TO INSPECT AND MAKE SAFE:

ON THE MORALLY RESPONSIBLE LIABILITY OF PROPERTY OWNERS

David Faraci and Peter Jaworski

Abstract

There is currently a stalemate over the correct approach to legal liability. To take a prominent example, it remains a point of contention whether land owners should be held liable for injuries to trespassers. Many of those who insist that land owners *should* be held liable for injuries to trespassers maintain this for purely economic or pragmatic reasons. In contrast, those on the other side frequently defend their view on the grounds that, in such trespass cases, owners are not morally responsible for the injuries. We maintain that the best way forward for all parties in this debate is to recognize the existence of "morally responsible liability"—of cases where owners qua owners are morally responsible for damages caused by their property. Once this is recognized, the debate can be framed in terms of whether there are economic or pragmatic reasons for legal liability to diverge from morally responsible liability. Unfortunately, there is no good account of morally responsible liability in the literature. Taking lessons from the failings of the few extant accounts, we draw on the work of A. M. Honoré and Jeremy Waldron to develop an account of our own. We argue that owners are morally responsible for damages caused by their property when and because their taking ownership of something leads to increased risk to others. We explain how and why such increases in risk come about, and how our account captures our intuitions concerning various cases, including those concerning injuries to trespassers.