I. ESTABLISHING GUILT
   A. Introduction
      1. Action against lawbreakers serves 3 purposes beyond immediate punitive one:
         a. Removes dangerous people from community
         b. Deters others from criminal behavior
         c. Change to turn lawbreakers into law-abiding citizens
   B. The Presentation of Evidence
      1. Evidence is never admissible if it is irrelevant
         --Irrelevant if evidence does not tend to establish proposition in Q or b/c the
         proposition is not material to the outcome of the case
      2. Evidence is relevant if probative (tends to establish the proposition for which it is
         offered) and material (will affect the outcome of the case)
         -evidence of past crimes admissible if very similar to crime at hand
         People v. Zackowitz (p. 22)
         Holding: Character is never an issue in criminal prosecution unless the D chooses
         -Should evidence of the other guns come into the case?
         --shouldn’t use past act/crimes:
            1. Focus on charge against the defendant, not the type of person
            2. Already punished→double jeopardy-like concern
            3. Jury might give it too much weight→overestimate value
            4. Efficiency→don’t want to discuss and waste time on things that aren’t important
            5. Bad person prejudice→jury might think that the defendant is a bad person, and might
               convict because of that and not really based on the evidence
            6. Burden 5th Amendment→puts pressure on defendant to testify
   C. Proof beyond a Reasonable Doubt
      1. Need proof beyond a reasonable doubt of every fact necessary to constitute the crime
         charged (Winship)
         Patterson v. New York (p. 38)
         Holding: The defendant has the burden of proving his affirmative defense by a
         preponderance of the evidence
         -2 aspects to burden of proof:
            1. Burden of persuasion—proof beyond a reasonable doubt in criminal cases (b/c of
               uncertainty); what it takes to prove something to your standard (burden of convincing
               the trier of fact)
            2. Burden of production—burden of coming forward with enough evidence to put a
               certain fact in issue; rule of convenience to get the ball rolling; usually on the person
               who has the burden of persuasion, but doesn’t have to be; if you don’t meet burden of
               persuasion, the court will direct a verdict against you
            2. Under MPC, D generally bears only burden of production, and once an affirmative D
               is raised, the P must disprove it beyond a reasonable doubt (§1.12(2)(a))
Be aware of 3 things from things covered so far:
1. Respect complexity (burden of proof, character evidence)
2. Carry constant, healthy skepticism of what courts or legislatures say
3. Have a sense that we punish people for the bad acts that they intentionally commit, and
   want to be darn sure that the person is guilty
D. The Role of the Jury

Duncan v. Louisiana (p. 55)
Holding: Right to jury trial in all criminal cases
- Benefits of trial by jury:
  -- Protect against arbitrary judgment of trial judges
  -- Benefits of group decision making
  -- Stop oppression/corruption
  -- Jury nullification
  -- Jury is capable

United States v. Dougherty (p. 62)
Holding: Jury cannot (does not have to) be instructed on issue of nullification
- Views on jury nullification:
  1. One view is that we can’t do anything about it, but a necessary evil that we have to put up with
  2. Other view is that jury nullification is a part of what the right to a jury trial is all about (right to have the jury in appropriate cases exercise mercy)

E. The Role of Counsel

Nix v. Whiteside (p. 79)
Holding: It is okay for an attorney to not allow a client to testify because it will be false testimony
- Indeed, both the Model Code and the Model Rules do not merely authorize disclosure by counsel of client perjury; they require such disclosure
  1. Strickland standard of effective counsel:
     a. Ineffectiveness (error—not functioning as counsel)
     b. Prejudice (unfair trial)
  2. Defense attorney should not substitute his judgment for the judgment of the judge/jury

II. THE JUSTIFICATION FOR PUNISHMENT

A. Background and Case Study (Why punish?)
  1. 3 main justifications for punishment:
     a. Retributive—backward looking, as they seek to justify punishment on basis of past behavior; punishes because and only because the offender deserves it
     b. Utilitarian—forward looking, as seek to justify punishment on basis of good consequences it will produce in future; general and specific deterrence
        -- deterrence, rehabilitation, incapacitation

Regina v. Dudley and Stephens (p. 135)
Holding: The broad proposition that man may save his life by killing, if necessary, an innocent and unoffending neighbor, it certainly is not law at the present day.

B. More case Studies (Why punish?)

United States v. Bergman (p. 140)
Holding: A “good” person should not be allowed to miss out on a prison term because they are good, as there should be equal justice
- Crimes like those in this case – deliberate, purposeful, continuing, non-impulsive, and committed for profit – are among those most likely to be generally deterrable by sanctions.
State v. Chaney (p. 143)
Holding: We believe that a sentence of imprisonment for a substantially longer period of imprisonment than the one-year sentence which was imposed would unequivocally bring home to Chaney the seriousness of his dangerously unlawful conduct, would reaffirm society’s condemnation of forcible rape and robbery.

United States v. Jackson (p. 146)
Holding: Giving a life sentence is permitted by a statute that says a minimum of 15 years must be given

United States v. Johnson (p. 153)
Holding: Family (and other extenuating) circumstances can factor into a judge’s determination of the length of a sentence
-A district court, according to the statute, may depart from the applicable guideline range if it finds a circumstance “not adequately taken into consideration by the Sentencing Commission in formulating the guidelines.”

III. DEFINING CRIMINAL CONDUCT – THE ELEMENTS OF JUST PUNISHMENT
A. Culpability—Actus Reus
1. Requirements of Overt and Voluntary Conduct
Martin v. State (p. 173)
Holding: We think it sound, that an accusation of drunkenness in a designated public place cannot be established by proof that the accused, while in an intoxicated condition, was involuntarily and forcibly carried to that place by the arresting officer.

People v. Newton (p. 175)
Holding: Defendant in unconscious or semiconscious condition cannot be convicted of manslaughter
-Where not self-induced, as by voluntary intoxication or the equivalent, unconsciousness is a complete defense to a charge of criminal homicide.

2. Omissions
Pope v. State (p. 183)
Holding: She may not be punished as a felon under our system of justice for failing to fulfill a moral obligation, and the short of it is that she was under no legal obligation.

Jones v. United States (p. 190)
Holding: Housing a child (and child’s mother) does not make a person legally responsible for the child

Barber v. Superior Court (p. 198)
Holding: Discontinuing life treatment is not murder, as a physician has no duty to continue treatment, once it has proved to be ineffective.

B. Culpability—Mens Rea
1. Basic Conceptions
-Mens rea refers only to the mental state required by the definition of the offense to accompany the act that produces or threatens the harm
Regina v. Cunningham (p. 204)
Holding: Appropriate mental state under MPC was recklessness

Holloway v. United States (p. 218)
Holding: Congress intended to criminalize the more typical carjacking carried out by means of a deliberate threat of violence
United States v. Jewell (p. 220)
Holding: “Knowingly” can mean consciously avoiding the truth (deliberate ignorance)
-The court here says as long as he makes a conscious effort not to find out what is there, that is enough for liability, regardless of what he may subjectively be aware of
--reduces the mens rea to negligence, even though the statute says knowledge
2. Mistake of Fact
Regina v. Prince (p. 226) and People v. Olsen (p. 230)
Holding: Reasonable mistake of age is not a defense (Age is strict liability element)
1. White v. State (p. 227)—pregnancy is strict liability element as well
3. Strict Liability
Morissette v. United States (p. 237)
Holding: A defendant must be proven to have wrongful thought (mens rea) when it is not expressly stated by the statute
Staples v. United States (p. 241)
Holding: Absent a clear statement from Congress that mens rea is not required, we should not apply the public welfare offense rationale to interpret any statute defining a felony offense as dispensing with mens rea.
State v. Guminga (p. 244)
Holding: We find that criminal penalties based on vicarious liability are a violation of substantive due process and that only civil penalties would be constitutional.
-We find that, in Minnesota, no one can be convicted of a crime punishable by imprisonment for an act he did not commit, did not have knowledge of, or give expressed or implied consent to the commission thereof.
4. Mistake of Law
-Mistake about statute you are violating is 2.02(9) defense/offense
-Mistake about extraneous law, then mens rea requirement (2.02(1))
People v. Marrero (p. 255)
Holding: Defendant’s personal misreading or misunderstanding of a statute may not excuse criminal conduct
Cheek v. United States (p. 263)
Holding #1: A judge can instruct a jury to not consider an individual’s claim that a law is unconstitutional
Holding #2: A judge cannot instruct a jury to individual’s belief on whether he had to pay taxes
-Not a mistake of law case—another ordinary mens rea case
United States v. Albertini (p. 268)
Holding: Couldn’t be liable as this was a mistake of law and under MPC 2.04(3) he relied on the court as an authority for interpreting the law for him
1. Hopkins v. State (p. 270)—need to be an official statement to rely on it
2. Raley v. Ohio (p. 271)—violation of due process to convict a D for conduct that governmental representatives had earlier in official capacity said was lawful
Lambert v. California (p. 271) (oddball case—unsure what it stands for)
Holding: Where a person did not know of the duty to register and where there is no proof of the probability of such knowledge, he may not be convicted consistently with Due Process
C. Legality

**Shaw v. Director of Public Prosecutions** (p. 290)
Holding: Can be guilty of a law that is not expressly stated, but rather implied (today’s view is that it has to be explicit)

**Keeler v. Superior Court** (p. 294)
Holding: This case was really about abortion—unborn fetus not a human (but soon after changed by California statute)

**City of Chicago v. Morales** (p. 300)
Holding: Vagueness in statute is unconstitutional
1. Vagueness may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits
2. Vagueness may authorize and even encourage arbitrary and discriminatory enforcement

IV. RAPE

A. Actus Reus

**State v. Rusk** (p. 323)
Holding: Either force and physical resistance of threat that brings about fear that makes absence of resistance understandable
*Hard to use this for precedent—all we know is that there is enough fear in this case with these facts*
-Elements:
  1. Intercourse
  2. Force or threat of force [force and resistance go together—needs to be resistance before there can be force]
  3. Without consent

**State in the Interest of M.T.S.** (p. 338)
Holding: Physical force found in an act of non-consensual penetration involving no more force than necessary to accomplish that result
-Any act of sexual penetration engaged without the affirmative and freely-given permission of the victim constitutes the offense of sexual assault

B. Mens Rea
-States require anything from knowledge to strict liability for mens rea requirement
  --recklessness is the prototypical requirement for sexual assault

**Commonwealth v. Sherry** (p. 351)
Holding: Any resistance that expresses lack of consent is enough to get to the jury.
-Mens rea not defined, but from here we know that it is less than knowledge

**Commonwealth v. Fischer** (p. 354)
Holding: Question of mistake (of consent) is not an issue, as precedent from Williams makes clear
-Holding #2: Cannot announce a new rule and then find counsel ineffective for failing to predict it

C. Statutory Solution
-Reform efforts have had surprisingly little impact on rape reporting, processing of complaints, and conviction rates
V. HOMICIDE

A. Intentional Killings—Premeditation

**Commonwealth v. Carroll** (p. 396)

Holding: Even if we believe all of D’s statements and testimony, there is no doubt that this killing constituted murder in the 1st degree

- Psychiatrist cannot determine the intent or state of mind of an accused at the time of the commission of a homicide
- No time is too short for the necessary premeditation to occur

**State v. Guthrie** (p. 400)

Holding: Needs to be more clear-cut difference between 1st and 2nd degree murders (intentional/purposeful killing and premeditation)

- Carroll court would have found guilty of 1st degree murder

B. Intentional Killings—Provocation

- Provocation/extreme emotional distress reduces murder to voluntary manslaughter
- Permissible to put burden of proof for provocation on D
- Some statutes disallow provocation defense where D induced the provocative action

**Girouard v. State** (p. 405)

Holding: Mere words could never be provocation; Standard is one of reasonableness

- 4 ways to read decision:
  1. Permissible to find non-provocation (narrowest holding)
  2. Must find non-provocation on these facts
  3. Words never adequate provocation [seems to lean towards this reading]
  4. Never provocation unless specific category

**Maher v. People** (p. 407)

Holding: No categories or mere words limitation like in Girouard; If reasonable doubt to whether D was provoked, then jury has to hear the evidence

**People v. Casassa** (p. 415)

Holding: Ultimate extreme emotional distress test is object—there must be “reasonable” explanation or excuse for the actor’s disturbance

- Dictum seems to suggest don’t need provocative act, just reasonableness of subjective emotional disturbance

C. Unintended Killings—Involuntary Manslaughter

**Commonwealth v. Welansky** (p. 425) (like Great White incident)

Holding: Can infer not only that D should have been aware, but also that he was aware of the risk (may not be much difference between negligence and recklessness)

1. Contributory negligence is not a defense to manslaughter

**State v. Williams** (p. 431)

Holding: Ordinary or simple negligence is sufficient to support a conviction of statutory manslaughter

- Under MPC, would be guilty of negligent homicide (as recklessness required for manslaughter)

D. Unintended Killings—Murder

**Commonwealth v. Malone** (p. 439) (Russian Roulette)

Holding: Malice aforethought—doesn’t have to be malicious or thought about beforehand if a bad enough act

- In trial for murder, proof of motive is always relevant, but never necessary
United States v. Fleming (p. 443)
Holding: For murder, only need to prove that operated car in a manner in which he did with a heart that was without regard for the life and safety of others
-Could be guilty of murder under MPC—has extreme indifference and even if he is not aware of it, voluntary intoxication will not be an excuse under §2.08(2)
E. Unintended Killings—Felony Murder (res ipsa in MPC)
-If felony that falls under felony-murder, then guilty of murder just b/c committed the crime during the commission of a felony

Regina v. Serne (p. 448)
1. The “Inherently Dangerous Felony” Limitation

People v. Phillips (p. 459)
Holding: Only such felonies as are in themselves “inherently dangerous to human life” can support the application of the felony-murder rule
-Some felonies may provide for murder conviction under felony-murder rule, even if not listed

People v. Stewart (p. 464)
Holding: We believe the better approach is for the trier of fact to consider the facts and circumstances of the particular case to determine if such felony was inherently dangerous in the manner and the circumstances in which it was committed

2. The Merger Doctrine—need to prove the mens rea

People v. Smith (p. 466)
Holding: Felony-murder instruction may not properly be given when it is based upon a felony which is an integral part of the homicide [here it is child-abuse]
-Felony-murder barred “where the purpose of the conduct was the very assault which resulted in death”

3. Killings not in furtherance of the Felony

State v. Canola (p. 471)
Holding: D cannot be guilty of felony murder for the death of his co-felon

- Agency Theory is used here

Taylor v. Superior Court (p. 477)
Holding: D guilty of murder under accomplice theory, not agency theory

VI. THE SIGNIFICANCE OF RESULTING HARM
A. Causation
1. Foreseeability
   People v. Acosta (p. 518)
   Holding: Not simply enough for a cause-in-fact relationship, but must be foreseeability (for murder)
   -Dissent says helicopters were not in the “zone of danger”
   People v. Arzon (p. 521)
   Holding: D’s conduct need not be the sole and exclusive factor in the victim’s death; Liable if conduct was a sufficiently direct cause of the death, and the ultimate harm is something which should have been foreseen as being reasonably related to his acts
-Many courts find the initial assailant liable for the victim’s death even when significant medical error contributes to the result

2. Subsequent Human Actions

**People v. Campbell** (p. 530)
Holding: Can’t be guilty of murder for giving the victim a gun, as it creates risk, but someone else’s action causes the death

**People v. Kevorkian** (p. 531)
Holding: If recklessly or negligently provides means, maybe guilty of reckless or negligent homicide, even if can’t be guilty of murder

-Irony—going to be hardest to get the person that is really trying to kill (like Kevorkian), as might not be guilty of anything, while reckless/negligent person will be easier to get

Things likely to cut off liability:
--independent act of the 3rd person, and/or
--defendant doing the last step toward death

**Stephenson v. State** (p. 537)
Holding: “When suicide follows a wound inflicted by D his act is homicidal, if deceased was rendered irresponsible by the wound and as a natural result of it”

**Commonwealth v. Root** (p. 545) (drag racing)
Holding: D not guilty when not a direct cause of the death in issue

**State v. McFadden** (p. 548) (drag racing with opposite result from Root)
Holding: The fact that co-racer’s voluntary participation in the drag race does not itself bar D from being convicted of involuntary manslaughter for co-racer’s death

**Commonwealth v. Atencio** (p. 550) (Russian roulette)
Holding: Defendants could properly be found guilty of manslaughter

B. Attempt (common law—need purpose)

-Usual punishment for attempt is a reduced factor of punishment for completed crime
-There can be no crime of attempted involuntary manslaughter, but can be a crime for attempted voluntary manslaughter

1. Mens Rea

**Smallwood v. State** (p. 556)
Holding: Have to have purpose to bring out result (i.e specific intent to kill needed)
-Recklessness not enough for attempted murder (although is enough for murder)

2. Preparation vs. Attempt

**People v. Rizzo** (p. 565)
Holding: The act or acts must come or advance very near to the accomplishment of the intended crime

-Police can’t arrest you unless they have probable cause that you committed or are committing a crime

**McQuirter v. State** (p. 569)
Holding: Intent is a question to be determined by the jury from the facts and circumstances adduced on the trial

**United States v. Jackson** (p. 575)
Holding: Under MPC, either conduct itself was sufficient as a matter of law to constitute a “substantial step” if it strongly corroborated criminal purpose
State v. Davis (p. 581)
Holding: Mere acts of preparation are not enough for an attempt
-MPC \( \rightarrow \) mere solicitation of someone to commit a crime is not enough to constitute
an attempt
3. Impossibility
- Legal impossibility is a valid defense, while factual impossibility is not
People v. Jaffe (p. 585)
Holding: There can be no attempt to receive stolen goods, knowing them to be stolen, when they have not actually been stolen
- Under MPC, can be guilty of an attempt to possess stolen goods
People v. Dlugash (p. 587)
Holding: May be held for attempted murder though the target of the attempt may have already been slain by another

VII. GROUP CRIMINALITY
A. Mens Rea
1. 2 levels of mens rea:
   a. That required of the accomplice—usually must intend to further the criminal action of the principal
   b. That required of the principal
Hicks v. United States (p. 607)
Holding: Where an accomplice is present for purpose of aiding and abetting, but refrains from doing so because it is unnecessary, he is equally guilty as if he had actively participated by words or acts of encouragement
State v. Gladstone (p. 611)
Holding: Vital element of a nexus between the accused and the party whom he is charged with aiding and abetting in the commission of a crime is needed [and is missing here]
People v. Luparello (p. 615)
Holding: Aiders and abettors should be responsible for the criminal harms they have naturally, probably, and foreseeably put in motion
   - Sounds like felony-murder doesn’t matter what the mens rea was with respect to the death, as long as they have purpose of encouraging crime to be committed
   - Will be guilty of any foreseeable crime that friends will commit, even if only negligent
United States v. Xavier (p. 621)
Holding: Cannot be guilty when have to have knowledge because Statute says “knowing or having cause to believe” and State doesn’t prove you have knowledge
State v. McVay (p. 623)
Holding: No reason why prior to commission of a crime, one may not aid, abet, counsel, etc. the doing of the unlawful act or of the lawful act in a negligent manner
People v. Russell (p. 624)
Holding: P does not have to proof who fired the fatal shot when the evidence is sufficient to establish that each D acted with mental culpability required for the commission of depraved indifference murder
B. Actus Reus

**Wilcox v. Jeffery** (p. 628)

Holding: Doesn’t matter what the illegal act is, provided that the aider and abettor knows the facts sufficiently well to know that they would constitute an offense in the principal

**State ex rel. Attorney General v. Tally** (p. 629)

Holding: It is quite enough if the aid merely renders it easier for the principal actor to accomplish the end intended by him and the aider and abettor, even though end would have been attained without aider’s help

C. Relationship between Liability of the Parties

**State v. Hayes** (p. 633)

Holding: To make D responsible for acts of Hill, they must have had a common motive and common design (which they did not)

-Under MPC (§5.01(3)), he would be guilty, b/c he would have been guilty as an accomplice if the crime had been committed (no crime committed b/c Hill didn’t have requisite mens rea)

**Taylor v. Commonwealth** (p. 636)

Holding: A person charged as an accomplice is not shielded based on principal’s excuse or justification

-Excuses are specific to defendants—no reason to grant the accomplice a defense simply because the principal has a defense

**Regina v. Richards** (p. 642)

Holding: Court says cannot be guilty of graver offense than that in fact which was committed

D. Conspiracy—Overview; Accessorial Liability

1. Overview

-Statute of limitations begins to run once the conspiracy terminates

**Krulewitch v. United States** (p. 671)

Holding: Not persuaded to adopt Government’s idea that all criminal conspiracy cases would create automatically a further breach of the general rule against the admission of hearsay evidence

2. Accessorial Liability

**Pinkerton v. United States** (p. 684)

Holding: In a continuous conspiracy, so long as the partnership in crime continues the partners act for each other in carrying it forward—foreseeability?

**State v. Bridges** (p. 687)

Holding: Co-conspirator may be liable for the commission of substantive criminal acts that are not within the scope of the conspiracy if they are reasonably foreseeable as the necessary or natural consequences of the conspiracy

-Most states reject *Pinkerton*; MPC-conspirators are liable for substantive crimes of their coconspirators only when the strict conditions for accomplice liability are met

E. Conspiracy—Actus Reus (the actus reus is the agreement itself)

**Interstate Circuit, Inc. v. United States** (p. 694)

Holding: Agreement is not a pre-requisite to conspiracy, but enough that each party gave their adherence to the scheme and participated in it

-A conspiracy may exist if there is no communication and no *express* agreement, provided that there is a tacit agreement reached without communication
United States v. Alvarez (p. 699)
Holding: Don’t have to prove knowledge of all details of the conspiracy, as long as P proves D had knowledge of the essential of the conspiracy

F. Conspiracy—Mens Rea

People v. Lauria (p. 704)
Holding: To convict of conspiracy, prosecution would have to prove knowledge and intent

F. Conspiracy—Scope of Agreement
- Chain (successive communication and cooperation to get to goal) vs. spoke (single person deals individually with two or more persons, each with own task/function)
  Kotteakos v. United States (p. 714) (spoke)
- 8 conspiracies or 1?
  United States v. Bruno (p. 718) (chain)
- Only 1 conspiracy

G. Conspiracy—Parties
- Wharton’s Rule: can’t charge with both substantive crime and conspiracy (if 2 people necessary for the commission of the crime)
  Gebardi v. United States (p. 724)
  Holding: Can’t conspire with self, so b/c the woman was a victim and therefore not guilty, the man could not be guilty of conspiring with himself
  Garcia v. State (p. 726)
  Holding: D can be guilty of conspiracy when the only person with whom D conspired was a police informant who only feigned acquiescence in the scheme
  - Unilateral—can have conspiracy even if only coconspirator feigns acquiescence

VIII. EXCULPATION

A. Self-defense (Justification—better to do what they did)
- Honest, but unreasonable belief:
  - Could be guilty of 1st degree murder (under NY law as seen in Goetz)
  - Under MPC ➔ negligent homicide (defendant will be guilty of level of homicide at the level of his mistake)—here unreasonable belief is negligence, so negligent homicide—§3.09(2)
- Many states say beliefs and fears must be reasonable, but do not make explicit that D’s actions must be reasonable as well
  United States v. Peterson (p. 750)
  Holding: The right of self-defense arises only when the necessity begins and equally ends with the necessity
  People v. Goetz (p. 751)
  Holding: Self-defense should include a charge of reasonable man in D’s situation
  State v. Kelly (p. 763)
  Holding: Expert’s testimony, if accepted by the jury, would have aided it in determining whether, under the circumstances, a reasonable person would have believed there was imminent danger to her life
State v. Norman (p. 776)
Holding: Only where D killed due to a reasonable belief that death or great bodily harm was imminent can the justification for homicide remain clearly and firmly rooted in necessity.
- The use of deadly force in self-defense to prevent harm other than death or great bodily harm is excessive as a matter of law.

State v. Abbott (p. 788)
Holding: Deadly force is not justifiable “if the actor knows that he can avoid the necessity of using such force with complete safety by retreating.”
- Don’t have to retreat in own home.

United States v. Peterson (p. 792)
Holding: One who is the aggressor in a conflict culminating in death cannot invoke the necessities of self-defense.
- Self-defense may not be claimed by one who deliberately places himself in a position where he has reason to believe “his presence would provoke trouble.”

B. Protection of Property & Law Enforcement
People v. Ceballos (p. 796)
Holding: Allowing persons, at their own risk, to employ deadly mechanical devices imperils the lives of children, firemen and policemen.

Durham v. State (p. 802)
Holding: Officer may not kill or inflict great bodily harm to arrest someone for a misdemeanor, but can use force when force used against him.

Tennessee v. Garner (p. 804)
Holding: Deadly threat may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

C. Necessity (outside forces)
People v. Unger (p. 809)
Holding: The D was entitled to have the jury consider the defense on the basis of his testimony.

United States v. Schoon (p. 820)
Holding: The necessity defense is inapplicable to cases involving indirect civil disobedience (there are always legal alternatives to indirect civil disobedience).
- MPC justifies killing an innocent, nonthreatening bystander when killing him is necessary to avoid the death of several.

Public Committee Against Torture v. State of Israel (p. 827)
Holding: Cannot have a general mandate giving authority to use physical means in interrogations, but sometimes can be used on a case-by-case basis.

Cruzan v. Director, Missouri Dept. of Health (p. 832)
Holding: Missouri standard requires clear and convincing evidence of informed consent to take patient off of life-support.

Washington v. Glucksberg (p. 834)
Holding: No right to assisted suicide in Washington.

D. Principles of Excuse (reasonable person would have acted in same manner)
- 3 groups that ground excuse:
  1. Involuntary actions
  2. Deficient but reasonable actions
  3. Render all actions irresponsible (infancy and legal insanity).
1. Duress (other persons)
   -MPC—makes duress excuse available only when the peril confronting D arises from the
do-it-or-else command of another person, not when it arises from some other source, such
as a natural condition
   -MPC—duress not available where D recklessly placed himself in a situation in which it
is probably he would be subjected to duress
   -Fairly limited defense at common law
      --has to be imminent threat; reasonable fear of death or serious bodily harm; can’t kill
an innocent person; in many jurisdictions simply not available in murder cases
   **State v. Toscano** (p. 845)
      Holding: To excuse a crime, the threatened injury must induce “such a fear as a man
of ordinary fortitude and courage might justly yield to”
      -Concern for the well-being of another, particularly a near relative, can support a
defense of duress if the other requirements are satisfied
   **United States v. Fleming** (p. 855)
      Holding: Need immediate danger of death or great bodily harm for duress defense

2. Intoxication—very narrow defense (can negate purpose or knowledge mens rea, b/c
getting drunk is reckless)
   **Regina v. Kingston** (p. 861)
      Holding: absence of moral fault doesn’t effect the criminality of the act (this is the
predominate rule for involuntary intoxication)
   **Roberts v. People** (p. 864)
      Holding: If voluntary intoxication negates mens rea then not guilty, as intoxication is
always relevant when determining mens rea (voluntary intoxication is a defense for specific
intent crimes)
   **People v. Hood** (p. 865)
      Holding: Intoxication only relevant for specific intent crimes and not relevant for
general intent crimes

3. Insanity—very narrow defense
   **M’Naghten’s Case** (p. 879)
      Holding: Jurors should be told that every man is presumed to be sane and thus
responsible for his crimes, until the contrary be proved to their satisfaction
      -If D was conscious that the act was one which he ought not to do, then guilty
   **Blake v. United States** (p. 885)
      Holding: Adopt MPC standard (§4.01)—not responsible when lacks substantial
capacity either to appreciate the criminality of his conduct or to conform his conduct to
the requirements of the law
   **United States v. Lyons** (p. 890) (adopts new position, contrary to Blake)
      Holding: Mere narcotics addiction raises no issue of mental defect or disease to serve
as a basis for the insanity defense
   **State v. Green** (p. 906)
      Holding: State has failed to meets its burden in establishing sanity