



The principle of mens rea in modern criminal law and its limitations

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Abstract

This is achieved by providing a detailed account of the origins, writers, and legal concepts behind Crimes against Humanity, while also drawing attention to important ideologies. The analysis revealed that the prohibition on Crimes against Humanity stems from a liberal worldview, especially regarding its founder; yet, subsequent jurisprudence has shown a limited influence of liberalism. The paper found that there has been no uniform assessment of mens rea across various courts. Concerning the notion of constructive knowledge and the significance of determining purpose, opinions differ. The minimum level has been characterized as recklessness, however the baseline in case law might vary depending on the evaluation. This is very improbable in light of the present mens rea requirement under ICC law; the more practical standard is indirect purpose.

Keywords: ICC, Humanity, mens rea, constructive knowledge, Crimes

Introduction

Mens rea is a Latin term meaning "guilty mind." Per the principle, an action does not render an individual accountable unless the mind is equally guilty. Merely doing a criminal act or violating the law does not define a crime. In most instances, other elements proving criminal intent or other responsibility are necessary. Mens Rea is a specialized word. It signifies a severe mental disorder, the lack of which on any occasion nullifies the existence of a crime. It is an essential element of criminal liability. A criminal crime is judged committed only when an act, recognized as an offence by law, is performed voluntarily. An act is deemed criminal alone when executed with malicious intent. Before a criminal may be held responsible, it must be shown that he has a culpable mental state (Mens rea). For instance, inflicting violence on an assailant in self-defense is not a criminal act, but inflicting injury with the intent of retribution is. A guilty thinking modifies the nature of the offense accordingly. However, the need of a culpable mind varies with the offense. In the case of murder, the purpose is to kill; in theft, the goal is to steal; in rape, the intent is to engage in sexual intercourse with a woman without her permission, and so forth. Consequently, while Mens rea is an essential element for perpetrating a crime, its nature and intensity may vary across different offenses.

The mens rea requirements are the conventional criteria for establishing guilt. Evidence of an individual's mental state pertaining to many aspects of the action is used to determine responsibility, including purpose, knowledge, recklessness, and maybe carelessness. The difference between being liable for murder and not being liable for non-negligently causing death is the same as the difference between causing death with malice and causing death without malice. Similarly, if someone was conscious of another's closeness when they voluntarily moved their arm after touching another person's nose might determine their guilt for assault. Liability for stealing partially hinges on an individual's understanding that the property was owned by another party.

Literature review

Arlie Loughnan (2016) ^[5] To provide a uniform Code of conduct for all Australian jurisdictions, the Model Criminal Code (MCC) was drafted. It represents the zenith of faith in the practicality and utility of reforming criminal law via systematization, rationalization, and modernization. Chapter 2, titled "generic principles of criminal responsibility," is the meat and potatoes of the MCC; it defines concepts like carelessness and lays down the "physical" and "fault" elements of criminal crimes. This dissertation examines the MCC as a program for reforming criminal law and looks at

how it came to be and what forces shaped it at a certain point in time. Two separate perspectives, the "external" and the "internal," are considered in the research. I will be presenting two primary arguments. During a time of great change in crime and criminal justice, the MCC was formed as part of a "top down" effort to modify the laws in an effort to provide some stability to the chaos. Secondly, I argue that the essential ideas behind the MCC, criminal responsibility, are most meaningful when considered in the context of the language that shapes and evolves criminal law.

Chan (2011) ^[4] Everyone agrees that mens rea is related to guilt. For thousands of years, the main principle of "actus non fit reus nisi mens sit rea" has been in place. It follows from the first principles of criminal law, it is often insufficient for a conviction that the defendant commits the actus reus. It should not be. Although it is unfortunate to cause harm to another person, there must be some degree of responsibility due to the moral decay associated with a criminal conviction. Mens rea is necessary to prove that.

Ahadi, Fatemeh. (2016) ^[3]. This study critiques conventional views on Mens Rea and proposes a new definition. The challenge posits that the principles of criminal law need change to maintain their efficacy and relevance. This development necessitates a condition that ensures the preservation of adaptation to contextual circumstances and principles of criminal law. It is common to use the terms "culpable state of mind of the accused while perpetrating an offense under criminal law" or "rebellion purpose" when describing mens rea in Islamic law. A revised definition is offered here, with mens rea being defined as "the guilty connection of mind with the prohibited behavior," acknowledging that both views may change over time.' Compared to the old definition, the new one has two noticeable changes: first, "linkage of mind" is used instead of "state of mind." Secondly, the meaning of "culpable" as a separate element will differ based on common sense and specific situations. In addition to resolving long-standing problems with the mens rea in criminal law, the updated definition gives the concept more life.

Hallevy, Gabriel. (2015) ^[2]. Contemporary criminal law addresses the issue of personality, namely determining who qualifies as an offender under its provisions. This also pertains to the issue of application about the potential imposition of criminal culpability on a personal level. Upon encountering the terms "criminal" or "offender," the majority of individuals equate them with "malevolent." Criminals are seen as socially malevolent. Nonetheless, the parameters of criminality include not just grave transgressions but also activities that are not deemed "malevolent" by the majority.

Brown, Darryl. (2012) ^[1] This article analyzes contemporary developments in the judicial interpretation of mens rea requirements in federal offenses. Strict responsibility for some parts of crimes is prevalent and occasionally uncontroversial. However, courts lack dependable interpretative methods to ascertain which aspects do not need mens rea requirements, in alignment with legislative purpose and the normative principles of culpability in criminal law as a condition for punishment. An examination of recent federal court cases reveals two conflicting interpretations of the culpability necessary to warrant criminal punishment, particularly concerning the difference

in penalties for minor vs major offenses. A recent U.S. Supreme Court decision supports an approach in case law that adheres to the notion of proportional liability. This concept asserts that punishment must correspond to the degree of an actor's culpability, resulting in judicial interpretations that impose mens rea requirements on each normatively relevant component of a crime. This notion is sometimes recognized by courts, although inconsistently, and it has more support among academics and the Model Penal Code. However, in several cases, federal court rulings that delineate mens rea criteria for significant federal crimes do not conform to this perspective. According to this theory, mens rea is not required for every component of a crime, even those that result in significant sentence enhancements. The paper presents justifications for the non-instrumental normative attractiveness of this later perspective, which elucidates the ambivalence of courts and Congress over which of the two culpability principles should presumptively define federal criminal law. It also delineates some expenses associated with this dilemma. Disparate perspectives on culpability hamper judicial decisions on the application of statutory interpretation criteria for mental state requirements in federal crimes, resulting in uneven and unexpected outcomes across courts and offenses.

Crimes against humanity revisited

Current legal status

Article 7 of the International Criminal Court's statute lays forth the current definition of Crimes against Humanity, which is in addition to the Nuremberg Charter and the legislation of the special courts.

Article 7(2) of the ICC statute stipulates that Crimes against Humanity may only occur "pursuant to or in furtherance of a State or organizational policy." A multitude of scholars see this clause as inclusive of many non-state entities. Fifty-nine Bassiouni disagrees with this perspective. Because it does not need the existence of an underlying state plan or policy, the customary international law that is comparable to Article 7 ICC goes deeper. The Appeals Chamber in the Kunarac case and other national cases have argued that the Nuremberg Charter does not have a state policy aspect, and they have used this fact to support their position. Sixty While this is true, it doesn't mean there isn't a demand for state policy; after all, the Nuremberg Charter did incorporate the Nazi regime and its policies. Sixty-one The determination of mens rea must account for awareness of the organizational policy as a result of this factor.

Customary International law

Evidence from state practice and jurisprudence establishes a binding customary norm. Although the practice first arose about 1919, the Nuremberg Charter is often considered the historical nexus of positive law.² dozen Modern legal scholars generally agree that crimes against humanity are illegal under established international law, and this is especially true given that major pieces of legislation have included anti-crime language in an effort to codify this long-standing norm. There are 63 One thing to note is that because of this, the laws' customary counterparts are the same, especially when it comes to the sub offenses. Sixty-four Over fifty nations have now enacted national legislation criminalizing Crimes Against Humanity, with

differing substance and breadth. These should be regarded as "general principles of law" to some degree. Sixty-five Although the substantive substance may not be totally explicit, such general condemnation will ultimately lead to *jus cogens* status.

What does customary international law say about the *mens rea*? The matter becomes problematic in the *Tadić* case because traditional legal systems do not adequately handle criminal responsibility within the framework of collective wrongdoing, sometimes referred to as joint criminal operations. They prove that the judges used *dolus eventualis* or, in certain cases, a high degree of guilt by citing extensive case law beginning with the Nuremberg Charter. There are 67 This selective approach, according to Bassiouni, undermines the validity of culpability principles. A total of 68 Due to the few cases where customary law has been used by the prosecution, the *mens rea* criterion in cases where there is no evidence of coordinated criminal behavior is unclear.

Contemporary mens rea

Forms of Intent

There is a lack of precedent in the most recent version of the ICC statute that clarifies the *mens rea* requirement for crimes against humanity. Article 30 of the ICC code, however, has a *mens rea* provision, as mentioned in the introduction. The conditions for *mens rea*, such as recklessness or *dolus eventualis*, have been left out, leaving just intent and knowledge. This is not to say that other forms do not exist; what it means is that they are often not enough to prove criminal culpability. A total of 69 As part of the necessary element of will, the ICC Pre-Trial Chamber (PTC) confirmed the existence of *dolus eventualis* in the Lubanga Case. This consideration is relevant to the accused's situation intends to commit the offense in issue and knows that his acts or inactions will constitute the material component and does or does not do these things with the intent to create the tangible elements of the crime

If the suspect knows that the objective parts of the crime could come from his or her actions or inactions and agrees to or reconciles with the possibility of such an outcome, then *dolus eventualis*, which is defined as knowing the probable consequence of a conduct, applies, according to the PTC.

This means that the "intent and knowledge" requirement of Article 30 of the ICC cannot be satisfied by a person whose mental state does not allow them to see that the immaterial elements of the crime might result from their own actions or inactions. Consequently, the PTC adheres to the civil law principle of *dolus eventualis*, as opposed to the "recklessness" standard of common law, which fails to satisfy the minimal level established by Article 30, given that recklessness does not inherently necessitate the suspect's acceptance of the outcome. Although War Crimes are at issue in the Lubanga case, the subtleties of Article 30 are fundamental to the *mens rea* of COH.

Even before the Lubanga case, there were those who wanted to lower the *mens rea* criterion under Article 30 to include carelessness, positing that those who engage in significant and unjustified risks, such as shelling a community, should be held liable. Because of the grave gravity of the crime, it is debatable whether the same holds true for crimes against

humanity. The inclusion of *dolus* ultimately becomes very problematic in such cases.

Article 30 does not provide a lower level of intention than *dolus* directs in the second degree, or the so-called "oblique intent" of the common law tradition, according to the Bemba Decision on the Confirmation of Charges. The minimal level of intent recognized occurs when the suspect anticipates the objective criminal components as a result, although not as the main aim, yet proceeds with the crime nevertheless. Article 30(2)b states, "aware that it will occur in the ordinary course of events," but the chamber argued that they should have used "may occur" instead if they had meant to include "*dolus eventualis*" in the drafting. It is important to acknowledge that there exists, at most, a tenuous agreement about this matter throughout legal study. Law, Ideology and Punishment: Retrieval and Critique of the Liberal Ideal of Criminal Justice states, according to Norrie, that criminal responsibility is a distinct area, since it encompasses regulations that effectively safeguard persons against illegal interference and punishment. Therefore, it is illogical to depart from the law's protection of the individual in favor of the greater good. Subsequently, rationality gives way to rationalization as legal thinking becomes a mask for governmental goals. The argument asserts that the law insufficiently considers the basic social and historical difficulties inherent in society.

Analysis

Liberalism

The primary objective of this study was to investigate the presence of liberal inclinations within the prohibition of Crimes against Humanity or to determine whether there exists a systemic prejudice concerning discriminating purpose, given that the original provision's author was an advocate of liberalism. Nonetheless, I promptly encountered difficulties. Is it fair to say that the International Criminal Tribunal for the former Yugoslavia's laws are less lenient since they apply to all subcrimes, not only persecution, and because they need "national, political, ethnic, racial or religious grounds", as envisioned by Lauterpacht? According to the liberal perspective, the response would be affirmative.

Despite the fact that the practical application of Crimes against Humanity primarily deals with group conflict, I do not believe that an increased emphasis on group identity in the punishment of offenders is essential in every instance. This is despite my belief that liberalism is an inadequate ideology for addressing discrimination because it fails to understand structural bias and is reluctant towards group identity. That doesn't mean group blindness doesn't exist; it only means that the aforementioned case law hasn't made it clear. The criticism of state sovereignty, which allowed for prosecution, was clearly impacted favorably by liberalism. However, if the discriminatory grounds effectively transform into prerequisites for group identification, as shown by their propensity in the ICTR, their aim becomes dubious. It would be more judicious to omit them from everything except persecution, allowing genocide to address the principal horrors while preserving discriminatory purpose as a major aggravating factor for further Humanitarian Crimes. This would be in line with Lauterbach's goal and greatly broaden the article's reach.

Norrie's critique pertains to national law but is pertinent here since it offers a rationale for the incoherent formulation of mens rea judgments. Although I believe this contributes to the fundamental issue, the primary fault lies with the absence of articles governing mens rea, compounded by the relative novelty of this legal domain rather than liberalism.

Al-Shifa

Recent courts exhibit a greater focus on and comprehension of the mental component Using the Al-Shifa bombing as an example, this paragraph will analyze the first two research questions. Despite the proliferation of crimes against humanity and related subcrimes, no universally accepted definition of mens rea has persisted. It appears that the IMT found it difficult to address intent in an international context when imposing criminal liability. Instead, they shifted the focus to knowledge, which at times resembles Tadić's "constructive knowledge" concept, which assumes that being in a position of authority implies knowing something. The validity of drawing conclusions about a criminal's mental condition from secondary sources raises concerns about the rule of law, it can be an essential method for establishing mens rea, particularly in instances where true intentions are obscured by phrases like "humanitarian intervention" and "responsibility to protect," and where fatalities may stem more from neglect of marginalized populations than from ethnic strife. This, however, assumes that the facts and circumstances are unequivocal.

Dependence on conventional or customary law determines the usefulness of creative knowledge in any possible case involving the Al-Shifa bombing. Despite the fact that case law and the works of prominent publicists from many

nations included in this article support a customary presence, the application of constructive knowledge in regard to the ICC statute is prohibited by Article 30(3). In the same way that Tadić's knowledge may likely be inferred from the circumstances when, in accordance with customary international law, Clinton.

Present-Fault: Target and Definition Limits

Concepts of mens rea are developed and understood in relation to their specific goals. 'Intention' and 'knowing,' for example, are abstract concepts that cannot exist in a vacuum. Doing so would be unreasonable. We talk about intended outcomes and known facts when we talk about intentions or knowledge. Thus, when legal definitions of mens rea are being established, In order to give these definitions any weight, it is necessary to provide similar objectives or sets of targets. For mens rea terms to serve their normative purpose in an offense, clarity is not enough; correspondence is also necessary. Attributing "intention" to D is also illogical since we cannot see an abstract state of such a thing. By drawing a direct line between the defendant's free will and her illegal acts, mens rea words make it possible to hold her criminally responsible and differentiate between various degrees of guilt. That is why the ideas of legal mens rea need to be in perfect harmony with the deeds or events that we are assessing D's responsibility for in order to work.

Modern legal theory recognizes the relevance of target characteristics in determining mens rea, but it applies only to crimes involving present-conduct activity. Parts of present-conduct crimes that are intended for destruction are shown in Figure 1.

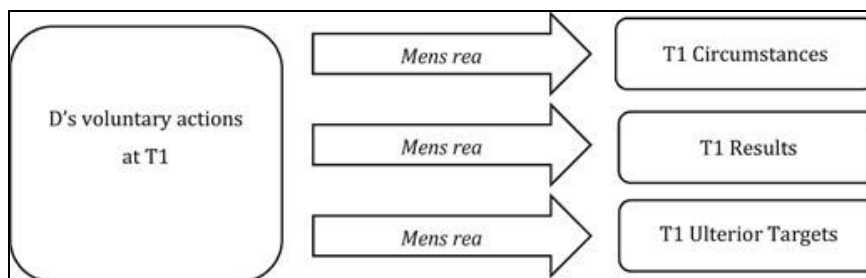


Fig 1: Present-conduct offences

The same mens rea phrase may be, and often is, defined variably in relation to distinct T1 target components. The same framework of connection is used in defining additional mens rea concepts, including 'recklessness' (already explored), 'knowing', 'belief', and others. These definitions lack descriptive or normative clarity without a specific aim;

furthermore, the varying targets (namely, T1 conditions and T1 outcomes) need distinct definitions of each mens rea word for effective correspondence.

However, this has its limitations. The new objectives often reside only inside D's mens rea; nevertheless, in instances of complicity, they may need completed activity.

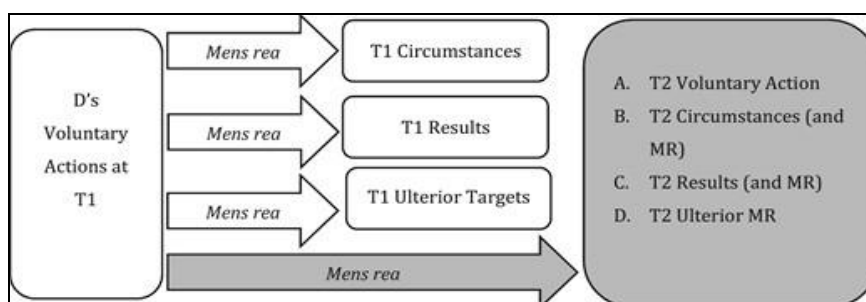


Fig 2: Future-conduct offences.

In what ways are mens rea phrases connected to T₂ objectives? In a conspiracy case, what does it mean for D to "intend" the elements of a future crime at time T₂? Crucially, there is some ambiguity in the response. The confusion stems from the fact that, although the circumstances and outcomes of D's T₁ acts may be defined differently, modern criminal codes and other legal sources often fail to recognize a difference in the definition of mens rea when it comes to T₁ and T₂ components. Differentiation is obviously required to understand the practical application of such mens rea notions.

Issues of this kind are seldom recognized by the judiciary, where mens rea terminology is often used without precise explanation. However, in instances when definitions are significant and disputed, as we will examine in detail later, issues become evident. Along with judicial opinions, the principal authority on the mens rea of conspiracy presents a plethora of conflicts and ambiguities, such as openly questioning the possibility of future-oriented "knowledge," wondering if "belief" can satisfy a "knowledge" requirement, and even (in dissent) challenging the construal of a plan to proceed "even if" a criminal situation exists as a conditional intention. Twenty-one, as Lord Hope rightly points out, the concepts underlying mens rea for conspiracy are easy to state, but how to put them into practice is far more complicated and has been the subject of heated debate from the beginning. This encompasses all crimes related to behavior in the future as well. The Court of Appeal in *Hussey* noted that "one who contemplates stealing solely if the found item is deemed valuable does not possess a present intention to steal" because it became complicated to distinguish between present (T₁) and future (T₂) settled intentions when trying to understand mens rea in burglary and attempts. These issues are not exclusive to individual cases or offenses; they are systemic in nature and need a systemic solution.

Conclusion

The ICTR may permit a threshold as little as carelessness for the underlying conduct, provided it is consistently accompanied by a particular purpose to discriminate. The agreement over the minimal level of the ICC mens rea is tenuous. Indirect purpose is the most basic type, according to the *Bemba* judgment. The most basic form of CIL is still not clear. In the context of criminal collaboration, *Tadić* emphasizes very low limits. According to the case law cited in this article, *dolus eventualis* is a more reasonable lower requirement, given its frequent occurrence in the jurisprudence of several courts and legal literature.

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