

but be ensnared in the legal system with its registry for sexual offenders and its indefinite sentences.

I urge all practitioners, legal, forensic, and lay, to read the chapter on Police Interrogation and False Confessions, digest it, assimilate it, and use the knowledge to advocate for our youthful charges. I anticipate that readers of this chapter will be seduced into reading other chapters in this book that will advance their knowledge and skills.

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Disclosures of financial or other potential conflicts of interest: None.

Ethics of Total Confinement: A Critique of Madness, Citizenship, and Social Justice

By Bruce A. Arrigo, Heather Y. Bersot, and Brian G. Sellers. New York: Oxford University Press, 2011. 300 pp. \$75.00.

This book undertakes a vigorous challenge in reviewing the ethics structure of judicial approaches to juveniles charged as adults, solitary confinement of the mentally ill inmate, and sexually violent predators (SVPs). The authors are concerned about the rights of offenders and the perception that certain groups are not amenable to rehabilitation. Their premise is that the law ought to serve as a healing agent. The concepts are drawn from ethics, psychology, law, and social theory and require a substantial investment in a close reading of the text. This review focuses on the perspective on ethics in the text. Each approach to ethics has strengths and weaknesses, including virtue theory.

A review of contemporary ethics will assist in addressing the text. Utilitarian theory (Jeremy Bentham and John Stuart Mill) attempts to balance good and negative effects; in medical training, this thinking is common in discussing informed consent and medication usage. A negative feature is the potential disregard for the needs of a minority group, such as prisoners. Duty-based ethics (Immanuel Kant) focuses on rules and includes universal principle such as not using others as a means rather than as an end; research that does not concern itself with the needs of

the patient would be unethical. A negative feature is the expectation that a rule should be universal. If a prisoner has special needs, a Kantian approach could fail. Virtue ethics has a long, historical tradition (Plato and Aristotle) and emphasizes the virtues of character such as wisdom, courage, temperance, and justice. The goal of an ethical life is “human flourishing (a translation of the Greek term, *eudaimonia*)” (p 22). Attention to virtue ethics will assist one in taking moral action. The consequence of virtue is the improvement of social life. By extension, a virtue ethics approach to criminal justice emphasizes social reintegration and participation. The weakness of virtue ethics is its limitation in making specific decisions.

The authors review legal decisions regarding juveniles, solitary confinement, and sexually violent predators (SVPs); in each domain, the type of ethics-based justification is identified. Utilitarianism and duty-based approaches are the predominant sources of decision-making. By contrast, there was scant reference to virtue ethics in current decision-making. The authors starkly assert that a virtue-based approach would promote that “all individuals have value and as such can thrive” (p 149). By encouraging the rehabilitation of the prisoners’ lives, the authors contend that there can be an improved connection to the “large social world” and human flourishing.

The authors state that virtue ethics has strong similarities to psychological jurisprudence. Their vision encourages “judges as counselors.” The necessary reform would have attorneys, judges, and mental health workers become better educated in the practices of therapeutic jurisprudence and restorative justice which was identified as “mediated reconciliation” (p 7). An examination of the text assists the reader in determining if this approach is to be encouraged.

The analysis of the needs of the criminally charged and convicted is an essential corrective in maintaining a humane balance between societal protection and individual liberty. The authors identified a tendency to overstate or misidentify the level of recidivism in SVPs. The courts, having a faulty understanding of recidivism, are limited in their ability to craft meaningful approaches to SVPs.

Looking at the role of shame and humiliation in the lives of those convicted is an important investigation. In the development of registries for the SVPs,

the authors note that the role of humiliation was designated as a “collateral consequence of a valid regulation” (p 132), and not as a direct effect; the court’s distancing itself from the intended punitive aspect of humiliation is a troubling finding. One is reminded of the stocks used during American colonial times to publicly embarrass the offender. Highlighting the question of humiliation makes the reader concerned about the real-world functioning of SVP registries. A focus on virtue and character development suggests a different direction in producing shame and humiliation in the released SVP. To the extent that the SVP would be limited in social reintegration, the prior ethics (utilitarian or duty based) is deficient. Virtue ethics could support the character development of the convicted.

The authors describe the “debilitative effects” of solitary confinement on the mentally ill and a specific syndrome of negative psychological effects, termed special housing unit syndrome (p 67). The more serious consequences of solitary confinement include mental deterioration with increased anxiety, confusion, and hallucinations. Self-destructive behavior may actually be encouraged by the environment.

In the California case of *Madrid v. Gomez*¹ (1995) the court states that inmates forfeit many rights and freedoms and that distress from segregation is not sufficient to invoke the Eighth Amendment. The authors express concern that this line of judicial thinking allows mentally ill inmates to be placed in solitary confinement where they may deteriorate further. The authors’ unstated critical bridge is that a virtue ethic that focuses on the development of human character would result in a different decision.

The research in each of the major areas focuses on examining the ethics of the relevant case law. Identification of the ethics-based structure of statutes and judicial decision-making (duty based and consequentialism) is provided. However, the process of naming the ethics approach shortchanges a more in-depth analysis of how virtue ethics would necessarily provide a superior result. Further, there are general philosophical concerns about the value of virtue ethics in informing decisions about the correct thing to do. Virtue ethics is more connected with the development of a moral person than any specific decision that should be made. The shortcomings of virtue ethics in resolving complicated judicial questions are not in the text. Duty-based ethics focuses on treating

individuals as the end rather than the means. The appropriate application of this theory would address many of the concerns about the treatment of prisoners.

The book is significant in reviewing case law and drawing renewed attention to the harsher realities of America’s judicial system. Arguing for increased attention to prisoner rehabilitation and improving their ability to reintegrate into their communities is commendable. However, invoking virtue ethics will not resolve the thorny social, financial, and psychological problems of incarceration. The authors make a substantial leap from the importance of an individual’s character to the promise of community integration and “human flourishing.”

Virtue ethics might provide improved social justice, but the approach is based on assertion rather than clear reasoning. The discernment of the variability and subgroupings of those who are convicted is not adequately covered. One of the core aspects of ethics analysis is to consider the alternatives. The specific prescription falls short and does not meet the problems addressed. The challenges of seriously antisocial prisoners and the problems of rehabilitation are not addressed. Specifically, important questions such as whether there are mentally ill patients for whom virtue ethics would not be an appropriate approach are not addressed. Despite these limitations, the book has valuable insights for patient readers.

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Disclosures of financial or other potential conflicts of interest: None.

Reference

1. *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995)

Expert Psychiatric Evidence

By Keith Rix. London: Royal College of Psychiatrists, 2011. 289 pp. \$80.00.

Keith Rix, a British forensic psychiatrist, writes here with authority and detail about the range of forensic evaluations currently required by courts and tribunals in the United Kingdom. His text is enriched by examples from his practice and with quotes from judges, some of whom have not been slow to offer advice to the aspiring forensic psychiatrist: