24.235J – Philosophy of Law – Paper Topics – Third Short Paper

DUE MAY 1st by the BEGINNING of class.

Please write a short (1200–1500 word) paper addressing **one** *of the following topics:*

(1) Consider this proposal:

> "Someone should be held legally responsible for a harm if and only if her action was a necessary condition for the harm's occurring."

Is it true? Might it sometimes be appropriate for someone to be held legally responsible for a harm even if her action was *not* a necessary condition for the harm's occurring – even if, that is, the harm would have occurred regardless of how she acted? If not, why not? If yes, give some examples to defend your view. Might it sometimes be *in*appropriate to hold someone legally responsible for a harm, even if her action *was* a necessary condition of the harm's occurring – even if, that is, the harm would not have occurred if she had not acted as she did? If not, why not? If yes, what distinguishes the cases where the person should be held legally responsible for the harm for which her action was a necessary condition from those where she shouldn't be held legally responsible? Be sure to explain and illustrate your proposal by applying it to examples, and defend it against possible objections and counterexamples.

(As a reminder, her are some of the candidate principles of legal responsibility from the Hart/Honoré reading and class discussion that you may want to consider:

> A person should be held legally responsible for a harm for which her act was a necessary condition if and only if:
> - No other fully voluntary act intervened
> - The act's leading to the harm wasn't the result of a coincidental event
> - The act was morally wrong
> - The act was voluntarily performed

If you consider any of these principles in your argument, be sure to explain what they mean!)

(2) Thomson distinguishes individualized and mere statistical evidence. Explain what, on Thomson's view, this distinction amounts to: what features does individualized evidence have that merely statistical evidence lacks? Consider a minimal pair of cases of individualized v. mere statistical evidence: in one case, we have individualized evidence that determines that an accusation has probability n, while in the other case we have mere statistical evidence that also gives the accusation probability n. Thomson, like many others, thinks that the evidence in the second case is an inappropriate (or at least less appropriate) basis for legal decisions.

Explain what you think is the best argument for the claim that individualized evidence is more valuable than mere statistical evidence. (It could be an argument discussed in the reading or in class or your own original argument.) Is this argument ultimately successful? If you think it is, defend it against an objection. If you think it isn't, explain what you think is wrong with the argument and assess a response on behalf of the friend of individualized evidence.

(3) Explain Cushman's "blame-blocking" hypothesis and why he takes his experiments to support it. Do you think the experiments support Cushman's hypothesis? Why or why not? How else might the data be explained? Can we learn anything from Cushman's experiments about what moral judgments we *ought* to make? Explain your answer.

(4) Do you think it is appropriate to punish criminal attempts more severely if they succeed than if they fail (or to punish one of two acts more severely than the other if it had more harmful consequences), even if the difference between success and failure (or the difference in harms caused) seems to be purely a matter of *luck*? Why or why not? As part of your argument consider and evaluate Lewis' (somewhat half-hearted) defense of differential punishment by appeal to the notion of a punishment lottery. Do you think Lewis' argument succeeds in establishing the justice of differential punishment for successful and unsuccessful crimes? Do you think there is a better way of justifying our practice of differential punishment? Or do you think it is ultimately unjustifiable? Be sure to defend your answer against possible objections.

(5) Why should we punish criminals? And how much should we punish them? Why? In defending your answer, be sure to consider possible objections to your view (think about possible direct objections to the principle of punishment you defend, as well as examples of particular, possibly hypothetical, cases where the punishment your principle recommends may seem intuitively objectionable).

The TA and I are both happy to talk to you about your papers as you work on them. As usual, you may write on a topic of your own choosing instead of the topics I've suggested, but you should run your topic by us for approval well in advance of the deadline.

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