

DENYING RESPONSIBILITY  
*Sentencers' accounts of their decisions to imprison*

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*The reasons for dramatic rises in prison populations are the focus of much debate. This paper examines just one of these; the sentencing practices of the Judiciary who play a pivotal role both in determining the use of imprisonment itself and in the severity of prison sentences. Drawing on research with Scottish sentencers it explores how they made decisions to imprison; how they viewed prison, how they justified sending people there and how 'borderline' offenders were dealt with. We found that although sentencers viewed imprisonment as a severe punishment they normalized their routine incarceration of individuals by, in effect, denying final responsibility for their actions. Sentencers' accounts of borderline decisions, where individuals committing the same offence could be accorded either a custodial or a community disposal, illustrated these denials most starkly and revealed an overarching retributivism in their custodial decisions. This retributivism was without proportionality insofar as it was directed at the offender rather than proportionate to the offence. In conclusion we argue for future sentencing policies and legislation to take heed of sentencers' logic in use.*

*Introduction*

Towards the end of the twentieth century prison populations in most western jurisdictions rose dramatically. Scotland was not shielded from these trends. In 1993 the average daily prison population in Scotland was 5,637. By 2002<sup>1</sup> it had reached 6,404 and by 2005 it stood at 6,645; a rate of 130 prisoners per 100,000 of the national population. This, despite decreasing crime rates since the 1980s and Scotland having amongst the widest range of 'alternative' community sanctions available anywhere in the world. Instead, the 67 percent rise in the use of community sentences<sup>2</sup> for adults between 1993 and 2002 paralleled a prison population increase of 24 percent. Further, the increased custody rates were not generally for those convicted of serious crimes; rather they were most often for shoplifting

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<sup>2</sup> In Scottish Executive statistics and in this paper the term 'community sentence' is used to refer to probation, community service, supervised attendance, restriction of liberty and drug treatment and testing orders. All Scottish courts, with the exception of the lay District Court, have the power to impose any of these sentences. As in other jurisdictions, the sentencing options available vary with the powers of the different criminal courts. The High Court hears the most serious cases including all cases of murder and rape and has no limits on the length of imprisonment or amount of fine. The Judge in the High Court sits alone with a jury of fifteen. Though Scotland has no established tradition of sentencing guidelines, the High Court does have the power to issue them. In the Sheriff Court, in serious cases – on solemn procedure – the legally qualified Sheriff sits alone with a jury of fifteen and can impose sentences of up to three years imprisonment and fines of up to £5,000. At the time the research was conducted, in less serious cases, in the Sheriff Court on summary procedure and in the Stipendiary Magistrates Court (there is only one in Glasgow), sentences of up to three months imprisonment, or six months for a second or subsequent conviction for violence or dishonesty, and a fine of up to £5,000 could be imposed. The Sheriff and the legally qualified Stipendiary Magistrate sit alone. Last, the District Court, the only lay court in Scotland, hears more minor cases and can impose up to sixty days imprisonment or a fine of up to £2,500. There will normally be one Justice of the Peace although there may be more. At present the powers and jurisdiction of the summary courts are undergoing change.

and other minor thefts. Sentence lengths also increased. There was a 51 percent increase in the numbers of adults arriving in prison with sentences of 4 years and over, excluding life. In short, sentencers<sup>3</sup> became more severe in their sentencing practices, imposing custody proportionately more often and for longer (Tombs, 2004).

Various explanations have been given for the staggering increases in rates of incarceration in western societies. These include the impact of global penal transformations and broad social and cultural changes on crime and punishment (Garland, 2001), the emergence of the prison industrial complex (Davis, 2003), the use of the prison in the management of poverty and marginality (Waquant, 2001; Beckett and Sasson, 2004), changing public attitudes to crime and punishment (Roberts and Hough, 2002) and culturally specific changes in penal policies and their impact on sentencing practices (Tonry and Frase, 2001). Sentencing practices themselves, however, have received less attention. Instead the sentencing literature concentrates mostly either on reform in general (Tata, 2002; Tonry, 1996; Ashworth, 1995) or on guidelines in particular (Morgan, 2002; Boerner, 1993). Few empirical studies have looked at decision-making processes (but see, for example, Hough et al, 2003; Hood and Cordovill, 1992).<sup>4</sup> Sentencers, however, play a pivotal role both in the use of imprisonment and in the severity of prison sentences. Understanding these practices and their significance for penal policy constitute the focus of this paper.

The paper is informed by an interpretation of original materials generated by research with sentencers in Scotland, especially their accounts of the logic they use in sentencing cases considered ‘borderline’; that is, cases that sentencers themselves defined as lying on the borderline between a custodial and community sentence. The research, reported in Tombs (2004),<sup>5</sup> had three strands. The first examined official statistics on sentencing patterns and trends in the use of imprisonment in the courts. The second strand, the main focus of the research, analyzed extended interviews<sup>6</sup> with sentencers throughout Scotland. Conducted

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<sup>3</sup> The generic name ‘sentencers’ is used to refer to those who impose sentences in any jurisdiction. In referring to the research subjects in the Scottish study drawn on in this paper the term ‘sentencers’ refers to Judges of the High Court, Sheriffs and Stipendiary Magistrates. Judges of the High Court are more traditionally known as Senators of the College of Justice. In this paper they are simply referred to as Judges.

<sup>4</sup> See also early studies by Hood (1962) and Hogarth (1971).

<sup>5</sup> To summarise the main findings here, Scottish Executive statistics for the period 1993 – 2002 indicate that a significant part of the growth in the prison population was due to more severe sentencing practices; sentencers imposed longer prison sentences for serious crimes and they were more likely to imprison those appearing before them than they had done ten years earlier. More specifically, over the period custody rates increased in both the High and Sheriff Courts, which pass the vast majority of prison sentences. The increased custody rates in the Sheriff Summary Courts made an impact on numbers of prisoners and in the Sheriff Solemn Courts the impact was on the average lengths of sentences. Average sentence lengths imposed increased for all prisoners. There was a steep rise in the use of long sentences of more than four years for adults whilst very short prison sentences – three months and under – decreased. Other factors were also identified as having contributed significantly to the growth in the prison population. These included a 57% increase in the use of adult remands, a substantial increase in the numbers convicted of drugs offences (23%) together with increased statutory maxima for some drugs offences, and some changes in policy and practice for automatic release, parole and the release of life sentence prisoners. The study concluded that more severe sentencing practices were themselves due to the interplay of legislative changes, an increasingly punitive climate of political and media debate about crime and punishment, sentencers’ perceptions that offending had become more serious and some changes in patterns of offending.

<sup>6</sup> The interviews lasted a minimum of one and a maximum of three hours. They were recorded and fully transcribed. The research into sentencing and the prison population in Scotland was funded under the Esmée Fairbairn Charitable Foundation’s Rethinking Crime and Punishment Programme and we gratefully acknowledge the Foundation’s support.

between April 2003 and March 2004, these comprised the following: five Judges of the High Court, thirty four Sheriffs from sixteen Sheriff Courts across Scotland and a Stipendiary Magistrate. The Sheriff Courts provided a national urban/rural spread and ranged from those with the highest to the lowest use of custody. The full range of judicial experience was also represented. Each interview sought to elicit the respondent's sense of why the prison population had increased, as well as their reflections on the aims of sentencing, the sentencing decision-making process, the influence of social and political factors on sentencing practices and the range of non-custodial penalties. Last, in addition to the interviews, all Sheriffs were asked to discuss four of their own cases that they believed lay on the borderline between a custodial and non-custodial penalty – two of which went to custody and two of which went to community sentences. By asking respondents about specific sentencing decisions the research provided insight into how custodial and non-custodial sentences were actually passed; most previous studies of sentencing have focused on hypothetical as opposed to real cases.<sup>7</sup>

The analysis presented here is organized as follows. Firstly, the paper outlines our main arguments; secondly, it looks at sentencers' views of the prison and their assessments of its capacity to fulfil the aims of sentencing as they conceive them; thirdly, it examines how they justify their decisions to imprison offenders, often for relatively trivial offences; fourthly, it illustrates their denials of responsibility for custodial decisions by investigating how those cases considered 'borderline' were dealt with; and finally, it argues for future sentencing policies and legislation to take heed of sentencers' logic in use at the point of sentence.

### *Arguments*

The paper has two main arguments. The first refers to how sentencers 'live with' their sentencing decisions. Every day they make decisions that send offenders to prison. This they do in full knowledge of the harsh realities of prison life and the implications of sending people there. They are well aware of the prison's brutalizing regime and of its negative social consequences. They know exactly what they are doing, what happens there and the suffering it causes to those they have imprisoned and to their families. At the same time deciding upon a custodial disposal is a central feature of sentencers' lives. We therefore suggest that they have to manage the tension between what they know about prison and their daily practice of sending people there. This they do by deploying certain 'techniques of neutralization' (Sykes and Matza, 1957), techniques that allow them to normalize their decisions to imprison in remarkably similar ways to those of ordinary delinquents and perpetrators of political atrocities (Cohen, 2001) in denying responsibility and moral culpability for their actions.

As we shall show, certain taken for granted assumptions underlie sentencers' explanations of how they arrive at sentencing decisions. These unspoken assumptions imply that we all already know and are agreed upon what sentencing is about and what prison is for. Time and again sentencers' discourses signify that, on the basis of some sort of unidentified and universally accepted common sense wisdom, an end point is reached where it becomes clear that an offender simply has to go to prison, where 'enough is enough'. How they

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<sup>7</sup> Notable exceptions are Hough et al (2003), Flood-Page and Mackie (1998), and Parker, Sumner and Jarvis (1989).

know when to say enough is enough remains unspecified but they make the assumption that everybody – not just themselves – knows and agrees on where that end point is and on why there is ‘no option’ but to impose a prison sentence even for relatively minor offences. Their narratives about custodial decisions in borderline cases reveal that inherent in their assumptions about when enough is enough is an overarching retributivism. But this is a retributivism without proportionality in the sense that it is aimed less at the offence than at the offender. Their detailed explanations of sentencing decisions will be spelt out later. Suffice it to say here that these cannot be understood as “private states of mind” (Cohen, 2001, 59). Rather, they belong to a broader group of speech acts known as ‘accounts’, which perform specific functions in particular social situations (Wright Mills, 1940) and are “embedded in popular culture, banal language codes and state encouraged legitimations” (Cohen, 2001, 76).

Cultural vocabularies of denial, however, are congruent with a number of professional discourses which also shape and determine sentencers’ decisions. We suggest in our second argument, and following Foucault (1977a, 1977b, 1979), that in accounting for their decisions sentencers also bring into play selectively certain discourses – overlapping bodies of knowledge originally produced by experts (legal, psychological, criminological and so forth) – which function in apparatuses of regulation. They operate at the institutional level, hierarchically and invisibly, to define what is ‘practical’ in any given context. They function to limit discussion to a narrow range of issues and only these are defined as relevant in terms of the institutional arrangements available for offenders. It is through such knowledges – which become inscribed in complex ways in the rules governing their activities (Henriques et al, 1984) – that sentencers claim to ‘know’ offenders and decide if they are suitable for custodial or community disposals.

This is not to argue, however, that sentencers cannot exercise any discretion. For, as we shall show, they have a great deal of discretion when sentencing the offenders who come before them. This is because the individualized notions of justice embedded in forms of legal argument mean that some offences have an ambiguous status within discourse. The same offence may attract a custodial or community sentence. Moreover, offenders themselves (as individuals) do not fit neatly into the limited number of categories discursively available; they are only ever approximations to these categories. Thus the fragmentary and contradictory reality of an individual and his or her life has to be represented as coherence, as a recognizable subject on which it is possible to pass sentence. We argue therefore that when making their decisions sentencers consider not only the severity and nature of the offence but also the characteristics of the offender. That is, they consider whether in terms of their own discourse an offender is ‘redeemable’ or ‘irredeemable’. If the former s/he will be accorded a community disposal, if the latter, a custodial one.

Ambiguities surrounding the offence and the offender together with the degree of discretion sentencers have are most clearly illustrated in borderline cases – those cases that sentencers deemed to lie on the brink between a custodial and a community sentence. In such cases sentencers weigh up and predict what the likely outcomes of their decisions might be; they anticipate, and where possible control, the variety of potential consequences of the decision-making process. This will include assessing who is motivated to stop offending, who might make best use of available community provisions and who presents a threat to the public. Thus those offenders who display attitudes, motivations and personal circumstances that imply the possibility of redemption are likely to receive a community

disposal. But those offenders already marked out as hopeless cases, designated as insufficiently remorseful or as having particular circumstances likely to invoke continuing official concern, will be designated irredeemable and sent to custody. Sentencers therefore anticipate where community disposals might fail. As Gordon has pointed out: “the system caters in advance for the eventuality of its own failure” (1979, 38). In sum, the ambiguous status of some offences together with the fact that offenders are merely approximations to categories opens up a space for judgement. The attributes of offenders and their offences can be endlessly reconfigured to legitimate sentencers’ claims that the ‘punishment fits the crime’. As we shall show, however, in practice sentencers’ decision-making reveals that they are not fitting the punishment to the crime but to the ‘offender’.

### *Sentencers’ Discourses on Incarceration*

We observed earlier that sentencers have increased both their use of incarceration and the lengths of the prison sentences they impose. Given these sentencing practices it seems reasonable to assume that those who send people to prison believe that it has some value, at least in terms of the traditional justifications claimed for sentencing – that people are sent to prison because it is an effective deterrent, that it is a way of protecting the public, that through denunciation it symbolizes society’s disapproval, that it is an appropriate punishment and that it has the potential to rehabilitate and reintegrate people back into society. Indeed, sentencers believe that prison can provide offenders with access to rehabilitative treatments and programmes not otherwise available to them in the community. Nonetheless, on the whole sentencers’ discourses reveal that they are sceptical about the extent to which imprisonment achieves most of the traditional objectives.

They are ‘not convinced’ about the deterrent effects of a prison sentence for the majority of the offenders they sentence and are fully aware of the high proportions of ex-prisoners who re-offend. They know that the reconviction rates of ex-prisoners show that prison has, at most, a very limited impact in terms of individual deterrence. As one of the Sheriffs argued:

Prison doesn’t work particularly well, at least with the general run of customers going through the Sheriff Court...not with the 17 – 24 year old male repeat offender we see here; 79 percent of them re-offend if they get the jail. (Sheriff 26)

More than this they had little doubt about the futility of imprisonment for individual offenders, especially for women. In the words of one Sheriff:

We can send them back to Corton Vale [the women’s prison] time and time again; it does nothing for them. I am increasingly conscious that in a lot of cases... when these women come out... they still have a debt, maybe a drug debt or whatever. I am not stupid, I know they will be sent down to Tesco and told to go in and shoplift to pay the debt. I know they are driven up to Glasgow to walk the streets as part of the repayment of their debt or they are going to get their face slashed or whatever .... That’s not right but what else am I supposed to do? (Sheriff 7)

At best sentencers saw prison as having limited effectivity insofar as they looked to prison as a way of preventing future crimes. Some claimed that giving an ‘exemplary prison sentence’, one that is longer than they would typically give for certain kinds of crime, such as carrying knives, was likely to have an effect in terms of general prevention. The argument was that such sentences were symbolic, to the extent that their denunciation of

such crimes would signal to others the likely consequences of similar behaviour. More commonly, however, they argued that the incapacitation of some offenders contributes to public safety by preventing the commission of some offences in the community. As one Sheriff commented:

It [prison] works in that it takes people off the streets and makes communities safer'. Similarly another said that, 'sending him there [prison] will not help him....but it will help Boots and it will help Marks and Spencer because at least they will get six weeks without him coming in to shoplift. (Sheriff 33)

Nevertheless, even although they thought that prison could provide this kind of 'respite' for shops and for the wider community, sentencers were aware that the break was temporary. As one of the Sheriffs observed, in sending offenders to prison in this way they were, 'not stopping the traffic at all... just taking somebody out of the system for a while.' Moreover, because of their *focus on the offender* rather than offence, they argued that in some instances prison was quite straightforwardly an effective way of punishing 'bad people'. In the words of one of the Sheriffs:

I can give you peripheral arguments like it [prison] helps people detox for a bit but I'm not really using it for that purpose... I think it's just that in the great scheme of things some things are so bad, or done by people who are so bad, that you've just got to give a sentence which is actually unpleasant for them. (Sheriff 15)

Just as sentencers know that prison is an 'unpleasant' sentence so too do they know that it has seriously detrimental effects on those who go there. They know about the pain of confinement in total institutions well documented by ex-prisoners (Boyle, 1977; 1984) and in the sociological literature (see Sykes, 1958; Goffman, 1968; Cohen and Taylor, 1972; and Carlen, 1983). Not infrequently they referred to the damaging effects of imprisonment on individual offenders. They argued that it was preferable to deal with offenders in the community rather than to 'lock them up' in an institution which, as one of the Judges commented, 'inevitably brutalizes them [prisoners]; you can't avoid that.' They stressed the very negative consequences for young prisoners in particular, especially how the experience of imprisonment amplifies and reinforces criminal behaviour by exposing youngsters to 'hardened criminals' who teach them things that they didn't previously know. One of the Judges observed:

It's a terrible thing to send a young person to custody – to think your decision could ruin a life. Bluntly, I don't like sending young people to detention; but if it's got to be done it's got to be done... I'd much rather have something where they don't have to get this. They come out worse than when they went in; they learn a lot in there probably that they would never have learnt outside. (Judge 3)

In a similar vein, sentencers knew that imposing a prison sentence meant there would be serious and far-reaching consequences for people's lives; consequences way beyond the immediate period following any given prison sentence. They knew that sending someone to prison meant taking them away from 'their family, community and their life'. Their dilemma was further amplified when confronted with 'first offenders', especially young first offenders. One of the Sheriffs, for example, when talking about his perception of an increase in the number of cases involving young people carrying knives, argued that he would face an especially difficult decision if such a case involved a first offender. While he felt he could justify a decision to 'send the offender straight to detention, not just as

punishment but also as a message to the other youngsters’, he was acutely aware that, ‘if you do that, you can ruin their lives forever.’ Several expressed particular concern about the consequences for children if their mother was sentenced to prison. One of the Sheriffs, for example, emphasized that sending a child’s mother to prison ‘drags them into it all.’ In short, they knew that a prison sentence often added to the range of problems already existing in people’s lives.

Even so, sentencers continue to send people to prison whilst acknowledging that ‘most of the offences for which offenders are imprisoned are, in and of themselves, ‘essentially fairly trivial’. They claim that, notwithstanding the problems that prison can create, the circumstances of many such offenders in the community are so grossly deprived that imprisoning them frequently provides a solution, however unpalatable, to social problems that other institutions and structures fail to address. Several made a similar argument to the Sheriff who observed that:

We’re dealing with the management of drugs, alcohol and deprivation problems ... what I think we’re doing to a large extent is managing a social problem rather than a criminal problem ... it’s about management; management of the drug problems and the alcohol problems and the other deprivation problems; the problems which cause a lot of the business we get here. (Sheriff 21)

Above all sentencers are well aware that prison is the one sentence that holds a great deal of terror for offenders; they acknowledge that the prison provokes anxiety, fills offenders with ‘dread’ and fear, and is, as one Sheriff commented, ‘the one thing that nobody wants to get... as a general rule; it is the one thing that accused persons are desperately anxious to avoid.’

Sentencers’ discourses on prison then clearly illustrate that they know about the harsh realities of prison life and the implications of sending people there. They are aware of the prison’s futility as a deterrent, of its detrimental and brutalizing regime, of its negative social and far reaching consequences for future lives and of the warehousing role that it has in ‘managing society’s problems’. They also know about the fear that prison holds for those they sentence.

### *Sentencers’ Denials of Responsibility*

Nonetheless, whatever their view of imprisonment and its effects on the lives of those they sentence, in practice sentencers send people to prison on a daily basis. They find various ways of bracketing off their knowledge about the futility and brutality of the prison from the other knowledge they use at the moment of sentencing. This they do by deploying certain ‘techniques of neutralization’ (Sykes and Matza, 1957). These techniques allow them to justify and legitimate their decisions to imprison in ways resonant with those deployed by ordinary delinquents and perpetrators of political atrocities (Cohen, 2001) in evading responsibility and moral culpability for their actions. As we shall see, sentencers find diverse ways in which they are able to deny final responsibility for their own decisions. For reasons of analytical simplicity the following discussion catalogues these various forms of denial as if they are separate. In practice, however, they operate simultaneously, overlapping and interacting with and supporting each other.

### *Denial of alternatives*

Within the constraints of their own discourse sentencers have the authority to exercise wide discretion in sentencing individual cases. Yet they often deny this discretion – a discretion they have been given and claim to treasure.<sup>8</sup> Thus in instances where there is nothing legally restricting their choice between custody and community they argue that they have ‘no option’ but to send an offender to prison. They do not articulate precisely why this is the case. Indeed their reasons remain amorphous and unspecified. Instead, the implication is that the criminal law simply *requires them* to act in certain ways. Thus their accounts of why people were sent to prison in borderline cases frequently conveyed a vivid sense of a lack of choice. They repeatedly claimed that they had ‘no alternative’; that they literally had ‘no choice’.

For example, referring to why he sent many offenders to prison for relatively minor offences, one Sheriff explained that such offenders had typically committed numerous such offences whilst on bail and on community sentences for earlier offences. He reached a point where he felt he could ‘not allow them to just carry on offending’, where the ‘only alternative’ was a custodial sentence. This Sheriff expressed a commonly held view that there was ‘nothing else’ but prison for people who had been given ‘chance after chance after chance’ in the community. At the same time sentencers made the point that in such instances they were not making a positive choice to send someone to custody. Instead, they had decided on prison because they had, in the words of one of the Sheriffs, ‘simply run out of anything else to do with them’. Once *an offender* had shown disrespect for the law, not only by repeatedly breaking it but more importantly by her/his attitude to it, then custody was deemed inevitable. Discussing an offender who appeared to ‘cock a snook at the law’, one Sheriff said, ‘the time has just come... that is the reason he’s going to prison to-day’. In this instance the sentencers’ decision that there was no alternative to prison was argued for solely on the grounds of the offender not the offence.

### *Appeal to a higher authority*

Linked to denial of alternatives is a technique whereby sentencers aim to ‘pass the buck’ by refusing to take full responsibility for their decisions. As Cohen has argued, appeals to obedience and authority provide the best known, easiest and most comprehensible way to evade personal responsibility, involving, as they do, a denial of, “agency, intent, disposition and choice” (2001, 89). Typically expressed in statements such as ‘I was just following orders’, evasions of this kind are generally associated with “underlings who implement rather than make policy, receive rather than give orders” (Cohen, 2001, 89). But such denials of responsibility are no less true of super-ordinates. Thus sentencers, who occupy very senior public positions and jealously guard their ‘judicial independence’, are not without their own techniques for evading responsibility; they too appeal to a higher authority. In their case this is literally the Appeal Court; a body that can revise, confirm or overturn their decisions.

Although it is mediated by either the prosecution or the defence making an appeal against a specific sentencing decision, in an important sense sentencers ‘delegate’ responsibility upwards. Commonly they deploy what might be described as the *I don’t have the final say*

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<sup>8</sup> For other examples of how judicial denial of discretion operates see Provine, 2002; Tata, 2002; and van Zyl Smit, 2002.

*syndrome*. That is, they abrogate responsibility for the final sentencing decision to the Appeal Court, thereby denying their own agency. The weight of their own responsibility is reduced insofar as their decisions can be checked and re-checked for validity by a higher authority (cf. Menzies, 1970). More than this their ability to draw on the authority of the Appeal Court seems to widen their field of possibilities, giving them what is, in effect, almost a licence to excess. As one of the Judges observed, the Appeal Court acted as a counter check on his sentences, a kind of ‘safety net’ which would ‘sort out any excesses on my part’. He further commented that, while he knew his sentences were at the ‘higher end’, he had the ‘security’ that the Appeal Court could make any necessary revisions. More than this the existence of the Appeal Court not only provided ‘security’ and acted as a ‘safeguard’; it absolved individual sentencers from taking responsibility for having to discover what the ‘right’ sentence might be. Thus one of the Sheriffs explained that she did not have to worry about whether she had imposed the right sentence. This was because, ‘if it’s not right and it’s way out ... hopefully the Appeal Court will look at it and decide whether it’s right’.

### *Routinization*

Another way in which sentencers were able to set aside responsibility for the probity of their decisions was by talking at length about the routine processes involved in sentencing. Indeed, as Cohen has pointed out, morality is easy to suspend if decisions are routinized, that is, if supra-ordinates can focus on what they do rather than why they do it (2001, 94). Thus sentencers frequently referred to the need to ‘follow a certain pattern’ by which they meant the need to take into account, in a structured or formulaic way, the various factors considered relevant in arriving at any given sentence. These were invariably presented as the gravity of the offence, characteristics of the accused, the public interest and the interests of the victim. By such means sentencers could represent their decisions as rational, logical, simply a matter of adhering to a routine.

Routinization was also evident in a more obvious sense in that individuals themselves became ‘routine’ to sentencers. As one of the Sheriffs remarked, ‘the same issues and faces come back over and over again.’ Not only do sentencers feel ‘very familiar’ with the types of cases that come before them, they also argue that many offenders and their families too become ‘familiar figures’. Their histories of previous problems and court appearances and their contacts with other agencies on account of these are well known to sentencers. Thus Sheriffs claimed that their previous knowledge of offenders and their families meant that they could speed up the sentencing process; they already ‘knew’ the circumstances surrounding the offences and could ‘run through the reports more quickly’. In the words of one Sheriff:

I don’t need to know what the siblings are up to when I already know what the siblings are up to...In a lot of cases I haven’t heard the circumstances at all, nor have I heard the plea in mitigation...I don’t need to. (Sheriff 29)

This ‘already knowing’ about offenders and their circumstances meant that sentencers spoke about their involvement in sentencing with a weary sense of familiarity. Time and again they used expressions such as ‘I thought let’s draw the line here’, ‘let’s just get him out of the road’, ‘something has to be done to try to stop it’ or ‘enough is enough’ to indicate their weariness with the number of times an individual offender had come before them. They claimed that with such familiar faces, routinely appearing before them, it was

‘obvious’ that community sentences were not working. Sentencers ‘knew’ these offenders; they already had acquired lengthy criminal records, (albeit for relatively minor offences and breaches of community penalties). This was the point at which ‘enough was enough’, when ‘the time had just come’, it was argued, for a prison sentence. In other words ‘the time had just come’ not to punish the offence but to *punish the offender*.

#### *Appeal to necessity*

Despite claiming that they often feel powerless and frustrated, however, sentencers argue that they are doing a necessary and valuable job. They maintain that they are acting ‘in the public interest’; their job is something that ‘somebody’s got to do’. Although not identical this claim is parallel with the “dirty work” that Cohen (2001) argues has to be done in every society. Thus sentencers stressed the significance of their position as society’s agents for dealing with convicted offenders. As one of the Sheriffs argued it was his public duty to ‘serve the community’ by dealing with crime in a way which was ‘hopefully designed to keep it under control.’ Another explained that while he didn’t like sending people to prison it often ‘had to be done’ because he viewed himself as a ‘servant of the public.’ It was his ‘public duty.’ This focus on the necessity of the work they do on behalf of the public allows them to invoke the notion of the public interest to distance them from the content and meaning of their decisions to imprison.

#### *Role distancing*

This distancing was even more pronounced in another technique deployed by sentencers which allowed them to separate or split themselves off from the job that they do. We are not here suggesting here that they split themselves off in the Freudian sense of denying responsibilities by the attribution of actions to another autonomous part of the self. Rather, sentencers engage in their own particular version of the everyday forms of role distancing and compartmentalization that Cohen argues are integral to late-modern democratic societies with their cultures of denial (Cohen, 2001, 94). In the case of sentencers this version is one that allows them, whilst believing that there is something ‘awful about taking away someone’s liberty’ and that prison is a ‘uniquely severe and unpleasant punishment’, to continue to send people there on a routine basis. In short, sentencers are able to reconcile the disjunction between their beliefs about the severity of prison and their decisions to send people there by distancing themselves both from what they do and from who they do it to.

Despite holding to an individualized model of justice and despite frequent contact with many offenders who had become ‘familiar figures’ to them, sentencers simultaneously claimed that it was necessary to develop and maintain adequate professional detachment from those they sentence. Not only was such detachment viewed as necessary, it was also rationalized as a ‘good thing’ that they did not become ‘too involved’ with the people they were sending to prison. Thus sentencers subscribe to a discourse that implies the need to maintain some psychological distance from the offender in order to accomplish their job of sentencing efficiently and appropriately. By distancing themselves from the offender as a person they are able to deny responsibility for any damaging consequences of sending her/him to prison and avoid any disturbing and potentially problematic identifications. As long as offenders can be viewed as different, ‘not like us’, the task of sentencing is rendered less ‘uncomfortable’. More specifically, the ‘othering’ of offenders becomes yet another discursive route to making prison possible.

### *Refusal of empathy*

This sense of the ‘otherness’ of offenders is central to another technique of neutralization deployed by sentencers – refusal of empathy. While it is not straightforward for sentencers to engage in a discourse that denies damage to those they would imprison, it is common for them to claim that many offenders do not experience pain as we do, that they are ‘unlike’ the rest of us, that they do not feel any sense of injustice in the punishment they receive; in short that they are ‘other’. Typically sentencers represent offenders, especially ‘repeat offenders’, as different from us; they are ‘not the type of people’ who are likely to be ‘bothered’ by a short custodial sentence, they are ‘used to violence’. One of the Sheriffs, for example, in describing ‘the folk who go in and out for short sentences’, argued that going in and out of prison was ‘no terribly great thing’. In his view, ‘for them’ it was simply ‘part of life.’

Sentencers frequently claim that offenders are ‘used to’ incarceration, that they ‘know what it’s like’, that they ‘choose to go back’ via their actions, and that prison ‘obviously doesn’t bother them’. Such expressions are remarkably similar to the denials of injury deployed by delinquents when they aim to minimize the damage caused by their actions (Sykes and Matza, 1957). One of the Sheriffs, for example, argued that sending a particular young woman to prison would not affect her greatly as ‘it’s not as though it’s a first’. Not only do they argue that those who are ‘no strangers to the prison’ are not harmed by incarceration; they also claim that the offenders themselves feel no harm. For example, one of the Sheriffs described how those who appeared before him repeatedly – ‘the regulars’ – often concurred with his decision. These offenders recognized ‘a sort of fairness in the Bench’ and did not feel ‘ill done to’. In other words, sentencers maintained that no injustice was done because even the offenders themselves agreed that they should go to prison; they too believed that they ‘got what they deserved’.

### *Interpretive denial*

Sentencers also engaged in a form of denial described by Cohen as interpretive denial. This takes the form of a re-framing of events so that “what happened is really something else” (Cohen, 2001, 103), where the re-framing also typically involves partial acknowledgement of the legitimacy of any criticisms made. This kind of interpretive denial revealed itself most clearly in sentencers’ discourses on the imprisonment of women. They acknowledged the harmful consequences of incarceration for individual women and their families and were well aware that they were publicly criticised as overly punitive in sending women to prison for committing petty offences. In part, they acknowledged the legitimacy of such criticisms. One of the Sheriffs, for example, did not attempt to deny that he knew that women were being imprisoned for trivial offences. He admitted the raw facts; that women were indeed sent to prison for such offences. Nevertheless, in seeking to justify why this was the case, he went on to present an alternative interpretive framework within which the same raw facts could be viewed less critically. He explained:

You see, newspapers... give this idea to the public... that Sheriffs are sending women to Cornton Vale [the women’s prison] for very minor offences... which is true... but they don’t do that until they’ve committed at least thirty or forty of them. (Sheriff 32)

In this way, in re-framing the content and meaning of decisions to imprison women, the focus was shifted from the present very minor offences to women's past offending careers. Although each offence in and of itself was trivial, the accumulation of such offences was taken to signify that a custodial sentence was justifiable. The Sheriff was therefore clearly seeking to fit the punishment to the offender rather than to the specific offence. Moreover, the harm being done to the women in sending them to prison was cognitively re-framed and justified on different grounds, thus re-configuring what happened. Sentencers therefore did not merely proffer a discourse aimed at legitimating their sentences but one consisting of a kind of re-arranged truth or mythological reality. It is less disparaging to the judiciary if they can re-present the imprisonment of women for petty crimes as something other than precisely what it is – as a “different, less pejorative class of event” (Cohen, 2001, 106).

### *Moral prioritising*

As we have shown in sentencers' discourse there is some acknowledgement of the implications of a prison sentence for offenders, their families, their children, husbands, wives; there is a “troubling recognition” (Cohen, 2001, 87) that has to be denied. They do not, however, resolve the problem by denying or distorting reality or by repudiating conventional moral codes. Indeed they do not engage directly with any moral discourse. Rather they take steps to block the unwelcome information. They convince themselves that the job of sentencing would be ‘impossible’ if they had to take such human factors into account. Their most important job is to uphold the criminal law through using their power to punish. This they could not accomplish effectively if they thought too long and hard either about the people concerned or about the ramifications of their practices. In other words they engage in *moral prioritising*, wilfully blotting out their unease about the virtue in sending people to prison. As one Sheriff expressed it, ‘if you started looking at the consequences for relatives all the time sentencing would become impossible’.

### *Sentencers' Borderline Decisions*

Although two crimes may be roughly similar in relation to the way they were perpetrated, the circumstances and backgrounds of offenders may be completely different, and they may deserve to be dealt with differently. (Sheriff 9)

Despite knowing that there is ‘something awful’ about prison, despite sending people there daily for what might be considered relatively minor offences, offences that in themselves pose no threat to public safety, sentencers deny that they have any choice. Indeed, as we have seen, they explicitly deny final responsibility for their decisions claiming instead that legal discourse *requires them* to deploy a particular disposal for a specific offence or set of circumstances. The aim of this section therefore is to demonstrate in more detail the various ways in which discretion is in fact exercised by sentencers and the features of the case that they take into account when making their decisions to imprison. As we shall show, sentencers clearly acknowledge the discretion they have (which they simultaneously deny) in their designation of some cases as lying on the ‘borderline’ between a custodial and a community sentence.

To elaborate, within established forms of legal argument a space is opened up for the exercise of discretion because any offence may have an ambiguous status; the nature of the offence alone does not necessarily determine the type of sentence deemed appropriate.

Sentencers' discourses reveal that the offenders themselves are central to the decisions made in borderline cases. Offenders committing the same offence can be constructed as 'irredeemable' and thereby sent to prison, or 'redeemable' and thus accorded a community disposal. The same offence can, depending on judgements made about the 'redeemability' or otherwise of the offender, come to rest on either side of the custody/community divide. In discussing factors considered salient in making judgements about redeemability sentencers mentioned the following: the age of the offender, his/her employment status, the extent of family and other social support (including the 'love of a good woman'!), their motivations, their physical/medical condition, their record of dealings with authorities, the timing of a guilty plea and having the right attitude. In short, sentencers looked for what they referred to as 'signs of remorse' and 'signs of hope'. The typology presented on page 22 summarises how such signs constitute factors that favour community as opposed to custodial decisions in borderline cases.

*The same offence: a poor unfortunate soul or a real tough nut?*

As we have argued, in sentencers' discourse offenders are held to fall into two types – the redeemable (those displaying signs of remorse and hope) and the irredeemable (those demonstrating neither). As one of the Sheriffs expressed it, an offender is either a 'poor unfortunate soul' or a 'real tough nut'. Accounting for the decisions made in borderline cases, this Sheriff spoke about two instances where the offence – stealing – had been the same but where the sentences she gave were very different. The first involved an eighteen year old young woman who had been stealing to 'feed her drug habit' and had accumulated several charges against her (including spitting at the police and paramedics). However, she had sought appropriate help and shown 'insight' into her problems, hence was seen as redeemable. Above all, the Sheriff argued, there was some 'hope' that the young woman might change. This hope led the Sheriff to decide in favour of a community sentence which would 'lead to some benefit to the community down the line... [as] she wouldn't re-offend'. On the other hand the same Sheriff deemed a twenty year old man with a drug habit, also charged with stealing, irredeemable. The Sheriff emphasized that the young man had previous convictions which 'ran to two and a bit pages' and a recently breached community service order. The combination of his record including the breach, together with his inability to work on account of the 'high risk' he posed because of his heroin use, 'all lead me to decide that there was no alternative to custody.' Thus two different offenders, both charged with stealing similar amounts, received very different sentences.

*The presence or absence of signs of remorse and hope*

Two key factors in Sheriffs' accounts of their decisions in favour of community sentences were the presence of 'signs of remorse' and 'signs of hope'. Sheriffs frequently spoke about 'contrition' as 'tipping the balance' towards a non-custodial option. Offenders were thought to show the right attitude in displaying remorse. One of the Sheriffs explained the significance of the presence of remorse as follows:

The nature of the response of the accused is important. Even in relatively serious cases, where you must take a very serious view in the public interest, evidenced contrition should be taken into account. The way in which contrition is carried through can indicate that another option [to custody] is possible. (Sheriff 32)

The converse was also true. Where remorse was absent, where offenders did not show any signs, it was likely that a custodial sentence would be imposed. For example, in explaining why, whilst ‘strongly urged to impose a community sentence’, he had in fact sent a woman to prison for possessing heroin, one of the Sheriffs argued that he had reached this decision because the woman displayed ‘a lack of frankness’ and did not therefore express an appropriate degree of remorse. Similarly, another Sheriff who imprisoned a first offender aged 31 charged with dangerous driving and drunk driving did so primarily because:

It was quite clear that this man had no conception that there was anything really wrong with his driving. He was ...sitting there listening to his lawyer talking with an extremely arrogant sort of look on his face, as if to say ‘what are they worried about?’ (Sheriff 9)

Having some ‘hope’ for offenders also contributed to a non-custodial decision in borderline cases. As one of the Judges expressed it:

One of the functions of punishment is also to show mercy. Sometimes, despite the gravity of the crime, the circumstances of the offender may influence you towards a non-custodial disposal... where there is hope that the offender can be rehabilitated. (Judge 4)

As with signs of remorse so too did sentencers look for ‘something’ that indicated that there was ‘a real hope’, a ‘prospect of rehabilitation’. As one of the Judges elaborated, ‘I mean a real prospect, not a pie in the sky sort of thing ... that’s what would persuade me to go for a community sentence’. In general, signs of hope were evidenced by steps taken by offenders to address the problems deemed to be associated with their offending behaviour, for example, undertaking voluntary alcohol or drug treatment or obtaining good progress reports on an earlier probation order. Similarly, an existing job, home, family support, or family responsibilities, were viewed as likely to improve the chance that a community sentence would be successful, not least because the offender had more to lose by re-offending. By contrast, several sentencers said they frequently imposed a custodial sentence ‘in despair’ of the offender. In such cases, the offender had been breached once or more in the past for failure to comply with a community sentence and, from the sentencer’s viewpoint, there was nothing – no stabilizing factor in the offender’s life – to suggest that a non-custodial sentence would be any more successful the next time.

The two cases studies presented below – one community and one custodial – illustrate the significance of signs of remorse and signs of hope in borderline decisions.

A community sentence was given in the first case involving an 18 year old male, first offender, charged with dangerous driving. He had driven erratically at 3.00am and had endangered the lives of the pursuant police, himself and his passenger by jumping from the moving car. He was given community service on the grounds that he came from a good family background, had a ‘very good education ....possibly going to university’ and, although currently unemployed, had got ‘a good future ahead of him’. His interest in ‘sports, rugby and so on’ was also mentioned. However, the Sheriff claimed that he had ‘made it clear’ in sentencing the young man that the ‘mere fact that he had a good background’ would not in itself ‘deter me from sending someone to detention’. What was crucial was that the boy, in expressing remorse, had displayed the right attitude: he was ‘clearly very, very contrite, and he was terrified’.

In the second case, again involving a young male, described by the Sheriff as ‘just another bad wee bugger’, a custodial sentence was imposed. The young man was charged with several non-serious offences. These included breach of the peace, stealing ‘bits of this and that, three packets of Flora, five boxes of tiles’ and causing a ‘barney when he gets lifted’. He then broke into a chemist shop on two consecutive days stealing perfume and after shave. Despite the minor nature of these offences, the Sheriff claimed that he had given a custodial sentence because of the offender’s non co-operation with community based agencies – he did not display the right attitude – and his failure to fulfil the conditions of earlier community sentences. The Sheriff said that he ‘despaired’ of the offender; that the stage had been reached where ‘it’s your first taste of custody son’. The offender was ‘never going to be a serious crook; he’s just going to be a bloody nuisance all his life’.

The total of 108 borderline cases sentenced by the Sheriffs in the research study included a wide range of crimes and offences. The most commonly mentioned – in 48 percent of the cases – were assaults of varying degrees of seriousness, including assaults to severe injury. Motoring offences (including driving whilst disqualified, dangerous driving and driving with excess alcohol) were the next most frequently mentioned (39 percent of cases) followed by drug offences (28 percent). Thefts, including shoplifting, occurred in 27 percent of the cases and frauds and housebreakings<sup>9</sup> were mentioned in 19 and 17 percent of the cases respectively.<sup>10</sup> There was no consistent pattern in the kinds of offence categories given custodial and non-custodial sentences. There were, however, clear differences in the types of factors related to the offender that inclined sentencers towards a custodial decision (see Tombs, 2004). Offenders who were ‘irredeemable’ went to custody regardless of the offence. The typology below summarises the main factors about offenders in borderline cases which determined on which side of the community/custody divide a case came to rest.

### **Typology: Factors in Borderline Decisions**

	<b>Sentence</b>	
	<b>Community</b>	<b>Custody</b>
Circumstances of offender	Family responsibilities Social support Stable relationship Employment/prospects Settled accommodation	None/seen as irresponsible Lacks social support Unstable relationships Lacks employment/prospects Accommodation problems
Condition of offender	Shows motivation Medical problems Young or elderly	Lacks motivation No medical problems Neither young nor elderly
Attitude of offender	Shows remorse Co-operative with authorities Pleads guilty early	Lacks remorse Unco-operative with authorities No early guilty plea

### *Conclusions*

<sup>9</sup> Elsewhere this offence is known as burglary.

<sup>10</sup> Percentages do not add to 100 as each case could involve several charges.

In showing how sentencers play a pivotal role both in the use of imprisonment, this paper adds another level to the literature aimed at understanding the staggering increases in rates of incarceration in western societies. The paper's distinctive contribution is in its exploration of factors associated with escalation at the level of the everyday practices of those who have the power to punish. We have shown that, despite viewing imprisonment as a severe punishment, sentencers normalized their routine incarceration of individuals by deploying various techniques of neutralization thereby allowing them to deny final responsibility for their decisions. In part these denials stem from the occupational culture within which they operate; one that surrounds them with normative values supportive of imprisoning the 'real tough nut'. They are also routed in the daily practice of sentencing, which could lead to a form of 'psychic closing off' (Carlen, 1996), a numbing of sensibilities or 'compassion fatigue' (Cohen, 2001) as a result of having seen the same old offences, even the same old faces, all too often. Their denials of responsibility were most starkly illustrated in borderline cases where we saw how it was possible for offenders convicted of petty offences to end up in prison. Sentencers claimed to know when 'enough was enough', when 'the time had just come' for a prison sentence; generally when offenders had acquired lengthy criminal records, albeit for relatively minor offences and breaches of community penalties. At that point their logic in use clearly revealed an underlying retributivism, aimed not at the offence but at the offender.

What hope then for sentencers' practices to be altered so that their use of imprisonment, at least for the less serious offences, is reduced? The answer is very little, unless and until sentencing policies and legislation are conceived and framed on the basis of a much more nuanced understanding of sentencers' logic in use at the point of imposing a prison sentence. Prison is deemed inevitable when, in terms of their own professional discourse, sentencers decide that a 'borderline offender' is 'bad enough', when all signs of hope and remorse have been extinguished. Such a decision is argued for as if it is entirely justifiable and acceptable by all; it is 'obvious', unquestionable, no one would doubt it. The smooth surface of their discourse is maintained by an unspoken appeal to the taken-for-granted – an appeal which succeeds in silencing other, potentially disturbing, truths. While we have not attempted to describe or explain anything like every facet of their logic, our analysis of sentencers' accounts of their decisions to imprison illuminates part of it.

Their retributivism towards the offender raises at least two problematic areas. First, it is at odds with proportionality as an overarching principle of sentencing, as stated in penal policy (see, for example, Home Office, 2001) and in sentencing guidelines (see, for example, Sentencing Guidelines Council, 2004). Second, it is at odds with the plethora of policies and legislative efforts in Scotland, England and Wales and elsewhere aimed at redesigning alternatives to imprisonment so that sentencers will choose to make more use of them. The assumption here is that the more prison-like the alternatives are, the 'tougher' they are, the more sentencers will use them and the less they will use imprisonment. But, as we have shown, sentencers do not see alternative community sentences as serving the same penal aims as imprisonment. No amount of refashioning will accomplish this. As one of the Sheriffs emphasised, 'community service can be an alternative to prison but it is not an equivalent'. When sentencers reached the point where 'enough was enough' they were looking to impose something that they considered to be sufficiently punitive on the offender. Prison was deemed to be 'the ultimate sanction, worse than any other' precisely because of its ability to punish the individual most harshly as well as because of its denunciatory potential. Indeed, it is because of this that sentencers decide to send offenders to prison even for relatively trivial offences.

What this means is that sentencers do not send people to prison because of a lack of ‘tough’ community sentences. Indeed, they claim that when they sentence borderline offenders to prison they have already used up all the alternatives to prison. This is one of the reasons why punitive transcarceralism, in the form of the proliferation of ever more new and ‘tougher’ sentences in the community, has not reduced the use of imprisonment but instead has contributed to its growth. Thus a not insignificant part of the prison population in most western jurisdictions is made up of people breached for community penalties. Moreover, as we have seen, offenders’ histories of breaches make Scottish sentencers less inclined to use alternatives to custody when sentencing for ‘new’ offences. They consider they have no option but to send an offender to prison where the offender has had previous experience of community sentences and has ‘failed’.

In conclusion then, if sentencers’ use of imprisonment is to be reduced, advisory bodies concerned with sentencing – such as the Sentencing Commission in Scotland and the Sentencing Advisory Panel in England and Wales – together with policy makers and legislators, need to understand sentencers’ logic in use and to question their ‘common sense knowledge’. More specifically, what is required is a reversal of sentencers’ present logic in use so that their domain presumption is against the use of imprisonment in all but exceptional circumstances. In short, the burden of proof would lie with those who would imprison – legislators as well as sentencers – to show why no lighter, less exclusionary sanction than imprisonment would be adequate. This implies that instead of policies and legislation that start from the presumption of prison as the default sentence, against which any and all ‘alternatives’ require justification, non-custodial sentences need to be constructed – through legislation – as the norm from which any and all prison sentences require justification. The starting point for a reversal in sentencers’ present logic in use then would be a focus on deciding which, amongst a range of community based sentences, is appropriate rather than deciding between prison and ‘alternatives’. This reversal would be predicated upon judicial training that challenged the taken for granted, not questioned or doubted, judicial conceptualizations of ‘redeemable’ and ‘irredeemable’ offenders that have become a part of sentencers’ common sense knowledge. These are prerequisites to any serious attempt to decentre the prison so that it can no longer be used simply because ‘enough is enough’.

## REFERENCES

- Ashworth, A. (1995), *Sentencing and Criminal Justice* 2<sup>nd</sup> edition. London: Butterworths.
- Beckett, K. and Sasson, T. (2004), *The Politics of Injustice* 2<sup>nd</sup> edition. London: Sage.
- Boerner, D. (1993), ‘The Role of the Legislature in Guidelines Sentencing in The Other Washington’, *Wake Forest Law Review*, 28: 381-420.
- Boyle, J. (1977), *A Sense of Freedom*. Edinburgh: Canongate.
- \_\_\_\_\_ (1984), *The Pain of Confinement: Prison Diaries*. Edinburgh: Canongate.
- Carlen, P. (1983), *Women’s Imprisonments*. London: Routledge.
- Carlen, P. (1996), *Jigsaw – A Political Criminology of Youth Homelessness*, Buckingham: Open University Press.
- Cohen, S. (2001), *States of Denial States of Denial: Knowing About Atrocities And Suffering*. Cambridge: Polity Press in association with Blackwell Publishers Ltd.
- Cohen, S. and Taylor, L. (1972), *Psychological Survival*. Harmondsworth: Penguin.
- Davis, A. (2003), *Are Prisons Obsolete?* New York: Seven Stories Press.

- Flood-Page, C. and Mackie, A. (1998), *Sentencing Practice: An Examination of Decisions in Magistrates' Courts and the Crown Court in the mid-1990s*. Home Office Research Study 180. London: Home Office.
- Foucault, M. (1977a), *Discipline and Punish: The Birth of the Prison*. London: Penguin.
- \_\_\_\_\_ (1977b), *Archaeology of Knowledge*. London: Penguin.
- \_\_\_\_\_ (1979), *History of Sexuality Vol 1*. London: Penguin.
- Garland, D. (2001), *The Culture of Control: Crime and Social Order in Contemporary Society*. New York: Oxford University Press.
- Goffman, E. (1968), *Asylums*. Harmondsworth: Penguin.
- Gordon, C. (1979), 'Other Inquisitions', *Ideology and Consciousness*, 6: 23-46.
- Henriques, J., Holloway, W., Unwin C., Venn, C., and Walkerdine, V. (1984), *Changing the Subject: Psychology and Social Regulation*. London and New York: Methuen.
- Hogarth, J. (1971), *Sentencing as a Human Process*, University of Toronto: University of Toronto Press in association with the Centre of Criminology, University of Toronto.
- Home Office (2001), *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, (The Halliday Report), London: Home Office Communications Directorate.
- Hood, R. (1962), *Sentencing in Magistrates' Courts: A study in variations of policy*, London: Stevens.
- Hood, R. in collaboration with Cordovill, G. (1992), *Race and Sentencing*, Oxford: Clarendon Press.
- Hough, M., Jacobson, J. and Millie, A. (2003), *The Decision to Imprison: Sentencing and the Prison Population*. London: Prison Reform Trust.
- Mathieson, T. (2000), *Prison on Trial* 2<sup>nd</sup> edition. Winchester: Waterside Press.
- Menzies, I. (1970), *The Functioning of Social Systems As A Defence Against Anxiety*. London: Tavistock.
- Morgan, N. (2002), 'A Sentencing Matrix for Western Australia: Accountability and Transparency or Smoke and Mirrors?', in C. Tata and N. Hutton, eds., *Sentencing and Society: International Perspectives*, 65-89. Aldershot: Ashgate.
- Parker, H., Sumner, M. and Jarvis, G. (1989), *Unmasking the Magistrates: The 'custody or not' decision in sentencing young offenders*. Milton Keynes: Open University Press.
- Provine, D. M. (2002), 'Sentencing Policy and Racial Justice', in C. Tata and N. Hutton, eds., *Sentencing and Society: International Perspectives*, 483-503. Aldershot: Ashgate.
- Roberts, J. and Hough, M. (2002), *Changing Attitudes to Punishment: Public opinion, crime and justice*. Cullompton, Devon: Willan.
- Sentencing Guidelines Council (2004), *Overarching Principles: Seriousness Guideline*, [www.sentencing-guidelines.gov.uk/docs/seriousness\\_guidelines.pdf](http://www.sentencing-guidelines.gov.uk/docs/seriousness_guidelines.pdf)
- Sykes, G. (1958), *The Society of Captives*. Princeton NJ: Princeton University Press.
- Sykes, G. and Matza, D. (1957), 'Techniques of Neutralization: a Theory of Delinquency', *American Sociological Review*, 22: 664-70.
- Tata, C. (2002), 'Accountability for the Sentencing Decision Process – Towards a New Understanding', in C. Tata and N. Hutton, eds., *Sentencing and Society: International Perspectives*, 399-428. Aldershot: Ashgate.
- Tombs, J. (2004), *A Unique Punishment: Sentencing and the Prison Population in Scotland*, Edinburgh: Scottish Consortium on Crime and Criminal Justice.
- Tonry, M. (1996), *Sentencing Matters*, New York: Oxford University Press.

- Tonry, M. and Frase, R. (2001), *Sentencing and Sanctions in Western Countries*, Oxford: Oxford University Press.
- van Zyl Smit, D. (2002), 'Mandatory Sentences: a Conundrum for the new South Africa?', in C. Tata and N. Hutton, eds., *Sentencing and Society: International Perspectives*, 90-109. Aldershot: Ashgate.
- Waquant, L. (2001), 'Deadly symbiosis: when ghetto and prison meet and submerge', *Punishment and Society*, 3, 1: 95-134.
- Wright Mills, C. (1940) 'Situated Actions and Vocabularies of Motive', *American Sociological Review*, 15: 904-13.