



MALCOLM DAVIES

DAVIES,  
CROALL  
& TYRER'S  
CRIMINAL  
JUSTICE

FIFTH EDITION

**DAVIES, CROALL AND TYRER'S  
CRIMINAL JUSTICE**

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**Fifth Edition**

# **DAVIES, CROALL AND TYRER'S CRIMINAL JUSTICE**

Malcolm Davies

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We should like to dedicate this book to Michael Molyneux (1929–2005) for his inspiration as a teacher to generations of students and colleagues at Ealing Law School.



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## Preface

It is nearly twenty years since the first edition of *Criminal Justice* was published in 1995. This fifth edition continues with the task of describing the operation of, and the changes to, the criminal justice system in England and Wales from the end of the twentieth century to the early decades of the twenty-first.

The changes described in the preceding four editions were many. Some were designed to give the appearance of modernisation. Some were the results of the pressure created by the single-issue pressure groups. Others were the consequences of new crimes, media attention and public outcry. There was a noted shift in emphasis from a system that sought to respond to crimes to one that also sought to increase the efforts to prevent crime by reducing criminal opportunities, enhance the coordination and collaboration between the agencies, increase surveillance by use of CCTV and electronic monitoring of offenders, and adopt strategies to counter anti-social behaviour in crime-prone communities and families.

The criminal justice system that emerged from the nineteenth and twentieth centuries was built on commendable principles to ensure the state and its agencies did not have all its own way. The constraints on the powerful were intended and enforceable through a range of principles and agencies that set limits on those whose duty it was to respond to crime. The most notable of these was that the agencies of criminal justice and the agents of law enforcement and prosecution were not above the rules of law.

Furthermore, in dealing with those accused of crime the determination of guilt for serious crimes was a matter of lay juries reaching decisions based only on the evidence heard in court.

In addition, the trial dice were loaded in our adversarial system of justice in favour of the defendant in two ways: first, with the 'burden of proof' principle whereby it is the prosecutor who needs to gather relevant and admissible evidence while the defendant does not need to provide evidence or account for their behaviour, and; second, by the 'standard of proof' criteria used in criminal cases whereby the jury are instructed that the decision to either convict or not convict, should be based on a standard that is 'beyond reasonable doubt', or as it is sometimes translated, the jurors had to be fairly certain the defendant did what had been claimed by the prosecution.

When talking about the principles and practice in a field of study such as criminal justice we refer to the dominant perspectives and theories that are taken for granted and underpin the work of institutions and the agencies. We call this a paradigm; defined as, 'A mode of viewing the world which underlies the theories and methodology of science in a particular period of history'.

What is the shift in the criminal justice paradigm in the early twenty-first century and to what extent have we moved away from a system defined primarily in terms of principles that focused on the rights of the defendant?

The era of the ECHR and its focus on the human rights of the criminal and prisoner probably reached its zenith in the first decade of the twenty-first century with demands for prisoners to have the right to vote regardless of their crimes or

the extent of their anti-social behaviour. One key development for clarifying and finessing these issues on human rights was the establishment in 2008 of the Supreme Court for the UK.

The early twenty-first century has seen a paradigm shift as a consequence of shifting sympathies which has seen, first a move towards the victims of crime, and second, a major refocus on the basics of criminal justice, i.e. public safety, as different types of organised criminal groups took full opportunity to operate globally.

Hence, two key drivers of change in the last decade have been the continued increase in victims' rights at home, and the enhanced perceived threat to the public from global crimes. This latter concern is dismissed by some as yet another example of a 'moral panic', a concept that has gained in popularity but stumbles over a key element of having no guide as to how the public, media and governments – castigated for 'overreacting' to an outbreak of crime – should react to new manifestations of criminality.

This rebalance in the system reflected the growing influence of the victims' movement and is illustrated by the series of trials held in 2014 of media celebrities, mainly radio and television presenters, who were accused of sexual crimes, usually involving younger victims. These resulted in historic prosecutions; in some cases going back to allegations made in the 1960s.

The status of the victim of crime has continued to advance and in 2013 the Victims' Right of Review (VRR) was introduced to give victims the right to challenge a decision by the Crown Prosecution Service not to prosecute an offender. This was a further example of a series of incremental reforms giving the victim more say in the system and followed on from the Victims Charter, Victim Support, victim compensation, victim impact statements and victim surcharge.

Developments in public accountability, illustrated the shift in the criminal justice paradigm, by giving the individual victim a greater voice, and also in addition by giving the public at large a chance to influence law enforcement at the local level by the introduction in 2012 of elected Police and Crime Commissioners.

On the international scene the impact of crime was to involve much soul searching and questioning of basic assumptions as to what is the purpose of the criminal justice system. Those who reiterated the shibboleths of liberty, and protecting the rights of the accused, were to be challenged and unsettled by the growing reality that we were in a global encounter whereby the parochial features of traditional jurisdictions with proud distinctions and trusted assumptions were somewhat inadequate when facing the dramatic nature of crimes being carried out by criminals operating on a global scale.

Cyber fraud is one example of criminals exploiting new technologies that are unhindered by international distances and, indeed, often protected by jurisdictional differences with regard to extradition and national laws that impeded cross-jurisdictional collaboration between police forces and prosecutors.

New horror stories emerged to do with cross-jurisdictional crimes that included human trafficking, people smuggling, slavery and terrorism.

Terrorist acts from around the world resulted in long lists of victims. These included: Kenyans and Tanzanians office workers and US embassy officials (1998, killed 200 and 1,000 injured), office workers in the Twin Towers in New York City (2001, killed 2,999), Bali holidaymakers (2002, killed 202 and 240 injured),

Spanish commuters on the Madrid Railway (2004, killed 191 and 1,800 injured), London Underground and bus passengers (2005, 52 killed and 70 injured), hotel guests and workers in Mumbai (2008, killed 164 and 308 injured), Lee Rigby, a soldier, hacked to death in a street in south London (2013) and cartoonists, publishers, shoppers and police officers in Paris (January 2015, 17 killed and 1 wounded).

The link between the national and international world is clearly evident in the new reality of global crime. It is also evident in the economic context of criminal justice in England and Wales, as from 2008 the global recession has resulted in a prolonged period of economic austerity and fiscal pruning that led to cutbacks to services and manpower and stimulated the search for more cost-efficient solutions such as increasing the number of services contracted out, i.e. switched from the public to the commercial and voluntary sector.

Some things, however, do not change. It is still a point of uniqueness that the criminal justice system in England and Wales relies on a very high proportion of tasks and decisions being undertaken by volunteers, independent professionals and lay participants, and this is in contrast to other countries where government employees and public officials undertake most of the tasks of delivering criminal justice services.

I trust you find this fifth edition helpful.

Cordially yours,

Professor Malcolm Davies

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## Chronology of key dates in the development of criminal justice in England and Wales

The following gives a list of significant dates referred to in the text. Added comments indicate key developments in the criminal justice system in England and Wales.

- 1717 Transportation Act
- 1779 Penitentiary Act
- 1784 Transportation Act
- 1816 Millbank penitentiary opened in London
- 1823 Gaol Act
- 1824 Vagrancy Act
- 1829 Metropolitan Police Improvement Act. The Metropolitan Police Force was established
- 1833 Factory Act
- 1842 Pentonville prison opened
- 1853 Penal Servitude Act. Ends short terms of transportation and Parkhurst Prison opens with a regime designed for young offenders
- 1854 Reformatory School Act
- 1856 County and Borough Police Act
- 1861 Offences Against the Person Act
- 1867 End of transportation
- 1877 Prison Act. The Prison Commission was established with responsibility for all prisons in the country: the first chairman was Sir Edmund Du Cane
- 1878 Criminal Investigation Department (CID) of the Metropolitan Police was established
- 1879 Prosecution of Offences Act
- 1895 Gladstone Committee Report on prisons
- 1883 Trial of Lunatics Act allowed juries to bring in a guilty but insane verdict
- 1898 Prison Act
- 1898 Criminal Evidence Act
- 1901 Borstal experiment introduced
- 1907 Probation of Offenders Act
- 1908 Prevention of Crime Act. Borstal system and preventive detention introduced
- 1908 Children Act. Restrictions on the imprisonment of children
- 1913 Mental Deficiency Act. Mentally deficient persons were diverted out of the prison system
- 1919 Police Act followed the Police Strike and the formation of the Police Federation
- 1925 Criminal Justice Act
- 1933 Children and Young Persons Act. Reformatories and industrial schools were replaced by approved schools

## Chronology of key dates in the development of criminal justice in England and Wales

- 1936 Open prison was established near Wakefield  
Prison Officers' Association was founded  
End to arrows on uniforms and treadmills
- 1936 Public Order Act
- 1948 Criminal Justice Act. Abolished penal servitude, prison with hard labour and whipping. Introduced corrective training, preventive detention and detention centres
- 1949 Royal Commission on Capital Punishment
- 1957 Homicide Act
- 1961 Criminal Justice Act. Minimum age of imprisonment was raised from 15 to 17. Greater use was encouraged of borstal training instead of prison for offenders under 21
- 1962 Royal Commission on the Police
- 1963 Prison Commission abolished and replaced by the Prison Department
- 1964 Criminal Procedure (Insanity) Act
- 1964 Police Act
- 1965 Murder (Abolition of Death Penalty) Act
- 1966 Mountbatten Report. Following the escape of the Russian spy George Blake from Wormwood Scrubs prison, Earl Mountbatten conducted an inquiry into prison security
- 1967 Criminal Justice Act. Introduction of the suspended sentence and discretionary parole. Courts were empowered to suspend any sentence of imprisonment not exceeding two years. Parole allowed an inmate to apply for parole after serving one-third of their sentence. Abolition of preventive detention and corrective training and corporal punishment in prisons. Introduction of majority jury verdicts
- 1968 Firearms Act
- 1968 Criminal Appeal Act
- 1969 Children and Young Persons Act. Introduced care and supervision orders and replaced approved schools and remand homes with community homes
- 1971 Misuse of Drugs Act
- 1971 Courts Act. Abolished Assizes and Quarter Sessions and established the Crown Court
- 1972 Road Traffic Act. Introduced the breathalyser
- 1972 Criminal Justice Act. Introduced community service orders
- 1974 Juries Act
- 1974 Rehabilitation of Offenders Act
- 1976 Bail Act
- 1977 Criminal Law Act. Allowed the court to suspend a sentence of imprisonment in part
- 1979 Report of the May Committee on the Prison Services. A policy of positive custody was advocated
- 1980 Magistrates' Courts Act
- 1981 Scarman Report on riots in Brixton
- 1981 Contempt of Court Act
- 1981 Royal Commission on Criminal Procedure

Chronology of key dates in the development of criminal justice in England and Wales

- 1982 Criminal Justice Act. Reduction of the parole eligibility criteria from 12 to 6 months. Statutory criteria for sentencing young offenders to a custodial sentence. Borstal training replaced by youth custody
- 1983 Mental Health Act
- 1984 Police and Criminal Evidence Act. Introduced the PACE Codes to cover police stop and search, questioning of suspects and detention in police custody
- 1985 Prosecution of Offences Act. Established the Crown Prosecution Service
- 1986 Public Order Act
- 1986 Drug Trafficking Offences Act made laundering of cash derived from the sale of drugs illegal and allowed confiscation of money made through drug dealing
- 1988 Criminal Justice Act. Extension of statutory criteria for custodial sentences for young offenders
- 1988 Legal Aid Act
- 1988 Road Traffic Act
- 1990 White Paper, *Crime, Justice and Protecting the Public*
- 1990 Criminal Justice (International Cooperation) Act introduced a new power for police and customs officers to seize cash discovered on import or export which is reasonably suspected of being derived from or intended for use in drug trafficking and enabled the UK to request and provide assistance to all countries
- 1991 Criminal Justice Act. Introduced the combination order, unit fine and a sentencing framework
- 1991 Report on the Prison Disturbances of April 1990 (chairman, Lord Justice Woolf). It recommended wide-ranging changes to the nature of prison regimes and the need for greater coordination throughout the criminal justice system
- 1991 Criminal Procedure (Insanity and Unfitness to Plead) Act
- 1993 Royal Commission on Criminal Justice (chairman, Lord Runciman)
- 1993 Bail (Amendment) Act
- 1993 Criminal Justice Act repealed the unit fine
- 1994 Sexual Offences Act
- 1994 Criminal Justice and Public Order Act. Secure training order, revised bail law, right to silence redefined, new offences relating to collective trespass, raves and squatters; new offence of male rape and reduction in the age of homosexual consent to 18
- 1994 Police and Magistrates' Courts Act. New process of funding and monitoring police performance and changed the organisation and funding of magistrates' courts. Home Secretary was given the power to set the objectives for the Police Service which have to be included in the local policing plan
- 1995 Criminal Appeal Act established the Criminal Cases Review Commission to review and investigate possible miscarriages of justice in England, Wales and Northern Ireland. It became operational on 31 March 1997 and it took over the powers formerly exercised by the Home Secretary to refer a conviction or sentence on indictment to the Court of Appeal
- 1995 Learmont report on prison security

## Chronology of key dates in the development of criminal justice in England and Wales

- 1996 Criminal Procedure and Investigations Act introduced new rules on the disclosure of evidence and the timing of the plea. Restored committal proceedings to replace the unimplemented transfer proceedings and introduced plea before venue
- 1997 Firearms (Amendment) Act outlawed ownership of handguns above .22 calibre
- 1997 Protection from Harassment Act
- 1997 Sex Offenders Act established the Sex Offender Register
- 1997 Crime (Sentences) Act introduced mandatory life sentence for adults convicted of a second serious offence such as rape or robbery with the use of a firearm, and minimum custodial sentences of seven years for those reconvicted of trafficking in Class A drugs
- 1997 White Paper, *No More Excuses*, proposed a range of proposals to improve the effectiveness of the youth court in preventing offending by children and young people. This became the principal aim of the youth justice system
- 1998 White Paper, *Modernising Justice*
- 1998 Consultation Paper, *Joining Forces to Protect the Public*
- 1998 Crime and Disorder Act introduced Drug Treatment and Testing Orders and the Sentencing Advisory Panel
- 1999 Access to Justice Act. Legal Service Commission established to oversee reformed legal aid scheme. Introduces Criminal Defence Service (CDS). The purpose of the Criminal Defence Service (CDS) is to secure the provision of advice, assistance and representation, according to the interests of justice, to people suspected of a criminal offence or facing criminal proceedings
- 1999 Criminal Cases Review (Insanity) Act
- 1999 Youth Justice and Criminal Evidence Act. Introduced a referral order for the youth court for young people convicted for the first time and its primary aim is to prevent reoffending. A youth offender panel will work with the young offender to establish a programme of behaviour for the young offender. Introduced reforms to the process of giving evidence to help young, disabled, vulnerable or intimidated witnesses give evidence in criminal proceedings such as use of screens, live link CCTV and the use of pre-recorded interviews; changes to the conduct of trials in rape cases
- 2000 *National Standards for the supervision of offenders in the community*, revised version came into force on 1 April 2000
- 2000 Criminal Justice and Court Services Act. Created the National Probation Service for England and Wales and the Children and Family Court Advisory and Support Service. Community orders were renamed: probation order became a community rehabilitation order. Extended the use of electronic monitoring and stricter enforcement. Measures to prevent unsuitable people from working with children. Sex offenders not to be eligible for the Home Detention Curfew scheme. Introduced new powers for the compulsory drug testing of offenders and alleged offenders at various points in their contact with the criminal justice system and allows a court considering the question of bail to take into account any drug misuse by the defendant

Chronology of key dates in the development of criminal justice in England and Wales

- 2000 Powers of Criminal Courts (Sentencing) Act. This was a consolidation Act that brought together all existing legislation on sentencing
- 2001 Sir Robin Auld's *Review of the Criminal Courts in England and Wales*. A comprehensive review of criminal procedure and the criminal courts
- 2001 Anti-terrorism, Crime and Security Act. In response to the 11 September terrorist attacks on New York and Washington DC. Introduced powers to cut off terrorist funds, allow government departments and agencies to collect and share information on terrorist activities, and provisions to improve the security of nuclear facilities that may be targeted by terrorists and enhanced police powers when detainees in police custody refuse to cooperate with the police as to their identity
- 2001 Criminal Justice and Police Act. Introduced on-the-spot penalties for disorderly behaviour and measures to prohibit the consumption of alcohol in designated public places
- 2001 Criminal Defence Service (Advice and Assistance) Act. Sets out the extent of the duty of the Criminal Defence Service to provide advice, assistance and representation
- 2001 International Criminal Court Act. The International Criminal Court (ICC) in The Hague, was established to try individuals for genocide, crimes against humanity and war crimes
- 2001 White Paper *Policing a New Century: A Blueprint for Reform*
- 2002 Police Reform Act. The Home Secretary will be required to produce an annual National Policing Plan. The Police Complaints Authority is replaced with a new body, the Independent Police Complaints Commission (IPCC)
- 2002 White Paper *Justice for All*
- 2002 Proceeds of Crime Act. Provides for powers to confiscate from convicted defendants the financial benefits criminals have made from their criminal activity. Confiscation orders are available following a conviction
- 2003 White paper *Respect and Responsibility – taking a stand against anti-social behaviour*
- 2003 Courts Act. Abolished Magistrates' Courts Committees (MCCs), and established courts boards. This Act abolishes commission areas and petty sessions areas and replaces them with local justice areas. It establishes a new HM Inspectorate of Court Administration
- 2003 Crime (International Cooperation) Act. Implements European Union police and judicial cooperation and provides for a database to store criminal information from all participating countries; cooperation to locate banking accounts and information relating to criminal investigations. Implements measures for combating terrorism. Implements the mutual recognition of driving disqualifications
- 2003 Anti-social Behaviour Act. It provides sanctions and powers for police, local authorities and housing associations to tackle anti-social behaviour in local communities and in social housing, including provisions aimed at dealing with noise nuisance. It provides a means for schools, local authorities and youth offending teams to work with the parents of children. Powers to tackle the problem of premises used for drug dealing; young people with air weapons, banning the possession of imitation guns and air guns in public; new powers of the police to impose conditions on

## Chronology of key dates in the development of criminal justice in England and Wales

- public assemblies, deal with illegal raves and to deal with unauthorised encampments
- 2003 European Union (Accessions) Act. The Accession Treaty provides for the accession of 10 new states to join the existing 15 countries in the European Union on 1 May 2004
- 2003 Sexual Offences Act. Redefines main sexual offences
- 2003 Criminal Justice Act. The Act introduced a major reform of sentencing including many of the reforms proposed by the Auld and Halliday reports on court process and sentencing. It established the Sentencing Guidelines Council and introduced a generic community sentence and a new indeterminate public protection sentence. For the first time it set out the aims of sentencing in a statute. Changes are made to pre-trial and trial process and the law governing evidence and juries.
- 2004 Domestic Violence, Crime and Victims Act. This introduced a new offence of causing or allowing the death of a child or vulnerable adult (to deal in particular where one of two people must be responsible for a death, but it is uncertain which). It makes common assault an arrestable offence, and makes provisions for victims and witnesses of crime.
- 2005 Constitutional Reform Act. Establishes the Supreme Court of the UK to replace the judicial appeal role of the House of Lords
- 2005 Prevention of Terrorism Act. Introduces control orders putting constraints on suspected terrorists who are not in custody awaiting trial
- 2005 Mental Capacity Act. Clarifies the law with regard to persons who have a 'lack of capacity' to take responsibility for their own actions.
- 2005 Serious Organised Crime and Police Act. Established the Serious Organised Crime Agency. Provided methods of recovering the proceeds of crime and preventing money laundering
- 2006 Criminal Defence Service Act. Created the Criminal Defence Service (CDS)
- 2006 Police and Justice Act. This dealt with reforms to police authorities and set up a mechanism for establishing police reforms via the National Police Improvement Agency (NPIA); introduced a standard set of powers for PCSOs. Punitive conditions may now be attached to conditional cautions. A new definition of computer hacking was provided
- 2006 Identity Card Act. Provides for a National Identity Register and the powers to issue ID cards and sets out the role of the National Identity Scheme Commissioner
- 2006 Terrorism Act. This Act increased the period of pre-charge detention to allow the police to question terrorist suspects from 14 to 28 days.
- 2007 Offender Management Act. This allows the Government to subcontract probation services from the public, private or voluntary sector
- 2007 UK Borders Act. This allows for the automatic deportation of foreign criminals who have been sentenced in the UK to a period of 12 months in prison
- 2007 Mental Capacity Act. This amends the Mental Health Act 1983 which governs the compulsory treatment of people with a mental disorder, and the Mental Capacity Act 2005 (MCA), and defines the circumstances in which a person with a mental disorder can be compulsorily detained for treatment.

- 2007 Serious Crimes Act. This introduced the Serious Crime Prevention Orders for those aged over 18 after a convicted for a serious crime in order to protect the public, based on the same principle as an ASBO or a Sex Crime Prevention Order, i.e. it is a civil order but failure to comply carries a maximum sentence of five years' custody. The Asset Recovery Agency (ARA) is abolished and its work incorporated into the Serious Organised Crime Agency (SOCA)
- 2008 Criminal Evidence (Witness Anonymity) Act. This Act follows the House of Lords judgment in *R v. Davis* [2008] UKHL 36 of 18 June 2008. A decision which restricted the use of anonymous witnesses in trials under the common law. The new Act defines the statutory power for the courts to grant witness anonymity orders in criminal trials
- 2008 Criminal Justice and Immigration Act. Introduced a Youth Rehabilitation Order – a generic community sentence for children and young offenders and replaces all exiting community penalties available for younger offenders and a Youth Conditional Caution for 16 and 17 year old offenders. In both cases this brings the procedures in line with those applicable to adults. It set out the purposes of sentencing in the youth justice system. It created Violent Offender Orders. It created a presumption that trials in magistrates' courts will proceed if the defendant does not attend
- 2008 Counter-Terrorism Act. This Act gave authorities further powers to gather and share information to prevent terrorism; it created a requirement on the part of anyone convicted of a terrorist offence to regularly notify police of their whereabouts for a minimum period of ten years following release from prison. It enabled the police to take fingerprints and DNA samples from individuals subject to control orders as well as to register and monitor their movement. The Act amended the definition of terrorism by inserting a reference to a racial cause
- 2008 Children and Young Persons Act. Legislation to improve standards for children and young people in care and those leaving care, including new regulations for care agencies and powers for chief inspectors to fine failing agencies
- 2009 Policing and Crime Act. Places a duty on police authorities to seek out the public's views on policing in their area; amends police powers to deal with children drinking alcohol in public; introduces stricter provisions for people who sell alcohol to children; and provides for the mutual recognition of football banning orders between Scotland, Northern Ireland and England and Wales. The Act also introduces a specific injunction intended to reduce gang-related violence. It strengthens the arrangements for recovery of assets obtained through criminal means; there are new arrangements for judicial cooperation in relation to extradition. It made 'reduction of reoffending' a statutory responsibility of the crime and disorder reduction partnerships
- 2009 Coroners and Justice Act. It clarified the homicide laws with respect to diminished responsibility. It abolished the defence of provocation and replaced it with a new defence of 'loss of self-control'. It allows courts to grant anonymity to vulnerable or intimidated witnesses, and to those who assist certain gun and knife crime cases. It creates powers to seize profits



- made by criminals from publications about their crimes. The Act creates a National Coroner Service, led by a new Chief Coroner. The Act also amends sentencing laws and guidelines, by replacing the Sentencing Advisory Panel and the Sentencing Guidelines Council with a new Sentencing Council for England and Wales. The courts can give indeterminate sentences for certain terrorist offences in the name of public protection. It provides for live video links and screens around the witness box in order to help vulnerable and intimidated witnesses give evidence
- 2009 Borders, Citizenship and Immigration Act. It extended powers to take fingerprints from foreign criminals liable to automatic deportation
- 2010 Crime and Security Act. Provided new PACE rules by reducing the reporting requirements with regards to stop and search powers; provided additional powers to take fingerprints and DNA samples from those convicted of serious sexual and violent offences overseas; and rules for the destruction and use of DNA and fingerprints. Introduced a new power called a Domestic Violence Protection Notice (DPVN)
- 2010 Terrorist Asset-Freezing (Temporary Provisions) Act. This Act enables the Treasury to freeze assets belonging to anyone believed to be involved in terrorist activities
- 2010 Bribery Act. Created a new offence of failing to prevent acts of bribery. It is specific to commercial organisations and requires the organisations to take verifiable steps to prevent acts of bribery
- 2010 Identity Documents Act. Repealed the Identity Cards Act 2006
- 2010 Anti-Slavery Day Act. Introduced a national day (18 October) to raise awareness of the need to eradicate all forms of slavery, human trafficking and exploitation
- 2011 Police Reform and Social Responsibility Act. It transferred the accountability of police forces from police authorities to elected Police and Crime Commissioners (PCCs). The first elections of PCCs were held in November 2012. Elections will take place every four years
- 2011 Terrorism Prevention and Investigation Measures (TPIM) Act. Replacing control orders, the Act introduced Terrorism Prevention and Investigation Measures (TPIMs) with an aim to protect the public from individuals believed to have participated in terrorist activities but who cannot be brought before the court or deported. The notices are imposed by the Home Secretary, can last up to two years and include a number of restrictions
- 2011 Police (Detention and Bail) Act. This changed the sections in PACE 1984 which refer to the way police calculate the maximum permitted detention period without charge, so that if at the point of releasing a suspect without charge there is unexpired detention time remaining, the police may recall and detain the suspect for further questioning until the total period of detention has expired
- 2012 Domestic Violence, Crime and Victims (Amendment) Act. It introduced new provisions related to the protection of victims of crime, particularly domestic violence. It also amended provisions for trials without jury, introduced new regulations for trials regarding the death of a child or vulnerable adult and permitted bailiffs to use force when entering homes

- 2012 Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act. Abolished the sentence of Imprisonment for Public Protection (IPP) and Extended Sentence for Public Protection (EPP). Introduced a new Extended Determinate Sentence (EDS) imposable on those which would have formerly received an IPP or EDP. It extends the period covered by a suspended sentence order up to two years rather than 12 months; it gives courts new powers to allow curfews to be imposed for more hours in the day (currently a maximum of 12) and for up to 12 months rather than the current six. It imposes a new test for bail and if there is 'no real prospect' of a custodial sentence, the offender should be granted bail. Revised Prison Rules allows for deductions from prisoners' pay, in order to finance victim reparations. It creates a new offence, and a mandatory minimum sentence, of threatening with an offensive weapon, with a minimum sentence of six months' imprisonment for persons over 18 found guilty
- 2012 Prisons (Interferences with Wireless Telegraphy) Act. The Act permits the blocking and capture of electronic communications data sent and received within prisons, young offenders' institutions and secure training centres located in England, Wales and Scotland
- 2012 The Protection of Freedoms Act. This Act brings in new laws regarding police retention of fingerprints and DNA data. It introduced a code of practice for surveillance camera systems (CCTV) and makes a new requirement to obtain judicial approval for certain surveillance activities by local authorities. It introduces revised rules to stop and search persons and vehicles reasonably suspected of being involved in terrorist activities as well as anyone within a specified area on terrorist alert. It reduces the maximum period of detention without charge for terrorist suspects from 28 to 14 days
- 2013 Prevention of Social Housing Fraud Act. It provided enhanced investigatory powers of local authorities and introduced new criminal penalties for sub-letting or parting with possession, without permission, of social housing
- 2013 Mental Health (Discrimination) Act. It amended the Juries Act 1974 by removing the ban on 'mentally disordered persons' undertaking jury service
- 2013 Justice and Security Act. Its provisions include an oversight of intelligence and security matters of the Security Service (MI5), the Secret Intelligence Service (MI6) and the Government Communications Headquarters (GCHQ). It made the Intelligence and Security Committee (ISC) a statutory Committee of Parliament providing it with greater powers and enhancing its remit. The Act established closed material procedures (CMP) in relation to certain civil proceedings
- 2013 Crime and Courts Act. The Act abolished the Serious Organised Crime Agency (SOCA), the National Policing Improvement Agency (NPIA), the Child Exploitation and Online Protection Centre (CEOP) and the National Cyber Crime Unit (NCCU) by incorporating and consolidating their operational activities into a new National Crime Agency (NCA)
- 2013 Victims 'Right to Review' (VRR) was introduced allowing a victim the right to appeal against a decision of the CPS not to prosecute a suspect

- 2014 Offender Rehabilitation Act amends the period after which a criminal conviction or caution becomes spent, and provides supervision in the community for those released after a short prison sentence. Before those sentenced to less than 12 months in prison did not receive supervision on release
- 2014 Anti-Social Behaviour, Crime and Policing Act introduced new community trigger and community remedy empowering victims and communities by giving them a greater say in how agencies respond to their complaints. The Act abolishes Anti-Social Behaviour Orders (ASBOs) and replaces them with Crime Prevention Injunctions (CPIs), that can be granted against a person aged ten or over when the court is satisfied on the balance of probabilities that the person has engaged or will engage in anti-social behaviour

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### Figures

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### Tables

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## Part A

# INTRODUCTION TO CRIMINAL JUSTICE



## Chapter 1

# What is criminal justice?

### Learning objectives

After reading the chapter you should be able to:

1. Describe the agencies and processes of the criminal justice system in England and Wales
2. Define the purpose of the criminal justice system
3. Explain the principles of criminal justice
4. Understand the system of criminal justice and its key sub-systems
5. Explain the **paradigms** and models of criminal justice
6. Outline recent legislation and current policy developments

### Key statistics

- The number of police officers fell from 141,925 in 2007 to 128,351 in 2014
- Between 11.9.2001 (New York City bombing of the Twin Towers) and 30.6.2013, 332 individuals were convicted in England and Wales for terrorism offences, including murder, illegal possession of firearms and explosives offences. 2,465 people have been arrested under the Terrorism Act during this period
- In 2014, there were 240 magistrates' courts and 76 Crown Court Centres in England and Wales. The number of lay magistrates declined from 28,300 in 2007 to 23,401 in 2014
- Total number of Security Industry Association (SIA) licensed qualifications held by individuals in January 2014 was 339,940
- On 31 March 2014 there were 10,749 prisoners aged over 50 (12%) of the prison population
- 16% of all prisoners in 2014 were held in private prisons
- The number of Victim Support volunteers rose from 1,700 in 2007 to 5,600 in 2014

## Introduction

Criminal justice systems change over time. New agencies appear and some disappear. New crimes appear and some older ones disappear such as blasphemy (decriminalised in 2008 in the UK); many crimes continue as new versions of the old sins of greed, intimidation, violence and theft. The criminal justice system (CJS) in the twenty-first century has had to adapt to crimes, both ancient and modern, from both domestic and global sources.

The CJS has many parts – as with the blindfolded men who were asked to describe an animal by touch, perspectives vary and depend on whether one starts at the front or back end of the animal, which in this case was an elephant.

Criminal justice, like the elephant, has many parts. There are numerous agencies, procedures and personnel, and in recent years in England and Wales – under the ‘New Labour’ Government from 1999 to 2010, and the Coalition Government since 2010 – we have seen new agencies and players emerge; these have included the elected justice commissioners, a National Crime Agency, Resettlement Prisons, Community Rehabilitation Companies, the UK Supreme Court and a Sentencing Council.

Is the elephant getting smaller? During the Coalition Government era of 2010 to 2015, the actions of government was dominated by the worldwide recession and an economic climate of austerity and financial stringency. Cutting the cost of the system was paramount as demonstrated by cuts to budgets and a decline in court, police, probation and prison staff numbers. Over the period from 2009 to 2013 the average cost of imprisonment per inmate fell from £45,000 to £36,808.

However, unlike the elephant, with a criminal justice system there is regular debate as to how it can be made to work more effectively. Reducing costs and increasing efficiency have become a major theme of policy discourse in criminal justice along with the policy debates on ‘what is it for?’

The policy reform agenda pursued under the Coalition Government included issues of accountability, as illustrated by the new Parliamentary Intelligence and Security Committee, that was established to oversee the security services; and a civil liberties agenda with ID cards being abolished before they were introduced, less restriction on terrorist suspects with the abolition of control orders, and a limit on CCTV usage. The advance of the commercial sector continued as evidenced by the privatisation of probation and prison services, such that 16% of the prison population was held in private prisons in 2014.

A criminal justice system should be more than the sum of its parts, but only if it is coordinated to achieve commonly agreed goals. The question, ‘does it work?’ depends on what you want it to do. Hence the policy debates as to the aims of the system and answers to the question of ‘what is it for?’ Without understanding its purposes it is difficult to make a reasoned response to the question as to whether it is effective or not. Thus, the absence of a comprehensive overview of the logic and purpose of the criminal justice system allows the self-interested, the single-issue pressure groups, the mischievous, the misguided and the malevolent to misrepresent it.

So what is the CJS for? To answer this we should learn the lessons of history that includes recent events such as the urban riots of August 2011 that started in Tottenham, North London and spread across a number of English cities over the subsequent week. The riots, although untypical, brought fear and anxiety to everyday life as

shops and workplaces were burnt and looted, people attacked and robbed, and four people were known to have been killed by rioters.

Not everyone is aware of the second sea adventure of Robinson Crusoe who had the misfortune to be shipwrecked for the second time in his life on what looked like another desert island. Crusoe could not believe his bad luck and he became very depressed thinking of the forthcoming isolation and fear of the unknown. Having decided to explore the island he climbed a hill and to his great relief he declared, 'Thank god. Civilisation', as there on the crest of the hill was a scaffold.

This symbol of punishment, considered barbaric to some, meant there were people, authority and laws: necessary conditions of a stable and ordered society. This was the lesson that Thomas Hobbes wrote about in *Leviathan* during the English civil war in seventeenth century England. Law with order requires individuals to accept some loss of liberty in order to achieve public protection from government. Without that protection, the potential for a state of anarchy increases and in Hobbes's words, 'the life of man becomes nasty, brutish and short'.

The riots of 2011 reminded people of a fundamental reality that had been taken for granted in the human rights era of the late twentieth century, when discussions turned to voting rights for prisoners – without law and order, the right to vote and the chance of being a prisoner would be greatly diminished if frightened people turned to self-protection and vigilante-style responses to perceived threats from criminals to themselves, their businesses and their homes. The absence of the police on the streets during the riots of 2011 reminded those caught up in them, including the most 'stout hearted of citizens' (a phrase used in the *Blackshaw* Court of Appeal sentencing guideline case on the riots) that the fundamental human right to life and liberty requires an effective criminal justice system.

Not all crimes are as dramatic as rioting. In fact, routine crimes continued, but there were fewer of them. The results of the Crime Survey for England and Wales and the police crime statistics showed steady reductions in the number of high-frequency crimes committed, such as burglary and theft. The number of overall crimes recorded by the police have been dropping each year since 2002/3.

Other crimes that have dominated the headlines since 2010, included phone tapping and illegal electronic snooping in the newspaper industry leading to the closure of the *News of the World* and imprisonment of its editor.

The **Metropolitan Police's** investigation in 2014, called 'Operation Yewtree', examined historic allegations of sexual crimes going back to the 1960s made against high-profile TV, media and radio celebrities that included Max Clifford, Rolf Harris and Freddie Starr. The allegations started when complaints were made against Jimmy Savile who died in 2011. An investigation was set up to look into 11 allegations of sexual abuse by Savile at the high-security psychiatric hospital at Broadmoor between 1968 and 2004.

Meanwhile, crime threats from abroad continued; most notably from terrorist activities linked with global conflicts in Islamic counties such as Syria and Iraq.

Electronic innovation provided new means to commit newly named crimes such as cyber-fraud and cyber-stalking. Globalisation of criminal opportunities is also apparent with organised criminal groups operating across Europe and engaged in activities such as smuggling people, drugs and weapons. The emergence of human trafficking in recent decades has led the UK to pass the Anti Slavery Day Act in 2010 to highlight the existence of modern styles of slavery. The UK Parliament passed the Abolition of Slavery Act in 1807. Then and now the global nature of crime is apparent

and the need to deal with British citizens convicted of crimes abroad and foreign nationals convicted of crimes in the UK has meant that special arrangements have been set up for detaining and deporting foreign national offenders.

In 2014, foreign nationals in prison in England and Wales accounted for 12% of the total prison population in England and Wales. Originating from 159 countries, over half were from the following ten countries: Albania, India, Ireland, Jamaica, Lithuania, Nigeria, Pakistan, Poland, Romania and Somalia (**Ministry of Justice quarterly bulletin October to December 2014**). In 2012, 4,765 foreign national offenders were deported or removed (**Hansard, HC, 25 November 2013**).

Global television and radio meant that crimes and criminal trials could now be instantaneously seen around the world and provide a source of documentary cum news cum entertainment as with the coverage of the trial of Oscar Pistorius on a charge of murder in South Africa in 2014. The media and global circus surrounding this trial was reminiscent of the trial in 1995 of another celebrity sportsman O J Simpson in California, for the murder of his wife and her friend. Yet another sportsman celebrity seized the world's media attention in 2014 during the football World Cup in Brazil when the Uruguayan player Luis Suarez bit an Italian player on the shoulder, a type of assault that he had committed at least twice before on other players during his footballing career.

'Footballer bites opponent' could have remained the headline were it not for the pronouncements of Oscar Tabarez, the Uruguayan football coach at a press conference, angry at the four-month footballing ban on Luis Suarez. He said:

'I have been a teacher in my life and I present the theory of the scapegoat: you know about the psychology of it all. When giving a punishment to someone who commits a transgression – not a crime – so that the whole group will know what is good, what is bad, what is wrong, what is correct, what ought to be done, and what shouldn't.'

*(The Independent, 27 June 2014)*

This brings an important insight into the nature of punishment in a criminal justice system. Even if the term of scapegoat is wrongly used by the coach in this example, he was right to point out that high-profile, anti-social and deviant acts stimulate discussion in the wider community that help to clarify behaviour that is right from that which is wrong.

Hence, a final lesson for those studying criminal justice is the realisation that crime affects everyday life in many ways: this includes the responses that in a practical way help to reduce crime opportunities and protect citizens against crime, as well as responses that come to shape the moral discourse and prompt demands for 'new laws' or 'tougher penalties' that are stimulated in the community by the well-publicised transgressions of Pistorius, Simpson and Suarez, *et al.*

Crime is a feature of all societies and criminal justice is the response to it. The response to crime will include practical and instrumental aspects of protecting the citizens from everyday threats to their safety, such as by ensuring dangerous and persistent offenders are monitored effectively when in the community and imprisoned when necessary. It also generates moral debate about defining expectations as to types of behaviour that is unacceptable. In response to concrete acts of unacceptable

behaviour the criminal justice system plays its part in the moral drama of society. By censoring breaches of the law, and the consequent confirmation or re-examination of moral boundaries, we come to define and shape civic expectations; hence, our response to crime comes to define what type of society we want to live in.

## 1.1 Criminal justice in England and Wales

### Objective 1

Describe the agencies and processes of the criminal justice system in England and Wales

There are three distinctive criminal justice systems with separate procedures and agencies in the UK: England and Wales, Scotland, and Northern Ireland. The organisation and jurisdictional limits of criminal justice in England and Wales are determined by constitutional distinctions within the UK and increasingly by the need to respond to issues of crime in the outside world, especially in light of the acts of terrorism in New York City and Washington DC on 11 September 2001 and in London in July 2005. Membership of the European Union has also meant that on some constitutional, policy and everyday regulations we are no longer an isolated island in the sea of criminal justice. To varying extents the agencies of criminal justice in the UK have had to comply with aspects of harmonisation, integration and greater cooperation with our European partners (28 member countries since 2013).

Within the UK, different government departments are responsible for criminal justice in the three jurisdictions – the Home Office and the Ministry of Justice for England and Wales, the Justice Department in Scotland, and the Northern Ireland Office. Other government departments such as the Attorney General's Office are involved in the administration of criminal justice. Local councils have a statutory duty to establish a Social Services Department employing qualified social workers to deal with children in trouble with the criminal law. Criminal investigations are not made exclusively by the police but also by many other agencies such as investigators for HM Customs and Revenue and various local government bodies such as the Environmental Health and Trading Standards departments.

### ► Agencies

In England and Wales, criminal justice agencies such as the police, prisons and probation are funded primarily by central government. Policy is established in part by civil servants who advise ministers and by legislation enacted by Parliament. For administrative purposes agencies are divided into regional areas. The main agencies are briefly described below.

- *Police.* There are 43 regional police forces, each under the direction of a chief constable and, except for the Metropolitan Police and the City of London police, local police authorities. Forces vary in size – the biggest being the Metropolitan Police with 30,417 uniformed officers available for duty, and one of the smaller is Warwickshire with 979. Across England and Wales in 2013 there were 128,351 police supplemented by 18,351 Specials, 13,552 Police Community Support Officers and civilian employees. The **Home Office** is the government department responsible for the police and counter-terrorism services.



- *Prosecutors.* The **Crown Prosecution Service** was established in 1985 and is divided into 42 areas which in 2007 were formed into 14 regional groups outside London. The **Attorney General** is answerable in Parliament for the Crown Prosecution Service, which is headed by the **Director of Public Prosecutions**. In 2013/14 the CPS employed 6,163 people and dealt with 640,657 prosecutions in the magistrates' courts and 94,617 in the Crown Courts, plus it dealt with 304,982 pre-charge review decisions and 10,358 appeals from the Crown Court.
- *Criminal Defence Service.* Oversees the system of legal support for those accused of a crime by advice, assistance and representation in court through a combination of full-time public defenders and contracted private sector lawyers.
- *Courts.* Of the total of criminal cases, 97 per cent begin and end in the magistrates' courts although more serious cases are ultimately dealt with in the Crown Courts. Officials in these courts include judges, **recorders**, **magistrates**. The criminal courts come under the authority of the Ministry of Justice.
- *Ministry of Justice.* Came into being in 2007 with the merger of the **Department for Constitutional Affairs** and part of the Home Office and is responsible for: Her Majesty's Courts Service; National Offender Management Service; Her Majesty's Prison Service; Probation Service; **Parole Board**; **Youth Justice Board**; **Criminal Injuries Compensation Authority**; the **Sentencing Guidelines Council**; Legal Services Board; and the **Law Commission**.
- *Probation.* The Probation Service is responsible for preparing pre-sentence reports for courts, supervising community orders and helping prisoners adapt to community life following release. Legislation in 2000 established the National Probation Service.
- *Prisons.* The Prison Service is an executive agency, with policy direction from the Ministry of Justice. With probation they constitute the **Correctional Services** and are also part of the National Offender Management Service (NOMS) with the responsibility of managing offenders from sentence to resettlement in the community.
- *Youth Justice.* The Youth Justice Board is a central board that monitors the work of the youth justice system and the work of the **Youth Offending Teams** (YOTs). Established across England and Wales in 2000, YOTs are local authority multi-agency teams that coordinate the effort of the agencies and volunteers working with young offenders.

### **Smaller agencies and bodies**

- *Coroners.* Officials who investigate suspicious or unusual deaths.
- *Criminal Injuries Compensation Authority.* Compensates the victims of some forms of crime. The scheme, initially introduced in 1965, is now governed by the Criminal Injuries Compensation Act 1995.
- *Forensic Science Service.* A scientific support service for the investigation of crime and the evaluation of evidence. In 2008 it had a database of 4.5 million DNA samples.

- *HM Inspectorate.* There are different inspectors who are semi-autonomous of government who inspect and report on the work of the police, courts, probation, prison and the CPS. They report to the government and Parliament on the efficiency and effectiveness of the specific service for which they have responsibility.
- *Parole Board.* This decides on the release and recall of prisoners where the sentence has an indeterminate aspect.
- **Victim Support.** An independent agency that organises 5,600 volunteers in 2014 to provide support for victims of crime and also runs the Court Witness Service.

## ► Civil society and the private sector

As well as the professions and officials in these agencies, many private citizens are involved in criminal justice on a voluntary basis. These include lay visitors to police stations, neighbourhood watch groups, victim support volunteers, members of juries, Independent Monitoring Boards in prisons, and over 23,401 lay magistrates in 2014.

There is also a growing army of employees in private security firms, of which G4S (Group 4 originally), Pinkerton's, Securicor and Wells Fargo are the best known. There are also many smaller businesses, such as private detectives, locksmiths, bailiffs and credit investigation and information services. Although it is extremely difficult to estimate the total number of employees in this sector, some have estimated the number to be as high as 400,000. The total number of private security guards outnumbers the police. The private sector plays a major and growing role in crime prevention. It is also becoming increasingly involved in other sectors of the system. In November 1991, Group 4 signed a contract to run the first private prison, the Wolds Remand Prison in Humberside; others include Blakenhurst, a local prison, Doncaster which opened in 1994, Altcourse, a category A local prison, Parc, a local male prison, Lowdham Grange, a category B prison, and Buckley Hall for category C prisoners.

Finally, the legal professions are a vital part of criminal justice. **Barristers** and **solicitors** are the two branches of this powerful professional group that is independent of government. Barristers are primarily court advocates, whereas solicitors advise clients on a variety of matters and deal with clients prior to **trial**. The majority of advocacy in the Crown Court is done by barristers, and the higher courts have only recently been open to solicitors as advocates. Both solicitors and barristers have the right to appear and represent clients, i.e. they have **rights of audience**, in the magistrates' court, where much of the work is undertaken by solicitors. A member of the public cannot directly seek advice from a barrister without first instructing a solicitor. In 2009 there were 12,000 practising barristers based in 350 chambers (most are in London), most of whom will have represented criminal clients in their career, and 2,800 members of the Criminal Bar Association who specialise in criminal cases.

## ► Expansion of the criminal justice system personnel

Whether we assess growth by expenditure, output or number of employees, the agencies making up the criminal justice system in England and Wales have