

Conference on Law & Morality

William & Mary School of Law

Criminal Law

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Professor Claire Finkelstein is Professor of Law and Philosophy at the University of Pennsylvania. Professor Finkelstein has published extensively in the areas of criminal law theory, as well as in moral and political philosophy, philosophy of law, and philosophical rational choice theory. Publications include "A Contractarian Argument Against the Death Penalty," *New York University Law Review* (forthcoming, 2006), "Merger and Felony Murder," in *Defining Crimes: Essays on the Criminal Law's "Special Part"* (Antony Duff & Stuart Green eds., 2005), *Legal Theory and the Rational Actor*, in *Oxford Handbook Of Rationality* (ed. Al Mele), Oxford University Press (2003), and "Is Risk a Harm?," *University of Pennsylvania Law Review* (2003).

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Professor Leo Katz explores the paradoxes of criminal law and deontological theory to set the stage for a deeper understanding of a wide variety of philosophical and legal issues. Katz is the author of *Bad Acts and Guilty Minds: Conundrums of the Criminal Law* (University of Chicago Press, 1987), *Ill-Gotten Gains: Evasion, Blackmail, Fraud and Kindred Puzzles of the Law* (University of Chicago Press, 1996), and co-editor with Stephen Morse and Michael Moore of *Foundations of the Criminal Law* (Oxford University Press, 1999). He was recently awarded a Guggenheim fellowship for his on-going book project, *Why the Law is so Perverse*. Katz has also authored numerous articles for law journals, as well as for the *New York Times*, *Wall Street Journal*, *National Law Journal*, and *The American Lawyer*.

Actio Liberia in Causa and Nuclear Deterrence:

Two Facets of One Problem

Scholars have recently become interested in the role that plans play in practical reasoning. Put generically, the question they ask is whether the fact that an agent's action is part of an overall plan should lead us to evaluate the action differently from the way we would if it were considered in isolation. In this paper we will explore this problem in two contexts, one in law and the other in rational choice theory. In law, this question arises in cases in which defendants cause the conditions of their own defenses—for example, where a defendant deliberately provokes another in order to be able to attack in claimed self-defense. The question is whether we should deny the defendant a defense we would otherwise grant, just because the defense is claimed in the context of a plan to produce it. In rational choice theory, the problem arises in the context of nuclear deterrence, where the question is whether the seeming irrationality of acting on a failed deterrent threat can be rationally justified because the threat was issued as part of an overall plan it was rational to adopt. We seek to show that the criminal law problem and the problem of the rationality of nuclear deterrence are converse expressions of the same logic, and as such may admit of a common solution.