

The English riots and tough sentencing

Christine Piper, Professor, Brunel Law School

The riots which occurred in London and several other major cities early in August have provoked a debate, still on-going, around a range of crucial sentencing issues. Two developments have most interested me. First has been the tension between the government and the judiciary and, second, the apparent mark-up because the offending took place in the context of a riot.

Indications of the constitutional issue can be found in several occurrences reported in the press. For example, the Prime Minister's first message to the rioters appears to anticipate the outcomes in sentencing courts when he told them that "you will feel the full force of the law and if you are old enough to commit these crimes you are old enough to face the punishment" ([Daily Mail 10.8.2011](#)). A week later the PM praised the courts for imposing tough custodial sentences. It would also appear that a senior clerk in Her Majesty's Courts and Tribunals Service circulated instructions to court clerks that they should advise magistrates to consider disregarding normal sentencing guidelines (*Guardian* 15.8.2011). One of the judges imposing allegedly tough sentences (Andrew Gilbert QC) explicitly justified his approach, explaining that such criminal behaviour "must be met with sentences longer than they would be if the offences had been committed in isolation" (*The Telegraph* 16.8.2011). Leading Liberal Democrat peers, on the other hand, voiced concern about a lack of proportion in sentencing rioters and that "the sacrosanct separation of powers between the government and the judiciary was being put at risk" (*Guardian* 17.8.2011).

The debate, then, has been whether the government, as well as parts of the press, has exerted untoward pressure on the courts and whether this has resulted in sentences which would not "normally" be imposed. We do not yet know whether the riot context has indeed led to harsher sentences although an analysis by the *Guardian* newspaper of 1,000 riot-related cases heard by magistrates suggested that those sentenced were receiving prison terms 25% longer than normal and that the overall imprisonment rate of 70% was much higher than the previous rate (*Guardian* 30.8.2011).

It is clear, however, that not all sentencers are in agreement as to whether such riot-related sentences should be longer and by how much. Appeals against some of the orders imposed by magistrates' courts have already been heard and in one reported case – that of a mother-of-two, [Ursula Nevin, 24, sentenced to five months](#) imprisonment for accepting looted shirts – the sentence was reduced by a Manchester Crown Court judge to a community sentence of 75 hours unpaid work although the fact that Nevin did not go into the city centre – was not actually in the riot – appeared to be critical to the decision.

What is apparently at issue here is the extent to which the context of the riot should 'aggravate' the seriousness of the offending. In a sentencing system where, except when the 'dangerousness' legislation is applied, offenders are given a sentence commensurate with the 'amount' of seriousness in their offending, greater seriousness equals a tougher sentence. If one or both of the culpability and harm aspects which make up seriousness are deemed to be greater because of the context of a riot then the proportionate sentence will

be a (longer) custodial one. Proportionality is at the heart of a retributivist, just deserts, sentencing framework and so the riots have focused attention on the matters which guidance from the appellate courts, the Sentencing Guidelines Council and, now, the Sentencing Council, suggests can be taken into account. As guidelines do not generally mention riots the debate has centred on the extent to which the guidelines can be bypassed because of the context.

I have a personal interest in this issue of context. In 1800 an Isaac Farnsworth, probably married to my great-great-great-great grandma was sentenced to transportation by Derby Quarter Sessions for 'obtaining money etc, at the head of a mob' (*Derby Mercury* 9.10.1800). The Justices of the Peace who had committed Farnsworth to the Quarter Sessions under 5 counts of theft (food and/or money) had two weeks earlier placed a notice in the *Derby Mercury* as follows:

[We] do hereby declare, that (in consequence of a Proclamation dated the 18th September instant, commanding us the said magistrates to suppress all riots and tumults which impede the regular Supplies of the Market, and the free sale of Articles brought to the same) we will use our utmost Endeavours for discovering, seizing, and apprehending all Persons who may be concerned in such dangerous Practices.

These 'bread riots' occurred periodically in the 18th century in England but in 1800 the unrest on account of the soaring price of grain during the Napoleonic Wars caused panic across the country. Farnsworth was clearly given a harsh sentence as an example: *The Times* of London reported the sentence (13.10.1800) as did *Bercow's Journal* in Worcester (although earlier in the summer when panic was high before the harvest, the Assizes at Chesterfield had been imposing death sentences). It has always seemed to me – admittedly with a family connection - to be unfair that volatile political and social pressures surrounding the bread riots had so strong an influence on the sentencing of the individuals involved.

So has the sentencing of those involved in the riots which took place in England in August 2011 also been unjustifiably influenced by social and political pressures? Without some careful academic research we may never know but it would be fair to point out that guidance on factors which aggravate seriousness has always endorsed the following as legitimate factors to take into account: planning in advance, acting with others, causing more than normal alarm (by, for example, offending at night), targeting vulnerable victims, gratuitous violence, and causing extensive damage and loss. All of these are relevant to the riot situation. I would argue that there should be no further markup, however.

Finally, it is a matter of concern to all commentators that so many children and young people were involved in offending during the riots. It should also be a matter of concern that fewer have questioned the focus on their punishment: the age of criminal responsibility in England and Wales, despite the best efforts of the UNCRC in its periodic reports, is very low at 10 years old. Nevertheless, the principle in the 1933 Children and Young Persons Act that the courts should "have regard to" the welfare of the child is still good law and should not be disregarded in the aftermath of riots.