

## **WEEK 1 – INTRODUCTION**

### **Chapter 17 – Aims of the Criminal Justice System (CJS)**

#### **Key words:**

- i. *Discretion*
- ii. *Retributive punishment*
- iii. *Utilitarian punishment*
- iv. *Crime Control model*
- v. *Due Process model*
- vi. *Processual decisions*
- vii. *Dispositive decisions*
- viii. *Indeterminate sentencing*
- ix. *Desert-based sentencing*
- x. *Individualised sentencing*

#### **Introduction**

- Central to criminal process – exercise of discretion by police officer, prosecutors, defence attorneys, judicial officers, probation officers, community and institutional correctional staff
- Roles of citizens in reporting crime, working with officials, participating in process

#### **The practical and symbolic significance of doing justice**

- CJS served 2 purpose:
  - Instrumental/utilitarian: state responds to crime to secure benefits to wider society – crime prevention, crime reduction
    - Pragmatic, future oriented: policies and practices evaluated by consequences, by future effects (reducing crime/reforming people)
  - Symbolic/non-utilitarian: state redress imbalances caused by people taking illegal advantage of another/diminish human dignity
    - Based on moral principles, backward oriented: policies, practices required to enunciate, reinforce what's collectively understood as right/wrong behaviour

#### **The controversial character of the criminal justice system**

##### *System or collection of agencies?*

- Various agencies – connected to each other, share certain objectives, also have own agendas
- *System* – collection of interdependent agencies – each have own function
- Davies, Croall, Tyrer – criminal law doesn't enforce itself
  - People working in particular agencies enforce it

- Adversarial (accusatorial) CJS – common law system: 2 parties in case, prosecution and defence, bring evidence before magistrate, judge, jury, each act as fact finder
- Inquisitorial CJS – civil law system: prosecutor/police officer assembles case (dossier) but judge calls witnesses and examines them
- Each CJ agency subject to legal regulation and bureaucratic admin
  - While individuals (police officers) empowered to gather evidence and make arrests – must do so in lawful manner
- Investigative and prosecutorial powers: at federal level – Australian Crime Commission, Australian Securities and Investments Commission
  - Enhanced powers of investigation
  - Unfettered by protections of Due Process
  - Operate in ways that don't recognise traditional sequences of criminal justice
- Most addressed at State
- International CJ: International Criminal Court
- Little evidence of system of criminal justice
  - Conflicts over aims
    - Ex, police investigate crime, arrest, detain suspects while courts protect rights of defendant
  - Conflict emerge from bureaucratic interests of each agency
    - Ex, police cut corners in following procedure so charge suspects quickly, easily as possible whereas prosecutors, lawyers with duties to courts, insist on letter of law met
  - Conflict over values – what CJS ought to be doing
    - Ex, is it more important to handle cases efficiently or ensure people not subject to abuses of state power
- Most important power: discretion in decision-making
  - Its sequence of decision situations where people apply, distort, ignore rules, where others have lives and futures directly affected by such decisions

### *Justice of injustice?*

- 'Too harsh' enforcement of laws or 'too lax'
  - Police often target certain groups for arrest – members of racial-ethnic minority groups – selective use of police discretion lead to disproportionate imprisonment of racial-ethnic minority group members
- Or 'too lax'
  - Suspects and defendants let off too easily – not being arrested/prosecuted – if found guilty, not being 'punished enough'

### *Criminal?*

- Criminal act – defined by state as crime and subject to criminal penalties

- CJS: loosely coupled collection of interdependent agencies, each having bureaucratic interests, each having specific functions (can be in conflict with other agencies) subject to legal regulations
  - Where agency workers have great discretion in making decisions when responding (or not) to harms defined as criminal by state
  - Where value conflicts exist within and across agencies and in general population about meaning of justice

*Flow of criminal process pg 395*

- At each phase, people make decisions to keep case in system or not

**Role of ordinary citizens**

- Problem with CJS: trains our attention, wrongly, visualise response to crime as being that which only agency officials do
- Under-noticed feature: whole operation depends on decisions and actions of ordinary citizens
- Roles:
  - Elect people to represent in making laws, indirectly, enforce them
  - Detecting and reporting crime
    - Police and prosecutorial investigation, evidence gathering depend on goodwill and participation of citizens as witnesses and victims of crime
  - Serve on juries
  - Those who are victims may be asked to participate in court diversion schemes – conferencing
  - Work as volunteers, paid works in CJA and in orgs that serve CJA
- Politicians – affect CJS by passing laws – ‘truth in sentencing’ – constrain discretion of sentencing officials, increase people in prison
  - Passage of legislation on social and economic policies has effect
    - Ex, cutbacks to unemployment benefits/new road built – cuts through town – disrupts social cohesion
- Commercial media – entertain not educate public about CJS