

## H. L. A. Hart's Liability-Responsibility in F.A. von Hayek's Thought

HALINA ŠIMO, Institute of Philosophy, University of Silesia in Katowice, Katowice,  
Poland

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This study delves into Hayek's treatment of liability-responsibility. Although Hayek does not systematically classify concepts of responsibility, his observations align closely with Hart's typology, which includes liability-responsibility. This type is invoked when the violation of established norms is associated with a specific sanction. Among the types distinguished by Hart, liability-responsibility is most extensively discussed in Hayek's works, justifying its exclusive examination. This focus also relates directly to fundamental themes in Hayek's thought. The paper examines how Hayek perceives liability-responsibility in legal and moral dimensions, emphasizes the importance of the rule of law as a guarantee of individual freedom, and explores the role of informal social mechanisms in safeguarding moral traditions to minimize the need for coercion.

**Keywords:** F. A. Hayek – responsibility – liability – H. L. A. Hart – moral tradition – rule of law

### Introduction

Friedrich August von Hayek claimed that responsibility is the flip side of liberty.<sup>1</sup> This raises the question: what is Hayek's theory of responsibility? This

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<sup>1</sup> See Hayek (2006, esp. Chapter 5). There, Hayek argues that liberty and responsibility are inseparable (Hayek 2006, 71), that a free society requires the widespread acceptance of personal responsibility (Hayek 2006, 71 – 72), and that responsibility presupposes rational agency (Hayek 2006, 76 – 77), among other points. A more detailed discussion of these themes, especially in relation to Hart's category of *role-responsibility*, is provided in a separate article

question is important not only because answering it would allow us to identify Hayek's position in debates on this issue – central to the liberal order – but also because it would help illuminate the very notion of liberty, which is a core category in Hayek's philosophical system. It is worth attempting to answer this question, as it has not been explicitly addressed either by Hayek himself or in the secondary literature, which tends to focus instead on the concept of liberty, the liberal social order, justice, and so on, while the issue of responsibility itself is largely overlooked.<sup>2</sup>

In considering how best to approach this research problem, we are confronted with the absence of a systematic account of responsibility in Hayek's work – his remarks on the topic are scattered throughout his writings. A conceptual tool is needed to organize and clarify these views. My hypothesis is that a useful tool can be drawn from legal philosophy – specifically, from Herbert Hart's typology of responsibility. This typology is well established, widely recognized, and commonly accepted in legal theory. Applying it allows for a structured reconstruction of responsibility in various thinkers, and it is particularly well suited to Hayek.

Hart presented his typology in the Postscript to his work *Punishment and Responsibility*, titled "Responsibility and Retribution" (Hart 1968, 211 – 237). He distinguished four types of responsibility: role-responsibility, causal responsibility, liability-responsibility, and capacity-responsibility. According to Hart, the most fundamental of these is liability-responsibility, which is defined by the legal and moral obligation of an individual to undertake or refrain from specific actions, with violations resulting in negative sanctions. I have attempted to apply Hart's typology to Hayek's thought in a separate text (Šimo, *forthcoming*).

Preliminary analysis suggests that, as in Hart's account, the type he called liability-responsibility plays a central role in Hayek's framework. Hayek's reflections on this form of responsibility are more extensive than those relating to other types and constitute the core of his concept of responsibility. Notably, it is mainly these reflections that are not explicitly presented under the label of "responsibility," as key statements falling within the scope of Hart's category appear in various other contexts.

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entitled "Responsibility in F. A. Hayek's Philosophy: A Systematic Approach Based on H. L. A. Hart's Classification" (Šimo, *forthcoming*).

<sup>2</sup> See, for example: Rothbard (1998); Barnett (2014); Leoni (1991); Gray, J. (1998); Diamond (1980); Wysocki – Dominiak (2024).

Because Hayek's position is too elaborate to be included within a broader discussion of all four types of responsibility without exceeding reasonable limits of scope and proportion, it merits a separate, focused treatment in this article. The main research question of the present paper is thus: What is Hayek's concept of liability-responsibility?

The thesis I will develop is that, just as Hart's liability-responsibility includes both legal and moral dimensions, so too does Hayek's concept of responsibility. Hayek gives substantive normative content to Hart's formal, somewhat abstract, and primarily descriptive formulations. More concretely: legal liability-responsibility in Hayek's theory is defined by general principles of individual liberty, understood as the absence of arbitrary coercion by others. Only these principles – and more specific rules derived from them – can justify the use of legal (i.e., non-arbitrary) coercion. Complementing this legal aspect is the moral dimension of liability-responsibility, shaped by the moral tradition. These norms are not enforced by legal sanctions, but rather by softer forms of social pressure and expectation.

This paper thus offers a contribution to clarifying Hayek's theory of responsibility and liberty (as two sides of the same coin), while also formulating a position in the ongoing discussion of the scope of individual accountability in a free society. On the one hand, it affirms that liberty presupposes responsibility; on the other, it underscores that such responsibility must be bounded – an individual is answerable for their own domain of freedom, not for the fate of the world.

In what follows, I present Hayek's views as those of a philosopher and theorist, not a policy advocate (Hayek 2006, 4 – 5; 354 – 355). His theoretical commitment to liberty as inviolable contrasts with the pragmatic concessions found in his political recommendations (e.g., Hayek 2013, 294, Ch. XIV).<sup>3</sup> These compromises, aimed at gaining broader acceptance, were strategic rather than principled, and should not be mistaken for his core beliefs (see Hayek 2007, 156). That core remains: "freedom can be preserved only if it is treated as a supreme principle which must not be sacrificed for particular advantages" (Hayek 2013, 55).

The first section of the article's main body outlines the foundational assumptions of Hart's concept of liability-responsibility to provide a theoretical basis for analysis. Subsequent sections apply this framework to Hayek's body of

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<sup>3</sup> See also Eric Mack and Bruce Caldwell on the tension between Hayek's normative commitments and his policy recommendations (Mack 2018, 56; Caldwell 2005, 4 – 5).

work. First, the role of rules (as liability-responsibility is grounded in them) in his theory will be presented. This will be followed by a discussion of his views on liability-responsibility in the legal context, and then in the moral context.

### **I. Hart's Concept of Liability-Responsibility**

As outlined in the introduction, we can generally state that according to Hart, liability-responsibility refers to the type of responsibility invoked when moral or legal norms prescribing specific obligations are violated under the threat of various forms of negative sanctions.

Having identified liability-responsibility as the most fundamental type, Hart substantiated this view by explaining that the original meaning of "response," derived from the Greek term ἀποκρίνομαι and the Latin *respondere*, included not only answering questions but also, more significantly, reacting to accusations or charges. These situations entail punishment or guilt (Hart 1968, 265).<sup>4</sup> Describing the four fundamental types of responsibility, Hart explained that they are distinct yet interconnected, and that other types stem more or less directly from the core concept of liability-responsibility. The other types of responsibility described by Hart, which are distinct yet interconnected and stem more or less directly from the core concept of liability-responsibility, include: role responsibility, which arises when an individual holds a particular position within a social system and thereby assumes specific duties; causal responsibility, where the term "responsible for" is used to indicate a causal link between actions and outcomes; and capacity responsibility, which assesses whether a person possesses the necessary cognitive and psychological abilities to be held accountable in the other senses (Hart 1968, 211 – 230).

Hart argued that while different types of responsibility can take either a legal or moral form, and this does not always necessitate treating these forms separately, in the case of the present topic of liability-responsibility, such a distinction seems necessary. Let us mention that he observes this type of responsibility as more broadly concerning law than morality, without resolving whether this emphasis is due merely to the general differences between law and morality, or whether it is inherent to the nature of the responsibility type being discussed (Hart 1968, 215).

In the legal context, a typical situation in which the term "responsibility" refers to liability-responsibility can be described as follows:

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<sup>4</sup> See Simpson – Weiner (1989), entry "answer"; Pollock (1892, 432 – 444, 465); Hart (1968, 265).

When legal rules require men to act or abstain from action, one who breaks the law is usually liable, according to other legal rules, to punishment for his misdeeds, or to make compensation to persons injured thereby, and very often he is liable to both punishment and enforced compensation (Hart 1968, 215).

As Hart notes (referring to specific legal systems), sanctions may also apply to someone who was not directly the perpetrator – for example, a sanction may be imposed in certain circumstances in response to harm caused by an employee, a servant, or a defective machine in the individual's possession (Hart 1968, 216). Nevertheless, using Hayek's terminology, the cause of the harm can, in one way or another, be traced back to the individual's domain of freedom.<sup>5</sup>

Having outlined the legal dimension of liability-responsibility, it is now essential to address its moral aspect, which Hart characterizes as follows:

...the moral counterpart to the account given of legal liability-responsibility would be the following: to say that a person is morally responsible for something he has done or for some harmful outcome of his own or others' conduct, is to say that he is morally blameworthy, or morally obliged to make amends for the harm... (Hart 1968, 225).

Thus, as the definitions indicate, there is an analogy between the legal and moral perspectives. Notable differences between legal and moral responsibility concern not their essence, but rather the content of the legal and moral rules and principles underlying them. Additionally, as Hart explains, in both the legal and moral dimensions, determining liability-responsibility involves considering specific conditions: these conditions relate to the nature or degree of an individual's control over their behavior, the causal or other connections between their actions and harmful events, or their relationship with the person directly responsible for the harm (Hart 1968, 217 – 222, 225 – 226).<sup>6</sup>

## **II. On the Principles Determining Liability-Responsibility in Hayek**

Hayek shares Hart's view that responsibility, understood as linked to sanctions following a breach of norms, encompasses two fundamental dimensions: moral

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<sup>5</sup> Hart later supplements his definition, but these are not crucial here. See Hart (1968, 216 – 218).

<sup>6</sup> Further discussions by Hart on liability-responsibility appear in Hart (1982) and (1994). Also, Hart (1968) also offers a broader discussion beyond the cited postscript. See also Raz (2004), Duff (2007), and Gardner (2007).

and legal. As he notes, “Responsibility has become primarily a legal concept, because the law requires clear tests to decide when a person’s actions create an obligation or make him liable to punishment. But it is, of course, no less a moral concept, a conception which underlies our view of a person’s moral duties” (Hayek 2006, 67).

Hayek was an opponent of legal positivism – understood as the thesis that “the existence and content of law depends on social facts and not on its merits” (Green 2019) – since, in advocating for a liberal order, he insisted that the law should not be treated as a mere outcome of institutional will, but instead grounded in a conception closer to natural law, as expressed in general principles of liberty (as will be further discussed below).<sup>7</sup> By contrast, he rejects situational ethics and utilitarianism, often characterized as proceeding “from act to act,” asserting instead that morality constitutes a system of rules (Hayek 2007, 166 – 168). This emphasis on principles, also evident in moral domains, is a distinctive feature of his approach.

It should also be noted that since even legal rules ultimately originate from morality, when Hayek speaks of moral rules, he understands them as those not incorporated into the legal system (Hayek 2006, 130 – 141). While both legal and moral rules are rooted in morality, he distinguishes between the two on the basis that legal rules, despite their moral origin, are identified as “legal” because they are formally codified and enforced by designated authority, whereas “moral” rules refer to those outside the scope of law.

As liability-responsibility, whether in its legal or moral sense, is based on principles derived from moral tradition, it is essential to ask what Hayek means by “moral tradition.” Thus, the tradition he examines encompasses two sets of principles, reflecting the dual nature of human social existence. Individuals function both within a large society, or the “extended order” – characterized by interactions with people they do not know directly, primarily connected through market mechanisms – and within small communities, composed of those close to them, often engaging in direct and voluntary relationships. Consequently, Hayek’s framework reveals two normative orders: one founded

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<sup>7</sup> Although Hart is generally seen as a legal positivist, the contrast with Hayek should not be overstated. Hayek rejects legal positivism based on his normative ideal of a free legal order grounded in abstract, non-arbitrary rules of just conduct. Hart, by contrast, focuses on describing how legal systems function, holding that legal validity is independent of moral content – though he does not dismiss the moral evaluation of law (see Murphy 2006, 26 – 31).

on private property rights and contracts, and the other rooted in solidarity and altruism (Hayek 1991, 11 – 28).<sup>8</sup>

In Hayek's view, the rules of small "immediate" communities are defined as rules of natural order because they arise from the instincts that govern cooperation among individuals in groups characterized by a shared purpose. However, Hayek emphasizes that it is not the instincts themselves but the rules derived from them that form the basis for morality; for morality to emerge, there must be a moment of duty or obligation. The rules, shaped by instinctual reactions, express values such as solidarity and altruism – importantly directed towards members of one's own group, not outsiders. They continue to function effectively within small groups, but are not suitable for regulating behaviors in large, anonymous societies of people not subordinated to a common purpose (Hayek 1991, 17 – 19).

The rules of the order that Hayek refers to as the extended order gradually and spontaneously developed as a tool for the survival of humanity "at its current size and structure," consisting of societies made up of individuals pursuing their own goals, alongside the development of civilization and the emergence of categories such as private property, trade, contracts, privacy, and so on (Hayek 1991, 12, 17 – 19). The moral rules of the extended order primarily consist of prohibitions protecting individual freedom and are universal in nature. Key values of this order include private property, saving, and fair competition. These values implement impersonal justice based on formal rules, in contrast to earlier particular justice, which was linked to specific communal goals (Hayek 1991, 12; Hayek 2013, 300 – 301).

For the preservation of individual liberty, it is crucial for individuals to live within both the natural and extended orders. As individual liberty is most fully realized within the extended order, the norms of this order play an essential role in Hayek's system. However, the norms of the natural order also remain important, provided they are maintained in their proper context. The structures of the extended order consist not only of individuals but also of sub-ordered systems, within which instinctive reactions, such as solidarity and altruism, retain significance. The rules of the natural order support the existence of those communities, which are essential for a liberal system (Hayek 1991, 17 – 19). As Hayek noted in this context, much of what is usually achieved through the coercive actions of authority can be more effectively accomplished

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<sup>8</sup> They will be discussed in reverse order, in accordance with how they appeared. The morality of the extended order, though key for Hayek, emerged later.

through voluntary cooperation (Hayek 2013, 299 – 309). Thus, the morality of the extended order directly supports individual liberty by constituting and guaranteeing it, while the morality of the natural order supports it in a more indirect manner.

Hayek emphasizes, however, that these two moral frameworks – instinctive morality grounded in small, face-to-face groups, and learned rules underpinning the extended market order – often coexist in tension. As he writes, “we must constantly adjust our lives, our thoughts and our emotions, in order to live simultaneously within different kinds of orders according to different rules” (Hayek 1988, 18). If we were to apply the emotional and solidarity-based ethics of the family or tribe to the impersonal, competitive mechanisms of the extended order, we would undermine the very structure of civilization. Conversely, applying the abstract, impersonal rules of the market to intimate relationships would erode the social bonds that sustain small communities. The conflict between innate impulses and culturally evolved norms – between what men instinctively like and what social evolution demands – lies, according to Hayek, at the heart of the civilizational process. Therefore, responsibility in Hayek’s framework cannot be fully understood without recognizing this duality: it arises from the need to internalize and navigate distinct moral expectations appropriate to each normative sphere.

Addressing the norms of the extended order, which Hayek considers the core of morality, it is worth noting that they sometimes raise doubts about their ethical nature, as they generally lack a strict connection to natural goodness. Hayek emphasized that acting in accordance with these learned rules usually brings greater benefits. In an environment of freedom, optimal conditions exist for the development of both individuals and entire societies (Hayek 1991, 11 – 17; Hayek 2013, 302 – 304; Hayek 2006, 71 – 73). As Peter Boettke highlights, “Liberty creates the institutional conditions that make other social values possible” (Boettke 2018, 265).

### **III. Hayek’s Perspective on Legal Liability-Responsibility**

According to Hayek, law should be a tool for protecting freedom, not a mechanism for imposing arbitrary obligations – not without reason does he call his conception “freedom under law” (Hayek 2006, 134; Hayek 2013, 69). Hayek subscribes to Savigny’s observation:

If...free agents are to exist side by side, mutually supporting and not impeding each other in their development, this can be achieved only by recognizing an invisible boundary within which the existence and operation



of each individual is assured a certain free space. The rules by which these boundaries and through it the free range of each is determined are the law (Savigny, 1840, I, 331 – 332; see Hayek, 1991, 35).

The subject of legal liability-responsibility in Hayek's thought is thus defined by what Mack calls "liberty-protective principles of justice" (those that prohibit arbitrary coercion, as Hayek defines liberty as the absence of such coercion) (Mack 2018, 40 – 41; Hayek 2013, 201 – 204). They are the most fundamental principles of morality of the extended order and are described by Hayek as discoverable universal rules of just conduct (Hayek 2013, 201 – 204). These principles fundamentally embody natural law – objective standards of fairness, immune to the whims of legislative arbitrariness (Hayek 2013, 70).

Although, in the context of the liberal order he envisions, Hayek can be regarded as a proponent of an approach akin to natural law (particularly in contrast to legal positivism), he was deeply cautious about the term "natural law" itself. He considered the term misleading, as it lumps together all critiques of legal positivism, reducing the debate to a false dichotomy: law as either entirely human-made (as maintained by legal positivists) or a reflection of superhuman wisdom (as traditionally asserted by natural law theorists) (Hayek 2013, 222 – 283; see, e.g., Kelsen 1967, 220 – 221). In order to avoid being drawn into this conceptual trap and to prevent misunderstanding, Hayek distanced himself from the label, explaining that while rules exist objectively, he did not see them as eternal or rooted in immutable human nature. Instead, he viewed them as products of social evolution – unintended outcomes whose functions can increasingly be understood. Nevertheless, he regarded his own approach as, in essence, a natural law theory – still, rather in the original, etymological sense of the term. As he wrote: "it would be legitimate to describe as 'natural' anything that has grown spontaneously and not been deliberately designed by a mind... it would seem fitting to call such traditional rules 'natural law'" (Hayek 1991, 143). Moreover, it is important to note that Hayek himself acknowledges that his perspective reflects the Lockean principle, which is articulated as "law, liberty, and property."<sup>9</sup> He states:

Property, in the wide sense in which it is used to include not only material things, but (as John Locke defined it) the "life, liberty and estates" of every individual, is the only solution men have yet discovered to the problem of reconciling individual freedom with the absence of conflict. Law, liberty, and

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<sup>9</sup> Here is an elaboration of this principle: "being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions" (Locke 1988, 271).

property are an inseparable trinity. There can be no law in the sense of universal rules of conduct which does not determine boundaries of the domains of freedom by laying down rules that enable each to ascertain where he is free to act (Hayek, 2013, 102).

Thus, in light of Hayek's perspectives, it is impermissible to treat law merely as a product of legislation. In a free-order legal framework, the fundamental principles of liberty must be preserved; the legislative process must not aim to allow legislators, in their presumed wisdom, to dictate what ought to be law (Hayek 2013, 69 – 71; again, it should be remembered that this is a normative argument about what ought to be the case in a liberal order, not a descriptive account of existing legal systems). Nevertheless, the legal system, of course, is not confined to liberty-protective principles. It includes a system of more specific rules that nonetheless should reflect these underlying principles. The general principles define the scope of permissible action; the details provided by rules must be crafted in such a way that they do not breach the fundamental principles but must be modeled upon them. To distinguish between these layers in what we call law, Hayek introduces the distinction between *nomos* and *thesis*. *Nomos* – rules of just conduct (general principles) – represents the law of liberty, while *thesis*, arising from legislation, comprises the actionable statutes (Hayek 2013, 120 – 121, 200 – 201). He observes that what *nomos* indirectly prescribes "is never accomplished but remains a standing obligation on all" (Hayek 2013, 121). As Hayek puts it, statutes (*thesis*), if designed to mirror *nomos*, embody its characteristics although they never inherit its essence (Hayek 2013, 121).

While Hayek allows for alternative approaches, he emphasizes that historically, the government has predominantly fulfilled the role of ensuring that principles are adhered to, thereby preventing arbitrary coercion (Hayek 2013, 45 – 46). Consequently, legal systems include rules of government organization that extend beyond mere rules of conduct (Hayek 2013, 125). Therefore, it seems necessary to emphasize that

if we want to preserve a free society, only that part of the law which consists of rules of just conduct... must be binding for the private citizen – whatever else may also be law binding those who are members of the organization of government (Hayek 2013, 200).

Rules of organization of government should focus on controlling and regulating the government's role in overseeing the enforcement of just conduct rules

(Hayek 2013, 125 – 127).<sup>10</sup> Although in actual systems it is often the case, organizational rules should not alter the general rules applicable to everyone (Hayek 2013, 123 – 125). Regarding the entities enforcing compliance with these rules, like any individual or association, they must adhere to the general rules of just conduct (Hayek 2013, 129 – 130). Rules of just conduct, therefore, do not only apply to relations between individuals, but also provide protection of individual liberty against those in power (see also Hayek 1980, 18).

#### **IV. Hayek's Understanding of Moral Liability-Responsibility**

While the principles aimed at protecting individuals from arbitrary coercion by others to secure their private domains are subject to legal liability-responsibility in Hayek's concept, he asserts that "coercion should not be used to interfere in that private sphere where it is not necessary to protect others" (Hayek 2013, 221). He would agree with the thesis that Lord Devlin criticized: "there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business" (Devlin 1965, 3). Hayek emphasizes the importance of acknowledging individual value systems, suggesting that respect for personal values is essential, even when we do not agree with them. He argues that a commitment to freedom involves recognizing that we are not the ultimate arbiters of others' values and that we should not prevent individuals from pursuing their goals unless their actions impinge upon the rights of others (Hayek 2006, 69 – 70).

By contrast, for Hayek, it is a typical belief that "a free society will function successfully only if the individuals are in some measure guided by common values" (Hayek 2006, 70). And that adherence to them, or lack thereof, should still be managed. Violations of moral norms, which are not accompanied by legal sanctions, also involve some type of sanction, just of a different kind. The following quote gives us a clue about what kind of sanctions: "the fact that conduct within the private sphere is not a proper object for coercive action by the state does not necessarily mean that in a free society such conduct should also be exempt from the pressure of opinion or disapproval" (Hayek 2006, 128). As Hayek notes, in a free society, the way an individual exercises their freedom directly influences the level of esteem they receive from others (Hayek 2006, 70). This reflects a societal mechanism where the respect accorded to individuals varies based on their adherence to accepted moral standards.

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<sup>10</sup> Hayek dedicates extensive considerations to this topic, addressing the so-called Rule of Law (see, e.g., Hayek 2006, 137; 142 – 153; 180 – 192; Hayek 1980, 18).

Hayek argues that milder forms of social pressure on nonconformists should not be equated with coercion, contrary to how John Stuart Mill reasoned, for example (Mill, 2009, 10 – 11). He argues, emphasizing that such gentle social influence promotes general obedience rather than universal adherence. Social norms permit individual departures in situations where it is particularly important for someone to act against these norms. Furthermore, these departures are not seen as subordination because there will always be individuals who remain nonconformists.<sup>11</sup> On this basis, Hayek describes the compliance resulting from social pressure as “voluntary conformity” (Hayek 2006, 56; 128). Equally important, as noted earlier, the principles we adhere to are not the result of arbitrary imposition but evolve as people primarily adapt to them through custom, as they enable the realization of freedom. Social pressure plays only a supplementary role here, as it is custom that fundamentally shapes adherence to these principles. The moral tradition is regarded as an expression of the accumulated experience of the race” (Hayek 2006, 57; see also Miller 2010, 71).

Crucially, according to Hayek, a free society does not uphold a “complete ethical code” or an “all-comprehensive system of values” (Hayek 2007, 172). Therefore, it can be concluded that for him, moral responsibility should be associated with sanctions limited to principles that define the ethical minimum without excessively interfering in an individual's personal sphere.<sup>12</sup> He maintains: “A society that does not recognize that each individual has values of his own which he is entitled to follow can have no respect for the dignity of the individual and cannot really know freedom” (Hayek 2006, 70; cf. 2007, 166).

## **V. Summary**

Hayek's views on liability-responsibility, both legal and moral, reflect his broader philosophical commitments to concept of liberty under law. He stresses that legal rules must be clear, enforceable, and grounded in universal

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<sup>11</sup> In Hayek's works, two types of nonconformists are identified. The first contribute to moral evolution by challenging norms through original behavior (Hayek 2006, 128 – 129). The second are parasitic nonconformists who reject participation in civilization while benefiting from its products (Hayek 1991, 153).

<sup>12</sup> Hayek does not explicitly define the minimum, but suggests it involves traits like independence, self-reliance, risk-taking, standing by one's convictions, and voluntary cooperation (Hayek 2007, 217). These reflect both values sustaining the extended order and those tied to care and solidarity.

justice – not arbitrary power. These rules should follow the Lockean view: no one may harm another in life, liberty, or property; purely personal actions lie beyond legal control. In the moral sphere, Hayek values the private domain but also highlights the role of noncoercive social pressure in upholding norms and reducing reliance on legal coercion.

Hayek emphasized that in a free society, a clear distinction between unenforceable moral rules and enforceable legal rules is crucial (Hayek 2013, 305 – 306). He himself provides only a general framework and principles for how such a distinction should be drawn but refrains from establishing clear boundaries applicable in all specific cases. His works also show certain ambiguities and inaccuracies concerning the concept of coercion itself (see e.g., Hayek 2006, 19 – 20, 181). Hayek's incomplete reflections can be seen as a call for further inquiry – one that is being taken up in contemporary libertarian legal and ethical debates.<sup>13</sup>

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<sup>13</sup> Directions in this research are indicated in Hamowy (2008), entry "Nonaggression Axiom." But for a more detailed and the most recent discussion see Dominiak (2019; 2022; 2023a; 2023b; 2023c; 2024); and Dominiak – Wysocki (2023).

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Halina Šimo  
University of Silesia in Katowice  
Institute of Philosophy  
Bankowa 11  
40-007 Katowice  
Poland  
e-mail: [halina.simo@seznam.cz](mailto:halina.simo@seznam.cz); [halina.simo@us.edu.pl](mailto:halina.simo@us.edu.pl)  
ORCID ID: <https://orcid.org/0000-0003-0035-4928>