CAPITAL CASE
No. 18-6135

In the Supreme Court of the United States

JAMES K. KAHLER,
Petitioner,

v.

STATE OF KANSAS,
Respondent.

On Writ of Certiorari to the Supreme Court of Kansas

Brief of Philosophy Professors as Amici Curiae in Support of Petitioner

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QUESTION PRESENTED

Do the Eighth and Fourteenth Amendments permit a State to abolish the insanity defense?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases:

Constitution and Statutes:

Miscellaneous:

INTEREST OF THE AMICI[1]

The amici are professors of philosophy, jurisprudence and law. They are listed in the Appendix. They submit this brief in their individual capacities and not on behalf of any institution with which they are affiliated. They represent neither party.

SUMMARY OF ARGUMENT

People should never be criminally punished for wrongful acts for which they are not responsible. This is a fundamental principle of justice. Any government that offends this principle by punishing actors who are not criminally responsible for their wrongs perpetrates profound injustice.

Sanity is a precondition of responsibility. This is not a principle of justice; it is a conceptual principle, deriving from the very nature of criminal responsibility. People who deeply disagree about what forms of conduct ought to be punished cannot reasonably disagree about this. Just as our reasonable moral disagreements can only exist in front of a backdrop of agreement over the nature of liberty and equality,

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[1] Both parties have consented to the filing of this brief. No counsel to a party in this case authored this brief in whole or in part. No party or party's counsel made any monetary contribution that was intended to or did fund the preparation or submission of this brief. No person or entity other than the amici and their counsel made any monetary contribution that was intended to or did fund the preparation or submission of this brief. Printing expenses have been borne by Yale Law School. This brief should not be interpreted as representing the views of Yale Law School or Yale University.

they can also only exist in the face of agreement that sanity is necessary for responsibility.

Therefore, any government that denies criminal defendants the opportunity to avoid blame and punishment by establishing that they were not sane at the time of their wrongful conduct necessarily perpetrates injustice. The lack of an insanity defense, as in Kansas, will ensure that the state punishes some defendants in the absence of responsibility for their crimes.

It is crucial for our society to tolerate a diversity of ethical views and to defer often to others to establish the rules by which they are to live, but toleration and deference cannot go so far as to allow a government to perpetrate injustice of this sort. The Court should correct Kansas's error.

ARGUMENT

I

THE MENTAL STATE ELEMENTS OF CRIMES ARE INSUFFICIENT FOR RESPONSIBILITY

The presence of the mental state elements of the crime, the *mens rea*, is necessary for criminal responsibility. But it is not sufficient.[2] There is a well-known distinction between excuses and justifications.

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[2] Rollin M. Perkins, *A Rationale of Mens Rea*, 52 HARV. L. REV. 905, 908 (1939).

Justifications negate wrongdoing.[3] The person who harms another in self-defense, for instance, does nothing wrong. By contrast, excuses negate responsibility.[4] Affirmative defenses that are excuses, such as duress and infancy, speak to our recognition of the fact that there is more to responsibility than the mental state elements of crimes.[5] The excusing affirmative defenses negate the responsibility of even those whose conduct included *mens rea*. The excusing affirmative defenses reflect that a wrongdoer's psychological states at the time of the crime can fail to constitute responsibility thanks to their causes.[6] The person who commits a crime as a result of duress possesses the mental states required for the crime—he intends to do the prohibited act to avoid harm to himself. But he is in those mental states due to the severe pressures placed on him by a third party's threat. It is the pressure that led him to form those mental states, the unjustified threat, that makes them insufficient for responsibility. Had he found himself in those same mental states for other reasons—from the

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[3] *See* J. L. Austin, *A Plea for Excuses: The Presidential Address*, 57 PROCS. ARISTOTELIAN SOC'Y 1, 2 (1956); Marcia Baron, *Justifications and Excuses*, 2 OHIO ST. J. CRIM. L. 387, 389-90 (2005).

[4] Austin, *supra* note 3.

[5] *See* Baron, *supra* note 3, at 390-91 (noting that both external circumstances and facts about the wrongdoer themselves may prevent the individual from conforming to the law).

[6] H.L.A. HART, PUNISHMENT AND RESPONSIBILITY 14 (2d ed. 2008) (describing an excuse as precluding criminal responsibility because "the psychological state of the agent when he [acted] exemplified one or more of a variety of conditions which are held to rule out the public condemnation and punishment of individuals").

pressure of poverty, or the simple desire to be rich—then he would have been criminally responsible. To determine if a person is owed an excusing affirmative defense we must attend to the reasons why *mens rea* was formed and not solely to the mental states that constitute the elements of the crime.

Moral philosophers and philosophers of criminal law are in universal agreement that some causal histories of mental states undermine criminal responsibility.[7] They uniformly accept that the mental state elements of crimes are insufficient for responsibility. This point has an important implication: If the state is to avoid punishing in the absence of responsibility, it must provide a mechanism through which a criminal defendant can be excused from liability through appeal to problematic features of the history of his mental states. The affirmative defense of duress is one such mechanism.[8] But justice requires that for each responsibility-undermining factor there is a legal mechanism by which a defendant can shield himself. This is reflected in the diversity of excusing

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[7] *See, e.g.*, HART, *supra* note 6, at 28; P.F. Strawson, *Freedom and Resentment*, 48 PROCS. BRITISH ACAD. 1, 6-10 (1962); Gary Watson, *Two Faces of Responsibility*, 24 PHILOSOPHICAL TOPICS 227, 233, 240 (Fall 1996); *see also* Erin I. Kelly, *What Is an Excuse?*, *in* BLAME: ITS NATURE AND NORMS 248-49 (D. Justin Coates & Neal A. Tognazzini eds. 2012) (describing different mental states that offer legal versus moral excuses).

[8] Kent Greenawalt, *Distinguishing Justifications from Excuses*, 49 L. & CONTEMP. PROBS. 89, 100 (1986).

affirmative defenses.[9] Being in the mental states required for a crime *due to duress* is one ground of excuse; being in those mental states *due to infancy* is another; and so on. For each such ground of excuse, a legal mechanism must be provided if the state is to avoid unjust punishment.

Criminal defendants are insufficiently protected from unjust punishment by the demand that prosecutors prove the mental state elements of crimes beyond a reasonable doubt. A prosecutor could meet this burden, and yet the defendant's criminal responsibility could fail to be established, for it could be undermined by the reason his psychological states were formed, a history never placed in evidence in the establishment of the prima facie case. The state will inflict an unjust punishment if there is no legal mechanism by which a defendant can shield himself from liability by showing that one of the responsibility-undermining types of factors was present.

This is the fundamental defect in Kansas's regime. As the next section of this brief will establish, when the mental state elements are produced by mental disorder, the defendant can be shown beyond a reasonable doubt to have had *mens rea* without thereby being shown to have been criminally responsible.

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[9] *See* Stephen J. Morse, *Excusing and the New Excuse Defenses: A Legal and Conceptual Review*, 23 CRIME & JUST. 329 (1998) (cataloguing affirmative excuse defenses).

II

SANITY IS NECESSARY FOR RESPONSIBILITY AND SO ESSENTIAL TO BOTH THE DETERRENT AND RETRIBUTIVE AIMS OF CRIMINAL PUNISHMENT

There are compelling arguments for the claim that at least sometimes mental states that are a product of severe mental illness fail to suffice for criminal responsibility for the acts of wrongdoing they accompany and guide.[10] Each of these arguments begins with a plausible description of the criminally responsible actor and shows that the severely mentally disordered can and sometimes do fail to meet the description. Moral philosophers and philosophers of criminal law differ from one another in their views about which features of the criminally culpable actor capture the essence of criminal responsibility.[11] They differ also about the precise criteria that mental states formed as a result of mental disorder must meet to excuse an agent from responsibility.[12] But these disagreements do not undermine the agreement that sanity is necessary for responsibility.

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[10] *See, e.g.*, Donald H. J. Hermann, *Assault on the Insanity Defense*, 14 RUTGERS L. J. 241 (1983); Stephen J. Morse, *Craziness and Criminal Responsibility*, 17 BEHAV. SCI. & L. 147 (1999).

[11] *See, e.g.*, JOHN GARDNER, OFFENCES AND DEFENCES 227-32 (2007); HART, *supra* note 6, at 136-150; A.P. Simester & W. Chan, *The Mental Element in Complicity*, 122 L. Q. REV. 591 (2006).

[12] *See, e.g.*, Baron, *supra* note 3; Kent Greenawalt, *The Perplexing Borders of Justification and Excuse*, 84 COLUM. L. REV. 1897 (1984).

A first mark of fully criminally responsible conduct is the opportunity to avoid wrongdoing.[13] Criminally responsible actors typically had opportunities to avoid the crimes they commit. Their mental states at the time of their offenses were formed through motivational mechanisms that allowed a meaningful choice about whether to offend.[14] The person who commits a murder for profit or out of anger is criminally culpable in part thanks to the fact that he had the opportunity to temper his impulse. He had the fair opportunity to step back, survey his motives, and elect an alternative course. His responsibility derives from the fact that he opted not to take the opportunity to "put on the brakes" by reflectively adjusting his motives and intentions towards law-abiding behavior.

Mental disorder, especially if it is severe, sometimes eliminates, and frequently substantially restricts, the opportunity to conform to law. When *mens rea* is caused by mental disorder, it is sometimes generated by a mechanism that severely restricts the offenders' opportunity to recognize, much less pursue,

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[13] *See* Mark Kelman, *Interpretive Construction in the Substantive Criminal Law*, 33 STANFORD L. REV. 591, 598 (1981) (noting the assumption in criminal jurisprudence that wrongdoers make intentional choices); Watson, *supra* note 7, at 239 (discussing the relationship between avoidability and moral responsibility).

[14] *See generally* Gideon Yaffe, *The Voluntary Act Requirement*, *in* THE ROUTLEDGE COMPANION TO PHILOSOPHY OF LAW (Andrei Marmor ed. 2012) (arguing that criminal responsibility requires that objectionable mental states manifest in voluntary action).

lawful paths.[15] Severe mental disorders profoundly distort the judgment of those who suffer from them.[16] The severely mentally disordered sometimes become convinced, as Mr. Kahler appears to have been, that their best, or even their only way forward, is to commit a serious crime. While they are, as Mr. Kahler was, tragically mistaken, their failure to see alternative paths as a result of their mental disorder makes it exceedingly difficult for them, if not impossible, to behave lawfully.

The goal of deterrence is not fruitfully pursued through the punishment of those whose mental illnesses eliminate or severely restrict the opportunity to pursue a lawful path.[17] The healthy person, who can elect any of a variety of courses of action, can be encouraged to elect the legal path through threat of punishment. But the person whose judgment is severely distorted by mental illness will not choose the legal course of action even if he fully recognizes that the alternative promises punishment. To him it appears that his only option, whether he will be punished or not for following it, is criminal conduct. To adopt a system that punishes him is, thereby, to adopt a system that denies that deterrence is a central purpose of criminal punishment.

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[15] Morse, *supra* note 10, at 152 (distinguishing between delusional agents who cannot properly follow legal rules and irrational agents who are simply mistaken about the rule).

[16] *See generally* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) [hereinafter DSM].

[17] Robert Waelder, *Psychiatry and the Problem of Criminal Responsibility*, 101 U. PA. L. REV. 378, 379 (1952).

There is another, conceptually distinct mark of fully responsible wrongdoing that is also missing in at least some of those who form *mens rea* as a result of mental illness. In addition to enjoying opportunities to correct their psychological states, criminally responsible actors manifest deficiencies in how they weigh the effects of their actions on other people.[18] Some of them care more about money than they do about other people's pain, for instance. We can infer that they have such distorted values from their actions and the mental states that accompanied and guided those actions. We can infer that the person who intentionally took another's money with a threat of violence cared far less than he should have about harm to others. We can infer that the person who intentionally killed his family for the insurance money, or to rid himself of family obligations, callously disregarded the lives of others for the sake of his own good. We make an inference from behavior, and the psychological states that drove it, to the agent's regard for the rights and prerogatives of other people.

Mental disorder often makes it impossible to infer anything about how its sufferer employs and exercises his capacities for rational thought, rational deliberation and self-regulation. Severe mental disorder profoundly alienates the person from rational control over his conduct and the psychological states that

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[18] *See* Morse, *supra* note 10, at 149 (describing the relationship between a defendant's degree of fault and their disregard for the rights of others).

give rise to it.[19] The criminal behavior of the severely disordered does not reflect the lack of concern and respect for others that similar behavior indicates about sane people. But if criminal responsibility requires the manifestation in behavior of such lack of concern then severely mentally disordered people are sometimes not criminally responsible for their conduct.[20]

A mentally ill defendant who is given only the opportunity to appeal to his mental disorder to negate the mental state elements of the crime, is prevented from showing that his criminal conduct was reflective of his disorder and not of the moral failure that similar criminal conduct reflects in the sane. The conduct of the cold-blooded murderer, including his vicious intention to kill, reflects an underlying callousness towards the rights and interests of other people. But the conduct of a mentally disordered person like Mr. Kahler, even when it is guided by an intention to kill, is not reflective of such callousness. It is reflective only of the distorted cognition and distorted control capacities caused by his debilitating depression. It is the reflection of facts about how offenders weigh their interests and the interests of others that is essential to criminal culpability.[21] Such facts are not always reflected in the criminal conduct of the mentally ill. If we are to conform to the demand of justice to punish only the responsible, then a legal mechanism must be provided by which people with mental disorder can

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[19] See DSM, *supra* note 16, for further discussion of the criteria of impulse-control and conduct disorders.

[20] *See* Morse, *supra* note 10, at 149-50.

[21] *See* HART, *supra* note 6, at 136-57.

demonstrate the crucial difference between themselves and the sane.

It is in part because criminally culpable conduct reflects an offender's attitudes and values that the goal of retribution is properly pursued through criminal punishment.[22] Wrongdoing, to be sure, is an essential contributor to desert. The culpable actor who harmed another person deserves punishment in part because of the harm he inflicted. But when conduct, even severely harmful conduct, does not reflect moral distortions in the person's underlying attitudes and values, punishment is undeserved.[23] In such a case, retribution cannot be served by inflicting blame and punishment. Civil commitment or similar remedies, not criminal liability, is then the right response.

By denying mentally disordered defendants the opportunity to shield themselves from blame and punishment when they had *mens rea*, the State of Kansas has adopted a system that is necessarily at odds with both the deterrent and the retributive aims of criminal punishment. Both aims are properly pursued only when punishment is reserved for the responsible, and

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[22] R.A. Duff theorizes criminal punishment as a public declaration of the offender's violation of the polity's values. The penal burden is retributive insofar as it communicates censure to the offender for adopting values that conflict with those of the polity and seeks recognition of that violation. R.A. Duff, *Retrieving Retributivism*, *in* MARK D. WHITE, RETRIBUTIVISM: ESSAYS ON THEORY AND POLICY (2011).

[23] See, for example, Gary Watson's account of responsibility in which the focus of blame and punishment is whether the agent's actions express her evaluative commitments. Watson, *supra* note 7, at 233-34.

the conduct of the severely mentally disordered sometimes lacks the qualities that are the mark of responsibility, qualities that make criminally responsible people deterrable and deserving of punishment for their crimes.

III

PRINCIPLES OF TOLERATION DO NOT SUPPORT DEFERENCE TO STATES THAT CHOOSE TO PUNISH THE MENTALLY ILL

A society with a serious commitment to fostering and protecting pluralism in moral attitudes, as ours has, has good reason to adopt policies of deference. Pluralist toleration is furthered when we allow states to control the content of their criminal law, and thereby to set the boundaries of permissible behavior within their borders. However, pluralist commitments do not require us to allow states to offend fundamental principles of justice. Kansas's regime does offend such principles.

It might be thought that while states must extensively adhere to the demand to punish only the criminally responsible, we should defer to each state to decide what constitutes criminal responsibility within its borders.[24] If this were correct, then a state would be free to adopt a conception of criminal responsibility under which the mental state elements of the crime suffice. While we might think them mistaken in such

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[24] *See, e.g.*, Waelder, *supra* note 17, at 385-86 (arguing that the criteria of criminal responsibility and mental illness are questions of legal policy for citizens of each state to decide).

a view, our commitment to a policy of deference would commit us to tolerating it. But this is an error. Rational people with radically different moral outlooks cannot disagree about the criminal responsibility of at least some of the severely mentally disordered.

Committed pluralists need not and should not think that virtually any rule must be acceptable.[25] There must be limits. There must be policies that offend fundamental principles of justice to such an extent that they are unworthy of our toleration, unworthy of our deference.

For this reason, a commitment to pluralist toleration does not require us to defer to a state's faulty view of notions that are fundamental to the very principles that set the limits to our toleration. We should not tolerate state policies, for instance, that offend fundamental principles of liberty and equality. States cannot bypass such limits by adopting faulty definitions of terms like "equality," "liberty," or "due process". To defer to states in their definitions of such terms would be to grant states license to offend fundamental principles of justice. Such deference functionally places no limits on toleration. It gives states the opportunity to define their way into formal compliance with the demands to respect liberty and equality.

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[25] *See generally* Michael J. Sandel, *Judgemental Toleration*, *in* NATURAL LAW, LIBERALISM, AND MORALITY: CONTEMPORARY ESSAYS (Robert George ed. 2001) (arguing that in some circumstances moral considerations may outweigh society's interest in pluralistic toleration).

Similarly, a state cannot avoid the demand to punish only the criminally responsible by insisting that within its borders "responsible" is defined in such a way that the mentally disordered are responsible even in cases in which they lacked a fair opportunity to conform to the law, or in cases in which their conduct failed to manifest the lack of concern for others that is the hallmark of the actions of fully responsible offenders. Tolerable moral disagreement must proceed against a backdrop of agreement about the nature of many descriptive features of persons that matter to the question of what justice requires. This is the case with the notion of criminal responsibility.

We can recognize that pluralist toleration requires us to grant states substantial control over their criminal law and, simultaneously hold, as we should, that states are not free to offend principles of justice through abolition of the insanity defense.

CONCLUSION

Criminal responsibility requires a certain psychology with a certain causal history. This is a descriptive, non-moral fact that has important implications for justice. Criminally responsible wrongdoing is an eligible object of punishment; conduct by non-responsible people is not a proper object of blame and punishment. This is a fundamental feature of our jurisprudence.[26] To tolerate policies of criminal

[26] *See, e.g.*, Panetti v. Quarterman, 551 U.S. 930, 960 (2007); Ford v. Wainwright, 477 U.S. 399, 407-11 (1986); *see also* Durham v. United States, 214 F.2d 862, 869-76 (D.C. Cir. 1954)

responsibility under which the mentally disordered are responsible solely because their conduct satisfies the *prima facie* case turns a blind eye to injustice that no policy of deference requires.

The amici urge the Court to recognize the injustice in Kansas's abolition of the insanity defense, and to uphold the fundamental principle that criminal blame and punishment must be reserved for the responsible.

Respectfully submitted.

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(describing the historical test for mental illness and incapacity under the law).

APPENDIX

List of the Amici Curiae*

Gideon Yaffe is the Wesley Newcomb Hohfeld Professor of Jurisprudence and Professor of Philosophy and Psychology at Yale Law School. He has published books and articles concerned with criminal responsibility and the philosophy of criminal law.

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Eyal Aharoni is an Assistant Professor of Psychology and Philosophy at Georgia State University. He has published extensively about moral reasoning, legal responsibility, and criminal punishment.

Richard J. Arneson is Professor of Philosophy at the University of California, San Diego. He has written on issues in social justice and on personal deservingness and moral responsibility themes.

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Nancy Bauer is Professor of Philosophy at Tufts University. She has published extensively in social and political philosophy.

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Kristen Bell is Assistant Professor at University of Oregon School of Law. She has published about criminal punishment.

Brian H. Bix is the Frederick W. Thomas Professor of Law and Philosophy at the University of Minnesota. He has written extensively in legal philosophy.

David Boonin is Professor of Philosophy and Director of the Center for Values and Social Policy at the University of Colorado Boulder. He is the author of six books and a number of articles in ethics and applied ethics.

Jeffrey Brand is Associate Professor of Philosophy at the George Washington University. He has published on moral philosophy, philosophy of law, and the theory of criminal punishment.

Michael E. Bratman is U. G. and Abbie Birch Durfee Professor in the School of Humanities and Sciences, and Professor of Philosophy at Stanford University. He has published extensively about intention, individual and shared, and about practical rationality.

David O. Brink is Distinguished Professor of Philosophy at the University of California, San Diego and Affiliate Professor of Law at the University of San Diego School of Law. His research is in ethical theory, moral psychology, and criminal law — including responsibility, excuse, and insanity.

Susan J. Brison is Professor of Philosophy and Eunice and Julian Cohen Professor for the Study of Ethics and Human Values, Dartmouth College. She has published extensively on topics in ethics and political philosophy

Michael Brownstein is Associate Professor of Philosophy at John Jay College of Criminal Justice/City University of New York. He has published books and articles about bias, prejudice, ethics, and moral responsibility.

Sarah Buss is Professor of Philosophy at the University of Michigan. She has published on moral responsibility, rational agency, the obligation to treat others with respect and the basis of this obligation.

Joe Campbell is Professor in Politics, Philosophy, and Public Affairs at Washington State University. He has published extensively about free will, moral responsibility, and blame.

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Michelle Madden Dempsey is the Harold Reuschlein Scholar Chair and Professor of Law at Villanova University Charles Widger School of Law. She has published extensively about criminalization and moral wrongdoing.

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John Martin Fischer is Distinguished Professor of Philosophy at the University of California, Riverside, and University Professor in the University of California. He has published extensively on freedom, competence, and moral responsibility.

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Peter Furlong is Professor of Humanities in the Philosophy Program at Valencia College. He writes about free will and philosophy of religion.

Jon Garthoff is Associate Professor and Director of Graduate Studies at the University of Tennessee. He has published work on a variety of topics in ethical theory and political philosophy, including moral character, the conditions necessary for responsibility, and the doctrine of legal personality.

Stephen P. Garvey is Professor of Law at Cornell Law School. He has written about the nature of the insanity defense and sanity as a necessary condition for the legitimacy of criminal liability.

Sanford Goldberg is Professor of Philosophy at Northwestern. He has published extensively in the theory of knowledge and the philosophy of language.

Sally Haslanger is Ford Professor of Philosophy and Women's and Gender Studies at MIT. She has published extensively about social justice, especially with respect to gender, race, and disability.

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Sarah Holtman is Professor of Philosophy at the University of Minnesota, Twin Cities. She is a specialist in moral, political and legal philosophy.

Adam Hosein is Associate Professor of Philosophy at Northeastern University. He has published extensively in political philosophy and the philosophy of law

Robin Jeshion is Professor of Philosophy at the University of Southern California. She has written

extensively on topics in philosophy of mind and language.

Troy Jollimore is Professor of Philosophy at California State University, Chico. He has published extensively about topics including the morality of personal relationships, obligations of loyalty, and the ethics of war and combat.

James M. Joyce is C. H. Langford Collegiate Professor of Philosophy and Professor of Statistics at the University of Michigan, Ann Arbor. He has published extensively on rational choice theory and probabilistic reasoning.

Shelly Kagan is the Clark Professor of Philosophy at Yale University. He has written widely on various topics in moral philosophy, including the nature of desert.

Matt King is Assistant Professor of Philosophy at the University of Alabama at Birmingham. He has published widely on responsibility and blame.

Hilary Kornblith is Distinguished Professor of Philosophy at the University of Massachusetts, Amherst. He has published widely on epistemology and related areas.

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Ambrose Lee is a Lecturer in Legal Theory at the School of Law in University of Surrey. He has

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Janet Levin is Professor of Philosophy at the University of Southern California. She has published on topics in the philosophy of mind, philosophy of psychology, and the theory of knowledge.

Judith Lichtenberg is Professor of Philosophy at Georgetown University. She has written about criminal punishment and has taught philosophy at Jessup Correctional Institution in Maryland and the DC Jail in Washington, D.C.

Douglas MacLean is Professor of Philosophy at the University of North Carolina Chapel Hill. He teaches and has published articles on moral philosophy, public policy, and law.

Daniel Markovits is Guido Calabresi Professor of Law at Yale Law School. He has written extensively about equality, desert and political legitimacy.

Julia Markovits is Associate Professor of Philosophy at Cornell University. She teaches ethics and philosophy of law, and has published extensively on topics in moral philosophy, including the nature of praiseworthiness and blameworthiness.

Andrei Marmor is Jacob Gould Schurman Professor of Philosophy and Law at Cornell University. He has published extensively in legal and moral philosophy as well as constitutional theory.

Edwin McCann is Professor of Philosophy and English at the University of Southern California. He has published work on the topic of free will and determinism, especially as it relates to the causation of action.

Lisa J. McLeod is Professor of Philosophy at Guilford College. A former criminal defense attorney, she has published on philosophical problems regarding imprisonment, and W.E.B. Du Bois.

Jeff McMahan is White's Professor of Moral Philosophy at the University of Oxford. He has published extensively on moral responsibility as the basis of a person's liability to be harmed as a matter of defense, punishment, or reparation.

Alfred R. Mele is the William H. and Lucyle T. Werkmeister Professor of Philosophy at Florida State University. He is the author of 12 books and over 200 articles concerned with agency and responsibility.

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L.A. Paul is Professor of Philosophy and Cognitive Science at Yale University. She has written two books on causation and decision making and has published many articles on these and related topics.

Douglas W. Portmore is Professor of Philosophy at Arizona State University. He has published extensively about morality, rationality, blame, and responsibility.

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Peter Railton is the Kavka Distinguished University Professor at the University of Michigan, Ann Arbor. He has published work on ethics, the theory of action, and the nature of rationality.

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Massimo Renzo is Professor of Politics, Philosophy and Law at The Dickson Poon School of Law, King's College London. He has published extensively on the philosophy of criminal law, political authority and human rights.

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