

Hespanha is a Sage

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Abstract

This personal statement emphasizes the importance of two studies by António Hespanha for certain aspects of criminal law in Portugal during the period of the late Enlightenment (the last quarter of the eighteenth century) and the nineteenth century, namely the influence of criminological positivism and anthropological positivism on the Portuguese criminal doctrine of that period (1890-1910).

Keywords

Criminal law, Enlightenment, Criminal positivism, Anthropological positivism in Portugal.

Resumo

Através de um depoimento pessoal, documenta-se a importância de dois estudos de António Hespanha para a compreensão do Direito Penal em Portugal durante o período do Iluminismo tardio (último quartel do século XVIII) e durante o século XIX, designadamente a influência do positivismo criminológico e antropológico na doutrina penal portuguesa desse período (1890-1910).

Palavras-chave

Direito penal, Iluminismo, Positivismo criminológico, Positivismo antropológico em Portugal.

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1.

The first time I heard the name of Professor António Hespanha was around 1986. I had completed a law degree and started my career at the Law School (*Faculdade de Direito*) of the University of Lisbon. In a group of lecturers and professors, someone referred to Hespanha and the innovative project he was working on about computing and law. I was impressed by Professor António Marques dos Santos simple and meaningful comment: “Hespanha is a sage.” Everyone agreed. I modestly limited myself to listening, as, unlike the other people present, I did not know Hespanha. But, over the years, I could confirm both the truth and the depth of this statement by reading his texts and talking to Professor António Hespanha, who, for some coincidence woven by fate, would much later (2013) be an examiner, specifically of the historical part of my PhD dissertation at the Nova Law School.

2.

In the academic and friendly relationship that we built over the years, two aspects always impressed me about Professor António Hespanha: his extraordinarily profound culture and his sense of humor, even in difficult times.

All those who came into close contact with him know what I am talking about. It was not possible to be with António Hespanha without laughing at some comment that he made in which the irony derived from his intelligent selection of an aspect worthy of attention. But his knowledge, his profound historical and legal culture, and his intellectual shrewdness marked his life, his relationships with his friends, and the various works that he published and which I read over the years. Every time I open a book or browse through an article he wrote, something new appears.

3.

As my area of academic studies is Criminal Law, I would like to underline two texts that I regularly revisit: “Da ‘Iustitia’ à ‘Disciplina’: Textos, Poder e Política no Antigo Regime”² and “A Evolução da Doutrina e do Ensino do Direito Penal em Portugal, c.1800-c.1910”³.

² *Estudos em Homenagem ao Professor Eduardo Correia*, Volume II, Coimbra; BFD, Número Especial, 1984, pp. 138-232.

³ *Quaderni Fiorentini* 36 (2007), pp. 419-502.

The first article highlighted the importance of the work of Pascoal de Mello Freire for the evolution of Portuguese Criminal Law. His work belongs to a late Enlightenment of Catholic origin (an important characteristic of the period of Enlightenment with Lardizabal in Spain, and with Mello Freire in Portugal), which carried out a deep theoretical and interpretive reformulation of the crimes envisaged in the *Ordenações*. It is a work that outlines the conditions of criminal liability with remarkable clarity, and that includes, among other aspects, a “Compendium” of Criminal Law (used at the Law School of Coimbra University throughout the first half of the nineteenth century) and a proposal for a Penal code (1786), which, despite never having been converted into law, marked the debate on the criminal system and guided the contributions that the Enlightenment brought to Latin America through Brazil.

This was highlighted in a clear and innovative way by Professor António Hespanha in his study. And, through this work, due value and importance were given to the study of the history of Criminal Law in Portugal.

The second work is an extraordinary and very complete synthesis on the evolution of nineteenth-century Criminal Law theory and teaching. In just over eighty pages, Professor António Hespanha brings together an impressive collection of sources for the understanding of Criminal Law in the nineteenth century, framing and highlighting the main contributions of the various authors and works presented. The task may seem relatively simple, but underlying it is the profound and painstaking work of reading the sources and selecting those aspects that would be important for improving the understanding of how criminal law was taught at Portuguese University (Coimbra), during the late nineteenth and early twentieth centuries. Through this work, we can comprehend the powerful influence that the *Scuola Positiva* (e.g. Tarde, Lombroso, Ferri, Garofalo) had in Portugal between 1880 and 1910. This was yet another topic of crucial importance for understanding the evolution of Portuguese criminal law in the first half of the twentieth century.

The sources in question are long and complex texts — monographs, articles, and university lessons — of intense density, calling for dialogues (sometimes assumed and in other cases invisible) with other theoretical currents that were accepted or rejected. Such sources are more complex to deal with than, for example, legislated law. All this is documented by Professor António Hespanha in the aforementioned text, with great fluidity and a mastery of the subject that impresses any reader and, in particular, a criminalist.

4.

One of the last times I spoke to Professor António Hespanha was due to a common passion: old books. He generously let me know that a very rare book (of which there are only two or three copies in Portugal), about which I had written, was for sale at an auction house in Lisbon. I bought the book, and we made a plan to have a coffee together to celebrate my purchase and to talk about this and other things. Unfortunately, our meeting was no longer possible. Yes, Hespanha was a sage and also a generous man, who remains with us thanks to the memory of his personality and the richness of his work.

References

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