A Respect Standard for Sentencing

Gabrielle Watson*

I. Introduction

Respect has untapped potential for sentencing, both as a concept of critical inquiry for legal scholars and an institutional standard that criminal courts should be required to endorse and maintain. In this article, I begin by addressing two deceptively simple questions: what is respect and why should it matter at sentencing—that notoriously complex and contested practice of criminal justice? The common law jurisdiction of England and Wales provides a compelling test case. I examine two contentious aspects of sentencing practice that have gained attention in the past year: the judgment in *R v Arie Ali* [2023],[1] which permitted a flexible approach to short-term sentences in response to unprecedented levels of prison overcrowding, and the public campaign for Olivia's Law, which would compel convicted offenders to attend their own sentencing hearings and face the families of those they have harmed.[2] The interim measure articulated in *Ali*—to modify sentencing practice in response to a crisis occurring elsewhere in the justice system—is well-meaning. In practice, however, it is being undermined by the institutional tendency to treat respect as peripheral to the pursuit of instrumental outcomes such as the swift processing of cases and the management of a deteriorating prison estate. Meanwhile, the overwhelming public support for *Olivia's Law* provides a stark reminder of the irreparable emotional damage that deep disrespect in court can inflict.

By proposing respect as a paradigm with which to think innovatively about sentencing practice and reform, the article seeks to contribute to the larger collective endeavor that is the focus of this Special Issue: to reconstruct criminal law and its associated institutional forms in the style of Lacey, Wells, and Meure, whose landmark 1990 text continues to epitomize the intellectual ambition of the "law-in-context" movement.[3]

---

* Chancellor's Fellow, School of Law, University of Edinburgh, U.K. For invaluable discussion, I thank the participants at the *Modern Criminal Law Review* workshop on Reconstructing Criminal Law (June 2024), the Virtual Workshop on the Political Turn(s) in Criminal Law Thinking (Nov. 2023), and the conference on New Perspectives in Sentencing, Punishment, and Alternative Sanction Models at the Max Planck Institute for the Study of Crime, Security and Law (July 2023). Above all, I am grateful to Nicola Lacey and Markus Dubber for the invitation to contribute to this Inaugural Issue.

[1] R v Ali (Arie) [2023] EWCA Crim 232.

[2] Clare Brader, King's Speech 2023: Crime and Justice (House of Lords Library, Nov. 1, 2023); Gabrielle Watson, Refusal to Attend Sentencing (Sentencing Academy 2023).

[3] Nicola Lacey, Celia Wells & Dirk Meure, Reconstructing Criminal Law: Critical Perspectives on Crime and the Criminal Process (1990).

II. From Critique to Reconstruction

Contemporary writings on sentencing appear driven by two related and mutually reinforcing commitments: first, an emphasis on the concrete problems of sentencing and criminal justice—including "useful" or "actionable" knowledge—and, second, a deep and persistent pluralism, both in relation to what criminal justice is and requires, and in relation to how criminal injustice is best recognized and remedied.[4] Any account of respect—which moves from critique to reconstruction—must be sensitive to this dynamic.

What might it entail to critique and reconstruct the sentencing process in the progressive manner that Lacey and co-authors envisaged? It would seem apt, first, to contextualize the application of the criminal law: by placing it in its institutional, social, and political context in a way that takes us far beyond legal doctrine.[5] To focus on doctrine alone would be a category mistake, for it would produce a "very partial and distorted view of criminal law as a social phenomenon: criminal legal rules being, after all, just one aspect of a complex set of more or less integrated social processes producing criminalisation over time."[6] Second, we ought to show a "distinctive concern for ethical questions" and a "particular orientation" towards them.[7] That work might involve, for example, importing moral ideas and dispositions into legal institutions, in a way modelled by Lacey and Pickard on the concepts of blame and forgiveness.[8]

Over five decades ago, we saw one of the earliest commitments to ethics at sentencing in Walker's *Sentencing in a Rational Society*. Walker appealed to human dignity and humanity.[9] In *Between Prison and Probation*, Morris and Tonry expressed the now uncontroversial view that sentencing policy should be humane and just.[10] Respect, however, has powerful intuitive appeal—being closely connected to those enduring concerns of dignity, humanity, and justice—and the potential not only to foreground ethical questions once more, but to become part of a bold program of institutional redesign.

---

[4] Gabrielle Watson, Sentencing Ethically, in Sentencing, Public Opinion, and Criminal Justice: Essays in Honour of Julian V. Roberts (Marie Manikis & Gabrielle Watson eds., forthcoming 2025); Pragmatism and Justice (Susan Dieleman, David Rondel & Christopher Voparil eds., 2017).

[5] Kate Leader, Nicola Lacey, Celia Wells & Dirk Meure, *Reconstructing Criminal Law*, in Leading Works in Criminal Law 173 (Chloë Kennedy & Lindsay Farmer eds., 2024); see also Nicola Lacey, Theorising Criminalisation through the Modalities Approach: A Critical Appreciation, 7 Int'l J. Crime, Just. & Soc. Democracy 122 (2018).

[6] Nicola Lacey, William Twining and the Law in Context Series: A Personal Reflection, 16 Int'l J.L. Context 464, 465 (2020).

[7] Nicola Lacey, Normative Reconstruction in Socio-Legal Theory, 5 Soc. & Legal Stud. 131 (1996).

[8] Nicola Lacey & Hanna Pickard, To Blame or Forgive? Reconciling Punishment and Forgiveness in Criminal Justice, 35 Oxford J. Legal Stud. 665 (2015); Nicola Lacey, Institutionalising Forgiveness in Criminal Justice (LSE Legal Studies Working Paper 1/2024, Apr. 22, 2024).

[9] Nigel Walker, Sentencing in a Rational Society (1969).

[10] Norval Morris & Michael Tonry, Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System (1991).

A "reconstruction" of criminal sentencing need not be an exclusively abstract exercise, or an attempt at achieving a level of conceptual precision of interest only to the academic community. Rather, when we examine legal doctrines and arrangements in the round—in this case, by viewing sentencing law and scholarship through the prism of respect—it can be a concrete exercise too, with material implications for individuals and the sentencing process alike. Ethics, like law, is, by its very nature, a regulatory instrument for the proper direction of individuals towards the common good. Ethics has the capacity to provide structured and systematic moral guidance, recommending what ought to be done or avoided. It too can be grounded, pragmatic, and empirically attuned.[11]

III. On Respect

In sentencing scholarship and practice, some principles attract deeper critical reflection than others. Some principles—proportionality, consistency, fairness, censure, aggravation, and mitigation—have been absorbed and brought into focus, while others remain implicit and unelaborated. As certain principles come to be treated as foundational, others are overlooked or displaced. On this view, it is entirely plausible that respect—despite its ethical depth and analytic potential—is one such value which quietly informs sentencing scholarship but has so far gone largely unremarked.

There are some niche exceptions. It may be argued, for example, that respect is a key criterion for legitimate sentencing, enhancing citizen-state relations, and promoting offender compliance with the sentence imposed.[12] Elsewhere, researchers have advocated remorse-based sentence reductions as a way of showing respect to offenders. For Tudor, "[r]espect is one of the fundamental responsive attitudes that the phenomenon of remorse commands or elicits in others."[13] There remains much to do, however, to clarify the precise meaning and significance of respect at sentencing and reassert the ethical project of criminal justice.[14]

A. What Is Respect?

What is respect? The Kantian notion of respect for persons provides an important starting point. The essence of Kant's account is that all persons are worthy of respect by virtue of their status as autonomous and rational human beings. Respect, in this sense, is a

[11] On the practical demand for ethical theory, see, e.g., Martha Nussbaum, Why Practice Needs Ethical Theory: Particularism, Principle, and Bad Behavior, in *The Path of the Law* and Its Influence: The Legacy of Oliver Wendell Holmes, Jr. 50 (Steven J. Burton ed., 2000).

[12] Gabrielle Watson, Respect and Legitimacy at Sentencing: Current Research and Future Priorities (Sentencing Academy 2021); Jessica Goldring, Defendants' Understanding of Sentencing: A Review of Research (Sentencing Academy 2021).

[13] Steven Keith Tudor, Why Should Remorse Be a Mitigating Factor in Sentencing?, 2 Crim. L. & Phil. 241 (2008); Richard L. Lippke, Response to Tudor: Remorse-Based Sentence Reductions in Theory and Practice, 2 Crim. L. & Phil. 259 (2008).

[14] On respect in the criminal process more broadly, see Gabrielle Watson, Respect and Criminal Justice (2020).

moral right that includes an obligation not to treat others instrumentally.[15] Kant holds that all and only persons are ends in themselves, which is to say that they have an intrinsic and incomparable moral worth called dignity.

There are two clear implications of the Kantian account of respect. First, when all individuals are equal in dignity and moral status, each has a right to respect. Second, the respect-worthiness of individuals is not conditional on whether they act morally. Dignity implies absolute worth. It cannot be diminished or lost through wrong actions or bad character, nor can it be increased through virtue or morally right action. Some contemporary accounts remain consistent with pure Kantian reasoning in insisting that respect cannot be surrendered. Duff claims, for example, that convicted offenders remain both humans and citizens worthy of respect and must, in sentencing and punishment, be treated as such.[16]

There is a broad consensus among philosophers that respect has both a behavioral and an attitudinal component. Respect can inhere, for example, in the act of praising or emulating others, not violating or interfering with them, assisting them, protecting them, leaving them alone, talking about them only in ways that reflect their intrinsic worth, and objecting to others' disrespectful talk.[17] However, it is routinely—and mistakenly—assumed by those outside philosophy that respect is exhausted by reference to the kinds of acts it requires or prescribes. Respect is also—and perhaps more centrally—about having or expressing a certain attitude towards others.[18] Then, there is scholarship that goes yet further: consider, for example, the Rawlsian claim that the presence or deficiency of respect in an institution is one indicator among many that it is just or unjust.[19]

No doubt respect is complex, and we have yet to arrive at a stable consensus on how best to theorize, identify, or cultivate respect in sentencing practice. That is no reason, however, to direct our attention away from it. Scholars including Ashworth and Zedner have referred to the "obvious relevance" of philosophy, insisting that its normative arguments can and should flow seamlessly into criminal justice debates.[20] Overall, we find in the philosophical literature strong reasons for ensuring that the sentencing process is compatible with respect for an offender's intrinsic worth, as well as a firm foundation on which to rule out excessively harsh treatment—or disrespect—of offenders on moral grounds.

---

[15] Immanuel Kant, Grundlegung zur Metaphysik der Sitten (Groundwork of the Metaphysics of Morals) (1785); see also Robin S. Dillon, Respect, in The Stanford Encyclopedia of Philosophy (Fall 2022 ed.) (Edward N. Zalta & Uri Nodelman eds., 2022) (https://perma.cc/7WKZ-GH98); Thomas E. Hill, Jr., Respect, Pluralism, and Justice: Kantian Perspectives (2000); Carla Bagnoli, Respect and Membership in the Moral Community, 10 Ethical Theory & Moral Prac. 113 (2007).

[16] R.A. Duff, A Criminal Law for Citizens, 14 Theoretical Criminology 293 (2010); Antony Duff, Citizens (Even) in Prison, 43 Netherlands J. Legal Phil. 3 (2014).

[17] Dillon, supra note 15.

[18] Id.

[19] John Rawls, A Theory of Justice (1971); John Rawls, Justice as Fairness: A Restatement (2001).

[20] Lucia Zedner, Pre-Crime or Post-Criminology?, 11 Theoretical Criminology 261 (2007); Andrew Ashworth, Criminal Justice, Not Criminology?, in What Is Criminology? 271 (Mary Bosworth & Carolyn Hoyle eds., 2011).

B. A Concept of Critical Inquiry

What are the attractions of respect for the sentencing scholar? First, respect can be an effective tool for moderating the ethics of the sentencing process. The flexibility of respect is such that it provides a means by which to appraise a diverse range of sentencing matters, sharpen our critique of others, and even to reimagine them. Respect might offer, for example, a coherent ethical framework for guiding the analysis of current practice. It might also be useful in evaluating reform proposals and mediating any conflicts of opinion contained within them. Second, by appealing to respect, we move beyond the view of sentencing as a narrowly instrumental exercise and reimagine it as a fundamental moment in the criminal process worthy of analysis in ethical terms.[16]

One example of respect at work in this way is in its capacity to reorient any discussion of what efficiency looks like in sentencing and criminal justice. Efficiency, of course, is a laudable goal for the sentencing process with which no one would reasonably disagree. However, implicit in contemporary discussions of sentencing, and of criminal justice more broadly, is a profound disagreement about what it means to be efficient. Efficiency in criminal justice should not be a value-free exercise. It is not simply about the number of cases processed, sentences handed down, financial savings made, or court time saved. It also implies a normative claim about what is just. Ideally, we would pursue instrumental outcomes such as the swift processing of cases only insofar as they are consistent with respect for those caught up in the system.[21]

C. An Institutional Standard

For a judge who must confront the task of selecting a sentence from a range of authorized punishments, respect might be viewed as a crucial component of the criminal process. The Equal Treatment Bench Book,[22] aimed at members of the judiciary, is a promising start, not least in its practical suggestions to judges on how to treat offenders equally and "with understanding and respect."[23] The guidance radically limits the possibility of unduly punitive treatment and sets out specific constraints on how a judge may act. The suggestions are modest, although a respect standard—if made explicit—could potentially commit the judiciary to much more than the minimum outlined there.

How might respect be pitched successfully as a new institutional standard that criminal courts should be required to endorse and maintain (alongside well-established standards such as proportionality and fairness)?[24] One option would be to make an intrinsic case for respect, namely, that it is to be valued irrespective of whether it is implicated in the pursuit of an instrumental outcome because it builds into sentencing an ethical sensitivity that we

---

[21] Watson, supra note 14.

[22] Judicial College, Equal Treatment Bench Book (Feb. 2021 with Apr. 2023 revisions).

[23] Id. at 9.

[24] For comparable work on hope, see Kimberley Brownlee, Punishment and Precious Emotions: A Hope Standard for Punishment, 41 Oxford J. Legal Stud. 589 (2021).

should value in a liberal democracy.[25] On this account, it would be perfectly acceptable to construct a *post hoc* account of the incidental instrumental benefits of respect, provided that those anticipated benefits do not motivate the display of respect in the first place.[26]

In developing an intrinsic case for respect, the point is not to undermine or object to the pursuit of instrumental objectives *per se*, which lie at the core of the activities of the criminal justice state and its agents. McBarnet was among the first to show that instrumental considerations had been prioritized in criminal justice (suggesting, at the time, that any appeal to due process as an independent constraint was merely ideological).[27] Criminal justice, however, functions best when it accommodates a mix of the instrumental and the ethical, and, in time, respect has the potential to become a unifying value at stake in the sentencing process itself.

IV. *Ali*

In England and Wales, we recently witnessed a new form of discretionary sentencing practice concerning the delay in—or diversion from—imprisonment on the grounds of exceptional prison overcrowding. On March 3, 2023, the Court of Appeal delivered its judgment in the case of *R v Arie Ali*,[28] which referred to sentencing and the impact of the exceptionally high male prison population in England and Wales. Quoting a letter from the Deputy Prime Minister to the Lord Chief Justice,[29] the judgment highlights that operating close to prison capacity has serious consequences for the conditions in which prisoners are held. The court held that, under these circumstances, when an offense crosses the threshold for a short custodial sentence, the sentencing judge may elect to suspend it or impose a community order instead.[30] It was further observed that "[s]entencing courts will now have an awareness of the impact of the current prison population levels from the material quoted in this judgment and can properly rely on that."[31]

The judgment in *Ali* does not mean that the high prison population is a factor which requires *all* short prison sentences to be suspended. Rather, under certain circumstances, the issue of prison capacity should be a factor to be integrated into the sentencing exercise. Immediately following *Ali*, the Sentencing Council for England and Wales issued a statement confirming that its guidelines, when considered in conjunction with core sentencing

---

[25] Watson, supra note 14.

[26] Id.

[27] Doreen J. McBarnet, Conviction: Law, the State and the Construction of Justice (1981).

[28] Ali, supra note 1; Georgia-Mae Chung, Prison Overcrowding and Operation Safeguard: Resultant Changes to Sentencing Practice (Sentencing Academy 2023).

[29] Ali, supra note 1, [20].

[30] Lord Justice William Davis, The Application of Sentencing Principles During a Period when the Prison Population Is Very High: Statement from the Chairman of the Sentencing Council (Sentencing Council for England & Wales, Mar. 20, 2023).

[31] Ali, supra note 1, [22].

principles such as proportionality, are sufficiently flexible to deal with these circumstances. It will be a matter for government to communicate to the courts when prison conditions have returned to an acceptable state.[43]

Where respect is concerned, this was an encouraging move by both the court in *Ali* and the Sentencing Council because there appeared to be a concern not merely with the imposition of the sentence but also with its overall scope, quality, and intensity. Sentencing officials seemed to be taking seriously the view that constituent criminal justice agencies are in real terms part of an integrated whole, and that the court process may be rendered ethically suspect if corrective measures are not applied.[32] There was an acknowledgment, for example, that more prisoners would be in overcrowded conditions while in custody, have reduced access to rehabilitative programs, and be placed further away from home, thus reducing family visits. Some prisoners would be held in poorly equipped police cells.

A human rights argument—and a renewed commitment to humane punishment—seem to be implicit here, although it is telling that neither the court in *Ali* nor the Sentencing Council speak of the issue in these terms. It is almost trite to observe that human rights are matters of paramount importance: as is well established, human rights set a minimal standard for institutional conduct on a global scale, and their violation constitutes a serious affront to justice. Notably, however, the duties associated with human rights often require actions involving respect.[33] That no distinctive significance was accorded to the notion of human rights (or related notions such as justice, dignity, or respect) at a time of acute prison overcrowding suggests that the driving force behind this temporary arrangement at sentencing was largely pragmatic, rather than ethical.

Traditionally, a sentencing court's duty extinguishes with the imposition of the sentence. The court cedes jurisdiction to the prison authorities to execute the punishment itself. The sentencing court is often oblivious to the nature of confinement and its effect on prisoners.[34] This static model assumes no interaction between the sentencing court and the prison; each authority operates its own autonomous regime, jurisdiction, expertise, and level of discretion. But in March 2023, we caught a glimpse of respect not only in the framing of sentences but also in the court's concern with their execution.[35]

And yet, mitigated punishment in response to prison overcrowding has the potential to be seriously divisive, not least because it risks shifting the focus of the sentencing hearing entirely. It has never been the primary concern of a sentencing judge to correct failures

[32] 3 The Trial on Trial: Towards a Normative Theory of the Criminal Trial (Antony Duff et al. eds., 2007).

[33] Respect may offer a more perspicuous way of talking about what normally goes under the heading of "human rights." See James Nickel & Adam Etinson, Human Rights, in The Stanford Encyclopedia of Philosophy (Fall 2024 ed.) (Edward N. Zalta & Uri Nodelman eds., 2024) (https://perma.cc/H8EW-AX4E); John Tasioulas, On the Nature of Human Rights, in The Philosophy of Human Rights: Contemporary Controversies 17 (Gerhard Ernst & Jan-Christoph Heilinger eds., 2012).

[34] For an extremely rare intervention on sentencing practice and prison overcrowding, see Lord Woolf et al., Sentencing Inflation: A Judicial Critique (Howard League for Penal Reform, Sept. 6, 2024).

[35] Id.

occurring elsewhere in the system. Adjusting sentences on the grounds of state failure in the management of the prison estate risks diverting attention away from offenders and shielding them from accountability. There is an implication for victims as well—vulnerable as they are to injury through insult and disrespect[36]—who may be concerned that this temporary measure may result in offenders receiving more lenient sentences than they deserve. For Margalit, the implications of disrespect can have a profoundly destructive impact on individuals: not only by humiliating them, but by excluding them from the good of community.[37]

The question arises, however, as to whether this short-term discretionary sentencing practice, set out in *Ali* and endorsed by the Sentencing Council, was undermined by the then-government's commitment—now being entertained by the Starmer administration—not to address prison overcrowding in England and Wales but to bring forward legislation to enable prisoners to be held overseas instead.[38]

Provided we subscribe to the view that the state has the exclusive right to set and police the boundaries of crime and punish citizens who transgress,[39] there is a *prima facie* case for respect. Too often, however, respect is overwhelmed by other principles and considerations—in this case, in the name of efficiency. An emerging interest in "foreign prison rental" implies that respect is far from being treated as a foundational value to be built into the purposes and rationale of sentencing practice, and there is also some resistance to the idea that we should pursue instrumental outcomes only insofar as they preserve and value respect. Interpreted in this way, a short-term commitment to increased flexibility at sentencing—which *prima facie* looks like a gesture of respect for prisoners and an attempt to limit their exposure to the harm of overcrowded prison conditions—in fact involves the sidestepping of disrespect in the English prison estate to deliver disrespect of another kind abroad. This will require judges to engage in a certain amount of superficial posturing and gesturing towards respect in its most basic form: enough for the sentencing court to convince those external to the institution that its practices are minimally consistent with the value. The real motivation behind flexible sentencing, however, seems largely pragmatic and has to do with whether the wider justice system is functioning well—or functioning at all.

As before, the aim is not to discredit the various instrumental functions—in this case, the management of the prison population—that criminal justice institutions purport to perform. It is simply to suggest that these instrumental concerns are held in their proper

---

[36] Axel Honneth, Disrespect: The Normative Foundations of Critical Theory (2007); Axel Honneth, Integrity and Disrespect: Principles of a Conception of Morality Based on the Theory of Recognition, 20 Pol. Theory 187 (1992).

[37] Avishai Margalit, The Decent Society (1996).

[38] Ministry of Justice, Press Release: Foreign Prison Rental to Ensure Public Protection (Oct. 3, 2023); Eir Nolsøe & Charles Hymas, Prisoners Could Serve Their Time in Estonia, The Telegraph, Sept. 6, 2024.

[39] Lucia Zedner, Penal Subversions: When Is a Punishment not a Punishment, Who Decides and on What Grounds?, 10 Theoretical Criminology 3 (2016).

place. At present, a clear orientation towards outcomes—and the means used to achieve those outcomes—erodes respect and narrows its range and significance.[40]

V. Sentencing *in absentia*

When convicted offenders in England and Wales are held in custody and directed to attend court for sentencing, judges do not have the power to force them to attend. There are typically three moments when a refusal may arise. Offenders may refuse to leave their prison cells, refuse to leave prison to attend court, or refuse to leave their cells once they have arrived at court. The Criminal Procedure Rules 2020 provide that the court must not proceed if defendants are absent, unless the court is satisfied that they have waived their right to attend. Provided defendants have legal representatives to attend on their behalf, the court can impose sentences of imprisonment.[41]

Defendants' refusal to attend sentencing has become more common, but it is not an entirely new phenomenon.[42] This decade, there have been several high-profile instances of non-attendance, each of which serves to illustrate the increasing magnitude of the problem, as well as the unethical implications of procedural rules which are framed in unduly rigid terms.

In August 2023, former neonatal nurse Lucy Letby refused to attend her own sentencing hearing for the murders of seven babies and the attempted murders of another six entrusted to her care. Having also refused to attend via video link, she remained in the cells below Manchester Crown Court as bereaved family members delivered Victim Personal Statements and the judge passed a Whole Life Order in her absence.[43]

In April 2023, Thomas Cashman exploited the same procedural rule by refusing to attend his own sentencing hearing. He received a sentence of life imprisonment with a minimum term of 42 years for the fatal shooting of nine-year-old Olivia Pratt-Korbel in her own home. Like Letby, he too travelled to Manchester Crown Court but declined to leave his cell, claiming that he had been provoked by court officials. His behavior prompted a high-profile campaign for Olivia's Law which, if enacted, would compel convicted offenders to attend sentencing and face the families of those they have harmed.[44]

In December 2022, the family of Zara Allena, a young woman who was sexually attacked and murdered as she walked home, said her killer should have faced them in court

[40] Watson, supra note 14.

[41] The Criminal Procedure Rules 2020, 25.2(1)(c).

[42] See, e.g., Caroline Davies, Levi Bellfield Gets Life Without Parole, The Guardian, June 24, 2011.

[43] The Honourable Mr Justice Goss, R v Lucy Letby sentencing remarks (Aug. 2023); Rachel Pain, Lucy Letby and the Reality of Compelling Defendants to Attend Sentencing Hearings (Mountford Chambers, Aug. 31, 2023).

[44] Mrs Justice Yip, R v Thomas Cashman sentencing remarks (Apr. 2023); Nicole Winchester, Forced to Face Justice: Will Ordering Attendance at Sentencing Hearings Work? (House of Lords Library, Oct. 24, 2023); BBC News, Thomas Cashman: Renewed Calls to Force Criminals to Attend Sentencing (Apr. 4, 2023).

so they could look him in the eye when being sentenced.[45] Jordan McSweeney was absent from the dock as the judge passed a life sentence with a minimum term of 38 years.[46] For the victim's family, McSweeney had taken control of events, and his refusal to attend rendered the legal process incomplete.[47]

In July 2022, Koci Selamaj was sentenced to life imprisonment with a minimum term of 36 years for the sexually motivated murder of Sabina Nessa in a London park. Selamaj refused to attend sentencing at the Old Bailey and further declined the court's invitation to attend via video link from his prison cell.[48] For Sabina's family, his absence from the dock was a further leveraging of power over them and a final insult of the highest order.

Following each high-profile refusal to attend sentencing—rendered legitimate by a little-known procedural rule[49]—a resurgence in public and political opposition to it occurred. Campaign groups, news media, and parliamentarians have called for an urgent review of the law, voicing concern for—and even anger at—a procedural rule which permits convicted offenders to opt out. For some, the presence of the offender in the dock as the sentence is handed down is equated with a sense of natural justice: the heinous nature of their crimes should mean that reluctant defendants be restrained, handcuffed, and brought to court using brute force.[50]

Yet such proposals push at the very limits of what we understand a dignified sentencing exercise to be and are reminiscent of some modern writings on respect which have questioned the Kantian notion that all persons are owed respect regardless of their conduct or the character traits that they display. On these accounts, respect should be forfeitable. Some contend that those who commit crimes remorselessly, for example, warrant less—or no—respect.[51] To borrow Margalit's terms, the claim is that these criminals have "desecrated their humanity": the very nature that was to serve as a source of respect in the first

---

[45] The etymological root of respect—"to look back at" or "to look again"—could not be more fitting here. The prefix ("re"), while referring to the act of returning the look of another, could also be treated as an intensifier, implying prolongation or persistence of attention. Allen W. Wood, Respect and Recognition, in The Routledge Companion to Ethics 562 (John Skorupski ed., 2010).

[46] Mrs Justice Dame Cheema-Grubb, R v Jordan McSweeney sentencing remarks (Dec. 2022). In 2023, the Court of Appeal substituted a sentence of life imprisonment with a minimum term of 33 years. R v Jordan McSweeney [2023] EWCA Crim 1250.

[47] Winchester, supra note 44.

[48] Mr Justice Sweeney, R v Koci Selamaj sentencing remarks (July 2022); Shona Love, Should Those Convicted of Serious Offences Be Compelled to Face Their Victim's Family? (Pump Court Chambers, Mar. 9, 2023); Jenn Selby, Refusal of Sabina Nessa's Murderer to Attend Sentencing May Prompt New Law, The Guardian, Apr. 16, 2022.

[49] The Criminal Procedure Rules 2020, 25.2(1)(c).

[50] Edward Malnick, Law that Forces Killers to Attend Sentencing Will Be in King's Speech, The Telegraph, Aug. 19, 2023.

[51] On the merits and limits of this argument, see David Middleton, Introduction, in Special Issue on Respect 12 Res Publica 1 (2006); Hill, supra note 15, ch. 4.

place.[52] Yet, importing such a narrow view of respect into the sentencing process could be counterproductive. Respect is not something that we earn or fail to earn but something that we are owed unreservedly as rational human beings and irrespective of moral merit or demerit.[53]

There may be multiple and overlapping reasons for non-attendance at sentencing. The reasons in each case should be ascertained as far as possible and further investigations made, for instance, when prisoners have claimed or proven ill-health. Some offenders may choose to stay away as part of a broader campaign of maintaining innocence. Prosecutors should assist the court in communicating the legal position to prison authorities in respect of when and why the defendant's attendance at court is expected.

It is essential that defendants make informed moral decisions regarding non-attendance. Defendants must either know, or be indifferent to, their role in devaluing Victim Personal Statements, and depriving them of meaningful recognition. After all, the delivery of such statements is the only opportunity in England and Wales for affected parties to participate in the formal criminal process.[54] A respect rationale would encourage sensitivity towards victims in such circumstances: indeed, the obligation to respect can sometimes function as a negative constraint and can involve refraining from treating others in certain ways. Offenders would be well advised not to treat victims as if they were worthless, degrade or humiliate them, or treat them in ways that flout their nature and worth as persons.[55]

Except for the sentencing remarks made by the judges in *McSweeney* ("the defendant's decision not to come up from the cells to court . . . shows that the man who took Zara Aleena's life has no spine whatsoever"),[56] and in *Selamaj* ("however cowardly [his] refusals may be, I have no power to force him to attend"),[57] judicial commentary on the rule has been muted. Sentencers can do little more than assert the law, deliver their remarks as if convicted offenders were present to hear them, and direct that copies of the Victim Personal Statements and sentencing remarks are made available to them in writing.

A. Reasonable Force

In the U.K., there is significant cross-party support for new discretionary powers for judges to order attendance at sentencing.[58] While politicians have been quick to adopt the language of "force," such plans have been sweeping in ambition but light on detail. We

[52] Margalit, supra note 37, at 64.

[53] Dillon, supra note 15; Watson, supra note 14.

[54] Freya Rock, Victim Personal Statements: A Review of Recent Research and Developments (Sentencing Academy 2024).

[55] Dillon, supra note 15.

[56] Mrs Justice Dame Cheema-Grubb, supra note 46.

[57] Mr Justice Sweeney, supra note 48.

[58] Ministry of Justice, Press Release: Offenders to Be Ordered to Attend Sentencing (Aug. 30, 2023); Prime Minister's Office, The King's Speech 2023: Background Briefing (Nov. 2023); Brader, supra note 2.

must be careful not to underestimate the practical difficulties around restraining and compelling convicted offenders to attend court, including potential human rights violations. Aside from bringing defendants before the court in handcuffs, even the use of reasonable physical force to compel attendance in the dock would be fraught with difficulty. It would remain a decision for the prison as to whether reasonable force is to be used by its officers, considering all the circumstances, including the temperament of defendants at the point at which force is to be applied. While having close regard to the overall fairness of the process, there is a balance to be struck between ensuring the safety of those responsible for containing offenders, and effectively dragging offenders to the dock for public and judicial condemnation at whatever cost.[59]

If a courtroom on the solemn occasion of sentencing were to permit the handling of offenders in this way, the hearing may descend into a public spectacle altogether more distressing for those directly affected. Would defendants be expected to remain in court however they behave? On what grounds may a judge remove them for disrupting the proceedings or provoking those present? The proposal sits uncomfortably within a sentencing process otherwise committed to proportionality. And if implemented inconsistently, the reform would likely be deemed a superficial attempt at respect for victims and their families, offering them no consolation or catharsis from the process itself.

A less invasive and more pragmatic solution would be to facilitate an offender's attendance by means of live video link to their cell, while making no assumptions about how, if at all, the offender will respond.[60] Section 51 of the Criminal Justice Act 2003 permits live audio or video links during sentencing proceedings. While the technology is widely available, the only constraint would be financial. Every court and prison would require a designated cell, fully equipped with live streaming capabilities: a substantial investment for the benefit of those who elect not to attend.

B. Sentence Aggravation

The second proposal is for the judge to draw an adverse inference from absence in calibrating the sentence, treating it as an aggravating factor and extending the length of the custodial sentence by two years. It has been mooted that this two-year extension would apply to offenses where the maximum sentence is life imprisonment, including murder, rape and grievous bodily harm with intent, and that judges would be given discretion to use these new powers as appropriate.[61] Another option in response to non-appearance might be a loss of time spent on remand, which would usually count towards the sentence imposed. Meanwhile, McSweeney's defense team secured a five-year reduction for his guilty

[59] Watson, supra note 2.

[60] Rowena Mason, Former Minister Suggests Broadcasting Lucy Letby's Sentencing to Her Cell, The Guardian, Aug. 20, 2023.

[61] Brader, supra note 2, § 2.1.

plea.[62] For his late guilty plea, Selamaj received a three-year reduction.[63] These sentence "discounts" could become a privilege only for those who attend.

Yet Letby, Cashman, McSweeney, and Selamaj had each been convicted of murder, and were anticipating mandatory life sentences. In passing a life sentence, judges must specify a "minimum term" which provides the earliest date on which a prisoner can apply for parole.[64] The starting points for adults convicted of murder range between a minimum term of 15 years and whole life, and it is far from guaranteed that a life prisoner will be deemed safe for release at the expiry of the term. A moderate extension of two years, a loss of time on remand, or the loss of a benefit associated with an early guilty plea, would likely have little, if any, effect on offenders refusing to attend. In Letby's case, the threat of a lengthier sentence would be entirely meaningless: the sentence of life without parole is as severe as the law of England and Wales will allow.

C. A Right of Reply

How should the sentencing court respond—if at all—to uncooperative offenders when they have reached the limits of lawful punishment? There is a risk that the government's commitment to enacting Olivia's Law may fall flat, notwithstanding the public's spirited advocacy for change. The first reform proposal risks radically undermining an otherwise civilized court process, while the second would be largely if not wholly inconsequential for those convicted of the most serious offenses. Perhaps the best that could be achieved is a strong presumption, written into law, in favor of attendance in person.

No doubt the issue of compellability is delicate and complex—not only in legal, but also in ethical terms. There may be no satisfactory solution, in which case it will be the government's duty to recognize and explain to the public why that is so. Let us not forget that the punishment is the sentence itself—the deprivation of liberty—not the hearing at which it is announced.

As before, respect proves helpful here in deciding which reform proposals we should endorse, how they are to be interpreted, and what exceptions we should make. An alternative incentive for convicted offenders to attend sentencing in person, and a genuine opportunity for respect and reconciliation, might be to permit them a right of reply both to the sentencing remarks and Victim Personal Statements—ideally in the form of an apology, provided it is neither feigned nor forced. It is an alternative possibility reminiscent of Sennett's work on mutual respect, which ascribes significance to its responsive and relational character. For Sennett, respect involves a form of mutuality that "requires expressive

[62] Mrs Justice Dame Cheema-Grubb, supra note 46.

[63] Mr Justice Sweeney, supra note 48.

[64] Sentencing Act 2020, Schedule 21.

work."[65] It is not a passive state or intrinsic quality—like dignity, for example[66]—but, rather, a form of positive consideration and a practice that requires a degree of active participation.

VI. Modest Realism

Let us pause and take stock. There are conceptual limits to the account I have sketched. It is essential not to overstate the capacity of respect to function as a concept of critical enquiry for sentencing or inflate expectations of what the criminal court process can realistically accomplish. Respect is one value among others. It would be naive to propose respect as an overarching category and suggest that we can make sense of the sentencing hearing exclusively in these terms; nor should we expect respect to generate straightforward answers to every ethical dilemma in criminal justice.[67]

If respect is to gain traction and make a decisive contribution to the theory and practice of sentencing, one challenge will be to ensure its compatibility with the retributive principle of proportionality.[68] The sentencing community has long been invested in the delicate task of crafting the proportionate sentence[69] and has, on occasion, promoted proportionality as the "master principle" in the field.[70] According to this principle, the severity of the punishment should increase progressively to match the seriousness of the crime and the offender's level of blameworthiness, and any departure from proportionality stands in need of robust defense. However, without understating the pervasive appeal of proportionality and the role that it has played in "modernising and tempering state punishment,"[71] an analysis of sentencing scholarship and practice should not stop there.

There is no doubt that proportionality has had a powerful influence on the field, but it is not a standalone concept. The constraining power of the appeal to proportionality is contingent upon other aspects of the context and system in which it operates. As Lacey and Pickard remind us, proportionality does not have an independent effect: when it works to limit punishment, this is because it resonates with deeper conventions, legal values, and

---

[65] Richard Sennett, Respect: The Formation of Character in an Age of Inequality (2004).

[66] Dillon, supra note 15.

[67] Gabrielle Watson, The Guilty Plea and Self-Respect, in Sentencing the Self-Convicted: The Ethics of Pleading Guilty 111 (Julian V. Roberts & Jesper Ryberg eds., 2023).

[68] See, e.g., Andrew Ashworth & Rory Kelly, Sentencing and Criminal Justice ch. 4 (2021); Richard S. Frase et al., Proportionality of Punishment in Common Law Jurisdictions and in Germany, in 1 Core Concepts in Criminal Law and Criminal Justice 213 (Kai Ambos et al. eds., 2020).

[69] Julian V. Roberts, Promoting Proportionality through Sentencing Guidelines, in Proportionality in Crime Control and Criminal Justice 227 (Emmanouil Billis, Nandor Knust & Jon Petter Rui eds., 2021); Julian V. Roberts, The Time of Punishment: Proportionality and the Sentencing of Historical Crimes, in Of One-Eyed and Toothless Miscreants: Making the Punishment Fit the Crime? 149 (Michael Tonry ed., 2019).

[70] Julian V. Roberts & Andrew von Hirsch, Statutory Sentencing Reform: The Purpose and Principles of Sentencing, 37 Crim. L.Q. 220 (1995).

[71] Nicola Lacey & Hanna Pickard, The Chimera of Proportionality: Institutionalising Limits on Punishment in Contemporary Social and Political Systems, 78 Mod. L. Rev. 216 (2015).

moral values.[72] One way to sketch a relationship between respect and proportionality, then, would be to show that proportionality works so well in part because it resonates with respect as an underlying value. Each perform a different task but are nonetheless complementary. While proportionality is concerned with the rational calculation of sentence, respect concerns the delivery and execution of it. In this way, respect speaks to the idea that it matters *how* we sentence convicted offenders and not just that we do so proportionately.

VII. Conclusion

One of the most striking features of sentencing scholarship and practice is that certain timeless ideas—such as respect—inform many of the most urgent contemporary matters. This article has sought to cut across and connect with Lacey, Wells, and Meure's original vision for the reconstruction of criminal law and its associated institutional forms by proposing a new paradigm with which to critique and reimagine the sentencing hearing. Sentencing, after all, is the pinnacle of the criminal court process—"the point at which the aims of state punishment are given concrete and public expression"[73]—and an institutional practice to which respect has obvious and special relevance.

Prioritized by some scholars as a "fundamental moral right" owed to all indiscriminately,[74] respect has potential—so far unexploited—for sentencing, both as a concept of critical inquiry for legal scholars and an institutional standard that criminal courts should be required to endorse and maintain. Two key insights emerged. First, the real value and potential of respect as a critical and regulative ideal at sentencing is being diminished by the tendency to construct it as a side-constraint on dominant instrumental concerns such as the swift processing of cases and the management of an overcrowded prison estate. Second, little-known procedural rules can have serious, if unintended, consequences, as exposed in the ongoing campaign for Olivia's Law. Here, respect for a rule permitting non-attendance at sentencing tends to manifest as an insult—and a form of deep disrespect—to victims and their family members. Both insights serve as important reminders that respect is not merely of abstract conceptual interest but is fiercely pragmatic. It can—and should—gain traction in the field for its capacity to critique and enlighten, enabling a finely-textured analysis of current practice and gesturing towards meaningful reform.

Let us hope, then, that sentencing scholars and practitioners take note. When we reorient the criminal court towards respect, that respect need not be utopian. It simply requires a degree of mutual understanding when it is owed to, called for, deserved, elicited, or claimed by another: judge, counsel, offender, and victim alike.[75] An Independent Sentencing Review has now commenced in England and Wales and the panel's findings are to

[72] Id.

[73] Ralph Henham, Sentencing and the Legitimacy of Trial Justice 1 (2012).

[74] Dillon, supra note 15.

[75] Id.; Watson, supra note 14.

be submitted in full to the Lord Chancellor by spring 2025.[76] Now, more than ever, we must follow Lacey's lead and remain open to a paradigm shift in criminal law, including how it operates, and what—and whom—it is for.

[76] Ministry of Justice, Independent Sentencing Review 2024 to 2025 (Oct. 21, 2024).