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# Issues In The Criminal Justice System

## Criminal Responsibility

- principle of individual autonomy relates to people being able to conduct their lives as they choose with as few restrictions as possible.
- This promotes minimal criminalization
- Also related notion of 'individualism' which regards people as capable of choosing their own courses of action – according to this notion people who lack the capacity to choose should not be criminally responsible for their actions.
- Competing consideration is the *community welfare* principle according to which the collective interests of society must be protected – hence the community welfare principle asserts that individual autonomy may have to be overridden by the collective interests of the community.
- The need for a balance between individual autonomy and community welfare is so vital that it appears in the Article in the *Universal Declaration of Human Rights: Art 29*
  - (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
  - (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society

## Aims and Functions of the Criminal Law

- the overall aim of crim law is the prevention of certain kinds of behavior that society regards as either harmful or potentially harmful
- crim law is applied by society as a defence against harms that injure the interests and values that are considered fundamental to its proper functioning.
- Interests and values include: bodily integrity of people, security of property, protection of the environment and moral values.

## **Moral Wrongness Approach**

- one suggested key to deciding whether behaviour should be criminalized is 'moral wrongness'.
- Lord Devlin "morality is the underpinning to social fabric of society and immoral behaviour erodes that fabric, and consequently destabilizes society".
- Problem with this definition is that it is far too imprecise and evokes irrational prejudices and feelings of disgust rather than reasoned moral indignation.

## **Individual Autonomy Approach**

- "harms to others approach"
- this approach places individual autonomy at a premium and contends that his and its attendant individual freedoms are vital to the proper functioning of society.
- The approach calls for individuals to be accorded as much freedom as possible, subject only to the minimum restrictions require to provide other individuals sharing the community with those same freedoms.
- Criminal law should therefore only be used against behaviour that injures the rights and interests of these other people – behaviour that harms others.
- Criticism against this approach is that it fails to explain adequately the use of criminal law in certain areas: i.e wearing seatbelts, or helmets → criminal to not do it but the act does not 'harm' others.

- It could content that this approach might cause harm because the participants may injure themselves and become financial burdens or sources of hardship on family, friends and State.

### **Community Welfare Approach**

- this principle justifies the use of the criminal law to protect the continued physical well-being of members of a community.
- It also takes into account the financial cost to the community of permitting activities such as not wearing seatbelts & helmets to continue unrestricted.
- Community welfare approach places premium on community interests and would be prepared to override individual autonomy for the greater good of the community.
- Problem for lawmakers is to decide what should and should not fall outside the ambit of criminal law.

### **Major Functions**

- involves the processes, operations or activities that the criminal law normally discharges.
- One function is to distinguish civil wrongs from criminal wrongs.
- A person who is harmed by tort or by a breach of contract may sue for damages or obtain some other remedy in a civil court.
- Some acts constitute harm to the public rather than individuals – these harmful activities are controlled by the criminal law and include activities such as drug use, prostitution, distribution of obscene literature and some forms of gambling.
- **Primary task** of criminal law is to stipulate the degree of seriousness of criminal conduct – need to know how serious a crime is compared to other crimes.
  - this is vital in order to select the proper label and penalty of the crime.
  - Also has wide practical consequences or matters such as the legality of arrest without a warrant and of searches, the decision to caution or prosecute, to grant bail, whether to have the case tried before a magistrate or judge, to try a case with or w/o a jury, the sentencing options available and the decision whether to release on parole.
- What considerations are material on assessing the relative seriousness of criminal conduct?
  1. impact on victims of the particular kind of crime
    - not only physical injuries but also psychological trauma of victims of violent crimes
  2. monetary value of the property crimes also affects the degree of offence seriousness
  3. extent of culpability of the offender
    - may be gauged according to the offenders mental state in relation to the offence
  4. degree of likelihood of harm

### **Regulatory Offences:**

- road traffic flow, business regulation, urban planning, licensing procedures and so forth
- offences are often made strictly liable by the legislature so that mere proof of the commission of the proscribed conduct is sufficient to establish the charge against the accused without additionally having to prove that the accused intended, or knew of or was reckless of the wrongdoing.

### **Sources, prescriptions and Influences on the Criminal Justice System**

#### **Sources of Criminal Law:**

- no single body of criminal law governing the whole of Australia.
- Divided into two forms: statutory and common law
- Variety of criminal laws in Aus is unsatisfactory. It results in inconsistency and incoherence in outcomes when dealing with like cases in different jurisdictions.

## **Prescription of Criminal Law**

- a national criminal code would bring consistency to the criminal law of Aus.
- It would mean that the criminal law would be prescribed and developed by the legislature rather than by Judges. This is more in accord with constitutional percepts – since the criminal law is society’s most powerful measure in regulating social mischiefs, it should be the legislature who decides what that law should be as opposed to a small number of judges.
- Another reason for preferring the criminal law to be cast in statutory form is the greater certainty this achieves when compared with the Common Law. With the law laid down in statute, members of society are given fair warning of their social responsibilities under the criminal law and can readily find these out.
- The stance of common law can be supported on the ground of social defence.
- The judicial power to create new offences and the vagueness of existing criminal law are needed to deal with new variations of social mischief without having to await the lumbering response of legislature.
- The main criticism against this approach is that it denies individual autonomy by retroactively penalizing previously non-criminal conduct.

## **Categories of Crime**

### **Crimes involving death:**

- homicide, which is causing death to a human being, is arguably the most serious harm.
- The crime of murder with its special label and the severity of the punishment it attracts, places this offence above all offences involving homicide.
- Then there is attempted murder, followed by manslaughter, and offences such as infanticide and reckless driving occasioning death.

### **Crimes Involving Bodily Injury**

- psychic assault (threats to apply unlawful force) sits at the least serious end of the range.
- Physical assaults resulting in very serious bodily injury that brings victim close to death is at the other end.
- In between are numerous varieties of assaults, depending on such factors as the degree of force applied, the injury suffered, and the mental state of the offender.
- Sometimes status of victim is also significant – eg serious offence of assaulting police officer in the execution of duty
- Sexual offences also vary widely and range from minor sexual contact to sexual assault involving physical violence.

### **Road Traffic Offences:**

- many are minor in nature and perform a regulatory function of promoting smooth flow of traffic.
- However serious offences that pose a danger to the lives and safety of other road users are included in this category.
- Eg. Reckless driving and its less culpably counterparts, negligent driving and drink driving.

### **Offences Against Public Order**

- offences range from serious offences such as rioting and violent disorder to minor ones such as offensive behaviour or the use of offensive language.
- Designed to enable members of society to move about freely and be spared abuse or nuisance.

### **Offences Against the State**

- treason sedition and providing assistance to the enemy in time of war are example of this group of offences

- also recently enacted legislation to combat threat of terrorism
- proscription seeks to protect the foundation of the state and maintain the stability of the government.
- Placed very high on scale of seriousness as aim is to protect national security.

### Property Offences

- most serious offence is robbery (theft accompanied by the use or threat of physical violence).
- Next is theft, which is the deprivation of another's property without consent and with intention of doing so permanently
- Then there are offences of damaging or destroying another's property.
- Next are offences that have an element of fraud – eg. Where property has been obtained by deception or by falsifying accounts. Receiving stolen property proscribed to punish those who encourage the commission of another property offence by making it economically worthwhile.

### Paternalistic Offences:

- failing to wear seatbelts, helmets.
- Gambling, prostitution, distribution of obscene literature and drug use

### Drug Offences:

- while the criminalization of drug use may be motivated by paternalism, there are several other offences connected with drugs that exhibit aggravating features.
- These are drug trafficking, importation, cultivation and manufacture.
- These offences are placed high on the scale of offence seriousness because they are designed to eradicate the supply of drugs.

## Elements of a Crime

### Conduct Elements:

#### Voluntary:

- cardinal requirement for all crimes is that the prohibited conduct must have been performed voluntarily. Voluntariness involves the ability to exercise control over ones bodily movements.
- Examples of states of involuntariness include sleepwalking, concussion, epileptic fit, being overpowered by another person.
- A person who lack choice or control cannot fairly be described as having *acted out* the conduct in the strict sense of that term.
- Compatibilism: notion that individuals are sufficiently free to choose and control their actions so as to be blamed for them and yet accepts that there may be occasions when circumstances so affect an individuals choice or control as to warrant the negation of blame.

#### Cause:

- has accused caused the resulting harm
- the test of substantial cause has been devised to resolve the issue of and subsequent event which may have caused the death. See *R v Hallet (1969)*
- there may also be cases where there was an intervening event

**Royall v The Queen:** a leading Australian case on causation, A violently attacked B. On one view of the evidence, A jumper to her death from a high building in an effort to escape the attack. B was regarded to have caused B's death because he impaired her autonomy in respect of her conduct and created the emergency she faced.

- other way of finding out the if 'cause' is asking whether a reasonable person in the accused's position could have foreseen that her or his conduct might lead to the intervening causal occurrence.