

ATS1423 – Notes

Learning Outcomes

1. Explain the system of courts and their operation at the state and national level
2. Discuss the role and workings of corrections at the state and national level
3. Describe the different types of punishment within Victoria and other Australian jurisdictions
4. Compare and analyse perspectives and debates on the role of punishment, its administrative functions and practices in society

Week 1 – Introduction to ATS1423

The Institutions of Crime Control

Crime Prevention

- Police, Departments of Justice, local governments, schools, health and community services, urban planners, community workers, independent commissions against corruption, Crime Stoppers

Detection and Investigation

- Police, Neighbourhood Watch, private security firms, Australian Criminal Intelligence Commission, Australian Securities and Investment Commission, the ATO, Australian Departments of Human Services, e.g. Centrelink, Ombudsmen, Australian Border Force, Royal Commissions of various kinds

Legal Services

- Police, Neighbourhood Watch, private security firms, Australian Criminal Intelligence Commission, Australian Securities and Investment Commission, the ATO, Australian Departments of Human Services, e.g. Centrelink, Ombudsmen, Australian Border Force, Royal Commissions of various kinds

Mediation, Trial and Adjudication

- Courts (federal, state and territory), specialist courts (e.g. Drug and alcohol, koori courts, family violence courts), children's courts, neighbourhood justice centre, community mediation services/dispute settlement centres, youth justice/juvenile justice/family conferences, police, administrative appeals tribunal, ombudsman's services, offices of public prosecution

Sentencing

- Community Mediation Services, Dispute Settlement Centres, courts, specialist courts, Children's Courts, Neighbourhood Justice Centre, police, Office of Public Prosecution, Sentencing Advisory Councils

Penalty

- Prisons, Departments of Corrections/Correctional Services (which oversee prisons, community corrections, probation and parole services), providers of outsourced correctional services (private prisons), Parole Boards, Juvenile Justice Services

Post-Detention

- Post Sentence Authority, ex-offender programs, Halfway Houses, Community Corrections, Adult Parole Board, Youth Parole Boards, Neighbourhood Justice Centre

Victims

- Victims of Crime Assistance League/Tribunal, Victim Support Services, police, court information services, Neighbourhood Justice Centre, support services for various specific victimisation, such as sexual assault, child abuse, murder etc

Week 2 – Principles and Practices of Punishment

LO1: Definition Of Punishment

- The practice of imposing a penalty (physical pain, shame or restraint) onto an individual who has acted disobediently and/or defiantly by engaging in behaviour deemed legally and/or morally wrong in accordance with individual, communal, legal or religious principles

Five Elements of Modern Punishment

- Must involve pain or other consequences normally considered unpleasant
- Must be for an offence against legal rules
- Must be of actual or supposed offender for [his] an offence
- Must be intentionally administered by humans other than the offender
- Must be imposed and administered by an authority constituted by a legal system against which the offence was committed. This can become problematic

LO2: Historical Accounts Of Punishment

Historical Accounts of Punishment

- **Personal Retribution:** Punishment was localised, personalised and arbitrary, in the hands of the victim. Blood feuds became a problem. An 'eye for an eye' type scenario, this means harm should be equal to the harm that was offended
- **Ecclesiastical Justice (500-1450):** Move away from personal/family based retribution, and now the Church got to decide both crime and punishment. We now have the church separated from the law
- The rise of capitalism and the Industrial Revolution moved power from Church to State (1700-1800)
- Move from punishing the body to punishing the mind. Beginning of the modern prison (1800-)

LO3: The Aims And Principles Of Punishment; Consequentialist, Expressive

Justifications for Punishment

Consequentialist Aims

- Only ever warranted on the grounds that it produces positive future consequences or outcomes for society; it must either achieve socially desirable benefits or avert socially unwanted harms
- **Deterrence:** Reduce the likelihood of crimes being committed in future by the threat of punishment
- **Incapacitation:** Impose a physical restriction on offenders
- **Rehabilitation:** To treat or reform the offender

Expressive Aims

- Grounded in a backward-looking rationalisation, that is oriented towards pursuing the expressive – the symbolic and ideological – functions of punishment
- The state and law take on a proactive, morally functionalist, or normative character. Aim to communicate what behaviours are not just legally, but morally acceptable
- Emphasise utilitarian approach
- **Denunciation and Moral Reprobation**
- **Retribution and 'Just Deserts'**

LO4: Deterrence, Rehabilitation, Incapacitation And Community Protection, Denunciation And Moral Reprobation, Retribution And 'Just Deserts'

Deterrence

- Individual (offender commits crime, punished, won't do it again) and general (based on the premises that we know what the punishment and crimes are, that the court is an open court)
- Reduction of offending through fear of consequence

- Offenders are considered rationalise decision makers (if you're on drugs, you won't be rationale in that specific moment), assessing pros and cons based on:
- Certainty and swiftness of punishment. For punishment to be effective it has to be certain.
- Type and severity of sanction. Proportionality argument 'eye for an eye'.
- Communication and credibility of the threatened legal repercussions
- Needs to be certain, swift and proportionate

Rehabilitation

- Can be seen as a 'caring' approach
- Views humans as deterministic
- Emphasis on correcting offending behaviour
- And crime as a consequence of pathology, an illness to be treated, and an offender to be 'fixed'.
- What about those 'moral' offences? Crime as a social construction? What are we really punishing? The new 'normal' gets to decide?
- Can also be positive if offender needs are appropriate addressed (reading and writing, treatment for addiction and mental illness, skills to survive in modern society)

Incapacitation and Community Protection

- Needs of the offender is not a factor here.
- Community protection and future safety is.
- Should be a last resort option, but is used more and more frequently in Australia.
- Calculating dangerousness and estimating risk is central to this aim.
- Clinical and actuarial predications
- Should sentencing length be based on presumed future dangerousness, as opposed to severity of crime? E.g. Indeterminate sentencing, post-release containment.
- Influenced by high-profile crimes in Victoria.
- Proving future behaviour in free society based on behaviour in prison: is this a fair/useful practice?

Denunciation and Moral Reprobation

- Punishment as a tool to communicate to society what behaviours are deemed morally harmful or socially repugnant
- Punishment of individuals serves as public censure (as the public executions did in the past), which in turn serves to reaffirm the legitimacy of the law (and those who made the law)
- Personal moral values vs societal moral values
- Always problematic when morality and punishment are too closely connected
- Who decides what is moral and immoral in this society right now? In any society at any point in time?

Retribution and 'Just Deserts'

- Punishment because the offender deserves it
- Offenders responsible for own actions and thus their punishment.
- Aims to redresses the unfair advantage to society that the criminal has taken.
- Positive and Negative retribution
- Crime results in a moral debt to the victim
- Issues and debates:
- What about victimless crimes? Moral debt to victim?
- Same crime = same unfair advantage? Poor v rich

LO5: Sentencing Legislation In Victoria

- A combination of two or more of these purposes.

Just Punishment

- To punish the offender to an extent and in a way that is just in all the circumstances.

Deterrence

- To deter the offender (specific deterrence) or other people (general deterrence) from committing offences of the same or similar character.

Rehabilitation

- To establish condition that the court considers will enable the offender's rehabilitation

Denunciation

- To denounce, condemn, or censure the type of conduct engaged in by the offender.

Community Protection

- To protect the community from the offender