**How to be Causally Liable without Causing: the Case of Omissions**

**Yuval Abrams, City University of New York Graduate Center**

**Abstract**

Causation of harm is required for liability in both criminal law and torts. To cause something is to make something happen in the world, physically. Omissions present difficulties for causation in that they are not, properly speaking, causes of anything, since they are, strictly speaking, nothing. This paper embarks on an investigation of causation via omission in both metaphysics and the law and attempts to show how a view of actual causation, that is, a view in which omissions are not strictly speaking causal, can still accommodate liability for omissions. Employing Dowe’s theory of causation as production (which rejects the counterfactual theory of causation), I argue that we can both maintain the act/omission distinction, which is desirable both metaphysically and morally, and account for omission-liability. The key is to understand that while omissions are not causal, they generate duties similar to Expectation Damages in contracts: the plaintiff has a right to be where she would have been had the (omitted) duty been performed. Defendant in these cases has not caused the damage; rather he is held liable for not having caused what he should have caused, had he complied with his duty. In adjudicating the dispute between contrastivists about causation (Schaffer) and singularists (Dowe and Moore), I argue that, while liability is indeed contrastive, causation itself, contra Schaffer, is not. The judgment of liability in omission cases is that the plaintiff has a right to have been placed in a different (better) possible circumstance that defendant would have brought about (caused) had the duty been met. The requirement that causation itself remain a relation between actual events and actions is maintained.