

Objectives of sentencing within england and wales



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This essay requires an answer to whether either theory of sentencing dominates, which include retributivism (backward looking) and reductivism (forward looking). It will be essential to study the aims and objectives of sentencing adopted by the legal system in England and Wales, and to further analyze the advantages and disadvantages of the two theories of sentencing mentioned. By exploring the topic of sentencing and examining different opinions, Acts of Parliament and aspects of sentencing, it should become apparent in this essay whether any one theory of sentencing should dominate.

Sentencing is a highly mentioned topic in the criminal justice system as there have been controversial opinions whether some sentences given are fair, for example sentencing by geography. Sentencing by geography is an extremely unfair way of sentencing an offender, as some offenders may travel to certain areas where it is knowledgeable that if caught, the sentence will not be as large as a pose to them committing a crime in another area in the community. This brings attention to whether the criminal justice system provides justice.

Sentencing however has a strong primary objective to protect the public, defend public morality and to ensure that justice is done for both victims and the public. Furthermore, the importance of sentencing to the criminal justice system is to provide reassurance to the public and to promote respect for the law. It is important that the law enforces the principle that criminals will be punished accordingly and demonstrates that criminal behavior is not acceptable in society, whether punishment be unpaid work, financial penalties or in some cases, custodial sentences. Judges promote respect

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towards the law by sentencing appropriately in proportion to the crime committed. ' If the sentence is too lenient, the message is that offenders will not be punished harshly. Many offenders may therefore engage in further criminal conduct, believing that even if they are subsequently apprehended the punishment will be mild' (Champion, 2008: 3). The reason why judges sentence defendants is in order to punish. ' Punishment is a word widely used in relation to anything that is painful' (Hudson, 1996: 1) , and takes place when an offence has been committed and proved. An offender will be required to proceed with unpleasant consequences even though it may be against their will. This is what makes punishment different from other aspects of law. The aims of punishment and sentencing serve many answers, some being ' because they deserve it; to stop them committing further crimes; to reassure the victim that society cares about what has happened to him/her; to discourage other people from doing the same thing; to protect society from dangerous or dishonest people; to allow offenders to make amends for the harm they have caused; to make people realize that laws must be obeyed' (Hudson, 1996: 3). However, there are more aims to sentencing than punishment alone. These aims include retribution, incapacitation, rehabilitation, deterrence, denunciation and restitution, which are all relative to the two theories of sentencing which will be discussed in this essay; retributivism and reductivism.

It is debatable whether sentences should be individually tailored in each case of a criminal activity, which could be seen as a fairer way of sentencing to many, or whether consistency in sentencing is more important to the criminal justice system. It is important to take in to consideration however,

that when an offender has committed a crime, another offender may have committed the same sort of crime but on a lower or higher level of seriousness, which means that the sentence given should not be the same. This conducts the key debate between the retributivism theory and the reductivism theory.

Retributivism is one of the main theories of sentencing which justifies punishment on the basis that the punishment given is deserved. This theory is often described as backward looking, where the decision of punishment is based on events which have already taken place and is decided on the severity of the crime. Retributivism does not try to change behaviors in offenders, as it deals only with the offence which has been committed, and the punishment given from the criminal justice system is the end of the process. A punishment in the view of reductivists must fit the crime committed. An example of this would be theft. It would not be morally expected to sentence an offender who has stolen a chocolate bar from a shop the same as an offender who has committed theft of a television from another store. These two different kinds of items hold different levels of value; therefore punishment should be proportional to the crime. However, it is important in terms of justice and respect for the law that all crimes, disregarding the level of seriousness should be punished. Ashworth (2002) states:

' Punishment is justified as the morally appropriate response to crime: Those who commit offences deserve punishment, it is claimed, and the amount of punishment should be proportionate to the degree of wrongdoing' (Ashworth 2002: 1077).

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Proportionality plays a large part in the retributivist theory of sentencing. Proportionality is divided into two sections; ordinal, which relates to how offences are ranked in accordance to seriousness; and cardinal proportionality, which relates to how punishments are ranked in accordance to seriousness. This enables the public to understand proportionality in crime, and to provide an understanding regarding what punishments will be likely to be given for the crimes committed, which further provides consistency in the law and the criminal justice system. Retribution in many opinions is one of the fairest ways to justice, and referring back to sentencing by geography, the retribution theory of sentencing ensures that the crime is the key factor when sentencing rather than where the offender is from or who the offender may be, as sentencing is based on the offence and not the offender.

In the case of *Regina v Decino* 1993 (Davies 2010: 387) 'the offence of theft of money from a telephone kiosk was capable of being so serious that only a custodial sentence could be justified, within the terms of section 1 (2)(a) of the Criminal Justice Act 1991' (ibid: 387). Due to the public telephone box being seen as a 'lifeline' by Lord Justice Beldam (ibid: 387), the essence of proportionality defined the sentence of the offender. As the crime was seen as so potentially serious, the need for custodial sentence was seen to be in proportion with the seriousness of the crime.

Reductivism is the second theory of sentencing mentioned in this essay.

Different from retributivism, this theory justifies punishment on the grounds that it will help to reduce future offending. Examples of the aims of

sentencing related to the reductivism theory are deterrence, which aims to
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discourage offences in the future, rehabilitation, which aims to change the way someone thinks about offending behavior; and incapacitation, which takes the power away from an offender to prevent them from re offending in the community, for example, a custodial sentence. This does not however prevent the offender from re offending whilst in prison; therefore this can be seen as a weaker approach to sentencing than the retribution theory.

Deterrence has been previously described as ' the least effective and least fair principle of sentencing' (Martin, 2005: 176). All three of these aims are forward looking, but contain some disadvantages more so than retributivism, for example, if an offender was to be punished by rehabilitated rather than a custodial sentence, there is a question as to whether justice has really been done or whether enough respect towards the law was been achieved. On the other hand however, reductivism can be seen as a technique to change the way offenders think about crime, and to change future consequences without the need of prisons, where research has suggested that ' The number of criminals who go on to reoffend within two years has reached its highest level in a decade' (Sky news).