

Research Workshop Series

Abstract

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HIV Transmission and the Jurisdiction of Criminal Law

The criminalisation of HIV transmission in Australia has gathered momentum in Australia since the 1990s. Understandably, much of the debate about criminalisation in this context has been engaged in the idiom of policy advocacy; it has gained little traction in juristic or jurisprudential argument. Attention to the form of legal argument, I want to suggest, has the potential to shed some light on the predicament that besets the contemporary criminalisation of HIV transmission. In the paper, I turn to the conduct, classification and form of the legal attribution of criminal responsibility for HIV transmission. The paper explores the manner in which criminal law reorders and shapes the meanings of HIV transmission so that, for example, the experiences of people living with HIV become situated in the juridical language of injury and danger. If this is the case, then, attention to the enterprise of criminal law and its plural traditions of legal argument has a number of implications for policy advocacy. For example, one of the recurrent themes in the policy debates is whether criminalisation is best approached through the general offences of criminal law such as assault offences, or by way of HIV-specific offences such as that contained in the Crimes Act 1958 (Vic) s 19A. The current consensus favours the use of general provisions. However, if the redescription of legal argument offered in this paper is persuasive, the use of general provisions of criminal law - as well as the limits such use may place on arguments derived from the virtues of shared responsibility - will need to be reframed if not precisely rethought.