Index

abnormal conditions causation and, 175-6 'eggshell skull' treatment case and, 191-2 intervention of, 187-93 regulatory context in causation and, 192 - 3abnormality of mind concept diminished responsibility and, 248-9 recent legal reforms concerning, 251-4 absolutism, penal theory and, 20-1 abstract juridical individual actus reus and, 168-70, 373-5 corporate liability and, 372-3 criminal doctrine foundations and, 35-8 criminal law and, 369-79 defences and, 375-8 deterrence ideology and, 336-44 duties of citizenship and, 166-8 emergence of, 35-6 historical context for, 26-9 insanity defence and, 263-4 'just deserts' in unjust society and, 348-50 law of acts and, 137-8 law of omissions, 159-62 mens rea and, 369-73 in offences, 369-75 political nature of, 53-7, 365-9 psychological individualism and, 366-7 regulatory offences and, 106-9 rehabilitation and incapacitation ideology and, 353-9 sentencing and ideology of, 333-6, 363-4, 378 - 9abuse diminished responsibility defence and, 264-6, 268n.37 imminence in self-defence and, 281-4, 283-4n.3 necessity in self-defence and, 279-80 in provocation defence, 320-2 in suicide cases, 182-3 'active member' requirement, self-induced duress and, 227-9 acts, 35-6 basic principles, 138-9 causation and, 193-5 corporate liability and, 117-18, 128-9 dangerous acts, 66-7 duress defence and, 220-4

identity doctrine and, 118-20 individual morality and, 46-9 involuntariness in, 177n.7 legal discourse concerning, 137-8 limits on physical involuntariness in, 144 - 51negligence and, 83-8 omissions and, 152-6 overview of, 137-70 practical indifference principle and, 92-4 responsibility for, 82-3 strict liability and, 104-6 supervening cause and, 193-5 voluntariness and, 140-4 actus reus. See also acts, law of abstract juridical individual and, 168-70, 373-5 causation and, 171-95 defences and, 199-200 definitions of, 137-8 gross negligence manslaughter and, 83-8 mistaken self-defence and, 286-7 necessity defence and moral involuntariness, 214 - 18omission concepts in, 152-6 self-defence and, 274-6 situational liability cases and, 149-51 summary of, 168-70 voluntary actions in, 138-9, 151 addiction offences abstract right and social need and, 150n.10, 160 - 2alcoholism and diminished responsibility, 254 - 6causation in drug-taking cases and, 183-5 duress defence and, 225moral validity of necessity and duress defences and, 234 self-induced duress in, 227-8 unconsciousness requirement and, 144-6 administrative offences, strict liability and, 102 - 4advertent recklessness antinomy and culpability and, 98-9 defined, 73–6 implied malice doctrine and, 96-8 practical indifference principle and, 90–1 age characteristics, provocation defence and, 319-20, 320n.16

More Information

396

Index

agency conflicting motives and common intentions and, 43-6 necessity defence and, 214-18 political limits of practical indifference and, 94 - 6standard of resistance and, 225-7 third-party voluntary intervention and, 177-9 voluntariness and, 168-70 aggregative approach aggregation of fault, 120-1 corporate liability and, 118-20 aircraft hijacking, excusatory necessity and, 207 - 10alcoholism, laws concerning. See also addiction offences diminished responsibility and, 254-6 moral voluntariness and, 144 physical involuntariness and moral voluntariness, 146-9, 147n.9 unconsciousness requirement and, 144-6 anger trigger, 308n.4 cold anger principle, 309 in provocation defence, 321-2 sudden vs. non-sudden, 322-5 Anglo-American legal scholarship, anti-historical tilt in, 9 An Inspector Calls (Priestley), 178, 182-3 antecedent cause, causation and, 171-2, 174-9 antinomy recklessness and, 98-9 in sentencing ideologies, 359-60 Anti-Social Behaviour Order (ASBO), 167-8 appeals, role of judiciary in, 17n.5 appropriate circumstances rider, in provocation defence, 312-14 Ashworth, A, 333 counter-arguments on self-defence and, 289 - 91on deterrence, 361-2 on duty to act, 164-5, 166 on incapacitation sentencing, 356-9 on intention, 48 'just deserts' in unjust society and, 344n.13, 348n.16, 348-50 on law of acts, 82-3 living standards analysis and, 352 on political individualism, 36-8 on regulatory offences, 116 on self-defence, 274, 278n.1, 290n.7 assault abnormal conditions or contingencies and, 175 - 6death as result of, 171-2, 179n.9 practical indifference principle concerning, 89 - 90recklessness and law of, 78n.6, 78-9 self-defence and, 287-9 assimilation in corporate liability, 117-24 corporate liability and, 132-3 assisted suicide discretion to convict and, 54-5

discretion to prosecute and, 54 asylum, history of insanity defence and, 240-2 attempted murder, duress defence in, 223-4 Austin, John, 43n.5, 140-1 automatism defence disease of the mind principle and, 244-5 intoxication, physical involuntariness and moral voluntariness, 146-9 unconsciousness requirement and, 144-6, 145n.6 autonomy communitarian theory and, 167 necessity defence and moral involuntariness, 214 - 18social values vs., 154-5 battered woman syndrome (BWS) anger trigger and, 321-2 diminished responsibility defence and, 264-6 fear trigger and, 320-1 self-defence and, 283-4n.3 subjective test of provocation and, 309 Beccaria, Cesare, 21-2, 26-9, 337-8 beckoning candle philosophy', 356n.21 beliefs, insanity defence and role of, 245-8 Bentham, Jeremy, 22-3 deterrence theory and, 22-3, 337-8, 341-4, 343n.10 on legality, 24 on moral-legal individualism, 25n.6-26n.7, 25-6, 26n.8 necessity defence and philosophy of, 205-6 panopticon of, 337n.3 penal theory and, 20-1, 26-9 reform ideology and, 24-5 bigamy cases, ethics of strict liability and, 109-13 Black Acts, 31-2 blood relationships easy rescue principle and, 163-6 law of omission and role of, 159-62, 160n.25 breadth of the rules principle, insanity defence and, 244-5 British Rail, corporate liability involving, 122-3 Brudner, Alan, 108n.6 Butler Report, 259-61 Buxton, Richard (Sir), 68-9 Caldwell case, 16-18, 73-6 consideration of mental state in, 82-3 determinacy in, 91–2 practical indifference principle and, 90-1 subjectivist/objectivist dichotomy of recklessness in, 76-9, 96-101 subjectivist/objectivist split in, 79-80 Caldwell/Lawrence test of recklessness, 73-6 callousness antinomy and culpability and, 98-9 political limits of practical indifference and, 94-6 practical indifference principle and, 90-1 cannabis offences, necessity defence in medicinal use of, 207-10

More Information

397

Index

capitalism causation doctrine and, 172-4 corporate liability and, 117-18 economic integration and corporate punishment in, 128-9 internationalisation of, 129-32 state interventionism and, 353-9 strict liability and development of, 106-9 capital punishment absence of deterrent value in, 338n.4 abstractions and realities concerning, 26 - 9conflicting views of crime and, 242-3 English penal theory and, 20-1 provocation defence law and, 325-9 retributive justice and, 21-2 cardinal proportionality principle, 350-2 causation, law of abnormal conditions or contingencies and, 175-6, 187-93 case-based analysis of, 179-93 coincidental events and, 187-93 conflicting views of crime and, 242-3 critical approach to, 172-4 drug-taking cases, 183-5 duty to act and, 152-4 factual vs. legal causation, 171-2 framing of cases in, 180-1 fright and flight principles and, 181-2 individualism and, 193-5 intervention of voluntary act and, 179-87 law enforcement cases, 185-6 legal discourses concerning, 137-8 liberal principles in, 174-9 manslaughter cases and, 160-2 omissions and, 151, 152-6 overview of, 171-95 refusal of medical treatment and, 186-7 regulatory context in, 192-3 suicide cases and, 182-3 third-party voluntary intervention and, 177 - 9voluntary acts and, 141, 177-9 censure, allocation of punishment and, 346-50 certainty ambiguity in interpretation of, 64-6 antinomy and culpability and, 98-9 indirect intention and, 67-8 intention and, 58-9 oblique intention and, 61-4 Chapman, Mark, 237-9 Chartist disorder, 243-8 'chiasmus', 293n.9 child labour, strict liability and development of, 106 - 9children, law of omissions and, 159-62 Children and Young Persons Act 1933, 159n.23, 159 'CID Structure', organisational approach to corporate liability and, 121-2 circumstance excusatory necessity and duress of circumstances, 207-10

justificatory necessity in challenges to state and, 211-13 citizenship, duties of law of omissions and, 162-8 legal form and preventive turn issues in, 166 - 8mistaken self-defence and, 292-4 civil law common law heritage and, 32-3 conflicting views of crime and, 242-3 Clapham rail disaster, 122-3 class structure ethics of strict morality and, 109-13 history of insanity defence and, 240-2 logic and policy and, 33-5 middle-class interests and legal reform, 25 motive in context of, 45-6 necessity defence and, 203-7, 207n.7 penal theory and, 26-9, 29n.12, 340n.8 state interventionism and, 353-9 strict liability evolution and, 106-9 utilitarian deterrence and, 22-3, 29n.12 coercive sanctions, causation law and, 174 - 9cognitive tests, insanity defence and, 245-8 coincidental events, intervention of abnormal occurrence and, 187-93 Coke, Edward (Sir), 25, 138n.1 common law heritage and, 31-3 cold anger principle, subjective test of provocation and, 309 Coleridge (Lord), 156-9, 203-7, 214-18, 220 - 4common law actus reus and, 137-8 criminal law and, 31-3 omission and duty in, 156-9 self-defence in, 274-6 commonsense expectation law of omissions and, 154n.15, 154-5 regulatory context of causation and, 188n.16, 192 - 3in self-defence, 276-86 suicide cases and, 182-3 communitarian theory duties of citizenship and, 166-8 easy care principle and, 163-6 compassion diminished responsibility defence and, 254 discretion to prosecute and motive of, 54 limits of, in insanity defence, 266-7 motive and, 45n.9, 45-6 provocation defence and, 316-19, 325-9 complicity, law of, self-induced duress and, 227-8 compulsion moral involuntariness and, 141-3 necessity defence and, 201-3 conscious acts, 140 justificatory necessity and challenges to state, 211-13 voluntariness paradigm and, 144-6

More Information

398

Index

consequentialist justification of punishment,
346-50
containment
incapacitation ideology and, 356–9
rehabilitation and incapacitation and
ideology of, 354–6
contingency, causation and, 175-6
contractualist ideology
abstract right and social need and, 159-62
law of omission and, 156–9
contractual model, law of omissions and,
139–40, 158n.22
conviction
discretion to convict and, 54–5
duress defence and, 220-4
subjectivist/objectivist view of recklessness as
basis for, 76–9
Coroners and Justice Act 2009, 248-57, 264-6,
307-8, 360-1
corporate liability
abstract juridical individual and, 372–3
aggregation of fault and, 120–1
assimilation in, 117–24
definitions of, 102-4
economic integration and, 128-9
identity doctrine and, 118-20
limits of organisational approach in, 122-3
offence legislation concerning, 124–7
organisational structure and, 121–4
regulatory context of causation and, 192–3
social complexity in, 128–32
Corporate Manslaughter and Corporate
Homicide Act 2007, 118-20, 124-7,
132–3, 372–3
Crime and Courts Act 2013, 299-300
Crime and Disorder Act 1998, 167-8
Criminal Code Bill of the Law Commission,
259-61
criminal damage
Parliamentary reform of, 76–9
ramamentary reform 01, 70–9
recklessness and, 73–6, 78–9
Criminal Damage Act 1971, 73-9, 214-18
criminality, rehabilitation and incapacitation
and, 354–5
Criminal Justice Act 1991, 333-6, 344-6, 360-1
incapacitation in sentencing and, 356–9
rehabilitation ideology and, 355-6
Criminal Justice Act 2003, 344–6, 356–9
Criminal Justice and Immigration Act 2008,
274–6, 284–6, 297–300, 356–9
criminal law
abstract juridical individual in, 369–79
Anglo-American scholarship on, 9–10
causation doctrine and, 172-4
common law and, 31-3
conflicting views of crime and, 242-3
contradictions in, 16–18
extraordinary norms in, 9–10
fault liability and, 13
fictional case of justice and, 1
formal structure of defences in, 229-33
foundational tensions in, 35-8
historical context of doctrine in, 19-38

historical context of self-defence in, 301-3 individual justice in, 13-15 legality and rationality in, 10-13 necessity defence and, 214-18 as praxiology, 379-81 rational approach to, 9-10 regulatory offences vs., 116, 132-3 strict construction rule and, 14-15 Criminal Law Act 1967, 274-6 criminal responsibility, corporate liability and principle of, 117-18 Crown Law (Foster), 32 culpability cardinal and ordinal proportionality and, 350-2 intoxication, physical involuntariness and moral voluntariness, 146-9 'just deserts' ideology and, 348n.15 living standards analysis and, 352 physical involuntariness and, 144-6 psychological individualism and, 366-7 recklessness and, 98-9 situational liability and physical involuntariness, 149-51 custodial sentencing incapacitation ideology in, 356-9 rehabilitation and incapacitation and, 355-6 danger, social constructions of, 99-100 incapacitation in sentencing and, 356-9 individualism vs. individualisation and, 354-5 death penalty abstractions and realities concerning, 26-9 conflicting views of crime and, 242-3 English penal theory and, 20-1 provocation defence law and, 325-9 decontextualisation of madness, legal-psychiatric convergence concerning, 261-9 defences abstract juridical individual and, 375-8 automatism, 144-7 diminished responsibility, 237-73 duress, 46-9, 53-7, 199-236 insanity, 237-73 loss of control, 304-29 mistaken self-defence and, 286-7 necessity, 50n.11, 53-7, 70-1, 199-236 psychiatry and development of, 243-57 self-defence, 274-303 strict construction rule and, 14-15 'degrees of turpitude', gross negligence manslaughter and, 87 delinquency, rehabilitation and incapacitation and, 354-5, 356-9 delusions, insanity defence and, 245-8, 260-1n.27 denial, politics of discretion in sentencing and, 55-7 discretion to convict and, 54-5 'just deserts' in unjust society and, 348-50

Cambridge University Press & Assessment 978-0-521-51646-4 — Crime, Reason and History 3rd Edition Alan Norrie Index

More Information

399

Index

prosecutorial discretion and, 54 remedies to, 53-7 Denning (Lord), 51n.12, 53-4, 137, 144-6, 207-10, 214-18, 244-5 deportation law, situational liability and physical involuntariness in, 149-51 desocialisation, motive and intention and, 43-57 determinacy easy rescue principle and, 163-6 law of omissions and absence of, 152-4 practical indifference principle and, 91-2, 94-6 determinism principle, post-Hinckley debate in US on insanity defence and, 257-9, 259n.23 deterrence conflicting views of crime and, 242-3 corporate punishment and economic integration, 129-32 duress defence and, 220-4, 223n.29 Enlightenment penal theory and, 20-4 failure of capital punishment in, 338n.4 incapacitation sentencing and, 356-9 individual vs. general deterrence, 341-4 necessity defence and, 203-7 policing and, 339n.6 post-Hinckley debate in US on insanity defence and, 257-9 rehabilitation and incapacitation ideology and, 354-5 retributive justice and, 21-2 sentencing and ideology of, 336-44, 361-2 social context of individual deterrence, 338-41, 363-4 utilitarian deterrence, 22-3, 24n.3 Devlin (Lord), 54-5, 240n.3 diabetics breadth of the Rules and disease of the mind and, 244-5 intoxicated involuntariness and, 146-8 diagnostic manuals, modernisation of diminished responsibility laws and, 251-4 diminished responsibility defence abstract juridical individual and, 376-7 alcoholism and, 254-6 combined law and psychiatry and decontextualisation of madness, 261-9 conflict and cooperation laws concerning, 249 - 51consensus and conflict between law and psychiatry and, 271-3 gender and racial stereotypes and, 262n.29 historical definitions and terminology, 248-9 legal discourse concerning, 237-9 legal reform of insanity defence in England and Wales and, 259n.25, 259-61 limits to compassion and pragmatism in, 266 - 7mandatory sentencing and, 266n.32 men killing women and, 267-9 modern concepts of madness and, 269-70 modern legal reforms concerning, 251-4

overview, 237-73 as partial defence in murder, 256 pre-menstrual tension and, 266n.31 provocation defence and, 316-19, 317-18n.12 psychiatric vs. legal concepts of, 248-61 women and infanticide and, 264-6 Diplock (Lord), 73–80, 104–6, 244–5, 284–6 'directing mind' concept, aggregation of fault and, 120-1 direct intention, moral threshold principle and, 70 - 1discretion in sentencing, 55-7, 334n.1, 341-4, 359 - 60discretion to convict, politics of denial and, 54 - 5discretion to prosecute gross negligence manslaughter and, 83-8, 87-8n.14 politics of denial and, 54 disease-based definition of madness, history of insanity defence and, 240-2 'disease of sloppiness', organisational approach to corporate liability and, 121-4 'disease of the mind' concept, insanity defence and, 244-5 dishonesty, social mores concerning, 50-3 dominant rationale approach in sentencing, 360-1 'double effect' doctrine, 211n.11 DPP v Morgan, 16-18, 114-15 rationality and legality in, 11-12 self-defence in, 287-91, 294-5 drowning infant/stranger paradigm, laws of omission and, 154-5 drug offences abstract right and social need and, 160-2 causation law and, 183-5 incapacitation sentencing and, 356-9 moral validity of necessity and duress defences and, 234 moral voluntariness and, 144 necessity defence and, 207-10 physical involuntariness and moral voluntariness, 146-9 self-induced duress in, 227-9 strict liability principles and, 113-17 unconsciousness requirement and, 144-6 dualism, of corporate identity, 129-32 Duff, Antony, 57-8, 59-61, 75-6, 89-90 on determinacy, 91-2 factual vs. moral recklessness and, 96-8 political limits of practical indifference and, 94-6 on practical indifference principle, 90-1, 91n.15 on subjectivity of practical indifference, 92-4, 99-100 duress defence abstract juridical individual and, 375-6 actus reus doctrine and, 143 basic principles, 218-29 conflict in basic arguments, 220-4

More Information

400

Index

duress defence abstract juridical individual and, 375-6 actus reus doctrine and, 143 basic principles, 218-29 conflict (cont.) definitions and terminology, 218-19 formal structure of, 229-33 individual morality and, 46-9 justification vs. excuse in, 202n.3 limits on, 224-9 mistaken self-defence and, 286-7 mistake of duress principle, 224-5 moral involuntariness and, 141-3 moral validity of, 233-6 in murder cases, conflicting positions, 219 - 20overview of, 199-236 self-induced duress, 227-9 standard of resistance in, 225-7 third-party voluntary intervention and, 177 - 9duress of circumstances, 199-200, 207-10, 209n.9 duty of care abstract right and social need and, 158n.22, 159 - 62gross negligence manslaughter and, 83-8 identity and organisation in corporate liability and, 124-7 killing and letting die principles in laws of omission and, 155-6 duty to act easy rescue principle and, 163-6 juridification of omission and, 156-9 killing and letting die principles and, 155-6 law of omissions and, 152-4, 154n.15, 160 - 2duty to treat, laws of omission and, killing and letting die principles and, 155-6 Earlsferry, Rodger of (Lord), 73-6 easy rescue principle duties of citizenship and, 168 law of omissions and, 139-40, 154-5, 162-8 line-drawing issue and, 163-6 Edmund-Davies (Lord), 11-12, 16-18, 76, 219-24 Education Act 1944, 159 'eggshell skull' treatment case, causation law and, 191-2 emotion history of insanity defence and, 240-2 insanity defence and, 245-8 motive and, 43-4 employer-criminality, ambiguity of strict liability and, 106-9 English penal theory 'just deserts' ideology in, 344-6 legality and, 24 legal reform of insanity defence and, 259-61 middle-class interests and, 25 Whig oligarchy and, 20-1

Enlightenment deterrence ideology and, 336-44 individual justice and legality in, 35-6 legal reform during, 75 madness and rationality in, 239-40 moral-legal individualism and, 25-6 penal theory of, 20-4, 55-7 'entitled to find' principle, intention and, 70-1 environmental protests, necessity defence and, 214 - 18epilepsy, breadth of the Rules and disease of the mind and, 244-5 equality 'just deserts' in unjust society and, 348-50 law and logic of, 29-30, 36-8 'equality of arms' principle, proportionality in self-defence and, 284-6 ethics, strict liability history and, 109-13 European Convention on Human Rights, intention in, 70-1 euthanasia discretion to convict in cases of, 54-5 discretion to prosecute in treatment of, 54 'entitled to find' principle and, 70-1 laws of omission and, 155-6 evidence, intention and rule of, 68-9 exclusion duties of citizenship and, 166-8 in law of acts, 138-9 in self-induced duress, 227-8 excuse defence structure and, 229-33, 232n.33 excusatory necessity and duress of circumstances, 207-10, 209n.9, 212n.12 in mistaken self-defence, 292-4 in necessity defence, 201-2, 203-7, 213-14 in provocation defence, 305-6, 312n.5, 312-14, 325-9 in self-defence, 291-2 exemplary sentencing, 338-41, 343-4 existing conditions, 'eggshell skull' treatment case and, 191-2 Factories Acts, 106-9 factual causation, legal causation vs., 171-2 factual intention, individual morality and, 48-9 factual recklessness, 96-8 failure to act, omission as, 152-6 fair choice principle, third-party voluntary intervention and, 177-9 fault liability aggregation of fault, 120-1 corporate liability and, 118-20 criminal law and, 13 mens rea and, 41-3 moral involuntariness and construction of, 141 - 3organisational approach to, 121-2 orthodox subjectivism and gradation of, 82-3 fear trigger, 308n.4 abused woman and provocation defence, 319n.15, 320-1 in provocation defence, 307-8, 319-20

More Information

401

Index

Ferri, Enrico, 354-5 feudalism, English penal theory and, 20-1 Field and Jorg, 121-2 Fletcher, George, 73, 75, 137, 146n.8, 160 on defences, 199, 229-33 on necessity defence, 201n.2, 201-2, 203-7 on self-defence, 274 flight principle, causation law and, 181-2 force flexibility concerning use of, 299-300 mistakes in amount of, 295-300, 303 proportionality in self-defence and, 284-6, 285n.4 foreseeability doctrine antinomy and culpability and, 98-9 causation and, 172-4 in G and another case, 80-2 intoxication, physical involuntariness and moral voluntariness and, 149 subjectivist/objectivist view of recklessness and, 76-9 suicide and, 182-3 forfeiture approach to self-defence, 276-8 forgetfulness, practical indifference principle and, 90-1 Foster, Michael (Sir), 96-8 Foucault, Michel, 240-2 on legal institutions, 102 on penal theory, 20-1, 341, 355-6n.20 on property rights, 25 on retributive justice, 21-2 freedom alcoholism and diminished responsibility and role of, 254-6 deterrence and denial of, 338-41 in drug-taking cases, 183-5 imminence in self-defence and, 281-4 insanity defence debate concerning, 259n.23 moral involuntariness and denial of, 141-3 rehabilitation and incapacitation and, 354-5 social values vs., 154-5 free individualism abstractions and realities in, 26-9 English penal theory and, 20-1 middle-class interests and, 25 modern law and repressiveness of, 29-30 utilitarian deterrence and, 22-3 French, Peter, 121-2 Friedman, Milton, 102, 129-32 fright principle, causation law and, 181-2 functionalist defence of legal practice, 176n.6 Gardner, John, 57-8, 290 Garland, D., 333, 337n.3, 338-41, 354n.19 gender issues abused woman, provocation defence and, 319n.15, 320-2 diminished responsibility defence, 262n.29 provocation defence and, 319-20 general deterrence, ideology of, 341-4 Gladstone Committee of 1895, 354-5 Gluckman, Max, 73, 100-1

'Great Confinement' period, history of insanity defence and, 240-2 Greenawalt, Kent, 291-2 Greenpeace activists, necessity defence and, 214 - 18gross negligence manslaughter antinomy and culpability and, 98-9 corporate liability and, 117-18 determinacy and, 91-2 identity and organisation in corporate liability and, 124-7 law of omissions and, 160-2, 164n.30 orthodox objectivism and, 83-8 practical indifference principle and, 88-9 suicide and, 182-3 guilt. See also culpability actus reus doctrine and, 142-3 ethics of strict morality and, 109-13 motive and, 45-6 necessity defence and legal concept of, 202-3 Hailsham (Lord), 11-12, 58, 199-200, 223-4 Hale (Baroness), 44-5, 115-16, 202-3, 225-7 Hall, Jerome, 369-73 on human agency, 43-4 on motive and intention, 41, 42 on situational liability and physical involuntariness in, 149-51 Hancock and Shankland case, 61-4 direct and indirect intention in, 71-2 indiscriminate malice in, 68-9 jury guidelines in, 64-6 practical impact of, 66-7 harm in actus reus law, 137-8 aggregation in corporate liability of, 120-1 cardinal and ordinal proportionality and, 350 - 2duress defence and, 220-4 incapacitation sentencing and potential for, 356-9 indirection intention and, 67-8 indiscriminate malice and, 68-9 law of oblique intention and, 61-4 law of omissions and, 152-4, 153n.13 living standards analysis and, 352 in mens rea, 41-3 morally substantive approach to intention and, 59-61 motive and intention and, 41, 66-7 omission as act of, 152-4 organisational approach to corporate liability and, 121-4 orthodox subjectivism concerning, 82-3, 99 - 100positive harm, law of omission and, 156-9 practical indifference principle and, 88-9 recklessness and, 73, 80-2 strict liability and regulatory offences, 104 - 6Hart, H L A, 13, 15, 77-8, 82-3 on causation, 141n.3 on individual justice, 16-18

Cambridge University Press & Assessment 978-0-521-51646-4 — Crime, Reason and History 3rd Edition Alan Norrie Index

More Information

402

Index

Hart, H L A (cont.) on moral voluntariness, 141 on retributivism, 344-6 on voluntary acts, 140-1 Hart and Honoré, 152-4, 153n.13 on causation, 172, 174-87 framing of causation cases by, 180-1 on intervention of abnormal occurrence, 187-93 on law enforcement, 185-6 on refusal of medical treatment, 186-7 Health and Safety at Work legislation, deaths at work and, 54 'heat of the moment' principle, 284-6, 299-300 Hegel, G F W, 333 on deterrence, 361-2 German penal theory and, 20-1 proportional limits on punishment and, 350 reform ideology and, 24-5 retributive justice and, 21-2, 346-50 hidden motives, 46-53 individual morality and, 46-9 political morality and, 49-50 social mores and, 50-3 Hinckley, John, 257-9 history Anglo-American legal scholarship bias against, 9 criminal doctrine in context of, 10, 19-38, 38n.17 formal structure of defences and role of, 229-33 of necessity defence, 202-3 of provocation defence, 305-6 recklessness in context of, 96–100 of self-defence, 301–3 Hobbes, Thomas English penal theory and, 20-1 philosophy of action and, 140-1, 151 Hoffmann (Lord), 118-20, 192-3, 211-13, 314-15, 320-2 Hogan, B, 9-10, 43-4 on defences, 229-33, 304 on discretion in sentencing, 55-7 on fault liability, 13 on intention, 57-8 on necessity defence, 207-10, 219n.22 orthodox subjectivism and, 99-100 subjectivist theory and, 33-5 homicide conflicting positions on duress defence in, 219 - 20factual vs. moral recklessness and, 96-8 identity and organisation in corporate liability and, 124n.21, 124-7 morally substantive approach to intention and, 59-61 se defendendo homicide, 301n.13, 301-3 self-defence and, 287-9 Homicide Act 1957, 248-57, 308-11 honest belief requirement, 296-300 honest mistake rule counter-arguments concerning, 289-91 flexibility concerning, 299-300

mens rea and, 287-9, 288n.6 mistaken self-defence and, 274-6 in self-defence, 297-300 honour killings, provocation defence and, 309-11, 314-16 Horder, Jeremy, 57-8, 114-15, 116 Hörnle, T, 213-14, 232n.33 Horwitz, Morton, 9, 10, 19-20, 173-4 human conduct conflicting motives and common intentions in. 43-6 conflicting views of crime and, 242-3 hidden motives and, 46-53 history of insanity defence and, 240-2 indirect intention and, 57-71 insanity defence and, 237-9 moral involuntariness and, 142-3 subjectivity of practical indifference and, 92 - 4human rights abstract rights and social need, 150n.10, 160-2 intentionality and, 70-1 justificatory vs. excusatory defence and state legitimacy, 213-14 self-defence and, 276-8, 284-6 Hume, David, 20-1, 44-5 Hvam case ambiguity of certainty in, 64-6 direct and indirect intention in, 71-2 indiscriminate malice in, 68-9 means and intention in, 58 oblique intention in, 61-4 orthodox subjectivist principles in, 66-7 Woollin case and, 67-8 ideal retributivism, 347 identity doctrine corporate liability and, 118-20, 128-33 organisational approach to corporate liability and, 124-7 ignorance, practical indifference principle and, 90 - 1imminence excusatory necessity and, 212n.12 in self-defence, 281-4 imperfect justification, in provocation defence, 312n.6, 312-14, 325-9 implied malice doctrine, factual vs. moral recklessness and, 96-8 inadvertent recklessness antinomy and culpability and, 98-9 defined, 73-6 political limits of practical indifference and, 94-6 practical indifference principle and, 90-1 incapacity and incapacitation individualisation in sentencing and, 356-9 individualism vs. individualisation in punishment and, 354-5 physical involuntariness vs. moral voluntariness, 144 in sentencing and penal theory, 353-9

Index

More Information

403

Indecency with Children Act 1960, 114-15 indecent assault, strict liability in, 115-16 indeterminacy easy rescue principle and, 163-6 law of omissions and absence of, 152-4 political limits of practical indifference and, 94-6 practical indifference principle and, 91-2, 94-6 in sentencing, 361-2 indirect intention discretion to convict and, 54-5 individual morality and, 48 legal and moral judgment and, 57-71 moral certainty test and, 64 orthodox subjectivist principles and, 66-7 in Woollin case, 67-8 indiscriminate malice, intention and, 68-9 individual fault, corporate liability and, 118-20 individualisation individualism vs., 354n.19, 354-5 in sentencing, 355-9 individualism. See also abstract juridical individual; free individualism; legal individualism; political individualism; psychological individualism causation and principles of, 193-5 deterrence and, 341-4, 354-5 duties of citizenship and, 166-8 individualisation vs., 354-5 law of omissions and, 156-9 social context of deterrence, 338-41 third-party voluntary intervention and, 178 Vining's discussion of, 15 individual justice criminal law and, 13-15 ideal and actual in classical retributivism and, 347 'just deserts' in unjust society and, 348-50 limits of, 16-18 mens rea and, 41-3 moral validity of necessity and duress defences and, 233-6 politics of denial and, 53-7 post-Hinckley debate in US on insanity defence and, 257-9 psychological individualism and, 35-6 strict liability of regulatory offences and, 104 - 6individual responsibility abnormal conditions or contingencies and, 175 - 6causation and, 172-9, 193-5 conflicting views of crime and, 242-3 corporate liability and, 128-32 defence law and, 199-200 duties of citizenship and, 166-8 hidden motives and, 46-9 insanity defence and, 237-9, 260-1n.27 'just deserts' in unjust society and, 348-50 law of omissions and, 139-40 legal test for, 263-7 motive and, 43-6, 49-50

penal theory and, 24 post-Hinckley debate in US on insanity defence and, 257-9 psychological individualism and, 35-6 recklessness in Caldwell case and, 77 sentencing and ideology of, 333-6 strict liability and, 104-6, 109-13 subjectivist theory and, 33-5 third-party voluntary intervention and, 177 - 9inequality, 'just deserts' in unjust society and, 348-50 inexorable logic in mens rea honest and reasonable mistakes and, 297 - 300mistakes of fact and law in self-defence and, 296-7 self-defence and, 287-9 infanticide diminished responsibility defence and, 264-6 poverty and insanity defence concerning, 263 - 4Inglis, Frances, 54-5 insanity defence abstract juridical individual and, 376-7 asylum and psychiatry and emergence of, 240 - 2breadth of the rules principle, 244-5 cognitive tests and, 245-8 combined law and psychiatry and decontextualisation of madness, 261-9 conflicting views of crime and, 242-3 consensus and conflict between law and psychiatry and, 271-3 'disease of the mind' concept and, 244-5 gender and racial stereotypes and, 262n.29 legal discourse concerning, 237-9, 263-7 legal reform in England and Wales and, 259n.25, 259-61 legal vs. psychiatric tests of, 243-8 limits to compassion and pragmatism in, 266 - 7men killing women and, 267-9 modern concepts of madness and, 269-70 narrowness of the rules concerning, 245-8 overview, 237-73 post-Hinckley debate in US on, 257-9 poverty and, 263-4 psychiatry and politics of law reform and, 257 - 61rationality in criminal law and, 239-40 intention, law of. See also mens rea abstract juridical individual and, 369-73 actus reus doctrine and, 143 basic concepts, 41-72 common intentions, motives in conflict with, 43 - 6definitions of, 41n.1, 41-3, 57-8, 71-2 duress defence and, 220-4 'entitled to find' principle and, 70-1 factual intention, 48-9 indirect intention, 48, 54-5, 57-71 indiscriminate malice and, 68-9

Cambridge University Press & Assessment 978-0-521-51646-4 — Crime, Reason and History 3rd Edition Alan Norrie Index

More Information

404

Index

intention, law of (cont.) individual desocialisation and, 43-57 individual morality and, 46-9 intrinsic morality of, 57-8 loss of control defence and, 322-5 morally substantive approach to, 59-61 moral voluntariness and, 151 motive and, 43-56, 138-9 necessity defence and, 210-11 oblique intention, 61-4 orthodox subjectivist approach to, 58-9 politics of denial and, 53-7 recklessness in Caldwell case and, 77-8, 78n.4 separation of motive from, 35-6 subjectivist interpretation of, 64-7 ulterior intention, 43-4 voluntary acts and, 138-9 interpersonal relations, third-party voluntary interventions and, 177n.8, 177-9, 180n.10 interventionist state. See also state instrumentality duties of citizenship and, 166-8 individualisation in sentencing and, 355-6 law of omissions and, 159-62, 165-6 rehabilitation and incapacitation ideology and, 353-9 intoxication, laws concerning. See also addiction offences; alcoholism, laws concerning alcoholism and diminished responsibility, 254-6 moral voluntariness and, 144 physical involuntariness and moral voluntariness, 146-9, 147n.9 unconsciousness requirement and, 144-6 involuntariness actus reus and, 138-9 causation and, 193-5 denial of physical involuntariness, 149-51 duress defence and, 220-4 intoxication, physical involuntariness and moral voluntariness, 146-9 in law of acts, 177n.7 limits on physical involuntariness, 144-51 moral voluntariness vs. physical involuntariness, 144 necessity defence and moral involuntariness, 214 - 18physical vs. moral involuntariness, 140-3 third-party voluntary intervention and, 177 - 9unconsciousness requirement, 144-6 iudgment conflicting motives and common intentions in, 43-6 hidden motives and, 46-53 indirect intention and, 57-71 necessity defence and, 203-7 political limits of practical indifference and, 94-6 judiciary attitude towards criminal law reform, 33-5

on legal individualism vs. social control, 30-5 mens rea doctrine and, 30-1 provocation defence and power of, 314-15 role in appeals of, 17n.5 sentencing and power of, 352n.17 subjective fault and role of, 17 juridical individual. See abstract juridical individual jury guidelines discretion to convict and role of, 54-5 gross negligence manslaughter and absence of. 83-8 in Hancock and Shankland and Nedrick cases, 64-6 in Moloney case, 63-4 social diversity issues and, 51n.12 'just deserts' ideology allocation of punishment and, 346-50 cardinal and ordinal proportionality and, 350 - 2indeterminacy of legal form and, 361-2 proportional limits on punishment and, 350 - 2sentencing and, 344n.13, 344-6 in unjust society, 348n.15, 348n.16, 348-50 iustice abstractions and realities concerning, 26-9 Bentham's penal theory and, 26-9 conflicting views of crime and, 242-3 discretion in sentencing and, 55-7 Enlightenment penal theory and, 20-4 inexorable logic in mens rea and, 287-9 mens rea and, 41-3 necessity defence and, 214-18 retributive justice and, 21-2, 344-52 justifiable homicide, self-defence as, 301-3 justification defence structure and, 229-33, 232n.33 in mistaken self-defence, 292-4 in necessity defence, 201-2, 202n.3, 203-7 in provocation defence, 305-6, 312n.5, 312-14, 322n.19, 325-9 of punishment, 346-50 for self-defence, 289-92 unknown justification, 295-6n.10 justificatory necessity challenges to state and, 211-13 in medical cases, 210-11 moral involuntariness and, 214-18 Kant, Immanuel penal theory and, 20-1, 350 reform ideology and, 24-5 retributive justice and, 21-2, 346-50, 347n.14 Kenny, C S, 77-8, 78n.6, 80-2, 88-9 factual vs. moral recklessness and, 96-8 Lacey, N C, 333 lactation theory, diminished responsibility defence and, 264-6 laisser-faire ideology abstract right and social need and, 159-62 corporate punishment and, 129-32

Cambridge University Press & Assessment 978-0-521-51646-4 — Crime, Reason and History 3rd Edition Alan Norrie Index

More Information

405

Index

individual vs. general deterrence and, 341-4 juridification of omission and, 156-9 law of omission and, 168–70 law enforcement causation law and, 185-6 deterrence and, 339n.6, 341n.9 duress defence and role of, 218-19 Law Reform (Year and a Day Rule) Act 1996, 171 - 2Lectures on Jurisprudence (Austin), 140-1 Legal Aid, Sentencing and Punishment of Offenders Act 2012, 356-9 legal causation, factual causation vs., 171-2 'legal cloke' argument in Dudley and Stephens case, 203-7 duress defence and, 220-4 necessity defence and, 214-18 legal code combined law and psychiatry and decontextualisation of madness, 261-9 conflicting views of crime and, 242-3 consensus and conflict with psychiatry and, 271 - 3evolution from moral judgment to, 113-17 evolution of defences in, 243-57 insanity test in, 243-8 judicial resistance to, 33-5 repressiveness of individualism and, 29-30 security of, 24n.4 legal individualism control and, 367-9 Enlightenment penal theory, 20-4 logic, policy and class structure and, 33-5 modern repressiveness of, 29-30 moral validity of necessity and duress defences and, 234-6 political individualism and, 36-8 reform penal theory ideology and, 24-30 social control and, 30-5 social individuality and, 20-30 Vining's discussion of, 15 legality contradictions within, 16-18 discretion in sentencing and, 55-7 individual justice and, 15 intention and, 68-9 middle-class interests and, 25 moral validity of necessity and duress defences and, 233-6 penal theory and, 24 of private property, 45-6 psychiatric profession vs., 239-43 psychiatry and politics of law reform and, 257-61 psychological individualism and, 35-6 rationality and, 10-13 legal reform abstractions and realities in, 26-9, 28n.11 Enlightenment penal theory, 20-1 historical contradictions in, 19-20 insanity defence in England and Wales and, 259n.25, 259-61 judicial resistance to, 33-5

middle-class interests and, 25 modernisation of diminished responsibility and, 251-4 moral-legal individualism and, 25-6 penal theory interests and ideology and, 24 - 30of provocation defence law, 305 psychiatry and politics of, 257-61 utilitarian deterrence and, 22-3 lesser evils approach justificatory necessity in challenges to state and, 211–13 justificatory necessity in medical cases and, 210 - 11justificatory vs. excusatory defence and state legitimacy, 213-14 necessity defence and, 201-2, 202n.3 letter of the law, necessity defence and, 202-3 Leverick, F., 278n.1 Lex Talionis, 350 liability. See also corporate liability; fault liability; mens rea; strict liability due diligence and, 104n.1 fault liability, 13 gross negligence manslaughter and determination of, 83-8 law of omissions and restrictions on, 139-40, 156-9, 159n.23 situational liability, 149-51 subjectivist/objectivist view of recklessness and, 76-9 liberal ideology abstract right and social need in law of omissions and, 159-62 actus reus and, 137-8 causation and, 174-9 in criminal law, 14-15 insanity defence and, 237-9 juridification of omission and, 156-9 legal reform and, 33-5 psychological individualism and, 366-7 sentencing and, 333-6 libertarian ideology actus reus and, 137-8 duties of citizenship and, 166-8 line-drawing issue, easy rescue principle and, 163 - 6living standards analysis, punishment and, 352 logic criminal law heritage and, 33-5 of equity, political individualism and, 36-8 mens rea and, 41-3, 287-9 loss of control defence abstract juridical individual and, 378 abused woman and, 320-2 age and sex factors in, 319-20 anger trigger in, 321-2 comparison of old and new law, 325-9 early law concerning, 308-11 fear trigger and, 320-1, 322n.19 historical evolution of, 305-6 legal reformation concerning, 305 new law concerning, 307-8

Cambridge University Press & Assessment 978-0-521-51646-4 — Crime, Reason and History 3rd Edition Alan Norrie Index

More Information

406

Index

loss of control defence (cont.) objective test in, 316-20 overview, 304-29 reinstatement of, 322-5 subjective test in, 309 sudden vs. non-sudden loss, 322-5 underlying philosophy, 312-14 Loughnan, Arlie, 239-40 lunacy statutes, history of insanity defence and, 243n.5 MacCormick, D N, 9-10 on argumentation process, 33-5 Caldwell case and theories of, 76 on rationality and legality, 11n.1, 11 Mackay, R D, 83-8, 245-8 McKittrick, D., 274 madness decontextualisation of, 261-9 individualism vs. individualisation concerning, 354-5 modern concepts of, 269-70 social control of, 239-43 malice aforethought, recklessness and, 78n.5 'malum in se' (real crime), strict liability and, 104 - 6'malum prohibitum' (quasi-crime) ethics of strict morality and, 113 strict liability and, 104-6 management failure principle, identity and organisation in corporate liability and, 124 - 2manslaughter offences. See also gross negligence manslaughter abstract right and social need in law of omissions and, 159-62 corporate liability and, 117-18, 132-3 discretion to convict in, 54-5 discretion to prosecute in, 54 drug-taking cases, 183-5 duress defence and, 223-4 indirect intention in, 67-8 individual morality and, 46-9 limits of corporate liability in, 122-3 mistakes of fact and law in, 296-7 physical involuntariness and moral voluntariness, 146-9 provocation in, 304-5 recklessness in, 78-9 market ideology, moral-legal individualism and, 25-6 Masters, Brian, 270-1n.42 materialist philosophy, English penal theory and, 20-1 May Committee, 355-6 means, intention and, 58 medical practice abnormal conditions or contingencies and, 175 - 6alcoholism and diminished responsibility and, 254-6 discretion to prosecute and, 54 easy rescue principle and, 163-6

'eggshell skull' treatment case and, 189n.18, 191 - 2gross negligence manslaughter cases and, 83-8, 85n.9 insanity test and, 243-8 intervention in abnormal treatment, 187-91 justificatory necessity defence for, 210-11 laws of omission and, killing and letting die principles and, 155-6 modernisation of diminished responsibility laws and, 251-4 necessity defence and, 199-200, 202, 207-10 refusal of medical treatment and, 186-7, 187n.15, 188n.16 mens rea abstract juridical individual in, 369-73 in Caldwell case, 76-9 in corporate liability, 117-24, 372-3 creation of, 30-1 defences and, 199-200 definition and terminology for, 41n.2, 41-3 evolution from moral judgment to legal principle in, 113-17 gross negligence manslaughter and, 83-8 hidden motive and, 46-53 individual justice and, 14-15 mistaken self-defence and, 286-7 motive and intention and, 41-72 political morality and, 49-50 recklessness as form of, 73-101 self-defence and, 274-6, 287-9, 294-5 social mores and, 50-3 strict liability and, 102-4, 109-17 Williams' discussion of, 16-18 mental responsibility concept, 250n.10, 251n.16 flexibility in self-defence concerning, 299-300 individualism vs. individualisation concerning, 354-5 mental state conflict and cooperation laws concerning, 249 - 51diminished responsibility and, 248-9 duress defence and, 225-7 history of insanity defence and, 240-2 insanity defence and discourse concerning, 2.37 - 9modern legal reforms concerning diminished responsibility and, 251-4 narrowness of rules and cognitive testing of, 245 - 8mercy discretion in sentencing and, 55-7 terror and, in English penal theory, 20-1 mercy killing diminished responsibility and, 249-51, 251n.17 discretion to convict in cases of, 54-5 discretion to prosecute in treatment of, 54 'entitled to find' principle and, 70-1 laws of omission and, 155-6 limits to compassion and pragmatism in, 266 - 7

Cambridge University Press & Assessment 978-0-521-51646-4 — Crime, Reason and History 3rd Edition Alan Norrie Index

More Information

407

Index

metaphysics, proportional limits on punishment and, 350 middle-class interests legal reform and, 25 moral-legal individualism and, 25n.6-6n.7, 25-6, 26n.8 Mill, James, 43n.5 mistaken self-defence abstract juridical individual and, 377-8 amounts of force in, 295-300 competing perspectives on, 301-3 counter-arguments concerning, 288n.6, 289-91 legal discourse concerning, 274-6 as offence, 294-5 reasonableness and, 286-7 warranted excuse or imperfect justification in. 292-4 mistake of duress, 224-5 mistake of fact, force in self-defence and, 296n.11, 296-7 mistakes of law, force in self-defence and, 296-7 mitigation of punishment conflict and cooperation laws concerning diminished responsibility and, 249-51 diminished responsibility and, 248-57 discretion in sentencing and, 55-7 duress defence and, 220-4 individual vs. general deterrence and, 341-4 M'Naghten, Daniel, 243-8 M'Naghten Rules, 237 diminished responsibility and, 248-57 emergence of, 239-40 of insanity, 243-8 modern concepts of madness and, 269-70 narrowness of, 245-8 post-Hinckley debate in US on, 257-9 trials involving, 244n.6 modern law madness concepts in, 269-70 provocation defence in, 307-8 repressive individualism of, 29-30 Moloney case comparison with Woollin, 67-8 direct and indirect intention in, 71-2 intended impact of, 64 jury guidelines in, 63-4 oblique intention principle in, 61-4 subjectivist interpretation of, 64-7 Moore, M., 18n.6 moral certainty test indirect intention and, 67-8 oblique intention and, 61-4 probability and, 64-6 'moral elbow room' principle, intention and, 71 - 2moral individualism, juridification of omission and, 156-9 morality conflicting values and law of omissions, 154 - 5control over grounds for provocation based on, 314-16

criminal law and, 13-15 deterrence theory and, 338-41 discretion to convict and, 54-5 duress defence and, 219-20 ethics of strict liability and, 109-13, 110n.11, 111n.13 evolution to legal principle, in strict liability, 113-17 formal structure of defence and, 229-33 indirect intention and, 57-71 individual morality, 46-9 insanity defence and, 237-9 justificatory vs. excusatory defence and state legitimacy, 213-14 legitimate allocation of punishment and, 346-50 middle-class interests and, 25-6 motive and, 45-6 necessity defence and, 203-7 physical involuntariness vs. moral involuntariness, 140-3 politics and, 49-50, 53-7 self-defence and, 294-5 strict liability of regulatory offences and, 104 - 6morally substantive approach to intention, 59-61 'entitled to find' principle and, 70-1 indirect intention and, 67-8 indiscriminate malice and, 68-9 moral recklessness, 96-8 moral threshold doctrine, intention and, 70 - 1moral turpitude principle, discretion to prosecute and, 54 moral voluntariness definitions and terminology, 144n.5 intoxication, physical involuntariness and, 146 - 9in law of acts, 138-9 legacy of, 151 necessity defence and involuntariness condition, 214-18 physical involuntariness vs., 144 situational liability and limits of, 149-51 Morris (Lord), 301-3 motive. See also mens rea abstract juridical individual and, 369-73 actus reus doctrine and, 143 basic concepts, 41-72 common intentions in conflict with, 43-6 discretion in sentencing and, 55-7 discretion to prosecute and, 54 hidden motives, 46-53 individual desocialisation and, 43-57 insanity defence and, 247n.9 politics of denial and, 53-7 separation from intention, 35-6, 43-6, 138 - 9third-party voluntary intervention and, 177 - 9multiplicity of causes, causation doctrine and, 172 - 4

More Information

408

Index

murder conflicting views of, 219-20, 242-3 diminished responsibility as partial defence in, 256 duress defence and, 218-20 indirect intention and, 67-8 justificatory necessity defence in, 210-11 malice aforethought and, 78n.5 morally substantive approach to intention and, 59-61 provocation defence in, 304-5 'must follow' formula, in sentencing, 360-1 narrowness of the rules principle, insanity defence and, 245-8 nationalisation, corporate punishment and, 129-32 natural consequences ambiguity in interpretation of, 64-6 definitions of, 64n.19 oblique intention and, 63-4 necessity defence actus reus doctrine and, 143 ambiguous history of, 202-3 basic principles of, 201-18 criminal law and justice and, 214-18 excusatory necessity, 207-10 formal structure of, 229-33 intention and, 50n.11, 53-7, 70-1 judgment and context in Dudley and Stephens case and, 203-2 justification vs. excuse in, 201-2, 213-14 justificatory necessity in medical cases and, 210 - 11moral involuntariness and, 141-3 moral validity of, 233-6 overview of, 199-236 paradoxes in, 199-200 re-emergence of, 207-14 self-defence and, 279-80 Nedrick case, 61-4 direct and indirect intention in, 71-2 indirect intention and, 67-8 indiscriminate malice in, 68-9 jury guidelines in, 64-6 practical impact of, 66-7 need justice theories and rule of law concerning, 45n.8 law of omissions and, 159-62 moral validity of necessity and duress defences and, 234-6 motive and intention linked to, 44n.7, 44-5 necessity defence and conditions of, 207-10 negative act, omission as, 152-6 negligence abnormal treatment in medical cases and, 187 - 91antinomy and culpability and, 98-9 corporate liability and, 118-20 determinacy and, 91-2 gross negligence manslaughter, 83-8

identity and organisation in corporate liability and, 124-7 in law enforcement cases, 185-6 law of omission and, 158n.22, 159n.23 organisational approach to, 121-4 orthodox subjectivism and, 82-3 practical indifference principle and, 88-9 recklessness and, 77-8, 78n.4, 78n.6 neo-liberal ideology, corporate liability in context of, 126-7 Nilsen, Dennis, 270-1n.42 non-custodial sentencing, rehabilitation and incapacitation and, 355-6 non-financial sanctions, corporate punishment and, 129-32 normal person test, provocation defence, 316 - 19norms abnormal conditions or contingencies and, 175 - 6intervention of abnormal occurrence and, 187 - 93law of omissions and, 152-4 prohibitory norms, defence structure and, 231 of self-defence, 278-9 no unreasonable risk principle, law of omission and, 163-4, 164n.29 Nourse, Victoria, 281-4, 283-4n.3 novus actus interveniens, suicide and, 182-3 nulla poena sine lege, discretion in sentencing and, 55-7 nullum crimen sine lege, discretion in sentencing and, 55-7 objectivist theory in Caldwell case, 76-9 of causation, 172-4 duress defence and, 225-7 legacy of, 100-1 legal reform and, 33-5 limitations of subjectivism and, 82-3 loss of control under, 308-11 orthodox objectivism, limitations of, 83-8 orthodox subjectivism and, 99-100 over-subjectivisation of reasonable person, provocation defence and, 311 practical indifference principle and, 88-9, 90 - 1provocation defence and, 307-11, 316-20 recklessness and, 73-89, 77n.3 split with subjectivist theory, 79-80 unacceptable grounds for provocation and, 309-11 oblique intention, 61-4, 66-7 obvious risk principle, 79-80, 82-3 offence abstract juridical individual in, 369-75 administrative offences, 102-4 discretion to prosecute and categories of, 54 formal structure of defences and, 229-33 indeterminacy in seriousness of, 361-2 mistaken self-defence and, 286-7, 294-5

Cambridge University Press & Assessment 978-0-521-51646-4 — Crime, Reason and History 3rd Edition Alan Norrie Index

Index

More Information

409

mistake of duress in, 224-5 necessity defence and, 210-11 regulatory offences, 104-6 restrictive vs. broad constructions of, 16-18 self-defence and, 294-5 Offences Against the Person Act 1861, 109-10, 110n.10 Official Secrets Act 1989, 211-13 'Old Corruption' regime, penal theory and, 20 - 1omissions, law of abstract right and social need in, 159-62, 373 - 5basic principles, 139-40 citizenship duties and, 166-8 concept construction in, 152-6 drowning infant/stranger paradigm and, 154 - 5easy rescue principle and, 139-40, 154-5, 162 - 8juridification of concept of, 156-9 killing and letting die principles and, 155-6 legal discourse concerning, 137-8, 151 overview of, 137-70 summary of, 168-70 supervening cause and, 193-5 ordinal proportionality principle, 350-2 organisational structure corporate liability and, 121-4, 132-3 corporate punishment and, 129-32 economic integration and, 128-9 identity doctrine in corporate liability and, 124-7liability issues and, 102-4 limits of corporate liability in, 122-3 Ormerod, David, 304-5 orthodox objectivism, limitations of, 83-8, 100 - 1orthodox subjectivist theory indirect intention and, 67-8 indiscriminate malice and, 68-9 of intention, 58-9 limitations of, 82-3 'objective' questions in, 99-100 practical indifference principle and, 88-9 recklessness and, 163-6 in Woollin case, 67-8 Outlines of Criminal Law (Kenny), 80-2 pain/pleasure principle, utilitarian deterrence and, 22-3 panopticon, Bentham's concept of, 337n.3 pardons, English penal theory and, 20-1 Parker (Lord), 250n.14, 251-4 partial defence diminished responsibility as partial defence in murder, 256 loss of control and, 307-8 modern concepts of madness and, 269-70 of provocation, 325-9 partial excuse, in provocation defence, 312-14 passive euthanasia, laws of omission and, 155-6 peace protests, necessity defence and, 214-18

'Peculiar People' cases, 46-9 Peel, Robert (Sir), 243-8 penal theory. See also punishment antinomies of sentencing and, 359-60 of Bentham, 26-9 common law heritage and, 31-3 competing ideologies in, 359-63 conflicting ideologies in, 363-4 conflicting views of crime and, 242-3 corporate liability and, 128-32 corporate punishment and economic integration, 128-9 deterrence and, 336-44 discretion in sentencing and, 55-7 dominant rationale approach in, 360-1 of the Enlightenment, 20-4 ideal and actual in classical retributivism and, 347 incapacitation in, 356-9 indirect intention and, 57-71 individualisation in sentencing and, 355-9 individualism vs. individualisation in, 354-5 individual vs. general deterrence in, 341-4 'just deserts' ideology and, 344-6 legality and, 24 legal reform and, 20-1 legitimate allocation of punishment and, 346-50 moral-legal individualism and, 25-6 reform interests and ideology, 24-30 rehabilitation and incapacitation in, 353-9 repressiveness of individualism in modern law and, 29–30 retributive justice and, 21-2 retributivism and, 344-52 social context of deterrence in, 338-41 social mores and, 50-3 utilitarian deterrence and, 22-3 perpetual surveillance, Bentham's concept of, 337n.3, 337-8 persecution cases, self-induced duress in, 227 - 8personal self-defence, 276-8 perverse verdict, discretion to convict and, 54-5 Petition of Right of 1628, 31 physical acts actus reus and, 138-9 denial of physical involuntariness, 149-51 intoxication, physical involuntariness and moral voluntariness, 146-9 involuntary acts vs. moral involuntariness, 140 - 3limits on physical involuntariness in actus reus, 144-51 moral voluntariness vs. physical involuntariness, 144 unconsciousness requirement in involuntariness, 144-6 pluralism, sentencing and ideology of, 333-6 political economy individualist ideology of, 25-6 social order and, 343n.10

More Information

410

Index

political individualism criminal law and, 36-8 expressive function of, 367-9 necessity in self-defence and, 279-80 politics abstract juridical individual and, 53-7, 365-9 control over grounds for provocation based on, 314-16 hidden motive and, 49-50 identity and organisation in corporate liability and, 124-7 incapacitation in sentencing and, 356-9 insanity tests and, 243-8 intention and, 66-7 justificatory defence in challenges to state and, 211-13 justificatory vs. excusatory defence and state legitimacy, 213-14 law of omissions and, 156-9, 165-6 moral validity of necessity and duress defences and, 233-6 necessity defence and, 202, 214-18, 279-80 practical indifference principle and, 94-6 psychiatry and politics of law reform, 257-61 recklessness and, 100-1 regulatory offences vs. real crime and, 116 rehabilitation in sentencing and, 355-6 self-defence and, 294-5 Ponting, Clive, 54-5 Poor Laws, 31, 202-3 positive good and harm, law of omission and, 156 - 9positivist criminology, rehabilitation and incapacitation and, 354-5 possession cases, ethics of strict liability and, 109-13 Pottle, Pat, 54-5 practical indifference principle antinomy and culpability and, 98-9 concept of, 90-1 determinacy and, 91-2 introduction of, 88-9 political limits of, 94-6 recklessness and, 89-96 subjectivity in, 92-4 pragmatism, limits of, in insanity defence, 266-7 praxiology, criminal law as, 379-81 preceding cause, in causation law, 171-2 pre-emption, necessity in self-defence and, 279-80 prevention of crime challenges to state and defence using, 211-13 rehabilitation and incapacitation and, 354-5 Priestlev, J B, 178, 182-3 prima facie wrongfulness, self-defence and, 289-91 Principles of the Penal Code (Bentham), 26-9 prior fault intoxication, physical involuntariness and moral voluntariness and, 148 law of omissions and, 159-62 situational liability and physical involuntariness and, 149-51

Prison Rules 1964, 354-5 private law, causation doctrine and, 172-4 probability analysis deterrence ideology and role of, 338-41 incapacitation ideology and limits of, 356-9 moral certainty principle and, 64-6 probable consequence test, intention and, 62n.18, 66n.20 property rights common law heritage and, 31 crimes involving, 33-5 duress defence and, 220-4 middle-class interests and, 25n.5, 25 motive in context of, 45-6 self-defence and, 276-8 social mores concerning, 52 proportionality cardinal and ordinal proportionality, 350-2 classical approach to, 350 fright or flight principle and, 181-2 incapacitation sentencing and, 356-9 legality and, 24 limits on punishment and, 350-2 living standards analysis and, 352 retributive justice and, 21-2 self-defence and, 284-6, 285n.4 prosecutorial discretion, politics of denial and, 54 provocation defence abused woman and, 320-2 age and sex factors in, 319-20 anger trigger in, 321-2 comparison of old and new law, 325-9 control over grounds for provocation, 314-16 discretion to convict and, 54-5 dual trigger approach in, 307n.3 duress defence and, 225-7 early law concerning, 308-11, 325-9 fear trigger and, 320-1 historical evolution of, 305-6, 325-9 judicial power and, 314-15 loss of control defence and, 304-5 new law concerning, 307-8 normal person test, 316-19, 325-9 objectivist test in, 307-8, 311, 316-20 over-subjectivisation of reasonable person, objective test for, 311 reformation of, 305 reinstatement of loss of control in, 322-5 sexual infidelity and, 315-16 standard of resistance and, 225-7 subjective test in, 309 unacceptable grounds for, objective test, 309-11 underlying philosophy, 312-14 psychiatry combined law and psychiatry and decontextualisation of madness, 261-9 conflicting views of crime in, 242-3 consensus and conflict with legal profession and, 271-3 diminished responsibility and, 248-57

More Information

411

Index

insanity assessment in, 243-8 insanity defence and role of, 237-9, 240-2, 257n.19 legal defences and, 243-57 legal reform of insanity defence in England and Wales and, 259n.25, 259-61 modern concepts of madness and, 269-70 modernisation of diminished responsibility laws and, 251-4 politics of law reform and, 257-61 rule of law vs., 239-43 psychological approach to intention, 58-9 criminal law and, 35-6, 71-2 duress defence and, 225-7 mens rea and, 41-3, 369-73 orthodox subjectivism and, 82-3 provocation defence and, 316-19, 317-18n.12 responsibility and, 71-2 psychological individualism individual responsibility and, 35-6 mens rea and, 369-73 repressive function, 366-7 public policy causation and, 193-5 criminal law heritage and, 33-5 necessity defence and, 214-18 public welfare incapacitation in sentencing and, 356-9 provocation defence and, 325-9 state interventionism and, 353-9 strict liability and, 104-6, 108n.6 punishment. See also sentencing antinomies of sentencing and, 359-60 cardinal and ordinal proportionality in, 350 - 2classical approach to proportionality in, 350 competing ideologies concerning, 359-63 conflicting ideologies concerning, 363-4 corporate liability and, 128-32 deterrence ideology and, 336-44 discretion in sentencing as mitigation of, 55 - 7dominant rationale approach to, 360-1 ideal and actual in classical retributivism and, 347 incapacitation in, 356-9 individualisation in, 355-9 individualism vs. individualisation in, 354-5 individual vs. general deterrence and, 341–4 'just deserts' ideology and, 344–6 legality and, 24 legitimate allocation of, 346-50 living standards analysis and, 352 mens rea requirement, 41 moral-legal individualism and, 25-6 moral validity of necessity and duress defences and, 233-6 necessity defence and justification of, 203-7 proportionality and limits on, 350-2 psychological individualism and, 366-7 rehabilitation and incapacitation in, 353-9 repressiveness of individualism and, 29-30

retributivism and, 21-2, 344-52 sentencing and ideologies of, 333-6 social co-ordination and corporate liability, 129 - 32utilitarian deterrence and, 22-3 purpose causation and, 193-5 motive and, 49-50 orthodox subjectivist theory of intention and, 58 - 9racial discrimination, 'just deserts' in unjust society and, 348-50 racial violence, provocation defence and, 314-16 radical incompleteness, individual justice and, 18n.6 Raitt and Zeedyk, 264-6 Ramsay, P. 167 Randle, Michael, 54-5 rape insanity and diminished responsibility defences and, 267n.34, 267-9 mens rea and, 73-6 practical indifference principle and, 89-90, 92 - 4proportional limits on punishment and, 350 recklessness in law of, 78-9 rational construction, MacCormick's principle of, 9–10 rationality in criminal law conflicting views of crime and, 242-3 deterrence and, 341-4 formal and substantive distinction in, 215n.14 incapacitation ideology and, 356-9 insanity defence and, 239-40 legality vs., 10-13 in legal scholarship, 9-10 limits of, 16-18 reasonableness easy rescue principle and criteria of, 163-6 ethics of strict morality and, 112 flexibility in self-defence concerning, 299-300 mens rea and, 287-9 in mistaken self-defence, 286-7 mistaken self-defence and, 286-7 necessity in self-defence and, 279-80 proportionality in self-defence and, 284-6 self-defence and, 276-8, 297-300 standard of resistance and, 225-7 reasonable person test, provocation defence, 311, 316-19 rechtsfrei argument, necessity defence and, 214 reckless driving law of omissions and, 159-62 offences based on, 87n.11 political limits of practical indifference and, 94-6 unconsciousness requirement in laws concerning, 144-6 recklessness abstract juridical individual and, 369-73

Cambridge University Press & Assessment 978-0-521-51646-4 — Crime, Reason and History 3rd Edition Alan Norrie Index

More Information

412

Index

recklessness (cont.) ambiguity in interpretation of, 64-6 antinomy and culpability and, 98-9 definitions of, 73-6, 74n.1 determinacy and, 91-2 factual vs. moral recklessness, 96-8 in G and another case, 80-2 gross negligence manslaughter and, 83-8 historical roots of, 96-100 indirect intention and, 67-8 line-drawing issue and, 163-6 oblique intention principle and, 61-4 organisational approach to, 121-4 orthodox subjectivism and, 99-100 overview of principles concerning, 73-101 political limits of practical indifference and, 94 - 6practical indifference principle and, 89-96 subjectivism and objectivism in law of, 76-89, 77n.3, 79-80, 100-1 recognised medical condition requirement modernisation of diminished responsibility laws and, 251-4 provocation defence and, 317-18n.12 reductionism, in self-defence, 295-6n.10 reformability, individualism vs individualisation and, 354-5 regulatory offences causation law and, 192-3 defined, 102-4 ideological and practical context of, 106-9 real crime vs., 116, 132-3 sentencing and, 333-6 strict liability and, 104-6 rehabilitation individualisation in sentencing and, 355-6 individualism vs. individualisation and, 354 - 5theories of, 353-9 religion individual morality and, 46-9 insanity defence and, 237-9 refusal of medical treatment based on, 186-7, 187n.15 resistance standard, duress defence and, 225-7 retributivism conflicting views of crime and, 242-3 dominant rationale approach in sentencing and, 360-1 ideal and actual in classical ideology of, 347 'just deserts' ideology and, 344-6, 348-50 legitimate allocation of punishment and, 346-50 middle-class interests and, 25 necessity defence and, 203-7 penal theory and, 21-2 post-Hinckley debate in US on insanity defence and, 257-9 proportional limits on punishment and, 350 - 2sentencing and, 344-52 risk assessment. See also foreseeability doctrine antinomy and culpability and, 98-9

objective justifiability issues in, 99-100 orthodox subjectivist view of, 82-3 practical indifference principle and, 88-9, 90 - 1recklessness principle and, 73-6 Rivers (Prevention of Pollution) Act 1951, 104-6 Road Traffic Act 1988, 159 discretion to prosecute and, 54 reckless driving offences and, 87n.11 robbery crimes, practical indifference principle and, 90-1 'Robin Hood' policy, social mores and, 50-3 role omissions, 154n.15 rule of law. See legality Scarman (Lord), 43-4, 46-9, 64-7, 176 Schmitt, Carl, 214 science, rehabilitation and incapacitation and, 354 - 5self-defence. See also mistaken self-defence bipolarity concerning, 301-3 commonsensical logic concerning, 276-86 counter-arguments concerning, 289-91 duress defence and, 223-4 evaluative context for, 291-5 flexibility concerning mistakes in, 299-300 historical evolution of, 301-3 honest and reasonable mistakes in, 297-300 imminence in, 281-4 as justification or excuse, 291-2 law enforcement and, 181n.12, 185-6 legal discourse concerning, 274-6 mistaken amounts of force in, 295-300 mistake of duress in, 224-5 mistakes of fact and law in, 296-7 necessity and, 279-80 normative model of, 278-9 offence-defence structure and, 287-9 overview of, 274-303 self-induced duress, 227-9 self-induced intoxication causation in drug-taking cases and, 183-5 duress defence and, 225-7 physical involuntariness and moral voluntariness, 146-9 self-preservation causation law and, 180n.10, 181n.12, 181-2 individual vs. general deterrence and, 341 - 4justificatory defence in challenges to state and, 211-13 necessity defence in medicinal use of cannabis and, 207-10 self-restraint, provocation defence and, 307-8 sentencing. See also punishment abstract juridical individual and, 378-9 actus reus doctrine and, 143 antinomies of, 359-60 cardinal and ordinal proportionality in, 350 - 2competing ideologies in, 359-63 deterrence and, 336-44

More Information

413

Index

diminished responsibility defence and, 266n.32 discretion in, 55-7 dominant rationale approach to, 360-1 exemplary sentencing, 338-41 incapacitation in, 356-9 indeterminacy of legal form in, 361-2 individualisation in, 355-9 individualism vs. individualisation in, 354-5 individual vs. general deterrence and, 341-4 'just deserts' in unjust society and, 348-50 legal discourse concerning, 333-6 living standards analysis and, 352 overview of, 333-64 proportional limits on punishment and, 350-2 rehabilitation and incapacitation in, 353-9 reparations in, 335n.2 retributivism and, 344-52 summary of conflicting ideologies in, 363-4 sexual crime insanity and diminished responsibility defences and, 267-9, 268n.35, 268-9n.38 proportional limits on punishment and, 350 sexual morality causation law and, 181n.12, 181-2 ethics of strict liability and, 109-13 evolution of legal principles in, 114-15 provocation defence and, 315-16 Sexual Offences Act 2003, 73-6, 115-16 Sheen Report, 118-20 Shimmen lacuna, subjectivist/objectivist split and, 79-80 side-effects of intention, 58-9 in murder/manslaughter cases, 66-7 oblique intention principle and, 61-4 situational liability, denial of physical involuntariness in cases of, 149-51 sleepwalking, breadth of the Rules and disease of the mind and, 244-5 small social harm principle, strict liability of regulatory offences and, 104-6 Smith, Adam, 26n.7 English penal theory and, 20-1 Smith, A T H, 16-18 Smith, J C, 9-10, 43-4 on defences, 229-33, 304 on discretion in sentencing, 55-7 on fault liability, 13 on intention, 57-8 on necessity defence, 207-10, 219n.22 orthodox subjectivism and, 99-100 subjectivist theory and, 33-5 social control breadth of the Rules and disease of the mind and, 244-5 causation law and, 174-9 deterrence and, 338-41, 343n.10 duties of citizenship and, 166-8 law of omissions and, 159-62 legal individualism and, 30-5, 367-9 logic, policy and class structure and, 33-5 of madness, 239-43 moral validity of necessity and duress defences and, 234

necessity in self-defence and, 279-80 physical involuntariness vs. moral voluntariness and, 144 provocation defence and role of, 325-9 psychiatry and politics of law reform and, 257 - 61strict liability and, 104-6 social individuality abstractions and realities in, 26-9 consensus and conflict between law and psychiatry and, 271-3 deterrence and, 341-4 Enlightenment penal theory, 20-4 legal individualism and, 20-30 modern repressiveness of, 29-30 poverty and insanity defence and, 263-4 reform penal theory ideology and, 24-30 social mores conflicting views of crime and, 242-3 corporate liability and, 128-32 deterrence theory and, 338-41 hidden motives and, 50-3 insanity defence and, 237-9 'just deserts' in unjust society and, 348-50 law of omissions and, 152-4 moral involuntariness and, 142-3 motive and, 43-6, 45n.9 necessity defence and, 205-6 provocation defence law and, 325-9 sentencing ideology and, 363-4 social responsibility doctrine causation and, 193-5 law of omissions and, 154-5, 162-8 third-party voluntary intervention and, 177 - 9spirit of the law, necessity defence and, 202-3 'split personality' cases, automatism defence in, 144 - 6standard of fortitude, duress defence and, 225-7 state instrumentality. See also interventionist state Bentham's penal theory and, 29n.12 discretion in sentencing and, 55-7 duties of citizenship and, 166-7 judiciary and, 36-8 law of omissions and, 159 moral validity of necessity and duress defences and, 233-6, 234n.34 rehabilitation and incapacitation ideology and, 353-9 state legitimacy justificatory necessity defence and, 211-13 justificatory vs. excusatory defence concerning, 213-14 self-defence and, 276-8 statutory interpretation, of corporate liability, 132 - 3Stephen, J F, 77-8, 109-13, 110n.11, 111n.13 on law of acts, 137, 160 on moral involuntariness, 141-3 on necessity defence, 202-3 on situational liability and physical involuntariness, 147n.9, 149-51

Cambridge University Press & Assessment 978-0-521-51646-4 — Crime, Reason and History 3rd Edition Alan Norrie Index

More Information

414

Index

strict construction, rule of, 14n.2, 14n.3 criminal law and, 14-15 strict liability definitions of, 102-4 differentiation in, 104-9 ethics in historic cases of, 109-13 evolution from moral judgment to legal principle of, 113-17 ideological and practical context of regulatory offences and, 106-9 offences under, 104n.1 presumption of mens rea and, 109-17, 372-3 regulatory offences, 104-6 sub-contractors, corporate liability and, 129n.23 subjective fault in criminal law, 16-18 social mores and, 50-3 subjectivist theory in Caldwell case, 76-9 duress defence and, 225-7 in G and another case, 80-2 incapacitation ideology and, 356-9 intention in context of, 58-9, 64-7 legacy of, 100-1 oblique intention and, 61-4 practical indifference principle and, 90-1, 92 - 4provocation defence and, 309 recklessness principle and, 73-89, 77n.3, 163 - 6split with objectivist theory, 79-80 strict liability and, 114-15 'substantial cause' argument, abnormal treatment in medical cases and, 187-91 suicide, in causation law, 182-3 super-individualism, actus reus and, 373-5 supervening cause acts and omissions law and, 193-5 causation and, 171-2, 174-9 fright and flight principles and, 181-2 survival cannibalism, necessity defence and, 203-7 Sutcliffe, Peter, 237-9, 247n.9, 259-61, 267-9, 268n.36 'take the victim as you find her' argument 'eggshell skull' treatment case and, 191-2 refusal of medical treatment and, 186-7 terror mercy and, in English penal theory, 20-1 self-induced duress in cases of, 227-8 terrorism, duress defence and, 222-3 Terrorism Act 2000, 166-7 Textbook on Criminal Law (Williams), 9-10 Theft Act 1968, 50-3 third-party intervention causation and, 175, 177-9 necessity defence and, 201n.2 regulatory context of causation and, 192-3 Thomas, D., 336-7, 360-1

threat, duress defence and role of, 218-19

'three strikes' sentencing, 356-9 tolerance, provocation defence and, 307-8 tort law, causation doctrine and, 172-4, 180-1 training rhetoric, individualisation in sentencing and, 355-6 triggers dual trigger approach, 307n.3 fear trigger, 320-1 in provocation defence, 307-8 tripartism in defences, 295-6n.10 triviality, ideology of, strict liability of regulatory offences and, 104-6 ulterior intention, 43-4 individual morality and, 46-9 unconscious acts, 140 requirement in physical involuntariness, 144 - 6third-party voluntary intervention and, 177-9 United States 'just deserts' ideology in, 344-6 post-Hinckley debate on insanity in, 257-9 three strikes' sentencing in, 356-9 unjust society, 'just deserts' ideology in, 348n.15, 348n.16, 348-50 unlawful act manslaughter, drug-taking cases, 183 - 5unlawful possession, necessity defence and, 207 - 10utilitarian deterrence individual vs. general utility, 341-4 middle-class interests and, 25 penal theory and, 22-3, 24n.3 utilitarianism conflicting views of crime and, 242-3 motive and intention in, 43n.5, 43-4 necessity defence and, 201-2, 203-7 sentencing and, 336-44 utter indifference principle recklessness and, 80-2 subjectivity of practical indifference and, 92 - 4Vagrancy Acts, 31 values consensus drowning infant/stranger paradigm in omission and, 154-5 political limits of practical indifference and, 94-6 strict liability principles and, 113-17 victim reparations in sentencing, 335n.2 Vining, J, 15 on individual justice, 16-18, 35-6 moral validity of necessity and duress defences and, 233-4 volition history of insanity defence and, 240-2 insanity defence and, 245-8 physical vs. moral involuntariness and, 140 - 1voluntary acts (voluntariness) actus reus and, 138-9, 168-70

Cambridge University Press & Assessment 978-0-521-51646-4 — Crime, Reason and History 3rd Edition Alan Norrie Index

Index

More Information

415

causation and, 171-2, 175, 177-87 conflicting concepts of, 140-4 drug-taking cases, 183-5 framing of causation cases and, 180-1 fright or flight principle and, 181-2 intoxication, physical involuntariness and moral voluntariness, 146-9 law enforcement cases and, 185-6 necessity defence and moral involuntariness, 214 - 18refusal of medical treatment and, 186-7 self-induced duress and, 227-9 situational liability and physical involuntariness, 149-51 suicide cases and, 182-3 voluntary association, duress defence and, 225-7 Von Hirsch, Andrew, 344n.13, 344-52, 356-9 warranted excuse in mistaken self-defence, 292-4 in provocation defence, 312-14, 313n.8, 325 - 9Welsh law, legal reform of insanity defence in, 259-61 Whig oligarchy, English penal theory and, 20-1 white collar crime, 363-4 Williams, Glanville, 9-10 on causation, 171 counter-arguments on self-defence and, 289-91 on duress defence, 222n.27, 222 on fault liability, 13 on formal structure of defences, 229-33 on gross negligence, 85n.9 on inexorable logic in mens rea, 287-9

on insanity defence, 237-9

on intention, 57-8 on judiciary and state instrumentality, 36-8 on law of acts, 152n.12 on legal concepts, 41, 57 on mens rea, 16-18, 30-1, 41 on morality and psychology, 42 on necessity defence, 201-2, 279-80 on rationality and legality, 12 on recklessness, 77-8 on regulatory offences, 104-6 on self-defence, 279-80 on social mores, 52 on strict construction rule, 14n.3, 14-15 on strict liability, 102 subjectivist theory and, 33-5 Wilson, William, 71-2 women, diminished responsibility defence and infanticide by, 262n.29, 264-6 women's labour, strict liability and development of, 106-9 Woollin case, 57, 61-4 direct and indirect intention in, 71-2 'entitled to find' and moral threshold in, 70 - 1indirect intention parameters in, 67-8 indiscriminate malice in, 68-9 workplace deaths and accidents ambiguity of strict liability and, 106-9, 108n.5 discretion to prosecute and, 54 gross negligence manslaughter in cases of, 83-8 Yorke, Philip, 31–2

Yorkshire Ripper. See Sutcliffe, Peter

Zeebrugge ferry disaster, 117-18, 122-3