

# *Rethinking Criminal Law*

*George P. Fletcher*

# Rethinking Criminal Law

**Héctor Olásolo**



## **Rethinking Criminal Law:**

Rethinking Criminal Law George P. Fletcher, 2000 This is a reprint of a book first published by Little Brown in 1978 George Fletcher is working on a new edition which will be published by OUP in three volumes the first of which is scheduled to appear in January 2001 Rethinking Criminal Law is still perhaps the most influential and often cited theoretical work on American criminal law This reprint will keep this classic work available until the new edition can be published Rethinking Criminal Law George P. Fletcher, 1978 **Rethinking Criminal Law** George P. Fletcher, 1978 Rethinking Criminal Law George Philip Fletcher (jurist), 1978 *George Fletcher's Essays on Criminal Law* George P. Fletcher, 2013-01-10 This volume collects for the first time a selection of criminal law scholar George Fletcher's most famous previously published shorter works as well as some that are less known but equally important Each of the twelve essays by Fletcher is paired with one or more new critical commentaries on that essay These critical commentaries trace the impact of the respective essay in the development of the criminal law and assess its future significance *Rethinking the Reasonable Person* Mayo Moran, 2003 The reasonable person standard plays a central role in the law figuring prominently in tort law criminal law and administrative law However the reasonable person has also attracted substantial criticism from egalitarian critics and feminists insofar as it presupposes contested notions of normal behaviour and may discriminate against certain classes of defendant Judges and mainstream theorists also increasingly puzzle over what the standard amounts to and how to apply it Using these controversies as a point of departure Rethinking the Reasonable Person examines the promise and the perils of the reasonable person standard Ultimately it argues that an objective standard is not only defensible but essential Yet only with a radical reconstruction will it be possible to realize the promise of the standard and to ensure a truly egalitarian conception of responsibility **Leading Works in Criminal Law** Chloë Kennedy, Lindsay Farmer, 2023-08-11 This book analyses a selection of leading works in the criminal law to ask questions about how the modern discipline of criminal law has developed how it has been deployed in colonial and postcolonial contexts and how criminal law scholarship has engaged with traditionally marginalised perspectives such as feminism queer theory and anti carceral and abolitionist movements The works analysed range from Macaulay's Indian Penal Code 1837 to more recent textbooks and monographs on criminal law and their jurisdictional reach extends to India Canada Australia Malawi the UK and the USA The contributing authors include scholars activists and legal practitioners each of whom explores the intellectual development and geographical reach of Anglocriminal law via the work they analyse Across the collection the editors and contributors address the question of what it means to be a leading work in criminal law The book will be a valuable resource for students academics and researchers working in the area of criminal law *The Handbook of Comparative Criminal Law* Kevin Jon Heller, Markus Dubber, 2010-12-01 This handbook explores criminal law systems from around the world with the express aim of stimulating comparison and discussion General principles of criminal liability receive prominent coverage in each essay including

discussions of rationales for punishment the role and design of criminal codes the general structure of criminal liability accounts of mens rea and the rights that criminal law is designed to protect before the authors turn to more specific offenses like homicide theft sexual offenses victimless crimes and terrorism This key reference covers all of the world's major legal systems common civil Asian and Islamic law traditions with essays on sixteen countries on six different continents The introduction places each country within traditional distinctions among legal systems and explores noteworthy similarities and differences among the countries covered providing an ideal entry into the fascinating range of criminal law systems in use the world over

The Defence of Mistake of Law in International Criminal Law Antonio Coco, 2022-07-11 The adage ignorance of the law is no excuse is significantly inaccurate Ignorance and mistake of law do under certain circumstances exclude responsibility both in national and international criminal law This monograph updates the existing reviews of law and practice on the topic aiming to go a step further it takes the analysis of mistake of law as a starting point for systematic observations about international criminal law in general First the volume defines the contours of the defence of mistake of law in general theory of criminal law distinguishing it from cognate defences and highlighting most notably its connection with superior orders Secondly it gives an overview of the possible approaches to the defence offering examples from national law as terms of reference for the subsequent analysis of international criminal law Thirdly it surveys the relevant law and practice of international criminal tribunals with a focus on the International Criminal Court and it contemplates offences for which a defence of mistake of law may potentially succeed Finally the author tries to interpret what the rules on mistake of law applicable before international criminal tribunals imply about the purpose of punishing individuals and to the legitimacy of such punishment Whilst the discourse on international criminal law is more and more concerned with global politics *The Defence of Mistake of Law in International Criminal Law* brings back the focus on the appropriateness of imposing a guilty verdict on the individual defendant a human being constituting the basic unit of each society

*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 Freedom and Criminal Responsibility in American Legal Thought Thomas Andrew Green,2014-10-27 As the first full length study of twentieth century American legal academics wrestling with the problem of free will versus determinism in the context of criminal responsibility this book deals with one of the most fundamental problems in criminal law Thomas Andrew Green chronicles legal academic ideas from the Progressive Era critiques of free will based and generally retributive theories of criminal responsibility to the midcentury acceptance of the idea of free will as necessary to a criminal law conceived of in practical moral legal terms that need not accord with scientific fact to the late in century insistence on the compatibility of scientific determinism with moral and legal responsibility and with a modern version of the retributivism that the Progressives had attacked Foregrounding scholars language and ideas Green invites readers to participate in reconstructing an aspect of the past that is central to attempts to work out bases for moral judgment legal blame and criminal punishment **Justified Killing** Whitley R. P. Kaufman,2009-01-01 In Justified Killing Whitley R P Kaufman argues that none of the leading theories adequately explains why it is permissible even to kill an innocent attacker in self defense given the basic moral prohibition against killing the innocent Kaufman suggests that such an explanation can be found in the traditional Doctrine of Double Effect according to which self defense is justified because the intention of the defender is to protect himself rather than harm the attacker **Complicity in International Law** Miles Jackson,2015-03-12 This book examines how international law prohibits state and individual complicity Complicity is a derivative form of responsibility that links an accomplice to the wrongdoing of a principal actor Whenever a legal system prohibits complicity it must address certain questions as to the content and structure of the rules To understand how international law answers these questions this book proposes an analytical framework in which complicity rules may be assessed and defends a normative claim as to how they should be structured Anchored by this framework and normative claim this book shows that international criminal law regulates individual complicity in a comprehensive way using the doctrines of instigation and aiding and abetting to inculcate complicit participants in international crimes By contrast international law s regulation of state complicity was historically marked by an absence of complicity rules This is changing In respect of state complicity in the wrongdoing of another state international law now imposes both specific and general complicity obligations the latter prohibiting states from aiding or assisting another state in the commission of any internationally wrongful act In respect of the ways that states participate in harms caused by non state actors the traditional normative structure of international law which imposed obligations only on states foreclosed the possibility of prohibiting the state s participation as a form of complicity As that traditional normative structure has evolved so the possibility of holding states responsible for complicity in the wrongdoing of non state actors has

emerged More and more both the wrongs that international actors commit and the wrongs they help or encourage others to commit matter Essays on International Criminal Justice Héctor Olásolo, 2012-01-09 Crimes of atrocity have profound and long lasting effects on any society The difference between triggering and preventing these tragic crimes often amounts to the choice between national potential preserved or destroyed It is also important to recognise that they are not inevitable the commission of these crimes requires a collective effort an organisational context and long planning and preparation Thus the idea of strengthening preventative action has taken on greater relevance and is now encompassed in the emerging notion of responsibility to prevent International courts and tribunals contribute to this effort by ending impunity for past crimes Focusing investigations and prosecution on the highest leadership maximises the impact of this contribution The ICC has an additional preventative mandate which is fulfilled by its timely intervention in the form of preliminary examinations Moreover when situations of atrocity crimes are triggered its complementarity regime incentivises states to stop violence and comply with their duties to investigate and prosecute thus strengthening the rule of law at the national level The new role granted to victims by the Rome Statute is key to the ICC s successful fulfilment of these functions This new book of essays which includes the author s unpublished inaugural lecture at Utrecht University examines these issues and places particular emphasis on the additional preventative mandate of the ICC the ICC complementarity regime the new role granted to victims and the prosecution of the highest leadership through the notion of indirect perpetration The work of Professor Olasolo breaks new ground in the academic field of international criminal law as an analysis of the system as a whole I therefore wish to express my congratulations for this work From the Foreword by Luis Moreno Ocampo Prosecutor International Criminal Court The Hague 27 April 2011 Professor Hector Olasolo s compilation provides an enormous source of easy reference to students academia and legal actors in the field of international law A look at the titles compiled in this volume demonstrates the present challenges to international criminal justice From the Preliminary Reflections by Elizabeth Odio Benito Judge and Former Vice President International Criminal Court The Hague May 2011 This collection written by a brilliant and prolific scholar and practitioner of international criminal justice is an insightful and important contribution to the existing literature Each chapter in this collection is copiously footnoted and thoroughly researched making it an important reference tool for scholars and practitioners in the field Additionally and importantly the chapters explore without polemic areas of controversy and dissent and thoughtfully and scrupulously set forth arguments for and against particular doctrinal choices From the Introduction by Leila Nadya Sadat Henry H Oerschelp Professor of Law and Director Whitney R Harris World Law Institute Washington University School of Law Alexis de Tocqueville Distinguished Fulbright Chair Universit de Cergy Pontoise Paris Spring 2011 A Collective Theory of Genocidal Intent Sangkul Kim, 2016-05-24 Tackling one of the most confusing and controversial issues in the field of international criminal law i e the genocidal intent element this monograph seeks to develop an account of genocidal intent from a collectivist perspective Drawing upon the two layered structure of the crime of

genocide composed of the conduct level and context level it detects the genocidal intent element at the context level The genocidal intent found in this manner belongs to a collective which significantly departs from the prior individualistic understandings of the notion of genocidal intent The author argues that the crime of genocide is not a crime of mens rea Collective genocidal intent at the context level operates in a way that renders the crime of genocide itself a criminal enterprise The idea of genocide as a criminal enterprise also suggests that genocide is a leadership crime in respect of which only the high level actors can be labeled as principals as opposed to accessories The book criticizes the dominant individualistic approaches to genocidal intent in particular the knowledge based approach which have thus far governed the relevant jurisprudential and academic analysis It further demonstrates that the hidden notion of collective genocide silently governs the relevant international jurisprudence Practitioners and academics in the field of international criminal law and related disciplines will find in this book a new approach to the crime of genocide The text is the first ever book length exposition of a collective account of genocidal intent Its accessibility is highly enhanced by relevant footnotes Sangkul Kim is Lecturer at Korea University in Seoul and Research Fellow with the Centre for International Law Research and Policy CILRAP He served as Associate Legal Adviser at the Office of the Prosecutor of the International Criminal Court 2004 2008 He earned law degrees from Korea University and Georgetown University Law Center

*J.L. Austin and the Law* Daniel Brian Yeager, 2006 In investigating the relationship between accusation and excuse this study uncovers something about the criminal law's peculiar way of interpreting human action Identifying that something can move us a little closer to discovery or agreement and just what it is that is staked in criminal law What is staked in any discussion of criminal law is the meaning and operation of responsibility which makes human action and its consequences so tragic The author confronts the idea of responsibility by mapping the work of J L Austin onto the criminal law

**The Bounds of Defense** Bradley Jay Strawser, 2023 Liberal conceptions of the moral justification for war have become dominant since the publication of Michael Walzer's *Just Unjust Wars* in 1977 This dominance is seen across all contemporary manifestations of just war theory from international relations and diplomatic discourse from the minds and proclamations of military commanders and governmental leaders to the everyday political assertions and philosophical rationalization of most individuals Similarly rights based accounts of the moral justification of individual defensive killing have been dominant since at least Judith J Thomson's work on the issue in the early Seventies Over the past two decades however these already rich fields of research just war theory and the ethics of defensive harm have each experienced significant and sustained resurgence

**The Oxford Handbook of Criminology** Alison Liebling, Shadd Maruna, Lesley McAra, 2023 With contributions from leading authorities this is the definitive guide to current criminological theory research and policy The Oxford Handbook of Criminology provides a comprehensive collection of chapters covering the core and emerging topics studied on criminology courses indispensable to students academics and professionals alike 43 chapters written by over 85 leading academics exploring relevant theory

cutting edge research policy developments and current debates encouraging students to appreciate the diverse and interdisciplinary nature of criminological discourse Includes detailed references to aid further research Chapters updated to reflect recent cases statistics and scholarship as well as significant current events such as Covid 19 and social justice movements New chapters added presenting research on topical issues including victimology hate crime desistance cybercrime atrocity crimes convict criminology security and smart cities prison abolitionism comparative criminology sex offending and network criminology Digital formats and resources The seventh edition is available for students and institutions to purchase in a variety of formats and is supported by online resources The e book offers a mobile experience and convenient access along with functionality tools navigation features and links that offer extra learning support [www.oxfordtextbooks.co.uk/ebooks](http://www.oxfordtextbooks.co.uk/ebooks) The accompanying online resources include essay questions and links to useful websites for each chapter along with guidance on answering essay questions and access to chapters from previous editions

**Liability for Crimes Involving Artificial Intelligence Systems** Gabriel Hallevy, 2014-11-06 The book develops a general legal theory concerning the liability for offenses involving artificial intelligence systems The involvement of the artificial intelligence systems in these offenses may be as perpetrators accomplices or mere instruments The general legal theory proposed in this book is based on the current criminal law in most modern legal systems In most modern countries unmanned vehicles sophisticated surgical systems industrial computing systems trading algorithms and other artificial intelligence systems are commonly used for both industrial and personal purposes The question of legal liability arises when something goes wrong e g the unmanned vehicle is involved in a car accident the surgical system is involved in a surgical error or the trading algorithm is involved in fraud etc Who is to be held liable for these offenses the manufacturer the programmer the user or perhaps the artificial intelligence system itself The concept of liability for crimes involving artificial intelligence systems has not yet been widely researched Advanced technologies are forcing society to face new challenges both technical and legal The idea of liability in the specific context of artificial intelligence systems is one such challenge that should be thoroughly explored

*Terrorism and Anti-Terrorism: A Normative and Practical Assessment* Christopher Blakesley, 2021-10-25 This book addresses the complex challenging and dangerous problems relating to terrorism and to the attempts to address and stop terrorism It includes not only a positivistic legal analysis of issues but attempts to assess the costs facing us all in this modern reality of political violence Blakesley challenges the so called realist premise of fighting fire with fire and attempts to devolve a working definition of terrorism that may be applied to whatever group or nation that uses terror or terrorism as a tactic or strategy Published under the Transnational Publishers imprint



## Rethinking Criminal Law Book Review: Unveiling the Magic of Language

In an electronic era where connections and knowledge reign supreme, the enchanting power of language has become more apparent than ever. Its power to stir emotions, provoke thought, and instigate transformation is actually remarkable. This extraordinary book, aptly titled "**Rethinking Criminal Law**," compiled by a highly acclaimed author, immerses readers in a captivating exploration of the significance of language and its profound impact on our existence. Throughout this critique, we shall delve into the book's central themes, evaluate its unique writing style, and assess its overall influence on its readership.

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