

Varia

Book review: M. Muñoz de Morales Romero, *El legislador penal europeo: legitimidad y racionalidad*, Foreword by Adán Nieto Martín, Civitas, Thomson Reuters, Pamplona, 2011, ISBN: 978-84-470-3667-7, pp. 977

Carlo Sotis^{*}

Is it possible to write a dissertation and an encyclopedia at the same time? While reading the book, devoted to research on characteristics and validity standards of the EU criminal law, it seems to be so. The courageous and recurring belief of the author is that a multidimensional reality obviously requires a multidimensional volume which provides the reader with several possibilities: a total reading of the book, a reading of some sections or a reading with the aim of developing new lines of inquiry.

The result is an extraordinarily useful and flexible work, an encyclopaedia, but with a well-defined and conducted research, that is to say a monograph where fundamental issues not dealt with in a unified framework until now are studied with originality and great attention to detail. As stated by Adán Nieto in his foreword, this volume is composed of at least three books: the first one is a book on EU criminal law; the second one deals with theory and praxis of harmonization in criminal matters and, the third one is devoted to the principle of legality in the field of Criminal Law.

The aim of the first 'book' is to present a detailed analysis on different legal and conceptual instruments which guide the functioning of the EU criminal law (i.e. new legal instruments provided by the Lisbon Treaty, an in-depth analysis on the principles of proportionality and subsidiarity). Taking as a starting point the most developed contributions to a general theory of penal harmonization, the second book is a significant contribution in terms of clarity in this field. In fact, principles for ensuring the adoption of incrimination rules are meticulously analyzed. For example, together with the aforementioned discussion on the principles of proportionality/ subsidiarity and a timely comparative analysis of the different federal systems of criminal law, a powerful reconstruction of legal devices governing networked legal systems is offered (the principle of mutual recognition, the functional equivalence standard, the national margin of appreciation, the direct effect technique, and the interpretation in conformity). This analysis, in fact, manages to identify the essential common features of the institutions explored, constituting a significant step forward in the theory of penal harmonisation in the EU.

^{*} Professor of Criminal Law, University of Macerata (Italy)

The third 'book' is focused on the principle of legal reserve in European criminal matters. The reconstruction done by the author is both original and conscientious. The research is fully convincing from both a methodological and substantive point of view. The path chosen is the analysis of the meaning of legal reserve in the enlarged EU of 27 member States, a stage of development where the fundamental decision-making institution is not (only) the State anymore. With this in mind, the thorough investigation deals in detail with the basis of the *nullum crime sine lege parlamentaria* axiom to then construct a principle composed of a series of validity factors able to satisfy the foundation upon which the idea of the legal reserve relies. Such a reflection is, consequently, translated into a careful analysis of different criteria of legitimacy and accountability which leads to the 'fair' adoption of criminal provisions. The result is, in short, an evaluation of a supranational legal reserve where the dogma of the legislator's will is replaced by the idea of how rational his/ her decisions are. In this proposal, one of the most important aspects is the link existing between the legitimacy of law-making decisions and duties of motivation, impact assessments, the need for transparency, and the idea of rational law-making procedures, particularly providing all citizens with ways of participation in legislation; concerning the responsibility issue, the research pays attention to several mechanisms capable of guaranteeing accountability. The research is so detailed and in-depth that it is impossible to make a brief summary of it. That said, in relation to the proposal, it is interesting to note the following: this 'view' of the legal reserve, which is accompanied with a detailed study on the case-law, leads the author to build mechanisms of rationality and accountability connecting the activities of the judge and the legislator; the legitimacy *deficit* of the law-making procedure is fulfilled by a *surplus* of rationality which leads to the support of the legislative decision. Equally, the increasing *surplus* of judicial decisions is kept at bay, thanks to strong judicial accountability.

In any case, this book is something more than three books in a single volume: it is a monograph which lends itself to so many different avenues that the result is similar to that of an encyclopaedia. The author shows an encyclopaedic knowledge of the problems of criminal law at supranational level, something of inestimable value for the reader, even for those who are experts in the field. In fact, every page in this book demonstrates a complete metabolism of the exhaustive bibliography in five languages, a result of the European-wide background knowledge of the author, which perfectly combines with the intent of stepping up dialogue among different points of view. This feature may be the most valuable of the volume, since it provides the reader with a precious intellectual gift: the possibility of understanding the spirit of the European criminal law in its truly European dimension as opposed to that of a single given country alone, which tends to be the most common approach in the monographs written today –even the most important ones.

For this reason, the reading of this monograph should also be considered a prerequisite for further analysis of the problems of criminal law at –but not exclusively– the supranational and European Union levels.