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PHIL 5180/7180; Fall 2018
Friday, 2:30-5:30pm, Oct. 26, Nov. 2, Nov. 9, and Nov. 16
Fair Opportunity, Responsibility, and Excuse
Seminar Description and Syllabus

This is a one-unit postgraduate seminar concerning the nature of responsibility and its implications for our practices of blame, excuse, and punishment. In particular, we will focus on the relationship between responsibility and excuse. An attractive working hypothesis is that responsibility and excuse are *inversely related* — if one is excused for one's wrongdoing, one is not responsible for it; and if one is responsible for one's wrongdoing, one has no excuse for it. The truth of this hypothesis implies that responsibility and excuse should have corresponding structure and that we should be able to study either in light of our beliefs about the other. As Michael Moore likes to say, "excuse is the royal road to responsibility," but we do well to remember that this is a two-way street.

This seminar engages the intersection of moral psychology and criminal jurisprudence. Often, work in these two domains proceeds in parallel with fairly modest interaction. Many philosophers writing about free will and responsibility tend to focus on foundational questions involving skepticism about responsibility, asking if we are ever responsible for our actions. They are commonly divided into *incompatibilists*, who think that freedom and responsibility are incompatible with causal determinism and so embrace either *free will skepticism* or *libertarianism*, and *compatibilists* who think that freedom and responsibility are compatible with determinism. By contrast, criminal law theorists tend to assume we are responsible in standard cases and patrol the border of responsibility via the doctrine of excuse. But these different starting points and concerns don't make disagreement inevitable. Though moral and criminal responsibility are not the same, they are not only parallel at many points, but exert mutual influence. So, there is reason to think that each approach to thinking about responsibility and excuse might learn something from the other approach. Indeed, we will be concerned with the potential for common ground between these two perspectives. We will focus on the *reasons-responsive* wing in the compatibilist tradition, which claims that agents are responsible for the actions that they have intentionally performed just in case they were normatively competent and reasons-responsive at the time of action (e.g. John Fischer and Mark Ravizza, R.J. Wallace, Susan Wolf, and Dana Nelkin). We will compare this tradition with the *fair choice* model of criminal responsibility, which claims that agents are responsible for their actions just in case they were rational at the time and had the fair opportunity to avoid wrongdoing (e.g. H.L.A. Hart, Michael Moore, and Stephen Morse). A good case can be made that these two traditions point toward a common architecture for moral and criminal responsibility, which is no accident if we accept a broadly retributive conception of criminal responsibility that treats blame and punishment as *pro tanto* fitting responses to wrongdoing for which the agent is culpable or responsible. The umbrella concept for this conception of responsibility is the *fair opportunity to avoid wrongdoing*; it factors responsibility into two further conditions: an internal condition of *normative competence* and an external condition of *situational control*. We excuse wrongdoers insofar as they lacked either normative competence or situational control, because these conditions compromise their fair opportunity to avoid wrongdoing.

We will start by looking at P.F. Strawson's influential claims about the link between responsibility and the reactive attitudes, contrasting a response-dependent reading that treats the reactive attitudes as having explanatory priority and a realist reading that treats responsibility as having explanatory priority. We will see that a realist reading of Strawson's thesis supports a broadly retributive approach to punishment as a fitting or deserved response to wrongdoing for which the agent is responsible. The inverse relationship between responsibility and excuse allows us to study responsibility by attending to excuses. The criminal law recognizes excuses involving impairment of the agent's capacities or opportunities, which suggests that we model responsibility

in terms of normative competence and situational control. The unifying principle for this conception of responsibility is the idea that blame and punishment presuppose that the agent had the fair opportunity to avoid wrongdoing. We can assess the fair opportunity conception of responsibility by examining its implications for incompetence excuses, such as insanity, and the vexed question whether psychopathy should be excusing.

Here is the provisional Syllabus:

Week #1 (Oct. 26)

- Readings: P.F. Strawson, "Freedom and Resentment" *Proceedings of the British Academy* 48 (1962): 1-25 and Gary Watson, "Responsibility and the Limits of Evil: Variations on a Strawsonian Theme" reprinted in Gary Watson, *Agency and Answerability* (Oxford: Clarendon Press, 2004).

Week #2 (Nov. 2)

- Readings: Michael Moore, *Placing Blame: A Theory of Criminal Law* (Oxford: Clarendon Press, 1997) ch. 2 and Herbert Morris, "Persons and Punishment" *The Monist* 52 (1968): 475-501.

Week #3 (Nov. 9)

- Readings: Gary Watson, "Two Faces of Responsibility," reprinted in Watson, *Agency and Answerability* and David O. Brink and Dana K. Nelkin, "Fairness and the Architecture of Responsibility" *Oxford Studies in Agency and Responsibility* 1 (2013): 284-313.

Week #4 (Nov. 16)

- Readings: Cordelia Fine and Jeanette Kennett, "Mental Impairment, Moral Understanding, and Criminal Responsibility" *International Journal of Law and Psychiatry* 27 (2004): 425-43; David O. Brink, "Responsibility, Incompetence, and Psychopathy" *Lindley Lecture* 53 (2013): 1-41; and Dana K. Nelkin, "Psychopaths, Incurable Racists, and the Faces of Responsibility" *Ethics* 125 (2015): 357-90.

These are the required readings. I will list a few additional recommended readings at the first meeting of the seminar. Students will be expected to do the required readings in advance and to come to seminar prepared to discuss the issues and readings. Students will be asked to write two papers for the seminar: a short paper (approximately 1500-2000 words) and a longer paper (approximately 4000-6000 words).

Feel free to email me with any questions.