

INCLUSIVE BLAMEWORTHINESS AND THE WRONGFULNESS OF CAUSING HARM

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VILLANELLE wants Eve to die. She aims a gun at Eve and pulls the trigger with the intention of killing her.¹ The bullet strikes Eve who dies as a result of the gunshot. Intuitively, it seems clear that Villanelle is blameworthy for killing Eve. If correct, this would seem to imply that Eve's death plays a role in determining Villanelle's blameworthiness such that she would be less blameworthy had she not killed Eve. However, this claim is in tension with another powerful intuition regarding the significance of luck. Suppose that Oxana also attempted to kill Eve in circumstances that were exactly like those of Villanelle (including any morally relevant facts about their thoughts and motives), except that a chandelier fell in the path of the bullet, thereby preventing it from reaching Eve's body. To many, it seems counterintuitive that Oxana deserves less blame than Villanelle, given that they both performed the same volitional act with the same malicious intent, the only difference being that Oxana's plan was foiled by an unforeseeable event disrupting the causal chain between act and intended result. However, if blameworthiness must be immune from luck, then it is difficult to see how Villanelle can be blameworthy for Eve's death, given that it was a matter of luck that the bullet hit Eve rather than a falling chandelier. The tension between these two common intuitions provides an illustration of what is known in the philosophical literature as the problem of moral luck, specifically resultant moral luck.

There are three broad strategies for responding to this problem.² One response is to simply accept resultant moral luck, to accept that how much blame a person deserves can be partly determined by factors outside of one's control. A second is to deny the first intuition that Villanelle is blameworthy for *killing* Eve. This view I refer to as *robust internalism*, as it holds that one can only be blameworthy for internal manifestations of agency, such as one's intentions,

1 The names for the running example are taken from the television program *Killing Eve*.

2 More precisely, three *nonskeptical* responses. While I certainly feel the force of hard determinist worries about the legitimacy of desert-based blameworthiness, I am setting aside general responsibility skepticism for the purposes of this paper.

attitudes, or values, and not for external actions, like killings. A third strategy is to attempt to reconcile both intuitions. This approach is adopted by Michael Zimmerman, who draws on the distinction between the *degree* and the *scope* of blameworthiness to argue that it is possible for something (such as a person's death) to increase the number of things for which one is to blame without increasing the degree or severity of blame one is deserving of.³ The intuition that Villanelle is to blame for Eve's death is captured by the claim that Eve's death is within the *scope* of Villanelle's blame, that it is among the things for which Villanelle is to blame. The intuition that Villanelle is not more blameworthy than Oxana is captured by the claim that Eve's death does not increase the degree or magnitude of Villanelle's blameworthiness.

The aim of this paper is to defend resultant moral luck. My strategy for defending this view begins by outlining an independently plausible theoretical framework that I refer to as the *inclusive conception* of blameworthiness, according to which the degree of blameworthiness is a function of two independent variables: wrongfulness and responsibility. I take one of the primary dialectic contributions of the paper to consist of reframing the debate over resultant moral luck in terms of the contribution of harm to the comparative *wrongfulness* of an action. When framed in these terms, I take the inclusive conception of blameworthiness, together with resultant moral luck, to create a more plausible package of theoretical commitments than competing views. In brief, this package consists of the following claims:

1. One can be blameworthy only if there is something one is blameworthy *for*.
2. Agents are paradigmatically blameworthy for what they *do*.
3. For a given wrongful action *a*, how much blame a person deserves for doing *a* is a function of both their degree of responsibility for and the moral wrongfulness of *a*.
4. For two agents *A* and *B* and two action-descriptions *a* and *β*, it is possible that *A*'s doing *a* is a morally worse offense than *B*'s doing *β*, even if the fact that *B* did *β* rather than *a* is due only to the fact that factors outside of *B*'s control prevented *B* from having the opportunity to do *a*.
5. For two agents *A* and *B* and two action-descriptions *a* and *β*, it is possible that *A*'s doing *a* is a morally worse offense than *B*'s doing *β*, even if the fact that *B* did *β* rather than *a* is due only to the fact that factors outside of *B*'s control prevented *B* from bringing about the intended harm.

3 Zimmerman, "Moral Responsibility and Ignorance" and "Taking Luck Seriously."

Zimmerman is committed to denying 1, while the robust internalist is committed to denying 2. Claim 3 expresses the inclusive conception of blame. The view that I call “qualitative scoping” could accept all three claims but faces dialectic pressure to accept 4, which in turn puts dialectic pressure on accepting the kind of resultant moral luck expressed in 5.

1. RESPONSIBILITY AND DESERT-BASED BLAME

The central question this paper takes up is whether the harm caused by one’s actions contributes to the degree of blame one is deserving of. Before answering this, it is important to clarify some of the key concepts involved in this question, beginning with the notion of blameworthiness.

In this paper, I shall understand blameworthiness in terms of Gary Watson’s notion of “accountability,” which he distinguished from “attributability.”⁴ Whereas attributability concerns the “aretaic face” of responsibility whereby we appraise a person as “an adopter of ends” or “an agent in a strong sense” in virtue of what their actions disclose about their “deep self,” accountability concerns responsibility’s “deontic face” whereby we appraise whether a person is an apt target of “adverse or unwelcome treatment” in virtue of failing to satisfy certain “expectations or demands or requirements.”⁵ While such an accountability conception of blame may be at odds with those who prefer to focus on the attributionist face of responsibility, I take it to be compatible with a wide variety of views regarding the nature of the sanctions associated with accountability.⁶ For example, the currency of criminal punishment is often held to be suffering, but it could also take the form of a monetary penalty, the imposition of community service, or the (temporary) deprivation of certain rights and privileges

4 Watson, “Two Faces of Responsibility.”

5 Watson, “Two Faces of Responsibility,” 229, 237, and 235. While Watson does not explicitly use the term “deontic” to describe the accountability face of responsibility, Darwall, in “Taking Account of Character,” does refer to attributability and accountability in terms of the aretaic and deontic dimensions of responsibility. However, in contrast to Watson, Darwall takes accountability to be disanalogous to attributability in that the former only has the negative dimension of blame.

6 Cf. Scanlon: “Questions of ‘moral responsibility’ are most often questions about whether some action can be attributed to an agent in the way that is required in order for it to be a basis for moral appraisal” (*What We Owe to Each Other*, 248). An attributionist could either hold that attributability is all there is to responsibility or hold that attributability is sufficient for accountability; the former would amount to a type of eliminativism and the latter a type of reductionism with respect to accountability.

of citizenship.⁷ In the context of interpersonal morality, the adverse treatment could, *à la* Strawson, take the form of being the target of resentment or some other negative emotion.⁸ Alternatively, it could take the form of a modification or withdrawal of one's friendship.⁹ While proponents of the "moral ledger" view of blame may not have originally conceived of their view as putting forth a claim about the nature of moral sanction, I see no reason why a "negative mark" or "blemish" on one's "moral ledger" could not be understood as a type of unwelcome treatment in the same way that a negative score on one's credit report could be seen as adverse treatment in response to a failure to pay one's bills on time.¹⁰

When it comes to the *justification* of blame, I assume a broadly retributivist view in the sense that I take the justification for any particular sanction to be based primarily on backward-looking considerations of *desert* as opposed to forward-looking considerations regarding the expected benefits of that sanction. That is, I hold that desert provides a necessary condition on the appropriateness of a given sanction and that the degree of the sanction should be proportional to desert, especially with respect to the upper limit. When I say that blame is *primarily* a matter of desert, I leave open the possibility for non-desert-based reasons—including, *inter alia*, evidence of remorse and restitution, the prospects of rehabilitation, and the value of mercy and forgiveness—to factor in as well, especially with respect to justifying a sanction that is less than what is strictly deserved.¹¹ For the purposes of this paper, however, I shall focus exclusively on the question regarding the degree of blame that one *deserves*, for what skeptics of resultant moral luck typically deny is that one person "*deserves ... a harsher reaction than*" another based on resulting harm,

7 For examples of the view that the currency of punishment is suffering, see Ross, *The Right and the Good*, 135–38; Hart, *Punishment and Responsibility*, 234–35; Tadros, *The Ends of Harm*, 63. For the point that the currency takes multiple different forms, see Brink, "The Nature and Significance of Culpability," 351.

8 Strawson, "Freedom and Resentment."

9 Scanlon explicitly states that "blame ... is not a kind of sanction" (*Moral Dimensions*, 122); rather "to blame a person for an action ... is to take that action to indicate something about the person that impairs one's relationship with him or her" (122–23). Thus, Scanlon seems to view the impairment of a relationship as the object of blame—or the external manifestation of the object of blame—rather than as a constituent of the blame itself. However, there seems to be conceptual space for thinking of accountability within a Scanlonian framework of interpersonal relationships such that the modification or termination of a relationship could be a kind of "treatment" that one is deserving of in response to conduct that has impaired (perhaps unforgivably) the relationship.

10 For examples of the ledger view, see Haji, *Moral Appraisability*; and Zimmerman, *An Essay on Moral Responsibility*.

11 This is the view that David Brink labels "predominant retributivism" ("Retributivism and Legal Moralism" and "The Nature and Significance of Culpability").

leaving “open the possibility that it would be morally justified to react more harshly toward [one who succeeded in causing harm] than toward [one whose attempt was thwarted] on grounds *other* than those having to do with desert.”¹²

This last way of putting the point—that a person deserves a harsher reaction—points to an important clarification regarding what I mean in saying that one person is more blameworthy than another. Following Robert Hartman and Justin Coates, we can distinguish between the claim that a person is more (or less) deserving of blame from the claim that they are deserving of more (or less) blame.¹³ The former reading indicates how strongly one stands in the desert relationship to blame; as Coates puts it: “for *A* to be more deserving of blame for a token of an *x*-type transgression than *B* is for a token of an *x*-type transgression, there are weightier reasons for blaming *A* than for blaming *B*.”¹⁴ In contrast, the latter reading is not about how weighty the reasons are for blaming a given person but how harsh or stringent a sanction they are deserving of. For example, to say that an adult offender is more blameworthy than a juvenile who has committed a type-identical offense in this latter sense is to say that the adult offender is deserving of a harsher punishment (e.g., a longer prison sentence). It is this second sense that I have in mind in this paper—when I say that Eve’s death can make Villanelle more blameworthy than Oxana, I mean that it can make Villanelle deserving of greater sanction.

In explicating the sense of “more blameworthy” that I have in mind, I contrasted an adult and a juvenile offender committing a type-identical offense. While there are different views about why juvenile offenders are deserving of less punishment, one common view is that they are less responsible because they have less control over their actions, and they have less control because their agential or reasons-responsive capacities are not fully developed.¹⁵ We can also contrast two agents who have type-identical control while committing different offenses. If *A* commits murder and *B* commits petty theft, then it is also the case that *A* is more blameworthy—is deserving of more punishment—than *B*, even if they have type-identical control over their respective wrongdoing. According to what I will call the *inclusive conception* of blameworthiness, these two examples illustrate each of two independent components of the desert base for blameworthiness: responsibility and wrongfulness.¹⁶

12 Zimmerman, “Taking Luck Seriously,” 562, emphasis added.

13 Hartman, *In Defense of Moral Luck*, 34; Coates, “Being More (or Less) Blameworthy.”

14 Coates, “Being More (or Less) Blameworthy,” 235.

15 See, e.g., Brink, “Immaturity, Normative Competence, and Juvenile Transfer”; Scott, “Criminal Responsibility in Adolescence.”

16 I use the label “inclusive conception” following David Brink’s label “inclusive culpability” for the type of culpability that includes (is inclusive of) both wrongdoing and

On the inclusive conception, blame is a fitting response to wrongdoing for which one is culpable or responsible, where the culpability or responsibility and the wrongdoing are independent variables.¹⁷ This view has the advantage of mapping onto the two main categories of culpability-denying defenses in law and morality: justification and excuse. In law, justification defenses, such as necessity or self-defense, deny wrongdoing; they deny that the defendant's action was criminal in nature and thus that a criminal offense has taken place.¹⁸ In contrast, excuse defenses, such as insanity or duress, accept that a criminal offense was committed but deny that the defendant should be held criminally liable because they lacked the capacity or (fair) opportunity to avoid committing the offense.¹⁹ Likewise, when a person is morally called to account for some *pro tanto* wrongdoing, they might justify their conduct by citing reasons that make the action all-things-considered morally permissible, thereby denying overall wrongdoing. Alternatively, they may accept that they ought not to have done what they did but offer an explanation that denies or mitigates their responsibility for the offense, e.g., by explaining how the circumstances led them to (mistakenly) believe they had good reasons for acting as they did.²⁰

responsibility. In the context of criminal culpability, Brink understands "inclusive culpability" as encompassing both "narrow culpability" (elemental *mens rea*), which is an ingredient of the wrongdoing, and "broad culpability," which refers to the defendant's moral responsibility for the wrongdoing. See Brink, "The Nature and Significance of Culpability" and *Fair Opportunity and Moral Responsibility*. By "desert-base," I mean the base or "ground" of desert—i.e., that in virtue of which one is deserving of accountability blame.

- 17 See Brink, "Retributivism and Legal Moralism" and "The Nature and Significance of Culpability"; Moore, *Placing Blame*; Nozick, *Philosophical Explanations*.
- 18 See Dressler: "Justified conduct is conduct that under ordinary circumstances is criminal, but which under the special circumstances encompassed by the justification defense is not wrongful and is even, perhaps, affirmatively desirable" (*Understanding Criminal Law*, 208).
- 19 Some conceptualize duress as a justification, rather than excuse, because they take (*pro tanto*) wrongdoing committed in response to an unlawful threat to be all-things-considered justified in the circumstances; see, e.g., Westen, "Does Duress Justify or Excuse?" Craig Agule argues for a middle position, such that duress shares aspects of both justification and excuse ("Distinctive Duress"). Some prefer to conceptualize insanity as an "exemption" rather than an "excuse."
- 20 It is also standard in the responsibility literature to recognize an epistemic condition on responsibility. On my view, how this condition factors into the inclusive conception is a complex matter, as the ignorance or mistaken belief can function either as a moral analogue of a negating defense (by affecting which action descriptions can be aptly imputed to a person) or a moral analogue of an affirmative defense (by defeating or mitigating moral responsibility); see Tiffany, "Imputability, Answerability, and the Epistemic Condition on Moral and Legal Culpability."

Following Robert Nozick and David Brink, we can represent this view of blameworthiness in terms of the following formula:²¹

$$B \propto D (= W \times R) \quad (1)$$

The $B \propto D$ part of the formula expresses the claim that the degree of blame that is appropriate or fitting is proportional to the target's desert, and the $D = W \times R$ component expresses the view that the desert-base (D) for punishment is wrongdoing (W) for which the target is responsible (R), where these are independent and scalar variables. Numerically, one can think of the " R " component as ranging from 0 to 1, with "1" representing full responsibility and "0" representing no responsibility (full excuse). It can be thought of as a "multiplier" for the degree and type of sanction associated with a given wrong, such that a person whose responsibility is diminished—e.g., because their cognitive or volitional capacities are diminished, or they are acting under coercive pressure—deserves less sanction than a person who commits the same offense in full possession of their rational capacities and free from external pressure. The " W " component should likewise be thought of in terms of a numerical representation of "seriousness of moral wrong" along some interval between "least wrong" and "most wrong." However, all of this should also be understood with the following caveats.

Despite the quasi-mathematical nature of the formula, we should not interpret it as indicating that deserved blame can be calculated with precision. For one thing, desert may only determine an appropriate interval, rather than a precise quantum, due either to genuine metaphysical indeterminacy regarding the desert base or to epistemic indeterminacy regarding our ability to accurately detect small differences in wrongdoing or responsibility.²² The quasi-mathematical *representation* of the desert-base for blame should not be taken to indicate that there is some metaphysical fact of the matter as to the precise percentage of responsibility one bears or that the moral quality of any given offense can be precisely quantified and measured, much less that we have the epistemic capacity to detect and measure such things with precision. Whether it even makes sense to think in terms of a *quantum* of blame may depend on how one understands the nature or currency of blame. Criminal punishment, for example, is often expressed in quantifiable terms, such as days in prison or hours of mandatory community service. Similarly, the "moral ledger" view of

21 This version of the formula comes from Brink, "Retributivism and Legal Moralism," 498, and "The Nature and Significance of Culpability," 350, who adapts it from Nozick, *Philosophical Explanations*, 363. Whereas both Brink and Nozick use " P " for "punishment," I use " B " for "blameworthiness."

22 For example, the United States Federal Sentencing Guidelines reflect interval sentencing.

moral blame may admit of quantification in terms of the “number of demerits” one receives on one’s moral “scorecard.” In contrast, if one thinks of blame as an expression of the reactive emotions, it is more difficult to quantify the intensity of resentment that one is deserving of.²³ In some cases, it might be more appropriate to understand degree of blame in categorical, rather than continuously scalar, terms—for example, in terms of the distinction between moral disdain, ordinary resentment, and mere annoyance. The point is that, even when expressed in a more qualitative type of currency, the type or intensity of reactive attitude one deserves is a function of both the moral turpitude of the wrong and the degree of responsibility or control one had over that wrong. For example, if I learn that you did not intend to step on my hand, I may either withdraw or mitigate the intensity of my reaction, depending on whether I think your behavior was (nonculpably) inadvertent and so completely blameless or whether it still manifested some (lesser) moral failure, such as recklessness or negligence.

Caveats aside, the fundamental idea behind the retributivist formula is that the degree of blame one deserves is a product of both the magnitude of the wrongfulness of one’s conduct and the degree of responsibility one had for that wrongdoing. This matters to the debate over resultant harm because the view that the actual harm caused by one’s actions contributes to one’s degree of blameworthiness is most plausibly interpreted as a claim about the contribution of that harm to the moral *wrongfulness* of that for which one is being blamed. While there is a sense in which some of the same concerns about the relevance of facts external to a person’s agency, such as resultant harm, to a person’s degree of responsibility will reappear as concerns about the relevance of those facts to the degree of wrongfulness, I do not think this merely replays the exact same debate in different language. At the very least, reframing the debate in terms of the inclusive conception changes the contours of the dialectic, as it is not clear that the same considerations about control apply equally to judgments about wrongfulness as they do to questions about responsibility.

This consequence is perhaps most clearly demonstrated in the context of the scoping strategy. When framed as a debate about the relevance of resultant harm to the wrongfulness of one’s conduct, the scoping strategy occupies an unstable middle position, as the considerations that would support excluding results from an evaluation of the moral wrongfulness of one’s actions would also support excluding them from the scope.

23 Coates develops this point in more detail in “Being More (or Less) Blameworthy,” 239–41.

2. AGAINST ZIMMERMAN'S SCOPING STRATEGY

One of the theoretical advantages of the scoping strategy, according to which factors such as outcomes can affect the scope but not the degree of blameworthiness, is its ability to accommodate both the intuitions that Villanelle is responsible for Eve's death and that luck should not determine how much blame one is deserving of. The problem is that once the debate is reframed in terms of the contribution of harm to the degree of wrongfulness, the rationale that Zimmerman offers for the scoping strategy no longer makes dialectic contact with the relevant opponent. Consider how Michael Zimmerman initially articulates and defends the view:

Although [Eve's] death may have added to the number of things for which [Villanelle] is to *blame*, it did not increase the degree to which she is to *blame*. Given [her] death, she may be to blame for more, but she is no more to blame than she would be had [Eve's] death not occurred. The reason for this is that [Villanelle] was only indirectly in control of [Eve's] death. That is, she was in direct control of something of which [Eve's] death was a consequence. . . . Her control did not extend beyond this something with respect to which she was directly free; there was no fresh injection of freedom beyond that point. Given that responsibility tracks freedom, there was therefore no fresh injection of responsibility beyond that point; her *responsibility* was not extended, its degree was not increased, by [Eve's] death.²⁴

While he begins by stating the thesis in terms of blame, the rationale he offers speaks only to the kind of control that grounds responsibility.

In order to represent the scoping strategy in the formal terms introduced above, we can represent the scope of blameworthiness as objects of the variables, such that " $B(a)$ " can be read as "blameworthy for a ." Thus (1) can be rewritten as:

$$B(a) = W(a) \times R(a) \quad (1')$$

According to the scoping strategy, how things turn out can increase the number of things for which one is to blame without increasing how much blame one deserves. This can be represented as follows:

$$B(a) = B(a + \beta) \quad (2)$$

24 Zimmerman, "Moral Responsibility and Ignorance," 419, emphasis added.

The “ β ” variable indicates an additional element in the scope of blameworthiness, for example, a resulting harm, such as a person’s death. According to the inclusive conception, this is equivalent to the following:

$$W(a) \times R(a) = W(a + \beta) \times R(a + \beta) \quad (3)$$

This way of representing the scoping strategy highlights the gap in Zimmerman’s argument, quoted above, as the rationale he provides speaks only to the responsibility component. That is, Zimmerman may have given us a good reason for accepting:

$$R(a) = R(a + \beta) \quad (4)$$

But this would produce an equivalent degree of blameworthiness only if it is also the case that:

$$W(a) = W(a + \beta) \quad (5)$$

The scoper owes an argument for claim (5), as it is not sufficient to point out that there is no difference in control. Imagine a third assailant, Irina, who intends only to (nonfatally) wound Eve. Zimmerman would accept that Villanelle and Oxana are both more blameworthy than Irina even if they all have type-identical control. According to the inclusive model, this difference is plausibly explained by a difference in the wrongfulness of intending to kill versus intending to (non-fatally) wound. If correct, the moral luck skeptic owes an account of the nature of this wrongfulness such that it distinguishes between Villanelle and Irina, but not Villanelle and Oxana. When it comes to offering such an explanation, Zimmerman is in a particularly vulnerable dialectic position.

First, he accepts that states of affairs can be within the scope of blameworthiness. In the above quotation, he puts the point in terms of the victim’s death; in a different paper, he writes: “I do not wish to deny that [the assassin] is responsible for killing [the victim] (or for [the victim’s] death—the distinction between actions and their ‘results’ seems to me irrelevant here).”²⁵ In other words, the “ β ” variable in the above formulas can refer to the state of affairs in which the victim is dead. However, states of affairs are morally assessed in terms of their axiological value.²⁶ If some state of affairs is included in the scope

25 Zimmerman, “Taking Luck Seriously,” 560.

26 Here I have in mind the distinction that Darwall draws between “ought-to-be” and “ought-to-do.” Darwall reads G. E. Moore as holding that “what most fundamentally possesses intrinsic value for Moore is a *state of affairs* . . . the normative proposition entailed by a thing’s having intrinsic value is that the state of its existing ought to be” (“How Should Ethics Relate to (the Rest of) Philosophy?” 26, emphasis original). This, according to Darwall, is Moore’s fundamental metaethical mistake: “Moore’s failure to understand

of W and the moral (dis)value of that state of affairs is a matter of the intrinsic (dis)value contained in that state of affairs, then it is not clear why that intrinsic (dis)value is irrelevant to the magnitude of W . Put differently: if state of affairs β is relevant to W , then the value of β would seem to be a blameworthy-relevant value; hence, if β 's value is axiological, then axiological value would be a blameworthy-relevant value. In contrast, if axiological value is irrelevant to the magnitude of W and states of affairs are fundamentally bearers of axiological value, then, contra the scoping strategy, that would seem to be a reason to exclude states of affairs from the scope of W .

Zimmerman could resist the above argument by denying that the fact that some state of affairs β is within the scope of W entails that β 's value is relevant to the value of W . That is, Zimmerman could include states of affairs within the scope of W (or B) while excluding the relevance of axiological value to the magnitude of W (or B) by denying that the moral status of *any* of the objects within the scope of W (or B) is relevant to the magnitude of W (or B).²⁷ This reading is supported by the fact that, in order to rule out the possibility of circumstantial moral luck, Zimmerman is willing to accept that a person can be blameworthy even if "the scope of [their] responsibility has dwindled to nothing," even when they are "not responsible for anything."²⁸ To illustrate, imagine that Villanelle, Oxana, and Dasha are all supposed to meet at a bar to discuss their mortal enemy, Eve; however, on her way to the meeting, Dasha's car breaks down, and she is unable to attend. At the meeting, Villanelle and Oxana end up placing a bet on who will be the first one to kill Eve, and then they each proceed as before with their murderous plans. Because Dasha was not there, she knows nothing about the bet and never conceives of killing Eve. However, we can suppose that had her car not broken down, she would have

reasons for action and ought-to-do's, which he reduced to the ought-to-be's he identified with intrinsic value" (26). While one could conceptualize actions and attitudes in terms of states of affairs—e.g., the state of affairs in which one values x or does y —I find it plausible to follow Darwall in emphasizing the normative difference between these ontological categories. If, for example, one accepts that "oughts gain their sense from norms; only what can be regulated by norms can be subject to normative judgment," then it seems plausible that "we must understand ought-to-be's as elliptical and underspecified, requiring completion by reference to something that can be normatively regulated," such as actions and attitudes ("How Should Ethics Relate to (the Rest of) Philosophy?" 27).

27 As Khoury puts it: "On his approach, to say that S is blameworthy for ϕ is to make a claim that, by Zimmerman's own lights, is irrelevant to anything that matters for blameworthiness" ("The Objects of Moral Responsibility," 1363; Khoury develops his argument against Zimmerman at 1361–63). See also Hartman *In Defense of Moral Luck*, ch. 4, for a thorough argument against Zimmerman's view (and counterfactual views more broadly).

28 Zimmerman, "Taking Luck Seriously," 364.

entered the bet and “*would* have freely killed [Eve], if [she] had the cooperation of certain features of the case.”²⁹ For Zimmerman, this is sufficient for Dasha to be equally blameworthy as Villanelle, even though Villanelle actually killed Eve while Dasha never so much as contemplated killing Eve. Contra Zimmerman, my view accepts the following:

Blameworthy-for: To be blameworthy, one must be blameworthy for something.

I find this so intuitive as to constitute a platitude. I am not sure how to even conceptualize a person’s being blameworthy without being blameworthy for anything at all.³⁰ I find it especially problematic to think about degree of blameworthiness independent of what a person is blameworthy for.

Setting aside Zimmerman’s particular counterfactual view, there is a way to accept Blameworthy-for and still embrace the spirit of the scoping strategy. One could hold both that Dasha is not at all blameworthy because she did not actually do anything wrong and that Oxana and Villanelle are equally blameworthy because what they did was equally wrong. This does mean that we have to slightly revise how to understand the scoping strategy, as it seems more accurate to say that Villanelle is blameworthy for a *different* action—murder, as opposed to attempted murder—than to say that she is blameworthy for *more* actions. Call this the “qualitative scoping strategy”:

Qualitative Scoping: When a person *P* performs an act *A* that causes some set of consequences *C*, *C* can affect the quality of *A* in the sense that it can affect what descriptions aptly describe the act for which *P* is being blamed, but *C* cannot increase the degree to which *P* is to blame for that act.

On this view, one can accept that Villanelle “did something wrong that [Oxana] did not,” but this is merely to accept that there is an act description that aptly describes what Villanelle did but not what Oxana did, and that the action is wrong under that description.³¹ What the scoper is committed to denying is that the particular wrongful action that Villanelle performed (murdering Eve) is morally worse than the particular wrongful action that Oxana performed (attempting to murder Eve). In the next section, I consider an internalist strategy for defending this claim.

29 Zimmerman, “Taking Luck Seriously,” 567.

30 Zimmerman explicitly rules out that a person in Dasha’s situation is blameworthy for having the kind of will such that she would have killed Eve had circumstances been different (“Taking Luck Seriously,” 564).

31 Zimmerman, “Taking Luck Seriously,” 561.

3. QUALITY OF WILL AND THE WRONGFULNESS OF CAUSING HARM

Within the literature on moral responsibility, it is common to distinguish between reasons-responsive or agential-control and quality of will or agential-revelation views of responsibility.³² It is not implausible to think that the same considerations that support a quality of will view of moral *responsibility* would also support a quality of will view of moral *wrongfulness*. According to this view, the scalar dimension of wrongfulness that is relevant to inclusive blameworthiness is exclusively determined by what something reveals about the moral quality of one's will:

Quality of Will: For any two objects within the scope of one's blame, α and β , α is more wrongful than β only if the quality of will manifested by α is morally worse than the quality of will manifested by β .

To return to the original example, the quality of will manifested by Villanelle is no worse than that manifested by Oxana; the fact that an unforeseeable event interrupted the causal chain from Oxana's action to the intended result does not seem to diminish the quality of will manifested by her attempt. Thus, if Quality of Will is correct, it follows that Oxana's attempted murder is not more wrongful than Villanelle's murder. Since we have already conceded that they have the same degree of responsibility, it would follow that they share the same degree of blame. Eve's death may determine whether we can aptly describe Villanelle's act as murder or (merely) attempted murder, but it does not make her any more blameworthy than if something had intervened to prevent Eve's death.

I accept that Quality of Will enjoys intuitive support. How far that support extends, I think, depends on what objects fall within the scope of blameworthiness. According to what I will call *robust internalism*, only direct internal manifestations of agency—intending, valuing, willing, and so on—can be objects of blameworthiness. If correct, then Quality of Will seems eminently plausible, perhaps even trivial. This is because the objects within the scope of

32 Cf. Yaffe: "It is common for theorists of responsibility to contrast quality of will views of responsibility with reasons-responsive views" (*The Age of Culpability*, 77); and Guerrero: "It will be useful to have two broad pictures concerning moral responsibility ... the agential control view [and] ... an agential revelation view" ("Intellectual Difficulty and Moral Responsibility," 208). Proponents of the control view include Fischer and Ravizza, *Responsibility and Control*; Wolf, *Freedom Within Reason*; Nelkin, *Making Sense of Freedom and Responsibility*; Brink, *Fair Opportunity and Responsibility*. Proponents of the quality of will view of moral responsibility include Arpaly, *Unprincipled Virtue*; Harman, "Does Moral Ignorance Exculpate?"; Hieronymi, "Reflection and Responsibility"; Smith, "Attributability, Answerability, and Accountability"; Talbert, "Moral Competence, Moral Blame, and Protest."

blameworthiness are all different ways of manifesting the kind of “will” that is relevant to a quality of will view of responsibility—what one intends, values, wills, and so on are all ways of manifesting a certain “quality of will.” Thus, anything that could affect the moral status of these is, by definition, something that affects the quality of one’s will.

This is the view defended by Peter Graham, who argues that “what people are most fundamentally blameworthy for are their attitudes to and mental bearing toward those things of intrinsic value around them.”³³ Commenting on a resultant luck scenario in which Bloggs succeeds at shooting Gomez in the leg while Jiggles’ bullet is knocked off course by a baseball, Graham claims “there is no level of resentment it is appropriate, for *any* sense of ‘appropriate,’ for Gomez to feel toward Bloggs that it would not be appropriate for her to feel toward Jiggles.”³⁴ Since Graham follows the Strawsonian tradition in understanding blameworthiness in terms of resentment, he takes this to imply that Jiggles is no less blameworthy than Bloggs. And, since they have the same intention but performed two distinct actions—shooting Gomez versus shooting a baseball—Graham takes the fact that they are equally blameworthy to imply that “what they’re blameworthy for fundamentally is not their actions, but rather their intentions.”³⁵

If we adapt Graham’s view to the inclusive model, the same considerations apply to each of the components of blameworthiness: wrongfulness and responsibility. This view fits quite naturally with Quality of Will, for if we limit the *ground* of moral appraisal to those features that are internal to one’s moral agency—e.g., one’s intentions, motives, and values—it is natural to likewise limit the *scope* of moral appraisal. And if we limit the objects of moral appraisal to internal features reflecting quality of will, then it is not clear how the scope of things we are responsible *for* can extend beyond those same features.

I do not have an argument against this type of robust internalism. However, in excluding even actions from the scope of things one can be blameworthy for,

33 Graham, “The Epistemic Condition on Moral Blameworthiness,” 163. See also Khoury, who argues that “the rejection of resultant moral luck entails we can only be morally responsible for elements of our mental life” (“The Objects of Moral Responsibility,” 1358). While Khoury argues from the rejection of resultant moral luck to internalism, he does provide reasons for skepticism with respect to resultant moral luck, some of which I discuss in section 4. As I note in my commentary on Graham, I do not take this kind of robust internalism to be my primary dialectic opponent in this paper. One could read this paper as adopting the inverse of Khoury’s strategy, as arguing from the rejection of robust internalism to resultant moral luck, while providing both intuitive and theoretical support for the latter.

34 Graham, “The Epistemic Condition on Moral Blameworthiness,” 170.

35 Graham, “The Epistemic Condition on Moral Blameworthiness,” 170.

the view is highly revisionary. It is also the case that this view is not available to the scoper, as what made the scoping strategy initially appealing was the fact that it was able to accommodate the very strong intuition that Villanelle is blameworthy for killing Eve. According to what could plausibly be termed the “standard” view of responsibility, we are paradigmatically responsible for what we *do*, which brings me to the second key claim that identifies the package of claims that characterize my view:

Blameworthy-Actions: Agents are paradigmatically blameworthy for what they *do*.

I say “paradigmatically” blameworthy, as I do not deny that we can be blameworthy for attitudes or mental “acts” (e.g., how we direct or fail to direct our attention). Rather, I take it to be a feature of our blaming practices that, typically, it is *wrongdoing* that merits a blaming response. Once we extend the scope of blameworthiness to include external acts, it is not clear why the resulting states of affairs that partly constitute those actions are not also relevant to our moral appraisal of those actions.

On a plausible view of action, whether some action can be properly ascribed to one depends on the description under which it is being ascribed. For example, in both law and ordinary language, the act of causing someone’s death can only be described as “murder” if it involves either the direct intention to kill or some mental attitude that is morally equivalent to a direct intention, such as “depraved indifference.” If one’s mental attitude at the time of the offense lacks this quality, then what one did cannot be aptly imputed under the description “murder.” It could, however, be imputed under some other description, such as “reckless homicide,” and under that description the action could still be wrongful, albeit less wrongful than directly intending some harm.

In criminal law, this view regarding the relevance of one’s mental attitude is captured by the *mens rea* condition. The American Legal Institute’s Model Penal Code recognizes four categories of *mens rea*—intention, foreknowledge, recklessness, and negligence—which are plausibly viewed as “reflect[ing] four grades of culpability from greater to lesser culpability and sometimes define distinct offenses.”³⁶ As Kenneth Simons puts it, we can “differentiate different mental states according to the relevant blameworthiness they display, holding constant a particular object of those mental states: intending to cause a death is more blameworthy than being reckless or negligent as to causing death.”³⁷ On the inclusive conception, this is plausibly explained by a difference in the

36 Brink, “The Nature and Significance of Culpability,” 360.

37 Simons, “Culpability and Retributive Theory,” 367.

wrongfulness of intending to cause some harm versus foreseeing and causing without intending the harm versus recklessly causing the harm versus negligently causing the harm. However, in addition to the *mens rea* element, criminal offenses are also constituted by an *actus reus* component, which can be understood as a voluntary act that causes some social harm.³⁸ There are three important features of this model of criminal culpability that I think plausibly hold for moral blameworthiness as well.

First, it is noteworthy that the *actus reus* condition contains both the external act and the resulting harm as constituent components of the “guilty action.” This is not just a feature of legal definitions or the nature of criminal law; ordinary language also includes resulting states of affairs as constituent components of action descriptions. As the external manifestation of a person’s will, actions extend into the world, and how they do so partly constitutes the nature of the action. Causing the baseball to fly over the outfield wall in fair territory partly constitutes the action of “hitting a home run”; causing the washing machine to function properly partly constitutes “fixing the washing machine.” If an outfielder’s mitt intrudes into the ball’s path, thereby preventing it from flying over the outfield wall, then one cannot aptly impute the batter’s action under the description “hit a home run,” even if the batter were the unlucky victim of a highly unlikely feat of athletic excellence on the part of the outfielder. Regardless of how much goodwill I put into my repair efforts, if I leave the washing machine no more functional than when I found it, I cannot accurately say that I “fixed the washing machine.” Whether Eve dies or something intervenes to save her life determines whether we can aptly describe Villanelle’s act as that of killing Eve or merely attempting to kill Eve. Both the nature and content of one’s mental attitude (*mens rea*) and the nature and consequences of one’s conduct (*actus reus*) combine to determine the description under which an action can be imputed and, hence, the description under which we are to assess a person’s responsibility for and the wrongfulness of that action.

Second, just as the different grades of *mens rea* correspond to different grades of wrongfulness, a difference in the magnitude of harm that partly constitutes the *actus reus* corresponds to a difference in the wrongfulness of the offense for which one stands accused. This can be captured by the following principle:

Harm Matters: For any two action descriptions α and β , it is possible for α and β to differ in their moral wrongfulness due only to the resulting harm(s), or lack thereof, that partly constitute α and β .

38 See Dressler, *Understanding Criminal Law*, 85.

It is important not to equate Harm Matters with consequentialism. Even if consequentialism is false and the moral quality of an act is not determined exclusively by its consequences, it can still be the case that consequences at least *partly* determine its moral quality. I provide some intuitive support for this claim below. First, though, it is important to bring out one final feature of the criminal model that is central to establishing moral blameworthiness.

While the criminal law does recognize the relevance of actual harm caused to the degree of punishment one deserves, it is important to recognize the way in which *mens rea* interacts with *actus reus* to establish culpability for a given harm. It is standardly held that the *mens rea* condition is what connects the agent to the *actus reus* in a way that grounds a defendant's blameworthiness for an offense.³⁹ One way to conceptualize this connection is in terms of control—*mens rea* is what accounts for control over the conduct and resulting harm captured by the *actus reus*. It is odd, for example, to say that Villanelle had *no* control over whether Eve died, given that Eve's death is precisely what Villanelle intended and what she went to great lengths to make happen. As Michael Moore presses the point:

In the situation where some defendant *D* intends to kill victim *V*, and where *D* carefully loads his gun, checking all bullets to be sure none are duds; tests the firing mechanism of the pistol; isolates *V* from all possible help or medical attention; screens off all birds or other objects that could interfere; puts the gun at *V*'s head, pulls the trigger, and kills him—I would say that *D* *controlled* *V*'s death. . . . If *D* has control over his choices, despite not having control over all the possible preventers or disrupters of those choices, does he also have control over *what* he chooses, *viz.*, that *V* die? His choice . . . is the product of his practical reasoning process. But so are the bodily movements by which he executes that choice, and so is the intended effect of those bodily movements, *viz.*, *V*'s death. It is *D*'s reasoning processes that cause all three of them: *D*'s choice, *D*'s act of moving his finger, and *V*'s death.⁴⁰

39 This function of *mens rea* is often made explicit in discussions of negligence. Cf. Herstein, commenting on the puzzle posed by negligence: "A person's responsibility for conduct turns on a type of connection between one's conduct and one's practical agency. . . . The paradigm for this conception of responsibility is the *intentional action* (or omission), wherein the responsibility-establishing connection between conduct and agency is obvious" ("Nobody's Perfect," 110, emphasis added); and Stark arguing that a "bare conduct-based account of negligence . . . would be unacceptable for the criminal law, for it would fail to draw a clear, personalized link between the defendant and her wrongdoing" (*Culpable Carelessness*, 181).

40 Moore, *Causation and Responsibility*, 28.

It is true that Villanelle has no control over whether her bullet is blocked by a falling chandelier, but it does not follow from that that Villanelle had *no* control over Eve's death. After all, she could have chosen not to shoot Villanelle. In the same way, imagine a person working on a construction site who recklessly tosses heavy debris onto the sidewalk below in full knowledge that people are using the walkway and, hence, that there is a strong likelihood of injury. If a pedestrian is struck by a thrown brick, it would seem an exceptionally poor attempt at excuse for the worker to claim, "I had no control over whether anyone was injured; they were just unlucky to be at the spot where and when the brick landed." The natural response to such a plea would be to point out that the worker did have control insofar as he could have easily avoided causing the injury by refraining from recklessly tossing bricks off the roof in the first place. Of course, the moral-luck skeptic holds that the degree of blame should be determined exclusively by the relevant attitude or *mens rea*, e.g., intention or recklessness. The point I am making is simply that one can hold that actual harm is *relevant* to degree of blame while also requiring that one have some sufficient degree of control over that harm via the moral analogue of a *mens rea* condition with respect to that harm, e.g., by intending the harm or being willfully reckless with respect to that harm.

It may be that the respective proponents of Quality of Will versus Harm Matters simply have different intuitions about crucial cases. I find the intuitive case for Harm Matters especially persuasive when looking at things from the perspective of the victim or the victim's family (in the case of murder). Consider, for example, a scene from the film *Dead Man Walking* in which the Sister Helen character (played by Susan Sarandon) is trying to get condemned murderer Matthew Poncelet (played by Sean Penn) to take responsibility for his crimes. Poncelet angrily remarks how the father of one of his victims said he wants to administer the lethal injection to Poncelet himself, and Sister Helen responds as follows:

Well, think of how angry he must be.
 He's never gonna see his daughter again.
 He's never gonna hold her, love her, laugh with her.
 You have robbed these parents of so much.
 They have nothing in their lives but sorrow, no joy.
 That is what you gave them.⁴¹

The last line here is key: "That is what you gave them." These consequences are all part of what Poncelet *did*—he robbed the parents of their child, of all the

41 Robbins, *Dead Man Walking*.

joy, the laughter, the experiences they would have shared with their daughter. Those consequences strike me as relevant to a deontic evaluation of the action's wrongfulness. Imagine a parallel scenario in which Poncelet fails to kill the teenagers because of resultant luck. Now the above is no longer an accurate description of what he did—it is no longer the case that he has robbed the parents of their daughter, of all the joy, laughter, and love that they would share. Given the context, Sister Helen's words would lack the same force when reflecting the lack of actual harm: "He *almost* never saw his daughter again . . . that is what you *attempted* to give them."

To take a less extreme case, consider a variation on Graham's example of shooting a person in the leg. Eve and Eevee are both professional dancers; Villanelle successfully shoots Eve in the leg, while Oxana's attempt to shoot Eevee in the leg is foiled by a falling chandelier. Two years later, Eevee is a principal dancer for the Joffrey Ballet while Eve is reduced to serving drinks in the lobby, her career cut short due to the permanent muscle damage suffered as a result of Villanelle's action. My intuitions differ from Graham's in that it strikes me as entirely appropriate for Eve to seethe with resentment of Villanelle in a way that it does not seem appropriate for Eevee to feel toward Oxana. After all, Villanelle robbed Eve of her dreams, her career, the one thing that had given meaning to her life—that is what Villanelle *did* to her. While Oxana may have tried to do the same to Eevee, she failed. Eevee still has her career; she is still able to pursue what brings meaning to her life. Because of this, it strikes me that what Villanelle did to Eve is morally worse than what Oxana did to Eevee.

Not everyone will share my intuitions about these cases. Others might acknowledge that these examples have some intuitive force but argue that this is outweighed by the counter-intuitiveness of allowing for luck to determine the moral status of one's action. It is this argument from moral luck to which I turn in the final section.

4. MORAL APPRAISAL AND MORAL LUCK

While the concept of moral luck is typically discussed in the context of moral *responsibility* or blame, Nagel originally introduces the topic by speaking about the "moral judgment of a person and his actions."⁴² One reason to prefer Quality of Will over Harm Matters thus comes from a desire to insulate the moral appraisal of actions from luck. In this section, I draw on recent work in the philosophy of criminal attempts to argue that the consequences of completely

42 Nagel, "Moral Luck," 24. He later offers the following definition: "Where a significant aspect of what a person does depends on factors beyond his control, yet we continue to treat him in that respect as an object of moral judgment, it can be called moral luck" (26).

eliminating moral luck are at least as counterintuitive as that of accepting resultant moral luck. In brief, I argue that we face the following trilemma: (1) accept that a person who has merely taken a few initial steps in pursuit of a murder plot is equally blameworthy as a successful murderer, (2) accept resultant moral luck, or (3) allow for circumstantial but not resultant moral luck. Most of the section is devoted to articulating why ruling out moral luck commits one to 1. To my mind, this is far more counterintuitive than simply accepting resultant moral luck, which leaves options 2 and 3. I end with some reasons for doubting that there is a principled way of distinguishing between circumstantial and resultant moral luck.⁴³

In the previous section, I suggested that there is both intuitive and theoretical support for thinking of criminal culpability and moral blameworthiness as structurally analogous in that the object of blameworthiness can be understood in terms of action under a description: paradigmatically, we are blameworthy for wrongful actions, the content of which is determined by the particular description under which we are being blamed. Both law and morality distinguish between murder and attempted murder, where those guilty of the former are held to be more blameworthy than those who are (merely) guilty of the latter. Since the only difference between a murderer and an attempted murderer is often a matter of resultant luck—as in the Villanelle and Oxana example—moral luck skeptics reject this view. In order to probe this debate, I find it instructive to look more closely at the way the criminal law treats criminal attempts.

The philosophical literature on moral responsibility often discusses attempts, such as attempted murder, in terms of fully *completed* attempts, such that the only difference between a murderer and an attempted murderer is resultant luck.⁴⁴ However, in criminal law there are good reasons to recognize criminal attempts prior to completion. For example, if police were to interrupt Oxana just seconds before she is able to pull the trigger, it is intuitively plausible to think that she should still be charged with attempted murder, that the

43 Robert Hartman also argues from circumstantial moral luck to resultant moral luck (*In Defense of Moral Luck*, 105–11). The argument presented here was developed independently of Hartman's and can be read as compatible with and supplemental to Hartman's argument. The principal difference between my version and Hartman's is that: first, the argument developed here draws on the nature of attempts as they are conceptualized in the context of criminal law, in particular by observing how criminal attempts need not be fully complete; second, my argument focuses on the difference in the wrongfulness of one's activity at various stages along the path to completion.

44 In commenting on a scenario in which a would-be assassin is unable to get his shot off because the target turned into a doorway, Zimmerman states: "In this sort of case there isn't even an attempt on [the victim's] life" ("Taking Luck Seriously," 563).

difference in mere seconds should not mean the difference between a charge of attempted murder and some lesser offense, such as breaking and entering. Within the philosophy of law, this leads to the question of how to determine when an attempt “vests,” that is, when a person’s conduct over some period of time is sufficient to establish a criminal attempt.

According to the view defended by Gideon Yaffe, we can approach this question counterfactually.⁴⁵ On Yaffe’s view, for some agent *D* who is motivated by an intention to commit some criminal offense *C* across some time interval from t_1 to t_2 , *D* counts as having committed a criminal attempt if they satisfy the following counterfactual:

Completion Counterfactual: If (1) from t_1 to t_2 *D* has the ability and the opportunity to *C* and does not fall prey to “execution failure,” and (2) *D* does not (at least until after t_2) change his mind, then *D* would *C*.⁴⁶

This view is much less revisionary than Zimmerman’s counterfactual view in that it requires a defendant to have a criminal intention and that they are actually motivated by that intention. It also fits comfortably with the quality of will view, as whether a person satisfies the counterfactual is arguably an indication of the quality of will from which they are acting.

It is plausible to suppose that the Completion Counterfactual has a determinate truth value at any point along the path to completion.⁴⁷ Thus, for any point along the path to completion, either the Completion Counterfactual is true or false of a given individual; if true, then that individual has committed a criminal attempt.⁴⁸ Yaffe takes this to be a feature of his view, as it preserves the (American) criminal law’s presumption of bivalence, and it is able to account for the intuition that being interrupted by the police just before one is able to complete one final muscular movement of the finger should not determine whether one is guilty of attempted murder or some minor offense such as breaking and entering.⁴⁹

45 Yaffe, *Attempts*.

46 Yaffe, *Attempts*, 94.

47 As Brink notes, there may be some indeterminacy regarding the precise degree of capacity and opportunity required, but “it might still be true that for any given precisification of the counterfactual it will always be determinately true or false for any given individual and any given point in time whether she would commit the crime if she had ability and opportunity to do so” (“The Path to Completion,” 189n6).

48 In the legal context there is the added *epistemic* complication of determining what counts as sufficient evidence for the truth of this claim, but we can set this aside as my concern in this paper is with the metaphysics of blameworthiness.

49 The presumption of bivalence is the presumption that a defendant can only be guilty or not guilty; other jurisdictions allow for a finding of partial guilt.

Whether Yaffe's account offers a plausible analysis of criminal attempts within the context of US criminal law, I find the presumption of bivalence problematic from the standpoint of moral blameworthiness. Following David Brink, I find it more plausible to think of blameworthiness for criminal attempts as scalar or multivalent, rather than binary or bivalent.⁵⁰ As Brink observes, "attempts are often temporally extended, unfolding over a period of time," and "typically involve a series or sequence of actions, such as conceiving of the offense, preparation and planning for the crime, and a sequence of steps in executing the plan."⁵¹ To fix some terminology, we can say that "prior to the last act, attempts are *partially complete*, and their degree of completion is roughly a matter of proximity to the last act."⁵² The problem with relying exclusively on the Completion Counterfactual is that it "will often be true fairly early in the execution of a plan."⁵³ For example, imagine a variation on the scenario discussed in section 2 involving Villanelle, Oxana, and Dasha placing a bet on who will be the first to kill Eve. Suppose that Dasha does attend the meeting, joins the bet, and begins to pursue her goal of killing Eve with the kind of determination that would ground the truth of the Completion Counterfactual. However, let us further suppose that she is only able to take a few preliminary steps, such as tracking Eve's daily routine, before she is arrested on unrelated charges and deprived of the opportunity to even make significant progress on the attempt. I find it deeply counterintuitive to hold that Dasha is equally blameworthy as Oxana, much less Villanelle. Following Brink, I find it much more plausible to hold that "partially complete attempts deserve censure sanction *proportionate* to their degree of completion."⁵⁴

I find the inclusive conception of blameworthiness to provide a plausible analysis of the scalar approach to attempts, as I think that the difference in degree of blameworthiness is plausibly accounted for by a difference in their degree of wrongfulness, where the wrongfulness of an attempt is proportionate

50 Brink, "The Path to Completion."

51 Brink, "The Path to Completion," 189.

52 Brink, "The Path to Completion," 190.

53 Brink, "The Path to Completion," 189.

54 Brink, "The Path to Completion," 192. As Brink also remarks, one can conceptualize multivalence either as continuously scalar or "lumpy." On the lumpy model, we can recognize different categories defined by different thresholds—e.g., anything less than 25 percent complete qualifies as *de minimus* (hence not prosecutable), anything over 75 percent counts as fully complete, and anything in between counts as partially complete. Given various practical and epistemic limitations on making very fine-grained distinctions in degree of blameworthiness, there may be good reasons for adopting the lumpy model with respect to criminal culpability, even if, metaphysically speaking, moral blameworthiness is continuously scalar.

to its degree of completion. This, in turn, I think can be supported by reflection on the doctrine of abandonment. Abandonment occurs when an agent abandons a criminal attempt at some point prior to completion, and it is sometimes held to exculpate one of blameworthiness even if the attempt has already vested.⁵⁵ In a criminal context, this doctrine functions in part to provide would-be criminals with an incentive to abandon their plans prior to completion, and the state has an interest in creating such incentives. On the view I am defending here, it is also relevant to a person's desert-based (inclusive) blameworthiness in virtue of being relevant to the wrongfulness of that for which one is being blamed. Specifically, I think the following is a plausible generalization:

Abandonment: It is less wrong to begin and abandon a plan to bring about some harm than to fully complete an attempt to bring about that harm.

Crucially, even if the Completion Counterfactual is true of a given agent from t_1 to t_2 , it is still possible for them to abandon the plan prior to completion. That is, the following could both be true: (1) at some time t , within the interval from t_1 to t_2 , if Dasha were presented with the opportunity to kill Eve at t , she would take it, and (2) at some time t_3 , after t_2 but prior to completion, Dasha decides to abandon her attempt to kill Eve. Because the Completion Counterfactual is true of Dasha at t , I take it that Dasha (at t) manifests the same quality of will as Oxana. However, because Dasha still has the opportunity to abandon her plan, I take it that what she has actually done (as of t) is less wrongful than what Oxana did; hence, she is less blameworthy (at t).

If the Brink-inspired scalar account of attempts is plausible, it follows that the wrongfulness of what one has done can be partly a matter of (circumstantial) luck. While resultant luck is what distinguishes a successful murder from an unsuccessful but completed attempt at murder, circumstantial luck is (typically) what distinguishes a partially completed attempt from a fully completed attempt. One could be prevented from completing an attempt for a variety of factors outside of one's control, such as getting caught by the police, the death of one's intended victim due to natural causes, a sudden and drastic weather event, or the onset of depression. Even in cases where one abandons one's plan out of a genuine change of heart, it could be that the change of heart was occasioned by a fortuitous occurrence such as the chance appearance of a child who closely resembles the would-be assassin's own child. In any number of ways, what a person ends up actually freely doing is susceptible to circumstantial luck.

55 The Model Penal Code §5.02(4) and some jurisdictions treat abandonment as an affirmative defense in cases where a plan has been abandoned due to a genuine change of heart (rather than, e.g., fear of apprehension), meaning that the abandonment provides grounds for acquittal of the charged attempt.

Thus, we are left either accepting Zimmerman's highly revisionary counterfactual view whereby a successful murderer is equally blameworthy as a person who never even contemplated murder but would have committed murder under suitable counterfactual circumstances, or accepting the following claim:

Opportunity Matters: For two agents *A* and *B* and two action-descriptions α and β , it is possible that *A*'s doing α is a morally worse offense than *B*'s doing β , even if the fact that *B* did β rather than α is due only to the fact that factors outside of *B*'s control precluded *B* from having the opportunity to do α .

Once one accepts a principle such as Opportunity Matters, the existence of resultant moral luck comes down to whether there is a principled difference between resultant moral luck on the one hand and circumstantial and constitutive moral luck on the other. In favor of the view that there is such a difference, Andrew Khoury reasons as follows:

The compatibilist has a principled reason for drawing a line between resultant moral luck and other forms of moral luck such as circumstantial and constitutive moral luck (luck in one's circumstances and luck in who one is). The compatibilist can hold that it is the quality of an agent's will that determines responsibility. It is particular qualities of an agent's willing that are the *bearers of responsibility relevant value*. To the extent that luck can affect those qualities of will, then luck can affect responsibility, . . . hence, the compatibilist can accept circumstantial and constitutive moral luck.⁵⁶

The rationale provided in this passage seems to depend on the following principle:

Blameworthy-Relevant Luck: For some *X*, if *X* is a determinant of blameworthy-relevant value, then luck can affect blameworthiness by affecting *X*.

This strikes me as a plausible principle. It also strikes me as correct that quality of will is a determinant of blameworthy-relevant value and that this explains why we should accept constitutive and (some) circumstantial moral luck. However, I do not think it can do all the work a resultant-moral-luck skeptic wants it to do for two reasons.

⁵⁶ Khoury, "The Objects of Moral Responsibility," 1374, original emphasis. See also: "What Nagel . . . identifies as constitutive and circumstantial moral luck are significantly less problematic than resultant moral luck precisely because they, as it were, flow through a person's agency whereas resultant luck bypasses one's agency altogether" (Khoury, "Responsibility, Tracing, and Consequences," 203).

First, it cannot explain the difference in blameworthiness between Dasha (who has merely taken some preliminary steps in her murder plan) and Oxana (who has fully completed her attempted murder) because, as I argued above, there is no difference in the quality of will manifested by Dasha and Oxana. Thus, the resultant-moral-luck skeptic must either reject Abandonment, explain how Abandonment is consistent with holding Oxana and Dasha to be equally blameworthy, or find an alternative explanation for the difference in blameworthiness.

Second, and more fundamentally, Blameworthy-Relevant Luck cannot help to explain the difference between resultant moral luck on the one hand and circumstantial and constitutive moral luck on the other without begging the question against resultant moral luck. On the view being defended here, resulting harm is relevant to the moral wrongfulness of one's action. If correct, then harm is a determinant of blameworthy-relevant *value*, which means that luck can affect blameworthiness by affecting harm. If Harm Matters, it entails the following counterpart to Opportunity Matters:

Harm Matters-Corollary: For two agents *A* and *B* and two action descriptions α and β , it is possible that *A*'s doing α is a morally worse offense than *B*'s doing β , even if the fact that *B* did β rather than α is due only to the fact that factors outside of *B*'s control prevented *B* from bringing about the intended harm.

I have intentionally formulated the two luck principles in contrastive terms, as I think that the case against resultant moral luck gains some intuitive plausibility when stated in contrastive terms—e.g., when we ask whether one had control over doing α rather than β . In the previous section, I argued that if a person acts volitionally with the intention to bring about some harm, such as a person's death, then it does seem that person has a morally relevant sense of control over the victim's death. But this can be true even if that person did not have control over whether they did α rather than β due to a lack of control over whether something intervenes to prevent the intended harm from coming about. But precisely the same thing is true of opportunity. One can have control over doing α , even if one does not have control over doing α rather than β due to a lack of control over whether something intervenes to deprive one of the opportunity to do β .

It is, of course, possible that there is a way of articulating a principled difference between resultant moral luck and circumstantial moral luck such that the former is morally problematic in a way the latter is not. However, I find it more parsimonious to simply accept that once we move "outside the head" and extend the scope of moral appraisal to include the ways in which we interact with the world, we invite various forms of moral luck.

5. CONCLUSION

My aim in this paper has been to contribute to the ongoing dialogue on resultant moral luck by reframing the central issue in terms of the inclusive conception of blameworthiness and the contribution of harm to the wrongfulness of that for which one is being blamed. While some of the same considerations regarding the relation between luck and responsibility will resurface regarding the relation between luck and wrongfulness, I have tried to show that reframing the debate in this way at least changes some of the contours of the dialectic, most importantly with respect to the role of control. Whereas a difference in control seems to necessarily correspond to a difference in responsibility, the same is not true of wrongfulness, which places the proponent of resultant moral luck in a stronger dialectic position.

Over the course of the paper, I have tried to defend a set of claims, including resultant moral luck, that combine to provide an intuitively plausible and theoretically sound package. I have argued that the scoping strategy—whether in Zimmerman’s counterfactual version or the modified qualitative version—is in a particularly vulnerable dialectic position. Zimmerman’s view involves the radically revisionary claim that one can be blameworthy without being blameworthy for anything. The qualitative scoper, on the other hand, must either accept that a person who has merely taken a few initial steps toward a murder plot is equally blameworthy as a successful murderer or make an *ad hoc* distinction between resultant and circumstantial moral luck. The robust internalist may be in the strongest dialectic position vis-à-vis the proponent of resultant moral luck insofar as they have an internally coherent position and can offer a principled explanation for why resultant moral luck does not affect blameworthiness. It may be that the debate between these positions comes down to the dull thud of clashing intuitions, but I take it to be a theoretical virtue of the view defended here that it is less revisionary in preserving the thought that we are typically blameworthy for what we do, where what we do extends beyond the mind.

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