

Precautionary Criminalisation in an Age of Vulnerable Autonomy

Review of *Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law*, edited by Bernadette McSherry, Alan Norrie, and Simon Bronitt (Oxford, UK: Hart Publishing, 2009): ISBN 978-1-841113-890-9 (paperback)

Jonathan Simon

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This book arose out of papers presented at a workshop at the International Institute for the Sociology of Law in Onati, Spain in 2007 on the topic of regulating deviance. Typically of such conferences, not all the papers are not exactly on the same theme, but crucially here there are a strong core of chapters that all engage with a set of related concerns; increasing criminalization, the increasingly precautionary logic of criminal justice, and the relevance of the residue of liberal legality in criminal law jurisprudence.

The title appears, in retrospect to be somewhat misleading. Deviance makes an appearance in these chapters, especially in the chapters dealing with sexual offenses, and regulation is hinted at as an alternative to criminalization in others, but it might have been more accurate to call it something like Precautionary Criminalisation. Under any title, however, the book is a distinct and valuable contribution to both substantive criminal law theory and to the burgeoning field of security studies; indeed one of the few recent books on precautionary governance in the age of terrorism that treats substantive criminal law as a core issue. Those primarily coming at this intersection from criminal law will find focused discussions on topics like attempt and preparation crimes, the act elements and mental states required for liability in the framing of new statutory crimes, and the limits of the ability to grade punishment by modern conceptions of culpability.

The volume's most central theme is captured in the subtitle of Lucia Zedner's chapter, "Fixing the Future? The Pre-emptive Turn in Criminal Justice." As Zedner traces, the problem of preventing future harm has long been part of the agenda of liberal criminal justice systems. What makes the present trend distinctive is the emergence of uncertainty, future risks that cannot easily be estimated let alone predicted. While the drive to manage future risk has long strained at the liberal legal ideal limiting penal control to punishment for past acts, clearly prohibited by law, and over a presumption of innocence requiring conviction or guilty plea, the age of uncertainty marked by large scale terror incidents has encouraged a new pre-emptive law. One of Zedner's examples, also discussed in other chapters, is the "control order" introduced as part of the Prevention of Terrorism Act of 2005 under which the government can impose strict conditions on the activity and contacts

J. Simon (✉)

Adrian A Kragen Professor of Law, University of California, Berkeley, CA, USA
e-mail: jsimon@law.berkeley.edu