

# ELEMENTS OF CRIMINAL LIABILITY

- In this lecture, we will consider:
- Burden and standard of proof in a criminal trial
- The building blocks of criminal liability -
  - the actus reus
  - the mens rea
- Transferred malice

# Responsibility And Criminal Liability

**R A Duff**



## **Responsibility And Criminal Liability:**

Responsibility and Criminal Liability C.T. Sistare, 2012-12-06 autonomy principally in terms of the agent's conscious choice of ends or conduct. From this the cognitivist emphasis on mental states and their contents naturally follows. The presence of specified mental states as signifying agent choice thus becomes the hallmark of responsible conduct. Capacities model theorists by contrast interpret personal autonomy and agent responsibility in terms of the looser notion of control. From this perspective conscious choosing is but one highly responsible instance of such control and the presence or absence of mental states is primarily relevant to determining degrees of responsibility. The examination of these two models occupies the bulk of this manuscript. Exploration of the capacities model and criticism of the orthodox view also generate treatment of legal issues such as the use of negligence liability, the nature of criminal omissions, the character of various legal defenses and so on. Chapters 2 and 3 set out some of the thematic arguments outlined above and introduce terminology and useful distinctions. Chapters 4 through 7 provide substantive analyses of agent responsibility and of standards of criminal liability. In these chapters I argue for the comparative superiority of the capacities model of responsibility and offer recommendations for changes in current legal conceptions and standards of liability. Each chapter centers on an element of individual responsibility and related legal concerns. The final chapter, Chapter 8, comprises an overview of the integrated theory of responsibility and liability and its comparison with the traditional view.

Answering for Crime R. A. Duff, 2007-11-16 In this long awaited book Antony Duff offers a new perspective on the structures of criminal law and criminal liability. His starting point is a distinction between responsibility understood as answerability and liability and a conception of responsibility as relational and practice based. This focus on responsibility as a matter of being answerable to those who have the standing to call one to account throws new light on a range of questions in criminal law theory: on the question of criminalisation which can now be cast as the question of what we should have to answer for and to whom under the threat of criminal conviction and punishment; on questions about the criminal trial as a process through which defendants are called to answer and about the conditions bars to trial given which a trial would be illegitimate; on questions about the structure of offences, the distinction between offences and defences and the phenomena of strict liability and strict responsibility; and on questions about the structures of criminal defences. The net result is not a theory of criminal law but it is an account of the structure of criminal law as an institution through which a liberal polity defines a realm of public wrongdoing and calls those who perpetrate or are accused of perpetrating such wrongs to account.

**Criminal Responsibility and Partial Excuses** George Mousourakis, 2018-12-17 Published in 1998 this book examines the relationship between responsibility and criminal liability through an analysis of provocation and related criminal defences. It begins by identifying fundamental questions about the role of justifications and excuses in the criminal law as they emerge from the discussion of philosophical theories of responsibility. Following an outline of the distinction between murder and manslaughter and its history, the basic doctrinal

issues relating to the nature and rationale of provocation and other partial defences are then identified and discussed in depth together with the circumstances under which these defences can be raised Although the analysis focuses for the most part on English law the references to other legal systems which are included in the work add an important comparative perspective to the discussion of the issues The book should be of special interest to criminal lawyers legal theorists and students interested in comparative criminal law and jurisprudence

**The Relationship Between State and Individual Responsibility for International Crimes** Béatrice I. Bonafè, 2009 This book offers a unique comparison between state and individual responsibility for international crimes and examines the theories that can explain the relationship between these two regimes The study provides a comprehensive and systematic analysis of the relevant international practice from the standpoint of both international criminal law and in particular the case law of international criminal tribunals and state responsibility The author shows the various connections and issues arising from the parallel establishment of state and individual responsibility for the commission of the same international crimes These connections indicate a growing need to better co ordinate these regimes of international responsibility The author maintains that a general conception according to which state and individual responsibility are two separate sets of secondary rules attached to the breach of the same primary norms can help to solve the various issues relating to this dual responsibility This conception of the complementarity between state and individual responsibility justifies co ordination and consistent application of these two different regimes each of which aims to foster compliance with the most important obligations owed to the international community as a whole

**Forms of Responsibility in International Criminal Law** Gideon Boas, James L. Bischoff, Natalie L. Reid, 2007 Publisher Description

**Individual Criminal Responsibility in International Law** E. van Sliedregt, 2012-03 Atrocities such as genocide or crimes against humanity are usually committed by a large number of perpetrators Moreover those who masterminded the crimes may not have actively participated This book sets out how these people can be held responsible for their crimes by international criminal tribunals

**Punishment and Responsibility** H.L.A. Hart, 2008-03-06 This collection of essays represents H L A Hart s landmark contribution to the philosophy of criminal responsibility and punishment This edition reproduces the original text adding a new critical introduction by John Gardner a leading contemporary criminal law theorist

***Responsibility in Law and Morality*** Peter Cane, 2002-04-17 Lawyers who write about responsibility tend to focus on criminal law at the expense of civil and public law while philosophers tend to treat responsibility as a moral concept and either ignore the law or consider legal responsibility to be a more or less distorted reflection of its moral counterpart This book aims to counteract both of these biases By adopting a comparative institutional approach to the relationship between law and morality it challenges the common view that morality stands to law as critical standard to conventional practice It shows how law and morality interact symbiotically and how careful study of legal concepts of responsibility can add significantly to our understanding of responsibility more generally Central to this project is a distinction between two

paradigms of responsibility the criminal law paradigm and the civil law paradigm Whereas theoretical discussions of responsibility tend focus on conduct and agency taking account of civil law reveals the importance of outcomes and the interests of victims and society to ideas of responsibility The book examines from a distinctively legal point of view central philosophical questions about responsibility such as its relationship with culpability challenging the common view that moral responsibility requires fault causation and personality It explores the relevance of sanctions and problems of proof and enforcement to ideas of responsibility as well as the relationship between responsibility and distributive justice and the role of concepts of responsibility in public law At the heart of this book lie two questions what does it mean to say we are responsible and what are our responsibilities Its aim is not to answer these questions but to challenge some traditional approaches to answering them and more importantly to suggest fruitful alternative approaches that take law seriously

*Corporate Criminal Liability and Prevention* Richard S. Gruner, 2004 The book instructs corporate counsel on how to adopt forward looking compliance policies that can prevent criminal liability and how to mitigate the severity of penalties when they are unavoidable

*Crime, Punishment, and Responsibility* Rowan Cruft, Matthew H. Kramer, Mark R. Reiff, 2011-07-14 For many years Antony Duff has been one of the world's foremost philosophers of criminal law This volume collects essays by leading criminal law theorists to explore the principal themes in his work In a response to the essays Duff clarifies and develops his position on central problems in criminal law theory Some of the essays concentrate on the topic of criminalization That is they examine what forms of conduct including attempts offensiveness and negligence can aptly qualify as criminal offences and what principled limits if any should be placed on the reach of the criminal law Several of the other essays assess the thesis that punishment is justifiable as a form of communication between offenders and their community Those essays examine the presuppositions about the nature and function of community and about the moral structure of atonement that must be embraced if communication is to be a primary role for punishment The remaining essays examine the nature and limits of responsibility in the law as they engage with philosophical debates over moral luck by investigating the ways in which the law can legitimately hold people responsible for events that were not within their control These chapters tie the first and third parts of the book together as they explore the relationship between the principles that determine a person's responsibility and the principles that determine which types of actions can appropriately be criminalized Finally Duff responds with comments that seek to defend and clarify his views while also acknowledging the correctness of some of the critics objections

*Causation and Responsibility* Michael S. Moore, 2010-07-15 The concept of causation is fundamental to ascribing moral and legal responsibility for events Yet the relationship between causation and responsibility remains unclear What precisely is the connection between the concept of causation used in attributing responsibility and the accounts of causal relations offered in the philosophy of science and metaphysics How much of what we call causal responsibility is in truth defined by non causal factors This book argues that much of the legal doctrine on these questions is confused and

incoherent and offers the first comprehensive attempt since Hart and Honoré to clarify the philosophical background to the legal and moral debates. The book first sets out the place of causation in criminal and tort law and outlines the metaphysics presupposed by the legal doctrine. It then analyses the best theoretical accounts of causation in the philosophy of science and metaphysics and using these accounts criticises many of the core legal concepts surrounding causation such as intervening causation, foreseeability of harm and complicity. It considers and rejects the radical proposals to eliminate the notion of causation from law by using risk analysis to attribute responsibility. The result of the analysis is a powerful argument for revising our understanding of the role played by causation in the attribution of legal and moral responsibility. The

Relationship Between State and Individual Responsibility for International Crimes Beatrice Bonafè, 2009-02-23. This book offers a unique comparison between state and individual responsibility for international crimes and examines the theories that can explain the relationship between these two regimes. The study provides a comprehensive and systematic analysis of the relevant international practice from the standpoint of both international criminal law and in particular the case law of international criminal tribunals and state responsibility. The author shows the various connections and issues arising from the parallel establishment of state and individual responsibility for the commission of the same international crimes. These connections indicate a growing need to better co-ordinate these regimes of international responsibility. The author maintains that a general conception according to which state and individual responsibility are two separate sets of secondary rules attached to the breach of the same primary norms can help to solve the various issues relating to this dual responsibility. This conception of the complementarity between state and individual responsibility justifies co-ordination and consistent application of these two different regimes each of which aims to foster compliance with the most important obligations owed to the international community as a whole. *Corporations and Criminal Responsibility* Celia Wells, 2001-05-24.

Contemporary concern about technological hazards posed by business enterprises has intensified interest in the criminality of corporations. Incorporating ideas from a wide range of literature, the book argues that there is no magic answer to corporate power, to issues of personal safety and their inter-relationship with criminal law and justice. The attention paid to corporate criminal liability by courts, legislatures, law reform bodies and international organizations has increased markedly in the past decade. As in the first edition, the book takes what might be called a panoptic approach to the subject. Corporations and their susceptibility to criminal law are examined from sociological, psychological, philosophical and organizational perspectives as the book progresses. This edition has been revised and updated to take account of the burgeoning scholarly literature. Detailed analysis of judicial and legislative movements in England and Wales, in other national jurisdictions and at the level of international organizations follows. Two new chapters on corporate manslaughter and on comparative and international responses to corporate crime accommodate these changes. The book is distinctive in combining legal analysis and discussion of law reform debates with a theoretical account of the relationship between legal institutions and the role of

risk and blame in shaping criminal law and the practices of the criminal justice system

**Collective Responsibility and Accountability under International Law** Shane Darcy, 2007-03-30 Collective Responsibility and Accountability under International Law examines the extent to which the basic principle of individual responsibility accommodates liability for the acts of others It examines the debates and legal developments surrounding collective responsibility under international law The philosophical debates on collective responsibility provide an introduction to the examination of whether collective responsibility is ever appropriate or even lawful under international law As the international criminal justice project begins to flourish it is of paramount importance that the extent of the potential liability of individuals for the acts of others is clarified and held up to rigorous scrutiny It is of equal importance that there is a clear understanding of whether the means of responding to ongoing violations of international humanitarian law can include measures based on collective responsibility Global events have created an impetus for the parameters of responsibility to be clearly defined The rise of non State actors within the international legal regime raises complex questions surrounding their status power and the means for holding them accountable Published under the Transnational Publishers imprint

**The Criminal Responsibility of Senior Political and Military Leaders as Principals to International Crimes** Héctor Olásolo, 2009-05-15 As shown by the trials of Slobodan Milosevic Charles Taylor and Saddam Hussein the large scale and systematic commission of international crimes is usually planned and set in motion by senior political and military leaders Nevertheless the application of traditional forms of criminal liability leads to the conclusion that they are mere accessories to such crimes This does not reflect their central role and often results in a punishment which is inappropriately low in view of the impact of their actions and omissions For these reasons international criminal law has placed special emphasis on the development of concepts such as control of the crime and joint criminal enterprise also known as the common purpose doctrine which aim at reflecting better the central role played by senior political and military leaders in campaigns of large scale and systematic commission of international crimes The Rome Statute of the International Criminal Court and the case law of the ICTY and the ICTR have in recent years played a unique role in the achievement of this goal

On Crime, Society, and Responsibility in the Work of Nicola Lacey Iyiola Solanke, 2021 Few contemporary scholars have done more in their work to develop the idea of responsibility than Nicola Lacey She ranks alongside thinkers and writers such as HLA Hart and Antony Honor in developing approaches to understanding responsibility Like these authors the influence of her work has spread beyond academia to change the perception of responsibility amongst practitioners Both Hart and Honor have during their lifetime had volumes dedicated to their work This book does the same for Nicola Lacey marking her ongoing influence and accomplishments in the common law world through a collection of essays by leading international scholars reflecting and interrogating her contribution to understanding criminal responsibility Additionally the book aims to promote the best legal scholarship on responsibility in the common law world and inspire the brightest legal scholars through a collection of essays designed to mark Professor

Lacey's ongoing contribution to the understanding of criminal responsibility. The role of Professor Lacey's work in this area as well as others cannot be overlooked. Her scholarship includes not only a prize-winning biography of HLA Hart himself but numerous articles and tomes on the subject, culminating with her most recent work *In Search of Criminal Responsibility: Ideas, Interests, and Institutions* (OUP, 2016). This Festschrift, one of few common law publications to pay homage to the erudition of a female jurist, can be seen as a continuation of the themes in this book via reflection and interrogation of her work by leading scholars on the topic. The Festschrift will therefore not only be a celebration of her work but also an attempt to take forward intellectual engagement with the topic of responsibility by continued engagement with her ideas. Each author brings new ideas to bear on her work touching upon important aspects of responsibility that are current in the scholarship: categorization, frameworks for understanding criminal responsibility, and the relationships between them; women in criminal law; the history of criminal law; blameworthiness and ascriptions of responsibility; moral responsibility; the role of politics and political economy.

Nicola Lacey is a School Professor of Law, Gender, and Social Policy. From 1998 to 2010, she held a Chair in Criminal Law and Legal Theory at the LSE; she returned to the LSE in 2013 after spending three years as Senior Research Fellow at All Souls College and Professor of Criminal Law and Legal Theory at the University of Oxford. She has held a number of visiting appointments, most recently at Harvard Law School and the Australian National University. She is an Honorary Fellow of New College Oxford and University College Oxford and a Fellow of the British Academy. In 2011, she was awarded the Hans Sigmund Prize by the University of Bern for outstanding scholarship on the function of the rule of law in late modern societies, and in 2018 an Honorary Doctorate by the University of Edinburgh. In 2017, she was awarded a CBE for services to Law, Justice, and Gender Politics.

The New Philosophy of Criminal Law Chad Flanders, Zachary Hoskins, 2015-12-16. There is no more vivid example of a state's power over its citizens than the criminal law. By criminalizing various behaviours, the state sets boundaries on what we can and cannot do. And the criminal law is in many ways unique in the harshness of its sanctions. But traditional criminal law theory has for too long focussed on the questions: what is a crime and what is the justification of punishment? The significance of the criminal law extends beyond these questions; indeed, critical philosophical questions underlie all aspects of the criminal justice system. The criminal law engages us not just as offenders or potential offenders but also as victims, suspects, judges, and jurors, prosecutors and defenders, and as citizens. The authors in this volume go beyond traditional questions to challenge our conventional understandings of the criminal law. In doing so, they draw from a number of disciplines, including philosophy, history, and social science.

Reflections on Ethics and Responsibility Zachary J. Goldberg, 2017-02-06. The original essays in this book address the influential writings of Peter A. French on the nature of responsibility, ethics, and moral practices. French's contributions to a wide spectrum of philosophical discussions have made him a dominant figure in the fields of normative ethics, meta-ethics, applied ethics, as well as legal and political philosophy. Many of French's deepest insights come from identifying and exploring the scope and nature of moral responsibility and



human agency as they appear in actual events real social and cultural practices as well as in literature and film This immediacy renders French s scholarship vital and accessible to a wide variety of audiences The authors recognized for their own contributions to the understanding of the nature of morality and moral practices offer new and unique positions while exploring expanding and responding to those of French The final chapter is written by French in which he provides both new philosophical insight as well as some reflection on his own work and its influence This book will appeal to philosophers as well as advanced students and researchers in the humanities social sciences law and political science

**The Role of Emotions in Criminal Law Defences** Eimear Spain,2011-09-29 The law has struggled for many years with the problem of how to accommodate those who commit crimes due to threats or circumstances The modern ambivalence surrounding the defences of duress and necessity has its origins in the legal past To date the defences of duress and necessity have been couched in terms such as compulsion involuntariness and human frailty resulting in the true nature of the defences being hidden Psychologists and legal theorists have begun to re examine the role of emotions in human action including their effect upon behaviour and choice In light of recent breakthroughs Eimear Spain considers how the emotions experienced by those who act due to threats both human and natural in origin should affect the attribution of criminal responsibility and punishment The understanding of emotions extrapolated in this book points towards a new rationale for the existing defences of duress and necessity

*Answering for Crime* R A Duff,2007-11-13 In this long awaited book Antony Duff offers a new perspective on the structures of criminal law and criminal liability His starting point is a distinction between responsibility understood as answerability and liability and a conception of responsibility as relational and practice based This focus on responsibility as a matter of being answerable to those who have the standing to call one to account throws new light on a range of questions in criminal law theory on the question of criminalisation which can now be cast as the question of what we should have to answer for and to whom under the threat of criminal conviction and punishment on questions about the criminal trial as a process through which defendants are called to answer and about the conditions bars to trial given which a trial would be illegitimate on questions about the structure of offences the distinction between offences and defences and the phenomena of strict liability and strict responsibility and on questions about the structures of criminal defences The net result is not a theory of criminal law but it is an account of the structure of criminal law as an institution through which a liberal polity defines a realm of public wrongdoing and calls those who perpetrate or are accused of perpetrating such wrongs to account

## Adopting the Song of Expression: An Psychological Symphony within **Responsibility And Criminal Liability**

In a global eaten by monitors and the ceaseless chatter of fast communication, the melodic splendor and emotional symphony produced by the written term often fade into the background, eclipsed by the persistent noise and disturbances that permeate our lives. Nevertheless, situated within the pages of **Responsibility And Criminal Liability** a stunning fictional treasure full of fresh emotions, lies an immersive symphony waiting to be embraced. Constructed by an outstanding composer of language, this interesting masterpiece conducts readers on a psychological trip, well unraveling the concealed tunes and profound impact resonating within each cautiously crafted phrase. Within the depths of this touching assessment, we will investigate the book is main harmonies, analyze its enthralling publishing style, and submit ourselves to the profound resonance that echoes in the depths of readers souls.

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