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## FOREWORD

### ISSUES IN RESPONSIBILITY

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The concept of responsibility pervades both the law and our everyday discourse. The multivariied senses of the term and the wide reach of the issues and problems that they suggest are well illustrated in a parable told by H.L.A. Hart:

As captain of the ship, X was responsible for the safety of his passengers and crew. But on his last voyage he got drunk every night and was responsible for the loss of the ship with all aboard. It was rumored that he was insane, but the doctors considered that he was responsible for his actions. Throughout the voyage he behaved quite irresponsibly, and various incidents in his career showed that he was not a responsible person. He always maintained that the exceptional winter storms were responsible for the loss of the ship, but in the legal proceedings brought against him he was found criminally responsible for his negligent conduct, and in separate civil proceedings he was held legally responsible for the loss of life and property. He is still alive and he is morally responsible for the deaths of many women and children.<sup>1</sup>

As part of an ongoing series of joint ventures, the Department of Philosophy and the School of Law of Duke University (in cooperation with the Robert L. Patterson Philosophy Endowment and *Law and Contemporary Problems*) presented a Conference on Responsibility, held on April 18-19, 1985, which brought together a distinguished group comprised of lawyers, philosophers, and a psychiatrist to explore some of the evergreen issues in this area. This issue of *Law and Contemporary Problems* contains the revised papers and comments of the participants.

It may be useful—and appetite-whetting—to the reader to have the gist of these articles. There are six sets of papers, each containing a lead paper and a critical response. In presenting their gist, it is of course impossible to convey the character of the debate that followed them; the lead speakers naturally

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1. H.L.A. HART, PUNISHMENT AND RESPONSIBILITY 211 (1968).

had rejoinders to the commentaries. The issue concludes with a bibliography on moral and legal responsibility.

Perhaps no subject is so central to the entire field of responsibility as causation. Responsibility (in one or more of its senses) for a particular occurrence is often ascribed to a situation, an event, an action, or a person because of a causal connection that is presumed to subsist between it or him and the occurrence. Professor W.H. Dray<sup>2</sup> opens this issue with a critical examination of an important claim in Hart and Honoré's influential book, *Causation in the Law*.<sup>3</sup> The problem that Hart and Honoré raise is how a factor is singled out as *the cause* of some occurrence when it was but part of the set of conditions that produced the occurrence. They draw a distinction between two contexts of causal inquiry, explanatory (where the aim is to explain why something happened) and attributive (where the aim is to attribute responsibility), which suggests that two different sorts of causal connection or causal judgment are involved. In the law (and frequently also in history), Hart and Honoré claim, causal inquiry generally is attributive, for while there often is no question as to what took place, there may be more than one selectable antecedent condition as its cause.

It is this distinction between explanatory and attributive inquiries that Dray attacks. In broad terms, *Causation in the Law* is a defense of the use in the law of common-sense principles in making the causal judgment or selection. Vital to that defense is the further distinction between causes and mere conditions, which common sense recognizes. According to the common-sense notion, a cause is something that intrudes or interferes in an ongoing process, or an antecedent that is highly abnormal, or a voluntary human act. These considerations function as termini of the inquiry in tracing backwards to the cause of a happening. Dray argues, however, that the idea of an attributive causal inquiry introduces no new principle of selection. His article refers the reader to discussions of the causes of the Mexican-American War and World War II as examples. Various possibilities for making the distinction between explanatory and attributive inquiries are explored, but found wanting. In the end, Dray holds, an attributive inquiry merely may be an explanatory causal inquiry that is pursued with a view to eventually raising the question of responsibility.

With the above as background, the gist of Professor Jerome Culp's response<sup>4</sup> to Dray can be readily presented. Culp maintains that the importance of the notion of cause, as expounded by Hart and Honoré, is best seen by contrasting it with the instrumental notion used in the law and economics literature on causation. Culp examines in detail how the different theories of causal judgment would deal with the question of the extinction of

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2. Dray, *Causal Judgment in Attributive and Explanatory Contexts*, LAW & CONTEMP. PROBS., Summer 1986, at 13.

3. H.L.A. HART & A. HONORÉ, CAUSATION IN THE LAW (1985) (1st ed. 1959).

4. Culp, *Causation, Economists, and the Dinosaur: A Response to Professor Dray*, LAW & CONTEMP. PROBS., Summer 1986, at 23.

the dinosaurs, and he also considers some legal examples (for example, the liability of the social host). He argues that the explanatory-attributive distinction is the only way of incorporating moral perspectives into the causal questions that bear on liability. According to Culp, once the goal of a causal inquiry and the causal decision maker are specified, Dray's criticisms are far less threatening to the distinction.

Professor Lloyd L. Weinreb's article<sup>5</sup> turns to a different side of the problem of responsibility: the idea of desert and the role it should play in the justification of criminal punishment. Until now, Weinreb maintains, the debate between the traditional justifications (retributivist, utilitarian, and composite theories) has been inconclusive: moreover, there are persistent puzzle cases (the felony murder doctrine is one of a number considered) that no theory seems to justify. Weinreb argues that the concepts of desert, punishment, and responsibility are inseparable; doubts about someone's desert, therefore, are also doubts about his responsibility and liability to punishment. The causally determinate background of human action undermines conclusions about individual responsibility and desert as a basis for punishment.

It is Weinreb's thesis that in order to overcome the conflict between the retributivist and utilitarian theories, one would have to adopt an "ontological premise of normative order." This premise asserts that the causally determinate background to our actions is itself in accordance with our desert. And the normative order assumption recommends itself, Weinreb claims, because it accounts for fundamental aspects of our experience that are given directly in it: human freedom, responsibility, and desert. Punishment for desert, therefore, is an implication of the human condition, and retributivist justifications of punishment reflect our recognition of human responsibility. It is in the light of this approach that Weinreb considers in detail such puzzle cases as the felony murder doctrine. Punishment, in this and some of the other problematic cases, is restorative of the moral order.

While Professor Barbara Baum Levenbook<sup>6</sup> agrees with Weinreb that a principled theory of moral responsibility and its limits is needed, she attacks Weinreb's claim that the normative order assumption is useful in defending the felony murder doctrine and other problematic rules. Levenbook lays out the argument that leads Weinreb to maintain that there is a contradiction in the "abstract idea of desert." Two of its premises constitute Weinreb's (normative order) assumption that the causal conditions of our actions are in accordance with our desert. This assumption, which Levenbook says is not well-grounded on ordinary beliefs, offers one rationale for certain of the problematic rules, but she maintains that there are other justifications that can

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5. Weinreb, *Desert, Punishment, and Criminal Responsibility*, LAW & CONTEMP. PROBS., Summer 1986, at 47.

6. Levenbook, *Responsibility and the Normative Order Assumption*, LAW & CONTEMP. PROBS., Summer 1986, at 81.

be given for the rules. Levenbook would rather have us give up some of the problematic rules than adopt the normative order assumption.

Professor Kent Greenawalt's article<sup>7</sup> concentrates on a different aspect of the relationship between law and morality. Greenawalt thinks the law in general should reflect moral judgments about when someone accused of a crime should be relieved of liability and why he should be relieved of it. In considering the extent to which this reflecting is possible, Greenawalt considers the concepts of justification and excuse, and examines in detail how these concepts are applied in moral evaluations and legal judgments of agents and acts. The central distinction between justification and excuse, he holds, is whether the act in question was warranted or not warranted; an excuse does not claim that the act was warranted, but only that the agent was not fully blameworthy or responsible. (In the law, the accused may also offer an exonerating explanation, which negatives one or more of the material elements of the offense.)

It is Greenawalt's thesis that the law necessarily uses rigid labels and cannot achieve the precision in its classifications that morality can make. In the case of moral judgments, Greenawalt points out, there frequently are difficulties in designating something as a justification or as an excuse. These difficulties arise because of uncertainties over whether an act should be evaluated according to its expected consequences or according to its actual consequences, because elements of both justification and excuse might be present, and because the labels tie into broad moral theories that may be in opposition to each other. Although the simple labels, as such, are too crude to express all aspects of a moral evaluation, our language is sufficiently rich to flesh out what we want to say. The law, however, is less flexible, according to Greenawalt. In the law, there are also troublesome borderline areas similar to some of those of morality. Duress, for instance, sometimes may well be regarded as a justification, although it is usually classified as an excuse. In any event, it is necessary to decide whether some proffered defense is either a justification or an excuse, and this decision, however crude its grounds are, will have momentous consequences for the accused.

Greenawalt briefly considers various proposals for making the legal concepts of justification and excuse more precise, but he questions their practical value. Having precise labels would mislead rather than illuminate, he maintains. There will be constraints on precision as long as we have general verdicts; not even the most precise labels will yield precise applications in many instances. Greenawalt questions whether the law is, therefore, flawed. Is it a flaw that self-defense, for example, is classified as a justification even though it would be better, and more precise, to regard it as an excuse in some cases? It is important, Greenawalt responds, not to expect more precision here than is practicable.

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7. Greenawalt, *Distinguishing Justifications from Excuses*, LAW & CONTEMP. PROBS., Summer 1986, at 89.

Commenting on Greenawalt, Professor Donald L. Horowitz<sup>8</sup> claims that a different approach is needed, although he agrees that legal categories are necessarily crude. Horowitz would start the inquiry into justification and excuse further back than an analysis of how this or that situation is characterized or evaluated; he would begin by asking why, at all, we should exculpate or not.

In the program of the criminal law, Horowitz maintains, both justification and excuse send messages to prospective criminals, but not the same messages. They have different historical and moral roots. Justifications preclude the prevention of evil from itself being called evil, and they serve the end of discouraging crime. Excuses, which relate to some form of incapacity or deficiency, encourage responsibility by heightening the condemnation of those who are not excused. Horowitz traces the development of justification and excuse in the law and the changes in emphasis that have occurred with respect to them. Since justifications serve the end of preserving social order, the range of admissible justifications change as ideas of social order change. Conceptions of excuse change as our understanding of the various forms of capacity and incapacity changes. There has been, in fact, a trend toward contraction in the range of justification in recent years and a trend toward expansion in the sphere of excuse. According to Horowitz, these contrasting trends derive from the different premises that underlie justification and excuse.

While Horowitz concedes the difficulty of categorizing defenses as justifications or excuses, he argues that there is a continuing need to label correctly if the program of the criminal law is to be pursued efficiently. Moreover, different legal consequences (for instance, whether a third party's actions will be regarded as privileged) will flow from the categorization of a defense as a justification or an excuse. Horowitz compares Greenawalt's analysis of puzzle cases with the analysis implied by his own approach. The complexity of the issues, he suggests, invites consideration of alternative approaches to justification and excuse.

A different aspect of the subject of excuses is dealt with by Professor Seymour L. Halleck.<sup>9</sup> He points out that there is an excuse-giving system outside the field of law, namely, in the system for treating medical patients. According to Halleck, the process of assessing the responsibility of patients is an integral part of medical treatment, and study of this process provides new insights into alternative approaches to criminal justice. Halleck argues that the law should move towards a medical model of criminal justice, which would place greater emphasis on utilitarian principles.

While most people do not look upon medical practice as a system that provides excuses for patients from blame or obligation, Halleck presents a

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8. Horowitz, *Justification and Excuse in the Program of the Criminal Law*, LAW & CONTEMP. PROBS., Summer 1986, at 109.

9. Halleck, *Responsibility and Excuse in Medicine and Law: A Utilitarian Perspective*, LAW & CONTEMP. PROBS., Summer 1986, at 127.

survey of examples to show that the opposite is the case. The purpose of excuses here is not to relieve someone of punishment but rather to protect the disabled or to assist the patient's recovery. Excuse-giving involves assigning an illness role to the patient, and the process may be relatively problematic for a physician when the illness is moderate or the individual has a "disease of the will" or mental disorder. In any event, says Halleck, risk-benefit evaluations have to be made, for there are advantages and disadvantages to the patient in giving or withholding an excuse. Medicine, he maintains, seeks to maximize the individual responsibility of its clients, and in order to accomplish this end, it pays attention to their particular capacities.

While some criminal acts admittedly are rational and self-serving, Halleck presents various reasons for viewing crime as an illness. Numerous crimes are committed by alcoholics or by people who have lower than normal intelligence, for example. Because sentencing of criminals, however, unlike medical treatment, fails to pay sufficient attention to individual differences in capacity, it is both inefficient and unjust. According to Halleck, fixed sentencing and the disinclination to give credence to rehabilitation, in contrast to excuse-giving and excuse-withholding in medicine, actually provide the offender with disincentives to change.

Adoption of a medical model of crime, viewing criminality as an illness to be treated, Halleck argues, would introduce a needed flexibility into the criminal justice system. For him, this requires indeterminate sentencing, so that differences in capacity can be given their due. He compares indeterminate sentencing to involuntary hospitalization of the mentally ill. To the criticism that indeterminate sentencing is perceived by offenders and others as inequitable, Halleck responds that it is not clear that it is more unjust than determinate sentencing, which fails to take account of differences in capacity. Adoption of a medical model, and greater emphasis on excusing for utilitarian purposes, he concludes, will not adversely affect the law's commitment to the doctrine of individual responsibility.

In Professor Kathryn N. Jackson's<sup>10</sup> comments on Halleck, she argues that his approach contains fundamental flaws. Jackson attacks the medical model of criminal justice, which purports to abandon the problematic notion of criminal responsibility, and she also criticizes some of the practices that adoption of the model entails. Jackson stresses the differences between law and medicine.

Jackson finds fault with Halleck's idea of the physician as excuse-giver. It is not, she maintains, the physician who excuses from blame or obligation. Rather, it is someone in a position of authority who may or may not excuse, on the basis of the physician's determination that an individual is physically or mentally ill. Halleck, says Jackson, has confused two separate roles here. There is a further straining of roles, she argues, if the psychiatrist is to

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10. Jackson, *Punishment as Therapy: A Reply to Halleck*, LAW & CONTEMP. PROBS., Summer 1986, at 147.

determine whether an offender should be released from confinement and treatment. On Halleck's version of utilitarianism, the psychiatrist, as physician and as agent of the state, should be concerned with both the good of the offender and the social good. But which is the primary responsibility, if these goals are in conflict? Halleck's utilitarianism, Jackson avers, provides no answer.

Although Jackson does not rule out efforts to rehabilitate criminals, she holds that the involuntary confinement and treatment of offenders is punitive, and Halleck, she says, also admits that there would be a nontherapeutic element in the treatment of offenders on his model. The notion of criminal responsibility, therefore, is not eliminated by Halleck's medical model. Against Halleck's claim that both law and medicine seek to maximize individual responsibility, Jackson argues that the techniques of behavior conditioning and psychosurgery, which he would allow, do not have this goal. She maintains that such techniques, in fact, are morally problematic.

Jackson concludes by arguing that if we have rights to freedom against the state, criminal justice cannot be defined in terms of social hygiene and utility. She disputes Halleck's claim that indeterminate sentencing is no more unjust than determinate sentencing; for sentencing should be viewed from the perspective of our legal status as citizens, which is determined by a complex of rights and duties as defined by law. Although determinate sentencing may work injustices in practice, as Halleck argues, indeterminate sentencing is unjust in principle. Unrehabilitated criminals, therefore, should be returned to their freedom when their term is complete. This release, says Jackson, is the price of freedom and of a system that recognizes the rights of citizens.

Are omissions conduct for which a person may be held criminally liable? With this question we turn to another facet of the concept of responsibility. Dr. John Kleinig's article<sup>11</sup> explores the unease felt over imposing such liability, either through judicial action or legislation, for a failure to render easy aid, where no preexisting role or consensual relationship holds between the parties. Kleinig wishes to rebut objections to making it a criminal offense to be a bad Samaritan. Among other objections to criminalizing omissions is that failures to act are "nonsubstantial," mere nondoings that lack ontological status. Moreover, the objection continues, the would-be rescuer's omission is a failure to intervene in an already harm-threatening chain of events, and so is not a necessary condition of the resulting harm.

Kleinig begins his rebuttal by mapping in detail the geography of the language of nondoings. Omissions, he maintains, are a special kind of nondoing, and they are attached to agents (omitters) in a way that other nondoings are not. The crucial factor in the identification of omissions is the reasonable expectations we have about each other's conduct. Omissions, says Kleinig, are the offspring of social life. The ontological problems, he argues, rest on a series of confusions. As for causation, although Kleinig concedes

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11. Kleinig, *Criminal Liability for Failures to Act*, LAW & CONTEMP. PROBS., Summer 1986, at 161.

that it often will be inappropriate to cite an omission as the cause of a given harm, he maintains, nevertheless, that there is nothing about omissions as such that makes it inappropriate to include them in causal histories. While the reasonableness of the expectation that people will render easy aid is not dealt with in his article, Kleinig argues, in sum, that there are no conceptual barriers to making the failure to attempt an easy rescue a criminal offense.

In his comments,<sup>12</sup> Professor Christopher Schroeder argues that Kleinig's article elides the deepest objections to imposing liability for failures to rescue. Schroeder notes that some failures to act have been treated by the common law as sufficient for liability, without concern about their ontological status. (Schroeder does not treat criminal and civil liability as cases apart, because the core issues in each area overlap.) He focuses on the value issues involved in the questions of whether to have a harm-preventing rule, and whether to impose sanctions on failures to attempt to prevent harm.

Although Schroeder favors imposing liability in at least some cases of failures to act, he avers that the cost to individual freedom is a significant negative consideration. Failures to act, moreover, have a causal logic different from acts of commission. The former, he suggests, are not so obviously intersected by other events. This causal factor places pressure on the concept of reasonable expectations. Judicial action, says Schroeder, might be justified in extending liability to omissions to rescue if one could formulate the degree of reasonableness of expectation that warrants imposing sanctions for failures to act. Given the value of individual freedom, there should be some limits on a duty to rescue, but it is difficult to draw the line. Schroeder maintains that under the surface of the consensus on the moral duty to rescue or render easy aid, there is a substantial disagreement on how encompassing that duty is. Schroeder and Kleinig, in fact, agree that the question of when a reasonable expectation that someone will act becomes a moral duty for him to act is fundamental to the problem of liability for omissions.

Professor Judith Jarvis Thomson's article<sup>13</sup> is concerned with yet another aspect of the issue of responsibility. She asks why it is that many people feel uneasy with the use of statistical evidence to establish liability in tort and criminal actions. She wishes to generate sympathy for the position that would also require individualized evidence for the imposition of liability.

Among Thomson's hypothetical examples is the case of *Smith v. Red Cab*, in which the only evidence presented is that one night Smith was injured by a cab, and that six out of ten cabs in town that night were operated by the Red Cab Company. Although the probability that a Red Cab vehicle caused the accident is .6, and the standard of proof in tort is "more probable than not," Thomson suggests that most people would feel uncomfortable with imposing

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12. Schroeder, *Two Methods for Evaluating Duty to Rescue Proposals*, LAW & CONTEMP. PROBS., Summer 1986, at 181.

13. Thomson, *Liability and Individualized Evidence*, LAW & CONTEMP. PROBS., Summer 1986, at 199.

liability on Red Cab based on this evidence. She maintains that individualized evidence against the defendant is lacking here.

As Thomson analyzes it, individualized evidence is evidence that is in an appropriate way causally connected with the (putative) fact that the defendant caused the harm. After distinguishing different types of individualized evidence, she points out that numerical or statistical evidence can also be individualized evidence in some instances. In any case, Thomson maintains, we feel less reluctant to impose liability on Red Cab if we also have individualized evidence. But this confidence, she insists, is not because such evidence raises the probability that a Red Cab vehicle caused the accident. The probability is already at .6, which is enough to meet the tort standard of proof. Thomson thinks it is ungenerous of the opponents of individualized evidence to say that its friends think that such evidence is uniquely highly probabilifying because, she says, it is easy to refute this idea.

In order to gain a better grasp on what it is that the friends of individualized evidence are after, Thomson discusses in detail an analogous problem in the theory of knowledge: the analysis of "*A* knows that *p* (a proposition) is true." On the traditional account of knowledge, one of the conditions of this statement is that *A* has a good enough reason for believing that *p* is true. But this condition, she points out, is not satisfied if, in the light of the evidence available to *A*, *A* is only entitled to conclude that *p* is highly probable. And what is it to have a reason that is good enough? It is plausible to think, says Thomson, that *A*'s reason for believing that *p* is true must ensure or guarantee that *p* is true. It must not just be *A*'s *luck* that *p* is true.

From the discussion of the conditions of knowledge, Thomson passes on to consider what is involved in saying that one has knowledge, where another party might be expected to rely on the assertion. Thomson argues that a jury imposes liability unjustly if its members declare a defendant to be guilty without believing that they had good reason to believe that the defendant was guilty—even if he actually was guilty. It was just their luck that what they declared was true was, indeed, true. But suppose the jury had statistical evidence of the defendant's guilt, evidence that amounted to a high probability, so that one now might say that they had good reason to believe he was guilty. Thomson holds, nevertheless, that the verdict would be unjust if what they needed was not just a good reason but, rather, a reason of the sort which would make it not just be luck for them if the verdict was true.

It is this stronger requirement, she says, that the friends of individualized evidence want. They feel that it is just luck for the jury if what they say is true is true, if liability is declared on the basis of nonindividualized evidence alone. This judgment would amount to imposing liability unjustly. Thomson sympathizes with the view that this is unjust and believes that a guarantee, as she calls it, is needed. Individualized evidence is evidence that is in an appropriate way causally connected with the (putative) fact that the defendant is guilty, and hence (putatively) guarantees the defendant's guilt. This notion,

she maintains, is compatible with having different standards of proof in crime and tort.

In conclusion, Thomson considers the argument that the friends of individualized evidence are in a muddle because all evidence ultimately is statistical or probabilistic. After all, we can have no more confidence in a causal hypothesis than in the statistical data which ultimately support it. Thomson contends, however, that the probabilistic nature of evidence also can be consistently accepted by the friends of individualized evidence.

Professor Richard Schmalbeck<sup>14</sup> finds Thomson's main argument unconvincing. Thomson's hypotheticals are designed to show that one should feel uncomfortable about a liability-imposing outcome when it is based on statistical evidence alone. Schmalbeck does not feel very discomforted, however, or if he does, it is not for the reasons advanced by Thomson. According to him, the disturbing element in these cases is not derived from the statistical nature of the evidence but, rather, from other defects in the particular bits of evidence or in the interpretation of those bits.

Schmalbeck discusses the *Red Cab* hypothetical. One issue here is the injustice to the victim if she cannot recover for her injury *versus* the injustice to the Red Cab Company if it is held liable when the injury was not caused by its agent. Schmalbeck suggests that a pro rata allocation of liability according to market shares would be acceptable to him. Although Thomson's article does not directly address the question of allocation of liability, she nevertheless is troubled by the use of statistical evidence alone to establish liability.

Schmalbeck analyzes why a liability-imposing outcome based on statistical evidence alone may be unsettling. There are, says Schmalbeck, three possible sorts of defect in the evidence. One of the defects has to do with its confidence level: the .6 estimate may be incorrect. It is necessary, he says, to distinguish between the probability of an event and the probability that the first probability has been established accurately. If the evidence in this hypothetical case is inadequate, it may be because of the low confidence level, and not because it is statistical rather than individualized. The other sorts of defect in the evidence, he claims, are also not inherent to statistical evidence as such. He points out, however, that it is not easy to translate statistical information into a reliable statement regarding the probability of the ultimate issue in a legal dispute.

Schmalbeck thinks that Thomson's notion of individualized evidence is unclear. In one of the examples she uses to explain the idea of an "appropriate causal connection," Schmalbeck substitutes a probability statement for the statement of causal connection, a substitution that he maintains is quite acceptable. He argues that the distinction between statistical and individualized evidence is a false distinction. What we always need, Schmalbeck concludes, is evidence that is relevant, whether it be

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14. Schmalbeck, *The Trouble with Statistical Evidence*, LAW & CONTEMP. PROBS., Summer 1986, at 221.

statistical or nonstatistical. In any event, statistical evidence should be used with great care.

The final contribution to this issue is an updated bibliography prepared by Kate Pecarovich.<sup>15</sup> The bibliography is a valuable resource for those interested in a selective guide to the vast literature on moral and legal responsibility, and is a useful adjunct for pursuing the questions raised by the authors in this issue.

Here, then, is the gist of the articles that resulted from the Conference on Responsibility. The reader is reminded that in each case replies and counter replies were made, but it was not possible, let alone appropriate, to present them.

Matters should not be left without thanking some of the people who made this issue of *Law and Contemporary Problems* possible. It goes without saying that the participants should be thanked. These include the individuals who served as moderators at the Conference: Professors George C. Christie, Paul Welsh, and Patrick Atiyah. An expression of thanks to Frances Finney, the secretary of the Duke Philosophy Department, who made the Conference arrangements, is also in order. To the student editors and the general editor, Joyce Rutledge, of *Law and Contemporary Problems*, the thanks are immeasurable.

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15. Pecarovich, *Bibliography on Responsibility*, LAW & CONTEMP. PROBS., Summer 1986, at 237.

