Criminal Law Outline[1]

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Contents

1 Basic Principles of Criminal Law

1.1 Introduction

1. Henry Hart argues that criminal law is a method with five features:
   (a) It operates by a series of commands ("don't kill or steal").
   (b) A community makes the commands binding.
   (c) There are sanctions for disobeying the commands.
   (d) The distinction between civil and criminal sanctions is that criminal violations draw a community's moral condemnation.
   (e) Violations are punished.
2. Murray: laws are framed as conditions ("if you do x, then y"—e.g., punishment), emphasizing agency and choice.
3. *nulla poena sine lege*: no punishment without law authorizing it.
4. Sources of criminal law:
   (a) Codification (statutes, administrative rules, etc.).
   (b) Common law (based on the English system, as distinct from a civil-law system).
   (c) Case law.
   (d) Model Penal Code.
5. What distinguishes criminal punishment?
   (a) Criminal penalties can restrain personal liberty (but civil penalties don't).
   (b) Moral stigma.
   (c) Judgment is collective—it isn't about two parties.[1]
6. **Probable cause** is necessary to make an arrest.
7. **Indictment** by a grand jury is usually necessary before a case can go to trial.
8. Sixth Amendment guarantees a right to a speedy and public trial, by an impartial jury.
9. **Due process clauses** in the Fifth and Fourteenth amendments guarantee persuasion **beyond a reasonable doubt** (as determined by the factfinder).

[1] See Schelling, "Ethics, Law, and the Exercise of Self-Command."

10. What does it mean to prove something "beyond a reasonable doubt?" *Owens v. State*: Driver was found drunk and asleep behind the wheel of a running car in a private driveway. Circumstantial evidence gives equal weight to two interpretations of the facts: either he had just arrived (guilty) or had not yet left (not guilty). If each interpretation is equally likely, the factfinder could not fairly choose the guilty option beyond a reasonable doubt. But after analyzing the evidence, the court finds "the totality of the circumstances are, in the last analysis, inconsistent with a reasonable hypothesis of innocence." The court affirms the conviction of driving while intoxicated.
11. Can you satisfy the burden of proof with only circumstantial evidence?
12. What is required to meet the reasonable doubt standard?
13. How should a judge instruct a jury on the definition of "reasonable doubt"?

1.2 Principles of Punishment

1. Some types of punishment: prison, fines, community service, shaming.
2. Two key questions:
   (a) Who should be punished?
   (b) How much punishment is appropriate?
3. Two predominant (and non-mutuallly-exclusive) theories of punishment: **retributivism** and **utilitarianism**

1.2.1 Utilitarianism

Punishment is justified because it's useful.

1. Jeremy Bentham: the **principle of utility** evaluates actions in light of their effect on the happiness of the interested party. Laws aim to augment a community's total happiness.
2. Kent Greenawalt: "Since punishment involves pain, it can be justified only if it accomplishes enough good consequences to outweigh this harm."[2] The consequences of an action determine its morality.
3. Benefits of utilitarian punishment:
   (a) General deterrence (i.e., discourage an action from occuring in a community).
   (b) Specific deterrence (i.e., discourage a specific person from doing something).
   (c) Incapacitation.
   (d) Reform.

[2] Casebook p. 35.

1.2.2 Retributivism

Punishment is justified because criminals deserve it.

1. Michael Moore: "the desert of an offender is a sufficient reason to punish him or her."[3]

2. Immanuel Kant: penal law is a categorical imperative.

3. James Fitzjames Stephen: **assaultive retribution** holds that hatred and vengeance in the name of morality are socially beneficial; criminals are "noxious insects."[4]

4. Herbert Morris: **protective retribution** holds that rules exist to provide collective benefit; they guards against unfair advantage for freeriders; if somebody cheats, punishment evens the score.

5. Jeffrey G. Murphy & Jean Hampton: wrongdoers implictly place their own value above their victims'; "retributive punishment is the defeat of the wrongdoer at the hands of the victim."[5]

1.2.3 Justifying Punishment

1.2.3.1 ***The Queen v. Dudley and Stephens*** Dudley, Stephens, Brooks, and Parker were castaways on a boat 1600 miles from the Cape of Good Hope. They quickly ran out of food and water. After twenty days, Dudley and Stephens decided to kill and eat Parker (with Brooks dissenting). They ate Parkers body for four days, at which point they were rescued and brought to trial for murder.

The case highlights the differences between retributive and utilitarian theories of justice. Parker was weak and unlikely to have survived the last four days if he hadnt been killed. Dudley and Stephens likely wouldnt have survived, either. Moreover, Dudley and Stephens had family responsibilities, while Parker was a drifter. A retributive response would hold that Dudley and Stephens are morally culpable and should be found guilty regardless of the mitigating factors. A utilitarian response would find them not guilty on the recognition of a net benefit for all parties involved.

1.2.3.2 ***People v. Du*** The defendant, Soon Ja Du, a 51-year-old woman, owned a liquor store in LA. A 15-year-old girl, Latasha Harlins, in the store put a bottle of orange juice in her backpack. It's not clear whether she intended to pay. A fight ensued, in which Du was injured. As Harlins was leaving, Du pulled out a gun (which had been previously stolen, heavily modified, and then recovered) and shot Harlins in the back of the head. She testified that she did not intend to kill Harlins. The jury rejected this defense, convicting her of voluntary manslaughter.

[3] Casebook p. 39
[4] Casebook p. 42.
[5] Casebook p. 46.

Du's probation officer concluded "would be most unlikely to repeat this or any other crime." The sentencing court sentenced Du to ten years, but suspended the sentence and placed her o n probation. She wrote, "it is my opinion that justice is never served when public opinion, prejudice, revenge or unwarranted sympathy are considered by a sentencing court in resolving a case." She tests Du's case against seven goals of sentencing:

1. Protect society.
2. Punish the defendant.
3. Encourage the defendant to lead a law-abiding life.
4. Deter others.
5. Incapacitation.
6. Secure restitution for the victim.
7. Seek uniformity in sentencing.

None of these reasons is sufficient to justify prison time. The only somewhat convincing motivation for prison time is the strong presumption against probation when guns are involved. But this is an unusual case, she concludes, "which overcomes the statutory presumption against probation."

1.3 Proportionality of Punishment

1.3.1 General Principles

1. Kant: The "right of retaliation" (*jus talionis*) is "the only principle which in regulating a public court...can definitely assign both the quality and the quantity of a just penalty."[6] Murderers must be punished with death.
2. Bentham: Punishment has four goals:
   (a) General deterrence.
   (b) Encourage criminals to choose the lesser of two offenses.
   (c) Encourage criminals to do no more mischief than necessary.
   (d) Punish cheaply.
3. ...and five rules:
   (a) To effectively deter, the value of the punishment must be greater than the value of the offense.
   (b) The greater the mischief, the greater the punishment.
   (c) Punishment must be sufficient to induce criminals to choose the lesser of two crimes.
   (d) Punishment must be adapted to each offense.
   (e) Punishment should not be greater than necessary.

[6] Casebook p. 70.

1.3.2 Constitutional Principles

1.3.2.1 ***Coker v. Georgia*** The defendant escaped from prison, where he was serving time for multiple violent felonies. He broke into the Carvers' house, tied up Mr. Carver, and kidnapped and raped Mrs. Carver. The Supreme Court held that the Georgia jury's death sentence violated the Eight Amendment, because rape is a crime "not involving the taking of life." In their dissent, Justices Burger and Rehnquist argue that the Eight Amendment does not prohibit states from taking prior behavior into account. While the death penalty may be disproportionate to the current crime, it can act as an effective deterrent.

A related case, *Kennedy v. Louisiana*, involved the rape of a child. The court narrowly upheld that the death penalty was "grossly disproportionate" for rape, but Alito issued a scathing dissent questioning the argument that every murder is more "morally depraved" than every rape.

1.3.2.2 ***Ewing v. California*** Ewing stole three golf clubs from a pro shop. With multiple prior felony convictions, California's three strikes law required a minimum sentence of 25 years, which Ewing argued violated the Eighth Amendment. The court's opinion, written by Justice O'Connor, relies on Justice Kennedy's opinion in *Harmelin v. Michigan*, where he lays out a set of principles for determining proportionality:

1. The primacy of the legislature.
2. The variety of legitimate penological schemes.
3. Federalism.
4. Objectivity.
5. **The Eighth Amendment does not require strict proportionality. It only forbids "grossly disproportionate" sentences.**

The court upheld Ewing's 25-year sentence, arguing that "Ewing's sentence is justified by the State's public-safety interest in incapacitating and deterring recidivist felons..."[7]

Scalia concurs, but argues that the justification for the sentence has nothing to do with proportionality and everything to do with the idea that "punishment should reasonably pursue the multiple purposes of the criminal law" (incapacitation, deterrence, retribution, rehabilitation).

The dissenters compare two prior cases, *Rummel* and *Solem*, which both involved major prison sentences for recidivist felons who committed relatively small crimes. In *Solem*, the court found the sentence to be too long, and upheld the sentence in *Rummel*. *Ewing* falls in the "twilight zone" between the two. Given that ambiguity, 25 years to life is grossly disproportionate to the crime of shoplifting golf clubs.

[7] Casebook p. 85.

1.4 Statutory Interpretation

TODO: legality principle; commonwealth v mochan; keeler v superior court; in re banks; city of chicago v. morales; muscarello v united states

2 Elements of a Crime

1. Every crime has two elements: *actus reus* and *mens rea*.
2. Every crime also has attendant circumstances.

2.1 Actus Reus

1. Literally, "guilty act." There is no universally accepted definition. In murder, for instance, some would consider it to be the pulling of the trigger. Others would consider it to be the death itself. The most common definition would consider it to be both.
2. "Omissions are not accidents."—Marianne Moore
3. What constitutes an act? When does the act begin? See Model Penal Code 2.01.
4. If someone holds a gun to your head and tells you to act, your act is voluntary. An act is something you do wilfully.
5. Thought crimes are not punishable (*Minority Report*, *Firestarter*).

2.1.1 *Martin v. State*

1. Police officers took a drunk man from his home and onto a public highway, where they then arrested him for public drunkenness. The court held that public drunkenness cannot be established when the accused was involuntarily carried to a public place.

2.1.2 *State v. Utter*

1. Defendant (here, the appellant) was drunk and stabbed his son. He had no memory of the stabbing. He argued that his service in the army had caused him to develop a "conditioned response" in which he reacts violently and involuntarily to people approaching unexpectedly from behind. The court reasons that an "act" requires voluntary action—that is, "act" is synonymous with "voluntary act." An involuntary or unconscious act cannot induce guilt—that is, it is not an "act" at all. The court finds that the defendant's theory of conditioned response should have been presented to a jury *if there was substantial evidence to support it.* However, because the jury could not possibly know or infer what had happened in the room at the time of the stabbing, the question should not be sent to the jury.

2.1.3 *People v. Beardsley*

1. While his wife was away, the defendant was drinking heavily with a woman at his house. The woman took several tablets of morphine and became unresponsive. The defendant put her in a basement room in his house (which another man was renting). The woman died that evening. The issue is whether the defendant had a legal duty to protect the woman. If he omitted to perform his duty, he would be criminally liable for manslaughter. The prosecution argued that the defendant was in the role of the woman's guardian. The court reasoned, however, that if the defendant had been drinking with a man and that man attempted suicide, the defendant would not have had a duty to protect him—so it should make no difference that he was with a woman.

2.1.4 *Barber v. Superior Court*

1. A patient suffered cardiac arrest after surgery. Doctors managed to save him, but he suffered significant brain damage. He remained in vegetative state on life support with little chance of recovery. His family decided to remove him from life support, and he died a few days later. The question is whether his doctors had a duty to keep him alive—since omitting to perform that duty would make them liable for murder. **"There is no criminal liability for failure to act unless there is a legal duty to act."** The court reasons first that removing the man from life support constituted an omission, not a positive act. The court holds that the decision of whether to continue treatment was left to the family. Therefore, the doctors did not unlawfully fail to perform a legal duty.

2.1.5 *Lawrence v. Texas*

1. In an opinion from Justice Kennedy, the court decided whether a Texas law criminalizing sodomy violates the Fourteenth Amendment's Due Process Clause and equal protection guarantee. It held that the statute violates individuals' rights to privacy and liberty. It overturned an earlier ruling on a similar Georgia statute in *Bowers v. Hardwick*: "*Bowers* was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent."

2.2 Mens Rea

1. "Guilty mind."

2. *United States v. Cordoba-Hincapie* includes a brief history of the evolution from ancient English strict liability to modern requirement of a guilty state of mind.

3. Holmes has two definitions:

(a) A morally culpable state of mind in general.

(b) The mental state specified in the definition of the crime.

2.2.1 *Regina v. Cunningham*

1. The defendant stole a gas meter from the basement of his mother-in-law's house, causing noxious gas to escape and partially asphyxiate his neighbor. The issue was whether his action was malicious. A lower court convicted the defendant on the definition of malice as "wickedness," i.e., a generally culpable state of mind. This court defined malice as (1) an **intention** to do the specific harm, or (2) **recklessness** (i.e., he foresaw that the harm *might* occur, but did it anyway). The court overturned the conviction.

2.2.2 *People v. Conley*

1. In a fight after a high school party, the defendant smashed a wine bottle into the victim's face, causing permanent disability. He intended to hit someone else (who ducked), but the court found that the defendant nonetheless intended his action to cause permanent disability.

2. The common law definition of intent includes both the actor's conscious goal and the results that are "virtually certain to occur."[8] Analogous to substantial certainty in intentional torts.

3. A person "intends the natural and probable consequences of his actions." The Fourteenth Amendment prevents courts from presuming this, but juries can use common sense to recognize it.

4. **Transferred intent** (in criminal law) allows transfer from one victim to another. Transfer between different types of harms is less clear cut. Courts often apply it, but not always.

5. There is dispute about the meaning of "general intent" and "specific intent." Some versions include:

   (a) General: the definition of the crime sets out no specific mental state, so the prosecutor needs only to prove a generally culpable state of mind. Specific: the definition of a crime explicitly sets out a mental state.

   (b) General: reserved for crimes that permit conviction on the basis of a less culpable mental state (e.g., negligence or recklessness). Specific: denotes an offense that includes a definition of intent or knowledge.

   (c) General: any mental state related to the act that constitutes the social harm. Specific: an additional "special mental element": (1) intent to commit a future act (e.g., intent to sell), (2) special motive

[8] Casebook p. 155.

(e.g., offensive contact intended to cause humiliation), or (3) knowledge of attendant circumstances (e.g., sale of obscene material to a minor).

2.2.3 MPC 2.02: General Requirements of Culpability

1. Requires "elemental" culpability—i.e., the specific state of mind required in the definition of the crime, rather than a generally morally culpable state of mind.

2. There are four levels of culpability:

   (a) **Purpose**: An actor intends to perform a specific action or to cause a specific result.

   (b) **Knowledge**: An actor is aware of factual circumstances that establish criminal culpability. For instance, someone may not *intend* to commit statutory rape, but knowledge that the victim is younger than the age of consent is enough to establish guilt.

   (c) **Recklessness**: An actor creates and recognizes a substantial, unjustifiable risk and acts anyway. The jury should decide whether the risk is substantial and unjustifiable and whether *disregard of the risk* deserves condemnation.

   (d) **Negligence**: An actor inadvertently creates a substantial, unjustifiable risk of which he should have been aware. The jury should decide whether the risk is substantial and unjustifiable and whether the defendant's *failure to perceive the risk* deserves condemnation.

3. If a law does not specify a culpable state of mind, culpability is established if the person acted purposefully, knowingly, or recklessly. Negligence is excluded unless the law specifically prescribes it.

2.2.4 Knowledge of Attendant Circumstances

1. todo.

2.2.5 *State v. Nations*

1. todo.

2.3 Strict Liability

1. todo.

2.3.1 *United States v. Cordoba-Hincapie*

1. todo.

2.3.2 *Staples v. United States*

1. todo.

2.3.3 *Garnett v. State*

1. todo.

2.4 Mistake and Mens Rea

1. todo.

2.4.1 Mistake of Fact: *People v. Navarro*

1. todo.

2.4.2 Mistake of Law: *People v. Navarro*

1. todo.

2.4.3 *Cheek v. United States*

1. todo.