CONTENTS

	About the Authors page xii List of Abbreviations xvii
1	Introduction to Volume III 1
	KAI AMBOS, ANTONY DUFF, ALEXANDER HEINZE, JULIAN ROBERTS AND THOMAS WEIGEND L. The Need for a Comparative Concentral Analysis.
	I The Need for a Comparative Conceptual Analysis 1II The Evolution of the Project 3
	III The Structure of the Volumes 4
	IV Contents of Volume III 5
	1 Criminal Law 5 2 Criminal Procedure 8 3 Criminal Justice 9
	V Conclusion 9
	Bibliography 10
	PART I Criminal Law 11
2	Principles of Criminalisation 13
	ANTONY DUFF AND TATJANA HÖRNLE
	I Introduction 13
	II What Is Criminalisation? 14
	III Reasons (Not) to Criminalise 16
	IV A Little History 19V Master Principles of Criminalisation: Anglo-American and German Discussions 28
	VI What Should a 'Theory of Criminalisation' Be? 43
	Bibliography 49
3	Intention 55
	MATTHEW DYSON AND THOMAS WEIGEND
	I Introduction: The Importance of Intention 55
	V

vi CONTENTS

II Intention and Other Bases for Criminal Liability

	(Overview) 55
	III What Is Special about Intention? Moral Significance
	of Intention 60
	IV Characteristics of Intention 65
	1 England and Wales 65
	2 Germany 75
	V The Limits of Intention: Risk-Taking vs. <i>Dolus</i>
	Eventualis 76
	1 England and Wales 76
	2 Germany 78
	VI Ulterior Intent Crimes and Attempts 83
	VII Intention and Finding Facts 88
	VIII Conclusion 89
	Bibliography 91
	Dibilography
4	Legal Insanity and Related Doctrines: German and US Law
	Compared 96
	JOHANNES KASPAR AND STEPHEN J. MORSE
	I Introduction 96
	1 Substantive Law 99
	2 Procedural Aspects 103
	3 Legal Consequences 105 4 Problems 107
	III US Law 107
	1 The Structure of Criminal Liability 107
	2 The Law's Concept of Responsibility 109
	3 Substance 110
	4 Insanity Defence Procedure 118 5 Mental Disorder Claims Other than Legal Insanity 124
	The state of the s
	IV Comparative Analysis 128
	1 Preliminary Considerations 1282 Substance 131
	3 Procedure 133
	4 Conclusion 135
	Bibliography 135
5	Statutes of Limitation 138
	CARLA SEPÚLVEDA PENNA AND SAMUEL BESWICK
	I Introduction 138
	II Limitation Rationales 142

CONTENTS vii

	2	
	_	Functional Explanations for Limitation Statutes 143
		(a) Finality and Certainty 143
		(b) Evidential Availability 144
		(c) Defendants' Interests in Future Planning 145
		(d) Contemporaneity; Timely Litigation and Not Stale
		Prosecution 146
		(e) Administrative Efficiency 148
		(f) Summary 149
Ш	Ge	eneral Time-Bars on Prosecutions 149
	1	Continental Europe 149
	2	The Commonwealth 152
	3	United States 156
IV	Ti	me-Bar Exceptions and Waiver 158
		Continental Europe 159
	2	
	3	
V		mitation Postponement and Repose Provisions 164
v		
	1	Continental Europe 164
	2	1110 GG11111101111 GW1111
	3	United States 169
VI	Co	onclusion 170
Bib	liog	graphy 173
Ω 1	d a	nd New Tracks for Corporate Criminal
\mathbf{v}		
		ity 179
Lia	bil	
Lia M A	bil rk	DSOUZA AND CHARLOTTE SCHMITT-
Lia MA LE	bil RK ON	DSOUZA AND CHARLOTTE SCHMITT-
Lia MA LEG	bil RK ON Int	T DSOUZA AND CHARLOTTE SCHMITT-ARDY troduction 179
Lia MA LEG	bil RK ON Int	DSOUZA AND CHARLOTTE SCHMITT-
Lia MA LEG	bil RK ON Int	T DSOUZA AND CHARLOTTE SCHMITT-ARDY troduction 179
Lia MA LEG	bil RK ON Int	T DSOUZA AND CHARLOTTE SCHMITT- ARDY troduction 179 d Routes to Corporate Criminal Liability 180
Lia MA LEG	bil RK ON Int	T DSOUZA AND CHARLOTTE SCHMITT- ARDY troduction 179 d Routes to Corporate Criminal Liability 180 England and Wales 180
Lia MA LEG	bil RK ON Int	t DSOUZA AND CHARLOTTE SCHMITT- ARDY troduction 179 d Routes to Corporate Criminal Liability 180 England and Wales 180 (a) Identification 181
Lia MA LEG	bil RK ON Int	troduction 179 d Routes to Corporate Criminal Liability 180 England and Wales 180 (a) Identification 181 (b) Strict and Vicarious Liability 187
Lia MA LEG	bil RK ON Int	troduction 179 d Routes to Corporate Criminal Liability 180 England and Wales 180 (a) Identification 181 (b) Strict and Vicarious Liability 187 (c) Failure to Perform a Statutory Duty (Including Failure to Prevent) 189
Lia MA LEG	bil RK ON Int	troduction 179 d Routes to Corporate Criminal Liability 180 England and Wales 180 (a) Identification 181 (b) Strict and Vicarious Liability 187 (c) Failure to Perform a Statutory Duty (Including Failure to Prevent) 189 (d) Liability Based on Fault in Management or Organisation
Lia MA LEG	bil RK ON Int	troduction 179 d Routes to Corporate Criminal Liability 180 England and Wales 180 (a) Identification 181 (b) Strict and Vicarious Liability 187 (c) Failure to Perform a Statutory Duty (Including Failure to Prevent) 189 (d) Liability Based on Fault in Management or Organisation of Activities ('Organisational Fault') 190
Lia MA LEG	bil RK ON Int Ol 1	troduction 179 d Routes to Corporate Criminal Liability 180 England and Wales 180 (a) Identification 181 (b) Strict and Vicarious Liability 187 (c) Failure to Perform a Statutory Duty (Including Failure to Prevent) 189 (d) Liability Based on Fault in Management or Organisation of Activities ('Organisational Fault') 190 Germany 193
Lia MA LEG	bil RK ON Int Ol 1	troduction 179 d Routes to Corporate Criminal Liability 180 England and Wales 180 (a) Identification 181 (b) Strict and Vicarious Liability 187 (c) Failure to Perform a Statutory Duty (Including Failure to Prevent) 189 (d) Liability Based on Fault in Management or Organisation of Activities ('Organisational Fault') 190 Germany 193 (a) Moves towards Corporate Criminal Liability 194
Lia MA LEG	bil RK ON Int Ol 1	troduction 179 d Routes to Corporate Criminal Liability 180 England and Wales 180 (a) Identification 181 (b) Strict and Vicarious Liability 187 (c) Failure to Perform a Statutory Duty (Including Failure to Prevent) 189 (d) Liability Based on Fault in Management or Organisation of Activities ('Organisational Fault') 190 Germany 193 (a) Moves towards Corporate Criminal Liability 194 (b) The Proposal in Draft 2020 197
Lia MA LEG	bil RK ON Int Ol 1	troduction 179 d Routes to Corporate Criminal Liability 180 England and Wales 180 (a) Identification 181 (b) Strict and Vicarious Liability 187 (c) Failure to Perform a Statutory Duty (Including Failure to Prevent) 189 (d) Liability Based on Fault in Management or Organisation of Activities ('Organisational Fault') 190 Germany 193 (a) Moves towards Corporate Criminal Liability 194 (b) The Proposal in Draft 2020 197 (c) Theoretical Concerns: 'Guilt Transfer' 199
Lia MA LEG	bil RK ON Int Ol 1	troduction 179 d Routes to Corporate Criminal Liability 180 England and Wales 180 (a) Identification 181 (b) Strict and Vicarious Liability 187 (c) Failure to Perform a Statutory Duty (Including Failure to Prevent) 189 (d) Liability Based on Fault in Management or Organisation of Activities ('Organisational Fault') 190 Germany 193 (a) Moves towards Corporate Criminal Liability 194 (b) The Proposal in Draft 2020 197

6

viii CONTENTS

		(f) Messaging: Are Corporate Crimes 'Real' Crimes? 204
	III	When Is the Corporation Itself Responsible –
	137	and Why? 205 Other Potential Options 207
		A Way Forward? 210
		Conclusion 214
		liography 215
7	De	fining the Victim in the Law of Homicide 220
	STI	EFANIE BOCK AND STUART GREEN
	Ι	Protection of 'Persons' vs. 'Humans' and the Anthropocentric Approach of Homicide Law 222
	II	Protection of Persons vs. Humans and the Equality of Life 224
		1 Human Non-Persons? 224
		2 Equality of Human Life and Differentiating the Grade
		of Homicide Based on the Age or Status of the Victim 226
	Ш	When Does Human Life 'Begin' for Purposes of Homicide
	111	Law? 232
		1 Two Paradigms 232
		(a) Anglo-American Paradigm in Practice 233
		(i) Treating the Non-Consensual Killing of a Foetus
		as Homicide Even When the Foetus Dies
		in Utero 233 (ii) Treating Non-Consensual Killing as Homicide Only
		When the Baby Is 'Born Alive' before
		Dying 234
		(iii) Foeticide 234
		(iv) Abortion 235
		(b) The German Paradigm in Practice 2362 Conceptual Issues Concerning the Killing
		of a Foetus 237
		(a) When Does Human Life Begin for Purposes of Homicide
		Law? 237
		(b) When Does 'Birth' Occur? 238
		(c) The 'Born-Alive' Rule and the Distinction between Results and Conduct 240
		(d) Treating Foeticide as a Separate 'Compromise' Offence 242
	IV	Killing 'Another' 243
		1 The Decriminalisation of Suicide 243
		2 Assisting Suicide and Euthanasia 246

CONTENTS ix

V The End of Human Life 250
VI Tentative Conclusions 254
Bibliography 255
PART II Criminal Procedure 261
Beyond a Reasonable Doubt and Intime
Conviction 263
KAI AMBOS AND YOUNGJAE LEE
I Introduction 263
II Brief Historical Background 265
III Justification of the Standard 270
IV Defining Reasonable Doubt 272
1 Introduction 272
2 Numerical Interpretation of the Standard 274
3 Doubt and Certainty 275
4 Subjective and Objective Interpretations 277
5 Moral Certainty 283 6 'Pause and Hesitate' 285
V What Needs to Be Proven? 287
1 Proof of Defences? 287
2 Elements vs. Sentencing Factors 289
3 Factual vs. Moral (Normative) Elements 290
4 Alternative Theories of Guilt 295
VI Reasonable Doubt and the Jury System 296
VII Conclusion 298
Bibliography 299
Pretext, Deception and Entrapment in Criminal
Investigations 305
DOMINIK BRODOWSKI, BRENNER M. FISSELL AND PAUL
ROBERTS
I Introduction: Policing Fundamentals 305
II Police Deception in the United States 307
1 Entrapment 308
2 Interrogations and Confessions 311
III Pretext, Deception and Entrapment in German Criminal
Procedure 315
1 Deceptive Interrogation 316 2 Deceptive Preach of Trust or Confidence 318
 Deceptive Breach of Trust or Confidence 318 Criminal Complicity and Incitement 321
5 Similar Compileity und menement 521

X CONTENTS

2 Deception in Police Interrogation 333 V Comparative Reflections and Conclusions 336 Bibliography 344 PART III Criminal Justice 351
10 Sentencing Procedure: Comparing the Adversarial
and Inquisitorial Approaches 353
JULIAN ROBERTS AND ANNEKE PETZSCHE
I Introduction 353
1 Overview 355
II Sentencing Procedure in Civil Law and Adversarial Jurisdictions 355 1 Sentencing Procedure in Civil Law Jurisdictions 355 (a) Summary 362 2 Common Law Sentencing Procedure 363
2 Common Law Sentencing Procedure 363 (a) Summary 367
 (a) Summary 367 III Bifurcation of the Trial Process: Exploring the Justifications 367 1 Different Issues Being Litigated: Verdict and Sentencing 367 2 Different Evidentiary Standards Apply 373 3 Change in Focus from the Offence to the Offender 374 4 Undermining the Defendant's Trial Strategy 375 5 Offender Agency and Participation at Sentencing 377 6 Time Necessary to Obtain Information Relevant
to Sentencing 379 (a) Principal Sources of Information at Sentencing 380 (i) The Pre-Sentence Report (PSR) 380 (b) The Victim Impact Statement as a Source of Information 382 IV Costs of a Separate Penalty Phase 384 V Conclusion 386 Bibliography 389

CONTENTS Xi

11 Confiscation and Forfeiture of Property in Connection with Alleged Unlawful Conduct: A Preliminary Assessment of Risks and Process 395

JOHAN BOUCHT AND BETH A. COLGAN

- I Introduction 395
- II Avenues to Confiscation and Forfeiture 398
 - 1 Europe 398
 - 2 United States 402
- III Purported Benefits and Costs of Confiscation and Forfeiture 405
- IV Procedures Related to the Risk of Unjust Confiscation and Forfeiture 413
 - 1 Adjudication of Claims 413
 - (a) Access to Court 413
 - (b) Access to Counsel 418
 - (c) Standards and Burdens of Proof 421
 - 2 Proportionality and Innocent Owner Protections 426
 - (a) Proportionality 426
 - (b) Innocent Ownership 429

V Conclusion 433

Bibliography 434

Index 438