

Non-custodial sentences may involve:

- Fines
- Reparation orders: paying back the community i.e through work, fines e.t.c
- Community work orders: up to 500hours max may be imposed
- Probation/supervision orders
- Good behaviour bonds/suspended sentences- if make a mistake, then sent to prison
- Drug treatment orders
- Home detention orders

Who are offenders in Prison (2015 Aus data)

- Males 92% (33,256 prisoners)
- Females 8% (2,876 prisoners)
- 9,855 prisoners aboriginal/Torres Strait Islanders
- Median age 34.3, male 34.2, females, 34.3
- Acts intended to cause injury (21%)
- Illicit drug offences (13%)
- Sexual assault (11%)
- Unlawful entry with intent (11%)
- Increasing rates of incarceration of women
- Major increases in remand population
- Increased sentences means more long-term offenders

Will it work?

Sometimes, yet prisons may fail to:

- Prevent future offending/recidivism
- Preserve human dignity
- Address causes of crime
- People with mental illness
- Facilitate autonomy and self-determination

Prisons fail:

- Means mostly what happens in post-release situations i.e. what occurs in prison, impact on imprisonment itself, have a negative effect on what subsequently lies ahead for the offender and for those who work with offenders within a community setting
- Failure of prison is observed by Foucault (1977) and who the voices of prison reform were essentially the same from one century to another: 'the reactivation of the penitentiary technique as the only means of overcoming their perpetual failure
- As long as the institution fails, it reinforces the stigma of offending, of offenders and of the lower social orders

TOPIC TWO: APPROACHES TO REHAB

Intro:

- Offenders come into contact with corrective services via a criminal justice pathway that usually includes the following elements:
 - Caution- formal, informal
 - Charge- arrest
 - Monetary penalty- fines, restitution orders
 - Other non-custodial orders- restitution orders
 - Fully suspended sentences
 - Community supervision or work orders
 - Custody in community i.e. home detention
 - Custody in correctional institution i.e, full-time incarceration, periodic detention
 - Juvenile options- restorative justice forums
- Traditional concepts such as restoration and rehabilitation and recognition has major implications for how practitioners and theorists respond to issues relating to punishment and treatment
- Rehabilitation and orientation is evident in the development of new institutional measures, such as therapeutic jurisprudence and problem solving courts
- Practitioners need to be embedded in the CJ process from the point of early contact through to final detachment of the offender from the system
- Models of intervention (Aus 'integrated offender management') IOM try to achieve greater attention and a more holistic approach in working with offenders
- Rehab belongs to the modern penal system.
- Previously, the classical penal system was informed by 'enlightenment' (focused on the dignity and worth of the person- taught people enlightenment- that if you do something bad, something bad will happen to you)

Classical penal system

- Free will enables human beings to deliberately choose to follow a calculated course of action
- Crime is attractive and controlled through the fear of punishment
- Based on classical criminological theory- crime is a choice
- Model was utilitarian (greatest happiness for the greatest numbers)
- Criminals are essentially the same as non-criminals- they commit crimes after calculating costs and benefits

Modern penal system

- Emerged with the growth of new scientific disciplines like psychiatry, psychology and psychotherapy
- Looked more at groups of offenders and what worked on them in order to provide effective treatment
- Human behaviour is determined and not a matter of free will
- Criminals different from non-criminals- no grey area

Four propositions about justice that reflect what we feel should be the key drivers of justice

1) Justice ought to be an active process

- Emphasis on participation of victims, offenders and community
- Emphasis on doing something such as repairing harm and addressing issues

2) Justice is about maximising liberty

- Emphasis on maximising liberty and choices of autonomy
- Emphasis on maximising status and self-worth by enhancing control over one's own destiny
- Self-determination- making decisions about one's own future

3) Justice deals with the whole person

- Emphasis on human rights and dignity of the person- victims and offenders
- Emphasis on each person as having the capacity to do good
- Emphasis on acknowledging the distorting effects of harmful acts on ordinary people- histories of abuse may engender futures of offending.

4) Justice has temporal and spatial dimensions

- Emphasis on the past, present and future lives of individuals- learn from what has gone on and recognise that what we do now has consequences
- Emphasis on the local- what we do in our own backyard counts and is meaningful

Adopting a therapeutic approach framework: non-adversarial approaches, to criminal justice

- Therapeutic jurisprudence provides an answer to the perennial problem of how to manage and understand the complex social problems that regularly arise in law courts
- It is a legal term that describes criminal justice, and court initiatives that focus on therapeutic interventions to rehabilitate the offender
- Specialist courts that adopt this therapeutic framework are called 'problem-solving'/problem-orientated courts as they move away from traditional adversarial court processes and instead endorse a collaborative case management model of diversion
- Therapeutic jurisprudence can also be called 'collaborative justice' which recognises the important role of therapeutic treatment providers and their partnership and active formal involvement in the CJS
- Collaboration is required across disciplines and service types in the administration of justice to achieve lasting outcomes
- King asserts that problem-solving courts are a better alternative to law and order campaigns, and yet they are not 'soft' on crime, they are instead 'smarter' on crime

Traditional court processes/ transformed court processes:

- Judge as arbiter/ judge as coach
- Claim/case oriented/ people oriented
- Few participants/stakeholders/ wide range of participants/stakeholders
- Efficient and formal/ effective and informal
- Precedent based/ planning based

Active Justice:

- Major feature of therapeutic justice is that it demands more on the part of the offender

- Three broad approaches to offender engagement: a 'justice' approach, 'welfare' approach and 'restorative justice' approach
- Justice approach emphasises such things like 'responsibility' for one's actions and a focus on what the offender has actually done wrong
 - Idea is to get tough on the offender and to punish them for what they have done
- Welfare approach puts emphasis on the offender and favours greater use of community-based sanctions
 - In this case, justice is something that is done for you
 - Takes into account the vulnerability and special needs of many people who offend.

The Risk-need-responsivity (RNR) Model

- Dominant rehab model in use today is based on assessment and action around risk, need and responsivity
- Psychological (offender deficit) model

Need principle:

- Assumption that most effective and ethical approach to treatment of offenders is to target risk factors
- Assess criminogenic needs and apply treatment and interventions to those needs
- Criminogenic needs may include: antisocial attitudes (rationalising 'everyone does it' 'I do what I want') and how offender reacts to these statements when read back to them

Risk principle:

- Assumption that treatment of offenders ought to be organised according to level of risk they pose to society- higher the level of risk, greater dosage or intensity of treatment

Responsivity principle:

- Assumption that we match the delivery of correctional interventions to certain characteristics of participants.
- What personal strengths and/or characteristics of offenders (learning style, motivation) may influence effectiveness of treatment?

- RNR model utilises psychological testing as a key diagnostic instrument
- Further critique of RNR model, concentrating on reducing dynamic risk factors. In practice, there is also a range of interlinked issues:
 - RNR model tends to neglect role of self-identity
 - RNR associated with a rather restricted and passive view on human nature
 - RNR is like 'one size fits all'
 - Difficult to motivate offenders as only looks at what is wrong with the offender
 - Does not recognise the role of personal identity, criminogenic needs and the contexts of rehab

The Good lives Model (GLM)

- 2 goals: promote human goods and to reduce risk

- Aims to strengthen life, excellence in work and play, agency, inner peace, relatedness, spirituality, knowledge, happiness and creativity
- Approach starts with assumption that offenders are essentially human beings with similar needs and aspirations
- Considerations that underpin applying GLM of offender rehab include:
 - Prisoners and probationers as whole individuals are more than the sum of their criminal record.
 - Such individuals lack many of the essential skills and capabilities necessary to achieve a fulfilling life
 - Risk of offending may be reduced by assisting individuals to develop these skills

Restorative justice paradigm

- Restorative justice refers to an emphasis on dealing with offenders by repairing harm
- Restorative justice equals reintegrative and developmental principles and offers the hope that opportunities will be enhanced for victims

Victim-offender mediation and dialogue

- Involves victim restoration and meeting of the victim's needs.
- Offenders held directly accountable for their behaviour

Family group conferencing

- Encourages participation by community members
- Group decides as a whole how the offender can repair the harm done

Circle sentencing:

- Emphasis on all participants to speak and find the best way of assisting in healing all the parties involved and preventing future occurrences

Reparative probation:

- Main concern is victim restoration and community empowerment, with offenders undertaking tasks that directly benefit victims and communities

Balanced restorative:

- Provides victims with the opportunities as well as the necessary services and gives offenders the opportunity to increase their skills and capacities