



Justifying Public Justice

Tarek Yusari Khaliliyeh¹

Published online: 11 February 2023

© The Author(s), under exclusive licence to Springer Nature B.V. 2023

Abstract

Criminal law contains a set of powers and permissions that enable it to fulfil its functions. A central feature of contemporary criminal law is that these powers and permissions are predominantly allocated to public officials acting in their capacity as such. Many of these normative incidents are entirely withheld from private persons, while some—like those involved in an arrest—are granted to private persons on a much more limited basis than they are to public officials. Call this feature the *standard allocation* of criminal law's powers and permissions.

Most agree that the standard allocation is justified. However, the question of what this justification is has been relatively neglected. The purpose of the thesis is to address this question, which I label the allocative question.

Statists claim that the standard allocation is justified because achieving some value—which is personal to public officials—is necessary to justify allocating criminal law's powers and permissions to an agent. A value is personal to public officials if it is such that only public officials are, even in principle, capable of realising it.

The thesis refutes Statism by challenging two arguments advanced in its defence: one, based on criminal law's functions, the other, on the role of lawmakers—who are the public officials charged with allocating criminal law's powers and permissions.

It then develops an Instrumentalist answer to the allocative question. According to Instrumentalism, criminal law is a way to achieve values that anyone, at least in principle, could realise. The standard allocation is justified insofar this arrangement helps criminal law to best deliver these impersonal values at a lesser cost in other values. The thesis also defends Instrumentalism from two main objections, namely, that Instrumentalism (i) fits poorly with criminal law doctrine and (ii) is in tension with the Wrongfulness Constraint on criminalisation.

DPhil (PhD), Law, University of Oxford, UK. Awarded 2021.

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

✉ Tarek Yusari Khaliliyeh
tarek.yusarikhaliliyeh@stcatz.ox.ac.uk

¹ Oxford, UK