Book of Abstracts
WG5-21
INFLUENCES AND RATIONALITY OF CRIMINALITY RELATED LEGAL REFORMS (Criminal Law-Making Policy ESC Working Group)

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Other authors: Nina Persak (Ghent University, Belgium), Jose Becerra-Muñoz (University of Malaga, Spain), Carlos Viveiros (University of Malaga, Spain), Ascension García (Universidad Complutense de Madrid (UCM), Spain)

This would be the second Panel Session organized by the Criminal Law-Making Policy Working Group formed at the Budapest Conference last year.

Similarly to Session 1 of the Working Group, our intention is to combine a wide enough range of topics to represent the core of the Group´s interests with an attractive representation of the different national case studies that aim to bring up similarities and differences in criminal policy creation from an international perspective.

As we have mentioned in the abstract sent for Session 1, these works show a surprising connection in their criminal policy making dynamics as well as in the academic concerns linked to them.

The paper that would lead this session would be professor Persak’s work on “Rationality and normative legitimacy of criminal law”, which proposes that harm-based arguments, drawn from criminal law philosophy and criminological research, can help recalibrate criminal law in the sense of re-claiming rationality or reasonableness as its main lens.

Secondly, Jose Becerra-Muñoz would show the results of his monitoring of criminal law-making processes in the UK and Spain through an evaluation that would inform of the differences among such systems and the possible impact of them in the outcomes that are finally obtained.

Thirdly, Carlos Viveiros will bring in the situation in Brazil through a case study that concentrates its attention in recent criminal reforms in the country and he will be followed, in the fourth place, by Ascension García, who would present her paper on noise management as an environmental crime and the role played by local authorities in Spain, as well as by civil associations, often claiming a genuine victimization process and being able to influence criminal policy making.

Keywords: Criminal Law-Making, Criminal Policy, Penal Policy, Cross-National comparison

WG5-21-1
Rationality and normative legitimacy of criminal law

Nina Peršak (University of Ghent, Belgium)

In many countries, criminal law has – probably more than other areas of law – been exposed to processes of emotionalisation of law, slowly chipping away at its rational core. Laws based on emotion, on some one-off scandalous event that shakes the country and stirs public outrage or other collective negative emotional reactions, however, often turn out as premature, misguided and ineffective. Criminalisation of incivilities, as witnessed in several European countries, can be seen as another area where the protection of emotion (or alarmed, annoyed or otherwise emotionally inconvenienced responses) has guided legislation, sidestepping at times the requirement of harm (harm principle) of the prohibited conduct.

Although some courts have tried to keep the proliferation of punitive laws addressing anti-social or uncivil behaviour at bay, the main function of setting an objective, more stable and rational principle of criminalisation clearly belongs to the legislator and their role in the criminal law making. The paper will propose that harm-based arguments, drawn from criminal law philosophy and criminological research, can help recalibrate criminal law in the sense of re-claiming rationality or reasonableness as its main lens. Furthermore, attention will be given to processes of "soft criminalisation" or criminalisation through the back
door (e.g. through civil law, administrative law or law of violations), arguing that they, when yielding punitive results, should not be left out of critical examination of criminal law processes, as they may, in fact, present the new battleground of repression.

Keywords: criminalisation, rationality, emotions, incivilities, legitimacy

WG5-21-2
Process evaluation of two mayor criminal law reforms in the UK and Spain

Jose Becerra-Muñoz (University of Malaga, Spain)

In 2004 two pieces of legislation were passed in the UK and Spain regarding a very hot topic: domestic or gender violence.

Both Governments confronted a difficult issue, filled with numerous connections beyond criminal legislation and related to education, culture and values. They both had to deal with a very worried society and a strong victim’s association movement.

How did they both perform? Who was involved in the law-making process? Who did they consult with? How long did it take for them to pass both bills? What previous analyses and researches were used to make the appropriate decisions?

I’ll try to answer some of those questions and, using these bills as an example, I’ll analyze how criminal legislation procedures vary from one country to another. I’ll also draw some conclusions on the effects such situation may have in the configuration of a countries’ Criminal Policy.

I’ll present here the first part of my research: 1.- a contextual analysis that will allow me to determine why these two reforms may be compared from a process evaluation perspective; 2.- the main results obtained in such analysis.

Next research steps will regard other interesting factors that take the compared analysis further and are, again, related to criminal public policy, such as the number and types of evaluations occurred in these ten years of implementation of the regulation as well as the number and importance of the reforms that such legislation have suffered after the approval of the 2004 acts.

Keywords: Criminal Policy, Process Evaluation, Penal Policy, Cross-national comparisons, Domestic violence

WG5-21-3
The role of the experts as groups of pressure: a study of the Brazilian penal code project

Carlos Domênico Viveiros (Málaga University, Spain)

The conference will address the question that relies on whether jurists, criminologists and criminal policy experts could be a decisive social actor in the constitution of “filters” that hinders and obstructs the path of irrational criminal law making; as well as, when this previous question is answered affirmatively, which could be the role played by those experts as such “filters”.

To this purpose, the author will undertake a study on the case of the legislative process from Brazilian penal code project of 2012, and the possible role that groups of pressure constituted from criminal sciences experts could have played, in that context, in preventing the approval of a legislation that reveals severe rationality problems, both in material and formal aspects.

The first part of the presentation will be a short exposition of the project’s characteristics and the rationality issues brought by it. The second part constitutes an analysis of the measures undertaken by the professionals who took a stand against it and their consequences.

Keywords: criminal law making, irrational legislation, criminal sciences experts, groups of pressure