

### **Criminal Justice: Assignment 1**

In this assignment I intend to critically evaluate the aims and consequences of sentencing and show how the laws regarding sentencing currently stand in England and Wales. I will show how sentencing an offender works, and how judges come to their decisions. I also intend to show what the aims of sentencing set out to achieve.

Sentencing is a particularly important aspect in the Criminal Justice System in operation within England and Wales. It must be determined, to define what sentencing does, what it can do what it could achieve and whether or not it endorses the aims it is given.

At present, there is not one specific aim of the Criminal Justice System. According to the current Home Office Statement which has been released, the aims of the Criminal Justice System is *“to build a safe, just and tolerant society, in which rights and responsibilities of individuals, families and communities are balanced, and the protection and security of the public are maintained”*.

There are many opinions as to what sentences are actually meant to achieve. Punishment is categorised as guilt, blame, pain or humiliation. Many of the general public believe that a sentence should be passed to punish an offender although in some cases this may not necessarily be the correct sentence to pass. In **Tyrer v United Kingdom (1978) A 26, Eur Ct of H.R** the question of whether corporate punishment in the Isle of Man violated Article 3 of the European Convention on Human Rights was raised. The court felt that in this case, birching the 15yr old boy for handling stolen goods, the definition of suffering was not severe enough, however it was severe enough to be humiliating to the victim, and that this notion of corporal punishment went beyond humiliation.

Obviously, a sentence should reflect the guilt of the offender and also the seriousness of his/her crime. However this brings about some consistency problems as not everyone has the same opinions on things, and therefore no two sentences will ever be alike. This is also because age, mental awareness and circumstances all need to be taken into consideration when passing a sentence. Mental awareness is, in particular, a major aspect to take into consideration. If an offender does not have the Mens Rea when he commits the offence then it may be for the courts to decide that the offender would be better to serve their time with a hospital order rather than a custodial order.

Another issue which needs to be raised is whether or not punishment should deter the offender and society at large. I believe that certain aspects of this are completely down to the offender. Certain people will commit a crime once and getting caught will deter them from ever doing it again. However, others, especially those that have been in and out of prison, may not benefit from any type of deterrence for the simple fact that they do not care enough about what the consequences are if and when they get caught.

**Jeremy Bentham** discusses general deterrence and believes that sentencing should be fairer and that it should aim to achieve general deterrence, but there are some crimes which general deterrence does not apply to. Murder, for example, is not usually a thought

out crime. People do not fail to commit murder because they think of the punishment, because usually murder is an opportunistic crime.

The 'Just Deserts' approach currently in force in England and Wales aims to strike a balance between the seriousness of the offence and the severity of the sentence to be imposed. It was brought in by the Government White Paper, *Crime, Justice and Protecting the Public (1990)* which then went on to form the basis of the *Criminal Justice Act (1991)*. This act states that the punishment should fit the crime. Before this, there were no statutory aims, or anything which articulated sentencing. In accordance with *CJA (1991)*, it is necessary to have to take into consideration certain facts when sentencing the offender. These include, proportionality, the culpability of the offender, whether the punishment will deter the offender and society at large from committing crime in the future, whether it will satisfy the victim's and society's need for revenge or retribution, and lastly, whether or not it may change the attitude of the offender through rehabilitation. In accordance with the *Criminal Justice Bill (2002)*, which is based by the *Halliday Report* and the *Auld Report*, is now the case that the harshest sentences should be saved for those who repeatedly commit offences.

Recently this approach has come under attack by the Government, who believe that sentencing is too individualistic and should be more fixed.

Obviously, sentencing in theory and sentencing in practise are completely different. In *Graham (1999) 2 Cr App R (S) 312* the Court of Appeal stated that sentencing is "*art not science*" meaning that there is much discretion as well as the stance of flexibility vs. rigidity.

The notion of exemplary sentencing has caused some concern, due to the fact that it is all very well to punish someone harshly, but if it is not known about then it will not deter other people from committing the same crime. In *Storey (1973) 57 Cr App R 840* the County Court Judge gave Storey a 3 year sentence for mugging. The judge stated that he was deterring other people from mugging, although it was found that there was no reduction over the next 5 years.

However deterrence and exemplary sentencing can work in certain circumstances. It was stated in *Attorney General v CCC (2001)* by Mantell LJ "*in all classes of sexual offences, there will also be the need to deter others from acting in a similar fashion*"

There are very few decisions from the Court of Appeal on sentencing. The Court is reluctant to be bound and therefore has not set very much binding precedent. Instead, they prefer to use guidelines. *Bagiric* in *Punishment and Sentencing: A Rationale Approach* states that "*decisions are often made not on the basis of binding rules and principle, but rather according to the intuitive sentiments of sentencers. As a result, sentencing law violates the rule of law's virtues of consistency and fairness*". This, in layman's terms means that sentencing is designed to be individualistic rather than generalistic. This makes sense, as no two crimes are ever exactly the same, and is a very European way of looking at sentencing, as opposed to the United States way of being very generalistic.

Murder is the only offence in this country which carries the fixed sentence of life imprisonment. Every other offence carries a maximum sentence although some public order offences do not carry any sentence other than an order to keep the peace. However, under the **Powers of Criminal Courts (sentencing) Act (2000)** a 'three strikes' system was introduced. Ss.109 states that you will get a life sentence for your second serious offence committed. Ss 110 states the same for drug trafficking and s.s 111 says that domestic burglary will receive the same penalty. There is a minimum of three years for the third offence, which is an attempt to impose some form of fixed sentencing. However, the government put in some discretion by stating that this can only be done whereby in may cause extreme injustice. For this reason, there have been very few offenders given a life sentence for their second serious offence.

Proportionality is a major part of sentencing. The Aggravation v Mitigation approach discusses proportionality in the circumstance of sentencing, or the "offence seriousness". **Lord Taylor CJ** states in **Cunningham (1993) Cr App R (S) 444** that proportionality requires a sentence to "*commensurate with the punishment and deterrence which the offence requires*". It obviously, a sentence needs to be proportionate to the offence committed and therefore the two types of proportionality need to be discussed. Ordinal proportionality relates to the ranking of punishment, whereas Cardinal proportionality looks at how serious the offence is in relation to other penalties. It was in **Cox (1993) 14 Cr App R (S) 479** that the amount of discretion available was emphasised. Cox was convicted of theft and sentenced to detention. The Court of Appeal stated that it was still open to a sentencer to choose to give him a lesser sentence as insufficient weight was given to his youth when originally sentencing him. In **Fraser (1982) 2 Cr App R (S) 449** the Court of Appeal decided to bring into force a two stage approach to sentencing. They decided that a sentencer must look at how grave or serious an offence is, although they didn't specify in relation to what, and also whether there is any mitigation which may act to reduce a sentence.

When passing a sentence the courts will take into consideration a number of factors. In **Allen v Bennett (1988) 10 Cr App R (S) 466** the court upheld the six year custodial sentence of the offender since he attacked an 82 year old lady in her own home. It was decided that the vulnerability of the old lady was such that the offence was more serious than it would have been on a younger, less vulnerable person. However, sometimes a crime is so serious that even the mitigating factors of youth and previous good behaviour are not enough, whereby victims of theft are targeted, purely because of their old age, shown in **Richards (1989) 11 Cr App R (S) 286**. **Nawrot (1988) 10 Cr App R (S) 239** stated that a public official is also vulnerable. In this case, the offender was sentenced to two years for assaulting a police officer, although this sentence was necessary as a deterrence as well as vulnerability. A breach of trust is also taken into consideration. In **Usher (1980) 2 Cr App R (S) 123** a teacher was convicted of unlawful sexual intercourse and the abduction of a 14 year old pupil, and was sentenced to eighteen months in prison. Likewise, premeditation of a crime is likely to impose a harsher sentence, particularly if it is committed by a 'professional' criminal such as in the case of **Spencer and Carby (1995) 16 Cr App R (S) 482**.

Gratuitous violence and injury caused by an offender will not have any mitigating factors taken into consideration. In Ivey (1981) 3 Cr App R (S) 185 Griffiths LJ held that kicking a man on the head whilst on the floor and urinating on him was above and beyond the normal cause of assault. Also in Legge (1988) 10 Cr App R (S) 208 forcing someone to strip and then beat, stab and urinate on them aggravates the offence.

Group offending can also aggravate an offence. This was shown in Rogers-Hinks (1989) 11 Cr App R (S) 234 where a group ran amok on a ferry causing £24,000 worth of damage. The court held that they were more intimidating as a group than they would have been as individuals and gave them 8 years custodial sentence. In the recent case of R v. Breeze (2002) EWCA Crim 2541 the court stated that the appellants straight out guilty plea, and her degree of participation in the conspiracy to commit fraud, should enable her sentence to be reduced.

Naturally, it is hard for judges to impose sentences on offenders since they have very few binding precedents and few guidelines. As I have shown throughout my assignment, many things can be taken into consideration when sentencing an offender. Age, mental awareness, aggravating factors, previous good behaviour, provocation and even remorse can all be taken into account. Also the tendering of a guilty plea can help an offender. However, the courts will frown upon those who they believe they can 'bargain', for example, those who state they will plead guilty if they don't get a custodial sentence. In Hillington and Emmens (1985) 7 Cr App R (S) 364 the offenders did not plead guilty until the last possible minute and appealed stating that the court had not taken into consideration their guilty plea. This was rejected at appeal. This is frowned upon, generally because if you want a lesser sentence, you should at least show some remorse for your crime, and plead guilty because you want to. However, in A-G (no.106 of 2002) [Jan 31<sup>st</sup> 2003] CA Hall was convicted of 2 counts of sexual intercourse with a 12yr old girl. He pleaded guilty before trial, but aggravated the offence in such that the age difference was 20yrs and as well as the fact that he instigated the offence, the girl was in the same class as his son at school. In Ingham (1980) 2 Cr App R (S) 184 it was shown that voluntary work taken on by the offender can show remorse as there is more recognition of social acceptability.

I believe that sentencing does consist in trying to settle a number of totally conflicting facts. In some circumstances it may be easier to have fixed sentences for offences; however with the Human Rights Act 1998 now in force, it may not work. If a court did not take into consideration any reasons for why an offender had committed the offence then the right to a fair trial may be raised by the offender. On the other hand, it could also be stated that people should not commit crimes anyway, so why should they get any special considerations when they get caught? Sentencing is always going to be a difficult matter where the courts are concerned. There will always be people who commit crimes and therefore if the courts do not want to be bound by their previous decisions then it will carry on to be one big circle with respect to the guidelines of sentencing.

**References**

**Sentencing and Criminal Justice – Andrew Ashworth, Butterworths 3<sup>rd</sup> edition 2003**