

Contents

1	Introduction	1
1.1	Objective and Structure of the Book	1
1.2	Preview of the Book.....	5
1.3	Theoretical Framework and Methodology.....	8
1.3.1	Constitutional Pluralism	8
1.3.2	A Normative Study	14
1.3.3	Rules of Interpretation.....	16
	References.....	42
2	The Nature of Traditional Criminal Law	47
2.1	Criminal Law as an Expression of State Power and Sovereignty	47
2.2	Justifying the Use of Criminal Law as an Institution: The General Justifying Aim.....	53
2.2.1	Looking Ahead.....	53
2.2.2	More than Words	59
2.3	Justifying the Use of Punishment in Individual Cases.....	62
	References.....	64
3	Features of European Criminal Law	67
3.1	Dimensions of European Criminal Law	67
3.2	History of European Criminal Law	69
3.3	Basic Values of European Criminal Law	75
3.3.1	Protection of Human Dignity as a Precondition for European Criminal Law	75
3.3.2	Pluralistic Democracy as a Precondition for European Criminal Law	99
3.3.3	ECHR Regime and Criminal Policy	104
3.4	Difference Between National Criminal Law and European Criminal Law	111
3.5	Difference Between General EU Law and EU Criminal Law.....	117

3.5.1	Vertical Direct Effect	117
3.5.2	Primacy of EU Law	119
3.5.3	Indirect Effect/Conforming Interpretation	119
3.6	Criminal Law Decision-Making in the EU	121
3.7	Legal Basis Determines the Union's Competence to Enact Substantive Criminal Legislation	127
3.7.1	Rules on the Choice of Legal Basis	129
3.7.2	Implicit Substantive Criminal Law Competence Pre-Lisbon and Its Meaning Today	131
3.7.3	<i>Travaux Préparatoires</i> Advocate That Article 83 TFEU Was Intended to Exhaust Union's Substantive Criminal Law Competence	135
3.7.4	Nature of the Substantive Criminal Law Competence of Article 83 TFEU	139
	References	146
4	Theoretical Ideals for European Constitutional Structures and Criminal Legislation	151
4.1	Heterarchical Constitutional Structures of the ECHR Regime	151
4.1.1	Heterarchical Constitutional Structures Pertaining Between National Legal Orders and the ECHR Regime	151
4.1.2	Heterarchical Constitutional Structures Pertaining Between the ECHR Regime and the EU Legal Order	155
4.2	Heterarchical Constitutional Structures of the EU Law	159
4.2.1	Primacy of EU Law, Member States as the Masters of the Treaties, Principle of Sincere Cooperation	159
4.2.2	Criminal Law Specific Heterarchical Constitutional Structures	165
4.3	Heterarchical Constitutional Pluralism in the European Legal Space	167
4.4	European Criminalization Principles	168
4.4.1	Subsidiarity and Proportionality: The Transnational Dimension of <i>Ultima Ratio</i> Principle	169
4.4.2	Respect for Fundamental Aspects of National Criminal Justice Systems	173
4.4.3	The Principle of Legality: Transnational Dimension	176
4.4.4	Respect of Fundamental Rights: Transnational Dimension . . .	182
4.4.5	Protected Interests: Transnational Dimension	188
4.4.6	European Criminalization Principles Can Be Derived from Article 83 TFEU	190
	References	194

5	Ideals Shaken by Realities	197
5.1	Opinion 2/13 on the Union's Accession to the ECHR.	197
5.1.1	Inter-Party Cases	198
5.1.2	Conflict of Jurisdictional Competence.	200
5.1.3	Conclusions	203
5.2	Choice of Legal Basis-Doctrine Versus European Criminalization Principles: Normative Problems Arising	205
5.2.1	Possible Implicit Legal Bases for Substantive Criminal Law Competence	205
5.2.2	Possibility of Directly Applicable EU Criminal Legislation	229
5.2.3	Full Harmonisation of Penalty Scales	237
5.2.4	Nature of Criminal Law as the Reflector of Sovereignty Forgotten?	240
	References	242
6	Conclusions: European Criminal Law—Justification and Restrictions.	245
	Sources	253