

Contents

<i>Preface</i>	v
<i>Contributors</i>	xiii
<i>Table of Cases</i>	xv
<i>Table of Legislation</i>	xxi
Seeking Security: An Introduction	1
<i>G R Sullivan and Ian Dennis</i>	
1 Identification, Surveillance and Profiling: On the Use and Abuse of Citizen Data	15
<i>Malcolm Thorburn</i>	
I Introduction	15
II Population Data versus Personal Data	20
III Identification	21
IV Surveillance	27
V Profiling	31
VI (Tentative) Conclusions	34
2 On the Legitimacy of Imposing Direct and Indirect Obligations to Disclose Information on Non-Suspects	37
<i>Shlomit Wallerstein</i>	
I The Old Law	39
II The Abolition of Mispriison of Felony	41
III The New Regime and the Exceptions to the General Rule	45
A The General Principle	45
B The First Exception – Money Laundering	48
C The Second Exception – Counter-Terrorism	48
IV The Justifiability of the New Regime	50
A Distinguishing Direct from Indirect Obligation to Disclose Information	50
B Personal Choice and Participation in Crime	52
C The Objective for which Information is Required	54
D The Severity of the Harm	56
E Special Relationships and the Duty to Disclose	57
3 Prophylactic Crimes	59
<i>AP Simester</i>	
I A Spectrum of Prophylactic Offences	61
II Limited Non-Negotiable Constraints	64

III	Supplementary Constraints on Prophylactic Crimes	66
	A Wrongful Action	66
	B A Nexus Requirement	67
	C Arbitrary Dispensations	69
IV	Preparatory Offences	69
V	Possible Constraints on Preparatory Offences	71
	A The Attempt-Preparation Divide in Inchoate Offences	72
	B Motive-Dependent Wrongfulness?	73
	C A Negotiable Matter?	75
VI	Necessitous Over-inclusion	76
	A Necessity Rather than Self-Defence	76
	B Excluded Reasons for Criminalisation: Fundamental Rights?	77
VII	In Closing	78
4	Harmless Wrongdoing and the Anticipatory Perspective on Criminalisation	79
	<i>Jeremy Horder</i>	
I	Introduction	79
II	Anticipatory and Harm-Done Perspectives on Criminalisation: An Outline	80
III	Minimalism: Who Really Believes In It?	85
IV	The Anticipatory Perspective on Criminalisation	92
	A Harm Done, Deterrent Value and what Counts against Criminalisation	92
	B The Explanatory Power of the Anticipatory Perspective: Direct Harm Risked	95
	C The Explanatory Power of the Anticipatory Perspective: Harm Risked Indirectly	96
V	Conclusion: The Anticipatory Perspective and Criminal Law's Changing Landscape	100
5	Risk and Inchoate Crimes: Retribution or Prevention?	103
	<i>Larry Alexander and Kimberly Kessler Ferzan</i>	
I	Introduction	103
II	Inchoate Crimes	105
III	Are Inchoate Crimes Culpable?	106
	A The Centrality of Intending a Culpable Act to the Case for the Culpability of Inchoate Crimes	107
	B Is Intending a Culpable Act Itself a Culpable Act?	110
IV	Inchoate Crimes and Dangerousness	119

6 Risks, Culpability and Criminal Liability	121
<i>RA Duff</i>	
I Introduction: Inchoate Offences in the Criminal Law	121
II Unleashing Risk	126
III A Radically Narrowed Criminal Law?	130
IV Moral Culpability without Unleashing Risk	132
V Criminal Liability and Moral Culpability	139
7 Preventive Detention at the Margins of Autonomy	143
<i>John Stanton-Ife</i>	
I Introduction	143
II Civil Detention of the Mentally Disordered and the Subversion of the Criminal Law	146
III Three Issues: Autonomy, Unjust Discrimination and the Right to be Irrational	154
A The Diminished Autonomy Justification	155
B Two Conceptions of Minimal Autonomy	156
C The Diminished Autonomy Justification Again	163
D Unjust Discrimination and the Right to be Irrational	164
IV Conclusion	167
8 Security, Risk and Preventive Orders	169
<i>Ian Dennis</i>	
I Introduction	169
II Why have Preventive Orders become Common Techniques of Crime Control?	172
III Criticisms of Preventive Orders	181
A Process Issues	181
B Substantive Issues	183
IV Reviewing Preventive Orders: Where Do We Go from Here?	186
V Conclusion	190
9 Imprisonment under the Precautionary Principle	193
<i>Peter Ramsay</i>	
I Imprisonment for Public Protection	195
A The Test of Dangerousness	195
B The Presumption of Dangerousness	197
C Imprisonment under the Precautionary Principle	200
D The Wrong of Dangerousness	204
II The Ethics of Precaution	206
A Ignorance as an Ethical Foundation	209
B Precaution as Moral Order	210

III	After IPP: Extended Determinate Sentences and Mandatory Life	214
IV	Conclusion	217
10	Erring on the Side of Safety: Risk Assessment, Expert Knowledge, and the Criminal Court	219
	<i>Lucia Zedner</i>	
I	The Right to be Presumed Free from Harmful Intentions	221
II	Applying Risk Labels	224
III	Justifying Intervention on Grounds of Risk	230
IV	Re-Assessing Risk Assessment	232
V	Who is to Decide? Psychiatric versus Legal Determinations	234
VI	Conclusion	240
11	The Test for Dangerousness	243
	<i>Martin Wasik</i>	
I	Background	243
II	The Original Dangerous Offender Scheme	244
III	The Revised Dangerous Offender Scheme	246
IV	The Test for Dangerousness	248
A	Significant Risk	248
B	Significant Risk of Serious Harm	249
C	To Members of the Public	250
D	By the Commission by Him of Further Specified Offences	250
V	The Information Base	251
VI	Three Examples	254
VII	Judges and the Assessment of Risk	257
VIII	Thresholds of Risk / Seriousness	258
IX	Conclusion	262
12	Culpability in Self-defence and Crime Prevention	265
	<i>Jonathan Rogers</i>	
I	The Rules and Deficiencies in the Criminal Law	268
A	Two Problems	272
II	Self-Defence, Violence and Legal Principles	276
A	One Culpable Motivation and One Culpable Attitude	277
B	Evidence of the Culpable Motive and Attitude	280
III	Non-Imminent Offences	284
IV	Stage Agents and Private Citizens	287
V	Conclusions	291

13 The Hard Treatment of Innocent Persons in State Responses to the Threat of Large Scale, and Imminent Terrorist Violence: Examining the Legal Constraints	293
<i>G R Sullivan</i>	
I Terrorist Violence: Large Scale and Imminent	293
II Innocent Persons and State Action	297
III Justification, Excuse and Permissibility	300
IV Hard Treatment of Innocent Persons	305
A Innocent Persons Harmed due to their Close Proximity to State Interventions Made against Terrorists	305
B Innocent Persons known not to be Terrorists or Complicit with Terrorists but whose Harsh Treatment May Avert or Mitigate Imminent Terrorist Attacks	309
C Persons who are Assumed by Officials to be Terrorists or Complicit with Terrorists but in Fact Have No Terrorist Connection and No Knowledge nor Influence on Future Terrorist Attacks	314
V Terrorism in the United Kingdom	319
VI Conclusion	321
<i>Index</i>	323