




Limits to the State's Authority in the Criminal Justice System

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Starting Points in Criminal Law Theory

- **The Dominant Approach**

- Versions of “legal moralism” → criminal law is fundamentally concerned with the enforcement of interpersonal moral norms.
- Under this approach, the foundational normative concepts for understanding and evaluating criminal law are blame, responsibility, wrongdoing, desert, etc.

- **An Alternative Approach**

- “Criminal law as public law” → criminal law is fundamentally concerned with the regulation of the state and its coercive powers.
- Under this approach, the foundational normative concepts for understanding and evaluating criminal law are authority, legitimacy, justification, etc.

Mass Incarceration and Overrepresentation in Prisons

- **What is Mass Incarceration?**
 - (1) a prison population markedly higher than historical or comparative norm, and/or
 - (2) a prison population whose social effects are concentrated on particular groups.
- **The Injustice of Mass Incarceration**
 - Lots of reasons! Underlying all of them, mass incarceration is almost always inconsistent with the state's claim to the legitimate public authority.
- **The Overrepresentation of Indigenous People in Canadian Prisons**
 - Not merely a crisis in our criminal justice system, but a public law crisis.

Criminal Trials, Justification, and Truth

- **The Traditional Account**

- The fundamental purpose of the criminal trial is to search for the truth – that is, the truth of whether the accused factually committed the alleged offence.

- **Two Difficulties for the Traditional Account**

- Does this account fit the actual practice of criminal trials? → No
- Is factual guilt sufficient for legitimate conviction and punishment? → No

- **A Public Law Account**

- The criminal trial is a procedure that calls upon the state to provide a public justification for exercising its coercive criminal law powers against a specific citizen.
- This public justification encompasses both epistemic and normative conditions.

Algorithmic Sentencing and Human Dignity

- **What is Algorithmic Sentencing?**
 - The use of artificial intelligence (usually in the form of predictive machine learning algorithms) to determine an offender's sentence or a sentencing factor.
- **Concerns with Algorithmic Sentencing Outputs**
 - Fairness (especially bias), accountability, and transparency.
- **Another Concern: Tension with the State's Duty to Respect Human Dignity**
 - Sentencing implicates an offender's sense of dignity because it involves normative evaluations of key aspects of their moral agency.
 - Using predictive algorithms to make complex normative judgments is not only a category mistake, but a failure to respect the offender's status as a moral agent.



Thank You!

Questions?

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