From Blackstone to Woolmington: On the Development of a Legal Doctrine

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I. THE ISSUE

Thomas Kuhn once suggested to his students:

When reading the works of an important thinker, look first for the apparent absurdities in the text and ask yourself how a sensible person could have written them. When you find an answer, I continue, when those passages make sense, then you may find that more central passages, ones you previously thought you understood, have changed their meaning.¹

That advice² will be followed throughout this paper with a view to re-examine Blackstone’s analysis of the rules allocating the burden of proof in criminal trials. The notion of ‘burden of proof’ embraces both ‘burden of adducing evidence’ and ‘burden of persuasion’,³ and it is in relation to the latter kind of burden that Blackstone’s analysis will be discussed. The function of that burden, which comes into play in situations of factual uncertainty, is to allocate the risk of error between the parties in dispute. As such, it can and should be looked at as expressing the risk-related preferences embedded in the legal system, namely as a distinctively moral issue.

Blackstone approached the risk of error in criminal trials from that very angle.⁴ He was explicit in saying that in order to establish that the accused has committed an offence, all reasonable doubt in relation to the facts in issue ought to be eliminated. According to him, it is better for ten guilty persons to escape their conviction and go unpunished than for one innocent person to be unjustly condemned.⁵ Blackstone, however, was no less explicit in stating that ‘all [the] circumstances of justification, excuse, or alleviation, it is incumbent upon the prisoner to make out, to the satisfaction of the court and jury’.⁶

This and related passages were meant not merely to describe, but also to justify in a systematic way the common law as it stood at that time. As such, they have been profoundly criticised in one of the leading

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PUBLISHED BY FRANK CASS, LONDON
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contemporary articles on the subject. Blackstone, a principal expositor of the law of his time, was accused of importing into the field of criminal evidence private law notions such as 'omnia praesumuntur pro negante', 'ei incumbit probatio qui dicit; non qui negat', and 'reus excipiendofit actor'. This importation has, arguably, fortified the view that the burden of persuasion in criminal trials at common law is to be allocated on the basis of an unprincipled syntactical distinction between 'constituents of the crime' on the one hand, and 'defensive issues' on the other. When facts pertinent to constituent elements of the crime were in issue, the principle 'in dubio pro reo' obtained. In contrast, when defensive issues were to be determined, the risk of error was placed upon the accused, so that he would be convicted in cases of doubt. This distinction is arbitrary since any qualifying condition of any offence can always be substituted with a definition of that offence limited ab initio; similarly, any definition of any offence can always be reformulated so as to include all possible defences within that definition.

According to the commonly held view, it was not until 1935, in the celebrated judgment of the House of Lords in Woolmington v. DPP, that the law in this area was changed. The facts of that famous case are well known. The accused, Reginald Woolmington, was charged with murdering his wife who had previously left him. He did not deny the fact that it was he who had shot and killed his wife. However, he told the court that this killing had been merely accidental. He explained that at the time of the killing he had tried to induce his wife to return to live with him by threatening to shoot himself. He had gone on to show her his gun, had brought it across his waist, and, accidentally, the gun had somehow gone off and his wife had been killed. At the end of the trial, Swift J. summed up to the jury in the following way:

The Crown has got to satisfy you that this woman ... died at the prisoner's hands. They must satisfy you of that beyond any reasonable doubt. If they satisfy you of that, then he has to show that there are circumstances to be found in the evidence ... which alleviate the crime so that it is only manslaughter, or which excuse the homicide altogether by showing that it was a pure accident.

The accused was found guilty as charged, but his appeal, reaching the House of Lords, was allowed on the ground of misdirection of the jury. Speaking for the House, Viscount Sankey L.C. held that —

Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the
The decision in Brown v. Board of Education is a landmark case in American law, declaring that segregation in public schools is unconstitutional and violating the Equal Protection Clause of the Fourteenth Amendment. This case was brought to the United States Supreme Court by a group of parents and students who argued that the racial segregation in Oklahoma City's public school system violated their constitutional rights. The court ruled unanimously that segregation in public schools is unconstitutional, and that states cannot classify and segregate individuals based on race.

In applying the Constitution's equal protection clause, the Supreme Court considered the nature of the right at issue—education—and the goals of the law being challenged—equal educational opportunity. The Court concluded that the state-sanctioned system of segregated schools violated the equal protection clause because it denied blacks equal educational opportunity and perpetuated a system of racial inferiority.

The decision in Brown v. Board of Education marked a significant shift in American law and society, beginning the process of desegregation that continues today. It has had far-reaching implications, leading to the desegregation of public schools and other government institutions, and catalyzing broader efforts to eliminate racial discrimination and promote civil rights.
The constitution is the supreme law of the United States. It is the source of all other laws and is the basis for the American legal system. It was adopted on September 17, 1787, and consists of the Preamble and seven articles. The Preamble states the purpose of the Constitution: to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.

The Constitution divides the government into three branches: legislative, executive, and judicial. The legislative branch, consisting of the House of Representatives and the Senate, makes the laws. The executive branch, including the President, the Vice President, and their departments, enforces the laws. The judicial branch, consisting of the Supreme Court and the lower courts, interprets the laws and decides whether government actions are constitutional.

The Constitution guarantees certain basic rights and freedoms to all citizens. These rights are protected by the Bill of Rights, which includes the First Amendment, guaranteeing freedom of religion, speech, and the press; and the Fourth Amendment, protecting against unreasonable searches and seizures. The Constitution also includes other amendments that protect freedom of speech, the press, and religion, and provide for the right to a speedy and public trial.

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The right to life was explicitly protected by the law, and the law's straightforward provision was formally declared in the Constitution. The right to life was equal protection, and the law's equal protection of all citizens was formally declared in the Constitution.

Under the law, the state shall not deny to any person within its jurisdiction the equal protection of the laws.

An equal protection of the law is not the denial of a privilege or benefit, but it includes the equal enjoyment of a public benefit or service. In other words, the state shall not deny to any person within its jurisdiction the equal protection of the laws, and shall make no classification of persons which are founded or which are to be enforced for the benefit or protection of any class, or for the terror or interference with any class.

The right to life was formally declared in the Constitution, and it shall be protected by the law. The law shall be equal protection, and the right to life shall be protected by the law. The law shall be equal protection, and the right to life shall be protected by the law.
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Ernest Bena, a free and independent Saxon, was murdered in a dispute over land. The death sparked a series of conflicts and led to a rise in tensions between the local Saxons and the English settlers. The case was eventually brought to the attention of the local authorities, who convened a trial to determine the cause of the violence.

The trial was presided over by a locallandreef, a respected elder in the community. The evidence presented during the trial included statements from witnesses, including the Saxons and the English settlers. The Saxons claimed that Bena was murdered in self-defense, while the English settlers accused the Saxons of provoking the conflict.

The trial was marked by heated debates and emotional outbursts, with both sides presenting their case with fervor. Ultimately, the landreef ruled in favor of the Saxons, concluding that Bena was indeed murdered in self-defense. The decision was met withmixed reactions from the community, with some supporting the Saxons and others siding with the English settlers.

The ruling had significant implications for the future of the area, as it set a precedent for resolving conflicts and tensions. It also highlighted the importance of understanding and respecting the views and perspectives of all parties involved in a dispute. The case of Bena's murder remained a contentious issue for many years, with its legacy still felt in the region.

In the years that followed, efforts were made to promote peace and understanding between the Saxons and the English settlers. These efforts included meetings and discussions aimed at resolving outstanding issues and fostering a sense of mutual respect and cooperation. While progress was slow, there were signs of improvement, with both sides taking steps to address the underlying issues that had led to the violence.

As the years passed, the case of Bena's murder continued to be discussed and debated in the local community. The legacy of the conflict served as a reminder of the importance of justice and fair resolution of disputes, as well as the need for ongoing efforts to promote peace and understanding among all parties involved.
The kind of reasoning that goes beyond both of these is the kind of reasoning that is capable of overcoming the intellectual conflict between the two. This kind of reasoning turns upon a deeper understanding of the intellectual conflict. It is not simply a matter of applying the principles of logic to the problem at hand, but rather it requires a deeper understanding of the nature of the conflict itself. This deeper understanding is what allows us to overcome the intellectual conflict and to arrive at a resolution that is intellectually satisfying.

In order to develop this kind of reasoning, we must first understand the nature of the intellectual conflict. This involves an examination of the assumptions underlying both of the positions, as well as an exploration of the ways in which these assumptions interact with each other. Once we have a clear understanding of the nature of the conflict, we can then develop a strategy for overcoming it. This strategy involves the application of the principles of logic and the use of critical thinking to identify and resolve the conflicts that arise.

The kind of reasoning that is required in order to overcome the intellectual conflict between the two is not simply the application of logic. Rather, it requires a deeper understanding of the nature of the conflict and the assumptions underlying both of the positions. It is this deeper understanding that allows us to overcome the conflict and to arrive at a resolution that is intellectually satisfying.