DOWNLOAD PDF CRIMINAL RESPONSIBILITY AND THE PROOF OF GUILT LINDSAY FARMER

Chapter 1 : FARMER v. STATE | S.E.2d () | e2d | calendrierdelascience.com

Abstract The emotions shame and guilt may represent a critical stepping stone in the rehabilitation process. In this article, we describe current psychological theory and research that underscores important differences between shame and guilt. We summarize recent research investigating the implications of these moral emotions for criminal and risky behavior, with special emphasis on the handful of studies conducted with actual offenders. We conclude with a discussion of implications for treatment in criminal justice settings. The emotions shame and guilt may represent a critical stepping stone in the rehabilitation process. Most psychologists regard remorse as a primary component of the guilt experience. Phenomenological studies underscore the centrality of remorse to guilt e. One basis for distinguishing between shame and guilt concerns the types of situations that elicit these emotions. In short, type of event does not reliably distinguish between shame and guilt. A second basis for distinguishing between shame and guilt emphasizes the public vs. It turns out that people feel more exposed, more scrutinized by others when experiencing shame than guilt Smith et al. The evidence favors a third basis for distinguishing between shame and guilt â€" focus on self vs. Shamed people also feel exposed. Guilt, on balance, appears to be less disruptive and more adaptive. Although painful, guilt is less overwhelming because what is at issue is a specific behavior, somewhat apart from the self. So people stricken with guilt are drawn to consider their behavior and its consequences, rather than feeling compelled to defend the self. Feelings of remorse and regret are central to the phenomenology of guilt. When feeling guilt, people are inclined to ruminate over the misdeed, wishing they had behaved differently. Although both are unpleasant, shame is the more painful self-focused emotion linked to hiding or escaping. Guilt, in contrast, focuses on the behavior and is linked to making amends. Shame and Guilt in Criminology In his review of psychological and criminological perspectives on shame and guilt, Tibbetts observed that most criminologists do not take into account the distinction between these two self-conscious emotions e. The person is isolated and humiliated, forgiveness is not bestowed and the goal is to punish the person by instilling feelings similar to what we would call shame. The behavior is condemned but the person is respected, accepted back into society, and given the chance to make reparation for the criminal act. Both RST and psychological theory call into question the notion that shame is an inhibitor of immoral or illegal behavior for reviews, see Tangney et al. In this review of the empirical literature, we have omitted studies from psychology and criminology that assess shame and guilt in a way that confounds the two emotions. Most of this research focuses on outcomes of the practice of reintegrative shaming or disintegrative shaming offenders. Such studies do not typically assess whether the perpetrating individual actually experiences shame or guilt, or whether these emotions are then related to subsequent behavior. In a rare study of the full mediational process, Murphy and Harris explicitly examined whether shaming practices led to shame which in turn led to offending behavior. The mediational hypotheses involving experiences of shame, however, were largely unsupported, perhaps because the model failed to distinguish between feelings of disintegrative shame and reintegrative shame guilt. Research on Shame and Guilt from Psychology The empirical literature in psychology has focused heavily on dispositional shame and guilt â€" that is, individual differences in the tendencies to experience shame and guilt across a range of situations. However, it is important to note that studies of state shame and guilt â€" feelings of shame and guilt in the moment -- converge with the dispositional studies for a review, see Tangney, et al. Five lines of research illustrate the adaptive functions of guilt, in contrast to the hidden costs of shame. Shame often motivates efforts to deny, hide or escape the shame-inducing situation. Guilt often motivates reparative action e. Self-Oriented Distress Feelings of guilt go hand in hand with other-oriented empathy. Externalization of Blame, Anger, and Aggression Research indicates a robust link between shame and tendencies to externalize blame and anger, again observed at both the dispositional and

state levels. By doing so, the shamed person attempts to regain some sense of control and superiority in their life, but the long-term costs can be steep. Friends, co-workers, and loved ones may feel confused and alienated by apparently irrational bursts of anger. The link between shame and overt physical aggression, observed in many but not all studies Tangney, et al. In sharp contrast, guilt-prone individuals are inclined to take responsibility for their transgressions and errors. Psychological Symptoms and Substance Abuse Research regarding shame and psychological problems is consistent. Across measurement methods and diverse age groups and populations, the propensity to experience shame is linked to a broad range of symptoms, including low self-esteem, depression, anxiety, eating disorders, post-traumatic stress disorder PTSD , suicidal ideation, and substance dependence Ashby et al. Results regarding guilt and psychopathology are more mixed. Studies employing global adjective checklists e. Here, too, shame and guilt-proneness show a differential relationship. In two independent studies, adults in recovery programs had lower guilt-prone scores and higher shame-prone scores as compared to individuals in community samples Meehan et al. Children high in shame tended to start drinking earlier than those low in shame and were more likely to later use heroin, uppers and hallucinogens. Those high in guilt started drinking at a later age than those low in guilt and were less likely to use heroin, with similar trends for marijuana and uppers. Criminal Behavior Finally, to what degree are shame and guilt associated with criminal behavior? Proneness to shame, however, was unrelated to such intentions. Results involving shame-proneness were mixed. An overall shame-proneness index, comprising three dispositional measures of shame, was unrelated to illegal behavior, further refuting the assumed inhibitory function of shame. Two prospective studies investigated the long-term effects of shame and guilt-proneness in predicting delinquency. In a study of public school children, guilt-proneness assessed in the 5th grade negatively predicted arrests and convictions reported by the participant at age In another sample, Stuewig and McCloskey examined whether proneness to shame or guilt in early adolescence mediated the relationship between maltreatment in childhood and subsequent delinquency and depression assessed in late adolescence. Guilt again emerged as a protective factor. Moreover, in the full models the inverse link between guilt and delinquency was robust, even when symptoms of conduct disorder in childhood and parenting in adolescence were integrated in the model. Research with Criminal Justice Populations Research in psychology has mostly been conducted on community samples â€” often college students. A few studies have employed clinical samples; studies of criminal offenders are rare. Two key questions arise. First, do shame and guilt behave similarly among community and criminal justice populations, in terms of their relationship with important psychological variables? Second, do studies conducted in community settings involving relatively minor transgressions generalize to more serious offenses, among individuals involved in the criminal justice system? In contrast to the research reviewed thus far, Harris found no evidence that shame and guilt form distinct factors when examining event-specific shame and guilt in a sample of non-incarcerated convicted drunk drivers, many with substance abuse problems. Harris, however, focused on a unique, homogeneous sample and a single type of transgression. It is possible that experiences of shame and guilt are not well-differentiated among individuals with substance abuse problems or alternatively, guilt and its empathic focus on the harmed other may be less relevant to transgressions such as drunk driving which typically do not result in objective physical harm to others. Due to these issues the generalizability of these findings are unclear. Only a handful of studies have attempted to distinguish and examine shame and guilt in incarcerated samples. Two were methodological in nature representing efforts to develop new measures of shame and guilt for offenders, and did not include measures of criminal justice-relevant outcomes. Using the Delphi method, Xuereb, Ireland and Davies generated items for a new measure of shame, guilt, and denial specifically for offender respondents. An initial version of the measure was piloted with a sample of offenders from a Medium Secure English prison. Confirmatory factor analyses failed to provide evidence for shame, guilt, and denial as three distinct factors, likely owing to the heterogeneity of items hypothesized to load on their respective factors. For example, it is not clear how certain stable factors e. The former yielded three factors which the authors labeled chronic distress and low self-worth, chronic self-blame, emotional capacity and respect. The offense-related

items yielded 5 factors labeled by the authors as responsibility and self-blame, distress and rejection, lack of negative emotion, minimization of harm, and functions of denial. Several of the factors had notably low internal consistency. Given the exploratory nature of the factor analyses, the large number of items relative to the number of participants, and the conceptual heterogeneity of the items, it is unclear whether the factor structure would replicate in an independent sample. According to Xuereb, Ireland and Davies , the main finding was a lack of support for the shame-guilt distinction. In contrast, Wright and Gudjonsson presented support for the distinction between shame and guilt in a study of 60 male offenders detained in a forensic psychiatric unit in England. A new measure of offense-related shame and guilt was compared with several existing measures, including the TOSCA No measures of criminal behavior or crime-related constructs were included, thus it is not clear how the ORSGS relates to actual behavior, but in a follow up article, Wright, Gudjonsson and Young reported that offense-related shame was associated with anger difficulties, whereas offense-related guilt was associated with the ability to control anger. Using the Internalized Shame Scale in a sample of 50 adult offenders, Morrison and Gilbert found that shame was associated with psychopathy, especially secondary psychopathy, aggression, and other antisocial personality characteristics. In contrast, in a study of 60 college students and 56 young ages incarcerated offenders, Farmer and Andrews found a link between shame and anger among college students but not young offenders. In addition, young offenders were less shame-prone than their undergraduate counterparts. Three studies of incarcerated individuals two of adolescents, one of adults have examined the degree to which shame and guilt are related to pre- or post-incarceration criminal behavior. Robinson, Roberts, Strayer and Koopman compared a group of 64 incarcerated adolescent male offenders to a sample of 60 male high school students. Shame and guilt proneness only marginally differentiated between groups. However, the two groups were not terribly distinct in terms of antisocial behavior, as adolescents from the community sample engaged in antisocial behavior at a fairly high rate. When the two samples were combined, shame-proneness was mostly unrelated to self-reported antisocial attitudes and behavior, or in a few cases positively related with aggression and anger. In contrast, guilt-proneness was consistently negatively related to antisocial attitudes and behaviors. Hosser, Windzio and Greve reported impressive results from a German sample of 1, incarcerated adolescents and young adults ages Specifically, shame ratings at the outset of incarceration predicted higher recidivism rates whereas guilt ratings predicted lower recidivism. Most felony offenders do not lack the capacity for moral emotions, as some might believe. Second, shame and guilt appear to serve similar functions among offenders as in community samples. Third, this study examined the relation of these moral emotional styles to psychological and behavioral factors known to be important in predicting crime. In brief, proneness to guilt emerged as a protective factor, whereas proneness to shame appears to be a risk factor for criminally-relevant characteristics and behaviors. Guilt-proneness was also negatively correlated with criminogenic cognitions, severity of current charges, prior jail experience, prior felony convictions, custody level at the jail, and with the Antisocial Personality scale and the Violence Potential Index from the Personality Assessment Inventory PAI; Morey, In sum, our findings converge with those of Hosser et al. In contrast, there is little evidence that the propensity to experience shame serves an inhibitory function. Rather, it is positively related to a host of psychological problems, a range of risk factors for criminal recidivism, and in Hosser et al.

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Chapter 2 : University of Glasgow - Schools - School of Law - Our staff - Lindsay Farmer

by Lindsay Farmer When James Tytler was charged with sedition before the High Court of Justiciary in Edinburgh in January , it was the first time that anyone had been charged directly with the crime of sedition in Scots law.

Court of Appeals of Georgia. Attorney s appearing for the Case Robert W. Lavender, Elberton, for appellant. Johnson, Assistant District Attorney, for appellee. He was tried before a jury, which found him guilty of driving with a suspended license and driving with an improper class license. The jury acquitted him on the remaining two counts. In his sole enumeration of error, Farmer raises the general grounds, contending specifically that the State failed to prove he received actual or legal notice that his license was suspended, which is an essential element of the offense. A review of the record in this case leaves little doubt that it is entirely possible, even probable, that Farmer was, indeed, aware of his license suspension. But here, as in every criminal prosecution, the State must prove every element of its case beyond a reasonable doubt. We are constrained to agree with Farmer that the evidence presented in this case falls short of establishing beyond a reasonable doubt that at the time of the accident Farmer had received either actual or legal notice that his license had been suspended. The evidence presented by the State in this regard consisted entirely of testimony from the arresting officer, Trooper M. Dukes of the Georgia State Patrol, who responded to the call following the collision between the tractor-trailer truck driven by Farmer and another car on February 23, Dukes then ran a license check by calling his dispatcher, who checked the license on the computer. When asked whether Farmer had been served notice of the suspension, however, Dukes responded only that Farmer was served notice "on the safety responsibility suspension The State introduced no documentary evidence of any of the license suspensions or of notice to Farmer. Farmer took the stand and testified that he had no knowledge that his license was suspended until the night of the collision in issue. His expired license was taken from him at that time. Several days later, he "had it taken care of and had [his] license renewed. State, supra, does not support its argument that the fact that Dukes informed Farmer at the scene after the accident that his license had been suspended constitutes sufficient actual notice to Farmer that his license had been suspended. The State misconstrues Arnold. In that case, the defendant had been told by a police officer during a prior stop in that his license was suspended. The same defendant was stopped again the following year, and he was charged with driving with a suspended license. On appeal, this court held because Arnold had been informed during the first stop that his license had been suspended, the defendant then had actual knowledge of that fact at the time of the second stop. Here, the information imparted by Dukes after the accident cannot serve to establish that at the time of the accident Farmer was driving after receiving actual or legal notice of the suspension.

Chapter 3 : Glanville Williams - Wikipedia

Criminal Responsibility and the Proof of Guilt Lindsay Farmer 3. "An Inducement to Morbid Minds": Politics and Madness in the Victorian Courtroom Joel Peter Eigen 4. The Meaning of Killing Guyora Binder 5.

Both categories of actors were further subdivided. Principals in the first degree were persons who with the requisite state of mind committed the criminal acts that constituted the criminal offense. An accessory before the fact was a person who aided, encouraged or assisted the principals in the planning and preparation of the crime but was absent when the crime was committed. It was eventually recognized that the accessory after the fact, by virtue of his involvement only after the felony was completed, was not truly an accomplice in the felony. Assistance can be either physical or psychological. Physical assistance includes actual help in committing the crime as long as the acts of assistance do not constitute an element of the offense. Psychological assistance includes encouraging the principal to commit the offense through words or gestures, [12] or mere presence as long as the principal knows that the accomplice purpose is present to provide assistance. While substantial activity is not required, neither mere presence at the scene of the crime nor even knowledge that a crime is about to be committed count as sufficient for accessorial liability. For example, one person may hold a gun on the clerk of a convenience store while a second person takes the money from the cash register during a robbery. Both actors are principals in the first degree since each does an act that constitutes the crime and each acts with the necessary criminal intent to steal. Even though neither did all the acts that constitute the crime under the theory of joint participation or acting in concert the law treats them as partners in crime who have joined together for the common purpose of committing the crime of robbery and each is held responsible for the acts of the other in the commission of the object offense. Mental states[edit] Two mental states are required for accomplice liability. First, the accomplice must act with at least the same mental state required for the commission of the crime. For example, if the crime is common law murder the state must prove that the accomplice acted with malice. Second, the accomplice must act for the purpose of helping or encouraging the principal to commit the crime. The accomplice can be guilty of a greater offense than the perpetrator. A says kill C. B pulls his gun and shoots C killing him. B would have the benefit of provocation which would reduce his offense to manslaughter. A, however, would be guilty of murder. This is no longer the law in England and Wales, since the Supreme Court in R v Jogee following the work of Professor Baker held that the mental element in complicity is intention. The same applies to his writing about the need for there to be actual assistance or encouragement, and about the nature of intent, which may be conditional. This points have now been adopted as law by the Supreme Court. Textbook of Criminal Law, London: Powell changed the law [Baker explains elsewhere why there might still have been room to move before R v Powell], the foresight of possibility rule i. These same rules were traditionally used for inferring intention, but in recent decades they have also been used to infer reckless foresight in common purpose complicity cases. What was a maxim of evidence has been invoked as a substantive fault element in complicity since , which has had the effect of extending the mental element in common purpose complicity to cover recklessness. Traditionally, the maxim that a person intends the foreseen consequences of her actions was used in common purpose complicity only to infer that the accessory authorised and thus intended or conditionally intended to encourage the perpetrator to perpetrate the conditional collateral crime. Foresight was not a substantive fault element, but merely a maxim of evidence. At the time when the assistance or encouragement is given, the commission of the anticipated crime is in futuro. When the accessory provides assistance or encouragement with full knowledge of the alternative crimes that the perpetrator conditionally intends to perpetrate in alternative to each other, the jury is able to infer that the accessory conditionally intended to assist or encourage whichever crime within the particular range was perpetrated. The courts have tended to overlook this requirement. On derivative principles the accessory is liable only if she in fact participates in the primary offending. A person cannot be derivatively involved in the crime of another merely

because she associated with the perpetrator in circumstances where she foresaw the perpetrator might commit a collateral crime. In the case of common purpose complicity, it has to be established that the accessory, by her conduct of participating in the underlying criminal joint enterprise, did in fact encourage the perpetrator to perpetrate the collateral crime. There might be sufficient evidence for a jury to infer that the accessory encouraged the perpetrator by voluntarily agreeing to participate in the underlying criminal joint enterprise, if it can also be established that there was a mutual expectation that certain conditional collateral crimes would be perpetrated to make their underlying criminal joint enterprise succeed. Alternatively, it might be shown that the perpetrator was encouraged by the fact that she knew that that accessory approved of his conditional collateral crimes and willingly participated in the underlying enterprise knowing those crimes where conditionally intended. Reinterpreting Criminal Complicity, Forthcoming. Likewise, in the same paper Baker argued that all complicity required factual assistance or encouragement and that joint enterprises were just another way of encouraging and thus there was no separate form of complicity based on mere association and foresight. Other academics took the view that joint enterprise was a separate form of complicity with recklessness as its mental element, but attacked the policy injustice of such an approach. And some thought it even just: Sullivan, Doing Without Complicity, J. Most jurisdictions hold that accomplice liability applies not only to the contemplated crime but also any other criminal conduct that was reasonably foreseeable. In the United States, any conspirator is responsible for crimes within the scope of the conspiracy and reasonably foreseeable crimes committed by coconspirators in furtherance of the conspiracy, under the Pinkerton liability rule. Under the Pinkerton rule, the conspirator could be held liable for crimes that they did not participate in or agree to or aid or abet or even know about. The basis of liability is negligence - the conspirator is responsible for any crime that were a foreseeable consequence of the original conspiratorial agreement. WIth the exception of an accessory after the fact in most cases an accomplice is a co-conspirator with the actual perpetrator. For example, the person who agrees to drive the getaway car while his confederates actually rob the bank is principal in the second degree for purposes of accessorial liability and a co-conspirator for purposes of conspiratorial liability. However, many situations could arise where no conspiracy exists but the secondary party is still an accomplice. For example, the person in the crowd who encourages the batterer to "hit him again" is an aider and abettor but not a co-conspirator. As Dressler notes, the difference between the two forms of complicity is that with a conspiracy an agreement is sufficient and no assistance is necessary, whereas with accessorial liability no agreement is required but some form of assistance is necessary for liability. A person acts through an innocent agent when they intentionally cause the external elements of the offence to be committed by a person who is themselves innocent by reason of lack of a required fault element, or lack of capacity.

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Chapter 4 : Works by Victor Tadros - PhilPapers

Criminal responsibility and the proof of guilt / Lindsay Farmer "An inducement to morbid minds": politics and madness in the Victorian courtroom / Joel Peter Eigen The meaning of killing / Guyora Binder.

Court of Appeals of Georgia. Lavender, Elberton, for appellant. Johnson, Assistant District Attorney, for appellee. He was tried before a jury, which found him guilty of driving with a suspended license and driving with an improper class license. The jury acquitted him on the remaining two counts. In his sole enumeration of error, Farmer raises the general grounds, contending specifically that the State failed to prove he received actual or legal notice that his license was suspended, which is an essential element of the offense. A review of the record in this case leaves little doubt that it is entirely possible, even probable, that Farmer was, indeed, aware of his license suspension. But here, as in every criminal prosecution, the State must prove every element of its case beyond a reasonable doubt. We are constrained to agree with Farmer that the evidence presented in this case falls short of establishing beyond a reasonable doubt that at the time of the accident Farmer had received either actual or legal notice that his license had been suspended. The evidence presented by the State in this regard consisted entirely of testimony from the arresting officer, Trooper M. Dukes of the Georgia State Patrol, who responded to the call following the collision between the tractor-trailer truck driven by Farmer and another car on February 23, Dukes then ran a license check by calling his dispatcher, who checked the license on the computer. When asked whether Farmer had been served notice of the suspension, however, Dukes responded only that Farmer was served notice "on the safety responsibility suspension The State introduced no documentary evidence of any of the license suspensions or of notice to Farmer. Farmer took the stand and testified that he had no knowledge that his license was suspended until the night of the collision in issue. His expired license was taken from him at that time. Several days later, he "had it taken care of and had [his] license renewed. State, supra, does not support its argument that the fact that Dukes informed Farmer at the scene after the accident that his license had been suspended constitutes sufficient actual notice to Farmer that his license had been suspended. The State misconstrues Arnold. In that case, the defendant had been told by a police officer during a prior stop in that his license was suspended. The same defendant was stopped again the following year, and he was charged with driving with a suspended license. On appeal, this court held because Arnold had been informed during the first stop that his license had been suspended, the defendant then had actual knowledge of that fact at the time of the second stop. Here, the information imparted by Dukes after the accident cannot serve to establish that at the time of the accident Farmer was driving after receiving actual or legal notice of the suspension. Newsletter Sign up to receive the Free Law Project newsletter with tips and announcements.

Chapter 5 : California Free Public Records, Vital Records, Property Records, Professional Licenses

The criminal law defines a range of public wrongs and it provides for those who commit such wrongs to be called to answer for them through the criminal process of trial and punishment.

They follow, persecute me wherever I go, and have entirely destroyed my peace of mind; it can be proved by evidence. That is all I have to say. The case created a public furore and led to the House of Lords raising a number of questions about the case. We have basically agreed that some people are not responsible for the crimes they commit, most notably children and the mentally ill. Here both prosecution and defence argued on the basis of insanity, but the prosecution said the accused was only partially insane and still knew the difference between right and wrong. The conclusion was that he had lost all restraint over his actions. Now this is possibly slightly circular. There are indeed, yes. And partly because the effect of being found insane after all, is not freedom, but detention in an asylum, which is often no more attractive than detention in prison. The law also of course provides defences against a charge of murder. For instance, if you kill in self-defence, then you can be acquitted. So on the fact of it, he was committing murder. The question is though, whether he was, as you say, a responsible agent at the time, because when the law defines murder, it presupposes some notion of responsible agency. In a similar way, we look at cases of children who commit crimes. A tragic case in Britain some years ago now when two boys aged 10 and 11 killed a toddler of 3 - Alan Saunders: This is the Jamie Bolger case. In one way, what they did fits the definition of murder. But again, we need to ask whether they were, at that time, responsible agents who could be held to blame for what they did. So he had lost touch with the realm of reason, in holding that belief, and in the way that belief informed his actions. But responsibility involves intention. So it looks as though he did intend at least to pull the trigger, and presumably he knew what the consequences of pulling the trigger were likely to be. Certainly he intended to kill, and he knew he intended to kill and he knew in a way, what killing was. He knew he was killing a human being. So intention is enough for guilt, only given a background addition of responsible agency, or capacity to understand and be guided by the reasons which should guide our actions. When did we first start to see reason or being a reasonable person come into the picture of criminal responsibility? The idea that you needed to be a person who could reason or be reasoned with? It goes back at least as far as Aristotle in the 4th century BC Greece. And that involves capacity to engage in reasoning. Of course what changes through time is our conception of what counts as rational capacity; of what it is to be reasonable. That you need to be reasonable to be held responsible for your actions, goes back at least 2, years. So the notion of what constitutes reason or what is a relevant conception of reason, that has changed over time. Take the case of psycopathy which is still deeply controversial. A psychopath is often a tragic person who can intellectually very acute. So in terms of pure cognition, they seem to be eminently reasonable. So in regards to psychopaths, are they responsible agents or not? Or do we say, as I say myself, that that emotional lack is itself a rational deficiency. The point is that you can say really what matters for responsibility and thus for criminal guilt and moral blame, is how far the person is rational or reasonable. They can also be emotional. So is it possible to establish, as it were, a sort of checklist of qualities that we can tick in order for somebody to be accused of a crime? People have tried to write that checklist e. And there are various ways in which you might be unable to understand it. You can ask about; the simple questions are whether they could grasp the facts of the matter. But there was an imaginative failure on their part to realise what they were doing, which might or might not have been to do with their very young age. If you ask did they understand that they were killing him, could they grasp what it is to kill someone, that seems to me much more dubious that a child of that age would have that kind of grasp, as you say, an imaginative grasp, of what it is to kill someone. It seems to me, probably not. And one more point too which I think is relevant here: Because to be put on trial, is to be called to answer for what you have done, called to account by your fellow citizens, by the court. So clearly, there are different views within the community about what constitutes responsibility. And presumably if you see somebody as a moral monster,

you think whatever this person has done, this person would be capable of doing again, which might be one of the reasons for public interest in the recent child porn accusations against one of the boys. And that kind of exclusionary move towards those who commit terrible crimes is all too familiar. He cites an example of someone with an illness forging some documents concerning a disability pension. That person is mentally ill, but does being mentally ill absolve that person from responsibility? So what undermines both criminal liability and moral blameworthiness is that the wrong he committed flowed from a mental disorder. Of course, because deterrence operates as you point out, by being seen to apply to those who are thought to be guilty. And furthermore, if we allow no kind of defence of insanity, that then will increase the certainty of punishment, and it would be even more effective as a deterrent. So what are the current philosophical debates or questions about responsibility that legal philosophers are grappling with? Is there contested ground here? At a deeper level there are still debates about the relevance of issues to do with freewill and determinism. My own view is not that pessimistic. It shows us the mechanisms of human agency and human thought, in a very important way, but not in a way that undercuts our view of ourselves as responsible agents who can operate in the realm of reasons. But that controversy about free will is still an ongoing controversy and has been for 2, years and more, and that bears directly on the notion of criminal responsibility. The question is, does the law presuppose a notion of free will which is untenable? Some would say that what, that it totally undermines the legitimacy of criminal law? Criminal law as an enterprise of holding people responsible for their actions. Then I say we can have something else which takes over from criminal law as a matter of trying to control conduct, to prevent harm in certain ways. If you could make changes in criminal law regarding criminal responsibility, would you do so, or would you leave things as they are? I think we operate with a fairly crude set of ideas of responsibility, as again shown in the Bolger case, and in other cases. How can you inject greater sensitivity into the scenario of this play? Partly by more resources, of course. Well, Antony Duff, thank you very much indeed for joining us this week. Antony Duff was in Australia to deliver the Simon Weil lecture on human value. The show is produced by Kyla Slaven, the sound engineer this week was Judy Rapley.

Chapter 6 : Criminal law - Wikipedia

burden of proof is the prosecutors-defense that use mistake as a defense and challenge the prosecution's version of the facts, but do not introduce an independent legal claim into the case. Defense that denies some or all of the evidence.

To view this email address you must enable JavaScript Phone: More narrowly, I am interested in the connections between moral philosophy and the substantive criminal law â€" especially decisions about criminalization and the moral limits of the criminal sanction. This latter interest has led me to critically examine the rationale for drug prohibitions. The Philosophy of Criminal Law: Selected Essays Oxford University Press, , pages. The Case for Decriminalizing Drugs London: Verso, , pages. Drugs and Rights Cambridge University Press, , pages. Translated into Spanish by Gustavo de Greiff with new preface Mexico: El Fonda de Cultura Economica, Reprinted in part in Lewis Vaughn, ed.: Contemporary Moral Arguments Oxford U. Reprinted in part in Daniel Bonevac, ed.: Reprinted in part in Judith Boss, ed.: Analyzing Moral Issues Mayfield Pub. Translated into Chinese by Xie Wangyuan ; second Chinese edition with new preface A Question of Content? Naga Sri Valli, ed: A Debate Amicus Books: The Icfai University Press, India, Reprinted in Stuart Rachels, ed: McGraw-Hill, 4th ed, forthcoming, Reprinted in John Kleinig and Stan Einstein, eds: Office of International Criminal Justice, Reprinted in Hugh LaFollette, ed: Ethics in Practice Blackwell, 3d. Reprinted in Hugh T. Consent and Reasonable Mistake," George C. Thomas, co-author 11 Philosophical Issues , pp. Reprinted in Steven M. Cahn and Tziporah Kasachkoff, eds: Imagery and Evidence of Drug Harms in U. Reprinted in Russell Weaver, et. Criminal Law Anthology Anderson Pub. Reprinted in Jonathan Herring, ed.: Reprinted in Tom Morawetz, ed.: Reprinted in part in Sanford Kadish and Stephen Schulhofer, eds.: Criminal Law and Its Processes Boston: Reprinted in part in Richard Singer and Martin Gardner, eds.: Crimes and Punishments New York: Reprinted in Lori Gruen and George Panichas, eds.: Sex, Morality, and the Law New York: Readings in Criminal Law Cincinnati: Why Punish the Deserving? Reprinted in Michael Gorr and Sterling Hardwood, eds.: Jones and Bartlett, Reprinted in Morton Winston, ed. Reprinted in Elizabeth Smith and H. Applied Social and Political Philosophy: A Reader Prentice-Hall, Reprinted in Patrick Hayden, ed.: Theories of Human Rights: Readings in Context University Press of America, forthcoming, Reproduced in Donald Abel: Reprinted in David Boersema, ed.: Philosophy of Rights Westview Press, Reprinted in Patricia Smith, ed.: How Useful Is Hohfeldian Analysis? Legal, Moral, and Metaphysical Truths: The Philosophy of Michael S. Duff, Lindsay Farmer, S. Marshall, Massimo Renzo, and Victor Tadros, eds.: Contemporary Debates in Applied Ethics 2nd. Viens, John Coggon, and Anthony Kessel, eds.: Prevention and the Limits of the Criminal Law Oxford: Oxford University Press, , pp. Theory and Practice Cambridge University Press, , pp. Morse and Adina L. What is Punishment Imposed For? Crime, Punishment and Responsibility: Retributivism Has a Past. Has It a Future? Paternalism in Criminal Law Nomos Verlagsgesellschaft, , pp. Essays in Honor of Antony Duff forthcoming, Paternalism in Criminal Law forthcoming, Miller and Alan Wertheimer, eds.: Five Questions Automatic Press, , pp. Offence and the Criminal Law Hart Pub. Co, , pp. Duff and Stuart Green, eds: Doctrines of the General Part Cambridge: Cambridge University Press, , pp. Festskrift for Nils Jareborg Iustus Pub. How to Legalize Drugs Jason Aronson, , pp. Fundamentals of Sentencing Theory Oxford: Clarendon Press, , pp. New Directions in Drug Policy Washington: Drug Policy Foundation, , pp. Routledge Companion to Philosophy of Law , pp. International Encyclopedia of Ethics Wiley, forthcoming, Edmundson and Martin P. Legal Aspects," in Joshua Dressler, ed.: Encyclopedia ofCrime and Justice Macmillan, 2d. The Philosophy of Law: An Encyclopedia Garland Pub. Philosophical Problems in the Law 4th. Moral and Legal Issues," in Ruth Chadwick, ed.: Principled Sentencing," Ethics , p.

Chapter 7 : Criminal Responsibility and the Proof of Guilt - CORE

Lindsay Farmer joined the School of Law in He studied law at the University of Edinburgh before doing an calendrierdelascience.com in Criminology at the University of Cambridge and a Ph.D. at.

Their History, Culture, and Character, p. Archived from the original on July 31, Retrieved May 22, Supplement 1, New York: Church [] 1 QB Church had a fight with a woman which rendered her unconscious. He attempted to revive her, but gave up, believing her to be dead. He threw her, still alive, in a nearby river, where she drowned. The court held that Mr. Church was not guilty of murder because he did not ever desire to kill her , but was guilty of manslaughter. The "chain of events," his act of throwing her into the water and his desire to hit her, coincided. In this manner, it does not matter when a guilty mind and act coincide, as long as at some point they do. See also, Fagan v. Stone and Dobinson [] QB , where an ill tended sister named Fanny could not leave bed, was not cared for at all and literally rotted in her own filth. This is gross negligence manslaughter. Dytham [] QB , where a policeman on duty stood and watched three men kick another to death. Miller [] 1 All ER , a squatter flicked away a still lit cigarette , which landed on a mattress. He failed to take action, and after the building had burned down, he was convicted of arson. He failed to correct the dangerous situation he created, as he was duty bound to do. See also, R v. Santana-Bermudez where a thug with a needle failed to tell a policewoman searching his pockets that he had one. Kimsey [] Crim LR 35, where 2 girls were racing their cars dangerously and crashed. One died, but the other was found slightly at fault for her death and convicted. Williams [] Crim LR where a hitchhiker who jumped from a car and died, apparently because the driver tried to steal his wallet, was a "daft" intervening act. Roberts [] Crim LR 27, where a girl getting drunk jumped from a speeding car to avoid sexual advances and was injured and R v. Majoram [] Crim LR where thugs kicked in the victims door scared him to jumping from the window. These actions were foreseeable and therefore creating liability for injuries. Cheshire [] 3 All ER ; see also, R v. Jordan [] 40 Cr App R , where a stab victim recovering well in hospital was given an antibiotic. The victim was allergic, but he was given it the next day too, and died. Mohan [] 2 All ER , intention defined as "a decision to bring about Cunningham [] 2 All ER , where the defendant did not realise, and was not liable; also R v. Latimer 17 QBD ; though for an entirely different offense, e. Criminal Law, 3rd ed. The Foundation Press, Inc. Surendra Malik; Sudeep Malik Supreme Court on Death Sentence in Murder cases. Law relating to Sexual Harassment at work. Supreme Court Criminal Digest Supreme Court Cases Criminal. General Principles of Criminal Law. Ahmad Siddiques Revised By S. Extraordinary Trials from Law Courts. Medico Legal Aspect of Sexual Offences. Kelkar Revised by K. The Criminal Law Commissioners, â€”45". Law and History Review. Archived from the original on Basic Concepts of Criminal Law. Gorr, Michael, Sterling Harwood, eds. Controversies in Criminal Law. A Theory of Criminal Justice reissue ed. Textbook of Criminal Law. The Israel Democracy Institute. Harwood, Sterling , formerly Check date values in:

Chapter 8 : Shame, Guilt and Remorse: Implications for Offender Populations

In contradistinction to socialist criminal law, legal doctrine and legislation in bourgeois countries permit establishment of criminal responsibility for certain minor crimes without proof of fault, that is, merely by virtue of a violation of the law; examples are "purely material" crimes in France and the institution of strict liability in Anglo-American law.

With institutional and legal machinery at their disposal, agents of the State can compel populations to conform to codes and can opt to punish or attempt to reform those who do not conform. Authorities employ various mechanisms to regulate encouraging or discouraging certain behaviors in general. Governing or administering agencies may for example codify rules into laws, police citizens and visitors to ensure that they comply with those laws, and implement other policies and practices that legislators or administrators have prescribed with the aim of discouraging or preventing crime. In addition, authorities provide remedies and sanctions , and collectively these constitute a criminal justice system. Legal sanctions vary widely in their severity; they may include for example incarceration of temporary character aimed at reforming the convict. Some jurisdictions have penal codes written to inflict permanent harsh punishments: Usually, a natural person perpetrates a crime, but legal persons may also commit crimes. Conversely, at least under U. When Quinney states "crime is a social phenomenon" he envisages both how individuals conceive crime and how populations perceive it, based on societal norms. It was probably brought to England as Old French crimne 12th century form of Modern French crime , from Latin crimen in the genitive case: In Latin, crimen could have signified any one of the following: The word may derive from the Latin cernere â€" "to decide, to sift" see crisis , mapped on Kairos and Chronos. Tucker suggests a root in " cry " words and refers to English plaint , plaintiff , and so on. The meaning "offense punishable by law" dates from the late 14th century. The Latin word is glossed in Old English by facen, also "deceit, fraud, treachery", [cf. Crime wave is first attested in in American English. Definition England and Wales Whether a given act or omission constitutes a crime does not depend on the nature of that act or omission. It depends on the nature of the legal consequences that may follow it. The expression "crime" means, in England and Ireland, any felony or the offence of uttering false or counterfeit coin, or of possessing counterfeit gold or silver coin, or the offence of obtaining goods or money by false pretences , or the offence of conspiracy to defraud , or any misdemeanour under the fifty-eighth section of the Larceny Act, Scotland For the purpose of section of the Trade Union and Labour Relations Consolidation Act , a crime means an offence punishable on indictment , or an offence punishable on summary conviction , and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment. This approach considers the complex realities surrounding the concept of crime and seeks to understand how changing social , political , psychological , and economic conditions may affect changing definitions of crime and the form of the legal, law-enforcement , and penal responses made by society. These structural realities remain fluid and often contentious. All such adjustments to crime statistics , allied with the experience of people in their everyday lives, shape attitudes on the extent to which the State should use law or social engineering to enforce or encourage any particular social norm. Behaviour can be controlled and influenced by a society in many ways without having to resort to the criminal justice system. Other definitions Legislatures can pass laws called mala prohibita that define crimes against social norms. These laws vary from time to time and from place to place: Other crimes, called mala in se , count as outlawed in almost all societies, murder , theft and rape , for example. English criminal law and the related criminal law of Commonwealth countries can define offences that the courts alone have developed over the years, without any actual legislation: The courts used the concept of malum in se to develop various common law offences. Criminalization The spiked heads of executed criminals once adorned the gatehouse of the medieval London Bridge. One can view criminalization as a procedure deployed by society as a preemptive harm-reduction device, using the threat of punishment as a deterrent to anyone proposing to engage in the behavior causing harm. The State becomes

involved because governing entities can become convinced that the costs of not criminalizing through allowing the harms to continue unabated outweigh the costs of criminalizing it restricting individual liberty , for example, to minimize harm to others. States control the process of criminalization because: Even if victims recognize their own role as victims, they may not have the resources to investigate and seek legal redress for the injuries suffered: The victims may only want compensation for the injuries suffered, while remaining indifferent to a possible desire for deterrence. Even in policed societies, fear may inhibit from reporting incidents or from co-operating in a trial. Victims, on their own, may lack the economies of scale that could allow them to administer a penal system, let alone to collect any fines levied by a court. As a result of the crime, victims may die or become incapacitated. Labelling theory Further information: Those who apply the labels of "crime" or "criminal" intend to assert the hegemony of a dominant population, or to reflect a consensus of condemnation for the identified behavior and to justify any punishments prescribed by the State in the event that standard processing tries and convicts an accused person of a crime. One of the earliest justifications involved the theory of natural law. This posits that the nature of the world or of human beings underlies the standards of morality or constructs them. Thomas Aquinas wrote in the 13th century: He regarded people as by nature rational beings, concluding that it becomes morally appropriate that they should behave in a way that conforms to their rational nature. Thus, to be valid, any law must conform to natural law and coercing people to conform to that law is morally acceptable. In the s William Blackstone It is binding over all the globe, in all countries, and at all times: He denied that the legal validity of a norm depends on whether its content conforms to morality. Thus in Austinian terms a moral code can objectively determine what people ought to do, the law can embody whatever norms the legislature decrees to achieve social utility, but every individual remains free to choose what to do. Similarly, Hart saw the law as an aspect of sovereignty , with lawmakers able to adopt any law as a means to a moral end. Legislation must conform to a theory of legitimacy, which describes the circumstances under which a particular person or group is entitled to make law, and a theory of legislative justice, which describes the law they are entitled or obliged to make. Indeed, despite everything, the majority[citation needed] of natural-law theorists have accepted the idea of enforcing the prevailing morality as a primary function of the law. This view entails the problem that it makes any moral criticism of the law impossible: Thus, on this line of reasoning, the legal validity of a norm necessarily entails its moral justice. People may find such law acceptable, but the use of State power to coerce citizens to comply with that law lacks moral justification. More recent conceptions of the theory characterise crime as the violation of individual rights. Since society considers so many rights as natural hence the term " right " rather than man-made, what constitutes a crime also counts as natural, in contrast to laws seen as man-made. Adam Smith illustrates this view, saying that a smuggler would be an excellent citizen, " Lawyers sometimes express the two concepts with the phrases malum in se and malum prohibitum respectively. They regard a "crime malum in se" as inherently criminal; whereas a "crime malum prohibitum" the argument goes counts as criminal only because the law has decreed it so. It follows from this view that one can perform an illegal act without committing a crime, while a criminal act could be perfectly legal. Many Enlightenment thinkers such as Adam Smith and the American Founding Fathers subscribed to this view to some extent, and it remains influential among so-called classical liberals [citation needed] and libertarians. What one group considers a crime may cause or ignite war or conflict. However, the earliest known civilizations had codes of law , containing both civil and penal rules mixed together, though not always in recorded form. The Sumerians produced the earliest surviving written codes. The Sumerians later issued other codes, including the "code of Lipit-Ishtar ". This code, from the 20th century BCE, contains some fifty articles, and scholars have reconstructed it by comparing several sources. The Sumerian was deeply conscious of his personal rights and resented any encroachment on them, whether by his King, his superior, or his equal. No wonder that the Sumerians were the first to compile laws and law codes. While modern systems distinguish between offences against the "State" or "community", and offences against the "individual", the so-called penal law of ancient communities did not deal with "crimes" Latin: Thus the Hellenic laws [23] treated all forms of theft , assault ,

rape , and murder as private wrongs, and left action for enforcement up to the victims or their survivors. The earliest systems seem to have lacked formal courts. The Romans systematized law and applied their system across the Roman Empire. Again, the initial rules of Roman law regarded assaults as a matter of private compensation. The most significant Roman law concept involved dominion. Similarly, the consolidated Teutonic laws of the Germanic tribes , [25] included a complex system of monetary compensations for what courts would now [update] consider the complete[citation needed] range of criminal offences against the person, from murder down. All the earliest English criminal trials involved wholly extraordinary and arbitrary courts without any settled law to apply, whereas the civil delictual law operated in a highly developed and consistent manner except where a king wanted to raise money by selling a new form of writ. The development of the idea that the "State" dispenses justice in a court only emerges in parallel with or after the emergence of the concept of sovereignty. In continental Europe, Roman law persisted, but with a stronger influence from the Christian Church. The people decided the cases usually with largest freeholders dominating. This system later gradually developed into a system with a royal judge nominating a number of the most esteemed men of the parish as his board, fulfilling the function of "the people" of yore. From the Hellenic system onwards, the policy rationale for requiring the payment of monetary compensation for wrongs committed has involved the avoidance of feuding between clans and families. On the other hand, the institution of oaths also played down the threat of feudal warfare. Both in archaic Greece and in medieval Scandinavia , an accused person walked free if he could get a sufficient number of male relatives to swear him not guilty. Compare the United Nations Security Council , in which the veto power of the permanent members ensures that the organization does not become involved in crises where it could not enforce its decisions. These means of restraining private feuds did not always work, and sometimes prevented the fulfillment of justice. But in the earliest times the "state" did not always provide an independent policing force. Thus criminal law grew out of what 21st-century lawyers would call torts; and, in real terms, many acts and omissions classified as crimes actually overlap with civil-law concepts. The development of sociological thought from the 19th century onwards prompted some fresh views on crime and criminality, and fostered the beginnings of criminology as a study of crime in society. In the 20th century Michel Foucault in Discipline and Punish made a study of criminalization as a coercive method of state control. Classification and categorisation The examples and perspective in this section may not represent a worldwide view of the subject. You may improve this article , discuss the issue on the talk page , or create a new article , as appropriate. January Learn how and when to remove this template message Categorisation by type The following classes of offences are used, or have been used, as legal terms of art:

Chapter 9 : University of Glasgow - Schools - School of Law - Our staff - Fiona Leverick

Complicity is the participation in a completed criminal act of an accomplice, a partner in the crime who aids or encourages (abets) other perpetrators of that crime, and who shared with them an intent to act to complete the crime.

Williams was well into his seventies when he wrote the volume. It is a magisterial book written in Socratic style. Williams published article after article in top refereed journals, even in his eighties. He was arguably the greatest legal thinker of the twentieth century. His groundbreaking Criminal Law: Similarly, his Textbook of Criminal Law, remains a standard textbook for judges, barristers, professors and students. One notable example is in R v Shivpuri [] A. The House of Lords held: I cannot conclude this opinion without disclosing that I have had the advantage, since the conclusion of the argument in this appeal, of reading an article by Professor Glanville Williams entitled "The Lords and Impossible Attempts, or Quis Custodiet Ipsos Custodes? The language in which he criticises the decision in Anderton v Ryan is not conspicuous for its moderation, but it would be foolish, on that account, not to recognise the force of the criticism and churlish not to acknowledge the assistance I have derived from it. I would answer the certified question in the affirmative and dismiss the appeal. First among these stands his Criminal Law: The Proof of Guilt is a comparative account of the rules by which criminal cases are tried in England and Wales, penetrating in its analysis of the merits of our system as well as its defects. The Sanctity of Life and the Criminal Law examines the philosophical basis for laws against contraception, sterilisation, artificial insemination, abortion, suicide and euthanasia; when it appeared it was very controversial. The fourth book is his 1,page Textbook of Criminal Law This was a successful student textbook, and would be one still if he had ever managed to finish the third edition, on which he had been labouring for 14 years at the time of his death. In , Dennis Baker edited a new third edition of this textbook, continuing the socratic style of the originals. In The Sanctity of Life and the Criminal Law , Williams criticised Christian, especially Roman Catholic, opposition to contraception, artificial insemination , sterilisation, abortion, suicide and euthanasia. His influential law book Learning the Law , now in its fifteenth edition, is a critically acclaimed and popular introductory text for legal undergraduates. Dubbed "Guide, Philosopher and Friend", the book is published by London: In fact, his range as a writer went far beyond the criminal law. Before turning to the criminal law, Williams had already written what are still the definitive books on a range of other important legal subjects: It is difficult, indeed, to think of any important legal subject on which at some time he did not have something original and interesting to say. Nor is this all. For taking notes, he invented and patented a new form of shorthand Speedhand Shorthand, And with Learning the Law , now in its 11th edition, he wrote a little introductory book about law studies which was, and still remains, indispensable reading for any would-be law student. The first is that the law should be clear, consistent and accessible. The second is that law should be humane. He was a convinced utilitarian, who held that punishment was an evil to be avoided unless there was a good reason for imposing it, and for whom "good reasons" meant the well-being of society, not the tenets of religious belief. The first was the "establishment man". He devoted many hours over several decades to serving on a range of official committees, in particular the Criminal Law Revision Committee , of which he was a member from to In this capacity he shares the credit for a number of reports which led, among other things, to the decriminalisation of suicide in and the radical reform and codification of the law of theft in His second role was that of "radical outsider". Working sometimes with others, sometimes on his own, he was adept at stirring up public opinion over matters where official interest in reform was lacking. He took a major part in the campaign to liberalise the law on abortion, which largely succeeded with the Abortion Act He was also very active in the campaign to legalise voluntary euthanasia, which has so far largely failed. In the s he was among the first to draw public attention to the problems children face when giving evidence in sex cases â€” and was still campaigning on the subject in the s. In he was the first person publicly to advocate the tape-recording of interviews with suspects in police stations; initially condemned as a silly and impractical idea, 25 years later this became almost universal

practice. Perhaps his greatest triumph was in , when a well-timed article persuaded the House of Lords to rule that a person can be guilty of attempt even where the crime in question was impossible of completion: Glanville Williams was a respected and innovative teacher. He was also very supportive throughout their careers to a number of his junior colleagues. Although a kind man, however, he was rather shy, and not a great socialiser outside the circle of his family. He was brought up in a pious Congregationalist family in South Wales, and much of his background stayed with him. Notwithstanding his great eminence, he remained to the end of his days a quiet-spoken, modest, gentle, serious-minded Welshman. Although an agnostic for most of his life he knew his Bible, and the use of biblical phrases was instinctive to him. Honours[edit] Academic honours were heaped upon him, culminating in in a Doctorate of Letters honoris causa from Cambridge. The truth, however, is that he was offered one and declined it; partly from modesty, and partly because he thought it incongruous that a man who had refused to wield a bayonet should theoretically bear a sword. In , he was famously impersonated by Campbell McComas , an Australian comedian, at a hoax lecture at Monash University , Melbourne. Hundreds and hundreds attended, and the lecture ended with the words: