

24.235J – Philosophy of Law – Paper Topics – Final Paper

DUE MAY 17th by the BEGINNING of class.

*Please write a 2000-2500-word paper addressing **one** of the topics below. In making your argument, be sure to engage carefully with at least one relevant course reading (you are of course free to engage with more!).*

The TA and I are both happy to talk to you about your papers as you work on them. As in the past, you may instead write on a topic of your own choosing, provided you run your topic by us well in advance of the deadline.

(1) Explain Rawls' distinction between practice rules and summary rules, giving examples of each. Then explain why Rawls thinks that someone who wants to perform an action governed by a practice rule can't meaningfully ask whether or not he should follow the rule in this case, if he accepts that the practice as a whole is justified. Why does Rawls think his distinction can be used to defend the utilitarian theory of punishment against the charge that it would condone the punishment of an innocent man, if doing so would produce the most welfare? Is Rawls right?

(2) In *On Liberty*, Mill writes,

[T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. (p. 251)

In support of this claim, which has been called the "Harm Principle," Mill seeks to establish that "mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest." (p. 253)

Explain and evaluate Mill's arguments for this view. Do you think Mill's Harm Principle is correct? Do you think he can successfully defend the Harm Principle on the basis of utilitarian considerations alone? Why or why not?

(3) When, if ever, is the state justified in restricting the liberty of those subject to its laws for their own good?

(4) Scanlon's "Millian Principle" governing freedom of expression says:

There are certain harms which, although they would not occur but for certain acts of expression, nonetheless cannot be taken as part of a justification for legal restrictions on these acts. These harms are: (a) harms to certain individuals which consist in their coming to have false beliefs as a result of those acts of expression; (b) harmful consequences of acts performed as a

result of those acts of expression, where the connection between the acts of expression and the subsequent harmful acts consists merely in the fact that the act of expression led the agents to believe (or increased their tendency to believe) these acts to be worth performing. (p. 213)

Explain this principle, and explain and evaluate Scanlon's argument for it. Give an example of a government regulation of expression the principle would condemn, and an example of a government regulation of expression the principle would allow, and explain how the principle applies to each case. Do you think the principle is a good one – that is, that it protects and restricts freedom of speech in the right way? Why or why not? In defending your answer, be sure to consider potential counterexamples to the principle – cases of acts of expression the principle protects (or allows to be restricted) which someone might argue ought not to be protected (or restricted).

(5) Carefully explain and assess Langton's argument that pornography violates women's right to free speech.

(6) Seana Shiffrin claims: "There seems to be a harm/benefit asymmetry built into our approaches to hypothetical consent where we lack specific information about the individual's will. We presume (rebuttably) its presence in cases where greater harm is to be averted; in the cases of harms to bestow greater benefits, the presumption is reversed." (p. 131)

Explain Shiffrin's reasons for this claim. Does her argument work? Why or why not? And, in light of your discussion, what should we think about Shiffrin's opening question: should a child be able to seek compensation if she suffers from a painful, chronic illness brought about by her parent's procreative negligence, even if she has a life that is well worth living on balance? Be sure to defend your answer against possible objections.

(7) The British historian Thomas Macaulay once defined a lawyer as someone who would, "with a wig on his head, and a band round his neck, do for a guinea what, without those appendages, he would think it wicked and infamous to do for an empire."¹

Does the role of the lawyer require her to do things that it would be wrong for her to do if she were not a lawyer? And, given that she *is* a lawyer, can those actions be justified? Be sure to defend your answer against possible objections.

¹ "Essay on Bacon," in *The Works of Lord Macaulay* (1900, ed. by Trevelyan), p. 163.

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