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One Masterprinciple of Criminalization – Or Several Principles?

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ABSTRACT

The paper challenges a fundamental premise that underlies R A Duff's new book "The Realm of the Criminal Law": the premise that criminalization theory must lead us to one master principle. Instead of striving for one unified theory, it seems preferable to be pluralistic from the outset and to develop separate theories of criminalization. The principles that are necessary to evaluate (potential) prohibitions in criminal laws should be developed separately for different groups of conduct: first, conduct that is incompatible with important collective interests; secondly, violent attacks against other persons; third, other conduct that violates another person's right to non-intervention.

Keywords: criminalization theory; master principles; Rechtsgut; rights; collective interests; pluralism.

1. INTRODUCTION

The purpose of this paper is to provide a short comment on one feature in R A Duff's new book "The Realm of the Criminal Law"[1]: the assumption that criminalization theory must develop *one* master principle that could be applied to a vast range of conduct. Against this commitment to a unified theory of criminalization, I propose that we should proceed from different starting points. The task of scrutinizing criminal laws and legislative proposals, or developing legislative proposals, becomes easier if one distinguishes from the outset between conduct that endangers collective interests and conduct that violates the rights of individual persons. In the latter case, it is also useful to distinguish between rights violations in the

1 I would like to thank José Luis Marti for organizing the symposium on this book in Barcelona, February 2019, and for providing us with a wonderful occasion to exchange views on criminalization theory. For the publication, I have mainly adhered to the form of the oral comment, with only a few footnotes added.

core area of criminal law (such as violent attacks against life and physical integrity) and other rights violations (such as theft, fraud and other disregard for property rights). I hope to show that a non-unified approach has the advantage of giving more structure to thinking about criminalization compared to the more general and more abstract principles that might be applied to all kinds of (potentially) criminal behavior.

2. THIN AND THICK THEORIES OF CRIMINALIZATION

What can we expect from theories of criminalization? We might hope to identify *one (and only one)* master principle for decisions on whether a certain kind of behavior should be criminalized. To be called a master principle, the principle would need to be exhaustive and exclusive (Duff 2018: 234). And, if it were to guide decision-making in an effective way, we would need a *thick* theory of criminalization. Duff calls principles thick if they have a rich descriptive content that allows them to be applied without adding further normative judgments.[2] Criminalization theory that focuses on an exhaustive, exclusive and thick master principle would identify an overarching goal or value that could be applied to *all* public discussions about criminalizing conduct and all legislative proposals. It would provide one recipe for a wide range of political proposals. One general idea would be broken down into conclusions and, ultimatelly, lead to norms that prohibit (or demand) certain actions in criminal laws or judicial definitions of crimes. Criminal law theorists can be expected to like the idea that their efforts could steer criminalization this way, as an exercise in deductive reasoning (members of parliament and other political voices might take a different view). For legal scholars in particular, it seems natural to work with deduction because this is a familiar methodological approach, at least in the Continental-European tradition.

Duff is skeptical about the possibility of a thick concept that allows for a substantive theory of criminalization. His ambition is more modest: to propose a thin theory of criminalization. The thin master principle that he develops argues that:

> "A. We have reason to criminalize a type of conduct if, and only if, it constitutes a public wrong.
>
> B. A type of conduct constitutes a public wrong if, and only if, it violates the polity's civil order." (Duff 2018: 275, 277).

2 See for the difference between thick and thin principles Duff (2018): 253 ff.

I agree with his skeptical stance towards the idea that a master principle could be exhaustive, exclusive *and* thick at the same time. The spectrum of behavior that we have serious reasons to consider for criminalization is broad. The range of justifications for criminal norms cannot be reduced to one substantive, thick master value that guides decision-making in a clear-cut, uncontroversial way. The more substantive content a principle has, the smaller its scope of application will be. For some criminal prohibitions, protection of human dignity can be cited as the supporting rationale.[3] However, for most crimes this would be a rather far-fetched idea, for instance, with regard to property offenses and tax crimes. Even if one sets relatively narrow notions such as dignity aside and turns to broader concepts such as autonomy and self-determination, they do not yield a "one idea fits all", substantive master principle. Of course, quite a few criminal prohibitions protect autonomy and self-determination in a straightforward way (for instance, all crimes that involve coercion, such as robbery and the traditional concept of rape). But even in the area of crimes against individuals, there are reasons to prohibit conduct that has no impact on a human being's ability to lead an autonomous life (for instance, injuring an infant should be a crime even if wounds heal without any lasting impact on her future life), and for many offenses against collective interests, it is not the most straightforward explanation that they protect the autonomy of individual human beings. Duff convincingly identifies a negative relationship between thickness and inclusiveness: the more substance a master principle has, the more it will be under-inclusive. Thinner principles cover more cases, but they do not give decision-makers clear guidance (Duff 2018: 255). Duff still opts for *one* overarching concept: the idea of public wrongs while admitting that "the thinness of a principle radically undercuts its substantive utility" (Duff 2018: 262). However, it seems more promising to abandon the idea that there is *one* theory of criminalization, which starts off with one, albeit thin master principle. My own, more radical conclusion is: It does not make sense to strive for a unified theory of criminalization. The alternative is to be *pluralistic from the outset*: we need several separate theories of criminalization.

Before I elaborate the thesis that theories (plural) should be preferred to one singular theory of criminalization, I should mention one more approach of the latter kind. As I am a German legal scholar, readers might expect to read something about *Rechtsgüter* (in a literal translation: legal goods). This is one version of a master principle, which is still popular in the German literature, but it has been increasingly debated in recent years

3 Hörnle and Kremnitzer (2011); Hörnle (2012).

more and more debated.[4] Duff mentions the Rechtsgutslehre in his book and arrives at a rather polite conclusion by describing it as "relatively thin" (Duff 2018: 254). This criticism can be phrased more strongly: It is not only a thin concept, but also so thin as to be an empty concept. The notion of a "good" does not give any guidance at all – every state of affairs could be labeled this way.

3. THE DISADVANTAGES OF THIN MASTER PRINCIPLES AND THE NEED FOR A PLURALISTIC APPROACH

Within academic discourse, the highly abstract, thin nature of master principles might not be considered a serious disadvantage. However, if scholars strive to have some impact on legislative activities, they should also strive for more substantive content. The more arguments turn from the highly abstract to more specific scenarios, the more they have a chance to be heard. Academic writings about criminalization theory should have a purpose beyond our internal discussions: ideally, they should help to make political decisions somewhat more rational. Legislators are not trained in systematic analysis. Their decisions are mostly based on gut reactions, typically emotional responses to incidents that were reported in the media. These emotional responses may reflect moral judgments, but moral judgments that are holistic and intuitive. The essential point is to provide structures for thinking about criminalization. This is not a pointless enterprise. At least in the German system, one can suppose some willingness to engage in reflections during the legislative process. There are formal procedures for parliamentary hearings and the need to provide written legislative material. Both the staff within the ministries who write drafts for new laws and the members of parliamentary committees need arguments. Admittedly, criminal law theory will hardly succeed in convincing politicians to revise opinions that are anchored in deeply felt intuitive judgments. But sometimes there is genuine puzzlement, and these are the occasions when it is possible to have an impact on legislation by providing arguments.

Criminal law theorists tend to prefer one theory of criminalization, a theory that is homogenous and well-rounded. Several different approaches might seem less pleasing, too pragmatic and incoherent from an aesthetic point of view. However, it is more important to differentiate and to decrease the degree of abstraction. My main argument is that it is possible to get *somewhat thicker* theories. The thesis I propose is: we need *several distinct*

4 See Dubber (2005); for competing opinions Engländer (2015) and Kudlich (2015).

theories of criminalization: one for crimes against individuals and another for crimes against collective interests (and, as I will explain below, another subdivision is recommendable for crimes against individuals). My main assumption is that for each of these groups, the logic of thinking about criminalization is different. Rather than glossing over differences and grouping all kinds of conduct together under one thin master principle such as Duff's public wrong principle, (potential) prohibitions should be analyzed *ab initio* separately for different groups of protected interests. If a choice has to be made between one unified, but very thin theory of criminalization and several, somewhat thicker theories, we should sacrifice our academic preference for the neater unified theory.

If one looks at crimes against persons and crimes against collective interests separately, some of the analytical distinctions that Duff introduces (Duff 2018: Chapter 6) can be used to explain different underlying logics, for instance, the distinction between responsive and preventive. Duff uses it to give the harm principle two different meanings:

> "We have reason to prohibit X if conduct X is harmful (responsive)
>
> We have reason to prohibit X if this will prevent harm (preventive)" (Duff 2018: 238).

The responsive-preventive distinction can be applied to the two categories of crimes against individuals and crimes against collectively shared interests. The logic of laws that protect collective interests is straightforwardly preventive. Citizens share an interest in maintaining institutions (and other shared resources) if their existence and well functioning is important for (different) individual ways of living. The point of protecting institutions and resources is, as a rule, that they are needed in a forward-looking perspective.[5] Prohibitions against, for instance, perjury and corruption serve to prevent damage to the effectiveness of institutions (lack of trust in courts and administrative agencies). Even if the content of a shared institution could be described in a backward-looking manner (for instance, foundational narratives about historical events), the purpose of a criminal prohibition (in the example against false narratives) would be future-oriented, based on the assumption that the institution is essential for our living together. I will argue that the reasoning behind criminal prohibitions must include responsive features if the behavior impacts individual persons rather than collective interests.

5 Exceptions regarding natural resources, mainly living species, are conceivable. Arguments for criminalization can be made in a responsive, non-preventive way if the issues are rights of animals (and perhaps plants) rather than their usefulness for humans' purposes – but these debates cannot be taken up here.

4. CRIMES AGAINST PERSONS AS VIOLATIONS OF RIGHTS

4.1 Why Rights to Non-Intervention Matter

A master principle for crimes against persons could be phrased in the following way: We have reason to criminalize conduct if it violates the rights of another person. Duff mentions criminalization theories that emphasize the notion of rights, but he raises several objections. He argues that this approach does not work well for *mala prohibita* or regulatory offenses, Duff 2018: 263. This is a convincing point, which has led me to question the search for one overarching master principle. If one accepts, however, a plurality of criminalization theories, the rights-based approach becomes interesting again for crimes against individuals.

Duff points out that a rights-based theory is (also) just a thin theory. Discusion is still needed as to what kind of interests should be acknowledged as individuals' rights that ought to be protected by the criminal law (Duff 2018: 263). Invoking the notion of rights does not settle all questions. One crucial question concerns the origins of rights. One possibility is to rely on catalogues of pre-legal, moral rights.[6] I prefer a different approach. If the task is to explain and justify practices of *state punishment*, reference to rights should reconstruct basic relations between citizens in this very social role as citizens (and not in the role as moral beings). It is not the vertical relationship between polity and offender that should be the primary focus point of analysis, but the horizontal relationship between citizens. Crimes against persons are not foremost conduct that violates the civil order. They are this, too, but this is not the most salient description. The main feature is interpersonal: one citizen disregarding the right of another citizen, that is, the right to non-intervention. German constitutional theory uses the term *Abwehrrechte* (defensive rights). Constitutional lawyers are usually interested in the right to non-intervention that citizens have against the state (see, for instance, Poscher 2003). However, for the purpose of criminalization theory, the rights to non-intervention that citizens have *against each other* take center stage. The basic relations that underpin state punishment can be depicted graphically as a triangle.[7] The three corners of the triangle represent the state, the offender, and the victim, the three sides relational structures that are characterized by rights. The basis of the triangle is formed by the victim's right to

6 See for such an approach Wellman (2017): 6.

7 The state, at the apex of the triangle, stands in rights-relations to both offenders and victims *qua* citizens. The rights of offenders against the state become important in criminal proceedings and sentence enforcement. For our purpose, the crucial right is the one at the bottom of the triangle: the right to non-intervention. See for a more comprehensive treatment Hörnle (2019).

non-intervention that the offender disregards. Again, this is not a theory about moral agents and moral duties. The rights to non-intervention that persons as citizens have against each other are fewer and much less demanding than their mutual moral duties and moral rights.

4.2 The Core Area

Are rights to non-intervention *pro tanto* rights or categorical rights (see for this dichotomy Duff 2018: 249-253)? *Pro tanto* means that there might be, all things considered, reasons for refraining from criminalizing conduct, even if it violates a right to non-intervention. Categorical rights are sufficient reasons to criminalize the conduct in question, without the need to weigh them against countervailing considerations. At this point, I draw another distinction that leads to three theories of criminalization, arguing that we should distinguish core rights to non-intervention from the wider scope of other rights to non-intervention. One might object that it is not possible to demarcate a "core or the criminal law". Vincent Chiao has challenged the notion of a core, mainly arguing that this paints a distorted image of the criminal law because the vast majority of crimes does not fall into this category (Chiao 2018: 150-159). This is certainly true with regard to the number of offense descriptions and the number of crimes committed. Conceptually, however, a distinction between "core" and "other offenses against persons" makes sense.

One can approach the core of criminal law by identifying individuals' most important rights (rights to life, bodily integrity, sexual autonomy, freedom of movement, freedom from coercion). I propose to define the core of criminal law as violent attacks that violate these most important rights to non-intervention. This definition can be supported by pointing to historical developments, historical developments that were more than just contingent events but crucial in the formation of states and public law. The need to maintain peaceful relationships by outlawing interpersonal aggression was a major force for the emergence of criminal law as public law.[8] Thomas Hobbes, in the "Leviathan", emphasized the commonwealth's protective function against interpersonal violence and transgressions that are to be expected in the state of nature. There is no need to point out that modern states have to fulfill other functions, too, but protective duties remain foundational duties for the state.

If one agrees that the protection of citizens against violent attacks of others is central to justifying why states are legitimate institutions, this supports

8 See for the so-called Landfriedensbewegung Wadle (2001).

the following conclusion: criminal law for this core area must be *both* responsive *and* categorical. The argument that a responsive logic applies needs more explanation. It might seem counterintuitive at first. Arguing that the state has a primary duty to protect citizens against serious interpersonal violence points towards a preventive justification. Duff contends that criminal law is "essentially preventive" (Duff 2018: 261). I agree with the acknowledgment of criminal law's preventive features, but would argue that there is a second level. Imagine that empirical research shows that a criminal prohibition in the core area, for instance rape, does not have measurable preventive effects. This is not a realistic assumption, and we can hardly explore how human beings would respond in a world *without* criminal law in the core area. Existing legal systems do criminalize this kind of conduct. And even if social scientists were to find a gap in one country and design a comparative study, they would need to control a lot of other factors that might influence the frequency of the relevant conduct. However, imagine for a moment a study that concludes "individuals' desistence from conduct X depends on a lot of factors, but not on the existence of a criminal prohibition". Should such a finding lead legislators to abolish the prohibition? Seen from a preventive-instrumental perspective, this would be a logical consequence. One should, however, take into account that criminal laws have a double function: they are norms of conduct, but also the prerequisite for official censure after the crime has occurred. The second feature is important, too. For my argument, the crucial point is to step from states' duties to maintain basic standards of security to state's duties to censure and sanction offenders who disregard the fundamental "no physical violence"-right. The right to be protected against violent attacks and the right to have them censured and punished are separate, but intertwined rights. Having a right to non-intervention against one's fellow citizens would be pointless if its violation goes unnoticed. Rights only are taken seriously if violations are registered and if there is a negative response. For these reasons, criminalization based on the notion of individuals' rights to non-intervention would need to be responsive, too. Because of the outstanding importance of the rights at stake, for the core area, there are also good reasons to assume that states are under a categorical duty to respond with serious censure and sanctions, that is, with criminal punishment. Duff argues "even if there are some egregious wrongs that we *must* criminalize, this holds only if we assume that we have a criminal law" (Duff 2018: 277). I disagree with this conclusion and argue for a *categorical* duty to create criminal law in the core area (not necessarily with all the features of existing criminal justice systems, but with serious, that is not only verbal censure). Other, non-censuring responses are not sufficient, even if they are equally effective in terms of prevention.

4.3 Other Rights Violations

The foregoing thoughts about the core area of criminal law were based on the perspective of criminal law theory. They are hardly important for real political debates about criminalization: We can assume that legal systems, however diverse they are, include prohibitions against violent attacks on the most important rights to non-intervention, such as the right to life or the right to sexual autonomy. Contemporary debates take place in the two other fields. How far should the criminal law safeguard collective interests (for example, how might the environment best be protected or what constitutes corruption)? Do individuals have a right to non-intervention against other citizens beyond the universally acknowledged core area of violent attacks? With regard to the second question, one can demand or criticize criminal prohibitions from two angles. First, as already mentioned, the question could be whether a certain interest is important enough to justify a right to non-intervention. This leaves rooms for debate, but it is possible to develop sub-principles that give some structure to the debates. The relevance of the interest in question for quality of life should be a central criterion. For legal purposes, statements about quality of life and rankings of interests must apply standardized measures, because general norms cannot rely on idiosyncratic preferences.[9] For judgments about rights to non-intervention beyond the core area, it is also conceivable to additionally apply the collective perspective in the mode of a filter. For our shared, collective interest, one can argue that rights to non-intervention should not be recognized too generously. Particularly in heterogeneous societies with diverging group interests, there might be reasons not to accommodate all claims for defensive rights but instead to promote resilience in some areas – but this opens a wide discussion that cannot be covered here.

Beyond the core area, a right to non-intervention is only a *pro tanto* reason to criminalize behavior. It does not amount to a categorical duty. Countervailing reasons need to be taken into account (the same holds for crimes against collective interests). For instance, recognizing property rights does not necessarily mean that the criminal law must be employed to protect *all* private property without the option to differentiate according to the degree of harm, the costs of law enforcement and other factors. Within the contemporary debate about the proper scope of sexual offenses, there is by now agreement on the right to sexual autonomy, a right to non-intervention that is wider than the traditional prohibition of rape involving physical violence (see, for instance, Archard 1998). However, the discourse

9 See for arguments referring to quality of life von Hirsch and Jareborg (1991).

about new sexual offenses (beyond the older concept of rape as a violent act) might leave *some* room to consider, for instance, questions regarding proof and other possible countervailing reasons.

With regard to countervailing reasons, one point deserves more attention: citizens' obligations to protect their own interests. At this point, my proposal deviates from Duff's analysis. He emphasizes that in contrast to tort law, criminal verdicts should not consider splitting responsibility between offenders and victims (Duff 2018: 294). The opposite view contends that decisions about criminalization should take *both* offenders' duties to refrain from rights violations *and* victims' obligations to protect their rights into account. The rationale stems from the notion of subsidiarity: we should only make moderate use of the intrusive (and costly) criminal justice system and thus value other paths to protect individual's interests, including options to protect one's own interests. In German criminal law doctrine, the heading for these discussions about the subsidiary role of the criminal law is "*Viktimodogmatik*" (see Hillenkamp 1981; Hillenkamp 2017). There should be limits to victims' obligations, that is, they should only be a reason not to criminalize conduct if self-protection is easy, efficient and does not require sacrificing legitimate liberty interests (see for more details Hörnle 2009), and if the conduct does not fall in the core of criminal law. As mentioned above, in the case of a violent attack against the most important rights, I would assume a categorical duty of the state to respond to rights violations, but this should not be extended to all kinds of rights violations.

This idea is unique to legal theory. From a moral perspective, one would focus on the agent's conduct and come to different results. Morally seen, it enhances blameworthiness if offenders exploit others who were oblivious or not very competent in protecting their own interests. The notion of victims' obligations stems exclusively from the victim's role as a citizen. The German Federal Constitutional Court uses the notion of "*Menschenbild des Rechts*" to emphasize citizens' autonomy and responsibility.[10] This is a normative, ascriptive concept, not a social or psychological description of human beings, who will, in real life, only partly live up to the normative expectations of the role described with the term citizen (Hörnle 2015). The German Constitutional Court points to our constitution (the *Grundgesetz*), but the underlying assumptions make sense beyond German positive law. They are fitting for all modern states with legal systems that emphasize citizens' autonomy – the obligation to care for one's own interests in a responsible way can be described as the flipside of autonomy rights.

10 See for instance Entscheidungen des Bundesverfassungsgerichts (BVerfGE), Volume 41, 29, 58; Volume 108, 282, 300.

This idea of victims' obligations obviously needs more elaboration, with regard to the question of how much self-protection can be required and what unacceptable restrictions of liberty would be. The point I want to make here is a limited one. First, these questions tend not to be covered sufficiently in the field of criminal law doctrine and deserve more attention. Secondly, for the area of criminalization theory, such considerations could contribute to creating a denser net of guiding principles beyond a very thin master principle. For illustration, let me mention two examples from recent debates about criminalization. The first example concerns the reform of sexual offenses and the choice between an "only yes means yes"-model and a "no means no"-model. The difference between the two models shows up in cases where neither approval nor rejection was expressed: they would be punishable under the first model, but not under the second. The second example relates to a recent German scandal where a young offender had assembled and posted vast amounts of personal and private information about politicians in the Internet that he collected from a wide range of websites (for instance, photos, chats with family members, mobile phone numbers, etc.). Should such disregard for sexual autonomy and privacy of others lead to criminal punishment? If the question is how much citizens ought to protect their own interests, for both examples one can point to victims' obligations that are easy to fulfill and do not unduly interfere with their liberty. It does not seem unreasonable to demand an expression of disapproval when confronted with another person's sexual advances or to demand the use of a password to protect personal data. Under this premise, criminal norms can be drafted in a way that excludes constellations where victims of a rights violation themselves have neglected to protect themselves in easy ways. Such details of the victim-offender-interaction are not grasped easily with Duff's approach that focuses on public wrongs and the vertical relationship between the polity and the offender.

5. CONCLUDING REMARKS

The main point in my comment is that it would be preferable not to search for one master principle to structure criminalization. If we distinguish three groups of objectionable conduct, one could formulate three master principles:

> Principle 1 (preventive, *pro tanto*): The state has reason to criminalize conduct if it is incompatible with important collective interests that cannot be adequately protected by other means, provided that there are no stronger countervailing reasons.

Principle 2 (responsive, *pro tanto*): The state has reason to criminalize conduct if it violates another person's right to non-intervention (however, there may be countervailing reasons).

Principle 3 (responsive, categorical): If conduct consists in a violent attack that disregards important rights of others, it must be criminalized.

Admittedly, with regard to principles 1 and 2, arguments in support of important collective interests and rights to non-intervention are open to debate. The same holds for weighing them against countervailing reasons. Nevertheless, it seems feasible to develop a framework of principles, including victims' obligations along these lines. Developing sub-principles for each of the three areas could (compared to the more general notion of "the polity's civil order") give somewhat more structure to criminalization decisions.

BIBLIOGRAPHY

Archard, D., 1998: *Sexual Consent, Boulder*, Colorado: Westview Press.

Chiao, V., 2018: *Criminal Law in the Age of the Administrative State*, Oxford: Oxford University Press.

Dubber, M., 2005: "Theories of Crime and Punishment in German Criminal Law", *American Journal of Comparative Law* 53: 679-707.

Duff, A., 2018: *The Realm of Criminal Law*, Oxford: Oxford University Press.

Engländer, A., 2015: "Revitalisierung der materiellen Rechtsgutslehre durch das Verfassungsrecht?", *Zeitschrift für die Gesamte Strafrechtswissenschaft* 127: 616-634.

Hillenkamp, T., 1981: *Vorsatztat und Opferverhalten, Göttingen: Schwartz Verlag.*

Hillenkamp, T., 2017: "Was macht eigentlich die Viktimodogmatik?", *Zeitschrift für die Gesamte Strafrechtswissenschaft* 129: 596-628.

Hörnle, T., 2009: "Die Obliegenheit, sich selbst zu schützen, und ihre Bedeutung für das Strafrecht", *Goltdammer's Archiv für Strafrecht* 156: 626-635.

Hörnle, T., 2012: "Criminalizing Behaviour to Protect Human Dignity", *Criminal Law and Philosophy* 6: 307-325.

Hörnle, T., 2015: "Das Menschenbild des Rechts", in *Anthropologie und Ethik*, eds. J. Heilinger and J. Nida-Rümelin, 97-111, Berlin: de Gruyter.

Hörnle, T., 2019: "The Role of Victims' Rights in Punishment Theory", in *Penal Censure. Engagements Within and Beyond Desert Theory*, eds. A. du Bois-Pedain and A. Bottoms, 207-226, Oxford: Hart.

Hörnle, T. and M. Kremnitzer, 2011: "*Human Dignity as a Protected Interest in Criminal Law*", Israel Law Review 44: 143-167.

Kudlicleh, H., 2015: "Die Relevanz der Rechtsgutstheorie im modernen Verfassungsstaat", *Zeitschrift für die Gesamte Strafrechtswissenschaft* 127: 635-653.

Poscher, R., 2003: *Grundrechte als Abwehrrechte. Reflexive Regelung rechtlich geordneter Freiheit*, Tübingen: Mohr Siebeck.

Von Hirsch, A., and N. Jareborg, 1991: "Gauging Criminal Harm: A Living-Standard Analysis", *Oxford Journal of Legal Studies* 11: 1-38.
Wadle, E., 2001: *Landfrieden, Strafe, Recht*, Berlin: Duncker & Humblot.
Wellman, C., 2017: *Rights Forfeiture and Punishment*, Oxford: Oxford University Press.