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Book Review

Cyrus Tata (2020) *Sentencing: A Social Process. Re-thinking Research and Policy*. Switzerland: Palgrave Pivot

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The study of sentencing as a social phenomenon rather than a purely legal event has, until recently, been uncommon. Sentencing is a complex, multilayered experience and analysing it exclusively through a narrow legal lens privileges certain types of knowledge and elides other important perspectives. Tata, in this eminently readable book, notes the limitations of current academic discourse around sentencing. He examines what he calls ‘sentencing professionals’ in an analysis of how lawyers and non-legal workers such as social workers and probation officers work collaboratively to present the individual as a suitable subject for criminal justice treatment. Importantly, he demonstrates how this work achieves and maintains an individualistic stance that denies the existence of collective problems. In another chapter, Tata confronts criminologists who insist that technocratic justice has taken over completely from judicial discretion, arguing that this totalising thesis obscures the more complex reality—that sentencing has always relied on the creation of categories and classifications.

Tata embraces and promotes the idea that sentencing is a performative, collaborative phenomenon. He critiques the binary conception of freedom and coercion implicit in debates between legal formalists and those favouring discretion, highlighting that these two ostensibly opposing positions share the same ontology.

The experience of the sentenced is at odds with the linear, event-based view perpetuated by legal analysis. Tata claims that subjects experience sentencing not as a temporally linear series of siloed stages, but as a process of travelling backwards and forwards in time as they gauge the effect of what they do or say in the next ‘stage’. This intriguing insight deserves further exploration and dovetails with the observations of ethnographic researchers that people experience the criminal process as a confusing jumble—as one prisoner in my own study said, ‘down the rabbit hole’. Tata appears to suggest that the siloing of the elements of criminal justice, so confusing and disorientating for the subjects, serves a functional role in maintaining the mystique of sentencing. This also warrants further exploration in terms of the mechanisms by which this is achieved.

Perhaps the most valuable aspect of the book is the bright light Tata shines on the role of sentencing professionals. Lawyers, particularly those acting for the defence, like to think that they are on the side of the individual against the might of the State. What is truly in the best interest of the client and whether lawyers actually take instructions in a straightforward way are questions complicated by a plethora of

factors, not least of which is the unequal power dynamic between them. In light of the obsession with efficiency, exemplified by schemes and incentives to plead guilty early, it is imperative to assess the effect of these incentives in the context of the unequal power relations, on lawyers' practices with their clients. Tata's insights in this regard should be heeded by defence lawyers and the organisations that represent them. The 'encouragement' of guilty pleas by sentencing professionals and the presentation of the individual as freely accepting their guilt are, Tata posits, the most powerful contributors to the maintenance of the legitimacy of the criminal justice system. Responsibility for the 'revolving door' nature of contact with the criminal justice system is also assigned to the professionals, who, according to Tata, 'cultivate their clients'.

Taking a Foucauldian view of the work of non-legal sentencing professionals in the maintenance of social control, Tata considers these professionals 'humanising agents' whose work in placing the stories of individuals into accepted tropes allows for the efficient functioning of the legal system. His insight into their role of transforming the subject into one suitable for 'rehabilitation' emphasises the interactive dynamic between legal and non-legal sentencing professionals. The power dynamic between them, however, is somewhat elided. Legal hegemony over the sentencing process will always place such professionals in a secondary, 'handmaiden role', which perhaps could have been better emphasised in Tata's account. Lawyers will always be granted greater legitimacy, since the court is their arena. However, the work of non-legal sentencing professionals is given some prominence in Tata's analysis, since they work together with lawyers to achieve what Tata calls 'ritual individualisation' to achieve the end result of autonomous individualism.

Using the example of Scottish attempts to implement a sentencing information system similar to that operating in New South Wales since the 1990s, Tata questions the validity of the tropes of 'technocratic justice' widely used to critique modern criminal justice. In positing a much more powerful role for the maintenance of longstanding traditions of juridical control and discretion in sentencing, he questions whether technocratic elements have had the type of all-encompassing control implied by some accounts. In New South Wales, the Judicial Information System is widely used in a complex system including guideline judgments and mandatory sentencing, retaining a considerable amount of judicial discretion. This tends to confirm Tata's thesis that the argument that judicial discretion has been overwhelmed by technocratic justice is too extreme and totalising.

Tata concludes with a plea for sentencing to be viewed as a socially constructed, communicative phenomena and for the emphasis on efficiency to be tempered by an appreciation of the effect of the focus on efficiency on the production of justice. In urging the application of proportionality and parsimony to sentencing, he reiterates resistance to the extension of carceral power, arguing that it should only be used for punishment and not, in his words, as the 'last resort of the welfare state.' These are not new insights, and this is perhaps the least successful part of the book. The strength in this work lies in the uncovering and interrogation of taken-for-granted processes and in piercing the mystique of sentencing by encouraging research into what is actually occurring.

For Australian criminal justice scholars faced with the human rights disaster of Indigenous overincarceration, Tata's book is a timely reminder that resorting to pure legal principle may lead to injustice when not informed by evidence about the social consequences of legal action. The struggle to convince courts to consider the structural disadvantage of Aboriginal and/or Torres Strait Islander people may be the most obvious symptom of the type of blindness to social disadvantage shown in purely legal approaches to sentencing. Tata's book is a call to action for a more social view of sentencing and for the production of research to illuminate these factors.

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