Contents

Prefac	e	7
Ackno	owledgments	vi
1: Is th	ne Criminal Law a Lost Cause?	1
1.1	Distinguishing Criminal Offences by Reference to their Content	2
1.2	The Procedural Distinction	2 5 8
1.3	The Functional Distinction	
1.4	Proceedings and Protections	13
1.5	The Seriousness of Wrongdoing	15
1.6	Equal Treatment, Countervailing Interests and Differential	
	Enforcement	20
	Criminalisation and Sentencing	26
1.8	The Principled Core of Criminal Law	28
2: Cri	minalising Omissions	31
2.1	The Place of Omissions in the Criminal Law	32
2.2	The Foundations of Legal Duties	38
2.3	A Re-appraisal of Duty-Situations	42
2.4		66
2.5	The Contours of Omissions Liability	68
2.6		73
2.7	, 1	75
2.8	Conclusions	78
3: Ign	orance of the Criminal Law, and Duties to Avoid it	81
3.1	Is Ignorance of the Criminal Law No Defence?	81
3.2	The Ignorance-of-Law Doctrine and the Principle of Legality	83
3.3	Three Different Contexts for Ignorance of the Criminal Law	87
3.4	What are the State's Obligations?	100
3.5	Some Practical Implications	102
3.6	Conclusions	106
4: Sho	ould Strict Criminal Liability be Removed from All Imprisonable	
Offen	ces?	107
4.1	What is Strict Criminal Liability?	110
	Reasons for Requiring Fault for Criminal Conviction	112
	Serious Crime: Limitations and Exceptions	116
4.4	Imprisonment Without Fault	123
4.5	Conclusions	129

x Contents

	Change of Normative Position: Determining the Contours of bility in Criminal Law	130
5.1	Unlawful Act Theory	131
5.2	The Nub of Subjectivism	131
5.3	Moderate Constructivism, Autonomy and the Rule of Law	135
5.4	The Idea of Change of Normative Position	137
5.5	Determining the Effect of a Change of Normative Position	140
5.6	Change of Normative Position by Acting Knowingly	146
5.7	Moderate Constructivism Re-Stated	147
6: The	e Unfairness of Risk-Based Possession Offences	149
6.1	Risk-Based Possession Offences	149
6.2	Possession Offences and Core Doctrines	152
6.3	Possession as a Form of Endangerment	163
6.4	If Possession is Criminalised, How should it be Sentenced?	169
6.5	Conclusions: Possession Offences and Criminal Law Doctrine	170
7: Child Defendants and the Doctrines of the Criminal Law		173
7.1	Childhood	174
7.2	Children as Moral Agents	174
7.3	The State's Response to Children's Bad Behaviour	176
7.4	The Effect of Childhood on General Defences to Criminal Liability	179
	The Effect of Childhood on Consent	187
7.6	The Effect of Childhood on Mens Rea	192
7.7	Conclusions	194
8: Hu	man Rights and Positive Obligations to Create Particular Criminal	
Offeno	ces	196
8.1	The Range of Positive Obligations under the European	
	Convention on Human Rights	197
8.2	Duty to Secure Article 8 Rights	198
8.3	Duty to Secure Article 3 Rights	200
8.4	Duty to Secure Article 2 Rights	203
8.5	Duty to Secure Article 4 Rights	206
8.6	Conclusions	209
9: Epilogue: Emphasising the Positive		212
Index		217