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Intent without volition: a dogmatic question or a matter of evidentiary convenience?
Dolo sem vontade: questão dogmática ou de praticidade probatória?
Dolo sin voluntad: ¿cuestión dogmática o de facilidad probatoria?

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Abstract: This article examines whether the concept of intent without volition — intent grounded solely on the knowledge that gives the agent control over the realization of the offense — is a dogmatic requirement or a device to ease the proof of the mental element. It starts from the punitive demand associated with the risk society described by Ulrich Beck and from the ethical requirement of responsibility formulated by Hans Jonas, distinguishing that demand from its legal legitimacy. It then examines the analytical theory of crime and the migration of intent from culpability to the definition of the offense; the concept, elements and forms of intent in Brazilian law, including the semantic limit of article 18, I, of the Penal Code; and the approaches of Roxin, Jakobs and Greco, with emphasis on the boundary between dolus eventualis and conscious negligence. Decisions of the Federal Supreme Court, the Superior Court of Justice and the Federal Regional Court of the 6th Region are analyzed for illustrative purposes. It concludes that the theory of intent without volition is dogmatic in its foundation; that its adoption redefines the object of proof, shifting it to the knowledge of a qualified risk; and that this effect is legitimate only if accompanied by criteria that prevent the attribution of knowledge without factual basis. In the decisions examined, volition is stated as a requirement but drawn from objective circumstances, and the normativization of knowledge itself reveals the risk of punishing negligence as intent.

Keywords:
Intent. Cognitive theory of intent. Dolus eventualis. Proof of the mental element.

Resumo: O artigo examina se a concepção de um dolo sem vontade — dolo fundado apenas no conhecimento que confere ao autor domínio sobre a realização típica — constitui exigência dogmática ou expediente destinado a facilitar a prova do elemento subjetivo. Parte-se da demanda punitiva associada à sociedade de risco descrita por Ulrich Beck e da exigência ética de responsabilidade formulada por Hans Jonas, distinguindo-se essa demanda de sua legitimidade jurídica. Examinam-se a teoria analítica do delito e a migração do dolo da culpabilidade para o tipo; o conceito, os elementos e as formas do dolo no direito brasileiro, inclusive o limite semântico do art. 18, I, do Código Penal; e as vertentes de Roxin, Jakobs e Greco, com destaque para a fronteira entre dolo eventual e culpa consciente. Analisam-se, a título ilustrativo, julgados do Supremo Tribunal Federal, do Superior Tribunal de Justiça e do Tribunal Regional Federal da 6ª Região. Conclui-se que a tese do dolo sem vontade é dogmática em seu fundamento; que sua adoção redefine o objeto da prova, deslocando-o para o conhecimento de um risco qualificado; e que esse efeito só é legítimo se acompanhado de critérios que impeçam a atribuição de conhecimento sem base fática. Nos julgados examinados, a vontade é afirmada como requisito, mas extraída das circunstâncias objetivas, e a normativização do próprio conhecimento revela o risco de converter a culpa em dolo.

Palavras-chave:
Dolo. Teoria cognitiva do dolo. Dolo eventual. Prova do elemento subjetivo.

Resumen: El artículo examina si la concepción de un dolo sin voluntad —fundado exclusivamente en el conocimiento que otorga al autor dominio sobre la realización típica—

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constituye una exigencia dogmática o un recurso para facilitar la prueba del elemento subjetivo. Parte de la demanda punitiva asociada a la sociedad del riesgo descrita por Ulrich Beck y de la exigencia ética de responsabilidad formulada por Hans Jonas, distinguiendo esa demanda de su legitimidad jurídica. Examina la teoría analítica del delito y el desplazamiento del dolo de la culpabilidad al tipo; el concepto, los elementos y las formas del dolo en el derecho brasileño, incluido el límite semántico del art. 18, I, del Código Penal; y los enfoques de Roxin, Jakobs y Greco, con énfasis en la frontera entre dolo eventual y culpa consciente. A título ilustrativo, analiza resoluciones del Supremo Tribunal Federal, del Superior Tribunal de Justicia y del Tribunal Regional Federal de la 6.ª Región. Concluye que la tesis del dolo sin voluntad es dogmática en su fundamento, que su adopción redefine el objeto de la prueba al desplazarlo al conocimiento de un riesgo cualificado y que ese efecto solo es legítimo si va acompañado de criterios que impidan atribuir conocimiento sin base fáctica. En las resoluciones examinadas, la voluntad se afirma como requisito, pero se infiere de circunstancias objetivas, y la normativización del propio conocimiento revela el riesgo de convertir la culpa en dolo.

Palabras clave:
Dolo. Teoría cognitiva del dolo. Dolo eventual. Prueba del elemento subjetivo.

1. Introduction

Contemporary criminal-law doctrine analyzes crime through a layered structure commonly referred to as the analytical theory of crime. As Zaffaroni and Pierangeli put it, “in this schematic way, we construct the concept of crime as conduct that satisfies the statutory definition, is unlawful, and is culpable” (Zaffaroni; Pierangeli, 2018, p. 355). The order of the layers—satisfaction of the statutory definition, unlawfulness, and culpability—is neither arbitrary nor immutable. It organizes the questions an interpreter must ask and determines when each element of the crime is considered.

This article focuses on intent, one of the elements examined across the layers of the analytical theory. Intent has occupied different places within that structure. In the causal system devised by Liszt and Beling, the assessment of criminal wrongfulness (satisfaction of the statutory definition and unlawfulness) was purely objective, and all mental elements belonged to culpability. The assessment of wrongfulness thus concerned only the act's external aspects. Culpability addressed the mental relationship between the perpetrator and the act.

According to Juarez Tavares, in this model intent and negligence were “treated as forms of culpability and constituted its core” (Tavares, 1980, p. 25). As criminal-law doctrine developed, the inadequacy of this view and of the causal systems became apparent.

It was against this background, following the neo-Kantian revision of culpability, that Hans Welzel's finalistic theory emerged. Action came to be understood as end-directed activity. This new understanding shifted intent into the statutory definition of the offense, one of Welzel's main contributions. Intent differs from the purpose of the action and is the legal

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concept linking the will to carry out an act with the statutory offense committed.

In its new place, “the subjective definition of the offense is composed of intent as its general subjective element” (Tavares, 1980, p. 65). The shift altered the content of the statutory definition, separated intent from awareness of unlawfulness, which remained part of culpability, and made the will to carry out the act the core of intent.

Brazilian positive law adopted this volitional language. Article 18(I) of the Penal Code defines a crime as intentional “when the agent intended the result or assumed the risk of causing it” (Brazil, 1940). Wanting a result and assuming a risk, understood psychologically, presuppose access to the perpetrator's internal state. Criminal proceedings offer no direct access to that state. This is the tension investigated here.

Complexities of contemporary society give rise to harmful behaviour characteristic of the present historical context, including crimes committed digitally. Scholarship on this subject extends beyond criminal law. Different social sciences seek to understand, from their own perspectives, how contemporary social organization deals with the difficulties of its time.

Ulrich Beck, for example, described late modernity as a risk society in which technological and economic development produces the most serious dangers. In Guivant's reading, these are risks “against which we cannot obtain insurance, because they cannot be calculated. They belong to the realm of uncertainty” (Guivant, 2016, p. 230). Moreover, “those who make the decisions are not the same people who suffer the consequences. Here Beck identifies an organized irresponsibility” (Guivant, 2016, p. 235).

Organized irresponsibility helps explain contemporary pressure to punish and the challenges it poses to the rationality of criminal law. Examples include debates over corporate criminal liability, attributing a result to someone who controlled a decision without directly performing the conduct, and attribution where a collective decision produces a criminal result. These are only examples concerning attribution of conduct that satisfies the statutory definition.

As an illustrative hypothesis, rather than an empirical finding, one may suggest that in areas such as traffic, business management, financial markets, and public administration, a person who causes serious harm may often have no desire for the harmful result in the descriptive psychological sense. The person knows the risk, manages it, and decides to proceed with the undertaking.

When such conduct causes harm or even creates a risk of harm, it generates public demand for a criminal response. The statutory formula for intent, however, still asks what the agent wanted. The existence of this demand does not establish its legitimacy. Whether a

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particular known risk should be punished as intentional or negligent conduct, or addressed under administrative or civil law, is a legal and constitutional question beyond the reach of sociological description.

Hans Jonas formulated the ethical demand arising from this situation. In the preface to his principal work, he writes:

> Prometheus, definitively unbound, endowed by science with previously unimaginable powers and driven by the relentless impetus of the economy, calls for an ethics that uses voluntary restraints to keep human power from becoming a calamity for humanity itself. The starting premise of this book is that the promise of modern technology has become a threat, or that the threat has become inextricably bound up with the promise. (Jonas, 2006, p. 21).

For Jonas, responsibility grows with the power of the person acting. He formulates his imperative as follows: “Act so that the effects of your action are compatible with the continued existence of authentic human life on Earth” (Jonas, 2006, p. 47). He distinguishes this ethical responsibility from criminal responsibility. In discussing punishment, he observes that “the act is punished when it is a crime” and that, in such a case, “the act itself must be examined: the decision, premeditation, motive, and capacity for criminal responsibility” (Jonas, 2006, p. 165). He adds that “no one can be held responsible for powerlessly imagining even the cruellest acts” (Jonas, 2006, p. 166).

These perspectives serve different purposes in the study. Beck provides the context for growing demands for criminal attribution of consciously created risks. Jonas supplies an ethical foundation that also sets a limit: rational punishment requires scrutiny of the agent's decision and of the actual power that the agent exercised over events. Neither offers a criminal-law theory of intent. Their work does, however, suggest that the response to major risks must preserve the consistency and certainty of criminal attribution, especially in relation to the mental element of the offense.

This is where the thesis of intent without volition arises. On this account, the only psychological component of intent is knowledge that gives the perpetrator control over the act. Volition in the psychological sense adds nothing to the justification for punishing intentional crime more severely. The study asks whether removing volition from the concept of intent is a requirement of doctrinal coherence or a practical device to ease the prosecution's burden of proof.

The working hypothesis is that the thesis is doctrinal in its foundation but affects the object of proof, and that the legitimacy of those effects depends on specific conditions. To test this hypothesis, the study distinguishes three questions that are often conflated: what justifies

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punishment for intentional conduct, how intent is defined in law, and how its elements are proved.

2. Methodology

This is a qualitative study that takes a doctrinal legal approach and draws on scholarship and documents. Authors were selected according to their role in the argument. The literature review examined historical reconstructions of systems of crime theory, the representation of finalistic theory in Brazilian scholarship, and the most influential strands of functionalism.

The decisions were chosen because each illustrates a situation in which the problem of the mental element is particularly clear: the boundary between dolus eventualis and conscious negligence in road traffic, the normative attribution of knowledge in an offense defined using the words “ought to have known,” and the use of wilful blindness to make up for a lack of proof of intent. The analysis is qualitative and illustrative.

The article progressively reconstructs and critically examines the thesis of intent without volition. Section 2 examines the analytical theory of crime. Section 3 reconstructs the shift of intent from culpability to the statutory definition of the offense. Section 4 discusses the concept, elements, and forms of intent in Brazilian law. Section 5 presents contemporary approaches, dolus eventualis, and its boundary with negligence. Section 6 examines the thesis of intent without volition and asks whether it rests on doctrine or proof. Section 7 presents the conclusions.

3. The analytical theory of crime

The analytical concept of crime breaks the offense down into successive characteristics, each a prerequisite for the next. Whether the elements of a layer are established determines whether the analysis stops or moves to the next layer. Zaffaroni and Pierangeli describe it as follows:

> Crime is human conduct identified in a statutory provision (the definition of the offense) that indicates its prohibition (conduct that meets the definition); that, because no legal rule permits it (a justification), is contrary to the legal order (unlawful); and that, because the perpetrator could be expected to act otherwise under the circumstances, deserves blame (is culpable). (Zaffaroni; Pierangeli, 2018, p. 357).

The definition distinguishes two assessments. Criminal wrongfulness, comprising satisfaction of the statutory definition and unlawfulness, concerns the act. Culpability asks whether the perpetrator personally deserves blame for committing the wrongful act,

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independently of the perpetrator's character. If there is no conduct, there is no need for further inquiry. If the conduct falls outside the statutory definition, there is no need to assess unlawfulness.

Concluding his study of systems of crime theory, Juarez Tavares states that “from a doctrinal standpoint, the analytical concept of crime as an action that meets the statutory definition, is unlawful and is culpable remains fully valid” (Tavares, 1980, p. 113). In the same passage, he notes that systems differ in their understanding of conduct, which can be purely causal, ontological and end-directed, or normative and social.

The three-part structure adopted here is one way of systematizing contemporary criminal-law doctrine. There are several variants of the analytical theory or model for analyzing crime. Some, for example, combine satisfaction of the statutory definition and unlawfulness in a single definition of the wrong. To organize the analysis, particularly in relation to intent, the three-part structure allows the study to focus on that element instead of the structural model itself.

Across these models, the location of subjective elements changes from system to system. Intent may be viewed as a form of culpability, as a psychological and normative element of blame, or as the subjective component of the statutory definition. Each option yields a different understanding of what it means to “want” the result. The next section reconstructs these differences.

4. The shift of intent from culpability to the statutory definition of the offense

4.1 The causal system (Liszt–Beling): intent as a psychological connection

In the classical system, action is understood in naturalistic terms, without an evaluative component. It is analyzed by reference to what it causes, independently of what the agent wanted to cause. According to Tavares, “action is value-neutral, identified as a voluntary bodily movement that produces a change in the outside world” (Tavares, 1980, p. 17).

The agent's will is simply the cause of movement and does not direct the action toward an end. Wrongfulness is objective, and all subjective matters are assigned to culpability. Including results within the concept of action made it difficult to account for crimes of omission and pure conduct offenses. For the present study, it is sufficient to note that the assessment of wrongfulness was limited to external aspects of the act.

In this model, intent is a mental fact: the relation of awareness and will between the

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perpetrator's mind and the act. This is the purest form of intent with volition in the descriptive psychological sense, and its proof depends most on inference.

4.2 The neoclassical system: normative culpability and psychological-normative intent

The neo-Kantian turn distinguished cultural from natural sciences and reconsidered the role of human reason in the production of knowledge. It introduced a value-oriented method to the doctrine of crime and found its best-known expression in Reinhard Frank's normative theory of culpability. This shift changed the foundation of culpability while retaining intent as part of it. Tavares summarizes:

> Culpability is still composed essentially of intent and negligence. Starting with Frank, however, it is no longer the subjective element of crime but a judgment of personal censure or blame based on psychological and normative elements. (Tavares, 1980, p. 40).

Intent thus becomes psychological and normative, and includes awareness of unlawfulness, the so-called dolus malus. Juarez Tavares observes that intent understood as "the will to fulfil the statutory definition, aware that one is acting unlawfully" contradicted the system itself, including the original wording of the 1940 Penal Code provisions governing the subject (Tavares, 1980, p. 33).

4.3 Finalism: intent as the will to carry out the statutory offense

Several criminal-law scholars contributed to the transfer of intent to the statutory definition, which Hans Welzel consolidated into a system. Some acts can be understood as fitting a statutory definition only by considering their subjective purpose; without intent, it is not possible to determine which statutory offense occurred. Zaffaroni and Pierangeli record the sequence: von Weber situated intent in the statutory definition in 1929, Dohna in 1936, and Welzel refined the concept of a composite statutory offense, with objective and subjective aspects, in the 1930s (Zaffaroni; Pierangeli, 2018, pp. 408–409).

In finalism, the will becomes the directing force of action. Direction toward an end "presupposes conscious and willed activity oriented to the specific end it is meant to achieve. The will thus becomes the 'backbone of action.' Without will there is no action" (Tavares, 1980, p. 59). The statutory definition of the intentional offense has objective and subjective components and, as to intent, "[...] Welzel identifies it as the will to carry out the act" (Tavares, 1980, p. 65).

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Culpability, stripped of psychological elements, becomes an assessment of blame, and awareness of unlawfulness becomes potential and autonomous. Brazilian finalistic doctrine retains that volitional structure: “intent is wanting the result specified in the statutory definition, the will to fulfil its objective elements” (Zaffaroni; Pierangeli, 2018, p. 435), or, more precisely, “it is as false to say that intent is awareness as to say that it is will: intent is awareness and will” (Zaffaroni; Pierangeli, 2018, p. 436).

In the finalistic tradition, intent therefore requires volition in the psychological sense. Volition is at the core of the concept, and knowledge serves to guide it. This is the premise the thesis of intent without volition challenges.

4.4 Functionalism: the normative reconstruction of the categories of crime

Although the current Brazilian Penal Code adopted solutions consistent with finalism on intent and its implications, particularly regarding mistakes as to the elements of the offense and mistakes of law (arts. 20 and 21, respectively), a new approach to the theory of crime gained ground in German scholarship in the 1970s: functionalism. It has since influenced scholars and actors in the Brazilian criminal justice system.

Finalism sought to derive criminal-law concepts from structures of reality. Functionalism constructs those concepts from the purposes of criminal law itself. Its most prominent exponents are Claus Roxin and Günther Jakobs.

Roxin organizes the system around criminal policy and the purposes of punishment. His best-known contribution is the theory of objective attribution. Where causation is a statutory requirement, the theory adds normative criteria for attributing the result, centred on the “creation of an impermissible risk within the protective scope of the rule” (Zaffaroni; Pierangeli, 2018, p. 365).

Jakobs extends normative reconstruction to every doctrinal concept, including intent, whose aspects are divided between “objective attribution of the unapproved risk and its realization (including the cognitive aspect of intent), and a subjective attribution, namely culpability (including the conative or volitional aspect of intent)” (Zaffaroni; Pierangeli, 2018, p. 366).

The two functionalist theories differ in their foundations and in how they organize the categories of crime. Roxin relies on criminal policy, Jakobs on stabilizing the binding force of the rule. For this study, they share a decisive point: intent becomes, to varying degrees, a matter of normative attribution in addition to a mental fact to be discovered. Section 5 examines the

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consequences of this shift.

The following table summarizes these developments.

Table 1 – The location and nature of intent in systems of crime theory

System	Location of intent	Nature of intent	Role of volition
Causal (Liszt–Beling)	Culpability (a form of culpability)	Psychological: mental connection between perpetrator and act	Cause of bodily movement; core of the psychological connection
Neoclassical (Frank, Mezger)	Normative culpability	Psychological-normative (dolus malus)	Element of blame alongside awareness of unlawfulness
Finalistic (Welzel)	Subjective definition of the offense	Natural intent (without awareness of unlawfulness)	"Backbone of action"; will to carry out the act
Roxin's functionalism	Subjective definition of the offense	Psychological, recognized under normative criteria	Decision against the legally protected interest, inferred from external circumstances
Jakobs's functionalism	Divided between objective attribution (cognitive aspect) and culpability (conative aspect)	Normatively attributed	Attributed; in blindness to the facts, even knowledge is supplied
Cognitive theory (Greco; Herzberg, Puppe)	Subjective definition of the offense, with overlap with its objective elements	Cognitive: knowledge that confers control	Dispensable or possibly dispensable

Source: Authors' compilation from Tavares (1980), Zaffaroni and Pierangeli (2018), Lucchesi (2017), and Greco (2009).

5. Intent in Brazilian law: concept, elements, and forms

5.1 Positive law

The Penal Code deals with the subject in complementary provisions. Article 18(I) defines intentional crime ("when the agent intended the result or assumed the risk of causing it"); article 18(II) defines negligent crime ("when the agent caused the result through imprudence, negligence, or lack of skill"); and the sole paragraph provides that, "except where expressly prescribed by law, no one may be punished for an act defined as a crime unless it is committed intentionally" (Brazil, 1940). The chapeau of article 20 completes the picture: "A mistake as to a constituent element of the statutory offense excludes intent but allows punishment for a negligent offense if the law provides for it" (Brazil, 1940).

Guilherme Lucchesi draws a methodological conclusion from these provisions: "article 18 does not exhaust the concept of intent; it must be supplemented by the chapeau of article 20, which defines mistake as to the elements of the offense" (Lucchesi, 2017, p. 191). Because such a mistake excludes intent, knowledge of these elements is a minimum legal requirement. The

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statute does not specify in what sense “intended” and “assumed the risk” must be understood.

5.2 Elements and forms of intent

Under the prevailing doctrine, intent comprises a cognitive element, knowledge of the circumstances that constitute the objective offense, and a volitional element, the will to bring them about. For Zaffaroni and Pierangeli, intent is “a definite will that, like any will, presupposes definite knowledge” (Zaffaroni; Pierangeli, 2018, p. 436).

The relative intensity of each element helps distinguish the forms of intent. The same authors illustrate the two varieties of direct intent:

> When a person wants to kill another and fires five shots at that person, they directly intend the result as their objective (first-degree direct intent). By contrast, when a person wants to kill another and takes advantage of an airplane journey to place an explosive device in luggage and cause an air disaster, they directly intend the deaths of the other passengers as a necessary consequence of the means chosen (second-degree direct intent). (Zaffaroni; Pierangeli, 2018, p. 450).

Both categories of direct intent correspond to the first part of article 18(I) (“intended the result”). Dolus eventualis, in turn, has its “statutory basis” in the second part of the provision, when the agent “assumed the risk of causing it” (Zaffaroni; Pierangeli, 2018, p. 450).

Four notions that ordinary language tends to conflate should be distinguished according to their precise meanings in criminal law: desire, an affective state directed toward the result; intention, which makes the result the purpose of the action; the will to carry out the act, reflected in the decision to perform the conduct; and acceptance of a necessary or possible consequence. The first two concern the perpetrator's attitude toward the result. The latter two concern the decision to act in knowledge of what will follow.

In second-degree direct intent, volition in the descriptive psychological sense can no longer be established as an intention directed toward the result. A passenger who dies in the explosion is not the perpetrator's target, and the perpetrator may even regret the death. This does not establish that all legally relevant volition is absent. Volitional theories can give wanting a broader meaning than intending, encompassing acceptance of necessary consequences of the chosen means.

This extension reveals a change in the nature of the concept. Lucchesi observes that, “from a descriptive psychological perspective, the result is not necessarily wanted,” but if the perpetrator sees it as necessary, “the perpetrator cannot say that they did not ‘want’ the result they caused” (Lucchesi, 2017, p. 193). “Wanting” is no longer a verified mental state; it is an

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attribution based on what the perpetrator knew.

5.3 The semantic limit of article 18(I) of the Penal Code

The centrality of knowledge, demonstrated by article 20, does not establish that volition can be dispensed with. Article 20 establishes the relevance of the cognitive element. Excluding the volitional element requires a separate interpretive step that must address the language of article 18(I) and the principle of legality.

The scholar under discussion puts the objection clearly in rejecting a purely cognitive account of intent:

> One cannot fully agree with this proposition, both because of the textual limit imposed by Brazilian legislation and because of the significance that legislation attaches to the perpetrator's volition, whether for punishability or for defining the conduct as an offense in the first place. (Lucchesi, 2017, p. 195).

There are two possible answers, with different scopes. The first is Luís Greco's. Examining the Portuguese Penal Code, which expressly defines the forms of intent using partly volitional language, Greco argues that the legislature's choice does not settle the scholarly debate: “in the eyes of legal scholarship, the question remains open whether this decision is correct and whether it is justified” (Greco, 2009, p. 886). This supports criticism de lege ferenda but does not permit an interpreter to disregard current law.

The second answer operates de lege lata and is more relevant to Brazilian law. The verbs in article 18(I) need not be read in a descriptive psychological sense. Although Guilherme Lucchesi rejects unifying the forms of intent, he acknowledges that “‘wanting the result’ does not presuppose proof of an ontological will on the part of the perpetrator” and that, in relation to “assuming the risk,” “it is not necessary to prove an internal attitude of acceptance or indifference on the part of the perpetrator toward that result” (Lucchesi, 2017, p. 204). Read as a normative attribution, the provision is compatible with intent grounded in knowledge of risk: a person is said to have wanted the result or assumed the risk of causing it when they acted knowing that the statutory offense would necessarily or probably be realized.

6. Approaches to intent, dolus eventualis, and the boundary with negligence

6.1 Volitional and cognitive theories

The central distinction between volitional and cognitive theories of intent is whether an

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autonomous volitional element is necessary. Although intent is traditionally defined by a combination of knowledge and will, disagreement persists over the content of these elements and their significance for criminal attribution.

From this common starting point, the theories divide into two major groups. In addition to knowledge, volitional theories require that the perpetrator adopt a position toward the result: assent to it, accept it, take it seriously, or decide against the legally protected interest. Cognitive theories dispense with this stance and focus on the quality of the known danger.

Reconstructing José Carlos Porciúncula's assessment, Guilherme Lucchesi places in the cognitive group “Herzberg's and Puppe's theories of intent, respectively the theory of unprotected danger and the theory of awareness of a qualified danger” (Lucchesi, 2017, p. 199).

In both theories, “the law attributes the perpetrator's attitude according to the nature of the danger to assess whether the person acted intentionally or negligently,” while “the perpetrator's knowledge continues to be treated as a descriptive psychological fact” (Lucchesi, 2017, p. 199).

Roxin retains the volitional element, defining it as a decision against the legally protected interest. The decision is not treated as a mental fact to be discovered. In a passage quoted by José Carlos Porciúncula and translated by Lucchesi, Roxin states that it “is inferred from the totality of external circumstances and not from the perpetrator's reflections, which the perpetrator probably did not even entertain and which in any event the forensic examiner cannot reconstruct” (Roxin as cited in Lucchesi, 2017, p. 198).

In Günther Jakobs's functionalist conception, the definition of intent also takes into account the normative meaning of the agent's behaviour rather than focusing only on psychological states. The stance the behaviour expresses toward the legal rule is especially important. The social meaning of the conduct thus also informs attribution of intent.

This approach explains “blindness to the facts”: a person unaware of a risk through indifference would deserve the same blame as a person who knows about it. In this construction, both volition and knowledge are normatively attributed. Whether intent is attributed depends on the normative meaning of the behaviour (Greco, 2009, p. 890).

Luís Greco departs both from Jakobs's normative account and from volitional theories of intent. For Greco, actual knowledge of the circumstances relevant to realization of the statutory offense is indispensable to attributing intent because it gives the agent control over the conduct and its possible consequences. In this sense, he argues that “knowledge means control. Whoever knows what they are doing and what may result from their conduct controls,

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in a certain sense, what they do and what may result from it" (Greco, 2009, pp. 891–892).

On this view, volition as a psychological element beyond knowledge supplies no separate basis for punishing intentional crime more severely. Section 6 examines the foundations of this conception.

6.2 Dolus eventualis

The divergence between volitional and cognitive conceptions is especially significant for dolus eventualis and its distinction from conscious negligence. Zaffaroni and Pierangeli explain:

> When a person plans a causal course to achieve an end, they envisage possible concomitant results of their conduct. If they trust that they will avoid those results or that the results will not occur, this is negligence with awareness of the risk (see no. 280). If they act while admitting that the results may occur, it is dolus eventualis. (Zaffaroni; Pierangeli, 2018, p. 451).

The distinction therefore turns on the agent's attitude toward the possible result, an outcome envisaged in both forms. In conscious negligence, the perpetrator trusts that the result will not occur. In dolus eventualis, the perpetrator proceeds while admitting that it may occur. As Zaffaroni and Pierangeli explain (2018, p. 451), acceptance of the result itself is not required; what matters is acceptance of its possibility or probability.

The reference to probability is significant. Even under a volitional definition, acceptance concerns a known risk and can be reconstructed only from the magnitude of that risk and the agent's conduct in response to it.

Identifying what acceptance of risk consists of, and how it differs from mere awareness that the risk exists, poses particular difficulties for volitional theories. Knowledge of the danger is present in both dolus eventualis and conscious negligence. Attributing the former therefore requires identifying the additional element that justifies treating the conduct as intentional. The thesis of intent without volition questions the doctrinal necessity of that element.

6.3 The boundary between dolus eventualis and conscious negligence

The distinction is particularly important because in both categories the agent knows the danger arising from the conduct. According to Zaffaroni and Pierangeli (2018, p. 467), the difference lies primarily in the volitional element. In dolus eventualis, the agent admits the possibility of causing the result; in conscious negligence, the agent recognizes the danger but trusts that the result will not occur.

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Drawing this boundary raises difficulties in both doctrine and proof. The same authors recognize that “the boundary between dolus eventualis and negligence with awareness of the risk is shifting ground, though more in procedure than in substantive criminal law” (Zaffaroni; Pierangeli, 2018, p. 452).

Theoretical distinction rests on accepting or rejecting the possibility of causing the result, but establishing that subjective attitude depends on assessing the concrete circumstances of the conduct. If the agent's acceptance of the risk cannot be proved with the necessary certainty, the principle of in dubio pro reo calls for classifying the offense as negligent if the relevant statutory conditions are met.

The difficulty lies both in establishing the doctrinal criterion and in showing that it applies in a particular case. This is where the issue becomes especially important: is an autonomous volitional element indispensable to attributing intent, or does actual knowledge of the circumstances that constitute the offense provide a sufficient basis for the distinction?

For volitional doctrine, in other words, the definition is clear and the difficulty lies in proof. Road traffic provides the most common example in court, and Jonas describes it precisely: “A reckless driver is imprudent with respect to himself, but irresponsible when he endangers his passengers as well” (Jonas, 2006, p. 168). Whether the driver accepted or rejected the death of others is exactly the question the proceedings cannot reliably answer.

Cognitive theory must answer the converse objection. If a person knows of a substantial risk and proceeds but sincerely believes the result will not occur, what criterion distinguishes dolus eventualis from conscious negligence without returning to the agent's internal attitude? The cognitive answer shifts attention from the perpetrator's confidence to the object of their knowledge. In Herzberg's formulation, “what matters for intent is not whether the perpetrator took a known danger seriously, but whether the perpetrator knew of a danger that ought to be taken seriously” (Herzberg as cited in Greco, 2009, p. 896, note 32).

Confidence that the result will not occur excludes intent only when grounded in known circumstances that genuinely reduce the danger, such as precautions that the perpetrator or others can take to prevent the result. This is what Herzberg calls a protected danger, as opposed to an unprotected danger, in which the result's nonoccurrence is left to luck or chance (Lucchesi, 2017, p. 195). Baseless hope does not change the nature of the risk the perpetrator knows they are creating.

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7. Intent without volition: a doctrinal question or a matter of evidentiary convenience?

The theory of intent without volition begins by questioning whether intent requires an autonomous volitional element. Traditional accounts associate knowledge of the circumstances specified in the statutory definition with the will to act or with acceptance of the risk. This account holds that actual knowledge, when sufficient to give the agent control over realization of the statutory offense, is the basis for attributing intent. The conduct must still be voluntary. The question is whether volition, understood as a psychological disposition in addition to knowledge, is indispensable to establishing intent.

The controversy extends beyond definition to the grounds for distinguishing intentional from negligent wrongdoing. If knowledge is sufficient to justify the more serious attribution, requiring an autonomous volitional element would lack an additional justification. Removing that requirement may nevertheless directly affect proof, because showing knowledge differs from investigating the agent's attitude toward the result. It is thus necessary to examine whether the theory follows from doctrinal coherence or provides, even indirectly, a way to overcome difficulties in proving volition in criminal proceedings.

Luís Greco invokes the well-known example of Lacmann's marksman in the version formulated by Souza Santos (Greco, 2009, p. 887, note 8). Two farmers wager their entire property that one of them will hit a girl's hat from twenty metres away without injuring her. The shot strikes and kills the child. The marksman did not desire this result, which would cost him his entire estate, yet attributing intent remains legally plausible. The situation shows that desire is insufficient as the exclusive criterion of intent. Greco therefore argues that “both the Code and prevailing doctrine recognize cases of intent without volition in the psychological sense” (2009, p. 888).

In this context, the Lacmann case shows that intent can exist without desire or intention. By itself, it does not refute volitional theories that understand volition as normatively attributed assent, acceptance, or decision. Greco makes a different argument against those theories.

That argument draws on inverse cases. A person who fires an ordinary pistol at the victim from an enormous distance, the Thyren case, wants to kill but has no control over the result. Punishing this desire as if it gave the person control would conflict with the idea that “criminal law punishes acts, and not internal attitudes” (Greco, 2009, p. 894).

Conversely, Greco imagines two outwardly identical cases of strangulation. In the first, the perpetrator accepts the death of his ex-girlfriend. In the second, he does not want her to die because he intends to sexually assault her afterwards (Greco, 2009, pp. 895–896). The conduct,

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the risk created, and the perpetrator's knowledge are the same. Only the desire changes.

Comparing these cases reveals a difficulty in justifying normative volitional conceptions. If a decision against the legally protected interest is attributed on the basis of the objective circumstances and knowledge of the risk, an additional volitional requirement appears to lose its independence. Identifying it then depends on the same elements that establish the agent's cognitive control.

The central issue is thus to show what assent, assumption of risk, or a decision against the legally protected interest adds to knowledge that justifies treating intentional wrongdoing as more serious.

7.1 Three meanings of “control”

The proposed substantive criterion is control, a term requiring precision, as noted in section 4.2. Here control is cognitive: the perpetrator “must consciously create a risk of such magnitude that the production of the result can be regarded as something the perpetrator controls” (Greco, 2009, p. 902).

The perpetrator need not have physical control over every event or actually govern the production of the result. The requirement is knowing that the conduct creates a risk of that magnitude. Greco therefore recognizes that “at least in part, intent ends up becoming a question about the objective offense” (Greco, 2009, p. 902).

Cognitive control should be distinguished from two other concepts with similar terminology. Control over the act distinguishes perpetration from participation and answers who the perpetrator is. It does not answer whether intent existed. Objective attribution, in turn, attributes the result to the creation and realization of a legally disapproved risk, regardless of what the perpetrator knew.

Although the three concepts are connected—cognitive intent presupposes a risk that can be objectively attributed—they serve different doctrinal functions. This distinction matters for reading case law. When a court rejects control over the act as a substitute for proof of intent, it is addressing perpetration and participation. The thesis examined here concerns whether the intentional mental element is present.

7.2 Support and resistance in Brazilian scholarship: actual or attributable knowledge?

Guilherme Lucchesi's account in Brazilian scholarship recognizes the centrality of knowledge to attribution of intent but differs in important respects from Luís Greco's.

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Examining the limits imposed by articles 18 and 20 of the Penal Code, Lucchesi (2017, p. 204) argues that the statutory expressions “wanting the result” and “assuming the risk of causing it” do not necessarily require proof of internal psychological states and can be interpreted according to normative criteria of attribution.

Lucchesi thus comes close to the cognitive conception in treating knowledge as fundamental to intent, but diverges on whether knowledge must be proved as an actual psychological state. Taking up Greco's formulation that intent presupposes knowledge sufficient to give the agent control over the act, Lucchesi adds that “knowledge may be established by normative criteria of attribution without violating Brazilian legislation” (Lucchesi, 2017, p. 213).

This understanding does not amount to unconditional acceptance of normative theories. Lucchesi (2017, pp. 204–205) acknowledges the shortcomings of theories that try to solve problems of proving psychological states by relying on vague criteria that cannot set reliable limits to criminal responsibility. He therefore permits normative attribution of knowledge while requiring criteria that prevent undue extension of liability for intentional conduct.

In a different vein, Juarez Tavares acknowledges that “intent and volition in the psychological sense are not identical,” but cautions that “one cannot dispense with the psychological concept of volition in grounding intent” (Tavares, 1980, p. 97).

His position shows that recognizing the legal nature of intent does not necessarily mean that volition can be excluded from its foundation. The objection thus concerns a question that precedes proof of the mental element in court: which components of the conduct justify classifying it as intentional?

The controversy over intent without volition extends beyond the opposition between cognitive and volitional conceptions. It also requires determining whether the knowledge necessary for attribution of intent must correspond to an actual psychological state or may be normatively attributed from the circumstances.

This distinction matters because the possibility of legally attributing knowledge does not, by itself, justify presuming it or equating what the agent actually knew with what they ought to have known. The doctrinal challenge is to establish criteria for rational attribution of the mental element without turning difficulty in proving intent into a basis for punishing negligent conduct as intentional.

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7.3 Reception in the case law: recognizing volition from known risk

Brazilian courts do not expressly adopt the thesis of intent without volition, and the decisions examined describe their approach as volitional. They nevertheless allow close examination of the structure of judicial reasoning. The focus here is on how the courts arrived at their conclusions.

The decisions state that volition is required but infer it from objective circumstances known to the agent. This is an interpretation of decisions selected under the criteria described in section 1.1. It does not purport to establish the dominant approach of the courts.

Two steps must be distinguished. In the first, the court says that volition forms part of intent and finds it proved by the conduct, means, and circumstances: an element still required by law is proved indirectly. In the second, the court says that once certain knowledge is shown, volition is unnecessary. Only the latter would amount to adopting Greco's thesis. The scenario examined here is intermediate: if the court necessarily infers volition from known risk without allowing counterevidence about the internal state, volition remains nominally required but functions as an attribution.

In the Federal Supreme Court, HC 101.698/RJ, with Justice Luiz Fux as rapporteur, is frequently cited in connection with homicide during a street race. The decision concerned a habeas corpus petition challenging a judgment that upheld the order committing the defendant for jury trial. It addressed the admissibility of the charge in jury proceedings rather than the final determination of guilt. The headnote and passages relevant to the mental element follow:

> Headnote: CRIMINAL LAW AND PROCEDURE. CONSTITUTIONAL LAW. HABEAS CORPUS IN PLACE OF AN ORDINARY APPEAL. HOMICIDE. STREET RACING ON A BUSY ROAD. DOLUS EVENTUALIS. ORDER COMMITTING THE DEFENDANT FOR JURY TRIAL. ADEQUATE REASONS. APPELLATE JUDGE'S CHANGE OF POSITION WHEN THE SAME APPEAL WAS HEARD AGAIN AFTER THE FIRST DECISION WAS SET ASIDE. NO UNLAWFULNESS. NO IMPROPERLY PREJUDICIAL LANGUAGE IN THE JUDGMENT UPHOLDING COMMITTAL FOR TRIAL. DOLUS EVENTUALIS VERSUS CONSCIOUS NEGLIGENCE. PARTICIPATION IN AN UNAUTHORIZED RACE ON A BUSY PUBLIC ROAD. FACTS ESTABLISHED BELOW. ASSENT INFERRED FROM THE CIRCUMSTANCES. DOLUS EVENTUALIS ESTABLISHED. NO REEXAMINATION OF THE FACTS AND EVIDENCE. LEGAL REASSESSMENT OF THE FACTS. WRIT DENIED. [...] IV – MENTAL ELEMENT OF THE OFFENSE
>
> 11. The case before the Court differs from HC No. 107801 (rapporteur Justice Luiz Fux, First Panel, DJ, 13 October 2011), which involved a petitioner under the influence of alcohol and turned on capacity for criminal responsibility. Doctrine and case law have traditionally addressed that issue by applying actio libera in causa, allowing intoxicated agents to be held criminally responsible through a fiction that, carried to its logical conclusion, produced automatic committal for jury trial in homicide cases involving the driving of a motor vehicle.

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> 12. In that decision this Panel gave closer consideration to the overuse of intentional homicide charges resulting from systematic application of the theory of actio libera in causa. In keeping with classical doctrine, it limited that theory to cases of prearranged intoxication.
> 13. The conclusion that all homicides committed while driving a motor vehicle are negligent except in cases of prearranged intoxication cannot be inferred from the ruling in HC No. 107801.
> 14. The difference between dolus eventualis and conscious negligence lies in the volitional element. Because the agent's mind cannot be directly known, all objective circumstances of the case must be considered. In both situations, the agent envisages the result. [...]
> 16. The assessment below showed that by engaging in highly dangerous conduct at high speed on a public road, the petitioner accepted that the result might occur, thereby acting with dolus eventualis under the second part of article 18(I), which reads: ("A crime is: I – intentional when the agent intended the result or assumed the risk of causing it" – emphasis added).
> 17. The obvious dangers of motor races on public roads led to legislation making them a separate offense under article 308 of the Brazilian Traffic Code, which provides: "Art. 308. Participating, while driving a motor vehicle on a public road, in a motor race, contest, or competition not authorized by the competent authority, where this creates a potential danger to public or private safety:".
> 18. Article 308 establishes an intentional offense of concrete endangerment. If the danger results in bodily harm or homicide, it progresses to an intentional offense under article 129 or 121. It would be contradictory to reclassify an intentional offense as negligent because a more serious result ensued. See José Marcos Marrone (Delitos de Trânsito Brasileiro: Lei n. 9.503/97. São Paulo: Atlas, 1998, p. 76). [...]
> 21. Legally assessing the facts differs from ascertaining them. This case does not require reexamining the body of facts and evidence. It requires only a legal reassessment of facts established in the lower courts, making consideration of the habeas corpus petition possible. Precedents: HC 96.820/SP, rapporteur Justice Luiz Fux, decided 28 June 2011; RE 99.590, rapporteur Justice Alfredo Buzaid, DJ, 6 April 1984; RE 122.011, rapporteur Justice Moreira Alves, DJ, 17 August 1990.
> 22. Finally, the allegation that the jury rejected the co-defendant's participation in street racing is unfounded. What the jury ruled out was intent, having answered "no" to the question, "By acting in this way, did the defendant assume the risk of causing the victim's death?" The jury therefore regarded the question about participation in dangerous manoeuvres as moot.
> 23. The Federal Prosecution Service recommended denying the writ.
> 24. Writ denied.
> (HC 101698, rapporteur: LUIZ FUX, First Panel, decided 18 October 2011, electronic judgment DJe-227, released 29 November 2011 and published 30 November 2011. Emphasis added.)

The judgment expressly reaffirms the volitional element as the distinguishing criterion (item 14). The way it identifies that element is revealing. Item 14 acknowledges the "impossibility of directly knowing the agent's mind," and item 20 concludes that participating in a high-speed street race "requires recognition" of the volitional element. There is no proof of an internal state between the known circumstances and the inference of volition. Volition follows necessarily from the known risk.

In the Superior Court of Justice, the Sixth Panel examined dolus eventualis in offenses of receiving stolen property and tampering with a motor vehicle identifier. Its analysis is

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pertinent to this study:

> INTERNAL APPEAL IN HABEAS CORPUS. RECEIPT OF STOLEN PROPERTY AND TAMPERING WITH A MOTOR VEHICLE IDENTIFIER. DOLUS EVENTUALIS. ESTABLISHED FROM OBJECTIVE CIRCUMSTANCES OF POSSESSION AND ACQUISITION. ARTICLE 156 OF THE CODE OF CRIMINAL PROCEDURE. DEFENCE BURDEN TO SHOW LAWFUL ORIGIN. RECLASSIFICATION AS A NEGLIGENT OFFENSE UNAVAILABLE. INTERNAL APPEAL DISMISSED.
> 1. The lower courts established specific factual grounds sufficient to conclude that the defendant assumed the risk of acquiring and driving a stolen vehicle with a tampered identifier: contradictory accounts, lack of documentation in the seller's name, attempted concealment, and a mismatched licence plate. Habeas corpus does not permit reweighing that evidence.
> 2. Following Law No. 14.562/2023, article 311, paragraph 2, III, of the Penal Code encompasses dolus eventualis through the words “ought to have known.” The informal acquisition and use of the vehicle with a different licence plate show that the agent at least ought to have suspected the identifiers were irregular and assumed the corresponding risk.
> 3. Seizure of the property in the defendant's possession places on the defence the burden of showing that the property had a lawful origin or that the conduct was negligent, under article 156 of the Code of Criminal Procedure. This does not create a presumption of guilt or improperly reverse the burden of proof.
> 4. The receipt offense cannot be reclassified as negligent because the same facts indicate awareness of a high probability of unlawful origin and conscious acceptance of the risk. They rule out mere imprudence, making the claim unavailable in the procedural avenue chosen.
> 5. Internal appeal dismissed.
> (AgRg in HC No. 1.085.084/SP, rapporteur Justice Rogerio Schietti, Sixth Panel, decided 15 October 2026, DJEN, 20 October 2026. Emphasis added.)

The decision is important because it sets out both tendencies this study distinguishes. Item 1 lists concrete factual premises, and item 4 speaks of “awareness of a high probability of unlawful origin,” a formula close to a cognitive account of dolus eventualis. Item 2, by contrast, states that the agent “at least ought to have suspected” an irregularity in the identifiers.

Item 3 places on the defence the burden of showing lawful origin or negligence. The decision states that this does not create a presumption of guilt. For present purposes, however, it calls for caution: if failure to prove negligence leads to intent, the mental element tends to be inferred from possession instead of being proved by the prosecution. This precedent cannot be read as requiring actual knowledge of the risk. It illustrates an area in which actual knowledge, attributable knowledge, and breach of a duty to know can become conflated.

At the regional level, a decision of the Federal Regional Court of the Sixth Region addresses intent and the limits of the doctrine of wilful blindness.

In reviewing the criminal responsibility of an accountant accused of a tax offense, the court's Second Panel upheld the acquittal for insufficient evidence. It held that neither the doctrine of wilful blindness nor the defendant's position could make up for the requirement to

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prove intent or itself constitute proof:

> HEADNOTE: CRIMINAL LAW AND PROCEDURE. CRIMINAL APPEAL. TAX OFFENSE. ARTICLE 1(I) OF LAW NO. 8.137/1990. ACCOUNTANT. INFORMATION PROVIDED IN THE DCTF TAX RETURN. INTENT NOT PROVED. INSUFFICIENT EVIDENCE. ACQUITTAL UPHELD. ORDER REQUIRING THE PROSECUTION SERVICE TO PAY COURT COSTS SET ASIDE. APPEAL ALLOWED IN PART. I. CASE UNDER REVIEW. [...] III. REASONS FOR THE DECISION
> 4. The objective occurrence of the offense is undisputed and evidenced by final assessment of the tax liability. Establishing the offense requires proof of the mental element: a free and conscious will to defraud the tax authorities.
> 5. The evidence does not reliably show that the defendant acted intentionally. No new evidence was presented in court. The case was particularly weak, and the prosecution abandoned the examination of witnesses.
> 6 The case file reveals inconsistencies in the tax returns. They are consistent with a procedural accounting error, particularly given that the accountant relied on information supplied by the company and that documents were temporarily unavailable.
> 7. The defendant's testimony in related criminal proceedings indicates that the returns were amended once inconsistencies were identified. This makes the defence theory of an accounting error more plausible.
> 8. The acquittal of the managing partners in related criminal proceedings for lack of intent further weakens the prosecution's allegation of an organized fraud.
> 9. Criminal responsibility rests on individual fault and cannot be presumed from the role occupied by the agent or the magnitude of the tax loss.
> 10. The doctrine of control over the act cannot make up for a lack of concrete evidence of the defendant's intentional participation. It cannot support a conviction based solely on the defendant's professional role.
> 11. Brazilian criminal law contains no statutory provision for wilful blindness, and the doctrine does not replace proof of intent.
> 12. A criminal conviction cannot rest exclusively on evidence gathered during the investigation and not corroborated in court. The principle of in dubio pro reo applies.
> 13. The Prosecution Service is exempt from court costs in public criminal proceedings under article 4(III) of Law No. 9.289/1996. IV. DISPOSITION
> 14. The appeal is allowed in part to set aside the order requiring the Prosecution Service to pay court costs. The defendant's acquittal is upheld pursuant to article 386(VII) of the Code of Criminal Procedure.
> (TRF6, ACR 0004193-75.2019.4.01.3800, Second Criminal Panel, rapporteur LUCIANA PINHEIRO COSTA, D.E., 15 June 2026. Emphasis added.)

The decision illustrates judicial scrutiny of attribution of the mental element. Its reasoning expressly retains the requirement of a “free and conscious will to defraud the tax authorities” (item 4). Its relevance here lies in the court's refusal to let wilful blindness replace proof of intent (item 11), rejecting normative attribution of knowledge without a factual basis. The reference to control over the act (item 10) concerns perpetration and participation rather than Greco's cognitive control (section 6.2).

The three decisions concern different procedural contexts and do not support generalization. They support a qualified finding: in these cases, volition is stated as a criterion but found from the objective circumstances known to the agent.

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The precedents show that proving the mental element poses difficulties for both volition and the identification of legally relevant knowledge. The central question is how far objective circumstances permit a finding of knowledge without turning it into a presumption based on what the agent ought to have known.

This distinction is essential to the inquiry. Removing volition as an autonomous element of intent does not eliminate the need to prove the criteria for intent or permit treating actual knowledge as equivalent to a mere breach of the duty to know.

7.4 Doctrine or evidentiary convenience?

The answer to the study's question lies in the grounds for the thesis itself. Greco expressly rejects an evidentiary reading: “even if the volitional element could be clearly defined and precisely proved, it should not form part of the concept of intent, for the simple reason that there is no apparent basis for it” (Greco, 2009, p. 897).

The argument is counterfactual. Even if volition were perfectly provable, it would not justify the more serious penalty. Control provides that justification, and control derives from knowledge. If the thesis stands after the evidentiary difficulty is hypothetically removed, it rests on doctrinal grounds. It nevertheless has implications for procedure: replacing a search for internal attitude with proof of knowledge of a qualified risk changes what must be proved. The legitimacy of that effect depends on criteria that prevent attributing knowledge without a factual basis, as the decisions in the preceding section show.

8. Conclusion

The development of the analytical theory of crime shows that questions about intent have always concerned what justifies attributing the mental element. In the causal system, intent was a psychological connection located within culpability. In the neoclassical system it became a psychological and normative element of blame. In finalism it moved to the statutory definition of the offense as the will to carry out the act. All these models placed volition at the centre of intent.

Ulrich Beck's risk society put that centrality under strain. Demand grows for criminal responses to risks knowingly created by people who often do not desire the result, while the statutory formula still asks what the agent wanted. The demand is not self-justifying. Jonas offers an ethical basis that sets a limit: responsibility grows with the actor's power, but punishment requires examination of the actor's decision and an act actually committed.

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Contemporary theories of crime provide different answers. They differ in terminology, in how they understand the mental elements, and in the grounds they provide for attributing intent. Roxin retains the volitional element and permits it to be identified from objective circumstances. Jakobs's account of blindness to the facts allows attribution of intent in some cases even when actual knowledge is absent.

Cognitive theory maintains that knowledge sufficient to confer control over realization of the statutory offense is by itself grounds for attributing intent, without requiring autonomous volition. This provides an alternative to volitional theories but leaves part of the controversy unresolved: the nature, content, and extent of the knowledge required to distinguish intent from conscious negligence still have to be defined.

Brazilian law does not adopt the thesis of intent without volition by name. Article 18(I) of the Penal Code uses volitional language but permits a reading based on normative attribution, subject to the limit that what the perpetrator did not know cannot count as knowledge. The decisions reviewed state that volition is required but infer it from objective circumstances. The Federal Supreme Court derives it from known risk, the Superior Court of Justice combines a cognitive formula with a duty to suspect, and the Federal Regional Court of the Sixth Region rejects wilful blindness as a substitute for proof of intent. The sample is illustrative and cannot show that court practice generally operates under a cognitive theory.

The thesis of intent without volition provides a doctrinal account of why intentional crime carries a greater penalty. Its adoption nevertheless changes what must be proved, requiring knowledge of a qualified risk in place of an internal attitude. This effect is legitimate only if the criteria used distinguish actual knowledge from a mere duty to know.

Knowledge sets the boundary that cannot be crossed. Normative attribution of intent that extends to knowledge itself without factual support risks substituting a presumption of knowledge for proof of the mental element and drawing intent too close to conscious negligence. Difficulty in proving volition does not justify dispensing with it, just as difficulty in showing knowledge does not justify presuming that it existed.

The doctrinal coherence of intent without volition ultimately depends on whether it can justify more serious attribution without unduly extending criminal responsibility. Dispensing with volition cannot weaken the knowledge requirement, or a theory meant to ground intent may become a means of punishing negligence as intent.

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