

MDU ADVANCED TRAINING SESSIONS



law & criminal justice



workshop structure

Part I: Purposes of the Criminal Justice System

- public protection (incarceration & deterrence)
- rehabilitation
- victim closure
- retribution

Part II: the Process of Criminal Justice

- the trial process
- the prison system
- life after prison



purposes of the criminal justice system i

- **public protection**

- **incarceration**

- to explain why incarceration is necessary, need to analyse why reoffence is likely
 - situational reasons
 - patterns of behaviour
 - lack of consequences

- **deterrence**

- why it would work**

- fear of prison
 - high punishment makes an action **appear** less permissible

- why it would not work**

- people do not **think of the punishment** when committing a crime
 - not rational
 - punishment less proximate
 - criminals do not think **they'll get caught**
 - prison sentences perceived as just small number and hard to conceptualise

- **rehabilitation**

- **why do we care about rehabilitation?**

- prevention of future crimes
 - state duty towards the individual that committed the crime (the state has failed that individual)



purposes of the criminal justice system ii

- **victim closure**

- **common problem:** arguments about victim closure get easily marginalised ('just upset for a while' / 'already suffered the harm of the crime, so this additional harm does not make much difference')
- need to clearly explain why the lack of punishment affects the victim

considerably

- we are socialised to understand punishment as a **recognition of the wrongdoing** (e.g. in childhood)
- lack of punishment means that the victim feels like their pain has not been recognised and profoundly disrespected as a person → feelings of anger, pain → more likely to **stay constantly on the victim's mind**
- this debilitates the life of the victims in two ways - a) fear b) limits the capacity to enjoy other activities
- **why do we care about the victim?**
 - the state limits our capacity to self-defence through laws → we outsource this to the state → the fact that crime happened means that the **state has failed its duty** and needs to retribute

- **retribution**

- principally justifying retribution is very hard and has to be motion specific → avoid unless necessary



the process of criminal justice i - the trial process

overarching theme: criminal justice motions often have to do with policies that could correct for the existing **biases** in the trial process → it is useful to have a clear characterisation

evidence gathering

- confirmation bias and tendency to **tunnel-vision** a particular subject

lawyers

- the role of **wealth** (useful for any motion related to rich actors in court and limiting their power, e.g. *THW require all defendants in criminal cases to be represented only by state-employed lawyers*)
 - rich people can afford better lawyers - **so what?**

what does a lawyer do for you and what advantages might it have to have a good lawyer?





the process of criminal justice ii - the trial process

- **what does a (good) lawyer do for you**

- procedural advice - e.g. preparing you and therefore protects you from self-incrimination during testimony
- looking into evidence
 - shaken baby syndrome case study (paying researchers)
 - can also be used to prove trickle down effects
- charisma and specific know-how
- abilities to find technicalities in law - this requires
 - time and resources
 - specialist knowledge

- **BUT even non-wealthy people might be able to get a good lawyer**

- pro-bono lawyers
 - want to confirm their conception of themselves as a good person - alleviate their guilt
 - personal experience (e.g. minorities)
- charities

- **the role of identity**

- problem with confirmation bias / lack of empathy towards minority clients
- trust towards the lawyer → more likely to follow their advice and provide them information

the process of criminal justice iii - the trial process

judges

- **bias**

- what is the likely **background** of judges - 'old white men'
 - need a **privileged background** to study law
 - need respect from your **peers**
 - self-selection
 - X** old white men not necessarily terrible - education often leads to more liberal mindset
 - X** move towards diversity - e.g. in university quotas etc.
- how does this background **affect** decision-making
 - empathy towards whoever looks like you (subjective consideration of culpability - did someone just 'make a mistake' or were 'actually evil')

- **checks on behaviour**

- sentencing guidelines
- standards by which evidence is considered in court
- external pressure e.g. by social movements / liberal media



the process of criminal justice iv - the prison system

- **why are prisons bad**

- violence from other inmates and guards
- overcrowding - leading to bad sanitation etc.
- lack of opportunities for education and work
- criminal networks
 - necessary to ensure self-protection
 - incentives to recruit

- **why is it hard to improve prisons**

- **lack of political capital**

- not a proximate issue for most people
- perception of criminals as evil people
- lobby groups (victims, prison industrial complex)

→ lack of **resources**

- can't buy helpful technology
- can't get guards
- can't get more space → overcrowding

- **lack of information**

- information not collected (e.g. the UK on reoffence rates, human rights groups in Latin American prisons)
- not listening to prisoners' experiences (media, politicians)

→ cannot hold people **accountable**

- **practical concerns** (e.g. moving prisons often makes it hard to complete training programmes)



the process of criminal justice v - life after prison

what are the obstacles to rehabilitation?



the process of criminal justice v - life after prison

- **obstacles to rehabilitation**

- hard to **find a job** (stigma, gaps in CV, background checks)
- learnt behaviours in prison
- **lack of capital** (they don't pay you much money in prison, structural problems that led to committing the crime likely still persist)
- **loss of relationships** (friends, family) → either they condemn the prisoner or their relationship disintegrates as a result of the lack of proximity
- do not have community that understands their experience

→ principled harm of **extra punishment**

→ occurs **disproportionately** across socioeconomic background / ethnic lines

e.g. Given the technology, THW erase society's memory and evidence of the criminal past of former convicts after their release from prison

