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Moral Luck and Unfair Blame

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Killer drove drunk and, for reasons beyond his control, killed a child that ran onto the street. Merely Reckless also drove drunk but, for reasons beyond his control, was lucky and killed nobody. Suppose that the outcome in each case differs solely due to factors beyond the agents' control. Still, these factors supposedly influence the respective moral praise- and blameworthiness of both agents: Killer seems more blameworthy than Merely Reckless, and so the latter is morally lucky. However, it is also widely accepted that only things within one's control shall determine how praise- and blameworthy one is; accordingly, there should be no moral luck.

These conflicting beliefs about agents' praise- and blameworthiness constitute the problem of moral luck. Scholars frequently pose the problem in alethic terms, following Nagel (1979: 27), who considers moral luck as a *paradoxical* but "natural consequence of the ordinary idea of moral assessment." Enoch and Marmor (2007: 406) describe the problem as a dilemma between what Enoch later (2010: 43) dubs as "contrasting families of intuitive judgements." More recently, Hartman (2019: 227, emphasis added) writes that "the problem of moral luck is a *contradiction* in our common-sense ideas about moral responsibility."[1] Thus, it is suggested that it is paradoxical that responsibility should be luck-free (or in other words—as Williams (1981: 21) put it—morality must be absolutely fair) and yet our assessment and treatment of people often differ depending on the consequences and circumstances of their acts over which they had no control.

A recent proposal to resolve the paradox of moral luck distinguishes between *judging blameworthy* (to wit, assessing someone's moral status) and *blame-related*

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[1] Some philosophers have suggested that the difference is epistemic. The differential treatment merely reflects third parties' knowledge of the judges' malicious intent. They must respond on the basis of this limited knowledge; see Rescher (1995), Zimmerman (1988, 2002). Epistemic differences explain away some cases of moral luck, but not all of them: Merely Reckless and Killer do not differ epistemically.

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reactions (to wit, practices that respond to someone's blameworthiness).[2] In what follows, we call this view *separatism*, because it proposes to separate these aspects conceptually to resolve the paradox of moral luck (Enoch and Marmor 2007: 412).[3] Separatists argue that unlike the blame one receives, someone's blameworthiness remains unaffected by factors beyond control. On this view, it is perfectly sound to judge Killer and Merely Reckless to be equally blameworthy and nonetheless blame them differently, for example, by punishing or resenting them to different degrees.

We aim to show that separatism resolves the paradox of moral luck, but does not sufficiently acknowledge the role of fairness in blame-related practices. Accordingly, we may resolve the paradox of moral luck but only at the cost of unfair blame. We highlight the importance of fairness considerations in blame-related practices and argue that separatists should interpret fairness as a *pro tanto* reason for blame. We thereby link the debate about moral luck to the recent debate about appropriate grounds for blame, which has largely ignored fairness' role as a reason for blame.[4] We will show that the fairness of blaming someone is entirely (in two different ways) determined by that person's blameworthiness. Fairness' relative weight in an axiology of blame seems to be non-dominant in the following sense: Other grounds for appropriate blame sometimes override fairness.

We proceed as follows: Sections 1 and 2 introduce the paradox of moral luck and the separatist solution in more detail. Section 3 outlines the challenge of fairness related to blame that separatists face. In Section 4, we sketch a way to amend separatism by locating fairness within an axiology of blame.

1 The Paradox of Moral Luck

Understanding the problem of moral luck as a *paradox* presupposes that judgments about blameworthiness are truth-apt, though they need not be overt. To judge someone blameworthy is thus, as Hobart (1934: 17–8) suggests, "simply to say [or think]

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[2] In the moral luck debate, the concepts "moral assessments", "responsibility" and "blameworthiness" are often used interchangeably; see Nagel (1979); Nelkin (2013a). Sometimes, the problem is understood to be concerned with *moral status,* see e.g. Hanna (2014: 683). Conceptual ambiguity gives rise to the confusion that separatists stress. Being aware of the difference between these concepts (responsibility supposedly also refers to, for instance, role-related obligations and emotional responses such as feelings of guilt and regret), we will follow the majority of authors (e.g. Enoch and Marmor 2007; Hartman 2019) and focus on blameworthiness. For the sake of simplicity, we later state the Control Principle in its standard formulation. In our view, it would have to be restricted to blameworthiness instead of moral assessment (cf. Sand 2021).

[3] See also Concepcion (2002); Enoch (2010); Jensen (1984); Richards (1986), Zimmerman (1987, 2002). In distinguishing between blame and judging blameworthy, we move—like other authors—beyond the purely cognitive account of blame (Scanlon 1986; Watson 1996). See Kenner (1967) for an early objection against purely cognitive accounts of blame.

[4] Our objection differs from the wrong kind of reasons objection to consequentialist accounts of punishment and blame; e.g. Mason (2011). We do not claim that some considerations that motivate blaming are the wrong kind of reasons for blame, but explore the view that fairness is amongst the right kind of reasons for blame. We thank Hanno Sauer for making us aware of this difference.

that he is a bad act-maker."[5] Paradoxical sets of judgments about blameworthiness in this sense seem to prevail in the cases commonly considered as moral luck paradigms. For example, consider Nagel's version of Killer and Merely Reckless (Nagel 1979: 29):

> If someone has had too much to drink and his car swerves on to the sidewalk, he can count himself morally lucky if there are no pedestrians in its path. If there were, he would be to blame for their deaths, and would probably be prosecuted for manslaughter [Killer]. However, if he hurts no one, although his recklessness is exactly the same, he [Merely Reckless] is guilty of a far less serious legal offence and will certainly reproach himself and be reproached by others much less severely.

Nagel suggests that Killer is *more* blameworthy than Merely Reckless and that this is commonly acknowledged in ordinary morality (cf. Enoch and Marmor 2007: 410; Wolf 2001: 5ff; Zimmerman 2002: 554). We can express this assessment as Killer seeming blameworthy to the degree D1, and Merely Reckless seeming blameworthy to the degree D2, and that D1 > D2. Let this inequality be the content of the judgment *Unequal*.

Unequal conflicts with the judgment that both Killer and Merely Reckless have precisely the same degree of blameworthiness, because they have precisely the same degree of control in the sketched situation, hence D1 = D2. Let this equality be the content of the judgment *Equal*. Equal is strongly supported by the intuition that morality is absolutely fair (Hartman 2018; Russell 2008; cf. Williams 1985). That is, factors beyond someone's control cannot make a difference to one's blameworthiness. This conviction is commonly called the *Control Principle*. The following standard formulation of this principle has been proposed by Dana Nelkin (Nelkin 2013b; see also Enoch and Marmor 2007: 407; Rosebury 1995: 518–9):

> **Control Principle**: We are morally assessable only to the extent that what we are assessed for depends on factors under our control.

Accordingly, factors beyond the control of Killer and Merely Reckless are "irrelevant to the question [of] how blameworthy they are" (cf. Zimmerman 1988, 2002: 560). Killer and Merely Reckless are thus equally blameworthy, assuming that they have the same factors within their control. While the Control Principle, as Nagel suggests, seems to be part of "the ordinary idea of moral assessment" (Nagel 1979: 24ff), moral luck examples also indicate that we tend to make both judgements Equal and Unequal, which is paradoxical. The paradox of moral luck is now in full view. Equal and Unequal cannot both be true, and yet both judgements rest on common and uncontroversial ideas of morality. It is far from obvious where the error lies.

Several responses to the paradox of moral luck have been brought forward. Some, like Nagel (1979), consider this paradox to be insoluble. However, the majority of

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[5] Blaming, and other blame-related practices, however, are plausibly not *merely* constituted by judging blameworthy in the descriptive sense outline above; see Hieronymi (2004: 116). We return to this point in Section 3.

scholars aim to dissolve it and, therefore, aim at showing that we can reject either Equal or Unequal. We will assume in this article, for the sake of argument, that the Control Principle in some formulation similar than the one presented before is true.[6] Therefore, we put aside views that acknowledge that factors beyond one's control can make a moral difference—that there is moral luck (Hanna 2014; Hartman 2018, 2019).

Accepting the Control Principle yet trying to dissolve the paradox of moral luck requires showing that Unequal judgements are either false or that they do in fact not contradict the Equal judgements. We will now turn to the separatists' way of defending the latter.

2 Separatism as a Solution to the Paradox of Moral Luck

Separatism has most prominently and explicitly been defended by Enoch and Marmor (2007).[7] Blameworthiness, in their view, remains luck free; hence, they accept some version of the Control Principle. They purport to resolve the paradox of moral luck by conceptually separating *judgments of blameworthiness* and *practices of blame*, arguing that the latter do not exclusively derive from judgements of blameworthiness. Unequal judgements would then not be departing from *judgements* about blameworthiness at all: Practices of blame are only partially based on (luck-free) judgments of blameworthiness. Hence, the paradox dissolves (Enoch and Marmor 2007: 412, emphasis added)[8]:

> [L]et us distinguish between moral blameworthiness (or praiseworthiness) which is, as we claim, solely a function of moral responsibility and therefore immune to luck, from the appropriateness or justification of what we will call *blame-(or praise-)related reactions, such as punishment, social condemnation, and even such first-person attitudes as regret or remorse.*

As a response to the paradox of moral luck, separatists argue that Unequal judgements should not be interpreted as judgments about blameworthiness at all. Instead, these judgements, properly understood, concern our *practices* of holding responsible, which include (legal) punishment, reproach, and blame. Separatists suggest that

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[6] One of the authors has defended the Control Principle in a recently published article (Sand 2021).

[7] See also Enoch (2010).

[8] Jensen (1984) too is an early proponent of separatism. In his classical work from 1984, we find a number of pioneering considerations concerning appropriate blame (pp. 327f.) that strongly resonate with the ideas presented in Section 4 of the present manuscript. The view is more or less explicit in several other accounts by Concepcion (2002), Levy (2005), and Zimmerman (1988, 2002). For example, though Zimmerman admits that factors beyond the control of Killer and Merely Reckless are "irrelevant to the question how blameworthy they are," he suggests that there might be "good moral reasons to punish murder […] more severely than a failed attempt at murder," but he admits being uncertain about this; see Zimmerman (2002: 560–1). For a similar defence, although focused more on the separation of moral and legal liability as a special case of blame-related practices, see Concepcion (2002: 456–7).

a confusion about judging blameworthy and blame-related reactions underlies the moral luck paradox(Enoch and Marmor 2007: 414):

> [W]e can agree that there are distinctions in how [Killer] and [Merely Reckless] should be treated, and consistently insist that these are not due to differences in blameworthiness, but rather to other, pragmatic, considerations that govern the relevant blame-related reaction.

The separatists' point concerns how to render judgements of moral blameworthiness correctly in paradigmatic moral luck cases. They do not claim that these judgments resemble people's actual beliefs regarding paradigmatic moral luck cases.[9] Instead, they claim that we should and need not take these blame-related practices as indicators of judging blameworthy and, therefore, they do not commit us to the paradox of moral luck.[10]

Apart from the challenge of explaining away the paradox, however, separatists face a normative challenge: They must defend the permissibility of separating blameworthiness and blame-related practices. It does not follow from the conceptual separation of judging blameworthy and blame-related practices that the separation is normatively warranted.

Hopes for resolving the normative task may not seem outlandish. As Enoch and Marmor note, "all but the most extreme retributivist theories" allow that considerations *other* than someone's blameworthiness are relevant for how a person is treated (blamed, punishment and reproached, etc.) and, indeed, for what a *justified* punishment for a given offense is (2007: 413).[11] Thus, they write that "it is quite possible that two cases which are identical in degree of blameworthiness merit different punishment" (2007: 412). Later, they suggest that "there may be other considerations, not deriving from moral blameworthiness, that call for differential punishment […]" (2007: 414f). Numerous factors, such as deterrence, costs of punishment, and crime

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[9] Separatists are not debunkers, who try to show empirically that patters of judgements about paradigmatic moral luck cases do not confirm to the Equal/Unequal sets. It should be noted, however, that that would, of course, be another possible way to resolve the paradox of moral luck, too. Such strategies can complement each other. Recent work suggests that people *in fact* judge paradigmatic moral luck cases as separatists claim that they *ought to* judge them (cf. Kneer and Machery (2019).

[10] It is worth noting again (see also footnote 2) that this distinction is obscured in Nagel's landmark paper. While Nagel suggests a wide array of different phenomena allegedly affected by luck, including judgments about blameworthiness, he does not clearly distinguish them from practices, of which some are moral (reproach and blame), and some are legal (prosecution). According to Nagel, the problem of moral luck reveals the paradoxical nature of our *moral judgments* or *assessments* and our ordinary concept of responsibility, see Nagel (1979: 31, 34). According to separatism, Nagel's conclusion can be rejected as the examples show only that there is more *blame* and *punishment* for unlucky people, but not more blameworthiness.

[11] The separatist solution might be interpreted narrowly as applying only to blame-*related* practices (vis-à-vis blameworthiness), rather than *blame* (vis-à-vis blameworthiness). If, furthermore, such blame-related practices operate independently from the grounds of blame, then the problem we raise in Section 3.2 might disappear. However, the narrow interpretation should be resisted. There is scant reason to believe that blame-related practices operate independently from the grounds of blame, and Enoch and Marmor themselves speak of *justified* or *warranted* blame. Moreover, if separatists would indeed strive to offer a narrow account, their theory would not be capable of dealing with some of the examples we discuss in the next section. Thanks to [redacted for blind review] for prompting us to address this worry.

prevention that influence the determination of *legal punishment* explain and presumably justify the separation of blame and judging blameworthy (2007: 412).

If there are grounds to coherently and reasonably separate blame and blameworthiness, we would be a long way to resolving the paradox of moral luck, while keeping a hold on a luck-free ideal of blameworthiness as expressed in the Control Principle. However, as we argue in the next section, separatists have not yet sufficiently resolved the normative challenge.

3 Fairness and the Need for a More Extensive Axiology of Blame

We will now argue that the separation of (judgments about) blameworthiness and blame gives rise to a crucial moral concern: It is unfair to *treat* equally blameworthy people differently, based on matters beyond their control. Though we do not claim that this problem undermines separatism, it creates the need for a more elaborate axiology of blame.

While separatism resolves the *paradox* of moral luck by dissociating blame from blameworthiness, this move is initially only a conceptual refinement and does not absolve separatists from providing a more detailed outline of the relationship between both concepts. Separatists face the following quandary: On the one hand, blame and blameworthiness need to be kept apart conceptually to solve the paradox of moral luck, but, on the other hand, they cannot be dissociated entirely without generating concerns about fairness.

Importantly, we relate our fairness objection to the practice of blame, since we are doubtful that judgments of blameworthiness can be assessed in terms of fairness. As others have emphasised, raising the fairness objection against judgments of blameworthiness means committing a category mistake (Enoch 2019, 2010: 46; Hieronymi 2004).[12] As Haas (2013: 231) states, "[i]t would be rather unfitting than unfair to judge [Killer] more blameworthy than [Merely Reckless]." Thus, our targets are not judgements about blameworthiness. Instead, we direct a fairness objection at entirely dissociating blaming practices from blameworthiness. Our argument can be stated as follows:

1. Agents in paradigmatic moral luck cases are equally blameworthy.
2. If equally blameworthy agents are not treated (i.e. blamed) alike, then that treatment is unfair.

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[12] Smith identifies fairness with the appropriateness of blame, when she writes: "[…] it is important to draw a distinction between the conditions under which a person can be said to be responsible for some thing, and the conditions under which it would be *fair or appropriate* for a moral judge to 'hold' her responsible for that thing" (Smith 2007: 483). Smith's identification between fairness and the rightness or appropriateness of an action has cogently been criticized by Hooker (2005: 350). Therefore, in contrast to Smith, we consider fairness as a *pro tanto* reason, a reason that can be overridden by others that play a role in determining appropriate blame. We will mention some of these other values in Section 4. In our view then, fairness factors in as a reason when determining reasonable or appropriate blame, but isn't identical to it.

3. In paradigmatic circumstantial and resultant moral luck cases, lucky and unlucky agents are not treated alike.

4. Thus, the treatment of agents in paradigmatic circumstantial and resultant moral luck cases is unfair. (from 1, 2, 3)

The argument is deductively valid. Premise 1 is entailed by the Control Principle, which we accepted for the sake of argument. Premise 3 is uncontroversial and supported by the examples provided beforehand. This leaves premise 2 as the crux of our argument. Before defending premise 2 in more detail, we illustrate our argument with two cases that involve resultant and circumstantial luck. Consider an example of resultant luck (cf. Nagel 1979: 30f; Kneer and Machery 2019: 333f):

Bathtub Lucky Mother is at home, giving her 2-year-old son a bath. She fills the bath, while her son stands near the tub. The phone rings in the next room. Lucky Mother tells her son to stand near the tub while she answers the phone. She believes her son will stand near the tub for a few minutes and wait for her to return. She leaves the room for 5 min. When Lucky Mother returns, her son is still standing near the tub, where she left him. In another home, Unlucky Mother does exactly the same as Lucky Mother. However, when Unlucky Mother returns to the room after 5 min, her son is in the tub, dead, face down in the water.

Unlucky Mother will face severer blame-related reactions than Lucky Mother: She will be resented more, and may even be subjected to legal charges for the negligence that led to the death of her son. Nonetheless, both mothers are, *ex hypothesi*, equally blameworthy because they had the same degree of control. Separatism can avoid the conclusion that our moral judgments are paradoxical by pointing out that the judgment of equal blameworthiness is compatible with unequal blame. Notwithstanding the resolution of the paradox of moral luck; however, it seems that morally speaking, both mothers *should* receive the same response, the same degree of blame. They are alike in terms of blameworthiness, and should, therefore, be treated alike. It seems unfair that they are treated unequally for matters beyond their control, namely whether or not their sons fell into the water.[13] Consider now an example that invokes circumstantial luck:

Betrayal Actual Betrayer goes to a party and betrays his girlfriend. Counterfactual Betrayer aims to do the same at the same party, but the person he is attracted to refuses him.

Again, separatism considers it unparadoxical that Actual Betrayer and Counterfactual Betrayer are equally blameworthy while accepting that their behaviour sparks different reactions for good reasons. Actual Betrayer will be socially rejected, and his partner might break up with him. Counterfactual Betrayer might not be exposed to any adverse reactions if he does not disclose his initial immoral intent and even

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[13] Cf. Hieronymi (2004: 118).

if he does, it is unlikely that his partner reacts to him as Betrayer's partner does. However, since both agents are equally blameworthy, fairness demands to treat them alike. Not doing so is unfair.[14]

Separatism thus raises worries about the immorality of differential responses to equally blameworthy people in paradigmatic moral luck cases. The objection uncovers a nuance in the moral luck debate: Namely that it consists of two distinct issues, a paradox and the unfairness of unequal blame. Though separatism resolves the *paradox* of moral luck, it insufficiently addresses the moral problem of unfair *treatment*, which is characteristic of moral luck cases. To be clear; so far, we have merely shown that separatists have failed to address this issue satisfactorily, not that it is insoluble.

Our argument supports the conclusion that typical *reactions* to paradigmatic moral luck cases are unfair (which is deducible from the claim that the unequal treatment of equally blameworthy people is unfair). One could further claim that the unfairness of an act is a categorical reason against performing it and, therefore, conclude that separatism fails practically.

If fairness were a categorical reason, it would never be permissible to act unfairly, and separatism would have morally unacceptable consequences. Of course, separatism's *conceptual point* of distinguishing judgements of blameworthiness from practices of blame would remain unaffected. But moral luck would still be deeply unsettling, because of the unfairness of unequal blame and, thereby, also render separatism moot. It is clear that separatists cannot take fairness as a categorical reason. They must hold that at least some blame-related reactions can be legitimately influenced by factors other than an agent's blameworthiness. Thus, separatists have to show which considerations make *treating* (e.g. blaming, punishing, or resenting) equally blameworthy people unequally permissible.

To rescue separatism from the challenge of fairness, one could register one's indifference to the conclusion of our argument based on a complete detachment of blame from blameworthiness. One could claim that blameworthiness is no necessary condition for appropriate blame. One could then reject as insignificant the conclusion that typical reactions to unlucky people in paradigmatic moral luck cases are unfair in the sense of overlooking proportionality to blameworthiness in blame

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[14] Separatists' conceptual point about the distinctiveness of judging blameworthy and allocating blame also holds in cases of constitutive luck. But blaming constitutively unlucky people is unfair, because there is no ground for judging them blameworthy in the first place. Allegedly, they are not in control of their character. If they are not blameworthy for their character, any kind of blame would be impermissible. Therefore, separatists recommend a different response to constitutive luck: They argue that agency is not necessarily a precondition of the type of character evaluations that render constitutive moral luck supposedly troublesome; see Enoch and Marmor (2007: 428). The same applies to causal luck: Causal luck seems to undermine control so profoundly; it challenges the very attribution of agency and responsibility. Zimmerman writes in this regard: "It means that the role that luck plays in the *determination of moral responsibility* may not be entirely eliminable […]" (2002: 575, own emphasis). Taken together, the various forms of luck and their collision with the Control Principle constitutes, thus, a much more severe problem. For the sake of clarity, we focus in the present paper on paradigmatic cases of resultant and circumstantial moral luck. It is here, where separatists believe (agreeably) to offer a viable response.

actions entirely.[15] However, separatists are hesitant to endorse a view that detaches blame and blameworthiness entirely (Enoch and Marmor 2007: 412–3, emphasis added):

> Very often, *perhaps always*, one of the relevant considerations to the justification of blame-related reactions is the blameworthiness of the agent.

And, further, that (Enoch and Marmor 2007: 433, emphasis added):

> [Judgements about blameworthiness] serve to ground or justify [judgements about appropriate blame-related reactions]. It is *because* a person is blameworthy that certain blame-related reactions are appropriate.

Thus, it seems that blame-related practices should, in some way, depend on blameworthiness after all. Insisting on this connection might be motivated by the punishing the innocent objection, which is often addressed at consequentialist theories of punishment (Wood 2010a, 2010b): If, for example, considerations of deterrence would guide practices of blame without further reference to blameworthiness, it would be permissible to punish the innocent. The intuitive moral reprehensibility of this constitutes the standard objection to consequentialist theories of punishment, which focus on the possible effects of the institution of punishment and other blaming responses. While consequentialists might find a way to rebut the challenge or bite the bullet, the objection certainly underscores the importance of blameworthiness as a necessary condition for blame.[16]

Therefore, to resolve the fairness challenge introduced in this section, separatists need to elaborate on the relation between blame-related practices and judgements of blameworthiness. The two cases we discussed above suggest that any blame-related treatment of a given agent that does not correspond appropriately to the agent's blameworthiness is unfair. But what is appropriate blame, and can it ever be permissible to blame equally blameworthy people unequally, if this is unfair? Alleviating the worry depends on drawing out the details of the appropriate relation between blameworthiness and blame.

3.1 Why Proportionality Does Not Suffice

Before vindicating premise 2 of our argument, we show that separatists have not fully answered the fairness objection themselves. Addressing this point is in order to maintain exegetic scrutiny and to demonstrate that we are not attacking a strawman.

Enoch seems to have anticipated a fairness objection about blame when he suggests in a later publication that blame must be proportionate to blameworthiness (Enoch 2010).[17] He defends the "proportionality of criminal punishment to the

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[15] We thank an anonymous reviewer for pressing us to clarify this point.

[16] This notion of blameworthiness implies no commitment to strong notions of agency. If causal luck exists, if–in other words–determinism is true, then a compatibilist idea of blameworthiness might still apply. In this paper, we do not commit to any such view.

[17] See also Enoch and Marmor (2007: 433).

moral blameworthiness of the offender for having committed the crime" (Enoch 2010: 42, 49). However, Enoch's proportionality principle cannot bind on the separatist view: If the proportionality principle holds, as Enoch believes, then Merely Reckless and Killer ought to be punished equally because they are equally blameworthy. In this manner, the proportionality principle entails comparative fairness as the equal treatment of people who are alike in blameworthiness.

However, separatists aim at defending that two equally blameworthy people can be unequally blamed for matters beyond their control, which is impossible when the proportionality principle alone determines blame. Hence, an unqualified commitment to the proportionality principle conflicts with the crucial separatist insight that "two cases which are identical in degree of blameworthiness merit different punishment" (Enoch and Marmor 2007: 412). If the proportionality principle is interpreted as setting upper and lower bounds for appropriate blame (bearing on blameworthiness), it would square with the central separatist conviction and allow for luck to affect how much blame one receives within a range proportionate to someone's blameworthiness. However, despite being proportionate within the given range, this simply results in unequal blame, which would, again, be unfair. We will suggest in Section 4 that reasonable blame encompasses a principle similar to the proportionality principle, which we develop in greater detail and set into relation to other grounds of blame.

In their 2007 article, Enoch and Marmor address the fairness issue while focussing only briefly on praise-rather than blame-related practices. The focus on praise leads them to underestimate the harmful consequences of unfair blame. They suggest that, at least regarding praise-related practices, complaints about unfair treatment seem like "childish reactions" (2007: 425). Suppose, for example, that you are circumstantially lucky and you save a child from drowning. Another person, though equally benevolent, altruistic, and good-natured, never gets the same chance. The unlucky person complains about unfair treatment. Enoch and Marmor suggest that such a reaction would be childish and ignorant of the praise-related reasons for treating lucky you differently. First, while this assessment might hold in cases of praise and reward, it is less plausible when it comes to blame and punishment as they are usually accompanied by adverse conditions for the transgressor. If Killer complaints about being imprisoned, while Merely Reckless got away with a fine, it seems impertinent to consider his complaint childish. The severity and adversity of a punishment such as imprisonment, raises a much higher justificatory bar, which implies taking complaints from the (alleged) perpetrator seriously, in particular if they concern the appropriateness of the punishment (King 2014; 422).

Second, a complaint may be childish and still indicate unfair treatment. If you lose a merry board game against kids who cheated, your complaint may seem childish since you have not lost any real money or some such. However, this does not render the cheating fair. While Enoch and Marmor may be right that the complaining about unfair behaviour might (sometimes) be childish, this has no bearing on the fairness of a certain behaviour. It remains open whether and how blame-related practices can fairly relate to blameworthiness while being at the same time affected by luck.

Therefore, separatists' brief remarks about the relationship between blame and blameworthiness do not alleviate our fairness objection.

3.2 Why Challenging the Fairness Objection on Independent Grounds Fails

This section vindicates premise 2 by rebutting a recent challenge to the claim that it is unfair to treat equally blameworthy people differently. Our rebuttal will imply that any treatment of a given agent that is not grounded exclusively in that agent's degree of blameworthiness is unfair, which vindicates premise 2.

Premise 2 of our argument has been challenged by Nathan Hanna. While Hanna denies the intuitiveness and plausibility of the Control Principle, he also suggests later on that denying moral luck on fairness grounds will be unsuccessful. Both of these arguments can be treated independently. Hanna points out that facing certain circumstances beyond control, has no fairness implications (Hanna 2014: 693). If that were true, it might after all not be unfair, if agents like Actual Betrayer and Counterfactual Betrayer are treated differently. Hanna writes (2014: 693):

> It's not obviously unfair if you happen to walk by a drowning baby, thereby having a chance to be a hero, and I never have such a chance. Nor is it obviously unfair if you get a chance to do some bad thing I never have a chance to do (stand by and watch a baby drown, say)

He further emphasizes that it is not unfair that there is an "unequal distribution of opportunities [to disgrace ourselves]" (Hanna 2014: 693). He is right: The world is neither fair nor unfair. And so is the unequal distribution of chances neither fair nor unfair. However, the question to be asked is, should we counterbalance or perpetuate these natural inequalities? Fairness is only concerned with those cases in which we can make a difference. It is not the world or morality that are unfair, as Hartman suggests when he writes that "morality is […] unfair with respect to how well people flourish" (2018: 16).

However, the argument, even if sound, leaves premise 2 unfazed. We maintain that *people* can act unfairly in situations where they can make a difference in how well others flourish. It would indeed be cynical to suggest that we simply have to accept the natural, unequal distribution of chances. Agents can decide whether to apportion praise and blame based on factors over which others had no control. If they do, they act unfairly. Imagine, that you are a parent of two teenagers who train equally hard for a sprint competition. During the competition, one's shoelaces open and she crosses the finish line last. This is not unfair: It is bad luck. But rewarding only her sister, who won the race, would be. *You* as a parent, *not* life or morality, decide who receives praise and reward. Equal diligence provides a reason to reward them equally: This would be fair.[18]

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[18] See also Temkin (2017: 49).

4 Embedding Fairness Within an Axiology of Blame

Let us briefly take stock. Thus far, we have argued that separatism, which holds that blameworthiness remains luck-free (following the Control Principle), faces a distinct fairness problem related to blame: It is unfair to blame equally blameworthy people unequally. Separatists have not sufficiently addressed this point in their solution to the problem of moral luck. This is a significant result, given the importance of the problem of moral luck and the relevance of separatism as a promising solution.

In light of this argument, we have a (dialectic) choice: Either we dismiss separatism as a response to moral luck (if, for example, we maintain that unfair actions are never permissible) or we face the task of establishing a more detailed theory of blame that shows, for instance, how blame relates to blameworthiness and that blame can justifiably be unfair. Because separatism is initially appealing as it offers a solution to the *paradox* of moral luck, we favour the second route. That is, on the separatist route, we should acknowledge that fairness is *an* important consideration for the appropriateness of blame (as we have argued above), which calls for a more detailed axiology of blame that shows when and why fairness is overridden by other factors to ground appropriate blame.

A comprehensive account of the required axiology of blame to supplement separatism is far beyond the confines of this paper and it is not our ambition to provide one here.[19] However, we will preliminarily sketch the rough contours of such an account, hoping that one significant aspect already emerges vis-à-vis existing debates about the axiology of blame. By discussing some principles of blame, we want to make plausible that fairness considerations are sometimes overridden by other factors for appropriate blame. We suggest that fairness should be considered a *pro tanto* reason amongst others within a more comprehensive axiology of blame. The grand challenge—one that we believe has not been satisfactorily addressed thus far—is to justifiably relate fairness to other grounds for blame. In what follows, we list some of these other grounds for blame that play a role aside fairness and thus present the contours of such axiology.

As argued before, separatists must consider fairness as a *pro tanto reason* to treat like cases alike.[20] It is unfair to treat two people who are alike in blameworthiness

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[19] Considerable progress has been made in recent years in developing an axiology of blame (Coates and Tognazzini 2012, 2013; Tognazzini and Coates 2018), but fairness as a *pro tanto* reason has not been considered independently.

[20] In a paper on the question "Should like cases be treated alike?", Marmor (2007) asks whether people, who aren't treated alike (receiving greater punishment within permissible bounds), "can […] claim that, given the previous decision in D1, it would be wrong or unfair [to treat them differently]" (2007: 185). He later interprets this fairness problem as one about bias: "[T]here may be certain situations in which the danger of a particular bias or prejudice looms large." He suggests that this is a legitimate concern, albeit a weak reason to treat like cases alike (2007: 187). Later, he adds, however: "I would venture to guess that public scrutiny and institutional constraints would work better [to tackle legal bias] than a practice that would require judges to ‚treat like cases alike.' After all, if the judge is indeed biased or prejudiced, it would not take a great deal of ingenuity on her part to show that the case in front of her is not really like the other cases" (2007: 189). This is a reasonable suggestion. However, it doesn't undermine the fairness worry that motivates the principle. When we pressure the application of the principle, we presume that the cases in question are alike.

differently and unfairness is a *pro tanto* reason not to do it. In that way, separatists can endorse fairness as a relevant ground for blame and reconcile it with their central insight. Conceiving of fairness as a *pro tanto* reason for blame permits that other blame-related reasons can override fairness (see also Broome 1990; Hooker 2005; Temkin 2017: 49). Let us explicate the principles for fair blame that have been implicitly endorsed throughout the previous argumentation. First and foremost, the idea is that *defecting* from the blameworthiness—blame relation is unfair in itself. We characterise the blameworthiness—blame relation as follows:

> **Individual proportionality**: If A is blameworthy to some positive degree D, then A ought to be blamed proportionally to D.

Individual proportionality does not specify what kind of blaming reactions to agent A's particular degree of blameworthiness, D, are appropriate. It implies that blaming-reactions towards a given agent presuppose that the agent is to some degree blameworthy. Hence, faultless people do not deserve blame (Hieronymi 2004: 116). The principle thus secures *some* link between judging blameworthy and blaming.

Of course, if Killer *is* treated according to his blameworthiness, and Merely Reckless is as blameworthy as Killer, then it follows that Merely Reckless ought to be treated in the same way as Killer. Thus, from individual proportionality, we can derive the following principle about the blameworthiness—blame relation applied comparatively:

> **Comparative proportionality**: If A is blameworthy to degree D, and A is blamed proportionally to D, and B is blameworthy to degree D, then A and B ought to be blamed alike.

A stronger comparative principle would not require that one of the agents be blamed proportionally to his or her blameworthiness, but only that both agents ought to be blamed to the same degree for being equally blameworthy. That would have the absurd consequence that a horrendously unproportionate blaming-response towards A would, if B had the same degree of blameworthiness, require treating B in the same way. But that would be unfair, as argued in Section 3.2. Therefore, we should blame equally blameworthy people alike insofar as they are equally blameworthy and previous blame-related actions were individually proportionate.

Thus far, we have spelt out defeasible principles that bear on fair blaming-practices (to the effect that blame-practices that accord with these principles ought to be considered fair), while we related those principles to *blameworthiness*. Now, we will extend our argument to principles concerning *blame*. The upshot of this discussion is that while the fairness of blaming someone is entirely determined by that person's blameworthiness, when it comes to the question regarding appropriate blame, fairness considerations will often be overridden by other grounds. Thus, we will in the following stipulate and introduce some other grounds for appropriate blame with no pretence to defend them or to provide a comprehensive list.

First, the *pro tanto* demand for comparative blame can be outweighed by the blamer's standing vis-à-vis the blamed, the costs of blaming for the blamer, as well as the weight of the consequences of the transgressor's act. To begin with,

several authors have defended a principle along the following lines (Fritz and Miller 2018; Scanlon 2008):

Mind your own business: for A to appropriately blame B, A needs to stand in some appropriate relation to B.

Generally, the relationship between the doer and the blamer, which is another luck-sensitive factor, affects whether and how reasonable blame is. When someone has committed a minor offence in an ordinary context, the people who could articulate the blame often lack the necessary authority (Smith 2007: 478). Hence, though appropriate blame demands fairness in treating others alike, it is a demand that can be overridden by the demand to mind one's own business.

Another element of appropriate blame concerns the relation of comparative proportionality to the costs of blaming practices from the blamer's perspective. Both Smith (2007: 480) and Enoch and Marmor (2007: 413) argue that "minimising the costs of punishment related practices" is a relevant consideration when it comes to determining the appropriate degree of punishment. The financial costs of discussing minor felonies at the court would be too high. This also applies in ordinary contexts of blame. Hence, these authors implicitly comply with a principle along the following lines:

Tally the costs: For A to blame B appropriately, A's blaming reactions must be weighed against A's costs for blaming B and A's costs for blaming B can outweigh A's other reasons that bear on blaming B.

The principle establishes a boundary for appropriate or called-for blaming reactions. If the costs of one's blaming-reaction would be too high on oneself, one can legitimately forgo blaming someone. According to the principle, one need not *always* stick out one's neck in order to dish out proportionate blame.

Finally, it seems that reactions of the blamed person can reasonably affect the degree of appropriate blame. For example, as Smith (2007) has argued, it is relevant for appropriate blame, when someone repents a transgression. Relatedly, Priest (2016) argues that repenting a transgression may dampen the degree of blame a third-party may legitimately bestow on the transgressor. We can formalise this principle as follows:

Respect repenting: For A to appropriately blame B, A needs to be sensitive to B's level of repentance, to A, if B transgressed against A, or to C, if B transgressed against C, and adjust blame accordingly.

This principle also outweighs the comparative proportionality principle of blame. When two agents committed the same transgression, there is a *pro tanto* reason to blame them equally. However, that principle can legitimately be affected by reactions of the blamed person to the effect that a lesser degree or kind of blame is appropriate. Again, the comparative proportionality principle of blame can be outweighed.

Our brief survey shows that some of the most important grounds deemed relevant for appropriate blame outweigh the requirements for fair blame. Fairness as the like

treatment of equally blameworthy people, therefore, does not seem to be a powerful ground. Nonetheless, fairness is not entirely irrelevant.

We close with an example that demonstrates fairness' relative importance in grounding appropriate blame. Numerous paradigmatic cases of unfair blame based on factors that are beyond people's control are discussed in the literature on fairness and discrimination to which we loosely relate in the following (Broome 1990). Imagine a group of people waiting in front of a bakery: After a long morning of waiting, the owner determines that the tallest will be served first all the way down to the shortest, who will be last. Surely, this is one way of solving the "problem" of whom to serve first. However, this seems unfair: No one choses one's height. Several competing ways of choosing whom to serve first do not have this flaw: Lotteries give everyone the same chance and do not tie the ranking to some (uncontrolled) feature of the waiting person. Likewise, the "first-come-first-served"-principle rests on a feature that people *can* partially control; how early they show up. Thus, the fact that a system is valuable in that it provides an answer regarding whom to serve first, does not nullify the fairness concern though it may override it. This suggests that fairness does play a distinct role in an axiology of blame albeit one alongside a host of other considerations.

5 Conclusions

In this paper, we worked toward a deeper understanding of the separatist solution to the problem of moral luck by confronting it with a novel concern about the unfairness of unequal blame and demonstrating ways to overcome it. Given the advancement of the separatist approach to the paradox of moral luck, this contribution outlined in much detail how separatism can be amended to deal with fairness concerns about blame, while also maintaining its resolution of the paradox.

In particular, we demonstrated how separatists could incorporate fairness as a ground for blame aside of other relevant considerations. For this, it is crucial to interpret fairness as a *pro tanto* reason that can sometimes be overridden. We have suggested that fairness weighs relative to other grounds that ought to be taken into consideration to blame reasonably. Blaming reasonably is not the same thing as blaming fairly. Drawing on previous work on blame, we made a number of further suggestions to establish a more comprehensive axiology of blame which shows that fairness is always a relevant consideration. However, it is—as our examples suggest—often overridden by other grounds when determining appropriate blame-related reactions.

If we are right, we might be going about acting frequently unfair, sometimes reasonably so, sometimes unreasonably so. Clearly, our framework requires further clarification and a more extensive delineation of the relative weight of fairness vis-à-vis other blame-related reasons. Nevertheless, having opened up a pathway on how to amend separatism, we see the present proposal as a considerable advancement of the moral luck debate.

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