

DEMOCRATIC CRIMINAL JUSTICE

14–15 October 2006

A workshop organised by the Law Faculty of the University of Warsaw, and the Office for Research Services of the Polish Parliament, in collaboration with the Department of Philosophy of the University of Stirling.

Honorary patron: *Marek Jurek* – Speaker of Sejm. Partner of the Conference – *Zbigniew Ziobro* – Minister of Justice

Media patron: *Monitor Prawniczy* published by C. H. Beck

I. Theme

A normative conception of criminal justice will have both legal and political dimensions, since it will deal both with the criminal justice system itself and with the political culture and structures within which the system is set. It will include, of course, an account of the criminal law itself, as that which defines crimes and provides for their punishment. It will include an account of the criminal process through which crimes are investigated and prosecuted, and those who commit them are convicted. It will include an account of punishment—of its aims, its meaning, and its proper modes and distribution. But a criminal justice system presupposes a state, which has the authority to make and to enforce the law, and a polity whose law it is. A normative theory of the criminal justice system must therefore appeal, implicitly or explicitly, to a political theory of the state, of its authority, and of its proper relationship to its citizens—although there will be room for argument about the extent to which and the ways in which different political theories will generate different conceptions of criminal law and justice.

This workshop will ask what conception of criminal law and criminal justice could be appropriate for a democratic polity. Given the diverse forms that democracy and democratic theory can take, that question might seem too indeterminate, but any democratic theory must at least take the ideas of citizenship and participation or inclusion seriously: a democracy is a polity of citizens who govern themselves, not of subjects who are ruled by an alien sovereign; to be a citizen is to share in the life and benefits (and burdens) of the polity. Once we move beyond that vague beginning, we face arguments about the nature of democratic citizenship, particularly between ‘liberals’ and ‘communitarians’: we must ask what difference a liberal or a communitarian (or a ‘liberal-communitarian’) conception of citizenship and the state makes to a normative understanding of the criminal law. But any plausible conception of democratic citizenship will need to include versions of such familiar liberal values as individual freedom, autonomy and pluralism, even if those values are given a communitarian interpretation.

The problem of how the criminal law can be democratic, of what kind of criminal justice system is appropriate to a democracy of citizens, is an urgent one both for the post-communist societies of Central Europe, and for Western European (and American) societies with longer traditions of liberal democracy. That urgency is increased by the strident demands that we hear from various sources for more effective forms of crime control, and for more effective forms of protection against a range of perceived threats and enemies: for such demands come into obvious tension with democratic conceptions of citizenship and individual rights.

This workshop will explore the problems raised by the idea of a democratic criminal law, by bringing together lawyers, legal philosophers, criminologists and political theorists in an intensive set of interdisciplinary discussions. The three main strands of discussion will be—

1. How do democratic values bear on the process of criminal legislation and on the content and scope of the substantive criminal law?

2. What kind of criminal process (understood broadly, to include policing and investigation, as well as the criminal trial) could be consistent with democratic values?
3. What role can criminal punishment play in a liberal democracy? How can punishment be democratically determined and administered? What modes of punishment are legitimate?

A central question will concern the character and possibility of democratic participation: what proper role is there for any form of democratic participation in, for instance, the criminal process, or in the determination and administration of criminal punishment?

II. Organisation

The workshop will be held in Senate Hall, University of Warsaw (Krakowskie Przedmieście St., 26–28, main University campus). The papers for the workshop will be circulated to all participants in advance. Each session will begin with a short (10-15 minutes) oral response to each of the papers to be discussed, to which the author of the paper will be able to reply briefly: this will then leave plenty of time for open discussion.

III. Programme

Saturday, 14 October

- | | |
|-------------|---|
| 9.15 | Welcome by <i>Marek Jurek</i> – Speaker of the Sejm, <i>Zbigniew Ziobro</i> – Minister of Justice, <i>Cezary Grabarczyk</i> – Head of the Commission for Justice and Human Rights, <i>Tadeusz Tomaszewski</i> – Dean of the Faculty |
| 9.45–11.15 | <p>Plenary Lecture</p> <p>Chair: <i>Antony Duff</i>, University of Stirling
 Paper: <i>Nicola Lacey</i>, London School of Economics
 Comments: <i>Douglas Husak</i>, Rutgers University; <i>Agnieszka Nogal</i>, University of Warsaw</p> |
| 11.15 | Coffee |
| 11.45–13.15 | <p>Session I. Democracy, Citizenship, and Human Rights</p> <p>Chair: <i>Roger Shiner</i>, University of British Columbia Okanagan
 Paper: <i>Barbara Hudson</i>, University of Central Lancashire
 Comment: <i>Sebastian Sykuna</i>, University of Gdansk
 Paper: <i>Kimmo Nuotio</i>, University of Helsinki
 Comment: <i>Tomasz Stawecki</i>, University of Warsaw</p> |
| 13.15 | Lunch |
| 14.30–16.00 | <p>Session II. Criminalization and the Scope of Criminal Law</p> <p>Chair: <i>Eleonora Zielińska</i>, University of Warsaw
 Paper: <i>Erik Claes</i>, University of Leuven; <i>Michał Krolkowski</i>, University of Warsaw
 Comment: <i>Thomas Weigend</i>, Köln University
 Paper: <i>Maciej Dybowski</i>, Adam Mickiewicz University of Poznan
 Comment: <i>Matt Matravers</i>, University of York</p> |

- 16.00 Coffee
- 16.30–18.00 **Session III. Democratic Criminal Liability**
Chair: *Douglas Husak*, Rutgers University
Paper: *Antony Duff*, University of Stirling
Comment: *René Foqué*, University of Leuven
Paper: *Mireille Hildebrandt*, Rotterdam University, University of Brussels
Comment: *Włodzimierz Wróbel*, Jagiellonian University in Cracow
- 19.00 Reception

Sunday, 15 October

- 9.45–11.15 **Session IV. Democratic Criminal Process**
Chair: *Piotr Kruszyński*, University of Warsaw
Paper: *Tatjana Hörnle*, Bochum University
Comment: *Paul Roberts*, University of Nottingham
Paper: *Sandra Marshall*, University of Stirling
Comment: *Paweł Wilinski*, Adam Mickiewicz University of Poznań
- 11.15 Coffee
- 11.45–13.15 **Session V. Democratic Punishment**
Chair: *René Foqué*, University of Leuven
Paper: *Linda Gröning*, University of Lund
Comment: *Michel van de Kerchove*, University of Brussels
Stuart Green, Louisiana State University, 'Theft, Punishment, and Exclusion'
- 13.15–14.15 Lunch
- 14.30–15.30 Concluding Comments and Discussion