

Book Reviews

Punishment and Process in International Criminal Trials

Ralph Henham

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As international criminal law gains more prominence and war crimes tribunals become more numerous, the question of how to adequately sanction the perpetrators of such crimes is increasingly relevant. There are conceptions of sentencing at the domestic level, but what is the proper construction of sentencing at the international level? Ralph Henham has explored these issues in his text *Punishment and Process in International Criminal Trials*. His text is bold, both in the questions he tackles and the approach he takes in an attempt to answer them.

The issues raised by international criminal law sentencing are complicated and imposing: what is justice? What are the best mechanisms for realising this? Are current procedures adequate to realise their aims? These questions strike at what motivates individuals and states in their reactions to some of the greatest atrocities of history. A confident approach is necessary to examine such issues, and Henham does not baulk from these complex philosophical and theoretical questions. He examines the fundamental values associated with sentencing, and from the premise that sentencing is instrumental, asks what the purpose of sentencing is. The author examines the notions of justice (should this be construed in a reconciliatory or retributive framework?), of rights, and of the rationality of punishment. These are daunting topics but Henham addresses them all with assurance.

Henham approaches the questions raised by attempting to provide an integrated socio-legal analysis of international sentencing. As such, Henham unflinchingly interrelates various disciplines and themes: international law, global politics, sociology, morality, and jurisprudence. In particular, the relationship between sociology and law is examined: the text 'makes explicit [...] the need for legal contexts to be interpreted sociologically'. As such, Henham analyses not only great legal theorists such as Antonio Cassese, but also the influential sociological theorists including Emille Durkheim and Anthony Giddens. This interplay may be disconcerting for some purists, however I find a holistic approach to be refreshing. Sentencing is necessarily a social construct, created by individuals for the benefit of communities. Integrating sociological and legal approaches therefore allows a thorough examination and

circumvents the neglecting of important points. By utilising only legal perspectives on sentencing, an author would fall victim to examining the issue in a vacuum. Too often, specialists remain confined to one realm of expertise and neglect the links between disciplines. Clearly, theorists may be wary of extending beyond their field of specialty, yet Henham possesses expertise in the area of sociology of law. Another possibility is that such an approach will result in superficial analysis by attempting to examine too much; however the relatively tight ambit of Henham's work has allowed this approach to be successful here.

Henham uses a logical and coherent progression of argument through the chapters, each of which deal with a different aspect of the problem at hand, and which ultimately lead to the conclusion offered. In order to build his argument, the author addresses issues including the internationalisation of sentencing procedures (chapter one), the sociological context in which international sentencing occurs (chapter three), plea bargaining as a vehicle to examine constraints on the concept of a fair trial in international sentencing procedures (chapter four), and access to justice and rights in international sentencing and the role of due process (chapter six). Henham's main novel contribution to scholarship is to offer a contextual modelling approach to the topic, in order to engage the notion of restorative justice in sentencing, and to reconstruct discretion in sentencing. Ultimately, he concludes that a new conception of international sentencing is required, one which renders it 'socially responsive, morally sensitive and culturally relevant'. In this way, sentencing would meet its aim, that of serving justice.

However, unfortunately the author's prose lacks the clarity seen in the structure of the text. Henham has a predilection for long words and verbose sentences, a stunning example of which is the second-last sentence of the text: more than 70 words long, with only one comma. This approach detracts significantly from the work.

The evidence used by Henham is mainly secondary, but he uses primary evidence in the form of case law from the relevant tribunals. The secondary evidence used is from well-respected scholars in the field of international criminal law. Henham's extensive bibliography and index are both comprehensive and easy to use. The use of Figures to demonstrate the arguments advanced adds to the reader's understanding. Despite significant imperfections in his prose, Henham has produced a commendable text. In tackling a contemporary and increasingly relevant aspect of international criminal law, he has utilised a novel framework of socio-legal analysis. I agree with his argument that international criminal