

Actio Libera in Causa

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Abstract The actio libera in causa doctrine, as originally formulated by various Enlightenment philosophers, concerns the imputation of responsibility to actors for actions unfree in themselves, but free in their causes. Like our Enlightenment counterparts, contemporary philosophers of criminal law, as well as most Western legal systems (both common law and civil), allow that persons can be responsible for acts that are not free when performed, provided they were free in their causes. The actio libera doctrine allows us to impute unfree actions to persons, provided they were responsible for causing the conditions of unfreedom that characterizes those actions when performed. This doctrine seems to be instantiated in a great many actual legal practices. But I argue that we must distinguish between two importantly different understandings of the doctrine itself and its application in law. On the one hand, the actio libera doctrine allows us to waive the voluntariness requirement that is generally needed for criminal liability. On the other hand, it disallows defendants to appeal to defences they would otherwise be entitled to use to block liability, if they culpably created the conditions of their own defence. The first case involves rules of imputation, while the second concerns culpability, and justifying the actio libera doctrine therefore faces different challenges in the two cases.

Keywords Imputation · Responsibility · Liability · Defences · Culpability · Voluntariness

Part One: *Actio Libera in Causa* and its Relation to Exculpatory Defenses, When Fault is Primary

This is a collection of original essays on the topic of *actio libera in causa* and its relations to other areas of substantive criminal law and doctrines in the general

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