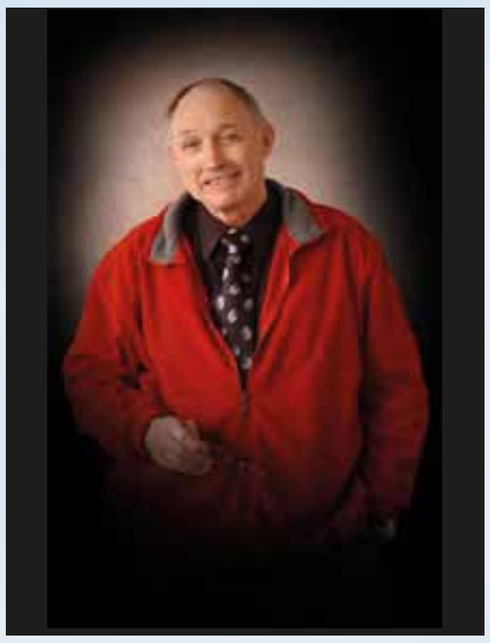
Liberty's Constraints on What Should Be Made Criminal



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The general topic is whether there can be principled restraints on the subject matter of criminal legislation in a democracy, and if so, what those constraints are. The general answer is that liberty gives the content of such substantive constraints. "Liberty" is understood here in terms of negative political liberty defined as the freedom from criminal sanctions, and enquiry is made as to the value of liberty in this negative, political sense. I shall argue that even if some criminal prohibition is properly motivated, to be justified the good obtained by prohibition (such as prevention of harm or punishment of wrong) must outweigh the cost to the values that stand behind the presumption in favor of liberty. Moreover, there is also a right to do certain wrongful and harmful actions. The conceptual coherence of a "right to do wrong" is defended, and four substantive readings are given as to the content of such a right.

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Social Sciences Chamber, 11/F, The Jockey Club Tower
Centennial Campus, HKU

Details and registration: *http://ppa.hku.hk/p/mmoore*

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