

Essay LAS-7 - Produce a detailed written essay for both parts:

Written by Amran Bhatti (March 2009).

(Part a) Describe the different aims of sentencing.

Introduction

When a person is found guilty of committing a crime or pleads guilty, then it is the court's responsibility to punish that person accordingly to their actions. There are many different methods of sentencing available for judges to choose. The sentence given to a person is not chosen at random, it is specifically chosen based on the severity of the crime and the circumstances. Under section 142 of the Criminal Justice Act 2003, the purpose of sentencing for those aged 18 and over is set out. The judge would choose a sentence with regard to the punishment of offenders, the reduction of crime (including through deterrence), the reform and rehabilitation of offenders, the protection of the public and the making of reparation by offenders to persons affected by their offences. Often a sentence is chosen with multiple aims and objectives.¹ Throughout this essay, I am going to look at and describe the different aims of sentencing in depth.

Retribution/Punishment

Based on the principles of fairness and justice an offender must be punished for their crime in proportion to the offence they committed. The concept of retribution is based upon this idea of punishment where you are basically punished for your crimes accordingly to what crime you have committed. A vast majority of the public agree with the idea of punishment including Kant in *The Metaphysical Elements of Justice*, where he wrote "Judicial punishment...must in all cases be imposed on him only on the ground that he committed a crime." In other words, those who commit a crime ought to be punished for doing so. This is very similar to the well known biblical saying "an eye for an eye and a tooth for a tooth and a life for a life", which in essence implies there is a balance and that what you do is what will happen to you, so for example, if you were to murder someone the fair punishment for your crime would be the death penalty; as you have taken a life, your life ought to be taken. A judge in America has been known to follow this concept and even practice it by allowing the victims of burglaries to go into their burglar's home with an officer and take items from the home up to the approximate value of their stolen items. To some this is a harsh way to deal with the punishment of offenders, however, to many it is completely fair and just as you get what you deserve.

Today, retribution is carried out in tariffs or levels of sentencing set down by the Sentencing Guidelines Council. This means that crimes are divided in the seriousness of them, so for example, in the instance of robbery an offence including the threat or use of minimal force

¹ OCR Law for AS by Jacqueline Martin

and removal of property would result in a minimum of 12 months in custody up to 3 years. However if during a robbery a victim is caused serious physical injury by the use of significant force and/or a weapon was used, the offender would be remanded in custody between 7-12 years.

Deterrence

To deter is to prevent or discourage the occurrence of an action.² Deterrence is aimed at preventing and reducing crime, either individually or generally. The aim of individual deterrence is to prevent the offender from re-offending through fear of being punished again or even being given a harsher punishment than before. Individual deterrence leads to general deterrence, this is where deterrence is aimed at preventing others from committing crime. If punishments are harsher, then the general public would tend to think twice before committing a crime for fear of punishment.

Examples of sentences which are used both to deter individual offenders and the public are lengthy prison sentences and large fines. However there has been evidence to suggest that some of these methods are ineffective as 55% of adult prisoners re-offend within two years and as for youth offenders, 70% given a custodial sentence re-offend within two years. Deterrence assumes that an offender will think of the consequences of their actions before committing a crime, it does not take into account the fact that most crimes are carried out on the spur of the moment or when an offender is under the influence of alcohol or drugs, this makes it difficult for some to consider the possible outcome of their actions. The fear of being caught is a more powerful deterrent. On London's District Line of the underground system there was an 83% reduction in crime in the first full year that surveillance cameras were used.³

General deterrence is slightly ineffective in the sense that not every potential offender is deterred by harsh sentences passed on others. However, general deterrence is still used by the courts to warn others of the potential punishment they may face for committing a crime. This was seen in the case of R v Whitton (1985), where a football hooligan was sentenced to life imprisonment, this warned other football hooligans of the consequences their actions may have on them. However general deterrence relies on publicity otherwise people are unaware of what they may face if they were to commit a particular offence.

Overall, deterrence is argued by some to be the least effective and least fair principle of sentencing due to the fact it relies on offenders being sentenced for longer terms (or severer punishments) than is deserved for their specific offence in order to deter others from committing the same offence.

Reform/Rehabilitation

² <http://dictionary.reference.com/search?q=deter>

³ OCR Law for AS by Jacqueline Martin

The aim of rehabilitation is to reform an offender's behaviour in order to prevent them from committing another offence which will therefore reduce crime. This approach to sentencing is a favoured one as it tackles the problem more directly in reducing crime and helping the offender. It is most commonly associated with alcohol and drug abusers as drugs and alcohol are behind the causes of many offences, however, there are many other rehabilitating programmes for other problems such as anger management, victim awareness and domestic violence. Rehabilitation encourages an offender to learn about and recognise their problem, then through education and training; they are helped to overcome their problem and to reform their life to one without crime.

When considering rehabilitation as a form of sentencing the court would look at many different factors to see whether rehabilitation would be most suited to an offender. If they feel that rehabilitation is necessary and possible, the court would give a punishment that would be individualised to the offender in order to meet their specific needs; this has been criticised as inconsistent as different people receive different sentences for the same crime. However it has been argued to be effective as it is helping in a productive and individualistic way instead of in a uniform manner as it takes an individual's needs into account. Rehabilitation has also been criticised for the fact that it tends to discriminate against the underprivileged as it assumes the underprivileged are more likely to re-offend and the privileged just made a one-off mistake, therefore those from poorer backgrounds are less likely to be given the opportunity to reform and be rehabilitated. Additionally, the success rate of rehabilitation has been questioned by some.

Protection of the Public/Incapacitation

Some offenders are considered extremely dangerous and releasing them to the public would lead to the harm of others, for this reason, the public needs to be protected from them. Under the Criminal Justice Act 2003, to help protect the public, longer and more serious punishments are given such as life or long term imprisonment to those who commit serious crimes such as murder, rape or manslaughter. By keeping these more threatening offenders incapacitated, they are unable to go back into the public and re-offend; therefore the public is protected from them. Extended sentences may also be given if a court believes that is necessary in order to protect the public. The most serious, highest and controversial form of incapacitation is the death penalty which even today some countries still have. Another serious form of incapacitation can be seen in some countries in the Middle East where Sharia Law punishes thieves by having their hand cut off for their crime. Additionally another controversial method of incapacitation carried out in some States in the America is chemical castration.

However for less serious and minor offences there are other approaches taken in order to protect the public. For example dangerous or drink drivers can have their license taken away from them or given driving bans. Exclusion orders can also be given which would ban them from going to an area where an offence is most likely to be committed by them. This was

seen in the case of R v Winkler (2004), where the defendant committed an affray at a football match and as a result he was banned from going to the town centre on home match days for six years and banned from going within half a mile of any football stadium for six years. Both bans were for a period of six years.⁴ Curfews are also issued to protect the public. These mean offenders are not allowed out for certain times during the day in which they are most likely to commit an offence. If needed, curfews can be monitored by an electronic tag.

However, incapacitation does not deal with long-term issues through rehabilitation therefore the issue remains un-tackled. If the issue was addressed directly then there would be less of a need to give lengthy custodial sentences which are expensive and cost the State around £25,000 a year. Furthermore keeping offenders for prolonged periods of time in prison can lead to them learning new ideas and plans to commit crimes which they could put into effect on release and would then result in them being even more of a threat to the public.

Reparation

Reparation is aimed at compensating the victim of the crime. This is usually done by ordering the offender to pay a sum of money to the victim or to make restitution. Courts are required to consider ordering an offender to compensate the victim/s for their crime along with any other sentence if need be. If a court does not make an order for compensation, the court is expected to give reasons for why they did not under s 130 of the Powers of Criminal Courts (Sentencing) Act 2000. There are also projects aimed at bringing offenders and victims together in order for direct compensation to be made. However, there are also ways of making restitution to the public and society. This can be done through unpaid work requirements (community work) where offenders work for a certain number of hours on a community project of some sort under the supervision of a probation service. So, for example, if an offender has vandalised a wall through graffiti, they may be expected to clean graffiti of public walls. Fines can also be ordered as a form of reparation.

Denunciation

Denunciation is “society expressing its disapproval of criminal activity”⁵ while reinforcing moral boundaries. Sentences are aimed at showing the offender and others that society condemned certain types of behaviour, it is fairly similar to deterrence.

Lord Denning in the Royal Commission on Capital Punishment said “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.”

⁴ OCR Law for AS by Jacqueline Martin

⁵ OCR Law for AS by Jacqueline Martin

Denunciation can mould society's views on certain criminal actions such as drink driving. Changes in the law and the imposition of severer sentences led to the majority of people finding drink driving as unacceptable behaviour.

Conclusion

In conclusion, there are many different aims of sentencing set out under the Criminal Justice Act 2003 and they are achieved through a number of different sentences. All sentences have the merits and drawbacks however; overall, there are two main aims of sentencing, retributive and utilitarian. Retributive being where the offender is punished for the offence and utilitarian which is aimed at giving the sentence a positive purpose for the offender and society.

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

Introduction

We have already seen there are many different types of aims of sentencing that judges can choose from. These different aims can be achieved through particular sentences. Sentences can be divided into four categories; custodial sentences, community sentences, fines and discharges. In this essay I am going to illustrate the ways in which different sentences may be used to support different aims of sentencing.

Custodial Sentences

A custodial sentence is the most serious sentence that can be given to an offender. Under s 152 of the Criminal Justice Act 2003, a custodial sentence must only be passed if the offence "was so serious that neither a fine alone nor a community sentence can be justified." Custodial sentences can vary from a few weeks in custody to life. When a judge considers a custodial sentence, the age of an offender, the seriousness of the offence, the maximum sentence available for the offence, if the defendant has any other convictions or previous record and any other mitigating and aggravating factors will be taken into consideration.

Prison can act as a form of incapacitation as it keeps offenders, who are a threat to the public, out of the public and locked away where they cannot re-offend. It can also act as a deterrent however research has shown that 55% of adults re-offend within two-years after release. One explanation for this could be that while in prison, offenders can learn from each other and pick up new ideas to carry out on release; also they could make friends and contacts. Custodial sentences can also lead to the rehabilitation of some offenders however rehabilitation is only open to some.

There are different types of custodial sentences, mandatory and discretionary life sentences, fixed-term sentences, custody (short-term sentences) and suspended sentences.

Mandatory Life Sentences

A mandatory life sentence is the only sentence that can be given for the offence of murder. However a judge is allowed to recommend the number of years that the offender must serve in prison before being eligible for parole. The Criminal Justice Act 2003 gives the minimum term of imprisonment being at least 12 years.

Mandatory life sentences support the aim of incapacitation as it keeps those who have committed serious offences such as murder away from others in order to protect them. It also supports the aim of retribution as an offender deserves to be punished for his crimes. Mandatory life sentences also have the secondary aims of denunciation and deterrence. Murder is a serious crime that the general public know is wrong and they condemn it also; the fact that you could spend the rest of your life locked up in a prison can deter you from carrying out such criminal offences.

Discretionary Life Sentences

Discretionary life sentences are given for offences such as manslaughter, rape and robbery. For these offences, the judge has the flexibility to choose an appropriate sentence for the individual offence, however the maximum for such offences is life imprisonment, so if a judge feels that it is necessary and the offender deserves to be punished severely for their crime, a life sentence can be given.

Discretionary life sentences have the same aims of mandatory life sentences. The only difference between mandatory sentences and discretionary ones is that the judge can choose the punishment more appropriately to the crime so it is a more individualised sentence.

Fixed-Term Sentences

Imprisonment for a set number of months or years is called a 'fixed-term' sentence.⁶ This is because the sentence term is for a fixed period of time. The sentence length will depend on the maximum length of the sentence for the offence and several other factors such as the seriousness of the crime and any previous convictions/records. Prisoners tend not to serve the entire sentence as they are usually released after serving half of it.

Home Detention Curfew

Under the Crime and Disorder Act 1988 a prisoner can be released early from prison on the condition that a curfew condition is included which is usually enforced by electronic tagging. The curfew period depends on the length of the sentence; the longer a sentence, the longer the curfew period. Individual prisoners will be assessed to see if they are suitable for a home

⁶ OCR Law for AS by Jacqueline Martin – page 92

detention curfew, no one is automatically entitled to it and is not always suitable to the offender.

The main aim of a home detention curfew is to rehabilitate offenders, “to encourage recently released prisoners to structure their lives more effectively as well as prevent re-offending.”⁷ An advantage of this sentence is that it allows offenders who have served their time to return to the public and get back to life but under supervision so they do not re-offend and to ensure they do not pose a threat to the public. On the other hand being tagged does not necessarily mean an offender will stop offending. However if an offender fails to fulfil the obligations of their curfew then they can be sent back to prison, this can act as a deterrent as most offenders do not wish to return to prison and therefore feel obliged to behave in order to stay free. Figures show that only 4% of those released on home detention curfew returned to prison for breach of curfew. Additionally this method of sentencing is cheaper than sending and holding people in prison and it also reduces the expanding prison population.

Extended Sentences

If necessary, a court can give an extended sentence for a sexual or violent offence under s 85 of the Powers of Criminal Courts (Sentencing) Act 2000. This means that an offender will serve their sentence plus an additional period called (‘the extension period’) where the offender is at liberty on license. The maximum extension period for a sexual offence is 10 years and a violent offence 5 years.

This acts as a form of deterrence as those who commit sexual offences are at risk of losing their liberty for a long period of time and are monitored by the police closely. This can deter people as it would affect their lives on release.

Suspended Sentences

The courts can also suspend a sentence. This means that the sentence would not take effect immediately. A sentence can only be suspended for a period of two years. If the offender does not commit an offence during this suspended period, the prison sentence would not have to be served. If the offender does commit an offence then the prison sentence is ‘activated’ and the offender will be expected to serve the sentence plus any further ones gained.

Suspended sentences support the aims of denunciation and deterrence as both the public and the individual would realise they have committed an offence that they shouldn’t have. Also during the suspended period, the offender would unlikely commit an offence through fear of being sent to prison to complete their existing sentence and any other ones they

⁷ OCR Law for AS by Jacqueline Martin – page 92

may gain by re-offending. However to some, suspended sentences are seen as an escape-goat for criminals who have offended and are being left unpunished.

Community Orders

Community sentences are available to offenders aged 16 and over. The Criminal Justice Act 2003 created one community order under which the court can combine any requirements they think are necessary.⁸ A judge can choose from the different sentences and if necessary can choose more than one to fit the restrictions and rehabilitation to the offender's needs. Under s 177 of the Criminal Justice Act 2003, the different sentences are given, these are: unpaid work requirements, activity requirements, programme requirements, prohibited activity requirements, curfew requirements, exclusion requirements, residence requirements, mental health treatment requirements, drug rehabilitation requirements, alcohol treatment requirements, supervision requirements and attendance centre requirements.

Some of these requirements have the same aims of sentencing however some differ. Drug rehabilitation and alcohol treatment are aimed at reform and rehabilitation to tackle the causes of crime and stop offenders from re-offending. Mental health treatment is also another example of reform and rehabilitation aimed at the causes of the offender's behaviour.

Unpaid Work Requirement

Unpaid work requirements require an offender to do work without pay for society. Some work that is often required is for an offender to paint school buildings, help build a play centre or work on conservation projects. The amount of hours expected to be done would be decided by the courts, this can vary from 40 to 300 hours. Usually an offender will work in eight-hour sessions at the weekend.

This sentence is aimed at reparation as it involves an offender giving back to the community. It can also be seen as a deterrent as it is unfavourable to work for hours and without pay.

Prohibited Activity Requirement

This requirement stops an offender from certain activities. The aim of this sentence is to prevent an offender from committing the same or similar offence again. Often defendants are banned from going to certain areas where they most likely will offend or they are ordered not to wear 'hoodies'. This sentence is aimed at reducing crime through incapacitation as well as deterring people as they can lose some of their liberties.

Curfew Requirements

⁸ OCR Law for AS by Jacqueline Martin – page 94

Curfew requirements require an offender to remain at a fixed address/location for a certain time during the day. This is often between 2 and 12 hours in a day for up to 6 months. Curfews can easily be enforced through electronic tagging if necessary. Tagging is quite expensive, costing approximately £675 a month for each offender. However in comparison to prison costs, it is much cheaper with it costing approximately £1,555 per offender per month.

Curfews fulfil the aim of incapacitation as an offender is prohibited and restricted to where they go and when they go. However tagging does not necessarily mean an offender will stop offending.

Exclusion Requirement

Exclusion requirements prevent an offender from going to a certain place. This can last for a period up to 2 years for offenders aged 16 and over, and for those younger a maximum of three months. A shoplifter, for example, may be asked not to go to a certain shopping centre or area to prevent them from shoplifting.

This is intended to keep offenders away from areas where they are most likely to commit crime.⁹ Thus it acts as a form of incapacitation as it prevents people from going where they are likely to offend.

Supervision Requirements

Supervision requirements require that the offender is placed under supervision. An offender would be supervised by a probation officer for up to three years. During this period, the offender is expected to attend appointments with the supervising officer or with any other person decided by the supervising officer.

The aim of this sentence is clearly stated under the Criminal Justice Act 2003, the purpose of supervision requirements are for “promoting the offender’s rehabilitation”. This is because the supervision officer will help to reform and rehabilitate the behaviour of the offender. However research has shown that 60% of offenders re-offend within two years.

Fines

Fines are often given as a form of sentencing. In the Magistrates’ Court an individual can be fined up to £5,000. However for businesses that commit certain offences can face up to £20,000 in fines. In the Crown Court there is no limit on the amount an offender can be fined. The amount of the fine would depend on the court; they have the discretion to choose a fine appropriate to the seriousness of the crime. Fines are often given for offences such as parking fines or graffiti.

⁹ OCR Law for AS by Jacqueline Martin – page 95

The aim of fines is obviously reparation as the offender literally pays for the crime they have committed. However it also acts as a deterrent as people would be unwilling to pay huge sums of money for silly offences.

Discharges

Discharges can be either conditional or absolute. A conditional discharge means that the court discharges an offender on the condition that no further offence is committed during a set period of up to three years.¹⁰ This is used when punishment is not necessary. An absolute discharge means that, effectively, no penalty is imposed. Such penalty is likely to be used where an offender is technically guilty but morally blameless.¹¹ For both discharges an offender will still receive a criminal record.

Discharges follow the aim of denunciation, the courts show the offender they have committed an offence and they ensure they recognise it. Discharges also act as a deterrent to prevent the offender from re-offending as next time they might not be so lucky to escape punishment and they already would have a criminal record.

Disqualification from Driving

If an offender is charged with a drink driving or dangerous driving offence, then the court can take away the offenders right to drive. The length of time the offender can be disqualified would depend on the seriousness of the crime they committed. For a first-time offence for drink driving you can be disqualified from driving for a minimum of 12 months. If an offender has previous offences for drink driving then the disqualification rises to a minimum of three years. Disqualification from driving can also be imposed on those who have used a vehicle to commit an offence such as burglary.

Driving disqualifications are an incapacitating offence as they prevent an offender from being able to drive and will stop them from committing the same/similar crime again. This also acts as a deterrent as people would not want to lose their privileges.

Young Offenders

Young offenders are aged 18 and under, the sentences for a young offender would vary depending on the age of the youth along with the offence. The main aim in sentencing young offenders is reformation and rehabilitation.¹²

Young Offenders' Institutions

Young offenders aged 18-20 who are given custodial sentences are sent to a Young Offenders' Institution. The youth could be kept in custody from 21 days to the maximum sentence available for the offence they have committed. If an offender turns 21 while in custody at a Young Offenders' Institution, they will be transferred to an adult prison. The

¹⁰ OCR Law for AS by Jacqueline Martin – page 96

¹¹ OCR Law for AS by Jacqueline Martin – page 96

¹² OCR Law for AS by Jacqueline Martin – page 97

purpose of Young Offenders' Institutions is to keep young offenders separate from adult offenders who could influence them in the wrong way.

Detention and Training Orders

The detention and training order was set up under the Crime and Disorder Act 1998. This sentence can last from between four months to 24 months. This sentence is aimed at 12 to 21 year olds however it is only given to those under the age of 15 if they are persistent offenders. The aims of this sentence are incapacitation and protection of the public as it keeps a control over young offenders who persistently offend. However it is also aimed at rehabilitating and reforming the offenders so they do not re-offend.

Detention for Serious Crimes

For young offenders who commit such serious crimes, the court has the power to have the offender detained for a longer period of time. For those aged 10-13, this would be where a crime committed would require a maximum sentence of at least 14 years imprisonment for adults. For 14-17 year olds, it is also available for causing death by dangerous driving, or for causing death by careless driving while under the influence of drink or drugs. This is aimed generally at punishing and incapacitating young offenders who have committed serious crimes that need to be punished. It also acts as a deterrent for others as it shows young offenders that they can still be punished severely for certain offences regardless of being young.

Detention at Her Majesty's Pleasure

Anyone aged 10-17 who has committed the offence of murder would be detained during Her Majesty's Pleasure. This sentence is an intermediate one and allows the offender to be released when it is believed appropriate. If a judge wishes to, they can recommend a minimum sentence that they feel that the offender should serve for their crime before they can be considered for release. The Lord Chief Justice would then set a tariff. If while in Her Majesty's Pleasure an offender turns 21, they will be sent to an adult prison to continue their sentence.

Conclusion

There are a variety of different sentences available for a court to choose from when punishing an offender, and each sentence has an aim or aims. When a judge is deciding the appropriate punishment for an offender, the judge must also look at what he plans to achieve by punishing the offender and what sentence would best achieve this aim while punishing the offender for their crime.