

Towards a Modest Legal Moralism: Concept, Open Questions, and Potential Extension

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Abstract The article introduces and critiques Antony Duff's Modest Legal Moralism from a strictly analytical angle. It seeks to illuminate its core tenets and modestly addresses a number of aspects that deserve further elaboration from the author's point of view. Notwithstanding these points of contention the main thrust of the article is the exploration of the constructive potential of Duff's concept. It will be shown that its core elements are well-equipped to come to grips with the lacuna of theorization of supranational criminal justice systems and their criminalization processes.

Keywords Modest legal moralism · Criminalization processes · Theories of criminalization · Public wrong · Supranational polity

In this comment I will only briefly lead the reader through the main tenets of Antony Duff's Modest Legal Moralism. Instead of merely summarizing his article, the comment will take a deeper look at what Duff's theory includes and focus on what aspects are in need of further defence. But beyond challenging and defending a modest version of Legal Moralism, which is one of Duff's own goals, I also wish to enunciate some thoughts on its constructive potential. I will explore whether it can be extended to the as yet under-theorised fields of European and International criminal law.

The Concept

Antony Duff concludes his paper with a disclaimer. He is not intending to offer a new theory of criminalization, but a first step towards a "normative account of the conditions under which, the deliberative procedures through which, the ways in which, the ends for which, a contemporary liberal polity should criminalize conduct" (Duff 2012, 17–18). In

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