

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

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Introduction

Nietzsche writes that: *“To forget one's purpose is the commonest form of stupidity.”* This can be said too about sentencing. A sentence without a purpose is utterly useless. However there are several aims of sentencing open to the Judge or the Magistrate, so the law does not have to fall into the “commonest form of stupidity”. The aims are set out in Section 142 of the 2003 Criminal Justice Act. It is within that act that the guidelines are set out which any Judge or Magistrate who is sentencing has to take into account.

Throughout this essay I will be detailing each of the aims in turn and describing them fully.

Retribution

Retribution is the idea that one must pay for ones deeds. So it is the idea that those who deserve punishment shall be given punishment. It does not hold any ideas of reform or reduction of crime. It does not tackle why the crime has been committed, simple the fact that it has been committed and now the offender must pay for their crimes. Eric Hoffer wrote *“Retribution often means that we eventually do to ourselves what we have done to others.”* Meaning that through simply punishing for the crime and not offering any means of change, there will be a constant crime rate eventually harming all.

Retribution is proportionate to the crime that has been committed; this theory of sentencing can be traced back to the famous bible quotation of *“an eye for an eye, a tooth for a tooth.”* Exodus 21:23-27.

It would be fair to say then that retribution is a form of state vengeance, used to “get back” at criminals. This can be seen in the *1993 White Paper on dangerous driving*; where the maximum sentence was raised to 10 years. The retribution argument is used to support capital punishment that still carries on around the world today, the belief that one should pay exactly for ones crimes. A Judge in the USA took this idea and allowed the victims of a burglary take items from the house of the offender equal to the value of the items taken.

This idea moves on to the further idea of tariff sentences. This is the idea that all crimes have a set punishment, so for example a theft crime would carry a 10 year sentence, while a murder would be the death penalty. This makes sentencing very ridged and leaves almost not room for the Judge to decide, or indeed for the special circumstances of the offender.

Denunciation

Denunciation is the aim of sentencing that shows the offender the disapproval from society of their action through the use of punishment. This is not just vengeful

sentencing; this is showing the offender that they are doing wrong in the eyes of society. It also acts as a beacon to others who might wish to commit this crime that society condemns those actions.

Denunciation can mould the public image of a crime as well as setting out clear moral boundaries that are clear and present, which people know when crossed there will be a form of punishment. To take a major example, drink driving through society expression its disapproval of is now considered by the majority of people a wrong thing to do.

The Criminal Justice Act of 1991 set out that “the first objective for all sentences is the denunciation and retribution for the crime.” However in the same act of 2003, it was not mentioned within the purposes of sentencing. This shows how widely the views on sentencing can change within the span of about a decade.

Reparation

It is the main idea of this aim to compensate the victim(s) for the crimes that have been committed against them. So it would be the standard course of the Judge to order the offender to pay a sum of compensation money to the victim(s). Or making restitution can be seen as reparation, so the return of stolen goods to the owner.

Today, the courts are required to consider ordering compensation to the victim of a crime, in addition to any other punishment they believe to be appropriate. So for example the offender could be ordered to pay money to the community to help fund for the clearing of criminal damage. **Section 130 of the Powers of Criminal Courts (Sentencing) Act 2000** states that courts have a duty to give reasons for why they have not issued a compensation order for a crime.

Reparations can be made to a group of people as well as society as a whole. For example this can be through unpaid work to remove for instance graffiti from walls or repair the damage they might have caused.

Deterrence

Deterrence as an aim of sentencing has two major branches; these are called individual deterrence and general deterrence. Individual deterrence concerns the offender and ensuring, through penalties and punishments that they do not re offend. Whereas general deterrence is geared towards preventing anyone from offending.

Prison sentencing is one of the ways the state can individually deter someone from repeat offending, the idea is that they will be too fearful of the punishment to ever commit a crime again. The idea can also extend to fines, but with fines it would be the fear of losing all the money they had. However through looking at the prison statistics it does not seem that prison sentences work. 55% of adult offenders re offend; this is even higher for young persons with over 70% re offending. Where most crimes are committed from snap decisions, the offender does not and did not think his or her actions through. This makes the concept of deterrence useless, if people do not think about the consequences they will not care about the punishment. This is made all the more true when drugs or alcohol are involved in the crime, where

someone is not thinking rationally, no thought would be had for the potential punishment.

General deterrence is not normally used within the English Legal System, but sometimes people are made an example of to deter the actions of others. Without a high profile case, the use of a general deterrent is rendered useless, if the rest of the public cannot see what is happening to this one person then they will not get the message of the deterrence. In 2002, the Lord Chief Justice after reading a report that in that year 1 million robberies had involved mobile phone theft increased the penalty for this crime from 6 months to 3 years. This is an example of a general deterrence.

Incapacitation

This aim of sentencing renders the offender incapable of re offending; this is achieved through extreme sentences. The most common example of incapacitation is capital punishment, because of the fact the defendant is now dead, and no more crimes can be committed.

The normal use of incapacitation is the application of lengthy prison sentences, there by removing the offender's right to effectively be a member of society. There are benefits to having long prison sentences imposed for certain crimes, especially in the rare instances of extremely dangerous criminals, however incapacitation does not address the longer-term issues that can be achieved through rehabilitation in addition it does not tackle the reasons why people commit crimes, if they were addressed then there would be no need to spend the money on the prison costs, or even the rope for nooses, especially, when the cost of holding a prisoner can cost over £25,000 a year. There are some extreme ways of incapacitation, such as the death penalty or with Sharia Law, where a thief's hands can be removed. Other less extreme examples existing in the UK include the removal of a driver's license for driving offences, or curfew orders that ensure the offender is to remain at a given place at certain times.

Rehabilitation

It is with this aim of sentencing that allows through the use of punishment, the ability for the offender to change, to reform. It is forward thinking, making once destructive members of society into contributing and functioning people within our states parameters for people.

Many crimes are committed because of the abuse of drugs, with this aim of sentencing it is possible to alter the offender's habits and to stop their addiction to drugs, and this would reduce crime and also improve the life of another human being; instead of giving up on them or just making an example out of people.

Rehabilitation is an individualized sentence that works best when the punishments are suited to the situation of the offender. This is then the mirror to the tariff sentences of retribution, whose uniform approach to the law does not take into account the different needs of the people. It is for this reason that rehabilitation has come under attack, because of the fact there is inconsistency in the law.

Conclusion

In conclusion it is never set in stone as to which aims are used consistently, there is room for change. However the one aim that has remained constant is the idea that one must pay for ones crime. The idea of retribution.

B) [Illustrate the ways in which different sentences may be used to support different aims of sentencing.](#)

Introduction

Theories of sentencing are all well and good to philosophize over, but there do need to be practical methods of sentencing. It is through the Judges or Magistrates judgment that the theories of sentencing are put into practice with sentences and punishments.

Custodial Sentences

Within the UK the most serious sentence that can be passed, is the custodial sentence. There are various types of a custodial sentence, ranging from “weekend” sentences to a life sentence. The different types of custodial sentence are: mandatory and discretionary life sentences, fixed term sentences, custody plus, intermittent custody and suspended sentences.

Under **Section 152 of the Criminal Justice Act 2003** custodial sentences must be the last resort of punishment, after all possible avenues of reform and punishment have been tried and failed. All the reasons must be stated for the imposing of a custodial sentence.

Prison is in place to act as a deterrent as well as a place for rehabilitation, but this is not always the case. The loss of dignity and rights too many can and does deter them from committing crimes. However if you were to look at the rates of re offending then it paints a sorry picture for the effectiveness of the prison service to reform, with over 55% of adult offenders committing another crime within 2 years.

Mandatory life Sentences

This would be the case for an offender of a murder; a life sentence is the only option open to a Judge for this crime. It falls within the boundaries of retribution and incapacitation, as well as denunciation. This is because of the fact that the offender is paying for their crime; whilst society shows its disapproval of the action and whilst incarcerated the offender cannot commit more crimes.

Discretionary life Sentences

It is not the case then for any other offences to have an automatic life sentence as the punishment. But it is well within the powers of the Judge to reattribute society and incapacitates the offenders of such crimes such as: rape, robbery and manslaughter. It is at the discretion of the Judge as to the severity of the punishment.

Fixed Term Sentences

The length of a sentence will depend greatly on the specifics of the case, as well as other factors such as medical history and social reports. Previous criminal convictions also play a part in the deciding on the appropriate punishment.

When there is a set amount of time for the sentence, months or years, this is called a “fixed term sentence”.

Home Detention Curfew

An early release from prison under the **Crime and Disorder Act 1998** details the need for a home curfew. The curfew period is flexible depending on the length of the sentence. The exact location of the offender can be found using the electronic tagging systems put in place today.

Rehabilitation is the main aim of this sentence, which greatly encourages the offender to structure their time and with the return to prison as an incentive to stick to their curfew. There are advantages and disadvantages to this sentence. One main advantage is that it allows the offender to integrate back into society whilst still under the watchful eye of the police. However the disadvantage is that the tag does not stop the offender from committing further crimes, you are just relying on the offenders want to reform. That said to look at the figures of re offending, only 4% of offenders are returned to prison for breach of curfew. This can either mean that the police are just not catching the people breaking curfew, or the offenders are taking this sentence seriously.

Young Offenders

It is controversial to sentence young offenders; there has been a lot of debate over whether the young should be given custodial sentences. Government policy has fluctuated greatly on this matter, constantly changing and adapting. It has been argued that young offenders need help to reform and rehabilitate not the incapacitation and retribution that does not alter future behavior, only breeding more hatred and putting the young minds along with hardened criminals who are able to teach ways and means of committing crimes.

Young Offenders Institutions

Youth offenders between the ages 18 and 20 when given a custodial sentence are sent to a Young offender’s institution. The aim of a Young Persons Institution is to keep the young separate from older, and more experienced criminals. When sent to a Young Offenders Institution the offender must serve a minimum of twenty one days and a maximum of what allocated by the Judge for a particular offence.

Detention and Training Orders

The **Crime and Disorder Act 1998** set up a new type of sentence for young offenders, called a detention and training order. This is geared greatly towards the rehabilitation and reforming of offenders in giving them qualification so when they finish their sentence they can integrate back into society.

The minimum for this type of sentence is 4 months and the maximum being 24 months. With the minimum age of the offender given this type of sentence is 12 years old, to the maximum age of 21. The Home Secretary can extend the detention and training order to children age 10-11. If this was to be the case, it would have to be at the courts discretion that the order would be in the benefits of the offender.

With deterrence and retribution also being some of the aims of sentencing here. Where as before this act, children were effectively immune to punishment for their crimes, now in the serious cases they can be punished it will act as a deterrent for children criminals.

Detention for Serious Crimes

The courts now have additional powers to detain an offender for a longer period of time; this can only be used if the crime committed is one of a very serious nature. The law for this was changed in 1994, and extends to 10-13 year olds. The maximum sentence that can be passed down is 14 years imprisonment.

Detention at Her Majesty's Pleasure

This is a sentence that is passed on anyone aged 10-17 for the crime of murder. It is an indeterminate sentence, meaning that when it is deemed suitable the offender can be released.

Community Sentences

Community sentences really came into use after the **Criminal Justice Act 2003**; prior to this the sentences were very individualized and would normally be combined with other sentences. After the 2003 act there was only one community order which the courts can combine any requirements with and to. This was to cut down on all the different community sentences that were in existence for adult offenders, it simplifies the process and allows the courts much more flexibility with the sentencing. It is within Section 177 of this Act that a wide range of options are made available to those that are sentencing, these include exclusion requirements, drug rehabilitation and unpaid work.

Unpaid Work Requirement

With the Unpaid Work Requirement the offender must spend between 40 and 300 hours on a project that is suitable for the offenders circumstances, this will be organized by the probation service. This fits the aim of retribution; this is because of the offender repaying his/her debt to society through their contribution to local projects. There will also be slight elements of denunciation and deterrence in the aims as well, as society

voices its opinion on the crime and there will be, through the hard work put in, a deterrence to commit crime again.

There are many different schemes that the offenders can partake in. These can range from painting school walls to installing security locks on gates and setting up CCTV cameras. The punishment is always proportionate to the crime, much fitting the aim of retribution. So for example someone who was found guilty of criminal damage would be required to clear the damages and to repair them.

It has been shown that the re offending rates from his type of punishment are low, this shows that it acts as a rehabilitating service as well. It is particularly degrading to work unpaid in public. So this does act as a deterrent as well.

Curfew Requirements

It is with the curfew requirement that the offender must remain at a fixed address for between 2 and 12 hours in a 24 hour time period. This can last for 6 months and the enforcement can be through the use of electronic tagging, only if this is found to be necessary.

The tag would notify the police if the offender where to leave their designated area after the hours they have set to be at home. If the offender where to leave within their designated time to be at home, a police officer will check to see where they are and further punishment will be administered for breaking the order.

This fulfils the aims of an incapacitating sentence because if the offender is within a certain area at any time they cannot commit any further crimes. Someone cannot steal their own property, or assault anyone from their front room. However there is no physical barrier to keep the offender from straying from their house, unlike prison. However it is a lot cheaper than incarceration, so for minor offences it is seen to be the better option.

An exclusion requirement is much the same, but it works in the other direction. Instead of not allowing an offender to leave a certain place. The exclusion requirement does not allow offenders to enter a certain area. This is another incapacitating punishment, because of the fact you cannot steal if you are not allowed into any shops.

Supervision Requirement

This requirement places the offender under the supervision of a probation office for up to 3 years. Within the time given by the courts the offender must attend regular meeting with the supervising officer to keep a tab on their activities and monitor their rehabilitation.

It is said in the **Criminal Justice Act 2003** that the supervision order is a sentence aimed at the rehabilitation of the offender primarily. It states that the order is “promoting the offender’s rehabilitation” However it is seen that 60% of offenders placed under this order will re offend, so it is not a very effective punishment.

Fines

Fines are a punishment that can be used by any court, as a single punishment or as a combined sentence. It is the Magistrates Court though that uses fines as its most

common form of punishment. This is because they deal with the less serious, summary, offences, such as parking fines or graffiti. A fine is a fixed sum of money that has to be paid to the court in a fixed amount of time. If it is not paid to the court further action can be taken, such as further fines, repossession or even heavier sentences such as prison.

There are different tariffs, or levels of fines. These are from 1 to 5:

Level 1: £200

Level 2: £500

Level 3: £1,000

Level 4: £2,500

Level 5: £5,000

This is for the Magistrates Court, because in the Crown Court there is no limit on the amount the offender can be fined. With the level system the gravity of the offence affects the level of the fine. So the more serious the offence the higher the fine will be.

Reparation is the main aim of this sentence, with the offender literally paying for their crime. Another aim could be seen to be deterrence, with the fines being high, or even unlimited, it might make people think about how much they really want to commit a crime if they have to end up paying thousands of pounds for a single action.

Discharge

The courts can decide to discharge an offender based on previous records, character of the offender, nature of the crime and many other factors. A discharge is a nullification of punishment for that crime; another possible reason would be if they thought a punishment would not be necessary. There are two types of discharges.

Absolute discharges, is where the court will take no further action against the crime, either because of its minor nature or because of the situation of the offender.

The other type being a conditional discharge, this would be where the offender is released on the condition that no further crimes are committed in the next 3 years.

Driving Disqualification

If an offender is found guilty of drink driving, or caught too many times speeding. The courts can take away the offenders driving license. The length of the disqualification will depend on the seriousness of the driving offence and whether the defendant has previous convictions any other driving offences. It is not common to only receive a driving ban; normally it is in conjunction with fines. This is an incapacitating offence, because the offender cannot commit any more driving offences if they cannot drive.

Conclusion

There are so many different aims of sentencing and so many circumstances of any different offence. So it becomes clear when looking at the different aims and types of sentencing that a judge or Magistrate must look extremely closely at what will be beneficial as a punishment.

However one thing remains constant throughout sentencing, the fact that if someone breaks the law, they must be punished for it. Retribution is constant.