

Buchbesprechung

Richard L. Lippke: *Rethinking Imprisonment*

Oxford, New York: Oxford University Press, 2007. 304 pp. (including index). £ 53/67 €. ISBN-10: 0-19-920912-X.

Lippke is Senior Scholar in Criminal Justice at Indiana University in Bloomington, USA. His research focus lies in applied ethics and the philosophy of law, in particular criminal law. He has written extensively in this area.

His book addresses an area previously neglected in the philosophy of punishment: justifications for the nature of and the limitations on the prison conditions of sentenced criminal offenders. His aim is to produce a normative theory of imprisonment in defence of “humane and minimally restrictive” conditions of confinement (p. 2). For this, he takes a contextual approach combining philosophical justifications of punishment with criminological findings and prisoners’ rights literature.

Lippke covers a vast amount of ground in the eleven chapters of his book. He begins in Chapters 1 through 4 with developing a theory of the justifications of punishment taking retributivism further by adding what he has termed “censuring equalization”. For him, legal punishment is a type of “public censure that operates by imposing sanctions on offenders that are roughly equal to the seriousness of their crime” (pp. 22f.). He explains, “censuring equalization” places a duty on the state to safeguard an individual’s fundamental and universal moral rights (p. 23). This forms the theoretical basis for his normative theory of imprisonment. He asserts that questions on what kinds of conditions of detention are morally acceptable are inextricably connected to questions on the justifying aims of punishment and sentencing.

In Chapters 5 and 6, *Lippke* sets out the parameters for his normative theory of imprisonment which builds on his synthesizing approach to the justification of legal punishment. The normative theory of imprisonment centres on what *Lippke* calls the “minimum conditions of confinement”, those that impose the least limitations and deprivations on prisoners. His vision of minimally restrictive conditions of confinement includes permitting prisoners “to work, obtain furloughs to visit family and friends or have such people visit them on a regular basis, and live in safe, comfortable surroundings where their basic needs were satisfied and their activities subject to no more surveillance or supervision than was necessary to maintain a secure, ordered environment” (p. 108). They would also consist of providing education and job training opportunities for inmates. Also, prisoners retain those civil and political rights, such as exercising free speech and the right to vote, that are not curtailed by the nature of imprisonment. Prisoners would still be severely restricted in their freedom of movement, association and privacy.

Lippke argues that his theoretical approach “censuring equalization retributivism” imposes a number of constraints or limitations on imprisonment. This in turn provides convincing arguments for promoting minimally restrictive prison conditions for the majority of prisoners. This is based on the assumption “that legal punishment must be structured so that it is consistent

with recognizing and treating offenders as rational and autonomous moral beings” (p. 111). The constraints *Lippke* mentions are first, basic welfare which requires that a prisoner’s basic needs are met. Secondly, moral personality involves providing the prisoner with the capacities and motivations for exercising responsible citizenship. Thirdly, the autonomy constraint requires that imprisonment “should not wholly deprive them [the prisoners] of the ability to fashion independent and meaningful lives for themselves” (p. 116). Fourthly, fair administration demands that prison rules and regulations are fair, consistent and transparent in their application. Fifthly, the proportionality constraint expects that both the length of the sentence and the level of severity of the conditions are taken into account when determining the retributive element, the equalizing loss on an offender. And finally, the resocialization constraint addresses “imprisonment’s after-effects”, because “prison conditions that diminish inmates’ capacity for responsible conduct weaken the retributive case for punishing them for their subsequent crimes, whether those crimes are committed in prison or after their release” (p. 118).

In the remaining chapters, *Lippke* applies his theoretical approach promoting minimally restrictive conditions of detention to an analysis of individual themes. Chapter 7 deals with work, welfare and responsibility. Chapter 8 examines the necessity of facilitating prisoners’ contacts with the outside world. Chapter 9 gives an account of prisoners’ retained civil rights and Chapter 10 discusses the importance of leisure activities in prisoners’ lives. Chapter 11 concludes the book with a discussion on privatization, prison abolition and prison reform.

Lippke’s approach of integrating philosophical arguments, criminological findings and prisoners’ rights literature is the real strength of this book; in particular the incorporation of approaches to prisoners’ rights from continental Europe especially the German Prison Law with its guiding principle resocialization. In this sense *Rethinking Imprisonment* adds to the contributions by *Lazarus*¹ and *Whitman*² introducing continental European ideas on humane conditions of detention to Anglo-American readers. Yet, it is precisely here where *Lippke* stops short. He misses the opportunity to critically engage with the concept of human dignity and its function as the basis for resocialization central to both *Lazarus’* legal and *Whitman’s* historical account of imprisonment in Germany.

Precisely the opposite to *Lippke’s* assertion that the justifications of punishment, sentencing and the administration of punishment are inextricably linked and therefore require one overarching theory is argued in German legal theory. For the *dialektische Vereinigungstheorie* and the *Stufentheorie* hold that different aims of punishment prevail at different points in the

1 *Liora Lazarus*, *Contrasting Prisoners’ Rights: A Comparative Examination of England and Germany*, 2004.

2 *James Q. Whitman*, *Harsh Justice: Criminal Punishment and the Widening Divide Between America and Europe*, 2003.

criminal justice system.³ General prevention is the focus of the substantive criminal law's legislative threat of punishment, retribution is central at the conviction and the sentencing stage and special or individual prevention that centres on resocialization is dominant at the execution and administration of punishment.⁴

Lippke's defence of humane and less restrictive prison conditions for serious offenders would have greatly benefited from a critical evaluation of these theories separating the aim of prison administration, resocialization, from the aims of criminal law and sentencing. This would have led him to an analysis of human dignity as the basis for resocialization reflected in the German Federal Constitutional Court's statement that

“Constitutionally this claim [to resocialization] corresponds to the self image of a society that places human dignity at the centre of its value order and that is bound by the Social State principle. As the holder of human dignity and the rights which

guarantee it, the criminal offender must have the chance, after serving his sentence, to integrate into society”.⁵

For a German audience, *Lippke's* book provides an immensely interesting insight into the problem Anglo-American thinkers face trying to justify humane and less restrictive prison conditions within the framework of the philosophy of punishment. So far, consequentialist and non-consequentialist theories of punishment have not addressed what ought and ought not to happen in prison. This is precisely where *Lippke's* contribution lies. His emphasis on humane imprisonment to enable prisoners to lead more autonomous lives and therefore facilitate reintegration into the community on release significantly advances the current debate. Yet, he fails to take the discussion on humane conditions of detention and prisoners' rights beyond retributivism and its constraints to include a critical analysis of the limitations placed on degrading punishment by human dignity.

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3 *Lazarus* (Fn. 1), p. 39; *Claus Roxin*, Sinn und Grenzen staatlicher Strafe, JuS 1966, 377.

4 *Liora Lazarus*, Conceptions of Liberty Deprivation, *Modern Law Review* 2006, 738 (745).

5 *BVerfGE* 35, 202 (235 f.), cited by *Lazarus* (Fn. 1), p. 42.