

# PHILOSOPHY AND THE CRIMINAL LAW

PRINCIPLE AND CRITIQUE

Edited by  
**ANTHONY DUFF**

CAMBRIDGE STUDIES IN  
PHILOSOPHY AND LAW

# Philosophy And The Criminal Law Principle And Critique

**Thomas Crofts, Louise Kennefick, Arlie  
Loughnan**

## **Philosophy And The Criminal Law Principle And Critique:**

**Philosophy and the Criminal Law** Antony Duff, 1998-02-13 Five legal theorists discuss a range of questions on the nature of the philosophy of criminal law *The Realm of Criminal Law* R A Duff, 2018-06-27 We are said to face a crisis of over criminalization our criminal law has become chaotic unprincipled and over expansive This book proposes a normative theory of criminal law and of criminalization that shows how criminal law could be ordered principled and restrained The theory is based on an account of criminal law as a distinctive legal practice that functions to declare and define a set of public wrongs and to call to formal public account those who commit such wrongs an account of the role that such practice can play in a democratic republic of free and equal citizens and an account of the central features of such a political community and of the way in which it constitutes its public realm its civil order Criminal law plays an important but limited role in such a political community in protecting but also partly constituting its civil order On the basis of this account we can see how such a political community will decide what kinds of conduct should be criminalized not by applying one or more of the substantive master principles that theorists have offered but by considering which kinds of conduct fall within its public realm as distinct from the private realms that are not the polity's business and which kinds of wrong within that realm require this distinctive kind of response rather than one of the other kinds of available response The outcome of such a deliberative process will probably be a more limited and a more rational and principled criminal law **The Limits of**

**Criminal Law** Carl Constantin Lauterwein, 2016-03-03 This book compares the civil and common law approach to analyze the question What sorts of conduct may the state legitimately make criminal Through a comparative focus on an Australian and German context this book utilizes interviews with Australian criminal law experts and contrasts them with the German model based on Rechtsgutstheorie By comparing the largely descriptive criminology based Australian approach with the more sophisticated German legal theory model the author finds the Australian approach to be suffering from a normative flaw illustrated by the distinction of different approaches to the offences of incest bestiality and possession of illicit drugs Carl Constantin Lauterwein discovers that while there is strength in the common law approach of describing the possible reasons for criminalizing certain conduct the approach could be significantly improved by scrutinizing the legitimacy of those reasons

**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

**Altruism and the Criminal Law** Andrew Ashworth, Juan Ignacio Piña Rochefort, 2025-09-18 This book explores the foundations of the principle of altruism and its relationship to the criminal law examining the contrasting justifications for the duty of easy rescue and the duty of tolerance both of which are based on altruism Since the days of Lord Macaulay and James FitzJames Stephen it has been said that English law does not usually punish omissions and that altruistic duties are incompatible with the spirit of the common law This book aims to show that this is not an accurate description of English criminal law and that there is a strong case to be made for the opposite understanding based on principles advanced by authors such as Adam Smith Jeremy Bentham John Stuart Mill and others By analysing the duty of easy rescue which imposes on individuals a duty to take steps to rescue a person in danger if this can be done without risk to the rescuer or at least a duty to call the emergency services and by comparing it with the well known duties arising in cases of extreme necessity it can be shown that altruism has plenty to say in different parts of the criminal law Having established the case for criminalising the failure to provide a simple rescue a detailed analysis is made of the form that this criminalisation should take bearing in mind the basic principles of English law and considering the strengths and weaknesses of the duty of easy rescue as it is formulated in various continental systems including the German French Spanish and Italian criminal codes

*Emerging Issues in Tort Law* Jason W Neyers, Erika Chamberlain, Stephen G.A. Pitel, 2007-05-29 In this book articles by leading tort scholars from Australia Canada Hong Kong Israel New Zealand the United Kingdom and the United States deal with important theoretical and practical issues that are emerging in the law of torts The articles analyse recent leading developments in areas such as economic negligence causation vicarious liability non delegable duty breach of statutory duty intentional torts damages and tort law in the family They provide a foretaste of the issues that will face tort law in the near future and offer critical viewpoints that should not go unheeded With its rich breadth of contributors and topics *Emerging Issues in Tort Law* will be highly useful to lawyers judges and academics across the common law world Contributors Elizabeth Adjin Tettey Kumaralingam Amirthalingam Peter Benson Vaughan Black Peter Cane Erika Chamberlain Israel

Gilead Paula Giliker Rick Glofcheski Lewis N Klar QC Michael A Jones Richard Lewis John Murphy Jason W Neyers Ken Oliphant David F Partlett Stephen GA Pitel Denise Reaume Robert H Stevens Andrew Tettenborn Stephen Todd Shauna van Praagh Stephen Waddams David R Wingfield Richard W Wright      **The Oxford Handbook of Criminology** Rod Morgan, Mike Maguire, Robert Reiner, 2012-04-12 The approach of the year 2000 has made the study of apocalyptic movements trendy But groups anticipating the end of the world will continue to predict Armageddon even after the calendar clicks to triple Os      Human Flourishing: Volume 16, Part 1 Ellen Frankel Paul, Fred D. Miller, Fred Dycus Miller, Jeffrey Paul, 1999-01-28 The essays in this volume examine the nature of human flourishing and its relationship to a variety of other key concepts in moral theory Some of them trace the link between flourishing and human nature asking whether a theory of human nature can allow us to develop an objective list of goods that are of value to all agents regardless of their individual purposes or aims Some essays look at the role of friendships or parent child relationships in a good life or seek to determine whether an ethical theory based on human flourishing can accommodate concern for others for their own sake Other essays analyze the function of families or other social political institutions in promoting the flourishing of individuals Still others explore the implications of flourishing for political theory asking whether considerations of human flourishing can help us to derive principles of social justice      **Punishment, Communication, and Community** R. A. Duff, 2003-05-15 The question What can justify criminal punishment becomes especially insistent at times like our own of penal crisis when serious doubts are raised not only about the justice or efficacy of particular modes of punishment but about the very legitimacy of the whole penal system Recent theorizing about punishment offers a variety of answers to that question answers that try to make plausible sense of the idea that punishment is justified as being deserved for past crimes answers that try to identify some beneficial consequences in terms of which punishment might be justified as well as abolitionist answers telling us that we should seek to abolish rather than to justify criminal punishment This book begins with a critical survey of recent trends in penal theory but goes on to develop an original account based on Duff's earlier *Trials and Punishments* of criminal punishment as a mode of moral communication aimed at inducing repentance reform and reconciliation through reparation an account that undercuts the traditional controversies between consequentialist and retributivist penal theories and that shows how abolitionist concerns can properly be met by a system of communicative punishments In developing this account Duff articulates the liberal communitarian conception of political society and of the role of the criminal law on which it depends he discusses the meaning and role of different modes of punishment showing how they can constitute appropriate modes of moral communication between political community and its citizens and he identifies the essential preconditions for the justice of punishment as thus conceived preconditions whose non satisfaction makes our own system of criminal punishment morally problematic Punishment Communication and Community offers no easy answers but provides a rich and ambitious ideal of what criminal punishment could be an ideal of what criminal punishment could be and ideal that challenges

existing penal theories as well as our existing penal practices      **Criminal Liability for Non-Aggressive Death** Sally Cunningham,2016-05-13 The crime of manslaughter exists as a catch all offence to punish those who are blameworthy in causing the death of another but whose culpability falls short of that required for murder Manslaughter is an extremely broad offence and it has a difficult task in ensuring that all those who warrant punishment for non aggressive deaths are convicted Simultaneously it should not be too broad in covering those who do not warrant punishment for such deaths There is little consistency in whether a particular dangerous activity leads to liability for a specific offence or for the generic offence of manslaughter when death is caused This book examines the current law and includes a variety of perspectives on the subject with chapters on specific modes of killing as well as issues that permeate all areas The first half of the book deals with issues such as how any special offences for non aggressive death should relate to a hierarchy of homicide offences The second half deals with issues specific to different activities which may or may not justify the creation of specific homicide offences The book includes a comparative chapter on Australian law      *Breaking the Cycle of Mass Atrocities* Marina Aksenova,Elies van Sliedregt,Stephan Parmentier,2019-05-02 Breaking the Cycle of Mass Atrocities investigates the role of international criminal law at different stages of mass atrocities shifting away from its narrow understanding solely as an instrument of punishment of those most responsible The book is premised on the idea that there are distinct phases of collective violence and international criminal law contributes in one way or another to each phase The authors therefore explore various possibilities for international criminal law to be of assistance in breaking the vicious cycle at its different junctures      *Lacey, Wells and Quick Reconstructing Criminal Law* Celia Wells,Oliver Quick,2010-05-27 Since the publication of the first edition this textbook has offered one of the most distinctive and innovative approaches to the study of criminal law Looking at both traditional and emerging areas such as public order offences and corporate manslaughter it offers a broad and thorough perspective on the subject Material is organised thematically and is clearly signposted at the beginning of each section to allow the student to navigate successfully through the different fields This fourth edition looks at topical issues such as policing the Serious Crime Act 2007 and reform of the Fraud Act 2006 Relevant case law and extracts from the most topical and engaging debates on the subject give the subject immediacy The book is essential for both undergraduate and postgraduate study of criminal law and justice      *Definition in the Criminal Law* Andrew Halpin,2004-10 This book investigates the role and scope of definition in criminal law the nature of legal materials and the diversity of perspectives on law      **Liberal Criminal Theory** A P Simester,Antje du Bois-Pedain,Ulfrid Neumann,2014-12-01 This book celebrates Andreas Andrew von Hirsch s pioneering contributions to liberal criminal theory He is particularly noted for reinvigorating desert based theories of punishment for his development of principled normative constraints on the enactment of criminal laws and for helping to bridge the gap between Anglo American and German criminal law scholarship Underpinning his work is a deep commitment to a liberal vision of the state This collection brings

together a distinguished group of international authors who pay tribute to von Hirsch by engaging with topics on which he himself has focused. The essays range across sentencing theory, questions of criminalisation and the relation between criminal law and the authority of the state. Together they articulate and defend the ideal of a liberal criminal justice system and present a fitting accolade to Andreas von Hirsch's scholarly life.

*The Routledge International Handbook of Criminal Responsibility* Thomas Crofts, Louise Kennefick, Arlie Loughnan, 2024-12-23. Presenting cutting edge research and scholarship, this extensive volume covers everything from abstract theorising about the meanings of responsibility and how we blame to analysing criminal law and justice responses and factors that impact individual responsibility. Inviting exchanges across a burgeoning critical scholarship on criminal responsibility, this Handbook showcases the diverse range of methodologies applied to the field, including socio-political approaches, critical historical methods, criminological and sociological perspectives, and interdisciplinary studies bridging law and the mind sciences. Spanning global networks of established and emerging scholars of responsibility for crime, this book explores how we relate to one another as human beings under the spotlight of the criminal law. In doing so, it is hoped that the collection not only does justice to the vibrant landscape of criminal responsibility studies but inspires new directions and future synergies in this compelling field. *The Routledge International Handbook of Criminal Responsibility* will appeal to scholars and students of criminal law, criminal justice, criminology, sociology, psychology, neuroscience, philosophy, and socio-legal studies, as well as practitioners and policymakers working in related fields.

**Hybrid Justice**, 2024-12-03. The last decade has seen the unexpected re-emergence of hybrid and internationalised courts/institutions which operate with varying combinations of national and international law, procedure and staff. Whilst the establishment of the permanent International Criminal Court should have made hybrid mechanisms largely obsolete, hybrids have recently been established or proposed for atrocity crimes committed in Chad, South Sudan, Israel/Palestine, the Central African Republic, Kosovo, Syria, Sri Lanka, Myanmar, The Gambia, Liberia, and Ukraine. *Hybrid Justice* critically examines the resurgent promise of hybrid courts. Focusing on the fields, practices, innovations, and of hybrid courts, the contributors evaluate hybrids' success and, in doing so, help to clarify the conditions and mechanisms that makes hybrids likely to succeed in their mandates and impacts. The authors focus on hybrid courts and resilience: the resilience of hybrid mechanisms to withstand political and other pressures to deliver justice and accountability, and the potential contribution of hybrids to the resilience of affected communities. Borne out of a collaboration between lawyers, academics, and activists, this edited volume provides a uniquely comparative account of the development of hybrid courts in recent years.

*Impassioned Jurisprudence* Nancy E. Johnson, 2015-06-05. In this volume of essays, scholars of the interdisciplinary field of law and literature write about the role of emotion in English law and legal theory in the late eighteenth and early nineteenth centuries. The law's claims to reason provided a growing citizenry that was beginning to establish its rights with an assurance of fairness and equity. Yet an investigation of the rational discourse of the law reveals at

its core the processes of emotion and a study of literature that engages with the law exposes the potency of emotion in the practice and understanding of the law Examining both legal and literary texts the authors in this collection consider the emotion that infuses the law and find that feeling sentiment and passion are integral to juridical thought as well as to specific legislation

**Sentencing Multiple Crimes** Jesper Ryberg, Julian V. Roberts, Jan Willem de Keijser, 2018 Sentencing Multiple Crimes confronts the practical and theoretical challenges for the criminal justice system when punishing multiple crime offenders including the proportionality of the crimes committed the temporal span between the crimes and the relationship between theories about the punitive treatment of recidivists and multiple offenders It provides a comprehensive examination of the dynamics involved with sentencing multiple offenders from the perspective of several legal theories

**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

**The Moral Foundations of Social Institutions** Seumas Miller, 2010 Seumas Miller provides an exciting new philosophical theory of contemporary social institutions and the ethical challenges they confront



## Whispering the Strategies of Language: An Psychological Quest through **Philosophy And The Criminal Law Principle And Critique**

In a digitally-driven earth where displays reign great and immediate transmission drowns out the subtleties of language, the profound secrets and emotional nuances hidden within words usually get unheard. However, nestled within the pages of **Philosophy And The Criminal Law Principle And Critique** a charming fictional prize sporting with raw emotions, lies an extraordinary journey waiting to be undertaken. Published by an experienced wordsmith, that marvelous opus encourages visitors on an introspective journey, delicately unraveling the veiled truths and profound affect resonating within the cloth of every word. Within the mental depths of this touching evaluation, we can embark upon a honest exploration of the book is core subjects, dissect its charming publishing design, and succumb to the effective resonance it evokes deep within the recesses of readers hearts.

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