

In Defense of Criminal Possession
by Gideon Yaffe

Possession crimes--such as possession of drugs, guns, child pornography or dangerous substances like freon--are some of the most commonly charged in the United States today. At the same time, it is agreed by all that we should never hold people criminally responsible for anything other than their acts or omissions. This is part of what underlies the view, that has also been the view of the courts, that there can be no crime of vagrancy. It cannot be a crime to be, simply, homeless and jobless; one needs to do something or fail to do something in order to be guilty of a crime. Is our practice of routinely punishing, and often severely, for crimes of possession compatible with the restriction of criminal liability to acts and omissions? This paper argues that it is. The paper first shows that many of the natural ways of defending criminal possession against the concern that it is no better than criminal vagrancy fail. The paper then defends criminal possession by arguing that omissions are a wider and more complicated category of human behaviors than is presupposed by the argument against criminal possession. To punish for possession, it is suggested, is typically to punish for omitting to dispossess.