

Taking plastic trees and bad sex seriously. Fresh Insights into the Liberal vs. Legal Moralism Debate over Criminalisation

Imagine a student who engages in a consensual but potentially morally wrongful sexual relationship with her professor, on whom her academic future depends. Or a beautiful forest that our neighbor decides to cut down and replace with the latest generation of plastic trees that look and function like real ones. Or a situation where we cause the extinction of a beautifully singing bird species without harming any individual birds. What do these situations have in common? Although they do not cause direct harm to other people, they can be perceived as morally wrong.

Project Objective

In our research project, we ask: Should actions that are morally wrong but do not directly harm others be enforced through state coercion, primarily through criminal law? Proponents of legal moralism argue that the state has the right to punish such actions because we should penalize morally wrong deeds. On the other hand, liberals, following John Stuart Mill's classical harm principle, argue that the only justification for state intervention is harm to others (and in some cases, offense). Our project aims to investigate whether the liberal position can address three types of counterarguments that intuitively seem to favor legal moralism.

Key Case Studies

The project focuses on the following controversial cases:

1. **Bad Sex:** Although both parties consent to sex, the situation is morally problematic, for example, due to an abuse of power dynamics or a form of coercion that does not invalidate the consent. Does the state have the right to intervene in such cases?
2. **Biodiversity Protection:** In times of climate crisis, protecting biodiversity is extremely important. But can the value of biodiversity itself, rather than the harm it causes to other beings, be a reason for penalizing its destruction?
3. **Aesthetic Values:** Similarly to biodiversity, should we protect intrinsic values like beauty or naturalness through law?

Research Perspective

We aim to examine these issues not only from the perspective of Anglo-Saxon theories in the philosophy of criminal law but also from the perspective of continental theories of criminalization, which focus on the protection of legal goods.

Importance of the Project

Why is this important? Because it not only advances the theoretical foundations of criminal law but also impacts the public debate on contemporary issues and how the state should respond to them. Protecting biodiversity and fighting for justice in sexual relations are topics that evoke strong emotions and require a new perspective on the role of law in society. We want our research to contribute to the creation of a more just and aware legal system that better responds to the needs of the modern world.