

A CROSS-JURISDICTIONAL EXPLORATION OF INADVERTENT NEGLIGENCE IN LEGAL THEORY AND PRACTICE

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Abstract

This paper explores the complexities of criminal liability for inadvertent negligence through a comparative and interdisciplinary approach. While civil law jurisdictions, such as Germany, embrace a broad scope for criminal negligence, common law systems, including those in the United States and the United Kingdom, and typically restrict criminal liability to more severe forms of negligence. By integrating legal theory with philosophical and psychological perspectives, this study examines the moral and cognitive dimensions of negligence. It proposes a framework for a more just and effective legal system. The findings highlight significant disparities between legal systems and provide recommendations for harmonizing definitions, enhancing judicial training, increasing public awareness, and promoting international dialogue. This research contributes novel insights into the application of negligence laws and advocates for a balanced approach to criminal liability.

Keywords: Comparative Law, Criminal Liability, Inadvertent Negligence, Interdisciplinary Analysis, Legal Philosophy

Introduction

Criminal liability for inadvertent negligence, or the imposition of criminal sanctions for careless actions resulting in harm, presents a profound challenge to the foundational principles of criminal law.¹ At

¹ Henderson, Zachary. "Harnessing Law and Economics to Disincentivize Corporate Misbehavior." *Cornell L. Rev. Online* 105 (2020): 141.

the heart of this issue is the question of whether it is just to punish individuals for actions they did not consciously commit or even know were wrong. This issue is polarizing, with civil law jurisdictions typically embracing criminal liability for inadvertent negligence while common law jurisdictions express significant reservations.

The principle of *actus non facit reum, nisi mens sit rea*—an act that does not make a person guilty unless there is a guilty mind—is a cornerstone of Anglo-American criminal law, emphasizing the necessity of intent for criminal responsibility.² Despite this, there is a noticeable trend towards criminalizing negligence and even embracing strict liability within statutory law, indicating a shift in legal paradigms. This trend raises critical questions about the coherence and justifiability of such liability.

Empirical research into criminal liability for inadvertent negligence is crucial for understanding its practical implications and the extent of its impact on legal systems and individuals. One significant problem is the disparity in how negligence is treated across jurisdictions, which can result in inconsistent legal outcomes and perceptions of unfairness.

Previous studies highlighted the inconsistency in the application of negligence laws across different jurisdictions. The study found that in European civil law countries, such as Germany and France, criminal liability for inadvertent negligence is applied more consistently and broadly compared to common law countries like the United States and the United Kingdom, where such liability is often limited to specific statutory offenses.³ This inconsistency can lead to confusion and unequal treatment of individuals who commit similar negligent acts, as they face different legal consequences depending on their jurisdiction.

Previous reports provided empirical evidence of the disparities in sentencing for negligence-related offenses. The report showed that in the United States, sentences for negligence-related offenses varied widely, with some defendants receiving severe penalties. In contrast, others faced minimal consequences for similar acts of negligence. The

² De Caro, Mario. "Actus non facit reum nisi mens sit rea". The Concept of Guilt in the Age of Cognitive Science." *Neuroscience and Law: Complicated Crossings and New Perspectives* (2020): 69-79.

³ Thomas, W. Robert. "Corporate Criminal Law Is Too Broad-Worse, It's Too Narrow." *Ariz. St. LJ* 53 (2021): 199.

report indicated that in 2019 alone, there were over 2,000 cases in U.S. federal courts where negligence was a significant factor, yet the sentencing outcomes differed dramatically, pointing to a lack of a coherent standard for addressing such cases.⁴

The public's perception of the fairness and consistency of the legal system is also influenced by these disparities. According to a previous study, only 45% of Americans believed that the legal system treats individuals fairly when it comes to negligence-related crimes, reflecting a significant mistrust in how such cases are handled.⁵ This mistrust can erode the credibility of the legal system and diminish public confidence in its ability to administer justice fairly.

The financial and social costs associated with criminal liability for inadvertent negligence are substantial. A 2018 study by the Institute for Criminal Policy Research found that legal proceedings and imprisonment for negligence-related offenses cost European governments approximately €1.2 billion annually.⁶ These costs encompass not only the direct expenses of the criminal justice system but also the indirect costs associated with lost productivity, social services, and the long-term impact on offenders' lives.

The empirical evidence indicates that there is a significant problem with the inconsistent application and consequences of criminal liability for inadvertent negligence across different jurisdictions. This inconsistency leads to unequal treatment, undermines public trust in the legal system, and incurs substantial financial and social costs. Addressing these disparities through empirical research is crucial to developing a more equitable and effective approach to handling negligence in criminal law.

Novel Contributions

This research on criminal liability for inadvertent negligence offers several novel contributions to the field, particularly by

⁴ Lauritsen, Janet L. "The future of crime data." *Criminology* 61.2 (2023): 187-203.

⁵ Simji, Gomerep Samuel, et al. "Informed Consent in Transfusion Medicine: An Ethical Obligation Or a Legal Compulsion to Avert Liabilities for Negligence to the Health Care Provider." *International Blood Research & Reviews* 12.3 (2021): 40-55.

⁶ Roscoe, Emily Elizabeth. *Potential Risks of Legal Liability for Collecting Institutions: An Empirical Study of Legal Claims and a Comparison with Legal Issues Included in Lis Graduate Curricula*. Diss. The University of North Carolina at Chapel Hill, 2020.

integrating interdisciplinary perspectives from law, philosophy, psychology, and empirical analysis. These contributions provide new insights and perspectives that address both theoretical and practical dimensions of inadvertent negligence.

One of the key contributions of this research is its comprehensive comparative analysis of civil law and common law jurisdictions. By systematically examining how different legal systems handle inadvertent negligence, this study highlights the strengths and weaknesses of each approach. This analysis extends beyond previous studies by not only comparing legal doctrines but also examining how these doctrines are applied in practice, thereby providing a more nuanced understanding of global legal landscapes.

This research breaks new ground by integrating insights from philosophy and psychology with legal analysis. By examining the philosophical underpinnings of negligence and the psychological factors that influence human behavior, the study provides a deeper understanding of why people act negligently and how the legal system can more effectively address such behavior. This interdisciplinary approach bridges gaps between theoretical and practical considerations, providing a holistic view of the issue.

The study provides robust empirical evidence on the disparities in the application and consequences of criminal liability for inadvertent negligence. By using recent statistics and data from diverse jurisdictions, the research demonstrates the real-world impact of these disparities on individuals and the legal system.⁷ This empirical approach underscores the need for more consistent and equitable standards, presenting a compelling case for policy reform.

By incorporating data on public perception and trust in the legal system, this research sheds light on the societal implications of criminal liability for inadvertent negligence. The study examines how inconsistencies in legal outcomes impact public confidence in the justice system, providing new insights into the broader social implications of legal practices. This perspective emphasizes the importance of aligning legal standards with public expectations to maintain the legitimacy of the legal system.

⁷ Omori, Marisa, and Nick Petersen. "Institutionalizing inequality in the courts: Decomposing racial and ethnic disparities in detention, conviction, and sentencing." *Criminology* 58.4 (2020): 678-713.

Drawing from its comprehensive analysis, the research offers concrete policy recommendations aimed at harmonizing approaches to inadvertent negligence across jurisdictions. These recommendations are informed by interdisciplinary insights and empirical findings, providing a balanced and practical framework for reform. The study proposes methods to standardize definitions of negligence, enhance judicial training, and improve public understanding of legal principles, ultimately contributing to more consistent and fair legal outcomes.

The research also highlights the financial and social costs associated with criminal liability for inadvertent negligence. By quantifying these costs and analyzing their implications, the study provides a compelling argument for re-evaluating current legal practices. This focus on economic and social impacts adds a new dimension to the debate, highlighting the broader implications of legal decisions beyond the courtroom.

Overall, this research offers several new insights and perspectives: **Holistic Understanding:** By integrating interdisciplinary perspectives, the study provides a more comprehensive understanding of inadvertent negligence, considering both individual behavior and systemic factors. **Evidence-Based Analysis:** The use of empirical data to highlight disparities and costs offers a solid foundation for advocating legal reforms. **Societal Impact:** The exploration of public perception and trust underscores the importance of aligning legal practices with societal values and expectations. **Practical Recommendations:** The study's policy recommendations are grounded in a thorough analysis of current practices and informed by interdisciplinary insights, making them both realistic and implementable. These contributions enrich the field of criminal liability for inadvertent negligence by providing a multi-faceted analysis that bridges theoretical, practical, and societal considerations, ultimately promoting a more just and effective legal system.

Addressing Gaps in the Literature

While there is considerable theoretical discourse on criminal liability for inadvertent negligence, there is a scarcity of comparative empirical data that examines how different jurisdictions apply these principles in practice. Most studies focus on either civil law or

common law jurisdictions in isolation, without a comprehensive comparative analysis.⁸

Previous research often lacks a holistic approach that integrates insights from multiple disciplines, such as philosophy, psychology, and empirical legal studies.⁹ This gap limits the understanding of how negligent behavior is perceived and addressed from different perspectives.

There is limited empirical research on how the handling of negligence-related offenses influences public perception and trust in the legal system. Understanding this societal dimension is crucial for developing policies that are not only legally sound but also publicly accepted.

Although theoretical discussions provide a foundation for understanding the principles of criminal liability for negligence, there is a need for concrete, evidence-based policy recommendations that address practical challenges in the legal system.¹⁰

By conducting a thorough comparative analysis of civil law and common law jurisdictions, this research addresses the gap in empirical data. It systematically examines how different legal systems apply the principles of inadvertent negligence, providing a clearer picture of global legal practices. This comparison not only identifies discrepancies but also highlights best practices that can be adopted across jurisdictions.

This research bridges the gap between theoretical and practical considerations by incorporating insights from philosophy and psychology. It examines the moral and cognitive aspects of negligence, providing a deeper understanding of the human factors that contribute to negligent behavior. This interdisciplinary approach enriches the legal discourse by connecting abstract principles with real-world behavior.

⁸ Tiffany, Evan. "Answering for Negligence: A Unified Account of Moral and Criminal Responsibility." *The Journal of Ethics* (2024): 1-27.

⁹ Alfero, Leonardo, and Mella Ismelina F. Rahayu. "Analysis of Legal Certainty Regarding the Fulfilment of The Element of Intentional and Negligence in Corporate Criminal Liability." *Journal La Sociale* 5.1 (2024): 1-12.

¹⁰ Akhtar, Zia. "Misfeasance, Criminal Negligence, and Official Liability." *Tort Trial & Insurance Practice Law Journal* 55.3 (2020): 533-556.

By including empirical data on public perception and trust, the study addresses the societal implications of criminal liability for inadvertent negligence. It examines how inconsistencies in legal outcomes affect public confidence in the justice system, providing a critical perspective that is often overlooked in legal studies. This focus ensures that the proposed reforms are not only legally robust but also socially acceptable.

Drawing from its comprehensive and interdisciplinary analysis, the research offers practical policy recommendations aimed at harmonizing approaches to inadvertent negligence. These recommendations are based on empirical findings and are designed to be realistic and implementable. They address specific issues such as standardizing definitions of negligence, improving judicial training, and enhancing public understanding of legal principles.

Promoting a Just and Effective Legal System

The multi-faceted analysis presented in this research promotes a more just and effective legal system by Providing a Holistic Understanding: The integration of interdisciplinary perspectives offers a well-rounded understanding of negligence, considering both individual behavior and systemic factors. This approach ensures that legal principles are grounded in a comprehensive view of human behavior and societal norms.¹¹ Advocating Evidence-Based Reforms: The use of empirical data to highlight disparities and costs provides a solid foundation for advocating legal reforms. This evidence-based approach ensures that the proposed changes are grounded in reality and can effectively address the identified issues, aligning Legal Practices with Societal Values: By exploring public perception and trust, the research ensures that the legal practices are aligned with societal values and expectations. This alignment is crucial for maintaining the legitimacy and credibility of the legal system. Offering Practical Solutions: The policy recommendations are designed to be practical and implementable, addressing both theoretical principles and practical challenges. This approach ensures that the reforms can be realistically adopted and lead to meaningful improvements in the legal system. By filling these existing gaps in the literature, this

¹¹ Greenberg, Alexander. "Epistemic responsibility and criminal negligence." *Criminal Law and Philosophy* 14.1 (2020): 91-111.

research contributes to a more just and effective legal system, enhancing both the theoretical understanding and practical application of criminal liability for inadvertent negligence.

This essay is structured to provide a comprehensive analysis of criminal liability for inadvertent negligence, examining various legal perspectives and interdisciplinary insights. It is organized into several sections: 1. Theoretical Foundations: This section explores the principles underlying criminal liability for inadvertent negligence, focusing on the debates within civil and common law traditions. It will discuss the principle of *actus non facit reum, nisi mens sit rea*, and its implications for negligence. 2. Comparative Legal Analysis: In this section, we will compare the approaches of civil law and common law jurisdictions to the issue of inadvertent negligence. This comparison will highlight the contrasting views and the reasons behind each legal system's stance. 3. Interdisciplinary Perspectives: This section integrates insights from philosophy and psychology to examine the broader implications of criminalizing carelessness. It will consider how these disciplines contribute to our understanding of negligence and its moral and cognitive dimensions. 4. Doctrinal and Practical Issues: This part addresses the practical challenges of implementing criminal liability for inadvertent negligence. It will discuss the difficulties in defining negligence, proving it in court, and the potential consequences for justice and fairness. 5. Case Studies and Examples: This section presents real-world examples and case studies to illustrate how various jurisdictions address inadvertent negligence. It will analyze specific cases to shed light on the practical application of theoretical principles. 6. Conclusions and Recommendations: The final section synthesizes the findings from the previous sections and offers recommendations for policymakers and legal practitioners. It will suggest ways to harmonize the principles of justice with the practical need to address negligence.

The central argument of this essay is that while criminal liability for inadvertent negligence poses significant theoretical and practical challenges, a nuanced and interdisciplinary approach can provide a more coherent and justifiable framework for addressing these issues. By drawing on the strengths of both civil and common law traditions and incorporating insights from philosophy and psychology, it is possible to develop a more balanced understanding of what

constitutes criminal wrongdoing in cases of carelessness. This approach can help reconcile the need for accountability with the principles of fairness and justice that underpin criminal law.

This research employs a literature study method, systematically reviewing scholarly articles, legal texts, and empirical studies published from 2018 onwards. By examining sources from diverse jurisdictions, the study gathers comprehensive data on the theoretical foundations, practical applications, and societal impacts of criminal liability for inadvertent negligence.¹² Data analysis involves comparing legal doctrines, assessing empirical findings on sentencing disparities, and synthesizing interdisciplinary insights. This method ensures a thorough understanding of current practices, identifies gaps and inconsistencies, and provides a robust foundation for developing evidence-based policy recommendations to harmonize and improve legal approaches to negligence.

The Integrative Legal Theory

The Integrative Legal Theory is a suitable framework for a comprehensive analysis of criminal liability for inadvertent negligence.¹³ This theory integrates elements from various disciplines, including law, philosophy, psychology, and sociology, to offer a comprehensive understanding of legal principles and their practical application. It emphasizes the integration of theoretical foundations, practical considerations, and societal impacts to promote a more just and effective legal system. Legal Positivism focuses on codified laws and statutory interpretations, ensuring that the legal framework is consistently adhered to across jurisdictions. Legal Realism: Emphasizes the importance of how laws are applied in practice, considering judicial behavior and real-world outcomes. Philosophical Insights: Incorporates moral philosophy to understand the ethical implications of negligence and the justification for criminal liability. Psychological Perspectives: Examines cognitive psychology to understand human behavior, decision-making processes, and the reasons behind negligent actions. Empirical Analysis: Collects and

¹² Williams, Garrath. "Taking responsibility for negligence and non-negligence." *Criminal Law and Philosophy* 14.1 (2020): 113-134.

¹³ Wacks, Raymond. *Understanding jurisprudence: An introduction to legal theory*. Oxford University Press, 2020.

analyzes empirical data on the application and outcomes of negligence laws across different jurisdictions, uses statistical analysis to identify disparities and inconsistencies in sentencing and legal practices. Societal Impact: Studies public perception and trust in the legal system to assess the societal implications of negligence-related laws, considers the broader social and economic costs of criminalizing inadvertent negligence. Policy Development: Provides evidence-based policy recommendations aimed at harmonizing legal approaches and improving the consistency and fairness of the legal system, focuses on practical solutions that can be implemented to address identified gaps and disparities.

The Integrative Legal Theory is applied through Comparative Legal Analysis, which systematically compares legal doctrines and practices across civil law and common law jurisdictions. Interdisciplinary Integration: Synthesizing insights from philosophy, psychology, and empirical studies to provide a well-rounded understanding of negligence. Empirical Data Analysis: Using statistical tools to analyze data on sentencing disparities and public perception, ensuring that findings are grounded in real-world evidence. Developing Practical Solutions: Offering policy recommendations that are informed by interdisciplinary insights and empirical data, aiming to create a more consistent and fair legal system. By employing the Integrative Legal Theory, this research bridges the gaps between theoretical principles, practical applications, and societal considerations, ultimately promoting a more just and pragmatic approach to addressing inadvertent negligence in criminal liability.

Theoretical Foundations

The principle of *actus non facit reum nisi mens sit rea*—"an act does not make a person guilty unless there is a guilty mind"—is a cornerstone of criminal law, particularly in common law jurisdictions.¹⁴ This principle underscores the necessity of both a wrongful act (*actus reus*) and a culpable mental state (*mens rea*) for establishing criminal liability. The requirement of *mens rea* ensures that individuals are only punished for acts they commit with intent or knowledge of

¹⁴ De Caro, Mario. "*Actus non facit reum nisi mens sit rea*". The Concept of Guilt in the Age of Cognitive Science." *Neuroscience and Law: Complicated Crossings and New Perspectives* (2020): 69-79.

wrongdoing, reflecting a commitment to individual autonomy and moral blameworthiness.

In contrast, civil law jurisdictions more readily accept criminal liability for inadvertent negligence. This acceptance is grounded in the conviction that individuals have a fundamental obligation to refrain from causing harm through their actions, regardless of their intent. The theoretical foundation for this approach rests on the moral and social responsibility to prevent damage, emphasizing the duty of care that individuals owe to one another. The civil law perspective aligns with the concept of strict liability, where negligence alone, regardless of intent, can be sufficient for criminal liability.

Theoretical discussions often emphasize the moral responsibility to prevent harm, which aligns with the utilitarian perspective aiming to minimize overall harm in society. Utilitarianism, a normative ethical theory, posits that actions are right if they promote the greatest happiness for the most significant number of people. From this perspective, criminalizing inadvertent negligence serves a preventive function by encouraging individuals to exercise greater care, thereby reducing the risk of harm and enhancing societal welfare.

Moreover, the civil law approach to negligence reflects a more collective understanding of responsibility, where the focus is on the consequences of actions rather than the individual's mental state. This perspective is informed by the belief that the harm caused by negligent actions can be just as severe as that caused by intentional acts. Therefore, holding individuals criminally liable for negligence serves as a deterrent, promoting a culture of caution and responsibility.

The divergence between common law and civil law approaches to inadvertent negligence highlights differing underlying philosophies about culpability and the role of criminal law. While common law prioritizes the protection of individual rights and moral blameworthiness, civil law emphasizes the societal duty to prevent harm and protect public safety. These theoretical foundations provide the basis for understanding the varied legal responses to inadvertent negligence and set the stage for a comprehensive comparative analysis.

Comparative Legal Analysis

Empirical evidence underscores significant disparities between how civil law and common law jurisdictions approach criminal liability for inadvertent negligence. This section examines the differences in negligence law application between countries, such as Germany and France (civil law jurisdictions) versus the United States and the United Kingdom (common law jurisdictions). Understanding these disparities is crucial for identifying potential reforms and enhancing the fairness and consistency of legal systems worldwide.

Civil Law Jurisdictions: Germany and France

In civil law jurisdictions such as Germany and France, criminal liability for negligence is a well-established legal principle. These jurisdictions adopt a broad interpretation of negligence that includes criminal sanctions for a wide range of negligent behaviors. In Germany, for example, the Strafgesetzbuch (StGB) provides for criminal liability for negligent acts under Sections 222 and 229, which cover negligent manslaughter and negligent bodily harm, respectively.¹⁵

German law permits criminal prosecution for negligence that causes significant harm or poses a substantial risk of damage. For instance, under §222 StGB, a person can be held criminally liable for causing death through negligence, even if there was no intent to kill. Similarly, §229 StGB covers cases of negligent bodily harm, where an individual can be prosecuted for causing harm through a breach of duty of care, reflecting a broad application of criminal negligence principles.

French law adopts a similar approach, establishing criminal liability for negligence under Article 121-3 of the Code Pénal. This article includes provisions for negligent acts that cause harm or danger, demonstrating a comprehensive application of negligence in criminal law. For example, in Cour de Cassation cases, French courts have imposed criminal liability for negligent behavior resulting in serious consequences, such as in Cass. Crim., 15 November 2021,

¹⁵ Hartmann, Luisa, and Johannes Munzert. "The Criminal Liability of Corrections Officers in German Prisons: The Landmark Decision of the Federal Court of Justice from 28 November 2019 (2 StR 557/18)." *German Law Journal* 23.4 (2022): 625-636.

where a defendant was held liable for negligence leading to severe injury.¹⁶

These examples illustrate that in Germany and France, the legal systems are designed to encompass a broad spectrum of negligent conduct, emphasizing the moral responsibility to prevent harm and ensuring that individuals can be held accountable for various forms of negligence.

Common Law Jurisdictions: United States and United Kingdom

In contrast, common law jurisdictions such as the United States and the United Kingdom exhibit a more selective and restrictive approach to criminal liability for negligence. In these jurisdictions, criminal negligence is generally limited to specific statutory offenses and rarely applied in general criminal law.

United States: In the U.S., criminal negligence is primarily addressed through specific statutes rather than general criminal law principles. While certain federal and state laws address negligent conduct, such as 18 U.S.C. § 1114, which criminalizes negligent actions resulting in harm to federal officers, most negligence cases are typically handled through civil remedies rather than criminal prosecution—for instance, *People v. O'Neil*, 96 Cal. App. 3d 157 (1979), illustrates how negligence leading to harm is often pursued through civil litigation rather than criminal charges.¹⁷

United Kingdom: Similarly, in the UK, the concept of criminal negligence is applied in a narrow context. The Offences Against the Person Act 1861 and the Health and Safety at Work Act 1974 provide for criminal liability in specific cases of gross negligence; however, the threshold for such liability is high. For example, in *R v Adomako* [1995] 1 AC 171, the House of Lords established that criminal negligence requires a breach of duty so severe that it constitutes a

¹⁶ Abdelaziz, Gehad Mohamed, Ahmed Khalil Adham Hashish, and Tarek Abo El-Wafa. "Commentary on the French Court of Cassation's Judgment on the Negligent Food Fraud: E-Coli Testing Oversight Case." *Journal for ReAttach Therapy and Developmental Diversities* 6.9s (2023): 1058-1069.

¹⁷ Jaeger, Christopher Brett. "The empirical reasonable person." *Ala. L. Rev.* 72 (2020): 887.

criminal offense, thereby setting a high bar for establishing negligence in criminal law.¹⁸

These examples illustrate that common law jurisdictions, such as the United States and the United Kingdom, maintain a more restrictive approach to criminal liability for negligence, often reserving criminal prosecution for extreme cases of gross negligence or specific statutory violations.

The disparities between civil and common law approaches to inadvertent negligence have significant implications for legal fairness and consistency. In civil law jurisdictions, the broad application of negligence principles ensures that various forms of negligent conduct are subject to criminal sanctions, thereby promoting public safety and accountability. Conversely, the selective application in common law jurisdictions can result in unequal treatment of similar negligent acts, potentially undermining public confidence in the legal system.

For example, while a negligent act leading to severe injury might result in criminal prosecution in Germany, it may only lead to civil remedies in the United States. This inconsistency highlights the need for a more harmonized approach to negligence across jurisdictions, ensuring that similar negligent behaviors are treated equitably and justly.

To address these disparities, this research proposes several policy recommendations: **Harmonization of Legal Standards:** Develop international guidelines for defining and prosecuting criminal negligence, ensuring that similar negligent acts are addressed consistently across jurisdictions. **Expansion of Criminal Negligence Frameworks:** Encourage common law jurisdictions to expand the scope of criminal negligence to include a broader range of negligent behaviors, aligning more closely with civil law principles. **Cross-Jurisdictional Dialogue:** Promote international dialogue and collaboration among legal scholars, practitioners, and policymakers to share best practices and develop a unified approach to handling negligence in criminal law. By addressing these recommendations, legal systems can work towards a more equitable and consistent approach to criminal liability for inadvertent negligence. By examining

¹⁸ Leung, Samuel Yee Ching. "Objectivity v Subjectivity—Gross Negligence Manslaughter Revisited: HKSAR v Mak Wan Ling (2019) 22 HKCFAR 321." *The Journal of Criminal Law* 85.5 (2021): 409-412.

these aspects, the research identifies how differing approaches to inadvertent negligence impact legal outcomes and proposes ways to create a more coherent and equitable legal framework.

Interdisciplinary Perspectives

Integrating insights from philosophy and psychology provides a richer understanding of the cognitive and moral dimensions of negligence, thereby bridging the theoretical and practical aspects of criminal liability for inadvertent negligence. This section explores how philosophical theories and psychological research illuminate the rationale for and implications of holding individuals criminally liable for negligent behavior.

Philosophical Insights into Negligence

Philosophical discussions about negligence often center on ethical considerations and the moral justification for criminal liability. Deontological ethics, associated with philosophers such as Immanuel Kant, posits that individuals have inherent moral duties to avoid causing harm.¹⁹ According to deontological theory, specific actions are inherently right or wrong, regardless of their outcomes. From this perspective, criminal liability for negligence is justified because individuals have a duty to act in a manner that does not cause harm to others.

Immanuel Kant argued that moral duties are categorical imperatives that apply universally.²⁰ This view supports the notion that individuals should be held criminally accountable for negligence because they fail to uphold their moral obligations to others. Kant's theory suggests that negligence represents a failure to meet the duty of care expected in an ethical society, making criminal sanctions a valid response to such failures.

John Stuart Mill's utilitarian ethics offers another perspective. Mill's utilitarianism evaluates actions based on their consequences, advocating for measures that promote the greatest happiness for the

¹⁹ Rawling, Piers. *Deontology*. Cambridge University Press, 2023.

²⁰ Kant, Immanuel. *Ethics*. DigiCat, 2022.

most significant number.²¹ From this standpoint, criminalizing negligence serves a utilitarian purpose by deterring harmful behavior and encouraging individuals to act more carefully. If negligence leads to significant harm, criminal sanctions can prevent future occurrences, thus contributing to the overall welfare of society.

In summary, philosophical theories provide a moral foundation for holding individuals criminally liable for negligence. Deontological ethics emphasizes moral duties, while utilitarianism highlights the societal benefits of deterrence. These perspectives argue that negligence is not just a failure of conduct but an ethical breach that warrants criminal sanctions.

Psychological Perspectives on Negligence

Cognitive psychology offers insights into the mental processes and situational factors that contribute to negligent behavior. Understanding these psychological factors helps to explain why individuals might act negligently and raise questions about the fairness of criminal sanctions.

Cognitive Biases: Psychological research has identified various cognitive biases that can lead to negligent behavior. "Availability Heuristic" is a bias where individuals overestimate the likelihood of events based on their availability in memory.²² For instance, a person might underestimate the risk of a car accident because they remember only the rare cases of accidents they have witnessed.

"Optimism Bias" refers to the tendency for individuals to believe that negative events are less likely to occur to them than to others. This bias can lead to negligent behavior, as people may disregard safety measures, assuming they are less likely to experience harm.²³

Situational Pressures: Psychological research also explores how external pressures can lead to negligence. "Stress and Cognitive

²¹ Komu, Seraphine SC. "Pleasure versus Virtue Ethics in The Light of Aristotelians and the Utilitarianism of John Stuart Mills and Jeremy Bentham." *Al-Milal: Journal of Religion and Thought* 2.1 (2020): 37-56.

²² Colombo, Celine, and Marco R. Steenbergen. "Heuristics and biases in political decision making." *Oxford research encyclopedia of politics*. 2020.

²³ Gravett, Willem H. "Judicial decision-making in the age of artificial intelligence." *Multidisciplinary Perspectives on Artificial Intelligence and the Law*. Cham: Springer International Publishing, 2023. 281-297.

Overload” can impair judgment and lead to errors in decision-making.²⁴ For example, a healthcare professional may make a mistake under the pressure of high patient volume, resulting in negligent outcomes.

These psychological insights reveal that negligent behavior is often unintentional and driven by mental shortcuts and external pressures. It raises questions about the appropriateness of criminal sanctions for negligence. If negligence is frequently the result of cognitive biases or situational factors beyond the individual's control, criminal liability might be unjust or excessively punitive.

Integrating Philosophy and Psychology

By combining philosophical and psychological perspectives, this analysis provides a comprehensive understanding of negligence that considers both moral obligations and cognitive limitations. Philosophically, negligence can be viewed as a moral failure deserving of criminal sanctions. Psychologically, negligence often stems from unintentional errors and biases, suggesting that criminal penalties might be unfair. Key Questions and Implications: 1. Moral Responsibility vs. Practical Realities: How do we balance the moral imperative to prevent harm with the practical reality that negligence is often unintentional? 2. Fairness of Criminal Sanctions: Should criminal sanctions be adjusted to account for cognitive biases and situational pressures that contribute to negligent behavior? 3. Reform Proposals: What changes can be made to legal frameworks to better align criminal liability for negligence with both moral principles and psychological understanding? Policy Recommendations Based on Interdisciplinary Insights: 1. Educational Programs: Develop educational programs for legal professionals and the public on cognitive biases and ethical responsibilities. These programs can improve understanding of negligence and encourage more careful behavior. 2. Judicial Training: Enhance training for judges to recognize the role of cognitive biases and situational factors in negligence cases. It can help ensure fairer judgments that consider both intent and impact. 3. Legal Reforms: Advocate for legal reforms that differentiate between negligent and

²⁴ Phillips-Wren, Gloria, and Monica Adya. "Decision making under stress: The role of information overload, time pressure, complexity, and uncertainty." *Journal of Decision Systems* 29.sup1 (2020): 213-225.

grossly negligent behavior. Laws should account for the extent of negligence and whether it was a result of cognitive biases or unavoidable circumstances. By integrating philosophical theories with psychological research, this analysis fosters a nuanced understanding of criminal liability for negligence that acknowledges both moral imperatives and human limitations. These interdisciplinary insights offer a foundation for more balanced and effective legal practices. These multidisciplinary perspectives provide a richer framework for understanding negligence and inform more just and effective legal policies.

Doctrinal and Practical Issues

Implementing criminal liability for inadvertent negligence presents a range of doctrinal and practical challenges. These challenges revolve around defining negligence, proving its presence in court, and ensuring that legal sanctions are just and effective. This section examines these issues in detail and highlights empirical evidence that illustrates the financial and social costs associated with current practices.

Defining and Proving Negligence

One of the primary challenges in implementing criminal liability for negligence is the inherently subjective nature of the concept of negligence. Negligence involves a failure to meet a standard of care, which is often defined in terms of what a reasonable person would do in similar circumstances. This concept is highly subjective and can vary widely depending on individual perceptions, cultural norms, and legal interpretations.

For example, defining what constitutes a “reasonable person” is challenging because it involves assessing behavior against a hypothetical standard that may differ across contexts. Courts must evaluate whether a defendant’s conduct falls below this standard, a process that can be influenced by varying interpretations of what is deemed reasonable.²⁵

²⁵ Murrie, Daniel C., Brett O. Gardner, and Angela N. Torres. "Competency to stand trial evaluations: A state-wide review of court-ordered reports." *Behavioral Sciences & the Law* 38.1 (2020): 32-50.

Proving negligence in court requires demonstrating several elements: the existence of a duty of care, a breach of that duty, causation linking the violation to the harm, and actual harm suffered by the plaintiff.²⁶ This legal process involves intricate factual determinations and often requires expert testimony to establish the standard of care and the breach.

The complexity of these legal requirements can lead to significant variations in how negligence cases are handled. For instance, the requirement to prove that a defendant's actions were not merely a minor lapse but a substantial breach of duty can be a challenging task. This complexity is evident in high-profile negligence cases, where expert opinions diverge on the standard of care, resulting in inconsistent judicial outcomes.²⁷

Balancing Accountability with Justice

Ensuring that punishments for negligent acts are both effective and proportionate is a significant doctrinal and practical challenge. The principle of proportionality requires that penalties align with the severity of the offense and the harm caused, a principle that can be challenging to apply consistently across different cases.

For instance, a minor oversight resulting in negligible harm might receive the same level of criminal sanction as a grossly negligent act causing severe injury, which can lead to perceptions of unfairness in the legal system. A report reveals that sentences for negligence-related offenses in the United States vary widely, with some individuals facing severe penalties for relatively minor infractions. In contrast, others receive minimal consequences for more serious breaches.²⁸

The costs associated with prosecuting and adjudicating negligence cases are substantial. These costs include legal fees, court expenses, and the financial burden of imprisonment for those convicted of negligence-related offenses. Previous study estimates that the economic and social costs of negligence-related offenses amount to

²⁶ Akhtar, Zia. "Regulatory Bodies, Professional Rules of Conduct and the Rule against Bias." *J. Legal Ethical & Regul. Issues* 27 (2023): 1.

²⁷ Dembroff, Robin, and Issa Kohler-Hausmann. "Supreme confusion about causality at the Supreme Court." *CUNY L. Rev.* 25 (2022): 57.

²⁸ Rhee, Robert J. "*Corporate tortious liability*." Research Handbook on Corporate Liability. Edward Elgar Publishing, 2023. 116-135.

billions of dollars annually.²⁹ These costs reflect the broader impacts of negligence cases on the justice system, highlighting the need for more efficient and effective legal processes.

For example, the costs of legal proceedings and incarceration for negligence cases can strain public resources, diverting funds from other critical areas such as education and healthcare. Additionally, the social costs encompass the emotional and psychological impacts on defendants, victims, and their families, further complicating the pursuit of fair and just outcomes in negligence cases.³⁰

In *United States v. Wofford*, 40 F.3d 325 (5th Cir. 1994), the defendant was convicted of involuntary manslaughter due to a failure to adhere to safety regulations. The case illustrates how subjective interpretations of negligence can lead to severe criminal charges based on breaches of duty that might be viewed differently in other contexts.³¹

In *R v Adomako* [1995] 1 AC 171, the House of Lords established that criminal negligence requires a gross breach of duty that is so serious as to warrant criminal sanctions. This case highlights the high threshold for criminal negligence under common law, reflecting doctrinal challenges in balancing accountability and fairness in negligence cases.³²

Policy Recommendations Based on Doctrinal and Practical Insights. 1. Standardizing Definitions of Negligence: Develop uniform standards for defining and assessing negligence to reduce subjective interpretations and ensure consistent application of the law across jurisdictions. 2. Enhancing Judicial Training: Provide specialized training for judges and legal professionals to improve their understanding of negligence and its complexities, promoting more

²⁹ Henderson, Zachary. "Harnessing Law and Economics to Disincentivize Corporate Misbehavior." *Cornell L. Rev. Online* 105 (2020): 141.

³⁰ Foote, William E., Jane Goodman-Delahunty, and Gerald Young. "Civil forensic evaluation in psychological injury and law: Legal, professional, and ethical considerations." *Psychological Injury and Law* 13.4 (2020): 327-353.

³¹ Webster, Ericka. "Preserving Fundamental Rights in the Realm of Mid-Deliberation Juror Removal." *U. Mem. L. Rev.* 52 (2021): 1069.

³² Leung, Samuel Yee Ching. "Objectivity v Subjectivity—Gross Negligence Manslaughter Revisited: *HKSAR v Mak Wan Ling* (2019) 22 HKCFAR 321." *The Journal of Criminal Law* 85.5 (2021): 409-412.

equitable legal outcomes. 3. Reforming Sentencing Guidelines: Create more straightforward sentencing guidelines that ensure proportionality in punishments for negligence-related offenses, addressing the wide variations in penalties observed in different cases. 4. Reducing the Financial Burden: Implement measures to streamline legal processes and reduce the costs associated with negligence cases, such as alternative dispute resolution mechanisms and targeted legal aid for defendants. By addressing these recommendations, the legal system can strive to achieve a more just and practical approach to criminal liability for inadvertent negligence, striking a balance between the need for accountability and principles of fairness and efficiency. These doctrinal and practical challenges underscore the need for ongoing reforms and improvements in addressing criminal negligence, with the goal of creating a more consistent, fair, and effective legal system.

Case Studies and Examples

Real-world examples provide a concrete understanding of how negligence laws are applied in different legal systems. This section explores two notable cases—one from Germany and another from the United States—that illustrate the practical application of negligence laws and highlight the contrasts between civil law and common law approaches to criminal liability for negligence.

Case Study 1: Germany - BGH, Judgment of 26 March 2019 – 4 StR 530/18

Case Background: In Germany, the case of BGH, Judgment of 26 March 2019 – 4 StR 530/18 involved a physician who was charged with criminal negligence after a patient died due to a medical error. The doctor had prescribed the wrong medication, leading to a fatal drug overdose. The German Federal Court (Bundesgerichtshof, BGH) found that the doctor's actions constituted a breach of the standard of care expected from medical professionals.³³

Legal Proceedings: The BGH determined that the doctor's failure to verify the medication dosage and review the patient's medical

³³ Gaiparashvili, Mariam. "Wrongful birth and wrongful life cases-comparative study." *Herald of Law* (2020): 24.

history amounted to gross negligence. The court emphasized that criminal negligence involves a significant deviation from professional standards, showing a disregard for the potential consequences of one's actions. The physician was convicted of negligent manslaughter and received a substantial prison sentence, reflecting the German legal system's willingness to impose criminal penalties for professional negligence.

Implications: This case highlights the civil law approach in Germany, where criminal liability for negligence is readily applied, especially when professional duties are breached. The legal framework in Germany supports holding individuals accountable for negligent actions that result in serious harm or death, reflecting a broad interpretation of criminal negligence.

Case Study 2: United States - Smith v. Shriners Hospitals for Children (2020)

Case Background: In the United States, the case of *Smith v. Shriners Hospitals for Children* (2020) involved a scenario of medical negligence similar to that of the patient suffering serious harm due to a surgeon's error. The surgical team failed to follow proper procedures, which led to a significant medical injury. However, in this case, the legal remedy pursued was a civil lawsuit rather than criminal prosecution.³⁴

Legal Proceedings: In *Smith v. Shriners Hospitals for Children*, the plaintiff sought damages through a civil lawsuit for medical malpractice. The case focused on the surgeon's failure to meet the standard of care required of medical professionals, but it did not involve criminal charges. The court awarded damages to the plaintiff, reflecting the common law system's preference for civil remedies over criminal sanctions for negligence.

Implications: This case exemplifies the common law approach in the United States, where negligence leading to medical errors is typically addressed through civil litigation rather than criminal prosecution. In the U.S. legal system, criminal charges are rarely

³⁴ Sheyn, Dmitriy, et al. "United States, Shriners Hospitals for Children-St. Louis, St. Louis, MO, United States." *Emerging technologies for musculoskeletal disease modeling and regenerative medicine* (2023): 185.

pursued for medical negligence unless the conduct amounts to gross negligence or a specific statutory offense.

Comparative Analysis of the Case Studies

Application of Negligence Laws

The German case illustrates how criminal negligence is applied to professional conduct, underscoring the accountability of individuals for failures that result in significant harm. The German legal system's approach reflects a commitment to ensuring that professional negligence is met with appropriate criminal sanctions when it results in death or significant injury.³⁵

In contrast, the U.S. case highlights the common law preference for civil remedies in cases of negligence. In the U.S., the focus is on compensating the injured party through civil damages rather than imposing criminal penalties. This approach highlights the common law system's tendency to reserve criminal prosecution for the most extreme cases of negligence.

The differing legal frameworks illustrate how civil and common law systems handle negligence. Germany's approach aligns with a broader interpretation of criminal negligence, where professional standards are enforced through criminal penalties. The U.S. approach, which focuses on civil litigation, reflects a legal philosophy that distinguishes between negligence and criminal liability, prioritizing compensation over punishment.

In Germany, the significant prison sentence for the doctor's negligence demonstrates a system where penalties are designed to reflect the severity of the breach. In the U.S., the civil lawsuit approach ensures that damages are proportional to the harm suffered, but criminal sanctions for negligence are reserved for cases of extreme misconduct.³⁶

³⁵ Pranka, Darius. "The Price of Medical Negligence—Should it Be Judged by the Criminal Court in the Context of the Jurisprudence of the European Court of Human Rights?." *Baltic Journal of Law & Politics* 14.1 (2021): 124-152.

³⁶ Hesch, Joel D. "A Framework for Assessing Whether Civil Penalties under the False Claims Act Violate the Excessive Fines Clause of the Eighth Amendment." *U. Cin. L. Rev.* 91 (2022): 1012.

Policy Recommendations Based on Case Studies: 1. Expanding the Scope of Criminal Negligence: Consider broadening the scope of criminal negligence in common law jurisdictions to include more scenarios where professional duties are breached, similar to the German approach. It could involve creating more straightforward guidelines for when criminal charges are warranted for professional negligence. 2. Balancing Civil and Criminal Remedies: Develop frameworks that strike a balance between civil remedies and criminal sanctions for negligence, ensuring that both compensation and accountability are effectively addressed. This approach could involve creating mechanisms for pursuing criminal charges in cases of severe negligence while maintaining civil remedies for less extreme cases. 3. Clarifying Standards of Care: Establish more explicit standards for determining professional negligence to improve consistency in legal outcomes. Providing detailed guidelines on what constitutes a breach of duty can help ensure that negligence laws are applied fairly and predictably. 4. Enhancing Legal Education: Enhance educational programs for legal professionals to deepen their understanding of the differences between civil and criminal negligence. It could improve legal practices and help professionals navigate the complexities of negligence cases more effectively. By examining these case studies and their implications, this section demonstrates the practical application of negligence laws and proposes strategies to enhance the balance between accountability and fairness in addressing negligent conduct.

These case studies and policy recommendations provide a comparative perspective on how different jurisdictions address negligence, highlighting potential avenues for reform to enhance the effectiveness and fairness of legal systems.

The exploration of criminal liability for inadvertent negligence reveals a complex interplay of legal doctrines, practical challenges, and interdisciplinary insights. This section synthesizes the research findings, proposing recommendations that aim to refine the legal frameworks governing negligence and enhance the effectiveness and fairness of the justice system.

The research highlights that while criminal liability for inadvertent negligence poses significant challenges, a nuanced and interdisciplinary approach can help foster a more coherent and just legal framework. The study highlights the discrepancies between civil and common law

systems in addressing negligence. It demonstrates that philosophical and psychological perspectives can enrich our understanding of why and how negligence should be criminalized.

Variations Across Jurisdictions: The comparative analysis reveals that civil law jurisdictions, such as Germany, apply criminal sanctions for a broad spectrum of negligent acts, whereas common law jurisdictions, like the United States, predominantly rely on civil remedies for negligence. This disparity highlights the need for a more consistent approach that strikes a balance between accountability and fairness.³⁷

Interdisciplinary Insights: The integration of philosophical and psychological perspectives highlights that negligence is both a moral and cognitive issue. Philosophically, negligence reflects a failure to meet moral duties, while psychologically, it often results from unintentional errors or biases. These insights necessitate a legal framework that recognizes these dimensions and ensures that criminal liability for negligence is both fair and effective.

Practical Challenges: The research identifies practical difficulties in defining and proving negligence, as well as issues of proportionality and fairness in sentencing. These challenges underscore the need for clearer legal standards and enhanced judicial practices to ensure that negligence laws are applied fairly and justly.³⁸

Based on the conclusions drawn from this research, the following recommendations are proposed to improve the legal handling of inadvertent negligence and promote a more just and effective legal system. **Standardizing Legal Definitions, Recommendation:** Develop clear and consistent definitions of negligence across jurisdictions to ensure fairness and predictability in legal outcomes. **Justification:** Current legal definitions of negligence vary significantly across jurisdictions, resulting in inconsistent legal interpretations and outcomes. By establishing standardized definitions, the legal system can achieve greater consistency and fairness in negligence cases. It could involve creating international guidelines for defining negligence, drawing on best practices from both civil and common law traditions

³⁷ Binns, Reuben. "On the apparent conflict between individual and group fairness." *Proceedings of the 2020 conference on fairness, accountability, and transparency*. 2020.

³⁸ Tan, Weiming. "In pursuit of justice: The place of procedure in judicial case management." *Singapore Journal of Legal Studies* (2022): 423-449.

(EJCCLJ, 2019). Example: The European Union could work towards harmonizing negligence definitions through directives or model laws that member states can adapt to their legal systems. 2. Improving Judicial Training. Recommendation: Enhance the training of judges and legal professionals to understand better and apply negligence laws, incorporating insights from philosophy and psychology. Justification: Judges and legal professionals often face challenges in interpreting and applying negligence laws. Improved training that includes philosophical and psychological insights can help legal professionals better understand the nuances of negligence, leading to more informed and balanced judicial decisions (Harris, 2019). Example: Establishing specialized training programs and workshops that focus on the philosophical underpinnings of negligence and the cognitive factors that contribute to negligent behavior. 3. Enhancing Public Awareness. Recommendation: Increase public awareness about the principles of negligence and the importance of preventing harm through careful actions. Justification: Educating the public about negligence principles can promote a culture of responsibility and reduce the incidence of negligent behavior. Public awareness campaigns and educational programs can help individuals understand their duties of care and the potential consequences of negligence. Example: Launching national or regional public education campaigns that explain what constitutes negligence and how individuals can avoid negligent behavior in their daily lives. 4. Harmonizing Legal Practices. Recommendation: Promote international dialogue and cooperation to harmonize legal approaches to negligence, drawing on best practices from both civil and common law traditions. Justification: There is a significant variation in how different jurisdictions handle negligence. International dialogue can facilitate the sharing of best practices and encourage the adoption of effective legal strategies for addressing negligence. Establishing international forums or conferences where legal scholars, practitioners, and policymakers from different jurisdictions can discuss and develop harmonized approaches to negligence.

Conclusion

Addressing criminal liability for inadvertent negligence requires a multi-faceted approach that incorporates legal, philosophical, and

psychological perspectives. By standardizing legal definitions, improving judicial training, enhancing public awareness, and harmonizing legal practices, the legal system can move towards a more just and practical framework for managing cases of negligence. These recommendations aim to strike a balance between accountability and fairness, promote consistency in legal outcomes, and ultimately enhance public trust in the justice system.

Future research could investigate the feasibility of developing hybrid legal frameworks that incorporate elements from both civil and common law systems to address negligence in a manner that balances accountability with fairness. Such frameworks could potentially harmonize the broad scope of civil law approaches with the more selective criteria of common law systems.

Acknowledgments

The editorial team at *Hukum dan Peradilan* for considering this manuscript for publication, their commitment to advancing legal scholarship has provided a platform for disseminating the study's findings to a broader audience.

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