SENTENCING THE MOTORING OFFENDER

ROGER HOOD

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Sentencing the Motoring Offender

A STUDY OF MAGISTRATES' VIEWS AND PRACTICES

by
Roger Hood
Fellow of Clare Hall
and Assistant Director of Research
in the Institute of Criminology, Cambridge

with the assistance of
K. W. Elliott *and* Eryl Shirley

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Foreword

by Sir Leon Radzinowicz

In terms of death, maiming, injury and destruction, motoring offences are the most dangerous and expensive in modern society. In terms of numbers they are the most frequent. More people appear before the magistrates for such trangressions than for any other offence. Yet our attitude to them is ambiguous. The predicament is at its most acute in the courts, since it is there that decisions have to be made about the penalties imposed. Magistrates hear evidence of the appalling consequences of some of these offences, and they dare not minimize their gravity. They see before them motorists, often citizens with blameless records and guilty of more than carelessness, and they are reluctant to class them as criminals. How do they resolve such dilemmas? This is one of the basic questions Dr Hood has set out to answer.

He is eminently qualified for the venture. His well-known *Sentencing in Magistrates' Courts*, has paved the way, and the magistrates themselves have been eager for him to embark upon this further exploration. His methods have broken new ground in this country. Instead of depending upon records, never an adequate basis for such investigations, he has sounded the magistrates direct, by way of interviews and a series of sample cases, and he has evolved a research design which is both original and provocative. He has thus been able to collect information about the social and personal backgrounds of magistrates, to assess their influence upon decisions and to discover what kinds of case produce most disagreement.

Of crucial importance are the differences of attitude amongst magistrates to the relationship between motoring offences and other kinds of crime. These are a major factor in producing discrepancies in sentencing, discrepancies which are widest where the offences are nearest to 'ordinary' crime, in terms of the injury to the victim or the previous record of the motorist.

It emerges, however, that members of a Bench tend to share a common policy. Dr Hood suggests that any attempt to achieve yet further uniformity, by a system of tariffs or basic penalties, would

be misguided. It would inhibit the urge to make more explicit the assumptions that underlie sentencing. That kind of questioning is vital. It is not the least of Dr Hood's achievements to have given it this further impetus. His report is remarkably succinct and makes remarkably good reading.

On behalf of the Institute of Criminology I would like to express our great appreciation to Baroness Wootton of Abinger and the other members of the Consultative Committee who have given us so much of their time and so much good advice.

Cambridge, March 1972

Acknowledgements

THE RESEARCH which this book reports has rather a long history. After the publication of my book *Sentencing in Magistrates' Courts* (1962), the Magistrates' Association suggested that I investigate the extent of disparity in sentences imposed by magistrates' courts on motoring offenders. It appealed to me because of the opportunity to extend my previous work to other areas and to try new methods of investigation. The project was financed by the Home Office and a Consultative and Steering Committee was set up with members from the Magistrates' Association and other interested bodies. The pilot work began in 1964 and the main fieldwork, which involved interviewing over five hundred magistrates, was carried out between 1965 and 1967 when I was Lecturer in Social Administration at Durham University. The remaining work was completed in Cambridge.

Throughout the project, and since the fieldwork was completed, there have been some changes in the law, in practice and in the outlook of magistrates, notably through the great expansion of training schemes. I have been very much aware of how the scene can change, and have therefore tried to present the findings of the empirical study in the context of the ever-developing debate surrounding the problem of dealing with motoring offenders in the courts.

Over the years I have been greatly helped by many people and organizations. First I should make clear my belief that the study would not have been possible without the keen support of the Magistrates' Association, the Lord Chancellor's Department, the Justices' Clerks' Society and the Home Office, all of whom laid the foundation for our acceptance as *bona fide* researchers by the vast majority of magistrates we approached. In particular, I would like to thank the members of the Consultative and Steering Committee who advised me at all stages and provided access to the records of Magistrates' Association Committees. Nevertheless, I especially want to make it clear that none of these bodies is in any way necessarily associated with, or responsible for, the views presented in this book.

My main helpers in carrying out the survey and in dealing with the data were, as indicated on the title page, Mr Kenneth Elliott and Miss Eryl Shirley, who were employed at different stages as full-time research workers. Mr Elliott was in at the beginning, tirelessly

helping with the collection of material for the pilot stage and then undertaking, at great personal sacrifice, the task of travelling round the country to interview almost all the magistrates. It was due to his tact and wisdom that so many eventually agreed to become the subjects of research—and, I venture to say, to enjoy the experience. He was also in charge of coding most of the data (before leaving in 1967) and at the end patiently read my manuscript and gave extremely helpful advice based on his exceptional experience. Miss Shirley joined me for a year at the end of 1969 as the statistician responsible for analysing the data concerned with the spread of sentences and the relationship between the social and personal backgrounds of magistrates and their sentencing decisions. She not only developed the necessary computer programmes and made the decisions on how best to handle the voluminous array of data but presented the results in a clear form as a basis for my report. At a later stage she also read the manuscript and gave valuable advice in dispelling my statistical misconceptions. The statistical appendix was drafted by Miss Shirley.

I am also grateful to Dr Terence Willett for advice and co-operation at the planning stage; to Rodney Coleman who undertook some early statistical analysis on a part-time basis and who, with his student, Richard Heagerty, helped me to analyse the 'decision-making game' which is reported in Chapter 6; to Patricia Brantingham for the substantial assistance with computer programmes; and to Dr David Darwent, who aided Mr Elliott with the interviews for a short period. I wish also to thank all those who helped with coding and secretarial work, especially Miss Margaret Guy, who carefully transcribed many drafts. My colleagues Richard Sparks and David Thomas made a number of very helpful comments on the manuscript. Naturally, I am extremely grateful to all those magistrates and clerks who gave so freely of their time and ideas. I hope that in return the study may prove to be of some interest and value to them.

I wish finally to thank Sir Leon Radzinowicz, who welcomed my continuing concern with this study when I came to Cambridge from Durham in 1967. He has not only wholeheartedly encouraged me to complete it, but at the stage when drafts were confused, messy and disordered, helped me enormously to impose a framework for the final version.

Membership of the Consultative Committee

The Baroness Wootton of Abinger [Chairman].

Mr T. S. Lodge, C.B.E., Director of Research and Statistics, Home Office Research and Scientific Department.

Mr R. North, J.P., Chairman, Road Traffic Committee and Member of the Council of The Magistrates' Association.

Mr B. Price Francis, O.B.E., LL.B., D.P. A., Clerk to the Justices, City of Coventry.

Mr J. B. Turner, J.P., Member, Council and Executive of The Magistrates' Association.

Dr N. D. Walker, Reader in Criminology, Nuffield College, Oxford.

Mr A. M. F. Webb., C.M.G., Deputy Secretary of Commissions of the Peace, Lord Chancellor's Office.

Contents

CHAPTER 1

The Problem

ABOUT a million persons appear each year before magistrates' courts charged with offences relating to motor vehicles. Nearly all plead or are found guilty.[1] Many still seem to feel a sense of grievance. They may blame the police for prosecuting them but their main complaints seem to be directed against the sentences imposed by the magistrates. These complaints are due partly to ignorance about the principles on which sentences are decided and partly to a genuine belief that there are gross disparities in the penalties given to offenders who have committed the same kind of offence and have similar personal circumstances.

The objects of this research are both practical and theoretical. On the practical side it sets out simply to chart the extent to which disparities exist. At the same time it attempts to expose the theoretical basis of sentencing by studying the views of magistrates about the motoring offender and his punishment and treatment; thus, it is hoped, providing a basis for explaining sentencing disparity. An entirely new method of inquiry has been used in an attempt to overcome some of the problems which have plagued earlier studies of judicial decision-making.

Motoring offenders were chosen originally because of the practical interest of the Magistrates' Association. After the publication of *Sentencing in Magistrates' Courts* in 1962 (which dealt with variations in practice in the sentencing of indictable cases, mostly theft,

[1] In 1964, when this research was first suggested, 839,684 persons were convicted at magistrates' courts in England and Wales. In 1967, when the field work was completed, the number was 1,043,115 and in 1969 it was 974,334. The increase over this period has been much greater for some offences than others. For example, the total number of findings of guilt (not persons) for driving while disqualified was 6,653 in 1964 and 10,968 in 1969; for driving under the influence of drink or drugs the figures rose from 5,980 to 21,742 (largely due, it seems, to the Road Safety Act 1967). The only two serious offences for which there was a decline in numbers were dangerous driving (8,459 in 1964; 6,716 in 1969) and failing to stop after an accident (19,193 in 1964 and 10,968 in 1969).

by twelve magistrates' courts)[1] the editor of *The Magistrate* pointed out that 'the field of motoring penalties offers the most promising opportunity for magisterial efforts at rationalisation since traffic offences are on the whole more of a kind and easier to "price" than indictable offences'.[2] The Association then asked me if I would be interested in carrying out an inquiry into the disparities in sentencing traffic offenders. Originally their suggestion was that it should focus on relatively minor cases 'since these do provoke the most widespread criticism',[3] but it seemed likely that this would become a routine accountancy exercise.[4] Simply to show for any offence the average fines and the range between minimum and maximum would provide no insight into why the disparities existed or what kinds of opinions were held by magistrates on the offence and its appropriate punishment. Whatever the degree of disparity eventually found, it seemed essential that the ideas lying behind sentencing practice should be open to scrutiny. There is no virtue in adopting the 'average' practice if it cannot be supported either logically, in terms of a coherent penal policy, or on the basis of the results it achieves. This inquiry concentrated therefore on the aims, assumptions and perceptions of magistrates and their relationship to sentencing practice. A parallel but independent study by Dr Terence Willett examined the effects of a sentence on the offender.[5]

The Road Traffic Acts cover an enormous range of offences. They are all concerned with the convenience and safety of the public, but clearly the 'convenience' offences, such as parking for over the prescribed limit in a restricted zone, are regarded differently from those which endanger life, such as dangerous and drunken driving, or which fail to protect persons or property, such as not insuring vehicles or reporting accidents, or which flout an order of the court, such as driving whilst disqualified. The convenience or purely regulative offences are being dealt with increasingly by fixed penalty notices so that the offender pays a standard fine (just as he pays for

[1] Roger Hood (1962), *Sentencing in Magistrates' Courts: a study in variations of policy*, London, Stevens. Reprinted as a Social Science Paperback, 1969.

[2] *The Magistrate*, *18* (1962), 147.

[3] Private correspondence from the Secretary, J. F. Madden.

[4] In fact, at a later date information on fines was collected by the Lord Chancellor and the Home Office and was used to calculate, for each Petty Sessional Division, the average fine and the distribution. The results were sent to all Clerks to Justices in 1968. Home Office Circular No. 249/1968. *Fines imposed for speeding offences.*

[5] This work is not yet published, but for a general review of the few studies of the effects of penalties on motoring offenders see Wolf Middendorf (1968), 'Is there a relationship between traffic offences and common crimes?' *Int. Criminal Police Review*, No. 214 (Jan. 1968), 4–13.

overdue books at the public library) without a conviction being recorded. Among the other offences, however, discussion about appropriate penalties has been bedevilled by at least three—sometimes conflicting—considerations. First, there is the question of the extent to which they can be considered in the same light as 'ordinary' crime such as larceny and assault. The normal tests of *mens rea* (or deliberate intent) are both difficult to prove and confounded by another important variable—the degree of harm caused or the potential danger involved. The point is illustrated by the lack of any clear distinction between dangerous and careless driving[1] and the tremendous difficulty in deciding whether a driver who deliberately overtakes on a bend at night and causes no accident has committed a worse offence than someone who, through lack of attention, has driven from a minor on to a major road and caused severe injuries to several people. Or, to take another example, whether a driver who deliberately goes at 40 m.p.h. in an area restricted to 30 differs in any important respect from the man who simply failed to look at his speedometer. Second, even where there is *mens rea*, there is strong public rejection of the idea that offences which are commonly committed by people from all social classes and, to some extent, tolerated and joked about can really be classed as 'crime': certainly the offenders do not wish to be considered as 'criminals'. Examples include drunken driving and exceeding the speed limits. It still seems to be considered unfortunate if one is 'breathalysed' or caught in a radar trap,[2] and it is only when the consequences are made explicit through accidental serious injury or death that the terms 'crime' and 'criminal' are likely to be used. Even then they will probably be avoided if the offender can prove 'respectability'. It is indeed enlightening that the main interest of Willett's *Criminal on the road* lay in his claim[3]

[1] See Glanville Williams (1967), 'Absolute liability in traffic offences', *Crim. L. R.*, 142–51 and (especially) 194–208.

[2] See H. Mannheim (1964). 'It is in fact the prevailing popular theory that these unfortunate victims of the motor age have been brought into the sphere of the criminal law and criminal courts only by a deplorable combination of legal tricks and social and moral judgements which should be put right without delay.' In Foreword to T. C. Willett, *Criminal on the road*, London, Tavistock. And Barbara Wootton (1963) says, 'with the possible exception of drunken driving, hardly any guilt [in its psychological sense] today attaches to motoring offences, even those of a quite deliberate nature which cannot be laughed off as due to incompetence or carelessness.' *Crime and the criminal law*, London, Stevens, 25.

[3] Later analyses of his data did, of course, indicate that those who had been convicted of driving while disqualified or failing to insure were much more likely to have previous convictions for non-indictable offences than were dangerous or drunken drivers—and Willett's sample also did not include careless drivers. See D. J. Steer and R. A. Carr-Hill (1967), 'The motoring offender—who is he?' *Crim. L. R.*, 214–24.

that a significantly large minority of those convicted of the more serious offences were 'criminals' because they had convictions for other 'real' crimes—not because of their motoring offences alone. There is, then, a resistance to being treated in court 'like a criminal', and this has implications not only for procedure but also for the kind of information that is collected, the way it is perceived and interpreted, and the sorts of penalties considered appropriate. This is the crux of the third point. In the face of rising accidents and deaths there is an understandable concern to use the law, as far as possible, as a means of prevention, for without doubt motoring offences as a whole lead to far more deaths, injuries and destruction of property than do those offences which are called 'real' crimes of violence. Yet a preventive system would undoubtedly entail an individualized approach to sentencing which would attempt to distinguish between those who are unlikely to repeat their offence and can be dealt with by a nominal penalty and those who are really dangerous either because of anti-social attitudes or because of sheer incompetence. But to find out who falls into which category involves asking precisely those questions which are asked about the ordinary criminal and ultimately leads to a complex system of penalties in which (at least to the citizen observing from outside) there is no clear correspondence between the offence actually committed and the penalty received. As far as motoring offences are concerned the public view of justice certainly seems to demand a retributive or tariff approach based on the gravity of the offence committed with (perhaps) mitigation of the fine for those with low incomes. A problem might arise in agreeing on what criteria are admissible as evidence of the gravity of the offence, but considerations of future recidivism would rarely be considered relevant. It is for this reason that criticism of variations in penalties for motoring offences is particularly strong. This criticism is taken seriously precisely because it comes from those who do not regard themselves as criminals; those, indeed, to whom the courts normally look for moral support.[1]

Magistrates obviously face a problem in deciding how to perceive the motoring offender. They have to administer a system of penalties which adequately distinguishes between offences of different gravity, appears to be effective in preventing bad driving, *and*, at the same time, 'fair'.

It is because the subject is so complex, because it is important to understand how magistrates perceive the problems facing them, and because we need to understand the principles on which they operate,

[1] This is discussed further on pages 105–8.