

What's wrong with "penal populism"? Politics, the public, and penological expertise.

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The Asian Criminological Society 12th Annual Conference (ACS2020), hosted by Ryukoku University, was held online for four days from June 18 to 21, 2021. The purpose of the conference, the second of its kind to be held in Japan after the 2014 Osaka conference, was to promote the growth of criminology in Asia and Oceania, and to promote academic exchange with advanced regions of criminology such as the United States and Europe.

The overall theme of the conference is "Crime and Punishment under Asian Cultures: Tradition and Innovation in Criminology". The aim was to promote understanding of the social systems and culture and measures against crime and delinquency in Japan, which is said to be "the country with the least crime in the world".

The following is a summary of the Keynote Session with Q&A Session, which was held live streaming at the conference.

Abstract

This keynote address discusses "penal populism" and its conflict with criminological expertise in the process of policy-making.

My talk considers the proper balance between professional expertise and community sentiment in the formulation of penal policy – especially in respect of policy measures where moral rather than instrumental considerations are involved. It raises theoretical questions about the nature of "public opinion" – does it exist other than as an artefact of survey instruments? – and its proper role in a democratic polity. It briefly discusses the

historical conditions that have brought “penal populism” to prominence as well as institutional and comparative questions about its varying capacity to shape policy.

Lastly, it considers the professional responsibility of penal experts in relation to policy formation and political debate. The performance of public health experts during the Covid pandemic will be briefly considered as an instructive case in point. Can criminology establish itself as a credible form of social scientific knowledge worthy of public trust? And how should criminologists comport themselves when engaging with questions of public policy and political controversy?

Summary of the Q&A Session

Question1: In criminology, what counts as evidence is fiercely and dogmatically contested.

What do you consider to count as criminological evidence?

Answer1: My own view is that different types of questions require different types of methods to answer them. I don't think that there is one methodology that provides us with reproduced, replicated, solid evidence but I do think that criminological research over time has produced enough in the way of quite basic understandings about crime, control and punishment that we could do a lot to move public opinion and commonsense in the direction of a "reality of congruence".

Question2: Concerning the analogy with the health sciences, the objects of the social sciences can make it difficult to speak about general truths. How should we deal with the issue of context specificity?

Answer2: Certainly, there are context specific human interactions that need to be taken account of. Most criminology is national-based and most variation is cross-national. So, we don't have to be global in our generalisations; most of the policies that we are dealing with are national or local. My examples were all very general and very simple, but my general point is that when criminologists are often asked to comment on a new law, or they are asked to respond to the cause of a high-profile crime, or comment on a new trend. Often, we tend to give very specific answers and often answers which are oriented towards our own political preferences. I'm suggesting that these are opportunities to repeat some basics on the way to responding to whatever the reporter is asking about. And what was so impressive and disciplined about the public health experts during the epidemic was that they were asked all sorts of different questions but they nearly always held that question off, repeated the basic message that they wanted to get across to the public, and then they came back to the original question and said something relevant at the end. Through basic information, repetition and reinforcement by many different spokespeople would eventually become commonsense, and that is what happened. So when criminologists engage with the media, we should take advantage of these

opportunities and do the same.

Question3: In attempting to change public opinion in the digital age, how do we get beyond the problem of social media ‘bubbles’, to speak to and influence those populations who are least receptive and distanced from us?

Answer3: The question is really fundamental and it gets to some of the biggest challenges that our democracies face today because the availability of generally agreed, factual, evidential basis for any kind of policy are disappearing in the world you are describing. To be honest, if I had the solution I would probably be working in the White House. But actually, we have a slightly different problem too. In American or British criminology, there is little real internal ideological debate. By and large, most criminologists are liberal to left-of-centre, and most of the conversations that take place are critical rather than supportive of criminal justice policy, and as a consequence, it is almost as if the criminological establishment exists as a critical opposition to the policy making process. I think that the discipline is lacking in the kind of robust conversation with ideological opponents that is necessary in the political realm because there are very conservative crime policies that exists out there but we don't fully understand the sentiments and urgency behind them when we think they are just stupid or uninformed.

Question4: How can countries move away from penal populism where experts are marginalized? Do you think we need to have a crises like COVID-19 or mass incarceration reaching a breaking point in order for experts' views to be valid?

Answer4: That's a difficult and good question. I think that there is a tension between competing forces rather than a situation where penal populism completely dominates and expertise has been vanquished. I don't know of any government, even the USA under Donald Trump, where the civil service and policy makers etc. were entirely ignoring criminological evidence and expertise. It was often just that high profile interventions, proposals and laws would be passed despite expert objections against all the evidence because they were populist. In other words, there would be moments where populist policies prevailed and there would be breakthrough instances where a

populist policy seemed to be setting the agenda. But it was never the case that it was 100% populism and 0% expertise. So I think it is always the case that even in moments of populist success, expert criminological advice to policy makers continues there in the background. If we criminological experts are correct, the failure of policies which are not based on evidence and which are ill-judged and which are punitive but not effective, will become more evident over time. The possibility of returning to or revising in the light of these failures becomes a possibility. Of course, we could get to a point where failures are not recognized by the government, just like how Donald Trump has never recognized that he lost the election, and we could be in a situation where everybody in power agrees to ignore the failure and to continue with it... in that case, your question about a crisis, a moment where the “business as usual” suddenly stops because of a disruption, and that’s an occasion to wake up and rethink the role of populism and expertise, that may be right. I don’t think we have got to that point yet, and until such a time, I think that competing in the public sphere for trust, legitimacy and persuasiveness is one of our roles.

Question5: What are your thoughts on the divide between academic vocabulary and the normal population? Do we need to look at the terms and definitions we are using and revise them to make them more understandable?

Answer5: I think that’s a great point and I should have made it myself in my talk because I think one of the things that public health experts did was, they were always accessible, clear and expressed their information using non-jargon. Much of the time they were dealing with epidemiological developments or even developments in terms of genetics and biochemical processes and explaining how the vaccines are working. They generally succeeded in doing the work of translating faithfully from a scientific language, which has every reason to be technical and precise and have its own terms and definitions, into a popular idiom which was understandable and immediately accessible but nevertheless still connected to, and reliably conveyed, the scientific information they were trying to get across. I do think that that many of us are guilty of jargon-laden technical language and we no longer value to the extent we ought to the stock and trade of the public intellectual which is to be

able to get across complicated ideas in direct, simple language. Sometimes, there are terms which have a particular meaning and when you use that you trip up people and you have to explain it. But the idea of emphasizing clarity of communication and accessibility of language I think that is really important. It makes a lot more sense to be clear and accessible and not to talk in technical jargon when you can possibly avoid it and when you can't, to explain the jargon.

Question6: How can you explain a decreasing crime rate in an era of penal populism?

Answer6: It's a very good question. These are two different kind of phenomena. So, the era of penal populism, what does that mean? By and large when we talk about an era of penal populism we are talking about a shift in the style of political argument, in terms of measures and legal enactments, like "three strikes and you're out", "truth in sentencing", or "Megan's law", some kind of moment when a populist style of argument delivers a successful enactment of law. Questions about why crime is rising or why crime is diminishing are typically at a real distance from these developments and are explained by factors which have little to do with populist matters. So the kinds of mechanisms which lead to the reduction of crime might have something to do with shifts in policing and shifts in the likelihood of apprehension etc.; it is very unlikely to have something to do with the increased severity of punishment for repeat offenders. In other words, the processes that affect rates of crime are typically quite different from the phenomena of penal populism as a form of discourse and penal populist laws as a form of enacted policy. So the relationship between one and the other... I would say there is a relationship but you are quite likely to get a rise of penal populism when crime seems to be rising and expert opinion seems to have not done much to stop it from rising which is what I believed happened in the 1990s, with higher rates of crime invoking and enabling a politics of populism discourse. But the other way round, I don't think that the cause and effect relationship exists. So when populist discourse produces some laws I don't think that then drives down the crime rate, I think there are many other things going on.

Question7: There are a few differences between criminology and the health sciences, two in

particular. First the health sciences have been around a lot longer than the social sciences and criminology, and second, the health sciences have a fairly universal agreement on what constitutes health. So the health of the body is very different to the health of the social body. So there are always differences of opinion, normative issues, of how the world should be organized. So does that make the analogy between the health sciences and criminology problematic?

Answer7: The premise of your question is right. However, I don't think that public health is committed to a maximization of the health of the population in complete disregard of all sorts of other considerations. In other words, public health is always also trading off the maximization of our physical health against the concern not to disrupt the social activities and social preferences of human beings in a society. Criminologists' relationship with crime is by and large that criminology is interested in contributing to understanding and controlling crime, minimizing crime, and minimizing the harm of crime, but of course not entirely, not in the sense of suppressing crime altogether if it means trading off repressive punitive measures. So there is in public health a sense of promoting public health but not at any cost, and in criminology there is a sense of reducing crime but not at any cost. To that extent the analogy holds. So whilst I agree with you that what ideas of what is a healthy body and what is a healthy society, that these are very different in terms of their level of agreement, there is nonetheless an analogy between what public health and criminology are doing. Both of them are interested in bringing about an improved health but not at any cost and always in consideration of, and balanced against, the costs of producing health or the 2021.07.30 David Garland other values that go along with controlling crime.

Recorded by David Brewster