

Book Review

Josie

By Catherine Trimby

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Dissimilar to most books which are reviewed in the Prison Service Journal, *Josie* is a fictional novel. I decided to include it in the review pile partly because the subject matter of the book focuses on Josie's time at a women's prison and also because the author, Catherine Trimby, served as a magistrate in Shropshire for 34 years and is now a member of the Independent Monitoring Board for a women's prison.

The book opens with Josie being transported to prison having been sentenced for her criminal offence. At this stage of the book we don't know anything about her or the fact that she is an offender, just the experience of being transported in, what is often referred to as the sweat box. We soon learn the context and then follow Josie through her first evening and morning at Edgehill Prison. The book then sets the scene. Josie is a 'quiet and timid thirty-two-year old' (back cover) who lives alone and is involved in an operatic society. One of the society's members, Mike, pays her unwanted attention and one night on a ruse gets Josie to come back to his flat. Mike makes unwanted advances to her and through panic Josie forgets to put on her lights when driving away. She hits and kills a man and is later charged with death by careless driving. She is sentenced to a custodial sentence.

Chapter 13 onwards then describes Josie's life in custody. We are told about the detailed induction programme, her bedroom, her house (wing), the group of friends she begins to make, her time working in the gardens and her involvement

with a choir. The book also highlights her appointments with her probation/reintegration officer and the conversations which they have in order to get Josie to start taking responsibility for causing the death of a young man. This involves contact with the victim's mother and also Josie replying to this letter. The experiences are not all positive: she is involved in a small incident in the queue for dinner in her first few weeks in prison, she is involved in a hostage incident and she also sees one of her friends self-harm.

Overall I did enjoy the book. It was well written and I did want to find out what happened to Josie but in truth I did find it a little tame. I have never been inside a women's prison so do not know what the reality of a women's prison is like, but having read some of the academic literature and watched documentaries I didn't feel this book painted that realistic a picture. Despite including the incidents of self-harm and being taken a hostage and also touching on other issues such as the women missing their children, drug abuse, low education levels and post-conviction employment; none of these were really dealt with in any meaningful way and thus could have been much stronger. This could have been a way in which to get some important messages out to people about why women shouldn't be held in existing custodial institutions. Nevertheless as a novel, it was an interesting read.

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Book Review

Regulating Judges: Beyond Independence and Accountability

Ed. Richard Devlin & Adam Dodek

Edward Elgar 2016

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Price: £105

This book considers the regulation of judges in 19 countries, including England and Wales. It proposes a new approach to analysing judicial regulation, which has traditionally been discussed only in terms of the twin necessities for judges to be independent and for them to be accountable. The book also provides a critique of regulation conceived merely as a process of setting, monitoring and enforcing rules or standards. Although this is not part of its design, the book may also help shed light upon the regulation of other aspects of social, economic and governmental activity, which the body of literature which has grown up alongside it often terms the 'regulated State'. This book adds to that literature and helpfully makes many references to it.

The importance of judicial regulation has long been recognised as a fundamental constitutional and philosophical issue (the question Plato asked in the *Republic* about how those who had power were to be controlled is of enduring significance). Judicial regulation is also topical given the scrutiny the senior judiciary in England and Wales have come under about whether the executive or the legislature can trigger Article 50 of the Lisbon Treaty to set in motion the UK's departure from the European Union. In November 2016 three judges in the Court of Appeal ruled unanimously that Ministers exercising the Royal Prerogative could not trigger Article 50 and that Parliament must formally empower them; and in January 2017 the Supreme Court upheld that decision, albeit with four of the 11 judges dissenting. The media coverage of those judgments, particularly the first (with the *ad hominem* attacks three tabloid newspapers made against the Appeal Court judges), has thrown into sharper relief issues relating to the accountability of judges (and indeed the media) as well as highlighting the tensions in the

relationship between the legislative, the executive and the judicial functions of the constitution.

The more sophisticated model this book proposes provides an interesting means of understanding and framing debates about such current issues. In the first of its 20 essays, each of which is written by separate authors all of whom are senior academics, the editors (Canadian professors of law) set out their new approach. Instead of conceiving the regulation of judges as a calibration of independence balanced against accountability, the editors set out a 'regulatory pyramid' of four features: values, processes, resources and outcomes. These are 'four variables that are potentially helpful for a description or analysis ... of all the multiple actors involved in the operationalization of a judicial system' (p. 4).

The six 'values'—impartiality, independence, accountability, representativeness, transparency and efficiency—provide the base of the pyramid. The 'processes' side of the pyramid (which includes recruitment, training, complaints, the appellate mechanism and performance evaluation) recognises how critical the administrative framework of a judicial system can be. It is argued, for example, that the 'recruitment and appointment processes are perhaps the most powerful regulatory instruments' (p. 18). Post-appointment the independence of the judiciary often leaves regulation to the appellate case-focused process and disciplinary arrangements which apply only by exception when judges behave improperly.

The importance of the 'resources' side of the pyramid was illustrated by comments made by Lord Neuberger and Lady Hale (respectively, the President and Deputy President of the UK Supreme Court) when appearing before the House of Lords Constitution Select Committee in

March 2017. The terms and conditions under which judges are appointed; the number of judges for which resources are made available; and the support they receive (including the physical and IT infrastructure) have a bearing on efficiency and effectiveness (efficiency being important for, as the old adage has it, 'justice delayed is justice denied'). In England and Wales there are currently concerns about the difficulty filling judicial vacancies because terms and conditions aren't attractive enough. The fourth aspect of the pyramid, 'outcomes' is a consideration of public confidence in the judiciary. Several of the essays consider the role the media plays in communicating this.

This new approach involves a more sophisticated assessment than balancing independence and accountability does alone. However, the editors recognise that it cannot provide a hard and fast yardstick. Accordingly, they qualify their approach by acknowledging the inherent complexity and diversity (or hybridity as the editors term it) of regulation; and by the need to contextualise its analysis, and appreciate the fluidity of context. These help explain variations of interpretation, particularly when applying the model internationally, which is the substance of the book. In the book's other 19 essays, different authors apply the 'pyramid' approach to considering judicial regulation in different countries including China, Croatia, Russia, the USA, Malaysia, Germany, South Africa and England & Wales.

Diverse though the countries whose judiciaries are considered, it is interesting to see common themes. For example, the introduction of a complaints and disciplinary process has proved a 'fertile domain' (p. 41) for reforms in many countries including Canada, India, Italy, South Africa as

well as England & Wales. By contrast where complaints systems are not formalised, accountability it is argued is less robust, as the essay on judicial regulation in Australia illustrates, which also criticises the lack of transparency in the system for appointing judges. It is also interesting, *apropos* the need to understand the judicial system in context, to note that the significance of impartiality as a value is subordinated to other political and social norms in China, Italy, Japan and Russia.

The essay on the Chinese judiciary highlights the fundamentally different set of values which underpin Chinese society. The very deep and longstanding cultural preferences in China for the harmonious resolution of disputes are reflected in the distrust of litigation to resolve them. This contrasts dramatically to the litigious nature of dispute resolution in Western democracies, notwithstanding efforts to replace some openly adversarial conflict with mediation. Perhaps the largest theme to emerge is that a healthy relationship between the regulated and the regulator involves tension. Should that relationship be 'comfortable' (that is, with everything going swimmingly) there is probably something deeply wrong. This isn't to suggest that regulation necessarily involves an adversarial set of relationships. Indeed, the editors argue that their pyramid approach is in part recognition that regulation needs to be understood and conducted not as a command/control relationship but more collaboratively; and, like all good partnerships, needs constant attention.

Some may regard the consideration of regulatory issues as like counting how many angels can dance on the head of a pin. Like all areas of study there is a risk of self-absorption and the marginalising of relevance. In addition to the insights into the

judicial function the book provides, its novel approach may also offer a way of considering current issues related to prisons. Regulated by the statutory instrument of Prison Rules and the instructions and managerial arrangements that flow from them, the pyramid model may enable interesting reflections on the role and discretion (or 'autonomy' in current parlance) of governors. It may also help interpret the

changes to the prison service as an organisation. From being truly an 'arm's length' body in 1990s (when the Director General of the Prison Service answered Parliamentary Questions), today NOMS (the name has disappeared) is being folded into the Ministry of Justice as another Directorate.

In short, this is an interesting book. One of its principal achievements, as Justice Richard Goldstone (who served on the

Constitutional Court of South Africa 1994–2002 and who was Chief Prosecutor for the International Criminal Tribunal for the former Yugoslavia and Rwanda) notes is its contribution to comparative jurisprudence: to understand one's own judicial system one needs to examine others.

William Payne was a prison governor and worked elsewhere in NOMS before retiring.