## Renouncing the attempt vs perpetration distinction

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### Motivation: causal luck

- **Army poisons her neighbor’s tree**
- Second thoughts
- Armistice does not work and the tree dies

Lucky vs unlucky: Same quality of will + outcome not under the agent’s control.

### Two views on responsibility

<table>
<thead>
<tr>
<th>Responsibility type</th>
<th>Kantian</th>
<th>Consequentialist</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does luck matter?</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>Quality of will</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>Outcome</td>
<td>yes</td>
<td>yes</td>
</tr>
</tbody>
</table>


One consequentialist exception: the renunciation defense → complete and voluntary deserting from criminal enterprise.

Completeness: the crime commitment cannot be merely postposed but has to be abandoned.

Voluntariness: 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.

### Objectives

- Feinberg: All legal rules and the entire practice should be Kantian.
  - Jones murdered Smith ✓ Jones did not necessarily cause Smith’s death.
  - 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-seeking) 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).

- **Two views**
  - **Legal rules**
  - Feinberg’s view (causation decisive)  
  - Kantian (blameworthiness decisive)

In common law systems, lay juries decide on responsibility. (Kneer & Machery, 2019) point out that when reflective (within subjects) or non-reflective (between subjects) judgments, 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 counterbalanced questions (N = 120).

**The tree scenario**

- **Neutral outcome**
  - 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.

- **Bad outcome**
  - The alkali solution does not work and the tree dies.

**Questions:** blame and punishment

### Results

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

**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.

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