BOOK REVIEW

ACT AND OMISSION IN CRIMINAL LAW: AUTONOMY, MORALITY, AND APPLICATIONS TO EUTHANASIA, DR. RONI ROSENBERG, ROUTLEDGE 2025. PAGES 183.

*Yaniv Ben Harush**

Imagine a world without any prohibition on killing. A debtor could settle his debts simply by murdering his creditor. A jealous neighbour, desiring his neighbour's home or spouse, might strike pre-emptively. In such a world, people would be condemned to live in constant fear, perpetually alert to avoid harm. Each individual would inevitably be forced to devote substantial resources to the defence of their physical safety. Beyond these considerable costs, the relentless terror would also exact an unbearable psychological toll.

In contrast, imagine a different world where there is a prohibition on killing, but no prohibition whatsoever on allowing one to die. In such a world, if a misfortune that endangers your life occurs, no one would be obligated to save you. If, for example, you were drowning, everyone could just sit on the shore and watch you drown to death. Such a world is certainly not pleasant, but also not as unbearable as the first one. There is always the option of not entering the sea, improving your swimming skills, or going to the sea with a trusted friend. The difference between the two worlds reflects a central difference between the prohibition on killing and the prohibition on allowing to die; the former protects broader and more essential interests than the latter.

It seems that from behind the veil of ignorance,[1] any rational and risk-averse person would prefer a world where killing is forbidden but allowing to die is permitted, over a world where killing is permitted but allowing to die is forbidden. The second type of world would be unbearable in two senses. Not only would you have to invest many resources to defend yourself, but you would also have to invest not a few resources to save others. Therefore, the infringement on autonomy will be no less severe than the constant feeling of terror itself.

Dr. Roni Rosenberg uses this brilliant metaphor in his new book on act and omission to illustrate an important difference between an act and an omission.[2] The illustrated difference concerns the protected values behind the various prohibitions of homicide by act or by omission. In doing so, the author takes the reader on a fascinating journey that begins in moral philosophy, continues through legal theory, and concludes in the world of criminal practice. The questions arising from reading the book are numerous and important. For example, is there a moral difference between drowning a person and refraining from saving them from drowning, and if so, is there not a similar moral difference between refraining from aiding developing countries and directly killing people there? Similar questions arise regarding the familiar distinction between active and passive euthanasia. What is the source of the distinction between the two, and is it consistent at all with the rationales for distinguishing between an act and an omission? Alongside these questions, broader questions arise, which may challenge our moral intuitions. One of the central ones is: why is an act different from an omission, assuming that all other conditions are equal? While reading the book, the reader is

* *The author is a criminal court judge in Israel.*

[1] John Rawls, A THEORY OF JUSTICE, 12 (Belknap Press, 1971).

[2] Roni Rosenberg, ACT AND OMISSION IN CRIMINAL LAW: AUTONOMY, MORALITY AND APPLICATIONS TO EUTHANASIA, 93–104 (Routledge, 2025).

presented with the author's answers in clear language and an orderly fashion, from every possible perspective.

The distinction between act and omission is one of the most intriguing and challenging topics in both philosophical and legal discourse. This topic is particularly fascinating because our distinct moral intuition regarding the difference between an act and an omission does not always align with central perspectives in moral philosophy, which do not identify a moral difference between the two, given that all other conditions are equal.[3] At the same time, this topic is also particularly challenging because it combines complex ideas from different disciplines. While many attempts have been made in the past to address this distinction by many scholars,[4] including Dr. Rosenberg himself,[5] this new book introduces a genuine innovation, both in the substantive ideas presented and in the unique combination of theory and practice.

In his book, the author systematically analyses the moral and legal rationales underlying the distinction between an act and an omission. However, he does not stop there and proposes a new alternative rationale. The proposed rationale for the distinction between an act and an omission is an autonomy-based rationale, through which the author attempts to establish new and more solid foundations for justifying this distinction. This is not a simple challenge, as the distinction between act and omission is deeply rooted in criminal law and in the moral intuition that sees a substantial and clear difference between active killing and refraining from rescue. On the other hand, there is philosophical criticism that undermines the legitimacy of this distinction, especially when the other conditions, namely, intent, means, and result, are identical. The criticism points out that any moral difference that appears at first glance to be associated with the distinction between act and omission often stems from a difference in intent, rather than from the classification of the conduct itself.

The book can be divided into two main parts: a theoretical part that analyses the rationales of the distinction between act and omission, and a practical part that examines the implications of those rationales on concrete criminal issues, including euthanasia, direct and indirect omission offences. The latter also examines differences in punishment between a criminal act and a criminal omission, in circumstances where the harm and culpability are similar. Thus, the author does not confine himself to a theoretical discussion, and after proposing an innovative rationale for the distinction between act and omission, he addresses this complex topic in a hands-on manner, applying these theoretical concepts within the realm of criminal practice.

The first part of the book opens with a chapter dedicated entirely to the sceptical philosophical view, which fundamentally challenges the existence of a moral distinction between act and omission.[6] The author analyses the works of Jonathan Bennett, Shelly Kagan, James Rachels, and others, who each, for their own reasons, represent a common line: when the intent, means, and result are identical, there is no essential moral difference between an act and an omission.[7] The discussion also reflects the tension between deontological theories, which attribute importance to the intention and to the nature of the action, and utilitarian

[3] *See* Rosenberg, *supra* note 2, Chapter 1.
[4] *See generally* THE ETHICS AND LAW OF OMISSIONS (Dana Kay Nelkin & Samuel C. Rickless eds., Oxford University Press, 2017).
[5] Roni Rosenberg, *Between Killing and Letting Die in Criminal Jurisprudence*, Vol. 34, N. ILL. U. L. REV., 391 (2014).
[6] Rosenberg, *supra* note 2, Chapter 1.
[7] For a discussion of Rachels's arguments, *see* Rosenberg, *supra* note 2, 12–19. For Bennett's argument, *see id*., 27–29. For Kagan's argument, *see id*., 22–24.

theories, which focus the moral evaluation of the act solely on the outcome. For example, imagine that A intends to kill B by poisoning him, but by mistake gives B a medicine that ultimately saves his life. From a deontological standpoint, A's conduct is morally wrong because the intention behind the act was malicious. In contrast, a utilitarian view would regard the act as morally positive, since the actual outcome was beneficial and resulted in B's survival. The importance of this chapter is that it directly confronts the most serious obstacle to distinguishing between an act and an omission. Because this entire book is a project dedicated to the distinction between act and omission, the first chapter allows the reader to understand the central critique of this distinction, comprehend the responses to it, and from there continue to delve into the depths of the book.

In the second chapter, the author presents the main moral rationales supporting the distinction between act and omission.[8] The author details three different focal points. The first concerns the agent. Focusing on the agent suggests looking at the distinction between act and omission from the perspective of the actor himself and the impact of the prohibitions on his autonomy. The central claim here is that a prohibition on active harm is regarded as less intrusive to autonomy than a duty to act in order to save another.[9] The second focal point is the principle of causation. Ordinarily, an act is seen as having a more direct causal link to the harm than an omission. Some would argue that an omission not only fails to meet the requirement of a causal link but is not a cause at all.[10] The third focal point is the harm to the victim. The core of the argument is that an act exacerbates the victim's condition, while an omission merely prevents the improvement of the victim's already poor condition.[11] The discussion is inspired by Philippa Foot's brilliant distinctions between doing harm and allowing harm to happen[12] and benefits from F. M. Kamm's critique of the need for morally neutral definitions.[13]

The third chapter is devoted to the legal rationales for the distinction between act and omission, which are inherently pragmatic. The author demonstrates how the principle of legality justifies the requirement for a duty to act to be defined in law, to ensure certainty for the accused. A conviction for omission might erode the principle of legality, especially if the prohibition is not formulated as an omission offence, such as the offence of abandonment after injury. This is followed by a discussion of the principle of lenity, a principle that gives preference to a lenient interpretation for the accused.[14] Another important legal rationale is the need for social coordination that prevents the imposition of a general duty to rescue. And a final rationale is based on systemic efficiency considerations that limit the scope of duties, which, in a nutshell, is that it would be plainly inefficient if every person were obligated to rescue others whenever they encountered someone in serious danger.[15] The author clarifies that the logic of these rationales does not rest on differences in moral guilt, but on legislative policy.

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[8] Rosenberg, *supra* note 2, Chapter 2.

[9] *See also* Roni Rosenberg, *Two Concepts of Freedom in Criminal Jurisprudence*, Vol. 6(2), BR. J. OF AM. LEG. STUD., 279 (2017).

[10] Michael S. Moore, ACT AND CRIME: THE PHILOSOPHY OF ACTION AND ITS IMPLICATIONS FOR CRIMINAL LAW, 28, 29 (Oxford: Clarendon Press, 1993); Michael S. Moore, CAUSATION AND RESPONSIBILITY: AN ESSAY IN LAW, MORALS AND METAPHYSICS, 139–142 (Oxford University Press, 2009).

[11] James Rachels, *Killing and Starving to Death*, Vol. 54(208), PHILOSOPHY, 159 (1979).

[12] Philippa Foot, *Morality, Action, and Outcome* in MORALITY AND OBJECTIVITY: A TRIBUTE TO J. L. MACKIE, 23–38 (Ted Honderich ed., Routledge, 1st edn.,1985). Rosenberg himself wrote about this distinction. *See* Rosenberg, *supra* note 5.

[13] F.M. Kamm, MORALITY, MORTALITY: RIGHTS, DUTIES, AND STATUS, Vol. 2, 56 (Oxford University Press, 1996)

[14] Rosenberg, *supra* note 2, 84, 85; Gideon Yaffe, *The Duty Requirement* in THE ETHICS AND LAW OF OMISSIONS, 199 (Dana Kay Nelkin & Samuel C. Richless eds., Oxford University Press, 2017)

[15] Andrew Ashworth, *The Scope of Criminal Liability for Omissions*, Vol. 105(Jul), L.Q. R., 424 (1989).

In the fourth chapter, the author presents his central contribution to the discourse on the distinction between act and omission — the Autonomy Rationale. He argues that the interests protected by the prohibition on killing are broader and stronger than those in the prohibition on failing to rescue. While the former protects the fundamental right not to be subjected to active harm, the latter primarily concerns the expectation of assistance. The author bases his position on a combination of rule utilitarianism and social contract theories. This is perhaps the most important chapter in the book because it successfully proposes a robust distinction between act and omission. The strength of the distinction the author proposes is that it is based on solid theoretical principles, yet at the same time, it establishes an excellent practical tool for the legislator and courts dealing with this issue. Furthermore, the Autonomy Rationale also succeeds in explaining the prevailing intuitions regarding the distinction between act and omission.[16] Precisely because this is the central and most important chapter in the book, the expectation was for a longer chapter, a more extensive justification, and more use of examples to illustrate the theoretical ideas within it. However, even as it stands, it sheds much light on the issue.

The applied part of the book opens in the fifth chapter, which examines the case law of the courts in the United States.[17] The analysis of the case law reveals a lack of uniformity in adopting the 'bodily movement test' for defining act and omission — a test adopted by scholars such as Moore,[18] but rejected by others, including the author himself.[19] The author argues that the gaps in court rulings stem from differences in the theoretical rationales adopted by the various judges.

The author further demonstrates the same idea through a brief review of rulings from the Israeli court, both those that accept the 'bodily movement test' and those that reject it. In this context, the author presents two models of absence of bodily movement related to the creation of risk or enabling risk and even offers important examples illustrating how an act can exist even in the absence of bodily movement. In this context, the author refers to the doctrine of Antony Duff, who, unlike Moore, views an act as a more complex matter than a physical event in the world.[20] It seems there is no room to be surprised by the existence of significant disparities between the different judgments, because if different judges justify the distinction

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[16] Rosenberg also uses this rationale to explain why there is a reduction of responsibility in cases of provocation. *See* Roni Rosenberg, *A New Rationale for the Doctrine of Provocation: Applications to Cases of Killing an Unfaithful Spouse*, Vol. 37(2), COLUM. J. GENDER & L., 220 (2019); Roni Rosenberg*, Human Dignity and the Doctrine of Provocation: A New Approach*, Vol. 34(1), NOTRE DAME J.L. ETHICS & PUB. POL'Y, 281 (2020).

[17] *See* People v. Swanson-Birabent, 114 Cal. App. 4th 733 (2003) (California Court of Appeal), where the court held that a person can be convicted of aiding by act even if he made no physical movement. A similar dynamic can occur in digital-sexual offenses. Consider a case of revenge porn: a woman ends a relationship; the boyfriend's brother, aware of the boyfriend's anger, takes the boyfriend's phone and disseminates the woman's intimate images. The boyfriend watches, fully understands what is happening, and chooses not to stop him. His knowing silence — despite no physical movement — functions as active assistance, signalling approval and facilitating the offense. Accordingly, he may be treated as having aided the revenge-porn offense by act, even without physically participating. For discussions regarding the phenomenon of revenge porn, *see* Roni Rosenberg & Hadar Dancig-Rosenberg, *Revenge Porn in the Shadow of the First Amendment*, Vol. 24, U. PA. J. CONST. L., 1285 (2022); Roni Rosenberg & Hadar Dancig-Rosenberg, *Reconceptualizing Revenge Porn*, Vol. 63(1), ARIZONA LAW REVIEW, 199 (2021).

[18] *See* Moore, *supra* note 9.

[19] Roni Rosenberg, *Two Models of "Absence of Movement" in Criminal Jurisprudence*, Vol. 12, OHIO ST. J. CRIM. L., 195 (2014). *See also* Roni Rosenberg, *Enticement by Omission – Is it Possible*, Vol. 7, HAIFA L. REV., 425 (2013).

[20] R. A. Duff, ANSWERING FOR CRIME: RESPONSIBILITY AND LIABILITY IN THE CRIMINAL LAW, 99, 100 (Hart Publishing, 2007).

between act and omission based on different rationales, it is natural that their conclusions will also differ.

The chapter demonstrates the important idea that there is no alternative to adopting a single guiding rationale for the distinction between act and omission, upon which the legal discussion will be based. Adopting a single rationale will bring conceptual order, but no less important, it will lead to equal treatment for different defendants appearing before different judges.

In the sixth chapter, the author addresses the question of the sources of the duty to act. It is important to note that, in criminal law, generally, one cannot be convicted based on an omission where there is no legal source for a duty to act.[21] A duty to act can, for example, arise from the actor's status or the nature of his relationship to the object of the omission, such as a parent's duty toward their children. Another source of duty to act can stem from a contractual commitment.[22] A further possible source of duty is related to creating a risk. Because when a person creates a risk, a duty falls upon them to act, either by act or omission, to prevent harm to third parties because of that risk source.[23]

At the beginning of the chapter, the author presents three different approaches regarding the source of the duty to act. According to the broad approach, any duty can serve as a source for criminal liability for omission. According to the restrictive approach, only certain duties can serve as a source of criminal liability for omission. For example, duties arise from a special relationship with the victim, a connection to the source of the harm, or the actor's role in the harm.

According to the third approach, which is the intermediate approach, not every duty can serve as a basis for criminal liability for omission. However, the intermediate approach does not require rigid preconditions for a duty to serve as a basis for criminal liability for omission.[24] The author skilfully connects the theoretical rationales for the distinction between act and omission to the boundaries of recognition of each type of duty. In this chapter, too, the clear influence of the author's proposed Autonomy Rationale on the realm of practice is visible.

The author argues that duties to act may justify criminal liability for result offences when these duties are designed to protect an individual's autonomy and to ensure a stable and safe social environment. Thus, for example, duties such as the Good Samaritan obligation cannot serve as a basis for liability for omission, because even without such duties, individuals can still lead reasonably autonomous and fulfilling lives; at most, the practical implication is that citizens may need to avoid dangerous places. By contrast, the parent–child duty of care can ground a conviction for manslaughter by omission, since without this duty the child's autonomy — and even their basic ability to survive — would be fundamentally undermined.

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[21] Joshua Dressler, UNDERSTANDING CRIMINAL LAW, 100 (Carolina Academic Press, 2022); Wayne R. LaFave, CRIMINAL LAW, 409, 410 (2017).

[22] *See also* Roni Rosenberg, *The Contract: Between Contract Law and Criminal Jurisprudence*, Vol. 26(4), ST. THOMAS L. REV., 444 (2014).

[23] For a discussion of an intriguing Israeli case on the issue of creating risk and the victim's consent to self-endangerment, *see* Roni Rosenberg, *The Meaning of Assumption of Risk in Criminal Law*, Vol. 52(2), HAPRAKLIT, 3 (2014); Roni Rosenberg, *Drag Racing, Assumption of Risk, and Homicide*, Vol. 51(2), CRIM. L. BULL., 283 (2015).

[24] *See also* Roni Rosenberg, *Options for Convictions – Manslaughter by Omission*, Vol. 11, ALEI MISHPAT, 107 (2014).

The seventh chapter examines whether differences in punishment between acts and omissions can be justified when they result in identical harm, in situations involving a breach of a duty to act. The author presents different positions and explains each one through various rationales for the distinction between act and omission. One position is that, given a duty to act, there is no room for differences in punishment. Such a position can be supported by legal rationales for the distinction between act and omission, such as the rationale based on the coordination problem, supported by Feinberg, or the liberty rationale.[25]

A second position is that there must always be a difference in punishment between an act and an omission. This position is held by scholars such as Moore, who find a principled difference between act and omission, for example, one related to the issue of causation.[26] A third position is that sometimes there may be justification for differences in punishment between an act and an omission, and sometimes not, depending on the nature and scope of the protected values. Here too, the Autonomy Rationale yields the most precise distinction between act and omission. If we accept the rationale the author proposes for the distinction between act and omission, then naturally, the values protected by prohibition on killing by act are ordinarily broader and deeper than the values protected by prohibition on letting someone die by omission even if there is a duty to act. Consequently, the punishment for killing by act should be more severe than the punishment for killing by omission.

Having said that, there may be cases where the values protected by the underlying duty to act are so substantial and powerful that they justify punishing a specific omission no less severe than the punishment for an act, such as a situation where a parent fails to fulfil their duty to feed their children, resulting in their death. Here too, the Autonomy Rationale succeeds in leading to context-dependent conclusions, in a way that aligns well with accepted sentencing theory and even with strong moral intuitions we hold. By contrast, if a lifeguard at a swimming pool violates his duty to rescue, the punishment should not be as severe as for killing by an act. This is because, absent such a duty, the autonomy of ordinary citizens would not be meaningfully diminished. An additional benefit of the application proposed by the author is that a systematic application of these principles in sentencing can contribute significantly to the principle of uniformity in sentencing, which is an important and guiding principle in various legal systems.[27]

In the eighth chapter, the distinction between result offences and conduct offences is discussed. The question at the heart of the chapter is whether the distinction between result offences and conduct offences has an impact on the need to identify a duty to act in an omission. As in the previous practical chapters, here too the author presents the influence of the various rationales for the distinction between act and omission on the question of the necessity of a duty to act in conduct offences that constitute an omission.[28] The author also holds a brief discussion on sexual conduct offences and demonstrates several interesting insights.[29] Ordinarily, the literature dealing with this field focuses on result offences, because,

[25] Rosenberg, *supra* note 2, 86, 148. According to Feinberg, the coordination problem consists of two aspects. The first is the problem of efficiency: if every individual were obligated to rescue another person in distress, this could lead to a waste of resources. Therefore, any well-ordered society should establish dedicated rescue mechanisms. The second is the problem of justice. This problem arises because, given a general duty to rescue, some citizens would invest significantly more resources than others.
[26] Moore, *supra* note 9.
[27] *See* Lyndon Harris, ACHIEVING CONSISTENCY IN SENTENCING (Oxford University Press, 2022).
[28] Rosenberg, *supra* note 2, 155–162.
[29] *Id*., 159–162.

naturally, harm is a central factor in the discussion. Therefore, the chapter's contribution is manifold.

The ninth chapter applies the philosophical and legal insights the author provided throughout the book to the issue of euthanasia. Here, the question is examined as to whether the rationales for the distinction between act and omission can justify the distinction between active and passive killing, or whether these are categories that should be based on separate considerations, not necessarily related to the distinction between act and omission. Here, too, the theoretical discussion from the first half of the book is harnessed for the discussion and provides a clear and insightful perspective regarding the distinction between the two.[30] For example, one key rationale for the duty to act is the liberty rationale, which aims to protect individuals' freedom by limiting obligations to intervene in emergencies. Without such restrictions, people would constantly be required to help others, interfering with daily life and personal choices. However, this rationale has little relevance to active versus passive euthanasia. A doctor's role is inherently to assist patients, so requiring intervention such as connecting a patient to a ventilator does not meaningfully infringe on liberty. Moreover, passive euthanasia cases are rare and involve minimal effort, making any liberty concern negligible.[31]

Reading the book is both fascinating and intellectually enriching. Overall, the first part presents a significant intellectual challenge, requiring the reader to grapple with complex theoretical ideas. Yet once the theoretical section is successfully navigated, the applied part proves more accessible and highly rewarding, particularly for those engaged in the practice of criminal law.

The book excels in systematicity and conceptual precision. The distinctions presented in the book, and the combination of moral and legal rationales, allow the reader to examine the issue in an in-depth and multi-dimensional manner. Another prominent feature when reading the book is its impressive breadth in combining the world of theory with applied criminal law. The discussion relies on both contemporary legal literature and philosophical writings, which gives it unique intellectual depth. The author maintains a real dialogue between criminal doctrine and the deep discussion in the philosophy of morality, thereby lending firm validity to his conclusions. Because of this, the book is suitable for researchers in the field as well as for criminal defence attorneys.

Most importantly, the Autonomy Rationale proposed in the fourth chapter constitutes an original and significant contribution to the field. In contrast to traditional rationales, which rely on an identity of interests between the prohibition on killing and the prohibition on failure to rescue, the Autonomy Rationale distinguishes between them substantially. This claim provides an answer to critics of the distinction on the one hand and allows for its preservation on a solid theoretical framework on the other. It seems that the author successfully proposes a theoretical framework that not only is consistent with moral intuitions but also explains why those intuitions are correct in the first place.

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[30] *See generally* Roni Rosenberg, *Moral and Practical Considerations in the Debate on Physician-Assisted Suicide – The Terminally Ill Adults (End of Life) Bill in the UK*, BIOETHICS TODAY, December 30, 2024, available at https://bioethicstoday.org/blog/moral-and-practical-considerations-in-the-debate-on-physician-assisted-suicide-the-terminally-ill-adults-end-of-life-bill-in-the-uk/ (Last visited on January 7, 2025); Roni Rosenberg, *Active and Passive Euthanasia vs. Act and Omission in Criminal Law – Moral and Legal Perspectives*, SSRN (2025) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5236066 (Last visited on January 7, 2025).

[31] *See* Rosenberg, *supra* note 2, 168–171.

One point that, in my humble opinion, is lacking is that the book relies heavily on Anglo-American literature and deals less with comparative aspects concerning Continental legal systems. For example, §13 of the German *Strafgesetzbuch* offers an interesting structure for omission offences that could have enriched the critique and provided an alternative analytical perspective.[32] In addition, the book lacks an empirical dimension. Although the book offers a profound normative analysis, a discussion of empirical findings might have shed light on how this distinction affects the behaviour of the agents in the broader social context.

The author emphasises the close link between the rationale for the distinction between act and omission and the definition of an act and an omission. However, the full definitions for the terms act and omission do not receive sufficient independent attention, detached from the question of the moral or legal difference between them. This may be a conscious choice intended to preserve the intellectual tension, or it may even be a case of the chicken-and-egg paradox, but a reader seeking an early definitional framework might encounter difficulty at the beginning of the book.

Dr. Roni Rosenberg's book on the distinction between act and omission constitutes a significant contribution to the philosophical discourse and no less so to the legal discourse. The book's uniqueness lies in the author's ability to combine philosophical depth with the application of complex theoretical ideas from the world of practice. In doing so, the author proposes a new theoretical framework that reconciles moral intuitions with considerations of legal policy. Thus, the book aligns itself with classic works in the field and adds a fresh and thought-provoking layer to them.

The book's intellectual contribution is not limited to presenting the familiar issues in the field, but also to its ability to highlight open questions, such as, whether the distinction between act and omission reflect a true moral difference, or is it a product of institutional constraints? How can the distinction be justified in a way that is consistent with the fundamental principles of autonomy? What are the legitimate boundaries of the duty to rescue? These questions are not merely theoretical; they are also directly related to practical decisions in matters of life and death.

The book serves as a rich source of knowledge for researchers, judges, attorneys, and even legislators seeking to confront the complexity of the distinction between act and omission. It offers theoretical and practical tools that can illuminate the intricate path to the important distinction between act and omission. Reading the book invites the reader to not only re-examine age-old assumptions of criminal law and morality but also to courageously reflect on the normative and institutional structures that have the power to shape the boundaries of criminal liability. This work deserves a place in the canon of scholarship on the subject and stands as a central point of reference for anyone seeking to engage with it.

[32] The Strafgesetzbuch, 1871, §13 (Germany). The German law definition is very interesting: "Whoever fails to prevent a result which is an element of a criminal provision is only subject to criminal liability under this law if they are legally responsible for ensuring that the result does not occur and if the omission is equivalent to the realisation of the statutory elements of the offence through a positive act". It seems that the German law offers a clearer and more readily applicable definition.