

Christophe Vandeviver – Ghent Uni.

A Conflict Theoretical Approach to the Amendment of the Belgian Penal Code of 20 December 2006 with a View of a Stricter Punishment of Violence Committed Against Certain Categories of Persons

Contents

1. Conflict theory and the construction of criminal law
2. Methodology
3. The law of 20 December 2006
 - A. Content
 - B. Discussion in the Chamber of Representatives
 - C. Discussion in the Senate
4. Analysis
 - A. Underlying principles
 - B. Conflict as the driving force of criminal law construction
 - C. Social groups and the content of criminal law
 - D. Criminal law for the protection of economic interests
 - E. Criminal law as a confirmation of positions of power
 - F. The construction of consensus and the legitimization of penalization
5. Conclusion

1. Conflict theory and the construction of criminal law (1)

- CHAMBLISS, W. (1976). The State and Criminal Law. In W. Chambliss & M. Mankoff (eds), *Whose Law. What Order? A Conflict Approach to Criminology* (pp. 66-106). New York: John Wiley & Sons Inc.
- Construction of criminal law is complex and rooted in the unequal distribution of power and ensuing conflict

1. Conflict theory and the construction of criminal law (2)

- Distribution of power & construction of criminal law
 - Classes that control the economic resources of society are most dominant (e.g. vagrancy laws)
 - Bureaucracies (e.g. American drug laws)
 - Lobby groups (e.g. prohibition)

1. Conflict theory and the construction of criminal law (3)

- Conflict & construction of criminal law
 - Latent conflict: social and economical elites safeguard their interests
 - Manifest conflict: polity wants to guard status quo and creates the illusion that the origin of the conflict is dealt with
 - In between conflicts: social groups with less power will be able to expand their power

2. Methodology (1)

- Why conflict theory?
 - Specific view on society – social stratification
 - Less deterministic use of key concepts (cf. neomarxist paradigm)
 - Conflict & active role of the powerless
 - Conflict & changing power relations
 - Conflict & uncertain outcome
 - Conflict, the mobilization of bias and the construction of criminal law

2. Methodology (2)

- Law of 20 December 2006 & all parliamentary proceedings relating to that law
 - Chamber of Representatives & Senate
 - Bill, proposed amendments, record of the discussion in both committees, record of the discussion and passing in both chambers

- Drawbacks
 - Only official records – no additional research
 - Off the record? Corridor chat? Lobby groups? Media influence?
 - Only one researcher
 - Interpretation issues?
 - No integration of theories

3. The law of 20 December 2006

- A. Content
- B. Discussion in the Chamber of Representatives
- C. Discussion in the Senate

3.A. Content (1)

- Stricter punishment of violence committed against certain categories of persons while they actually practice their profession
 - Members of the public authority and public force
 - Certain professional groups
 - Members of personnel from educational institutions
- By means of:
 - Introducing new aggravating circumstances
 - Raising the minimum penalty

3.A. Content (2)

- Assault on members of public authority and public force
 - Include: members of legislative branch; members of the Constitutional Court; magistrates/officers of the public force in active service; ministerial officials; agents of the public authority/public force
 - New aggravating circumstances; aggravated assault

3.A. Content (3)

- Violence against certain professional groups
 - Include: drivers, (ticket) inspectors and counter clerks of public transportation; mailmen; firemen and members of civil security; paramedics, doctors, pharmacists, nurses and receptionists working at emergency rooms; social workers and psychologists from public services
 - Raising the minimum penalty

3.A. Content (4)

- Violence against members of the personnel from educational institutions
 - Include: members of the personnel or management from educational institutions; individuals responsible for the reception of pupils in medical-pedagogic institutions; individuals responsible for the prevention or solution of violence at school
 - Raising the minimum penalty

3.B. Discussion in the Chamber of Representatives (1)

- Four important phases:
 1. The original bill put forward by the Government
 2. Fifteen amendments
 3. Discussion in the Committee of Justice of the Chamber of Representatives
 4. The plenary of the Chamber of Representatives

3.B. Discussion in the Chamber of Representatives (2)

- Phase 1 – Bill of 7 June 2005
 - Alleged increase of violence against certain professional groups
 - A stricter punishment of violence committed against specific professional groups can halt this negative trend
 - Only very specific professional groups should enjoy additional protection
 - *Include:* drivers, (ticket) inspectors and counter clerks of public transportation; mailmen; firemen and members of civil security; paramedics, doctors, pharmacists, nurses and receptionists working at emergency rooms; social workers and psychologists from public services; members of the personnel or management from educational institutions and individuals responsible for the prevention or solution of violence at school.

3.B. Discussion in the Chamber of Representatives (3)

- Phase 2 – Amendments
 - Vulnerable position of police officers
 - Individuals responsible for the reception of pupils in medical-pedagogic institutions
 - Public or social service workers in general
 - Manslaughter

3.B. Discussion in the Chamber of Representatives (4)

- Phase 3 – Committee of Justice
 - Discussion
 - Vulnerable position of police officers: pro-discourse >< counter discourse
 - Only two amendments are passed
 - Members of the public force and authority
 - Individuals responsible for the reception of pupils in medical-pedagogic institutions
 - In the end, additional criminal protection for police officers is introduced

3.B. Discussion in the Chamber of Representatives (5)

- Phase 4 – the Plenary
 - Interventions remain limited and aim to emphasize the importance and necessity of the proposed law
 - The law is passed with 131 Yeas, 0 Neas and 4 abstentions

3.C. Discussion in the Senate (1)

- Three important phases:
 1. Amendments
 2. Discussion in the Committee of Justice of the Chamber of Representatives
 3. The plenary of the Chamber of Representatives

3.C. Discussion in the Senate (2)

- Phase 1 – Amendments
 - Distinction public and private sector
 - Taxi drivers
 - Verbal disrespect
 - Target of violence because of his professional activities

3.C. Discussion in the Senate (3)

- Phase 2 – Committee of Justice
 - Discussion
 - Bill lives up to the general public's expectations
 - General and special prevention function of criminal law is being opposed
 - No amendments are passed

3.C. Discussion in the Senate (4)

- Phase 3 – the Plenary
 - Only a very limited number of interventions
 - Noteworthy: *“the Senate is not to amend nor to discuss the bill and should just pass it”*
 - The law is passed with 47 Yeas, 0 Neas and 9 abstentions and send back to the Chamber of Representatives where it will be passed with unanimity

4. Analysis

- A. Underlying principles
- B. Conflict as the driving force of the construction of criminal law
- C. Social groups and the content of criminal law
- D. Criminal law for the protection of economic interests
- E. Criminal law as a confirmation of positions of power
- F. The construction of consensus and the legitimization of penalization

4.A. Underlying principles

- Central idea: violence is unacceptable
 - Violence against certain professional groups and/or members of the public force is even more objectionable
- Latent idea: safeguarding certain sectors of society
- Need for adequate protection
 - General and special prevention of criminal law?

4.B. Conflict as the driving force

- Violent conflict as immediate cause
 - *“Professional groups are increasingly confronted with physical violence”* (Minister for Justice)
- Conflict at political level
 - Legislative branch >< executive branch
 - Majority >< opposition

4.C. Social groups and the content of criminal law

- Economic sections of society
 - Bus drivers, nurses and teachers
 - Personnel from medical-pedagogic institutions
 - Taxi drivers
- State bureaucracies – law enforcement agencies
- The bar

4.D. Criminal law for the protection of economic interests

- Negative economic consequences
 - Long-term absences
 - More investments
- Need for “positive appreciation”

4.E. Criminal law as a confirmation of positions of power

- Stricter punishment of assault on members of public authority and public force
- Apparent unwillingness to adopt additional criminal protection for the police
 - Amendments Déom

4.F. The construction of consensus and the legitimization of penalization

- Ex post construction of consensus on the need of criminal law?
 - Ex ante construction of consensus!
- Law lives up to a certain need in society
- Law matches the public opinion's expectancy
- More safety without affecting anyone's liberties

5. Conclusion

- Double goal of this presentation
 - Deliver insights and understandings in the construction of criminal law
 - Continue challenge criminologists to pay more attention to the construction of criminal law