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# Radical democracy and punishing elites



**A talk by**

**Jacob Abolafia**  
**Ben-Gurion University**

**Monday, 27 May 2024**  
**From 12:15 till 13:45**  
**Room 343, Diller Bldg (74)**

With the rise of illiberal parties in heretofore stable liberal democracies across the developed world, critics on both the left and the right have begun to theorize a future for “democracy without liberalism.” For supporters of radical democracy on the right, illiberal democracy promises a legitimate form of popular rule unfettered by the international human rights regime or the neutral conception of the state; for radical democrats on the left, democracy without liberalism promises a way to overcome the ossification of constitutional veto-points and reinvigorate stalled redistribution downwards. Whatever their aims, democratic critics of the liberal order agree that lessening the liberal character of the state will, in an important sense, make it more “democratic.” One important challenge to this project is the well-known fact that “majoritarian processes all too easily lend themselves to capture and manipulation by well-organized minorities to advance their particular interests” (Shapiro and Hacker-Cordon, 1999). In this paper, I focus on one prospect of “democracy without liberalism” for improving upon liberal-democracy’s constitutional “guardrails” against elite capture – a democratized approach to criminal law.

Since the publication of Foucault (1975), the relationship between liberalism as a regime form and the structure of punishment has become almost unquestioned. Resistance to liberal penalty has coalesced under the heading of “abolitionism.” Abolitionists argued that the response to class and racial hierarchies instantiated in liberal punishment is to abolish liberal penal practices, first and foremost the prison. Against liberals on the one hand and abolitionists on the other, I argue that in fact, democratic critics of liberalism should focus not how punishment happens but on who is punished. Drawing on two examples of “democracy without liberalism” in the history of political thought, I show that radical democrats in Athens and England viewed the exemplary punishment of the wealthy as one of the chief tools of the democratic public for maintaining popular control. As one theorist of democracy without liberalism puts it “any modern democracy that cannot resort to decision making by the people if and when necessary remains vulnerable to capture by a political elite” (Ober 2017). Jury trials against wealthy and powerful figures, as a centerpiece of criminal law rather than an exception to it, can serve the role of just such an example of democratic decision making. The democratization of the criminal law is one of the easiest places to democratize legal institutions, but doing so may mean abandoning some centuries-long liberal nostrums about which crimes deserve to be punished, and how.

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