

The Future of Criminal Law as a Global Discipline:

The Liberal Project, the Persistence of the Penal Paradox, and the Role of Legal Scientists

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Criminal law scholarship has become a lot less parochial over the last fifty years. But it still has a long way to go on its way to becoming a global discipline. Related disciplines like criminology and criminal justice remain far ahead. Law as a whole lags behind other disciplines that define themselves as social sciences or humanities (not to mention the natural and physical sciences), which have long been less concerned about insisting on domestic boundaries.

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Many thanks to the editors of the *Bergen Journal of Criminal Law & Criminal Justice* and, especially, to Íñigo Ortiz de Urbina Gimeno for soliciting comments on 'New Legal Science in the Dual Penal State: Critical Analysis of Law and the Legitimacy of State Power' (Dubber 2025), and to the comments' authors for writing them. I'm also grateful to the commentators on versions of the paper that have appeared in other languages so far (Manuel Cancio Meliá, Stefano Manacorda, Thomas Weigend) and to participants in events at the Faculty of Law, University of Lisbon, July 2-3, 2026. Rather than attempt to respond to comments individually, this essay shares some thoughts on the future of criminal law prompted by the comments collectively, in the hope of joining their authors in the attempt to move our discipline forward.

Perhaps law—and criminal law in particular—will always remain more parochial than other disciplines, and perhaps that's as it should (or even must) be.¹ Still, there's plenty of work to do to make criminal law as non-parochial as it can be. And, of course, to expand and diversify the enterprise of criminal law doesn't mean that parochial criminal law would become less important, or even that the only way to do criminal law is to do it globally. Some issues in criminal law are local, but not all are.

Making room for a global—or at least non-parochial—discourse about criminal law makes sense for several reasons. One is that, as with any other discipline, the more and the more diverse, the merrier. Everyone working on criminal law will benefit from the ideas, insights, discoveries, and perspectives that new members will bring to the table. This works on all dimensions: location, age, gender, race, ethnicity, etc. Also, as with any other discipline, it is high time the Academic North recognized its historical, institutional, financial, etc. privilege and opened up the halls of academe to those who happen to live in the Academic South, often working under conditions that would cripple colleagues who happen to live in the Academic North. The radically unequal access to primary and secondary sources is only one example, with one portion of the Academic World having access to millions of materials at the click of a mouse while the other is working in relative resource darkness.

And in the case of criminal law, we need all the help we can get. It concerns itself with the most violent, intrusive, and facially illegitimate mode of state power, which—on its face—commits stalking, harassment, trespass, assault, battery, kidnapping, robbery, (false) imprisonment, and (in some countries) murder against the very people it represents, all of this in the name of law (the penal paradox). We have made very little progress in coming up with anything resembling a widely accepted and convincing justification for this daily explosion of state violence, after centuries or millennia of trying (but not very hard), depending on who is counting. Instead of facing this challenge of justifying the *prima facie* unjustifiable, we have continued to wield the state's penal power with catastrophic consequences for millions upon millions of people, and especially for people of color and other disadvantaged populations, around the globe – with the most powerful and richest country of the Academic North leading the way.

In the end, a non-parochial approach to our subject matter might also help all of us, no matter where we might be, to appreciate our role—as criminal law scholars—in modern liberal democracies where contributions to public discourse about state power are—or are supposed to be—measured by their substance rather by whatever claim to expertise (or some other status or marker of superiority) their author might make (or presume).

1 See Dubber (2019).

Expertise (or at least academic degrees and titles) in criminal law should give us a leg up in the competitive marketplace of ideas, simply because we should know more things better than others. But it shouldn't entitle us to see our role as disseminating our expert discoveries, analyses, or prescriptions to non-experts (including, in some jurisdictions, constitutional court judges insufficiently deferential to the discoveries of criminal law science²) whose role would be to record and implement them, and with thanks.

The 'New Legal Science in the Dual Penal State' paper builds on previous attempts to create the conditions for the development of criminal law as a global discipline where contributors (scholars, but not only scholars) from around the world, and from across blocs (notably the civil law and common law blocs), engage in a productive exchange of ideas among equals.³ These attempts to lay the foundation for a common discipline—by making available (in the current academic lingua franca, English) a canon of shared foundational texts, primary and secondary materials, and other resources, including a snapshot of criminal law scholarship worldwide, in print and online⁴—proved insufficient. While individual and continuing forums provided opportunities for exchange—or at least the collection of various approaches to a range of issues—the emergence of sustained dialogue at a non-parochial level remained elusive.

Perhaps that most dreaded of exercises in academic navel gazing, methodological (self-)reflection, could help. After all, at least when it came to the distinction between the common law and civil law blocs—which had long outlived much of whatever usefulness they might have possessed as a matter of substance—one formal, i.e., methodological, distinction remained: that criminal law scholars in one bloc (common law) had long ago abandoned the notion of 'legal science' that remained unquestionably central to the self-understanding of the other (civil law). The paper, by pointing out this persistent methodological distinction and suggesting a way of addressing it, aims to help criminal law get over the hump on its way to non-parochial discourse in a common discipline committed to a common aim: facing the enormous challenge of developing and maintaining a comprehensive critical analysis of the state's penal power.

2 Cf. BVerfGE 120, 224 (2008) ((ir)relevance of 'Rechtsgut' principle for constitutional analysis).

3 On the distinction between multilateral and horizontal as opposed to unilateral and vertical 'comparative criminal law,' see Dubber (2018 & 2019).

4 See Dubber/Hörnle (2014a) (textbook including primary and secondary materials from U.S. and German criminal law, including cases, most available in English for the first time); Dubber/Hörnle (2014b) (global snapshot of criminal law scholarship); Dubber (2014) (shared canon of foundational materials, with commentary, several available in English for the first time); see also Dubber (2009) (comparative online resources for teaching, research, reform).

Whether addressing the distinction between ‘*absolutely* doing criminal law science’ and ‘very much *not* doing criminal law science’ meant overcoming it—by everyone or no one doing criminal law science—or downgrading it to a manageable—and perhaps even productive—tension within a common discipline made no difference. The point was to chart a path toward a common discipline no matter by what name: call it whatever you like, science, new science, old science, or no science at all, as long as it gets all those hands on deck we need to do our critical (in both senses of the word) job better than we have been for the past two hundred years or so (depending on whenever you think state penal power morphed from a too-obvious-for-words manifestation of sovereignty to the state action that was both most illegitimate on its face and most in need of legitimation).

Besides highlighting and problematizing the methodological distinction—along with related differences in professional and even societal self-identification and -classification—based on the notion of legal science, ‘New Legal Science in the Dual Penal State’ illustrates what critical analysis of penal law in modern liberal states might look like, using the dual penal state approach as an example. This approach regards state penal power as characterized by the tension among two mutually contradictory yet interdependent modes of penal governance, law and police, that are grounded in autonomy and heteronomy, respectively.⁵

These two parts of the paper, New Legal Science and Dual Penal State, are not necessarily connected. The second part is simply one illustration of the analysis presented in the first. They are also both contestable. The paper aims to stimulate thought and encourage action regarding the transformation of criminal law into a global discipline, not make an airtight case for either its (main) methodological or its (illustrative) substantive part.

Take, for instance, the suggestion that a common non-parochial discipline of criminal law focus on the shared challenges faced by Western modern liberal democratic states. The limitation to Western states is contestable because it suggests that the new discipline of criminal law wouldn’t be ‘global’ after all. Here I think it’s important not to bite off more than we can chew. Even a project that includes ‘Western’ states would cover a lot of ground. It’s also unclear just what ‘Western’ means in this context. Similar questions arise with respect to ‘modern’, ‘democratic’, and even ‘state’. Perhaps more so than in the case of ‘Western’, attempts to answer these questions would be an important part of New Legal Science, or whatever we want to call the kind of criminal law discipline we want.⁶

5 See Dubber (2018).

6 See Sekhri (2026) (India).

But let's focus on the word 'liberal' for the moment. Much has changed about the 'liberal project', pretty much however we define it, since I started discussing the idea of a New Legal Science with colleagues in various countries some two decades ago. In fact, much has changed even since 'New Legal Science in the Dual Penal State' appeared in early 2025. However much sense it might have made in, say, the year before Brexit or the first election of Donald Trump, the liberal project today, on July 4, 2026, is under siege worldwide. And even if we can make out pockets of a liberal ideal of the state in some parts of the world, and that's a big If, the inclusion of the United States among countries that are committed to a liberal conception of state power is today even more questionable than it would have been ten years ago.⁷

The pursuit of a non-parochial discipline of criminal law built on a common commitment to the liberal conception of the state could survive without the U.S. It couldn't survive if liberalism is dead everywhere. And the paper wouldn't survive either way, since it turns on a comparative analysis of U.S. and German criminal law.

That comparative analysis, compressed into two impressionistic lists,⁸ is also highly contestable. Still, two caricatures are better than one. The point was to capture some features of both U.S. and German criminal law while also making the point that this paper was not arguing for the superiority of one country over the other (U.S. vs. Germany) or—even worse—one bloc over the other (common law vs. civil law). After all, it would have been ironic for a paper calling for a common discipline of criminal law that overcomes parochial distinctions between countries and blocs to express a preference for a given country or bloc. Both systems are flawed, in different yet similar ways.

Perhaps, then, the path to a common discipline of criminal law in modern liberal democratic societies will not run through the countries standing in (imperfectly) for the common law and civil blocs,⁹ having divided the global criminal law world into complementary zones of influence—substance for Germany, and procedure for the U.S.—within which each feels entitled to lecture other countries, rather than participate in a horizontal exchange of views among equals. Perhaps this common horizontal discipline will emerge not—or at least not initially—at a global (or at least broadly international) level, but on a smaller scale in various regions across the world, which—for different reasons—have the potential to coalesce around a shared project of tackling the challenge of liberal criminal law, beyond the reach of the traditional ideological criminal law empires.

7 On American international penal exceptionalism, see, e.g., Garland (2025); Whitman (2003); but see Dubber (2018) pt. III (internal exceptionalism).

8 Dubber (2025) pp. 6-7 (Germany), pp. 7-9 (U.S.).

9 See Gruber (2026); Hilgendorf (2026).

Possible candidates include the Nordics (which have long sought to carve out a collective position at an angle to the common law and civil law blocs, and Anglo-American and German criminal law in particular),¹⁰ Latin America (or, more broadly, Ibero-phone countries including the former imperial metropolises, Spain and Portugal, plus perhaps Italy),¹¹ Central and Eastern European countries (to the extent they are forging a new path against the historical backdrop of the influence of German and Soviet criminal law),¹² and India and other South Asian countries (again ironically united by their shared colonial heritage, in particular the Indian Penal Code imposed during the British Raj that remains—if renamed—in force to this day).¹³

Finally, and unexpectedly, there is human rights law. Operating at a potentially global—and at least regional international—scale, with no legal scientific pretense or claim to expert status, in uncomfortable but familiar proximity to the *realpolitik* of competing sovereigns, and with an essential commitment to horizontal and inclusive discourse, human rights law may provide criminal law with a disciplinary *modus operandi* to address issues that cut across not only domestic criminal law systems but also criminal law and human rights law.¹⁴

10 See Nuotio (2026) & Mindeststrømmen (2026); Nordic Criminal Law as a Normative Project: A Book Forum (2024).

11 See Di Corleto (2026) & Teixeira (2026); Manacorda (2026).

12 See Błachnio-Parzych (2026).

13 See Sekhri (2026); Sekhri (2024).

14 See, e.g., International Commission of Jurists et al. (2023); cf. Di Corleto (2026).

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