

## BOOK REVIEW

**Lindsey Pointer, *The restorative justice ritual*. New York: Routledge, 2021, 159 pp., ISBN: 978-0-367-56078 (hbk) and 978-1-003-09634-4 (ebk).**

Ritual studies emerged as a field of research in the 1970s. It arose from, and augmented, a reappraisal of the importance of rituals in our lives. In this book, Pointer applies concepts and insights from ritual studies to explain what happens in the restorative justice process and, in particular, how this process achieves its transformative and other effects.

Ritualisation involves creating social spaces that are extraordinary in that they involve symbolic acts and spatial configurations and bring people together for a deliberate social activity (25). Pointer's analysis is organised around an account of three important social functions that rituals can perform: (i) normative functions, that is they give people a sense of order, safety and security; (ii) transformative functions, that is they create a social space conducive to personal and relational change; and (iii) proleptic functions, that is they envision and temporarily create a possible future social structure which is more just.

Pointer compares two rituals – the criminal trial and the restorative justice process – in terms of their capacity to fulfil these functions. She argues that the trial performs the normative function quite well but has significant shortcomings when it comes to the transformative and proleptic functions. In the aftermath of a crime, the trial reaffirms the norms and values that have been breached, thereby promoting stability and cohesion. But, it does not function as a positive transformative space for the primary parties involved in a criminal situation: the 'responsible party' and the 'harmed party' (to use Pointer's terminology). Rather, features such as the requirement of civility and the hierarchical structure of the courtroom function to suppress the emotional expression and informal interaction required to create a transformative space. The ritual of the criminal trial also, contends Pointer, has shortcomings when it comes to the proleptic functions of rituals. Because it focuses on a specific act, and ignores its underlying causes, the criminal trial fails to explore the needs which lead to offending. Far from subverting hegemonic structures, it reinforces them by suppressing attention to social injustices.

By comparison, the key strength of restorative justice is its capacity to perform the transformative function of rituals: to evoke significant positive change both within the parties involved in a criminal case and in the relationship between them. Many, especially facilitators of restorative justice processes, have highlighted and celebrated its extraordinary capacity for transforming people and relationships. Pointer addresses the question of *how* the restorative justice ritual produces such transformative effects. She starts with a brief survey of scholarship which has deepened our understanding of the transformative impact of restorative justice through investigations of the dynamics of shame, neurobiological mechanisms which rewrite emotional memories, and interaction ritual chains. Pointer seeks to complement this body of scholarship by analysing the transformative social space created by restorative justice. Applying the methods and insights of anthropological

and sociological studies of ritual, she shows how restorative justice processes take participants through three phases of transformation: separation, liminality/communitas and reincorporation. This analysis is illustrated and supported by her own empirical research involving interviews with facilitators. Pointer carefully identifies the features of restorative justice processes that help produce personal and relational transformation, as well as factors that might hinder it.

More critical voices might accept that restorative justice rituals are good at transforming the lives of those who take part in them, yet insist they can do little to deal with the feelings of anxiety, confusion and vulnerability which crime introduces into the lives of the wider public. Hence, society arguably requires penal rituals that are more effective in reassuring public audiences that the moral and social order is intact. Pointer acknowledges these criticisms and surveys the work of sympathetic critics of restorative justice who have sought to solve this problem by proposing ways of integrating restorative justice into broader rituals of judicial punishment. She finds these schemes unsatisfactory, largely on the ground that they involve maintaining hierarchical and stigmatising elements of the criminal trial that would diminish the transformative potential of restorative justice. As an alternative, she suggests that modifying rules about confidentiality and using imaginative and energetic methods of enhancing public awareness and understanding of restorative justice can enhance the normative impact of the restorative justice ritual.

A rather different critical concern about restorative justice is that, like the penal rituals to which it is proposed as an alternative, it fails to address structural injustices. Pointer provides a neat summary of this critique before arguing that the restorative justice ritual is more effective than has been assumed in performing the proleptic function of rituals. The key theme here is that within the restorative justice ritual a miniature 'restorative society' is created: a society in which everyone belongs and everyone matters and in which everyone is connected. Through promoting widespread use of restorative justice processes such as circles, to handle not only crime but troublesome conduct and conflict in schools, workplaces and everyday life, the restorative justice movement – Pointer argues – is enabling more and more people to (temporarily) experience such a society. Hence, the restorative justice ritual is beginning to play a key role within larger efforts to bring about social change.

Pointer's book concludes (in chapter seven) with a set of specific recommendations for those organising and facilitating restorative justice processes that will enable them to protect and enhance the functioning of the restorative justice ritual.

*The restorative justice ritual* is a welcome addition to the growing body of scholarship which is pushing forward understanding of the mechanisms by which restorative justice achieves its positive results. It also makes an interesting contribution to thinking about the strengths and limitations of restorative justice processes as a contribution to broader efforts to achieve social justice and moral order. Moreover, the book expands the range of scholarly resources that are being brought to bear upon the task of understanding and assessing restorative justice. Leading works of classical social theory and cultural anthropology are drawn upon

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in order to provide stimulating readings of the practices of restorative justice. Pointer's book is, in my view, essential reading for all serious scholars interested in restorative justice. Moreover, practitioners and policymakers will also benefit from it. Whilst it is a rigorously researched and scholarly work, it is written very clearly and engagingly. Difficult concepts (of which there are a few) are plainly and concisely explained. Pointer shows a deep appreciation of the perspective of practitioners and her practical recommendations are clear and to the point.

Yet, there are aspects of *The restorative justice ritual* which I find problematic. The most important of these is the account of the criminal trial. This occupies a central place in the book. In my view, it perpetuates errors and dangers which dog the discourse of many restorative justice advocates.

The book opens with a juxtaposition of the criminal trial of some Māori activists, for illegal possession of firearms and belonging to a criminal group, with a subsequent restorative justice encounter between senior police officers and the families of those affected by a violent police raid that preceded the trial. The reader is left in little doubt about which of these 'two distinct modalities for performing justice' is to be preferred (2). After the trial, 'justice had been done in the eyes of the state', but the need of people for justice largely remained unmet (3). The restorative justice encounter, on the other hand, 'allowed for a more holistic response to the needs resulting from the raids, thus opening the possibility for greater reconciliation to emerge' (3). This opening sets the tone for much of the rest of the book. Throughout, the criminal trial is mainly portrayed as a degradation ceremony designed to intimidate and degrade suspects and offenders (or 'responsible parties') in order to reassure the public that order and authority remain intact. In restorative justice processes, by contrast, everybody is treated respectfully and lovingly, with responsible parties related to as good persons responsible for bad deeds. The concern is with healing rather than degrading people.

This contrast strikes me as odd. The criminal trial and restorative justice processes have completely different purposes. The core purpose of the criminal trial, if we take 'official' accounts of its purpose at all seriously, is to produce a verdict in a criminal case: is the person accused of committing a criminal offence guilty or not guilty? Because the outcome has such serious consequences, especially for those accused, people who value justice have long insisted that the process for reaching this verdict should adhere to 'the rule of law'. They insist that: the prosecution must prove, beyond a reasonable doubt, that the accused person has committed a specific illegal act; the determination of whether this has been proved should be made in an ordinary court, subject to public scrutiny; accused persons should be presumed innocent unless and until proven guilty; they have a right to know the charge, to hear evidence and to be represented by an advocate; various forms of evidence are excluded or restricted, such as evidence of bad character, illegally obtained evidence, and confessions obtained in oppressive circumstances.

In practice, the criminal trial usually falls short of this ideal. It would indeed be naïve to suppose that the criminal trial is shaped solely by concerns of justice and the rule of law. It is also shaped by competing objectives, such as concerns for the ritual denunciation of crime. Yet, any account of the criminal trial which leaves out

its 'official' purpose, focusing only on its more latent social functions, is equally distorting. Crucially, it fails to account for why so many people regard the trial as a necessity. It is mistaken to suppose that popular support for the criminal trial is a product solely of people's need for a ritual which helps them deal with feelings of disorder and insecurity that crime provokes. Rather, many people take justice and the rule of law very seriously.

So long as we accept that many criminal accusations are wrong, and that justice requires that those accused should have a right to contest their guilt and to benefit from the protections of the rule of law, we will need criminal trials. Restorative justice processes, no matter what beneficial functions they perform, are simply not designed to fulfil the most important purpose of criminal trials. Rather, they are designed to meet various needs – such as needs for accountability, healing and reintegration – in cases where guilt has already been freely admitted.

This disparaging attitude towards the criminal trial also strikes me as dangerous. As I have suggested, those who value justice tend to insist that those accused of criminal conduct should have a right to a trial governed by the rule of law. There is a high price to pay for rigorously adhering to this ideal. Many people who are widely regarded as dangerous and reprehensible will remain at liberty and avoid punishment. And, as the scope of criminal law is expanded to cover more and more types of conduct, the trial system becomes very costly and overloaded. Not surprisingly, then, there is a countervailing movement, growing in strength in contemporary society, to relax the procedures for producing guilty verdicts (to have more summary 'justice' procedures, to dilute the presumption of innocence, to have less exclusionary evidential rules, and so on). Indeed, as Pointer recognises, there is a strong tendency in contemporary society to bypass the trial altogether by offering incentives to accused persons to plead guilty (39). Hence, the criminal trial is the site of an important struggle between those who prioritise justice and the rule of law and those who think these are luxuries that should be diluted or even dispensed with for pragmatic reasons. To the extent that it denigrates the criminal trial – presenting the ideals of legal justice which it 'purportedly' embodies as mere rhetorical gloss painted over a degradation ceremony – the restorative justice movement positions itself on the wrong side of this struggle.

But, of course, it is not necessary to do this in order to make the case for restorative justice rituals. The criminal trial, in its ideal form, needs to be defended energetically as an institution that is vital in a society committed to justice. But, it forms part of a larger institution of juridical punishment. That larger institution has many shortcomings and flaws. And, some of its most serious shortcomings result from adherence to a rather limited and impoverished notion of what is required to achieve justice in the aftermath of crime. A key achievement of the restorative justice movement has been to draw attention to this, and to demonstrate that our quest for justice can be enriched by a shift towards a more reparative conception of justice and by a certain type of moral dialogue between those who commit crime and those whose lives are blighted by it. *The restorative justice ritual* makes a valuable contribution to this development by providing an insightful and

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valuable reading of the restorative justice process. It is illuminating and a pleasure to read.

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