LEGAL PROBABILISM

MARCELLO DI BELLO – ASU

Reading Guide – Week #4

Redmayne. A good summary of the paper's argument is given on p. 710 by the author:

"We started our investigation of the relevance of character with an analysis of relevance. The stance taken there was that relevance could be understood in terms of likelihood ratios, with each piece of evidence presented during a trial being used to render the hypothesis of guilt more or less probable. This provides a means of analysing relevance which is both clear and simple. The point now being made is that it may be rather too simple, because a realistic analysis of relevance requires that some thought be given to how jurors actually process evidence."

Use this as your map. I recommend you make sure you understand these key points:

- the definition of logically relevant evidence in terms of likelihood ratio (pp. 685-690)
- how comparative propensity is calculated; see table 2 (pp. 691-700)
- objections to comparative propensity and replies (pp. 770-710)
- contextual relevance v. logical relevance (p.p 710-714)

Pundik This article is more critical than Redmayne's about the use of statistical evidence about prior convictions.

- Sec 1 (pp. 241-247) discusses the philosophical background, notions such as free will, determinism, (in)compatibillism.

Sec 2 (pp. 247-) applies the philosophical framework to legal fact-finding in criminal trials. If defends the culpability account: relying on predictive evidence for judgments about culpability at trial would treat defendants as though they lacked free will, but presupposing free will is necessary for attributions of culpability. The account is illustrated with examples: child molestation (p. 249), motive (p. 250) and opportunity (p. 252).

• Sec 3 (pp. 256-end) examines a competing view and argues that it is more problematic than the culpability account.

Precis. No specific instructions this week. Your precis should describe (a) topic of the paper; (b) main thesis (or theses, if more than one); (c) supporting arguments; (d) objections to these arguments, complications or difficulties that the author considers (if any). A precis should be no more than one page. If you want to write more, that's fine, but do not exaggerate! Be clear, simple, and concise. Due at the beginning of class.