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Shin Matsuzawa | Kimmo Nuotio (eds.)

Methodology of Criminal Law Theory: Art, Politics or Science?



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Preface

This book discusses whether criminal law theory, or in more general terms, general law theory or jurisprudence can be regarded as a branch of science. This topic was the center of international debate in the 50's and 60's, but it has never generated a final verdict. However, if we are to claim that the study of the law is a branch of "science," we cannot avoid answering that question. Danish criminal theory has provided a possible answer through Scandinavian legal realism and this answer has been adapted into Japanese criminal law theory by one of the editors, Shin Matsuzawa, a Japanese criminal law theorist. This new theory has come to be one of the leading theories in Japan today.

In 2014, an international symposium titled "Japan/Denmark/Sweden International Symposium 'Methodology of Criminal Law Theory and the Thought Process of Judges from the perspectives of Legal Dogmatics Studies, Legal Policy, and the Scandinavian Experience'" was held in Japan. At this symposium, Matsuzawa delivered a keynote lecture on criminal law theory of Scandinavian legal realism. Thomas Elholm from Denmark and Petter Asp from Sweden commented the keynote lecture as Scandinavian experts in the field. After the colloquium, Jorn Jacobsen and Kimmo Nuotio provided additional articles on the subject, and some other international scholars were invited to join. This way the discussion of the subject could be broadened beyond the alternative provided by the Scandinavian legal realism.

The question we wish to address in this book is: Is the criminal law scholarship which obviously informs the legal system remarkably itself a form of science, and in what sense? Can we adopt a disciplined approach to discuss knowledge of criminal law? Can there be systemic developments in criminal law theory? A study on these issues is rather topical since different legal systems interacts with each other more than before, and it would be helpful to understand for instance whether it would be possible to sketch a universally applicable model of criminal liability. Or are we prisoners of our own traditions?

The questions concerning the nature of the knowledge of criminal law in the core areas of the field are of course closely linked with issues concerning what legal science is generally about. A reflective discussion in the field of criminal law on these issues may contribute to the general discussions in legal theory and legal philosophy, but it serves the interest of un-

Preface

derstanding where criminal law theory stands when legal research is increasingly faced with challenges of interdisciplinarity. How receptive is criminal law scholarship to other branches of science (例 : Law and Economics)? Should it be more receptive, or rather not? By publishing this book, we aim to contribute to the discussion about the methodology of criminal law theory in the 21st century.

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Shin Matsuzawa

Kimmo Nuotio

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