

BOOK REVIEW

Lyndon Harris and Sebastian Walker: Sentencing Principles, Procedure and Practice (3rd edn, Thomson Reuters Sweet & Maxwell 2023) ISBN 9780414108875

Author: Bláithín O'Shea, LLB (UL), LLM (UCD), PhD Candidate (UL)

Prior to the publication of *Sentencing Principles, Procedures and Practice*, Lyndon Harris and Sebastian Walker were lead lawyers on the Law Commission of England and Wales' Sentencing Codification project wherein they instructed Parliamentary Counsel on the drafting of the Sentencing Code and gave evidence to the Joint Committee during its passage through Parliament. These engagements ultimately resulted in the enactment of the Sentencing Code on 1 December 2020 which witnessed the consolidation of fifty Acts of Parliament into a single Sentencing Act. While this exercise may not have resulted in any substantive changes to the law, Harris and Walker claim that the Sentencing Code nevertheless 'makes numerous changes to improve and harmonise the law' and 'marks a new dawn in the in the area of sentencing'.¹ In drawing, then, upon their unique, first-hand knowledge of the central principles underpinning this new era, Harris and Walker have presented readers with a hitherto absent, comprehensive textbook mapping the changing sentencing landscape of England and Wales.

Significantly, *Sentencing Principles, Procedures and Practice* succeeds, not only in yielding a detailed doctrinal account of both the legal principles and procedures which shape contemporary sentencing practice across the Irish Sea (an impressive feat in and of itself, it must be said), but it also crucially frames these developments within a normative discourse that is alert to critical scholarship and empirical studies in the field. The result, in the words of the Honourable Mr. Justice Hilliard, is a 'work of considerable depth and practical utility'.² Since its first edition, *Sentencing Principles, Procedure and Practice* has been described as an 'invaluable resource for anyone engaged in sentencing research',³ and has been cited in the Court of Appeal (Criminal Division).⁴ The third edition continues to contribute to the changing sentencing landscape, with additions such as the Police, Crime, Sentencing and Courts Act 2022, recent cases from the Court of Appeal (Criminal Division) and new Sentencing Council guidelines.

In a reflection of its vast breadth of analysis, the book is split into two parts. Part A discusses sentencing in England and Wales, including sentencing principles, procedure and purposes as well as sentencing guidelines under the Sentencing Code. Part B, meanwhile, goes deeper into how courts determine the appropriate sentences for specific criminal offences. Due to the book spanning 18 chapters (in excess of 1,900 pages), the proceeding review naturally reflects a selective account of the salient features of the text.

In Chapter A1, the authors set out general sentencing provisions and principles in England and Wales. They outline how the jurisdiction's sentencing scheme is 'principally' retributive in nature (this is reflected in the availability of custodial and non-custodial sanctions

¹ Lyndon Harris and Sebastian Walker, *Sentencing Principles, Procedure and Practice* (Thomson Reuters, Sweet & Maxwell 2023) vii.

² *ibid* ix.

³ Tom O'Malley, 'A superb new book on English sentencing law and practice' (*Sentencing, Crime and Justice*, 2 March 2021) <<https://sentencingcrimeandjustice.wordpress.com/2021/03/02/a-superb-new-book-on-english-sentencing-law-and-practice/>> accessed 3 March 2023.

⁴ See *R v Channer* [2022] 1 Cr. App. R. (S.) 3 [47]-[48].

necessitating offences to be serious enough to justify their use) and they observe how accounting for the seriousness of an offence assists in the determination of the sentence to be imposed.⁵ The authors address the purpose of sentencing guidelines (namely, to ‘supplement’ and ‘not replace’ the general statutory duty of proportionate sentences and to ‘guide’ the sentencer’s discretion).⁶ They use academic analysis to explore the relationship between harm and culpability in the absence of guidance on this matter from the Sentencing Code.⁷ They also provide a contextual insight into sentencing guidelines and their current provision and application under the Sentencing Act 2020.⁸

Following the introduction to sentencing in England and Wales given in Chapter A1, the remaining Chapters in Part A focus on the different stages of sentencing in more detail. Chapter A2, for instance, addresses the pre-sentence stage in England and Wales. The authors’ analysis of this topic is focused on the following: the applicability and limitations of the ‘Goodyear’ procedure (whereby defendants may ask the court for an advance indication of the sentence); the limited circumstances in which a deferment order can be imposed under the Sentencing Act 2020; the legislation governing committal for sentence (i.e., the transfer of cases from the magistrates’ court to the Crown Court); remission for offenders under the age of 18; and adjournment procedures. Chapter A3 through to Chapter A6 highlight the sentencing hearing, primary and secondary sentencing disposals and the sentencing procedure for children and young persons. Chapter A7 focuses on the consequences of conviction with a specific reference to notification requirements which apply to sexual offences and terrorism offences.

In Chapter A8, the authors discuss how section 2 of the Sentencing Code ‘drastically’ simplifies the law applying to non-recent offences committed on or after 1 December 2020.⁹ Essentially, for any convictions before this date, ‘reference must be made to previous preserved regimes’ as the Sentencing Code will not apply. At this juncture, the authors also consider the complexities surrounding Article 7 ECHR and the Sentencing Code. The former states that:

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

Thus, in order to ensure compliance with Article 7, the Sentencing Code’s ‘clean sweep’ policy cannot apply in circumstances where ‘to do so would expose the offender to a heavier penalty than that which applied at the date of the offence’.¹⁰ In this regard, the authors highlight three situations in which there will need to be ‘careful reference’ to the date of the offence in order to ensure compliance – offences of murder; life sentences; and minimum sentences.¹¹ The authors provide further guidance on Article 7 ECHR in circumstances in

⁵ Harris and Walker (n 1) para A1-009.

⁶ *ibid* para A1-011.

⁷ *ibid* para A1-012. On this point, the authors argue that ‘the weight to be given to culpability and harm should vary with the offence in question, the purpose of criminalisation and the extent to which the assessment of either is built into the *actus reus* or *mens rea* requirements.’

⁸ *ibid* paras A1-030 – A1-049.

⁹ *ibid* paras A8-001 – A8-004. For any conviction before this date, reference must be made to ‘previous preserved regimes, even where re-sentencing’.

¹⁰ *ibid* para A8-004. Harris and Walker describe this ‘clean sweep’ as ‘the removal of the need to refer to previous layers of legislation that have been repealed but partially saved by unnecessarily complicated transitional provisions.’ – (n 1) vii.

¹¹ *ibid*.

which a defendant crosses an age threshold and they also clarify what constitutes a heavier penalty.¹² In the final section of Chapter A8, the authors expound on their argument that ‘the question of whether a sentence is lawful... and whether a sentence is appropriate are two distinct questions’ by providing the example of a robbery – although it may be *lawful* to impose a life sentence for this offence, it does not mean that it is *appropriate* to impose a life sentence for it. The authors finish the chapter by discussing current approaches in determining the appropriate sentence for an offender with specific reference to the Court of Appeal (Criminal Division), before providing a critical analysis on how to improve this approach.¹³

Chapter A9 details the sensitive and complex issue of sentencing offenders with significant mental health issues or disorders. As the authors themselves note, ‘mental health issues or disorders exist on a spectrum’.¹⁴ Accordingly, the specific and separate consideration of offenders falling within this categorisation is welcome as it allows a discussion on how a sentence should vary depending on a person’s mental illness or disorder. By splitting the section into three (pre-sentence; disposals available for offenders on conviction; and disposals available where the defendant has been found unfit to plead but to have done the act or omission alleged, or found to be not guilty by reason of insanity), the authors write about this topic with great clarity. The final chapter in Part A focusses on post-sentence issues such as variations in sentences, reviews of sentences, release/recall procedures and breach, amendments and discharges in primary and secondary disposals.

The Chapters contained in Part B are written by the authors in a way that mirrors the modern approach to sentencing in England and Wales for specific offences (i.e., violent and sexual offences, property, drug and driving offences, regulatory offences and offences against justice). More specifically, it explores the imposition of sentences and the application of the sentencing guidelines (and when there are no guidelines applicable, the authors stipulate what the ‘general’ guideline is) in a practical context. The authors provide commentary on the issues that may arise from the guidelines, but they take a different approach from other sentencing texts in that their commentary only includes case law that expands upon the sentencing guidelines and shows the reader how the guidelines should be interpreted or applied. In doing so, the authors present refreshing insights with practical outcomes.

Sentencing Principles, Procedure and Practice is a rich and considered tome that provides a valuable insight into the continuously evolving sentencing landscape of England and Wales. Through their comprehensive descriptive account of sentencing practice and procedure, Harris and Walker have created a high calibre yet accessible textbook that offers scholars, practitioners and judicial authorities a welcome field guide on navigating the labyrinthian formalities of modern sentencing practice as it has been re-ordered under the Sentencing Code. However, it would be to do a disservice to the textbook to frame its value entirely in the context of its interrogation of the Sentencing Code of England and Wales. Both the wide applicability of the general sentencing principles excavated in the book – and the scholarly deeper critique of their operation – offers rich, transferrable insights that might usefully inform other common law jurisdictions in their approach to sentencing. Indeed, from an Irish context, the text may be particularly valuable to those on the Sentencing Guidelines and

¹² *ibid* paras A8-008 – A8-011.

¹³ *ibid* para A8-014.

¹⁴ *ibid* para A9-001.

Information Committee (“SGIC”) in preparing draft sentencing guidelines following their empirical analysis of data pertaining to sentencing practices in Ireland.¹⁵

¹⁵ See section 23(2) of the Judicial Council Act 2019; Jay Gormley and others, *Assessing Approaches to Sentencing Data Collection and Analysis: Final Report* (Judicial Council of Ireland 5 May 2022).