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criminal trial and the civil proof respectively, once the context has been provided by discussion of the detailed rules. Much of the remaining material in the book has been reorganised into what the author believes (with justification) to be a more logical structure, so that the book is laid out in a way which is significantly different from the work it supplants.

Proper account is taken of the fact that evidence in practice is much more bound up with the presentation of facts, and the way that may be done, than with the actual rules of evidence. The book is also enriched by the fact that the subject is considered against the wider background. The philosophical and political debates surrounding particular issues, relevant policy statements and sociological studies are skilfully woven into the fabric of the work. Particular pieces of legislation are not merely explained, but empirical analysis is accessed in order to indicate how (or if) the rules actually work in practice. The author has, of course, long been a pioneer in examining how science in general and particularly the behavioural sciences interact with the law, and as might be expected, this is a notable strength of certain parts of the work. The human rights dimension of this area of the law also receives enhanced prominence.

At the same time, this remains a text on the law of evidence, and in this respect it retains the strengths of the former work. So anyone who wishes to know which categories of witness are competent and/or compellable in a criminal trial, or what section 280(9) of the Criminal Procedure (Scotland) Act 1995 means, can still find the answer here. Equally, while the description of the wider context helps the reader make better sense of the rules, it is not necessary to consider that aspect of the work in order to understand the account of the law. It is also worth noting that by making the subject come alive the author makes the book a pleasure to read. Despite the learning which has obviously been invested in the work, nobody will find it difficult to understand. It is an ideal student text, which will also prove of great value to practitioners and indeed to anyone interested in the law of evidence. Many though the virtues of the previous work were, they are easily surpassed by this wonderful contribution to the literature on the subject.

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**R A Duff, ANSWERING FOR CRIME: RESPONSIBILITY AND LIABILITY IN THE CRIMINAL LAW**

Oxford: Hart ([www.hartpub.co.uk](http://www.hartpub.co.uk)), 2007. xx + 322 pp. ISBN 9781841137537. £45.

*Answering for Crime* was written by Antony Duff during a Leverhulme Major Research Fellowship. Its aim is relatively modest – not to produce a theory of criminal law but instead to “sketch the normative and logical structures that any such theory should embody” (7). In this and more, it succeeds admirably.

The book’s starting point is the distinction between criminal responsibility and criminal liability. For Duff, questions of criminal responsibility – “who is (or should be) criminally *responsible* for what and to whom?” (15) – arise logically prior to questions of criminal liability. This is a simple but crucial distinction – one that, as Duff himself states, is often neglected by theorists – and it provides the foundation for the rest of the book. The focus of the first two thirds of the book is primarily on responsibility, addressing topics including the relational nature of responsibility (to whom we are responsible and in what role?), what we can properly be held responsible for, and the legal and moral bars to trial. Later chapters consider criminal liability,

discussing the distinction between offences and defences, strict liability and the classification and structure of defences.

The book is full of insights into a range of important issues. In a book that is of consistently high quality, it is difficult to select particular parts for special praise but the following discussions certainly engaged this reviewer's attention. In chapter 5, Duff suggests that, rather than the traditional act requirement found in most criminal law textbooks, the law might more usefully operate with an action requirement – “an actualisation of the results of practical reasoning in a way that has an impact on the world” (107) – and uses this concept to develop an illuminating analysis of when we might legitimately impose criminal responsibility in the context of possession offences (114-115).

Chapter 8 focuses on pleas in bar of trial (as distinct from defences) and proposes a valuable typology before offering an analysis of some of the more complex pleas, such as entrapment. Duff has been one of a small minority of scholars to devote attention to pleas in bar and this chapter, which draws on existing work but also covers new ground, is a valuable contribution to a neglected area.

Chapter 10 addresses the distinction between offences and defences. For Duff, offences “define presumptive public wrongs” (217), “conduct that we have, in the law's eyes, reason not to engage in” (218). Defences “[do] not deny responsibility for the offence charged, but [claim] that further relevant factors should block liability” (263). He illustrates the distinction using the examples of a lack of consent to sexual intercourse (part of the offence definition of rape) and self-defence (a defence). Given the former example, it would be interesting to learn what Duff makes of the paper by Dempsey and Herring in the *Oxford Journal of Legal Studies* 27 (2007) 467 – published after the text of *Answering for Crime* would have been finalised – in which the authors argue that sexual penetration *per se* is a wrong that requires justification.

Chapter 11 addresses the structure of defences, including the issue of putative justification – the individual who acts on a mistaken (but reasonable) belief in circumstances that, if true, would justify her actions. The example used in the book is of someone who smashes a window to gain entry to a house in which she saw a friend with heart problems lying unresponsive on the floor. It turns out that the friend had fallen asleep with his hearing aid turned off while trying out a new relaxation technique. The question of whether such conduct is best classified as “justified” or “excused” has attracted an enormous amount of discussion among criminal law theorists. Duff suggests that her action be described as neither justified nor excused but as “warranted” (276). As one who has contributed to the debate, I am left feeling rather foolish that such an obvious (with the benefit of hindsight) analysis did not present itself to me.

Aside from these major contributions, the book is full of passing but no less valuable insights made possible by the author's extensive experience and knowledge. For example, Duff succinctly identifies exactly why we should hesitate to embrace restorative justice as a principle of the criminal law (88) and captures perfectly the arguments against criminalising merely preparatory acts (160), being able to draw here on his earlier work on attempted crime.

If one was to air a slight disappointment, it would be that the majority of the illustrations come from the law of England and Wales. We are lucky in Scotland to have a criminal law theorist of the stature of Antony Duff working in our jurisdiction, but despite his geographical location, the table of cases contains only six from Scotland (compared to around 80 from England and Wales and 20 from the USA). It may be that the use of English examples was necessary to maximise the appeal of the book but if this is the reason, it is a shame.

This is, however, a very minor quibble: *Answering for Crime* is an important yet highly readable book. It might be questioned whether another monograph on criminal responsibility is needed, with recent works having been published by Victor Tadros (reviewed at (2007)

11 EdinLR 138) and John Gardner among others. If one had any doubts about this, they are dispelled by reading this book, which contains many new insights and which, equally importantly, tackles complex issues of criminal law theory with a rare clarity. Engaging with the field of criminal law theory can sometimes leave those who are not legal theorists feeling bewildered and slightly inadequate. But this book proves that complex issues can be discussed at an elevated level without making them incomprehensible to all but a small group of dedicated theorists. Indeed, the book should be of interest not just to academics but also to students and even – unusually for a book in this field – practitioners and policy makers.

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**Anthony Duff, Lindsay Farmer, Sandra Marshall and Victor Tadros, THE TRIAL ON TRIAL vol 3: TOWARDS A NORMATIVE THEORY OF THE CRIMINAL TRIAL**  
Oxford: Hart Publishing ([www.hartpub.co.uk](http://www.hartpub.co.uk)), 2007. vi + 344 pp. ISBN 9781841136981. £40.

This is an excellent and provocative book, which should be read by everyone with an interest in criminal justice, although I am slightly sceptical about the authors' thesis. It is the product of a series of workshops which have already led to the publication of two collections of essays, *The Trial on Trial vol 1: Truth and Due Process* and *The Trial on Trial vol 2: Judgement and Calling to Account*. These were edited by the authors of the present work and contain contributions by scholars from a variety of academic backgrounds. Here I must declare an interest as a participant in all of the workshops and author of an essay in the first volume. It is fair to say that at the outset, while I thought that this was an extremely interesting and worthwhile project, I was rather dubious about the authors' claims. While some of my doubts persist, this third volume, which sets out the authors' own views and stands alone as a coherent and self-contained work, presents a much more impressive and convincing argument than I had originally anticipated.

Put briefly, the authors argue that it is time to develop a normative theory of the criminal trial in order both to defend it against current attacks (for instance, increases in plea bargaining and attempts to "rebalance" it in favour of the victim) and also to provide a moral framework against which the current institution can be evaluated and improved. It is emphasised at the outset that the theory was developed through a study of the English adversarial trial and that it cannot simply be "transplanted" (11) into other systems, particularly those of an inquisitorial nature: thus the book avoids the ethnocentricity to be found in, for instance, R Burns, *A Theory of the Trial* (1999). It is fair to say however that the authors' thesis is generally applicable to most forms of the Anglo-American adversarial trial and is thus directly relevant to the Scottish experience.

In essence, the authors' theory is that the trial is – or should be – about communication, primarily calling the accused to account on behalf of the polity for his wrongful behaviour. As such, they reject the traditional "instrumentalist" (64) conception of the trial which sees the process as geared towards discovering the truth or ensuring the accuracy of the verdict, subject to external constraints, such as the need to respect the accused's civil rights and the requirement for the polity to behave in a moral fashion. The argument is that these are not "free-floating rights" (238) which hamper the pursuit of truth but that they are integral to a normative theory of the trial (62-70). Calling the accused to account at a criminal trial involves