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052140150X - Automatism, Insanity, and the Psychology of Criminal Responsibility: A Philosophical Inquiry

Robert F. Schopp

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This book is about the role that psychological impairment should play in a theory of criminal liability. Criminal guilt in the Anglo-American legal tradition requires both that the defendant committed some proscribed act and that he did so with a certain attitude such as intent, knowledge, or recklessness. The second requirement corresponds to the intuitive idea that people should not be punished for something they did not do “on purpose” or if they “did not realize what they were doing.” Although intuitive, this underlying idea can be highly controversial in theory and in practice, especially in cases involving the insanity defense.

This important new book addresses the conceptual and moral foundations of these issues. Unlike many previous works in this area, it addresses the automatism and insanity defenses by examining the types of functional impairment that typical candidates for these defenses actually suffer. What emerges is a much wider conceptual framework that allows us to understand the significance of psychological states and processes for the attribution of criminal responsibility in a manner that is logically coherent, morally defensible, and consistent with research in psychopathology.

The book will be of particular interest to legal theorists and practicing lawyers, philosophers of law, psychologists, and criminologists.

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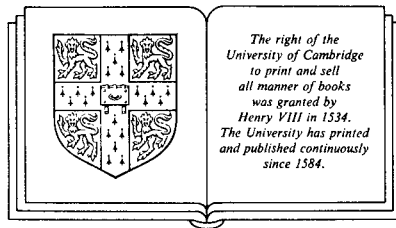
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# Automatism, insanity, and the psychology of criminal responsibility

A philosophical inquiry

ROBERT F. SCHOPP

COLLEGE OF LAW, UNIVERSITY OF NEBRASKA-LINCOLN



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For those who show us how to live:  
Frank C. Schopp  
Winifred Schopp

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## Preface and acknowledgments

In the Anglo-American tradition of criminal law, the state cannot convict and punish people for serious offenses merely because they have performed proscribed conduct. Legal guilt requires both that the defendant engaged in illegal behavior and that certain psychological requirements were fulfilled. Traditionally, these requirements have been very difficult to describe and justify. Consequently, they have been highly controversial, both in theory and in application.

This book clarifies and justifies the psychological components of criminal responsibility. It adopts two methodological premises that differentiate it from many prior investigations of these issues. First, it directs primary attention toward the structure of offenses. Historically, many writers have concentrated on the insanity defense, either as an independent concern or as the central piece of the larger puzzle involving criminal responsibility. The book treats the structure of offense elements as the core of the problem, addressing the insanity defense as an ancillary aspect of the broader system of offense elements and defenses. Second, to the extent that psychopathology undermines attributions of criminal responsibility, the book looks to the available information regarding the nature of the dysfunction involved in that pathology in order to advance the analysis of responsibility.

This book is based on a doctoral dissertation submitted to the Department of Philosophy at The University of Arizona. Several individuals made diverse and valuable contributions

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to that dissertation. I am particularly indebted to Joel Feinberg, who contributed both to the dissertation itself and to the educational preparation that preceded it through his direction, teaching, writing, and guidance. David Wexler helped me appreciate the complexities of the law, the myriad of interactions that occur both within the law and at its intersection with other fields, and the importance of approaching interdisciplinary studies with careful attention to the potential contributions and limitations of each discipline. Allen Buchanan, Bruce Sales, and Holly Smith each contributed substantially both to this project and to my preparation for it.

I am also grateful to Jules Coleman, who introduced me to the formal study of moral and legal philosophy and reassured me through example that one can do serious work without taking it too seriously. Michael Quattrocchi accompanied me in our first tentative attempts to explore what I now think of as the philosophy of law and clinical psychology, although neither of us realized at the time that this was what we were doing. Perhaps the greatest credit should go to Mary, Bill, and those they represent for providing the impetus sufficient to move even Mike and me. Unfortunately, it seems unlikely that they will recognize their contributions or benefit from them. Ed O'Dowd has participated in a seemingly endless series of prolonged conversations about many topics relevant to this book. Let us hope that it draws primarily on the conversations during which we made some progress. I am also grateful for helpful comments made by two anonymous reviewers from Cambridge University Press and for Ronald Cohen's editorial skills.

Finally, Joel Feinberg's prominent influence on this undertaking requires one kind word for Josiah S. Carberry. Although he contributed nothing to this project, neither did he detract from it. For some, perhaps, this is the kindest word that honesty will allow or history will record.

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**Note to the reader on language**

Previous drafts of this book were written in gender-neutral language. Unfortunately, the results were awkward, distracting, and sometimes confusing because the book contains numerous real or hypothetical actors illustrating a variety of concepts and situations. In order to avoid detracting from the substantive argument, I have reverted to the traditional practice of using male pronouns and possessive adjectives when making general statements. Identifiable actors are referred to according to their proper gender. My aim is to present the arguments clearly to readers without offending them.