

The Revolution and the Criminal Law

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Published online: 18 August 2012
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Abstract Egyptians had many reasons to overthrow the government of Hosni Mubarak, and to challenge the legitimacy of the interim military government. Strikingly, among the leading reasons for the uprising and for continued protest are reasons grounded in criminal justice. Reflection on this dimension of the Egyptian uprising invites a broader examination of the relationship between criminal justice and political legitimacy. While criminal justice is neither necessary nor sufficient for political legitimacy, criminal injustice substantially undermines political legitimacy and can provide independent reasons for revolution. A state may compromise its legitimacy by committing criminal acts, by perverting or subverting the criminal process, and by failing to discharge its duty to punish serious wrongdoing—a duty that then falls to individuals to discharge either directly (through vigilantism) or indirectly (through revolution). Contrary to the views of many leading criminal law theorists, the duty to punish serious wrongdoing applies to individuals and not only to states. The relevance of political legitimacy to criminal justice is more complicated. Individuals are morally obligated to follow the morally justified laws of an illegitimate state, but are not morally obligated to follow the morally unjustified laws of a legitimate state. Nor may any state punish in the absence of moral wrongdoing and moral fault. However, illegitimate states may be incapable of justly holding individuals accountable to the state, to the community, or to victims through criminal trials. This incapacity provides an additional reason to overthrow illegitimate states and replace them with legitimate states capable of justly administering a just criminal law.

Keywords Justice · Legitimacy · Authority · Obligation · Revolution · Vigilantism · Democracy · Detention · Retributivism · Punishment

On June 10, 2011, I walked through Cairo’s Midan Tahrir (Independence Square) for the first time. Less than 4 months earlier, millions of Egyptians gathered there and in city centers across the country to bring down the authoritarian government of then-President

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