

Palgrave MacMillan Law Masters

麦克米伦法学精要丛书·影印本



【英】乔纳森·赫林

Jonathan Herring

刑法

CRIMINAL LAW

第三版

3rd edition



法律出版社
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Jonathan Herring

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出版说明

1843年,来自苏格兰的麦克米伦兄弟在英国创立了麦克米伦出版社,筚路蓝缕,以启山林。一百多年来,这家出版社早已发展成为国际知名的跨国出版集团,以出版学术著作和高等教育教材而享有盛誉,其包括法学在内的人文社会科学出版物更是广有嘉声。

麦克米伦法学精要丛书是麦克米伦近年来重点推出的一套法学教材。风格明晰简约,内容深浅适中。丛书以方便学生学习为目标,阐发原理,评介法律;析解制度,品读案例;引导思考,提供练习。既适用于专业课程的学习,也有助于职业技能的改进,受到学生与教师的广泛欢迎。对我们非英语国家的学生和研究者来说,这样一套教材恰好是学习、了解英语国家法学和提高法律英语水平的极好读物。

法律出版社作为中国最大的法律图书出版机构,一直致力于法律图书的全品种出版。2002年,成立专门的法律教育出版中心,将服务于中国法律教育事业的发展引为重责。在从事法律教育出版的过程中,我们一直认为,中国学子不仅应该阅读中文法学教材,通过母语了解本土或域外法学知识,同时也应该眼界高远,进一步阅读外文法学教材与文献,在原汁原味中学取域外知识,提升专业水平,适应日益全球化的现实需要。1999年,本社曾经出版英文影印本的美国法精要系列丛书,受到佳评。如今,我们再次引进这套麦克米伦法学精要丛书,影印出版,期冀于在中文教材之外,为广大学子和研究人员进一步提供优秀英文教材读物,谨献绵薄之力,给进步中的中国法治事业和进步中的中国年轻一代。

本书为《刑法》,主要论述英国刑法问题。细心的读者在阅读过程中,可以就相关问题与美国刑法进行有趣比较,探寻普通法体系下具体制度的差异。

比较权威的论述英国刑法的著作,有两本很值得提及,它们是Glanville William的 *Text of Criminal law* 与 Smith & Hogan的 *Criminal Law*。本书和它们相比,在体例安排与主题铺设方面有如下特点:

一、以刑事责任为解析刑法理论的工具,本书的一系列问题都围绕此核心展开。同时,在应对不常见与新型犯罪方面,刑事责任理论不失为有效的裁断根据(内容可参见第一部分)。

二、作为刑法基石的普通法,一般不会发展出抽象的法律原则,但可以寓原理于具体的判例与特定的犯罪之中。由是,本书花了比较大的篇幅介绍了英国刑法中主要的犯罪类型——对人犯罪与对物犯罪的具体情形,同时,这几乎也是刑事犯罪的基本分析模式,一般的犯罪都可以囊括其中(内容详见第二、第三部分)。

三、沿着刑事责任的主线,作为内容的衔接,第四部分主要介绍了减免刑事责任的法定事由,也即程序法中的辩护;第五部分主要介绍了承担刑事责任的特殊情形——共犯与未完成罪。

四、鉴于英国受欧洲人权法院判决的约束,本书最后介绍了1998年人权法案(The Human Rights Act 1998)对英国刑事法的影响。这也是该书的一特色。

本书用平实的语言深入地阐述了英国刑法的基本原理,在主题论证思路的选择方面可以说充分体现了“普通法的精神”。首先,它没有泛泛地讨论刑法理论问题,而是将其分散到具体的犯罪分析之中。这种避免宏大叙事的空洞和植理论的种子于坚实的司法实务之中的“化整为零”的论述策略值得关注。同时,这种策略也防止了单纯分析判例所可能导致的“只见树木不见森林”的弊端(具体可以参考第8章关于性犯罪的论述)。其次,在具体犯罪的讨论中,充分地结合了刑事实体规则与程序法的规定两方面内容。这样有可能使某些实体问题讨论不够深邃,但它的优点在于对具体犯罪的认知方面能够提供给读者一个完整的、动态的清晰图景。比如,第二章专门介绍了法官与陪审员在刑事审判中的作用,而几乎每种犯罪的讨论中都涉及到了刑事证据与证明责任问题,等等。

尚需附带说明的是,该书每章具体内容的组织也有其特点——比较详尽与周全:首先开门见山的列出本章的关键词,且第一小节基本上也是该章的导论;然后详尽地介绍主干内容,接着是对本章内容的总结;其次是相关判例摘记,最后是提供更广泛了解相关主题的参考书目,有些章还附有相关主题争论的热点问题。这样,读者根据自己的具体需求可以选择阅读。

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Preface to the First Edition

This book is intended as an introduction to the basic principles of criminal liability and some of the most important criminal offences. The offences have been chosen (from among the vast range of criminal offences) to illustrate clearly the principles underlying the criminal law; they also feature in most courses on substantive criminal law. There is a fundamental need for the law (and especially the criminal law) to be clear, and its content easily understood by the lay person, but first-time students of the subject often find its key concepts difficult to grasp and the major textbooks somewhat formidable. The Mastering Law series should provide a comprehensible account of major areas of the law and an introduction to the controversy and debate that is inseparable from any serious study of the law. This book was commissioned by the late Lady Oliver, who gave me much encouragement, and who was a firm believer in the need for accessible student texts as an adjunct to large-scale scholarly and reference works. Certain features of the book have therefore been designed to help those who are studying criminal law for the first time. There is a Case Notes section at the end of each chapter which gives, in respect of the key cases mentioned in the text, a short account of the facts and decision. Cases that are noted in this way are marked with an asterisk when they are first mentioned in the text, and the page on which the Case Notes appears is printed in bold type in the Table of Cases. In addition there is a selective bibliography (giving references to works mentioned in the text) and list of further reading for each chapter. Of the books listed, two are worth special mention; all students of English criminal law will come to know well Glanville Williams's *Textbook of Criminal Law* and Smith and Hogan's *Criminal Law*. The section of Exercises at the end of each chapter is designed both to test the reader's understanding and to stimulate further thought on the topics covered. The Workshop section gives an opportunity to practise the practical application of the rules and principles discussed. The book endeavours to state the law as at the end of March 1988.

MARISE CREMONA

Preface to the Third Edition

The third edition of this book sees the introduction of several new features. At the end of each chapter there is a section entitled *Hot Topic*. This provides an opportunity for a more in-depth analysis of a subject that is particularly topical or has received attention from academics in recent years. As the prospects for a criminal code now seem dim there is no longer a chapter devoted to it, although it is covered in Chapter 2. The book includes a chapter specifically on the potential effects of the Human Rights Act 1998, although references are made throughout the book to that legislation's potential impact. The new edition has also been thoroughly updated and many sections have been completely rewritten. The fact that the House of Lords has produced several important and highly controversial decisions in the past few years demonstrates that criminal law continues to be a vibrant, if contentious, subject of legal study.

Although this edition does not bear Marise Cremona's name her influence can be seen throughout the book. I have also enjoyed her advice and support during the preparation for this new edition. I have greatly appreciated the support of the team at Palgrave Macmillan, especially Helen Buglar and Esther Thackeray. Much of the writing of this book was witnessed by my daughter Laurel, who patiently played as I typed. I hope the experience has not harmed her too much. My wife, Kirsten Johnson, has been, and is, a constant source of love and support.

JONATHAN HERRING

As in the previous editions, cases marked with an asterisk* when they are first mentioned in the text are discussed in greater detail in the Case Notes at the end of the relevant chapter.

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