

Part A – Describe the aims of sentencing

PLAN

Introduction

- *Aims of sentencing are concerned with the reason or objective of the judge for given a particular sentence.*
- *Criminal justice act 2003 sets out all aims of sentencing for adult offenders*
- *The court should have regard to 5 main things:*
 - *Punishment*
 - *Reduction of crime*
 - *Reform and rehabilitation*
 - *Protection of public*
 - *And reparations*

Paragraph 1 – Retribution

- *Society's revenge*
- *RETRIBUTION=PUNISHMENT*
- *Fit the crime and should be an element of blame on offender*
 - *Mentally ill people wouldn't be subject to retribution*
- *Expressed in 19th century by Kant in the metaphysical elements of justice: SEE BOOK pg 182 for quote*
- *EYE FOR AN EYE – LIFE FOR A LIFE*
 - *Seen as the crudest form of retribution – still used in America with the death penalty*

Paragraph 2 – Deterrence

- *Individual*
 - *Aims to deter a person from committing the same crime*
 - *Imposes heavy fines or long sentences*
- *General deterrence*
 - *Make an example of an offender*
 - *Dependant on media coverage*
 - *Sentencing longer than specific offence*

Paragraph 3 – Reform + Rehabilitation

- *Main aim is to get them back into society*
- *Forward looking*
- *Aim to alter behaviour of offender and in this way reduce crime*
- *Particularly important when sentencing young offenders*
- *Given information about background, presentence report prepared by the probation service*

Paragraph 4 – Reparation

- *Aimed at compensating the victim by ordering the defendant to pay a sum of money or to make restitution e.g. Return property*

- *Bring the offender + victim together so they can make contact e.g. rapist + victims can be brought together if the victim wants to – COSMOPOLITAN*
- *Reparation to the society as a whole – community service sentences fall under this category*

Paragraph 5 – Denunciation

- *Sentence should indicate both to the individual and others that their actions are frowned upon by society.*
- *Lord denning pg. 184 top right quotation*
- *Reinforces the moral boundaries of acceptable conduct*
- *Page 101*

Conclusion

- *Tie loose ends + establish the aims of sentencing. Mention the effects of sentencing.*

Part A – Describe the aims of sentencing

Sentencing is the power of the court to determine what will happen to a defendant once found guilty. The aims of sentencing are concerned with what the judge looks to achieve by handing out a certain sentence. The Criminal Justice Act 2003 sets out all the aims of sentencing for adult offenders and states that the court should have regard to 5 main things: retribution; reduction of crime; reform and rehabilitation; protection of the public and reparations. In this essay I aim to expand upon each of these aims and describe their intentions.

Retribution

Retribution is the same as punishment and is seen as society's form of revenge upon a criminal for committing the crime they are found guilty of. The criteria for the judge to hand out such a sentence are such that a mentally ill person cannot be subject to retribution as there cannot be placed a blame on them if they're not mentally stable. The other of the criteria is that giving a sentence with the aim of retribution is that it must fit the crime, for example you cannot give a life sentence for a minor driving offence as it would be unjust and retribution should ensure that the sentence is in proportion to the offence. It is important that retribution is kept separate from deterrence and reduction of crime as this is not the main aim of a sentence due to retribution; this was also expressed by Kant in the nineteenth century who stated that: '*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 ground that he has committed a crime.*'¹. Currently retribution is based on set tariffs for certain crimes and in Britain there is the Sentencing Guidelines council who produce examples for judges on the most commonly committed crimes and all of these would include a range of sentences for the certain crimes.

The crudest form of retribution is; an eye for an eye and a life for a life, which is the idea behind the death penalty still in place in America. This varies slightly from state to state, as the crimes which allow for the death penalty change between states, but the most common crime which leads to the death penalty is one of murder for gain, such as 'a bungled robbery in which someone gets shot'². Retribution justifies the death penalty

¹ The English Legal System page 182 – Jacqueline Martin

² Understanding Criminal Justice Sociological Perspectives page 188 – Philip Smith & Kristin Natalier

because it states that the punishment should be in proportion and the death sentence is seen as directly proportional to committing murder.

Deterrence

Deterrence can be both individual and general; individual deterrence aims to stop a person from committing the same crime as they have been sentenced for. This will tend to include long prison sentences, suspended sentences or a heavy fine. This aims to make the criminal feel that perhaps committing the crime isn't worth the consequences but most criminals would tend to think that they are too clever for the system anyway so whether this actually works or not is debatable.

There is also the general form of deterrence which makes an example of a certain case in order to exemplify to the rest of society that the criminals will be punished. This often involves longer sentences than outlined in the guidelines however judges may feel the need to make an example of the case. An example of this is that when people hear about crimes through the media some of the cases are followed to the end so the public also hears about the sentence the convicted criminal receives and this may deter the rest of the society from committing similar crimes. General deterrence is the complete opposite to retribution because it completely defies the need for the sentence to be proportional to the crime as it allows for longer sentences than actually deserved for the crimes committed.

Reform and Rehabilitation

This is probably one of the most forward looking of the aims because it aims to change the ways of the criminal rather than actually simply punishing or making an example of them. This is good because it allows for the criminals to turn their lives around and make something better of themselves and therefore this is particularly important when sentencing young offenders as they have their entire lives ahead of them and can put their troubled youth behind them. The idea of reforming these criminals also is thought to reduce crimes because they have changed their lives so will not reoffend in the future. The court gets information about the defendant's background (from a presentence report prepared by the probation service) and the court will consider other elements where relevant.

Individualised sentences are also used when the court considers rehabilitation because they aim to understand the needs of the defendant and the way in which they will be able to benefit most from their sentence. This is obviously completely against the idea of retribution as criminals can be seen to be given more lenient sentence because it is thought that they could reform themselves which strays from the idea of tariff sentencing and this can appear to be unfair.

Reparation

Reparation is the aim which does the most for the victim as it aims to compensate the victim. Often this would involve ordering the defendant to pay a sum of money or other compensation (such as returning stolen goods) to the victim. This is often done when it comes to shoplifting or other such offences, where the victim is directly affected by the actions however not as severely as someone who would receive a sentence based on retribution. As well as this community service would also fall under the reparation category because it is helpful to the society as a whole.

Another example of reparation is allowing contact between victim and offender so the offender can make direct reparations.³ For example, in a feature in COSMOPOLITAN magazine it explained how a woman; Jo Nodding⁴

³ The English Legal System, Jacqueline Martin, page 187

⁴ COSMOPOLITAN magazine, November 2011, page 80

met the man who sexually assaulted her via the Restorative Justice Council. It took place in a controlled and mediated meeting where she was able to talk to her attacker and get the answers she needed in order to move on. The police liaison officers or the Restorative Justice Council are able to do this for many victims now and this helps many to move on from the crimes committed against them because it makes it easier for them to come to terms with what has happened and also allows them to understand why the attacker did what they did. Jo was quoted in the magazine saying: 'It was when I said 'I thought you were going to kill me' that he started to cry. He didn't deny anything'. The offenders must also agree to meet the victims and she quoted his reasoning which was: 'I did something really bad and now I can do something good' and then he apologised. She then said: 'I forgive you and I want you to forgive yourself.'⁵ This example of reparation shows how important it can be to both parts and this scheme is a good part of the aim involving helping the victims.

Denunciation

Denunciation is the aim that the sentence indicates that the actions of the offender are frowned upon by society. This aim involves showing the public that justice is being done and Lord Denning put it as '*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 adequately reflect the revulsion felt by the great majority of citizens for them.*'⁶ Denunciation also enforces the idea that crimes are morally incorrect and not socially acceptable in most parts of the country for example offences such as drink driving and smoking inside in public places which are now no longer viewed as acceptable by most of the society. Increasingly severe sentences and laws expand how widely the public feel that, things are morally incorrect because of the media coverage and the general idea of incorrectness when breaking the law.

Incapacitation

This is aiming to serve a useful purpose in the sense that the offender is in some way made incapable of recommitting the crime; the most obvious method of this is the death penalty or giving a life sentence. Although it is not seen as humane in the UK, in some other countries thieves have their hands removed in order that they cannot reoffend. Some examples of incapacitation are: electronic tagging, removal of driver's licenses and being banned from entering certain places. This removes the opportunity for the convict to even attempt to reoffend, particularly the electronic tagging. Another example is giving curfews; this tends to be common in anti-social behaviour cases because these things will often happen during the later hours of the day.

Conclusion

To conclude there are 6 different aims of sentencing some of which easily overlap others which completely oppose one another. These are used by judges daily for different reasons but it often depends on the type of case as to which aim the sentence has, it will also depend on the individual.

⁵ COSMOPOLITAN magazine, November 2011, page 80

⁶ The English Legal System page 184 – Jacqueline Martin

Part B – Illustrate the ways in which different sentences may be used to support different aims of sentencing

Plan

Introduction

- *There are different aims of sentencing: retribution reduction of crime, reform and rehabilitation, protection of public and reparations*
- *Different forms of punishment will reflect the different aims in different ways*
- *Types of punishment are:*
 - *Custodial sentences*
 - *Community sentences*
 - *Fines*
 - *Discharges*
 - *& Compensation*

Custodial Sentences

- *Involve depriving them of their liberty and freedom*
- *MOST SEVERE*
- *Courts can only pass it when an offence was so serious that it was the only response or if the case involved violence or sexual elements*
- *Outlined in Powers of Criminal Courts (Sentencing) Act 2000*

- *Current view is that it is a deterrent*
- *It is also a punishment (retribution)*
- *Some cases carry mandatory sentences eg. Murder = life*
- *Also incapacitation*

Community sentences

- *For offences which don't require such a harsh penalty*
- *Probation order (name changed to community rehabilitation order)*
 - *Conditions are attached: the offender living at a particular address/going for counselling or medical treatment/not seeing certain people (including known criminals)*
- *Community punishment order (community service order)*
 - *Contain an element of punishment and of rehabilitation and compensation*
- *Community punishment and rehabilitation order (combination order)*
 - *Combine both types (full time community service and probation)*
- *Curfew order (certain curfew must be adhered to)*
- *Exclusion order (banned from certain places)*
- *Antisocial behaviour order*
- *Drug abstinence order formally banned from taking drugs for between 6 months and 3 years.*

- *Obviously seen as retribution*
- *Also seen as reparations to the entire society*

Fines & Compensation

- *The court orders offenders to pay money (this is their punishment) this goes to the state*
- ***If paid to the victim it is a compensation order.***
- *Level of fine; up to the judge to decide however there are guidelines.*
- *This is a reparation aim because it would compensate the victim*

Discharges

- *Absolute discharge*
 - *The offender is free to go and is not subject to any conditions*
 - *Is given when someone has pleaded guilty or is found guilty.*
 - ***STRONG JUSTIFYING REASONS***
- *Conditional discharge*
 - *Will apply some conditions to the offender if they're released without sentence.*
 - *Often they are bound over – if they reoffend within a certain timeframe they will be tried for both offences at once.*
- *This is seen as a reform and rehabilitation because it gives the offender the benefit of the doubt and allows them to turn their lives around.*

Conclusion

- *There are forms of sentence which address each of the aims*
- *This is important as each sentence isn't suitable for each offender*

Part B – Illustrate the ways in which different sentences may be used to support different aims of sentencing

There are six different aims of sentencing which judges will follow, dependant on the case, these are: retribution, reduction of crime, reform and rehabilitation, protection of the public (incapacitation), reparations and denunciation. Different types of sentences aim to reflect these intentions in different ways and in this essay I will explain how these sentences do so.

Custodial Sentences

Custodial sentences deprive the offender of their freedom and liberties and because of this it is the most severe punishment used in the English Legal System. Because of a custodial sentence's severity courts have regulations on when they are permitted to hand out such sentences, these are that it may only be given if: the

offence was serious enough to not be given any other sentence or if the case involved a violent or sexual element which is thought to be potentially harmful to the public and from which they should be protected. These regulations can be found in the Powers of Criminal Courts (Sentencing) Act 2000 which has now become the focus of sentencing by all courts. Some cases carry mandatory sentences, for example a murder case will always sentence a guilty offender to life imprisonment.⁷

The current view of custodial sentences is that they act as a deterrent and retribution. The fact that it is a deterrent seems quite likely because most would not be willing to commit a crime knowing that the sentence will be imprisonment however I would suggest that the idea of it being retribution is probably more realistic because it is done mainly to punish the offender. Furthermore this could be seen as aiming to protect the public from potentially dangerous criminals particularly those who have the capacity to harm other people.

Community Sentences

Community sentences are most often given for offences which don't require such a harsh penalty and there are many different types of community sentence. The first of these is a probation order which has recently been changed to a Community Rehabilitation Order. This, as the name suggests, falls more under the aim of rehabilitation and integrating the criminals into society by removing them from certain potential situations. There are conditions attached to the probation for example the offender must be living at a certain address or should be attending counselling whilst on their probation. Also, probation orders can enforce that they do not see certain people, often aimed at the offender not seeing known criminals. There is also the Community Punishment Order, this is also known as community service which would be seen as mostly fulfilling the punishment and reparations aims, this is because it is work for the offender however the work they are doing aims to help the community so in a way the offender is giving back to society what they took away by committing the crime they were convicted of. These two can also be combined to produce the Community Punishment and Rehabilitation Order, this combines full time community service and probation. This attempts to show the public that the offender is both being punished and being given a chance to change their lives, the combination is most likely to fall into both retribution and reparation and is often used in cases involving young offenders.

There is also the Curfew Order in which the offender is only allowed to leave the house at certain times of day, this will usually be a curfew in the evening by which time they have to be in, this would probably be seen as incapacitation. Another community sentence is the Exclusion Order which bans the offender from certain places or types of places for example pubs or bars where they serve alcohol. Again, this would fall into the category of incapacitation because it removes them from a certain environment. A further sentence is the Antisocial Behaviour Order, or as it is more commonly known, the ASBO. This is intended for younger offenders and would be classed as reform and rehabilitation because it involves allowing youths to turn their lives around. Also falling under the category of reform and rehabilitation is the Drug Abstinence Order, which bans the offender from taking Class A drugs for anything from 6 to 36 months. This allows the offender to reform their lives and get off drugs. Overall the community sentences are quite a broad category and can be seen as anything from retribution to reform and rehabilitation or reparations to society.

Fines and Compensation

Offenders can also be fined for the crime they committed; this regularly applies to motoring offences and other minor offences. This fine they pay goes to the state unless they are paying a Compensation Order, in which case the money goes directly to the victim of the crime, these are often for crimes such as theft in which the offender is ordered to pay the full value of what they stole. The level of the fine is up to the presiding judge however there are guidelines. Fines and compensation orders would be seen as a reparation aim because it would compensate

⁷ AS Law for OCR, Jimmy O'Riordan page 69

the victim or pay reparations to the entire society it could also be seen as retribution because it would aim to punish the offender harshly enough that they would not reoffend.

Discharges

There are two types of discharge: absolute and conditional. Absolute discharge is when the offender is completely cleared of all charges and is free to go subject to no conditions. It is most often given when the defendant pleads guilty or is found guilty but there are strong justifying reasons for them committing the crime, such as self-defence. This would be seen as reform and rehabilitation, because it would allow an offender to get on with their lives and to be absorbed into society. Conditional discharge is similar; however the offender has certain conditions by which they are discharged. They are often 'bound over'⁸ so if they reoffend within a certain time frame they will be tried for both the new crime and the previous one; this allows for reform and rehabilitation because it allows them to continue with their lives by giving them the benefit of the doubt however it can also be seen as individual deterrence because the offender knows that if they reoffend they will be tried for both so they are less likely to reoffend because of the length of the potential sentence.

Conclusion

To conclude there are forms of sentences which address each aim. All of them will have aims of at least one, and most will include elements of retribution. The difference in sentences is important because of the suitability to each case and each individual offender, specifically because of age – it would be unfair to sentence a young offender to life.

⁸ AS Law for OCR, Jimmy O'Riordan page 70

Bibliography

- The English Legal System – Jacqueline Martin
- AS Law for OCR – Jimmy O’Riordan
- Understanding Criminal Justice Sociological Perspectives – Philip Smith & Kristin Natalier
- Sentencing and The Penal System Text and Materials – Christopher Harding & Laurence Koffman
- www.helpwithlawexams.co.uk/sentencing.html
- Cosmopolitan, November 2011, page 80