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Leandro Mancano

***Book Review of “A. di Martino, Sfruttamento del lavoro  
Il valore del contesto nella definizione del reato, Il Mulino, Bologna, 2020”***

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**ABSTRACT**

This work is a short review of Alberto di Martino's book *Sfruttamento del lavoro. Il valore del contesto nella definizione del reato*, Il Mulino, Bologna, 2020

**KEYWORDS:** Exploitation of labour – Europe – criminal law

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\* Senior Lecturer in European Union Law, University of Edinburgh.

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Phenomena of exploitation of labour in Europe have come increasingly under the spotlight over recent years. Pieces of investigative journalism and criminal proceedings have brought to the fore issues concerning degrading conditions of workers. This development has been significantly amplified by the exponential growth of migratory flows knocking on Europe’s doors, in many cases tangled up with a very profitable business of human trafficking. A debate has sparked on the adequate actions to be taken, involving the different sides of the policy-making process: socially, economically, legally. The legal studies especially have played a major role in this context. *Sfruttamento del lavoro. Il valore del contesto nella definizione del reato* (Bologna: il Mulino, 2020) by Alberto di Martino is a very welcome contribution in this respect. Like previous works from the same author, the rigour of the conceptual analysis goes hand in hand with the originality of the perspective offered. The book is divided into five chapters. In the introduction, di Martino clarifies the scope of the research and the main features of the methodological approach. The focus is on the recent reform of the Italian criminal law concerning the relevant offence of exploitation of labour. This is a kind of research where the value of the context, in the definition and operation of the criminal offence, takes the centre of the stage. The topic of the book has been traditionally addressed by the Italian institutions as a matter of public order. Here, the reference to the different inquiries that have been published over the years confirms that genetic trait, but also the indissoluble connection thereof with phenomena of irregular migration. This is also why, at first, a finding of a situation of exploitation was a requirement for granting leave to remain to irregular migrants.

The first chapter revolves around the different definitions of exploitation and their application. While criminalisation initially homed in on the phenomenon of *caporalato* exclusively (the unlawful intermediation between employer and employee characterised by a situation of exploitation), the most recent text punishes the role of the employer as well. The author offers the reader the juxtaposition of the two versions of the legislation before and after the amendment, which works as a visual aid to the understanding of the evolution of the relevant legislative provisions. Here, di Martino considers the criticisms of ineffectiveness that have been directed towards the version of the offence before the 2016 reform. He makes a valid methodological point. Especially when it comes to criminal law, there is an inevitable lag of a few years that must pass before any evaluation of the impact of a piece of legislation can be carried out. The following point made by di Martino, equally valid and connected to the context in which phenomena of exploitation take place, refers to the conceptual centrepieces shaping the definition of the offence (intermediation,

organisation, activity). As far as intermediation is concerned, the author argues that it is its functionality to the illegality - rather than to the exercise of the entrepreneurial activity - that is relevant to the criminalisation. Criminal law, submits di Martino, should be relied on only where other less intrusive areas of law – such as employment law, civil law and the like - are incapable of protecting the person concerned.

Chapter II elaborates on the use of indexes and indicators. The indexes and indicators are those which, taken from the factual situation under consideration, determine whether that situation meets the minimum requirements of exploitation established by law. In this chapter, di Martino argues forcefully that there is no tension between the use of indexes and the general principles of criminal law. The former offers the necessary guidance to the judge in the performance of its interpretative task. After presenting the two main approaches of the scholarship to the classification of these indexes (whether part of substantive, or procedural, criminal law), the author offers convincing arguments as to why they should be regarded as criteria orientating the interpretation of the judge. This part of the book is particularly informative, and benefits from a historical and comparative perspective on the use of indexes in the context of criminal law. Furthermore, the discussion shows the author's capacity – emerging from other publications too – for a wider and more comprehensive analysis. This, in turn, leads to the creation of innovative research results. After introducing the methodological principles governing the recourse to indexes and indicators more generally, di Martino turns to those relevant to the issue of exploitation of labour – for example, that of decent work – showing the compatibility of their use with fundamental principles of criminal law such as precision and determinacy. What follows is a critical overview of the different contexts in which exploitation has come to the attention of the authorities in Italy - such as domestic work or agriculture. This rich chapter concludes with the depiction of a theory of the relevance of the context in the identification of a criminal conduct. This last section of the chapter widens the perspective beyond the specific realm of exploitation of labour, and shows the role of the context in other areas and offences of criminal law.

Chapter III expands on the specific themes of the state of need and the condition of vulnerability of the exploited worker. The author addresses the different approaches to the definition of the state of need. The latter concept is traditionally connected to a purely economic perspective that, however, is not suitable for criminal law. The state of need is not the reason that leads to the acceptance of the contractual conditions of exploitation, argues di Martino, but is rather the precondition to accepting a situation of subjugation. An approach that finds legitimacy in the position taken by the Italian Supreme Court. Once again, the legal analysis of the concept of vulnerability is supported by a broader look at the use of the concept in international law and studies of the UNODC. The discussion is then connected to the peculiarities of the Italian legal framework.

The focus on the concept of vulnerability does not leave out of the equation the concept of abuse, which is also addressed in the book. By the end of the chapter, the reader will have familiarised with the role of the context in relation to the criminal relevance of exploitation of labour: firstly, there is the situational context (economic, social, demographic); secondly, the context also refers to the point of view of the victim, and the perception the latter has of their own situation.

Chapter IV deals with the opposite side of the perspective: that is, that of the employers and, more broadly, the economic operators. This part dissects the issues related to the identification of the perpetrator of the offence of exploitation. Consistently with the previous chapters, the research places the legal analysis in the broader, sociological and economic debate that inevitably affects the decisions of criminalisation made by the Italian legislature. The legal analysis is here supported by considerations around some key aspects of the system of production, distribution and retail. An important part, in the context of the themes developed in the book, is played by the food industry. Concluding on the relationship between the extraterritorial application of the offence of exploitation and human trafficking, the chapter opens the door to the last part, devoted to the relationship between different criminal offences. Here, di Martino analyses forensically the most important offences with which the crime of exploitation can interact (recruitment, migration-related offences, human trafficking). The discussion unfolds against the background of EU law, to which the author appropriately refers, and the issue of protection of the victims.

This book is a must-read for anybody interested in the topic and offers a compelling take on one of the most critical issues affecting contemporary European societies.