

A Moral Predicament in the Criminal Law

Gary Watson

Abstract

This talk is about the difficulties of doing criminal justice in the context of severe social injustice. Having been marginalized as citizens of the larger community, those who are victims of severe social injustice are understandably alienated from the dominant political institutions, and, not unreasonably, challenge their authority, including those of the criminal law. The failure of equal treatment and protection and the absence of anything like fair and decent life prospects for the members of the marginalized populations erodes the basis for its allegiance to demands of the political community. The criminal law thus occupies a problematic normative position with respect to lawbreakers in this population; in many cases it finds itself in the position of convicting them for crimes for which the political community itself bears some significant responsibility. The attempt to administer criminal justice therefore faces a serious moral predicament; on the one hand, criminal law has a right and an obligation to protect citizens against serious crimes; on the other hand, because of its complicity, the dominant society has compromised its standing to condemn the wrongdoers in question. This paper tries to characterize the predicament in a perspicuous way, and to suggest ways of proceeding in spite of the predicament.