CRIMINAL LAW MULTITASKING:

EXPANDING THE CONFINES OF CRIMINAL LAW

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Classic criminal law is known to pursue multiple goals such as retribution, deterrence, rehabilitation, and incapacitation. However, in the last three decades additional goals have been introduced and presented as legitimate and important objectives of criminal law, such as restoration of relationships and communities, reparation of harm, and promotion of individuals' wellbeing. This emerging discourse around criminal law's goals has caused the scope of substantive criminal law itself to be debated, modified, and expanded. Consequently, the procedures used by criminal law to promote its objectives have also been reevaluated and changed, in order to accommodate for these new and emerging goals. Various "civilized" justice mechanisms have been developed as alternatives to formal criminal justice processes in order to provide better treatment for the criminal law "clientele" and to expand the goals of substantive criminal law beyond its classic goals. Criminal law has become a diverse, hybrid platform, which hosts a wide range of processes and practices, many of them promote new and debated goals.

In this Article we develop a taxonomy that captures the interplay between various procedures that promote the various classic, as well as new, substantive goals of criminal law. We focus on several processes (or justice mechanisms) that represent three "generations" of criminal practices, beginning with traditional Mainstream Criminal Process, continuing with modern developments such as Restorative Justice and Problem-Solving Courts; and concluding with emerging practices such as Restorative Sentencing Juries and Therapeutic Settlement Conferences. We first present each process and describe the social forces that led to their development. We propose that in the new and emerging reality of an expanded criminal law, policy-makers and law-enforcers will be expected to select one or more of these mechanisms to implement the chosen mix of retribution, deterrence, expressive justice, rehabilitation, restoration, and reconciliation.

The taxonomy compares these various justice mechanisms – all based on an agreement about the facts (the defendant's admission) – according to parameters relating to their procedural characteristics, the goals they promote, the involved actors in each of them and the relationships between these actors. The results of the comparison are organized in a table that is both an analytic instrument for criminal law theoreticians and a practical tool for policy-makers and law-enforcers when considering the selection or promotion of specific justice mechanisms. The taxonomy suggests a potential for state-regulated multitasking by supporting a system of concurrent referrals of different cases to different mechanisms or combinations thereof. It envisions a diversified system that offers various options for different cases, depending on the severity of the crime, the characteristics of the offender or the victim, and other attributes. Such a multifaceted system constructs multitasking into the regulation of criminal behavior because it involves the simultaneous development and implementation of diverse justice mechanisms representing varying values and goals.