

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 5 | Issue 4**

---

**2022**

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Essence of Morality in Tort Law

---

RAJAT RATHI<sup>1</sup>

## ABSTRACT

*The law of private wrongs, particularly common law torts, fails to map onto our moral reality, according to the established orthodoxy. Skeptics concerning the moral basis of tort law have been particularly intrigued by four objections: They claim to throw doubt on the duty of care element's moral appeal; they attack the objective standard of care's seeming inequity; they criticize the morally arbitrary aspects of factual causation and injury; and they complain about the proximate cause element's unnecessary expansion of responsibility. The author will attempt to demonstrate that the normative structure of tort law may be rebuilt to reflect, to a large extent, our reasoned judgments moral values are concerned. The paper give new evidence in support of the idea that tort law enshrines certain interpersonal standards, such as responsibility norms. To begin, the author has used current responsibility theory research to better explain the role of ethically relevant varieties of institutional responsibility in tort law.*

## I. INTRODUCTION

Tort law originated primarily from societal morality and has some moral standards as its foundation. The purpose of tort law, in its most basic form, is to protect society from anarchy and pandemonium by providing a court where one person may file a claim against another without resorting to private retribution. For example, according to society's morality, no one should do anything wrong to anyone, and if he does, he must be punished in order to restore the victim to a decent position.

For example, under the strict responsibility concept, there is generally no error or wrongdoing, but rather an unavoidable accident, yet it would be unethical to leave the person who has suffered without giving them with any comfort. Tort law does not convey morality in general, but it does have a distinctive structure that must be tracked by a moral explanation of it.

Tort law contains moral basis, but it cannot be claimed to be entirely founded on moral ideals. It is important to highlight that under today's tort law, the unlawful act or omission must be one that is legally recognised. There can't be a culpability for a moral or social wrong if it's just that.

---

<sup>1</sup> Author is a student at Institute Of Law Nirma University, India.

If someone fails to aid a starving man or save a drowning kid, for example, it is just a moral wrong, and so no culpability can emerge unless it can be proven that the starving man or drowning child had a legal obligation to help. Another example of a woman who gets ill and asks her neighbour B to look after her because she is alone is a woman who falls ill and asks her neighbour B to look after her.

Also, while it is ethically true that the one who does a wrongdoing must bear the penalties, in the master-servant relationship, the master of the servant bears the repercussions of the conduct committed by his servant under current tort law.

We can conclude with this observation: there may be certain moral wrongs that cause harm to others, but the law does not provide a legal remedy; on the other hand, there may be certain legal wrongs that do not cause any loss or harm to others, but the law does provide a legal remedy despite the violation of a private legal right. And we might argue that tort law is a mixture of moral and legal obligations, rather than being simply focused on morality.<sup>2</sup>

## **II. DUTY OF CARE**

Taking all possible steps to prevent inflicting foreseeable harm to another person or their property is part of the legal or moral responsibility to protect others' safety and well-being.

### **Importance Of Duty Of Care**

The law of negligence refers to a breach of a duty of care. A violation of the duty of care occurs when one party does or fails to do something that may cause damage to another party or cause them to incur a loss.

If the harm was fairly foreseeable, the aggrieved party may have a compensation claim (that is, a reasonable person in the situation of the person with the duty of care should have known of the danger of injury or harm).

### **There Has Been A Breach Of Duty Of Care When**

You Were Harmed As A Consequence Of Someone Else's Activities (Or Inactions); The Danger Of Injury Was Clear; It Was Reasonably Foreseeable That You Would Be Damaged As A Result Of The Other Person's Actions (Or Inactions); And The Behaviour That Caused The Injury Was Unreasonable (I.E. If A Reasonable Person In The Same Situation Would Have Done Things Differently).<sup>3</sup>

---

<sup>2</sup> Priyanshu Fauzdar, *Morality In the Law of Tort* Legalserviceindia.com (2021), <https://www.legalserviceindia.com/legal/article-5189-morality-in-the-law-of-tort.html> (last visited Dec 5, 2021)

<sup>3</sup> Shine.com.au. 2021. [online] Available at: <<https://www.shine.com.au/service/public-liability-claims/duty-of-care>> [Accessed 5 December 2021].

## **Standard Of Care**

The term "standard of care" refers to a set of behaviours "recognised as suitable based on a set of common case law judgments." However, ethical SOC is described as "the conscientious use of current information, competent expertise, and reasoned judgment in the best interest of the patient, while respecting the patient's autonomy." (12) In other words, a choice that is in the best interests of a patient should not be based on what the majority of doctors are doing.

Of course, any theory of negligence that allows for compensation (which all credible theories do) will, in this way, at least somewhat limit setbacks to people's life goals. However, not all theories, including democratic standard theory, support pay for that specific reason. Compensation for these or comparable reasons would be lauded by any other hypothesis. Nonetheless, democratic standard theory keeps the focus on tort law's capacity to create a framework within which people can live their lives. In other words, providing a framework for individuals to pursue their life goals is a major and organisational feature of democratic standard theory, as well as its primary justification.

Moreover, democratic standard theory, in addition to other theories, provides an extra mechanism that protects and allows individuals to pursue their objectives. By designing the standard of care to reflect the values of as many people as possible, those people may go about their lives without fear of being sued for negligence if they suffer injury. In other words, because the negligence standard of care matches to most people's life plans components, as long as people stick to their plans, they will not be subject to negligence claims for the injury of others. Other theories don't have this mechanism to the same extent as democratic standard theory, and they can't have it without mirroring it.

Furthermore, democratic standard theory incentivizes others to refrain from engaging in acts that do not sufficiently advance the lives of most other people by establishing a legal framework that effectively "penalises" those who engage in such acts by making them vulnerable to a negligence claim for compensatory damages. As a result, democratic standard theory aids in the protection of individuals from hazards posed by behaviours that do not properly progress most people's life ambitions. This indirectly promotes people's life plans because, as previously said, many people wish not to be damaged by accident, but they also prefer not to be harmed by specific sources of risk, even if they are willing to bear risk from many sources of risk. To put it another way, the underlying argument, or implied "compromise," is that actors can still engage in unusually harmful behaviour if they pay a fee. They pay punitive penalties as well as compensatory damages for any injury caused by them. if the act is done in a careless manner

(and harm occurs). Damages represent the situation in this way. Other people are at danger in two ways. The risk posed by the One is negligently conducting an exceptionally risky act, while the other is executing that abnormally dangerous act, which apparently makes the excessively risky deed even more harmful. On one or more dimensions, the situation is hazardous<sup>45</sup>

### III. NORMATIVE STRUCTURE OF TORT LAW

Tort law is a legal system that permits customers to obtain legal assistance in the form of monetary reimbursement for damages and losses they have suffered as a result of the actions of others. Tort law has a distinctive "framework," which tort law theorists refer to as "bipolar," in that it connects plaintiffs with those who have injured them, making a defendant's responsibility the precise consequence of a plaintiff's remedy. This paradigm drastically limits the scope of tort law, restricting its capacity to fulfil goals such as preventing wrongdoing and excessively dangerous behaviour, shielding individuals from large-scale injuries and losses, and guaranteeing fairness in risk, injury, and risk sharing.

Many conflicting and complementing interpretations of the normative concepts that do and should underpin tort law, or civil wrongs, have been given by legal theorists. These include

- (1) Incentives to exercise optimal levels of care against harm risks deter erroneous or expensive behaviour.
- (2) Protection against large-scale losses
- (3) Equitable distribution of certain types of losses
- (4) Responsibility, in the sense of using people's agential responsibility for damaging others as a justification for making the injurers face the expenses as a method of holding them accountable for their actions.

Since the beginning of the law and economics movement, tort academics have frequently explained and justified tort law in terms of the purpose of economically optimum deterrence—that is, increasing wealth through bringing about efficient levels of risk-taking.

"We now operate under a tort law conception inherited from [law and economics scholar Guido] Calabresi, in which tort law is merely a technology—a potential solution to a social

---

<sup>4</sup> Legal and evidenced-based definitions of standard of care: Implications for code of ethics of professional medical societies - Surgical Neurology International, Surgical Neurology International (2018), <https://surgicalneurologyint.com/surgicalint-articles/legal-and-evidenced-based-definitions-of-standard-of-care-implications-for-code-of-ethics-of-professional-medical-societies/> (last visited Oct 29, 2018).

<sup>5</sup> The Democratic Standard of Care in Tort Law, 256 (2021), <https://repository.upenn.edu/cgi/viewcontent.cgi?article=4109&context=edissertations> (last visited Apr 7, 2021).

problem rather than a body of law rooted either in fundamental features of our agency or one that otherwise maps onto our moral lives or reflects the normative structure of our relationships with one another," the author writes. If Coleman is true, most people today consider tort law to be "simply a technology." This is most likely due to persistent concerns about how successfully tort law actually implements justice and accountability, as well as how ethically relevant its concepts of both are.<sup>6</sup>

In the many tort cases in which companies are defendants held accountable for faulty goods or vicariously culpable for the torts of their workers, economic approaches to tort law may appear exceptionally strong, and moralised explanations of tort law very impotent. It is self-evident that tort law has an impact on corporate incentives, but it is less self-evident that tort liability may be effectively viewed as a kind of moral accountability when imposed on businesses rather than human beings.

Moral philosophers and common moral reasoners alike have argued that what a person is morally responsible for and what it would be fair for an individual to be morally accountable for are the same thing. [13] It is unclear whether the link between fairness and responsibility holds true for all types of duty, for reasons that will become clearer shortly. However, insofar as duty must be equitable, the fairness problems raised in tort law apply to an examination of moral responsibility in tort law.

The type of duty that underpins tort liability differs from, and is less moralised than, the type of responsibility that underpins criminal law. It's even unclear if the moral responsibility necessary for tort liability exists. Criminal law distinguishes between a variety of mental states that we interpret as indicating moral guilt. Tort law, on the other hand, is concerned with objective facts regarding a person's activities, such as whether they were performed with reasonable care and if their potential for injury was fairly foreseeable. Many laypeople and criminal justice scholars believe that moral responsibility for culpable criminal activity qualifies a person for criminal punishment, at least logically. Tortious behaviour, on the other hand, frequently includes just negligent rather than purposeful misconduct, and may even involve completely non-culpable wrongdoing (such as trespassing on another's property owing to non-culpable ignorance).

Furthermore, the degree of tort liability is frequently determined by chance, which has nothing to do with the wrongfulness or culpability of tortfeasors' actions. As a result, it is neither usual

---

<sup>6</sup> Ewing, Benjamin. "The Structure of Tort Law, Revisited: The Problem of Corporate Responsibility " *Journal of Tort Law*, vol. 8, no. 1-2, 2015, pp. 1-28. <https://doi.org/10.1515/jtl-2015-0015>

nor credible to believe that tort liability is justified in part because tortfeasors deserve to be held accountable in tort because of their moral guilt.

To present the bipolar structure of tort law as plausibly of special moral importance, I believe we require an analysis demonstrating that the structure is based on a morally meaningful idea of responsibility.<sup>7</sup>

#### IV. CONFLICTING VIEWS OF WRITERS ON MORALITY IN TORTS

"It's convenient to say that the answer to the question of when a person is responsible in these two aspects is the same: an action is attributable to a person only if he or she performed it voluntarily, and a person is substantively responsible for a certain outcome only if he or she chose, voluntarily, to bring it about," -Scanlon

Scanlon is correct, however, in concluding that "it is critical to distinguish clearly between these two types of judgments of responsibility." One of the reasons the distinction is important to Scanlon is that it helps him defend the idea that people can be morally responsible and criticizable even if they are incapable of recognising and acting on the moral reasons that apply to them, and even if it would be unfair to make them bear the costs of morally wrong actions.

"I do not believe that blame is undermined by the fact that a person had no control over the factors that made him the kind of person that he is, or by the fact that, given the kind of person he is, he is incapable of understanding the reasons against acting the way he does," *Scanlon* writes in his recent work on blame. Scanlon contrasts with a number of other renowned moral philosophers, notably Susan *Wolf* and *R. Jay Wallace*, in his ideas on moral responsibility and blame. He does so, in part, because he is adamant that attributional accountability does not always imply substantive responsibility. He does not believe that attributive moral responsibility is a penalty or requirement, and that persons cannot be judged morally accountable unless they have a reasonable or fair chance to escape it.

*Gary Watson*, who previously proposed a difference between "two faces of responsibility" that is quite similar to Scanlon's, identifies himself with Scanlon. [25] The key distinction, according to Watson, is between "attributability" (what reflects on a person) and "accountability" (what demands can appropriately be placed on a person). Watson, like Scanlon, believes that attribution is a morally essential concept. Watson emphasizes the link between attribution and personal identification, claiming that "the major linkage between conduct and the 'real self' is not (only) causal, but executive and expressive." Watson, like

---

<sup>7</sup> Ewing, Benjamin. "The Structure of Tort Law, Revisited: The Problem of Corporate Responsibility" *Journal of Tort Law*, vol. 8, no. 1-2, 2015, pp. 1-28. <https://doi.org/10.1515/jtl-2015-0015>

Scanlon, sees issues about responsibility's fairness as relating to accountability and "the imposition of duties on individuals" rather than attributability and identification.<sup>8</sup>

**David Miller** is another writer who makes a similar point. Individuals who hold various forms of responsibility for causing particular costs or injuries by their activity do not always have "remedial responsibility" in the sense of being the persons who should bear those costs or remedy those harms, according to Miller. [29] Although Miller feels that responsibility in the first sense of agential attribution is a crucial issue in establishing where remedial duty should be placed, he also understands that other factors may outweigh it.

Tort liability is what Scanlon and Miller refer to as "substantive" and "remedial" duty, respectively. This type of duty might theoretically be based on factors other than attributive responsibility. For example, we can argue that society owes it to destitute people to provide social insurance against miseries like starvation, disease, and homelessness, even if these ills are the result of the free, self-destructive decisions of individuals who would suffer from them. However, if the only concept of responsibility in tort law was a substantive or remedial responsibility unrelated to attributive responsibility for causing the harms to be redressed, the concept of responsibility would play only a minor role in tort liability assignment—it would be a label for it rather than a ground for it.

So, when we question if a sense of responsibility is crucial in explaining tort liability, we're asking if the substantive or remedial duty connected with tort liability is based in part on tortfeasors' attributive responsibility.

Tort liability is not a free-floating type of substantive or remedial obligation, as we've shown. Tort litigants cannot seek redress from the general public or from anybody who is in a position to reimburse them. Rather, only those who have wrongly hurt them are included in the group of those who might be held substantively liable. To decide whether someone is substantively accountable, tort law looks to see if she is attributively responsible for the plaintiff's injury. At the very least, tort law argues that being attributively liable for another person's injury makes you a stronger candidate for bearing substantive responsibility for the injured party's costs. However, the moral importance of the type of attributive responsibility implied by tort liability judgements has yet to be determined.

To have a better understanding of this notion, go through Tony Honoré's seminal explanation of "outcome responsibility"—a term designed to reflect the moral link that persons have to

---

<sup>8</sup> Benjamin Ewing, The Structure of Tort Law, Revisited: The Problem of Corporate Responsibility, 8 Journal of Tort Law 1-28 (2015), <https://www.degruyter.com/document/doi/10.1515/jtl-2015-0015/html>.

specific conditions of affairs that they have brought about via their acts.

For 3 reasons, It's tempting to focus on the role that attributive responsibility (at least in combination with fault or some other condition) likely plays in making it morally permissible (rather than morally good or obligatory) for a defendant who is attributively outcome responsible for injuring a plaintiff to be held liable.<sup>9</sup>

First, while the state (acting through police, prosecutors, judges, and juries at various stages) has considerable discretion in deciding whether and how far to pursue criminal actions, political morality appears to constrain the appropriate exercise of that discretion in ways that do not appear to apply to private parties bringing tort lawsuits. In tort law, a successful plaintiff has the choice of suing, but she also has the moral discretion to waive her claims if she so desires. [45] It is not always ethically acceptable for a plaintiff to stand up for her rights and pursue them, nor is it always morally good for the defendant to pay her the compensation she is legally entitled to.

Second, it is uncertain whether even those who wrongfully harm others deserve to bear the full cost of their actions, in part because the quantity of actual damages suffered might vary substantially depending on the degree of wrongdoing and the perpetrator's culpability. It appears that their argument against having to carry them has been weakened or destroyed as a result of their illegal behaviour, whether or not they deserve to bear such costs.

Third, there is a compelling reason why attributing responsibility for an injury, especially wrongful infliction of harm, has the moral effect of making it permissible (though not yet morally desirable or needed) for a person to bear the costs of the injury. Remember that Perry takes a "avoidability" approach to outcome responsibility, which holds that a person is responsible for an outcome if she could have forecast it and prevented it by acting on her foresight. We may better grasp part of the case for rooting substantive tort liability in attributive outcome responsibility if we recall Scanlon's plausible premise that the substantive burdens a person might properly be compelled to bear depend on the choices she has with respect to those burdens (conceived as applying to outcomes avoidable through foresight).

As Scanlon points out, having good options or opportunities to avoid bearing a particular cost is an important means of protecting oneself from having to bear it; thus, all other things being equal, a person has less of a complaint about having to bear a cost if she had a good opportunity to avoid bearing it. Furthermore, while it may be difficult or impossible to avoid harming

---

<sup>9</sup> Benjamin Ewing, *The Structure of Tort Law, Revisited: The Problem of Corporate Responsibility*, 8 *Journal of Tort Law* 1-28 (2015), <https://www.degruyter.com/document/doi/10.1515/jtl-2015-0015/html>.

others' interests throughout one's life (because people's interests conflict and accidents occur), people have a unique opportunity to do so because doing so does not require them to refrain from anything other than acting wrongfully toward others.

We have no reason to believe that the functions of tort law could not be delegated piecemeal, without moral loss, to morally permissible substitute institutions for dealing with the costs of interpersonal wrongs and harms—institutions that lack tort law's bipolar structure—if the grounding relationship between attributive and substantive outcome responsibility is simply that the former contributes to the permissibility of the latter. To be sure, attribution result culpability may play a role in demonstrating why it is acceptable to hold defendants accountable for particular damages they have proximately caused plaintiffs.<sup>10</sup>

To demonstrate that there is something normatively distinct about tort law that gives us at least pro tanto reason to keep it rather than replace it with an amalgam of permissible alternative institutions, we must answer the question of why attributive outcome responsibility might not only make it permissible but also give us affirmative reason to single out an agent who has (perhaps wrongfully) injured another and hold him liable to compensate that other person.

I won't try to provide a systematic solution to that question here, but will instead point you in the direction of where I feel one could eventually be located. I shall do so by quickly addressing the idea of "moral luck" that *Bernard Williams* and *Thomas Nagel* influentially defined which has frequently been referenced in connection with tort law, and by analysing Scanlon's recent development of a new theory of responsibility.

Despite the fact that a dominant stream in both common and academic moral theory aims to exclude chance from our moral judgements of one another, *Williams*, *Nagel*, and many others have resisted this temptation. Moral judgements, in their opinion, are necessarily saturated with the impact of luck, so much so that morality would look very different if we were successful in eliminating that influence. Moral luck, according to *Nagel*, occurs in the form of situations. "here a large portion of what someone does is dependent on variables outside his control, yet we continue to consider him as a moral judgement object."

Scanlon has taken "the phenomenon of moral result luck" as a datum that his theory of blame tries to explain, following in the footsteps of *Williams* and *Nagel*. Scanlon defines blameworthiness as "something in the agent's beliefs toward others that influences the connections that others can have with him or her." To properly blame someone, one must not

---

<sup>10</sup> Benjamin Ewing, The Structure of Tort Law, Revisited: The Problem of Corporate Responsibility, 8 Journal of Tort Law 1-28 (2015), <https://www.degruyter.com/document/doi/10.1515/jtl-2015-0015/html>.

only judge her to be blameworthy, but also perceive cause to alter one's relationship with her as a result of that judgement. Scanlon claims that his relational impairment theory makes great sense of the role chance plays in our blaming practises, in contrast to the "'character evaluation' explanation of blame." The outcome of a person's actions is unaffected by chance, and her character is characterised as an amalgamation of her beliefs, desires, values, and inclinations.

However, *Scanlon* observes that it can have an impact on blameworthiness and blame as defined by the relational impairment model. For, according to that viewpoint, "blame is not a simple judgement, but a new interpretation of our relationships with a person in light of what he or she has done." "Blame is therefore a consequence not just of the seriousness of a person's flaws, but also of their relevance for the agent's relationships with the person performing the blaming."<sup>11</sup>

Assume that one of two equally irresponsible drivers murders a kid and the other narrowly avoids doing so. As *Scanlon* points out, using *Nagel* as an example, the difference in outcomes tells us nothing about the drivers' personalities. However, it is more than plausible to believe that because the first driver committed negligent homicide while the second did not, a slew of people (family members, friends, and community members) will have normative reasons to change some of their expectations and dispositions toward the first driver in particular, and the first driver herself will have distinct reasons for action that the second driver will not. Williams employs the example of a non-negligent car accident to highlight the importance and breadth of what he refers to as "agent-regret": a distinctly "first-personal" viewpoint on one's previous conduct and its repercussions.<sup>12</sup>

Even if a person's outcome responsibility for an accident is not negligent or otherwise adequate to establish tort liability, it may be a foundation for her to "express [her] contrition to the person affected," according to Stephen Perry. When Scanlon refers to such cases as "objective stigma," as opposed to really moral luck, he adopts a word from Nagel. According to him, objective stigma is similar to guilt in that it entails "a shift in one's relationships with others, a shift in the meaning of one's interactions." Objective stigma, on the other hand, differs from blame in that, unlike blame, objective stigma can come from flawless behaviour.

The outcomes of our actions don't necessarily reflect our personalities. "It is the outcomes of our actions that give us a history as persons, and our history as persons contributes in a very large proportion to our identities as individuals," Perry has observed, referencing Honoré.

---

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

When the results are the consequence of behaviours that reflect badly on the agent's character, as the distinction between moral outcome luck and objective stigma suggests, the outcomes are more likely to be crucial to the agent's identity. Of fact, some outcomes will be too far away to ascribe in any meaningful sense to a person's agency. That might explain why, under tort law, persons can only be held liable for harms that were reasonably foreseeable, and why Perry views "avoidability" to be a key component of outcome responsibility. On the other hand, the literature on moral luck and Scanlon's notion of responsibility show that outcomes are not random.

What the moral luck literature and *Scanlon's* definition of blame show is that the consequences of acts may have an impact on how agents behave and how others regard them.. Much more, I believe, could and should be said to clarify and defend that assertion. However, I feel that the debates of *Williams, Nagel, Honoré, Perry, and Scanlon*, among others, provide sufficient support for the proposition.

I have not sought to completely support the proposition that assigning blame for a harmful conduct might provide us with positive reasons to hold its actor substantively accountable for its expenses. What I hope to have demonstrated is that

(a) tort law assumes that people who are attributively responsible for foreseeably injuring others have special reasons to bear the costs of those injuries (at least or especially when they have done so wrongfully),

(b) this implicit inference is at the very least plausibly justified and morally significant.<sup>13</sup>

## V. CONCLUSION

Plaintiffs and defendants, as well as guilt and compensation for harm, are all part of the tort law framework. While this structure limits tort law's ability to achieve a variety of goals, it does reflect—and allows tort law to express—what is undeniably a morally significant connection that people have with specific consequences of their actions. Because of tort law's bipolar structure, causing harm to another person reflects on a person in a way that may occasionally present us with at least pro tanto reasons to hold her liable for the injury's costs.

Despite the fact that tort law's notion of responsibility differs from the behavioral, will-focused ideas of obligation that dominate our thinking about criminal law, it is arguably ethically meaningful in its own right, as I demonstrate in this article. Furthermore, What I haven't done

---

<sup>13</sup> Benjamin Ewing, *The Structure of Tort Law, Revisited: The Problem of Corporate Responsibility*, 8 *Journal of Tort Law* 1-28 (2015), <https://www.degruyter.com/document/doi/10.1515/jtl-2015-0015/html>.

is adequately argue the bipolar nature of tort law's morality, which considers a person's attributive guilt for damaging another to be a legitimate justification for her to bear the costs of the injury rather than others on rare occasions<sup>14</sup>.

\*\*\*\*\*

---

<sup>14</sup> Ibid.