

## **The Limits of Criminal Law: A Comparative Analysis of Approaches to Legal Theorizing by Carl Constantin Lauterwein**

**Ashgate, Surrey, 2010, 162 pp, £60.00. Hardback  
ISBN 978-0-7546-7946-2**

**Arlie Loughnan**

© Springer Science+Business Media Dordrecht 2013

On one level, the focus of *The Limits of Criminal Law* is captured by its title—the book is concerned with the legitimate boundaries of the criminal law. Lauterwein sets out different approaches to this topic in the German and Australian legal contexts. The book does not formally adopt a comparative methodology, but rather presents ‘an analysis using contextual and comparative elements’ (p. 45). He concentrates on analysing discussion of the limits of the criminal law in Australia, using the German legal theoretical approach as a counterpoint. But, on another level, the book is concerned with the features of criminal legal scholarship in these two national contexts and the influence of this scholarship (in the author’s words, ‘legal theorizing’) on the criminal law in their respective traditions. As a result, *The Limits of the Criminal Law* addresses both the question ‘what sorts of behaviour may the state legitimately make criminal?’ (a question that is expressly posed by the author) and ‘what is the value of criminal legal scholarship?’ (a question that is implicit in the discussion he offers).

This is an interesting and stimulating book. For a scholar trained in the common law tradition, it provided an accessible and informative introduction to German criminal law and criminal law scholarship. And, from the perspective of an Australian scholar, it prompted serious reflection about the state of criminal law scholarship ‘down under’. Yet, this reader was left with a troubling sense of several asymmetries running through the analysis that potentially undercut the strength of the conclusions the author reaches in relation to each of the two questions asked in *The Limits of Criminal Law*.

The first of these asymmetries relates to what exactly is being counter posed with what in the book. This is an issue of substance although it relates closely to an asymmetry in the author’s methodological approach. Lauterwein begins the book with a discussion of the way German scholars answer the question ‘what sorts of behaviour may the state legitimately make criminal?’. As Lauterwein outlines, the answer to this question is structured by the general function of the criminal law, and specifically by the concept of the *Rechtsgütsschutz*—the protection of legal goods/interests—that forms a guiding principle or goal that is independent of the substance of the criminal law. Lauterwein takes up the

---

A. Loughnan (✉)

ARC Postdoctoral Research Fellow, Faculty of Law, University of Sydney, Sydney, NSW, Australia  
e-mail: Arlie.Loughnan@sydney.edu.au