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Thinking of criminal law means reasoning on the civilisation of the community which applies it. Civilisation in its broadest sense, that concerns the whole set of spiritual, cultural, social, political and economic aspects of a given collectivity in a given period. Therefore, thinking of a Sixteenth-century criminalist means not only reasoning on his criminal doctrine, but also placing him in his period and patiently finding the threads which tie him – and his penal system – to the rulers and the justice that they dispense in the community.

Michele Pifferi, in his monograph, draws an accurate portrait of Tiberius Decianus as jurist, criminalist, jurisconsult, State official. The author, through the analysis of Decianus’s thought and work, intends to reconstruct the laborious period of the doctrinal gestation of principia and concepts of substantial criminal law, to investigate the genesis of criminalia and of the general theory of crime (p.3). Moreover describing the sophisticated penal system created by Decianus, he concurrently paints a fresco of Sixteenth-century Venetian society, of its criminal policies and of the degree there reached in the process of State formation.

1 In the second half of the Twentieth Century, those who dedicated themselves to the study of Tiberio Deciani substantially depend on the description of the jurist made by Antonio Marongiu in his essay Tiberio Deciani (1509-1582). Lettore di diritto, consulente, criminalista, published in the Rivista di Storia del Diritto Italiano (VII, pp.135-202, 312-387) in 1934. Such a description mainly highlights two profiles of his: that of apologist for the consultant-jurisprudence linked to the mos italicus and that of founder of modern penal law.

2 Michele Pifferi accepts the suggestions which Mario Sbriccoli provides in his essay: Lex delictum facit. Tiberio Deciani e la criminalistica italiana nella fase cinquecentesca del penale egemonico, in Tiberio Deciani (1509-1582). Alle origini del pensiero giuridico moderno, edited by Marco
The work is subdivided into three parts which represent its logical caesurae: the first one places Decianus in the juridical culture of his time, in the political and academic life of the town of Padua and of the Republic of Venice; the second one is dedicated to the analysis of the ‘general principles’ of Decianus’s Tractatus criminalis; the third one examines the ways followed by Decianus in applying the models elaborated in the generalia delictorum to single crimes. The choice to subdivide the volume into three parts consents the reader to gradually approach Decianus and his juridical thought, by way of successive deductions.

In the first section, Decianus is described as part of two clashing cultures: Bartolism and juridical Humanism and this participation to two differing universes produces extraordinary fruits, in that it brings Decianus to elaborate his “methodus”3. His methodus is a real scientific method because it permits the acquisition of new knowledge, it is not only a dispositio of partes, but it is a progressus which drives in cognitionem ignoti inferring it from known elements (p.58). The methodus is different from the ordo which instead gives only order to the subject disposition without a logical-deductive progress of knowledge coming from the parts which succeed one another. The question of the methodus is central in the volume and accompanies it in all its parts. It represents the value added in Decianus’s work which is innovative thanks to it, even though it uses building material coming from the past.

Moreover in this first part, the relationship existing between the institution of chairs of criminal law at the universities and the absolutist politics of the States in the Sixteenth century is also described. According to the author indeed, the chairs of criminal law are instituted not only for reasons linked to praxis and juridical Humanism, but especially owing to the pressure exercised by the rulers upon the Universities. The author describes the Universities’ loss of autonomy and their subjection to the control of the rulers. The

3 It was among the desiderata of the recent historical-juridical historiography that the question of Decianus’s methodus was studied in depth. On the point see H. Schlosser, Tiberio Deciani ed il suo influsso sulla scienza penalistica tedesca nel XVII secolo, in Tiberio Deciani (1509-1582) ... . cit., pp.121-137. At pages 126 and 127, the law historian wishes that the nova Methodus – with which Decianus turned towards the future … developing new presuppositions by way of which the opposition between mos italicus and mos gallicus was overcome with a new synthesis – will be deeply investigated because this systematic-synthetic method will permit fertile ground for a meeting between juridical doctrine and natural law and mos geometricus, in the following century.
University becomes *instrumentum regni*, becomes the place in which knowledge is managed according to the precise aims of the *res publica* government. The duty to form the future ruling class, lawyers, diplomats, judges is assigned to the Universities. The procedures of selecting professors, the organisation of teaching, the subjects taught (among these criminal law rises to a particular importance) become politically significant. Governments, and in this case the Venetian Republic, need a criminal law which adequately defines crimes and which allows the exercise of effective social control. In the Republic of Venice, the question of the relationship between Dominator and Terra firma must be added to all this. In this relationship the *doctores iuris* exercise a fundamental role in the management of the correlation of Venetian law based on customs and *ius commune* largely spread throughout Terra firma. Decianus, states the author, entirely corresponds to this prototype of *doctor iuris*. He incessantly weaves threads which unify Dominator and Terra firma holding numerous *officia publica* in the main towns of Terra firma, and also his appointment as lecturer of criminal law places him among the men close to the Prince.

A result of his closeness to the Prince is also the *Tractatus criminalis* which, for the author, is expression of his conception of the constitutional order (p.88). On this point the author takes a stand on previous statements of juridical historiography that wanted the *Tractatus* to be the publication of the course of University lessons held by Decianus. Such a statement, according to the author, can be confirmed only with the finding of the lesson manuscripts, but however it is not convincing enough because of the maturity, vastness and completeness of the treatise. Pifferi affirms that the *Tractatus* must be evaluated and interpreted with reference to the absolutist politics of the Venetian Republic (p.88). His construction into system of criminal law is not only connected to the *nova Methodus*, outcome of the meeting of Decianus with juridical Humanism, but is also expression of political interests which the jurist together with others intends to communicate. Jointly with the Prince’s criminal legislation which multiplies prohibitions and sanctions, the presence of the jurist’s ordering and rationalising work is more and more indispensable.

In the second part, the author faces three important questions, coinciding with its subdivision into three chapters: the structure of the *Tractatus criminalis*, the analysis of the conceptual edifice of *delictum*, and finally the role of criminal legislation in the doctrinal system created by Decianus.

As far as the first question is concerned, Pifferi affirms that in the *Tractatus* there is an indissoluble unity of structure and method. The method consents Decianus to rise above criminal case law of the *Practicae* which is not abandoned, but is instead distilled into a
superior synthesis that allows the criminal principles to emerge from the multiplicity of single cases. A criminal law founded on abstract principles better answers the absolutist expectations of the princes who tolerate badly the judicial arbitrium, necessary consequence of criminal case law (p.105).

Then the abandonment of the case law structure, according to the convincing reasoning of Michele Pifferi, determines the further consequence of the separation of substantial criminal law from procedural criminal law. The criminal cases, and the ways of their resolution, produce the mixing of substantial criminal law and procedural criminal law. In Decianus’s work the separation of substantial criminal law from procedural criminal law is completed and the latter becomes functional for the former. Nevertheless, the author reminds us, we have to keep in mind that in the system of the jurist from Udine it is the doctor iuris, and not the law, who faces judge and criminal procedure, even though the potentia legis circa delicta is exalted by the jurist. The Prince still needs the jurists to legitimise his potestas (p.145).

The abandonment of the case law structure is especially sublimed in the construction of the general principles of criminal law. In Decianus’s work the generalia delictorum open with terminological premises which are not merely a pure show of learning, but they serve the purpose of circumscribing the subject and of indicating the important questions which will be explained in more detail later. This is another sign of the jurist’s humanistic formation. Michele Pifferi warns us about easy comparisons between Decianus’s generalia delictorum and today’s parts of criminal law containing its general principles. Between them there are obvious and evident differences which, if ignored, risk producing a total flattening of the historical perspective.

The author, in this part of his work, begins a transversal theme: the comparison between Decianus’s Tractatus and the Judicium Criminale Practicum by Petrus Dietrich (Theodoricus). Such comparison is directed at weighing up in what measure the German jurist relies and depends upon Decianus’s work. Pifferi draws our attention to the fact that also in Dietrich’s Judicium there is a part dedicated to the meaning of criminal juridical

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4 Recently Hans Schlosser, Tiberio Deciani ed il suo influenso..., cit., at p.132 doubted the soundness of that which is affirmed by the German historical-juridical historiography regarding the influence that Decianus had on the dogmatics and theories of Sixteenth-century German criminal law. He hopes that finally someone will be able to establish which German jurists – and to what extent – they drew inspiration from the Tractatus criminalis by Decianus. Michele Pifferi in this work of his welcomes the challenge and finds the threads which connect Dietrich’s work to Decianus.
terms which is similar to that contained in Decianus’s treatise.

As far as the second question is concerned, the author maintains that the lack of an abstract definition of crimes, upon which the myriad of criminal cases can be measured, concedes large discretionary space to judges and doctrine and becomes unacceptable for the rulers in the Sixteenth century. Therefore, jurists set to work and in the corpus delicti no longer only include the objective elements of crime but also the subjective ones and it becomes the locus in which penal science divides the substantial elements of crime from the procedural ones. For example, even though Clarus is mainly concerned with criminal procedural matters, nevertheless he understands that conceptual elaborations on criminal substantial law can be useful for greater clarity in the judgement (p.181). In Michele Pifferi’s reconstruction, the influence, which a greater definition of substantial criminal law exercises on the judicial procedure, brings Decianus to anticipate the Humanist criticism towards the inquisitorial trial and to prefer the accusatory model.

It is thanks to the application of his new method that Decianus is able to abstract the crime essence from the varied multiplicity of criminal cases. And regarding method Pifferi again compares Dietrich with Decianus and affirms that the German jurist derives his method in the conceptual construction of crime from Decianus and he, as well, combines Aristotelian causes and crime elements, bringing that which is affirmed by the jurist from Udine to yet further perfection (p.189). Decianus’s well-known definition of crime derives from the study of crime based upon its causes. The choice of defining crime means breaking off with the previous tradition which was careful to avoid definitions in order not to limit the interpreter’s work. The definition of crime is at the core of Decianus’s criminal system and represents its expository corner-stone (p.196). In the definition, Decianus includes only the essential elements which are common to every crime leaving the outlining of the characteristics of every single crime to the ‘special part’ of criminal law. He separates the quidditas of crime, its most intimate nature, from the qualitates which can vary without jeopardising its being. Pifferi, in a convincing way, demonstrates the influences exercised on the scheme of the abstract model of crime, which is described in the Tractatus, by the general notions built on by private law science especially in the contracts sector (p.206). He then illustrates which are the substantialia, the naturalia and the circumstantialia delicti for Decianus, noticing that Decianus leaves the part, in which he intends to describe the crime elements in detail, unfinished, and limits himself to the sole depiction of the first one: the lex.
Michele Pifferi then establishes an interesting comparison with the successive definitions of crime elaborated by Dietrich, clearly deriving from Decianus’s, but less effective in describing the *substantia delicti*; by Matthaeus, depending on the old law books (*Corpus Iuris Civilis*) and unable of real abstraction; and by Sinistrarus, closely following Decianus’s definition. Pifferi tracks the evolution of crime definition in the successive German jurists in order to understand its developments and implications. He chooses to deal, in this part of his monograph, with the *mens rea* which Decianus places instead in the ninth chapter of his *Tractatus*, in that part which is dedicated to the examination of single crimes. Decianus’s choice is, according to Pifferi, motivated by the fact that generally the criminal science of the time investigates the *mens rea* while describing the murder elements. However, Decianus in this chapter, notes Pifferi, goes back to the style of the first chapters and abandons every reference to case criminal law. The jurist from Udine brings the notion of *dolus* elaborated by the previous doctrine to ripening and subsumes the numerous hypotheses of *dolus* deriving from case criminal law into a unitary concept representing a crime quality: the intentional act. Also with regard to *dolus*, the author compares Dietrich and Matthaeus with Decianus and affirms a clear derivation from Decianus of the part in which Dietrich deals with *dolus*, while in Matthaeus’s work there is no definition of *dolus*, even though he distinguishes the *culpa* from it in the application of punishment.

With regard to the third question treated in the second part of his volume, Pifferi affirms that in Decianus’s work the central theme, upon which all the argumentative system of criminal law general part is built, is that of the criminal *lex* (p.263). Decianus’s work is directed towards making the systematic centralness of the *lex* emerge, towards transmitting a precise depiction of the constitutional order and of the power balance (p.264). However, Decianus’s concept of *lex*, the author warns us, is different from today’s conception of it which is limited to positive law, and it refers instead to a multiplicity of sources.

Above all for Decianus, the reference to the *lex*, and particularly to the *lex scripta*, means distinguishing crime from sin, defining therefore two different typologies of offence, and handing over only that which concerns the crime to the legislative *potestas* of the prince. Decianus, referring to the *lex*, intends only to sustain its essential and exclusive function … in creating the crime (p.270). To anchor criminal law to the *lex scripta*, however, does not mean secularising it: the *lex scripta* is the act of positivizing the divine natural law and the same Prince exercises his *potestas* in that, for this purpose, he has been appointed by God. The obligation of obeying the *leges* comes from the natural law of people. The temporal power described by Decianus, according to Pifferi’s shareable judgement, seems to come
out stronger because of its rooting in divine law which confers it an aura of holiness.

The author then analyses how, in the modified political and religious context of the Sixteenth century, the border between crime and sin is redefined and it seems that sin is transformed into crime when it is punished by the *lex*. Michele Pifferi affirms the existence of two trends in criminal theory and legislation: one which is directed towards including crime and sin in the concept of justice, and is sustained by the Catholic Church and the School of Salamanca; another which is instead engaged in differentiating crime from sin and in reserving only the crime to the punitive intervention of the State, this position is shared by Decianus. The author persuades us with fine argumentative subtlety that Decianus’s aim is indeed to establish borders between that which is morally due in conscience and that which is juridically due, between interior life and juridical experience. Criminal law must have no concern for all moral questions, only the public good can justify an interference of it in the very private sphere of the conscience.

The matter of the complex relationship between crime and sin is then completed by Pifferi with the analysis of two problematical aspects in Decianus’s: the moral validity of the criminal law and the judge’s duty to judge according to *allegata et probata* (p.307). Decianus, affirms Pifferi, makes a choice totally in line with the criminal system which he built as far as the moral validity of the criminal law is concerned. His system has no padding, and this matter represents one of its borders: criminal law does not morally bind the individual, in that for punishment application, the work of the judge and a verdict of guilty are necessary. In such a way, the line between crime and sin is clear and the distinction between them is provided for by the *lex* which in case of crime consents the activation of a judicial proceeding for its persecution. The reconstruction of Decianus’s position is enriched by the comparison with that which is affirmed on the matter by the most important Spanish jurist theologians of the time. Such comparison allows Pifferi to highlight the continuity with the tradition as well as the originality of the thesis sustained by Decianus.

Regarding the duty of the judge to judge according to *allegata et probata*, Decianus concerns himself with the judge’s possible conflict of conscience between procedural truth and truth which he knows privately. The jurist solves the contrast by way of separating the judging function from the private person within the judge himself. Therefore Decianus affirms that the judge never commits sin when he judges on the basis of the truth which has emerged from the judicial proceeding because as judge this is what he has to follow. In extreme situations, Decianus provides for certain ways out which consent the judge not to
deliver judgement. Pifferi affirms with punctual analysis that to judge according to *allegata et probata* places the judge at the service of the criminal law established by the Prince.

The third and last part of the monograph completes the analysis of Decianus’s *Tractatus*, verifying the soundness of the models elaborated by the jurist in the general part of his treatise when he applies them to single crimes.

The author maintains that in the construction of the ‘special part’ of criminal law, Decianus uses profitably the methods and the models constructed in the general part of his criminal law system and at the same time he recuperates all his practical experience as jurist, nevertheless, Pifferi specifies, the style of the ‘special part’ of the *Tractatus* is not the style of the *Consilia*. They supply the jurist with documentation from which he can select all the elements necessary to describe the abstract crime.

By means of the analysis of the principal models of crime disposition which have been elaborated by jurists who lived both before Decianus and in his same period, Pifferi makes us appreciate the innovative content of Decianus’s new systematics. He abandons the classifications of crimes in *crimina ordinaria* and *extraordinaria* and in *delicta publica* and *privata* because they are based on procedural distinctions, and he adopts instead a modern criterion of classification based on offended interests. Such classification answers, better than others, political purposes, makes the hierarchy of values which the political system retains noteworthy of defence evident, it mirrors the pecking order of the interests on which the *Respublica* is founded and shows the subjects the pillars which sustain *ordo* and *pax civitatis* (p.376).

When describing single crimes, Decianus adopts a scheme which is consonant with the *methodus* elaborated in the construction of the general part of his criminal law and is made up of: «*etymologia – definitio – substantialia – divisiones*» (p.380) to which information related to the law that regulates them, to the crime actors, to the justifications, to the judicial procedure and to the punishment is added. To define a crime, states Pifferi highlighting the political value of such an operation, means cutting out that and only that ‘portion’ of a hypothetical fact and to make it punishable. The same act of definition is, therefore, authoritarian, imposes behaviour models, includes and excludes a series of possible attitudes from juridical consequence (p.385). Moreover, the crimes that Decianus defines are all public crimes prejudicial to interests important to the *Respublica*. Of every crime which he defines, he points out its *quidexitas*, its substantial nucleus, which is guide and certain aid for the judge in singling out the crime. According to the author, the effort to
reduce every single typology of crime to unity is concretized within the definition, while the multiplicity of its forms of expression is recuperated in the distinctions. The *qualitates* are another element which Decianus uses in order to describe crimes and they, according to Pifferi, from procedural requisite become components of the substantial criminal law in Decianus.

This third part of the monograph is completed with the depiction of Decianus’s doctrine referring to certain crimes (robbery, public violence, murder and commissioning of murder) by means of which the reader can appreciate the interpretative and analytical subtlety of the Sixteenth-century jurist.

Finally some brief observations on the methodological approach followed by Michele Pifferi. We think that we can say, without fear of denial, that the author did not limit himself to describe the figure of Decianus and his juridical doctrine, instead he followed the impervious path of reconstructing the juridical thought of the jurist. His research activity is not enclosed within the narrow constraints of the sole account of Decianus’s theories, it is instead a far-reaching work. The author, with a sure touch, singles out and portrays the juridical-political project which underlies the *Tractatus* structure, the methodological instrumentation used by the jurist, the expedients which consented the solution of technical problems, the schemes within which the intuitions have been moulded.

As evaluation sieve of the innovations which Decianus’s thought introduced to criminal science, the author compares it with the previous juridical tradition. In order to ponder the soundness and the fortune of certain intuitions of Decianus, he follows the trail that they left in the thought of successive jurists. Moreover in order to correctly highlight the genesis of Decianus’s thought, the author places him in his own time, comparing his work with private law and criminal law sciences, with the practised justice, with criminal policies pursued in the period in which Decianus lives. Because Decianus and his *Tractatus*, the author states, are expressions of that time, studying them outside its boundary makes no sense.

Summing up, we face an essay of great juridical rigour which for the extension of the themes treated and the deepness of analysis has to be considered indispensable reading not only for those historians who intend to engage themselves in the study of Sixteenth-century criminal law, but also for the jurists of positive law who would like to achieve the historical perspective of today’s criminal institutes.