

# Review: Claes Lernestedt and Matt Matravers (eds.), *The Criminal Law's Person*, Hart Publishing 2022

JØRN JACOBSEN\*

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It is not too frequent that Nordic criminal law scholars step up to the international forefront of criminal law scholarship. But there are also important exceptions to this, including the new book, *The Criminal Law's Person*, edited by Claes Lernestedt (Stockholm) in collaboration with Matt Matravers (York), published in 2022 by Hart Publishing. The book, in total 202 pages including index, consists of an introduction (18 p.), as well as eight articles by the editors and other authors included in the project.

The book contains the following articles: Matt Matravers discusses the criminal law's 'various persons' (chapter 2), Kai Hamdorf addresses the criminal law's person and normative elements in the legal definition of excusing circumstances (chapter 3), Claes Lernestedt discusses standard-setting versus tracking 'profound' blameworthiness, questioning what the role the rules for ascription of responsibility should have (chapter 4), Robin Zeng discusses attributability and accountability (chapter 5), Malcolm Thorburn is 'in search of the criminal law's person' (chapter 6), Alan Norrie discusses victims who victimise in relation to guilt in political theory and moral psychology (chapter 7), Craig Reeves addresses responsibility beyond blame, i.e. unfree agency and the moral psychology of criminal law's person, and, finally, Jules Holroyd and Fredrico Picinali deal with the issue of implicit bias, self-defence and the reasonable person.

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\* Professor, Faculty of Law, University of Bergen, and editor of Bergen Journal of Criminal Law and Criminal Justice.

The editors have limited the book's agenda to what we may call the 'responsible person in criminal law', i.e. conceptions about individual's criminal responsibility in the general part of criminal law. Cooperative criminal responsibility is not analysed in the book, and the special part of criminal law is explicitly left aside (even though for instance Matraver's chapter connects to that issue). Left out are also conceptions of victims in criminal law and the agents of the criminal justice system. These choices may leave an impression that the book misses an acute opportunity to go beyond the 'individual responsible subject', as the classical focus of the philosophy of criminal law, to significantly broaden our understanding of the complex notion(s) of persons in various aspects of contemporary criminal law and its practice. This is perhaps particularly so in regard to points where the criminal law's responsible person intersects with criminal law's contemporary ideas and conceptions about victims of crime. Norrie's contribution connects to that, but developments in criminal law policy and doctrine invites for more analysis here. One example is the, in Norway at least, broadened doctrine of passive complicity in cases of domestic violence, holding one parent responsible for not intervening when the other parent abuses their child. The passive parent, however, may itself be a victim of abuse, and in some cases, it is far from clear what category one will be put in. Examples like these indicate that there may be conflicting conceptions of persons or individuals at play in contemporary criminal law, which becomes clearer to us when we precisely move beyond the classical issue of the responsible subject (which is very important in itself, of course).

The editors justify the choice of sticking to the perspective of the general part and related ideas about the responsible person, not going into the special part, by reference to it being 'too much for a single volume to try to tackle both' (p. 1). But even to 'tackle' the general part may appear optimistic and beyond the scope of one book of this kind, and what we are provided with is perspectives on and fragments of the many facets of criminal law's (responsible) person. As the overview of the content of the book shows, the articles address quite different topics and engage with the notion of criminal law's (responsible) person at various levels and in different ways. Some go straight to the heart of the notion, while others utilise more specific issues and perspectives to add to the discussion. This variety provides a challenge for the reader, and I would not advise digesting the book in one bite. Some of the articles are not properly related to the overarching notion of the criminal law's person, and may seem to connect primarily to other discussions.

The editors' introduction does not fully compensate for that. The articles are presented as 'key themes of the constructed nature of the criminal law's person, and the interplay between criminal law and other disciplines; other sources of "knowledge"' (p. 15). But the selection is not self-evident, and many more 'key themes' and perspectives could be thought of. Reading the book would be helped by further guidance from the editors relating to the selection of subjects and composition of the book. Also, some of the overarching perspectives highlighted in the introduction disappear somewhat

throughout the book. The relations or connections between the contributions are also not sufficiently clarified in the introduction. For instance, in their overview, the editors claim that chapter 5 and 6 (Zheng and Thorburn) ‘examine accounts of responsibility’. This, however, seems to be the case also for Reeves’ discussion of ‘Responsibility Beyond Blame’ in chapter 8, with Norrie’s discussion of blame, guilt and moral psychology in chapter 7 in between them. As the editors themselves point out, academics are amongst the ‘stakeholders’ (pp. 4-5) in producing ideas about ‘the criminal law’s person’. This invites a high level of self-reflexiveness in a project that thereby not only studies but also develops and promotes certain ideas about its study object.

However, what the book certainly does is to show the notion of the criminal law person to be a very productive prism to study criminal law in, one that cuts across and relates various traditional focus points in criminal law and criminal law theory. This is the main strength of the book. Already in the introduction, the reader is offered productive perspectives, ideas, and notions, such as the criminal law’s trait of ‘shallowness’ (p. 3, and further developed in Lernestedt’s own contribution), and connections to, for instance, ‘the reasonable person’ (p. 4). Many of the contributions to the book add to this, and are well-written and stimulating reading. Without going into the viewpoints advocated in the different articles, I would here emphasise the contributions framed in regard to, and speaking most directly to the overarching subject, in particular those of the editors, Hamdorf and Thorburn, developing perspectives on and showing the complexity of the overarching subject of the book. The fact that many more contributions and broader perspectives could be thought of the kind already mentioned testifies precisely to how productive this prism is. One is left with a want for more contributions, perspectives, and nuances to be developed. If making the reader want to go on and pursue such issues is a token of success for a book of this kind, the *Criminal Law’s Person*, digging into this ‘multifaceted, semi-coherent being’ (p. 14), scores high. In a sense, it brings the broader issue coined by Gustav Radbruch as ‘*der Mensch im Recht*’, properly into the realm of criminal law and contemporary criminal law theory.<sup>1</sup>

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1 Radbruch G (1957), *Der Mensch im Recht, Ausgewählte Vorträge und Aufsätze über Grundfragen des Rechts*, Göttingen: Vandenhoeck & Ruprecht.