INTRODUCTION

The criminal law identifies certain wrongful behaviour that society regards as deserving of punishment. People breaching the criminal law are labelled as criminals and are penalised by the state. Given these severe consequences, the criminal law is normally reserved for limited kinds of wrongdoing.

This chapter will analyse the major considerations affecting the decision whether certain wrongful behaviour should be regarded as a crime. One of these is the principle of individual autonomy whereby people may conduct their lives as they choose with as few restrictions as possible. This principle promotes minimal criminalisation. There is also the related notion of ‘individualism’, which regards people as capable of choosing their own courses of action. According to this notion, people who lack the capacity to choose should not be made criminally responsible for their actions. A competing consideration is the community welfare principle according to which the collective interests of society must be protected. This principle views individuals as belonging to a wider community that can only be sustained if certain duties are imposed on its members. The criminal law is relied on as one mechanism to ensure that these duties are adequately discharged. These duties serve to protect the rights of other members of the community and, more broadly, the values and interests of the community that are seen as essential to its successful functioning. Hence, the community welfare principle asserts that individual autonomy may have to be overridden by the collective interests of the community. The criminal law is very much the product of the interplay between these two competing principles of individual autonomy and community welfare.

The first part of this chapter spells out the aims and functions of the criminal law. In the second part, certain specific policies and principles influencing the perimeters of the criminal law are explored. Also included is a brief consideration of the sources of the criminal law and how the law is or should be laid down. The third part covers the essential ingredients of a crime, namely, harm-inducing conduct, a mental or fault element, and the absence of any lawful justification or excuse, or a legally recognised mental incapacity (that is, defences). The fourth part considers certain concepts that the criminal law has devised to extend the scope of criminal responsibility. The discussion will often engage with the struggle between individual autonomy and community welfare. It will be observed how justice or fairness is achieved for both individuals and the community to which they belong through a carefully reasoned balancing of these competing considerations. This need to balance individual autonomy with community welfare is so vital that it appears as an Article in the Universal Declaration of Human Rights:

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

1 Much of this chapter is inspired by A. Ashworth and J. Horder, Principles of Criminal Law, 7th edn, Oxford University Press, Oxford, 2013.
(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.²

In the final part, we discuss two recent developments pertaining to criminal responsibility that go beyond the discussion covered by that stage. The first concerns efforts by lawmakers to render corporations criminally liable by modifying the conventional principles of criminal responsibility that are geared towards natural persons. The second is the creation of the International Criminal Court to try certain crimes, and the enactment, at the international level, of a set of general principles of criminal responsibility.

AIMS AND FUNCTIONS OF THE CRIMINAL LAW

The overall aim of the criminal law is the prevention of certain kinds of behaviour that society regards as either harmful or potentially harmful. The criminal law is applied by society as a defence against harms that injure the interests and values that are considered fundamental to its proper functioning. These interests and values cover a wide area. They include the bodily integrity of people, the security of property, protection of the environment and moral values.

It may be easy enough to state this general justifying aim of the criminal law. But the problem comes when we have to locate the key to deciding whether an interest or value is so fundamental as to warrant the protection of the criminal law. This problem is compounded by several factors. First, there are other fundamental interests or values, also crucial to the proper functioning of society, that are incompatible with the threat of criminal sanction. Second, there are methods of social control or prevention besides the criminal law. Third, the primary aim is blurred by its increased use of the criminal law to regulate conduct for reasons of economy and expediency. There is a growing sphere of legislative activity that uses the criminal sanction to endorse policies that stand apart from harm prevention. We shall elaborate upon these factors in the course of our discussion.

MORAL WRONGNESS APPROACH

One suggested key to deciding whether behaviour should be criminalised is ‘moral wrongness’. Lord Devlin, an English judge, was a keen proponent of this stance.³ He regarded morality as underpinning the social fabric of society, and immoral behaviour as eroding that fabric and consequently destabilising society. He therefore had no hesitation in advocating the use of the criminal law to deter ‘immoral’ behaviour. Lord Devlin applied the strength of feelings of ordinary people to define moral wrongness. If conduct arouses feelings of indignation or revulsion in these people, it is a good indication that the conduct strikes at the common morality and is a proper object of the criminal law. But herein lies a major weakness of Lord Devlin’s approach. His definition of moral wrongness is far too imprecise as it leaves the matter to be decided by mere feelings of disgust. Such feelings may well stem from irrational prejudices rather than reasoned moral indignation.

² Article 29. The Declaration was adopted by the United Nations General Assembly in 1948.
INDIVIDUAL AUTONOMY APPROACH

Another suggested key to deciding whether the criminal law should be used is the ‘harms to others’ approach. This may be described as individualistic liberalism. This approach places individual autonomy at a premium and contends that this and its attendant individual freedoms are vital to the proper functioning of society. The approach calls for individuals to be accorded as much freedom as possible, subject only to the minimum restrictions required to provide other individuals sharing the community with those same freedoms. The criminal law should therefore be used only against behaviour that injures the rights and interests of these other people, in other words, behaviour that harms others. Thus, under this approach, homosexual behaviour between consenting adults should not be criminalised since they have mutually agreed to engage in this behaviour. Accordingly, these people should not be subject to the criminal law however reprehensible or immoral their behaviour might appear in the eyes of some.

It should be noted that this ‘harms to others’ approach relates to individuals who have reached a sufficient degree of mental maturity to competently decide what is best for themselves. Proponents would permit the use of the criminal law to protect individuals who lack such maturity, for example, children and intellectually disabled people. This may be described as legal paternalism as it conveys an image of the law acting as a protective parent or guardian to especially vulnerable or dependent individuals. Thus, the criminal law may be applied to prohibit children below a certain age from engaging in activities such as homosexual or heterosexual intercourse, drinking alcohol in pubs, or driving a motor vehicle on a public road. These activities are criminally proscribed not because they are harmful in themselves, but because they have potentially harmful consequences that immature people may not sufficiently appreciate.

A criticism against this approach is that it fails to explain adequately the use of the criminal law in certain areas. For instance, few would today disagree that the deterrent effect of the criminal law should be applied to ensure that safety belts are worn by drivers, or that motorcyclists should wear helmets. Paternalism is an inappropriate explanation here since we are concerned with individuals who should possess a sufficient degree of maturity to make their own decisions about the risks of such activities. It could be contended that these activities might cause harm because the participants may injure themselves and become a financial burden or source of hardship to their families or the state that has to care for them. However, these harms are, at best, indirect and their recognition will considerably reduce the limiting principle that makes the approach so attractive.

COMMUNITY WELFARE APPROACH

Perhaps a better explanation for the criminal proscription of such behaviour lies in what we have termed the community welfare principle. This principle justifies the use of the criminal law to protect the continued physical well-being of members of a community. The principle would also take into...

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5 This was the view of Lord Mustill (dissenting) in the House of Lords decision in *R v Brown* [1993] 2 WLR 556 at 599–600, a case involving a group of sado-masochists who willingly and enthusiastically participated in inflicting violence against one another for sexual pleasure.

account the financial cost to the community of permitting activities such as not wearing seatbelts and helmets to continue unrestricted.

It is worthwhile observing here the material difference between the ‘harms to others’ approach and the community welfare principle. We have already noted that the former emphasises individual autonomy and confines the role of the criminal law to proscribing activities that impinge on the freedoms of other individuals within the same community. In contrast, the community welfare principle places a premium on community interests and would be prepared to override individual autonomy for the greater good of the community. Thus, the principle may impose criminal liability on drug users or on people driving without securing their seatbelts out of concern for the welfare of the community. This would be done at the cost of infringing upon their individual freedom to choose their own course of action. It should be added that the community welfare principle is not confined to explaining those activities that cannot be adequately explained by the ‘harms to others’ approach. The community welfare principle can and does serve as a key to deciding which behaviour should or should not be criminalised in respect of a full range of ‘antisocial’ behaviour.

To summarise our discussion thus far, the overall aim of the criminal law may be stated as the prevention of harm. But the criminal law would be drastically over-used if it were to proscribe each and every activity that causes harm or has the potential to do so. The problem for lawmakers is to determine which kinds of harmful activity should fall within the ambit of the criminal law and which should fall outside it. Two competing influences have been located that have a significant bearing on this determination—the principles of individual autonomy and community welfare. Neither can claim to have taken predominance over the other so that, in achieving the overall aim of preventing harm, the criminal law has been moulded in ways that account for both of these principles.

In your view, what is the key to deciding whether an interest or value is so fundamental as to warrant the protection of the criminal law?

**MAJOR FUNCTIONS**

We now turn to examine certain major functions of the criminal law. These involve the processes, operations or activities that the criminal law normally discharges. One of these functions is to distinguish civil wrongs from criminal wrongs. A person who is harmed by a tort or by a breach of contract may sue for damages or obtain some other remedy in a civil court. He or she has been ‘wronged’ but the harmful conduct may not be regarded as sufficiently serious to constitute a crime. Not all social mischiefs will have aggrieved victims wanting remedies from a civil court. There are some mischiefs that harm the public rather than individual victims. In these cases, the criminal law may be justified in stepping in to ensure that such harmful activities are controlled, even though the mischief may constitute only minor incursions on basic social functioning. These have been described as ‘victimless’ crimes and include activities such as drug use, prostitution, distribution of obscene literature, and some forms of gambling. Whether the criminal law is the best measure to control this behaviour is open to debate.

Distinguishing civil from criminal cases is only a preliminary function of the criminal law. Its primary task is to stipulate the degree of seriousness of criminal conduct. We need to determine not simply

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7 Torts are civil wrongs that attract compensation by way of damages. Some common torts are negligence, trespass, nuisance and defamation.
whether a social mischief is sufficiently serious to be made a crime but, if a crime, how serious it is when compared with other crimes. Knowing the degree of seriousness of criminal conduct is vital to selecting the proper label of offence and the appropriate penalty. It has also wider practical consequences for matters such as the legality of arrest without a warrant and of searches, the decision to caution or to prosecute, to grant bail, whether to have the case tried before a magistrate or a judge, to try a case with or without a jury, the sentencing options available, and the decision whether to release on parole.

What considerations are material in assessing the relative seriousness of criminal conduct? One factor is the impact of the conduct on victims of the particular kind of crime. Not only the physical injuries, but also the psychological trauma of victims of violent crimes may be taken into account. The monetary value of property crimes also affects the degree of offence seriousness. Another factor is the extent of culpability of the offender. This may be gauged according to the offender’s mental state in relation to the offence. Thus, intentional wrongdoing would normally be assessed as more culpable than recklessness, which in turn would be more blameworthy than negligent behaviour. A third factor is the degree of likelihood of harm. A case involving conduct that was virtually certain to cause harm would obviously be more serious than one where the risk of harm was remote. Similarly, a case where the harm actually occurred would normally be regarded as more serious than one where the harm did not materialise.

This very brief consideration of how offence seriousness is assessed should be sufficient to indicate its complexity. Numerous value judgments are involved as well as a multiplicity of variables relevant to the assessment exercise. Difficult as the task is in ranking offences, justice to both offenders and their victims requires every effort to be made. To reduce arbitrariness and inconsistency in ranking offence seriousness, it may be necessary to adopt a framework upon which lawmakers can pin their deliberations.

So far, we have only discussed crimes that harm the fundamental values and interests necessary for proper social functioning. However, there is an ever-growing proliferation of offences that do not fit this description. These are minor offences that use the threat of punishment to achieve the smooth running of day-to-day social intercourse and activities such as road traffic flow, business regulation, urban planning, licensing procedures and so forth. Accordingly, they have been described as ‘regulatory offences’. These offences are often made strictly liable by the legislature so that mere proof of the commission of the proscribed conduct is sufficient to establish the charge against the accused without additionally having to prove that the accused intended, knew of or was reckless of the wrongdoing. But is the use of the criminal law justified in these areas? While the smooth running of these activities may be necessary to realise social and individual goals, it is certainly not as central to social functioning as the protection of physical integrity or the security of property. These regulatory offences seem to have emerged on the basis of economy and expediency. The criminal law and criminal justice system lend themselves to providing cheap, effective and politically convenient means of controlling such comparatively minor infringements. Whether the criminal law should function in these spheres is highly debatable. Such an extension of its operation does not sit well with the overall aim of the criminal law of protecting values and interests considered fundamental to proper social

8 The concepts of intention, recklessness, knowledge and negligence are dealt with later in this chapter.
10 See further below, p. 25.
functioning. Furthermore, the stigma and consequences of criminal conviction may be too drastic for these kinds of infringements. It is our view that the better course would be for these infringements to be regulated by some other form of enforcement—for example, insurance, taxation and licensing.\textsuperscript{11}

Do you agree with the authors’ view that so-called ‘regulatory offences’ have no place in the criminal law?

**SOURCES, PRESCRIPTIONS AND INFLUENCES ON THE CRIMINAL LAW**

In this part, we shall deal first with the sources of Australian criminal law—where it is to be found. Next, the form in which the law is presented will be examined. There then follows a brief description of the major categories of crimes. The final section will consider certain policies and principles that narrow or expand the contours of criminal responsibility.

**SOURCES OF CRIMINAL LAW**

There is no single body of criminal law governing the whole of Australia. Each State and Territory has its own set of criminal laws. Added to these is Commonwealth (or Federal) criminal law regulating matters within the domain of the constitutional powers of the Commonwealth, such as international and interstate trade, Federal taxation, and environmental control.

The criminal laws of these various Australian jurisdictions may be divided into two forms: statutory law, which is enacted by the legislature; and ‘common law’, which is formulated by judges. The Commonwealth, Queensland, Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory have criminal codes. These are statutes that comprehensively lay down the criminal law. New South Wales, South Australia, and Victoria have much of their criminal law formulated and developed by judges. However, in recent years, these common law jurisdictions have witnessed a noticeable increase in criminal legislation. The effect of this is to have the common law gradually replaced by statute.

This variety of criminal laws in Australia is unsatisfactory. While there are some core criminal legal principles commonly shared by all the States and Territories, there remain material differences in much of the substantive criminal law of these jurisdictions. These differences concern such fundamental matters as the definitions of offences, their range of seriousness, the definitions of defences, and the prescribed punishment. The result is inconsistency and incoherence in outcomes when dealing with like cases in different jurisdictions. Thus, a person performing some criminal conduct in, say, Queensland, may be convicted of a different offence and receive a different punishment from a person who had performed the same conduct in Victoria. Justice dictates that persons engaged in criminal behaviour should be treated in the same way throughout this country.\textsuperscript{12} Such a sentiment led the Attorneys-General of all the Australian States and Territories to initiate a model criminal code for Australia.\textsuperscript{13} Regrettably, after more than two decades, there is little evidence that the State and


\textsuperscript{13} This occurred in 1991 with the establishment of the Model Criminal Code Officers Committee. For the background to this Australian initiative, see G. Scott, ‘A Model Criminal Code’, Criminal Law Journal, 16, 1992, p. 350.
Territorial Governments are prepared to replace their existing criminal laws with the one proposed by the Model Criminal Code Officers Committee. Hopefully, the lead taken by the legislatures of the Commonwealth and the Australian Capital Territory in adopting most of the model criminal code will eventually persuade the other governments to follow suit.

PRESCRIPTION OF CRIMINAL LAW

A national criminal code would bring consistency to the criminal law of Australia. This development would have another welcome effect on those jurisdictions whose criminal law is presently founded on a common law base. It would mean that the criminal law would be prescribed and developed primarily by the legislature rather than by judges. This is more in accord with constitutional precepts—since the criminal law is society’s most powerful measure in regulating social mischief, it should be the legislature who decides what that law should be as opposed to a small number of unelected judges. The legislature, comprising elected representatives of the community, is best equipped to express the views of society on such questions as: Is a particular interest or value fundamental to proper social functioning? If so, are there other competing interests or values that should prevail? Is the criminal law the best medium to protect these interests and values?

Another reason for preferring the criminal law to be cast in statutory form is the greater certainty this achieves when compared with the common law. With the law laid down in statute, members of society are given fair warning of their social responsibilities under the criminal law and can readily find these out. This adheres to the principle of individual autonomy with its notion of sufficient choice. Choices are real if the law clearly spells out in advance the consequences of taking certain proscribed actions.

In contrast, the history of the common law has been to create new offences whenever judges regarded conduct, not previously the object of the criminal law, to be deserving of punishment. The common law has also tended to be much vaguer in its pronouncements of the criminal law. This might have been consciously done by the judges to provide room for further creativity should some future occasion so require. The stance of the common law can be supported on the ground of social defence. The judicial power to create new offences and the vagueness of existing criminal law are needed to deal with new variations of social mischief without having to await the lumbering response of legislature. The main criticism against this approach is that it denies individual autonomy (and consequently fairness to individuals) by retroactively penalising previously non-criminal conduct. Indeed, such retroactivity breaches an Article in the Universal Declaration of Human Rights, which says that:

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.

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14 Over the years, the Model Criminal Code Officers Committee has produced several chapters of the Code, commencing with ‘General Principles of Criminal Responsibility’ in 1992.
16 There has been no new common law offence created over the past few decades; the modern tendency of the courts is to express the need for a new offence and leave its creation to Parliament.
17 Article 11(2).
As for the point about the lumbering response of legislature, the pace of legislative enactment has been noticeably much quicker in recent years.\textsuperscript{18}

With the move towards greater statutory prescription of the criminal law, what role is left for the courts? This brings us into the realm of statutory interpretation. Judges, with their legal training and expertise, are still the best people to attend to this task. Where the statutory formulation is clear, the court cannot deviate from it. Where the formulation is open to debate, which is often the case, the judges can select from a range of interpretative principles. The judges exercise considerable discretion in both the selection and appreciation of these principles.

The statutory prescription of the criminal law makes it readily accessible to the public. It also provides the impetus to pronouncing the law in simple language so as to be easily comprehensible to ordinary people. Furthermore, the process of encasing the criminal law within the structure and terms of a statute in turn encourages the exercise of ranking offences according to their seriousness.\textsuperscript{19} As we have noted earlier, justice requires that a determined effort should be made to perform this task.

**CATEGORIES OF CRIME**

It is not possible here to mention all the multifarious forms of harms that the criminal law proscribes. The main categories of crimes (not necessarily in order of offence seriousness) may be summarised as follows:

- **Crimes involving death.** Homicide, which is causing death to a human being, is arguably the most serious harm. The crime of murder with its special label and the severity of punishment it attracts places this offence above all other offences involving homicide. A little lower down the scale is attempted murder. This is followed by manslaughter and offences such as infanticide and causing death by reckless driving.

- **Crimes involving bodily injury.** Besides offences causing death, there is a whole range of other offences designed to protect bodily integrity. Psychic assault (threats to apply unlawful force) sits at the least serious end of the range. At the other end are physical assaults resulting in very serious bodily injury that brings the victim close to death. In between are numerous varieties of assault, depending on such factors as the degree of force applied, the injury suffered, and the mental state of the offender. Sometimes, the status of the victim is also significant—for example, the relatively serious offence of assaulting a police officer while in the execution of her or his duty. Sexual offences also vary widely and range from minor sexual contact to sexual assault involving serious physical violence.

- **Road traffic offences.** Many of these offences are minor in nature and perform a regulatory function promoting the smooth flow of traffic. However, included in this category are much more serious offences that pose a danger to the lives and safety of other road users. For instance, there is reckless driving and its less culpable counterparts, negligent driving and drunk driving. Besides seeking to prevent bodily injury, road traffic offences legislation seeks to provide protection against damage to property.

\textsuperscript{18} For example, the proliferation of sexual assault legislation in New South Wales, South Australia and Victoria, with many of the new offences enacted soon after a few months of public debate. The rapid enactment of antiterrorism offences is another example, although this can be explained by the imminent global threat posed by terrorists: see further Chapter 10, pp. 359–60.

\textsuperscript{19} Offence seriousness is normally measured by the type of penalty prescribed for the offence. See Chapter 7.
• **Occupational health and public safety offences.** These are offences proscribed to prevent physical injury in the workplace, from the consumption of goods, in the use of public transportation, and so on. In the past, these offences tended to be regarded as minor and regulatory in nature when compared with the traditional offences involving bodily injury. However, with greater enlightenment on the extent of injury suffered by victims of these offences, they are beginning to be accorded a much higher rank on the scale of offence seriousness.

• **Offences against public order.** These offences range from such serious offences as rioting and violent disorder to minor ones such as offensive behaviour or the use of offensive language. They are designed to enable members of society to move about freely without fear of violence, and be spared abuse or nuisance. For offences at the lower end of the range, there is a danger of their being misused by the police to serve or protect their own interests.  

• **Offences against the state.** Treason, sedition, and providing assistance to the enemy in time of war are examples of this group of offences. Their proscription seeks to protect the foundations of the state and maintain the stability of the government, which is considered vital to maintaining peace and good order. Closely related to these offences are those that have recently been enacted to combat the threat of terrorism. As might be expected, these offences are placed very high on the scale of offence seriousness since their proscription seeks to protect national security.

• **Property offences.** The most serious of these offences is robbery (theft accompanied by the use or threat of physical violence). Lower down the range is theft, which is the deprivation of another’s property without consent and with the intention of doing so permanently. Then there are the offences of damaging or destroying another’s property that, as with theft, are proscribed to protect property interests. Next, are those offences that have an element of fraud—for example, where property has been obtained by deception or by falsifying accounts. The offence of receiving stolen property is proscribed to punish those who encourage the commission of other property offences by making it economically worthwhile.

• **Environmental offences.** Legislation regarding these offences seeks to prevent the pollution of water, air and the earth and to generally maintain a healthy environment. In recent years, there has been an increased awareness of the long-lasting ill effects of pollution on food, health and the environment. This has resulted in raising many environmental offences up the scale of offence seriousness. Industries that produce hazardous wastes are being more closely monitored and made to implement antipollution procedures under threat of heavy penalties.

• **Paternalistic offences.** Some of these have already been discussed such as failure to wear seatbelts and helmets. Gambling, prostitution, the distribution of obscene literature and drug use may be added to this list. Legislation regarding these offences is sought to be justified on the ground that it protects vulnerable people from harming themselves. These people are usually the very young, but adults are also included on the basis that the general welfare and well-being of the community is promoted by discouraging such potentially harmful activities.

• **Drug offences.** While the criminalisation of drug use may be motivated by paternalism (as used in a wide sense), there are several other offences connected with drugs that are seen to exhibit
aggravating features. These are drug trafficking, importation, cultivation and manufacture. These offences are placed high on the scale of offence seriousness because they are designed to eradicate the supply of drugs. The whole issue of drug offences, particularly in relation to so-called ‘soft drugs’, is a matter of continuing public debate.

**INFLUENCES ON THE PERIMETERS OF CRIMINAL RESPONSIBILITY**

In this section we shall consider certain policies and principles contained in the criminal law that influence the ambit of criminal responsibility. Some of these will have the effect of narrowing the limits of the criminal law while others will have the opposite effect.

The policy of *minimal criminalisation* advocates that the criminal law should be used sparingly due to its coercive and liberty-depriving consequences. Individual autonomy is placed at a premium with the individual given as much freedom of choice as possible. The criminal law should therefore be confined only to censuring those activities that definitely harm the values and interests fundamental to proper social functioning.

Opposed to minimal criminalisation is the policy of *social defence*. This sees individuals as members of a wider community whose social arrangements may need to be protected by the criminal law. The criminal law is permitted to infringe upon individual autonomy should this be required to protect the community from threats to peace and order. We have previously noted this same tension between the two policies when discussing the principles of individual autonomy and community welfare.

The principle of *liability for acts but not omissions* also narrows the ambit of the criminal law. According to this principle, criminal responsibility should be confined to positive conduct. Conversely, the criminal law should not penalise people for failing to take action to protect the bodily integrity or property interests of others. It can be seen that individual autonomy is once again maintained since the principle asserts that people should be free to decide whether or not to act in these circumstances. Proponents of this principle would be prepared to recognise certain exceptions. Positive duties to act may justifiably be imposed by the criminal law where, for example, a parent–child relationship exists, or where the accused had voluntarily assumed the care of the victim. However, these exceptions are still consistent with individual autonomy since the positive duty is imposed only on people who have voluntarily chosen through their previous actions to protect the victim. Accordingly, a failure by these people to protect their charges may deserve punishment.

In contrast, the principle of *social responsibility* asserts that the act–omission distinction should give way to the imposition of duties that help to promote a value or protect an interest beneficial to society. In partial deference to individual autonomy, there is the proviso that the discharge of the duty is easy and involves no risk to the actor.

The principles of justification and excuse also operate to narrow the ambit of criminal responsibility. Under the principle of justification, society approves of the accused’s conduct and

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23 For a discussion of the various categories of duties under common law, see *R v Taktak* (1988) 34 A Crim R 334; *Burns v The Queen* (2012) 246 CLR 334. The codes expressly impose duties to act: see, for example, ss. 285–90 of the Queensland code; ss. 262–7 of the Western Australian code; and ss. 144–52 of the Tasmanian code.

24 Thus under French criminal law, there is a ‘duty of easy rescue’: see A. Ashworth and E. Steiner, ‘Criminal Omissions and Public Duties: The French Experience’, *Legal Studies*, 10(2), 1990, p. 153. No Australian jurisdiction recognises such a duty. The closest to doing so is s. 155 of the *Criminal Code Act 1983* (NT), which criminalises ‘any person who, being able to provide rescue … to a person urgently in need of it and whose life may be endangered … callously fails to do so’.