Symposium on Criminalization

R. A. Duff

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The last few years have seen a revival of interest in the normative question of criminalization—in the enterprise of trying to develop some plausible set of principles, criteria or considerations that could guide lawmakers in deciding what kinds of conduct should be defined and treated as criminal. Joel Feinberg’s magisterial four-volume *The Moral Limits of the Criminal Law* in the 1980s set the agenda for much of the next decade,¹ although Jonathan Schonscheck’s unjustly neglected *On Criminalization* suggested a different, subtler approach,² while the work of such critical scholars as William Stuntz forced academic attention onto the complex and messy reality with which normative theorising must engage.³ A new impetus to the debates was given by the publication of Doug Husak’s much discussed *Overcriminalization* in 2008,⁴ which proposed an original approach to the task of identifying principles that could guide, and especially constrain, legislators in making criminal law. This was followed in the next few years by at least four other books on criminalization: one offered a revised, sophisticated version of a Feinbergian approach to the issues⁵; two offered critical comparisons of common law (Anglo-American or Australian) and German theorising⁶; another sought constitutional limits on the expansion

¹ J Feinberg, *Harm to Others* (1984), *Offense to Others* (1985), *Harm to Self* (1986), *Harmless Wrongdoing* (1988), all published by Oxford University Press (New York).

² J Schonscheck, *On Criminalization: An Essay in the Philosophy of the Criminal Law* (Dordrecht: Kluwer, 1994).

³ Work that culminated in the posthumously published W J Stuntz, *The Collapse of American Criminal Justice* (Cambridge, MA: Harvard University Press, 2011).

⁴ D N Husak, *Overcriminalization: The Limits of the Criminal Law* (Oxford: Oxford University Press, 2008).

⁵ A P Simester and A von Hirsch, *Crimes, Harms and Wrongs* (Oxford: Hart Publishing, 2011).

⁶ N Persak, *Criminalising Harmful Conduct* (Dordrecht: Springer, 2007); C Lauterwein, *The Limits of Criminal Law* (Farnham: Ashgate, 2010).

of criminal law.⁷ Successive editions of Andrew Ashworth's influential *Principles of Criminal Law* have also tackled the issue of criminalization.⁸ Meanwhile, the UK Arts and Humanities Research Council funded a 4-year collaborative project on *Criminalization*, which held a number of conferences, workshops and meetings, and has produced four volumes of papers on different aspects of the topic.⁹

Earlier versions of the papers in this symposium were delivered and discussed at a workshop at the IVR World Congress 2011 in Frankfurt, held under the aegis of the AHRC Criminalization project and the *Forschungsstelle für Strafrechtstheorie und Strafrechtsethik* (which offered some generous financial support). They tackle a number of key questions in the criminalization debate, in particular questions about the role of moral wrongfulness among the criteria or conditions of justified criminalization, and the significance of ideas of political community. One benefit of the workshop, held as it was as part of a world congress, was that it helped to foster conversations between Anglo-American and continental European theorists (and thus between common law and civil law traditions of thought)—conversations whose continuation and strengthening can only help us to grapple with the deep problems that beset our systems of criminal justice.

⁷ D Baker, *The Right not to be Criminalized* (Aldershot: Ashgate, 2011).

⁸ See A J Ashworth and J Horder, *Principles of Criminal Law* (7th ed.; Oxford University Press), esp. ch. 2.

⁹ R A Duff, L Farmer, S E Marshall, M Renzo, V Tadros (eds), *The Boundaries of the Criminal Law* (2010), *The Structures of the Criminal Law* (2011), *The Constitution of the Criminal Law* (2013), *Criminalization: The Aims and Limits of the Criminal Law* (2014), all published by Oxford University Press.