

Amy Cross - Essay LAS- 7 (Part A and B)

‘(Part a) Describe the different aims of sentencing.’

Introduction:

First when the defendant is found guilty from either plea or trial, the judge or magistrate have many sentencing options available to them, the many options they have depend of the seriousness of the offence and also the circumstances around the crime. When deciding a sentence for a case they will also look at what this particular sentence they choose will achieve for the defendant. Within the Section 142 of the criminal justice Act 2003 this sets out the purposes for sentencing for those aged 18 and over, within the act it states that the court must have regard to punish offenders, reduce the amount of crime, reform and rehabilitate offenders, protect the public and also those who were affected by the offender. From this Act it clearly recognizes the aims which are need for sentencing to happen; through this answer I will describe in turn all the aims of sentencing and how each combination of aims intend to serve a number of objectives.

Retribution:

Retribution aim is based upon the idea that the punishment that the offender receives is due to the seriousness of the crime, the punishment is not decided to reduce crime or even alter the offender’s future behavior but to just make sure the punishment inflicted is in proportion to the offence. ‘This idea was expressed in the nineteenth century by Kant in *The Metaphysical elements of justice* when he wrote:

“Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or for civil society, but instead it must in all cases be imposed on him only on the grounds that he has committed a crime.”¹

From this quotations, mottos such as “Let the punishment fit the crime”², have been developed and started to be used when deciding on how severe to be with the punishments for specific crimes.

In today’s society, retributions is largely based upon the idea that each offence should have a certain tariff or level of sentencing, so to make sure this was clearly used and declared ‘The Sentencing Guidelines Council’³ produced

¹ OCR Law for AS – Jacqueline Martin Pg 83

² OCR Law for AS – Jacqueline Martin Pg 83

³ OCR Law for AS – Jacqueline Martin Pg 84

guidelines in which all courts now have to follow. Example: Guidelines on robbery include 'The victim is caused serious physical injury by the use of significant force and/or use of weapons', with this type of activity the starting point would be 8 years custody and the sentencing could range between 7-12 years custody.

Deterrence:

With the deterrence aim it can be split into two different parts, you can either have individual deterrence or general deterrence. With individual deterrence the main is intended to ensure that the offender does not re-offend, through the fear of future punishment. With general deterrence the main primary aim is preventing other potential offenders from committing crimes. Both of these are aimed at trying to reduce future levels of crimes in the future.

With individual deterrence there are several penalties which can be forced and imposed with aim of deterring any offender from committing any similar crimes within the future. The main penalties are that of prison sentence, a suspended sentence or a heavy fine. However from research it has shown that prison does not seem to deter as about 55% of adult prisoners reoffend within two years of release, and also 70% of young offenders reoffend within two years of release. The theory behind deterrence has been highly criticised, due to deterrence is meant to make the offender think about the consequences before committing a crime however most crimes are committed on the spur of the moment usually under the influence of drugs and alcohol, which in doubt means that it is very unlikely that the offender will stop and consider the consequences of their actions. It has been pointed out that the fear of being caught is more of a deterrent than considering the consequences.

With general deterrence this is less frequently used, as its value is often doubted and to succeed on what it is trying to get across relies greatly on the publicity. However it has been seen where a judge or magistrate will choose to 'make an example' of the offender, especially where there has been an increase in a particular crime. General deterrence is said to be in direct conflict with the sentencing aim of retribution, and is seen to be the least effective and least fair principle of sentencing.

Reform/rehabilitation:

Rehabilitation is mostly based with both alcohol and drugs abuse, with the main aim to try and reform and rehabilitate the offender in hope they alter their future behavior. The aim is there in hoping that the offender's behavior will be altered due to the penalty imposed onto them, to make sure that they do not offend in the future. Reformation is very important in the sentencing philosophy especially with young offenders and also some adult offenders, in deciding the community sentence issued to young offenders the courts will look

and consider factors such as school reports, job prospects and medical records on what sentence should be given.

When the court is considering rehabilitation for an offender the sentence which is decided is an individual one which is aimed at the needs of the offender, this approach is a direct contrast to the tariff sentence, as this aim is producing inconsistency in sentencing. However in the past five years rehabilitation has become a popular sentence, many offending behavior programmes have been set up within prisons especially specializing in alcohol, anger management and drug abuse. Persistent offenders are usually thought as less likely to respond positively to reformation as they have supposedly become accustomed to a criminal way of life in which they live, with relation to this the 'Powers of the Criminal Courts (Sentencing) Act 2000'⁴ stated that:

"In considering the seriousness of an offence, the court may take into account any failures to respond to previous rehabilitative sentence".⁵

Reparation:

The aim surrounding reparation is that it is aimed at compensating the victim of the crime usually done by ordering the offender to pay a sum of money to the victim for the trouble and damages they have caused. The idea of paying back compensation to the victims has been around for a long time and still highly often used in English courts now. English Courts are required to consider compensation to the victim of a crime in addition to any other punishment they believe is necessary with the case. As under 'Section 130 of the Powers of Criminal Courts (Sentencing) Act 2000'⁶ are under duty to give reasons if they decide not to make the offenders pay a compensation, also courts have brought in projects to bring offenders and victims together so that the offenders make direct reparations with the victim. The main concept restitution also includes making reparations within the society, such as doing unpaid work such as removing graffiti or cleaning litter from a public place.

Denunciation:

The final sentencing aim is denunciation; this is where the society is expressing its disapproval of criminal society, believing that a sentence should indicate both the offender and other people that society condemns as certain types of

⁴ Essay Competition Winner

⁵ Essay Competition Winner

⁶ OCR Law for AS – Jacqueline Martin Pg 85

behavior. ‘The *Criminal Justice Act 1991*’⁷ placed both denunciation and retribution as the most important forms of punishment.

From the Royal Commission report issued in 1953, Lord Denning’s approach to denunciation was:

“Punishment is the way in which society expresses its denunciation of wrong doing, and in order to maintain respect for the law it is essential that the punishment inflicted for grave crimes should be adequately reflect the revulsion felt by the great majority of citizens for them.”

Conclusion:

All the aims of sentencing are very important; each aim is very different and suitable for different crimes. The two main themes which run through all the sentencing aims is that of first-retributive and second - utilitarian, with the first involving looking at the offence and the punishment for it and the second theme is to make the sentence decided a positive one for both the offender and for society on helping them make a change.

(Part b) Illustrate the ways in which different sentences may be used to support different aims of sentencing.

Introduction:

The courts have several different types of sentencing available for them to use; there are four main categories of sentencing: custodial sentences, community sentences, fines and discharges. However the court also has other powers in which they can use, such as compensation orders and also disqualification such as in driving for example.

Custodial Sentences:

Within the UK, the most serious punishment that a court can impose is a custodial sentence; these sentences can range from a few weeks to life imprisonment. The sentences included in custodial sentences are mandatory and discretionary life sentences, fixed-term sentences, custody plus (Short-term sentences) and suspended sentences.

⁷ Essay Competition Winner

When deciding to impose a custodial sentence the court must state the reason on why in a written warrant form of commitment and then is entered in the court register.

Mandatory Life sentence:

With the example of murder, the only sentence in which a judge can impose is life sentence, however a judge may set a minimum number of years to spend in custodial, however a whole-life term should be set where the offence has either murdered two people, done a substantial degree of premeditation or planning or abducting the victim, Murdering a child, murder done through the purpose of political, religious or ideological cause and finally has the offender convicted murder before. Usually the starting point of a life sentence can range from 30 to 15 years and if under the age of 18 then the starting point can be from 12 years, The stating point states the minimum amount of years they can spend under custodial.

Discretionary Life Sentences:

When looking at other serious offences such as manslaughter, rape and robbery the maximum sentence given is life imprisonment, but the judge does not have to impose it, the judge instead may decide that a fine or discharge is more appropriate.

Fixed Term Sentences:

When looking at other crimes, deciding on the sentence to be given several factors have to be considered such as the seriousness of the crime, have they committed the crime before. Imprisonment for set number of months or years is seen as fixed term; prisoners do not have to serve the whole sentence and is released after they have served half the sentence.

Home Detention Curfew:

From 'The Crime and Disorder Act 1998'⁸ this allows early release from prison on condition that a curfew condition is included, the curfew which is enforced is through an electronic tag, in which the rest of their sentence is done at home but under a tag monitor. There is no automatic right to be released in curfew; each prisoner is assessed individually on deciding if she is suitable. The main reason on why home detention was introduced was to encourage prisoners to not re-offend, reduce the prison population and help prisoners structure their lives more efficiently.

⁸ OCR Law for AS – Jacqueline Martin Pg 92

Extended / Suspended Prison Sentences:

From section 85 of the powers of Criminal Courts (Sentencing) Act 2000 gives the court the power to pass an extension sentence for a sexual or violent offence. This is where the offender is given a custodial sentence plus a further period of custodial sentence. The extension sentence can no longer be than 10 years for a sexual offence or five years for a violent offence.

With suspended prison sentences, this is where an adult offender may be given a suspended prison sentence of up to two years, this is where the sentence does not take a effect immediately, however within this time if the offender does not commit any further offences the prison sentence will not be served.

Community Orders:

Community sentences, is a sentence given to help change the offenders behavior and helping them make amends, this can either be done directly to the victim or to society. This type of sentence is available to anyone over the age of 16; the court can choose different elements to make the community order suitable and relevant to the particular crime and offence committed. Within section 177 of the 'Criminal Justice Act 2003' it states many different options which can choose for sentencing, which could include fines, unpaid voluntary work and rehabilitation.

Unpaid Requirement:

When the court decides to issue unpaid work, this can between 40-300 hours in where you will work on a suitable project organised by the probation service. The court will decide the exact number of hours, with the hours usually normally being sorted into groups of 8 hours at a time. This sentence is usually issued to people who have offended or harmed the community as a whole, such as anti-social behavior or criminal damage. Usually the sentence will include clearing up the local area, this could be removing graffiti from buildings or installing gates and security locks to put in place anti-crime measures, also there is cases in where individuals have been placed into charity shops to work unpaid.

Curfew Requirement:

With curfews they are given to offenders over the age of 16, with a curfew the main aim it carries is that it is enforced to reduce the offender's opportunities for criminal activity as well as protecting the local community from anti- social behavior. A curfew can last up to 6 months where the offender must remain at a fixed address, most likely their home for between 2 - 12 hours in any 24 hour period. Curfews are usually given at times on when the offence took place which in most cases is at night. By having a curfew this means that you will

have to wear an electronic tag in which is tracked on a satellite system. If found to have broken their curfew then this will be picked up straight away and then they will be taken into custody. However though with this sentence it is still possible for the offender to commit crimes whilst they are under curfew, but from statistics it has shown 80% of tagging system have been successful.

Exclusion and supervision Requirements:

With an exclusion order this is where the offender is not allowed to go to certain places, this could be for a period of time or just for a few days, and this order is used to keep away the offender from the areas in which they are more likely to commit crime. This order can be up to two years for offenders over the age of 16 and up to 3 months for those under 16.

With a supervision requirement this is where the offender is placed under supervision of a probation officer for a period of three years, during this time the offender must attend appointments with the supervising officer or with any other person decided by the supervising officer.

Fines:

For a wide range of offences the most common way to dispose of the case and resolve it, is by placing fine on the offender, fixed penalty notices are given to less serious offences such as parking tickets, speeding and public disorders. Instead of prosecution a fixed amount of money will be required from the offender to be given to the magistrate's court, the fines are placed into levels:

Level 1: £200, Level 2: £500, Level 3: £1000, Level 4: £2500 and Level 5: £5000.

However when looking at the crown court there are no limits to the amount that an offender can be fined.

Discharge:

When looking at discharge there is either conditional discharge or an absolute discharge, a conditional discharge sees the court discharging an offender on the condition that no further offence is committed during a set period of up to three years; it is used when they think that punishment is not necessary. When looking at conditional discharge it is widely used by magistrate's court for first time minor offenders. When an absolute discharge is decided it is when effectively no penalty is imposed, this is usually used when an offender is technically guilty but morally blameless.

Conclusion:

When looking at different sentencing options, you can also assess the different aims in which can go with them, many of the different sentences include a large element of deterrence and retribution. In making sure that sentences given prevent any future crimes from happening. However I personally believe that rehabilitation should be considered when deciding on the sentence in which should be given to, as while they are serving their sentence they should get the chance to change their lives for the good and help cut down the criminal offence rate for the future.

Bibliography:

OCR law for AS - Jacqueline Martin

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