

controlled by (humane) will (a "natural act") to a particular *person* (the perpetrator or agent); then we have to qualify this event legally or morally in the sense of normative imputation, that is, to perform a normative evaluation of the act as wrongful or immoral and thus in need of a sanction.<sup>93</sup> Thus, imputation is understood as "the establishment... of a relationship between an event and a human being"<sup>94</sup> as the "link between an event (*Seinstabestand*) and a subject on the basis of the norm."<sup>95</sup> Imputation in a *broader* sense concerns the central question of the general part of criminal law: what person shall be punished under what normative assumptions?<sup>96</sup> To put it more abstractly: how should "the relationship between the subject of the offence and the result" be "construed"<sup>97</sup>? The imposition of a sanction requires, as a minimum, that the person can be held to account for certain consequences of her acts since she realized these on purpose (*zweckhaft*);<sup>98</sup> otherwise, these consequences have to be considered as "bad luck" and as such cannot be attributed to anybody.<sup>99</sup> Obviously, in addition to the attributable act, the imposition of a criminal sanction presupposes that the person acted wrongfully and deserves to be blamed

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<sup>93</sup> For this differentiation based on the natural law doctrine of the eighteenth century, see SAMUEL VON PUFENDORF AND CHRISTIAN WOLFF, F. SCHAFFSTEIN, *DIE ALLGEMEINEN LEHREN VOM VERBRECHEN IN IHRER ENTWICKLUNG DURCH DIE WISSENSCHAFT DES GEMEINEN STRAFRECHTS* 36-37 (Aalen 1986); JOACHIM HRUSCHKA, *STRUKTUREN DER ZURECHNUNG* 2-3, 35 (1976); Bernd Schünemann, *Über die objektive Zurechnung* 207, 208 GA (2003). In a similar vein, see HANS KELSEN, *HAUPTPROBLEME DER STAATSRICHTSLEHRE: ENTWICKELT AUS DER LEHRE VOM RECHTSATZ* 73 *et seq.* (2d ed., Aalen 1984) according to which the imputation possesses a non-causal, non-teleological and non-volitional character since it rests "exclusively and solely on the Ought (*Sollen*), on the norm." *Id.* at 75 (translation from German); see also Manfred Maiwald, *Zur strafrechtssystematischen Funktion des Begriffs der objektiven Zurechnung*, in FS MIYAZAWA 465 *et seq.* (Hans-Heiner Kühne ed., 1995) (tracing back imputation in its original, two-tiered sense to Lorenz, Honig, and Welzel).

<sup>94</sup> WERNER HARDWIG, *DIE ZURECHNUNG, EIN ZENTRALPROBLEM DES STRAFRECHTS* 7 (1957) ("die Feststellung... eines Zusammenhangs zwischen einem Geschehnis und einem Menschen.")

<sup>95</sup> KELSEN, *supra* note 93, at 72, 144. Later Kelsen characterized the relationship between "Seinstabestand" and subject of the norm as "Zuschreibung" ("ascription") and used the term imputation only as analogy to scientific causality. Cf. HEINZ KORIATH, *GRUNDLAGEN STRAFRECHTLICHER ZURECHNUNG* 146-49 (1994).

<sup>96</sup> Cf. JAKOBS, *supra* note 86, at ch. 6 nn. 1.

<sup>97</sup> ROXIN, *supra* note 2, § 10, nn. 55: "Wie muß die Beziehung zwischen Deliktssubjekt und Erfolg beschaffen sein?", see also Wolfgang Frisch, *Zum Gegenwärtigen Stand Der Diskussion Und Zur Problematik Der Objektiven Zurechnungslehre* 719, at 725-26 GA (2003).

<sup>98</sup> Cf. Claus Roxin, *Gedanken zur Problematik der Zurechnung im Strafrecht*, in *FESTSCHRIFT FÜR RICHARD M. HONIG* 132 *et seq.*, 134 (1970) (referring to Honig); see also Maiwald, *supra* note 93, at 465 *et seq.*; Winfried Hassemer, *Person, Welt und Verantwortlichkeit. Prolegomena einer Lehre von der Zurechnung im Strafrecht*, in *AUFGEKLÄRTE KRIMINALPOLITIK, ODER, KAMPF GEGEN DAS BÖSE? BAND I: LEGITIMATIONEN* 354-55 (Klaus Lüderssen ed., 1998); Wolfgang Frisch, in *FESTSCHRIFT FÜR CLAUD ROXIN* 214-15 (2001).

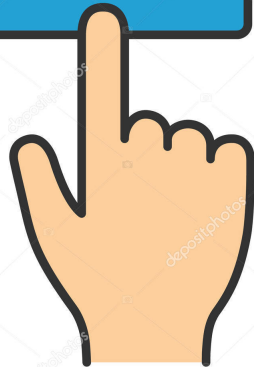
<sup>99</sup> Cf. Günther Jakobs, in *VERANTWORTUNG* 65 (Neumann/Schulz eds., 2000).

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