Textbook of Criminal Law

GLANVILLE WILLIAMS

STEVENS

TEXTBOOK
OF
CRIMINAL LAW

BY

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PREFACE

THE reader who has entered this book at random instead of at the preface —which is probably true of most readers—will already know that it is unusual in its layout. It is so unlike previous law books in some respects that a few words of explanation, or even of justification, may seem to be needed.

The primary purpose of the work is educational. No assumption is made that the reader knows anything of the criminal law, or even of other parts of the law. I have, therefore, taken all the space needed for a full explanation, which is one reason why the book is so long. The arrangement of subjects is based not upon an abstract scheme but upon the order in which topics are most clearly presented. Since a beginner's threshold of boredom tends to be low, my efforts to enliven the discussion include the interruption of the text by questions and objections. Some of these are merely convenient sub-headings, but many represent the challenges that may be expected from a shrewd, critical and irreverent reader. My interlocutor is allowed to talk naturally, and indeed racily (since even grave and experienced lawyers, when they doff their gowns, do not always address each other in the language of a statute or judgment). I have endeavoured to satisfy him that the law is mainly rational; but when it is not I join in the effort to expose its shortcomings. I would suggest to the student that he consider for himself whether an objection put into the mouth of my critic is valid, or whether a question raises a good point, before reading the observations I offer in reply.

Even though the reader may be a beginner, I have not spared him the complexities of the subject. My view is that a textbook should not leave major problems unexplored; and the present state of criminal law is such that major problems abound. Certain of them are here discussed in greater depth than in some other works, even works intended for practitioners. For this reason, I hope that the book will not be without interest to lawyers of all degrees of expertise. In order to facilitate skip-reading, small type is used for some legal minutiae and other matter that the reader may think he can get along without. There are summaries at the ends of all chapters (save the first); these are designed to bring out the salient points, and may be used either for recall or as an auxiliary index.

As for the scope of the book, it deals with the main part of the criminal law usually treated in such works, namely, the general principles of law, together with offences against the person and property, and offences conveniently considered with them, such as the major driving offences. For reasons of space I have had to omit the details of laws restricting liberty that are not primarily motivated by the desire to prevent observable harm to others (bigamy; incest; prostitution; homosexual behaviour; obscenity; the possession of controlled drugs). Again, the book does not set out to

deal with offences against the public order, against the government, and against the administration of justice. They are more easily omitted because in teaching syllabuses they are often regarded as belonging to constitutional law, with its new emphasis on human rights. However, I have discussed these subjects, or have drawn illustrations from them, when they are relevant to a consideration of general principles or other matters considered in the book, so that in the end the reader should have a good idea of the reach of the criminal law.

My warm thanks are due to my colleagues P R Glazebrook, J R Spencer, A T H Smith and Geoffrey Marston, who have each read one or more chapters (Mr Glazebrook read some dozen chapters), and have made sundry observations from which I have greatly profited. I hope that the parts on which they have not placed their revising hand will not be too clearly visible. I am indebted to Mr Glazebrook in particular for leading me to acceptance of the proposition that offences of false statement admit of a defence of mistake of law (Chap. 18 § 7).

I am obliged to the publishers for many kindnesses, and should like on this occasion to acknowledge in particular their readiness to indulge my typographical foibles. The one thing that authors are generally not allowed to do is to interfere with house style, and I am grateful for the dispensation given to me, in which The Eastern Press has co-operated.

The law is stated as at March 1, 1978.

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SUPPLEMENT
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ABBREVIATIONS

THE following list of abbreviations was omitted from the *Textbook* by oversight.

Nearly all the abbreviations employed in the footnotes are standard. Important statutes are frequently cited by their initial letters, *e.g.* CLA 1977 = Criminal Law Act. The references to Stephen, *HCL (History of the Criminal Law)*, Pollock and Maitland, Holdsworth, *HEL (History of English Law)*, and Radzinowicz, *HECL (History of English Criminal Law)*, are to well-known historical works. Note also:

BMJ British Medical Journal
CA Court of Appeal
CCCR Court for Crown Cases Reserved
CLJ Cambridge Law Journal
CLRC Criminal Law Revision Committee
HLR Harvard Law Review
JPN Justice of the Peace (Newspaper)
LQR Law Quarterly Review
MLR Modern Law Review
Model Penal Code Model Penal Code of the American Law Institute (ALI). References are to the Tentative Drafts (TD) and the Proposed Official Draft (POD).
NLJ New Law Journal
PC *Pleas of the Crown* (classical works under this title by Hale, East, Hawkins etc.).
Russell, 12th ed. Russell on *Crime*.
Smith and Hogan. *Criminal Law*, 3rd ed. For preference, reference should now be made to the current, 4th, edition.
The General Part. Glanville Williams, *Criminal Law: The General Part*, 2nd ed.

SUPPLEMENT TO THE FIRST EDITION

This Supplement, which brings the statement of the law up to August 15, 1979, is divided into two parts. The first, which is intended to be read at the same time as the book, is a revision of the text. It updates the text on matters of substance and corrects some errors. The second part (pp. [29]–[31] contains a list of amendments and corrigenda relating to citations; it does not affect the main theme, and in general is needed only when sources are being checked; it is, therefore, of interest mainly to practitioners. References in heavy type are to pages.

REVISION OF TEXT

7 n. 3. The fear has been expressed that the vague crime of public nuisance at common law is beginning to take the place in the judicial armoury formerly occupied by public mischief. See *Norbury* and the note thereto in [1978] Crim.LR 435.

12 lines 1–3. Most of the relevant provisions of the Criminal Law Act have been brought into force by the Criminal Law Act 1977 (Commencement No. 5) Order (SI 1978 No. 712).

17 last line and **18** lines 1–2. Proceedings for prerogative orders etc. now take place by means of an " application for judicial review." This asks the High Court to grant relief against improper conduct by public authorities and inferior tribunals; the relief may take the form of a declaration, injunction, damages, one of the prerogative orders (mandamus, prohibition, certiorari), or the prerogative writ of habeas corpus. See Rules of the Supreme Court Ord. 53.

38 *ad* n. 2. The agreement would no longer be punishable as a conspiracy to handle stolen goods: see below, note to p. 401.

40 *ad* n. 3. The rule is put into statutory form by CLA 1977 s. 1 (4), which makes an exception for conspiracy to commit murder abroad.

42 and to end of Chapter 4. See the legislative proposals in Law Commission, *Criminal Law: Report on the Mental Element in Crime* (Law Com. No. 89, HMSO 1978), and commentary in [1978] Crim.LR 588, 593.

70. *Briggs* is confirmed by the important case of *Stephenson* [1979] 3 WLR 193.

79–80. That evidence of mental disorder must be taken into account on the issue of foresight was accepted in *Stephenson*, above.

90 n. 6. For " note " read " not."

108. In *Ferguson* [1979] 1 WLR at 99, 1 All ER at 882, the Judicial Committee of the Privy Council recommended a return to the time-honoured formula of reasonable doubt.

137. Footnote reference 10 in the text is misplaced. It should be deleted and appended instead to the word " actor " at the end of the line preceding the reference to footnote 11.

141. Summary § 2. Delete " and dangerous driving."

154, end of § 2. That a bruise is " actual bodily harm " was decided in *Taylor* v. *Granville* [1978] Crim.LR 482, where magistrates were held to be entitled

to infer that the victim suffered " bodily harm, however slight " from being struck in the face, without any direct evidence of the harm. Query, however, whether this gives sufficient weight to the word " actual," which must have been intended to have some limiting effect. And what about the *De minimis* maxim? See Chap. 24 § 14.

165 paragraph numbered 4, line 6. For " before a High Court judge " substitute " in the Crown Court."

178–80. On false imprisonment and kidnapping in general see Napier in *Reshaping the Criminal Law,* ed. Glazebrook (London 1978) 190 ff.

180 top. Kidnapping is supposed to be a particularly serious form of false imprisonment, but over the years the courts have attenuated the circumstances of aggravation, so that now the only distinguishing feature is that the imprisonment, to amount to kidnapping, must involve either the secreting of the victim or the carrying him away from the place where he wishes to be. See *Wellard* [1978] 1 WLR 921, 3 All ER 161, which shows that carrying the victim away for 100 yards is enough. Lawton LJ seems to have regarded it as for the jury to decide whether the transporting of the victim went sufficiently far to be accounted a carrying away. But surely there must be some judicial control.

Kidnapping may be either by force or by the threat of force. There is no authority for saying that either kidnapping or false imprisonment is committed where a person is induced to accompany another by fraud, there being no threat of force. See generally, as to fraud inducing consent, Chap. 23 §§ 6–10.

184, end of § 13. The Act cited should have been the Sexual Offences Act 1956.

190 *fin.* Taking indecent photographs of persons under 16 (or distributing or showing such photographs, or possessing them for distribution or showing, or advertising them) is now a statutory offence: Protection of Children Act 1978, applied to Northern Ireland by SI No. 1047 (NI 17) of 1978.

192 § 6. It has now been held, overruling earlier authorities, that gross indecency cannot be committed with a non-consenting partner: *Preece* [1977] 1 QB 370.

196 lines 7, 8. Delete " rape his wife through the innocent agency of another," and substitute: " be accessory to the *de facto* rape of his wife perpetrated by an innocent actor."

198. § 9. Unlawful sexual intercourse became triable either way by CLA 1977 s. 16 and Sched. 2.

204 § 1 line 6. For " dangerous " read " reckless."

233 § 3. On principle, since a sane adult cannot be subjected to compulsory medical treatment, it should follow that neither a spouse nor any other person who refrains from obtaining medical treatment for such a sufferer who does not want it is not guilty of manslaughter if the sufferer dies. This principle, neglected in *Stone* (§ 2), has also been overlooked or obscured in other cases. In *Wilkinson,* The Times, April 19, 1978, a woman took to her bed and violently resisted offers of medical help. Her husband and daughter gave up trying to persuade her; the woman died, and they were prosecuted for manslaughter. Astonishingly, they were convicted; equally astonishingly, the Court of Appeal rejected their application for leave to appeal against conviction, but it allowed their appeal against a jail sentence. In *Smith* [1979] Crim.LR 251, on a prosecution of a husband for manslaughter in similar circumstances, the judge did not direct the jury that the husband was not bound to force medical treatment upon his wife, and said that if the wife was desperately ill it might be right to override her wishes. The jury failed to agree. For a different view on overriding the patient's wishes see Chap. 24 § 10.

235. The Conference of Medical Royal Colleges and their Faculties of the United Kingdom have reaffirmed the principle stated in the text: [1979] 1 BMJ 332.

237. Skegg in 41 MLR 423 objects to the argument in the first full paragraph. His point is that if stopping the respirator is an omission, this would allow unauthorised strangers to interfere and kill the patient. The stranger owes no duty to prolong the patient's life, so if his conduct in stopping the respirator is legally an omission, it could not be murder. It may be said that from the practical point of view this is not a serious objection. Nurses would be under the same kind of duty as the doctor. The intervention of an unauthorised intruder is most improbable. If it be the case that the patient is beyond hope, there is no great social need to regard the intervention as murder anyway. Dr. Skegg suggests an alternative solution: a doctor's withdrawal of artificial ventilation from irreversibly comatose patients is " medical practice considered proper in the circumstances," which should be regarded as not being a cause of death in contemplation of law. If a stranger does the same thing, his act *is* a cause of death. But if we are allowed to play with language in this way, it could equally well be said that the intruder who switches off the machine commits an act, while the doctor who does so merely omits to continue to treat. The point of difference is that the doctor put the patient on the respirator (or is one of a medical team who did so), and in taking the patient off is merely restoring the *status quo ante*, whereas the intruder is committing a positive act of interference.

239. The problem of the frightened victim who kills himself accidentally in fleeing is discussed in Chap. 14 § 12.

N. 9. It should be added that appellate courts do not insist upon a direction in terms of negligence where the negligence is clear: see, *e.g. Daley* [1979] 2 WLR 239.

272 *ad* n. 27. The current Construction and Use Regulations are those of 1978, No. 1017.

273 *ad* n. 2. It is true that the offence of reckless driving goes back to RTA 1930, when the meaning of recklessness was in doubt. But the Act of 1977 re-enacts the offence (in s. 50), and it seems reasonable to suppose that in so doing Parliament intended the term to bear its current meaning. See, however, Ashworth in [1979] Crim.LR 409.

276. The relevant provisions of the CLA 1977 are now in force.

288. The high desirability of using appropriate terms to charge the perpetrator and accessories was emphasised in *Maxwell* [1978] 1 WLR 1350, 3 All ER 1140. On the meaning to be attached to the four traditional verbs " aided and abetted, counselled and procured," see Smith in *Reshaping the Criminal Law,* ed. Glazebrook (London 1978) 120 ff.

292 *fin.* The point was touched upon by Lowry CJ delivering the judgment of the Court of Appeal of Northern Ireland in *Maxwell* [1978] 1 WLR at 1375, 3 All ER at 1162. He said: " Such questions must, we think, be solved by asking whether the crime actually committed is fairly described as the crime or one of a number of crimes within the contemplation of the accomplice."

294 *fin.* The proposition in the text is perhaps mistaken, having regard to *Garrett* v. *Arthur Churchill (Glass) Ltd.* [1970] 1 QB 92, decided not on the common law of accessoryship but on a statutory offence of similar nature. The rule laid down was that a person who delivers an article to its owner knowing that the latter intends to commit a Revenue offence with it is guilty

under statute of " being concerned " in the offence if, in the words of the court, he " lends himself to the idea " of committing the offence, but not if he hands the article over only because he feels he has to. " Lends himself to the idea " is a rather vague metaphor. What if the defendant hands over because he thinks he morally ought to? What if he is merely indifferent? The normal principle is that a person can become an accessory although he is indifferent to the outcome: see *per* Devlin J in *NCB* v. *Gamble* [1959] 1 QB at 23.

305. *Bainbridge* has now been qualified by the House of Lords in *Maxwell* [1978] 1 WLR 1350, 3 All ER 1140. Three situations must be considered.

(1) D, who is charged as accessory, knew what offence was contemplated (that is to say, the specific legal type of offence as a layman would describe it in his own language). This is sufficient *mens rea* for complicity in ordinary circumstances. *Bainbridge* is still relevant as showing that D need not have known the details of the projected offence.

(2) D knew that either offence A or offence B was contemplated. *Maxwell* now decides that this is sufficient *mens rea*; and similarly if other possible offences C, D etc. are brought into the list.

(3) D thought that offence A would be committed, and nothing else, when in fact what was intended to be committed was the rather similar offence B. For example, D may be charged, as in *Bainbridge*, as accessory to burglary, and he may say that what he thought was intended was a disposal of stolen property. Even though offences A and B have important characteristics in common (as where they are both offences of dishonest acquisition of property), the better view is that D is not liable as an accomplice in these circumstances. The opinions of the majority of the lords in *Maxwell*, Lords Edmund-Davies, Fraser and Scarman, are perfectly clear that the question, and the only question, is the range of the defendant's contemplation. They approve the judgment of Lowry CJ in the court below, which is also explicit. The question is *not* whether two offences, A and B, are of the same " type "; to ask this would introduce an undesirable element of uncertainty into the legal trial if it were left to the jury, and of legal complexity if numerous combinations of offences had to be considered by the judges. Viscount Dilhorne's opinion, though not expressed quite so clearly as those just mentioned, on the whole agrees with them. Lord Hailsham, it is true, considered that different legal offences could be of the same " type," so that the defendant's mental element as to the one could justify his conviction as accessory to the other; but his opinion must be regarded as having been rejected by the other lords.

(4) D's knowledge of the projected illegality may have been fuzzy. He may have thought that an offence belonging to some general category was intended, without knowing which offence of that category. For example, he may have known only that the offence intended was an offence of dishonest acquisition of property. It would be consistent with *Maxwell* to hold that in these circumstances D is a party to whichever offence of that category is committed—burglary, for example, or handling stolen goods; and this is surely right as a matter of policy. If the defendant agrees under cross-examination that the general illegality of which he was aware included the crime that was committed, this should be decisive against him; and the position should be the same if he does not agree, if the jury conclude that the crime committed was in fact within the range of his contemplation. There are, nevertheless, indications that the courts may hold that the defendant's knowledge of a rather general category of illegality is not enough. In *Patel* [1970] Crim.LR 274 the defendant was charged with abetting the possession of cannabis by X, who had cannabis in a bag. The judge directed the jury that the defendant could be convicted if he knew that the bag contained something and was content to aid in its possession whatever it might be. This direction was held on appeal to be

wrong: the prosecution had to prove that the defendant knew that X was in possession of a dangerous drug. On principle it should surely have been enough that the defendant knew that there was something in the bag that it was unlawful to possess, or even that there was something in the bag that was being possessed in pursuance of a criminal purpose or activity. See also *Valerie Scott*, note to page 360 below. This point evidently requires further consideration by the courts in the light of *Maxwell*.

Although *Maxwell* shows that the defendant's recklessness as between a number of possible crimes is sufficient for his conviction as accessory, the decision does not bear on the question whether the defendant's recklessness as between crime on the one hand and an innocent transaction on the other is sufficient. On this, the discussion on pp. 305–306 and 309 of the *Textbook* is still relevant. Lord Hailsham's insistence that "there must be not merely suspicion but knowledge" may be taken as sound law when there is no positive knowledge of any illegality but only suspicion.

347 § 14. Switching off a respirator for an irreversibly comatose patient does not break the chain of causation between a criminal attack and the resulting death: see the Scots case of *Finlayson* (1978) discussed by A. McCall Smith in 129 NLJ 376.

349 *fin.* The scope of the Act has now been judicially clarified: see below, note to pages 642–643.

351. To make a person liable for conspiracy, his agreement to take part must be communicated to the other parties: *Valerie Scott* [1979] Crim.LR 456, The Times, July 4, 1978.

Professor Smith (in *Reshaping the Criminal Law*, ed. Glazebrook (London 1978) 137) suggests that there can be no conspiracy merely to assist a crime as accessory. D2 and D3 agree with one another to place a ladder against a building in order to facilitate burglary by D1. If D1, the intending perpetrator, is not a party to the agreement, Professor Smith holds that D2 and D3 are not guilty of conspiracy. The reason he advances is that the act agreed upon—the placing of the ladder—is not an offence. But it will involve D2 and D3 in the guilt of the offence of burglary if that offence is committed, which should, on principle, be enough to make the arrangement a conspiracy at common law. Whether the Criminal Law Act now decriminalises the agreement is unclear. It may be said that the agreement itself, if carried out in accordance with the parties' intentions, may still not involve the commission of the burglary, since, notwithstanding the help given by the ladder, D1 may fail to carry out the burglary. But to this it may be replied that it was part of the common intention that the burglary should be carried out, and if it were carried out an offence would necessarily be committed. How the courts will interpret the Act on this point remains unclear; but see the note to page 355 below.

In any event, a conspiracy to perform acts of assistance will obviously be criminal if the acts themselves are criminal. For this reason, a conspiracy to incite a person to commit a crime, either as perpetrator or as accessory, remains criminal. Incitement being itself a crime, the conspiracy is to commit a crime. For incitement to become an accessory see below, note to page 385.

355 § 6 line 9. We now have to say that it does not *always* prevent them from being punished. Sometimes it does. See the note to p. 401.

The argument at the foot of the page about "course of conduct" is fortified by the decision in *Duncalf* [1979] 1 WLR 918, 2 All ER 1116, even though the point was not there expressly considered. Persons who went round shops in pursuance of a conspiracy to steal were convicted of statutory

conspiracy to steal although nothing was found that they could steal and wanted to steal. The conspiracy did not result in a consummated crime, but it "necessarily" would have if carried out in accordance with the parties' "intentions," *i.e.* desires. Cp. Smith in [1979] Crim.LR 454. This decision may perhaps allay the apprehensions Professor Smith expressed in [1978] Crim.LR 487.

356 para. 3. It now seems almost certain that such conspiracies to do the impossible are not punishable under the statute. See note to p. 401, below. (The reference in brackets at the end of the paragraph should be to § 7 (5) and (6)).

358 n. 3. It may be added at the end of the footnote that, as Mr. Adrian Lynch points out in [1978] Crim.LR 207–209, on the facts supposed the parties would in any case be saved from liability for conspiracy by subs. (2).

360, end of § 7. This discussion does not consider the question whether a person charged as conspirator must have known some of the details of the plan. In *Valerie Scott* [1979] Crim.LR 456, The Times, July 4, 1978, the Court of Appeal appears to have assumed that a person who gave assistance did not become a conspirator at common law by reason of knowing that something illegal was going on, without more specific knowledge; but it is difficult to see why not. Suppose that the defendant admits, under cross-examination, that the "something illegal" could include a conspiracy to import cannabis, which is what the other parties were in fact doing; why should not the defendant be a party to the conspiracy, as on the ground that the offence was within the range of his or her contemplation? Section 1 (1) does not seem to create any difficulty in this respect if the charge is of statutory conspiracy.

377 top. As another example of a proximate attempt, it has been judicially stated that opening a van door can be an attempt to steal an article inside: *Husseyn* (1978) 67 CAR 131.

383 § 6 and **384** lines 1–3. For a full argument in support of the view stated, see Smith in *Reshaping the Criminal Law*, ed. Glazebrook (London 1978) 136–137.

385 top. Professor Smith advances the same view for incitement as for conspiracy (see note above to p. 351), namely that there can be no incitement to act as accessory to a crime, since "the act incited is not an offence." *Sed quaere*: it will be an offence when the offence is perpetrated.

§ 8 line 2. Delete "(like attempt)." The general rule (partly of law, partly of practice) is that an attempt is punishable only up to the maximum for the consummated offence: Chap. 16 § 2.

399. *Partington* v. *Williams* was approved by the House of Lords in *Nock*, subject to a suggestion as to a way in which the case might be distinguished on a future occasion. See the note to p. 400 below.

400. Events have shown that the rule in *Roger Smith* is not only against the public interest but incapable of being administered rationally and consistently.

In *Farrance* [1978] RTR 225 the defendant was charged with attempting to drive with a blood-alcohol concentration above the prescribed limit. He was found by two police officers revving the engine of his van in the hope of getting it going, but in fact the clutch had burnt out so that it was impossible to drive the van under power. It was held by the Court of Appeal that the condition of the engine did not prevent the defendant's conviction of attempt. The reasoning is not entirely clear, but the court said that the attempt would