
RESPECT AND LEGITIMACY AT SENTENCING

Current Research and Future Priorities

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EXECUTIVE SUMMARY

- This paper offers a rare joint discussion of respect and legitimacy at sentencing in England and Wales.
- A review of research reveals that relatively little is known about defendants' perceptions of legitimacy at sentencing, and even less about their perceptions of respect, despite the dominance of these concepts elsewhere in criminal justice.
- There are limited empirical findings on the precise operation and implications of legitimacy at sentencing and no empirical findings on the operation and implications of respect. Perhaps the most important finding to date is that court users – defendants, victims, and witnesses – perceive the court process as broadly legitimate and obey the rules of the process not because they are forced to do so, but because they feel *obliged* to do so (Jacobson et al. 2015).
- Most research on legitimacy and respect at sentencing has yet to move beyond the stage of mere hypothesis. Researchers have suggested, for example, that respect is best understood as a key criterion for legitimate sentencing. Others have made the related claim that legitimate sentencing enhances citizen-state relations and promotes offender compliance with the sentence imposed. In the US context, researchers have advocated remorse-based sentence reductions as a way of showing respect to offenders. Yet, these matters remain far from clear-cut and we will only make tangible progress by prioritising empirical analysis in the future.
- Moving forward, researchers might explore the extent to which increasing the degree of respect accorded to defendants has the consequential benefit of increasing their compliance with the sentence imposed. Is it the case that offenders who feel disrespected are less likely to comply with court orders and possibly less likely to desist? And if this relationship holds, is it mediated by perceptions of a lack of legitimacy?
- Ultimately, this paper recommends that researchers and practitioners treat respect and legitimacy not as abstract ideals but as grounded and pragmatic concepts with a lasting contribution to make to sentencing policy and practice.

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1. PURPOSE AND SCOPE OF REVIEW

This paper introduces the concepts of respect and legitimacy and considers their relevance to sentencing practice in England and Wales. A review of research reveals that relatively little is known about defendants' perceptions of legitimacy at sentencing, and even less about their perceptions of respect, despite the dominance of these concepts elsewhere in criminal justice, notably in policing and procedural justice (see, e.g., Tankebe and Liebling 2013, Tyler 2008, and Watson 2020). The paper defines respect and legitimacy and the relationship between the two and then locates the concepts in current sentencing research. It calls for academics and practitioners to highlight respect and legitimacy as fundamentally pragmatic concepts in the sentencing context and work towards building a robust body of research on this theme.

What practical benefits might derive from greater integration of these concepts into the sentencing process? One possibility is that demonstrable instances of respect and legitimacy have the capacity to enhance citizen-state relations and promote offender compliance with the sentence imposed.¹ If this were shown to be true, we might then elevate respect and legitimacy to the status of institutional standards: as indicators that the sentencing process is functioning well.

2. PRELIMINARIES: RESPECT AND LEGITIMACY

Defining Respect

What is meant by the concept of 'respect'? When and on what grounds do individuals owe respect or have an entitlement to it?

Respect is open to interpretation and multiple definitions exist, though the Kantian notion of respect for persons provides an important starting point (Hill 2000). The essence of this account is that all persons are worthy of respect since they are rational human beings. Respect, in this sense, is a moral right that includes an obligation not to use others for our own ends. Kant holds that all and only persons are ends in themselves, which is to say that they have an intrinsic and incomparable moral worth called dignity. Respect is the only suitable acknowledgement of an individual's dignity. As such, we have a binding moral obligation to respect each other and ensure that it is evidenced in both our attitudes and conduct (see, e.g., Dillon 2018).

¹ See Goldring (2021) for a discussion of the evidence on the extent to which defendants understand and can engage with the sentencing process and its possible impact on compliance with their sentence.

There are two clear implications of the Kantian account of respect. First, when all individuals are equal in dignity and moral status, each has a right to respect. Second, the respect-worthiness of individuals does not depend on whether they act morally. Dignity implies absolute worth. It cannot be diminished or lost through wrong actions or bad character, nor can it be increased through virtue or morally right action. Respect is not something that we earn or fail to earn but something that defendants and offenders are owed unreservedly, notwithstanding their offences or alleged offences.

Several contemporary accounts remain consistent with Kantian reasoning in insisting that respect cannot be surrendered. One prominent claim is that convicted offenders remain both humans and citizens worthy of respect and must, in sentencing and punishment, be treated as such (Duff 2010).

Defining Legitimacy

Legitimacy is an essential foundation of just legal and political institutions. It is fundamentally important in the context of criminal justice since the sheer monopoly of authority its institutions possess – including their capacity to coerce citizens and impose punishment – demand the highest levels of legitimacy.

What is meant by the concept of legitimacy? Although there is no settled definition of legitimacy among researchers, it is broadly defined as the property of being valid or proper, either as set forth in law (intrinsic legitimacy) or from the perspective of citizens (perceived legitimacy), or both. On this view, legitimacy has two elements, which may sometimes conflict: institutions must not only be legitimate according to some external standard or benchmark of acceptability but be *seen* by citizens to be legitimate too.

In the context of criminal justice institutions – in this case, the sentencing court – having legitimacy means that all citizens – including defendants – believe that the decisions made by judges are in some way ‘right’ or ‘desirable’ and ought to be followed. Key here is the belief that the sentence passed by the court is ‘valid’ in the sense that it ought to be obeyed by virtue of *who* made the decision and *how* it was made (see, e.g., Jackson 2018 and Tyler 2006). Legitimacy, then, is an essential component of individual satisfaction with the criminal process and reflects the capacity of an institution to maintain active or passive public support.

Respect as a Criterion for Legitimacy

Although they are distinct concepts, there is nonetheless a link between respect and legitimacy, and they are worth considering together for two reasons.

First, both respect and legitimacy are fundamentally relational, involving a degree of interaction between state and citizen, and providing a way for citizens to assess the quality of their treatment by authorities. Second, respect and legitimacy matter during the process itself – in our case, the sentencing hearing – as well as in the outcome. We might describe a sentencing hearing as legitimate and respectful because it met the demands of due process and successfully upheld a defendant’s legal rights, but we might also describe the sentence imposed as legitimate and

respectful because it was sensitive to the law and sentencing guidelines, adjusted in view of a defendant's mitigating circumstances, and promoted a defendant's compliance once imposed.

Researchers have yet to articulate in detail the precise relationship between respect and legitimacy at sentencing. It would certainly be a mistake to treat the concepts as abstract ideals. Rather, in the sentencing context, respect and legitimacy are best understood as grounded, pragmatic, and fully immersed in the applied domain, given their capacity to secure real and lasting change for defendants and the sentencing process more generally. In other words, respect and legitimacy might, in fact, be preconditions for an effective justice system because they promote meaningful citizen-state relations and are good predictors of offender compliance with the sentence imposed.

One way of framing their relationship would be to treat respect – for defendants and victims – as a criterion for legitimate sentencing practice. This idea has been proposed elsewhere in criminal justice (see, e.g., Watson 2020) and recent work strongly suggests that the idea might have some mileage in the sentencing context too. For a study of the Crown Court in England and Wales, researchers interviewed victims and witnesses and found that being treated with humanity, kindness, and respect contributed to their positive evaluations of the justice system and reinforced their belief in its legitimacy (Jacobson et al. 2015). Researchers have also examined strategies for building legitimacy in the eyes of the public, citing 'fair and respectful handling of people' and 'listening to what they have to say' as 'significant predictors of legitimacy' (Hough et al. 2013, p. 6). Elsewhere, 'respect for rights' was identified as a key means of achieving a legitimate criminal justice system (Easton and Piper 2012, p. 288).

While this paper strongly supports the idea of respect as a criterion for legitimacy, the reality remains far from clear-cut. It will remain a mere idea until researchers prioritise careful empirical analysis, test the hypothesis, and demonstrate its viability.

Acting Respectfully

It is for all judges, whatever their background, to gain and hold the confidence of those appearing in court. This entails making themselves aware of the range of social experiences of defendants and 'treating them with understanding and respect' (*Equal Treatment Bench Book* 2021, p. 9). What does it mean to act respectfully towards defendants in court? The *Equal Treatment Bench Book* (2021), aimed at members of the judiciary, offers some practical suggestions.

- a) Court hearings usually begin with introductions by name. Judges are advised to show 'respect for names' and 'naming systems' (p. 238) on the grounds that they are important to an individual's sense of identity and can indicate national, linguistic, religious, and family roots.

For a defendant with a 'foreign name' (p. 238), the way a judge or member of court staff reacts to it can symbolise their attitude towards other cultural differences: it is an important step towards gaining and holding the defendant's confidence that it will not prove a disadvantage in court. It is best practice to avoid mispronouncing names or changing names without asking the defendant first. The defendant may notice the omission and interpret it to mean dismissiveness or disrespect. It is recommended that judges try to pronounce the name, ask for guidance, and apologise if unable to get it right.

- b) Judges might build trust and treat defendants with respect by explaining court processes to them in sufficient detail (p. 245) including giving reasons for, and the effect of, sentences imposed. Defendants should not be made to feel uncomfortable if they require further explanation of the process or do not understand the way questions are being asked (p. 125). The aim is to treat defendants as active participants in the proceedings.
- c) The *Bench Book* offers detailed guidance on how to show respect for a defendant's cultural differences and religion (p. 252). Judges should avoid stereotyped assumptions about the attitudes, allegiances, or level of education of a defendant. Judges might, for example, show awareness of fasting practice if the hearing takes place during Ramadan and schedule additional breaks throughout the hearing.
- d) To ensure respect for a defendant's private life and personal dignity (p. 325), it is important for members of the judiciary to respect a person's gender identity by using appropriate terms of address, names, and preferred pronouns. A person's gender at birth or their transgender history should not be disclosed unless it is necessary and relevant to the legal proceedings. In exceptional circumstances, disclosure of a person's previous name and transgender history may be necessary, and so the court may consider making reporting restrictions to prevent the disclosure of this information more widely or directing a private hearing (p. 326).
- e) As hearings increasingly take place via video platform in response to the COVID-19 pandemic, judges are advised to be careful to avoid unconscious assumptions about defendants from their home surroundings, behaviour, or dress. For some defendants, a legal process which is streamed into their home may feel like an invasion of their personal space.

The *Bench Book* reminds judges that defendants with representation are more likely to have had the benefit of legal advice regarding how they should present themselves at home, including how they should dress, where they should sit, and how their surroundings should appear. Unrepresented parties may not have had this guidance and so judges should not assume disrespect by manner of address or what is being worn in the comfort and privacy of their home environment (pp. 484-485).

3. SENTENCING SCHOLARSHIP

Respect

Sentencing is likely to generate strong views among defendants and victims about the respect – or lack thereof – with which they are treated by the sentencing court. References to respect in sentencing scholarship remind us of the sheer breadth of the concept itself and that there is much work to do to arrive at a stable consensus on how best to identify or cultivate respect in practice. Although the primary focus of the discussion is England and Wales, it draws comparisons with practices in the US when it is valuable to do so.

- a) What is the relevance of respect to sentencing scholarship and practice? One possibility is that the value sheds explanatory light on a defining stage of the sentencing process: the entering of a guilty plea and the subsequent awarding of a sentence reduction.

There is a certain ambivalence to the act of pleading guilty. It has the capacity to generate conflicting sentiments, where we might at once morally approve of and morally object to its existence. On the one hand, the guilty plea is a gesture of contrition, a form of atonement, and a public acceptance of legal responsibility. On the other hand, it can be a tactical decision made for personal gain in the form of a plea-based sentence reduction when the defendant might well be factually innocent. These conflicting interpretations mean that – depending on context – the guilty plea can both promote or erode the defendant’s moral right to respect.

The practice of incentivising defendants to plead guilty often looks more like inducement. The practice of plea-based sentence reductions – of one-third if the plea is entered at the earliest opportunity – could easily persuade a defendant to act against his own best interests. The current system in England and Wales appears to assume that plea decisions are truly autonomous and consensual, but there is good reason to believe that even the factually innocent might be induced into pleading guilty in the face of weighty evidence against them. In some cases, the plea might be a deliberate construction, a strategic decision, or a compromise between conflicting accounts honed through negotiation (Watson 2021).

A second issue arises in relation to vulnerable defendants. To enter a guilty plea is not a straightforward decision for any defendant to make, let alone a vulnerable one, where full credit may be withheld if there is no indication of a guilty plea at the first hearing. It seems, however, that the Sentencing Council’s guideline (2017) risks having an adverse impact on the vulnerable because its time-based scheme – even if justified on the grounds that it saves resources – is inherently pressurising. The current emphasis on timing – the entering of a guilty plea at the earliest possible opportunity – implies a significant disregard for the vulnerable defendant’s moral right to respect, when he is already distanced from the protections afforded by trial.

- b) Some studies claim that respect is valuable in and of itself, aside from its capacity to secure instrumental outcomes. However, these studies, while valuable to criminal justice in general, do not refer to respect specifically in the context of the sentencing court.

We might envisage a place for respect as an overarching value in criminal justice, provided it is an attitude adopted and expressly shown by criminal justice actors, but not demanded in return. The obvious objection to this account is that respect attracts multiple definitions. Arguably, the dominant definition of respect is not as a passive state or an intrinsic quality but as a form of mutual interaction that requires a degree of active participation on both sides. Respect only provides a good guide for criminal justice practice when it is reciprocal (Millie 2016).

One researcher has recorded the need for a more detailed description of respect in criminal justice and calls for a robust account of its significance (see, e.g., Duff 2005). Elsewhere, researchers have reimagined criminal punishment within a society where citizens treat each other with 'equal concern and respect' (see further Dworkin 1977 and Duff 2011). The idea is that convicted offenders are treated as fellow members of the community, who are both answerable to the community for their wrongdoing and entitled to respectful treatment from them.

Others have argued that there are both intrinsic and instrumental benefits to cultivating respect in criminal justice. They have proposed that there should be an agreed set of moral and practical principles for criminal justice policy, among them, humanity, dignity, and respect in the treatment of offenders, victims, and in the administration of justice. In addition to the intrinsic necessity of values such as humanity, dignity, and respect, researchers have claimed that these values would enhance the institutional legitimacy of criminal justice (Faulkner and Burnett 2011).

International jurisdictions

Too often, we find – in both the domestic and international literature – fleeting references to respect within general commentaries on criminal justice policy and practice. There are, however, some exceptions – this time in the US context. This work, however, should be interpreted with care, since the standards invoked by respect are not necessarily commonly held by all and respect depends instead on the ethnic, religious, cultural, national, and ideological commitments of the jurisdiction in which it is expressed.

- a) We might make the case for an approach to criminal justice and punishment that is premised on respect for offenders' human dignity (Tonry 2016; 2018). The notion that offenders should be treated with 'equal concern and respect' (Dworkin 1977) had once exerted influence on indeterminate and determinate sentencing systems in the US. But such values have largely disappeared from contemporary sentencing law and practice, which has become unprecedentedly severe. This severity is increasingly evident in, for example, the near absence of meaningful systems of appellate sentence review, the low standards of proof at sentencing, and the absence of standards for the sentencing of individuals convicted of multiple offences at one time or over time.

In the past year, researchers have reiterated their commitment to ensuring that defendants – together with their individual circumstances and interests – are treated with equal concern and respect whenever decisions affecting them are made (see, e.g., Tonry 2020). They envisage a system of punishment that is consistent with respect in that it should be parsimonious and impose no unjustifiable human suffering. No doubt researchers have high

regard for the concept of respect for human dignity, since they regularly treat it as an overarching concept that subsumes other well-established sentencing principles such as proportionality, fairness, equal treatment, and parsimony.

- b) Some sentencing experts have argued in favour of remorse-based sentence reductions. The idea here is that sentencing judges, whose role – at least in part – is to morally communicate with convicted offenders at their sentencing hearings, must be visibly responsive to expressions of genuine remorse. If they fail to do so and simply calculate the sentence in accordance with the seriousness of the crime, then they fail to demonstrate the respect for convicted offenders which they are owed no matter what and by virtue of their status as moral agents.

Although the case for remorse-based sentence reductions is intuitively appealing, other researchers have questioned it and, in so doing, revealed once more the ethical complexity of respect itself (see, e.g., Lippke 2021). Why should the automatic response to a remorseful offender be a downward adjustment of his sentence? How much of a downward adjustment is required if the practice is to be respectful of the offender? How should sentencing judges react to apparently remorseful offenders before them who have lengthy criminal histories (for which they previously expressed ‘genuine’ remorse)? How should sentencing judges balance remorse with other mitigating and aggravating factors? And if the practice is to truly embody respect, then there is the potentially problematic implication that the victim will need to adjust his response to the wrongdoer’s behaviour by being respectful of his demonstration of remorse.

Legitimacy

We can safely assume that a baseline level of legitimacy is essential for the effective functioning of the criminal process. As the defendant moves through the system, every decision must command legitimacy, since it has major implications for due process. Ultimately, without legitimacy, criminal justice institutions will not achieve their ends (Lacey 2012), nor will they be effective as part of an apparatus of social control or in the maintenance of public order. As the culmination of the criminal process – ‘the point in the trial where the aims of punishment are given concrete and public expression’ (Henham 2012, p. 1) – sentencing no doubt prompts strong views among defendants and victims about the legitimacy of the sentencing hearing and the sentence itself. Yet, academic work on legitimacy at sentencing in England and Wales remains limited in both content and scope.

- a) Legitimacy can take on many and varied meanings in the sentencing context. One possibility is that legitimacy is to do with the assertion of power on the part of an individual or institution. That assertion of power would only be considered legitimate if it is justified. How might we know that a sentencing judge or sentencing court’s actions are justified? That justification may derive from the very existence of the role with all its rights and responsibilities. Another possibility is that legitimacy is to do with being *perceived as* legitimate; of having credibility and commanding the confidence of the public. It is the idea that justice is not simply done but *seen* to be done (Bennett 2014). A robust definition of legitimacy might incorporate both possibilities.

- b) Sentencing decisions offer important insights into the legitimacy of punishment and are directly related to the effective governance of criminal justice (Henham 2012). On this account, legitimacy involves meeting the pastoral needs and legal rights of victims and their communities, but this is increasingly under threat in England and Wales due to the dominance of crime control narratives in law and policymaking.
- c) If we define legitimacy from the perspective of citizens, then we remain committed to the view that sentencing is a lens through which the legitimacy of punishment is both declared and justified. The idea is that legitimate sentencing successfully addresses citizens' concerns about criminalisation and the punishment of citizens by the state (Henham 2013).

We might even go one step further by claiming that the future legitimacy of sentencing depends on the extent to which the practice is visibly invested in social justice. One researcher makes the case for sentencing as an inclusive exercise which promotes societal cohesion and is sensitive to common moral intuitions. Should the state fail in delivering socially just sentencing decisions, the implications would be major and twofold: an immediate loss of legitimacy in the eyes of citizens and a weakening of the rule of law (Henham 2018).

- d) We might explore – with reference to the concept of legitimacy – why most defendants, victims, and witnesses comply (even reluctantly) with the legal process. Research has shown that court users perceive the court process as broadly legitimate and they obey the rules of the process not because they are forced to do so, but because they feel *obliged* to do so (Jacobson et al. 2015).

Researchers have identified five constituent elements of court users' perceptions of the legitimacy of the process, which co-exist in different combinations for different individuals. The five elements are: a sense of *moral alignment* with the work of the courts and the wider criminal justice system; experiences of *positive outcomes* (however defined) of the court process; experiences of *fair decision-making* (again, however defined) within the court process; experiences of *respectful treatment* by professionals and practitioners with whom they have interpersonal contact at court; and – on the part of many defendants – a *passive acceptance* of what goes on in court and its consequences for them.

Researchers have found that negative experiences and attitudes relating to outcomes, decision-making, or treatment were often outweighed by the presence of other positive legitimating factors. In other words, the respondents' overarching sense of the legitimacy of the court process tended to reside in differing combinations of the five factors, but rarely, if ever, in all of them simultaneously (Jacobson et al. 2015).

As might be expected, in the stark setting of the criminal court, the outcome of a case was also a crucial determinant of individual perceptions of legitimacy. Respondents' views on the appropriateness or otherwise of the sentence passed in their respective cases varied widely. Some victims and witnesses complained that the sentences passed in their cases were not punitive enough and – as with a 'not guilty' verdict – this potentially undermined their sense of the legitimacy of the entire process.

- e) Another strand of sentencing research is concerned to explore the strength of the link between legitimacy and compliance: whether and, if so, how perceived legitimacy promotes individual compliance with the criminal process.

A key finding is that cooperation with the criminal process and respect for the law are both affected by legitimacy. If individuals perceive the system to be legitimate, they are more likely to comply because they believe that courts impose appropriate punishments following appropriate principles (those to which the community subscribe) (Hough and Kirby 2013, following Jackson et al. 2012).

For our purposes, these findings are arguably too wide-ranging since they relate to legal compliance in general and not to offender compliance with the sentence itself. The findings must also be interpreted with care since the authors proceed according to one possible definition of legitimacy: the idea that it arises from or is defined by the degree to which an authority represents the views of the community. But, as explored above, legitimacy is open to interpretation. It might be that the legitimacy of courts rests on a different perception, namely, that sentencing judges are *not* representative of the community but instead are impartial arbiters acting on legal argument and reasoning alone.

The same researchers go on to consider whether the incorporation of public opinion into sentencing guidelines might enhance institutional legitimacy but concede that there is limited research evidence to make the case. Nonetheless, they cite strong common-sense grounds for the proposition that public support for sentencing outcomes is a building block of judicial legitimacy (Hough and Kirby 2013). A cautious policy implication to draw from this is that guidelines should aim to fall within the outer limits of public tolerance, but a tight correspondence is not necessarily needed.

- f) If sentencing practices diverged widely from public opinion on a regular basis, then this would inevitably weaken the legitimacy of the system itself (Roberts 2008). Yet it is not clear whether there are offsetting costs associated with greater alignment of community views and the courts – even if levels of legitimacy and compliance are enhanced. These hypotheses must be borne out empirically, showing that legitimacy's effect on compliance is more than negligible. Only then would the findings constitute a reason for adjusting sentencing practice. At present, it remains unclear *why* people who perceive sentencing practices to conform to their views would be more likely to comply with the criminal process.

International jurisdictions

We will now turn briefly to insights from international jurisdictions, some of which might be extrapolated to sentencing practice in England and Wales.

- a) In the Australian context, research has shown that by incorporating public opinion into sentencing policy, the legitimacy of the courts – and especially the sentencing process – is enhanced. When sentencing policy is not transparent or publicly accountable, it results in a crisis of legitimacy, which can be resolved only through public engagement and input (Indermaur 2012).

- b) Whereas in the past, the primary form of public participation in the legal process was via the jury – which, according to the author, conferred legitimacy on the criminal trial by arriving at verdicts that, in the hands of the judiciary alone, would have attracted public criticism – the way forward, according to research, is to involve the public yet more through the drafting of new sentencing law (Indermaur 2012).

One possibility might be to recruit a representative sample of the public, who would be willing to become informed on the sentencing process and the functions of punishment. They would propose, respond, and test the robustness of their views and then observe their incorporation into sentencing law, which would automatically be deemed legitimate because of the way in which it was designed.

- c) In the US context, another researcher has claimed that public perceptions of fairness in adjudication procedures can build a sense of legitimacy into the criminal process. This, in turn, is likely to promote individual compliance (Robinson 2013).

It is worth noting, however, that achieving legitimacy through fair procedures alone risks undermining the law's credibility. A procedurally fair system may generate seriously unjust results, while a procedurally unfair system may produce just results. Experts on legitimacy at sentencing must be mindful of the potential conflict between process and outcome.

There are potential stumbling blocks associated with a heavy reliance on legitimacy in criminal justice. First, legitimacy is a potentially unhelpful 'umbrella concept' that can apply to actions ranging from the 'discourteous' to the 'discriminatory' (Robinson 2013, p. 207). Second, the notion of legitimacy demands a great deal from the average citizen: he must grasp the objectives, structure, and methods of a justice system and the implications of its procedural practices and strategic choices. Legitimacy is not necessarily instinctively understood. Individual perceptions of legitimacy may fail to reflect reality because they may be clouded by an incomplete or inaccurate understanding of the system itself.

- d) Writing with reference to the International Criminal Court, researchers have examined the relationship between the sentencing regime and public perceptions of legitimacy. They set out the essential features necessary for a 'high legitimacy' sentencing regime. It must be – and perceived to be – clear and transparent; consistent – where like cases are treated alike – and therefore predictable; sensitive to the input of relevant parties and, finally, grounded in sound sentencing principles (Roberts and Plesničar 2015). It follows that to secure legitimacy in the eyes of the public – and to manage expectations – this regime must be communicated effectively to them.

4. FUTURE PRIORITIES

There is considerable scope for the sentencing community to re-evaluate the concepts to which they have become accustomed and conduct further research on the theme of respect and legitimacy at sentencing. This research agenda, while ambitious, is nonetheless achievable: academics are already at ease applying conceptual ideas to sentencing policy and practice, as we have seen with proportionality and remorse in recent decades (see, e.g., von Hirsch and Ashworth 2005; Ashworth and Kelly 2021, ch. 4; Maslen 2015). A comprehensive research agenda might begin by considering the extent to which treating offenders with respect has the consequential benefit of increasing their compliance with the sentence imposed. Is it the case that offenders who feel disrespected are less likely to comply with court orders and possibly less likely to desist? And if this relationship holds, is it mediated by perceptions of a lack of legitimacy?

Further research might include the following topics:

- a) The extent to which respect and legitimacy are guiding principles in the passing of non-custodial sentences (e.g. the absolute discharge, the conditional discharge, fines, compensation orders, and community sentences) and custodial sentences (including offenders on the cusp of custody, suspended sentences, short, medium, long-term, and life sentences, and eligibility for release on licence)
- b) The extent to which respect and legitimacy are guiding principles in the passing of ancillary orders e.g. Criminal Behaviour Orders (formerly ASBOs) under the Anti-social Behaviour, Crime and Policing Act 2014. These orders are particularly significant from a practical point of view as they aim to change offender behaviour so require a significant 'buy in' from the recipient
- c) Perceptions of respect and legitimacy at sentencing among minority and vulnerable groups, including BAME, female, young, disabled, and mentally disordered offenders. What does it mean to show respect to these individuals in the sentencing court and ensure that both process and outcome are deemed legitimate?

In pursuing new lines of enquiry, this paper strongly recommends that researchers move towards common definitions of respect and legitimacy to build a robust body of sentencing research with the potential for meaningful comparative analysis.

In conducting empirical research on respect and legitimacy at sentencing, researchers might begin by creating indicators of respect in the sentencing context. They might then proceed to measure perceptions of legitimacy, rates of compliance, and try to relate the two.

It may prove challenging to analyse offenders' compliance with sentences and determine decisively whether they are acquiescing because they have been respected or consider the system to be legitimate or because of some other motivation. There are many and varied reasons why offenders might comply with their sentences, respect and legitimacy being only two of them. These are not reasons to dispense with the research agenda, but simply to acknowledge – in the spirit of modest realism – its complexity and the need for careful planning and persistence.

5. CONCLUSION

This paper has sought to assess the ways in which respect and legitimacy might inform sentencing practice in England and Wales. As we have seen, sentencing experts introduce the concepts in isolation from time to time, but there are few instances – aside from this paper – of both respect and legitimacy being considered together (see, e.g., Jacobson et al. 2015 and Hough et al. 2013).

The paper has prioritised exploration of two key hypotheses. First, offenders who are or who perceive to be respected are more likely to see the judicial process (and their sentence) as legitimate. Second, when offenders perceive the system to be legitimate, they are more likely to comply with requirements imposed on them by the sentencing court.

Although research on respect and legitimacy at sentencing is at an early stage of development and, in most cases, has yet to move beyond mere hypothesis, it nonetheless provides important hints that such intangible, hard-to-reach concepts matter because they improve defendants' experiences of the criminal process. No doubt those designing criminal justice institutions ought to be responsive to respect and legitimacy, but empirical research will be essential to gain a deeper understanding of their precise operation and impact. Only then might we speak with greater authority on respect and legitimacy and make a successful case for both values to be elevated to the status of institutional standards at sentencing.

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