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NIEVES SANZ MULAS

CRIMINAL POLICY IN THE
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**CRIMINAL POLICY IN THE AGE
OF GLOBALISATION**

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*To my Mum,
the best gift and the biggest void.
I think about you every day and I'll love you forever.*

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INTRODUCTION

If there is a widespread feeling among those of us who work in criminal law, it is one of helplessness when we see how many people regard it as the solution to (almost) all of our problems, while ignoring the true reasons, mainly socio-economic and cultural, that lie behind crime; or worse yet, a sense of indignation when it is used for pure political gain, at the expense of citizens' rights and freedoms.

We live in turbulent times, when seldom a day goes by when we do not wake up to a news story that violently shakes us out of our western stupor: the murder of another woman by her partner or ex-partner; a fresh corruption scandal involving politicians and big businessmen who have taken advantage of their privileged position to plunder the public coffers; the rescue of hundreds of refugees in the Mediterranean and the chilling figures of those who ended up drowning on the way; terrorist attacks with dozens, if not hundreds, of victims, perpetrated in markets, restaurants, metro stations, or simply on a busy city street; or the dismantling of organised gangs involved in child pornography or the trafficking of people, organs, drugs or weapons. Businesses based on big profits and cheap lives are but a sad reflection of enormous global imbalances. Such issues, however, require urgent and viable solutions, rather than abstract or often absurd theories bereft of any practical feasibility. We criminal law specialists have already wasted too much time on such endeavors.

I have always believed that the main task of university professors is to impart knowledge that has inevitably passed through solid investigation. Professors are mainly paid to perform research and transmit the wisdom that they have gained, awakening concern, curiosity and a critical spirit in their students. Above all, the latter, judgment and critical capacity, learning to filter the massive information that reaches us through TV, radio, press, Internet or social networks, which is often selected in a biased manner, seeking to distance us from what really matters or, worse yet, from what may prove to be real solutions.

In any case, no subject could be of greater interest or concern to us, nor generate such a wide variety of opinions, as criminal

policy. It forces us to take a position on problems that are certainly serious, such as the ones addressed in this work: for example, the growing authoritarian nature of criminal law, reflecting its increasing dependence on political and media powers, and economic interests that are evolving towards a neoliberal model in which numbers matter far more than people; or the great internationalisation of current criminal law, which translates into a criminal policy which bears an increasingly American imprint. It also compels us to confront old problems that have not yet been resolved, such as euthanasia, abortion, gender violence, child pornography, drug trafficking and prostitution, as well as new challenges, such as organised crime, and its links to corruption and white-collar crime, and terrorism, especially jihadist terrorism, which partly reflects Europe's failure to integrate Muslim immigrants. And, of course, the great contradiction that has arisen between unstoppable migratory flows, on the one hand, and an obsession with protecting borders on the other. This cruel reality is sentencing thousands of people to death, while forcing others to turn to organised crime in search of the vital opportunities that states deny them.

Does this book adopt a certain ideological position on each of the issues it addresses? Yes, it does, nor could it be otherwise. Criminal policy always stems from an ideological position, which may or may not be widely shared, but which must, in any case, be respected, as long as it is formulated in compliance with fundamental freedoms and rights. Just as there is none so deaf than those who will not hear, nor one so blind as those who will not see, we in the University cannot and must not allow ourselves to be intentionally deaf and blind, especially when such freedoms and rights are at stake. We academics have a social responsibility to be critical in defense of all people, supporting what is best for the society of which we are a part and to which we owe our very existence.

As ZAFFARONI reminds us with his usual brilliance, "current judicial power is out of control. The scandal could not be greater and our reaction, as legal scholars, must be proportional. What we have in our hands is not merely a minor, partial or technical issue, but a dilemma between remaining indifferent, taking refuge in a normative world full of dogmas denied by everyday reality and becoming inured to dominant bureaucracies, or really assuming the responsibility of

defending our civilisation, in line with respect for the person and our best and brightest tradition". I hope that, in the present work, I can contribute to this latter goal, to which I have dedicated, with greater or lesser fortune, my entire academic life.

Salamanca (Spain), July 2020.

In the midst of the coronavirus pandemic
and missing the most important person in my life, my mother.

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Criminal Policy is the Law Subject devoted to seeking real and feasible solutions to problems, as serious as those discussed in this book. Issues such as the obvious authoritarian trait of criminal law, a reflection of its progressive dependence on political and media power. And, of course, also of some economic interests that evolve towards a neoliberal model in which figures matter much more than people. Or past problems not yet resolved, such as abortion, gender violence or drug trafficking. Additionally, new challenges such as organized crime and its close relationship with phenomena, such as corruption and white-collar crime, sky-rocketing in a global and interconnected world. Not to mention terrorism, especially the *jihadist*, a reflection, to a large extent, of the resounding failure in the integration of immigrants. Human migration, in turn, unstoppable, despite the increasing stubbornness of States to close their borders, thereby condemning thousands of people to death. The alternative to rotting in a refugee camp is sometimes only one: turning to organized crime seeking vital opportunities that the States either due to destination or origin, withhold. Because going from victim to criminal had never been so simple as it is now, and also with the back-up from the international community.



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