

Objectives of sentencing within england and wales

[Countries](#), [England](#)



What are the main aims and objectives of sentencing within England and Wales? Should any one theory dominate? What are the main aims and objectives of sentencing within England and Wales? Should any one theory dominate? In the criminal justice system, there are many different sentences that can be given to an offender. According to the sentencing statistics in England and Wales (2009) the highest sentence being given is financial penalties with 67.3% of convicted offenders being given a fine, 14% received community service and 7.2% of offenders were sentenced to prison.

The type and length of a sentence largely depends upon the seriousness of the committed offence and the offender behind it. This essay will look at the main aims and objectives of sentencing, as well as the different theories used within sentencing. Within this essay the question of whether or not a sentence should aim to prevent further crimes or punish offenders as they deserve, will too be discussed. A further factor of this essay will look at influential factors within sentencing and the complications that would arise if the system was to be dominated by one theory.

To conclude it has been found that one theory simply cannot dominate sentencing within England and Wales as the majority of sentences are tailored around each individual offence and offender, therefore there cannot be a set sentence for a set crime. According to the Criminal Justice Act (2003) there are five main purposes of sentencing an offender. The first is to punish the offender; also known as denunciation. This is the acknowledgement that the behaviour of the offender is not acceptable within society and ensures a consequent punishment.

This can be seen as a form of paying back the wrong doing or understanding of what is right and wrong. However Ashworth (2005) arises the underlying question on how this does so and why punishment is seen as an appropriate response to criminal behaviour. The second is to reduce crime this includes its reduction by deterrence. Ashworth (1999) claimed that deterrence aimed to prevent crime by future offenders and the offender in question, by not committing an offence due to fearing the consequent punishment.

This can take the form of individual or general deterrence. The next purpose of sentencing is to reform and rehabilitate the offender, this is achieved through many different methods such as; counseling or group therapy. The purpose of this is to change the offenders' attitudes and behaviours so they desist from crime. (Ashworth 1999) Rehabilitation may also address prior reasons as to why the offender may have committed the offence in the first place and teach the offender to deal with these in an acceptable way.

The fourth aim of sentencing is to protect the public from both the offender and further crimes. This is known as incapacitation, the idea of removing the ability from the offender to commit a crime for a length of time, for example; being in prison or under house arrest. Finally the last purpose of sentencing is for the offender to make amends to the persons affected by their actions. This idea can also be known as restorative. This aims to give an appropriate sentence to the offender, whilst ensuring a balance with the appeasement of the victim.

This can be in the form of the offender having to give some sort of financial compensation to the victim or affected persons. When deciding on an appropriate sentence for an offender there are two main theories that

<https://assignbuster.com/objectives-of-sentencing-within-england-and-wales/>

dominate. These theories individually question whether or not it is best to punish the offender or treat the offender. Retributivism is the first, otherwise known as backward looking, and secondly is Reductivism, known as forward looking. Retributivism is the idea that an offender's punishment should fit the crime that was committed.

Otherwise referred to as 'an eye for an eye' approach. Proportionality is the essence of the retributivist theory. Von Hirsch (1981) quoted that 'the severity of the punishment should be commensurate with the seriousness of the wrong' he also stated that there were two types of proportionality. The first being Ordinal, this is how offences are ranked in accordance to their seriousness, and the offence ranked at the top will in turn receive the highest punishment. The second type of proportionality is Cardinal, this is how punishments are ranked in accordance to seriousness.

This idea has set sentences for set crimes therefore ignoring the offender's circumstances. Reductivism aims to prevent future offences with the main aim of creating the greatest happiness for the greatest number. Reductivism consists of three main ideas; deterrence, rehabilitation and incapacitation. Ashworth (1998, 44) quoted that; 'Deterrence seeks to further the aim of crime prevention by setting the sentence so that it is sufficient to deter the convicted offender.' This idea is known as individual deterrence, general deterrence differs from this, as instead of focusing on preventing the offender in question from offending again, general deterrence focuses on preventing potential offenders from committing a crime due to them being fearful of the crime's consequential punishment. Incapacitation is the idea of preventing an offender from committing a future crime by making it impossible for them to

do so. For example; being in prison prevents the offender from being able to commit another crime.

This idea is used for offenders who are not deemed as 'curable'. This goes against the retributivist idea that punishments should follow a committed offence by punishing a person in order to prevent an offence. The third aim of reductivism, is rehabilitation. This is the idea that the offenders' behaviours can be altered through methods such as cognitive behavioural therapy and family intervention. Rehabilitation in practice can be seen in the case of Venables and Thompson.

The Times reported that 'One of the most comprehensive care plans was drawn up for young offenders by the Department of Health which aimed to rehabilitate the boys and prevent them becoming institutionalised'. This plan included rehabilitation techniques such as counselling and learning techniques to control their behaviour. As both young offenders were released just 8 years after the murder this would prove the technique somewhat successful. However this can not be generalised to adult offenders.

An important factor that influences sentencing in England and Wales is the offenders' age. In 2009 5.8% of offences were committed by under 18s. (Sentencing Statistics). According to Gordon (1999, 92-93) when sentencing a juvenile the courts aim of the sentence should also take the following into account; whether or not the juvenile is young and possibly immature, if they are socially or educationally disadvantaged and finally, if they are at a critical stage in their personal development.

When sentencing a juvenile both theories are applied however in some cases the reductivist approach seems to dominate. The Detention and Training order is the main custodial sentence for offenders ages 12-17, this aims to split the sentence to include both a custodial part and part served under the supervision in a community, with the primary concern on rehabilitating the offender therefore being dominated by the reductivist approach.

After discussing the aims and objectives of sentencing and the theories based on the aims, it is clear that one theory simply cannot dominant sentences as there are too many influential factors, and one theory working could not be generalised to work on all offenders due to the level of differences between offenders and offences. Some influential factors include; previous convictions, whether or not the offender shows any remorse, the plea and various others. Furthermore to this, a system would not work based on one theory.

For example if the system was based on deterrence, the courts would need information on each individuals circumstances and character in order to sentence accordingly, persistent offenders would have increased punishments therefore meaning the sentencing system would have no consistency as each sentence would be based on the offender in question. (Ashworth 1998. 45). In Conclusion, after reviewing the two main theories of sentencing in terms of the main aims objectives set by the Criminal Justice Act, it is clear that each one takes some of the aims and objectives into account.

However neither has a proposed way of dealing with offenders that addresses all the aims and objectives. Before it is possible for one theory of <https://assignbuster.com/objectives-of-sentencing-within-england-and-wales/>

sentencing to be established as a dominant theory, the question of whether or not sentencing should primarily punish or treat the offender needs to be answered. However there cannot be a general answer to this, as it will always be a debateable topic, as each sentence depends on each individual offender and the individual offence, therefore making a categorisation of whether or not specific crimes should be treated based on the retributivism theory or the reductivism theory cannot be done.

A combination of both theories, aiming to punish and treat the offender in order to prevent further offences would seem the best solution, however in some cases this would not be the best solution.

BIBLIOGRAPHY Ashworth A, Von Hirsch A, 2005, Proportionate Sentencing, Exploring the principles, Oxford, Oxford University Press Ashworth A, Von Hirsch A, 1998, Principled Sentencing, Readings on Theory and Policy, Hart Publishing Cavadino M, Dignan J, 2006, Penal Systems, A comparative Approach London, Sage Publications Criminal Justice Act 2003

Gordan W, Cuddy P, Black J, 1999, Introduction to Youth Justice, Incorporating Introduction to the Youth Court, Winchester, Waterside Press Gross H, Von Hirsch A, 1981, Sentencing, Oxford, Oxford University Press <http://www.justice.gov.uk/sentencingannual.htm> (Sentencing Statistics England and Wales 2009) <http://www.timesonline.co.uk/tol/news/uk/crime/article7054623.ece>