

Evaluating Resultant Moral Luck in Involuntary Manslaughter

By Zihan(Harrison) Huang

Author Bio

Harrison is a senior at Middlesex School in Concord, Massachusetts. Growing up in China and later coming to the United States to study, Harrison has experienced first-hand the differences between the two countries in their political, legal, economic, social, and cultural environment, differences that continue to inform him in his research and as a person.

Abstract

Humans are imperfect beings. Our success or failure in accomplishing something almost always depends to some extent on luck, an external factor beyond our control (Nagel, 1979). This paper examines different scenarios of involuntary manslaughter in which resultant moral luck, the moral luck concerning the consequences of an action, plays a role in affecting the outcome of an ordinary action, such as driving. The term “involuntary manslaughter” can be divided into three subcategories: unlawful act manslaughter (the defendant causing death with the specific intent for the relevant crime), gross negligence manslaughter (the defendant causing death due to gross negligence), and reckless manslaughter (the defendant causing death due to recklessness). While scholars agree that involuntary manslaughter often gets lighter sentences than murder, moral luck in all three types of involuntary manslaughter remain controversial topics in criminal law today (Mitchell and Mackay, 2011). The extent to which the luck and responsibility of the offender determines their culpability provides insights into criminal lawmaking and judicature.

Keywords: Criminal Law, Moral Luck, Involuntary Manslaughter, Differential Punishment, Legal Philosophy, Lawmaking, Judicial Review, Thomas Nagel, Andrew Ashworth, Barry Mitchell, R.D. Mackay

Introduction

Imagine two people driving on the streets. While one arrives safely at their destination, the other hits a pedestrian jaywalking across the street. The two drivers, albeit under the same conditions, face completely different outcomes. The lucky driver can enjoy their day, while the unlucky driver may face prosecution, fines, or imprisonment depending on the severity and culpability of the involuntary manslaughter and bear the guilt of killing a person. Now, would the justification for differential punishment change depending on whether they violated traffic rules? What if they were aggressive driving, an action that does not always constitute a criminal offense but violates the spirit of traffic rules?

Nagel, the American philosopher who studied legal philosophy and ethics and coined the term “moral luck,” notes that giving a moral judgment is not to say an action is good or bad, but rather assessing the extent to which the outcomes of people’s behaviors are their fault (Nagel, 1979). Following this logic, instead of giving a definite “yes” or “no” answer to the question of legal and moral culpability, I will approach the discussion of moral luck by analyzing whether two factors—1) ignorance of rules and 2) ignorance of circumstances—increase or decrease the culpability of an action. I will also create a standard for measuring culpability, the extent to which people should be blamed for the negative consequences of their actions, and using it as the basis for punishment. Because nuances in moral luck affect the outcome of people’s actions, identifying them is critical to developing a criminal justice system that will better protect the public from harm in the future and the offender from being punished unusually harsh.

Thesis and Hypotheses

At its core, the debate on moral luck is a debate between two different schools of legal philosophy, consequences of the crime versus the state of mind of the offender (Mitchell and Mackay, 2011). A consequentialist who sees that the unlawful or harmful action has caused death, directly or indirectly, would argue that differential punishment is justified because harm has been inflicted on the victim. Even if the death is not causal, it is not completely due to bad luck because the offender has performed a risky action.

On the contrary, to one who emphasizes the state of mind, or *mens rea*, of the offender, the offender may be excused from their crime given the unpredictable nature of the consequences of their action. If the offender does not have the malicious intent to kill the victim, they should not be blamed for the victim’s death. Following this logic, only when the involuntary manslaughter arises from an unlawful action, the offender deserves differential punishment for their malicious intent. The gap between what the offender foresees or can foresee and death may at times be too large in gross negligence manslaughter and reckless manslaughter (Mitchell, 2008).

Acknowledging the consequence-state-of-mind divide between scholars, my paper proposes a practical legal framework that takes into account the conditions when differential punishment is more or less justified. In order to prove that less resultant moral luck should be considered in punishment and differential punishment is more justified when the offender is more conscious about the risks of their action and vice versa, I will first propose three hypotheses considering varying degrees of culpability in terms of moral luck in involuntary manslaughter.

Hypothesis 1 describes the moral dilemma at its most simplistic terms as a violation of the letter of the law:

H1: When involuntary manslaughter occurs under the disregard of the letter of the law, resultant moral luck is not considered in punishment and the tradition of differential punishment is justified.

Hypotheses 2 and 3 outline the relationship between the action and its respective punishment when the offender is not aware that there are laws or that their circumstances are risky:

H2: When involuntary manslaughter occurs under the ignorance of the letter of the law, resultant moral luck is considered in punishment and a lesser punishment is justified.

H3: When involuntary manslaughter occurs under the ignorance of circumstances, resultant moral luck justifies equal punishment and differential punishment is not justified.

Hereby I define the letter of the law as the written code of drivers that outlines the liabilities of drivers and protects road safety, i.e. one that punishes driving under the influence and the killing of another human being. An example of committing involuntary manslaughter while disregarding the letter of the law is to pay no attention to the law that one must not drive under the influence when the offender knows that they must not. And to commit involuntary manslaughter while ignoring the letter of the law would be to unknowingly violate the law. I define circumstances as risky conditions of driving that, when driving in, does not constitute criminal offenses, i.e. driving during bad weather. An example of committing involuntary manslaughter while disregarding circumstances is to knowingly plan for a trip that requires driving during a stormy day. And to commit involuntary manslaughter while ignoring circumstances would be to unknowingly engage in a risky driving condition that is not foreseeable. By differentiating between involuntary manslaughter with and without rule violations, this paper assesses the criminal liability of manslaughter under such conditions as follows:

Involuntary Manslaughter Violating Rules – Disregard or Ignorance of Rules

According to an unlawful theorist, harm, however unforeseen by the offender, has occurred. The culpability of the involuntary manslaughter is not affected by whether or not the consequence is foreseeable and that the offender knowingly engaged in harmful behavior. The death of an innocent person may not be the direct result of driving, but by engaging in risk-inducing behaviors such as driving under the influence, disregarding a traffic signal, running a stop sign, speeding, etc., the driver increases the chances that individuals in the surroundings will be hurt. The Control Principle, the principle which states that people are only morally assessable when what is morally assessed is within our control, is compatible with the punishment of the offender. In this case, the judge is morally assessing the factors within the offender's control and the law is punishing the negative excesses of human nature, i.e. crimes, not human nature itself.

The only criminal liability that could result from involuntary manslaughter should be attributed to the unlawful or harmful act committed. To determine whether or not this criminal liability should apply

in cases of involuntary manslaughter, we can use awareness of the risk of serious harm (Ashworth, 1991). Because we are measuring the extent to which resultant moral luck should be considered in the punishment of involuntary manslaughter, it is important to differentiate cases where the offender is more or less aware of the seriousness of their actions and existing laws by a clear standard. By introducing the level of awareness as a determinant for criminal liability, this paper creates a standard for measuring culpability, and the legal dilemma of moral luck with regard to unlawful act involuntary manslaughter could be solved.

Involuntary Manslaughter without Violating Rules– Disregard or Ignorance of Circumstances

The more complex part of the legal dilemma of moral luck lies in scenarios where there are no rule violations or causal links between the offender's action and the death of the victim. As for gross negligence manslaughter, differential punishment should only be justified when there is a causal link between the negligence of the offender and death. Unlike one who intentionally creates risk in unlawful act manslaughter, a merely negligent person whose actions would not typically cause death should not be expected to foresee that their negligence leads to the death of others. For instance, though drivers should be aware that there are blind spots in driving, their moral and legal responsibility should not exceed checking the blind spots before entering the car and starting to drive. In other words, the driver should not be responsible for hitting people when they are in the driver's blind spots.

Drivers should also not be charged with sentences as heavy as that of unlawful manslaughter under the disregard or ignorance of rules when driving in bad conditions, such as heavy fog, snow, or storm, when driving is the necessary means of transportation. To understand the differences in culpability in the ignorance of circumstances compared to the ignorance of rules, it is worth comparing two cases---case 84 and 88 in Mitchell and Mackay's empirical study on the culpability of involuntary manslaughter. Out of the 127 cases investigated, case 84 and 88, when put together, are promising examples of how differential punishment cannot be justified when resultant moral luck is involved.

Case 84 involves a hit-and-run scenario where the driver accidentally hitting the victim when driving during a heavily snowing day. The driver left the scene and later drove back, ignoring his surroundings and trapping the victim under his car, killing them. In case 88, the defendant and the victim had a “history of antagonism.” The defendant attacked the victim with a table leg and knife, killing them. Both defendants in case 84 and 88 pled guilty not to murder, but guilty to manslaughter, and were sentenced to 4- and 5-years imprisonment, relatively modest sentences. In addition to what researchers suggested that high moral blame may not result in a high sentence and that the guilty pleas of defendants in both cases effectively reduced their sentence, extenuating circumstances play a critical role in the sentencing of involuntary manslaughter when there is no violation of the letter of the law. Compared to the violation of laws under disregard or ignorance, the punishment for the violation of circumstances under disregard or ignorance is far lighter and more consideration of resultant moral luck is given.

Insights into Criminal Law

The culpability of causing death varies from one case of involuntary manslaughter to another (Mitchell and Mackay, 2011). Despite this variation, we can navigate the gray areas of the legal landscape by considering law not just as words written on paper, but more broadly as a code that regulates and guides the morals and behaviors of ordinary people. By understanding that an action is both mental and physical, legislators and judges can deliberate based on whether the involuntary manslaughter involves the following six different scenarios:

1. Disregard of rules (the offender knows and violates the law),
2. Conscious ignorance of rules (the offender knows that they do not know the law and violates the law),
3. Unconscious ignorance of rules (the offender does not know that they do not know the law and violates the law),
3. Disregard of circumstances (the offender knows that circumstances are risky),

4. Conscious ignorance of circumstances (the offender knows that they do not know that circumstances are risky), or
5. Unconscious ignorance of circumstances (the offender does not know that they do not know that circumstances are risky).

The following diagram may conclude the insights of this paper into determining culpability of causing death in involuntary manslaughter:

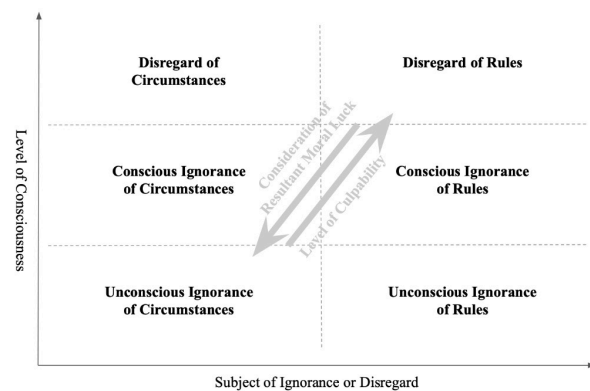


Figure 1: The coordinate plane of the culpability and punishment model of this essay. Individual involuntary manslaughter cases would be represented by points on this plane. The x-axis and y-axis denote the subject of ignorance and the level of consciousness of ignorance or disregard, respectively—the further from the origin a point is the more culpable the act is, the less important resultant moral luck should be in the consideration for punishment, and the more justified differential punishment is. I have further divided the space into six quadrants, each representing a level of consciousness and a subject of ignorance or disregard.

The model of this paper could also be used to gauge the extent to which doctors have fulfilled their responsibility in medical manslaughter cases. Rule violations and immoral practices can be monitored by regulatory bodies in the medical field to ensure the safety of patients (Hubbeling, 2010).

Bibliography

Ashworth, A. (1991). *Principles of Criminal Law*. United Kingdom: Clarendon Press.

Hubbeling D. (2010). Criminal prosecution for medical manslaughter. *Journal of the Royal Society of Medicine*, 103(6), 216–218. <https://doi.org/10.1258/jrsm.2009.090324>

Mitchell, B. (2008). Minding the Gap in Unlawful and Dangerous Act Manslaughter: A Moral Defence of One-Punch Killers. *The Journal of Criminal Law*, 72(6), 537–547. <https://doi.org/10.1350/jcla.2008.72.6.537>

Mitchell, B., & Mackay, R. D. (2011). Investigating Involuntary Manslaughter: An Empirical Study of 127 Cases. *Oxford Journal of Legal Studies*, 31(1), 165–191. <http://www.jstor.org/stable/23014746>

Nagel, T. (2012). *Mortal Questions*. United States: Cambridge University Press.