

INDEX

abandonment, 136, 145 Absicht, 137, 139 abstract endangerment, 133, 151-2, 158 abuse of discretion, 179-80, 194 access to information, 188, 284 to lawyers, 251, 283-8 accidents, 76, 79, 148 traffic, 79, 428 accomplices, 29, 81, 87, 302-3, 318, 334 - 5accountability, 86, 101, 103, 383 acquittal, 98, 121, 186, 205, 220 actio libera in causa, 97, 103-7, 119, 122-5, 127and intoxication, 111-12 actio praecedens, 104, 123 active defence participation, 285, 287 agents actors, 36-7, 38-9, 79-80, 102-5, 109, 113-14, 116-17, 205-6 conduct, 38, 58 legal, 21, 32, 36, 43, 48, 51, 53-5 private, 354, 401-3 acts negligent, 79, 142 of killing, 68, 78 unlawful, 23, 78, 80, 87, 119-21, 126, 127 actual punishment, and legal punishment, 375-9 actualisation of harm/risk, 135, 148-9 actus reus (AR), 2, 19-24, 27, 29, 40, 75-6, 90, 111 adaptability, 21, 192 Adäquanztheorie, 74 additional consequences, 108, 405, 407, 429

adhesion contracts, 317 adjudication, 110, 184, 203 administration, 199, 354, 379, 383, 399 public, 133-4, 353 administrative guidelines, 196, 200 administrative law, 34, 41, 409 admissibility, 110, 264 admissions of guilt, 286, 302 adults, 200, 351, 374, 399 adversarial trial system, 2, 260-1, 262, 267, 276-7, 279-80, 285-6, 295 - 6advertent Fahrlässigkeit, 139-43, 146, 147 agency, 174, 175-6, 177-8, 180, 186, 199, 422, 425 intervening, 60, 82, 89, 90 conduct, 135, 161 intervening, 81-2 agreements, 2, 85, 170, 194, 199, 302, 311-13, 315-18 cooperation see cooperation, agreements. aid, withdrawing, 66-9 alcohol, 76, 101-2, 106, 115, 117, 123, 125, 157 - 8consumption, 98-9, 101-102, 116, 120, 124-5, 127-128 selling, 76 see also intoxication alcoholism, 100, 115-16, 126 Al-Khawaja, 274-7 America see United States. American Law Institute, 74, 427 ancillary penalties, 357, 393 ancillary sentencing orders, 357



> INDEX 439

anecdotal evidence, 119, 124 arrestees, 8, 219, 222-8, 234, 238, 240, Anglo-American law, 243-4, 246-8 civil death, 396-8 collateral consequences, 412-14 criminal, 2, 3, 7, 49, 132, 138, 140, 169-70, 187 types and number of collateral consequences of criminal conviction, 398-403 see also common law; English law Anlasstat, 301 attainder, 396-7 apex courts, collateral consequences in jurisprudence, 412-18 appeals, 80, 82, 158, 159-61, 274-5, 281, 327-8, 361 appearance, 15-16, 33, 416 approvement, 302 Äquivalenztheorie, 72 higher, 176 AR see actus reus. arbitrariness, 178-9, 192 arrest, 8, 22, 189, 205, 219-48, 250-3, 302, 314 and coercion, 219-53 and expedition, 221, 224-5, 252 and incapacitation, 227-8 and initiation of criminal process, 222 and integrity, 223-4 and investigation, 226-7 and punishment, 228-9 execution see execution of arrests. grounds for see grounds for arrest. investigation-based lawful, 236, 245 legitimate and illegitimate purposes, 221 - 9point of, 245, 247 practice of, 219-21, 235, 239, 252 preliminary, 242 procedures, 230, 245 process, 238, 243 provisional, 241-3, 250 typology of purposes, 8, 220, 221-9, 251 unlawful, 231, 234 warrantless, 231, 247 death, 63 warrants, 240-2, 248, 250-1

arresting officers, 219, 237, 253 arsonists, 82, 85-6 assault, 25, 108, 125, 136, 237, 274, 421 assistance, substantial, 300, 306-7, 311, 318, 325, 329, 331, 339 assisting suicide, 81 attacks, 135-6, 137, 146, 148, 150, 228, 313 attendance, 221, 223, 231, 273 voluntary, 235, 237 attorneys, 193, 201, 206, 245, 318 attribution, objective, 38 audio recordings, 265, 269, 291 authorities, 118-19, 172-3, 179, 182-3, 221, 224-6, 350, 375 investigative, 301, 315, 329, 334 prison, 352, 364-5, 367, 369, 380 prosecuting, 199, 315, 342 autonomous behaviour, 36, 84 autonomy, 37, 98, 381 background checks, 401-3 bail, 240, 313, 361 balance of probabilities, 22 bargaining, plea, 191, 194, 281-2, 300, 311, 323, 326, 333 basic intent, 110 offences, 102, 116 Bavarian Criminal Code, 104-5 Beurteilungsspielraum, 174-6, 180, 191 Bezugstaten see reference offences. Bharara, Preet, 206 bipartite system, 14, 19-23, 24, 25, 43-4, 45-9, 50-2, 54 application to facts, 25 blameworthiness, 37, 40, 95-7, 106, 125-6, 358-9, 380, 384 individual, 39, 116, 358 blood, corruption of, 396-7 bodily harm/injury, 125, 134, 144-5, 147-8, 151, 227, 248, 274 brain, 62, 70, 72, 82 bridging of areas of legal analysis, 46



440

Cambridge University Press 978-1-316-51054-4 — Core Concepts in Criminal Law and Criminal Justice Edited by Kai Ambos , Antony Duff , Alexander Heinze , Julian Roberts , Thomas Weigend Index

INDEX

More Information

bullets, 57, 60-1, 63, 70, 72 children, 61-6, 79, 145, 177, 294, 374, Bundesgerichtshof, 117-18 421, 428 business, 34, 41, 306, 323, 398, 400 China, 224, 228, 253 but-for choate offences, 134-6 causation, 59-60, 64-5, 69-72, 89 circumstances test, 57-8, 65, 69, 89 exigent, 223, 241 justifying, 2, 37, 39-40 capacity, 22, 39, 45, 109, 116-17, mitigating, 301, 305, 320 380, 396 special, 365-6 general, 39-40 civil death, 396-8, 403-4 individual, 33, 37, 39, 111 civil disabilities, 397, 419, 425 capital offences, 229, 240 civil law, 4, 27, 95-6, 102, 106-7, 111, case law, 28-9, 35, 43, 49-50, 67, 79, 126 - 7308, 312, see also jurisprudence intoxication and blameworthiness, 116-24 causal chain, 63-4, 75, 81-2, 84, 89 causal contributions, 72, 77 legal culture, and institutions, causal factors, 69, 71, 74, 87 102 - 6causation, 6, 16-18, 36-8, 57-65, 68-9, systems, 1-2, 4, 97, 106, 116, 119, 74-5, 81, 89-90 125-7,260and responsibility, 6, 57-90 traditions, 97, 107, 202, 263, but-for, 60, 64 417 test, 58, 65, 69, 89 civil penalties/sanctions, 392-3, 397, factual, 6, 57-60, 66, 69, 72-3, 75-7, 400-1, 413-14, 419-20 84, 89-90 civil rights, 352, 396 legal see legal causation. civil servants, 193-4, 429 principles of, 44, 112 classification, 10, 14-17, 23, 27, 28, proximate see proximate causation. 31-2, 319-20 quasi-causation, 65-6 closed prisons, 362, 375, 379 scientific, 6, 59-69, 89 closing arguments, 204, 313 causes co-conspirators, 83, 311, 339 intervening, 81-9 Code of Juvenile Criminal Law, 201 legal, 57, 74, 81 codification, 34, 46, 47, 49, 403 of death, 63, 77 coercion, 8, 23, 85, 114-15, 314 of harm, 137, 147, 152-3, 162 and arrest, 219-53 scientific, 6, 62, 64-6, 68, 72 coercive powers, 220, 228, 249 caution, 200, 202, 247-8, 261, 324, cognitive dissonance, 379 367, 373 coherence, 14, 30, 43, 104, 184-5 conditional, 200 collateral consequences, 9-10, 392-430 simple, 191, 200 classification, 405-11 censure, 15, 159-61, 415 external, 406, 409-11 chain, causal, 63-4, 75, 81-2, 84, formal, 400-1 89 history and current state of affairs, charge bargaining, 193 395-411 charges, 17, 176, 178-9, 181, 192-3, informal, 401-2 195-8, 222, 301-4 internal, 405-6 charging decisions, 194-7, 340 jurisprudence of the apex courts, charitable work, 368, 370 412 - 18child pornography, 17 rationale(s), 421-4



INDEX 441

terminology and 'punitive
continuum', 418–20
types and number, 398-403
way forward, 424–30
collateral sanctions, 10, 393, 399, 418,
424-6
collective interests, 133–4
common law, 95–8, 106, 107, 109,
125-7, 260, 262-3, 264, 396-7
intoxication
legal culture and institutions,
98–102
modifying general rules on <i>mens</i>
rea, 107–11
rules, 76, 114, 267
systems, 2, 4, 126
tradition, 174, 184, 202
companies, private, 353, 365,
383
comparative analysis, 2, 3, 8, 10, 300,
357, 384, 395
need for, 1–3
of discretion, 7, 170
compartmentalisation, 42
complexity, 2, 24, 26, 95, 101–2, 125,
133, 230
complicity, 83, 90
concrete endangerment, 7, 132–3,
150–4, 158
conditional intent, 139, 141, see also
dolus eventualis
conduct, 20–2, 75–8, 109, 133–4, 137–8,
144, 148–53, 154–9
agents, 135, 161
criminal, 36, 98, 102, 112, 117, 150,
201, 303
dangerous, 132, 144, 152, 158
intentional, 35, 111, 140
wrongful, 76, 144, 158
confessions, 264–5, 301, 314–15,
323, 334
false, 334–5
confrontation, 273, 276–8, 295
connection requirement, 308–9, 341
consensual justice, 194, 280
consensus, 75, 170, 248–9, 262, 419
consent, 23, 26–7, 68, 193, 201, 281,
365-6

```
consequences, 7-8, 39, 40, 106-8,
       118-19, 137, 407-9, 427-8
  additional, 108, 405, 407, 429
  collateral see collateral
       consequences.
  direct, 372, 392
  harmful, 85, 116, 410, 429
  indirect, 350, 372
  negative, 76, 252, 405
conspiracy, 17, 83, 326
contributions, causal, 72, 77
control, 102, 116, 118, 126, 294, 302,
       359, 371
convergence, 126, 260-1
conviction, offences of, 424, 426, 427
cooperating defendants, 306, 322, 340
cooperating witnesses, 302, 324-5,
       333, 338
cooperation, 301, 304-6, 311-13,
       317-18, 320-1, 322-3, 326, 328,
       329, 340-1
  agreements, 8-9, 300-42
    justification, history and concept,
       300 - 4
  comprehensive bargaining, 305-7
  determining sentence, 319-22
  due process and fair trial, 323-9
  effectiveness and effects on truth and
       fairness, 329-39
  in Germany and United States,
       300-42, see also Germany/
       United States
  mitigation of sentence, 304-5
  proffer sessions, 300, 310-13, 329
  qualifying to be cooperator, 307
  success, 313-19
  truth and fairness, 329-39
cooperators, 303-4, 307, 311-12,
       317-20, 323, 327-8, 331, 339-40
  qualifying to be, 307-13
corroboration, 275, 316, 333, 340
corruption of blood, 396-7
courts, 112-17, 123-6, 203-4, 262-6,
       268-73, 351-4, 367-70, 412-16
  English, 274-5
  German, 105, 116, 169, 250, 277, 357,
       412, 415
  ruling, 386
```



More Information

442 INDEX

courts (cont.) statements, 263, 266, 267 trial, 21, 32, 264, 271-2, 342 see also individual court titles CPS (Crown Prosecution Service), 191-3, 351 credibility, 268, 275, 316, 332-3 crimes of endangerment see endangerment. criminal codes, 15-16, 28-9, 104-5, 305, 358-60, 366-8, 369-70, 404 - 5criminal conduct, 36, 98, 102, 112, 117, 150, 201, 303 criminal damage, 15-18, 34, 137 criminal fault, 101, 136, 138, 140, 141 Criminal Justice Statistics, 354 criminal justice, 1, 3–5, 9–10, 176, 186-7, 219-21, 223, 228, see also Introductory Note criminal law Anglo-American, 2, 7, 49, 132, 138, 140, 169-70, 187 doctrine, 6, 29, 38, 45, 47, 59, 75 substantive, 28, 32, 50 see also Introductory Note and criminal legal reasoning criminal lawyers, 5, 13, 36, 42 criminal legal reasoning comparison of structural reasoning, 52-4 compartmentalising and sequencing, 42 descriptive or prescriptive, 47 enforcing structures, 50-1 expressing underlying priorities and indeed normative claims about order, 43, 45 expression of skill in deploying standards, 42 formal or informal structures, 49-50 Germany see Germany. implementing principles and policies, 45-6 structures across legal systems, 42-54 expressed through substantive or procedural rules, 48-9

restricting or empowering, 47-8 success for, 51 United Kingdom see English law. value of structures, 43 criminal liability, 13-14, 28-9, 35-7, 40-1, 74-6, 98-9, 133-4, 139-41, see also liability criminal penalties, 394, 400, 406, 415-16, 419, 423, 426, 427 criminal procedure, 5, 7-9, 10, 221, 223, 248-9, 341-2 criminal proceedings, 202, 224, 232, 239, 251, 267, 286, 340 criminal process, 198-9, 222, 267, 269, 280-2, 286, 393-4, 425-6 criminal prosecution, 183-4, 222, 293, 313 criminal punishment, 35, 36, 392-4, 404, 414, 415, 420–1, 426 criminal records, 161, 372-4, 399-401, 403, 410-11, 419, 423, 429 publicly accessible, 410, 430 criminal trials, 8, 183, 198, 260, 290, 301, 333, see also trial criminalise conduct, 144, 152, 155 cross-examination, 204, 262-3, 266, 279-80, 289, 312-13, 323, 325 Crown Prosecution Service see CPS crown witnesses, 301-2, 305-6, 307-9, 313-16, 320, 325-6, 332-3, 336-7 regulations, 305, 307-9, 316-20, 326, 330, 332, 335-8, 340-1 broad/narrow, 305, 309, 330 statements, 316 culpability, 20-1, 41, 45, 95, 138-9, 144, 147, 195 culpable mental state, 107-9, 113 custodial sentences, 349, 360, 376, 378, 421, see also imprisonment; prison custody, 191, 349, 355-6, 361, 364-5, 378, 382, 385 damages, 15-16, 18, 25, 33-4, 61-2, 137, 151-2, 186

dangerous conduct, 132, 144, 152, 158



More Information

INDEX 443

dangerousness, 23, 88, 407, 414 abuse of, 179-80, 194 Davis, Kenneth C., 171, 176, 198 and rule of law, 182-3 DBS (Disclosure and Barring broad and narrow senses, 173-7 Service), 374 concept in law, 170-3 death, 44, 60-7, 70-2, 77-8, 81-8, 134, exercise of, 171, 173, 177-80, 191, 136, 396 205 - 6brain, 63 from comparative perspective, cause, 63, 77 187 - 204civil, 396-8, 403-4 informal, 173, 179 decision to release. see release. judicial, 43, 169, 204, 321, 322 decision-makers, 30, 169, 171, 178-9, police, 7, 169, 189 185-7, 279, 288, 294 primary, 171 integrity, 183-5 prosecutorial see prosecutorial decision-making discretion. balancing goals in, 185-7 secondary official, 177-82 discretionary authority, 7, 205-6 defence lawyers, 32-3, 271, 283-5, discretionary decisions, 7-8, 169, 177, 286-7, 290-3, 313, 321-3, 180, 182, 187-8, 194-6, 198-9 diseases, 78, 100, 114, 115, 291 326 - 7defence(s), 21-2, 26-7, 43-4, 204, disqualification, 358, 406, 408, 268-9, 276-7, 280-8, 290-2 421 defendants, 21-3, 108-15, 268-71, diversion, 28, 181, 194, 198-202, 277-8, 304-7, 310-13, 317-18, 205 323 - 9documentary evidence, 264, 270-1 cooperating, 306, 322, 340 Dogmatik, 6 depositions, 274, 290 dolus directus, 38, 137, 139, 154 deprivation of liberty, 221-3, 226, 241, dolus eventualis, 7, 132, 138, 139-43, 248, 250-1, see also 147, 154, 162 imprisonment; prison dossier, 204, 262, 272, 281, 284, detention, 100, 224, 228, 231, 235, 358 286-7, 294 pretrial, 224, 226-7, 239-40, 244, double preventions, 62-3, 64 251-2, 361 downward departures, 306, 312, 313, 317, 322, 332, 339 preventive, 358-9, 372, 374, 409, 417 deterrence, 101, 126, 152, 186, 358-9, drinking see alcohol, consumption; 380, 415, 423 intoxication. deviations, 6, 42, 50-1, 95, 107 drivers, 79, 133, 148, 151, 157-8 gross, 138, 154 driving, 44, 76, 78, 152, 155, 156–8, differentiation, 381, 399, 404 406, 408 dignity, 36, 183, 282, 366, 422, 430 bans, 358, 405-6, 415 disqualification orders, 406, 415 diminished responsibility, 106, 123-4, 126 - 7drugs, 87, 101, 110, 115, 155, 331, direct consequences, 372, 392 385 disabilities, 9, 238, 392-3, 412, 413, drunken state, 119-21, 124 419-20, 425, 427 drunken stupor, 120 Disclosure and Barring Service drunkenness, 98, 100, 105, 127, see also (DBS), 374 intoxication discretion, 44-5, 153-4, 160, 161, due care, 79 Duff, Antony, 1, 7, 132, 179 169-98, 203-6, 291, 295



More Information

Cambridge University Press 978-1-316-51054-4 — Core Concepts in Criminal Law and Criminal Justice Edited by Kai Ambos , Antony Duff , Alexander Heinze , Julian Roberts , Thomas Weigend Index

444 INDEX

duties, 79, 82-3, 85-6, 88, 155, 363, 369, 422 professional, 32, 85 Dworkin, Ronald, 171-3, 177-8 early release, 363, 366-7, 368, 370, 375, 376-8, 379, 386 ECtHR (European Court of Human Rights), 8, 227, 260, 261, 273-8, 282-3, 285, 416-17 witness evidence, 273-8 educational measures, 202 Eighth Amendment, 412-13 elements of the offence see Tatbestand. end of life decisions, 68 endangerment, 132-63 breaches of safety-serving regulations, 155-62 concrete and abstract, 7, 132-3, 150-4, 158 direct and mediated, 148-50 explicit, 150-4, 159 marking out offences, 134-8 mediated, 7, 133, 148-50 offences, 7, 120, 132-6, 138-9, 142 - 5general v. specific, 144-8 types of offence, 150–62 recklessness, negligence and dolus eventualis, 224-33 subjective dimension, 7, 132, 135-6, 138, 144, 154, 162 enforcement, 45-6, 231, 367-8, 383, 399 chamber, 352, 365, 367 judges, 378 of sentences, 349-51 English law see also Anglo-American law; common law; English law AR/MR exceptions, 23-4 architecture of criminal legal reasoning, 17-27 bipartite system, 14, 17, 45, 46, 54, 149, 155 characterising the facts, 17 common law, 22, 98, 109, 115, 262 - 3, 397

General Part and Special Part, 26 grounds for arrest, 234-9 incorporation of non-criminal aspects in criminal law, 27 intoxication, 109-11, 115-16 offences and defences, 26 and their hooks, 18-19 orality, demise, 264-9 parts of liability, 19-25 relaxation of hearsay rule, 264-7 right to information, 247-8 use of force, 245-7 enterprise, 137, 141 European Court of Human Rights see ECtHR. evidence, 21-3, 263-8, 270-3, 275-80, 285-7, 288-96, 312, 333-5 documentary, 264, 270-1 hearsay, 264, 266-7, 270, 275, 277, 288, 295 in chief, 203, 289, 294 independent, 335, 372 live, 267-8, 289 of intoxication, 107, 109 presentation, 203-4 sufficient, 175, 190-1, 311 witness, 8 see witness evidence. evil. 161 execution of arrests in England and Wales, 245-8 in Germany, 248-51 in United States, 243-5 exigent circumstances, 223, 241 expedition, and arrest, 221, 224-5, 252 expert witnesses, 271, 365 explicit endangerment, 150-4, 159 external collateral consequences, 406, 409 - 11facts, 14-16, 17, 19, 20, 25-6, 28, 29, 30, 31, 32, 33, 171, 174-5, 178-9, 203-4, 268-9 application of bipartite system to, 25 characterising, 17, 28-33 relevant, 16-17, 106, 272

execution of arrests, 245-8



INDEX 445

factual causation, 6, 57–60, 66, 69, 72–3,	general endangerment offences,
75–7, 84, 89–90	144–6, 153
Fahrlässigkeit, 7, 132, 154, 162	general intent, 108-9, 114
advertent, 7, 139-43, 146, 147	General Part of the criminal law, 6,
see also negligence	14–15, 26, 34–5, 95–7, 120–2,
fair imputation, 88–9	125–6, 127–8
fair trial, 183, 195, 220, 260, 275,	general principles, 19, 27, 95–6, 97, 119,
323, 325	127, 249
fairness, 73, 75–6, 182–5, 275, 279–80,	Germany, 8–9, 15–16, 51–4, 187–91,
282, 286, 293	226-9, 277-8, 353-69, 371-8
guarantees in pretrial procedures/	and Switzerland, 6, 95, 106, 116,
proceedings, 283–92	126–7
false confessions, 334–5	application of classification
families, 46, 199, 380, 419	structures to facts, 33
fault, 2, 19-22, 96-7, 124-6, 139, 143-4,	architecture of criminal legal
149, 154	reasoning, 28–41
criminal, 101, 136, 138, 140,	characterising the facts, 28-33
141	Code of Juvenile Criminal Law, 201
prior, 110, 126–7	collateral consequences, 403-11,
federalisation of prison law, 375	415–18
felonies, 15, 121, 235, 396, 398, 403,	cooperation
418, 424	agreements, 8, 304–5
fidelity, 97, 125	and organised crime cases, 335-8
Fifth Amendment, 327, 412	determining sentencing discount,
firearms, 61, 81, 84–5, 148–50, 155, 233,	319–21
245–7, 249	effectiveness and effects on truth
firefighters, 82–3, 85	and fairness, 329–31
flagrancy, 224–5, 242	mitigation of sentence, 304–5
flawed forensic science, 334	secrecy and lack of
Fletcher, George P., 13	transparency, 323
flight, 223, 239–42, 248–9	undermining of fair trial, 325
risk of, 223, 225, 239–40	weakening factual basis of
force	convictions, 332
physical, 248–50	courts, 105, 116, 169, 250, 277, 357,
use of, 8, 243–6, 248, 250, 252–3,	412, 415
353-4	Criminal Code, 36, 136, 145,
foreseeability, 23, 73–4, 76, 80, 85,	357–8, 376
87, 123	criminal law, 7, 29–30, 34, 40, 45,
formal depositions, 290	139-41, 143, 405-8
formal proof, 14, 224	criminal procedure, 2, 8, 223, 225–6,
formal punishment, 418, 420, 425–7	248, 260, 273
Fourth Amendment, 230–2, 244	criminal statutes, 33–5
fraud, 17, 115, 271, 421	General Part and Special
freedom, 171, 177, 183, 234, 240, 282,	Part, 34–5
366, 369	elements of criminal liability, 37–40
Führungsaufsicht, 369–70, 372,	execution of arrests, 248–51
375	Federal Court of Justice, 117–18
fundamental rights, 220, 249	grounds for arrest, 239-43



446

Cambridge University Press 978-1-316-51054-4 — Core Concepts in Criminal Law and Criminal Justice Edited by Kai Ambos , Antony Duff , Alexander Heinze , Julian Roberts , Thomas Weigend Index

INDEX

More Information

Germany (cont.) actualisation, 134, 149 incorporation of non-criminal bodily, 145, 147, 274, 331 aspects in criminal law, 41 cause, 137, 147, 152-3, 162 intervening causes, 84-90 relevant, 135, 137-8, 140, 143, 154 letter of rights, 250-1 social, 57-8, 71, 90 liability, 36-41 threatened, 146, 152 mitigation of sentence, 304-5 within the risk, 80 offences and defences, 40-1 harmful consequences, 85, 116, orality, demise of, 269-73 410, 429 prosecutors, 175, 193-5 Hart, H. L. A., 173, 178 provisional arrest, 241-3, 250 health, 134, 145, 155-6, 275 qualifying to be cooperator, 307–10 hearsay right to information, 250-1 evidence/testimony, 264, 266-7, 270, structures in classification, 28-33 275, 277, 288, 295 successful cooperation, 313-17 rule, 263, 290 two paradigm cases doctrine, 64-6 relaxation, 264-7 use of force, 248-50 heart, 61-3 Youth Criminal Law, 201 homicides, 57, 60, 82, 134, 233 grave or serious offences, 225 intentional, 57, 85, 271, 288 grey areas, 405, 420 see also death; murder gross deviation, 138, 154 hooks, 18, 33 grounds for arrest, 225, 226, 227, 228, House of Lords, 100-1, 109, 265 229 - 43human rights England and Wales, 234-9 guarantees, 8, 260, 261 Germany, 239-43 law, 8, 45-6, 260-1 United States, 229-34 Anglo-American law, 3, 7, 140–2, guarantees, 38, 263-4, 274, 293, 295, 146, 147-8, 162, 170, 244 336, 416, 425-6 human rights, 8, 260, 261 ignorance, 17, 157, 282 guidelines, 45, 181-2, 184, 197, 201, immunity, 303-4, 312 207, 248, 306 immunity grants, 303-4, 311 sentencing, 305-6, 321, 323, 327, impairment, 116-18 implementation of sentences, 9, 350-84 339–40, 376 aims and prison regimes, 379-81 guilt, 35, 40–1, 102–3, 116, 120, 122–5, 366-7, 415 constitutional context, 350-4 admissions of, 286, 302 individual prisoners, 351 Institutional rules, 350-1 see also confessions legal punishment and actual principle, 121, 127, 309, 320, 341, punishment, 375-9 406, 428 guilty pleas, 17, 286, 300, 312, 318, legal standing of individual 333-4, 363 prisoners, 351-3 guns, 61 see firearms. prison, 357-75 custodial part of sentence, 361-4 half-time release, 365-6 decision to release, 364-7 Handlung, 36-8, see also criminal fixed term sentences, 364-6 conduct imposition of criminal sanctions, 357-60 harm, 76-80, 86-9, 103, 136-8, 141-5, 147-53, 154-6, 161 life post-release, 368-72



More Information

INDEX 447

life post-sentence, 372-5 release of lifers, 366-7 privatisation, 353-4 role of offenders and victims, 381-2 statistical data, 354-7 transparency and accountability, 383 126, 413 imprisonment, 15, 18, 341-2, 350, basic, 102, 110, 116 357-62, 370, 376, 399 increased minimum sentences, general, 108-9, 114 310, 341 life, 18, 319, 341, 364 imputation, 97, 103-6, 107-9, 119, 120, 122, 125, 127 doctrine, 6, 95-6, 126, 127 fair, 88-9 objective, 6, 16, 58-60, 72-9, 80-1, 84-7, 88-9, 90 153, 200-1of responsibility for intoxicated offending, 6, 95-128 inappropriate risk, 58 incapacitation, 117, 249, 252, 404, 408, 423 and arrest, 227-8 measures of rehabilitation and, 358-9, 369-70, 407-8 inchoate offences, 134, 136 judicial, 271, 290-2 independence, 98, 169, 263 independent evidence, 335, 372 **Independent Safeguarding Authority** (ISA), 374 indirect consequences, 350, 372 inducement, 265, 266, 303 induction into prison, 9, 363 inertia effect, 379 288, 302-3 inferences, 267-8, 283 informal discretion, 173, 179 informants, 301, 303, 328, 331, 332-5 122, 127 intoxicated offending testimony, 323, 334-5, 340 information access to, 188, 284 95 - 128right to, 245, 247, 284, 285 injury, 79, 83, 134-7, 140-1, 146-8, 149-51, 219, 246 see also alcohol bodily, 125, 134, 144, 148, 151, 227, 248 inquisitorial approach, 2, 260-2, 266, and actio libera in causa, 111-12 295 - 6insanity, 22, 98, 113–14, 115, 358 and blameworthiness, 116-24

institutional frameworks, 8, 192, 206 integrity, 183-5, 203, 221-4, 229, 239-40, 249, 251-2 and cooperation agreements, 327-9 intent, 33-5, 38, 39, 99-100, 108, 124, conditional, 139, 141-142 see also dolus eventualis natural, 116, 118-20, 122, 125, 126 specific, 101-2, 108, 109-10, 116 intention, 2, 23-5, 26, 108, 135-7, 139-40, 146-7, 162 intentional conduct, 35, 111, 140 interests, 84-5, 86, 133, 136, 137, 151, protected, 76, 134-6, 138, 140, 154 public, 174, 195, 200, 269 internal collateral consequences, 405-6 International Criminal Court, 175 interpretive judgment, 174-5, 191 interrogating officers, 270, 274, 288 interrogation, 227, 234, 242, 245, 271, 278, 283-5, 314 pretrial, 264, 270, 272, 285, 288 intervening agency, 60, 82, 89, 90 intervening agents, 81-2 intervening causes, 81-9 German doctrine, 84-90 United States doctrine, 81-3 interviews, 221, 226, 265, 269, 278, 287, police, 247, 268-9, 286-8 intoxicated offenders, 99, 107, 116-18, imputation of responsibility, 6, in common law and civil law, 107-25 socio-cultural and moralphilosophical, 98-106, 270 intoxication, 6, 22, 39, 95-8, 99-109, 111-18, 119, 121, 123-5, 126-7



448 INDEX

intoxication (cont.) juries, 23-4, 44, 202-3, 269, 293-4, as ground for punishment in itself, 324-5, 335, 340 119 - 22jurisprudence, 29, 30, 260, 261, 274, doctrine of, 6, 95 412, 414-16, 418, see also England and Wales, 109-11, 115-16 case law evidence of, 107, 109 jurors, 21, 99, 290 involuntary, 101, 113-15, 125 iustice law of, 95-7, 110-11, 116, 126 procedural, 7, 170 recent punitive turn, 124-5 substantive, 7, 170, 205 self-induced, 100, 109-10, 119, 121, justifications, 22, 25, 39-41, 44, 111-12, 126, 127 220, 222, 418 state of, 105, 117, 121, 124, 127, 408 triggering evaluation over broader Kades, Michael, 191-2 time frame, 122-4 killing, act of, 68, 78 United States, 107-9, 113-15 knowledge, 2, 80, 83, 108-9, 231, voluntary, 99, 110, 112, 114-15, 124 313-14, 339, 341-2 'voluntary' acts, and boundary Law Commission, 46, 266, 290 between intoxication and lawful arrest, 236, 245 insanity, 6, 113-16 see also alcohol; drinking law-makers see legislators/legislatures. investigation, 175, 188-91, 239-40, laws of natural science approach, 58, 280-7, 292, 306-7, 315-17, 65-6, 69, 89 326 - 7lawyers, defence, 32-3, 271, 283-5, and arrest, 226-7 286-7, 290-3, 313, 321-3, and prosecutorial discretion, 188-91 326 - 7effective, 235, 238 legal actors, 21, 32, 36, 43, 48, 51, pretrial, 262, 263-4, 278, 281-2, 284, 53 - 5legal aid, 284, 287, 353 288, 291-3, 295-6 investigation-based arrest, 229, 234 legal analysis, bridging of areas of, 46 investigative authorities, 301, 315, legal causation, 6, 60, 89 329, 334 and objective imputation, 72-80 involuntary intoxication, 101, legal cause, 57, 74, 81 113-15, 125 legal discourse, 2, 170 legal doctrine, 29-30, 32-3, 34, 35, 38, ius poenale, 197-8 43-4, 48-51, 55 ius puniendi, 197-8 legal orders, 10, 36, 39-41, 395 judges, 32-3, 201-4, 225-6, 276-9, unity of the, 39-41, 47 289-92, 294-5, 320-2, 376-7 legal practice, 38, 42, 52, 65, 79 legal principles, 46, 97, 125, 172 presiding, 272–3 pretrial, 278, 295 legal punishment and actual sentencing, 360, 378, 395, 406, 409, punishment, 375-9 legal reasoning, 5, 13-14, 29-30, 32, 415, 426-7, 429 trial, 23, 203, 316, 334, 360, 379 34-6, 37-8, 45-8, 52-3, see also judicial branch, 45, 46, 349 criminal legal reasoning judicial discretion, 43, 169, 204, legal scholars, 29, 103, 122, 430 321, 322 legal standing of individual prisoners, judicial interrogations, 271, 290-2 351 - 3

judicial review, 176, 180, 195

legal traditions, 1, 4, 9, 30, 173, 395



More Information

INDEX 449

legal/proximate causation and objective imputation, 72-80 legality principle, 46, 49, 188, 190, 192, 195, 200-1, 415-16 legislative labels, 394, 412-13, 415, 420 legislators/legislatures, 34, 36, 49, 51, 101, 125-6, 413, 428-9 legitimacy, 45, 183-5, 220, 228, 243, 369, 419 leniency, 127, 303, 328, 335 letter of rights, 250-1 liability, 13–14, 19–25, 34–6, 37–8, 40-1, 54-5, 102-3, 154 AR/MR exceptions, 23-4 basic position, 19-21 bipartite, 21-3 elements of, 24, 35, 47 English architecture, 19–25 strict, 22, 80, 82, 90, 143 liberty, deprivation of, 221-3, 226, 241, 248, 250-1licence, 364-6, 369, 371, 384-5, 409 imprisonment, 18, 319, 341, 364 in prison, 326, 364, 366 post-release, 368-72 post-sentence, 372-5 sentences, 355-6, 359-60, 366, 374 lifers, 358 release, 366-7 live evidence, 267-8, 289 live testimony, 8, 260, 262, 265, 270-1, 289, 294 logical structures, 2, 156 MacCormick, Neil, 184 magistrates, 15, 21, 44, 203-4, 290, 360 mandatory minimums, 300, 340 mandatory prosecution, 15, 48, 188, 205, 304-5 manslaughter, 44, 121 MAPPA (Multi-Agency Public Protection Arrangements), 373 - 4margin of appreciation, 174-5, see also Beurteilungsspielraum Maurach, Reinhard, 197

measures of rehabilitation and incapacitation, 358-9, 369-70, 407 - 8mediated endangerment, 7, 133, 148-50 mens rea (MR), 19-24, 40-1, 75-6, 78, 80, 107, 108-12, 115 mental disorder/illness, 100, 114, 116-18, 121, 126-7, 414 mental states, culpable, 107-9, 113 minimum sentences, increased, 310, 341 minor offences, 147, 232, 244 mischief, 134-6, 137, 144 mitigating circumstances, 301, 305, 320 Model Penal Code, 73, 107-8, 113-14, 134, 136-8, 144-5, 154, 161 moral censure, 15, 415 moral responsibility, 83, 90 motives, 175, 319-20, 324 MPC see Model Penal Code. MR see mens rea. Multi-Agency Public Protection Arrangements see MAPPA. murder, 22, 26, 72, 80, 81, 88, 135, 136 see also homicides narrative, rule against, 267-8 Natur der Sache, 420 natural intent, 116, 118-20, 122, 125, 126 natural science, laws of, 58, 65-6, 69, 89 negative consequences, 76, 252, 405 negligence, 2, 78, 80, 108-9, 124, 138–40, 142–3, 154 and recklessness, 2, 7, 108, 132, 138-40, 154, 162 see also Fahrlässigkeit negotiated justice, 33, 199, 300, 315 neutrality, 169, 203 New York, districts of, 206, 322 non-punitive legal fiction, 412-14 normative claims, 44, 45, 46, 52 notification requirements, 251, 373-4 novus actus interveniens, 81, 82-4, 89, 90 oaths, 230-1, 263, 271, 290 objective imputation, 6, 16, 58, 60,

72-9, 80-1, 84-7, 88-9, 90



More Information

Cambridge University Press 978-1-316-51054-4 — Core Concepts in Criminal Law and Criminal Justice Edited by Kai Ambos , Antony Duff , Alexander Heinze , Julian Roberts , Thomas Weigend Index

450 INDEX

objective imputation (cont.) penal state, 400, 412, 418 in a broad sense, 58 penalties in a narrow sense, 60 civil, 392-3, 397, 400-1, 413-14, objective reasonableness test, 244-5 419 - 20offences criminal, 394, 400, 406, 415-16, 419, and defences, 26, 40 423, 426, 427 capital, 229, 240 personality rights, 410, 430 choate, 134-6 persons, arrested see arrestees. endangerment see endangerment. physical force, 248-50 inchoate, 134, 136 physical injury, 134, 148, 227 minor, 147, 232, 244 physical violence, 228, 252 of conviction, 424, 426, 427 plea agreements, 311, 317, 323-5, 427 possession, 149 plea bargaining, 191, 194, 281-2, 300, reference, 301, 307-10, 315, 320, 335 311, 323, 326, 333 regulatory, 15, 143, 160, 415 point of arrest, 245, 247 sexual, 17, 355, 364, 382, 392 police, 188-93, 226-8, 235-6, 240-6, triggering, 301, 307-10, 316, 320 253, 284-5, 303, 325-7 offender registration, 410, 414 discretion, 7, 169, 189 sex, 392, 400, 410, 421, 430 forces, 169, 243, 373 official decision-making in law, 177-82 interrogations, 271, 283, 288-90, 327 omissions, 6, 18, 38, 57-9, 61-6, interviews, 247, 268-9, 286-8 67-70, 89 officers, 25, 189-91, 233, 238, 245-6, opportunity principle, 188, 191, 200, 205 252, 264-5, 270 oral evidence/testimony, 263, 266-9, stations, 235, 237, 242, 265, 269, 271, 273, 279, 290 287, 289 live, 263, 267-8 policy-makers, 395, 399, 418-19, see also orality 420, 430 oral trial political rights, 396, 422 as apex of criminal process, 280-3 pornography, child, 17 as mechanism for finding truth, possession offences, 149 279 - 80powers, 46, 171-2, 176, 186, 189, 197-8, orality, 260, 261-7, 270-2, 273-4, 378, 381 276-7, 279, 284, 292-6 coercive, 220, 228, 249 orders separation of, 45, 48, 183-4 driving disqualification, 406, 415 state, 176, 198, 412, 430 legal, 10, 36, 39-41, 395 preclusion, 313, 316, 323, 342 penal, 194, 202, 281 preliminary arrest, 242 supervision, 358, 368 presentation of evidence, 203-4 organised crime, 9, 300-1, 305 presiding judges, 272-3 Germany, 335-8 pretrial detention, 224, 226-7, 239-40, United States, 338-9 244, 251-2, 361 over-determination, 59, 69-71, 89 pretrial interrogation, 264, 270, 272, 285 parole, 365, 368, 370, 381 pretrial investigation, 262, 263-4, 278, boards, 359, 367, 372, 383 281-2, 284, 288, 291-3, 295-6 officers, 357, 368-70 pretrial judges, 278, 295 pretrial phase, 8, 239, 260, 261, 282, patients, 66-8 penal order, 194, 202, 281 286-7, 292



INDEX 451

pretrial procedures/proceedings, 8, 260-1, 273, 283, 287, 294, 296 fairness guarantees, 283-92 prevention, 64, 162, 307-8, 313-14, 315, 341-2, 407, 415-16 double, 62-3, 64 preventive detention, 358-9, 372, 374, 409, 417 preventive measures, 404-5, 406 primary discretion, 171 principles general, 19, 27, 95-6, 97, 119, 127, 249 legal, 46, 97, 125, 172 limiting, 73, 422 opportunity, 188, 191, 200, 205 prior fault, 110, 126-7 prison, 9, 349, 351-3, 360-6, 369-71, 373, 379-83, 419-21 authorities, 352, 364-5, 367, 369, 380 closed prisons, 362, 375, 379 induction into, 9, 363 law, 375-6, 380, 384 life in, 326, 364, 366 open, 361-2, 375 population, 354-6, 360 regimes, 9, 350-1, 379-80, 383 sentences, 121, 300, 318, 357, 368, 405-7, 410, 419 implementation see implementation of sentences, prison. systems, 9, 350–1, 353, 361–2, 376, 383 prisoners, 349-56, 358-73, 375-7, 378-82, 383 legal standing, 351-3 private companies, 353, 365, 383 privatisation, 353-4 privilege against self-incrimination, 269, 303, 325-7 probable cause, 189-91, 196, 229-34 test, 232, 236 probation, 370, 381, 393, 399, 426 officers, 363, 368-9, 371, 384 procedural justice, 7, 170 professional duties, 32, 85 professional routines, 31, 47-9

professions, 42, 358, 408-11, 422 legal, 50, 51, 266 proffer sessions, 300, 310-13, 329 proof, 5, 96, 101, 112, 124, 143 formal, 14, 224 property, 15-16, 18, 25, 27, 33-4, 41, 149-53, 396 law, 41 proportionality, 186, 232, 249, 310, 358, 428, 430 prosecuting authorities, 199, 315, 342 prosecution, 26-8, 188, 189, 190, 191-205, 271-3, 275-6, 306-7, 312 - 13criminal, 183-4, 222, 293, 313 mandatory, 15, 48, 188, 205, 304-5 service, 50-1, 190, 192, 250, 351, 361 prosecutorial discretion, 7, 169-207 accountability, 182-5 balancing goals in decision-making, 185 - 7concept, 170-3 decision-making, 177-82 from comparative perspective, 187 - 204in broad and narrow senses, 173-7 integrity of decision-maker, 183-5 investigation stage, 188-91 official decision-making in law, 177 - 82prosecution stage, 191-202 trial stage, 202-4 prosecutors, 175, 191-205, 291, 300-1, 302-5, 310-12, 317-18, 321-31 federal, 193, 197, 201, 325 Germany, 175, 193-5 public, 169, 264, 284, 302 protected interests, 76, 134-6, 138, 140, 154 protocols, 31, 264, 270-1, 272, 278, 291 written, 270, 288 provisional arrest, 241-3, 250 proximate causation, 57, 89 and objective imputation, 72-80 Prussian Criminal Code, 105, 404 public administration, 133-4, 353 public interest, 174, 195, 200, 269 public prosecutors, 169, 264, 284, 302



More Information

Cambridge University Press 978-1-316-51054-4 — Core Concepts in Criminal Law and Criminal Justice Edited by Kai Ambos , Antony Duff , Alexander Heinze , Julian Roberts , Thomas Weigend Index

452 INDEX

public safety, 108, 127, 365, 370, 376, registration, sex offenders, 392, 400, 380, 423, 425 410, 421, 430 public trial, 263, 268, 276, 290, 293, regulatory offences, 15, 143, 160, 415 296, 323 rehabilitation, 186, 200, 361, 363-4, publicly accessible criminal records, 365, 380-1, 384, 406 410, 430 measures of, 358-9, 369-70, 407-8 punishment, 117-20, 377-8, 394-7, release, 240, 243, 349, 360-1, 363-72, 404-8, 412-14, 415-18, 420-3, 378-9, 382, 383-4 425 - 6decision to, 349, 364-5 amount of, 407, 429 half-time, 365-6 and arrest, 228-9 of lifers, 366-7 criminal, 35, 36, 392-4, 404, 414, 415, on licence see licence. 420-1, 426 prisoners serving fixed term formal, 418, 420, 425-7 sentences, 364-6 legal and actual, 375-9 relevant facts, 16-17, 106, 272 main, 9, 393, 396, 404, 418 resocialisation, 378-9, 381 retroactive, 412, 414 responsibility threat of, 36, 380 and causation, 6, 57-90 traditional, 394, 420 causal, 57, 80-1 diminished, 106, 123-4, 126-7 punitive continuum, 418-20 for outcomes and scientific quasi-causation, 65-6 causation, 60-9 gap, 6, 95 rational decisions, 178-9, 185, 313 moral, 83, 90 rationality, 46, 178, 181, 185, 230, 353 retribution, 186, 395, 415, 417, reasonable basis, 175 reasonable grounds, 235-6, 237 rights reasonable suspicion, 174, 189-90, 230, civil, 352, 396 233-5, 236-8 fundamental, 220, 249 reasonableness, 154, 184, 244, 245-6 human see human rights. reasoning, 13, 30, 34, 47-8, 50, 52-4, of access, 251, 283-4, 285, 287 65, 71 personality, 410, 430 political, 396, 422 *Rechtsstaatsprinzip see* rule of law. recklessness, 15, 18, 25, 80, 82-3, 109, to a lawyer see access, to lawyers. 138-43, 327 to information, 245, 247, 284, 285 and negligence, 2, 7, 108, 132, to/of silence, 227, 248, 268-9, 138–40, 154, 162 283, 287 recordings, 267-8, 294 voting, 408, 422, 426 audio, 265, 269, 291 risk actualisation, 148-9 of police interrogations, 288-90 harm within the, 80 video, 269, 270-1, 288-91, 294-5 records, criminal, 161, 372-4, 399-401, inappropriate, 58 of death or serious bodily harm, 403, 410–11, 419, 423, 429 re-entry, 9, 393, 398-9, 409, 136–7, 145 unlawful, 76-8, 84, 87, 90 410-11, 429 role ambiguity, 169 reference offences, 301, 307-10, 315, 320, 335 role duality, 169

reforms, 5, 266, 396, 402

Rosenberg, Maurice, 171-2



More Information

INDEX 453

rule against narrative, 267-8 rule of law, 27, 179, 182-5, 198, 206, 226 safeguards, 235, 243, 274, 275, 286, 291, 296, 394-5 safety, 144, 155-6, 162, 233, 336, 362 public, 108, 127, 365, 370, 376, 380, 423, 425 regulations, 7, 133, 155-62 sanctions, 139, 199-201, 404, 406-8, 410, 412–13, 415, 417–18 civil, 392, 397, 414, 420 collateral, 10, 393, 399, 418, 424-6 Schuldprinzip see guilt, principle. scientific causation, 6, 59-69, 89 German doctrine on two paradigm cases, 64-6 philosophical analysis, 61-4 withdrawing aid, 66-9 search for truth, 8, 260-1, 282 secrecy, 222, 262, 279, 284, 315, 323-5 seizures, 190, 226, 230, 244, 250, 282 self-control, 22, 44, 105, 120 self-incrimination, privilege against, 269, 303, 325-7 self-induced intoxication, 100, 109-10, 119, 121, 126, 127 sentences implementation see implementation of sentences. life, 355-6, 359-60, 366, 374 prison, 121, 300, 318, 357, 368, 405-7, 410, 419 sentencing, 9, 191, 311–13, 349, 375-81, 383-4, 405-7, 426-30 classification, 319-20 decisions, 378, 395, 407, 426, 429 guidelines, 305-6, 321, 323, 327, 339-40, 376 judges, 360, 378, 395, 406, 409, 415, 426-7, 429 law, 116, 376, 384 purposes, 358 stage, 9, 127, 199, 393-4, 406, 426-7 time of, see also implementation of sentences separation of powers, 45, 48, 183-4 sequencing, 14, 42, 51, 52, 54

sex offenders, registration, 392, 400, 410, 421, 430 sexual offences, 17, 355, 364, 382, 392 shooting, acts of, 60, 62-4, 70-2, 84, 248 Sicheres Wissen see dolus directus. Sicherungsverwahrung see preventive detention. silence, rights to/of, 227, 248, 268-9, 283, 287 simple caution, 191, 200 sine qua non approach, 40, 57-8, 65, 71, 74 sobriety, 23, 109-10, 124 social protection, 101, 126 sole or decisive rule, 333 solidarity, 159, 337 sovereignty, 176, 197-8 special circumstances, 365-6 special part of criminal law, 6, 26, 29, 34-5, 95, 97, 119, 120-2 specific intent, 101–2, 108, 109–10, 116 state of intoxication, 105, 117, 121, 124, 127, 408 statements, witness, 8, 260, 261, 291, see also witness evidence statistics, 322, 355-6, 368 statutes, 1, 14-15, 24, 28, 173-5, 249, 397, 413 statutory bodies, 18, 383 Strafgesetzbuch, 15, 28, 305, see also criminal codes Strafvollstreckung see implementation of sentences. Strafvollstreckungskammer see enforcement, chamber. Strafvollstreckungsrecht, 350–1, see also enforcement, of sentences strict liability, 22, 80, 82, 90, 143 strong suspicion, 240-1 structure(s), 14 across legal systems, 42-54 bipartite, 19-21, 24-5, 44, 47-8, 52 enforcing, 50-1 expressed through substantive or procedural rules, 48-9 expressing underlying priorities and normative claims about order, 43, 45



454

Cambridge University Press 978-1-316-51054-4 — Core Concepts in Criminal Law and Criminal Justice Edited by Kai Ambos , Antony Duff , Alexander Heinze , Julian Roberts , Thomas Weigend Index

INDEX

More Information

structure(s) (cont.) objective reasonableness, 244-5 formal or informal, 49-50 theft, 17-18, 23, 27, 333 logical, 2, 156 traditions, 1, 4-5, 9, 29-30, 50, 162, meaning of, 13-14 171, 173 restricting or empowering, 47-8 civil law, 97, 107, 202, 263, 417 success for, 51 common law, 174, 184, 202 tripartite, 40, 46-7, 49-50 traffic accidents, 79, 428 value, 43 transparency, 253, 323, 383, 399, 403 within criminal legal reasoning, 5, trial, 199-205, 260-2, 263-5, 267-74, 13 - 55276-83, 287-96, 311-13, 323-8 subjective dimension of endangerment, adversarial, 262, 267, 285 7, 132, 135-6, 138, 144, 154, 162 adversary, 279, 286 substantial assistance, 300, 306-7, 311, courts, 32, 264, 271-2, 342 318, 325, 329, 331, 339 fair, 183, 195, 220, 260, 275, 323, 325 successful reintegration, 423-4 future of, 292-6 sufficient evidence, 175, 190-1, 311 judges, 23, 203, 316, 334, 360, 379 suicide, 249, 274 oral, 279-80 assisting, 81 phase, 277-8, 313 supervising officers, 385-6 procedure, 8, 18, 260 supervision public, 263, 268, 276, 290, 293, judicial, 349, 371 296, 323 of offenders, 372 traditional, 262, 292 orders, 358, 368 triggering offences, 301, 307-10, post-sentence, 372, 384 316, 320 tripartite system, 29-30, 32, 35-6, 38, probation, 385 39-40, 45, 46-52, 54 supreme courts, 44, 107, 203, 244, 318, 325-6, 329, 412-14 truth, 183, 205, 262-4, 268, 272, suspicion 279-81, 288, 293-4 reasonable, 174, 189-90, 230, 233-5, oral trial as mechanism for finding, 236 - 8279 - 80strong, 240-1 search for, 8, 260-1, 282 Switzerland, 3-5, 6, 95, 106, 116, 118, typology of purposes for arrest, 8, 220, 121-3, 126-7 221–9, 251 *Systemdenken*, 30, 45, 54 unavailable witnesses, 266, 275 Tatbestand, 2, 37, 123, 135, 138 unfairness, 275 technicality, 95, 101 United Kingdom, 393, 416 termination of treatment, 68 Criminal Justice Statistics, 354 Terry stop-and-frisks, 189 Law Commission, 46, 266, 290 testimony, 260, 263, 270-2, 304, 307, MAPPA (Multi-Agency Public 332, 335, 338 Protection Arrangements) see also English law hearsay, 264, 270, 277, 288, 295 informant, 323, 334-5, 340 United States, 99-102, 126-7, 229-34, 236, 239, 243-5, 397 live, 8, 260, 262, 265, 270-1, 289, 294 oral, 8, 263, 267, 273, 279, 290 cooperation agreements, 8, 305-7 see also witness evidence and organised crime cases, 338-9 tests, 21, 23, 29, 31, 38, 39, 71, 230-2 effect on integrity of prosecution but-for, 58, 65, 69, 89 and defence, 327-9



INDEX 455

effectiveness and effects on truth and fairness, 331-2 limits of judicial discretion in Federal system, 321-2 proffer sessions, 300, 310-13, 329 successful cooperation, 317-19 weakening factual basis of convictions, 333-5 Eighth Amendment, 412–13 execution of arrests in, 243-5 Fifth Amendment, 327, 412 Fourth Amendment, 230-2, 244 grounds for arrest, 229-34 intervening causes, 81-3 intoxication, 107-9, 113-15 Model Penal Code, 73, 107-8, 113-14, 134, 136-8, 144-5, 154, 161 right to information, 245 secrecy and lack of transparency, 323-5 Sentencing Guidelines, 305-6, 321, 327, 378 undermining of fair trial through cooperation agreements, 326-7 unity of the legal order, 39-41, 47 unlawful acts, 23, 78, 80, 87, 119-21, 126, 127 unlawful arrests, 231, 234 unlawful risks, 76-8, 84, 87, 90 unlawfulness, 34, 37, 39-40, 96, 116-17 use of force, 8, 243-53, 353-4 England and Wales, 245-7 Germany, 248-50 United States, 243-5

vagueness, 30, 49, 173–4

Verbrechenslehre see liability.
verdicts, 51, 183, 293, 407
victims, 105, 135, 137, 200–1, 231, 234–5, 272–4, 381–2
video-recordings, 269, 270–1, 288–91, 294–5
violence, 125, 155, 228, 244, 252, 306, 309

Vollstreckungsrichter see enforcement judges.
voluntariness, 22, 45, 313–14, 334
voluntary intoxication, 99, 110, 112, 114–15, 124–5
Vorsatz see intention.
voting rights, 408, 422, 426
vulnerable witnesses, 280, 294

Wales see English law.

warrantless arrests, 231, 247
warrants, 231
arrest, 240–2, 248, 250–1
arrest without, 235–6
weapons, 83, 190, 233, 246, see also
firearms
witness evidence, 8, 260–96
ECtHR (European Court of Human
Rights), 273–8
frontloading of evidence taking,
278–92
future of trials, 292–6
orality principle, 262–4
demise, 264–73
taking, 278–92

witness protection programme, 303, 339 witnesses cooperating *see also* cooperation

crown, 301–2, 305–6, 307–9, 313–16, 320, 325–6, 332–3, 336–7 expert, 271, 365 statements *see also* witness evidence unavailable, 266, 275 vulnerable, 280, 294 wives, 24, 83, 87–8, 112 wrongful conduct, 76, 144, 158

young/youth offenders, 201, 381, 410 Youth Criminal Law, 201

Zipf, Heinz, 197 Zurechnung, Objektive see objective imputation.