

Laina D'Costa
1145047
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Criminality, Civility & The Criminal Law

The criminal law is an essential aspect of modern societies, but as the population and their views have evolved, it has expanded beyond the formal controls that it once implied and essentially has shifted to also govern individuals daily actions to create significant control and order. Criminal law is used to control the public sphere by ensuring that citizens are at peace, which can also translate beyond just social control to encapsulate social discord. The main function of the criminal law is to regulate criminality to ensure a safe environment for citizens, but it has expanded to also have the ability to promote civility.

To begin, the criminal law outlines and defines what constitutes criminal offences in the public sphere (Gans, 2017, p. 2). The main function of the criminal law is to regulate criminality in society, which refers to discovering and incarcerating criminals, deterring crime, and ensuring the safety of citizens. This facet of criminal law is dire to the social systems of modern societies, and without the regulation of crime through the criminal law, the nation would turn into an anarchical state. One aspect of regulating criminality can be shown through the analysis of the legal governance of public spaces. Public spaces, especially major cities, are more prone to crime and victimisation, which is why it is valuable to analyze the control of criminal behavior in communal and public areas (Yadhunath et al., 2019, p. 1). In order to define the use of the

criminal law to regulate criminality, different criminal laws and criminal theories must be dissected and examined.

First, a theory that focuses on the governing of public areas to control or regulate crime is broken windows theory. This crime theory is centered around the hypothesis that if there is a broken window in a neighborhood, it will signal to the public and potential criminals that no one is tending that area, so they can break more windows (Greenberg, 2014). This means that if there are signs of social unrest that remain unrepaired, like a broken window, it signals to individuals that there is a lack of regulation in that area or that no one cares, which encourages criminals to create more social unrest and crime, like by breaking more windows (Greenberg, 2014). Broken windows theory has been used to influence policing styles in cities like New York City, to guide the tactics used by officers to discover criminals and detain them. As a result of the use of broken windows theory, New York City increased their policing of neighborhoods that tend to have higher rates of crime (Greenberg, 2014). Although broken windows policing has been criticized for inciting racial injustices by police officers against racial minorities, the theory itself can be used to show how legal governance of public spaces through the criminal law is able to regulate criminality. Broken windows policing focuses on high-crime areas where low-level criminals tend to act due to the visible signs of social unrest and criminal activity, but these crimes can cause those criminals to become desensitized to the act of committing a crime, leading them to commit more crime (Greenberg, 2014). One implication of broken windows policing is the increased use of foot patrol policing in areas that have high-crime rates (Kelling and Wilson, 1982). Due to the elevated foot patrolling of police officers in high-crime areas, the police were able to increase the amount of public order in these crime hotspots with large amounts of visible

signs of social unrest which successfully led to the incarceration of minor criminals who may have escalated to major criminals (Kelling and Wilson, 1982). Based on broken windows policing, regulation of public spaces through foot patrolling has resulted in the incarceration of criminals. Through broken windows theory, it can be seen how the criminal law is able to regulate criminality by expanding the police presence in areas with more crime, which creates more social order and gives them the ability to incarcerate criminals, therefore preventing further crime and controlling criminality.

Another example of legal governance of public spaces as a method of regulating criminality can be seen through the criminalising of graffiti. Although graffiti and street art have become more socially accepted and appreciated, graffiti is still often met by communities with fearfulness and disgust (Young, 2014, p. 100). This adverse and sometimes unjust response may be due to the fact that graffiti frequently occurs on residential properties. In New South Wales during the 2015-2016 financial year, the most common property type reported to police as being targets of graffiti vandalism were residential properties, accounting for 1,767 vandalism incidents in New South Wales (Graffiti facts and figures, 2016). Due to the potential threat of having their residential property vandalised by graffiti artists, many individuals still consider graffiti a negative and illegitimate practice or art form, which has caused it to become criminalised. Through the criminalising of graffiti, the criminal law has effectively prohibited this conduct in order to regulate vandalism of private property and ensure the well-being of residential areas and properties. This shows that the criminal law regarding graffiti is used as a way to legally govern public spaces, which regulates criminal behavior in those areas.

On the other hand, the criminal law has been able to promote civility through the introduction of laws based on public interactions and the enforcement by public authorities. Civility in this context refers to the concept of politeness and a general regard for others in society, creating a cohesive environment for all people. Although promoting civility is not the main goal of the criminal law, it does have the ability to advance the state of civility which can be seen through public regulations.

An example of a criminal law that promotes civility occurred in New York City, where they implemented the regulation and policing of bodily postures on public transportation (Ertel, 2015). The New York City subway is notorious for their overcrowded trains caused by the immense population being served, rush hour traffic, and the constant delays of the subway. Due to the consistent overcrowding of the New York City subway, the city was prompted to create laws prohibiting individuals from taking up more than one seat, 'manspreading', or putting their feet up on the seats (Goldstein and Haughney, 2012). In 2012, 1,600 people were arrested for having their feet on a seat on the subway, many of which were detained for 24 hours (Goldstein and Haughney, 2012). Taking up extra space on a train is not an inherently criminal act, but due to the frequent overcrowding of the metro system, New York City adopted this criminal law to create a more respectful and cohesive riding experience for all of their passengers, rather than just a single individual who would benefit from the extra seat or having their feet up. By looking at the criminal law in New York City, it is clear that criminal laws can be used to enforce and create civility by requiring individuals to create space for other riders.

Another example of a criminal law that promotes civility are laws regarding public indecency. Indecent exposure refers to the notion of being nude in public and can fall under other

titles which includes but is not limited to ‘public indecency, sexual exhibition, disturbances to public order, and threats to public peace’ (De Vries, 2019). The issue with public indecency is clearly labeled in the title of the act, being exposed publicly and inappropriately. Public indecency laws are being challenged by many different activists and spiritual groups, but they are generally upheld and regarded as favorable by the public (De Vries, 2019). Despite the petitioning and requests for public nudity to become legal as a form of freedom of expression, it is generally and socially accepted that being nude in public is obscene and crude. Being indecently exposed in public may not have major criminological implications, but it is based on social standards that are being upheld through this criminal law. The penalties for public indecency include jail time, intensive correction order, community service, and fines (Indecent Exposure - Charges, Penalties and Sentencing in Canberra, 2020). Despite not being a violent or destructive act, indecent exposure violates social views and widely held beliefs on appropriate behavior in public, which caused these criminal laws to be created in order to reflect those community values. This shows that criminal laws, like those regarding public indecency, are able to create a sense of public respect, uphold social views and promote cohesion within society all contributing to the expansion of civility.

The criminal law has been distinguished to either advance civility in public or control criminal behavior, but there are many instances where both the promotion of civility and the regulation of criminality result from the criminal law. Although the most important aspect of criminal law is to control crime, there are crimes that affect public participation and social interactions, which means that some laws are able to govern criminality while also promoting a sense of social decorum.

Criminal laws that garner both of these results can be seen through the criminal laws regarding public intoxication. Public intoxication laws are directly related to the regulation of crime which can be analyzed through the connection between violent crimes and intoxicated offenders. Alcohol intoxication has been a prevalent feature in crime in general, along with violent offences like spousal violence and homicide (McClelland and Teplin, 2001, p. 71). Based on police reporting, up to 82% of assault suspects had prevalent rates of alcohol intoxication, distinguishing that violent crimes have a clear correlation to alcohol intoxication (McClelland and Teplin, 2001, p. 71). From this information, it is apparent that alcohol contributes to crime, showing the necessity of the criminal law to control public intoxication in order to prevent it from escalating into violent criminal behavior or illegal actions.

In terms of promoting civility, public intoxication often leads to public disruption. Police have reported that they are more likely to receive complaints of public intoxication around or after midnight since that is the time that pubs, bars, and clubs usually close (Homel et al., 1992, p. 680). Since many public intoxication arrests occur in the middle of the night, this can cause people to be disrupted by noise or through other encounters with drunken individuals while they are trying to sleep or rest peacefully in their homes. This shows how public intoxication can lead to decreased civility since drunken individuals can disrupt communities, especially in the middle of the night. Since public intoxication has occurred frequently around or after midnight, it has created the necessity for enforcement through criminal laws which regulate this behavior in order to create a more peaceful environment for the public and to uphold general respect for others. Through the examination of the criminal laws surrounding public intoxication, it is clear that this criminal law is able to regulate criminality while also promoting civility.

Another example of the criminal law acting in a manner that promotes civility while also regulating criminality can be seen through the laws created to deter and prevent racial discrimination. Racial discrimination goes beyond the notion of simply being polite since acting in a racial discriminatory manner is a vile way for individuals to express themselves. Due to the heinous and appalling manner of these actions, criminal laws have been implemented regarding those actions. The laws around racial discrimination through violence, threats, or hostility are intended to 'encourage civil dialogue and respect between all groups in society' (Berman, 2015, p. 82). Racial discrimination laws have a deeper, more extensive purpose, but one of the effects of these laws is the desire to spread of civility amongst different racial groups, showing how the criminal law is able to foster civility.

Additionally, criminal laws of racial discrimination also regulate criminality. The *Racial Discrimination Act 1975* (RDA) 'makes it unlawful to discriminate against a person because of his or her race, colour, descent, national origin or ethnic origin, or immigrant status' (Racial Discrimination, 2014). Specifically in Victoria, the introduction of the *Racial and Religious Tolerance Act 2001* 'makes it against the law to make racist comments in a publication, including the Internet and email, statements at a meeting or at a public rally... write racist graffiti, display racist posters or stickers and engage in racist or vilifying abuse in a public place' (Racial and Religious Tolerance Act, n.d.). Due to these criminal laws, racial discrimination is prevented and criminalised on a federal and state level. Through these criminal laws, racial discrimination is clearly a criminal act. This means that the criminal laws against racial discrimination are regulating criminality by preventing individuals from discriminating against others based off their race. By examining the criminal laws regarding racial discrimination, it can be seen that

these criminal laws are able to regulate criminality by outlawing racial discrimination and imposing consequences for those actions while also promoting civility by encouraging respect and civil dialogue between different racial groups.

In conclusion, the main function of the criminal law has historically been to control criminal behavior, but it has evolved beyond that one objective. Now the criminal law is able to not only control criminality, but also promote civility. Through the examination of broken windows policing and the criminalising of graffiti, it is clear that criminal law has the ability to control crime by outlawing specific activities and detaining criminals. On the other hand, criminal laws are able to promote civility which can be seen through the policing of bodily posture in New York City and the prohibition of indecent exposure which both uphold public values and promote respect for others. Both the regulation of criminality and the promotion of civility are present when exploring the criminal laws regarding public intoxication and racial discrimination, showing that although the two effects are garnered separately through some laws, there are also criminal laws that result in both the control of criminals and the expansion of civility. The criminal law is clearly a crucial aspect of modern day governance, due to its ability to insight control over criminality and encourage amenity amongst society.

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