



The Limits of Expanding Criminalization in Contemporary Criminal Law in Light of Human Security

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ABSTRACT:

The expansion of criminalization occurs when legal provisions defining additional conduct as criminal proliferate, irrespective of existing criminal law's adequate sufficiency to deter, control, and remedy conduct already criminalized. Contemporary societies have witnessed global debates to extend criminalization to new offenses, which elicit attention from multiple academic scholars. Governments then seek legal instruments to promote justice and security in society. The effects are favorable or otherwise. Empirical analysis of selected jurisdictions worldwide reveals that an expansion of criminalization, both preventive and prohibitive, empowers the existing criminal law to deter offenses relating to public integrity, drug abuse, juristic organizations, and cybercrime. Such measures, in contrast to decriminalization, sit proportionately, supplying public safety services to humanity.

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Introduction

Criminal law occupies a unique and particularly significant place among the various legal fields that make up the broader landscape of jurisprudence. Although there is a great deal of meaningful overlap in the goals and objectives of various legal regimes, the specific objectives of criminal law possess an instrumental quality that other fields often lack or do not emphasize as strongly. For example, contract law exists primarily to maintain civil order in economic interactions, property law exists to enable and define ownership rights, tort law exists to facilitate peaceful coexistence among individuals in society, and family law exists to govern kinship relations and familial responsibilities. However, for each of these distinct fields, the formal legal mechanisms that are employed serve the law's objectives but do not constitute the primary means of achieving them in a direct manner. In stark contrast, the law's enforcement, deterrence, incapacitation, and rehabilitation mechanisms and strategies occupy the forefront of consideration when formulating a comprehensive criminal law regime; it is through these targeted measures that the law successfully secures its intended goals and purposes.

The delicate and intricate relationship between criminalisation and ongoing security concerns thus occupies a privileged and vital position among numerous potential critiques of expansive criminalisation under contemporary, security-oriented arrangements and practices. This complex interplay highlights the necessity for careful scrutiny and thoughtful engagement with how laws are created and enforced, particularly in an era where security concerns are paramount in policymaking.

Among the various discussions around the limits to criminal law's expansion, security constitutes the most formidable challenge to constraining state power and the most robust justification for expanding criminal law's scope in many jurisdictions. Criminal law represents an important part of a broader network of tools used to mitigate security risks; it occupies an instrumental role in facilitating numerous security-oriented objectives; and certain security-related harms have been linked to criminalisation in a manner that directly connects security threats to the criminal law.

research question: Is expanding criminalization an appropriate policy response to emerging security threats?

1. Conceptual Foundations: Criminalization and Human Security

Criminalization is defined as the substantive determination that certain specific behaviours should be formally prohibited by law and, as a result, made subject to the various processes and severe sanctions of the criminal law system. This typically involves a thorough and careful identification of actions that are deemed harmful, dangerous, or detrimental to society as a whole. Such harmful behaviours can range widely, encompassing everything from theft and violence to drug offenses and fraud. On the other hand, decriminalization refers to a process that may involve a reduction in the overall scope of such prohibitions, meaning that some behaviours which were previously classified as crimes may no longer be subject to harsh legal penalties. This shift significantly alters the legal landscape surrounding those actions, potentially allowing for a more lenient approach to certain behaviours that society may come to view differently over time. (Lazarus & J. Goold, 2007).

The fundamental aims of the criminal law and the process of criminalization are indeed multifaceted and complex. However, a prevalent and overarching objective shared among these aims is the significant reduction of the prevalence of behaviors that cause tangible harm to individuals or to broader societal interests. This reduction is pursued through effective strategies aimed not only at the prevention of harm's occurrence but also at ensuring a structured response that alleviates or remediates the harm once it has occurred. Furthermore, criminalization may serve additional purposes. It often aims to express the community's condemnation of specific conduct deemed unacceptable within society, reflecting shared values and moral standards. Moreover, it seeks to enhance the perceived legitimacy and authority of the State in the eyes of its citizens and to signal a stronger commitment to promoting human security as a vital social priority. By addressing these interconnected objectives, criminal law plays a critical role in maintaining social order and protecting the well-being of community members. (Nasu, 2018). Each of these objectives may relate to human security in a contemporary context, and the potential for tension between criminalization and human security is fairly evident.

Human security can be understood as an approach that emphasizes the security of the individual human person and, specifically, the protection of individuals from enduring and grievous threats such as disease, hunger, unemployment, crime, social conflict, and political repression. While the emerging conception does not supplant traditional notions of sovereignty or State security, it seeks a complementary legitimacy that extends beyond territorial and political dimensions. Rather than criminalization being conceived as a mechanism to enhance human security, the potential exists for criminalization, especially an expansive form of such criminalization, to impede rather than advance security at the individual level.

Criminalization may serve human security via the deterrence of behaviour that generates unacceptable risks to society, the prevention of behaviours that give rise to immediate threats, and the provision of responses that lessen the significance of the harm suffered. Expansive criminalization may occur in response to threat perceptions associated with diverse issues such as terrorism, organized crime, or information technology, including criminal law tools as deemed appropriate for addressing particular harms and concerns. The preceding discussion only lays out the justification for considering the interaction of criminalization and human security, and further articulation of the situations in which concern for criminalization and worries related to human security may arise is necessary to set out criteria for evaluating the merits and urgency of expanding the reach of criminalization within contemporary environments. (Kerwin and Martínez, 2024)

2. The Instrumental Role of Criminalization in Human Security

Criminalization can be an important means of advancing human security by deterring, preventing, and responding to threats that endanger it. International human security policy has identified certain acute threats to security, including terrorism, organized crime, trafficking in persons and drugs, and corruption. Criminal law occupies a central place among the various regulatory tools available to governments for

tackling such threats. Specific criminal-law tools directly targeted at these kinds of harms encompass specialized investigative techniques (Nasu, 2018) , heightened preemptive measures, practices of preventive detention, criminalization of preparatory conduct, and stricter limits on various legal immunities. Expanding the reach of criminal law to address burgeoning security threats at the national and transnational levels has long been a preoccupation of states. The UN Counter-Terrorism Strategy, for instance, actively encourages more countries to adopt comprehensive anti-terrorism legislation. States facing organized crime, illicit drugs, and transnational threats tend to emphasize criminal justice as an essential component of their national security.

Criminalization helps to fortify the human-security dimension of threats and may even serve as a catalyst for further security-related initiatives. While reinforcing states' distinctive responsibility for the physical protection and safety of people, human security broadens the foundational principle of security beyond the classical military conception to include diverse and acute threats affecting individuals, communities, and states alike. The idea of human security initiates a reframing of international security that highlights the plight of vulnerable individuals subject to various forms of violence, abuse, persecution, and exploitation. It focuses attention on a broad range of matters intimately connected to human well-being, protection, and survival. Human rights, development, and the environment emerge as the three pillars encouraging this broader approach to security at the preventive stage. Yet international human law continues to shape contemporary definitions of security, with specific manifestations of crime such as terrorism rarely, if ever, considered part of the human-security agenda. (Djorobekova et al.2022)

3. Potential Costs of Expansive Criminalization: Rights, Legitimacy, and Efficacy

Policy-driven arguments emerging from both right- and left-leaning jurisdictions reveal a diverse range of shared concerns regarding the pressing phenomenon of excessive criminalization that has garnered attention in recent years. These shared worries significantly bolster the ongoing critique of punitive expansion as a strategy that purports to enhance human security. Beyond the context of specific situations or legislative frameworks, it becomes clear that expansive criminalization practices may infringe upon various fundamental rights and liberties that are essential for ensuring security for all individuals. These include crucial elements like due-process guarantees, the right to privacy, which collectively serve as the bedrock of personal freedoms, along with various procedural safeguards that aim to protect individuals from arbitrary state actions. Such infringements, when compounded with the additional layers of class and racial stigmatization, fundamentally undermine the much-needed legitimacy required for effective security-promoting interventions in society.

This serious undermining poses significant challenges to the credibility of state responses to crime, thereby highlighting the urgent necessity for a more balanced and equitable approach that prioritizes the importance of human rights alongside the critical need for public safety and community well-being. Without addressing these foundational issues, any attempt at reforming punitive practices may fall short of fostering sustainable improvements in both social order and justice. (Lazarus & J. Goold, 2007).

Expansion-driven frameworks have the potential to drastically displace governance from legally anchored domains, raising an array of significant and complex concerns that demand careful consideration. Within rights-respecting states, strategies that are perceived as excessively punitive or overcriminalizing often lead to a profound erosion of trust in essential public institutions, which is critical and foundational for upholding democratic accountability. Furthermore, these strategies can inadvertently rekindle deep-seated fears of legitimacy deficits that are commonly associated with anti-terrorist legislation, leading to increased public skepticism and social unrest.

The actual impacts of such frameworks frequently run counter to the intended governmental objectives: for instance, mass incarceration, which is often employed as a strategy to combat crime, typically contributes to higher crime rates instead of genuinely diminishing them, producing the opposite of the desired outcomes. Additionally, counterintuitively, evidence of enhanced state capacity, which might initially seem reassuring, can actually strengthen threats instead of effectively mitigating them, creating a complex landscape of governance challenges. This paradox serves to highlight the intricate and often

unintended consequences that can arise from even well-intentioned policy implementations, raising critical questions and ethical implications regarding the overall effectiveness and moral ramifications of prevailing governance strategies in contemporary society. (Zedner & Ashworth, 2018).

4. Alternative and Complementary Measures to Criminalization

Contemporary expansions of the criminal law have sometimes been seen as ancillary to maintaining human security, yet these two notions remain fundamentally at odds. A human security agenda does not eliminate the possibility of criminalization, but alternative and complementary measures to criminalization merit careful consideration. These options span regulative regimes, social prevention, and administrative risk-reduction responses, thus leaving a residual range of situations that alternative and complementary mechanisms do not cover.

Numerous avenues exist beyond criminal law that offer promising options for promoting security and addressing identified risks. Options include sociodemographic examinations of the underlying causes of radicalization and violent crime; non-criminal regulatory regimes; social-prevention measures that target specific socioeconomic and cultural risk factors; administrative and civil processes that qualify preventive or remedial actions; non-criminal interventions to counter organized crime; selective police crackdowns, hot-spot policing, and community-oriented policing; measures to promote rehabilitation and reintegration; an array of restorative justice mechanisms; and longer-term international technical assistance to strengthen pre-existing legal systems and promote the rule of law consistent with international standards. (Nafid et al.2024)

The limited nature of these pathways reflects that criminal law coexists with a much wider spectrum of human-security-enhancing measures. Further, an essential, complementary set of techniques—interagency coordination and cooperation, data-sharing arrangements, international cooperation, and other forms of risk-assessment support—carries significant potential for broader actualization of these non-criminal avenues.

The available non-criminal-options catalog excludes situations where security threats emerge but criminalization by definition is absent and hence never enters into the policy calculus. In circumstances of manifest criminalization urgency, further examination identifies criteria—assessed within sectoral capacity constraints, evaluable on a case-by-case basis and benefiting from periodic re-evaluation—indicating when the alternative further enhances human security by at least matching the contributory roles of criminalization.

5. Case Studies: Contemporary Debates in Select Jurisdictions

Contemporary debates on expanding criminalization reveal contrasting positions across jurisdictions. Notable discussions have emerged in Spain, Canada, and Argentina regarding limiting, regulating, or expanding the scope of criminalization following the introduction of new security measures. In Spain, the constitutional Court has interpreted legislation authorizing warrantless tracking of convicted terrorists under specific conditions without constituting a general rule. Although the law was deemed compatible with constitutional rights, the Constitutional Court recognized the need to adapt the criminal legal framework to uphold such rights. Canada has witnessed an increase in criminalized conduct alongside frameworks facilitating the imposition of conditions or prohibitions to protect society. The introduction of anti-terrorism legislation and regulations allowing for extensive preventive interference has prompted concerns about the erosion of fundamental liberties and due process, raising the possibility of limiting, regulating, or even decriminalizing specific conducts. In Argentina, an expansive interpretation of criminal security laws has occurred, broadening the spectrum of constitutive criminal conduct. The criminal law, originally conceived as a last resort, has been utilized more frequently to address the considerable socio-legal insecurity currently confronting society. (Aaronson, 2024)

The thorough examination of these detailed case studies presents significant insights into the many potential impacts on security, fundamental rights, governance structures, and the crucial element of trust that arise as a result of the ongoing trend of expanding criminalization. This expansion has both immediate

and far-reaching consequences that are critical to understanding. Furthermore, it also leads to informative and thoughtful recommendations for effectively implementing the concept of human security as an essential constitutive rationale. This is crucial in ensuring we avoid the excessive and potentially harmful dissemination of various tools designed to punish injury, danger, and unacceptable behavior. Despite the growing societal temptation to criminally address perceived risks and threats, it is essential to tread cautiously. The act of expanding criminalization, while simultaneously attempting to promote robust security measures and uphold vital civil and political rights, represents a complex alternative that is widely debated within legal courts and forums. Such discussions warrant careful examination and detailed exploration to comprehensively understand their implications and potential pathways forward. (Pinto, 2018).

Observations regarding the processes and debates that surround security legislation and the nuanced scope positioning in these various jurisdictions, paired with the emerging, often restrictive proposals in these areas, can indeed offer important and insightful lessons for the design of effective policy. The intricate interplay that is continually observed in the Canadian context between custodial, preventively directed criminal statutes, various anti-terrorist initiatives, and a wide range of other socioeconomic pressures that are inspiring similar or even broader anti-vehicular practices seems to echo the complex dynamics that arise in both Spanish and Argentinian multidisciplinary engagements. Such reflections can provide invaluable insights into the rapidly evolving landscape of security measures and their far-reaching implications for civil liberties, thus enabling a more informed and thorough understanding of the resultant societal changes that are occurring in response to these developments. This multifaceted examination of security legislation and its broader context can serve not only to inform policymakers but also to engage the public in meaningful dialogue about the balance between safety and personal freedoms in our increasingly complex world. (L. Berger, 2014).

6. Policy Implications: Toward a Human Security-Oriented Criminal Law

Expanding the scope of criminalization remains a central precept for developing a contemporary and relevant legal framework for human security. However, this precept must be contextualized to take into account the complex interrelation of criminalization, human security, and wider legal, regulatory and policy developments that exist outside the criminal law sphere. To do so, it is necessary to examine the distinct instrumental role that criminalization plays in enhancing human security, particularly with respect to existing and emerging threats posed by the likes of terrorism, organized crime, and trafficking activities. Although criminalization can play a pivotal role, its expanding scope may involve costs to individual rights, perceptions of state legitimacy, and actual policy efficacy that can vary considerably in intensity and magnitude. Further, such an expansion frequently signals the advancement of an increasingly punitive approach to governance that does not necessarily contribute to the enhancement of broader human-security provisions. Consequently, the mere goal of having a broader array of criminalizing provisions, instruments, or tools at one's disposal does not in and of itself meet the imperative for a human security-oriented criminal law. (Gillett, 2023)

To support a broader and more comprehensive framing of criminalization under the umbrella of human security, while also effectively mobilizing its necessary and warranted expansion, we can identify a distinct set of both formal and substantive criteria. These carefully outlined criteria serve to elucidate the various preconditions that are considered essential for justifying the introduction of any extensive new definitions, formulations, or offences that would significantly broaden the overall scope of criminalization. Such reform considerations are particularly crucial, especially when they are complemented by criminalization-focused provisions that are already embedded within existing frameworks of sovereignty and/or universally accepted legal concepts. These encompass areas such as international criminal law, human rights law, and the intricate law of armed conflict. Together, these elements furnish a stronger and more robust set of policy options aimed at securing broader states of human security. This is notably more effective than relying solely on more conventional expert assessments that analyze the direct relationship between the act of criminalization itself and the advancement of human security. By expanding the conversation surrounding these criteria, we can better articulate and understand the implications of criminalization,

ultimately leading to policies that not only address the needs of human security but also align with established legal principles. (Nasu, 2018).

Conclusion

The human-securitization framework equips us with invaluable tools that enable a comprehensive and nuanced assessment of the ongoing and contemporary conceptual evolution pertaining to the scope of modern criminality. By acknowledging various threats to individual dignity as some of the most critical challenges confronting human security today, we can effectively contextualize and position serious concerns such as terrorism, human trafficking, organized crime, and their numerous derivatives as fundamental security risks that require our urgent attention. These multifaceted risks necessitate appropriately supportive and well-informed risk-management measures that are specifically tailored to address their unique and varied characteristics. The extensive variety and inherent diversity of these threats, which manifest across different jurisdictions, continue to evolve rapidly, making them a dynamic and ever-changing consideration in the field of human security.

Consequently, this ongoing evolution effectively precludes the possibility of adopting an exclusive preference for any singular approach of broad-spectrum criminalization as the optimal pathway to govern and successfully manage these complex and interrelated issues in today's world. It highlights the necessity of developing a more adaptable and multifaceted strategy that can respond to the unique needs and complexities associated with these threats, strengthening our overall ability to enhance human security in the face of evolving challenges. (Pinto, 2018).

Criminalization constitutes an important instrument for enhancing human security. Legislative and reporting obligations applicable in both national and supranational systems highlight the priority accorded to these issues, alongside specific obligations undertaking to prevent and suppress the relevant-specific offenses by establishing and enforcing appropriate legal prohibitions, notwithstanding the residual nature of these measures in the broader political and institutional governance landscape. Both the prevention and suppression of terrorism reflect this perspective in dedicated-offensive regimes, with the former particularly focusing on risk management and coordination, but linked to the penal-regulatory dimension or spectrum. Prescriptive definitions of organized-crime grouping and activity provide a comparable illustration, as do treaty-based obligations on combatting, or the trias of prevention, suppression, and protection or its derivatives in phenomena of multiple overarching configuration or tub collective-action challenges, whether uncoordinated, under-coordination, or over-coordination even on selective-temporal basis.

Expansion of the ambit of contemporary criminal law might signify, on a different register, its conceptual transformation from narrative of restriction, limitation or privacy-protection toward heightened-concern or human-security. Contemporary criminal expansion often merely reflects a spatial mutation or eventual mission creep along a parallel orientation within some of the longer routes toward human-security criminalization. The contemporary empirical pragmatics layer into the ongoing colonization-upstudy of situated matters that supplement the general-recitation consideration formulated around contemporary criminalization.

Security programs, measures and strategies remain more intimately explored on-line with emphasis placed not only on the volume, variety and diversity of explicit cross-cutting, cross-governing and cross-centric security perspectives on contemporary and emerging matters but also on the inter-connectivity and inter-dependence across each and all of the specified-issues. Such capital circumstantial panorama and configuration enables to further populate and broaden and open-up a pertinent-con uncommitted conceptual characterization. Systematic examination of the pre-existing policy-governing patterns presides the articulation of the broader coverage at the expansive/contractive junction.

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