

But whatever the defects of the maxim may be when critically considered, it has for centuries stood as embodying an undoubted and most cherished principle of English criminal law that, "ordinarily speaking, a crime is not committed if the mind of the person doing the act in question be innocent." (Wills, J., *R. v. Tolson*, supra, p. 171.)

"In all ordinary crimes the psychological element which is thus indispensable may be fairly accurately summed up as consisting simply in intending to do what you know to be criminal." (Kenney, p. 39.)

Blackstone calls it "a vicious will." It is a mental ingredient, not one of feeling, a state of mind forbidden by law; murder from the best of motives is still murder. No one can plead, in justification of his criminal act, that he intended an ultimate good. "I think the old, sound and honest maxim, that you shall not do evil that good may come, is applicable in law as well as in morals." (*Regina v. Hicklin*, L.R. 3 Q.B. 360, 372, per Cockburn, C.J.)

The terms "malice" ("a term which is truly a legal enigma," Harris, 13) and "malicious" have, on account of the difficulties connected with them been discontinued in the Code, only appearing in section 499 (4) and 963 (2).

Ordinarily, therefore, mens rea is an essential ingredient of a crime. But when the legislature expressly declares an act to be criminal, the question of intention or malice need not be considered except as affecting the quantum of punishment. A statute may be so framed as to relate to such a subject-matter and make an act criminal whether there has been any intention to break the law or otherwise to do wrong or not.

The Legislature has power to make the bare doing of a particular act a crime, no matter how innocent from a mental point of view the doer of it may be; in such a case the doer must be held to be a criminal.

"The Legislature, within its jurisdiction, can do everything that is not naturally impossible, and is restrained by no rule, human or divine. If it be that the plaintiffs acquired any rights