

TRADUCCIÓN JURÍDICA INGLÉS - CASTELLANO

According to the liberal constitutionalism story we have been spelling out, two features of the criminal law that were missing come out as central features not only of the criminal law but of the legal order more generally: it is uniquely a matter of state action (for when private actors start enforcing the rules, this undermines the equality of all, rather than supporting it), and it is fundamentally coercive (for the point of the legal order is not simply to guide people toward what they ought to do but, rather, to ensure that a certain set of arrangements actually obtains).

Within a liberal constitutional order, there are several different sorts of legal regulation. One is concerned with setting out and enforcing the boundaries between individuals' private rights claims. Private wrongs are acts that violate the terms of equal freedom that the state has put in place through the legal order. Thus, when one person culpably causes injury to another's person or property, he has wronged that person. Through the institutions of the private law, the state ensures that the victim of such an injury may obtain compensation for any resulting injury from the wrongdoer in order to undo any factual injury to the rights claim. It is crucial to the framework of rights that we have such a system of private law in place and that the state back it up with its coercive power.

The criminal law is not directly concerned with these sorts of regimes. Rather, in criminal law, we are concerned with the efforts of private actors who try to supplant the law's neutral ordering with their own favoured arrangements. The criminal law's concern is with someone's efforts to undermine the whole system of equal freedom itself. Criminal wrongs are those that demonstrate a willingness on the part of the offender to displace the legal rules themselves— they are concerned not merely with an injury to some specific rights claim, but to the very idea of living together under law rather than subject to the wishes of specific individuals. The criminal actively disregards the law's requirements and substitutes his own preferences. In an important sense, then, the criminal law truly is what some scholars call a last resort, not merely in the sense that we ought to use regulatory instruments other than the criminal law to control behaviour if we can. It is a last resort in the deeper sense that it is necessary for the whole project of living together with others under law. For it is all very well to have in place a set of laws that demarcate each person's sphere of rights and even to have a legal regime in place enabling individuals to seek damages to undo the effect of wrongs done to them, but we need to address those who would disregard the whole system.

(Constitutionalism and the Limits of the Criminal Law)

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