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How a Defendant's Mental State Affects His or Her Responsibility for a Crime

What a defendant intended to do often affects how severely he or she will be punished -- but not always.

What makes a crime a crime? In most cases, an act is a crime because the person committing it intended to do something that most people would consider wrong. This mental state is generally referred to as "Mens rea," Latin for "guilty mind."

The "mens rea" concept expresses a belief that people should be punished (fined or imprisoned) only when they have acted in a way that makes them morally blameworthy. "Mens rea" is never identified as a distinct element of a crime. Instead, moral blame is almost always the underlying justification for the enactment of a criminal law. In the legal system's eyes, people who intentionally engage in the behavior prohibited by a law have "mens rea;" they are morally blameworthy. For

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example, a murder law may prohibit "the intentional and unlawful killing of one human being by another human being." Under this law, one who intentionally and unlawfully kills another person has "mens rea."

Crimes that Don't Require "Mens Rea"

Laws that don't require "mens rea" -- that is, laws that punish people who may be morally innocent -- are called "strict liability laws." The usual justification for a strict liability law is that the social benefits of stringent enforcement outweigh the harm of punishing a person who may be morally blameless. Examples of strict liability laws include:

- "Statutory rape" laws which in some states make it illegal to have sexual intercourse with a minor, even if the defendant honestly and reasonably believed that the sexual partner was old enough to consent legally to sexual intercourse.
- "Sale of alcohol to minors" laws that in many states punish store clerks who sell alcohol to minors even if the clerks reasonably believe that the minors are old enough to buy liquor.

Strict liability laws like these punish defendants who make honest mistakes and therefore may be morally innocent. Because the legal consequences of innocent mistakes can be so great in certain circumstances, people

who find themselves in situations governed by strict liability rules need to take special precautions before acting.

When a Mistake Will Get a Defendant Off the Hook

People who *unintentionally* engage in illegal conduct may be morally innocent; this is known as making a "mistake of fact." Someone who breaks the law because he or she honestly misperceives reality lacks "mens rea" and should not be charged with or convicted of a crime. For example, if Paul Smith hits Jonas Sack because he reasonably but mistakenly thought Sack was about to hit him, Smith would have labored under a mistake of fact -- and would not have mens rea. It is this same principle that underlies the traditional insanity defense -- the defendant so misperceived reality that her actions were caused by a mental disease or defect rather than mens rea.

While a "mistake of fact" can negate mens rea, a "mistake of law" usually cannot. People who intentionally commit illegal acts are almost always guilty, even if they honestly don't realize that what they are doing is illegal. For example, if Jo sells cocaine in the honest but mistaken belief that it is sugar, Jo has made a mistake of fact and may lack mens rea. However, if Jo sells cocaine in the honest but mistaken belief that it is legal to do so, Jo is considered morally blameworthy. Perhaps the best explanation

for the difference is that if a "mistake of law" allowed people to escape punishment, the legal system would be encouraging people to remain ignorant of legal rules.

When Carelessness Amounts to Criminal Behavior

"Ordinary" carelessness is not a crime. For example, negligent drivers are not usually criminally prosecuted, though they may have to pay civil damages to those harmed by their negligence. However, more-than-ordinary carelessness can demonstrate "mens rea." Common terms for morally blameworthy carelessness are "recklessness" and "criminal negligence." Unfortunately, no clear line separates non-criminal negligence from recklessness and criminal negligence. In general, carelessness can amount to a crime when a person "recklessly disregards a substantial and unjustifiable risk." Indefinite language like that cannot always rationally draw a line between ordinary and criminal carelessness. Police officers and prosecutors have to make the initial decisions about whether to charge a careless person with a crime. At that point, it's up to judges and juries to evaluate a person's conduct according to community standards and decide whether the carelessness is serious enough to demonstrate "mens rea."

What "Knowing" or "Knowingly" Means

Many laws punish only

violators who "knowingly" engage in illegal conduct. The "knowingly" requirement indicates that a crime involves "mens rea," and prevents people who make innocent mistakes from being convicted of crimes. Since most crimes require mens rea anyway, the word knowingly is often redundant. What a person has to "know" to be guilty of a crime depends on the behavior that a law makes illegal. For example:

- A drug law makes it illegal for a person to "knowingly" import an illegal drug (often referred to as a "controlled substance") into the United States. To convict a defendant of this crime, the prosecution would have to prove that a defendant knew that what he brought into the United States was an illegal drug.
- Another drug law makes it illegal to furnish drug paraphernalia with "knowledge" that it will be used to cultivate or ingest an illegal drug. To convict a defendant of this crime, the prosecution would have to prove that a defendant who sold or supplied drug paraphernalia knew about the improper purposes to which the paraphernalia would be put.
- A perjury law makes it illegal for a person to testify to any material matter which she or he "knows" to be false. To prove perjury, the prosecution would

have to prove that the defendant knew at the time she testified that her testimony was false.

- A school safety law makes it illegal for a person to "knowingly possess a firearm in a school zone." To prove a violation of this law, the prosecution would have to prove both that the defendant knew that he was carrying a gun and that he was in a school zone.

"Specific Intent" Crimes

"Specific intent" laws require the government to do more than show that a defendant acted "knowingly." Specific intent laws require the government to prove that a defendant had a particular purpose in mind when engaging in illegal conduct. Each specific intent law identifies the particular purpose that the government has to prove. For example, many theft laws require the government to prove that a defendant took property "with the intent to permanently deprive a person of the property." To convict a defendant of theft, the government has to prove that a thief's plan was to forever part a victim from his or her property. For example, a culprit who drives off in another's car without permission and returns it a few hours later might be convicted only of "joyriding." However, the same culprit who drives off in another's car without permission and takes it across the country

probably demonstrates a specific intent to permanently deprive the owner of the car and would be guilty of the more serious crime of car theft.

Crimes Requiring "Malicious" Behavior

In everyday usage people often use the term "malicious" to mean "spiteful" or "wicked." In most criminal statutes, however, "maliciously" is simply synonymous with "intentionally" and "knowingly." As a result, the term "maliciously" usually adds nothing to the general "mens rea" requirement. As used in murder statutes, however, the term "malice" is often interpreted as meaning the defendant had a "man-endangering" state of mind when the act was committed, which is enough to justify at least a second degree murder charge.

Crimes Requiring "Willful" Behavior

As with "maliciously," the term "willfully" usually adds nothing to the general "mens rea" requirement. In most statutes, to commit an illegal act "willfully" is simply to commit it intentionally. For example, consider these statutes:

- "It is unlawful to willfully disturb another person by loud and unreasonable noise."
- "Anyone who willfully encourages another to commit suicide is guilty of a felony."

Each of these statutes merely

requires the government to show that a person intentionally committed the act made illegal by the statute.

Less commonly, the term "willfully" in a statute has been interpreted to require the government to prove not only that a person acted intentionally, but also that the person intended to break the law. (This is an unusual instance in which "ignorance of the law" actually is an excuse!) For example, in one case a federal law made it illegal to willfully bring in to the country more than \$10,000 in cash without declaring it to customs officials. The U.S. Supreme Court decided that to convict a person of violating this law, the government had to prove that the person knew the law's requirements. (*Ratzlaf v. U.S.*, 510 U.S. 135 (1994).) This more exacting interpretation of "willfully" preserves the "mens rea" foundation of criminal law where, as in the "declaring cash" law, many people might be morally innocent yet break the law.

Crimes Requiring "Felonious" Behavior

The term "felonious" is sometimes included in a law when prohibited conduct can in some circumstances be interpreted as a misdemeanor or as a felony. For example, "felonious assault" in a statute would refer to those types of assault -- such as "assault with a deadly weapon" or "assault with intent to commit great bodily injury" -- that are typically treated as felonies.

The Role of "Motive" in Criminal Law

"Motive" generally refers to the reason behind an illegal act. For example, a person's need to raise money quickly to pay off a bookie may be the motive for a robbery; revenge for a personal affront may be the motive for a physical attack. Prosecutors often offer motive evidence as circumstantial evidence that a defendant acted intentionally or knowingly. The reason is that like most people, judges and jurors believe in "cause and effect." They are more likely to believe that a defendant had "mens rea" if they know that the defendant had a motive to commit an illegal act. While prosecutors frequently do offer "motive" evidence, they are not required to do so. By the same token, defendants may offer evidence showing that they had no motive to commit a crime, and then argue that the lack of a motive demonstrates reasonable doubt of guilt.

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