

Development of sentencing policy in england law essay



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According to Andrew Ashworth (Sentencing and Criminal Justice, 5th Edition, Cambridge University Press (2010), p. 77), section 142 of The Criminal Justice Act 2003 appears to embody the worst of pick-and-mix sentencing, and one which invites inconsistency.

In the light of this statement discuss, and comment, on the aims and purposes of sentencing.

To what extent are they a reflection of sentencing currently practised by courts?

This essay seeks to consider the way in which the sentencing policy has developed under English law on the basis of the fact that many academics including Ashworth look upon the current system as being somewhat 'pick-and-mix' illustrated by section 142 of the Criminal Justice Act 2003. With this in mind, this essay looks to produce a discussion that is considered to be able to serve to provide an understanding of the aims of sentencing traditionally and as to how English law has looked to fulfil these aims and the extent to which they have proved successful in this regard.

In considering the idea section 142 of The Criminal Justice Act (CJA) 2003 appears to embody the worst of 'pick-and-mix' sentencing (Ashworth, 2010), it is necessary to appreciate how it may invite inconsistency by first discussing the aims of sentencing before looking to expand and focus this discussion upon the specific provision and related provisions. On this basis, it should be possible to then determine the extent to which these aims are a reflection of policies of sentencing currently practised by courts in the UK and their associated aims. Finally, this essay will then look to conclude with a <https://assignbuster.com/development-of-sentencing-policy-in-england-law-essay/>

summary of the key points derived from this discussion in relation to the remit of sentencing in the UK and as to how it is currently practised by domestic courts.

When considering the different aims of sentencing there are significant rationales involved with the development of an effective policy focussed upon achieving retribution, deterrence, rehabilitation, restorative justice, and incapacitation founded upon a specific offenders' culpability that can prove complicated (Tonry, 2005). Nevertheless, such an understanding is ably supported by philosopher, Immanuel Kant (2002) to mark the beginning of modern theories of punishment as he argued the only morally legitimate justification for sentencing. Therefore, the key function of such policy is to look to ensure offenders receive the appropriate sentences to manage the apparent conflict that exists between individual liberty under Article 5 of the European Convention on Human Rights (ECHR) 1950 (domestically implemented by the Human Rights Act (HRA) 1998) and the interests of society as a whole (see, for example, *Steel v. United Kingdom*). However, it has proved difficult for an effective sentencing policy to develop that is able to find a balance between the aims that have been recognised to account for goals of crime-prevention and the apportioning of punishment (Fraser, 2005). More specifically, government policy makers have sought to explain away major changes with a view to increasing public confidence (Home Office, 2002, p. 13) because the criminal justice system domestically did not have the necessary credibility and legitimacy government policy makers felt was necessary to make punishments and sanctions for criminal activity more effective, certain, and consistent (Tonry, 2005).

Sentencing policy in the UK has been largely explained by the fact that, for over a decade, government policy makers have explained away major changes as part of a larger effort to increase public confidence in the English legal system (Home Office, 2002, p. 13). Prior to the making of these changes, it had been a traditional social belief this country's criminal justice system did not have the necessary credibility and legitimacy government policy makers felt was necessary to make criminal punishments more effective, certain, and consistent to address citizens problems (Tonry, 2005). But, despite this clear need and the changes, it is arguable that sentencing has still become something of a 'pick and mix' process aptly illustrated by section 142 of the CJA 2003 regarding the purpose of sentencing policy in the English legal system (Ashworth, 2010). Therefore, both the aims and purpose of the domestic system of sentencing has arguably been lost without set guidelines to follow in the interests of fairness and consistency regarding the sanctioning of offenders because the current codification of the law is arguably too discretionary for the judiciary to utilise in keeping with the remit of their powers as it relates to making their decisions in any given case.

Section 142 of the CJA 2003 recognises criminal courts need to consider the following purposes of sentencing - (a) punishment; (b) the reduction of crime; (c) reform and rehabilitation; (d) social protection; and (e) reparation. As a result, unfortunately, it is arguable such a provision was always bound to lead to significant problems because it seems to require the judiciary to actively consider a variety of aims before then giving weight to one factor above all of the rest that they must consider to reach a decision (Ashworth,

2010). But such concerns regarding sentencing serve to detract from its aims that now arguably lack foundation since the Sentencing Guidelines Council has adopted section 143 – as opposed to section 142 – of the CJA 2003 to determine appropriate sanctions for criminal offenders (Tonry, 2005). Section 143 specifically provides, for the purpose of sentencing, “ the court must consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have cause”. Therefore, it has been for the Sentencing Guidelines Council to focus its attention upon the ‘ proportionality principle’ to determine what is required for the sentencing of individual criminal offences to be more effective (Von Hirsch & Roberts, 2004).

However, the policy of sentencing under English law still remains sufficiently uncertain so one is left to wonder what will happen if section 142 of the CJA 2003 is favoured when determining how the Sentencing Guidelines Council’s ‘ Overarching Principles – Seriousness’ (2004) is to be followed by the courts in deciding sanctions in any given case. This is because it has proved arguable that section 142 under the CJA 2003 has already given the judiciary too greater autonomy in deciding the sentencing of offenders in any given case regarding the appropriate sanction for the offence the defendant has committed where they are found guilty (Rex & Tonry, 2005, Chapter 5). As a result, doubts have arisen throughout society about whether changes in sentencing would actually reduce crime when many people have sought tougher penalties to reduce crime rates through a system that expounded the virtues of deterrence and incapacitation to achieve the aforementioned aims of sentencing. At the same time, however, there is a need to appreciate

the prospect for effective rehabilitation from the sentence that an offender is given has changed quite radically under contemporary law. This is because effectively targeted programs, as part of an offender's sentence, can serve to limit the probability of that individual then re-offending through the drug treatment, anger management, sex-offender treatment, and various educational and vocational-skills programs implemented to prevent further offences occurring in the interests of crime prevention within society (Gaes, 1999).

By way of illustration, the Home Office's Halliday Report provided the foundation for a massive reorganisation of the English criminal justice system under the CJA 2003 so it was concluded " if the [treatment] programmes are developed and applied as intended, to the maximum extent possible, reconviction rates might be reduced by 5-25 percentage points". (Halliday, et al, 2001, p. 7) Therefore, a new approach to custodial sentences was proposed and endorsed totalling less than a year with three specific options available. The first is ' custody plus' consisting of a maximum of 13 weeks in prison with the rest being made up by community service, whilst sentencing may also consist of a policy of ' intermittent custody' that involves weekend imprisonment for up to 51 weeks (sections 183-186 at CJA 2003). Finally, there is also the possibility of ' custody minus' whereby the offender's sentence is suspended for a maximum of 51 weeks with community service carried out instead (Von Hisch & Roberts, 2004). On this basis, the methods for dealing with minor criminal matters have taken on greater significance with the CJA 2003's enactment, since sections 22-27 now also supplement the existing system of cautions (under the Police &

Criminal Evidence Act 1984) with 'conditional cautions' which may be given when the conditions set out are fulfilled (Ashworth & Redmayne, 2005, Chapter 6).

However, whilst the CJA 2003 has introduced a new mandatory minimum sentence of five years for possession of firearms without a licence under section 287, there has been a distinct lack of Court of Appeal guidance for the minimum sentence for domestic burglary (section 111 at Power of Criminal Courts (Sentencing) Act 2000) but was not endorsed by the Court of Appeal (R v. Hoare) - unlike, for example, guidelines on rape (R v. Milberry). Moreover, the CJA 2003 also eliminated the automatic life imprisonment sentence and absorbed it within the new 'dangerousness sentences' (sections 224-236 & Schedules 15 & 18 of the CJA 2003 because decisions like *Stafford v. UK* recognised the Home Secretary's power to set a minimum time for someone to remain in prison who is imprisoned for life (see also section 269 & Schedule 21 of the CJA 2003).

As for the matter of previous convictions' impact upon sentencing individual offenders, where an individual has already been convicted of another offence they should be liable to a much stricter penalty for all offences they are convicted of thereafter because such convictions are illustrative of an individual's 'bad character' in court proceedings to impact upon a given case (Choo, 2006, Chapter 8). However, the CJA 2003 have proved somewhat controversial to say the least because the precise moment of their coming into force has proved a matter of notable dispute (R v. Bradley) as well as the fact that, in a criminal trial, any evidence relevant to the case should be admissible (Rees & Roberts, 2006). This proved necessary because <https://assignbuster.com/development-of-sentencing-policy-in-england-law-essay/>

it was previously largely understood under section 1(3) of the Criminal Evidence Act 1898 the prosecution in any criminal case was unable to adduce evidence of a defendant's 'bad character' except regarding the offence a defendant was charged with unless it was considered probative to the 'best interests' of justice (Durstun, 2004). But what Lord Wilberforce said in *Boardman v. Director of Public Prosecutions* (p. 444) acted as a caveat in recognising "the admission of similar fact evidence (of the kind now in question) is exceptional and requires a strong degree of probative force" to be admissible prior to the CJA 2003. Therefore, the level of sentencing may then be determined fairly and consistently in keeping with the facts of any given case to provide sufficient sanctions in the best interests of justice for society as a whole (Fitzpatrick, 2006).

In addition, the exclusionary rule previously emphasised as being of fundamental significance against the admission of previous misconduct and other evidence of 'bad character' has now been largely abolished where it is found the matters to be considered are relevant to the issues at hand (section 101 of the CJA 2003). By way of illustration, under section 103(1) of the CJA 2003, "the matters in issue between the defendant and the prosecution include: (a) The question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence" (Roberts, 2006). But whilst there is little doubt those who drafted this provision intended to make evidence of a defendant's 'bad character' admissible because it shows they have a general tendency to

commit offences, there is room for considerable doubt about whether the provision achieves its aim (Withey, 2007).

To conclude, policy makers under English law have sought to develop a system of sentencing that fulfils its recognised aims since the CJA 2003 has sought to provide for the achievement of higher levels of fairness in the decisions reached to prevent further instances of crime and act in society's 'best interests'. This is because not only can an effective system of sentencing provide a deterrent for others in society, but this can also serve as a means of punishment and rehabilitation. However, whilst the CJA 2003's remit has been called into question because it would seem to give too wide discretion to the judiciary in looking to 'reason' out their decisions, previous convictions must also now be taken into account in determining the level of sentencing for any individual found guilty of a criminal offence as an indication of 'bad character' under the CJA 2003. But, to achieve a consistent and fair approach to the administration of justice through an effective sentencing policy, it is still necessary to adhere to the Act to come to a fair approach to sentencing and sanctions to punish and rehabilitate a guilty offender whilst also deterring others from carrying out similar offences.