The Normative Structure of Responsibility
Law, Language, Ethics

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SUMMARY

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INTRODUCTION

OVERVIEW

In this work I defend two main theses, relevant both for ethics and for legal philosophy: that responsibility is fundamentally normative and that responsibility should be normative.

Part I (‘The Concepts of Responsibility’) aims at:

(i) first, clarifying what kinds of entity ‘responsibility’ refers to, and, using a structured taxonomy, distinguishing concepts, conceptions, conditions and justifications of responsibility;

(ii) second, clarifying what ‘normative’ in the phrase ‘normative responsibility’ means.

In the remainder of this work, I shall put forward four arguments to back up my thesis.

In Part II, I shall put forward three negative arguments. In particular:

In Chapter 2 (Responsibility and Mens Rea), I consider the claim that since responsibility should have a descriptive content, it cannot be based on mens rea (on mental elements) because mens rea is not objectively or scientifically ascertainable.

In Chapter 3 (Responsibility and Neuroscience), I then consider the claim that cognitive sciences (ie. neuroscience) would

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1 A convention on the use of quotation marks: quotation marks are simple (‘ ’) only for terms used in suppositione materiali; quotation marks are double (“ ”) for all other uses: scare quotes, irony, etc. Here is an example: ‘When talking about “use”, use ‘use’.'
be able to objectively measure mental states, thus giving a plausible descriptive foundation to responsibility. I refute this claim both for theoretical and practical reasons. I propose, instead, to endorse a normative notion of responsibility.

In Chapter 4 (Responsibility and Causation), I consider (and refute) an even more extreme argument: that responsibility attribution should be completely descriptive because it is based on (one of its conditions:) causality. The evaluative component would then (almost) disappear.

In Part III (The Language of Responsibility), I shall put forward a fourth and positive argument: using a pragmatic analysis of negation (of normative statements), I shall consider negations of responsibility and shall show the normative nature of responsibility judgments.\(^2\)

In the Appendices, I make available part of four works (especially important for my last chapter and for philosophical deontics) hard to find or not yet translated into English.

RESPONSIBILITY: THE NAME, THE THING

Names of Responsibility

At the end of this Introduction (Figures 0.1 and 0.2), I shall provide the reader with a list of some xenonyms, of some counterparts, of ‘responsibility’ in 50 natural languages, most of which are Indo-European.

In most Indo-European languages, the words for “responsibility” are connected to the words for “answer”. I shall present five examples and then try to give an etymological sketch, to show

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\(^2\) This is by no means the standard theory. When judgments of responsibility are kept separate from responsibility or concepts of responsibility, they are usually considered non-normative; for example, judgments of responsibility are considered explanatory by Björnsson and Persson, 2012, forthcoming.
that while the connection with 'answer' may seem immediate, the matter is more complicated.

The word for “responsibility” is connected to the word for “answer” in at least five different groups of Indo-European languages. First, it is obviously connected to answer in Romance languages. Second, it is connected to answer in most Germanic languages. Third, it is connected to answer in most Slavic languages. Polish ‘odpowiedzialność’ [“responsibility”] is obviously connected to ‘odpowiadać’ [“to answer”]. Fourth, it is connected to answer in some Goidelic languages. Irish Gaelic ‘freagracht’ [“responsibility”] is connected to ‘a fhreagairt’ [“to answer”]. Fifth, the word for responsibility is connected to the word for answer in some Baltic languages, such as Lithuanian. Lithuanian ‘atsakomybė’ [“responsibility”] is connected to ‘atsakyt’ [“to answer”].

But things are more complicated than that. Hart (Hart, 2008, Postscript) points out the connection between ‘responsibility’ and Latin ‘respondère’, not in the sense of answering questions, but in the sense of responding to accusations. Latin ‘re-spondère’ is obviously a compound made by ‘re’ and ‘spondeô’. ‘Spondeô’ has been sharply investigated by Benveniste, 1969.

‘Spondeô’ has, in fact, the primary meaning of “to pledge, promise, make a contract”; briefly: engaging oneself in an obligation (like a promise), and likely responding for that.

Germanic languages — at least according to Benveniste, 1969 — show a parallelism with Romance languages and Latin: ‘Verantwortung’, ‘ansvar’, ‘answerability’ all come originally from a verb akin to Gothic ‘swaran’ (cf. German ‘schwören’, English ‘to swear’) with the sense of “swear”, “undertake an oath”, but whence we got Icelandic ‘svara’ “to answer”, Old High German ‘and-svara’ “to re-spond”, akin to the meaning of Latin ‘re-spondère’.4

While doing philosophy from etymology can be risky or useless, I think that both Latin (and mediately Romance languages)

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and Germanic languages suggest that responsibility’s (linguistic) ancestor is connected to a normative entity, be it an obligation, a promise or an oath.

In the rest of this work, I shall try to show that there is more to be added to this (partial) philological evidence. I shall try to show that there are philosophical reasons to think that responsibility is primarily a normative notion.

Aitiologics


But why use ‘aitia’, if ‘aitia’ means “cause”, such as in ‘etiology’? Even intuitively, “cause” and “responsibility” are not the same.

‘Aίτια’ ‘Aitia’, in Ancient Greek meant both “guilt” (one could try to say, employing contemporary categories: “responsibility”) and “cause”.5

So, why use ‘aitiologics’ to designate the study of responsibility? For three main reasons.

First, the primary meaning of ‘aίτια’ ‘aitia’ is something akin to modern “guilt”.6

Second, the primary use of ‘aίτια’ ‘aitía’ was in social, legal and medical contexts, in order to mean “guilt”.

Third, the conceptualization of “causality”, from blame or guilt, developed in medical thinking. It is from medicine that ‘aίτια’

5 Cf. for instance Beekes, 2009, ad vocem.
6 The word ‘aίτια’ ‘aitia’, from a reconstructed ‘*aίτως’ ‘aitos’ “share” (cf. Beekes, 2009, p. 45), was already used in Homeric texts (cf. for instance Iliad, XIX, 86) but it is does not seem likely that the concept expressed is comparable to the modern “guilt”, because of the notorious lack of subjectivity in archaic Greek thought. On this last aspect, see at least Adkins, 1960; Gernet, 1917; Snell, 1946; Vernant, 1971; Vidal-Naquet and Vernant, 1972; Said, 1978 and Vegetti, 2007b, 2010.
'aitía' in the sense of “cause” (the idea of causality) passed on to natural thinking (for instance in physics).7

LINGUISTIC/SEMANTIC REMARKS

My work has been carried out mostly in an English-speaking setting and with primary sources mainly in English or concerned with an English-based legal system and categories. Nonetheless, the author’s personal background is from continental law — a domain with different categories and a different semantics. This cross-contamination seems a useful experiment, because it forces me to look anew and from different perspectives at both the “lived” and the “learnt”, in a process of mutual enlightenment.

It may therefore be useful to give a sort of linguistic and semantic map for the reader from another legal system, with the usual caveat that all translations are imperfect and approximative: not all xenonyms are also synonyms.

The non-bijectivity of these terms is splendidly shown by the very eponym of my work: ‘responsibility’. In Romance languages, the xenonyms for ‘responsibility’ cover not only what in English is called ‘responsibility’ but also what is called, respectively: ‘answerability’, ‘accountability’ and, most importantly I think, ‘liability’ (German: ‘Verantwortung’, Swedish, Danish and Norwegian: ‘ansvar’; Dutch: ‘verantwoordelijkheid’, ‘aansprakelijk’, ‘toerekeningsvatbaar’).8

METHODOLOGICAL REMARKS

Now, four methodological remarks.

8 For an early analysis of these words in Dutch from a legal semiotic perspective, see de Haan, 1912, 1916, 1919. I owe Paolo Di Lucia this clue.
First, the word ‘responsibility’ is usually qualified: moral responsibility, legal responsibility, criminal responsibility. Furthermore, responsibility is kept separate — if not distinct — from liability. When the word ‘responsibility’ is not qualified, I usually refer to the general phenomenon.

Second, ‘responsibility’ is an umbrella term in the sense that it covers both blame and praise. Usually praise is ignored to focus only on blame. I shall follow this general use somewhat, but the scope of the following considerations should hopefully also be symmetrically applicable to praise.

Third, I am aware of at least two latent issues: the relationship between moral and legal responsibility, and, more generally, between law and morals. For both, personal and external constraints suggest that I do not engage directly with these points.

Fourth, I shall try to investigate responsibility and not one of its (possible) conditions: freedom of the will. For this reason I shall not be concerned directly with the debate on freedom and (moral) responsibility.

This dissertation hopes to be philosophical, if not in nature, at least in its intention. Occasional examples or doctrines taken from the law are considered mainly from a philosophical perspective and for their philosophical import.

As always (at least in analytic philosophy), the arguments I offer in the following pages are in no way definitive proof of anything.

I shall try to highlight those issues arising from various philosophical (and non-philosophical) theories I think problematic. I shall picture a detailed theory to account for these issues and my aim is to offer an alternative possible solution. I then try to address obvious and not so obvious objections and counterarguments and argue why this particular approach might be the best explanation.

My proximate aim then will be to show that the position defended here has at least some pros (or less cons) than its main rivals.