

**Part 1: Great! Very clear and thorough, well argued. A**

**Part 2: More discussion needed – why is this a good counterexample? B**

**Part 3: Very reasonable discussion. A**

### **Part one: thesis and reasons**

The thesis I will defend is that **(1)** whenever someone has not taken sufficient measurements to know what exactly he is doing *or* **(2)** if someone possesses or uses certain potentially dangerous and harmful device carelessly and he commits a crime, then it is not morally wrong to legally punish someone for this act even if the jury knows that they do not have *mens rea*.

Let me first give some more explanations about these criteria I have chosen. The first one **(1)** addresses the responsibility of every individual concerning their own actions, but especially the responsibility to know to some degree the details about their actions. Cases where there is no *mens rea* refer to illegal acts committed without having the corresponding guilty mind or intention to do so, and therefore, it seems that it is wrong to make someone responsible for it. But the responsibility when people perform an action involves also the knowledge of their actions, so if someone is aware that he is partially ignorant of what they do, then they are not directly responsible of the act, but they are directly responsible for their ignorance, which in turn makes them indirectly responsible for the act. Consider the following example to make this point more clear: Mr. Kitchen works as a cook in a school serving meal to hundreds of children. He decides to prepare pizza, and uses some tomato sauce that had expired one year before. However, he does not notice this fact since lunchtime is coming soon, so the pizza contains the rotten tomato sauce. All children who try a slice of pizza get food poisoning by the tomato sauce. It is clear that Mr. Kitchen did not intentionally poison the children, he rather wanted them to enjoy a tasty meal, but he is responsible for not checking the expiration date of the product he used. **This is a good idea and you make plausible claims. I'd like to hear more about what counts as "sufficient measures," though.**

The second criterion **(2)** involves the handling of dangerous machines or objects that include weapons, vehicles, dangerous animals and other potentially harmful devices. Since all of them can cause some serious injury or death to people if wrongly operated, there is an extra necessity to regulate their use, and the need to demand an especially careful use of them. The number of potentially dangerous objects is too high, since even a pen or a pillow could kill a person, so I will appeal to common sense to narrow the notion of dangerous devices and restrict them to objects that in their *normal* use can cause harm. For instance, a person who has the hobby to go hunting can somehow mistakenly confuse a person walking in the woods with a wild animal he wanted to hunt. If he shoots and injures the person **carelessly?**, it is still morally right to punish him, because even if it was an accident, small mistakes can have big consequences with harmful devices such as a shotgun.

The reason why I chose these criteria can be reduced to one principle when making a good law: laws should protect potential victims from irresponsible or reckless people. This principle assumes that there are some crimes that are not intended but are avoidable if taken enough measurements and care when people act, and the criteria that I chose are aimed to these unintended criminal acts that could have been prevented.

In this context, I argue that the law is an effective means to obtain the goal of preventing these crimes, because even if alternative ways can contribute, I believe that by the deterrent effect of rules that threaten to punish the subjects regardless of whether

or not they have *mens rea*, it is possible to encourage them to take especial care of what they do and thus avoid the crimes. **Good idea here.** Since *their deterrence effect* is disputed and controversial, in what follows I will defend how it applies to my specific thesis.

Punishment, as has been noted in class, plays multiple roles in the system of justice. On the one hand, it may serve as a process that ultimately would lead the prisoner to a correction of the behavior or simply as a restoration of justice, since he would be paying the price for an illegal act. On the other hand, and most importantly regarding this case, the punishment is fixed on the law as a threatening feature to the potential *rational* criminals (I will come back to this) and intends to deter the potential law violator. We have discussed in class the little tendency of most of the population to break a law because the vast majority of them are actually rules that prohibit immoral acts, and this fact could be enough to stop doing something wrong. However, the case of laws involving no *mens rea* is different, because by definition, no intrinsic immorality is involved in the violator's mind or will, so we need to put a heavier burden than morality on that person.

In other words, there are situations where morality is not enough or where morality does not play any role. It is true that behind the mentioned cases, there is a sense in which the normal use of the objects should not cause any harm, and only the small chance of an accident could derive in such a situation. But as we saw in class, the risks that one is willing to take in one's own life are subjective, and we all assign different values to risky activities. So the threat of punishment is what actually makes us be aware more objectively of what kind of things are wrong when third parties could be involved and hence think twice before we perform an action. Since *prima facie* no one would like to lose their liberty and go to jail (just to mention the typical punishment) usually the existence of a punishment, even a low one, is enough to constrain us from breaking the law.

Let me defend this point with more details and illustrate it. Almost every person who owns a car has faced the dilemma, on a day when the person is going late to an appointment, to speed up just a little bit over the legal maximum speed. Suppose there is no traffic, visibility is clear, the road is all straight ahead and there are not crossroads or incorporations, so that driving the car at 70mph instead of 60mph does not look like being much more dangerous, besides that only the offender would result. Yet, even if there is nothing morally wrong, the driver might not break the law because of the sanction that implies this illegality and not due to its immorality. There is a consequence calculation here, involving the punishment and the probability of being caught. Suppose that the road is full of radars, so that the odds are 100%. Now if the fine established by the law is \$5 it is likely the fact of being in time for an important appointment (maybe a flight) outweighs the amount of money. If the fine were \$300, the driver may have some doubts but due to the utter necessity of being in time he could afford it. If the punishment is not merely administrative but penal, and say up to 5 years in jail could be the consequence, then the most rational behavior would be not to break the law whatsoever. So there seems to be nothing morally reprehensible if there is no one around and the chances of a bad outcome going faster than legally permitted is neither bad for other nor bad for the driver (if we were considering the law paternalistically), so this is a clear example of deterrence.

By means of this example I wanted to emphasize how people usually respond to the punishment entailed for breaking the law, but it could be argued that I am referring only to rational people and that punishment has no deterrence effect on typical criminals as we saw in Robinson and Darley. I grant their thesis, but it must be noted again that

the cases I am discussing in this paper are those without *mens rea*, that is, I am excluding from the beginning typical criminals who act intentionally. So the targets of laws that ignore the intentionality are rational people, sensitive to deterrent effects.

Once established the effectiveness of such a punishment, suppose that in this very car journey, suddenly the speedometer breaks down, so the driver cannot *know* what speed he is driving at. If he is late, that may sound like the perfect excuse to drive as fast as he liked, although at some point he would certainly intuit that he is going faster than what is permitted. To add plausibility, assume the driver comes from Canada, and has no idea how many miles per hour equal to kilometers per hour, so he has no clue if he is exceeding speed limits. Yet, there is something wrong there; he is responsible of not knowing the conversion of mph to km/h, and even if not knowing the speed may not be illegal, speeding is.

### **Part 2: Counterexample**

Suppose there is a man in Boulder on Sunday morning that decides, since it is a nice sunny day, to take care of his yard, a request from his wife. He goes up the ladder, takes his power saw and starts cutting some branches of the oak tree they have. After half an hour, due to the direct sun the man's eyesight is affected starts to feel sick. He starts to descend from the ladder, but since it was not placed in a flat surface, he falls down with such a bad luck that the saw injures a child walking by the yard. Moreover, the unhappy accident left the man paraplegic. **You need to explain why this is a counterexample and argue that it is a good one. Are you saying that it is clearly wrong to punish this person for hurting the child? Why is that plausible?**

### **Part 3: response to the counterexample**

I will argue that the counterexample in part seems a genuine objection; we intuitively think that such a case does not deserve punishment, but if we explore it more carefully we can see why it is still justified.

Firstly, the counterexample makes the antecedent true, since the man is using a dangerous machine, and the causes that yield to the accident could have been prevented if the man had put the ladder in a flat surface, or had avoided direct sunlight. It could be objected that the man was reasonably careful (he was not drunk for instance) and that these criteria are too extreme because there is always more that can be done to avoid any accident so nobody would eventually dare to do anything due to the fear of punishment **This should go in part 2, and I still would like a little more discussion of why it is wrong to punish this person; asking someone to be careful when using power tools doesn't seem *too* extreme.** However, I do not regard this as a genuine objection; we should encourage people to take more care until accidents are reduced at least to their avoidable limit. Thus, regarding the counterexample in this paper, it is obvious that at least more measurements should have been taken, and we can define his behavior as irresponsible.

In the second place, the counterexample seems to make my thesis' consequent false, and I do agree that there is *something* morally wrong in the punishment of this man; there is an intuition that makes us believe that the man was not totally careless and he was actually worse damaged than the child, so it might be unfair to add an extra penalty to him. In addition, he did not have a guilty mind, so it is *partially* morally wrong **This is a misuse of terms, but I think I get the idea – you want to say that there are reasons to not punish this person, or perhaps that punishing them is *prima facie* wrong. That is, it is ordinarily wrong to punish people who lack intent, but in this case it is justified...** to punish him, in the sense that he does not deserve the

same punishment as someone who did it intentionally. However, the punishment is justified because it is still *overall* good, as the benefits to the whole society outweigh the badness caused to the man. The benefits in this case are that in the future this man and other people in similar situations will be more likely to take stronger measurements to avoid accidents. Then, if the man was not punished after all, a message that recklessness remains unpunished is sent to society, and similar cases could become more common and would provide irresponsible people with incentives and therefore it would be overall worse.

Additionally, note that just *some* punishment is enough, for the intended effect. We regard the word punishment highly negatively but it is not necessary that it would be very severe: for this counterexample it may be enough to judge him as responsible to pay the medical costs derived from the child's injuries, or a low fine. What is important for the argument is that at least the existence of some punishment and the feeling that the law will prosecute him is enough to affect the behavior of the person involved; the feeling that he will not be totally unpunished or the fact that he will have a criminal record is sometimes enough to make us change the perspective from our particular standpoint and think of the risks involved to others in some of our everyday act.