Reviewing:


There are different ways to approach the study of criminal law. The technical one, necessary to master the practice of law, consists in the exposition, systematization and rationalization of the relevant rules laid down by the legislature and/or the courts. This is the task of criminal doctrine or dogmatics, usually served by textbooks, digests, and commentaries. Another path is to search for underlying principles of a more general kind and trace back these principles to theories of what criminal law “is all about”, to assumptions about the nature of human beings, the foundations of ethics, of law and state, of the concept of personhood etc. This is the realm of criminal theory which blends with jurisprudence or legal philosophy. Both approaches cannot be separated. The contents of whatever municipal rules of criminal law, whose doctrinal systematization will almost inevitably reveal manifold tensions and contradictions, can neither be fully understood nor criticized, nor can hard cases be solved nor new rules intelligently be created without a well-founded idea of how attribution of wrongdoing and blame functions, how it *should* function, and why.

There are also different styles in criminal theory, as in jurisprudence generally, often associated with different legal systems. Some

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* Senior Research Fellow, Institute for Criminal Law, University of Bonn, Germany; first state exam (1990), LL.M. (Harvard, 1992), second state exam (1997), Dr. iur. (Bonn, 1997).

1 These different styles reflect differences in the broader philosophical traditions, see e.g., ALAN R. WHITE, GROUNDS OF LIABILITY 2–6 (1985).
are more pragmatic, realist, analytical, process-oriented; others more abstract, idealist, deductive, evaluative. The corresponding common clichés have it that Anglo-American criminal law traditionally shows little interest in its theoretical foundations, thereby risking incoherence and injustice, as evidenced by under-theorized “general parts”, while certain Continental European traditions are prone to over-theorizing, thereby losing touch with the social practice of criminal law, as evidenced by an abundant literature on the “general part”.

William Wilson’s book explores criminal theory on the basis of English criminal law and undermines the first of the aforementioned clichés thoroughly. In his preface, the author quotes George Fletcher (p. v) that “these are good times for the theory of criminal law”, and notes the “enormous upsurge of interest in the philosophical foundations of criminal law” and “unparalleled co-operation between judges, commentators and theorists of criminal law”. The book intends to contribute to this process of communication, thus criminal lawyers are its declared “primary target” and substantial use of hypotheticals is made.

The Introduction begins with a tentative definition that criminal theory “is the enterprise of subjecting criminal doctrine and its procedures to critical scrutiny” (p. 1) which seeks to give a more than descriptive account of criminal law rules and procedures. Should then the story to be told of the criminal law be a richly contextual one as proposed by Nicola Lacey or rather the traditional “insider’s story”? Scepticism is expressed towards the latter as exemplified by the doctrinal division of general part and special part, since the general part’s broad generalizations would not adequately reflect the practice of criminal law. The author favors a “middle level account” whose “primary aim is to make sense of the social practice of criminal law and to identify how far it measures up to the goals it sets itself” (p. 8).

As indicated above, there is no sharp dividing line between criminal theory and doctrine which is instantiated by the fact that its theoretical ambitions do not prevent the book from also offering a host of excellent doctrinal analyses.

The first chapter gives an overview of theories of criminalization like the harm principle, upholding moral standards, fostering individual autonomy, advancing communitarian goals, and finds flaws with all of them so that “no one explanation is capable of accounting for the large number of different criminal offenses” (p. 17), most of

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