

RESPONSIBILITY IN THE THOUGHT OF F.A. HAYEK: SYSTEMATIZATION ACCORDING TO H.L.A. HART'S CLASSIFICATION

HALINA ŠIMO

Fecha de recepción: 24 de octubre de 2024

Fecha de aceptación: 19 de marzo de 2025

Resumen: Este artículo analiza las reflexiones de F.A. Hayek sobre la responsabilidad a través del marco analítico de H.L.A. Hart. Si bien Hayek aborda distintas dimensiones de la responsabilidad a lo largo de su obra, no lo hace de manera sistemática ni clasificatoria. En cambio, Hart distingue cuatro tipos clave de responsabilidad: responsabilidad de rol, responsabilidad causal, responsabilidad por imputación (liability) y responsabilidad por capacidad. Al aplicar estas categorías descriptivas de Hart al discurso predominantemente normativo de Hayek, el estudio revela que este último destaca la centralidad de la agencia individual en una sociedad libre, subraya el poder motivacional de la responsabilidad causal en el logro humano, y afirma la necesidad de la responsabilidad por imputación para mantener el orden legal y social. Además, el análisis muestra que una definición clara de la responsabilidad por capacidad es esencial para evaluar la competencia y la imputabilidad individual. En conjunto, este enfoque permite descubrir una noción más rica y compleja de responsabilidad en el pensamiento de Hayek, que integra aspectos antes no reconocidos y cuyo propósito común es sustentar y estructurar las condiciones de la libertad.

Palabras clave: responsabilidad; F.A. Hayek; H.L.A. Hart; libertad; teoría jurídica.

Clasificación JEL: K10; D63.

Abstract: This article examines F.A. Hayek's reflections on responsibility through H.L.A. Hart's analytical categories. While Hayek touches on various aspects of responsibility in his works, he does so without presenting a systematic framework. In contrast, Hart, in his analytical approach, identifies four main types of

responsibility: role-responsibility, causal responsibility, liability-responsibility, and capacity-responsibility. Applying Hart's distinctions (which are descriptive in nature) to Hayek's primarily normative ideas highlights Hayek's emphasis on the pivotal role of free individuals in society, the significant impact of accepting causal responsibility on human achievement, and the indispensability of liability-responsibility in maintaining order within a free society. Additionally, it shows that accurately defining sufficient capacity is crucial for determining whether an individual is competent and accountable for their actions. The resulting analysis reveals the complexity of Hayek's concept, showing that it encompasses senses of responsibility previously unrecognized within his thought, with each type of responsibility tailored to support liberty.

Keywords: responsibility; F.A. Hayek; H.L.A. Hart.

JEL Classification: K10; D63.

1. Introduction

F.A. Hayek, as a philosopher, placed significant emphasis on values, including responsibility. Although he explores various aspects of responsibility from a deeply philosophical perspective, he addresses these themes—particularly in *The Constitution of Liberty* (Hayek 2006) and in his other writings—without presenting them in a systematic manner, often in connection with other topics.

In contrast, H.L.A. Hart provides clear distinctions between various types of responsibility. His typology, introduced in the Postscript to his collection of essays *Punishment and Responsibility: Essays in the Philosophy of Law* (Hart 1968) offers valuable analytical tools and a solid foundation for further research and the development of responsibility theory.

The aim of this article is to apply Hart's framework to analyze Hayek's reflections on responsibility. In doing so, we aim to systematize his ideas and highlight the multiple dimensions of responsibility within Hayek's thought.

In the first part of the main body of the article, I will present Hart's reflections on the ambiguity of the concept of responsibility. Hart vividly illustrates the various related, yet distinct, senses of

the term by recounting a story “in the terminology of responsibility” about a drunken sea captain who lost his ship at sea. Depending on the specific shade of meaning attributed to the term, the captain is alternately described as responsible or irresponsible. The key senses of the term responsibility, and the corresponding main types of responsibility that emerge from Hart’s analysis, will be briefly characterized. He distinguishes four of them as particularly noteworthy: role-responsibility, which arises when a person occupies a specific position or role within a social structure, thereby having certain duties to fulfill; causal responsibility, in connection with which the phrase “was responsible for” is used as an expression indicating causality; liability-responsibility, referring to situations where individuals are required by legal or moral rules to perform or refrain from certain actions, with violations leading to some form of punishment; and capacity-responsibility, which involves assessing whether an individual possesses the minimum cognitive and psychological faculties necessary to justify assigning responsibility in the other senses.

In the following sections, I will sequentially demonstrate how the types of responsibility distinguished by Hart are reflected in Hayek’s views. Regarding role-responsibility, I will describe the fundamental, essentially universal role that emerges in Hayek’s considerations: the role of a free individual responsible for their own domain of freedom. In the context of causal responsibility, I will explain the significance Hayek attributes to acknowledging this type of responsibility —even though, in his view, it often involves merely a belief that outcomes are determined by actions, it is crucial for motivating people to make the best use of the resources at their disposal. It will be shown that the concept of liability-responsibility is manifested in Hayek’s work mainly through his discussion of which norms should be regulated by law in a free society (the legal version), but also in his reflections on how certain norms that constitute moral traditions, while not subject to legal sanctions, are still subject to the moral judgment of society (the moral version)¹. Finally, within analysis concerning capacity-responsibility,

¹ Given the need to maintain balanced proportions in this article, the relatively concise treatment of liability-responsibility in Hayek’s work is deliberate. Expanding

we will focus on how Hayek emphasizes the necessity of clearly defining its criteria in the legal context. It must be presumed for all individuals unless it has been clearly demonstrated that a particular person does not meet these criteria; it should not be treated as a gradable trait, as it might be in the moral context.

The final section will offer a summary of the key arguments and conclusions.

It is worth making the following observation: whereas Hart approaches the types of responsibility primarily in a descriptive manner, Hayek's perspective is predominantly normative. For instance, in his reflections on legal responsibility, Hart provides a descriptive account based on common features observed across various legal systems. In contrast, as we will see below, Hayek formulates normative postulates concerning what he considers to be justified legal obligations within a libertarian order².

2. The Typology of Concepts of Responsibility According to H.L.A. Hart

Hart notes: "A wide range of different, though connected, ideas is covered by the expressions 'responsibility', 'responsible', and 'responsible for', as these are standardly used both within and outside of legal contexts" (Hart 1968, 211). He thus recognizes that this concept exhibits a particular type of ambiguity characteristic of value-laden terms—what can be referred to as potential ambiguity³. To illustrate this ambiguity, Hart recounts the story of a drunken sea

this discussion significantly would risk overshadowing the other three types of responsibility addressed here. A more extensive analysis of liability-responsibility could therefore be reserved for a separate article, titled *H.L.A. Hart's Liability Responsibility in F.A. Hayek's Thought* (forthcoming).

² Hayek does this with the awareness that the legal realities of societies, which may vary in their proximity to the ideal of a society of free individuals, significantly diverge from his postulates (see Hayek 2013, 133-134)

³ It is important to be aware of such potential ambiguity, as it tends to be more subtle and concealed compared to obvious, actual ambiguity, thereby exposing users to miscommunication. As Wittgenstein observes, the meaning of words is highly dependent on their use in various contexts, which can lead to misunderstandings, even if the ambiguity is not immediately apparent (Wittgenstein 2009, §43).

captain who lost his ship at sea, described in what he himself refers to as the “terminology of responsibility,” albeit, as he acknowledges, at the expense of stylistic elegance:

“As captain of the ship, X was responsible for the safety of his passengers and crew. But on his last voyage he got drunk every night and was responsible for the loss of the ship with all aboard. It was rumoured that he was insane, but the doctors considered that he was responsible for his actions. Throughout the voyage he behaved quite irresponsibly, and various incidents in his career showed that he was not a responsible person. He always maintained that the exceptional winter storms were responsible for the loss of the ship, but in the legal proceedings brought against him he was found criminally responsible for his negligent conduct, and in separate civil proceedings he was held legally responsible for the loss of life and property. He is still alive and he is morally responsible for the deaths of many women and children” (Hart 1968, 211).

Without claiming to exhaust the multitude of meanings of the term and its grammatical cognates, Hart identifies four particularly noteworthy concepts of responsibility: role-responsibility, causal responsibility, liability-responsibility, and capacity-responsibility.

A. Role-responsibility can be seen, for example, in situations where a ship captain is accountable for the safety of the ship, or parents for raising their children. More generally, whenever someone takes on a specific role within a social framework that includes obligations to ensure the well-being of others or achieve particular goals of an organization, they are responsible for fulfilling those obligations or taking the necessary actions to achieve them. As Hart explains, “Such duties constitute a person’s responsibilities” (Hart 1968, 212).

Hart does not provide a fully precise definition of the concept of a role. He suggests, among other things, that one can speak of role-related responsibility even in cases where certain duties are temporarily assigned—for instance, when one participant in a journey is tasked with handling the maps. This implies a broader understanding of “role” than is typical in sociological perspectives, where it refers to tasks assigned by contract or agreement

(Hart 1968, 212-213). On the other hand, not every duty associated with a specific function implies responsibility. For example, when a private is required to line up in formation, this duty is not typically associated with responsibility. Based on this, Hart posits that “what distinguishes those duties of a position which are singled out as responsibilities is that they are obligations of a relatively complex or extensive kind... while short-lived tasks... are not termed responsibilities” (Hart 1968, 213).

Undoubtedly, role responsibility can be legal, moral, or fall outside this distinction —unless “moral” is broadly understood as “not regulated by law” (in which case the terms “moral” and “legal” are complementary within the universe of discourse, and there is nothing that is extralegal and simultaneously not within the realm of the moral). To act responsibly in the sense of role responsibility means to behave as someone who takes their duties seriously (Hart 1968, 213-214).

B. Causal responsibility is invoked when the phrase “was responsible for” can be substituted with expressions such as “caused” or “brought about,” or by another causal term. An example of this usage is the statement: “Disraeli was responsible for the defeat of the Government.” In this causal sense, responsibility can be attributed not only to individuals but also to their actions, omissions, objects, conditions, and events that lead to specific outcomes. Hart notes that this notion of responsibility is primarily applied in scenarios where the outcome is perceived as either unfortunate or felicitous, rather than neutral. Moreover, assigning causal responsibility often carries connotations of praise or blame, though not always. Sometimes, a sentence that indicates causality is itself a declaration of causal responsibility; at other times, it also involves an assertion of liability responsibility (Hart 1968, 214-215).

C. Liability-responsibility can be discussed both in the context of law and morality, similarly to role responsibility; however, it is appropriate to consider these two contexts separately —despite similarities, there are significant differences between them (Hart 1968, 215). In the legal context, liability-responsibility refers to following situations: “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).

The corresponding concept in the moral sphere would be moral liability-responsibility, which can be defined as attributing moral blameworthiness to an individual for their actions or the harmful outcomes of their own or others' conduct, and may involve the obligation to make amends for the harm caused (Hart 1968, 225).

Hart notes that assigning liability-responsibility differs in the realms of law and morality, particularly with regard to (i) psychological conditions, (ii) the causal connection between an action and its consequences, and (iii) personal relationships that can lead to responsibility for others' actions (Hart 1968, 218-222). The law can impose absolute liability, holding individuals accountable regardless of intent, and even for the actions of others —this can include punishing children or those with mental impairments. While such practices may seem unjust, they can still fit within the legal framework. However, in the moral domain, such approaches are much harder to justify, as they conflict with fundamental moral principles. Incorporating these concepts into morality would require significant changes, whereas the law remains more flexible in this regard (Hart 1968, 226).

D. Capacity-responsibility refers to the possession of certain abilities that are necessary for a person to be morally and legally accountable for their actions. In Hart's view, these abilities include understanding (the ability to comprehend what is required by legal rules or morality), reasoning (the capability to deliberate and make decisions regarding these requirements), and control of conduct (the capacity to conform to decisions once they are made). In essence, capacity-responsibility is about having the psychological and cognitive faculties required to understand, reason, and control one's actions according to legal and moral standards. Without these capacities, a person's responsibility for their actions can be considered diminished or entirely absent (Hart 1968, 227-230)⁴.

Naturally, the question arises —both regarding the elements of Hart's deliberately simplified categorization and other shades of meaning in general— about the relationships between these

⁴ Valuable insights into Hart's reflections are provided in a review by R. S. Summers (1969).

particular concepts and whether they are interconnected beyond their connection through the word itself. Hart states, “Though connections exist between these different ideas, they are often very indirect, and it seems appropriate to speak of different senses of these expressions” (Hart 1968, 211).

While distinguishing the various meanings of “responsibility” is crucial, it is still worth asking what kind of indirect relationship is implied here. Hart notes that the original meaning of the word “response,” akin to the Greek ἀποκρίνομαι and the Latin *respondere*, referred not merely to answering questions but to reacting to accusations or charges, which, if confirmed, entailed punishment or guilt⁵. It is precisely due to this direct link between “response” and responsibility for obligations —namely, liability-responsibility— that Hart considers this sense to be the primary and foundational meaning of responsibility. Hart explains: “The other senses of responsibility are variously derived from this primary sense of liability-responsibility and are connected indirectly with the relevant sense of answer in that way.” This implies that responsibility in the sense of liability-responsibility is based on criteria such as causing harm (causal responsibility) and possessing the normal capacities to comply with legal or moral requirements as an acting person (capacity-responsibility). Role-responsibility, though less directly derived from liability-responsibility, refers to situations where an individual, by fulfilling a specific role, may become responsible if they fail to carry out the duties associated with that role, which are considered their responsibility (Hart 1968, 265).

3. The Foundations of Role-Responsibility in Hayekian Individual Liberty

In discussing role responsibility, Hayek emphasizes a fundamental role that, as I interpret it, arises from humanity itself —the role of

⁵ For a discussion on the evolution of terminology, refer to the entry “answer” by Simpson & Weiner (1989). Additionally, see how Pollock (1892, pp. 432-444, 465) uses the phrase “answerable for” to denote liability for losses, damages, or actions—a term that in many current contexts would align with “responsible for” (Hart 1968, 265).

the individual as a free being, accountable for themselves and their various affairs within their own domain of freedom (see Hayek 2006, 68). Hayek of course describes this role within the framework of a libertarian, individualistic order that he advocates. In such an order, society is based on rules that establish and protect the spheres of freedom for each person, prohibiting interference in others' domains while also safeguarding individuals from external intrusions.

Under these conditions, Hayek's primary value—individual liberty, understood as the absence of arbitrary coercion by others—flourishes. Within their own domain of freedom, individuals define and pursue their goals, living on their own terms while being fully accountable for the various matters they choose to engage in. Hayek emphasizes that respecting the dignity of the individual as a rational being requires recognizing their capacity to manage their own affairs and bear responsibility for them. Ignoring this capacity would mean treating individuals merely as instruments for others' ends, thereby compelling external control over the range of their chosen undertakings, i.e., a negation of freedom (Hayek 2006, 19-20). For Hayek, therefore, "Liberty and responsibility are inseparable" (Hayek 2006, 63). "The complementarity of liberty and responsibility means that the argument for liberty can apply only to those who can be held responsible. Arguments for liberty can apply only to those who can be held responsible" (Hayek 2006, 68).

The type of responsibility Hayek advocates in this role is often perceived, particularly in a context where the concept of personal responsibility has lost favor, as a demanding approach. Hayek observes that "The burden of choice that freedom imposes, the responsibility for one's own fate that a free society places on the individual, has under the conditions of the modern world become a main source of dissatisfaction" (Hayek 2006, 70). Notably, however, Hayek opposes excessively burdening the individual with responsibility; thus, the responsibility tied to this role is both essential and delimited. "It is quite as destructive of any sense of responsibility to be taught that one is responsible for everything as to be taught that one cannot be held responsible for anything" (Hayek 2006, 73)⁶.

⁶ It is worth noting that Hayek is skeptical about the concept of collective responsibility, much like H. Arendt, who emphasizes that guilt cannot be attributed to

Indeed, individuals can effectively bear responsibility only for what they know and can adequately assess. "Freedom demands that the responsibility of the individual extend only to what he can be presumed to judge, that his actions take into account effects which are within his range of foresight, and particularly that he be responsible only for his own actions (or those of persons under his care) —not for those of others who are equally free" (*Hayek 2006, 73*).

The conclusions to be drawn from this analysis are twofold. First, it underscores the importance of ensuring that individuals are held accountable for themselves and their own affairs. While it may be uncertain whether every individual is always the best judge of their own matters, there is even less certainty that another person would fulfill this role more effectively. Assigning responsibility for oneself to another—or appropriating the responsibility of others—inevitably violates the fundamental principles of freedom (*Hayek 2006, 67*).

Second, any attempt to impose upon individuals a responsibility for the entire world or for every person in need appears untenable. Such an inflated notion of responsibility undermines initiative rather than fostering it. Appeals to this exaggerated form of responsibility, which frequently surface in public discourse, erode the distinction between authentic responsibility that genuinely compels action and a superficial sense of obligation that evokes only despair, helplessness, or misplaced guilt without prompting effective action (a distinction described as responsibility "which calls for action" and that "which does not lead to action")⁷. As Hayek observes, "The sense of responsibility has been weakened in modern times as much by over-extending the range of an individual's responsibilities as by exculpating him from the actual consequences of his actions" (*Hayek 2006, 73*).

As Hayek frequently asserts, within the framework of the described role, individuals are free to pursue their own aims and

individuals for events in which they did not actively participate. Arendt also points out that when guilt is universally ascribed, individual accountability loses its meaning (Arendt 2003, 147). Such a concept is also unacceptable in light of Hayek's theory, as well as the idea of shared responsibility presented by I. M. Young (see Young 2006).

⁷ "To be constantly reminded of our "social" responsibilities to all the needy or unfortunate in our community, in our country, or in the world, must have the effect of attenuating our feelings until the distinctions between those responsibilities which call for our action and those which do not disappear" (*Hayek 2006, 74*).

interests. This freedom sometimes raises the question of whether there is room within this concept for duties toward others, as Hart includes in his definition of role responsibility (Hayek 2013, 303). The answer is affirmative. Hayek explains that it is incorrect to believe that being left free means one will or should only pursue their own selfish interests (Hayek 2006, 69).

Without dwelling on the clear fact that people do much for others without encroaching on their spheres of freedom, allowing them to pursue their own goals and interests, let us point out that furthermore: In fulfilling the role outlined by Hayek, individuals naturally contribute to the well-being of others. Freedom “to pursue one’s own aims” does not exclude the human inclination to care for others’ welfare. As Hayek observes, “It is part of the ordinary nature of men... that they make the welfare of other people their chief aim” (Hayek 2006, 69).

It is also worth noting that under conditions of freedom, pursuing one’s own goals often leads, as a byproduct, to the well-being of others. This outcome is facilitated by the spontaneous forces inherent in free societies. Hayek explains that striving effectively toward one’s goals contributes to the general good through innovation and progress, which ultimately benefit society, even if these effects do not directly impact individuals in one’s immediate environment. Hayek explained, that acting in accordance with the rules of liberty brings greater benefits to society than the more immediate actions of individuals aimed at directly benefiting specific other people (Hayek 1991, 14, 19)⁸. As P. Boettke aptly notes, “...liberty creates the institutional conditions that make other social values possible...” (Boettke 2018, 265)

4. Hayek on Causal Responsibility: Enhancing Efficiency

Hayek agrees with Hart that the phrase “was responsible” is sometimes used to mean “caused.” In reflecting on this interpretation of “responsibility,” Hayek observes that it is somewhat colloquial

⁸ Nonetheless, individuals may still choose to assist those around them voluntarily, provided that coercion is not involved.

and imprecise. "In this sense the assigning of responsibility does not involve the assertion of a fact. It is rather of the nature of a convention..." (Hayek 2006, 67). Yet, it remains both useful and necessary. While Hayek acknowledges that the belief that achievements depend solely on one's effort and skill may be partially false, he emphasizes that "...it is apt to have the most beneficial effects on his energy and circumspection" (Hayek 2006, 73). The utility of this convention of lies in encouraging individuals to make the most of their circumstances and resources in pursuing their goals. This belief directs attention to aspects that can be controlled, treating them as crucial, while taking into account the potential influence of countless external factors. For this reason, Hayek defends the pragmatic approach, stating that even if outcomes are not always fully within our control, it is reasonable to assume they are unless proven otherwise (Hayek 2006, 63).

Hayek assigns great importance to this motivational mechanism, operating on the concept of causal responsibility for a free society, asserting, "A free society will not function or maintain itself unless its members regard it as right that each individual occupy the position that results from his action and accept it as due to his own action" (Hayek 2006, 63). Abandoning this form of responsibility, according to Hayek, leads to undesirable consequences: a decline in initiative, the rise of passivity, and an increasing sense of entitlement.

5. Hayek on Liability-Responsibility in the Contexts of Law and Morality

Hayek agrees with Hart that responsibility, understood as a sanction for the breach of obligations, encompasses two dimensions: moral and legal. Both thinkers acknowledge that this distinction is fundamental, with each aspect warranting separate consideration. As Hayek observes: "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). In both variants, liability is defined by rules of conduct —the emphasis on rules is a significant feature of Hayek’s concept (Hayek 2007, 166-168). For Hayek, the distinction between moral and legal rules lies in the fact that the former are not enforced by a designated authority, whereas the latter are subject to recognized enforcement procedures. However, there is no difference when it comes to the sources, as legal norms also derive from morality (Hayek 2013, 222; Hayek 2006, 130-141)⁹.

Hayek emphasizes that the rules of conduct underlying liability-responsibility in the legal sense must be rooted in universal principles of just conduct, which he describes as “discoverable principles of just conduct of universal applicability” —something that reflects natural law, objective fairness, and constitutes a negation of legislative arbitrariness (Hayek 2013, 134)¹⁰.

It should come as no surprise that Hayek draws here upon his earlier-stated principles that prohibit interference in the domains of freedom, which E. Mack characterizes as liberty-protective principles (Mack, 40, 72). Therefore, only legal norms derived from these principles, prohibiting arbitrary coercion —since Hayek defines liberty as the absence of such coercion— can and should be enforced coercively. For Hayek, it is essential that the law be a tool for safeguarding liberty and not a mechanism for imposing additional, arbitrary obligations (Hayek 2013, 69-71). Let us note that Hayek aligns himself with the Lockean principle that, “being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions” (Locke 1988, 271). Only actions concerning others are the subject of legal regulation, while actions concerning the individual himself and

⁹ J. Finnis suggests that only from the perspective where legal obligations are viewed as moral obligations in principle, does the creation of law, as distinct from other social orders, take on overriding significance and become a key subject for legal theorists to describe. (Finnis 1980, 3).

¹⁰ It is an intellectual overreach, as Hayek argues, to claim that humans, in their wisdom, have designed the entire system of legal and moral rules, a view which he criticizes as a manifestation of the constructivist fallacy —where the legislator is seen as the one determining what should be regarded as law (Hayek 2013, 210-211).

On the sense in which Hayek’s concept can and cannot be considered as natural law —see Hayek 1991, 143-144; Hayek 2013, 222-223.

having no impact on others should remain outside the scope of legal control, irrespective of the stringency of prevailing moral or social norms (Hayek 2013, 221).

Although Hayek acknowledges the possibility of non-state approaches, he highlights that historically, it has been the government's role to enforce adherence to principles, thus preventing arbitrary coercion (Hayek 2013, 45-46). Therefore, the legal framework includes rules concerning the organization of government, which should regulate the government's role in enforcing rules of proper conduct and ensure the protection of individual liberties against those in positions of power—under no circumstances may they violate the general principles applicable to everyone (Hayek 2013, 125-127). Thus, it is evident that the rules of proper conduct are not limited to regulating interactions among individuals; they also serve to protect individual freedom from infringements by those in authority (Hayek 1980, 18).

Turning to the moral context, Hayek's assertion that "...conduct within the private sphere is not a proper object for coercive action...", along with his insistence that respecting individual scales of values, even when we disagree with them, is essential to honoring personal liberty, might initially raise doubts about whether there is room in his concept for moral liability-responsibility, as it entails holding individuals accountable for violations of moral norms (Hayek 2006, 128; 2006, 69-70). However, Hayek clarifies that responsibility extends "far beyond the sphere of coercion," and is still functioning as a spontaneously developed mechanism for minimizing coercion (Hayek 1991, 211-212). This minimization of coercion through responsibility is achieved by the functioning of shared conventions and traditions, which regulate individual behavior informally and thus reduce the need for formal, top-down organization (Hayek 1980, 23-24). Hayek explains that this process operates through a mechanism of voluntary conformity—as he notes, "Coercion, then, may sometimes be avoidable only because a high degree of voluntary conformity exists..." (Hayek 2006, 56). Such voluntariness is largely likely to occur because it pertains to norms that have not arisen arbitrarily but are based on inherited practices developed to support a liberal order, and are therefore customarily observed

(Hayek 2006, 57)¹¹. Nonetheless, there is also a defining sanction for liability-responsibility —Hayek states: “Yet 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). He clarifies the significance of social evaluation of the individual: “...in a free society an individual will be esteemed according to the manner in which he uses his freedom” (Hayek 2006, 70). Hayek maintains that the milder forms of pressure applied by society should not be regarded as coercion (Hayek 2006, 128)¹².

Significantly, Hayek points out that a free society lacks a uniform ethical code or an all-encompassing system of values (see *The Road to Serfdom*, p. 171). Instead, voluntary conformity relates to basic norms and a framework of essential ethical standards. Actions within this framework are largely discretionary and guided by personal conscience, with the pluralism of values viewed as a positive feature (Hayek 2006, 69-70).

It is important to clarify one point here: Hayek’s views on legal responsibility, as presented in this context —namely, that any legislation extending beyond the protection of individual domains is unacceptable because it threatens liberty, while other norms carry at most moral sanctions— reflect his stance as a philosopher and theorist, not as an advocate of practical solutions aimed at a broader audience beyond proponents of radical libertarian ideas (Hayek 2007, 156). The principles Hayek formulates from these two perspectives are clearly distinct. As Mack aptly noted, “Hayek seeks to provide a restatement of strongly classical

¹¹ For Hayek, the moral tradition is abstract and impersonal. However, he noted that some interpret it as a personal will, which can sometimes lead to a fear of punishment. This theoretically could also be discussed in terms of liability-responsibility, as it is experienced this way. In this regard, Hayek discussed religion as standing guard over morality (Hayek 1991, 135-140).

¹² This conformity does not encompass everyone and does not consistently resonate, as it permits occasional non-compliance with norms.

J.S. Mill, in contrast to Hayek, was critical of moral pressure from society (Mill 2009, 10-11). E.I. Kelly critiques the influence of public opinion in the case of legal liability-responsibility (Kelly 2018).

liberal principles, although the policy recommendations that accompany those restatements are often less libertarian than one would expect" (Mack 2018, 56). This distinction underscores the need to differentiate between Hayek's theoretical postulates (principled defense of liberty) and his practical suggestions (concessions toward statism). While this differentiation is addressed in his writings and acknowledged by scholars such as Mack and B. Caldwell, it is often overlooked by many other commentators (see Caldwell 2005, 4-5). Those who engage selectively with Hayek's thought frequently misinterpret his philosophical position. What these commentators often miss is that Hayek, as a philosopher, maintained that freedom can only be preserved if it is treated as a supreme principle that must not be compromised (Hayek 2013, 55). Meanwhile, the concessions he suggested were not rooted in his convictions about the ideal state of affairs but were instead driven by his recognition of the majority's resistance to radically libertarian solutions. For Hayek, implementing even partial reforms was crucial, as he considered this approach far preferable to achieving no reform at all. Therefore, these practical concessions should not be mistaken for the essence of his philosophical doctrine¹³.

4. Capacity Responsibility: Who Bears Responsibility According to Hayek?

According to Hayek, the answer to who is equipped to bear responsibility begins with the assertion, as previously indicated, that responsibility is attributed broadly and almost universally to humans. However, the qualifier "almost universally" requires clarification. It is essential to outline the conditions under which responsibility can be assigned and to identify the factors that may disqualify an individual from bearing it.

¹³ However, for a new research showing that libertarian solutions, even within the most radical stream of libertarianism, that is, Rothbardianism, do not have to be as radical as one could have thought see Dominiak 2019, 2022, 2023, 2024; Dominiak&Wysocki 2023.

Hayek defines the criterion for assigning responsibility as an individual's capacity for rational action, noting, "The assigning of responsibility... presupposes the capacity on men's part for rational action" (Hayek 2006, 68). The necessary and sufficient condition for attributing responsibility is a certain degree of rationality, though not excessively stringent. Hayek further elaborates on this requirement, explaining, "Rationality, in this connection, can mean no more than some degree of coherence and consistency in a person's action, some lasting influence of knowledge or insight which, once acquired, will affect his action at a later date and in different circumstances" (Hayek 2006, 68).

In the context of Hayek's philosophy, there are valid reasons for not imposing excessively high standards of rationality on individuals entrusted with responsibility. Restricting responsibility solely to those who are exceptionally rational would result in subordinating those who are less rational, which would contradict Hayek's concept of freedom, which should be universal rather than exclusive. Although Hayek is not an egalitarian and recognizes exceptional individuals, he does not allow anyone to impose their will on others or implement paternalistic solutions (Hayek 2006, 247-248). Responsibility, according to Hayek, should not divide people but serve as a tool that enables society to establish order without the use of force: "It is a device that society has developed to cope with our inability to look into other people's minds and, without resorting to coercion, to introduce order into our lives" (Hayek 2006, 68). Even those with lower levels of rationality should bear responsibility for their actions, as "Though we leave people to decide for themselves because they are, as a rule, in the best position to know the circumstances surrounding their action, we are also concerned that conditions should permit them to use their knowledge to the best effect" (Hayek 2006, 67). Although this is not always confirmed in practice, there is no certainty that others would know their interests better. Moreover, rationality is only one of the factors determining human action, but since it is particularly valuable, its influence should be maximized. Assigning responsibility encourages individuals to act rationally and thoughtfully: "The assigning of responsibility thus presupposes the capacity on men's part for rational action, and it aims at

making them act more rationally than they would otherwise" (Hayek 2006, 68; see Tillmann 2005).

Few individuals are exempt from responsibility, though exceptions exist for those who fail to meet minimal cognitive or moral requirements. According to Hayek, this group includes "infants, idiots, or the insane," who have not yet acquired or are incapable of acquiring necessary knowledge and skills. Additionally, individuals suffering from conditions like kleptomania or dipsomania, "whom experience has shown to be unresponsive to normal motives," are also excluded from this responsibility (Hayek 2006, 68).

What is particularly important is that within a moral framework, capacity responsibility is understood as being gradual and individually assigned. However, in a legal context, such a nuanced approach is not acceptable; here, responsibility must be defined in absolute terms, without any ambiguity (cf. Hayek 2006, 68-69). In this realm, freedom and responsibility should apply universally to individuals who meet clear, objective criteria such as age or health, unless explicit evidence exists indicating a lack of the requisite minimum capacities. Hayek warns that personalized treatment, as exemplified in juvenile courts or psychiatric wards, represents a form of unfreedom and paternalism, not liberty or individualism (Hayek 2006, 68-69).

Summary

Incorporating the fundamental senses of responsibility distinguished by Hart—role-responsibility, causal responsibility, liability-responsibility, and capacity-responsibility—into the analysis of Hayek's views allows us to recognize the multifaceted nature of Hayek's concept. Hayek reveals that:

1. In a society of free individuals, emphasis must be placed on the responsibility of a free person for their own domain of freedom, within which the individual shapes their life. Respect for human dignity requires the acceptance of personal responsibility—and recognition of it by others; otherwise, it would force a person to become a means for realizing

the goals of others, which is incompatible with the idea of freedom.

2. The outcomes of actions taken by individuals recognized as responsible are commonly treated as their direct consequences. Although this assumption is idealized —since many factors beyond an individual’s control can influence results— assigning causality in this way can be seen as an evolutionary mechanism for enhancing action efficiency. Hayek considers this approach a highly motivating way of thinking.
3. Often, when we speak of a person being held responsible, we are referring to their liability for punishment due to violations of the principles of conduct governing a free society. Hayek argues that legal responsibility should be confined to violations of principles that constitute the order of liberty —specifically, impermissible interference with the domains of other individuals. Only in such cases is coercive enforcement and the application of compulsory actions, such as restitution or punishment, justified. In contrast, when violations concern other norms, which represent the ethical minimum defined by moral tradition, these should not be subject to legal sanctions, though they may still provoke social disapproval or ostracism. In this context, we encounter liability-responsibility in its moral (non-legal) dimension.
4. Responsibility for one’s own life, the attribution of outcomes to one’s actions, and, above all, the susceptibility to punishment are only justified for individuals who meet certain qualifications —those who possess the necessary capacity in the form of a minimum level of rationality (defined strictly in law and more flexibly in morality). It would be unacceptable and disadvantageous to limit responsibility to only the most rational individuals, as this would lead to them assuming responsibility for others, which would be equivalent to their enslavement.

An analysis of Hayek’s concept of responsibility through the lens of Hart’s typology also reveals that —irrespective of its

type— responsibility is fundamentally conceived by Hayek as a mechanism for supporting and sustaining freedom. When discussing freedom and responsibility as two sides of the same coin, it is essential to recognize that freedom occupies the primary position, serving as the obverse, while responsibility functions as the reverse —subordinate to freedom both in its origins and its ongoing function.

It is essential to remember, as I emphasized earlier, that these are his philosophical and axiological assertions, where the principle of individual liberty is inviolable, and responsibility is strictly governed by the principles of freedom. However, in his practical proposals, there are deviations from this principle. And —when individual liberty is constrained, responsibility is likewise transferred¹⁴.

The author declares that she has no conflict of interest.

References

- Arendt, H. (2003). *Responsibility and Judgment*. New York: Schocken Books.
- Boettke, P. J. (2018). *F. A. Hayek: Economics, Political Economy and Social Philosophy*. Great Thinkers in Economics Series. London: Palgrave Macmillan.
- Caldwell, B. (2005). *Hayek's Challenge: An Intellectual Biography of F. A. Hayek*. Chicago: The University of Chicago Press.
- Dominiak, Ł. (2019). "Must right-libertarians embrace easements by necessity?" *Diametros: An Online Journal of Philosophy*, 16(60), 34-51.
- Dominiak, Ł. (2022). "Unjust enrichment and libertarianism". *Polish Political Science Review*, 10(2), 1-13.

¹⁴ For instance, in theory, governance is permissible only if it is grounded in the principles of freedom, with an emphasis on the rule of law, whose sole purpose is to safeguard that freedom. In his practical solutions, however, Hayek permits the government to hold certain competencies in managing public spheres and allows exceptions where the government may assume greater authority in extraordinary situations. This approach entails transferring part of individual responsibility to the government.

- Dominiak, Ł. (2023). "Proceeds of crime, punishment, and libertarianism." *Archiwum Filozofii Prawa i Filozofii Społecznej*, 2(35), 20-33.
- Dominiak, Ł. (2024). "Accession, property acquisition, and libertarianism". *Diametros: A Journal of Philosophy*. Advance online publication.
- Dominiak, Ł., & Wysocki, I. (2023). "Libertarianism, defense of property, and absolute rights." *Analiza i Egzystencja/Analysis and Existence*, 61(1), 5-26.
- Finnis, J. (1980). *Natural Law and Natural Rights*. Oxford: Oxford University Press.
- Hart, H. L. A. (1968). *Punishment and Responsibility: Essays in the Philosophy of Law*. Oxford: Clarendon Press.
- Hayek, F. A. (1980). *Individualism and Economic Order*. Chicago and London: The University of Chicago Press.
- Hayek, F. A. (1991). *The Fatal Conceit: The Errors of Socialism*. Chicago: The University of Chicago Press.
- Hayek, F. A. (2006). *The Constitution of Liberty*. London and New York: Routledge.
- Hayek, F. A. (2007). *The Road to Serfdom*. London: Routledge; Chicago: The University of Chicago Press.
- Hayek, F. A. (2013). *Law, Legislation and Liberty*. London and New York: Routledge.
- Kelly, E. I. (2018). *The Limits of Blame: Rethinking Punishment and Responsibility*. Cambridge, Massachusetts: Harvard University Press.
- Locke, J. (1988). *Two Treatises of Government: Student Edition* (P. Laslett, Ed.). Cambridge University Press.
- Mack, E. (2018). *Libertarianism*. Cambridge: Polity Press.
- Mill, J. S. (2009). *On Liberty*. The Floating Press.
- Pollock, F. (1892). *Torts* (3rd ed.). London: Stevens and Sons.
- Simpson, J. A., & Weiner, E. S. C. (Eds.). (1989). *Oxford English dictionary* (2nd ed.). Oxford University Press.
- Summers, R. S. (1969). [Review of *Punishment and Responsibility*, by H. L. A. Hart]. *The University of Toronto Law Journal*, 19(4), 642-653.
- Tillmann, V. C. (2005). "Owning Intentions and Moral Responsibility." *Ethical Theory and Moral Practice*, 8, 507-534.

- Wittgenstein, L. (2009). *Philosophical investigations* (G. E. M. Anscombe, P. M. S. Hacker, & J. Schulte, Trans.; 4th ed.). Wiley-Blackwell.
- Young, I. M. (2006). "Responsibility and Global Justice: A Social Connection Model." *Social Philosophy and Policy*, 23(1), 102-130. Cambridge: Cambridge University Press.