

Sentencing Beyond the Offender: Family Harm, Proportionality, and the Limits of Criminal Punishment.

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Abstract: When a parent is imprisoned, punishment frequently harms children and other innocent relatives through financial loss, psychological trauma, educational disruption, and social stigma. This paper examines the extent to which courts should consider such family impact in sentencing through consequentialism, prioritarianism, and retributivism. It argues that consequentialism recognises collateral harm but risks inconsistency, while retributivism protects equal treatment but may ignore foreseeable suffering. Prioritarianism highlights the disproportionate burden placed on already vulnerable families. The paper ultimately supports Leonora G. Catuara's theory of Complex Proportionality as the most balanced framework because it considers involuntary dependence, equal justice, and existing disadvantage without allowing family circumstances to override proportionate punishment.

Keywords: Sentencing, Perpetrator's family, Consequentialism, Prioritarianism, Retributivism, Complex Proportionality.

1. Introduction

Sentencing is a legal process where a court imposes a punishment following a criminal conviction. It serves several purposes, including retribution, deterrence, incapacitation, rehabilitation and the expression of social condemnation. These purposes often do not align with each other in terms of their own consequences. A sentence that satisfies retributive justice may impose additional hardship on innocent family members of the offender, while a sentence designed to minimise social consequences of the crime may appear to compromise proportionality and equal treatment before the law. Therefore, the question of to what extent the effect on the perpetrator's family should be taken into account depends on the purpose of the sentencing.

This paper acknowledges that the imprisonment of a family member may sometimes benefit the family if they have been victims of the offender's abuse or criminal conduct. However, for many families, imprisonment of a family member may impose substantial emotional, social, and economic burdens. This paper argues that the consequences to innocent families should not be ignored during sentencing, nor should they be regarded as a decisive factor in the perpetrator's sentencing. Leonara G. Catuara's theory of Complex Proportionality[1] thus should be the guiding model when judging the extent of family impact because it provides a balanced and consistent framework while acknowledging the foreseeable harm to innocent families.

2. Theoretical Perspectives on Family Impact in Sentencing

2.1. Consequentialism and Collateral Harm

From a consequentialist perspective, punishment is justified by the overall consequences of the crime rather than the offender's moral desert by itself. Therefore, family impact should be considered because it forms part of the overall consequences of punishment. Jeremy Bentham argues in *An Introduction to the Principles of Morals and Legislation* that punishment necessarily inflicts suffering, writing "all punishment is mischief"[2]. Sentencing, thus, can only be

justified when the suffering provides greater social benefits such as deterrence, rehabilitation, or crime prevention. In this case, if imprisoning a perpetrator causes severe harm to the family that outweighs the benefit it generates, consequentialism may argue that the sentencing should be adjusted.

Empirical evidence suggests that the collateral consequences to innocent family members can be severe. According to the National Council on Family Relations, parental incarceration is associated with significant harms to children[3][4][5]. Their research found that paternal incarceration increased children's depression and anxiety by 5-6%, externalising behavioural problems by 4-6%, and aggression by 18-33%. More strikingly, paternal incarceration was linked to a 47-49% increase in infant mortality and a 94-99% increase in childhood homelessness. These findings suggest that the effects of imprisonment frequently extend far beyond the offender, imposing substantial burdens upon innocent children[6].

For consequentialists, harms to family cannot be dismissed as merely unfortunate side effects. If family harms are ignored, the court risks overlooking the punishment's real-world consequences. However, this argument does not establish that family interests should dominate sentencing decisions. If family hardship routinely justified reduced punishment, the justice system and deterrence would be undermined. Thus, consequentialism demonstrates why family impact matters, but not necessarily how much weight it should receive, making it a weak perspective if standing alone.

2.2. Prioritarianism and Vulnerable Families

In addition to the consequentialist argument of considering overall social welfare, the strongest moral argument for considering family impact lies not in maximising welfare, but in protecting vulnerable individuals who are disproportionately burdened by punishment. Prioritarianism argues that judges should consider the impact on families because family suffering often falls disproportionately on those who are already disadvantaged. As Derek Parfit argues, we should give greater moral weight to benefits and harms affecting the worst-off members of society[7]. In other words,

we should not make the worst-off even worse off. The report published by the National Council on Family Relations shows that 44% of Black women and 32% of Black men reported having a family member incarcerated, compared to only 12% of White women and 6% of White men. The disparity is similarly striking among children. While only 4% of White children experience the incarceration of a parent before the age of fourteen, approximately 25% of Black children do[8]. Already part of the marginalised groups, these families and children experience further anxiety, educational disruption and financial instability. Therefore, imprisonment does not only punish, but also deepen existing disadvantages by adding a burden on the already deprived group, making the already vulnerable people even more vulnerable.

Thus, from the perspective of consequentialism and prioritarianism, criminal sentencing should consider the consequences on the perpetrator's family because the purpose of sentencing is to benefit society overall and to not further harm the vulnerable groups. Only if the harm to society outweighs the benefit, then should the circumstances of the perpetrator's family be considered to a large extent.

2.3. Challenges to Consequentialist Approaches

However, while this argument possesses significant moral force, it also raises an important concern. Extensive consideration of family impact risks creating unequal justice. To reduce a sentence because an offender has dependents would be to punish two equally culpable offenders differently for reasons unrelated to their crimes, resulting in punishment which no longer tracks desert.

In addition, even if family harm is morally relevant, courts may struggle to assess it fairly. Andrew Ashworth, in his *Sentencing and Criminal Justice*, argues that sentencing should be predictable and consistent[9]. However, it is difficult for judges to quantify family hardships or establish a structured criterion to determine how one family is more dependent than another. For example, it is hard to compare the extent of dependency of a disabled spouse, elderly parent or an infant child; similarly, one cannot compare the extent of harm between mental anxiety due to an incarcerated family member to the harm that financial instability will bring. Thus, without sufficient and universal criteria, consequentialists offered little guidance on how such harms should be weighed in individual cases, causing inequality before justice, with similar offenders receiving different punishments based solely on the circumstances of their relatives.

3. Retributivism

Retributivists, on the other hand, believe that the sole purpose of criminal courts is to administer justice. They argued that punishment is justified because offenders deserve it. Immanuel Kant famously stated in *The Metaphysics of Morals* that "punishment can never be inflicted merely as a means to promote another good"[10]. Under this view, punishment derives its legitimacy from moral desert rather than social utility, with sentencing systems built around offence seriousness rather than personal circumstances. Consequently, punishment should correspond solely to the offender's culpability and wrongdoing instead of the family. In fact, considering family circumstances violates justice. Kant argues that justice must be done even if no social benefit follows, stating that "even if civil society dissolved itself, the

last murderer in prison should still be executed"[10]. Kant's ideas go directly against consequentialists' beliefs, demonstrating that punishment is justified independently of its wider social consequences because justice requires the offender to receive the punishment they deserve. Although the imprisonment of a family member may harm innocent people, these consequences do not alter the offender's culpability, therefore reducing the punishment will result in unequal justice. However, this strict focus on desert appears morally indifferent to severe and foreseeable harms imposed upon innocent third parties and all the harms that previous paragraphs listed if family were not considered.

Neither the inconsistent consequentialists nor the morally indifferent retributivists offer a satisfactory solution because they are taking the extremes. Consequentialists emphasise the effect of family, believing in the collective welfare of society, undermining equality of justice, and facing inconsistent court decisions; Retributivists minimise the weight of family situations, believing punishment derives its legitimacy from moral desert, making it consistent but morally blind.

4. Complex Proportionality as a Balanced Framework

The theory of Complex Proportionality proposed by Leonara G. Catuara addresses the weakness of consequentialism without abandoning the moral concerns of overlooking the suffering from innocent parties[1]. Catuara rejects the simple view, which states sentencing is justified if social benefits outweigh harm. Instead, the theory urges the court to evaluate sentencing through three factors: are the family aware of the crime and willingly accept the risks of using the financial income from the crime; is treatment equal between two perpetrators when family is taken into account for one; and will imprisonment worsen existing disadvantages. This framework preserves the consequentialist concern for innocent suffering while providing tangible factors to protect consistency, proportionality and equality before the law, making it the best solution to the proposed question.

4.1. Voluntary Risk and Involuntary Dependence

One of Catuara's most important factors out of the three is that the significance of family harm in the sentencing decision should depend on whether family members voluntarily accept the risks associated with the offender's conduct, recognizing that not all family hardship carries the same moral weight[1]. Catuara uses the example of a perpetrator who is a gang member. If family members knowingly rely on the income from the gang member, they understand the risk of imprisonment but choose to ignore it, and thus the moral weight of imprisoning the perpetrator, the gang member, is less than the moral weight when imprisoning a perpetrator who supports a family that does not know the origin of the income, or has no choice but to rely on it, for example, dependent children. As Catuara says, "their association (with the perpetrator) is involuntary"[1]. Rather than treating all family suffering equally based purely on net social benefit, Catuara presents an argument addressing the core question of "who chose to withstand the risk?" If the family members choose to withstand the risk by knowingly using illegal income, then they are also part of the crime. Retributivism, however, ignores both cases entirely because it treats all family harm as irrelevant. By recognizing innocent

dependents who have done nothing and have no other choice but to rely on the perpetrator without voluntarily choosing, Catuara provides them more support.

4.2. Preventive Role of Sentencing and Welfare Limits

While some critics may argue that the government's welfare system can function as a net to protect the innocent family members[9], this essay contends that the Complex Proportionality remains more persuasive because the courts should have a more dominant role, since the approach it takes is more preventive rather than compensatory. While the government's actions of mitigating the collateral consequences of incarceration are important, since the harm has already been imposed by the sentencing, counselling and financial support that welfare systems provide can only partially remedy without eliminating the harm caused by the loss of parental care, emotional trauma, and family disruption. Sentencing decisions though, have the capacity to prevent or reduce these harms before they occur. Therefore, Complex Proportionality remains more persuasive than either pure consequentialism or strict retributivism. It takes into account the suffering of innocent third parties while preventing family hardship from automatically overriding proportional punishment. Instead, it provides a structured, consistent, and principled framework that balances compassion with equality before the law, preventing unnecessary suffering before it occurs.

5. Conclusion

In conclusion, criminal sentencing should take account of the effects on the perpetrator's family to a significant but limited extent. Extreme consequentialism risks inconsistency and unequal treatment before the law, pure retributivism fails to address the foreseeable harms on innocent families. Therefore, the most convincing method is to not ignore family hardship but also not treat it as decisive. Specifically, sentencing should consider the extent of involvement of family members, whether the sentencing is equitable between

offenders and whether it would further disadvantage vulnerable groups.

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