

BOOK REVIEW

“SENTENCING LAW AND PRACTICE” (2nd Ed.)
(Thomson Round Hall, 2006)
Thomas O’Malley

THE HON. MR. JUSTICE GARRETT SHEEHAN*

This book is the *Archbold* of Irish sentencing law. Professor O’Malley comprehensively covers every relevant topic in thirty six chapters ranging from an evaluation of the Irish sentencing system in Chapter One to an examination in Chapter 36 as to how Judicial Review, *habeas corpus* and case stated impact on sentence.

In a clear but understated way the author draws the reader’s attention to a wide range of issues that need to be considered when it comes to imposing sentence and, by drawing widely on case law from other jurisdictions, prompts us to give further consideration to what at first sight seem established principles.

In Chapter Six entitled; “General Principles” Professor O’Malley states that rehabilitation remains a valid consideration in the selection of sentence:

It can clearly operate to the advantage of the offender but as the court of criminal appeals stressed in *People (DPP) v. OD (R)* [2000] 4 IR there is also a strong public interest in rehabilitation as it reduces the risk of re-offending, something that imprisonment often fails to achieve except temporarily.

Proportionality has undoubted merits but it is not directly concerned with risk reduction or offender reformation. However it need not be incompatible with those aims.

He further states that efforts should be made whenever possible to fashion sentences that are rehabilitative as well as

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proportionate. In 2002 the National Economic and Social Council (NESC) published a report entitled *Reintegration of Offenders* which made a number of recommendations designed to provide a context for rehabilitation within prison. Professor O'Malley's remarks suggest that it may be profitable for sentencers to examine what rehabilitation possibilities exist within the prison system before deciding on the length of a custodial sentence.

In an important analysis of the suspended sentence Professor O'Malley points out that the cardinal principle governing it is that the court must be satisfied that imprisonment is merited in the first place. He goes on to state that a second principle is that a term of imprisonment must never be increased because it is about to be suspended. A third requirement is that the conditions attached to a suspended sentence should be reasonably capable of fulfilment by the particular offender. Professor O'Malley says that the conditions attached to a suspended sentence should be such as to allow the offender to lead a reasonably normal, law abiding life without running an undue risk of breaching a condition of suspension. He points out that, while in the absence of statutory restrictions there is no limit on the operational period of a suspended sentence, the Law Reform Commission recommended in 1996 that the period should rarely be longer than three years.

In an interesting comparison between English and Irish sentencing laws Professor O'Malley comments that the sentencing system in England and Wales is now governed by a complex and unwieldy corpus of statute law with a correspondingly complex body of case law. By way of illustration he points out that the Powers of the Criminal Courts (sentencing) Act 2000, purported to consolidate sentencing powers, runs to one hundred and sixty eight sections and twelve lengthy schedules. Within six months many of these provisions were repealed by the Criminal Justice and Court Services Act 2000 which contains eighty two sections and eight schedules. The Criminal Justice Act 2003 contains three hundred and thirty nine sections and sixteen schedules, two thirds of which relate to sentencing. While acknowledging that Irish sentencing legislation is meagre by comparison and has the benefit of relative simplicity, Professor

O'Malley suggests that Irish sentencing options are arguably too narrow and unimaginative.

In recent years we have had the unedifying spectacle of former prisoners being forced to flee their homes as a result of newspaper articles purporting to be in the public interest, and on a fairly regular basis sentences in individual cases are subject to considerable ill-informed media comment. Apart from being an indispensable resource for lawyers this work will be of considerable benefit to journalists and broadcasters.

In his foreword Mr. Justice Hardiman says:

This book is one of several Irish legal texts published in recent years by practitioners or academics (and Professor O'Malley is both) which one recognises with pride as worthy to rank with the best products of any common law jurisdiction. Text books of this quality are essential if the law is to be coherent in its development and transparent in its application.

I respectfully agree.