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EMOTIVE RIOT SENTENCING REMARKS: QUALITATIVE ANALYSIS OF THE ENGLISH JUDICIAL PERSPECTIVE.

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Abstract

The judicial response to the riot context via their sentencing remarks has an important, yet hitherto unexplained emotive meaning. It would appear that such remarks have repeatedly focused upon negative emotive sentiments, which seek to public condemn and blame the riot offender. Part one qualitatively considers the judicial selection of riot sentencing remarks made within riot case law precedent. Positive and negative sentiments have been counted and the legal tests and principles behind their selection analyzed. Part two considers further what the common sentiments expressed within sentencing remarks may mean based upon an academic literature review. The conclusions reveal that the English judiciary have commonly remarked upon rioters negatively, regardless of their level of participation. They have rejected offender mitigation when presented and have sought to promote the preservation of civilized society from the harm and threat caused by rioters. The statutory sentencing principles of punishment, deterrence are highly detectable, public protection and victim reparation moderately detectable, whilst offender reform and rehabilitation is rarely detectable. For the future, it would seem prudent that the predominantly negative emotive remarks expressed by the English judiciary are better understood. Sentencing case law may provide common reasons for the rejection of sentencing appeals, but are limited in the extent that they can reveal the related subjective emotions. Qualitative inquiries such as judicial interviews are well placed to further investigate the shared meaning of these emotions, which in turn, can lead to a better engagement with the public whom the judiciary serve.

Key words: riot, sentencing remarks, judiciary, court files, qualitative.

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Overview of article

This article considers our current limited understanding regarding the meaning of sentencing remarks occurring during and related to times of social disorder. Riot sentencing remarks have been gathered and analyzed in two ways: 1) By identifying the number of repeated and similar (supported by quotes where appropriate that explain the meaning) from positive and negative sentencing remarks provided within appellate case law; and 2) By further considering their meaning from sentencing principles and the extensive debate within academic literature. The former part of the article consists of a qualitative analysis of sentencing remarks provided within riot appellate judgments over the past 44 years. Secondary content analysis of court judgments produces qualitative data on language semantics. This includes judicial interpretations of relevant sentencing principles and the appropriate legal tests to be applied. Appellate riot judgments are publicly available and the detailed sentencing explanations are interwoven with emotive sentiments. The balance of these positive and negative emotive sentiments is identified when sentencing in times of social disorder and the repetition of predominantly negative judicial reflections is noted. The latter part of the article considers the meaning of riot sentencing principles already identified as relevant by the senior judiciary in England. Beyond notions of offender condemnation and blame, the reasons for predominantly negative emotive remarks expressed within riot sentencing remarks are discussed. The sources of riot sentencing guidance are then analyzed. The article concludes regarding the importance of further qualitative research (interviews) into sentencing remark choices in order to ascertain the true and intended judicial emotive meaning.

Introduction

Sentencing remarks when given as part of the sentencing explanation or judgment appear to matter. Under section 174 of the Criminal Justice Act (2003), judges are duty bound to give reasons for, and explain the effect of their sentence on the offender. However, sentencing remarks appear to emerge not just as a reason for or to explain the effect of a sentence, but also as an emotive reaction to the riot context and the case facts (both mitigating and aggravating factors), with some relation to the underlying statutory sentencing principles favored. This emotive reaction by the judiciary to the riot context appears to be emphatic and negative with rioters presenting a threat to civilized society. The remarks chosen suggest judicial frustration and annoyance, fear and disgust. They are publically presented and can therefore provoke a reaction from the offender as well as from the public, who appear increasingly to be influenced by social media responses to "contemporary societal changes and conflicts", (Fuch, 2012: 383). Whilst the subjective interpretation of remarks can vary, the choice of words to convey them requires careful judicial thought regarding meaning. English judges have voluntarily chosen to produce them as part of their sentence explanations or judgments. The judicial reaction to the riot context appears to be sending out a clear and consistent principled message of societal preservation and safety.

In sentencing practice, there are five sentencing principles recognized by statute in England applicable to adults (18+) which courts "must have regard to," under section 142 (1) Criminal Justice Act (2003). The courts can chose to reflect upon these principles as they deem appropriate with no preference being given to one or the other. The five statutory sentencing principles are: punishment, deterrence, rehabilitation, public protection and victim reparation. In

sentencing practice, emotive and subjective sentencing remarks can reflect these principles to varying degrees. Whilst we can subjectively determine positive and negative remarks, it is important we fully understand their intended meaning. The focus of the Court of Appeal (Criminal Division) judiciary when sentencing rioters appears to be negative with public condemnation and blame prevailing. Rioters can threaten respect for the rule of law, which may prompt emotive remarks. Senior judges in their sentencing remarks seem to be reflecting the limits of tolerance that they and society has for rioting and violent disorder.

Sentencing remarks appear to be a form of expressive justice, which manifest themselves as positive or negative communications from the judge to the offender in court as well as wider society. The positive meaning of expressive justice appears to be the positive promotion of self-awareness and re-integration through a "mutual effort at reconciliation, where offender and society work together to make amends," (Johnson, 2002: 328). The negative meaning appears to be the rejection of individual offender immorality and wider social ignorance as a judicial attempt at "status degradation", (Garfinkel, 1956: 420). The choice as to the meaning of sentencing remarks appears to be determined by the choices of our judges through the creation of their sentencing explanations. The expression of sentencing remarks can be specifically directed towards the offender and appear to be a response to the case facts and previous riot sentencing precedent, with a choice made as to the relevant sentencing principles. Or they can be generally directed to encompass preceding trial process influences, such as the views of victims, other court room actors, the media and wider society.

Method

Whilst the use of quantitative numerical analysis via surveys appears to be the criminological norm, according to a recent academic literature review, only a minority of research, albeit published from one crime and criminal justice journal, has reported qualitative indicative norms derived from interviews and even less again from the qualitative analysis of court files, (Smith, D. 2014: 13). Data gathered from interviews can be cost and labor intensive and can face significant judicial access difficulties, (Lowenstein, 2013: 33). This court file research, despite its' subjective bias provides valuable data. It acts as a helpful precursor to the framing of future judicial interviews by providing hints as to the potential meaning of riot sentencing remarks, before they are posed directly to members of the judiciary via a qualitative interview guide. Whichever research method or combinations one choses, there is a tendency for both quantitative and qualitative research to be underpinned by associations, perhaps even assumptions across the philosophical spectrum, suggesting that the connections are not perfect (Bryman, 2012: 618-619). In understanding the meaning of riot sentencing remarks from senior judges whose busy lives present a significant challenge to interviewers, the qualitative approach via court files is the best suited. Qualitative research can suffer from subjective misinterpretation and therefore only the repeated and similar sentencing remarks have been clearly identified. Where helpful to the reader, they have been presented as quotes directly from the judgments. Whether they have a positive or negative emotional purpose is merely identified here and analyzed further in order to contextualize and promote further academic debate, (Davies, Francis, Jupp, 2011: 69).

Analysis

Court files of appellants appealing against their sentence for the offence of riot were selected. The development of riot sentencing precedent was charted from Court of Appeal (Criminal Division) case law between 1970 and 2015 (45 years). Key reported riot sentencing precedent was gathered from the online database Westlaw UK. Furthermore, the results of case file requests from Court Managers and any relevant media releases regarding riot sentencing remarks from the Judiciary of England and Wales website were consulted. This provided a focused, accessible, reliable and importantly workable sample for the sole researcher. As qualitative researchers will know, there is no standard method for analyzing the complex semantics produced within case file judgments. The researcher is focused only on repeated and similar sentencing remarks made within the selected riot judgments. The narrative judgments gathered were qualitatively analyzed in three stages.

First, common meanings were identified and condensed to focus the data volume. The number of positive and negative sentencing remarks were identified and counted to help indicate an overview. Positive and negative emotions themselves appear to comprise of subjective meanings that lend themselves to qualitative analysis. However, there is no current academic consensus as to what emotions may conclusively mean whether positive or negative, (Lee, 2011: 1147-1148). Where the repeated and similar meanings behind positive and negative sentencing remarks were expressed in the judgments, this was used to form the basis of explanatory quotations directly from the court file for the reader to consider for themselves.

Second, the level of analysis turned to *ad hoc* meaning generation which by its own flexible nature allows the researcher to adopt a multiple analysis of all the approaches discussed above in order to understand the deeper data semantics. This approach recognizes that an interpretation of meaning and language requires recognition of the particular academic perspective being used. In this case, it is socio-legal which incorporates the interviewers' subjective interpretations of what is positive and negative, similar and different. This in turn is interpreted for and later by a validating readership of judges, the criminal justice research community, legal practitioners, politicians and the general public. The *ad hoc* meaning generation approach towards court files involves an attempt by the researcher to "work out metaphors that capture the meaning of the material" and identify positive and negative representations or symbols within the sentencing remarks analyzed, (Kvale, 1996: 203-204).

Third, the researcher then added his own subjective critical analysis. This had its own limitations in terms of potentially reducing the objective validity of the data examined. However, this could also be justified as an alternative and innovative way to develop an in-depth understanding of sentencing remarks in judgments by treating them as narrative interview data, (Kvale, 1996: 236).

Part One – Riot sentencing remarks in appellate case law

When judges have provided their sentence explanation they have repeatedly chosen to provide negative remarks that reflect upon aggravating rather than mitigating factors. They have chosen to condemn and blame rioters in order to punish and deter. These remarks could provide a means by which judges can connect with the public sentiment on rioting. For the judiciary, it is important that through their sentencing remarks they are demonstrating their empathy with the public and ensuring their understanding, trust and acceptance. Statutes, case law and guidelines

on sentencing starting points and range can provide the judiciary with reference points. Beyond this, the case facts can provide specific seriousness factors to consider. Judicial reflections on these seriousness factors can be used to demonstrate they have followed democratic principles and shared moral values, (Allen, 1977: 745). This does not mean that every sort of criminal conduct involves moral blame or harm that has the support of the majority within society, (Walker, 1983: 5). It appears that the judiciary, have the opportunity through their sentencing remarks to express which riot offender behaviors and impacts should attract moral condemnation and to explain why this is so.

The extent to which English judges are able to depart from any applicable sentencing guidelines in relation to riot related offences such as theft, assault and burglary appears to reflect their sentencing power. Where there is a relevant guideline for an offence committed in the riot context, both the extent of departure and the reasons for the higher or lower starting point should be carefully justified, (Ashworth, 2012: 95). Under section 125 of the Coroners and Justice Act (2009) judges may depart in the interests of justice from the applicable sentencing guideline range up to the statutory sentencing range maximum. This can produce a significant sentencing methodology gap. To fill this gap, when a court imposes a sentence of a different type or outside the range provided, it should explain its reasons for doing so during sentence summation. For the offence of riot, judges appear to be drawing upon sentencing principles and sentencing length norms established from case law precedent. This is because sentencing guidelines have not yet been drafted to guide the sentencing approach towards the offence of riot on its' own.

There appear to be three challenges facing the English judiciary in formulating sentencing remarks which effectively justify why such departures are necessary and fair. First, judges should explain how and why that they have adopted a sentencing approach that is both transparent and consistent with previous judicial reasoning. Second, judges should be aware of how and why individual riot offenders may benefit from their sentencing remarks, based on credible and supported evidence from academia. Third, judges should consider how best to inspire future compliance and maintain wider social harmony, whilst retaining their judicial autonomy, (Allen, 1977: 749). These challenges can be made more acute, particularly where judicial access to academic literature and public perceptions of the offence and offender may be minimal, (Yeo, 1986: 86).

Within the appeals against sentence for the offence of riot analyzed from 1970 to 2015 (45 years), the similar and repeated sentencing remarks were overwhelmingly negative. Overall there were 90 negative compared to 30 positive sentiments detected in the sample. Negative remarks were repeatedly based upon a rejection of offender mitigation attempts and the aggravating riot context. Positive remarks were repeatedly based on support for the police for their efforts to prevent rioting and protect the public from harm. Furthermore, the principled judicial belief in the preservation of wider society from the harms caused by rioters was affirmed by repeated appellate court support for sentencing approach adopted within original trial riot sentencing. Beyond this, deterrence, punishment and public protection appear to have been the most repeatedly affirmed principles within the riot sentencing remarks expressed. Beyond riot sentencing appeals, any previous riot convictions appear to aggravate into the future. For example, in R v Ahmed (Fiaz) [2015], where Mahmood saw his appeal against sentence length rejected, it was noted that "he had previous convictions for racially aggravated harassment, participating in the Bradford riots in 2002 and possessing a firearm in 2008."

In R v Caird [1970], all applications for leave to appeal against custodial sentences were dismissed with 6 negative compared to 2 positive sentencing remarks detected. Offender

mitigation was repeatedly rejected for all the appellants involved. Lord Justice Sachs outlined three guiding principles which have been clearly and consistently reapplied over the past 40 years:

> "First, a riot offender who is part of a larger group and argues, 'why pick on me?' cannot blame the other members of the group who were not arrested and are not facing punishment. Second, a riot offender cannot isolate their individual actions from the actions of the group in order to make light of the gravity of their offence. Third, whilst a Court may empathize with the negative impact of rioting convictions on the welfare of young men with previously good character, the wider public interest should be considered more important reducing the impact of this form of mitigation."

Public condemnation and blame of the riot offender's premeditation and participation was not to be mitigated by "their social background or education as students." The Court further positively remarked that the State in the form of the police deserved support from the judiciary for performing their "protective duties to the public" and the very highest commendation for their "restraint in an intolerable position" impacting wider society.

In R v Pilgrim and others [1983], there were 5 negative remarks compared to 1 positive sentencing remark. Lord Chief Justice Lane outlined four guiding principles impacting offender culpability and the rejection of their mitigation. These were the amount of violence, the extent of the riot as described by witnesses, the degree of premeditation and the volume of offenders involved. Beyond these principles, his Lordship remarked that the "preservation of a civilized society" by the Judiciary and "preventing people taking the law into their own hands" was considered to be "one of the principal objects of the criminal law." Lord Chief Justice Lane in rejecting all of the appeals against custodial sentences went on to dismiss any vigilante motivations of "pre-emptive strikes and revenge" as a possible basis for mitigation. It would seem that he was less concerned with how vigilante justice might occur and who might be to blame for it within the riot context. Instead, it would appear that he sought to publicly condemn all forms of vigilante justice in the riot context.

A number of developments to the Caird principles were added to riot sentencing remarks in terms of negative aggravating and positive mitigating factors applicable to rioters in R v Keys and others [1987]. In the judgment, there was atypically more balance with 7 negative compared to 5 positive sentencing remarks provided. All appellants saw reductions in their original terms of custody. Negative aggravating factors such as offender premeditation were further defined as "preparation, central organization and direction". Other negative aggravating factors such as the use of weapons, any previous violent offence convictions and intended dangerous acts against the police were applied to the appellants. Positive mitigating factors such as police cooperation, early guilty plea, young age and personal mitigation in the form of genuine remorse, stable employment, family or relationship support were argued in order to successfully mitigate the sentence. Like in Caird, the extent of individual offender participation within the riot context as mitigation was rejected, but good offender behavior after arrest was accepted as a benefit to society. It was considered very difficult to formulate a helpful sentencing framework for future riot cases which could, "capture all of the facts and the degrees of participation" as had been earlier noted in Pilgrim. However, the importance of protecting society from the harms caused by rioters in the future was re-affirmed.

In R v Rogers-Hinks and others [1989], there were 6 negative remarks compared to 1 positive sentencing remark provided regarding the restrained police response. Victim harm through emotive witness statements which described horrendous and dreadful riot devastation on a North Sea ferry attracted significant offender condemnation and blame and negated any mitigation based on degrees of participation. Lord Justice Russell in response to the appeals against the custodial sentences given, supported the original sentences and publicly condemned and blamed each riot offenders' involvement in "sullying the international reputation of every person in England." He went on to describe English football hooliganism as a "sickness and scourge which threatened to destroy our civilized way of life." It therefore warranted, according to the presiding Judge, "the harshest sentences available in order to deter other football hooligans from taking part in future unlawful violence." It would appear that such sentencing remarks affirmed the previous sentencing principle of Lord Lane of preserving civilized society via punishment and deterrence.

In R v Rawlins [1993] in dismissing the appeal against a custodial term for rioting, 5 negative compared to 2 positive sentencing remarks were provided. It was felt that individual offender participation could positively be apportioned based on reliable police witness testimony and video evidence. Mr Justice Macpherson's sentencing remarks appeared to be recognizing that individual offender premeditation as previously defined in Keys could and should be balanced with the harms riots caused for society. However, unfortunately for this appellant this meant that any mitigation based on his high level of participation was rejected. This was because the individual offender's "leadership position in the hierarchy of those involved" as a security leader by preventing the police from arresting a work colleague after an altercation with a passing motorist was beyond all reasonable doubt and thus attracted significant judicial condemnation and blame. It was felt that willful obstructions from rioters to reasonable police interventions to protect the public required clear and consistent judicial support.

In R v Najeeb (Parvais) [2003] this support extended to more detailed guidance on recommended sentence lengths for varying levels of riot participation. This ranged from a ringleader who could expect 10 years custody to a follower who could expect 5 years custody. In allowing 4 appeals against sentence for riot, but dismissing the remaining 10 appeals there were 8 negative and 2 positive sentence remarks which praised the actions of the police. On the former, the negative impact of rioting on the Bradford community was dwelt upon. Personal mitigation and good character submissions were repeatedly dismissed as "carrying comparatively little weight." The availability of compelling CCTV evidence meant that the usual discount for a timely guilty plea (1/3 at the police station) "would be significantly less than the usual one third," due to the necessity of deterrent sentences.

The participation of individual riot offenders was further considered in R v Munir and others [2004] where 7 negative and 3 positive sentencing remarks regarding police restraint were provided. A number of sentencing remarks from the original trial were highlighted at the appeal against custodial sentences in response to the video evidence. In particular, individual offender premeditation shown by, "acting at the forefront and ignoring the law abiding Asian community majority who had peacefully resisted right wing extremists in Bradford," were selected for repeated negative commentary by the appeal judges which negated the pleas in mitigation. Further supporting the original sentences as "entirely right" on appeal, Mr Justice Forbes remarked that, "recent previous convictions for public disorder and violence were a highly relevant factor" in aggravation.

In R v Rees and others [2005] all appeals against sentence were rejected with 5 negative compared to 3 positive sentencing remarks supportive of the police provided. The individual responsibilities of riot offenders were negatively considered in light of a "habitual binge drinking culture leading to unlawful violence and rioting amongst young football hooligans." The pleas in mitigation were again negated by the repeatedly negative judicial perceptions of the harms which voluntarily intoxicated rioters caused. The appeal judges chose to affirm the preservation of civilized society by highlighting the dangers of excessive drinking as a "very great danger causing anxiety and distress to members of the public" and leading individual riot offenders to act "out of character."

In R v Ball and others [2010] Lord Justice Laws reflected on 4 appeals against custodial sentences for rioting at an international airport between rival motorcycle gangs. The sentencing remarks provided were overwhelmingly negative with 6 negative comments compared to 1 positive comment which praised the efforts of the police and airport security staff. In rejecting any reductions in the original sentences given, his Lordship highlighted the aggravating context of "extremely nasty violence" and the "dangerous weapons used leading to very grave injuries." It was noted that each appellant refused to cooperate with the Police and did not give evidence in their defense at their original trial. The appellants were all mature men, some with previous convictions, who had collectively planned to riot in a busy public place. While participation varied and was submitted as mitigation for each appellant, no distinction was made between the individual sentences passed to each individual offender because "they were all involved in this terrible incident fair and square."

In R v Blackshaw and others [2011] the English riots in August 2011 were considered by the Court of Appeal. The Appeal Court set out to clarify the current sentencing approach by outlining three principles. First, relevant sentencing guidelines provided the consistent starting point nationally for the offence of riot. However, in the context of persistent nationwide rioting spread by social media, which no relevant guidelines had contemplated, a deviation from them was justified. Sentences beyond the guideline range were considered to be "entirely necessary and inevitable" because the "context hugely aggravated the seriousness of each individual offence." Second, there was an obligation on sentencing courts to protect the public from injury and their property from damage through the imposition of severe custodial sentences in order to deter and punish riot offenders. Third, offender participation could be extended due to advances in social media technology and distinguished as either directly connected or intrinsic to the disorder. In rejecting the appeals against custodial sentences, there were 8 negative compared to 2 positive sentencing remarks. Two appellants had intrinsically participated by encouraging and assisting the rioting via social media, despite the fact that they themselves did not inflict physically harm. The other eight appellants were directly involved in the rioting and had inflicted physical harm. All the appellants were adults without mental health problems and "knowing what they were doing." In dismissing the pleas in mitigation of all appellants' actions whether direct or intrinsic, it was felt that all were connected to the "deliberate planning." The positive judicial comments provided sought to praise the police for "nipping the matter in the bud" and for "pro-actively listening to public concerns by visiting social networking websites in order to pre-empt their plans".

In relation to the second Blackshaw sentencing principle, there is some academic support for criminal offenders being rational and responsive actors who will understand their punishment through the sentencing remarks provided and be specifically deterred in the future provided there is an immediate imposition of punishment, (Pasternoster, 2010: 765). However, it remains

extremely difficult to precisely measure the general deterrent effect of severe custodial sentences as perceptions from offenders and society will vary, (Pasternoster, 2010: 808). Generally, offenders may become less risk averse if they continue to get away with their offending, (Saltzman et al, 1982: 180-84). However, it is unclear if this is applicable to the rarely occurring riot context. For the English Judiciary, who appear to have repeatedly affirmed the Caird and more recently the Blackshaw principles the deterrent effect does not appear to have been addressed in order to demonstrate the rationality of judicial authority to all, (Beccaria, 1764: 4). Instead, the limited consideration of the acts of individual participators in Caird appears to have been extended by Blackshaw to include both direct and indirect actions as a result of following riot plans used as evidence in Court from the records of social media.

The Blackshaw principles have been re-affirmed in R v Suleimanov [2013] and R v Ellis [2013] where manifestly excessive custodial sentence lengths for riot convictions were rejected on appeal. In Suleimanov, 6 negative compared to 1 positive comment supporting police actions was provided. Mitigation in the form of offender participation, remorse, favorable drug treatment progress reports was repeatedly rejected. The requirement of hospital treatment due to a police dog bite upon arrest was specifically rejected because "the appellant was the victim of his own misconduct in that respect." In Ellis, 5 negative compared to 2 positive comments were provided. The Court of Appeal rejected the "lack of merit or logic" behind the submissions of the defence counsel, whereby a first occasion riot offence with an early guilty plea was argued as holding more mitigation than subsequent sentencing occasions where riot offences were being considered. This was rejected because it restricted the mitigating impact of an early guilty plea on subsequent sentencing occasions, when further riot offending was being considered. In essence, their Lordships appeared to be affirming that the impact of guilty pleas must be the same regardless of how many occasions an appellant convicted of riot was sentenced. In both cases, the work of the police in protecting society from rioters was re-affirmed.

In both, R v Lewis and others [2014] and R v Sherlock [2014] the appeals against sentence were rejected. The sentencing principles of deterrence, punishment and protection of the public were noted. In Lewis, 10 negative comments were provided in relation to premeditated rioting, aggravated by arson and fire arms offences. In particular, there was a clear purpose to "lure police officers to the scene so they could be terrorized, attacked and shot at." The danger to the police and public was viewed as particularly aggravating by the appellate court who agreed with the trial judge, that the avoidance of physical injury was "wholly a matter of luck." This was compared to 3 positive comments when analyzing the sentencing remarks for the 7 appellants collectively. Mitigation in the form of good character, young age, limited previous convictions, minimal participation, family and work commitments were rejected. The police were praised with the trial judge particularly praised for his "exemplary and skillful handling" of the riot trials. In Sherlock, 6 negative comments were provided on a planned and coordinated prison riot where the rioters were seeking destruction and "caused just over £600,000 worth of damage which took over a year to repair." The individual riot offenders' custodial sentence length was affirmed and his limited degree of participation was rejected. This was compared to 2 positive comments supporting the original trial judge who was "ideally placed to assess the seriousness of the riot and role played by each defendant" and who identified the relevant sentencing case law guidance applying it both "properly and correctly".

Part Two – Riot sentencing remarks in academia

Riot sentencing principles

The importance of expressive justice has for some time been recognized by Senior judges who have used their sentencing remarks to communicate with the offender and the public regarding the meaning of legal and moral wrongdoing in order to preserve law and order, (Denning, 1949). The legal and moral wrongfulness of riots and violent disorders can arguably vary depending on the judicially perceived rationale behind them. As (Hunsicker, 2011: 49) notes:

> "Riots have occurred in every century and every region of the World. They have been attributed to poverty, hunger, unemployment, strikes, industrial disputes, politics, religious, ethnic differences, sports and even alcohol."

When riots are remarked upon at sentencing, it would appear that judges are recognizing the importance of communicating established sentencing principles and factors in statute and case law to the riot offender and the wider public in a way that "sustains the common consciousness" (Durkheim, 1984: 63). How and why judges express their sentence remarks to the riot offender and wider public in the way they chose to do appears to require a clear and consistent approach which respects the "collective morality of society" (Maruna, 2011: 7). The judiciary, appear to be justifying to the riot offender and the wider public how and why they are sentencing in the interests of justice. Lord Chief Justice Judge provided the following justification, via the media to the wider public, in response to the widespread rioting in August 2011, (The Press Association, 2011):

> "It is very simple. Those who deliberately participate in disturbances of this magnitude, causing injury and damage and fear to even the most stout-hearted of citizens, and who individually commit further crimes during the course of the riots, are committing aggravated crimes. They must be punished accordingly, and the sentences should be designed to deter others from similar criminal activity."

Lord Chief Justice Judge appeared to be advocating a mix of retributive and utilitarian punishment sentiments, but with a particular emphasis on offender punishment, the reduction of crime by deterrence and public protection. However, whilst the public may feel it is justified to attach condemnation and blame without the need for consistency and clarity because they are not responsible for applying a sentence, the Judiciary cannot do the same. Judges need to communicate a well-reasoned and logical account of the principles applied and clearly express where the threshold for criminal and moral condemnation and blame lies, (Duff & Green, 2011: 350).

The academic attempt to find a widely acceptable notion of offender condemnation and blameworthiness, according to which punishments might be scaled has deep jurisprudential roots from both the retributive and utilitarian justice perspectives. Expressive justice recognises the value of both individual culpability and preserving community bonds, thus sentencing remarks that condemn and blame can reflect "either quasi-retributivist or crypto-consequentialist thinking," (Walker, 1983: vii). In sentencing practice, offender culpability forms part of the

equation for determining its' seriousness together with offence harm. It is important that judges reflect upon the offender's subjective capacity to cause harm to others and publicly express the extent to which this has aggravated and led to the sentence given, (Stewart & Freiberg, 2008: 303-304). The role of morality in such legal decision making attracts significant thought as (Edmundson, 1990: 512) notes:

> "First, expressing society's moral condemnation is part of the point of sentencing and, second, the smooth functioning of the moral machinery society has chosen to achieve its aim of reducing the number of properly and narrowly blameworthy acts would be impaired by the confusion of judgments that would result if degrees of punishment did not match degrees of blameworthiness."

The link between offender blame and morality appears to have some logic in clarifying how the offender's conduct should be related to their punishment. However, which offender behaviors matter and how they are recognised by the law as worthy of condemnation and in particular are being quantified by the judiciary appears to be highly complex.

To meet the challenge, academics have sought to understand offender blame through their motives, (Kim, 2006: 215). This can range from understanding what the offender themselves state was their intention to what a jury or judge decide the offender reasonably foresaw based on the case facts. What is legally blameworthy may not be the same as morally blameworthy when intention is being considered. Consider two members A and B of a group of rioters who cause serious injury to the public to the same level of harm, but with different degrees of understanding and intention. Member A is of high intelligence and plans their riot involvement seeking to encourage others to join the group purposely and clearly understanding that serious injury to people will result. Member B is of very low intelligence and simply follows the group leader Member A, without a clear understanding as to whether serious injury to people may result. In interpreting the statute are different degrees of offender understanding and intention represented? Section 1 of the Public Order Act (1986) appears to suggest that they are not, due to the repeated use of the term common purpose and an objective approach towards victim fear for their personal safety:

> "(1) Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot.
> (2) It is immaterial whether or not the 12 or more use or threaten unlawful violence simultaneously.
> (3) The common purpose may be inferred from conduct.
> (4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.
> (5) Riot may be committed in private as well as in public places.
> (6) A person guilty of riot is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine, or both."

Should the different degrees of understanding and intention between Members A and B be more clearly represented via statute? Firstly it should be noted that establishing a common purpose depends on individual case facts. Secondly, a common purpose may not be present where violence is spontaneous and where the motives of different group members appears to be sufficiently diffuse. However, where group coordination and planning can be proven and this leads to unlawful violence this may well be sufficient to establish a common purpose. Both group members are legally blameworthy of rioting, but arguably A is more morally blameworthy than B because the intention to use and threaten violence is more deliberate. This analogy would sit well with equivalence theorists who focus on different levels of offender intention. However, for non-equivalence theorists who focus on offence consequences, the extent of harm caused to people by groups of rioters would play a larger role in establishing the extent of moral blameworthiness attributable to A and B. It could also be argued that the reform and rehabilitative needs of A and B are different due to their varying degrees of understanding and intention and that this should, if not already, be fully reflected upon at sentencing, (Donnelly, 2007: 414).

Determining what an individual riot offender's state of mind is within a group of 12 or more rioters can of course be highly complex. A riotous crowd who seek to redress political or social grievances and who include otherwise law abiding citizens can be seen as less morally blameworthy than a criminal gang motivated by personal gain, (Lund, 1988: 262-63). This is despite the fact that both riotous crowds have committed the same degree of harm injuring local people in their community and damaging their property. Whether determining the common purpose of a group to cause harm by rioting can be achieved through assessing differing levels of individual physical and emotional participation is debatable. One individual rioter may show frustration or aggression by shouting obscenities at the police. This may spontaneously lead to another member of the group throwing a brick at the police. As the level of general crowd frustration and aggression escalates it can become hard to determine which individuals are then to be condemned and blamed for which actions. When individuals are placed in highly stressful situations, their reactions may become unpredictable and irrational. Whilst the merits of each riot case must be considered carefully, there appears to be some limitations on the extent to which individual victim and local community harm can be fairly related to an individual riot offender's state of mind.

The failure of the judiciary to protect the public from harm caused by riot offenders can attract public condemnation and blame. This may prompt judges to further reflect upon what their role and responsibilities are when sentencing riot offenders. Beyond the statutory sentencing principles of punishment and deterrence there is reform, rehabilitation and reparation which may engage and change the offender and may also help in addressing media distortion, (Lowenstein, 2013: 32-33). Whether judges can be held to be fully responsible for properly managing the re-offending risk of criminals and thereby protecting law-abiding citizens is debatable. As previously noted from Lord Chief Justice Judge, offender punishment and crime reduction by general deterrence appear to be the focus when dealing with riot offenders. The judiciary can seek to protect the community from future riot harm by imposing custodial sanctions where the recidivism risk is high and a clear message of deterring future rioting is desired, (Bond & Jeffries, 2011: 20).

How to predict a riot offender's future criminal behavior is complex. One indicator of risk from previous convictions appears to be other recent and relevant instances of violent offending from minor assault to assault occasioning grievous bodily harm. These can be related

to the unlawful violence element within the offence of riot, (Bond & Jeffries, 2011: 28). However, judges who seek to protect the public based on predictions of future crime risk as opposed to moral blameworthiness for past crimes committed may well lose public credibility. As (Robinson, 2001: 1444) notes:

> "Citizens initially pleased by the added protection that preventative detention reforms provide, nonetheless may accurately perceive that the system is no longer in the business of doing justice. As criminal liability is increasingly disconnected from moral blameworthiness, the criminal law can exercise less moral authority to change norms or to cause the internalization of norms."

In this sense, the judge appears to be reaffirming what the community consensus on blameworthiness and punishment is from the bottom up, (Robinson, 2008: 148). When judges are tempted towards an emotional reaction towards riot offenders based upon public feelings of blame caused by the aggravating rioting context, it would appear that they should choose their words in response with great care. As (Lee, 2011: 1147-1148) notes:

> "Emotions associated with the practice of blaming are, for example, anger, resentment, indignation and hatred. Such emotions may be thought to be subjective or irrational in that they can get 'out of hand,' but because of their cognitive content they can be evaluated as appropriate or inappropriate, rational or irrational."

The extent to which punitive public emotions are successfully mirrored in State punishment does appear to matter, (Gardner, 1998: 33). In other words, if judges do not accurately reflect the emotional impacts of riot crime from the public perspective within their sentencing remarks, they may fail to displace them and provide an outlet for them, (Lee, 2011: 1147). Historically comparing the latest English riots of 2011 to past incidences of social disorder can reveal some important contextual differences. These differences can be positive or negative. If predominantly negative this may increase the degree of negative emotional impact, which in turn may need to be reflected through more negative sentencing remarks. For example, in 2011, social media was used to encourage and assist more wide-spread riot offending, looting was on a more substantial scale, the senior political response was initially critical and more punitive and CCTV evidence enhanced more detection and conviction, (Newburn, 2014: 22).

As the latest riot related offences were considered to be aggravated crimes according to Lord Judge in 2011, it would seem that when sentencing riot offenders in the future, the plethora of emotions related to the riot context are unlikely unfortunately to be positive. If this is so, it is likely that such increased emotional negativity will be reflected within future riot sentencing remarks and communicated very quickly and widely via social media. This in turn may create a circumstance whereby any increasingly negative sentencing remarks may or may not be shared and supported by all media outlets and members of the public. Punishment, deterrence and public protection appear to be important shared principles when sentencing rioters. However, recent research into public attitudes suggests there is less severity than the judiciary, particularly for non-violent members of a riot whose participation is minimal. Furthermore, it has been suggested that perhaps the greater use of non-custodial options for non-violent rioters could receive public acceptance, which in turn may lead to more positive sentencing remarks from the

judiciary which begin to accept the statutory sentencing principles of offender reform and victim rehabilitation, (Roberts & Hough, 2013: 253-254).

Judges as human beings can of course be drawn into the negative emotive aspects from the context of general public disorder, such as public anger and fear, community and individual victim harm, riot offender opportunistic selfishness and greed. These negative aspects remind us all of how the behaviors of the criminal minority within our society can be morally repugnant to the majority. However, while majority public attitudes have thankfully moved beyond the time when State punishments could match the brutality of this criminal minority, we should not ignore that such negative aspects exist and continue to have some limited appeal. As (Nietzsche, 2003: 38) warned humanity in relation to our continuing struggle to gain control of our emotions and reason away our instinctive desire to inflict pain and suffering on criminal wrongdoers through overly harsh punishments:

> "It was by the help of such images and precedents that man eventually kept in his memory five or six 'I will nots' with regard to which he had already given his promise, so as to be able to enjoy the advantages of society – and verily with the help of this kind of memory man eventually attained 'reason'! Alas! reason, seriousness, mastery over the emotions, all these gloomy, dismal things which are called reflection, all these privileges and pageantries of humanity: how dear is the price that they have exacted! How much blood and cruelty is the foundation of all 'good things'."

It would appear that perhaps a more equal balance could be struck between the positive and negative reflections from judges who must manage often intense public emotions when sentencing rioters. This is perhaps far easier said than done. Beyond the risk of public alienation for not reflecting public sentiment, judges may risk losing public trust and respect, if their sentences do not measurably reduce and deter the incidence of crime, (Lee, 2011: 1149). The media has an important role to play in communicating with the public on deterrence and punishment. The role of long term custody is in deterring re-offending is debated placing it at the heart of sentencing reform, (Whitehead, 2011). By following established riot case law principles, judges can try to keep a healthy distance from intense public emotions released during the trial process by the media. However, avoiding trial emotions culminating in sentencing is perhaps more difficult. The judiciary in handling trial emotions may attempt at sentencing summation to turn negative sentiments towards riot offenders such as anger, distrust and alienation into positive sentiments such as in renewal, restoration, and revitalization. In this way, their sentencing remarks can become valuable and rare cathartic opportunities to empathize with the public and perhaps the offender, if they are engaged, thereby releasing tension and pressure on the judiciary. If the trial process can be thought of as a form of restorative justice ritual, the closing sentencing remarks and perceptions of them from engaged court room actors may have some potential to have a lasting impact. Re-integrative engagement during sentencing explanations is likely to lead to complex emotions built up over the trial process. These emotional interactions by the end of the sentencing ritual, hopefully to a significant extent have led to a "common rhythm and synchronization among participants," (Rossner, 2015: 17). If this is so, understanding complex micro-level factors at sentencing summation from court room actor perceptions gathering may indicate to macro-level structures such as the Sentencing Council how to guide sentencing explanation best practice, (Collins, 2004). Such data beyond defining scope

can test the impact of sentencing remarks whose importance generally is more and more judicially recognized through their regular publication on the Judiciary of England and Wales website.

Riot sentencing guidance

No specific riot offence definitive sentencing guidelines from the Sentencing Council have been issued. Furthermore, there is no guidance on riot sentencing remarks content and how best to communicate them as a potential final step in the sentencing guideline process. This is despite the statutory underpinning via section 174 of the Criminal Justice Act 2003 and the emphasis on "ordinary language" being used to explain the sentencing reasoning and effect such as offender non-compliance. Offence-specific guidelines could perhaps benefit from added sentencing remark guidance which could highlight effective sentence explanation examples derived from shared judicial experiences. Such judicial best practice guidance could also include guidance on the effective expression of them via judicial actions in court, which can include body language such as eye contact, gestures, voice, tone and pace. Currently, the "context of general public disorder" has been specifically recognized for Burglary offences under the exhaustive list of greater harm factors at step one, (Sentencing Council, 2011: 4). This positioning at the offence category determination stage is revealing. It suggests that the Sentencing Council's intention is for burglary committed in a riot context to be considered under a high harm offence category and thereby receive at step two the highest sentencing range available between 2-6 years custody. Had the intention been to limit the extent of aggravation as a result of the riot context this element of harm could have been placed in step two affecting the category range only rather than the offence category itself. Perhaps the context of general public disorder as an aggravating greater harm factor could be extended to other existing offence specific guidelines. Riot related offences beyond burglary, can include criminal damage, theft, assault and arson. Departures from these specific offence guideline ranges up to the statutory maximum are currently open to judicial discretion in the interests of justice. These "departure zones" could benefit from more comprehensive guidance on potential starting points as well as the "quantum of aggravation" and mitigation to be expected for offenders caught up in a riot context, (Roberts, 2012: 446-48).

Within the guideline judgments case compendium, sentencing advice is provided regarding the foreseeability of harm from rioting linked to starting points for custodial sentence length, (Sentencing Guidelines Council, 2005: 69). The advice notes the importance of the extent of offender premeditation, participation in unlawful violence and the extent of harm caused to public and private property. A ringleader who has organized or instigated unlawful violence should be sentenced near the maximum of 10 years custody after trial. An active and persistent participant who has used dangerous weapons such as petrol bombs and knives should be sentenced between 7 to 9 years custody. Participation over a long period with less dangerous weapons such as stones and bricks should be sentenced from 5 years custody.

Judges must apply section 143 (1) of the Criminal Justice Act (2003) which states:

> "In considering the seriousness of any offence, 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 caused."

In seeking to understand what intended to cause or might foreseeably have caused may mean, judges must refer to any definitive sentencing guidelines which are relevant. Judges determine riot offence seriousness with reference to a sliding scale (highest to lowest) from specific intention, recklessness, knowledge and negligence, (Sentencing Guidelines Council, 2004: 4).

If the statutory emphasis upon common purpose is to dilute the importance of individual offender intentions this appears to lead to more focus by the judiciary on the objective notions of foreseeable victim fear for their personal safety in order to establish the seriousness level. The most important aggravating factors indicating higher offence seriousness are listed in the definitive sentencing guidelines, (Sentencing Guidelines Council, 2004: 6-7). These non-exhaustive aggravating and mitigating factors must be considered by the presiding judge, unless it is contrary to the interests of justice to do so and may be reflected in their sentencing remarks (Sentencing Guidelines Council, 2004: 7). When judges consider riot offender blameworthiness, it is possible that individual victims may be perceived as having provoked some of the harm they have received. For example, individual victims of riots may provoke some of the harm they have received by striking pre-emptively or they may react with an unreasonable amount of force. If this can be identified, it may be considered as offender mitigation by the judge and perhaps reduce offender culpability, (von Hirsch 1983: 214).

There are two principal ways in which the offender can demonstrate their understanding and acceptance of blame. The Court may consider any personal offender mitigation which it considers relevant according to section 166 (1) of the Criminal Justice Act (2003). How and when offender remorse has been provided should be considered. There is no sliding scale applicable, but remorse can be demonstrated by words and actions and can be understood as genuine or fabricated, (Brinke & MacDonald et al, 2012: 52). The Court should also consider on a sliding scale (1/3 at the police station to 1/10 at the door of the Court) when a guilty plea is given, which should be considered after the impact of personal mitigation and remorse have been calculated, (Sentencing Guidelines Council, 2007: 4).

The emotions detectable within riot sentence explanations can vary and picking apart the meaning of these emotions can be very complicated. For example, one can consider the meaning of genuine offender remorse as an emotion facing the appellate judiciary, which has been the subject of extensive philosophical debate for some time. There appear to be associated emotions with remorse, which are open to subjective interpretations and experiences beyond the objective normative labels that can be identified within empirical data, (Davitz, 1969: 12). We can try to conceptually distinguish the arguably associated emotions of remorse such as shame, guilt and regret. We can then contrast their differences in order to clarify the characteristics of genuine remorse: subjective acceptance of moral wrong, harm caused, blameworthiness leading to a desire to apologise and/or repair the significant riot harm caused, (Maslen, 2015: 10-11). However if the characteristics of remorse can ever be agreed upon, they still may not match the complex and predominantly negative riot sentencing emotive sentiments faced and experienced by the senior judiciary in reality, (Maslen, 2015: 6).

Conclusions

What conclusions may the reader draw from this qualitative analysis of riot case files and the related academic debate? First, within sentencing remarks there appears to be a predominantly negative emotive emphasis that publicly condemns and blames riot offenders and appears to dismiss their attempts at mitigation. Appellate judges have repeatedly recognised and

sought to promote the preservation of civilized society from the threat and harm caused by rioters. They have done so, by clearly and consistently expressing empathy and understanding with negative threats and harms caused to the public such as distress, fear, anger and disgust. However, whilst the public may interpret and understand these threats and harms, it is ultimately the riot offenders themselves who must interpret, understand and serve the custodial sentences given. The extent to which riot offenders have related to, understood and constructively reflected upon predominantly negative sentencing remarks and explanations appears to be important. For example, in response to sentencing remarks that publicly condemn and blame, a riot offender may be further alienated from society. By rejecting such emotive sentiments they may experience a "conflict between the formalized community laws, which are expressed through the criminal law and the counteracting norms dominating the riot group" of which they feel they are more a part, (Andenæs, 1974: 48).

Second, the statutory sentencing principles of offender punishment, crime reduction through deterrence, public protection and victim reparation under section 142(1) of the *Criminal Justice Act (2003)* have for some time been expressed within case law with the first two particularly detectable. Deterrence and punishment research has suggested that for it to be effective, the punishment is required to be subjectively certain, severe, credible and communicated with a rational basis that the offender understands, (Kennedy, 1983: 4-6). If the subjective understandings of the riot offender at sentence summation matter, then perhaps offender personality and participation can be better understood by the judiciary. For example, is the more rational, risk avoidant rioter more capable of being deterred via reform and rehabilitative means than the less rational, impulsive opportunist rioter? (Ritchie, 2011: 16-17). Can the extent of participation of individual rioters be rationally explained and aligned to culpability when the group typology can consist of protesters, retaliators, thrill seekers, looters and sellers? (Morrell et al, 2011). For protecting the public to be effective through terms of incarceration, riot offenders should engage with prison based rehabilitative programmes. However, once incarcerated there may be some risk from potentially criminogenic prison conditions which may lead to further criminality and re-offending, (Ritchie, 2011: 23). For victim reparation to be effective, riot offenders should engage with the perspectives of their victims and their local community in order to express their remorse and to better understand the harm they have caused.

Third, answering why it has been much harder to detect the remaining sentencing principles of offender reform and rehabilitation within the riot appellate sentencing judgments appears to merit further investigation. The predominantly negative riot sentencing remarks detected are justified via the statutory principles of general deterrence and punishment. Criminological research over the past 30 years has repeatedly tested the hypothesis that general deterrence and increasing the severity of punishment through sentencing for a variety of offences does in fact reduce crime. Producing reliable data that a reduction in crime impact is empirically plausible for any offence has consistently proved elusive, (Webster & Doob, 2012: 175). Yet policy-makers, legislative drafters and the English judiciary continue to rely upon these principles in order to help them justify and explain their sentencing remarks. Their remarks appear to also include many complex and associated emotions, which vary in intensity. The meaning and impact of these associated emotions on judges, legal actors and riot offenders remains elusive. Do these associated emotions, if we can ascertain their meaning from judges help or hinder? If they have no coherent meaning and little impact, should judges still express them in their sentencing remarks? This does not mean that offender reform and rehabilitation

principles are not of relevance to the English judiciary when sentencing riot offenders. Indeed, further qualitative inquiries, albeit indicative only, may indicate that these principles do in fact matter more than is hinted in the judicial remarks gathered and analysed here. If this is the case, the current emphasis on expanding restorative justice interventions across England may provide us with an alternative principled approach to apply in Court which is more aligned with the principles of offender reform and rehabilitation. Under section 44 of the Crime and Courts Act (2013), judges in the Crown Court and Magistrates' Court have the power to defer a non-custodial sentence. This is whilst potential restorative interventions take place, with guidance from a probation officer in court as to the appropriateness. Where a restorative justice initiative report has been accepted by the court, the agreement solutions made can form part of the offenders' formal sentence. This ensures that what has been consensually accepted by all participants, can then be fully integrated into court orders, which are enforceable upon breach by the judiciary of England and Wales, (Restorative Justice Council, 2014: 11). Typically only low seriousness, non-custodial and guilt accepted crimes such as minor theft or minor assault are likely to be referred to restorative justice interventions and only provided there is a consensual agreement from the victim and offender to do so. Typically, harm impact and remorse would be discussed. However, if they are riot-related, these same crimes are likely to be significantly aggravated, likely to be sentenced to custody and therefore are unlikely to be referred to restorative justice intervention. It however, remains unclear into the future, the extent to which restorative interventions may be expanded and integrated into the caseloads of the Crown and Magistrates' Courts and for which crimes, judges will discretionally defer to them, (Ministry of Justice, 2014: 4)

Fourth, for the future it would seem prudent that the current riot sentencing remarks expressed by the English judiciary are qualitatively investigated in order that their true meaning, which includes shared emotional responses from judges, be fully understood by the public. In particular, riots come and go, sentencing remarks are not often provided and when they are, it tends to be at a time of national crisis. As such, it seems to be pertinent that we better understand the judicial mind set on their sentencing expressions, which includes the reasons for their emotive responses towards rioters. Qualitative research via interviews is well placed to provide more data, albeit indicative, from the judicial perspective, because interviewers can test the meaning of the predominantly negative emotions and provide us with a shared understanding of them from the repeated judicial commentary. Furthermore, court based observations, surveys or interviews of riot offenders and other courtroom actors may reveal more detailed and variable interpretations of what riot sentencing remarks may mean and in particular their wider emotional impact. If there are variations regarding understanding and these are qualitatively detected, this may result in data that can inform both academic debate and sentencing practice reform. Such indicative research data may also help the English judiciary to better understand and communicate the full impact of their sentencing principles and punishment choices, particularly the reduction of re-offending via deterrence and punishment which they repeatedly align to rioting, to the public whom they serve, (Lawrence, 1999: 6).

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Open Peer Review Comments

1. The article deals with an important and under-researched issue in contemporary sentencing: the treatment of offenders convicted of crimes occurring during and related to a time of social disorder. I strongly recommend publication as the article is well-written, well-researched and makes a significant contribution to the literature.

2. I have a number of minor editorial suggestions to make which would improve the article.

First, the article could have a clearer "statement of intent" -- a summary of the contents and also of the argument. There is reference to the intention in the middle of the first page but this should be more fulsome and broken out with a subheading "Overview of article" or something to that effect.

Second, I believe that an article dealing with sentencing rioters recently appeared in BJC, published since the current article was written. The author should check that and also do a last minute lit search for any more recent pieces. For example, I believe Tim Newburn may have written on the issue recently. There is another article on departure sentencing in the CLR after Ashworth and this should be cited.

Third, the article should be carefully copyedited. Note some errors, eg "There are two principle ways" on page 11 -- should be principal.

Fourth, the author might want to expand on the role of sentencing guidelines in this sentencing context. Although this element of the problem is discussed, there is a lot more he could say and his views would be of interest to the statutory authority responsible for producing guidelines. Since an internet publication is not constrained by page limits the author could expand his discussion without violating length restrictions.

Julian V. Roberts
University of Oxford

1.) This is a valuable and informative article on the socially important issue of the response of the judiciary to persons convicted of taking part in riots. Particularly valuable is the author's collection and distillation of judicial remarks at sentencing, based on leading cases over the last 45 years.

2.) A key issue, which could be taken further, is whether the judicial sentencing remarks are chiefly expressions of emotion (when they use terms such as deterrence and public protection) or whether they are intended to pursue a deterrent strategy. If the latter, then more might have been said about leading studies of general deterrence (e.g. the Cambridge study by von Hirsch, Bottoms et al 1999; and the two Toronto studies by Doob and Webster 2003 and Webster and Doob 2012); and perhaps questions could be raised about the policy of disregarding factors that normally mitigate sentence when pursuing a general deterrent strategy – this may be connected with the reasons why judges appear not to pursue reform and rehabilitation in these cases (on which the author speculates in the penultimate paragraph).

Andrew Ashworth
University of Oxford

Author Amendment Synopsis

-On p. 1 an article overview has been drafted and added.
-Additional up to date literature has been added and discussed: (Collins, 2004), (Morrell et al 2011), (Roberts, 2012), (Ministry of Justice 2014), (Newburn 2014), (Rossner 2015), (Maslen 2015).
-The article has been carefully copy edited throughout.
-On pp. 13-14, the role of sentencing guidelines in the social disorder context has been discussed more thoroughly.
-On pp. 8-9 additional riot sentencing case law (R v Lewis, R v Sherlock, R v Ahmed) have been added to the dataset to bring it up to date in 2015.

-On p. 17, the penultimate paragraph has been expanded to reflect more upon past general deterrence research (Webster & Doob, 2012).
-On pp.17-18, recent restorative justice intervention developments (Restorative Justice Council, 2014) have been discussed in relation to riot-related offences, which are significantly aggravated by the social disorder context.