

# PRISON SERVICE JOURNAL

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# Reviews

Book Review

## ***Mercy: A Restorative Philosophy***

By David Cornwell,  
Publisher: Waterside Press,  
Hampshire, UK, 2014, 136pp,  
ISBN 978-1-909976-0106  
Paperback £12.95

David Cornwell locates the central concerns of this book carefully within current debates on crime and punishment. His explanation of the transition from a restitutive to a retributive understanding of crime, with the state rather than the victim at the centre, covers well-explored ground in a crisp, clear way which will be helpful to newcomers. His long experience at the intersection of practice and theory gives a realistic tone to his account, for example, of the systematically ambivalent attitude to restorative justice of almost all those whose hands are near to the levers of power in the UK system.

Coming to the main focus of his argument, Cornwell opens up the contested relationships of meaning between justice, equity, mitigation and mercy. He is emphatic that the latter two are quite distinct from one another. He studies the debate which followed the early release on compassionate grounds of Abdulbaset Al-Megrahi, convicted of murder in connection with the Lockerbie aircraft bomb in 1988. One distinguished philosopher held that strict justice forbade the exercise of mercy in that way; another, that mercy is an executive power, often vested historically in the monarch, which lies outside and in some way beyond the calculation of strict justice. Cornwell is clear that if the category of mercy finds its way

into the actual administration of justice, confusions will follow.

He returns to familiar ground in mapping the punitive turn in UK politics from the 1990s. He does not like an accelerating retributivism, and he especially dislikes 'general deterrence', that is punishing people 'pour encourager les autres'. However, when he comes to his central discussion of mercy, the argument gains power from his reading of moral philosophers who have discussed the nature of mercy. Which better reinforces the 'moral credibility' of the administration of justice — strict desert or the exercise of mercy? He traces arguments back to a seminal paper by Alwynne Smart in 1968, from which a continuing debate on the place of mercy has flowed.

He begins to make his serious play for a new approach in a chapter 'Institutionalising mercy'. The phrase is from Paul Robinson, whom Cornwell follows to some extent. However, on pp 58-9 he makes his decisive move. He says that as retributive justice is based on desert — which he acknowledges to be a problematic concept — so may mercy be, in a restorative process where the victim wishes to 'show mercy', and the perpetrator shows some remorse. He brings into the foreground a notion of 'desert of mercy', while retaining the position that mercy 'is for victims of crime to extend as both forbearance and forgiveness when (or if) they feel gracious enough to do so' (p 59). Later he asserts conversely that 'the state ... has no responsibility or capacity to extend mercy' (p.100).

There is some crunching of gears as Cornwell moves into a chapter setting out his two-track

model for criminal justice (adumbrated in an earlier book). One track, dependent on the offender accepting responsibility and showing remorse, would follow a restorative approach; the other, for the rest, a 'traditional' model. The upshot would be more community-based programmes, paid for by a big drop in prison numbers. In the course of defending this position, Cornwell makes clear his view that punishing remorseful and remorseless people alike for the same offence 'would be an injustice done to the remorseful. (p. 67). The remainder of this chapter is a continuing spirited defence of the effectiveness of community and restorative interventions, done right.

A chapter on victims raises some awkward issues. It begins to seem that we should take victims seriously if they want a restorative process, but not if they want exemplary punishment. A risk of paternalism seems close to the surface here — Cornwell definitely does not wish victims to address the court lest they be vindictive and cloud a jury's judgment. He points out that victims' rights are still not enshrined in law in England and Wales, but his enthusiasm for such rights sits oddly with his very partial valuing of them.

As a theoretical account of restorative justice (the subtitle is 'a restorative philosophy'), the book describes the background without achieving a convincing integration of the core concepts. As an account of the place of mercy in criminal justice, it opens up a useful new area of discussion. The concept of mercy is, incidentally, prominent in current theological discussion, and a Roman Catholic

Cardinal has recently published a major book called, like this one, 'Mercy'. The idea that 'mercy' typically describes a situation where a forgiving victim and a remorseful offender come together seems to this reviewer a little narrow.

The book will be a useful introduction to its general topic, and will set more informed readers thinking along new lines. If it does not solve as many knotty problems as it sometimes claims, well, it is far from being the only book of which that may be said.

#### Book Review

### ***The Role of Community in Restorative Justice***

by Fernanda Fonseca Rosenblatt.

Publisher: Routledge (2015)

ISBN: 978-1138858954

Price: £85

Another title from the Routledge 'Frontiers of Criminal Justice' series, *The Role of Community in Restorative Justice* is the culmination of a PhD thesis completed by Fernanda Fonseca Rosenblatt at the University of Oxford. Although the title (and the book's minimalist cover) suggests a stark, sterile and somewhat bland regurgitation of what is already known about restorative justice and where it fits in modern day criminal justice circles; what lies beneath is a breath of fresh air. It is thorough, well considered and has a flow which takes the reader through a journey that neatly introduces her research aims, objectives, methods, analysis, discussions and conclusions. Her style of writing allows the reader to truly understand the flow

of the book and makes for pleasant reading.

The overall content of the book is a reflection of Rosenblatt's qualitative study into the role that people from the community play in youth justice panels. These panels are an area of restorative justice in England and Wales. Comprising a total of 127 semi structured interviews with Youth Offending Team (YOT) workers, community panel members and young offenders themselves, Rosenblatt has demonstrated a sound methodology for the conducting of this case study. She has three primary aims to her work, which have been designed to establish:

1) why . . . the community is involved in the youth offender panel process;

2) to examine how . . . the community is involved in the youth offending panel process; and,

3) to investigate the overall role of the community in the referral order process (emphasis in original, p 78).

These aims are more than adequately achieved throughout the eight chapters and her conclusions will be discussed below. She guides the reader through the history of restorative justice, placing her research within the gaps in the literature so that we are under no illusion that this is an important and timely piece of work. As with many qualitative studies she brings to life the many people with whom she met and who so kindly gave up their time to talk to her in the first place. For example her participants like to explain what they think of the panels:

Random People. They don't know me. They only sit there once or twice (p. 136).

Just people from the street? (p.136).

Although the use of the 'voice' of the participants is nothing new in the world of qualitative research, Rosenblatt neatly fits their narratives together; helping her to show how well informed her conclusions are.

Therefore, if restorative justice's goal is to give power to the people who are most affected by the criminal act especially when they are deciding what to do with a particular offence and offender, then Rosenblatt has shown how the theatrical nature of youth offender panels does not fully include community members and does not allow them to be entirely utilised; especially not in the original way it was intended. She argues how she has demonstrated that community members do not have sufficient creativity when it comes to dealing with offenders and contradicts previous research,<sup>1</sup> alongside Ministry of Justice guidance on how restorative justice should be delivered in the community. Community members rarely bring 'local knowledge' to the panels and when they do, this knowledge is not as good or as detailed as the YOT workers themselves. Some community members choose to sit on panels of neighbouring areas (to reduce the chances that they know the offenders) which in turn does not provide the panel with adequate local knowledge. Rosenblatt therefore believes that youth justice panels should rely more on the professionals involved and not expect so much from the lay people, as their input and knowledge is often minimal and does not 'help to strengthen social ties' (p. 210). Indeed in Rosenblatt's own words the study 'advances our empirical and theoretical understanding of community in restorative justice's talk and practices, but it does so mainly by

1. See Newburn, T., Crawford, A., Earle, R., Goldie, S., Hale, C., Hallam, A., Masters, G., Netten, A., Saunders, R., Sharpe, K. and Uglow, S. (2002). *The Introduction of Referral Orders into the Youth Justice System: Final Report*, Home Office Research Study 242, London: Home Office.

suggesting what 'community involvement' *does not* mean and what work it *does not do*' (emphasis in original, p. 207). The very nature of the sound methodology and the use of the 'voice' of those people involved, means the reader is left with little choice but to consider her findings respectfully.

All in all, from a practical sense, Rosenblatt has started to untangle the quagmire that is restorative justice, especially in relation to youth justice panels. She has provided evidence that the UK position of these panels is outdated and under researched; practitioners should therefore take note and use this book to their advantage, as it

offers useful insights and would help to inspire change in a positive and modern fashion.

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