

## PRINCIPLES OF SENTENCING

There are five general aims or functions or justifications of punishment:

### 1. DETERRENCE

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There is a belief that punishment for crime can deter people from offending. There are two forms:

- *Specific* deterrence is concerned with punishing an individual offender in the expectation that he will not offend again.
- *General* deterrence is related to the possibility that people in general will be deterred from committing crime by the threat of punishment if they are caught.

*How this aim is effected*

- Prison sentence/long prison sentence
- Heavy fine

*Effectiveness*

Imprisonment, the most serious punishment in the UK, does not always deter further offending:

- According to a Home Office study, 58% of all sentenced prisoners discharged in 1995 were reconvicted of a serious offence within two years of being released. Among young offenders, 76% were reconvicted (*Reconviction of Offenders Sentenced or Released from Prison in 1995*, April 1999).

At least two points are assumed to be essential for deterrence to be effective:

1. *Supporters of deterrence believe that the punishment must be sufficiently severe for it to have a deterrent effect.* This assumption can be tested by examining an instance where the level of punishment was altered.

- In 1965, the death penalty was abolished as a punishment for murder. Research indicates that this change had no readily definable impact on the rate of murders. This challenges claims that in America, every execution deters seven or eight other murders.
- A recent Home Office report concludes that there is no basis for inferring that increasing the severity of sentences generally is capable of enhancing deterrent effects (*Criminal Deterrence and Sentence Severity: An Analysis of Recent Research*, 1999).

2. *Supporters of deterrence assume that potential offenders weigh up the rewards and risks associated with crime.* However, the extent to which people believe they might be caught is probably more important than the actual risk of detection, or the level of punishment.

- The Home Office paper, *Criminal Deterrence and Sentence Severity*, suggests that for at least some classes of potential offenders, their perceptions of the risks of being apprehended and punished (when they are aware of such risks) affect their reported choices of whether to offend.
- Social ties, or the lack of them, affect the deterrent effects of the criminal justice policies – with persons having strong social ties (ie, strong links to families, local communities, etc) being more readily deterred by prospects of being apprehended. Persistent offenders with weak social ties, such as persistent burglars, often act impulsively, and in circumstances that they themselves define as a situation of pressing need. Such impulsivity may reduce these offenders' amenability to being deterred through increased penalties (*Criminal Deterrence and Sentence Severity*, 1999).

## 2. REHABILITATION

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Rehabilitation involves offering an offender help to overcome problems which he faces, thereby attempting to make it easier for him or her to avoid future offending.

This can include various types of assistance provided in prison or in the course of a probation order, which are intended to help the offender to improve his social skills, his employment prospects, or his capacity to obtain welfare benefits.

Rehabilitative ideals can be seen in the official terms of reference of some of those dealing with offenders after conviction:

- The duty of the Prison Service is to treat inmates "with humanity and to help them lead law abiding lives in custody and after release" (Statement of Purpose, 1988).
- Probation officers should 'advise, assist and befriend clients'.

*How this aim is effected*

- Individualised sentence
- Community penalty, ie a Community Service Order, Probation Order or Combination Order.

*Effectiveness*

The viability of rehabilitation has been challenged:

- A recent Home Office study found that there was no discernible difference between reconviction rates for custody and community penalties. 56% of offenders who commenced community penalties were reconvicted within two years in comparison with 58% of all sentenced prisoners (*Reconviction of Offenders Sentenced or Released from Prison in 1995*, April 1999).

Evaluating the effectiveness of sentences in reducing re-offending is difficult:

- The fact that someone is not reconvicted does not mean he has stopped offending. He might simply be better at not getting caught.

- Although we can see what happens to an offender after he has been through a programme of rehabilitation, we cannot predict what would have happened if his sentence had not contained such elements.

Offenders may experience social problems after completing their sentence:

- Two researchers, Bottoms & McClintock, attributed a social problem score to ex-Borstal trainees in 1973. Only 18% of those with the lowest scores were reconvicted, whereas 82% of those with the highest scores were reconvicted. In practice, those who had made the poorest social adjustment after their release were most likely to become recidivists.
- Adult offenders with multiple social problems (ie, accommodation, employment, alcohol, drugs and finance) are more likely to be reconvicted (*Explaining reconviction following a community sentence: the role of social factors*, Home Office 1999). Also, reconviction rates are higher for those with more previous convictions (*Reconviction of Offenders...*, Home Office 1999).

### **3. PROTECTION OF THE PUBLIC**

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Protection of the public is one of the major justifications claimed for punishment. For example, imprisonment leads to the incapacitation of offenders so that they are prevented (at least temporarily) from offending against the public at large.

*How this aim is effected*

- Death penalty for murder
- Long prison sentence
- Electronic tagging (Curfew Order)

*Effectiveness*

The execution of an offender will obviously protect the public from that offender.

Imprisoning an offender will prevent him from committing crimes against members of the public. However, the situation is not that simple:

- The experience of prison may be such that the offender is more likely to re-offend after release, and perhaps to commit more serious crimes. If this is so, crimes are not prevented, but merely deferred.
- Some prisoners continue to commit offences, including serious assaults and homicides, while in custody.

Another problem also arises. Offenders who are never caught will not be affected by the imprisonment of less elusive offenders:

- Some now believe that recorded crime rates would not be substantially affected if fewer offenders were sent to prison.

This was acknowledged in the Home Office Handbook, *The Sentence of the Court* (1986).

Nevertheless, the incapacitation of an individual offender, who poses a danger to the public, can protect the public from that particular offender, eg, a mass murderer or a serial rapist.

A curfew order may include the requirement of electronic monitoring of the offender's whereabouts during the curfew period.

#### **4. RETRIBUTION**

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Retribution rests on the notion that if a person has knowingly done wrong, he or she deserves to be punished.

This idea was at the heart of the previous Conservative Government's White Paper "*Crime, Justice and Protecting the Public*" (1990). The Government's aim, repeated several times, was to ensure that convicted criminals receive their 'just deserts'.

*How this aim is effected*

- Tariff sentence

*Effectiveness*

Punishing offenders satisfies the requirement that where a rule imposes a penalty for its own breach, that penalty must be imposed when the rule is broken.

#### **5. SYMBOLIC DENUNCIATION**

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One justification for imposing penalties is that they denounce particular types of behaviour, and reaffirm the validity of moral attitudes to that behaviour. The previous Conservative Government's White Paper suggested several times that punishment can denounce criminal behaviour and express public repugnance of it.

*How this aim is effected*

- Sentence reflecting the blameworthiness of the offence

*Effectiveness*

An ironic feature of a denunciatory sentence is that it does not have to be complied with. The passing of the sentence, provided the public expects that it will be carried out satisfies the symbolic function.