

What is Philosophy of Criminal Law?

John Deigh and David Dolinko: *The Oxford Handbook of Philosophy of Criminal Law* (2011)

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Introduction: State-Centered and Individual-Centered Theories

What is philosophy of criminal law? The seventeen essays in this book, as a whole, provide an excellent place to start in answering that question. Editors John Deigh and David Dolinko state that they put together this volume of “seventeen original essays by leading thinkers in the philosophy of the criminal law” in order to create “an authoritative handbook” representing “the state of current research on the major topics in the field that arise from issues in the substantive criminal law” (p. v).

So what is the field, and what are its major topics? There are many ways to organize this field, but I would start by observing that we can divide the world of philosophy of criminal law into two different types of theorizing: state-centered and individual-centered. The state-centered theory focuses on the proper limits of the state’s power to criminalize and punish, while the individual-centered theory focuses on questions of innocence and culpability. This division is, of course, somewhat artificial. Both approaches can and do coexist, often within the same piece of scholarly work, but the two approaches are distinctive, and keeping both theories in mind is helpful in making sense of the field.

The existence of the state-centered approach is in some ways more obvious and easier to justify than the individual-centered approach. Because much scholarly work in philosophy of criminal law speaks in terms of wrongdoing, justification, and excuse, which are familiar concepts from moral philosophy, it may appear that philosophy of criminal law is nothing more than a type of moral philosophy. However, setting aside the possibility of defining political philosophy as a special type of moral philosophy—that is, a type of moral philosophy that focuses on what the state is or is not morally permitted to do—it is a mistake to view philosophy of criminal law as a kind of moral philosophy and nothing more. It is, after all, philosophy of *criminal law*, and criminal law is, at bottom, an exercise of state power. Any comprehensive philosophical account of criminal law must, therefore, explain and justify the role of the state, and much work done in the field of philosophy of criminal law focuses on it.

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