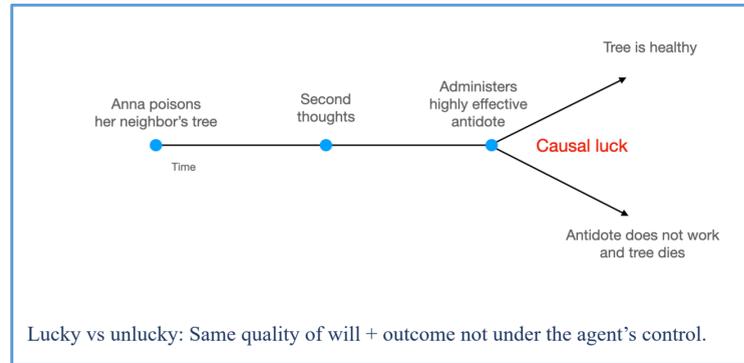




Renouncing the attempt vs perpetration distinction

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Motivation: causal luck

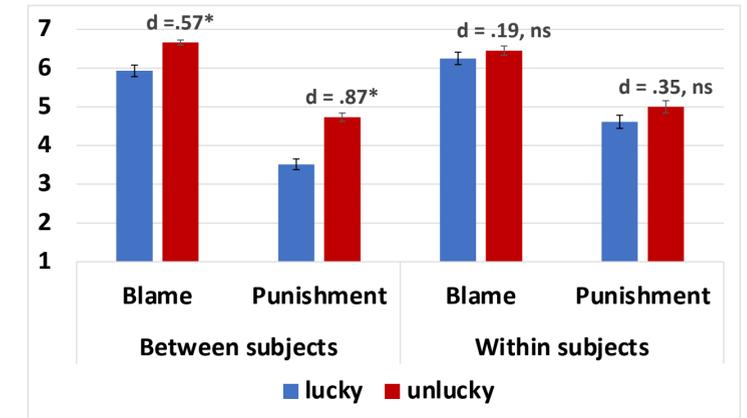


Switching the consequentialist terminology

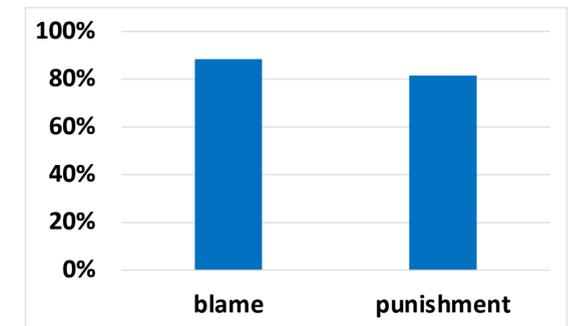
Feinberg: All legal rules and the entire practice should be Kantian.

- **Jones murdered Smith => Jones did not necessarily cause Smith to die.**
- if murder and attempted murder are to be considered on a par, then, without terminological alterations, 'participants in the criminal process would start saying some very odd things, such as "Jones murdered Smith although Smith is still alive"' (Feinberg, 2003, p. 79).
- New crime 'wrongful homicidal (or survival-affecting) behavior (WHB)', the definition of WHB would look much like our current definition of murder, except that the definition would have no component clause requiring that the victim actually die' (Feinberg, 2003, p. 79). The levels of punishment for WHB would depend on the levels of blameworthiness rather than merely outcome luck.
- 'Our penal code, for example, could forbid WHB on pain of severe penalty, defining WHB as "any act of murder or attempted murder which..." and so on. The rest of the definition would specify mens rea, actus reus, and other definitional elements, **except for the causal condition, which is left out because it has no relevant bearing on blameworthiness, and that being the case, the most blameworthy criminal actions may or may not satisfy it'** (Feinberg, 2003, p. 80).

Results



Mean blame, and punishment judgments for the between-subjects and within-subjects designs; error bars denote standard error of the mean.



Proportion of participants who agreed with the claim that the two agents should be judged identically with respect to blame, and punishment in the contrastive design (>4 on the Likert scale).

Conclusion

If reflective folk intuitions are Kantian for the renunciation defense and the principles of criminal legal responsibility are by and large Kantian, then perhaps Feinberg's view is correct that, at least the rules on the renunciation defense, could be reformulated in a Kantian manner.

Two views on responsibility

	Kantianism	Consequentialism
Responsibility basis	Quality of will	outcome
Does luck matter?	no	yes

The law is by and large Kantian (Hall 1963, Hart, 1968, Fletcher, 1971, Simons, 1994, Hurd & Moore, 2002, 2011, King, 2009, Raz, 2010, and Husak, 2011).

One consequentialist exception: the renunciation defense = complete and voluntary desisting from criminal enterprise.

Complete = the crime commitment cannot be merely postponed but has to be abandoned.

Voluntary = cannot be motivated by increased difficulty or possibility of detection.

This definitions holds for instance in: the US, France, Germany, Poland, Switzerland, Japan, Columbia, Mexico, Brazil etc.

	Legal qualification	Availability of renunciation defense	Punishment
Lucky	attempt	yes	mitigated
Unlucky	perpetration	no	full

Note: one can attempt only if one does not produce the outcome.

Attempt => (abandonment v failure).

Objectives

Two views:

Legal rules	Feinberg's view
Consequentialist (causation decisive)	Kantian (blameworthiness decisive)

In common law systems, lay juries decide on responsibility. (Kneer & Machery, 2019) point out that when reflective (within subjects design) folk intuitions are Kantian rather than consequentialist.

Question: What are the folk intuitions with respect to the renunciation defense?

The experiment

We ran three experiments. All experiments had two conditions: (i) lucky (neutral outcome) and (ii) unlucky (bad outcome). The first experiment had a between-subjects design (N = 271), the second had a within-subjects design (participants saw both conditions simultaneously, N = 88) and the third was within subjects with contrastive questions (N = 120).

The tree scenario

Anna wants to poison a tree because the tree obstructs her view. She injects acid into the soil surrounding the tree. Later Anna has second thoughts. She injects the soil surrounding the tree with an alkali solution, which, at a recent botanists' conference, was discussed as an effective antidote.

The alkali solution works and the tree remains healthy.

The alkali solution does not work and the tree dies.

Questions: blame and punishment

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