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Philosophical Analysis of Two Types of Legal Responsibility

1. Introduction

The goal of my article is to analyse the concept of legal responsibility from the perspective of an analogous analysis of the nature of moral responsibility. In my considerations, I draw upon the Anglo-American metaethical discussions of moral responsibility, especially prominent in philosophy after Peter F. Strawson's landmark paper *Freedom and Resentment*.[2] I argue that legal responsibility has a very similar structure to moral responsibility. In particular, we can also distinguish two types of such responsibility (which do not need to coexist), both of which play an important role in the process of justifying legal reactions to blameworthy actions. Despite an intuitive understanding of these two types of responsibility, lawyers rarely reflect on their nature and sometimes fail to distinguish them adequately. This paper aims to expand our knowledge and understanding of legal responsibility and to contribute to further research on the notion of responsibility at the intersection of moral philosophy and jurisprudence. Particularly, these distinctions may be useful for lawyers, who often fail to distinguish adequately different aspects or types of legal responsibility, especially in the continental legal systems,[3] which in turn may influence their approach to creation of legal norms and sanctions.

It is important to note that when we morally evaluate agents and their actions, we make at least three types of judgments: aretaic, deontic and hypological.[4] Aretaic judgments assess a person: their moral character, vices, and virtues. Deontic judgments relate to moral obligations and to what is right or wrong. Lastly, hypological judgments concern the agent's moral responsibility for the act. For instance, if Anna kills Adam, we can ask three separate questions based on these judgments: 1) aretaic: Is Anna a bad person?; 2) deontic: Was killing Adam a breach of a moral obligation? (i.e. Is killing

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[2] See: P.F. Strawson, *Freedom and Resentment, and Other Essays*, London–New York 1974, pp. 1–28; and for example T. Scanlon, *What We Owe to Each Other*, Cambridge 2000; J.M. Fischer, M. Ravizza, *Responsibility and Control: a Theory of Moral Responsibility*, Cambridge 2000; or D. Shoemaker, *Responsibility from the Margins*, New York 2015.
[3] In common law systems there is at least a distinction between responsibility and liability, which after all is mainly intuitive and not clear enough.
[4] This distinction comes from M.J. Zimmerman, *Moral Luck: a Partial Map*, "Canadian Journal of Philosophy" 2006/4, p. 585.

Adam morally wrong?); and 3) hypological: Is Anna responsible for killing Adam?[5] In law, we also use such judgments. Deontic (e.g. Was killing Adam a breach of legal obligation?) and hypological (e.g. Is Anna legally liable for killing Adam?) judgments are more frequent, but aretaic ones can also appear, such as in the case of excuses or the severity of penalty (e.g. Is Anna such a monstrous person that she deserves life imprisonment?). In the paper, I focus only on hypological and deontic judgments concerning responsibility for actions, mainly for failure to comply with obligations. Therefore, I set aside any issues regarding the evaluation of moral character or determining responsibility for moral character.

Moreover, I do not concentrate on the notion of forward-looking responsibility, which is a matter of responsibilities in the future, or "being (…) responsible for bringing about a state of affairs which we as a community take to be desirable".[6] Instead, I focus on backward-looking responsibility, which is a matter of "having caused an existing (…) state of affairs".[7] Moreover, I limit myself only to issues of responsibility that concern blameworthy actions (and omissions), such as wrongdoings, torts or offences, and do not discuss praiseworthy ones, such as good or supererogatory deeds. Underlying these decisions is the belief that this type of responsibility – backward-looking for blameworthy things – is the most widespread and important kind in law.

2. Two views on responsibility

Let me start by presenting two dichotomous views on the nature of moral responsibility that dominate the literature on this kind responsibility. The first, called the "Strawsonian view", was introduced by Peter F. Strawson. It is based on the notion of "reactive attitudes", which are emotions, such as resentment or moral indignation, that are important for the practice of holding people morally responsible.[8] If we find that someone did something wrong, we usually express (or at least are willing to express) reactive attitudes towards them. These are responses to what Strawson calls "qualities of will",[9] which can range from the intention to kill in cold blood to sheer negligence. The former will be met with more intense reactive attitudes (such as anger) than the latter.[10] Many philosophers claim that Strawson reversed the order of explanation of what the nature of moral responsibility is. According to the traditional view, it is appropriate to hold people morally responsible (i.e. express reactive attitudes towards them) because they are morally responsible. And they are morally responsible

[5] According to some authors, these are completely separate questions, e.g. Anna can be a bad person because of killing Adam, she may have breached moral obligation not to kill but she is not responsible for killing Adam. Or Anna can be a good person because of killing Adam, she may not have breached any moral obligation by doing that but she is responsible for killing Adam, etc. See: M.J. Zimmerman, *Moral Luck*…, p. 587.

[6] M. Smiley, *Future-looking Collective Responsibility: a Preliminary Analysis*, "Midwest Studies in Philosophy" 2014/38, p. 1.

[7] M. Smiley, *Future-looking*…, p. 1.

[8] In the paper, I will treat reactive attitudes as part of a broader category of all responsibility-related reactions, which are performed, activated, felt, or thought in response to someone's responsibility for something. Responsibility--related reactions for blameworthy actions include not only the emotions and attitudes described by Strawson but also e.g. remorse or social sanctions. Responsibility-related reactions for praiseworthy actions are e.g. social approval, gratitude or giving a medal. From the perspective of this paper, the most important category of responsibility-related reactions are legal sanctions. The category of responsibility-related reactions is taken from D. Enoch, A. Marmor, *The Case Against Moral Luck*, "Law and Philosophy" 2007/4, pp. 412–413. Cf. P.F. Strawson, *Freedom and Resentment*…, pp. 14–15.

[9] Cf. P.F. Strawson, *Freedom and Resentment*…, p. 15.

[10] We can easily recognize here the influence of emotivist ethical theories.

because they satisfy the conditions for being morally responsible, e.g. they are mature enough or they could have acted otherwise. Therefore, traditionally the practice of holding x morally responsible is explained by x being morally responsible. It seems that for Strawson it is the other way round: people are morally responsible because they are appropriately held morally responsible. There are no external criteria that x needs to satisfy to be morally responsible, it is enough that x is appropriately held morally responsible.

Many philosophers after Strawson tried to interpret the notion of appropriateness of reactive attitudes. R. Jay Wallace suggested understanding it as "fairness",[11] Derk Pereboom as "basic desert",[12] John M. Fischer as "apt candidacy",[13] and Sidney Shoemaker as "fittingness".[14] One of the most interesting interpretations was given by Robert Kane, who claims: "What justifies us in holding people morally responsible is that they are part of a practice or form of life in which it is appropriate to have such reactive attitudes toward one another".[15] Thus, the Strawsonian approach is a social one, focused on the relation between the offender and the people (or society) that express reactive attitudes towards him/her. As Gary Watson puts it, "our sense of ourselves and one another as morally responsible agents and (accordingly) as morally responsible to one another is integral to ('given with') human sociality itself".[16]

This does not mean that a reactive attitude needs to be expressed towards the judged agent; it may arise only in our mind ("I am furious with him but I will not let him know") or be directed towards ourselves ("I feel angry because of what I have done"). What is more, they may not arise at all. Moral responsibility, from a Strawsonian perspective, concerns only the appropriateness of expressing a reactive attitude in our form of life, which attitude need not be actually expressed. If Anna kills Adam and no one knows about it, but according to our form of life it is appropriate to express, e.g. anger towards murderers (it is a typical reaction to murder), then she is morally responsible.

But the question which immediately arises in this context is how we can determine the appropriateness of holding one morally responsible, when doing so seems to be suported by our moral intuitions. In other words, how can we differentiate justly adopted reactive attitudes from mistakes or abuses, e.g. blaming small children or mentally ill persons? Here Strawson's idea starts to be problematic. As Patrick Todd argues

> [d]efenders of the Strawsonian "reversal" either need to embrace the difficult consequence that if we blamed the severely mentally ill or small children, they would be blameworthy, or instead articulate precisely how their proposal escapes this result, while still being a theory on which our practices "fix the facts" of moral responsibility.[17]

According to Todd, all the above interpretations are unsuccessful in true reversal of the order of explanation. They do not want to bite the bullet and allow blaming people contrary to our basic moral intuitions, but at the same time they cannot offer a good

[11] R.J. Wallace, *Responsibility and the Moral Sentiments*, Cambridge 1994, chapter 4.
[12] D. Pereboom, *Free Will, Agency, and Meaning in Life*, New York 2014, pp. 1–8.
[13] J.M. Fischer, M. Ravizza, *Responsibility and Control*…, chapter 1.
[14] D. Shoemaker, *Response-Dependent Responsibility; Or, a Funny Thing Happened on the Way to Blame*, "Philosophical Review" 2017/4, p. 508.
[15] See: R. Kane, *A Contemporary Introduction to Free Will*, Oxford 2005, p. 108.
[16] G. Watson, *Peter Strawson on Responsibility and Sociality*, in: D. Shoemaker, N. Tognazzini (eds.), *Oxford Studies in Agency and Responsibility. Volume 2*, Oxford 2015, p. 17.
[17] P. Todd, *Strawson, Moral Responsibility, and the "Order of Explanation": An Intervention*, "Ethics" 2016/1, pp. 208–240.

explanation of how we can limit the practice of holding morally responsible without any external criteria of its appropriateness.

The second view on responsibility, called the "ledger view", was developed mainly by Michael J. Zimmerman.[18] It claims that "[s]omeone's being responsible for x consists of x's being part of that person's moral record".[19] Imagine that there is a ledger book in which a moral accountant writes down all our morally good, neutral and bad deeds. If there is credit in the ledger, then the person is praiseworthy, and if there is debit, then they are blameworthy.[20] Of course, neither the moral ledger book nor the moral accountant exists; they are only metaphors. Although the idea of a moral ledger is similar to (or maybe even inspired by) the Christian image of God as a righteous judge, who records all our good deeds and sins to pronounce the final judgment, there is absolutely no such metaphysical or theological assumption underlying this theory.

Contrary to the Strawsonian view, which focuses on *holding* one morally responsible, the ledger view represents the traditional order of explanation of what the nature of moral responsibility is. It is based on the concept of *being morally* responsible. In other words, moral responsibility is a property that can be attributed to the agent. According to Zimmerman, "in the context of inward moral praise and blame, the worthiness of such praise or blame is a strictly non-moral type of worthiness; it is a matter of the truth or accuracy of judgments".[21] The normative aspect is the conditions that need to be satisfied to ascribe moral responsibility to the agent. Thus, if Anna kills Adam and all the conditions for moral responsibility are met, then the property of moral responsibility for killing Adam is instantly ascribed to Anna. We may say that "being morally responsible for killing Adam" metaphorically appears in her moral record, but it just means that Anna is morally responsible for killing Adam.

Importantly, there is no need for anyone to make a judgment about Anna or even know about her deed. Anna and Adam could be the last two living people on Earth, and Anna would still instantly become morally responsible after meeting the relevant criteria. Moreover, Anna's being morally responsible does not need to involve expressing any reactive attitudes. If, after killing Adam, Anna becomes the last living person on Earth, there will be nobody to have any responsibility-related reactions towards her (apart from her own remorse, which does not even need to arise).

To sum up, the Strawsonian and ledger views are often contrasted with each other. They give different answers to the question: "What is more fundamental for the nature of moral responsibility?". Strawsonians' answer would be that the reactive attitudes and practices of holding morally responsible are more fundamental, and our understanding of the agent's moral responsibility should be based on them. Adherents of the ledger view would say that the theoretical property of being morally responsible is more fundamental and that it grounds the practice of holding morally responsible.[22] I believe,

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[18] See: M.J. Zimmerman, *An Essay on Moral Responsibility*, New Jersey 1988, p. 38.

[19] M.J. Zimmerman, *Varieties of Moral Responsibility*, in: R. Clarke, M. McKenna, A.M. Smith (eds.) *The Nature of Moral Responsibility: New Essays*, Oxford 2015, p. 48.

[20] I am skeptical about the claim that we can sum up these credits and debits in the moral ledger and on this basis form a holistic judgments about person's moral worth or moral character. This would assume that there is a common scale for all good and bad things. I limit myself to the claim that if there is a credit for x (e.g. saving a drowning person) in the moral ledger then the person is praiseworthy for x and if there is also a debit for y (e.g. killing someone), then the person is separately blameworthy for Y.

[21] M.J. Zimmerman, *An Essay*…, p. 38.

[22] Considering the objections raised against the Strawsonian view, one could assume that it gets close to the ledger view in the sense that it needs an external criterion against which the correctness of the holding one responsible will be

after Angela M. Smith and Michael J. Zimmerman,[23] that the ledger and Strawsonian views refer to two distinct types of moral responsibility, which I call "attributability" (stemming from the ledger view) and "accountability" (stemming from the Strawsonian view).[24] They are both important for understanding what it means to be responsible.

Attributability refers to the attribution of being morally responsible (understood as an "entry" in one's moral record) for x to the agent. It is about the relation between the subject and the object of moral responsibility. Accountability, on the other hand, concerns the appropriateness of holding someone responsible for x. It is about the relation between the subject of the responsibility and responsibility-related reactions. Attributability can be described as more fundamental in the sense that it usually justifies judgments of accountability and, eventually, the expression of reactive attitudes. For instance, if Anna does not kill Adam, the murder cannot be attributed to her (i.e. she is not morally responsible for killing Adam), and therefore it is morally unjustified to adopt reactive attitudes towards her (i.e. she is not accountable for killing Adam). However, I assume that attributability and accountability are not equivalent; one can be morally responsible for x in terms of attributability, but not morally responsible in terms of accountability, and *vice versa*. This notion will be developed later.

In the next sections, I apply the dichotomous notions of responsibility in the Strawsonian and ledger views to the field of law, offering an analysis of legal responsibility *qua* attributability and legal responsibility *qua* accountability. To ensure clarity of my argument, I use the terms "legal responsibility" to refer to attributability and "legal liability" to refer to accountability. These are technical terms and should not be understood according to their typical meanings in English, which are not very clear.[25]

3. Legal responsibility *qua attributability*

The normative conditions for responsibility are the key to understanding how attribution of responsibility works. In the field of law, these conditions can be found in legal norms. They should be distinguished from the conditions constituting legal obligations and prohibitions, which underlie deontic judgments. For instance, let us assume that there is a norm of criminal law stating that it is prohibited to kill a human being. If Anna kills Adam (and meets all the requirements of this norm), then we may make a deontic judgment that she did not comply with the obligation and thus did something wrong (in a criminal sense). This, however, does not immediately mean that she is legally responsible; she needs to first satisfy the normative conditions for legal responsibility.

From an ontological point of view, the normative conditions of legal responsibility are constituted by legal norms, which generate norm-based facts. These norms are static *counts-as* rules, according to which "some things, 'often events', count in the law as

judged. It is not clear, however, what this criterion would be in the Strawsonian view. This may be the argument why both approaches are compatible rather than competitive. The Strawsonian view supplements the ledger view with the holding responsible issue, and the latter gives the former the criterion for appropriateness, which is the property of "being responsible".

[23] M.J. Zimmerman, *Varieties*…, pp. 61–63, A.M. Smith, *On Being Responsible and Holding Responsible*, "The Journal of Ethics" 2007/4, pp. 465–484.

[24] The notions of responsibility, liability, attributability, accountability and answerability are used by many authors and have different meanings. Unfortunately, this creates a conceptual mess. See: M.J. Zimmerman, *Varieties*…, pp. 57–61.

[25] In Polish, it can be even more unclear, since there is only one term for both "responsibility" and "liability", which is "odpowiedzialność".

something else".[26] In case of legal responsibility, they include the criteria whose fulfilment by a given behaviour may qualify it as a criminal offence or a tort. For instance, let us assume that there is a *count-as* legal norm which says that killing a person with the intention to kill counts as murder. If Anna kills Adam and if she intended to kill him, then her deed meets the criteria given by the norm and counts as murder. Therefore, by meeting these criteria, Anna becomes responsible for the murder. The attribution of responsibility happens instantly and does not involve anyone's judgment, decision or action.

Let us look at the legal provision for the defence of necessity in Polish criminal law: "Article 25. § 1. Whoever in necessary (self-)defence repels a direct illegal attack on any interest protected by law, shall not be deemed to have committed an offence".[27] If Anna's action meets all the criteria included in this norm – she repels a direct, illegal attack by Adam on her life by killing him – then it does not count as murder but as acting in self-defence. Therefore, we may make a hypological judgment that Anna is not criminally responsible for killing Adam.

Importantly, this judgment is based on the assumption that "legal rules can operate 'by themselves', even if nobody is aware of it".[28] It means that if Anna's deed meets all the criteria for murder included in the *count-as* legal norm, then she is legally (criminally) responsible for the murder, even if the court finds her guilty of manslaughter due to lack of evidence of her intention. In such a case, the court's decision is incorrect, and its legal consequences are inadequate or unjust (she should be punished more severely for murder). However, it is highly likely that in practice nothing can be done about the court's decision and that neither the court, nor the society would ever know about the error.

Importantly, legal responsibility does not equal causal responsibility. The latter is a concept used in science or in everyday life that describes the "authorship" of the deed, and it is not based on the normative conditions for legal responsibility included in legal norms. If Anna hits Adam while driving her car, we may say that she is causally responsible for his death because she is the cause (or one of the causes) of the accident. However, this does not always mean that she is legally responsible. Let us consider the conditions for responsibility in the Polish Criminal Code:

> Article 8. A crime may be committed only with intent; the misdemeanour may also be committed without intent, if the law so stipulates.
> Article 9. § 1. A prohibited act is committed with intent when the perpetrator has the will to commit it, that is when the is willing to commit or foreseeing the possibility of perpetrating it, he accepts it.
> § 2. A prohibited act is committed without intent when the perpetrator not having the intent to commit it, nevertheless does so because he is not careful in the manner required under the circumstances, although he should or could have foreseen the possibility of committing the prohibited act.[29]

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[26] J. Hage, *Conceptual Tools for Legislators Part 2: Pathways Through the World of Law*, "The Theory and Practice of Legislation" 2014/2, p. 286. Many thanks to one of the anonymous reviewers for recommending this paper to me. It was extremely useful for me to realize and clarify some issues. See also: M.J. Zimmerman, *Varieties*…, p. 48.

[27] Act of 6 June 1997 – the Penal Code (Polish title: Ustawa z 6.06.1997 r. – Kodeks karny, tekst jedn.: Dz. U. z 2020 r. poz. 1444).

[28] J. Hage, *Conceptual Tools*…, p. 279. According to the other perspective, legal norms are just tools in legal reasoning and the judgment about responsibility is not instant, because it requires adequate reasoning first. Japp Hage argues that such perspective is characteristic for hard cases (J. Hage, *Conceptual Tools*…, p. 279). I believe that this perspective may lead to similar results as the one mentioned above if we assume the real or objective nature of reasons. However, this is not part of this paper's topic.

[29] Act of 6 June 1997 – the Penal Code, translation, https://www.legislationline.org/download/id/7354/file/Poland_CC_1997_en.pdf, accessed on: 30 May 2021.

Simply put, this means that the agent may commit a crime: 1) intentionally with *dolus directus* ("the perpetrator is willing to commit" a crime); 2) intentionally with *dolus eventualis* ("foreseeing the possibility of perpetrating it, accepts it"); 3) non-intentionally, recklessly ("could have foreseen") or 4) non-intentionally, negligently ("should (…) have foreseen"). Now, imagine that Anna was driving extremely carefully and slowly and Adam carelessly ran into the street. She could not have foreseen this or reacted in time. Therefore, Anna: 1) was not willing to kill Adam; 2) did not foresee the possibility of killing Adam; 3) could not have foreseen killing Adam; and 4) should not have foreseen killing Adam. Thus, she satisfies none of the normative conditions for criminal responsibility and is not criminally responsible for killing Adam. This does not change the fact that she is still causally responsible for it, which may lead to what Bernard Williams called agent regret.[30] However, it will not have any legal implications.

The problem is not so easy when we realize that causation can also be one of the conditions for legal responsibility in legal norms. Here, it is understood as distinct from the notion of causation as used in science and everyday life. There may be similarities between these two notions, but in the field of law, causation is designed by lawmakers and legal scholarship to serve a particular function for determining legal responsibility and legal liability. As Michael Moore claims:

> [t]he law's concept of causation is thus a product of three factors in combination:
> 1. Causation's explicit definition in authoritative legal texts.
> 2. Its implicit definition extracted from the totality of usages of the concept in the legal doctrines making up a body of law.
> 3. The value(s) served by the use of a concept of causation in the legal doctrines employing the concept.[31]

Therefore, if there is a norm prohibiting one from causing the death of another human being, even unintentionally, causation is treated as one of the conditions for legal responsibility, which can be very different from the concept of causal responsibility as authorship. For instance, if Anna is pushed by a sudden gust of wind and runs into Adam, who falls under a train and dies, then Anna is causally responsible for his death in the sense that she is one of the links in the causal chain events, similarly to the wind. However, the causality condition required by the norms of criminal law will probably not be met, and Anna will not be legally responsible for Adam's death.

Moreover, just like moral responsibility, one's legal responsibility does not depend on any third party. No one needs to be a witness of Anna's act of killing Adam, no authorities need to investigate the case, and no court needs to find her guilty. Again, if Adam and Anna are the last two people on Earth and there are valid legal norms that apply to them, then Anna still may be legally responsible for killing Adam. Of course, her legal responsibility would be highly theoretical and would not lead to any punishment because there would be no one to punish her.

It is important to remember this, as one could confuse this idea with the presumption of innocence, a principle stating that a person should be treated as innocent until found guilty. The presumption of innocence only has a procedural character. It does not mean that one who committed the crime is not criminally responsible for it until found guilty by the court, it just means that we cannot publicly call them responsible. Imagine that Eve is arrested

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[30] See: B. Williams, *Moral Luck: Philosophical Papers 1973–1980*, Cambridge 1981, pp. 27–32.

[31] M. Moore, *Causation in the Law*, in: E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*, 2019, https://plato.stanford.edu/archives/win2019/entries/causation-law, accessed on: 15 January 2021.

and put on trial for killing Adam. Both the society and the system are uncertain whether she is legally responsible for his death. The authorities should look for evidence of her guilt, and if there is such evidence, the court should find her guilty. Even if the evidence is overwhelming from the beginning, there can be circumstances that need to be investigated, such as whether Eve was mentally sane at the moment of killing. If the court convicts her of murder, we are allowed to claim that she is legally responsible for killing Adam. But what if it was not Eve who killed Adam, but Anna, and nobody knows the truth? Then, the statement that Eve is legally responsible for killing Adam would be false, even if everybody were certain of it. The true statement would be that Anna is legally responsible for killing Adam.[32]

To sum up, legal responsibility (*qua* attributability) is distinct from causal responsibility, although causality may be one of its conditions. It is instantly ascribed to the agent when they satisfy the conditions for responsibility set by legal norms, regardless of whether anybody verifies, proves or witnesses the crime. The main function of the conditions is to ground judgments of legal liability.

4. Legal liability *qua* accountability

Unlike legal responsibility, legal liability is not about being responsible, but about being held legally responsible. Therefore, it does not concern the ascription of a very theoretical moral record to the agent, but the practical consequences of the agent having done something unlawful. However, like legal responsibility, legal liability is a property "stuck" to the agent, which refers to the appropriateness of expressing responsibility--related reactions to the agent. Static *count-as* legal norms again set the conditions for legal liability, which determine whether the agent is subject to legal sanctions.

As mentioned above, judgments about responsibility ground judgments about legal liability, especially in criminal law. Anna is legally responsible for killing Adam, therefore she is accountable. In other words, Anna's legal liability is justified by her legal responsibility for killing Adam. However, this is not always the case; sometimes, legal liability is not based on or justified by legal responsibility. For example, let us consider these legal provisions from the Polish Civil Code:

> Article 426. A minor who has not attained thirteen years of age shall not be liable for the damage inflicted by himself.
> Article 427. A person who under a statute or contract is obliged to supervise a person who due to their age or mental or physical state may not be imputed fault shall be obliged to redress the damage inflicted by that person, unless he satisfied a duty of supervision or if the damage would also have arisen despite the careful exercise of supervision. The provision shall also apply to persons who without a statutory or a contractual duty exercise a permanent care of a person who due to their age or mental or physical state may not be imputed fault.[33]

This means that the person supervising a minor under 13 years of age is liable for the minor's deeds (if other conditions for legal liability are also satisfied). Therefore, if a 12-year-old Peter breaks his neighbours' window, he is not liable for it. His legal responsibility for the act may be disputable – it is a matter of determining whether his

[32] Again, it is based on the assumption that legal norms can operate by themselves and the court's reasoning is only declarative.

[33] Act of 23 April 1964 – the Civil Code (Polish title: Ustawa z 23.04.1964 r. – Kodeks cywilny, tekst jedn.: Dz. U. z 2020 r. poz. 1740),T. Bil, A. Broniek, A. Cincio, M. Kiełbasa (transl.), *Kodeks cywilny. Civil Code*, Warszawa 2011.

young age allows him to be subject to legal responsibility at all – but his parents are not legally responsible because they were not the agents involved in breaking the window and it is not their deed.[34] However, if they did not fulfil their supervisory obligations, they are legally liable for breaking the window. It would be justified if they were subject to appropriate responsibility-related reactions, in this case, damages.

However, it is important to note that liability does not require actually holding agents legally responsible and directing responsibility-related reactions towards them. Peter's neighbour may not want to take any legal action and may be satisfied with apologies by Peter's parents and repair of the window. This is because legal liability concerns the appropriateness of responsibility-related reactions. Arguments in support of the agent's legal responsibility, even if no one knows about the action, or the agent's responsibility for x if they are convicted of y, are still valid when it comes to legal liability. If Anna kills Adam and she meets all the requirements for legal liability, she is legally liable for killing Adam. No one may know about it, and Anna may not be convicted for it, but she will be still accountable. If Eve was incorrectly convicted for killing Adam, then this judgment is unjust, as it is not grounded in actual legal liability.

To sum up, legal liability (*qua* accountability) is similar to legal responsibility (*qua* attributability) because it is also a property attributed to the agent. It is ascribed to the agent when the agent satisfies the conditions for legal liability set by legal norms, regardless of whether anybody verifies or confirms them. Their main function is to ground the responsibility-related reactions.[35]

5. Conclusions

The main conclusion from the above analysis of the concept of legal liability is that, in parallel to moral responsibility, we are dealing with two types of responsibility, which I refer to as attributability and accountability. The former concerns being legally responsible, while the latter relates to the appropriateness of holding a person legally responsible. They are similar in many ways, firstly because they both refer to properties which are assigned to individuals instantly, without the interference of any entity, only by virtue of meeting of the normative conditions included in legal norms. However, they are still separate types of legal responsibility, which means that no conceptual connection is necessary between them. I hope that this distinction clarifies to some extent our understanding of what the different types of legal responsibility or liability are and will lay the groundwork for further research, not only more detailed research, for example into the conditions for liability, but also more general research. I hope it will also help untangle in the future the conceptual confusion in the understanding responsibility, which is visible in literature.

[34] Theoretically, I can imagine a situation in which legal norms set the condition for legal responsibility in such a way that a person who was not involved in doing x is in fact legally responsible for doing x. Will it, however, make sense if being legally responsible for x does not involve any other legal consequences and liability can be justified without reference to legal responsibility? The only reason I see is symbolic or expressive. For instance, the conditions for legal responsibility set by the norms of criminal law may preclude that parents are responsible for the acts of a minor under 13 years of age to emphasize their role in raising the children and teaching them responsibility. Even if such legal responsibility would not lead to their legal liability and obligations to pay damages, e.g. to the owner of a window.

[35] I do not think the distinction between attributability and accountability changes anything in the practice of holding agents legally responsible or liable, mainly by the courts. As mentioned before, the judgments about responsibility may be different here from the facts about responsibility, taking into account, e.g. limitations of evidence. This distinction is, however, important for the agents' blameworthiness (which is independent of their being found guilty and punished), which may influence non-legal judgments and sanctions against them.

Philosophical Analysis of Two Types of Legal Responsibility

Abstract: The paper presents some preliminary results of a philosophical analysis of the concept of legal responsibility, including its nature and types. It draws upon Anglo-American metaethical discussions of moral responsibility, which have abounded in philosophy after Peter F. Strawson's landmark paper *Freedom and Resentment*. The author reconstructs two views on the nature of moral responsibility, the Strawsonian view and the ledger view (coming from Michael J. Zimmerman) and applies them to the concept of legal responsibility. The result is a distinction between two types of legal responsibility: attributability and accountability, which are characterized in the paper, which is an introduction to further research on legal responsibility (or liability) and its conditions.

Keywords: legal responsibility, legal liability, attributability, accountability, reactive attitudes

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