

Preface

Nordic criminal law is often thought of as a specific kind of criminal law. The Nordic societies and their political and legal orders have much in common. The expression 'Nordic criminal law' itself indicates that this includes a particular mode of criminal law. The ideal and rationale of this style of criminal law seem to unite Nordic criminal law scholars, or at least, a large part of them, seemingly providing them with a reference point for their work within the discipline. 'Nordic criminal law' is recognised even beyond the Nordic legal community.

More specifically, what we are talking about when we are speaking about 'Nordic criminal law' is, however, not quite clear. 'Nordic criminal law' is not easy to pin down. There is extensive literature on the subject, including historical, legal, and sociological perspectives that contribute to clarifying the specific and complex character of Nordic criminal law. But there is also a limitation to this literature: the deeper justification of Nordic criminal law is not discussed to any extent, not even in Nordic criminal law scholarship, the scholarly discipline perhaps most intimately connected to Nordic criminal law as a normative project. Despite the fact that many legal scholars have contributed significantly to our understanding of Nordic criminal law, there is a gap in the discipline regarding clarifying its justification and exploring its deeper meaning. Hence, we lack what is most needed when it comes to understanding *whether* and *why* one should appreciate and aim to preserve Nordic criminal law.

The aim of this book is to address this justification challenge. This endeavour is a matter of ensuring the scientific credibility of the discipline: If Nordic criminal law scholarship is to rely on this as normative basis and reference point, 'Nordic criminal law' must be clarified and justified as a normative theory. But there are also increasingly clear signs of what criminologists and critical scholars have emphasised for some time now: that the realities of and developments in Nordic penal practice do not align with the dominant perception of 'Nordic criminal law'. This requires a rethinking of the status of this normative reference point.

To do so, this book turns to a perhaps somewhat surprising ally of Nordic criminal law. Immanuel Kant (1724–1804) is often considered a leading proponent of exactly the kind of harsh metaphysical retributivism that Nordic criminal law has rejected. But this standard account of Kant usually found in Nordic criminal law scholarship is seldom grounded in a thorough analysis of his political philosophical writings and to an even lesser degree in an understanding of Kant's broader philosophical framework. At the same time, recent legal and political philosophy have done much to revive the interest, understanding, and more nuanced appraisals of Kant's views.

Building on this literature, this book will argue that Kant offers important starting points for a philosophical basis for criminal law, Nordic criminal law, and Nordic criminal law scholarship in particular: Criminal law is an essential part of the political arrangements that we are obliged to put in place and maintain in order to promote external freedom, and we should constantly strive to bring it closer to what Kant termed 'the true republic'.

This book is a product of two decades of engagement with the issue of justification of punishment, going back to when I was a law student here at the Faculty of Law in Bergen. Back then, Jan Fridthjof Bernt and Asbjørn Strandbakken both encouraged me to pursue this topic, which has stayed with me ever since, sometimes in the foreground, other times in the background of my work on other, more concrete aspects of criminal law. The latter of the two was also kind enough to bring me into the Nordic criminal law research environment, which has provided me with perspectives and insight, and also, I would stress, great experiences and good friends (at my first Nordic Workshop in Criminal Law I met someone truly special). Many thanks are owed to this research environment and all my wonderful Nordic colleagues – none mentioned, none forgotten. I hope this book, aiming to provide Nordic criminal law with a deeper normative justification, contributes to strengthening this research environment.

Still, some individuals must be mentioned for their contribution to this specific book. Many of the viewpoints, particularly in the latter parts of this book, have matured significantly through a longstanding research dialogue with two of my colleagues here at the Faculty of Law in Bergen, Linda Gröning and Erling Johannes Husabø, in particular through working on our textbook

on criminal law. Also, David Chelsom Vogt (Bergen) has for a long time been a close dialogue partner regarding the philosophy of criminal law. David was also kind enough to read a preliminary version of the book, providing, as always, useful feedback. He also hosted a session in the Nordic Network for Criminal Law Philosophy. In that regard, thanks are also due to the other contributors to that session for the valuable input and fruitful challenges that they provided. Furthermore, Marius Mikkel Kjølstad (Bergen) generously read a preliminary version and commented on it from a historical perspective. Thanks also to Knut Bergo (Oslo), Dan Frände and Esko Yli-Hemminki (both Helsinki) for providing insightful and constructive comments on the text at different stages of the writing process. Ragnheiður Bragadóttir (Reykjavík) kindly facilitated my investigations into Icelandic criminal law science. Also, huge thanks are due to Antony Duff (Stirling), for generously taking the time to read an early version of the manuscript and offering encouragement to someone who has far greater interest in than credentials for engaging with the philosophy of criminal law. The comments from the two anonymous reviewers have also clearly improved the text, for which I am very grateful.

The Faculty of Law in Bergen granted me a sabbatical in 2022 allowing me to put together this text. The University of Bergen Library has generously supported this open access publication, and the library's department at the Faculty of Law has once again been invaluable in providing access to the materials I have needed. Helene Nilsen has helped me much on improving the text and language in it. Øystein Nordmo kindly helped me completing the register. I am also very grateful to my publisher Fagbokforlaget and editor Balder Holm in particular, for taking on the project and seeing it through in a safe and steady way. In that regard, I would also like to thank Gosia Adamczewska for her efforts in the production process.

It all started, however, when one day, out of nowhere, the late professor Nils Nygaard (1932–2015) contacted me, a lost law student. This initiated several talks in his office, displaying Nils's intellect, curiosity, and open-mindedness, and also academia as a wonderful place to be. I am sorry for not having thanked him properly in person for inviting me in.

Jørn Jacobsen

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