

Criminalizing Behaviour to Protect Human Dignity

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Abstract The purpose of this article is to discuss the criminalization of conduct based on human dignity arguments. It proposes a modest version of integrating human dignity into discussions about criminalization. After a critical examination of both the notion of “human dignity as an objective value” and the assumption that the meaning of human dignity can be explained by referring to Kant’s moral philosophy, human dignity violations are characterized as severe humiliations.

Keywords Human dignity · Criminal law · Criminalization

Introduction

If one asks whether human dignity should play a role in developing normative standards for criminal justice systems, it would probably not be difficult to achieve consensus on procedural regulations. Parts of the legal framework which shield defendants and witnesses in criminal investigations and trials against serious forms of pressure and severely demeaning treatment can be traced back to the duty to respect human dignity. In this paper, I will not examine the relevance of human dignity for procedural issues but turn to a somewhat less explored area: whether and how human dignity should figure in discourses about *criminalization*. Within such discussions, human dignity arguments appear in two different modes. Human dignity can be either a reason to constrain and limit the scope of the criminal law or, adversely, a reason which justifies a criminal norm. Human dignity as constraint is evoked to support criticism of particular prohibitions or particular sanctions (see Gur-Aye and Weigend 2011; Gur-Aye 2012). My angle will be the second one: the positive role of human dignity when considering criminalization. Could protection of human dignity be at least a *prima facie* reason for criminalization? Can one argue that criminal prohibitions are justified because to commit these acts is to violate human dignity?

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