

# [Criminal justice issues in democratic society](https://assignbuster.com/criminal-justice-issues-in-democratic-society/)

#### What are the major crime control or major criminal justice issues that face advanced democracies?

Advanced democracies are mainly based around the liberal social democratic model which places a high value on the idea of human rights and freedom of choice across a wide spectrum of human activities (Bevir, M. (2005) 1-10) (Choongh, S. (1997) Ch. 1) (Fennell, P., Harding, C., Jörg, N. and Swart, B. (1995) Chap. 1).

This emphasis on human rights extends into the field of criminal justice which is an essential component of any advanced democracy (Coates, R., Davis, G., Messmer, H. and Umbreit, M. (1992) 1-5) (Cochrane, J., Marsh, I. and Melville, G. (2004) 1-5). This typically involves a concept of crime control which aims to protect society from violence and violent offenders as well as punishing criminals for infringing the law (Ashworth, A. (2006) 1-5) (Bean, P. (2004) Ch. 1) (Fielding, N. (1995) Ch. 1). However, this focus creates problems because the rights of the victim will also have to be counterbalanced against the rights of the defendant. Often there are conflicting interests at stake and it is often the rights that the rights of the criminal are resolved at the detriment of the victim of the crime, or vice versa (Allan, T. (1994) 1-5) (Ashworth, A. (2006) 1-5) (Bean, P. (2004) Ch. 1).

A good starting point for a discussion of the major issues which affect criminal justice is a discussion of what the purpose of a criminal justice system is in advanced democracies. The criminal justice system imposes sanctions on people who are deemed to have broken the law. It is based on independent principles, and there is a mechanism which involves an independent tribunal of enquiry into whether or not a person broke the law. The test of whether a person has broken the law usually involves whether or not a prosecuting authority can prove beyond a reasonable doubt that the person concerned infringed the law.

Therefore the purpose of the criminal justice system is twofold; it involves the identification of criminals, and it operates to impose fair and consistent sanctions on those who have broken the law, in an effort to protect society form criminal activity and to give the victim a measure of peace of mind and sense that justice has been served in the measure of punishment which has been imposed. However, in a sense the abstracted concept of the purpose and functionality of the criminal justice system is quite far apart from the actual translation of these principles ‘ on the ground’ so to speak. This difficulty has led many to question to approaches which have been taken to criminal justice issues within various advanced democracies. This has given rise to a body of debate as to which approach is better and for what reasons.

The main crime control and criminal justice issues which are tied up within a complex lexis of sociological, political and legal factors (Dixon, J. and Macarov, D. (1998) Chap. 1) (McLaughlin, Ferguson, Hughes and Westmarland (2003-2004) Chap. 1), which emanate from this political background (Bevir, M. (2005) 1-10) (Choo, A. (1993) 1-5) (Choongh, S. (1997) Ch. 1). There are issues such as deprivation, social exclusion, poverty, drug addiction, prostitution, rising population, youth deprivation, violence and unemployment which all have a role to play in influencing the criminal justice system (Coxall, B. and Robins, L. (1998) Chap 1 and 2) (Denver, D., King, A., McLean, I., Norris, P., Norton, P., Sanders, D. and Seyd, P. (1998) 1-5) and the issues which form part of its application within advanced democracies (Allan, T. (1994) 1-5) (Ashworth, A. (2006) 1-5) (Bean, P. (2004) Ch. 1). This essay will attempt to extract themes from this background and discuss them with reference to the question.

So how is it possible to extract themes from this background, and to identify them as major criminal justice issues? Perhaps it is important to emphasis that this is a subjective exercise and any list of major criminal justice issues will necessarily not be an exhaustive list. Nevertheless it is possible to surmise what the most important themes would be.

The purpose and function of punishment is a major criminal justice issue. What may be achieved through the punishment of the offender?; should the law have a pragmatic approach which aims to find the best possible solution in this regard for society at large?; or should the focus be more microcosmic and focus on the individual needs of the victim, and how they feel in relation to their experience of the results of crime? These are all questions which must be addressed in addressing this as a major criminal justice theme in relation to criminal justice in advanced democracies. The issue of crime control is also a major theme for the purpose of criminal justice in advanced democracies. How should one approach the detection of crime; should one have a utilitarian or a deontological perspective on how terrorism should be detected and prevented? and how important are human rights within the process? Should human rights be sacrificed for the purposes of preventing further terrorist attacks? These are all very important questions which will be explored in examining this issue.

One major theme which affects societies in advanced democracies is the debate as to whether punishment should be aimed more at retribution, or rehabilitation of the offender (Bevir, M. (2005) 1-10) (Singer, P. (1990) 1-20) (Marshall, T. (1999) 1). This is a difficult question to approach. It is clear that the UK for example has taken an approach which comes down firmly in favour of the rehabilitation of the offender (Allan, T. (1994) 1-5) (Ashworth, A. (2006) 1-5). It is difficult to speculate as to why this is the case, however if we are to draw perspective from the current sociological climate it is correct to tie this rationale to the fact that prison populations are expanding beyond control in the UK, and the government have had to impose strategies which reduce this problem. As Cochrane, J., Marsh, I. and Melville, G. (2004) surmise: ‘…. newer, harsher initiatives have similarly had little effect on the size of the prison population or on rates of recidivism. Without going into great detail, some overall figures will help illustrate the pressures on the prison system in Britain and provide a context for considering the different philosophies of punishment. The prison population in Britain has continued to rise pretty steadily over the past few decades, with over 71, 000 people in Prison Service establishments in 2002 (Home Office data, Social Trends 33, 2003). The number of people given immediate custodial sentences in 1999 was over 105, 000 compared to just under 80, 000 four years previously (Home Office data, Annual Abstract of Statistics, 2002)… (Cochrane, J., Marsh, I. and Melville, G. (2004) 4)’.

One strategy therefore is to impose more community based penalties on offenders, such as tagging of offenders, curfews, drugs and alcohol addiction programmes and suspended sentences on criminals rather than prison based sentences, which are often regarded as the last resort (Singer, P. (1990) 1-20) (Marshall, T. (1999) 1). Contrast this approach with the approach taken in America where crime control is probably more retributionist than the UK system. The presence of the death penalty in some states in America evidences this contrast.

Proponents of each system offer various justifications for their favoured approach. Proponents of the American system would argue that stiffer penalties deter criminals from engaging in repetitive patterns of criminal activity. Conversely, proponents of the approach taken in the UK would argue that the prison system simply perpetuates the problems associated with repeat offending (Cohen, M. (2005) 1-5) (Davies, M., Croall, H. and Tyrer, J. (2005) Chap. 1) since in this system a person is more likely to be sent to prison for relatively minor offences. When in the prison population these individuals are exposed to more hardened criminals from whom they can become associated with or learn more sinister patterns of criminal activity. For this reason, it is argued that the system which focuses less on retribution and more on offender rehabilitation is more effective at reducing levels of crime in society since criminals are kept away from these situations where more hardened patterns of criminal propensity can be formed.

Another problem which faces advanced democracies are problems associated with terrorism, and how the criminal justice system should handle the detection of and the punishment of crimes associated with extreme forms of terrorism. The impact of the September 11th attacks in America, and the London underground attacks launched on the West by Al Qaeda have become benchmarks for a renewed terrorist campaign against advanced democracies in the West, and extreme Muslim terrorist groups. The approach to terrorism in the UK has been focused simultaneously on the detection of crime, greater public awareness of the problems of terrorism and an appeal to moderate sectors of the Muslim community, whereas most of the measures which we have seen formulated as the Patriot Act in America have focused on bolstering the security services with more powers to detect terrorist related crime.

An example which highlights this contrast between the two systems can be found by looking at the development of powers relating to the control of terrorism in advanced democracies. In the UK for example, the approach may be characterised colloquially as ‘ softly, softly’. There was a huge public outcry when an innocent man was shot dead on the underground system shortly after the July attacks on the Underground system. This can be contrasted with the system in America which allows law enforcement officials to carry guns and where armed clashes are more likely to occur as a result. In the UK new powers are being debated which extend the powers of police officers to question suspects of terrorism. The system as it stands does not permit officers to question a suspect after charges have been brought. This is seen as the end of the matter. However, police are to be allowed in future to question terrorism suspects long after charges have been brought. These new powers are seen as useful particularly in complex cases where large amounts of evidence have been gathered in the investigation. This new law also reflects the growing sophistication of terrorism which now can be aided through laptops and sophisticated technology which stores information in an encrypted form. The laws in England have also controversially been extended to extend the amount of time a terrorism suspect can be detained without charge. The government’s efforts to secure 90 days for the police to hold terrorism suspects without charge were defeated in the Commons. This can be sharply contrasted with the American system, which has secured powers to hold detainees in Guantanamo Bay without charge and indefinitely. The strength of feeing about 9/11 in America has given this more oppressive system germination and propelled it now, even when more than three years have passed since the attacks on the twin towers.

Therefore we can see a dichotomy emerging also which highlights a disconnect between these two examples of how criminal justices themes have emerged as divergent within the spectrum of advanced democracies. To turn now to further examples of criminal justice issues in advanced democracies, these have in many ways highlighted similar issues.

Major criminal justice themes have been approached differently in other advanced democracies such as those in continental Europe. Many European countries for example have seen their foreign policy as linked with their efforts to structure the criminal justice system. The troop withdrawal from Iraq and the effects which were projected in relation to this have influenced what is important within these criminal justice systems. Advanced democracies such as India have also had their criminal justice systems influenced by the issues of terrorism and associated crime control. The Indian system sees the shape of their criminal justice system with respect to the detection of terrorism as having a considerable impact upon their ability to forge relationships with actors in the West with whom a political alliance can be economically advantageous.

In conclusion this essay has examined the criminal justice system issues which have moved to the forefront of the political and legal agenda in advanced democracies. The issues of social exclusion, the debate about whether retribution or rehabilitation should be the focus of the efforts of the criminal justice system and the approaches taken to terrorism and the new brand of terrorism which has been seen recently have all been evaluated. The diversity which is involved in assessing the contributions and effects of criminal justice issues across different advanced democratic systems shows us how difficult it is to make generalisations about what issues are major in the area of criminal justice. This essay has attempted to extrapolate what themes may be important generally within different advanced democracies. The difference in how each issue develops and manifests itself has been highlighted in the essay.

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