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**YOU CANNOT GO AROUND LUCK:
THE POTENTIAL INFLUENCE OF LUCK ON THE MORAL
EVALUATION OF HUMANITARIAN INTERVENTIONS USING
EX-ANTE AND EX-POST APPROACHES.**

Abstract

While there is a vast amount of literature on the morality of humanitarian interventions, there is a niche in academic research on the potential influence of luck in morally evaluating a humanitarian intervention. That influence becomes most strikingly clear by looking at the ante-post-debate: at what moment can one determine an intervention to be morally justified on humanitarian grounds? Before or after the intervention took place? This thesis will emphasise the necessity of having a stance on the debate of moral luck for any position in the ante-post-debate. By examining the debate on moral luck and applying it to the ante-post-debate, which is articulated by Fernando R. Tesón and Bas van der Vossen in “Debating Humanitarian Intervention. Should we try to save strangers?”, it will become clear that not only is having a stance in moral luck necessary for a stance in the ante-post-debate, it can also mean that it is not always possible to take a purely ex-ante or pure ex-post position.

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I: INTRODUCTION

Try to justify all your actions and thoughts morally for an hour and you will see that we generally do not act and think in that way. We probably should not, also. It would be hard to always think in full moral perspective, that is using your full moral set of assessments to do what is in accordance with our values, to determine trivial possibilities as the right amount of sugar to put in our coffee.

A moral evaluation is much more important when there is more at stake and all possible options are with a cost, a moral dilemma such as the following: In World War II, Dutch resistance fighter Frits Kroese together with a group comes up with the idea of sabotaging a railway track.¹ It would stop a part of the uprising of Nazi-Germany but the Nazis would revenge themselves on the nearest house for the resistance fighter's action. Kroese can choose where to sabotage the track, and so he could choose which house the Nazis would pick to revenge themselves upon. Should the resistance sabotage the railway in the first place, and if they should, which house are they (probably) to sacrifice for it? Should they sacrifice a young family or an old couple?

The fact is that none of the options: not to sabotage the railway, sabotaging near the old couple or sabotaging near the young family are without sacrifices. This renders the choice of Kroese and the other resistance fighters a moral dilemma. It demonstrates that dilemmas as such make it much harder to decide what action is morally justified; a humanitarian intervention is such a dilemma.

War is generally obstructed in terms of moral justification. Killing others to gain power or land is generally prohibited by most moral theories. At the beginning of the 19th century a possible moral justification for war became prominent: Humanitarian intervention.²

¹Van Walsum, S. 2018, p. 8

²Walzer, M. 2002, p.29

It is the justification for entering another state to combat the suffering of that state's citizens caused by their government or another group within that state's territory.

This paradigm made it possibly permissible doing good by starting a war. Ever since, more and more wars were started in the name of humanitarian goals. Recent wars as the war in Iraq and Syria are (partly) justified by these goals. The question is: What to do when there are lives lost, people hurt, and rights violated by an oppressor in another state? The choices are to maintain the status quo and do nothing or to intervene in that state to stop harm against (a part of) the citizens of that state.

The morality of humanitarian interventions has been addressed by many authors and because of the ongoing wars that are defended on the basis of humanitarian arguments, the debate goes on. An important step in that debate is the question at what point in time the permissibility of an intervention should be determined. Should that moral justification be made at the moment of decision (to intervene or not) or should one judge only after an intervention about its permissibility? Two academics take a different side on this debate: Fernando R. Tesón and Bas van der Vossen. They elaborate about these positions in their book 'Debating Humanitarian Intervention. Should we try to save strangers?'³

Van der Vossen defends a pure ex-ante approach according to which a humanitarian intervention is just if the decision beforehand was made morally just and nothing can change that (p. 213). Tesón uses a purely ex-post approach in saying that the only moment to decide if an intervention was just is doing the maths after the intervention (p. 126-127).

The big difference between these two approaches is whether the outcome of the intervention influences the moral appreciation of a humanitarian intervention. In the extended example of Kroese it is known what will be the consequences of the different choices before the choice actually made. In most of the actual cases you make a decision, based on the

³Van der Vossen, B. & Tesón, F.R. 2017

evidence you have for a potential result, but things can turn out differently than you thought they would.

Van der Vossen prefers to determine the moral justification at the moment the decision to sabotage the railway track or not is made, focussing on intention. Tesón, however, would prefer to determine that same moral justification at the moment the result of the decision is clear, focussing on the final result.

Following this elaboration of approaches they seem to differ most in their moment to determine possible justification or their focus on intention or result. Nonetheless, I will argue in this thesis that the biggest bone of contention is on what they did not expect to happen. Assuming that they reasonable calculate what will happen if they intervene or not, what they do not expect to happen is foremostly influenced by luck.⁴ Their biggest bone of contention is how to deal with luck in the moral evaluation of humanitarian intervention. The possibility of luck influencing a moral evaluation is called moral luck.

This thesis will seek to contribute to the debate on humanitarian intervention by showing the importance of a stance in the moral luck debate for determining a position in the ante-post-debate. Because of the importance of a stance in the ante-post-debate for an overall moral evaluation of humanitarian intervention the theoretical niche of moral luck is essential to be addressed.

⁴With exclusion of the possibility of resultant luck influencing the reasonable made decision. See chapter III on resultant luck.

II: THE DEBATE ON HUMANITARIAN INTERVENTION

The main purpose of this thesis is contributing to the debate of what should be done when human rights are violated in another state. Should we prevent this from happening or should we not? How simple this sounds how difficult that question really is.

On top of the pyramid of that question is of course the overall question of morality. Is it morally permissible to intervene on humanitarian grounds in a state that is not yours? Every writer on humanitarian intervention of course wants to answer that overall question but a comparison of some simple 'yes'- and 'no'-answers does not tell anything, scientifically interesting.

The next layers of the pyramid of humanitarian intervention show what is at stake for determining permissibility and impermissibility. This chapter will show five central themes in humanitarian intervention and a number of different perspectives on these themes presented by academics in the field of humanitarian interventions. This chapter will be concluded with the importance of the ante-post-debate and why a stance on moral luck is needed before entering that debate.

A just cause

The debate that is most directly linked to the general question of moral permissibility is that of a just cause. What should be the just cause to start a humanitarian intervention? The answer on that question depends for a large part on independent variables, partly on moral prohibited means and partly on what in the end brings about the best result.

The biggest opposites on that first variable would be a pure form of consequentialism that states that even the smallest humanitarian harm is a just cause as long as the intervention is in proportion. The opposite of that is a purely deontological point of view, which regards any harm to innocent people because of an intervention impermissible, leaving only perfect

interventions as permissible.

Most academics are somewhere in between. As one of the most important writers on humanitarian interventions, Michael Walzer (2002) claims: “Every violation of human rights isn’t a justification.”⁵ From this deontological idea there must be a serious, totally inhumane suffering taking place to justify for humanitarian intervention.

This has to do with the connection between means and ends in this discussion. The just cause is strongly related to the intended outcome. The reason to save these lives is also the intended end, of indeed saving those lives. The means are setting the rules to do that. Some writers don’t justify all possible means to come to an intended outcome. The most prominent example of that is the prohibition of an intervention in a sovereign state, bringing us to the next debate.

Human rights versus state sovereignty

The oldest and most prominent debate in the humanitarian intervention discourse is about the question: is it permissible to intervene in a sovereign state for humanitarian reasons? Particularly on the deontological side it is questioned if intervening in a sovereign state is ever permissible for a humanitarian intervention.⁶

State sovereignty has an external and internal aspect. This ambiguity is important for the debate. The external part that was most prominent from the start of the humanitarian interventions debate in the 19th century is all about the possible right to intervene in another state. A state should have control over what happens within its own borders, other states should not have the right to infringe those rights. The debate shifted, also combining the external aspect with an internal part of sovereignty: states may only have sovereignty if they have the sovereign control over their borders. Some of the academics claim that a sovereign

⁵Walzer M. 2002, p. 29

⁶Van der Vossen, in Van der Vossen, B. & Tesón, F.R. 2017, p. 173

loses its sovereignty when infringing upon the rights of its citizens.⁷ Michael Walzer is part of that first side. For him the level of wrongdoing must be significant to justify an infringement on sovereignty and self-determination for the good of individual rights.⁸

Van der Vossen focuses more on the possibility that intervening in a sovereign state is going against the self-determination of that state. “As a result, the value of self-determination can prohibit an intervention, it is said, even if that intervention could correct or prevent real injustices.”⁹ In opposition of that, Eamon Aloyo claims that individual rights must be defended in order to have possible self-determination in the first place, arguing that if you think self-determination is so important humanitarian interventions are permissible for the reason of defending self-determination.¹⁰ Tesón as a consequentialist is primarily occupied with the ultimate goal of saving as many people as possible through proportionality. “The idea is deceptively simple: a war is justified only if the damage it causes is not excessive.”¹¹ That is the main idea when sovereignty and self-determination can play no role in means of an intervention as long as the ultimate goal of saving lives is expected to be met.

Legality and authority

Another, more recent aspect of humanitarian intervention, in a time of smaller states (in comparison with the big empires in the 19th century) and international organisations, is the source of authority that is necessary to make a humanitarian intervention permissible. Most writers on this topic connect the authority with the legal framework it is embedded in. The UN, NATO, ICC and the international jurisprudential rules are often used as examples of institutions to authorize humanitarian interventions.¹²

Petra Perisic for example focuses in her article “Legal Permissibility of Unilateral

⁷Wellman, H.C. 2012, p. 120

⁸Walzer, M. 2002, p. 29

⁹Van der Vossen, B. in Van der Vossen, B. & Tesón, F.R. 2017, p. 180

¹⁰Aloyo, E. 2016, p. 326

¹¹Tesón, F.R. in Van der Vossen, B. & Tesón, F.R. 2017, p. 98

¹²Stein, M.S. 2004, pp. 21-29

Humanitarian Interventions” on the legal character of Humanitarian Interventions: “The legality of this type of intervention represents one of the most controversial issues in contemporary international law, primarily due to the fact that they are undertaken without the prior Security Council authorization.”¹³ Cristina G. focuses on the importance of authority of intervening: “This article has suggested that in cases where the Security Council fails to act in response to instances of grave human rights violations, other agents, such as regional arrangements can legitimately choose to do so.”¹⁴

The UN is an important subject in the literature about Humanitarian Intervention and new doctrine ‘Responsibility to Protect’ (R2P) doctrine in particular. As Graham Melling describes it: “According to ICISS, if a state is unwilling or unable to meet its responsibility to protect its citizens then the responsibility moves from the state to the international community.”¹⁵

It is important that the role of this authority, whether it is legally established or not, is instrumental to the central moral question. The authority has a moral meaning only if it contributes to moral justification of humanitarian interventions. That could be the case if authority contributes in terms of checks and balances to start a justified intervention.

Time

The fourth debate concerns the question *when* it is permissible to start humanitarian interventions and even more important: when an intervention is finished or should stop. The first question is about the amount of evidence of harm that is necessary to make the decision to intervene in another country. It is a difficult question because it is possible that when you start an intervention when there is not enough evidence of cruelty being present it could be considered as impermissible for this lack of evidence. But if you insist that cruelty already

¹³Perisic, P. 2013, p. 48

¹⁴Badescu, G.C. 2017, p. 23

¹⁵Melling, G. 2018, p. 8

must have been taken place it could already be too late to have a successful intervention.

To determine when an intervention is finished or should stop is even more difficult. Do you stop when the direct harm is averted? That could result, in particular when it is an ethnic conflict, in a return of the violent harm that was the reason to intervene, directly after the interveners withdraw. It could be morally required for an intervening power to also rebuild the state in order prevent that violent harm will suddenly arises again. The R2P-paradigm of the UN even requires interveners to rebuild a state.¹⁶

The difficulty of this debate is more about practical objections to the decision of intervening but the moral question when to stop intervening should not be ignored.

Ante-post-debate and moral luck

With an already complex debate with numerous different perspectives in it, there is still one left unmentioned in this chapter: the ante-post-debate. Your position in this debate determines at what moment the overall morality of humanitarian interventions is evaluated. Do you use an ex-ante or an ex-post approach as starting point? The answer to this question is very important. While all the other four debates shape rules for a possible permissible intervention, the ante-post-debate can help to determine when the decision for a intervention to be permissible or impermissible, should be made.

This debate is best explicated in the book of Van der Vossen and Tesón. The cornerstone of both their theories on humanitarian intervention is the “success principle”. It is the assumption that in the end the most important ingredient of a just intervention is the success of that intervention, making it permissible or impermissible (although Van der Vossen emphasises that not all means are justified for the end of a successful intervention).

They do both agree on, in different terms, a success principle to be necessary for permissibility, including proportionality. Tesón states that “The just cause in humanitarian

¹⁶Van der Vossen, B. in Van der Vossen, B. & Tesón, F.R. 2017, p. 235

intervention is saving persons from (human) rights violations by their rulers or other groups in their territory.”¹⁷ He continues: “The intervention must have reasonable chances of success. Success is defined as the realization of the just case.” (p. 71)

Van der Vossen formulates it as follows: “Humanitarian interventions are permissible only if the risks they create for others can be permissibly imposed on them. Call the condition of such permissible risk imposition the success condition. This condition holds that morally justified interventions should have a good enough chance of succeeding, thus rendering the dangers they impose, other things being equal, morally acceptable.”¹⁸

The first part of their definitions is quite similar. Success is defined by the permissibility of saving lives. But here the empirical twist comes back in. Tesón focusses on the result of an intervention while Van der Vossen emphasizes that “... the morality of a humanitarian intervention is not just a function of the actual outcomes it brings about.” (p. 193)

This brings us to their positions in the ante-post-debate: Let us consider a few scenarios which are, for the sake of the argument, simplified. In all four scenarios there is a state whose government is violating the human rights in such a way that another state considers to intervene on humanitarian grounds. In half the scenarios the risks from the starting point appear to be too high to start an intervention. In the other half of the scenarios, the information that is available suggests that intervention will be permissible in terms of the success condition. The grounds of permissibility are different for Tesón and Van der Vossen. As stated, for Van der Vossen self-determination could stand in the way for an intervention while Tesón proportionality is most important; nonetheless, they can agree and disagree on other grounds.

¹⁷Tesón, F.R. in Van der Vossen, B. & Tesón, F.R. 2017, p. 39

¹⁸Van der Vossen, B. in Van der Vossen, B. & Tesón, F.R. 2017, p. 192

The following four scenarios occur when, apart from the possible permissibility *ad bellum* we also look at the permissibility *post bellum*.

Scenario	Permissibility <i>ad bellum</i>	Permissibility <i>post bellum</i>	Overall Permissibility Tesón	Overall Permissibility Van der Vossen
1	Yes	Yes	Yes	Yes
2	Yes	No	No	Yes
3	No	Yes	Yes	No
4	No	No	No	No

They both solely rely on their moment of deciding permissibility. While in two of the scenarios they agree on overall permissibility it is purely on their own terms. So, in fact they do not, content related, agree on any of the cases. The following clarification of their positions will make clear what those different grounds are.

For Tesón, the outcome of an intervention is all there is and the only reason to decide if an intervention was successful and so also permissible. “Good intentions and good evidence are insufficient to justify such unsuccessful intervention, because permissibility is determined only by what happened.”¹⁹ He does make a distinction between permissibility and blameworthiness. Success decides the permissibility but if the decision to intervene was not permissible at the time the intervention may be blameworthy (or the other way around ‘not blameworthy’) (p.123).

For Van der Vossen, the moment to decide on an intervention is before the intervention takes place, looking at the probable success: “The success condition counts as an ex-ante condition because it sees the justice of interventions as depending on their likelihood of justly bringing about a humanitarian outcome.”²⁰ Van der Vossen deals with the uncertainty of making a decision beforehand by saying: “As a rule of thumb, we might say

¹⁹Tesón, F.R. in Van der Vossen, B. & Tesón, F.R. 2017, p. 120

²⁰Van der Vossen, B. in Van der Vossen, B. & Tesón, F.R. 2017, p. 213

that interventions are morally acceptable only if they pose a good enough moral bet – at the time of intervening, in light of the intervener’s evidence.” (p.224)

How is it possible that they both have a scenario, scenario 2 for Van der Vossen and scenario 3 for Tesón in which the permissibility before the intervention is different from the permissibility after the intervention? The answer to that question is luck. To illustrate this with an example: The ex-post view of Tesón would mean randomly throwing a grenade out of your window on a crowded square could turn out to be a just deed. The ex-ante decision to throw the grenade is impermissible. But if you still throw it out of the window and it oddly enough just kills one person that was planning to kill a hundred people, Tesón would call it permissible. He would call the thrower blameworthy for doing something reckless at the moment but because of the successful result it is permissible.

The other way around is also possible: you have full evidence for a man on the square having a switch to instantly kill 50 people on the next moment. You only have a grenade with you, so you throw it, hoping to be in time to save the lives of those 50 people. At the moment you have thrown the grenade, suddenly a fire breaks out in the building next to the square, causing hundreds of people running towards the man to escape the fire. The grenade explodes and next to killing the man you targeted, it kills 100 innocent people. Tesón would call this action impermissible. He would in this case call the thrower not blameworthy, but still, because of the unsuccessful result, say it was not permissible. Without mentioning it, Tesón is in both examples accepting that luck can be justified as criterion of the permissibility of an intervention.

Another example similar to the second example: you throw the grenade knowing there is a fire breaking out but you argue that you are assigned so much charisma that standing on the balcony signing the people to do not move closer to the man, will stop them from getting killed, but they still run towards the middle and get killed. Van der Vossen would probably

argue that the evidence for arguing this action was permissible was not sufficient enough. One could argue against that conclusion that at the moment on which the decision was made, that was not obvious. He was really convinced he could stop those people. In this case one could argue that the man was only having a character overestimating his own capabilities; a capability that is not unknown to leaders. In that case there is ex-ante permissibility but this unlucky character influences the action to be ex-post impermissible.

In such a way, luck may influence both the ex-ante and ex-post permissibility. But that is only possible if you regard this luck as morally significant. Permissibility of humanitarian interventions is a moral issue. It is about the question when one is morally justified to intervene. If luck influences the action you have to decide on to be a part of the moral evaluation or not we are to speak in terms of moral luck.

III: MORAL LUCK

“Moral luck occurs when an agent can be correctly treated as an object of moral judgment, despite the fact that a significant aspect of what he is assessed for depends on factors beyond his control.”²¹ For most academics rejecting moral luck the “control principle” is a condition: “We are morally assessable only to the extent that what we are assessed for depends on factors under our control.” (p. 2) These two concepts are conflicting. When agreeing that the control principle exists, luck is morally arbitrary.

Agreeing with moral luck, you accept that despite the influence of luck on actions, these actions still are morally valuable. As in the example of throwing a grenade (ex-ante permissibly) that results into a bloodbath, agreeing with the control principle would mean accepting the result to be highly influenced by bad luck. This is however contra-intuitive for most people and often what we do in society, namely we do hold people morally responsible even if the outcome was primarily influenced by luck. We punish someone who killed someone else more than someone that wanted to, but had to cough in the last second, missing his target. Like Jed Lea-Henry describes this intuition: “Moral luck matters because we can feel it in our bones.”²² For academics agreeing with the control principle it is morally impermissible to punish someone more for something that was not within someone’s control.

To show the influence of different positions on moral luck for the permissibility, the positions of several authors on moral luck will now be considered, including the influence their positions could have on the moral justification of humanitarian interventions.

²¹Stanford Encyclopaedia of Philosophy 2013, p. 2

²²Lea-Henry, J. 2016, p. 3

The debate on moral luck.

Aristotle argued that you need luck for having a virtuous, just self. Luck was needed to have a good set of virtues and giving one the opportunity to resist bad virtues.²³ Next to Aristotle, the most influential thinker on the relation between morality and luck was Immanuel Kant. His general idea can be interpreted as an overall rejection of the idea of moral luck, although he did not use the concept 'moral luck'. Luck should never influence morality. "A good will is not good because of what it effects or accomplishes, because of its fitness to attain some proposed end, but only because of its volition, that is, it is good in itself."²⁴

For Kant only intention should be used for moral evaluations of persons. It is about knowing how to do good and try to act accordingly. If the circumstances change the result of your intentions, this should not change the way people treat you as person. The Kantian view was not properly tested for a long time. Thomas Nagel and Bernard Williams came with a new paradigm, challenging the Kantian view. Opposed to Kant they argue that we evaluate a lot of what happens in our lives, morally, even when those actions are (partly) beyond our control.

Nagel showed the potential effect of luck on moral evaluations using four types of moral luck: resultant luck, constitutive luck, circumstantial luck and causal luck.²⁵ The first is resultant luck, which occurs when two persons have the exact same intentions and plans but their actions turn out differently, leading to cases as the attempted murder and the successful murder. Causal luck is the second kind of luck. It represents dealing with antecedent actions that are responsible for the way you act without you having control on those antecedent actions. These two concepts of moral luck are related in the sense that resultant luck is

²³Stanford Encyclopaedia of Philosophy. 2013, p. 10

²⁴Kant, I. 1784/1998, p. 4:394

²⁵Nagel, T. 2012

descendent to your action and causal luck is antecedent to your action. The third and fourth kinds of luck are also related. Both are circumstantial kinds of luck. One is internal circumstantial luck called constitutive luck. It occurs when someone is lucky or unlucky because of his personal traits and dispositions. When someone is so arrogant to think that he alone can stop the crowd from walking to the centre of the square to avoid them getting killed, you could argue he is unlucky for the arrogant person he is. The other is external circumstantial luck, which Nagel simply calls circumstantial luck. It covers the kind of luck that one can have in terms of the circumstances that one finds himself in, without that person having control on that aspect.

Nagel's and William's most important contribution to the discussion of moral luck is their rebuttal of Kant's inviolability of moral evaluations. They argue that looking at the tremendous role these kinds of luck may have on one's life, it is not possible to evaluate actions morally the way Kant submits. Furthermore, they argue that because of the potential influence of luck Kant's formulation of morality as the highest form of evaluation is tested and therefore not possible to be the highest form of evaluation. They show that in accepting the roles these different kinds of luck could have the Kantian view can lead to an ongoing narrowing of a possible moral evaluations. When you cannot evaluate someone's actions if they partly depend on luck, you cannot evaluate any actions anymore because they are all affected by some kind of luck. Your character is at least partly beyond your control and any actions related to that cannot be evaluated, they argue.

William's example of man, Gauguin, shows what this view on moral luck would mean for any notion of an ex-ante or an ex-post evaluation of moral permissibility.²⁶ Gauguin feels that he can make it as an artist. He does not have any evidence for that claim at that moment. Nevertheless, he turns his back to his family to become an artist, although he is known as a

²⁶Williams, B. 1981

“family man.” According to Williams the only way to know if Gauguin’s decision to leave his family to become a painter was justified, is retrospective (ex-post!) (p.36). Williams is just as Nagel not formulating a theory on moral luck, but instead he wants to show that the ultimate moral standard of Kant is flawed. In the end it is not the kind of morality Kant uses that will evaluate someone’s action but more a kind of regret when someone sees he has made the wrong decision with or without luck (p.28).

In a later postscript Williams clarifies that his look on moral luck is similar to Aristotle. Not morality is most important but ethics. Someone has a good character and - virtues and so luck has no meaning in this regard.²⁷

A whole new perspective on moral evaluation was brought by Michael. J. Zimmerman in “Taking luck seriously.”²⁸ He proposes to make the distinction between degree and scope. He compares the two situations of a successful murder by George and an unsuccessful murder by Georg that is due to luck. He argues: “...I am quite willing to grant that George may well be responsible for more things than Georg. What I deny is that George is any more responsible than Georg. We must distinguish the degree of someone’s responsibility from its scope.”²⁹ Accordingly, Zimmerman argues that you could be responsible for actions, even if they are influenced by luck, although the amount of responsibility is independent from this luck. The rigorous conclusion he eventually formulates is that a lot of possible actions did not take place due to luck.³⁰ When we would accept the moral responsibility in that manner, we are responsible for a lot of actions that did not took place. Therefore, our moral evaluation is unfair according to Zimmerman.

Now the most important possible positions in the debate on moral luck in general, have been explicated. The rejection of moral luck by Kant, the critique on that by Williams

²⁷Williams, B. 1993, pp. 241-247

²⁸Zimmerman, M.J. 2002

²⁹Zimmerman, M.J. 2002, p. 560

³⁰Williams, B. 1981, p. 571

and Nagel and the reformulation of what morality should be about by Aristotle and Williams. Furthermore the more hybrid stances represented by Zimmerman in taking some versions of moral luck, while rejecting others and another hybrid stance also represented by Zimmerman, separating the morality associated with a person from the morality associated with actual outcome.

One possible stance is left out: the potential outcome of Williams' and Nagel's critique by formulating a pure deterministic view on morality. The possibility that nothing of what one does could ever be possible to be evaluated morally will be addressed in the next chapter.

I will end this chapter with a perspective that combines the concept of moral luck with war. Rob Lawlor does so in his article 'Luck, Evidence and War', although he is more concerned with the concept of luck than the concept of moral luck.³¹ Lawlor suggests that: "To the extent that the outcome depended on luck, the outcome should not affect our moral appraisal and to the extent that the outcome does legitimately effect our moral appraisal, this is not a case of luck effecting our moral appraisal, but a case of the outcome providing evidence (after the event) for the claim that the war was or was not just." (p. 254)

Outcome is not, according to Lawlor's reasoning, an evaluation on its own but only the possible evidence for others to make it more or less clear that the decision beforehand was made justly. Lawlor wants to emphasise that instead of purely looking at intention or purely looking at the results his third option could be a hybrid. Furthermore, the eventual result shows evidence for the potential luck that influenced the result. With all these different visions on moral luck we can now come to a synthesis of moral luck and the ante-post-debate.

³¹Lawlor, R. 2006

IV: THE SYNTHESIS, MORAL LUCK IN HUMANITARIAN INTERVENTIONS

Applying the moral luck-debate on humanitarian intervention is both more complicated as well as easier, compared to the general debate on moral luck. The discussion gets more complicated because it is not just one action, as with as with the attempted murder, where the possibilities of moral luck most be applied for. Humanitarian interventions are mostly long-term missions with numerous aspects in terms of places to fight, decisions to make and political trade-offs to come to the best result.

On the other hand, the fact that those missions are so complicated, guarantees that the decision to intervene is well-advised and not made lightly. All reasons why it is morally justified or unjustified to intervene will in many cases be clearly articulated, which makes it more easy to see where there are possibilities of luck influencing the decisions and actions. Furthermore it is not just a stand-alone action. There are human rights being violated in one state and another state 'simply' has to decide what would morally be better: to intervene or not to intervene. The fact that it is a binary choice provides the possibility of moral calculation between those options.

I will apply the potential influence of luck on the moral evaluations of humanitarian intervention by using the ante-post-debate by Tesón and Van der Vossen, because it represents the most significant theoretical distinction on the ante-post-debate in addition to the fact that the ante-post-debate on its own is important because it determines the moment you can be permissible to decide an intervention to be overall morally just or not.

The degradation of accepting moral luck can range from totally rejecting moral luck as Kant proposes, to a full moral acceptance of luck, determining intentions and result. By taking the four categories of Nagel into consideration, there is a distinction to make between the categories that have possible influence on what ante-post approach. In the following paragraphs it will be demonstrated that the acceptance or rejection of to these categories of

luck as morally significant determines when and how to evaluate the permissibility of humanitarian intervention.

Moral luck for ex-post approaches

Van der Vossen promotes the idea that you can only morally evaluate a humanitarian intervention at the moment you decide to intervene and that the result should not have any influence on that evaluation. Considering the concept of resultant luck by Nagel, the ex-ante view of Van der Vossen would eliminate the potential influence of resultant luck on a moral evaluation. Without the possible effect of result on your moral evaluation, resultant luck cannot have any influence on that evaluation. For the ex-ante approach, then, it is not necessary to have an answer to resultant luck because it would not change your moral evaluation.

For Tesón, on the other hand, resultant luck seems to have influence on the moral evaluation. “That a catastrophe occurs is a misfortune beyond the agent’s control, but his place in history will be nonetheless tainted. This strongly suggests that outcomes are controlling.”³² He implicitly argues for the intuitive-argument that because wars are mainly evaluated by mankind on the basis of their results, resultant luck is actually morally significant. It would of course be possible to underline the ex-post approach without accepting resultant luck as morally significant. If that is the case you have to know what the intention ex-ante was to know what part of the result was due to resultant luck and should not be used for the moral evaluation. Either way an answer to resultant luck is necessary as ex-post theorist. Accepting it would change the way you evaluate but not the moment. Still, for a good evaluation of permissibility without the influence of resultant luck one also needs to consider it from an ex-ante perspective.

³²Tesón, F.R. in Van der Vossen, B. & Tesón, F.R. 2017, p. 127

Moral luck for ex-ante approaches

For the other three categories of moral luck the possible effect applies for both the ex-ante and ex-post approach. The big difference with resultant luck is the fact that these kinds of luck already might influence the intention.

For ex-ante theorists, accepting these kinds of moral luck the kind of evaluation would not change. If someone's character caused a wrong decision but you accept constitutive luck to be morally significant, the evaluation will not change.³³ There is an exception to be made on the possibility of checks in a system that can reduce the potential influence of someone's character on the decision and so on the moral permissibility of that decision. Still the possibility of constitutive luck is present.

It becomes even more complicated if one wants to evaluate in a more Kantian way, totally rejecting the possibility of luck as morally significant. The decision can only be evaluated as permissible once the influence of luck can be filtered out. To know the potential influence of character, for example of throwing the grenade and assuming that people will stop when you make a hand gesture, you need to see the result first to know that he overestimated his own capacities due to his arrogant character.

An answer to circumstantial luck could also change both the ex-ante- and ex-post-evaluations although in most humanitarian interventions the influence of circumstantial luck would not be that big, for there are always two options: to intervene or not to intervene. The fact that the possibilities are influenced by the circumstances does not imply there is no possibility for doing the right thing. For example: due to of the actions of a former president of your country there is a worsening of the relationship with citizens of another country. Suddenly their fundamental rights are poignantly violated by their president. You are thinking

³³Assuming that the decision eventually is made by one person. Otherwise the debate on moral responsibility would be needed to be answered; a topic too big for this thesis

of intervening but evidence shows that the citizens will not support your help, so intervening would only make things worse. If one chooses not to intervene because he knows that the citizens of another state will not accept your help because of that circumstantial luck, it could change the decision but it would not change the possibility to do the right thing, considering the circumstances.

For the last category, causal luck, accepting the moral significance would mean that one has no overall control in what is done but is still morally responsible for something that was in general beyond control. It would be hard to defend that moral option but not impossible. Rejecting it would mean for an ex-ante theorist, that you need to check what was influencing the decision in a causal way and that is also only possible after the result, so ex-post. For all these three categories of luck, an answer is needed by both ex-ante theorists and ex-post theorists. Rejection of the moral significance of these categories of luck would change the moral permissibility. For ex-post-theorists it would not change anything in terms of moment of evaluation but for the ex-ante theorists it would mean that it is impossible to morally evaluate the overall permissibility of the intervention without considering it, ex-post.

Hence, when both ex-ante-theorists and ex-post-theorists are accepting luck as morally significant, it would change their moral evaluation (with an exception to resultant luck for ex-ante theorists). Moreover, rejecting resultant luck as ex-post-theorists and rejecting one of the other three categories as ex-ante theorist would entail you cannot purely evaluate the permissibility at one moment. One would need a hybrid approach.

The potential hybrid evaluation

At this point it is clear that the main goal of this thesis, to show the necessity to have a stance on moral luck for both the theory of Tesón and that of Van der Vossen, and so for humanitarian intervention in general, is met. But the last few paragraphs showed that next to the necessity of a stance in the debate on moral luck it could also change the approach in

general. Zimmerman's stance is helpful in looking at that possibility: at the end of his article he makes an obscure claim. By separating the scope and degree of morality you can be more responsible in terms of actions you are responsible for but you will be equally responsible in degree if you would have done the same as a person for example murdering someone if luck would have influenced you the same as that person.³⁴ Following that claim Zimmerman is showing that we could often misjudge others. We just evaluate on the basis of what is visible because of the scope of actions but not on what does not happen, influenced by luck.

Zimmerman's notion shows the tension between intention and result. This could be applied to the deontological ex-ante approach of Van der Vossen and the consequentialistic ex-post approach of Tesón. While Van der Vossen focuses solely on intention with no moral assets to know if someone's intention was justified (looking at the results), Tesón focuses purely on the result without knowing if the result was due to a morally just intention.

Lawlor is willing to solve this dispute by offering a hybrid version: the main focus is on an ex-ante approach but the result could be regarded as evidence in favour of or against the claim that was made, ex-ante. The defect of this argumentation is the possibility of evaluating morally at two moments, creating the odd possibility of both accepting and rejecting the moral permissibility of a humanitarian intervention.³⁵ I agree with Van der Vossen that this would be impossible -let alone: unworkable- as a moral asset for humanitarian intervention. Nevertheless, the possibility of also having to consider the morality from an ex-ante approach as ex-post theorist (and the other way around) is necessary.

The solution for having to evaluate at two moments but not hurting the impermissibility of having two equal moments of moral evaluation, is having two moments of evaluation with different moral value. For ex-post theorists rejecting resultant luck, the

³⁴Zimmerman, M.J. 2006, p.562

³⁵Van der Vossen, B. in Van der Vossen, B. & Tesón, F.R. 2017, p. 216

difference should be between an ex-ante notion of intention as instrument for making the ex-post evaluation. For ex-ante theorist the difference should be made between the decision that is morally permissible at the moment on which a decision is needed and the decision to be morally justified, free of luck, that is only to be determined ex-post. It would mean an evaluation based on the morality *ad bellum* and the moral evaluation of the action itself, to filter out the influence of luck.

Only one truth?

Tesón and Van der Vossen both reject the possibility of a hybrid moral evaluation. They also claim their way of thinking to be morally superior. But Tesón and Van der Vossen both use an invalid argument to reject each other's theory. Van der Vossen uses the argument that evaluating ex-post is not working because in the end: "They want to know what, as moral agents, they ought to do in their situation."³⁶ Van der Vossen argues that a mixed or purely ex-post approach will not work because one doesn't know if an intervention is permissible the moment he starts it. That, however, is an invalid argument. Even if you do not know the absolute truth about the permissibility, one can still make a decision on the basis of evidence that is available at the moment.

Tesón is also making an invalid argument against Van der Vossen, which is already discussed in the paragraph about resultant luck. Tesón argues that in the end, what mankind thinks of a humanitarian intervention, is leading. But what mankind thinks is not a reasonable moral evaluation. It is just an empirical notion of what mankind thinks. Only when there is a general moral evaluation of mankind of that intervention it can be morally valuable.

Both authors do not adhere to an absolute truth and what their stance in the ante-post-debate is, should be based on their positions on moral luck, as your position in the different debates on moral luck decides when and how one is to evaluate a humanitarian intervention.

³⁶Van der Vossen, B. in Van der Vossen, B. & Tesón, F.R. 2017, p. 217

Therefore, one's main position in the ante-post-debate remains, but when the influence of luck on the moral evaluation would be rejected, a moral evaluation with secondary importance is needed.

V: CONCLUSION

This philosophical journey began by considering the possibilities of resistance fighter Kroese in World-War II. The difficulty of doing the right thing when you know that every choice may also have a number of bad results on the world. For humanitarian intervention it works in the same way: you can decide to intervene or support the status quo and both will in most scenarios, result in both lives lost and lives saved. The unfolding of different debates on humanitarian intervention demonstrated the complexity of those decisions. Not only finding the just cause for an intervention and the right means to come to a successful intervention but also deciding on the right moment to intervene or to redraw is shown to be hard. The right source of authority could help to make an intervention more successful but is not always a contribution to morality. While most of these debates were instrumental to the question of overall morality, the ante-post-debate showed an important debate that was not instrumental but key to overall morality of humanitarian interventions.

Although the permissibility of humanitarian interventions is primarily influenced by the moral theory you adhere to, luck proved to have great influence on the moment to determine that possible permissibility. Moreover the biggest bone of contention between Van der Vossen and Tesón turned out to be the way they cope with the moral significance of luck. Van der Vossen's intention as holy grail and Tesón's result as greatest good proved to be implicit instruments to deal with luck.

Not only was it shown that for having a position in the ante-post-debate a clear stance in the debate on the moral value of luck is necessary, particular stances in rejecting moral luck could result in requiring a hybrid stance in ante-post-debate.

This conclusion does not solve the problem that both debates are highly complicated. The moral debate is caught between reality, often shown not to be morally reasonable, and Zimmerman's theoretical infinite possibility of morally having to evaluate all possibilities

without luck that did not happen. The ante-post-debate on the other hand is caught between the practical difficulty to measure intention and some morally meaningless result that still ends up in history.

What this thesis does, is emphasizing that luck is everywhere and to contribute to a moral debate such as the ante-ex-debate in humanitarian interventions, one needs to know how luck is potentially effecting our moral evaluation.

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