

# **Justice without Retribution III**

**Ghent University, Faculty of law**

**June 2 & 3, 2017**

## **ABSTRACTS**

**Organizing committee: Farah Focquaert, Jan Verplaetse, Sigrid Sterckx (local hosts)**

**The conference is an initiative of the Justice without Retribution Network, the Faculty of Law Ghent University, and Bioethics Institute Ghent**

**Speakers and their talks:**

**DERK PEREBOOM**

**TITLE:** Incapacitation, Reintegration, and Limited General Deterrence

**Abstract:** My overall aim is to set out a theory of treatment of criminals that (1) rejects retributive justification for punishment; (2) does not fall afoul of a plausible prohibition on using people merely as means; and (3) actually works. The theory can be motivated by free will skepticism, but can also be supported without reference to the free will issue since retributivism faces ethical challenges in its own right. In past versions of the view I've emphasized the quarantine analogy for incapacitation together with the value of rehabilitation and reintegration. In this talk, I pay special attention to the permissibility and the limits of general deterrence.

**ADRIAN RAIN & OLIVIA CHOY**

**TITLE:** Benign Biological Interventions to Reduce Offending

**Abstract:** A considerable body of evidence now documents beyond reasonable doubt biological and health risk factors for crime and violence. Nevertheless, intervention and prevention efforts with offenders have avoided biological interventions, in part due to past misuses of biological research and also the challenges that biological predispositions to crime raise. In this talk we selectively review this prior literature and outline results of two biological interventions – omega-3 and transcranial direct current stimulation – that may show some initial promise. Perspectives on the viability of these interventions will be outlined. Ethical implications that will be raised include issues related to safety, risk and benefit, boundaries of behavioral manipulation, and informed consent in offender populations.

**BRUCE WALLER**

**TITLE:** Beyond Moral Responsibility to a System that Works

**Abstract:** The retributive system of just deserts is built on an implausible foundation of individual moral responsibility. Whether libertarian or compatibilist, sustaining belief in moral responsibility requires hard limits on deeper inquiry into the causes of behavior. When we reject moral responsibility and blame and shame, we open the door to better understanding together with better methods of promoting socially desirable behavior. Those methods have been tested -- and have proved their worth -- through innovative programs in industry, hospitals, and prisons, and their benefits can be observed writ large in cultures that are moving away from moral responsibility.

**JONA SPECKER & FARAH FOCQUAERT**

**TITLE:** Forensic Practitioners' Expectations and Moral Views Regarding Neurobiological Interventions in Offenders with Mental Disorders

**ABSTRACT:** Neurobiological and behavioural genetic research give rise to speculations about potential biomedical interventions to prevent, contain, or treat violent and anti-social behaviour. These developments have stirred considerable ethical debate on the prospects, threats, and limitations of integrating neurobiological and behavioural genetic interventions in forensic psychiatric practices, yet little is known about how forensic practitioners perceive these potential interventions. Finding out to what extent forensic practitioners envision a role for such biomedically informed interventions, as well as how they morally view such interventions, is interesting in itself. Additionally, their observations and normative considerations may provide a welcome addition to the oftentimes highly speculative bioethical debate on 'moral bioenhancement', in which potential biomedical interventions aimed at improving morally relevant abilities or countering immoral tendencies are being discussed.

In our talk we will report on a qualitative interview study in which we asked about: (i) the extent to which these practitioners expect that effective biomedical interventions will be developed and integrated in their daily work practice; and (ii) their normative views concerning those potential biomedical interventions. We focused on: potential biomedical possibilities to lower aggression, the possible usage of neuroimaging in assessing legal responsibility, and the potential use of biomarkers in assessing risk for future violent and antisocial behaviour. Furthermore, we interviewed forensic practitioners about questions related to the moral dimensions of forensic psychiatric practice: do they consider moral development and progress (implicitly or explicitly) a part of their professional practice? And how do they balance safety and risk management concerns with the interests and well-being of the individual patient they are working with?

### **CHRISTOPH BUBLITZ**

**TITLE:** Freedom of the Criminal Mind

**Abstract:** The possibility to intervene into minds of offenders or supposedly dangerous persons through psychological and neurobiological methods to raises a host of normative questions, e.g., about the legal protection of the human mind. I shall argue that a strong human right, which I summarily call a human right to mental self-determination, protects offenders or supposedly dangerous persons against involuntary interventions, for preventive or rehabilitative purposes. Because of this right, having immoral or deviant thoughts or emotions is allowed, by law. Furthermore, this right blocks thorough alterations of the moral character of offenders or dangerous persons. Accordingly, neuro-interventions should be permissible only in exceptional conditions, if no less restrictive alternative is available.

### **JOHN CALLENDER**

**TITLE:** JUSTICE WITHOUT RETRIBUTION AND THE VICTIMS OF CRIME

**Abstract:** The main focus of deliberation in relation to justice without retribution has been the just treatment of offenders in the light of scepticism about free will and responsibility. This paper will consider the matter from the perspective of the victims of crime. This is an important issue for several reasons. Justice is often conceptualised in relation to whether victims feel that punishment of the criminal is commensurate with the harm that has been caused to them. There is considerable overlap between the populations of offenders and victims of crime. One reason for this is that crime can be a consequence of prior victimisation. Consideration of the plight of victims may shed light on the causes of some forms of criminal behaviour and provide guidance on how best to respond to these. Finally, only a few people commit serious crimes but most

people fear that they might be a victim of crime. Public opinion and hence public policy changes will be driven more strongly by identification with the interests of victims than by concern with the rights of offenders.

The presentation will be based on the case of young woman. Her problems began when she was raped at the age of 15. She responded to this with a range of antisocial and self-destructive behaviours. These culminated in her being imprisoned four years later. After several months of incarceration, she committed suicide by hanging.

One recognised consequence of traumatic experiences is re-traumatization, in which victims of trauma inflict further harm on themselves and on other people. I will discuss the psychological mechanisms that can drive this 'contagion' of harm, especially harm that is caused by criminal acts. I will argue that a major role of the criminal justice system should be to respond in ways that help to prevent post-traumatic symptoms and the propagation of harm. This is a potential benefit of restorative justice procedures which give victims a role in determining how the damage caused by criminal behaviour should be repaired. This will sometimes require that the offender is subjected to punishment as part of the process of making good the harm the harm that has been caused. I will discuss whether this is retribution by another name and if so whether we can relinquish retribution without detriment to justice and to the interests of victims.

#### **KATY DE KOGEL**

**TITLE:** Neuroscientific applications in the juvenile criminal justice system: more free or more fenced in?

**Abstract:** In the last decennia, knowledge about neurobiological factors in relation to antisocial behavior has grown. However, current assessment and interventions within the criminal justice system are based on psychosocial models, leaving out biology. Therefore, we made an inventory of possible neuroscientific applications that can already be used – as pilots in practice- within the juvenile criminal justice system. Combining neuroscientific and psychosocial information could aid in establishing *biopsychosocial profiles*, which could be used to assess risk, plan and evaluate interventions, or enhance treatment and supervision. Neuroscience, also in combination with new techniques, such as wearables, have the potential of a more personalized approach, putting juveniles more in 'the driving seat' of their lives. Issues with regard to knowledge transfer, neuro-myths, privacy and other ethical aspects could however could spoil this if not adequately dealt with.

**GWENDOLINE ADSHEAD**

**TITLE:** Change not retribution: therapeutic approaches to changing violent minds

**Abstract:** In this talk, I will suggest that violence often represents a disturbance of thinking; and that in theory therapies might be developed that can assist offenders to change their minds with a view to giving up violence. I will discuss disturbances of thought in offenders and potential therapeutic interventions; some of which are now available in prisons and secure hospitals. I will explore what our response should be to people who do not seem to want to change.

**PAUL RUSSELL**

**TITLE:** Naturalism, Genealogy and Responsibility Scepticism

**ABSTRACT:** This paper is concerned with a central strand of P.F. Strawson's effort to show that scepticism about moral responsibility is impossible. Strawson's argument is complex but one crucial aspect is the claim that, given our human nature, we are naturally and inescapably committed to reactive attitudes. I argue that although there are significant features of this argument that are seriously flawed, Strawson presents an interesting challenge to the sceptic - one that demands more careful consideration. This challenge takes the form of the question why human beings are liable or prone to reactive attitudes if tokens of them are always inappropriate or unjustified (and never were or could be justified)? I consider some possible hypotheses that the sceptic might offer in reply to this challenge and pay particular attention to a genealogical account that suggests that our liability to emotions of this kind is a product of a particular (modern, Western) cultural history, and not something that is basic or universal to human nature. I go on to argue that although this "subversive" genealogical account is illuminating and convincing as far as it goes, it is, nevertheless, incomplete in important respects. A more complete or fully adequate genealogical story, I maintain, would serve to vindicate Strawson's core claim about our natural commitment to the reactive attitudes.

**GREGG CARUSO**

**TITLE:** Free will skepticism and public health-quarantine model: replies to objections

One of the most frequently voiced criticisms of free will skepticism is that it is unable to adequately deal with criminal behavior and that the responses it would permit as justified are insufficient for acceptable social policy. This concern is fueled by two factors. The first is that one of the most prominent justifications for punishing criminals, retributivism, is incompatible with

free will skepticism. The second concern is that alternative justifications that are not ruled out by the skeptical view *per se* face significant independent moral objections. Despite these concerns, I have recently argued that free will skepticism leaves intact other ways to respond to criminal behavior—in particular incapacitation, rehabilitation, and alteration of relevant social conditions—and that these methods are both morally justifiable and sufficient for good social policy (Caruso 2016; Pereboom and Caruso 2017). The position I defend is similar to Derk Pereboom's (2001, 2014, 2016), taking as its starting point his quarantine analogy, but it develops the quarantine model within a broader justificatory framework drawn from public health ethics. The resulting model—which I call the *public health-quarantine model*—provides a framework for justifying quarantine and criminal sanctions that is more humane than retributivism and preferable to other non-retributive alternatives. It also provides a broader approach to criminal behavior than Pereboom's quarantine analogy does on its own since it prioritizes prevention and social justice.

I will begin by briefly summarizing my public health-quarantine model—for more details on the model, however, see Caruso (2016) and Pereboom and Caruso (2017). Then I will respond to several criticisms that have been raised by Michael Corrado (2016, forthcoming), Stephen J. Morse (2017), John Lemos (2016), Saul Smilansky (2011, 2016), and others. In particular, I will address concerns about proportionality, human dignity, victims' rights, rehabilitation, cost, the incapacitation of innocent people, and replacing punishment with punishment. I will argue that each of these concerns can be met and that in the end the public health-quarantine model offers a superior alternative to retributive punishment and other non-retributive accounts.