

Aims of CJS:

The criminal justice system (CJS) is a collection of agencies that are integral to the achievability and the delivery of justice. Seeking justice is difficult when the agencies that collectively form the CJS have conflicting and competing interests and aims.

Key agencies:

- Police
- Courts
- Community corrections
- Prisons

CJS serves 2 key purposes:

1. Instrumental/utilitarian
 - State responds to crime to secure benefits to the wider society i.e. crime prevention and crime reduction.
 - Pragmatic and future-oriented.
2. Symbolic/non-utilitarian
 - State must redress imbalances caused by those people who take illegal advantage of another or diminish their human integrity.
 - Based on moral principles and backward oriented.

Funnelling effect:

- At each stage of the criminal process the number of cases involved in the CJS becomes smaller and smaller.
- This is a result of a number of discretionary decisions on the part of the police, the prosecutors and the courts.
- Discretion is a key theme at each point of the criminal process.
- Funnelling process means that few cases that are initially reported to, or come to the attention of, the police actually go before the courts or result in a conviction.

2 types of decisions in the criminal process:

1. Processual – decisions about the processing of the case from initial charge through to trial; guided by values of legality.
2. Dispositive – decisions about the disposal of the case; guided by values of proportionality and crime prevention.

Proportionality:

- Interconnected with desert theory, a modern form of retributive punishment.
- Penalty structure should reflect a relationship between crime seriousness and punishment seriousness.
- A retributive justification for punishment means that a crime must be censured and that a punishment should reflect the degree of blameworthiness we attach to the act.
- Backward orientation.

Crime prevention:

- Associated with several theories of punishment.
- Forward orientation to punishment.

Models of criminal justice

Crime Control Model:

- Essentially concerned with the efficiency of the criminal process.
- Emphasis placed on removing cases where there is a lack of evidence or an unlikely conviction as early as possible in the criminal process.
- Based on the presumption that a key goal of agencies within the CJS is to maintain public order;
- And that to do so, various agencies must use their power to ensure that order is maintained.

Due Process Model:

- Concerned with the accuracy and reliability of the decisions made throughout the criminal process.
- Relies less upon the decisions made during the initial stages of the criminal process and instead focuses upon the importance of fact finding during the adjudication phase of the CJS.
- Emphasises the importance of the presumption of innocence.
- Recognises the power held by agencies of the CJS and emphasises the need for checks of decision making.

Rule of law:

- No one is above the law.

- Law should be transparent, reliable and consistent.
- Law should be consistently and fairly applied.
- Law should be appropriately scrutinised.
- Law should be independent from government.

Due process:

- Rights of those who are brought before the law.
- The checks and balances of the CJS.
- Justice is fair and accessible for all regardless of race, religion, gender, age and financial status.
- At all levels of the CJS due process requirements must be upheld.

Due process rights

Onus of proof:

- Presumption of innocence until proven guilty.
- Limited defence disclosure.
- Full prosecutorial disclosure.

Access to legal representation:

- Quality of legal representation can significantly impact on the outcome of the case.
- Adversarial system – contest between 2 sides; 1 winner; for this to be a fair contest both sides must be represented by legal counsel.
- Access to legal representation has been impacted by the recent budget cuts to the Victorian legal aid system.

Right to silence:

- Relevant to the investigative, pre-trial and trial stage of the CJS.
- Balances the rights of the accused and the interests of the police.
- Police cannot compel a suspect to answer questions.
- A suspect may remain silent because of:
 - A fear and distrust of the police.
 - A fear that their words may be distorted and/or used against them.
 - Desire to protect family or friends.
 - Fear of reprisal from an offender.
 - Desire to hide legal but embarrassing behaviour.

Discretion

Police:

- Decision by victim to report offence or not.
- Decision by police to investigate or not, to arrest or not, to give a charge or warning, to use force or not.

Courts:

- OPP decides whether to run a case and which charges to bring forth.
- Defendant decides whether to plead guilty or not guilty.
- Defendant decides whether to give evidence at trial or not.
- Judges decide what sentence to impose.

Corrections:

- Classification of prisoner (maximum and minimum security).
- Decision to release on parole.

Accountability

Police:

- Often unaccountable as much police work is invisible.
- Some accountability through the Independent Broad Based Anti-corruption Commission (IBAC).

Courts:

- Accountability achieved through appeal.
- Public and open justice – open courtrooms.
- Juries are unaccountable.

Corrections:

- Difficulty of achieving accountability within the closed walls of a prison.
- Privatisation of prisons makes it problematic for public accountability.