

RESEARCH ARTICLE

The social question and the transnational constitutional space

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Abstract

Although markets are becoming increasingly transnationalized, the social question appears to remain firmly national. The aim of this article is to discuss under what circumstances, if at all, the social question ought to have a transnational dimension and what form it should take. As such, the article seeks to build a normative framework that abandons the conventional taxonomies of moral duties and instead links the concept of responsibility to governance, which takes place in the space of the *polis* through a reliance on questions of group agency. To this end, the article will draw on different aspects of responsibility. Having established a link between the social question and the concept of responsibility based on outcome and remedial responsibility, it will draw on collective and shared responsibility to consider what, if any, transnational dimension the social question should have.

Keywords: transnationalism; responsibility; social question; moral duties; constitutionalism

1. Introduction

Because the social question addresses the ‘misery’ experienced by some people, the study of that question is of critical importance to the survival of democracy. Take as an example the storming of the US Capitol on 6 January 2021. While the complex details of this event make an exhaustive explanation difficult, I nevertheless think that a partial explanation can be found in Hannah Arendt’s astute observation regarding the consequences for society when people believe ‘that their lives are without consequence’, that they are ‘excluded from the light of public realm where excellence can shine’ and that they instead ‘stand in darkness wherever they go’.¹ Watching the footage from that day, I wondered how many of those who took over the Capitol, whipped up by former US President Donald Trump’s ‘Big Lie’ that the 2020 election was stolen, had gone in search of their (spot)light at the heart of the US *polis*.

My aim in sharing these reflections is not to exculpate those responsible for the assault on the Capitol, but rather to highlight that the survival of democracy itself may be at stake

¹H Arendt, *On Revolution* (Penguin, Harmondsworth, 2006) 59.

if we fail to answer the social question satisfactorily, particularly in light of its current context. In *One World*, Peter Singer offers a powerful reminder of the extent to which the spaces in which we live have become increasingly transnationalized.² Markets have been at the forefront of this development, yet the social question, which ‘mainly concerns the perception of and the political mobilization around social inequalities – based on norms of equality – as unfair or unjust on the one hand, and the legitimation of social inequalities on the other’,³ remains largely confined to the level of the nation-state. Reflecting on this dynamic in 1939, the well-known neoliberal economist Friedrich Hayek described what he saw as the inevitable consequence of market transnationalization, namely that the power to implement ‘socialist planning of economic life’ would no longer rest with nation-states.⁴ In response, Somek drily noted that, as far as the social question was concerned, Hayek’s proposal was simply an attempt to ‘put it to rest’.⁵ Leaving aside the question of ‘probability’ – which ultimately is a matter of political will – this article discusses the circumstances under which it is *normatively* ‘desirable’ to solve the social question in a transnational rather than a national *polis*.

I consider the discussion of the social question in its transnational context important because of the danger that, even when it has a transnational dimension, the social question will receive only a national answer, which could mean that it receives the wrong answer. In this article, I will use the concept of ‘responsibility’⁶ to develop a *normative* framework that helps to determine which agent ought to answer the social question. From the outset, I want to emphasize that ‘any attempt to change people’s thinking about responsibility requires a critique of power and ideology and simultaneously represents a challenge to them’.⁷ Thus, any changes to the political status quo will be met with resistance from the political establishment.

The argument presented in this article is structured as follows. I begin in section II by introducing two typologies of responsibility, ‘outcome’ and ‘remedial’,⁸ which will be used to link responsibility with the social question. In sections III and IV, the focus will shift to collective and shared responsibility, which will assist in determining whether the national or the transnational *polis* ought to be responsible for answering the social question.

II. Outcome and remedial responsibility

Before outlining its link to the social question, I first want to clarify my understanding of the concept of responsibility which, as Miller observed, ‘has proved to be one of the most slippery and confusing terms in the lexicon of moral and political philosophy’.⁹ It is therefore unsurprising that responsibility triggers different associations for scholars from different disciplinary backgrounds. My own interpretation closely follows that of Honoré,

²P Singer, *One World: The Ethics of Globalization* (2nd ed., Yale University Press, New Haven, CT, 2002).

³T Faist, *The Transnationalized Social Question. Migration and the Politics of Social Inequalities in the Twenty-First Century* (Oxford University Press, Oxford, 2019) 5.

⁴FA Hayek, ‘The Economic Conditions of Interstate Federalism’, in FA Hayek, *Individualism and Economic Order* (University of Chicago Press, Chicago, 1980) 266.

⁵A Somek, ‘The Social Question in a Transnational Context’ LEQS Paper No 39/2011, 13.

⁶On the principle of responsibility, see H Jonas, *Das Prinzip Verantwortung* (5th ed., Suhrkamp Verlag, Berlin, 2015).

⁷M Goodhart, *Injustice: Political Theory for the Real World* (Oxford University Press, Oxford, 2018) 221.

⁸D Miller, *National Responsibility and Global Justice* (Oxford University Press, Oxford, 2007), Ch 4.

⁹Ibid 82.

who conceived responsibility as ‘wider than and distinct from moral fault and legal liability’.¹⁰ In the following discussion, I develop two typologies of responsibility, ‘outcome’ and ‘remedial’, which I will use to link responsibility with the social question before examining the extent to which – if at all – these two types of responsibility are conditional.

The parable of the Good Samaritan provides a helpful starting point for my discussion by highlighting a distinction between the two typologies that is often glossed over.¹¹ In that well-known parable, a Jewish traveller is beaten and robbed by thieves while on the road from Jerusalem to Jericho. The injured man is ignored first by a priest and then by a Levite before a passing Samaritan stops and helps him to safety. One obvious question a person arriving at the scene might ask is ‘Who is responsible?’ This question has two dimensions. First, it seeks to establish who is ‘answerable’ or ‘accountable’ – in other words, outcome responsible – for the harm suffered by the traveller.¹² Second, by drawing on remedial responsibility, which cannot be discharged without solidarity, the question seeks to establish who should provide a solution or compensation for the harm suffered.

While both dimensions of the question ‘Who is responsible?’ often have the same answer, the parable of the Good Samaritan teaches us that this need not always be the case. Obviously, the criminal who injured the traveller has a strong remedial responsibility because that person is also outcome responsible for the harm. However, the matter is more complex in relation to the Levite and the priest, who cannot be considered outcome responsible for the harm the traveller suffered. They may defend their behaviour by arguing that they were merely (innocent) bystanders who did not cause the traveller’s injuries. Before I discuss the circumstances under which people become outcome responsible, let me briefly clarify the relationship between outcome and remedial responsibility.

Whether it is possible to decouple outcome responsibility from remedial responsibility is a question that runs through the parable of the Good Samaritan. In other words, can the priest and the Levite be held remedially responsible even though they are obviously not outcome responsible? Many people would find the behaviour of the Levite and priest appalling, but clearly to a lesser degree than that of the robber, who is both outcome and remedially responsible for the harm suffered by the traveller. In turn, what makes the behaviour of the Good Samaritan both exceptional and praiseworthy is their willingness to help a person in need despite having no outcome responsibility for their harm. Thus, the preliminary point can be made that the Good Samaritan, having no outcome responsibility, is acting upon weak remedial responsibility.

But on what grounds can a person who is not responsible for a harmful outcome become remedially responsible, even if only in a weak sense? Shue argues that ‘there is no cosmic explanation, and there is no better answer than: “you are *here* and therefore in a position to help this victim – is there a stronger claim upon you now?”’¹³ Imagine that a person is passing a pond in which a child is drowning. In that scenario, the person’s spatial proximity to the event makes all the difference and confers remedial responsibility to intervene despite the fact that the person is not outcome responsible for the child drowning.

While ‘proximity’ has an obvious spatial dimension, it is important to emphasize that there is another dimension, which was expressed by Lord Atkin in *Donoghue v Stevenson*.¹⁴

¹⁰T Honoré, *Responsibility and Fault* (Hart, Oxford, 1999) 1.

¹¹Luke 10:29–37.

¹²JR Lucas, *Responsibility* (Oxford University Press, Oxford, 1993) 5.

¹³H Shue, ‘Exporting Hazards’ (1981) 91 *Ethics* 579, 604 (emphasis added).

¹⁴*Donoghue v Stevenson* (HL 1992) 31.

This “other”, non-spatial (i.e. relational) interpretation of proximity is of particular relevance for the discussion in this article. Lord Atkin argued that proximity is

*not confined to mere physical proximity, but ... extend[s] to such close and direct relations that the act complained of directly affects a person whom the person alleged to be bound to take care would know would be directly affected by his act.*¹⁵

Thus, states can become remedially responsible beyond their boundaries when they have close relations with another state.

While the spatial dimension of proximity is fixed in that states are either close or distant, they are either neighbours or they are not, the dynamic, non-spatial, relational dimension is variable. In other words, the intensity of relationships between states can either increase or decrease over time. Although the existence of a relationship of some kind can be an indicator of proximity, it is also possible that at some stage, as the relationship increases in intensity, a ‘tipping point’ is reached,¹⁶ which triggers outcome responsibility. This is so because with intensifying interaction our vulnerabilities also increase; lovers, for example, are more vulnerable to each other than mere fleeting acquaintances. A state that is outcome responsible for a specific harm beyond its boundaries also has a strong transnational remedial responsibility. As I will argue in the next section, however, in the context of international relations, this strong transnational remedial responsibility is often overlooked.

Given the overall importance of outcome responsibility in establishing remedial responsibility, I will next consider the conditions under which people become outcome responsible. While this type of responsibility has a causal dimension, it is important to understand that outcome responsibility goes beyond merely ascertaining the causality of harm. It is one of the unavoidable facts of life that we are constantly forced to make choices. By interpreting these choices as ‘gambles’, Honoré argues, society establishes outcome responsibility through ‘allocating *credit* for the good outcomes of actions and *discredit* for bad ones’.¹⁷ Accordingly, agents will become outcome responsible primarily not because they caused a particular outcome but rather because they can be ‘credited’ or ‘discredited’ for an outcome.

Imagine, for example, that a person intends to drive to a destination (Z). At some point during the journey, the person decides to make a U-turn (X) instead of driving to the next roundabout (Y) because they think that by changing direction, they will arrive more quickly at Z. Honoré might say that the driver puts their money on X instead of Y in order to achieve Z.¹⁸ Whether the driver does indeed arrive more quickly at Z (in other words, whether they do achieve the desired outcome) depends not only on the soundness of their plan for the trip but on whether they have full control over its implementation, which they would not if, for example, their car broke down or they encountered an unexpected traffic jam along the way. I will return to the concept of planning and its relationship to responsibility in the next section, but for now I want to highlight another point: the driver’s ability to reach the destination on time – that is, to achieve a successful outcome – depends also, to some extent, on ‘luck’.

¹⁵Ibid 45 (emphasis added).

¹⁶S Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton University Press, Princeton, NJ, 2008) 9–10.

¹⁷Honoré (n 10) 14 (emphasis added).

¹⁸Ibid 25.

Intuitively, and in the Kantian tradition, we think of ‘control’ as a vital element when making a moral judgement about whether someone ought to be held responsible for an outcome¹⁹ – for example, arriving on time. Yet, under the banner of ‘moral luck’, philosophers have long discussed the question of under what circumstances people should be judged morally responsible for their behaviour even when they find themselves in a situation in which they lack total control.²⁰ An important aspect of Honoré’s framework is that it embraces luck when ascribing responsibility for outcomes.

While the bringing together of “luck” (good or bad) and “responsibility” seems to contradict Kant, Honoré argues with some plausibility that ‘if we claim credit for *good luck*, we must also be prepared to accept responsibility for *bad luck*’.²¹ This argument is broadly in line with that of Churchland and other compatibilists, who maintain that the fact we have only a degree of control does not rule out our responsibility for our actions *per se*.²² Thus, as a general rule, we cannot use lack of complete control or bad luck (e.g. that we were born into a particular harmful or evil society) as a justification for rejecting responsibility.

Finally, in order to establish remedial responsibility, it is necessary to identify another parameter, or what Honoré refers to as ‘the extra element’: while ‘sometimes the extra element is *fault* ... [f]or strict liability, the extra element is usually that the conduct of the harm doer carries with it a special *risk* of harm’.²³ While the conventional ‘liability model’ used to allocate responsibility is fault based, the ‘social connection model’ can function without it.²⁴ Political theorist Iris Young questions the usefulness of the liability model in the context of society because it

relies on a fairly direct interaction between the wrongdoer and the wronged party ... Where structural social processes constrain and enable many actors in complex relations, however, those with the greatest power in the system, or those who derive benefits from its operations, may well be removed from any interaction with those who are most harmed in it.²⁵

Nevertheless, I will argue that both models can be helpful, depending on the circumstances.

I want to elaborate briefly now on the two parameters of blame and risk. In relation to blame, imagine the scenario involving a single mother who struggles financially. Often when blame is allocated in such a context, it is the unemployed entrapped in poverty who are blamed for their circumstances.²⁶ As a consequence, society does not consider itself

¹⁹I Kant, *Groundwork of the Metaphysics for Morals* (AW Wood ed and trans, Yale University Press, New Haven, CT, 2002) 4:394 (emphasis added).

²⁰T Nagel, ‘Moral Luck’, in R Shafer-Landau (ed), *Ethical Theory: An Anthology* (2nd ed., Wiley, Chichester, 2013) 322, 323.

²¹P Cane, ‘“Responsibility and Fault”: A Relational and Functional Approach to Responsibility’ in P Cane and J Gardner (eds), *Relating to Responsibility: Essay for Tony Honoré on his Eightieth Birthday* (Hart 2001) 81, 91 (emphasis added).

²²PS Churchland, *Brain-Wise: Studies in Neurophilosophy* (MIT Press 2002) 212.

²³Honoré (n 10) 27 (emphasis added).

²⁴IM Young, *Responsibility for Justice* (Oxford University Press, Oxford, 2011) Ch 4.

²⁵IM Young, ‘Responsibility and Global Justice: A Social Connection Model’ (2006) 23 *Social Philosophy and Policy* 102, 118

²⁶M Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (The New Press, New York, 2004) 31–32.

responsible for providing a remedy. The reason for the stigmatization of the poor can be found in the very concept of neoliberalism, which ‘encourages us to see poverty as natural and unavoidable and to blame it on the poor themselves’.²⁷ However, it is possible to allocate blame differently, and thereby uncover and challenge ‘existing social arrangements’,²⁸ structures and processes that humiliate people. In other words, we can decide to build a ‘decent society’²⁹ or we can choose not to. In section III, I will show how social arrangements are created in relationships beyond boundaries – that is, in the transnational space.

And then there is risk. In a superb historical analysis, Michele Dauber portrays how US President Roosevelt and his team successfully created a narrative for the New Deal in a hostile environment by making sure that ‘the details of individual encounters with economic hardship had to be exposed to view, but in a manner that foreclosed the conclusion that the needy themselves were to blame for their own hard times’.³⁰ In other words, they transformed ‘the heterogenous mass of poor people into disaster victims [which] meant justifying their circumstances as a result of *fate*’.³¹ For me, this narrative acknowledges the existence of risk in the context of the market. Thus, the Great Depression and the hardship it triggered were portrayed as a materialization of specific risks posed by the market. According to Dauber, this explains why ‘the “disaster narrative” of *blameless loss* is so central to the American welfare state’.³² I will elaborate further on the relationship between risk and the social connection model in section IV.

Before I draw this section to a close, I want to outline how I think the social question and responsibility can be connected conceptually. I think a few words need to be said about their relationship because some may wonder how the concept of ‘responsibility’ is at all helpful when dealing with the social question. It seems to me that drawing on responsibility is useful for at least two reasons. First, questions of responsibility often ‘lie at the heart of many of our most heated *social and political controversies*’,³³ the same is true of the social question. Second, there exists an obvious etymological link between responsibility and the social question: the word *Verantwortung* (responsibility) includes the word *Antwort* (respond).³⁴ Unless merely rhetorical, every question – and this includes the social question – ultimately expects an answer.

The point I want to convey, however, is that based on my discussion of outcome and remedial responsibility so far, the *asking* of the social question corresponds with outcome responsibility, whereas remedial responsibility corresponds with *answering* the social question. The single mother I mentioned earlier finds herself in a situation of dependency *because* of the structures society consciously chose to build. For those who live in a ‘market society’, for example, ‘market values seep into every aspect of human

²⁷ Goodhart (n 7) 220.

²⁸ RE Goodin, *Protecting the Vulnerable: A Reanalysis of Our Social Responsibilities* (University of Chicago Press, Chicago, 1985) 191.

²⁹ A Margalit, *The Decent Society* (N Goldblum trans, Harvard University Press, Cambridge, MA, 1998) 1.

³⁰ ML Dauber, *The Sympathetic State: Disaster Relief and the Origins of the American Welfare State* (University of Chicago Press, Chicago, 2013) 100.

³¹ *Ibid* (emphasis added).

³² *Ibid* 11 (emphasis added).

³³ M Smiley, *Moral Responsibility and the Boundaries of Community* (University of Chicago Press, Chicago, 1992) 1 (emphasis added).

³⁴ J Nida-Rümelin, *Verantwortung* (Reclam, Leipzig, 2011) 12.

endeavour. It's a place where social relations are made over in the image of the market'.³⁵ A society which organizes itself this way rewards but also punishes its members accordingly. Thus, the process is deliberate rather than incidental and therefore an argument can be made that society is outcome responsible for the harm the single mother experiences.

In turn, if society is outcome responsible, then it ought to be responsible for providing a remedy for that harm which seeks to address systemic poverty. Reflecting on its role in society, Arendt argued that poverty exposes vulnerabilities:

Poverty is more than deprivation, it is a state of constant want and acute misery whose ignominy consists in its dehumanizing force; poverty is abject because it puts men [and women] under the absolute dictate of their bodies, that is, under the absolute dictate of necessity as all men [and women] know it from their most intimate experience and outside all speculation.³⁶

In order to address poverty, the answer to the social question must make reference to solidarity. Pope John's XXIII encyclical *Mater et Magistra* asserts that:

The solidarity which binds all men together as members of a *common family* makes it impossible for wealthy nations to look with indifference upon the hunger, misery and poverty of other nations whose citizens are unable to enjoy even elementary human rights.³⁷

The social question and solidarity share certain characteristics. Scholz argues that solidarity (as well, I would add, as the social question) 'mediates between the community and the individual. That is, solidarity is neither individualism nor communalism but blends elements of both'.³⁸ By drawing on solidarity, the social question, if successfully answered, can be an important cornerstone in the building of what Margalit describes as a 'decent society' – that is, one whose institutions do not humiliate people.³⁹ For the purposes of this article, the institution of the market is of particular importance.

In this section, I outlined two typologies of responsibility and analysed how they are interconnected and linked with the social question. To this end, I introduced outcome and remedial responsibility. I argued that an agent who is outcome responsible will also have a strong remedial responsibility if either fault or risk can be established. In turn, an agent who lacks outcome responsibility can nevertheless become remedially responsible based on proximity; this kind of responsibility is weak, however. Regarding the relationship between the social question and responsibility, I argued that outcome responsibility can be treated as a proxy for *asking* the social question because of its relationship to harm, whereas remedial responsibility constitutes a proxy for *answering* the social question due to its focus on finding a solution for harm. With this conceptual framework in place, I now turn to the transnational space.

³⁵M Sandel, *What Money Can't Buy: The Moral Limits of Markets* (Penguin, Harmondsworth, 2012) 10–11.

³⁶Arendt (n 1) 50.

³⁷*Mater et Magistra: Encyclical of Pope John XXIII on Christianity and Social Progress* (1961) para 157 (emphasis added).

³⁸SJ Scholz, *Political Solidarity* (Pennsylvania State University Press, Philadelphia, PA, 2008) 18.

³⁹Margalit (n 29).

III. Collective responsibility and the liability model

I begin my analysis of the transnational space with a focus on intergovernmental space, which is populated by nation-states.⁴⁰ According to Bickerton, the nation-state has two distinctive characteristics: first, there is a unity between the state and society;⁴¹ and second, any limitation on the power of nation-states is treated as ‘internal expressions of sovereignty’.⁴² Based on these two preliminary observations, I will discuss two questions in particular. First, looking inward, I examine whether a nation-state, which is composed of many individuals, can become responsible as a single agent. Second, looking outward, I discuss the circumstances under which, if at all, a collective such as a state becomes responsible, outcome and/or remedially, beyond its boundaries. For the purposes of this discussion, I will draw on the most common instrument in order to allocate responsibility: the liability model. Therefore, I will need to show that even when a collection of people is involved, we nevertheless deal with a single agent, enabling fault to be established.⁴³

The concept of group or collective responsibility is contested by those who, like the philosopher HD Lewis, argue that responsibility ‘belongs essentially to the individual’.⁴⁴ If the critics of collective responsibility are correct, then nation-states have no responsibility for any outcome, good or bad, and consequently cannot be held responsible for providing any remedy beyond their boundaries. Nevertheless, the concept of collective responsibility has a certain intuitive appeal, simply because in our daily lives we do seem to be willing to hold collectives responsible for harmful outcomes.⁴⁵ For example, most people would say without much quarrel that Germany was responsible for World War II. While this may be so, I do not want to make an argument based merely on ordinary language philosophy.⁴⁶ When we reflect on the potential responsibility of a group for an action (or inaction), we cannot ignore the individuals who form the group; we somehow need to incorporate them into our conceptual framework. After all, a collective can only act through the individuals who comprise it (e.g. to discharge remedial responsibilities).⁴⁷

Thus, we must investigate the relationship between individuals and the collective. While there are those who are sceptical about the possibility of collective responsibility, we also find supporters of that idea.⁴⁸ One of these is Young, who argues that

assigning responsibility derives from legal reasoning to find *guilt* or *fault* for a harm. Within this idea of responsibility, one assigns responsibility to particular agents

⁴⁰W Mattli, *The Logic of Regional Integration: Europe and Beyond* (Cambridge University Press, Cambridge, 1999) 28–31.

⁴¹CJ Bickerton, *European Integration: From Nation-States to Member States* (Oxford University Press, Oxford, 2012) 69.

⁴²Ibid 52.

⁴³Young (n 24) 97.

⁴⁴HD Lewis, ‘Collective Responsibility (A Critique)’ in L May and S Hoffman (eds), *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics* (Rowman & Littlefield, Lanham, MD, 1991) 17.

⁴⁵DE Cooper, ‘Collective Responsibility (a Defense)’ in L May and S Hoffman (eds), *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics* (Rowman & Littlefield, Lanham, MD, 1991) 35.

⁴⁶PA French, ‘Types of Collectives and Responsibility’, in S Bazargan-Forward and Deborah Tollefsen (eds), *The Routledge Handbook of Collective Responsibility* (Routledge, London, 2020) 8, 9–10.

⁴⁷L May, ‘Vicarious Agency and Corporate Responsibility’ (1983) 43 *Philosophical Studies: An Inter-national Journal for Philosophy in the Analytic Tradition* 69, 80.

⁴⁸V Held, ‘Taking Responsibility for Global Poverty’ (2018) 49 *Journal of Social Philosophy* 393, 395–98.

whose actions can be shown to be causally connected to the circumstances for which responsibility is sought. This agent can be a collective entity ... and when it is, that entity can be treated as a *single agent* for the purposes of assigning responsibility.⁴⁹

Young seems to suggest not only that a collective can be 'guilty' or 'at fault', but also that it can be treated as a 'single agent'. If so, this would allow the allocation of responsibility based on the liability model.

Because this article focuses on group agency, I will not dwell on the question of under what circumstances an individual is *also* morally responsible – that is, guilty – when the collective becomes responsible. After all, 'guilt' is 'strictly personal', as Hannah Arendt argues.⁵⁰ Nevertheless, she defends the idea that a collective can become responsible in her seminal book *Eichmann in Jerusalem*, in which she argues:

Many people today would agree that there is no such thing as collective guilt or, for that matter, collective innocence, and that if there were, no one person could ever be guilty or innocent. This, of course, is not to deny that there is such a thing as *political* responsibility which, however, exists quite apart from what the individual *member of the group* has done and therefore can neither be judged in moral terms nor be brought before a criminal court.⁵¹

Having established the possibility of collective responsibility, I begin my analysis of the 'agent' by asking how a collection of individuals can be transformed into a collective – that is, a single agent. Whether we deal with a single agent formed out of a collective depends on the (political) organization of the collective entity; it would not be plausible, for example, to argue that a collection of four random strangers who witness an accident can become remedially responsible as a group. Arendt takes the position that these individuals cannot be held to account *as a group* – that is, as a single agent – for the acts they have committed, or rather omitted in this case. She explicitly states that a thousand experienced swimmers 'lolling at a public beach' while a man drowns would not be collectively responsible because they did not constitute a collective in the first place.⁵²

What appears to be missing in Arendt's beach scenario is a 'framework' that brings these people together and connects them so they form a collective – in other words, a single agent. I argue that it is planning that can explain the transformation of an unorganized collection of people into an organized collective, and that helps to achieve the 'supervenience of a group agent' that can acquire responsibility as a single agent.⁵³ Bratman has analysed the concept of the plan extensively in his work. Reflecting on the importance of plans, he makes the point that 'We frequently settle in advance on plans for the future. These plans help guide our later conduct and coordinate our activities over time, in ways in which our ordinary desires and beliefs do not.'⁵⁴ Bratman argues further

⁴⁹Young (n 24) 97 (emphasis added).

⁵⁰H Arendt, 'Collective Responsibility', in J Kohn (ed), *Responsibility and Judgment* (Schocken Books, New York, 2003) 147.

⁵¹H Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin, Harmondsworth, 2006) 297–98 (emphasis added).

⁵²Arendt (n 50) 149.

⁵³C List and P Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford University Press, Oxford, 2013) 64.

⁵⁴ME Bratman, *Intention, Plans, and Practical Reason* (CSLI Publications, Stanford, CA, 1999) 111.

that ‘we – ordinary adult human agents in a broadly modern social world – are responsible agents in part in virtue of our planning agency’.⁵⁵ Thus, planning is a common activity that makes our acts intentional rather than impulsive and thereby can provide a link to responsibility.

To further explore the issue of planning and group-forming, imagine that two people plan to cook dinner for their mutual friends. Both are passionate cooks. One of the two wants to cook Italian food; the other prefers to cook French food. They ultimately settle on a plan to cook Austrian food for their guests. Thus, while each may have had some input in the direction of travel, the final plan does not coincide exactly with either cook’s stated preferences.⁵⁶ However, because they both agreed on and decided to implement that plan, they showed a degree of intention, and therefore, like a single agent, they can both be held responsible for the success or failure of the meal. If it turns out that their friends do not like Wiener Schnitzel, neither cook can shed responsibility for the failure by saying that they did not want to cook Austrian food in the first place.

In the above example, both cooks actively make the plan that they then implement. It is also possible, however, for someone else to make plans for them – for example, a third person could have told them what and how to cook for their friends. Even under these circumstances, however, the two cooks would be held responsible as a single agent for the failure or success of the meal. This divide between planning and implementing a plan is particularly important in the context of the state. By definition, a representative democracy operates according to that type of division of labour: while the government or the legislature makes the plan, it is citizens who implement it in their daily lives and who may be held responsible for any negative outcomes.⁵⁷ Moreover, even if we are thrown by fate into a bad plan – that is, as citizens of an evil or ignorant society – this does not absolve us from responsibility for the acts of the single agent to which we find ourselves linked.

Still, we may wonder whether it is ever possible for individuals to cut the ties between themselves and the single agent, and thereby escape responsibility for its acts. Scott Shapiro casts doubt on this possibility, even when individuals are alienated, noting that plans

are powerful tools for managing the distrust generated by alienation. For the task of institutional design in such circumstances is to create a practice that is so *thick with plans and adopters, affecters, appliers, and enforcers of plans that alienated participants end up acting in the same way as nonalienated ones*. The fact that activities can often be structured so that participants intentionally achieve goals that are not *their* goals accounts for the pervasiveness of massively shared agency in the world around us.⁵⁸

Thus, the collective – the single agent – casts a long shadow of responsibility on the individual. With that, I return to outcome and remedial responsibility.

It is an observable fact that inequality between states is dramatically increasing,⁵⁹ which raises the question of whether states can be held outcome responsible for the harm

⁵⁵ME Bratman, ‘Responsibility and Planning’ (1997) 1 *The Journal of Ethics* 27, 43.

⁵⁶T Nagel, ‘The Problem of Global Justice’ (2005) 33 *Philosophy & Public Affairs* 113, 129.

⁵⁷SJ Shapiro, *Legality* (Harvard University Press, Cambridge, MA, 2011) 135.

⁵⁸Ibid 150.

⁵⁹S Sassen, *Expulsions: Brutality and Complexity in the Global Economy* (Harvard University Press, Cambridge, MA, 2014) 15.

experienced beyond their boundaries. In other words, can a negative outcome experienced by a vulnerable state be debited to the wealthy states? Pogge argues that wealthy states often harm vulnerable states in a concealed manner; this can happen, for example, through ‘a badly slanted *global order*’,⁶⁰ which is designed by wealthy countries and plays in their favour. This argument is somewhat reminiscent of Johan Galtung’s concept of ‘structural violence’.⁶¹ Zürn describes a similar phenomenon, which he characterizes as ‘institutionalized inequality’, according to which powerful actors create an institutional framework for their own benefit, to which – in the absence of other options – less powerful actors nevertheless are forced to sign up.⁶² And yet, often people are ignorant about their role in exercising this kind of violence.

If one accepts that states can become outcome responsible for harms beyond their borders, then they have a strong transnational remedial responsibility – provided fault can be established. According to Scanlon, someone’s intentions or attitudes are faulty if they do not meet the required standards of a relationship.⁶³ But what standard do we owe each other when the actions of the state in which we live in causes harm outside its borders? Pogge depicts the different standards as a pyramid of duties, in which the location of the duty indicates its moral urgency. If we violate the duty, then we do not meet the required standard. I think the hierarchy outlined by Pogge is uncontroversial and largely corresponds with common perceptions. As we will see, though, Pogge’s argument comes with a twist: people of wealthy states are often mistaken about the standard they owe to vulnerable states – hence they are oblivious to their fault.

The most important duty, and the one to which all others are subordinated, is the negative duty not to harm others.⁶⁴ In Pogge’s model, this duty sits at the top of the pyramid. Our duties in relation to those inside identity boundaries – which circumscribe our family, friends and, many would argue, even the nation – are to be found in the middle of the pyramid. (Civic) nationalists, for example, would argue that we owe a positive duty to others within our specific identity boundaries because they share our citizenship. These obligations rank higher than the positive duties we have towards those outside identity boundaries, such as citizens of another state.⁶⁵ At the bottom of Pogge’s pyramid are the positive duties that we have towards people who are unrelated to us and are outside of our identity boundaries.⁶⁶ The Good Samaritan who comes to the aid of the injured traveller acts on this kind of duty; this is what makes the behaviour of those who help in such circumstances so praiseworthy.

Although people frequently do not consider their behaviour to be blameworthy because they do not think that they are outcome responsible in this kind of scenario, Pogge argues that states and their citizens often directly harm vulnerable citizens beyond

⁶⁰T Pogge, *World Poverty and Human Rights* (2nd ed, Polity Press, Cambridge, 2008) 135 (emphasis added).

⁶¹J Galtung, ‘Violence, Peace, and Peace Research’ (1969) 6 *Journal of Peace Research* 167, 171.

⁶²M Zürn, *A Theory of Global Governance: Authority, Legitimacy and Contestation* (Oxford University Press, Oxford, 2018) 96.

⁶³T Scanlon, ‘Interpreting Blame’, in DJ Coates and NA Tognazzini (eds), *Blame: Its Nature and Norms* (Oxford University Press, Oxford, 2013) 84, 88.

⁶⁴Pogge (n 60) 139.

⁶⁵Ibid 136.

⁶⁶Ibid 138.

their boundaries.⁶⁷ In other words, people regularly violate the most important duty of all, which requires them ‘to ensure that others are not *unduly harmed* (or wronged) through [their] own conduct’.⁶⁸ While it may be acceptable for us to give preferential treatment, for example, to our parents in a rescue operation, we nevertheless must not (directly) harm others even in an effort to rescue those who are close to us.⁶⁹ Yet we may wonder how people can be so mistaken about the duty they owe, which is an urgent negative rather than a positive. The reason for this may be that people deal with ‘positive obligations’ – which are, however, *derived* from negative duties;⁷⁰ in other words, the negative duty is more indirect or less visible.

Critics of Pogge’s argument wonder whether he is not merely describing ‘derivative positive duties’.⁷¹ In response, Pogge argues that duties ‘are morally fundamental and apply always’, but some ‘are generative duties – that is, duties that, in conjunction with appropriate empirical circumstances, create more specific moral reasons for actions: obligations’.⁷² He goes on to say that ‘little would be left of my argument if I had assumed that negative duties cannot generate derivative positive duties (“positive obligations” in my language)’.⁷³ Returning to the liability model and the language of responsibility, we may say that the harm experienced by vulnerable states can be debited to the acts of wealthy states. Therefore, these states become outcome responsible, but also – because they violate the basic standard not to harm others in interaction – their behaviour is faulty. These factors produce a strong transnational remedial responsibility.

According to Arendt, however, the basis for this remedial responsibility ought to be ‘solidarity’ rather than ‘pity’ because ‘it is out of pity that men are “attracted toward *les hommes faibles*”, but it is out of solidarity that they establish deliberately and, as it were, dispassionately a *community of interests* with the oppressed and exploited’.⁷⁴ Arendt’s concern is that the compassion we feel when engaging with individuals transforms into pity when we engage with the masses, and pity depends on the misery of others for sustenance. Unlike solidarity, pity

does not look upon both fortune and misfortune, the strong and the weak, with an equal eye; without the presence of misfortune, pity could not exist, and it therefore has just as much vested interest in the existence of the unhappy as thirst for power has a vested interest in the existence of the weak.⁷⁵

In this section, I examined how the liability model allocates responsibility in the inter-governmental space. To this end, I showed how individuals can form a collective that constitutes a single agent, but also demonstrated how fault can be established for harm

⁶⁷T Pogge, ‘Reply to Critics: Severe Poverty as a Violation of Negative Duties’ (2005) 19 *Ethics and International Affairs* 55, 68.

⁶⁸Pogge (n 60) 136 (emphasis added).

⁶⁹V Beck, *Eine Theorie der globalen Verantwortung: Was wir Menschen in extremer Armut schulden* (Suhrkamp Verlag, Berlin, 1996) 90.

⁷⁰Pogge (n 67) 68.

⁷¹R Cruft, ‘Human Rights and Positive Duties’ (2005) 19(1) *Ethics and International Affairs* 29, 32.

⁷²Pogge (n 67) 68.

⁷³Ibid.

⁷⁴Arendt (n 1) 78-79 (emphasis added).

⁷⁵Ibid 79.

beyond the boundaries of the collective/single agent. While the *polis* in this kind of scenario remains confined to the national level, and the social question therefore develops only a thin transnational dimension of the social question, I argued that the transnational dimension nevertheless must be taken into consideration, for two reasons. First, the national *polis* is remedially responsible, albeit weakly, for harm in another state, based on proximity, which not only is spatial but can also be established when the relationship between two states is sufficiently intense. However, as the intensity of this relationship grows, there will come a tipping point at which a collective can also be considered outcome responsible for harm experienced by a vulnerable state, which in turn forms the basis for strong transnational remedial responsibility. As I have shown, this is more often the case than people realize.

IV. Shared responsibility and the social connection model

Unlike intergovernmental space, which is populated by nation-states, supranational space is populated by member states and citizens; a prime example of a supranational space is the European Union (EU). Member states have two characteristics, Bickerton argues: first, the relationship between state and society becomes ‘relativized’,⁷⁶ and therefore no longer exclusive. Second, as stated in the introduction to this article, the sovereignty of member states is constrained externally;⁷⁷ this has implications for the location of the *polis*. Relativization finds its expression in Article 10 of the Treaty on the European Union (TEU), which substantiates the principle of democracy in the EU and makes specific reference not only to ‘Member States’ but also to ‘citizens’ of the EU;⁷⁸ both seem to be given a formal ‘voice’,⁷⁹ independent from each other, in a transnational *polis*. Thus, ‘state and society relate to each other *antagonistically* rather than as an *integrated* totality as was the case with the modern nation state’.⁸⁰

Regarding the constraints on the sovereignty of member states, for example, Article 3 of the Treaty on the Functioning of the European Union (TFEU) allocates exclusive competences to the European Union in the field of customs union or competition rules that are necessary for the functioning of the internal market. Also, Article 4.2 of the TFEU stipulates that the EU shares the competence for building the internal market with member states, which means that ‘Member States shall exercise their competence to the extent that the Union has not exercised its competence’.⁸¹ Finally, the principle of ‘sincere cooperation’, established in Article 4.3 of the TEU, can be considered another external restriction of powers that transforms a nation-state into a member state. Based on these cursory observations, the following point can be made: if society and the way it is organized – for example, through the framework of a state – are no longer an axiomatic unity, then the usefulness of ‘collective responsibility’, the single agent, and consequently also the fault-based liability model are called into question and must be replaced.

⁷⁶Bickerton (n 41) 12.

⁷⁷Ibid 52.

⁷⁸Treaty of Lisbon Amending the Treaty of European Union and the Treaty Establishing the European Community (2007/C306/1) Arts 10.1 and 2.

⁷⁹On voice, see AO Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations and States* (Harvard University Press, Cambridge, MA, 1970) Ch 3.

⁸⁰Bickerton (n 41) 16.

⁸¹TFEU, art 2.2.

Take as an example the euro crisis that began in 2010. “Guilt” and “blame” featured prominently in the heated debates at the time, in part for etymological reasons. After all, in German, the word *Schuld* has a twofold meaning, namely, ‘debt’ and ‘guilt’.⁸² Obviously, ‘the guilty party must “pay” for his sins, just as a debtor is one who must correct his moral imbalance by repayment’.⁸³ Thus, the double meaning of the word *Schuld* may have contributed to the feeling among Germans that they had morality on their side, allowing them to reject both outcome and remedial responsibility for the negative effects of the euro. In fact, Germany engaged in an exercise of ‘moralizing victim *blaming* [emphasis added], [which] at least in its crudest and most popular version, invites an amalgamation of the *good vs evil* with the *us vs them* code of *national* collectives as moral agents’.⁸⁴

Some German academics, such as Wolfgang Streeck, insisted that the victims in the euro crisis had only themselves to blame because of their overspending and support for a corrupt political system.⁸⁵ Consequently, it was justifiable to punish the citizens of these countries with severe austerity measures. Clearly, the issue is more complex than this crude allocation of blame suggests. While there is no space in this article to develop these points, it is worth noting briefly that Joseph Stiglitz has criticized Germany for making itself more competitive by suppressing wages instead of increasing wages and prices, which ‘would have engineered the needed *real* exchange rate adjustment’.⁸⁶ More generally, Stiglitz notes a lack of consideration on the part of Germany for the economies of the other EU member states, even though this is key to the functioning of unified currency.⁸⁷ Finally, Stiglitz asserts that a considerable amount of blame also lies with those who have created flawed supranational institutions, which appear to lack a sufficient depth of integration to sustain the euro.⁸⁸

Rather than drawing on the fault-based liability model, which seems unhelpful when the transnational space is more deeply integrated, I will use the social connection model, according to which

individuals bear responsibility for structural injustice because they contribute by their actions to the processes that produce unjust outcomes. Our responsibility derives from belonging together with others in a *system of interdependent processes of cooperation and competition* through which we seek benefits and aim to realize projects.⁸⁹

Responsibility, which is allocated under the social connection model, is shared and discharged through the action of a collective.⁹⁰ In particular, the social connection model

⁸²C Offe, *Europe Entrapped* (Polity Press, Cambridge, 2016) 94.

⁸³J Feinberg, ‘Collective Responsibility’, in L May and S Hoffman (eds), *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics* (Rowman & Littlefield, Lanham, MD, 1991) 53, 60.

⁸⁴Offe (n 82) 97 (original emphasis except where noted).

⁸⁵W Streeck, *Gekaufte Zeit: Die vertagte Krise des demokratischen Kapitalismus* (4th ed, Suhrkamp Verlag, Berlin, 2013) 132–39.

⁸⁶JE Stiglitz, *The Euro and Its Threat to the Future of Europe* (Penguin, Harmondsworth, 2016) xiii; K Tuori and K Tuori, *The Eurozone Crisis: A Constitutional Analysis* (Cambridge University Press, Cambridge, 2014) 66.

⁸⁷W Schelkle, *The Political Economy of Monetary Solidarity: Understanding the Euro Experiment* (Oxford University Press, Oxford, 2017) 62–65.

⁸⁸Stiglitz (n 86) 15–17.

⁸⁹Young (n 24) 105 (emphasis added).

⁹⁰*ibid.*

must explain how outcome and remedial responsibility are allocated; recall from the earlier discussion in this article that people do not become outcome responsible primarily because they have caused a particular outcome but rather because they can be ‘credited’ or ‘discredited’ for a harmful outcome based on the choices they make in the market (e.g. consumer choices in the garment industry, which I mention below), whereas remedial responsibility establishes who (by which I mean which collective or *polis*) is to provide compensation for, or a solution to, the harm that is emanating from the market.

Because the social connection model is based on shared responsibility, it is necessary to establish who shares responsibility – in other words, it is necessary to draw boundaries. On the difference between shared and collective responsibility, Larry May argues that:

To say that the members of a group share in responsibility for a harm is different from saying that a group is collectively responsible for a given harm. When a group of people shares responsibility for a harm, responsibility distributes to each member of the group.⁹¹

While my discussion of collective responsibility was predominately ‘outward-looking’, my analysis of shared responsibility can be characterized as ‘inward-looking’. According to the social connection model, people share responsibility when they are in ‘active relationships’ with others;⁹² it is then that people become outcome responsible for a particular harm that can be credited or debited to them. This begs the question of what constitutes an active relationship.

It seems to me that people are in active relationships with others when they are concerned about ‘the situation of others – their fears, hopes, disappointments, feelings of humiliation, and anger – [which become] comprehensible through social relations between individuals, encounters, joint action, conversations and observations, and shared involvement’.⁹³ While active relationships may develop through direct interaction between individual group members in small groups, this is no longer possible in larger groups. Instead, it happens in a mediated way – that is, through political institutions or the law and related discourses. Norbert Elias captures the sentiment in his description of society when he writes that people encounter each other in the street as strangers who are nevertheless united through ‘*unsichtbare Ketten*’ (‘invisible chains’) and by virtue of living in a ‘*Netzwerk von Abhängigkeiten*’ (‘network of dependencies’).⁹⁴

Active relationships are important for establishing shared responsibility for an outcome because people in this kind of relationship ‘*share certain attitudes*’.⁹⁵ These attitudes serve as a trigger for shared responsibility. The sharing of attitudes is especially important if we do not participate directly in specific acts, as is normally the case in larger groups and in society. If a shared attitude can be established, then a harmful outcome can be debited to a group of people, making them outcome responsible. Think of a xenophobic crowd that cheers on those who are actively attacking foreigners in the streets. For the purposes of shared responsibility and its discharge through the collective, what is most relevant is not what any given individual actually did – that is, whether they cheered or actively

⁹¹L May, *Sharing Responsibility* (University of Chicago Press, Chicago 1996) 38.

⁹²Young (n 24) 137.

⁹³U Beck, ‘The European Crisis in the Context of Cosmopolitization’ (2012) 43 *New Literary History* 641, 659.

⁹⁴N Elias, *Die Gesellschaft der Individuen* (Suhrkamp Verlag, Berlin, 2003) 31.

⁹⁵May (n 91) 5 (emphasis added).

struck the victim; after all, the aim is not to establish the personal responsibility of any individual. In fact, it may well be the case that ‘some or all members of a group may be assigned less than full responsibility for a harm in cases of divided or shared responsibility’.⁹⁶ Group members share responsibility for a negative outcome *because* they cooperated in some way to achieve a specific end based on their shared attitudes.

The concept of ‘sharing certain attitudes’ as a basis for shared responsibility seems particularly persuasive when the political space of the *polis* is fully developed. To this end, Karl Jaspers has argued that there is an overlap between politics and society that cannot be separated (*‘der politische Zustand und die gesamte Lebensart der Menschen sind nicht zu trennen’*).⁹⁷ One prominent ideology that shapes our attitudes in an almost totalitarian manner is ‘neoliberalism’,⁹⁸ in which ‘the social contract understanding of the state standing above society and acting to secure its citizenry is fundamentally challenged’.⁹⁹

Here a transformation has been taking place from a somewhat confined ‘market economy’,¹⁰⁰ in which we would expect those who populate the market space to share attitudes, toward a boundless ‘market society’, which encompasses all walks of life. My presentation of the point that people share neoliberal attitudes is suggestive rather than exhaustive. The consequence, however, is that neoliberal values have become normalized as ‘idealized background assumptions’¹⁰¹ in the thinking of academics, ordinary people and politicians. It is difficult to think of a stronger example for ‘sharing certain attitudes’.

According to the theory of ‘structuration’,¹⁰² the existing structure – that of the market – is then reproduced, often unintentionally, by the actions of an individual.¹⁰³ For example, the English language already exists; however, when I speak English I contribute to its reproduction.¹⁰⁴ Similarly, when I decide to buy clothes from a shop I may perpetuate the unfair structures which already exist in the garment industry even if I myself am not directly causally responsible for their creation: the harm can at least be credited or debited to me and this is sufficient to make me outcome responsible. In many ways, society has conditioned us as consumers who consequently share specific attitudes:

The desire for up-to-date clothes becomes internalized and reproduced through habitual behavior ... These structural forces of production and consumption in the global capitalist economy are not going to be overcome by altering individuals’ consumer choices. The underlying economic relationships and power relationships will continue to exist. Moreover, these structural processes are taken for granted by the majority of participants.¹⁰⁵

⁹⁶Ibid 38.

⁹⁷K Jaspers, *Die Schuldfrage* (3rd ed, Piper Verlag, Munich, 2019) 58.

⁹⁸T Biebricher, *The Political Theory of Neoliberalism* (Stanford University Press, Stanford, CA, 2018).

⁹⁹D Chandler, ‘Resilience: The Societalization of Security’, in D Chandler and J Reid, *The Neoliberal Subject: Resilience, Adaptation and Vulnerability* (Rowman & Littlefield, Lanham, MD, 2016) 27.

¹⁰⁰K Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press, Boston, 1944) 71.

¹⁰¹Goodhart (n 7) 56.

¹⁰²A Giddens, *The Constitution of Society* (Polity Press, Cambridge, 1984) Ch 1.

¹⁰³M McKeown, ‘Iris Marion Young’s “Social Connection Model” of Responsibility: Clarifying the Meaning of Connection’ (2018) 49 *Journal of Social Philosophy* 484, 497.

¹⁰⁴A Giddens, *Central Problems in Social Theory: Action, Structure and Contradiction in Social Analysis* (Palgrave, London, 1979) 77–78.

¹⁰⁵McKeown (n 103) 497.

Having established how outcome responsibility is shared, I want to shift focus now to remedial responsibility. Whereas I used the fault-based liability model in my discussion of collective responsibility, in relation to the social connection model I will draw on risk as the basis for remedial responsibility.¹⁰⁶ When we find someone remedially responsible because of risk, this ‘does not imply finding [them] at fault or liable for a past wrong; rather, it refers to agents carrying out activities in a morally appropriate way and seeing to it that certain outcomes obtain’.¹⁰⁷ My focus is on our role as market citizens. I am not arguing here for a risk-free market, but in the market economy we still have a refuge space. In the market society, however, we can no longer escape the risk of the market in the different aspects of our lives. It is the latter that interests me.

Without doubt the market is a risky space.¹⁰⁸ ‘Trade is ... a risky business. As the growth of trade transformed the principles of gambling into the creation of wealth, the inevitable result was capitalism, the epitome of risk-taking’.¹⁰⁹ The discussion about risk in the economic context is a stark reminder that the process of economic integration does not necessarily produce Pareto-efficient solutions: while there are winners, ultimately – although it is easily forgotten – there will be losers too.¹¹⁰ Thus, it can be argued that a market economy is a potentially ‘harmful’ and ‘risk-creating’¹¹¹ environment; Polanyi argued that ‘the stupendous industrial achievements of market economy had been bought at the price of great harm to the substance of society’.¹¹² The market society affects the lives of people even more as we move towards an ‘omnipotent (possessing all power), omniscient (having all knowledge), and omnipresent (existing everywhere)’ market.¹¹³

It seems to me that those who benefit from the existence of the market society ought to become remedially responsible based on risk rather than blame, if a specific harm materializes in the context of society instead of just the market. As Peter Sloterdijk points out in his characterization of the Goddess Fortuna, life in many ways is a gamble;¹¹⁴ consequently, those who win have no right to praise themselves whereas those who lose have nothing to complain about. I would argue, however, that people can no longer be credited for achievements or blamed for failures that have become a matter of chance for those who operate in the market. Who deserves, we may ask with some justification, to win or lose in a game of roulette? Yet, in the market society, the risks in our lives become a particular kind of gamble that is determined by the laws of the market; those who lose on the market lose again in life.

Thus, basing the American welfare state on the concept of ‘blameless loss’¹¹⁵ has plausibility. The risks that people face when they operate in the market are not distributed evenly within a society. This observation has been made with great clarity by the sociologist Ulrich Beck, who argued that risk follows the pattern of wealth: ‘Wealth

¹⁰⁶Honoré (n 10) 27.

¹⁰⁷Young (n 24) 104.

¹⁰⁸C Larrère, ‘Responsibility in a Global Context: Climate Change, Complexity, and the “Social Connection Model of Responsibility” (2018) 49 *Journal of Social Philosophy* 426, 433.

¹⁰⁹PL Bernstein, *Against the Gods: The Remarkable Story of Risk* (Wiley, Chichester, 1996) 21.

¹¹⁰M Höpner and A Schäfer, ‘Grundzüge einer politökonomischen Perspektive auf die europäische Integration’, in M Höpner and A Schäfer (eds), *Die Politische Ökonomie der europäischen Integration* (Campus, Berlin, 2008) 11, 13.

¹¹¹Honoré (n 10) 55–57.

¹¹²Polanyi (n 100) 195.

¹¹³H Cox, *The Market as God* (Harvard University Press, Cambridge, MA, 2016) 8

¹¹⁴P Sloterdijk, *Im Weltinnenraum des Kapitals* (4th ed, Suhrkamp Verlag, Berlin, 2016) 80.

¹¹⁵Dauber (n 30) 11.

accumulates at the top, risks at the bottom. To that extent, risks seem to *strengthen*, not to abolish, the class society. Poverty attracts an unfortunate abundance of risks.¹¹⁶ The constructed vulnerabilities to which a person is exposed influence the risk of harm that they face. It is therefore incumbent on society to aim to solve the social question ambitiously – that is, by changing risk itself – rather than modestly – by merely alleviating the effects of risk.

Earlier, I highlighted the importance of solidarity in relation to remedial responsibility and the social question. The point I wish to make is that the concept of solidarity also has a relationship with risk. Solidarity has its origin in the Roman law of *obligatio in solidum*, which means that

a man is good for his debts and stands up to his obligations to others even when he has not benefited from them directly. To be the cosignatory of a loan means that one is *liable* for the reversals of fortune of another; that one's own economic well-being is no longer completely in one's own hands.¹¹⁷

Risk has group-forming effects and transforms a group of people into a 'risk society',¹¹⁸ which coincides with the market society. The boundaries of the risk society must coincide with those of the market society if it has been transferred to the transnational space, because otherwise Hayek's prediction that the political power to implement 'socialist planning of economic life'¹¹⁹ will never shift from the national to the transnational level may well come to pass.

I have argued that in contrast to the intergovernmental space, the supranational space is populated by individuals (i.e. citizens) as well as member states with their porous political boundaries. I used shared responsibility and the social connection model in order to identify the outcome responsible *polis* (the collective) which is competent to discharge remedial responsibility. Here the *polis* is no longer situated at the national level because the single agent no longer resembles the nation-state. Rather, because the population of the transnational space comprises member states and citizens, the boundaries of the collective, which remain unchallenged in the intergovernmental space, need to be redefined in the supranational context. Thus, the social question has a thick transnational dimension here. The extent to which any shift from the national to the transnational *polis* is also politically likely, feasible, or 'probable', as Hayek put it, may remain a bone of further heated contention, however.

V. Conclusion

We live in a world in which markets increasingly transnationalize, whereas the political space of the *polis* often remains confined to the national level. With regard to the social question, we are therefore confronted with the following problem: while it is often triggered by events on the transnational market, the answer to the social question continues to be formulated on the national level, often ignoring the space beyond the

¹¹⁶U Beck, *Risk Society: Towards a New Modernity* (M Ritter trans, Sage, Thousand Oaks, CA, 1992) 35.

¹¹⁷M Pinsky, *The Ends of Solidarity: Discourse Theory in Ethics and Politics* (SUNY Press, Albany, NY, 2008) 6.

¹¹⁸Beck (n 116) 19.

¹¹⁹Hayek (n 4) 266.

national boundaries. The aim of this article was to develop a framework that might help to determine, from a normative perspective, the extent to which the current status quo is justified or needs to be changed. At the heart of this framework is the concept of responsibility: while outcome and remedial responsibility are linked to the social question, shared and collective responsibility describe different kinds of agents. I argued that if people are outcome responsible for harm, which triggers the social question, then there is a strong case for remedial responsibility, which provides the answer to the social question. How the social question is answered must be decided by the political space – that is, the *polis*.

I then distinguished two types of transnational spaces that are populated by two different kinds of agents. First, I discussed the intergovernmental space, which is populated by nation-states. Nation-states can be characterized by a ‘unity’ between the state and society; sovereignty is constrained internally.¹²⁰ Thus, they are best captured by collective responsibility allocated on the basis of fault and the liability model. One consequence of collective responsibility is that the *polis* remains situated in the nation-state. Nevertheless, there is a transnational dimension that is covered by the circumstances under which a collective is responsible for negative outcomes beyond its boundaries. The core argument that was made in this context was that collectives can be mistaken regarding whether they are outcome responsible. As a consequence, they may not be aware that they are allocated a strong remedial responsibility. In short, in the context of intergovernmental space, it is the national *polis* that decides on the remedy, but that can be required to take the transnational dimension into consideration.

My focus then shifted to the transnational space, which is supranational in nature. The key characteristic of this kind of space is that it is populated by both states and citizens. In other words, there is a ‘division’ between state and society;¹²¹ sovereignty is constrained externally.¹²² Because collective responsibility no longer captures the nature of the agent, I instead drew on shared responsibility. Two consequences follow from this shift. First, the *polis* is no longer situated in the nation-state, but beyond it. Second, shared responsibility can help to identify the boundaries of this new *polis*, which decides on the remedy; in order to allocate responsibility, I used the social connection model.

In conclusion, not every transnational market normatively justifies a shift of *polis* from the national to the transnational level. Instead, it is the nature of the transnational space – that is, intergovernmental or supranational – and the agent involved – that is, nation-state or member state – which determines whether it is ‘desirable’,¹²³ indicating a normative pull towards shifting the *polis* from the national to the transnational level.

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¹²⁰Bickerton (n 41) 69 and 52.

¹²¹Ibid 59.

¹²²Ibid 52.

¹²³Hayek (n 4) 266.