BOOK REVIEWS

Memory and Punishment: Historical Denialism, Free Speech and the Limits of Criminal Law by Emanuela Fronza [Asser Press, Springer, 2018, 246pp, ISBN 978-94-6265-233-0, €114.99 (h/bk), ISBN 978-94-6265-234-7, €96.29 (ebk)]

The phenomenon of historical denialism is frequently associated with individuals such as David Irving and his (in)famous legal battle with American historian, Deborah Lipstadt, masterfully portrayed in the movie 'Denial' (2016). Laws banning 'rehabilitation', 'denial', 'minimisation' or 'negationism' (to mention a few of the terms used to describe this phenomenon) have been introduced by the majority of European countries, though not in the UK, as well as others around the world and have prompted heated academic and political debate. The nature of these laws and their uneven implementation within Europe has led researchers and practitioners to question whether denial/negation of gross human rights violations (and, first and foremost, the Holocaust) can be regarded as an international crime, and, more broadly, whether courts are appropriate venues to address such wrongdoings. In this book Italian scholar Emanuela Fronza provides a comprehensive analysis of the origins of historical denialism as a criminal offence (Pt I) and of the practical hurdles associated with the actual prosecution of this offence in the courts of law (Pt II).

Whilst the author carefully delineates the parameters of her research, it is inevitable that debates concerning historical denialism raise questions concerning the limits of freedom of speech in a digital world, yet these are only briefly addressed, as is the related question of whether it is appropriate to regulate content on social networks at all. The goal is to explore the use of criminal law as a means of protecting historical memory, and the criteria which can determine those historical memories which are worthy of protection. While the author does not deny the necessity of combating historical denialism (as well as other racist statements), she asserts that criminal law might not be the most appropriate method for doing so, and urges the reader to consider what the potential appropriate responses of a modern democratic society might be, where free speech is protected as a fundamental right.

Fronza begins by contextualising academic and political discussions of denialism within the broader context of memory debates in Western and Eastern Europe, as well as the current status of this crime under international law. There is detailed analysis of the nascent EU approach towards denialism as provided for in the Framework Decision 2008/913/JHA. She notes how the EU extended the original reach of the crime of denialism to include the negation of almost all other core international crimes. The author also takes the reader through the intricacies of the European Court of Human Rights' (ECtHR) approach, that has evolved over the decades and currently, in almost all cases, involves 'the monopoly of Article 17 [i.e. "abuse of rights"] over Article 10 ["freedom of speech"] ECHR' (65). Several well-known cases, such as *Garaudy v France* and *Perinçek v Switzerland*, are examined and the major dilemmas these decisions entail are highlighted.

There then follows a comparison of the legislation and case law of several Western European States (France, Germany, Italy, and some others) with more recent examples from Central and Eastern Europe that have extended not only the concept of denialism to include crimes of the Communist regimes, but have also extended the very definition of genocide in international law.

Fronza's careful analysis shows that the European experience shows that there is no clear idea of what the *actus reus* and *mens rea* of denialism should be, let alone what would be an appropriate punishment, which would help ensure the prevention of such crimes in the future. Three groups of European countries can be identified: those that criminalise Holocaust denial only, those that criminalise genocide denial/negation/trivialisation (a rather vague category that also includes crimes committed by the Communist regime), and those that criminalise the denial of international crimes more generally (war crimes, crimes against humanity and crimes against peace). The majority of European laws are a response to the events of the Second World War,

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which are now historically rather remote and with few living victims. The lack of a pan-European approach to denialism, also raises the question of whether such an approach is feasible at all. In terms of law enforcement, it seems impossible to identify a clear approach to the crime of denialism and, therefore, how to avoid the danger of imposing one single interpretation of historical events. Indeed, the author is sceptical about the potential of criminal law to serve as an arbiter of history.

The only drawback of the book is that it pays too little attention to the experience of the Central and Eastern European countries: while there is an overview of laws banning denial of 'Communist genocides', it remains unclear what forms of acts are understood to fall into this category. There is no mention of Russia, despite its having introduced a new provision in 2014 that bans the 'rehabilitation of Nazism', and several cases have already been decided by domestic courts. There is also a lack of information on the approaches of other countries outside of Europe to the interrelationship between memory, law and punishment, though it is recognised that with a handful of exceptions (such as Rwanda, Israel and Peru) there has been a reluctance to consider denialism as a crime outside of Europe. Against this background, the case of Peru, that prohibits the denial of terrorism, and the controversies accompanying it, could have usefully been explored in more detail.

The book is excellently written, being very detailed without becoming too dense. It would be of interest not only to lawyers, but also to historians, to political science scholars and to the general public interested in the important questions surrounding the debate on history, memory and the role of the law in promoting the State's version of historical events. This highly informative book is likely to become the basis of further research building upon Fronza's arguments, in particular in examining the experience of countries beyond Europe regarding historical denialism.

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Reliance in the Breaking-off of Contractual Negotiations: Trust and Expectation in a Comparative Perspective by Isabel Zuloaga [Intersentia, 2019, xxxviii +256pp, ISBN 978-1-78068-650-9, £66 (h/bk)]

Reliance in the Breaking-off of Contractual Negotiations addresses precontractual liability in Germany, France, Chile, England and Wales. The focus of the book is delimited by a 'paradigm case' presented in the Preface (xxxiv): commercial parties negotiate a contact but create no preliminary agreements and start no works. If one of the parties breaks off negotiations, can it be held liable? To explore answers that may be given in various legal systems, Chapters 2, 3 and 4 consecutively address precontractual liability in German, French and Chilean law.

The book makes a valuable addition to the existing comparative law literature on this topic. There have been only a few studies in English in this area. One example is the fundamental 1968 study on precontractual liability and formation of contracts directed by Schlesinger. In 1990, both the International Chamber of Commerce and the International Academy of Comparative Law published reports of studies regarding precontractual liability. In 2006, Cartwright and Hesselink searched for a common core on precontractual liability in European private law. Giliker compared precontractual liability in English and French law in her thesis (2002). Furmston and Tolhurst explored the law and the practice of contract formation in England, Wales, Australia, Canada, New Zealand and Singapore (2016). Zuloaga extends our current comparative law knowledge to Latin America.

However, this book is not confined to the comparison of legal systems. It also aims to advance the fundamental theory of precontractual liability. In Chapters 1 and 6, the author discusses various theoretical bases for precontractual liability; good faith is the most frequently used in the legal

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