

Legal Principles

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Legal Principles ~Jess Musulin

Aims of the Criminal Justice System

1. Deterrence: Disincentivise people from committing crimes. Making people think about the consequences. Deterrence is not always effective because
 - People are not always rational
 - Many times things happen in the heat of the moment
 - People think that they will ever get their caught
 - Justice systems are not effective in many countries.
2. Rehabilitation: Reducing the chance of the person committing the crime again. Kind of oppositional to the idea of punishment. Scandinavian prison systems are highly focused on rehabilitation. In countries where rehabilitation is not done properly, recidivism i.e. offending or committing crime again has a high likelihood.
3. Incarceration: We need to protect the society by taking the offender away from the society. What should it be done on the basis of? Seriousness of Crime or likelihood of the crime being committed again.
4. Retribution: Principle that doing something bad warrants for punishment in and off itself. Hard to make it sound believable.

5. Victims rights: Victims wishes need to be put at the forefront. Do all the victims want the same thing? Is the way that we are treating victims improving. Like having victims to appear by video links.

What things need to proved?

- What is the aim?
- Can this aim be achieved? Ex: Can deterrence reduce crimes of a particular type.
- Why is the particular aim most important and why are the others less important.

Why do people commit crimes?

- Need: Stealing to feed. Crimes of necessity.
- Want: wanting to do something. Like hating someone or desperation to get something.
- Circumstantial: Things depending on the situation. Not under control

Ex: People cannot be stopped from stealing if that is what they need to do keep them alive. Hence, deterrence is ineffective.

Types of Punishments

1. Jail Prison
2. House arrest
3. Fines
4. Community Service
5. Rehabilitation Programs
6. Probation: Check regularly with a probation officer. Cannot leave country etc.
7. Suspended Sentence

These are the various kinds of tools that the criminal justice system has.

Jails/Prisons

PROS

- Can be a strong deterrent
- Removes people from the situation that may have resulted in their offending. For
Ex: If a person is a part of a gang, he is taken away from the gang when he is in prison which is good because now he is away from the cause that made him commit the offence in the first place.
- Excellent way of forced rehabilitation or compulsory rehabilitation
- Allows for introspection. People can think about the people whom they have wronged.

CONS

- Exposure to criminals. Prisons have gang like structures.
- Removed from the positive influences available in the outside world.
- When state treats people like criminals, they are more likely to internalise it and act like criminals. "Treated like a criminal, will act like a criminal"
- Poorly managed and funded hence ineffective rehab
- Inherent immoral as it takes away liberty in a strong way.

Discretion in CJS

Discretion is exercised by Judge, Police and Prosecutors. However, it still has limitations as to max and min punishments that a judge can give. Police officers are governed by guidelines for their behaviour.

PROS:

- Accounts for different levels of culpability and provides flexibility

CONS:

- Racist Police officers. Can be applied unfairly

Mandatory sentences are sometimes enacted by governments. Ex: Govt cracking down on gangs. Cannot look into the case specifics. Can get caught up in popularism.

Certain crimes have expiration dates. Because evidence becomes weaker. But states are changing their approach. For: Child Sexual Abuse.

Plea Bargains

1. Charge Bargains: The defendant agrees to plead guilty to reduce charges. Ex: aggravated assault rather than an attempted murder.
2. Sentence Bargaining: Same charge is applied but a lighter sentence is given

PROS:

- Offenders could get lighter sentences. Dont get trapped in jail for life.
- No traumatizing court cases
- Saves the state resources in terms of bringing that case to trail.

CONS

- There is no possibility of a not guilty verdict. The person might be innocent.
 - Plea bargains can be coercive to minority groups. For Ex: A black suspected offender who is innocent might be coerced in to accepting the plea bargain, because the jury is all white.

Different Legal Systems

Common Law

- Case law (published judicial opinions) are of primary importance. Higher courts take a decision in a given situation and that is recorded. This record can be used by

other lower courts to take decisions in similar situations

- System is 'adversarial'
 - Judge is a referee
 - Lawyers have an active role of presenting arguments
 - Emphasis on licensed professionals. Lawyers have to be licensed to appear in a court.
- This system is followed in USA, UK, India, Australia, Canada

PROS:

- Evolves naturally. Changes with time and is more likely to be up to date.

CONS:

- Inherently adversarial. Lot of fighting and argumentation rather coming to the truth of the matter.
- Costly because there is lot of setup involved. Licensed professionals

Civil Law

- Much more emphasis on codified statutes (legislation)
- The system is inquisitorial
 - Charges are brought based on established facts. Judges play an active role. Lawyers still represent clients but they don't involve that much. More in administrative property
 - More quasi-legal professionals.
- Ex: China, Japan, Germany, France and Spain

PROS:

- Truth Seeking. No sugar coated arguments.
- Conflict averse.
- Lesser cost

CONS

- Sometimes more rigid. When codified statutes are not updated it can get obsolete.

Role of Judges

- They have extensive technical training and are well versed in the law and understand all its nuances.
- Often they are at the top of their profession. They get elevated and promoted to be a judge.
- Trained to overlook bias. They have some biases but they have undergone training to consciously work past those things.
- Becoming more diverse

CONS:

- There are still old, rich white men stereotypes. Hence their ability to sympathise is very limited.
- Not in touch with the broader societies. Not much in contact with the minorities.
- Some of the judges are tied to a very rigid application of law. Unable to value the border concepts such as what is the social value and what is the social good etc.
- Are still humans and have their own aspirations and worries. They are potentially worried about job security. Judges play it safe to prevent their verdicts from being repealed.

Juries

Juries often do not decide on the criminal sentence or compensation rather on guilt or innocence or if liability exists

PROS

- Diversity. Representative of the communities. The main purpose of the jury is to have 10-12 people from the different sections of the society.
- Studies show that juries take their roles seriously
- Encourages engagement with the legal system in general.

CONS

- Incapable of understanding legal intricacies and complex evidence. Evidence nature is evolving with advances in science. Ex: DNA, CCTV footage, Cyber footprint
- Juries often don't necessarily have huge amount of education. Because people can get out of jury duty easily.
- Those with understanding of cases eg lawyers are often vetted off the case.
- Prone to bias
- Emotive
- Easily swayed by lawyers

Standards of Proofs

- The criminal standard for the burden of proof is "beyond all reasonable doubt". Intended to be a high threshold. It is because the consequences of sending someone to prison are very severe for the person and hence, the decision regarding this should not be taken haphazardly. "Innocent until proven guilty"
- Should this be changed for different types of crimes? Debatable topic. It is because crimes like sexual assault are particularly difficult to prosecute people. Comparison is between currently low rates of conviction v/s potentially letting an innocent person suffer.
- The civil standard of proof is "balance of probabilities". More likely than not to have occurred. More than 50% chance. These are in cases where the cases involve determining liability, instances of negligence by companies etc.

Types of Dispute Resolutions

1. Mediation: Parties come to a consensus or decision on their own with assistance from third party. It is requirement in many states before you go to litigation.

PROS

- Lower Costs
- Lesser load on Court Systems
- Does not pit sides one against another
- explores interests in more detail

CONS

- Nothing forces the parties to agree
- Power imbalances adversely affect the minority in the mediation. For Ex: If you are a woman in a domestic violence situation, it might not be easy to represent in mediation as the lawyers are not as involved as in other kinds of dispute resolutions.

2. Litigation: parties bring their cases and arguments before the court and the judge/jury decides the outcomes. Decision can be appealed.

PROS:

- Completely independent. You do not have to choose your litigator. Many countries have litigation as their last resort.
- Litigation is getting better in a number of countries and becoming more sensitive to the needs of the people

CONS:

- Costly and Lengthy
- It pits people against people
- Can clog the judicial system
- Less discretion for the parties as they might want to resolve their dispute in a different way.

3. Arbitration: Middle ground between mediation and litigation. A neutral third party responsible for resolving the dispute. Decision is binding but unlike litigation they cannot be appealed. Like mediation, there is a bit more flexibility like deciding the judge, role of lawyers and method of dispute resolution

Constitutions, Rights and Legislative Interpretations

- A constitution is an aggregate of fundamental principles that constitute the legal basis of a polity, organisation or other entity
- Interaction with rights:
 - Express Rights: Right to freedom of religion, press, assembly and petition
 - Implied Rights: Eg: right to political communication in Australia because it is necessary to vote. Because if people do not know about the political scenario they cannot make an informed choice while casting their vote.

There is no single default way of interpreting the codified law. Different judges interpret laws differently.

Interesting Topics

- Do family law systems disproportionately favour women for custody etc?
- Should indigenous populations historically oppressed by the state have separate legal system?
- Should animals and environment have legal standing?
- What helps and hurts wrt increasing system engagement?
 - Legal aid
 - Televising criminals
 - Plain English Legislation
 - True Crime Documentaries

Intellectual Property

Intellectual property is not only about patents, it also involves other things.

1. Patents: It protects an inventive idea or process often to get monetary benefits. Patents are for things that are new useful and non-obvious. Types: utility, design, plants, etc.
2. Trademarks: Protects words, phrases, symbols, sounds and color schemes etc.
3. Copyright: Does not protect the ideas themselves rather they way in which those ideas are expressed and manifested. Ex: Written works, art, music, code etc
4. Trade Secret: Procedure, formulas, strategies exclusive to companies using them

KEY FEATURES

- If you have an IP, you can control the reproduction of that item. You can charge someone fee for using that idea or product.
- Different processes apply to different countries. For eg, Copyright is automatic. If you write a book you automatically get its copyright however, you have to apply for a patent to get it.
- Patents and Copyrights are limited in time. Ex: Copyright of a book limited to 70 years from the writer's death. Patent lasts for 20 years from the application (depends on type)
- Berne Convention and World Intellectual Property Organization seek to unify different countries. In Status Quo, these laws are diverse across all the countries.

PROS

- Protects creativity and rewards innovation
- Encourages investment EX: pharmaceutical research

CONS

- Controlled by monopolies. Not using patents but locking out other people from using the patents.
- Buying out of patents as the prices can be controlled by having patents

- Accidental Breaches