Introduction

These introductory materials present an overview of the criminal justice system and important background concepts for understanding other parts of the text. Though we will not focus on these materials in class, I will assume your familiarity with them in our discussions. As you review these materials, consider the fundamental question of what distinguishes criminal law from other areas of law.

I. The Purposes and Limits of Criminal Punishment

We begin our discussion of the purposes of punishment by considering a famous case involving a group of seamen trapped on a lifeboat. As you read the facts of this case, gauge your own instincts about whether and how Dudley and Stephens (and Brooks) ought to be punished. Then review the facts again after reading about the classic theories of punishment and assess which theory or theories support (or perhaps change) your instincts about the proper treatment of these seamen.

Questions: • Should Dudley and Stephens be convicted of murder? Why or why not? • Do New York Penal Law provisions (at p. 25) help you decide these issues? • Is the death penalty a fitting punishment for them? How about six months in prison?

A. Utilitarian Justifications for Punishment

Specific and general deterrence
Rehabilitation
Incapacitation

Questions: • What does deterrence theory assume about human nature and the reasons for crime? • By what standards can we and should we assess an offender’s “rehabilitation”? • If incapacitation is a sound justification for punishment, should we punish persons before they commit crimes if we have evidence suggesting they are likely to break the law? • What seems lacking or generally missing from utilitarian justifications for punishment?
B. Desert-Based Justifications for Punishment

Retribution as a limit on punishment
Justifying the justification of retribution

As you think about the concept of retribution, give serious thought to the seemingly simple idea of “just deserts,” and give particular attention to the range of factors that should be considered when assessing what is truly “deserved.”

Questions:
• Would you punish the hypothetical rapist discussed by Michael Moore on page 67?
• What punishment does a drunk driver or heroin dealer “deserve” for their offenses?
• Does a heroin dealer deserve (a lot) more punishment if someone ODs with her product?

C. Additional Theories and Considerations

Educative, restorative and abolitionist theories of punishment
Proportionality

Graham v. Florida
Kennedy v. Louisiana
Ewing v. California (read this one case somewhat more slowly)
Miller v. Alabama

As you review these final topics, consider the requirements and limitations that modern American society and legal structures place upon the theories of punishment we might adopt and apply.

Questions:
• Are there unique virtues (or problems) with educative, restorative or abolitionist theories?
• How might these theories inform judges now sentencing the January 6 Capitol rioters?
• Can you identify how punishment theories have had a role in SCOTUS cases?
• Do you think our Constitution adopts a particular theory of punishment? Should it?

Application of Theory

Case Handouts

Sentencing Hearing for Criminal Case No. 21-533A-1, The People v. Rachel Foster

Sentencing Hearing for Criminal Case No. 21-533A-2, The State v. Dan Schayes
II. The Criminal Offense and Requirements for Criminal Liability

A. The Conduct Requirement

1. Requiring an *Actus Reus*

   113-121, MPC § 2.01
   ORC §§ 2901 et seq.
   134-139

   *Proctor v. State*
   *State v. Barger*

   Try to identify the various purposes discussed in *Proctor* which seem to be served by the “act requirement” for liability. Consider whether these purposes are all equally important and whether they sometimes conflict with each other or other functions of the criminal system, especially in hard cases.

   **Questions:**
   - Is it accurate to say in *Proctor* that the statute failed to require an “overt act”?
   - Is it fair to consider possession an act? Who possesses material on the internet?

2. Omissions

   121-127

   *Jones v. United States*

   As *Jones* makes clear, in some instances the common law ascribes criminal liability for a failure to act, but these situations are quite limited. Should they be so limited?

   **Questions**
   - If you were prosecuting Jones, what added facts would you try to prove at the retrial?
   - Do you see common elements to the categories providing a basis for omission liability?
   - Do you like the provisions of the Wisconsin “duty to aid” statute on p. 125? Can you find whether Ohio has a comparable statute? Should it?

3. Voluntariness

   149-155

   *Martin v. State*
   *People v. Grant*
   *People v. Decina*

   Notice that in these cases the presence of some act – indeed, some bad act – is clear, but it is now the circumstances of the act which causes us to question the appropriateness of criminal liability. In this context, consider what functions the voluntariness requirement serves.

   **Questions**
   - Was there truly the absence of a “voluntary act” in *Martin*?
   - How does the outcome in *Decina* fit with the results in *Grant*?
B. The Guilty Mind Requirement

1. Requiring a Mens Rea

*People v. Dillard*
*Morissette v. United States*

We begin our discussion of the key concept of mens rea by looking at a small class of cases in which criminal liability is allowed even though a “bad mental state” seems to be absent. As you review each of these cases, consider whether the defendants can fairly claim to be “innocent” of any and all wrongdoing.

Questions:
- What purposes are served by strict criminal liability, and when should it be used?
- What are the best theoretical arguments for and against strict criminal liability?
- Should there be any constitutional limitation on the use of strict liability in criminal law?
- What is the Model Penal Code’s view on strict criminal liability? (See pp. 202-203)

2. Categories of Culpability

*Regina v. Faulkner*
*Model Penal Code § 2.02*
*Ohio Revised Code § 2901.22*
*Exercises in Statutory Construction*

The last page of Handout #1 provides a series of definitions for particular crimes in different jurisdictions, and these definitions will be utilized in our last day of class discussion about general categories of culpability. In preparation for that final discussion, you should try to identify the material elements of each crime listed and also try to determine the mens rea required for the crime there defined.

Questions:
- Is it fair to condemn and severely punish Faulkner for burning the ship?
  - How is this question like (or not like) debates over the fairness of strict liability?
- Why should we worry about distinguishing mental states and grading crimes?
- Can you identify ways in which MPC § 2.02 and ORC § 2901.22 differ?
  - Can you imagine when and how different terminology could be consequential?
- Do you think the categories of culpability in the MPC and ORC are truly comprehensive?
  - How can we describe the mens rea of the defendant in *U.S. v. Jewel* (pp. 228-229)?
3. **Mistakes**

*People v. Ryan*
*State v. Lima*

**Question:**
- Is it fair to blame Ryan or Lima for violating the statutes at issue in their cases?
- Were you a NY legislator, would you have supported amending the statute in *Ryan*?
- What distinguishes the default *mens rea* rules under the MPC and ORC?

*United States v. Baker*
*Hopkins v. State and MPC § 2.04(3) & (4)*
*People v. Bray*
*Cheek v. United States*

Note the order of the cases as listed above, which is the order for our in-class review.

**Questions:**
- Why shouldn’t ignorance of the law be an excuse?
- How would the *Hopkins* case be resolved if MPC § 2.04 were applicable?
- How can we reconcile the decision in *Baker* with the decisions in *Bray* and *Cheek*?

4. **Capacity**

*Handout #2, 272-276*

*People v. Wetmore*
*State v. Cameron*

**Questions:**
- Why should we ever permit voluntary intoxication to negate *mens rea*?
- Since the *Cameron* court recognizes the “defense” of voluntary intoxication, why did it affirm the conviction rather than remand the case for a new trial?

C. **Causation**

*Regina v. Martin Dyos*
*Commonwealth v. Rhoades*
*Commonwealth v. Root*

**Questions:**
- Why should we care whether MD’s action actually caused RM’s death?
- Which of the opinions in *Root* do you find more convincing? Why?
- How and when should a victim’s own actions break the “chain of causation”?”
III. Specific Offenses

A. The Law of Homicide

1. Intentional Homicide Offenses
   a. Murder

ORC § 2903, Shooter
331-348(skim), 357-367

Statutory definitions of homicide
United States v. Watson

Questions: • Why do we bother to grade homicides? Is there an ideal number of homicide grades?
• What are pros and cons of a code having few (MPC) or many (ORC) homicide grades?
• Do you consider Watson guilty of the worst kind of murder? Would Ohio? The MPC?

b. Voluntary Manslaughter

368-375, 387-395
(read notes quickly)

People v. Walker
People v. Berry

As we work through the “partial defense” of provocation, focus on the distinction between a justification and an excuse (see p. 384-85) and consider which view of this “defense” is more satisfying.

Questions: • How would you describe Walker’s mens rea at the time he killed Stenneth?
• How does Ohio law approach the issue of provocation? The MPC?
• Was Berry’s passion in any way “reasonable”?
  Was the Berry decision more in line with Ohio’s or the MPC’s provocation standard?

2. Unintentional Homicide Offenses

a. Involuntary Manslaughter

Commonwealth v. Welansky
State v. Williams

Questions: • Is the Welansky jury charge consistent with the MPC’s definition of recklessness?
• What do you think was the real reason the Williamses did not take their baby to a doctor?
• Should standard homicide laws be modified to deal uniquely with driving-related deaths?
b. **Reckless Murder**

426-436

*Mayes v. The People*
*Commonwealth v. Malone*
*People v. Watson*

**Questions:**
- How would you describe the *mens rea* of Mayes, Malone & Watson when they acted?
- What homicide would Mayes, Malone & Watson be guilty of in Ohio? In Oliwood?
- Why should we treat some unintentional killings as murder and thus more serious than the intentional killings we classify as manslaughter?


c. **Felony Murder & Misdemeanor Manslaughter**

436-451, 468-474

*State v. Martin*
*State v. Shock* (skim only to try to understand merger concept)

Two Variants of Felony Murder

Think carefully about the different justifications given for the felony-murder rule discussed at page 449. Be prepared to discuss the logic and the implications of these various rationales.

**Questions:**
- Which rationale for the felony-murder rule best justifies the doctrine?
- How does the MPC’s approach to felony murder compare to Ohio’s approach?
- How does Ohio’s homicide statute deal with the issue of “merger”?
- Does the MPC have misdemeanor manslaughter? Does Ohio?

B. **The Law of Rape**

891-901, 907-919

*927-939*

*ORC § 2907*

*Brown v. State*
*People v. Barnes*
*In the Interest of M.T.S.*

As we review these materials, imagine yourself as a member of a legislative committee drafting a new rape law for Oliwood. Thus, as you read these materials, give particular thought to the competing concerns in rape cases and to how a modern statute defining sexual offenses should be drafted. Review carefully the possible elements of rape provided on p. 898 as you consider this matter.

**Questions:**
- What purposes did the resistance and force requirements serve at common law?
- Is rape a strict liability crime? Should it be?
IV. Defenses

A. Introduction to Justification and Excuse 527-534 (skim)

Because theories of punishment are integral to defenses, you should try to examine each case we will discuss from both utilitarian and retributive perspectives. A distinct theoretical approach involves assessing whether the certain defenses should be deemed a justification or an excuse. This challenging introduction examines the intersection of these two theoretical perspectives on defenses.

B. Defensive Force 535-539, 543-563

*People v. La Voie*
*Model Penal Code §§ 3.04 & 3.09*
*State v. Leidholm*
*State v. Thomas*
*Ohio Revised Code § 2901.05*
*United States v. Peterson*

Questions:
- How should the law respond to people who kill others when they honestly, but mistakenly and unreasonably, believe they must use force for self-protection?
- Do traditional self-defense doctrines adequately deal with “battered woman syndrome”?
- Under *Thomas*, what is Ohio’s law on the duty to retreat? Does it differ from the MPC?
- How does recent revisions to ORC § 2901.05 change Ohio self-defense law?
- How would the *Peterson* case come out under the MPC? Under Ohio law?

C. Necessity 589-609

*The Queen v. Dudley & Stephens*
*Model Penal Code § 3.02*
*People v. Unger*
*State v. Warshow*

Questions:
- Would Dudley and Stephens have been found guilty if the MPC was applicable?
- Why might some states be resistant to the MPC’s approach to the defense of necessity?
- Why did the jury in *Unger* need five hours to deliberate after hearing Instruction No. 9?
- Do *Warshow* and other “political” cases present different kinds of “necessity” concerns?
D. Duress

State v. Crawford
Model Penal Code § 2.09
United States v. Contento-Pachon
Williams v. State

Questions: • What sorts of threats should be required to establish the defense of duress?
• How would Crawford and Contento-Pachon be resolved under the MPC?
• What is the rationale for the MPC’s limit on duress that was applied in Williams?

E. Insanity

People v. Serravo
Empirical data on NGI outcomes (p. 661-662)

Consider that there are four different traditional tests for the insanity defense B (1) M’Naghten, (2) control, (3) Durham, and (4) ALI B and that the insanity defense gets a lot of legislative and public attention. Think about why the insanity defense is the most commonly discusses and debated defense.

V. Attribution of Criminality

All of the attribution doctrines rely and turn upon their own distinct actus reus and mens rea requirements. Consequently, as we work our way through these materials, you should examine carefully and critically the requisite actus reus and mens rea for each route to criminal liability.

A. Attempt

ORC § 2923.02

Animating all of the law of criminal attempts are the competing questions of “Why punish attempts at all?” and “Why not punish attempts exactly as we punish completed crimes?” Consider whether any consistent set of theoretical or practical considerations can adequately answer these questions.
Questions: • What is the nature of the dispute between the majority and dissent in Lyerla? Which side’s position is consistent with the MPC?

703-719

Questions: • What are advantages and disadvantages of the various doctrines outlined at pp. 704-705 which have been used to distinguish “mere preparations” from attempts?
• How does Ohio law and the MPC distinguish “mere preparations” from attempts?
• How would Murray, McQuirter, Rizzo, and Staples be decided under the MPC?

B. Complicity

749-764, 780-789

ORC § 2923.03

Questions: • What should be the requisite actus reus and mens rea for accomplice liability?
• How do the MPC’s and Ohio’s definition of the mens rea for complicity differ?

C. Conspiracy....