

## **(When) Are Authors Culpable for Causing Harm?**

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**Abstract:** To what extent are authors morally culpable for harms caused by their published work? Can authors be culpable even if their ideas are misused, perhaps because they failed to take precautions to prevent harmful misinterpretations? Might authors be culpable even if they do take precautions—if, for example, they publish ideas that others can be reasonably expected to put to harmful uses, precautions notwithstanding? Although complete answers to these questions depend upon controversial views about the right to free speech, this paper argues that five notions from philosophy of law and legal practice—liability, burden of proof, legal causation, mens rea, and reasoning by precedent—can be adapted to provide an attractive moral framework for determining whether an author’s work causes harm, whether and how culpable the author is for causing such harm, steps authors may take to immunize themselves from culpability, and how to responsibly develop new rules for publishing ethics.

*Key words:* ethics, harm, legal causation, Marx, *mens rea*, moral responsibility, risk.

In 1848, Karl Marx published *The Communist Manifesto*, a work that openly advocates for the “violent overthrow of the bourgeoisie”<sup>1</sup> and “conquest of political power by the proletariat”<sup>2</sup>, claiming that the bourgeoisie will produce “its own gravediggers.”<sup>3</sup>

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<sup>1</sup> Marx (1848a), 20.

<sup>2</sup> *Ibid.*, 22.

<sup>3</sup> *Ibid.*, 21.

Elsewhere, Marx advocated for a “dictatorship of the proletariat”<sup>4</sup>, adding, “there is only one way in which the murderous death agonies of the old society and the bloody birth throes of the new society can be shortened, simplified and concentrated, and that way is revolutionary terror.”<sup>5</sup> Vladimir Lenin later came to treat Marx’s ideas as “absolute truth”<sup>6</sup>, installing a one-party totalitarian state in the USSR as “an organization of violence”<sup>7</sup> to “suppress” and “crush” the bourgeoisie.<sup>8</sup> Marx’s work similarly inspired Mao Zedong, who wrote that, “The seizure of power by armed force ... is the central task and the highest form of revolution”; that, “This Marxist-Leninist principle of revolution holds universally”<sup>9</sup>; and adapted Marxism to agrarian China in justifying the Land Reform Movement, Great Proletarian Cultural Revolution, and Great Leap Forward—each of which involved mass murder.<sup>10</sup> All told, Marxist regimes have caused anywhere from 20–62 million deaths in the USSR<sup>11</sup>, 40–77 million deaths in China<sup>12</sup>, 1.3 million deaths in the Killing Fields of Cambodia<sup>13</sup>, and mass killings in Vietnam, East Germany, Bulgaria, and Yugoslavia.

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<sup>4</sup> Marx (1850), Part 3.

<sup>5</sup> Marx (1848b).

<sup>6</sup> Volkogonov (1994), 362. Lenin (1913) claimed, ‘Marxist doctrine is omnipotent because it is true.’

<sup>7</sup> Lenin (1917), 17.

<sup>8</sup> Ibid., 3, 26, 30.

<sup>9</sup> Zedong (1938).

<sup>10</sup> Rummel (2017a), chapters 10–12.

<sup>11</sup> Courtois et al. (1997); Rummel (2017b), Chapter 1.

<sup>12</sup> Fenby (2008), 351; Rummel (2017a).

<sup>13</sup> Seybolt et al. (2013): 238.

Consequently, although Marxism continues to inspire many academics<sup>14</sup> and activists<sup>15</sup>, some critics argue that Marx's ideas have been repeatedly and predictably responsible for inspiring tyranny and mass murder.<sup>16</sup> As Rummel writes:

Probably 61,911,000 people, 54,769,000 of them citizens, have been murdered by the Communist Party—the government—of the Soviet Union. This is about 178 people for each letter, comma, period, digit, and other characters in this book...<sup>17</sup>

Marxism is thoroughly uncompromising. It knows the truth, absolutely; it absolutely knows the Good (communism) and the Evil (capitalism, feudalism); it absolutely knows the way (a socialist dictatorship of the proletariat) ... Since Marxists know the Truth, ideological opponents could only be gravely mistaken and therefore enemies of the people. Knowing the Way to Happiness, those who intentionally or unintentionally blocked the Way must be eliminated ... And all was permitted as a matter of course—governmental lies, deceit, robbery, beating, torture, and the murder of 61,911,000 people—all instrumental to the communist future.<sup>18</sup>

Vladimir Bukovsky, a former political prisoner in the former Soviet Union, adds:

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<sup>14</sup> Academic journals devoted to Marxist studies include *Historical Materialism*, *Rethinking Marxism*, *Science & Society: A Journal of Marxist Thought and Analysis*, *Journal of Marxism and Interdisciplinary Inquiry*, and *Mediations: Journal of the Marxist Literary Group*, to name a few.

<sup>15</sup> See e.g. Gómez (2018).

<sup>16</sup> Rummel (2017a,b); Bukovsky [1978]; Goldhagen (2009), 206; Pipes (2003), 147

<sup>17</sup> Rummel (2017b): 1.

<sup>18</sup> *Ibid.*, 14.

The dream of absolute, universal equality is amazing, terrifying, and inhuman. And the moment it captures people's minds, the result is mountains of corpses and rivers of blood ... It is all so easy, so simple, and so tempting—to confiscate and divide! To make everybody equal, and with one fell swoop to resolve all problems. It is so alluring—to escape from poverty and crime, grief and suffering, once and for all ... It is difficult for man to resist this dream and this noble impulse, particularly for men who are impetuous and sincere. They are the first to start chopping heads off and, eventually, to have their own chopped off ... Such a system is too convenient for scoundrels and demagogues, and they are the ones in the final analysis, who will decide what is good and what evil.<sup>19</sup>

Nevertheless, Marx's apologists typically aim to absolve him of culpability for the above atrocities. As Eagleton asserts, "Marx was no more responsible for the monstrous oppression of the communist world than Jesus was responsible for the Inquisition."<sup>20</sup>

Standard defenses of Marx hold that totalitarian communist leaders perverted his doctrines<sup>21</sup>, and that Marx opposed the cults-of-personality and quasi-religious fervor that defined such regimes.<sup>22</sup>

These disagreements raise important and under-theorized questions. Suppose we grant that communist leaders guilty of tyranny and mass murder misinterpreted Marx's ideas. Might Marx still be culpable for *inadvertently* inspiring the crimes their regimes

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<sup>19</sup> Bukovsky [1978], 617–8.

<sup>20</sup> Eagleton (2014), 1.

<sup>21</sup> Ibid.

<sup>22</sup> Carver (2014), xiii.

committed? Should we perhaps blame Marx for not being more cautious—perhaps for failing to take clearer steps to caution against harmful misinterpretations or misapplications of his ideas? More broadly, when should we take an author to be culpable for their published ideas causing harm, and what steps should authors take to insulate themselves from culpability? Complete answers to these questions depend upon controversial views about the right to free speech. For example, some strong deontological defenses of free speech suggest that authors can do no wrong by publicly proclaiming their convictions, and that it is only people who act on a given idea who bear any responsibility for harms their actions cause.<sup>23</sup> In contrast, others contend that speakers have duties to avoid forms of expression that predictably lead others to behave in harmful ways.<sup>24</sup> Finally, in the literature on intervening agency, it is widely thought that an individual can be at least partially responsible for causally contributing to harms committed by other people, but if the harms in question depend upon an intervening party's actions, then this may mitigate the extent to which the initial party is responsible for the harms in question.<sup>25</sup>

This paper cannot resolve these thorny debates. Instead, I argue that to whatever extent people *can* be held morally responsible for influencing the actions of others, five influential notions from the philosophy of law and legal practice liability—burden of proof, legal causation, mens rea, and reasoning by precedent—can be adapted to provide an attractive moral framework for determining whether an author's work causes harm,

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<sup>23</sup> Scanlon (1972), 212; Nagel (1995). §V; Brison (1998), 320—though, as we will see, these accounts tend to concern legal rather than moral liability.

<sup>24</sup> See Jubb & Kurtulmus (2012); Basu (forthcoming).

<sup>25</sup> Zimmerman (1985); Hosein (2019); Frowe (2022).

whether and how culpable the author is for causing harm, steps authors may take to immunize themselves from culpability, and how to responsibly develop new rules for research<sup>26</sup> and publishing ethics<sup>27</sup> that go beyond traditional rules concerning plagiarism, data collection and analysis, conflicts of interest, and research on human subjects.<sup>28</sup>

### **1. Legal vs. Moral Liability**

Virtually everyone in everyday life and in the free speech literature distinguishes between legal and moral liability (i.e., responsibility) for speech and its consequences.

In US criminal law, people can be held responsible for speech constituting fraud or perjury, inciting imminent lawless action (*Brandenburg v. Ohio*, 1969), obscenity (*Miller v. California* 1973), fighting words (*Chaplinsky v. New Hampshire*, 1942), true threats (*Watts v. United States* 1969), and child pornography (*New York v. Ferber*, 1982), as well as for certain types of speech relating to national security (*Espionage Act of 1917*) or by state officials (*Garcetti v. Ceballos*, 2006); and in tort law, people can be held civilly liable for defamation. However, beyond this, US citizens enjoy wide First Amendment protections of “harmful” speech, and civil standards for proving defamation are high. For example, in *Time, Inc. v. Hill* (1967), the US Supreme Court ruled that false statements that damage a person’s reputation are protected by the First Amendment unless they are made knowingly, recklessly, and maliciously; and in *Hustler Magazine v. Falwell* (1988), the Court held that the First Amendment protects speech that intentionally inflicts emotional distress.

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<sup>26</sup> Basu (forthcoming).

<sup>27</sup> Thiem et al. (2019).

<sup>28</sup> COPE (1999).

However, moral liability for speech is intuitively far broader than this. For example, although people should not ordinarily be held legally liable for telling lies, spreading rumors, or for speaking cruelly to friends, people are obviously *morally* blameworthy for these things. The difference here between legal and moral liability for speech is not merely recognized in everyday life. It is also reflected in influential deontological and consequentialist theories of free speech. For example, Kant distinguishes “the doctrine of right”, which concerns *freedom from state coercion*<sup>29</sup>, from “the doctrine of virtue”, which concerns *moral duties*.<sup>30</sup> For the former, Kant defends a strong deontological conception of free speech, holding that “merely communicating ... thoughts ... telling or promising ... something” can never amount to (legal) wrongdoing because “it is entirely up to them [the listeners] whether they want to believe him or not.”<sup>31</sup> However, Kant’s doctrine of right focuses on *free speech legislation* and “citizens’ claims on their public institutions...”.<sup>32</sup> In contrast, in the doctrine of virtue, Kant defends a very different view: that “even though lying is not a wrongdoing from the point of right ... if one lies, one is indeed responsible for the *bad consequences* of the lie.”<sup>33</sup>

John Stuart Mill, the great utilitarian free speech theorist, also defends different standards for legal and moral liability. When discussing legal restrictions, Mill defends the *harm principle*, holding that “the only purpose for which power can be rightfully exercised

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<sup>29</sup> Rauscher (2022).

<sup>30</sup> Smit & Timmons (2013).

<sup>31</sup> Kant (1797a), 6:238.

<sup>32</sup> Varden (2010a), 42.

<sup>33</sup> *Ibid.*, italics added. See also Varden (2010b) and Kant (1797b).

over any member of a civilized community, against his will, is to prevent harm to others”<sup>34</sup>, where this is understood in turn in terms of actions that “directly and in the first instance invade the rights of a person.”<sup>35</sup> Yet, when Mill turns to social disapprobation, he instead appears to defend “a fairly encompassing *offense principle*”<sup>36</sup>, writing:

Again, there are many acts which ... *ought not to be legally interdicted*, but which, if done publicly, are a *violation of good manners*, and coming thus within the category of *offenses* against others, may rightly be prohibited...<sup>37</sup>

Although Mill cautions against overuse of disapprobation<sup>38</sup>, the relevant point is that Mill does distinguish between legal and moral liability for speech.<sup>39</sup> Finally, legal and moral liability are widely distinguished in the free speech literature. For example, Scanlon defends a strong deontological theory of *legal* liability for speech when writing that “our normal views about legal responsibility” entail that,

If I were to say to you, an adult in full possession of your faculties, "What you ought to do is rob a bank," and you were subsequently to act on this advice, I could not be held *legally responsible* for your act, nor could my act legitimately be made a separate crime...<sup>40</sup>

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<sup>34</sup> Mill [1859], 9.

<sup>35</sup> van Mill (2021), §1.

<sup>36</sup> Ibid., §5, italics added.

<sup>37</sup> Mill [1859], 97.

<sup>38</sup> Ibid., 58, 63–4.

<sup>39</sup> van Mill (2021), §5.

<sup>40</sup> Scanlon (1972), 212.



Similarly, in arguing that people should have a legal right to privately view pornography as a matter of principle, Dworkin focuses on governmental restrictions.<sup>41</sup> Yet, much like Kant, Scanlon, Dworkin, and others who defend “strong deontological” theories of free expression tend to focus on legal restrictions<sup>42</sup>, and when we look at the broader literature, moral liability for speech is widely thought to be far more expansive. For example, although it is debated whether hate speech should be legally protected<sup>43</sup>, virtually everyone agrees hate speech is wrong, and that a person who engages in it is culpable for causing harm.<sup>44</sup> The question is not so much whether moral and legal liability for speech are distinct—virtually all agree that they are—but rather how to delimit their differences.

I propose that conditions for legal liability can be fruitfully adapted to moral liability for speech. In law, legal liability normally requires two things: (A) *actus reus* (or “guilty act”), which are actions or omissions contrary to law; and (B) *mens rea* (or “guilty mind”), which concerns whether the person is legally blameworthy. These two concepts can be extended to moral liability. First, we may posit “*moral actus reus*” as actions or omissions that, whatever their legal status is or ought to be, are nevertheless morally wrong. Second, we may posit “*moral mens rea*”, or grounds for *moral* blameworthiness. For example, if I intentionally make a false promise to you with malice—promising to meet you for a dinner date, but fully intending to stand you up to hurt you—then, although I should not be legally liable for this, I am plainly morally blameworthy for it and the harms it causes you.

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<sup>41</sup> Dworkin (1985), 353–372.

<sup>42</sup> See e.g., Nagel (1995), 98–99.

<sup>43</sup> Brink (2001); Brown (2005); Reid (2020).

<sup>44</sup> See Maitra & McGowan (2012).

Notice, next, that following Kant, everyday judgments about moral liability standardly extend to *reasonably foreseeable harms* of speech, including harms caused by influencing others' behavior. First, although some strong deontologists again contend that a person can do no wrong by merely expressing ideas, this absolutist position firmly contradicts settled law. In *Chaplinsky v. New Hampshire* (1941), the US Supreme Court ruled that a person is legally liable for "fighting words"—that is, for inciting other people to breach the peace—by the immediate effects that such words have upon "a reasonable person", where this is understood in terms of what is "reasonably foreseeable." Second, as Jubb and Kurtulmus point out, "It is perhaps one of the *least* controversial conclusions available in moral or political philosophy that sometimes one ought not to tell the truth or at least not the whole truth" precisely because of how *other* people might use the truth to commit wrongful harms ("Kant ... has long been pilloried for thinking that it cannot be permissible to lie to someone who you know intends to commit murder about the location of their potential victim"<sup>45</sup>). Third, in everyday life, we standardly extend mens rea blameworthiness to a broad variety of such harms. If, for example, I lie to you recklessly or maliciously, telling you that Jones is romantically interested in you and wants you to ask him out on a date when I know this to be false; if you reasonably trust me as a friend; and you then ask Jones out on the basis of the lie and he turns you down—causing you emotional distress—then I am intuitively blameworthy for this harm as a foreseeable consequence of my wrongdoing. The same is true of spreading rumors. We standardly hold people responsible for harms caused by spreading rumors (such as social ostracism)

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<sup>45</sup> Jubb & Kurtulmus (2012), 539; italics added.

precisely because spreading rumors wrongfully and predictably leads others to act in harmful ways. Fourth, legal liability for fighting words and moral liability for the harms caused by lies or rumors are different than Scanlon's bank-robbing case in a critical respect: whereas fighting words are defined in law as words which "by their very nature ... tend to incite an immediate breach of the peace" (*Chaplinsky v. New Hampshire* 1942), and whereas lies or rumors can be reasonably expected to cause harm by how they influence other people to act, we do *not* reasonably expect people to rob banks when we tell them, "What you ought to do is rob a bank"; we expect them, as law-abiding citizens, to *ignore* such advice. Fifth, to this extent, insofar as deontology is thought to support a retributivist conception of blame and punishment<sup>46</sup>, there are plausible deontological arguments for holding people legally liable for the foreseeable harms of fighting words and morally liable for the foreseeable harms of lies and rumors. In the case of fighting words, one's wrongful maxim of action is to utter words which, by their very nature, incite people to breach the peace (contrary to legal obligation). Similarly, in the case of lies or rumors, one's wrongful maxim of action is to utter words which, by their very nature, can be reasonably expected to cause harm *by* influencing the actions of others (contrary to moral obligation). Sixth, there are compelling deontological grounds for holding people *legally* liable for harms foreseeably cause by fighting words but only *morally* liable for harms foreseeably caused by everyday lies or rumors. For whereas we could intuitively will holding people legally liable for fighting words as a universal law (as such a law is necessary for keeping the peace), we could *not* will holding people legally responsible for every lie or rumor they tell

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<sup>46</sup> Dolinko (1997).

as a universal law—as this would overwhelm the legal system and leave citizens under constant threat of litigation (neither of which we could presumably will). Holding people responsible for their maxims, as such—as retributivist deontological theories do—thus supports holding people legally liable for harms caused by fighting words, and morally liable for harms foreseeably caused by wrongful speech (such as lies or spreading rumors).

To be clear, not everyone in the free speech literature accepts these claims—but these notions are sufficiently intuitive, and enjoy sufficiently wide acceptance, I submit, to theorize productively on their basis about the moral culpability of authors for causing harm.<sup>47</sup>

## **2. Legal vs. Moral Precedence**

This article cannot settle precisely which kinds of speech people are morally liable for—as these are matters of ongoing, indeed perennial, debate. Still, I believe it is possible to provide an attractive framework for investigating these matters in a manner that can help us to see why some authors (such as Marx in particular) are presumptively culpable for causing harm, and in ways that undercut standard arguments absolving them of culpability. We can begin to do this, I propose, by adapting a second notion from law: reasoning by precedent.

As Brennan and Freiman note, people arguably have a variety of “expressive, contemplative, and doxastic duties” grounded in the following moral considerations:

1. *Offensiveness*. Certain forms of expression are offensive, causing others to feel upset, enraged, or hurt...

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<sup>47</sup> See e.g., Jubb & Kurtulmus (2012), Maitra (2012), Tirrell (2012), Basu (forthcoming),

2. *Desert/Entitlement.* ... people might deserve that others hold or not hold certain beliefs about them ...
3. *Respect.* In some cases, to express or hold an attitude is disrespectful ...
4. *Harm.* Perhaps expressing certain attitudes might harm others. For instance, perhaps calling someone nasty names or saying nasty things can induce psychological and psychosomatic harm...
5. *Oppression.* One might hold that individual expressions of beliefs can constitute or contribute to oppression...
6. *Hypocrisy.* Sometimes holding or expressing an attitude is hypocritical...
7. *Violates Office or Role.* We might think certain individuals, in virtue of offices or roles they have hold, have obligations not to express, or perhaps even to hold, certain attitudes...
8. *Dangerous Misuse.* Perhaps expressing certain beliefs or attitudes, even if those claims are correct, might be dangerous, because they might be misused by the powerful...<sup>48</sup>

Brennan and Freiman do not take any clear position on which of these we have moral duties to avoid. Notice, however, that some the above categories—as well as instances within them—are more controversial than others. For example, whereas it is highly uncontroversial today that we have contemplative and doxastic duties not to hold racist beliefs and expressive duties not to engage in racist speech, it is a matter of debate whether we have moral duties to avoid giving *mere* offense to others.<sup>49</sup>

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<sup>48</sup> Brennan & Freiman (2020), 192–3.

<sup>49</sup> Richardson-Self (2018).

How, then, should we determine which harms authors are morally liable for? In legal contexts, courts make use of *established precedents*, taking “settled cases” as presumptive guides for future cases. Although legal precedents can be overruled—and scholars debate whether judicial rulings should lay down strict rules, general principles, or merely inform “all things considered” reasoning for future cases<sup>50</sup>—the relevant point is that, in law, precedents are established to provide guidance and clarity where it was previously absent. In the sections to follow, I argue that we can adapt several further notions from law—burden of proof, causal responsibility, and mens rea—to justify some presumptive precedents for holding authors morally liable for causing harm. Although I merely present the examples provided as presumptive precedents—ones that, like legal precedents, may be debated or overturned—my aim is to show that this paper’s framework is illuminating, carries moral force, and can help isolate what is so dubious about common attempts to absolve particular authors (such as Marx) of culpability for causing harm.

### **3. Evidentiary Bases and Burden of Proof: Legal vs. Moral**

In Sections 4–7, I will provide frameworks for judging whether an author’s published work causes harm, whether they are morally culpable, and what authors can do to insulate themselves from culpability. First, however, we should consider which evidentiary standards should *govern our judgments* about these issues.

The law has strict evidentiary standards: juries are not permitted, for example, to consider illegally obtained evidence or generally consider hearsay. Similarly, criminal law requires a high burden of proof “beyond a reasonable doubt.” These conventions are

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<sup>50</sup> Alexander & Sherwin (2004).

thought to be justified by the moral stakes involved. Criminal convictions can result in jail or prison time, or even capital punishment. Because depriving someone of their life or liberty is so morally weighty, it seems morally appropriate to utilize strict evidentiary standards. In contrast, because civil proceedings have lower stakes—instead involving monetary compensation and reputational effects—a preponderance of evidence standard is ordinarily used instead. As Schauer and Zeckhauser explain, “It is well understood that a legal system’s choice among these standards is an exercise in trading off the harms that flow from different types of error.”<sup>51</sup> And indeed, other areas of law utilize much lower burdens of proof. For example, because the harms of potentially leaving a child in an abusive situation are so great, Child Protective Services proceedings only require *some credible evidence* of abuse to temporarily remove a child from a guardian’s custody for investigation.

Given that our concern is about moral liability of authors for causing harm, our question is which evidential standards we utilize in arriving at *extra*-legal judgments on these matters. As Schauer and Zeckhauser argue, there is a plausible case to be made for utilizing weaker standards outside of legal contexts than within them. For example, if there is merely a *reasonable possibility* (say, a .06 probability) that “an applicant for a teaching job is a sexual harasser of students”, then this may intuitively be sufficient to think the person may be a harasser and not hire them.<sup>52</sup> Similarly, although hearsay is standardly inadmissible in legal contexts, it is arguably appropriate to utilize hearsay in non-judicial contexts where the moral stakes are lower. For example, suppose I stand you up for a lunch

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<sup>51</sup> Schauer & Zeckhauser (1996), 34.

<sup>52</sup> Ibid., 35.

date and two friends of yours who you trust say that they have heard from multiple people they trust that I tend to stand people up as a matter of habit. Although this is hearsay, most of us would ordinarily take it to be fair evidence for thinking that I have a habit of wrongly standing people up.

Bearing this in mind, let us ask: what evidential standards should we utilize to determine whether authors are morally culpable for causing harm? I propose two answers that admittedly stand in some tension with each another. On the one hand, I propose that we should presumptively judge authors using *ordinary everyday standards of evidence*—that is, the kinds of admittedly amorphous standards that we use in deciding who to extend moral praise or blame to in everyday life, but which include things like sociological and historical evidence—and utilize a *preponderance of evidence* standard. The reason for this is simple: these seem to be the default standards that we standardly take ourselves to be epistemically and morally justified in using to morally judge people’s actions in daily life. On the other hand—and we will return to this in Section 8—I also propose that, much like in law, we should bear appropriate contextual sensitivity to the moral stakes involved in risking various errors, such as incorrectly blaming authors (false positives) or incorrectly failing to blame them (false negatives). After all, authors being able to publish freely intuitively has important benefits. So, when evaluating whether authors (such as Marx) are culpable for causing harm, we should also bear in mind whether *practices* of blaming them for causing harm would itself do more harm than good.<sup>53</sup>

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<sup>53</sup> See Saikkonen and Väliverronen (2021) for a discussion of the risks of “chilling effects” that social sanctions can have on free expression and academic freedom.



Although the above standards are admittedly in tension, I believe these tensions are morally important to preserve and highlight. When deciding whether someone is morally culpable for causing harm, we normally use ordinary-everyday standards of evidence and a preponderance of evidence. Yet, when it comes to matters of free speech and academic freedom—that is, to practices of *holding* people responsible for their behavior—we should also be sensitive to contextual dangers of being too permissive (viz. letting fascist authors off the hook for inspiring harm) and too zealous (viz. shutting down healthy debate). While I will not aim to settle the right balance between these tensions, I contend that the further notions that I adapt below from law—concerning causal and mens rea responsibility for harm—can help us to evaluate authorial culpability for causing harm given the moral stakes involved, and in a way that usefully clarifies salient debates. For example, insofar as I will use our framework to argue that Marx *was* culpable for negligently causing harm, the framework should shift debate from whether Marx was culpable to very different issues: what he should have done to avoid culpability, whether his work caused more good than harm, and whether it would be good, all-things considered, to impose social sanctions on authors like Marx (such as criticism, shaming, ostracism, etc.) for the harms they *have* culpably caused. In each case, I submit, this paper’s framework is useful and illuminating.

#### **4. Causation-in-Fact: Determining When Authors Culpably Cause Harm**

We are now ready to examine authorial culpability for causing harm. Notice that, in framing the issue as such, two questions present themselves:

1. **The causation-in-fact question:** has an author’s published work *in fact caused* harm?
2. **The moral culpability question:** is the author *morally blameworthy* for that harm?

These questions correspond to how legal liability is standardly understood. In law, a two-tiered analysis is utilized to determine liability for harm.<sup>54</sup> The first tier, ‘cause-in-fact’, is a purely descriptive analysis of whether an action causes harm. Here, the dominant legal definition of cause-in-fact is the *sine qua non* or ‘but-for’ test, where the question is, “but for the defendant’s action, would the victim have been harmed as they were?”<sup>55</sup> Importantly, the crucial clause here—“harmed *as they were*”—is often interpreted to include contributory causes. For example, if I bring a loaded gun to a robbery and you fire it at the store clerk, killing them, then although my actions were not *the cause* of the clerk’s death (your gunshot was), I may still be held liable felony murder because the death would not have happened as it did had I not brought the gun to the scene.<sup>56</sup> Further, accomplice liability in law drops the *sine qua non* standard, holding that accomplices may be held legally liable for a harm simply for knowingly aiding or abetting a crime (*Title 18, United States Code, §2*), irrespective of whether the harm would have otherwise occurred as it did “but for” their complicity. The second tier of legal liability for harm—“proximate” causation—then concerns not merely whether a defendant caused a harm, but whether they are *legally liable* for it. We will return to this in Section 5. For now, let us examine how to evaluate whether an author *in fact* causes harm.

To determine whether an author’s work causes harm, we may utilize philosophical theories of causation. First, there are counterfactual theories, including David Lewis’s influential counterfactual theory of causal influence, which holds the following:

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<sup>54</sup> Moore (2019), §2.

<sup>55</sup> *Ibid.*, §2.2.

<sup>56</sup> Justia (2022).

Where *c* and *e* are distinct events, *c* influences *e* if and only if there is a substantial range *c*<sub>1</sub>, *c*<sub>2</sub>, ... of different not-too-distant alterations of *c* (including the actual alteration of *c*) and there is a range *e*<sub>1</sub>, *e*<sub>2</sub>, ... of alterations of *e*, at least some of which differ, such that if *c*<sub>1</sub> had occurred, *e*<sub>1</sub> would have occurred, and if *c*<sub>2</sub> had occurred, *e*<sub>2</sub> would have occurred, and so on.<sup>57</sup>

On this theory, bringing a loaded gun to a crime can causally influence a murder because there are not too distant alterations of the action—such not bringing the gun, bringing an unloaded one—that would have resulted in different outcomes. Second, there are process theories of causation, which understand causation in terms of “world-lines” of physical processes linking one event to another.<sup>58</sup> According to this conception of causation, bringing a gun to a robbery can causally contribute to the harm in question (the clerk’s death) because there is an extended physical process *leading from* the purchase of the gun, to bringing it to the crime scene, to the clerk being shot dead. Finally, there are probabilistic theories, which hold that something can cause of an effect merely by raising the effect’s probability.<sup>59</sup> For example, it is widely accepted that smoking causes lung cancer by increasing its probability—and the biological and social sciences standardly infer causal relationships from statistical regression analyses.<sup>60</sup>

Next, we may adapt the *sine qua non* test to any such theory of causation for determining whether an author’s published work causes harm:

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<sup>57</sup> Lewis (2000), 190.

<sup>58</sup> Schaffer (2019), §2.1.1.

<sup>59</sup> Hitchcock (2018).

<sup>60</sup> Janzing et al. (2013)

**Lewisian causal influence:** is there a substantial range of not-too-distant alterations in what the author published such that, if they had done things differently, particular harms would not have occurred *as they did*?

**Process-linkage:** were the author's words implicated in a physical-causal process culminating in harms occurring *as they did*?

**Probability-raising:** did the author's published words raise the probability of harms occurring *as they did*?

On each formulation, Marx's work caused harm. According to a wealth of historical scholarship, Marx's work profoundly influenced Lenin, Trotsky, Stalin, Mao, and Pol Pot, from their readiness to use violence to their political programmes of centralizing power in the State. For example, Lenin directly echoes Marx's claims that "there is only one way" to overthrow capitalism—by "violent overthrow of the bourgeoisie" and "conquest of political power by the proletariat"—when Lenin writes, "The supersession of the bourgeois state by the proletarian state is *impossible* without a *violent revolution*."<sup>61</sup> Similarly, whereas Marx held that, "The proletariat will use its political supremacy to . . . *centralise all instruments* of production in the hands of the State . . . and to *increase the total productive forces as rapidly as possible*"<sup>62</sup>—and whereas Marx explicitly recognizes that "defects are inevitable in the first phase of communist society", including "the *enslaving* subordination of the individual

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<sup>61</sup> Lenin (1917), Chapter 1, §4; italics added.

<sup>62</sup> Marx (1848a), Chapter 2; italics added.

to the division of labor”<sup>63</sup>—Lenin and Stalin directly sought to follow through on these claims. First, Lenin cited Marx’s idea that the first step toward communism requires “enslaving subordination”<sup>64</sup> to justify the conclusions that “the dictatorship of the proletariat imposes a series of restrictions on the freedom of the oppressors, the exploiters, the capitalists”, and that opponents “must be crushed by force.”<sup>65</sup> Lenin then realized these conclusions in his infamous Hanging Order, which resulted between 50,000–200,000 executions<sup>66</sup> during the Red Terror:

Comrades! The kulak uprising in your five districts must be crushed without pity ...

You must make example of these people.

(1) Hang (I mean hang publicly, so that people see it) at least 100 kulaks, rich bastards, and known bloodsuckers.

(2) Publish their names.

(3) Seize all their grain.

(4) Single out the hostages per my instructions in yesterday's telegram.

Do all this so that for miles around people see it all, understand it, tremble, and tell themselves that we are killing the bloodthirsty kulaks and that we will continue to do so ...<sup>67</sup>

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<sup>63</sup> Marx (1891), Chapter 1.

<sup>64</sup> Lenin (1917), §4.

<sup>65</sup> Ibid., §1

<sup>66</sup> Stone (2013), 335; Lowe (2002), 151.

<sup>67</sup> Lenin (1918).

Similarly, following Marx's claims that a command socialist State should increase productive forces "as rapidly as possible", Stalin pursued land-collectivization to achieve rapid industrialization—a policy estimated to have involved sending some 5 million "kulaks" to forced labor camps<sup>68</sup>, 125,000 executions<sup>69</sup>, and between 7.8–11 million deaths from starvation.<sup>70</sup> In much the same vein, Mao Zedong wrote, "The seizure of power by armed force ... is the central task and the highest form of revolution," holding that, "This *Marxist-Leninist* principle of revolution holds well universally", and claiming that the policies he advanced—ranging from Land Reform to the Cultural Revolution, which killed 40–77 million people—were nothing more than "learning to apply the theory of Marxism-Leninism to the specific circumstances of China."<sup>71</sup> In sum, Marx *explicitly advocated for* revolutionary terror, enslaving insubordination of the individual to the collective, centralization of power in government, etc.—and Lenin, Stalin, Mao, and others explicitly sought to follow through on these ideas, citing them as justifications for political policies that killed millions.

Let us now ask, first, whether Marx's work caused harm using Lewis's theory of causal influence. Notice that even if we grant that Lenin, Stalin, and Mao might have still perpetrated atrocities if Marx had never published what he did, and even if Lenin, Stalin, and Mao can be rightly accused of misunderstanding and misapplying Marx's ideas, it is nevertheless clearly the case counterfactually, given a preponderance of evidence, that if

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<sup>68</sup> Hubbard (1939), 117–8.

<sup>69</sup> Amis (2013), 129

<sup>70</sup> McCauley (2013), 43.

<sup>71</sup> Zedong (1838); italics added.

Marx had not published what he did, then the above atrocities would not have occurred *as they did* in at least the following respects: *but for* Marx's work, the Red Terror, Land Collectivization, Chinese Cultural Revolution, etc., would not have been waged *in Marx's name, using his ideas* as justifications. On a Lewisean theory of causal influence, this is all we need to establish that Marx work caused harm (whether Marx is *culpable* for this is a separate question we will soon address). Other theories of causation support similar conclusions. According to a process theory of causation, Marx's ideas are clearly part of a physical process that culminated in the above terrors—as Marx's ideas are a common thread that informed the policies of all of the above leaders. Finally, there is a strong case that Marx's work increased the probability of the above atrocities to at least some extent. For, if Marx had advocated for clear limits on violence or argued forcefully against extreme centralization of power (which the Mensheviks advocated against Lenin's Bolsheviks), then—given how influential Marx was among socialist revolutionaries—at least some of his supporters would have been less likely to support unrestrained violence and centralization that they did.

There is, then, is a strong case that authors such as Marx can *cause harm* by influencing how others act; that the *sine qua non* test can be readily adapted to determine whether authors cause harm; and finally, on a preponderance of evidence, that Marx's published work in fact did causally influence horrific harms. The question now is whether, and under what conditions, authors such as Marx are culpable for these harms.

## **5. Mens Rea Culpability for Authorial Harm**

Legal systems commonly recognize four types of mens rea responsibility for causing harm:

**Purpose liability:** a person purposefully commits a material offense/harm when it is the *conscious object* of their conduct...

**Knowledge liability:** a person knowingly commits an offense/harm when they are aware it is *practically certain* to occur given their act, even if it is not their purpose...

**Recklessness liability:** a person recklessly commits an offence/harm if they *consciously disregard* a substantial and unjustifiable risk in a manner that involves a *gross deviation* from the conduct of a normal law-abiding person...

**Negligence liability:** a person negligently commits an offense/harm if they *should* have known and avoided the risk as a reasonable person.<sup>72</sup>

In addition to these considerations, there is ongoing legal debate over precisely how “proximate” (or nearby) a given harm must be to hold a defendant legally liable for it. On the one hand, some broad platitudes about proximate causation are broadly accepted, such as:

[A] proximate cause cannot be remote from its putative effect; it must be a direct cause of the effect; it must not involve such abnormality of causal route that is freakish; it cannot be of harms that were unforeseeable to the actor; its connection to the harm cannot be coincidental; it must make the harm more probable; etc.<sup>73</sup>

However, beyond this, there is widespread disagreement. For example, Hart and Honoré famously defend an “unbroken chain of events” analysis of proximate causation.<sup>74</sup>

According to their analysis, an agent should be held legally liable for a harm only if (i) a

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<sup>72</sup> Model Penal Code (1962), §2.02.

<sup>73</sup> Ibid: §2.3.

<sup>74</sup> Hart & Honoré [1985].



voluntary action by the agent, (ii) generated an abnormal situation, (iii) initiating a chain of events, that (iv) causally led to the harm in fact, without (v) the chain of events being 'broken' by chance events or the actions of others. This analysis has obvious attractions, as it centers questions of moral culpability on whether a harm is the result of a defendant's voluntary actions, as opposed to involuntary actions or sheer luck, and in holding that the actions of intervening agents can shift legal responsibility for a harm from a defendant to the intervening agent(s). However, Hart and Honoré's analysis runs into well-known problems.<sup>75</sup> First, it is difficult to specify what constitutes a sufficient coincidence or breaking of a chain of events by actions of others. For example, if you and I rob a store and a customer decides to run, knocking over a shelf that kills the cashier, is that a "coincidence" or voluntary action that breaks the chain of events from our committing the robbery to the cashier's death? Maybe yes, maybe no. Furthermore, as we have seen, accomplice and felony murder laws *do* hold people at least partially (and sometimes fully) liable for harms even when intervening agents are involved.<sup>76</sup> Second, Hart and Honoré's analysis is unable to account for legal liability for harms caused by passive negligence, such as a business owner failing to clean up a dangerous situation caused by natural events (such as a slick walkway from a rainstorm).

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<sup>75</sup> Schauer & Sinnott-Armstrong (1996), 791–2.

<sup>76</sup> Also see Tadros (2016) for an argument that intervening agency can *increase* the moral responsibility of an initial agent for preventing or causing harm, particularly when "where life and death are at stake" as a consequence of reasonably foreseeable wrongdoing by others—as I will contend is the case with Marx.

To address these problems, other theories of proximate causation have been defended. The most relevant alternatives for our purposes are *accomplice liability* (knowingly aiding and abetting a crime), *negligence liability* (liability for harms that ought to be foreseen by a reasonable person)<sup>77</sup>, and the “*modernist*” theory, which holds that we should utilize all of the moral resources at our disposal (including considerations of justice) to determine whether a defendant should be considered “proximate” enough to be liable for a harm.<sup>78</sup> For example, in *Liebeck v. McDonald’s Restaurants* (1994), the issue was whether McDonald’s should be held legally liable for the defendant’s third-degree burns due to making their coffee too hot, or whether the plaintiff should be liable due to driving some distance from the pickup window, parking, and holding the coffee between her legs in the car. While the jury found McDonald’s 80% liable and Liebeck 20% liable using a comparative negligence standard, one common criticism was that this was a dangerous precedent that would generate *frivolous litigation*—a costly injustice that a legal system should aim to presumptively avoid.<sup>79</sup> Similarly, even though inadequate police training may not be in close spatiotemporal proximity to a given instance of police brutality, a modernist might hold that the police department should be held liable for the brutality due to negligent training because it is important as a *matter of justice* to hold officers responsible for brutality and incentivize better trainings to more reliably prevent it.

Now, as argued in Section 1, we should not automatically defer to legal standards to evaluate moral liability, as there are many cases where people are morally blameworthy

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<sup>77</sup> Schauer & Sinnott-Armstrong (1996), 791–2789–792.

<sup>78</sup> Foot (1963).

<sup>79</sup> Pearle (2007).

for harms for which they should not be held legally liable. Because our concern is with the *moral* liability, let us adapt the mens rea standards for proximate causation using *all-purpose moral reasoning*, as in the “modernist” approach.

Consider first purpose liability, knowledge liability, and recklessness liability. Adolph Hitler surely caused harm by publishing *Mein Kampf*. Even though part of what explains this is Hitler’s actions as political leader, it is still nevertheless the case—on all three theories of causation discussed above—that his published work itself caused harm: *Mein Kampf* sold well and a preponderance of evidence suggests that it influenced many people to share his beliefs. Second, it was plainly Hitler’s purpose to achieve this. However, since Hitler did not evidently consider his beliefs to be evil, it can be argued that he did not *purposefully* cause wrongful harm in publishing *Mein Kampf*. That being said, he plainly published the book *knowing full well* that its contents contradicted widely accepted moral standards—as the US Declaration of Independence, French Declaration of the Rights of the Man and of the Citizen, and work of the most influential moral philosopher in the German-speaking world, Immanuel Kant, all ascribe inviolable moral rights to all persons. Finally, Hitler is intuitively culpable of recklessly causing harm in that *Mein Kampf* advances the conspiracy theory of a worldwide Jewish conspiracy, invoking the *Protocols of the Elders of Zion* as proof despite being documented a forgery.<sup>80</sup> Insofar as Hitler knew he was advocating views that violated widely accepted moral norms, and insofar as publishing conspiracy theories to demonize religious or ethnic groups deviates grossly from the

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<sup>80</sup> Hitler (1925), 303.

conduct of a normal morality-abiding person, Hitler is intuitively culpable for knowingly and recklessly causing harm through publishing *Mein Kampf*.

Now turn to Marx. Although I think it may be argued Marx recklessly caused harm, I want to focus instead on negligence—as the case for culpability here, I think, is clearer. *Donoghue v. Stevenson* (1932), which established modern negligence law, holds that a person is legally liable for negligently causing a harm iff four conditions are satisfied:

**Duty of care:** the defendant has a legal duty to others ... to exercise *reasonable care*,

**Breach:** the defendant breached this duty by doing or not doing something that a *reasonably prudent person* ... would responsibly do under similar circumstances ...

**Causation:** the injury to the plaintiff is a *reasonably foreseeable* consequence of the defendant's act or omission.

**Damages:** the court can compensate the plaintiff for damages.<sup>81</sup>

Let us now ask Marx satisfies moral analogues of these conditions—that is, whether he was *morally* (rather than legally) culpable for negligently causing harm via his published work. First, there are a number of arguments that authors *do* have duties of reasonable care<sup>82</sup>, the most relevant of which our purposes is that, “given the consequences of misunderstandings that might occur, political philosophers will sometimes be under a moral duty not to disseminate their research.”<sup>83</sup> Second, as Jubb and Kurtulmus argue, authors plausibly have such a duty when they have good reason to expect their work to have impact, have particular effects, and those effects will be bad, such as by leading “uncontroversial cases of

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<sup>81</sup> FindLaw (2019).

<sup>82</sup> See e.g. Basu (forthcoming), Thiem et al. (2019).

<sup>83</sup> Jubb & Kurtulmus (2012), 539.

injustice.”<sup>84</sup> Third, although we may debate exactly what reasonable care involves, if anything seems obviously true, this does: all of us, authors or otherwise, have a pro tanto moral duty of reasonable care to avoid actions or omissions that (i) a *reasonably prudent person* (ii) can *reasonably foresee* to (iii) *contribute to* mass murder or slavery. This duty carries strong intuitive force because, as Tadros puts it, “the duties that a person has depend on how gravely different people, including the duty holder, would be wronged if that person has or lacks that duty.”<sup>85</sup> In cases “where life and death are at stake” as a “consequence of wrongdoing”—as in the Holocaust, Red Terror, Stalin’s purges and land collectivization, and Mao’s Great Leap Forward—“our duties to prevent harm, and not to cause harm” are intuitively “more stringent” than they otherwise would be, precisely because the harm in question “will occur as a result of the wrongdoing of others.”<sup>86</sup> If, for example, Joseph Goebbels knew or ought to have known, as a *reasonably prudent person*, that his actions could be *reasonably expected* to contribute to the Holocaust, then—provided there are better options available—surely Goebbels had a duty of reasonable care to avoid that action. If any moral duty of reasonable care exists, this one surely does. Let us ask, then, whether Marx violated this duty.

First, Marx fully anticipated that command socialism—complete concentration of the means of production in a “dictatorship of the proletariat”<sup>87</sup>—would be a “transitory

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<sup>84</sup> Ibid., 546–7.

<sup>85</sup> Tadros (2016), 118.

<sup>86</sup> Ibid., 121–2; italics added.

<sup>87</sup> Marx (1848a), 26–7; Marx (1891), Part IV.

step” toward true Communism.<sup>88</sup> Second, Marx held that the achievement of this “new society” would require “revolutionary terror”<sup>89</sup> and “the enslaving subordination of the individual to the division of labor.”<sup>90</sup> Third, given Marx’s own theory historical materialism—his theory that human history has been a perpetual struggle to control means of production and use them to dominate others<sup>91</sup>—by Marx’s own lights he had *good reasons to believe* that revolutionary terror and centralization of power in the hands of the State would involve atrocities, including the kind of “enslaving subordination” that he predicted. Fourth, in repeatedly demonizing the bourgeoisie<sup>92</sup>, advocating for their “violent overthrow”<sup>93</sup>, saying the bourgeoisie will produce “its own gravediggers”<sup>94</sup>, and holding that “a higher phase of communist society” will only be achieved “after the enslaving subordination of the individual to the division of labor”<sup>95</sup>—all without defending any clear moral limits on the use of violence—it is *reasonably foreseeable* that Marx’s followers would take him to support the idea that the ends of communist revolution justify brutal means; which, of course, is exactly what Lenin thought in launching the Red Terror (Lenin’s “criterion of morality was simple: does a certain action advance or hinder the cause of the

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<sup>88</sup> Marx (1848a), 24–5.

<sup>89</sup> Marx (1848b).

<sup>90</sup> Marx (1891).

<sup>91</sup> *Ibid.*, Section I.

<sup>92</sup> Marx (1848b).

<sup>93</sup> Marx (1848a), 20

<sup>94</sup> *Ibid.*, 21.

<sup>95</sup> Marx (1848b).

Revolution?”<sup>96</sup>); how Stalin justified land collectivization (killing 7-14 million people<sup>97</sup>) and “dekulakization” (involving mass executions); how Mao justified the Great Leap Forward (which is estimated to have killed 45 million)<sup>98</sup>; and how Pol Pot justified Khmer Rouge policies in the Killing Fields of Cambodia (estimated to have killed 2 to 3 million<sup>99</sup>). Fifth, such an “ends justify the means” approach to morality was not only long recognized to be morally dubious far before Marx’s time, at least as far back as Aquinas and Grotius.<sup>100</sup> It also appears to be inconsistent with Marx’s *own* normative commitments concerning the injustice of exploitation, as mass murder and enslavement to the state are themselves intuitively exploitative, violently using people as mere means.<sup>101</sup> Sixth, Marx can also be plausibly charged with negligence for failing to recognize or caution readers that a world-wide proletarian revolution of the sort that he thought would lead to true Communism would almost certainly be preceded by the kinds of regional proletarian revolutions that he did *not* think would generate Communism. As Eagleton puts it, Marx only provided a theory of “how well-heeled capitalist nations might use their immense resources to achieve justice and prosperity for their people.”<sup>102</sup> Marx did not intend his theory to be concerned with how “nations bereft of material resources, a flourishing civic culture, a democratic heritage, a well-evolved technology, enlightened liberal traditions, and a skilled, educated workforce

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<sup>96</sup> Service (2000), 293.

<sup>97</sup> Fitzpatrick (1994), Himka (2013).

<sup>98</sup> Dikötter (2010).

<sup>99</sup> Shawcross (1985): 115–116.

<sup>100</sup> Aquinas [1485], IIa-IIae Q. 64, art. 7; Grotius [1625].

<sup>101</sup> Arvan (2019), 214.

<sup>102</sup> Eagleton (2014), 1.

might catapult themselves into the modern age.”<sup>103</sup> Yet, Marx had to have known which kind of world he lived and published in: a world *not* of well-heeled capitalist nations, but instead nations (such as Russia and China) bereft of such conditions.

Despite all of the above—that is, despite the fact that a *reasonably prudent person* ought to know that demonizing an entire class of people and advocating for “revolutionary terror” and “enslavement of the individual” to a centralized, all-powerful State could be *reasonably foreseen* to utilized by “scoundrels and demagogues” to justify atrocities—Marx published these ideas anyway. Second, Marx did so without any clear disclaimers that might plausibly constitute due care to prevent his ideas being invoked to justify such atrocities.<sup>104</sup> Finally, as we will see in Section 6, Marx *should* have taken such precautions as a reasonably prudent person. Consequently, in publishing his work at the time he did, in the way he did, using the kinds of words and ideas he did, there is a strong case that Marx is culpable for negligently influencing incredible historical harms.

To be clear, my aim here is not to demonstrate definitively that Marx is culpably negligent. Although I believe the above case to be strong, these are substantive moral claims that may be debated further. The point is that we now have a clear framework for evaluating these issues that has not guided these debates previously, and which can help us see more clearly why common defenses of authors like Marx are so dubious. We may in turn extend this framework to other cases, such as whether “race scientists” are culpable for contributing to the harms of white supremacy and actions of white supremacists who

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<sup>103</sup> Ibid.

<sup>104</sup> Rummel (1994), 15.



cite race science in justifying acts of mass murder<sup>105</sup>, whether “gender-critical” feminists are culpable for contributing to harms against trans people<sup>106</sup>, whether critics of democracy<sup>107</sup> are culpable for contributing to loss of faith in democratic institutions<sup>108</sup> and rise of proto-fascism<sup>109</sup>, etc.—bearing in mind, however, the moral stakes of overusing and underusing the framework (which we will return to in Section 8).

## **6. Steps Authors Should Take to Insulate Themselves from Culpability**

Our framework also promises to help us to determine what authors can do to insulate themselves from culpability for wrongfully causing harm. For example, how could Marx have insulated himself against the forms of negligence alleged above? First, Marx should have been aware as a reasonably prudent person that incendiary phrases such as “revolutionary terror”, “dictatorship of the proletariat”, “conquest of political power”, and “enslaving the individual to the division of labor” could be reasonably expected to be used by scoundrels and demagogues to justify atrocities. So, to avoid culpability for negligence, Marx should have avoided this kind of *facially dangerous rhetoric*. Second, given that “ends justify the means” reasoning was widely thought to be morally dubious well before Marx’s time, Marx ought to have:

- I. *Given a careful and nuanced theory of the moral limits to justified violence,*
- II. *Broadly consistent with established moral views about the justified use of violence,*

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<sup>105</sup> See e.g., Pronczuk & Ryckewaert (2022).

<sup>106</sup> Basu (forthcoming).

<sup>107</sup> E.g., Brennan (2016).

<sup>108</sup> Mounk & Foa (2020).

<sup>109</sup> Benhabib & Rasmussen (2017).

- III. *Or alternatively*, challenging those established views *rigorously*,
- IV. *In a matter consistent with Marx's own commitments* regarding the wrongfulness of exploitation<sup>110</sup>, and
- V. *Strongly expressed disapproval* of unjustified violence, however defined relative to such a theory.

Third, insofar as Marx's own theory of historical materialism holds that control of means of production has always been used to oppress and exploit people, Marx ought to have either taken steps to argue *against* "command socialism" as a morally acceptable temporary step toward Communism, or else spell out in a careful way how command socialism might be carried out without atrocities, issuing clear disclaimers on how command socialism should *not* be pursued (viz., kidnappings, executions by secret police, etc.). If Marx had taken these steps, his apologists could more plausibly claim what they now cannot: that Marx had taken *due care as a reasonably prudent author* to avoid negligently contributing to the kinds of atrocities that have in fact been repeatedly—and predictably—carried out in his name.

Finally, however, if despite all such forms of argumentative nuance, caveats, and disclaimers—Marx still could have reasonably expected his work to be put toward evil uses (such as mass murder), then (although this is controversial), then he might have a duty not to publish at all.<sup>111</sup> If, for example, in creating and disseminating plans for a Doomsday Device, I have a *reasonable expectation* that the warnings I attach to the plans will be effective in preventing harm, then it would be unreasonable to hold me culpable of recklessly or negligently causing harm. However, what if I have every reason to expect that

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<sup>110</sup> Arvan (2019), 214.

<sup>111</sup> Jubb & Kurtulmus (2012).

my plans for the Device are likely to be misused *regardless* of the warnings I attach to them? In that case, I would still be plausibly culpable of recklessly or negligently contributing to harms the device is put to, if they occur—in much the same way that a corporation would be for putting an excessively dangerous product on the market regardless of warnings or disclaimers. These points may of course be debated further—but the point is, we now have a clear, illuminating, and plausible framework for justifying various duties of due care by authors that can be put to use to insulate authors from culpability, and for guiding further debates regarding precisely what authors must do in particular sociohistorical contexts to insulate themselves from different forms of mens rea culpability for causing harm.

### **7. Reply to Objections, and Toward Responsible New Codes of Publishing Ethics**

I expect a variety of objections. One initial objection is that this paper's framework is trivial, in that it does not tell us anything we did not already know. For, as we saw at this paper's outset, many critics already criticize Marx and other authors for their published work contributing to serious social harm.<sup>112</sup> Given that the practice of blaming authors is already prevalent, what does this article's framework add? A second objection might be that a person cannot be morally liable for any harm that they are *morally justified* in perpetrating or risking<sup>113</sup>, and that Marx is not liable for any of the harms his work influenced *because he was right*.<sup>114</sup> My reply to these two objections run together. First, the second objection illustrates the very utility of this paper's framework, undercutting the triviality objection.

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<sup>112</sup> See Basu (forthcoming).

<sup>113</sup> McMahan (2009).

<sup>114</sup> Eagleton (2011).

Although blaming authors is common, so too is the practice of defending them—and, until now, there has been no clear framework for rigorously evaluating claims of authorial culpability. Further, as we have seen, one common strategy of Marx’s apologists is to hold that he is non-culpable because communist leaders misused his work. Our framework puts the lie to this line of argument. Marx cannot be absolved of culpability merely by others misusing his work, as he failed meet basic standards of due care and the harms in question were *readily foreseeable* to a reasonably prudent person in Marx’s position. So, our framework is not trivial: it can help us distinguish potentially valid forms of argument for absolving authors of culpability (Marx is not liable because he was right) from red herrings (Marx is not liable because others misused his work). Second, if we accept that moral justification defeats liability, our framework thus pushes us to the question of whether Marx was in fact right—in particular, right about the *morality of violence* in pursuit of Communism. This, in itself, is philosophical progress—as our framework enables us to fix in on what the real questions are (e.g. *was Marx right? If not, was he negligent?, etc.*). Finally, though, Marx was *not* right—at the very least, about violence. For, despite calling for violence, Marx never provides a clear or morally plausible analysis of justified versus unjustified violence; crude consequentialist (“ends justify the means”) justifications of violence are widely recognized to be morally problematic; and killing people for utopian ends *itself* seems exploitive, contrary to Marx’s own commitments regarding the wrongfulness of exploitation.<sup>115</sup> Further, even if we admit that Marx’s work has been morally beneficial in some important regards—for example, by inspiring efforts to improve

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<sup>115</sup> Arvan (2019), 214.

global equality—our framework still shows how he is culpably negligent for influencing grave *harms* (as a person can, of course, simultaneously be laudable for doing good but blameworthy for doing harm). So, our framework is useful: it helps us to rigorously determine what is and is not relevant for evaluating authorial culpability for harm.

This, however, brings us to a converse objection: that the framework is too useful because it is dangerous. For, in addition to blaming Marx, our framework might be used to hold a wide variety of authors culpable for causing harm—which if embodied in social sanctions, might unjustifiably squelch debate, academic freedom, or contribute to serious harms against authors (such as “cancellation”, threats, or violence). These are real and important concerns, and things like death threats are intuitively almost always disproportionate to harms of mere words. However, as we have seen, failing to hold authors adequately responsible for contributing to horrific injustices also has serious costs. Given that there are risks of overusing this paper’s framework for pernicious purposes, but also risks in underutilizing it, such that authors are not properly held accountable for causing harm, how should we proceed?

There are, I believe, good grounds for adopting a *precautionary* approach here. The precautionary principle, which is often invoked in biomedical and environmental ethics, holds:

When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.<sup>116</sup>

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<sup>116</sup> SEHN (1998).

As some have noted, there are plausible moral grounds for extending a precautionary approach with respect to any action that carries a serious threat of widespread harm:

In its simplest formulation, the precautionary principle has a dual trigger: If there is a *potential for harm* from an activity and if there is *uncertainty* about the magnitude of impacts or causality, then anticipatory action should be taken to avoid harm.<sup>117</sup>

Given that there are risks of serious harms in underutilizing and overutilizing this paper's framework, the precautionary principle suggests that we have a duty to take special care to avoid grave underuse and grave overuse. How might this be done? Some have recently proposed expansive new conceptions of research and publication ethics that may include duties to engage in "respectful research"<sup>118</sup> and broad concern for "impact on marginalized groups."<sup>119</sup> While I do not oppose these ideas in principle, a precautionary principle suggests that the present paper's framework should be utilized cautiously. For example, we might begin with non-negligence requirements like those defended in Section 6 using Marx as a precedent, holding that authors have duties to take clear steps to avoid facially dangerous rhetoric ("revolutionary terror"), issue clear disclaimers about unjustified violence to prevent "scoundrels and demagogues" from being able to *cite* the work to justify atrocities—as again, given the moral stakes involved (mass murder, etc.), these seem like *reasonable* requirements of due care. Then, when it comes to more controversial forms of liability for harm (such as commonly alleged harms of race science, gender-critical feminism, etc.) where the dangers of stifling open debate and academic freedom may be

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<sup>117</sup> Raffensberger & Tickner (1999), 1; italics added.

<sup>118</sup> Basu (forthcoming).

<sup>119</sup> Thiem et al. (2019).

greater, we should proceed with an eye toward incentivizing authors to behave with due care, while at the same time not expanding the framework too quickly or comprehensively so as to shut down important forms of debate, stifle academic freedom, or endanger authors. This paper cannot purport to show precisely where we should draw these lines, as they are matters of current debate.<sup>120</sup> What this paper has done do is provide a new, illuminating, and plausible framework for examining these matters more rigorously moving forward.

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<sup>120</sup> Again, see Basu (forthcoming); Thiem et al. (2019). Cf. Cole (2009); Cofnas (2020).

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