

WHY CRIMINAL LAW?

The British Academy, 10 Carlton House Terrace, London SW1Y 5AH

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A Symposium convened by

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It is all too easy to take the criminal law for granted, as an essential or ineliminable aspect of our social lives. Even those who do take the criminal law for granted, however, face a range of questions about its proper role and scope.

The obvious question is that of criminalisation: what kinds of consideration or principle should guide legislative decisions about what to criminalise? The Harm Principle, long seen by liberals both as a protection against an over-expansive and over-moralised criminal law and as a positive guide to the criminal law's proper concerns, has come under attack: its central problem is that of providing an account of 'harm' that will equip the principle to set substantive and plausible limits on the scope of the criminal law. But what other principles or values should guide decisions about criminalisation?

However, the question of criminalisation is not one question, but many. Criminal law can be contrasted with a range of other kinds of legal regulation or provision: for instance—

- Many kinds of harmful or wrongful conduct constitute both criminal and civil wrongs, whilst in other cases the matter is seen as one for the criminal *rather than* the civil law, or for the civil law *rather than* the criminal law.
- Some legal systems distinguish crimes properly speaking from 'administrative violations'; other modes of administrative regulation involve rules and penalties, but do not count and are not seen as part of the system of criminal law; English lawyers talk of a category of 'quasi-criminal', 'regulatory' offences that are formally part of the criminal law but do not involve 'real' crimes.
- A by now familiar argument from advocates of 'restorative justice', and from other penal abolitionists, is that we should move away from a criminal law response to many of the kinds of conduct that are defined and treated as crimes, and look instead to more informal modes of mediation and conflict resolution.

In each of these contexts, we must ask what could justify a criminal law approach (one that operates by defining certain types of conduct as criminal, and providing for the prosecution and punishment of those who engage in them): why should we treat certain kinds of conduct as 'crimes', rather than as civil wrongs, or as administrative violations, or as conflicts that need to be resolved?

To tackle these questions, we need to work towards a clearer account of the possible, proper aims of a system of criminal law, and of the role that the criminal law can properly play in a liberal democracy. Philosophers of law and philosophically minded lawyers have been doing some interesting work on these issues; this seminar will provide an opportunity for intensive discussions that should enable some real progress to be made. We hope to publish some of the papers in a new journal, *Criminal Law and Philosophy*, which will be published by Springer from Autumn 2006. A wine reception will be held at the event to celebrate the launch of the journal, kindly sponsored by Springer.

Programme

- 0930— Welcome and Introduction
0940
- 0940— Douglas Husak (Rutgers), '*Why Criminal Law?—A Question of Content?*'
1110 Respondents: Kimberley Brownlee (Manchester), Chris Clarkson (Leicester)
- 1110— Tea/coffee
1130
- 1130— Andrew Ashworth & Lucia Zedner (Oxford), '*Defending the Criminal Law:
1300 Reflections on the Changing Character of Crime, Procedure, and Sanctions*'
Respondents: Rowan Cruft (Stirling), Stuart Green (Louisiana)
- 1300— Lunch
1400
- 1400— Claudia Card (Wisconsin-Madison), '*Ticking Bombs and Interrogations*'
1530 Respondents: Clare Chambers (Cambridge), John Tasioulas (Oxford)
- 1530— Tea/coffee
1550
- 1550— Alon Harel (Hebrew University Jerusalem), '*Criminal Law and the Authority of the
State*'
1720 Respondents: John Stanton-Ife (King's College London), Suzanne Uniacke (Hull)
- 1720— Final Comments
1730
- 1730 Wine Reception to celebrate the launch of *Criminal Law and Philosophy*, sponsored
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