

Interdisciplinary Conference on

Rights in Criminal Law

Exploring the Role of Individual Entitlements in Criminal Law

7th to 9th July 2022 at the University of Graz

- Call for Abstracts -

Summary

From 7th to 9th July 2022, the Institute of Philosophy, University of Graz will host an interdisciplinary conference on “Rights in Criminal Law”, pursuing the question which role individual entitlements do or should (not) play in criminal law.

We invite paper proposals (500 words max.) from researchers working in the field to be submitted to rights.crim.law@uni-graz.at by 15 August 2021.

We welcome submissions by philosophers, legal theorists and criminal lawyers of any career stage, whose research explores the controversies, dilemmas, and promises evolving around the question of rights in criminal law.

We intend to provide funding for travel and accommodation, in case your home institution does not cover your travel expenses or you are not institutionally affiliated. Following the conference, it is planned to publish the contributions to the conference in a peer reviewed volume.

Keynote Speakers

Antony Duff (Stirling)

Tatjana Hörnle (Berlin/Freiburg)

Joachim Renzikowski (Halle)

Markus Stepanians (Bern)

Hamish Stewart (Toronto)

Aness Webster (Nottingham)

Topic

The aim of the conference is to address the issue of rights in criminal law: Who holds and who should hold a right not to be wronged by others? And is it the violation of rights, rather than harm, that grounds a *prima facie* reason for criminalization?

According to the standard view in criminal law, the compliance with criminal law-duties is not owed to the people protected by criminal law but to the state enacting the law. Thus, criminal law theory does not think of individuals as holders of normative claims, but as mere beneficiaries. The reasons why this standard view does not endorse individual rights in criminal law seem to be twofold:

First, a commitment to the Harm Principle or theoretical equivalents (like the German “*Rechtsgutslehre*”). Those principles do not trace back the moral significance of harm to a violation of one’s normative *standing as a* person endowed with *intersubjective claims*. Second, a theoretical understanding of rights, that is to a large part shaped by a narrow interpretation of the Will Theory of rights, which assumes that right holders have to possess the legal power of claiming compensation for infringement of the duties. As victims of crimes lack this power, they should not be considered right holders.

However, there seems to be argumentative and theoretical space to support the claim that individual rights play a vital role in criminal law:

- Descriptively, a right-based approach to criminal law could provide an explanatory framework for the legal power of discharging someone from his or her criminal law-duty by valid consent. Furthermore, consent does not only allow us to speak of individual rights in criminal law (within a Will-Theory framework), but also to attribute one’s normative standing as a person a central explanatory function in criminal law theory.
- Normatively, a right-based approach offers an alternative normative principle for criminalisation that traces back the moral significance of crimes to the violation of individual autonomy. Thus, the question of what makes a wrong a crime, is still up to debate. Beyond that, the *volenti non fit iniuria* principle might be applicable to the prosecution and rectification of crimes. This is even more so, since new elements in prosecution (e.g. procedural victim’s rights) and rectification of crimes (e.g. restorative justice-approaches) seem to be at odds with the aforementioned standard picture of criminal law.

The conference “Rights in Criminal Law” attempts to stimulate a debate on the role of rights in criminal law. We aim at collecting existing and innovative approaches to this topic from different disciplines, exploring and critically reflecting on their strength and potential. For this purpose, we ask scholars of any career stage in the fields of legal theory, practical philosophy, and criminal law to take a stand on the topic.

We invite contributors to address the following (or related) questions:

- Does criminal law confer individual rights or not? How can seemingly contradictory features of criminal law, like individual consent and the state's monopoly on prosecution, be accounted for in a consistent theory of rights?
- Are rights in criminal law only a problem for a Will Theory of Rights? Can other theoretical approaches, like the Interest Theory or the Status Theory of Rights, offer different accounts of the normative relations in criminal law?
- How can the concept of rights help us to conceptualize criminal wrongs and inform a principle of criminalization of human behavior? Does such a principle preclude the application of other principles for criminalization (like the Harm-Principle)? Or can these principles be reconciled with a right-based understanding of criminal law?
- Is a rights-based understanding of criminal law committed to some form of legal moralism attributing values such as human dignity or autonomy a distinctive importance for the criminalization of human behavior?
- How did our understanding of the role of rights (in criminal law) develop historically?
- How must criminal and procedural law be adjusted to conform with the conceptualization of crimes as rights-violations?
- Is there a threat of overdetermination, e.g. a “privatization” of criminal prosecution? In general, how would we have to distinguish crimes from torts, criminal law from civil law?
- How do we conceptualize consent in criminal law and how do we justify its limits? Are there or should there be inalienable normative positions in criminal law, i.e. criminal acts to which one cannot consent? Do inalienable normative positions proof the inadequacy of a rights-based understanding of criminal law?
- Are public wrongs an insurmountable obstacle to a rights-based understanding of criminal law? Or do public wrongs reflect rights held by the general public or the state?
- Rights, Retributivism and Restorative Justice: What consequences does a right-based understanding of criminal law have for your practice of punishing people?

Organization and Contact

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