

THEORIES OF PERSONHOOD:

Capturing the Legal Subject in a Dangerousness-Based Model of Preventative Detention

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Introduction:

Two Texts:

Canada's *Criminal Code*

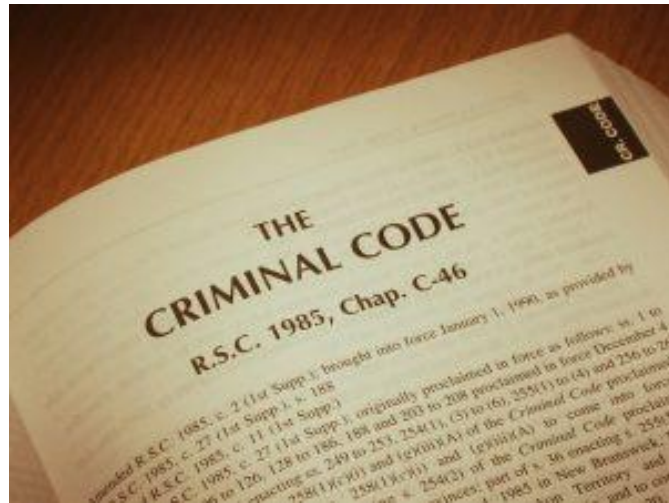


Figure 1. Source: <https://www.lawnow.org/wp-content/uploads/2016/10/Crim-Code-2-300x225.jpg>

Franz Kafka's *The Metamorphosis*

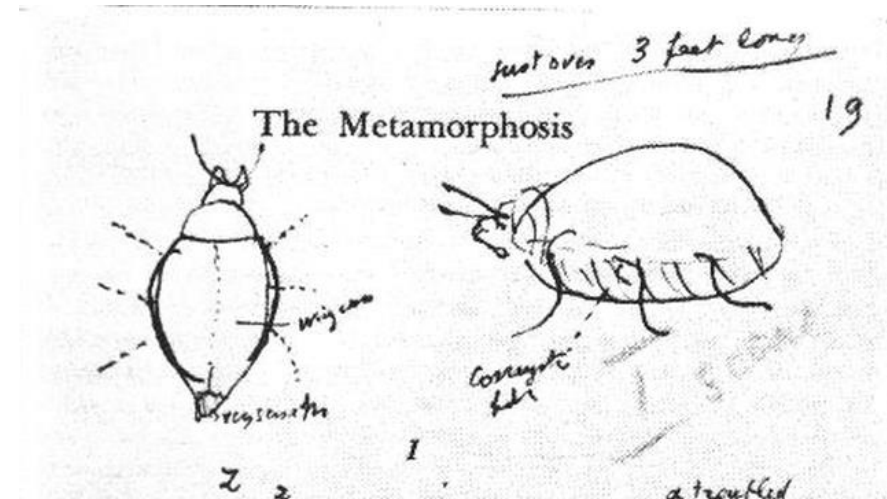


Figure 2. Source: http://flavorwire.files.wordpress.com/2011/01/nabokov_on_kafka-7238181.jpeg

Introduction

A Dangerousness-Based Model of Preventative Detention

- ❖ What does this model suggest about Canadian's underlying assumptions regarding individuals with mental illness?

Introduction

Thesis:

- ❖ A dangerousness-based model of preventative detention fails to recognize the personhood of individuals with mental illness.

Practical Example

Detention Schemes under Canada's *Criminal Code*

- ❖ Sentencing vs. Not Criminally Responsible Dispositions

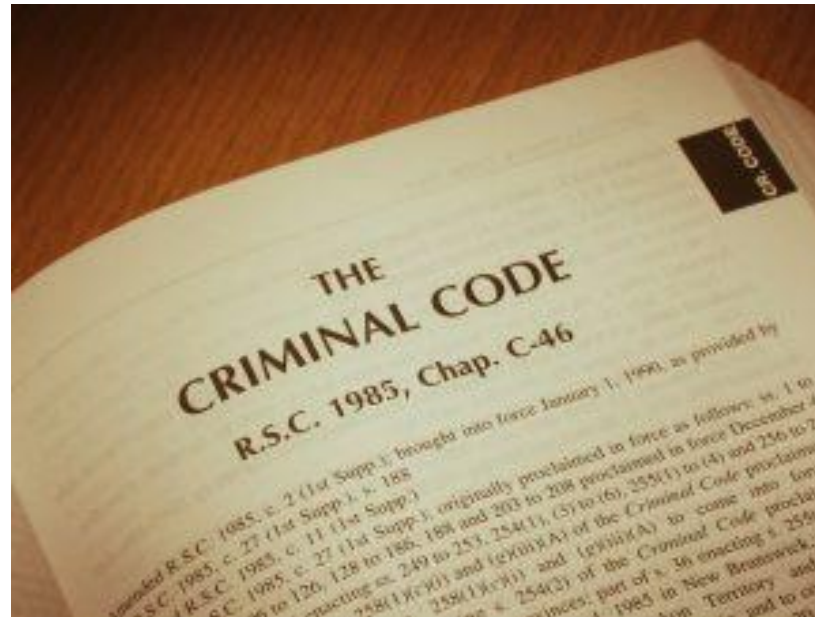


Figure 1. Source: <https://www.lawnow.org/wp-content/uploads/2016/10/Crim-Code-2-300x225.jpg>

Criminal Code: Two Detention Schemes

FINDING OF GUILT:

Sections 718 and 718.1

- Premise:
 - Moral Responsibility
- Principles:
 - Proportionality
- Duration: Finite

NOT CRIMINALLY RESPONSIBLE:

Section 672.54

- Premise:
 - No Moral Responsibility
- Principles:
 - Protection of Society and Treatment of Accused
- Duration: Potentially Infinite

Criminal Code: Two Detention Schemes

❖ *Extending the Dangerousness Model?*

- Elyn Sacs: “If increased likelihood of dangerousness is enough reason to commit the dangerous mentally ill, it should also be enough reason to commit the dangerous, youthful male, who is likelier to be violent than the general public – and much more so than the symptomatic mentally ill.”

Criminal Code: Two Detention Schemes

- ❖ Why do we only impose a dangerousness-based model of preventative detention on individuals found NCR?
- ❖ Answer: Different conceptions of personhood

Defining “Personhood”

Herbert Morris, “Persons and Punishment”

- ❖ To treat somebody as a “person,” you must:
 - 1) Permit them to make choices to determine what happens to them
 - 2) Respect their choices

Criminal Code: Two Detention Schemes

RETRIBUTIVE JUSTICE

Rationale

- Agential Choices
- Past Conduct
- Better Decision-Making

RISK MANAGEMENT

Rationale

- Agentless “Happenings”
- Future Dangerousness
- Treatment

Visualizing Preventative Detention

❖ Franz Kafka's *The Metamorphosis*

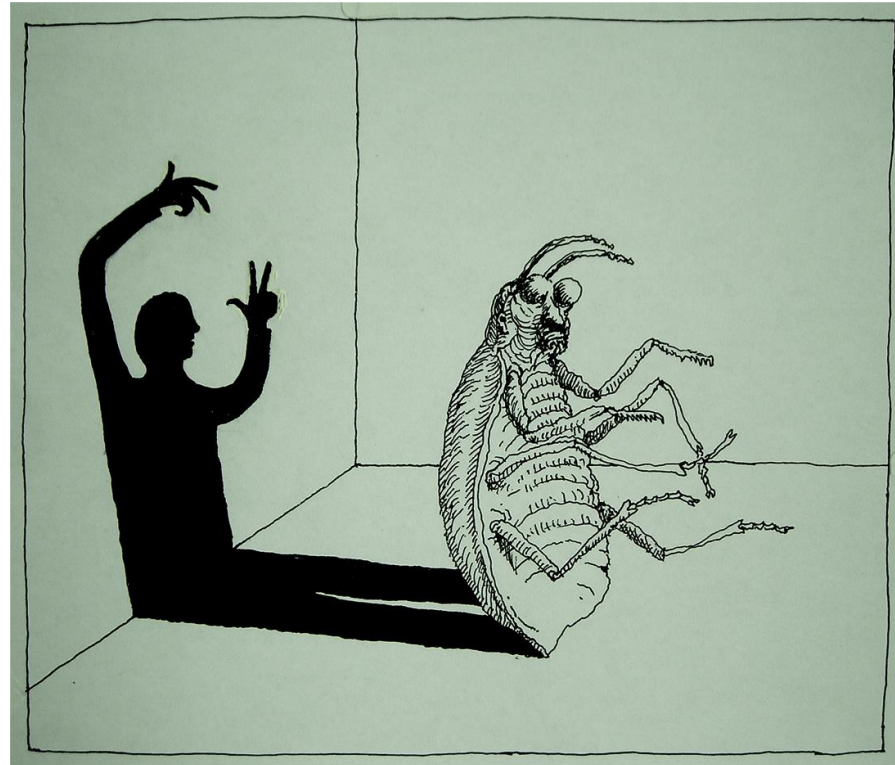


Figure 3. Source: <https://anthonyhummel.files.wordpress.com/2013/12/metamorphosis.jpg?w=393&h=335>

The Metamorphosis



Figure 4. Source: <https://www.pinterest.ca/Kaferano/metamorphosis/>

❖ Fear and Dangerousness

- ❖ There is a widely held belief in our culture that the mentally ill are predisposed to act in a violent or dangerous manner ... their unpredictable, strange and often inappropriately obtrusive behaviours easily produce a reaction of fear. When we experience fear, we all too readily attribute that fear to dangerousness of the exciting object, rather than considering whether our reactions may not be excessive or misplaced. (McLachlin CJ, *Winko v British Columbia (Forensic Psychiatric Institute)* [1999] 2 SCR 625 at para 35).

The Metamorphosis



Figure 5. Source: <https://www.jacobinmag.com/2015/10/metamorphosis-prague-spring-german-expressionism>

- ❖ Conflating “Personhood” with “Predicament”
- ❖ Isolation, dehumanization, and shame

Conclusion



Figure 6. Source:
http://4.bp.blogspot.com/_okQ7JoNmdxY/R37HO7W8t6I/AAAAA AAAAMs/XCkfJMCfsI4/s1600-h/gregor+samsa.gif

- ❖ Understanding Implicit Prejudices
- ❖ Encouraging Reflection

Thank you

❖ Questions?

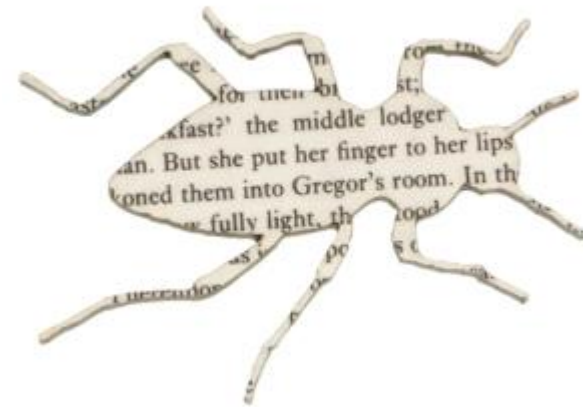


Figure 6. Source:
<https://21stcenturybookgroup.files.wordpress.com/2013/04/franz-kafka3.jpg?w=300&h=300>