Rutgers Law School (Newark)
Faculty Papers

Year 2008 *Paper* 47

The Case of Weak Will and Wayward Desire.

Vera Bergelson*

*Rutgers (Newark) School of Law, vbergelson@kinoy.rutgers.edu

The Case of Weak Will and Wayward Desire.

Vera Bergelson

Abstract

In this article, I confront Garvey¡¯s argument that a weak-willed individual deserves partial excuse for trying to resist a strong desire that pushes him toward commission of a criminal act even though in the end he unreasonably abandons his resistance and commits the crime.

I attempt to refute Garvey¡¯s argument on two counts: one, I question whether the law should indeed provide mitigation to such an offender; and two, I argue that, even if it should, this mitigation may not come in the form of a partial defense. Defenses, even partial, are desert based, and there is nothing in Garvey¡¯s offender¡¯s circumstances that makes him less blameworthy for the crime he committed. A court may choose to treat such an offender more leniently but it should not be mandated to do so.

The Case of Weak Will and Wayward Desire.

Vera Bergelson*

Introduction

In his impressively competent and sophisticated article, Stephen Garvey argues that a weak-willed individual (an "Akratic Offender") deserves a break for trying to resist a strong desire that pushes him toward commission of a criminal act even though in the end he unreasonably abandons his effort to sustain self-control and commits the crime. According to Garvey, the law should provide the Akratic Offender with a defense of partial excuse.

To develop a theoretical foundation for this new defense, Garvey construes two accounts of failed synchronic self-control, a compatibilist account and a libertarian account. Garvey concludes that, while the two accounts differ in their interpretation of "capacity for self-control," both of them support his theory of partial excuse in a case in which an actor (i) possesses that capacity, (ii) exercises it, but (iii) unreasonably gives up his effort because it becomes too hard for him, even though he can continue to resist and believes that he can and should continue to resist.[1]

In this article, I attempt to refute Garvey's argument on two counts: one, I question whether the law should indeed give an Akratic Offender a break; and two, I argue that, even if it should, this break may not come in the form of a partial defense.

I. Who Is the Akratic Offender?

Based on Garvey's description, the Akratic Offender commits a criminal act in order to avoid continuing and ever-increasing "psychic pain or discomfort, usually characterized as dysphoria, anxiety, tension or stress"[2] produced by the unsatisfied desire. The Akratic Offender possesses the following characteristics:

1) he does not identify with the desire to commit a criminal act;
2) he is not culpable for coming into possession of the desire, nor for failing to dispossess himself of it;
3) he is not culpable for being in a situation in which his unsatisfied desire to commit the criminal act causes him distress;

---

* Professor of Law, Robert E. Knowlton Scholar, Rutgers School of Law-Newark; J.D., University of Pennsylvania; Ph.D., Institute of Slavic and Balkan Studies at the Academy of Sciences of the Soviet Union. I would like to express my deep gratitude to Anna Gelpern, Boris Lokshin, Elizabeth Rapaport, George C. Thomas III, Leo Zaibert, and Ekow Yankah for their insightful comments, to the deputy director of Rutgers Law Library Paul Axel-Lute for his excellent research and advice, to my research assistant Kathleen Wells for her help in preparing this article for publication, and to the Dean's Research Fund of Rutgers School of Law-Newark for its financial support.

[1] Garvey, at 13-14.
[2] Id. At 10.

4) he does not believe that the law permits him to commit the criminal act (on the contrary, he believes that he is not so permitted), even on those occasions when the non-satisfaction of the desire to commit the criminal act causes him distress;
5) he exercises self-control but fails to achieve it such that his (intrinsic) desire to avoid the dysphoria he is experiencing becomes his strongest desire;
6) the only way to satisfy his desire to end the mounting distress is to satisfy his (instrumental) desire to commit the criminal act;
7) he forms a volition that translates his desire to end the dysphoria into action; and his choice to give up his resistance is neither permissible nor (fully) excusable.[3]

As a paradigmatic illustration, Garvey offers the case of a kleptomaniac who commits theft following an unsuccessful struggle to control his desire to steal, the continued non-satisfaction of which causes him considerable and ever-increasing psychic distress.[4] In my view, this example is not sufficiently representative for Garvey's theory.

First of all, the kleptomaniac's criminal act is a product of a mental disorder. The Diagnostic and Statistical Manual of Mental Disorders lists kleptomania among impulse control disorders and distinguishes kleptomaniac conduct from ordinary theft or shoplifting.[5] In fact, some defendants have successfully invoked kleptomania to plead the defense of insanity.[6] However, the defense advocated by Garvey is not limited only to those offenders whose volitional impairment is a result of a "mental disease or defect"[7] (in fact, those offenders may not even need it). Thus, a person whose weakness of will stems from a mental impairment represents only a small segment of potential beneficiaries of the proposed defense.

Another reason Garvey's kleptomaniac is not sufficiently representative of the whole class of Akratic Offenders is related to the kind and amount of harm he produced. A non-violent property offense occupies one of the lowest positions in the hierarchy of criminal wrongdoings. We are much more likely to forgive a petty theft than a brutal assault on a vulnerable victim.[8] In other words, Garvey's kleptomaniac is a tad too self-serving for Garvey's argument. So, instead of considering Garvey's proposal based on a best-case defendant, I would like to test it on a broader group of offenders, provided of course, that they satisfy Garvey's description of an Akraic Offender.[9] Consider the following examples:

- Mary loves her beautiful petunias. One day, she sees three-year-old Polly picking the flowers and throwing them onto the ground. Mary experiences an immediate desire to kill Polly in the most barbaric way. Mary manages to control that desire for a few

[3] Id. at 16.
[4] Id.
[5] Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) 613 (4th ed. 2005). "Ordinary theft (whether planned or impulsive) is deliberate and is motivated by the usefulness of the object or its monetary worth," whereas kleptomania is a "recurrent failure to resist impulses to steal items even though the items are not needed for personal use or for their monetary value." Id. at 612.
[6] See, e.g., Jones v. United States, 463 U.S. 354 (1983).
[7] See, e.g., MPC, § 4.01(1) (listing mental disease or defect as an element of the defense).
[8] See, e.g., Model Sentencing and Corrections Act § 3-108(1) and (2) (authorizing mitigation of punishment for an offender whose "criminal conduct neither caused nor threatened serious bodily harm").
[9] See Garvey, at 16.

minutes but, despite her efforts, her fury does not subside. Eventually, she abandons self-control, runs out of the house and kills little Polly in the most barbaric way.

- As a result of a shipwreck, Bernard finds himself on a small, unpopulated island. His only fellow survivor is ten-year-old Rachel. Soon enough, Bernard who possesses uncommonly strong sexual appetite develops a desire for Rachel. He knows that having sex with young girls is wrong and, for some time, manages to ward off the desire. However, as his sexual frustration grows stronger, maintaining self-control becomes more and more difficult. Finally, one day he gives up and violently rapes Rachel.
- David desperately wants a new car. Fiona has promised to give him one if he burns alive her ex-boyfriend's puppy Lassie. David does not want to kill Lassie but he knows that there is no other way he can get a new car. For a few days, he resists the temptation but, as his desire for a new car becomes particularly intense, his resolve weakens. He experiences acute dysphoria. After a week of suffering, David catches Lassie and sets her on fire.

Just like Garvey's kleptomaniac, Mary, Bernard and David tried to exercise self-control but failed to achieve it because continued resistance had become too hard for them to maintain, even though they could and should have continued to resist, and even though they themselves believed that they could and should have continued to resist. Should the law give Mary, Bernard or David a break?

II. Should the Law Give the Akratic Offender a Break?

Garvey answers this question in the affirmative. According to him, the law should give the kleptomaniac offender a break because, although he "failed to control his desire to steal, and although he could and should have controlled his desire to steal, he nonetheless ought to earn some merit for the good-faith effort he made to achieve such control, even though in the end he chose to give up that effort."[10]

Under this line of argument, the petunia-loving Mary should get a break because she made an effort to control her fury, even though in the end she chose to give up that effort and murdered little Polly in the most barbaric way. The sex-starved Bernard should get a break because he made an effort to control his lust for young Rachel, even though in the end he chose to give up that effort and violently raped her. And the car-obsessed David should get a break because he made an effort to control his yearning for a new car, even though in the end he chose to give up that effort and burned Lassie alive.

But why – why are all these people worthy of our sympathy and reduced punishment? Is it because their capacity for self-control was lower than that of a reasonable person or is it because they deserve credit for a good-faith effort to follow the law?

If the reason is the former, then the argument is at least a familiar one: it is neither fair nor efficient to punish people based on some abstract standard with which the actual defendant may not be able to comply.[11] However, it is unlikely that Garvey relies on this argument because he

[10] Garvey, at 16.
[11] See e.g., Glanville Williams, Criminal Law: The General Part (2d ed. 1961). Williams observed:

looks only to those defendants who, under both the libertarian and the compatibilist accounts, *were* capable of controlling their desires but consciously *chose* to break the law in order to avoid dysphoria. Of course, it is undeniable that some people, while capable of complying with the law, have a harder time doing that. A timid person may be more vulnerable to coercion, and a naturally irritable person may be more prone to acting violently in response to provocation. In the same way, a weak-willed person may be more susceptible to the pressure of internal desires. However, as long as these people are *actually capable* of complying with the requirements of the law, and also believe that they *can* and *should* comply with the law, the fact that it takes them a somewhat bigger effort than an average reasonable person is largely irrelevant.

If, on the other hand, the reason to treat Garvey's offenders more leniently lies in their attempt to exercise self-control, it is not clear why they deserve special treatment for merely trying to do what they are *required* to do? It seems that, if we say that they are entitled to certain forgiveness, we should also affirmatively reward people for all their morally neutral behavior or at least for their morally neutral behavior under the pressure of a strong temptation. For example, we forgive people for committing a crime under duress, and we praise them for withstanding duress and not committing a crime. But, in the case of Garvey's offenders, this would produce ridiculous results: we would have to praise Mary for not murdering Polly, Bernard for not raping Rachel, and David for not burning Lassie alive. In fact, we would have to reward/praise each member of our society for each unrealized opportunity to break the law under the influence of a wayward desire.

Moreover, if Garvey's offenders should deserve leniency for the mere good-faith effort to do the right thing, it should hardly matter *why* they chose to abandon that effort. Indeed, if the good-faith effort has intrinsic moral value, then what is rewarded is the offenders' conduct *before* they gave in. The reward then should be a function of how strong the effort was or how long it lasted but not why it was abandoned. In this sense, weak will should provide no special grounds for a defense. An offender who made an identical good-faith effort to comply with the law but failed because of his overdeveloped sense of self-pity or skewed moral judgment should be treated the same way.

Even more generally, is it necessarily true that one's temporary exercise of self-control followed by a decision to give up in order to avoid further emotional discomfort is morally superior to one's complete failure to exercise self-control? I am not sure of that. Of course, in each case, I assume, as Garvey does, that the perpetrator was capable of *not* giving up self-control. Consider a few arguments.

1. *Cool Off Argument:* The doctrine of provocation mitigates the defendant's responsibility if "the victim's conduct actually provokes, and reasonably provokes, the defendant into a passion

---

> Some people are born feckless, clumsy, thoughtless, inattentive, irresponsible, with a bad memory and a slow 'reaction time.' With the best will in the world, we all of us at some time in our lives make negligent mistakes. It is hard to see how justice . . . requires mistakes to be punished.
> Id. At 122-123

See also H.L.A. Hart, Punishment and Responsibility 152-54 (1968) (pointing out that some defendants may not be able to meet the objective or "reasonable person" standard of behavior).

which robs him of his normal capacity for self-control."[12] However, the defendant is not entitled to mitigation if he managed (or had a reasonably opportunity) to cool off by the time he committed the deadly act.[13]

By the same token, a person who put his desire under control but later let that control slip may be more culpable than a person who acted momentarily, under the heat of passion, without even trying to achieve self-control.

2. *Premeditation-Deliberation Argument:* Almost all American jurisdictions that divide murder into degrees distinguish between murder situations that include, in addition to the intent to kill, elements of premeditation and deliberation (first-degree murder), and killings that were committed entirely on the spur of the moment (second- or sometimes third-degree murder).[14] "Deliberation" is usually understood as cool mind, capacity for reflection, and "premeditation" as actual reflection, even for a very short time, before the act of killing.[15]

Of course, neither Garvey's Akratic Offender nor an offender who made no effort to achieve self-control can be said to possess "cool mind:" presumably, each of them acted under the influence of a strong desire. However, comparing the two, I would think that Garvey's offender is more culpable: whereas his counterpart may not be even aware of his ability to control his desire (he may be mistaken about his own resilience or skills), Garvey's offender *knows* that he can and should continue to maintain self-control. In these circumstances, his decision to give up resisting the temptation because it is "too much" for him strikes me as a more calculated, and thus more culpable, choice.

3. The Apparent Safety Argument: Under the doctrine of apparent safety, the defendant is not liable for the ultimate harm to the victim, if the determinative harmful events occurred after "the defendant's active force has come to rest in a position of apparent safety."[16] In the paradigmatic case of *State v. Preslar*, a woman escaped home after her husband violently assaulted her. She intended to stay with her father; however, when she almost reached his house, she changed her mind and spent the night outside, in bitter cold. As a result, she became ill and died. The court held that the defendant was not responsible for his wife's death because "there was nothing to prevent her from going in, but she chose, of her own accord, to remain out all night, exposed on the damp ground."[17] Similarly, a man who successfully escaped from the rioting mob but later stepped out of his hiding place and shot to death one of his pursuers was not entitled to claim self-defense. The court explained its decision by the fact that, "when defendant escaped from the mob . . ., he was in a place of comparative safety, from which, if he desired to go home, he could have gone by the back way, as he subsequently did."[18] In essence, both courts ruled that an

[12] Wayne R. LaFave, Criminal Law (4th ed.) 786.
[13] Id. At 787-88.
[14] See, e.g., State v. Diaz, 654 A.2d 1195 (R.I. 1995) (Murder in the first degree requires premeditation of more than a momentary duration and requires an intention to kill in addition to premeditation and deliberation about the killing.).
[15] Wayne R. LaFayve, Criminal Law, at 766-67.
[16] Joseph H. Beale, *The Proximate Consequences of an Act*, 33 HARVARD LAW REVIEW 633, 651 (1920).
[17] State v. Preslar, 48 N.C. 421, 428 (N.C. 1856).
[18] Laney v. United States, 294 F. 412, 414 (D.C. Cir. 1923).

individual who managed to achieve safety but chose to abandon it bore responsibility for the ensuing harm.

The analogy with Garvey's Akratic Offender is rather transparent: he too managed to achieve temporarily the "apparent safety" of self-control but chose, on his own accord, to abandon it. He is, therefore, more responsible for what followed than a person who, for whatever reason, never even reached that point of self-control.

4. *The Realistic Assessment Argument:* Finally, the Akratic Offender who gives up resistance to a wayward desire, although he knows that he can maintain it, is probably more culpable than a person who does not even try resistance because he accurately believes the attempt to be futile. Take an expert swimmer who makes an effort to rescue his child drowning a few hundred feet away from the shore. Assume that he gets tired of the effort and gives up, although he is perfectly capable of continuing it and personally believes that he can and should continue it. This person seems to me more culpable than a mediocre swimmer who knows that he would never be able to swim that far and, thus, does not even attempt the rescue.

III. Does the Akratic Offender Deserve a Partial Excuse?

With all that said, I agree with Garvey that in many—perhaps most—instances a person who makes an honest effort to do the right thing, particularly in the face of a strong temptation, is more appealing than a person who makes no effort at all. We may have good reasons to punish such a person less severely. For example, in order to encourage people to exercise self-control, we may want to impose a lesser punishment on offenders who tried to control their harmful impulses. Alternatively, we may believe that it is easier to rehabilitate an offender who has committed a crime due to his weak will rather than evil disposition. We may consider such an offender a better and more responsible person who is less likely to commit another crime.[19] Guided by these consequentualist considerations (namely, general and specific deterrence and rehabilitation), society may choose to exercise leniency and mitigate the Akratic Offender's punishment in order to achieve a collective benefit; however, that mitigation may not be qualified as a defense.

All defenses, complete or partial, are desert-based.[20] Complete excuses, for example, shield from liability those defendants who may not be fairly blamed for their criminal acts due to the presence of some disability or disabling condition (e.g., insanity, minority, duress).[21] Partial excuses differ from complete excuses in that they do not entirely exonerate people from punishment; instead, they mitigate culpability of those defendants who are *less* blameworthy for their criminal acts compared to a paradigmatic offender (an offender with no disability or disabling condition).

[19] In fact, I doubt that the last two suppositions are correct: a person who has committed a crime under the influence of a serious threat or provocation may never find himself again in such emotionally unhinging circumstances, whereas a weak-willed person will constantly be tempted by his wayward desires.
[20] Douglas N. Husak, *Partial Defenses*, 11 Can. J. L. and Jurisprudence, 167, 169 (1998).
[21] See e.g., Paul H. Robinson, Criminal Law Defenses: A Systematic Analysis, 82 Colum. L. Rev. 199, 221, 226 (1982).

At the same time, partial excuses differ from those mitigating circumstances that are not based on the defendant's desert. The latter mitigators can only reduce the severity of the defendant's punishment, whereas the former ones can also change the very offense of which he is convicted. For example, if the defendant can establish the partial defense of provocation, the homicide, which would otherwise be murder, will be classified as manslaughter.[22] In contrast, such factors as the defendant's cooperation with the authorities or lack of criminal record will only be taken into consideration at the sentencing stage and will not affect the defendant's verdict.

More significantly, the court *may, but does not have to*, take the defendant's cooperation with the authorities or lack of criminal record into account. Yet, the court *must* reduce the charged offense and/or punishment when the defendant has a partial defense. Defendants are entitled to consideration of partial defenses, as a matter of justice, simply because they are desert-based. In the words of Douglas Husak, "[t]o disregard such circumstances is no more defensible than to disregard a complete justification or excuse. Only a rejection of the principle of proportionality—that the severity of punishment should be proportionate to desert—would authorize the discretion to disregard a partial justification or excuse."[23]

In this context, is there anything in the Akratic Offender's circumstances that reduces his blameworthiness compared to that of a paradigmatic offender and *mandates* the court to punish him less? The only three factors that are special to the Akratic Offender's case are: a strong wayward desire; a weak will; and an effort to maintain self-control. The last factor (except for its possible evidentiary value) is not pertinent to the theory of excuse: excuses deal with people's disabilities, not their good "moral record."

Accordingly, we should focus only on the gravity of the Akratic Offender's disability (the weakness of his will and the strength of his wayward desire). For example, in cases of Mary, David and Bernard, we should ask only two questions. One: how strong were Mary's desire to revenge the loss of her beautiful petunias, David's sex urge, and Bernard's yearning for a new car? And two: how weak a will did each of them posses? And if it turns out that each of them, indeed, was driven by a strong desire and possessed a weak will, then, based on Garvey's theory, each of them should be partially excused, even if they made *no effort at all* to resist their desires. I have a few problems with this conclusion.

My first problem is the following: suppose Mary's, David's and Bernard's respective desires were not very strong and their respective wills were not very weak, shouldn't we still provide each of Mary, David and Bernard with a partial defense? Of course, the effect of this excuse would be less significant than in the case of a strong desire and weak will; however, at least conceptually, we would have to accept their entitlement to the defense. But if so, shouldn't we also provide a partial excuse when the desire is rather weak and the will is rather strong? It appears that ultimately, under this logic, we would have to allow a partial excuse even to a person with a very strong will and a very weak desire.

All right, let's suppose that Garvey's new defense should be only available when the desire is sufficiently strong, and the will is sufficiently weak. Still, to provide a foundation for a partial

[22] See, e.g., MPC, § 210.3(1)(b).
[23] Husak, *Partial Defenses,* at 169.

excuse, these factors must be conceptualized as a legal disability. And Garvey, indeed, attempts to analogize his new defense to other defenses involving a volitional impairment, specifically insanity and duress. I am not persuaded that either analogy helps Garvey's argument.

The defense of insanity differs from the proposed defense in an important way: even in those few jurisdictions in which the insanity defense may be grounded in a volitional impairment, that impairment has to be caused by a mental disease or defect.[24] If a similar requirement be added to Garvey's new defense, that defense would only help the defendants whose weak will was a result of some impulse control disorder. A kleptomaniac then might be able to benefit from the new defense (ironically, *he* may not even need it) but a psychiatrically adequate offender whose passionate desire clashes with his weak will (e.g., a "'moneyphile' who steals because he has a strong desire for money")[25] would not be entitled to any mitigation.

Premising a criminal defense on one's weak will poses another problem. If we are to characterize a weak will as a volitional impairment, then it should not matter whether the offender is at fault for possessing this disability. After all, if a person develops a cognitive impairment, which qualifies him for the defense of insanity, we do not deny him this defense simply because it is a result of his own irresponsible conduct (e.g., a head injury caused by a drag racing accident). Similarly, if an offender's capacity for synchronic self-control has weakened because of, say, heavy drinking, we should equally ignore the origin of that disability. This, however, would contradict Garvey's own theory, which assumes that the Akratic Offender has exercised diachronic self-control, and according to which, a culpable failure to exercise such diachronic self-control may result in the forfeiture of the defense.[26]

Garvey's analogy of a wayward desire with duress is also problematic. Here, the problem lies in the source of coercion: unlike duress, a wayward desire does not involve any external force or threat. Why is this important? One answer is that people have the right not to be subjected to external coercion. Accordingly, they may not be required to anticipate it and be prepared to withstand it. In contrast, the Akratic Offender's desire is "his own." Even if he is not at fault for possessing it, he is still aware of its wayward nature and its effect on him, and therefore may be fairly expected to keep it under control (analogously to other inherently dangerous possessions or conditions), both diachronically and synchronically.

Another answer, coming from Aristotle, is that only those actions committed under external "pressure which overstrains human nature and which no one could withstand"[27] are truly coerced and deserve pardon, whereas a wrongful act compelled by an internal motivation is voluntary.[28] To conclude otherwise would mean to collapse all volitional acts into the class of coerced

[24] See, e.g., MPC, § 4.01. Garvey himself acknowledges this difficulty. See Garvey, at 14 ("[E]ven if a jurisdiction does recognize 'irresistible-impulse' insanity, the defense is available only to actors whose irresistible desire is the result of a mental disease or defect"). And Garvey is certainly correct that the law is suspicious of claims of volitional incapacity not accompanied by cognitive incapacity as well.
[25] Garvey, at 25.
[26] Id. at 7.
[27] ARISTOTLE, THE NICOMACHEAN ETHICS 49 (1998, J. L. Ackrill, J. O. Urmson eds.). See also Ekow N. Yankah, *The Force of Law*, 42 RICHMOND LAW REVIEW *26 (2008) (forthcoming).
[28] Id.

actions. After all, whenever people commit willful wrongdoings, they are driven by some kind of internal force.[29]

For all these reasons, I do not believe that the Akratic Offender is less culpable than a paradigmatic offender or that his special circumstances change the nature of the crime he committed. Accordingly, in my view, the Akratic Offender should not be entitled to a partial defense. However, his good-faith effort to avoid committing a crime may, in some circumstances, be given credit at the sentencing stage. For example, the Federal Sentencing Guidelines authorize reduction of punishment if the "defendant clearly demonstrates acceptance of responsibility for his offense."[30] As one court opined, "[a]mong those factors used to determine a defendant's potential for rehabilitation is his or her manifestation of social conscience and responsibility through contrition, repentance, and cooperation with law enforcement agencies."[31] It may be plausibly argued that the Akratic Offender's effort to resist a wayward desire also manifests his social conscience and responsibility and thus should be given appropriate weight in determining his punishment.

Conclusion

Garvey's article raises a fascinating issue of whether one's own desires, superimposed on one's weak will, should provide a basis for a partial excuse in a situation in which the offender made a good-faith effort not to yield to those desires. In my view, although we may feel sympathy for an Akratic Offender who has a hard time fighting his devils, this sympathy has no place in criminal law as long as the offender is objectively capable of complying with the law and subjectively believes that he can and should comply with the law. In the words of J. Stephen, "it is at the moment when temptation to crime is strongest that the law should speak most clearly and emphatically to the contrary."[32]

On the other hand, a good-faith effort to avoid committing a crime may evidence the Akratic Offender's stronger moral convictions (compared to a paradigmatic offender). One's good "moral record" may be compared to a good criminal record and other factors that tend to predict the offender's future dangerousness and prospects for rehabilitation. These factors are irrelevant to the offender's desert for the specific crime he committed but they may be relevant to the general evaluation of the offender as a society member for the purposes of determining the correct punishment. Accordingly, an Akratic Offender who made a good faith effort to resist his wayward desire is not entitled to a partial excuse; however, in some circumstances, it may be appropriate for a court to punish him more leniently.

[29] Id.
[30] Federal Sentencing Law and Practice §3E.1.1 (Acceptance of Responsibility) (2008).
[31] Commonwealth v. Frazier, 500 A.2d 158, 160 (Pa. Super. Ct. 1985).
[32] 2 J. Stephen, History of the Criminal Law of England 108 (1883).