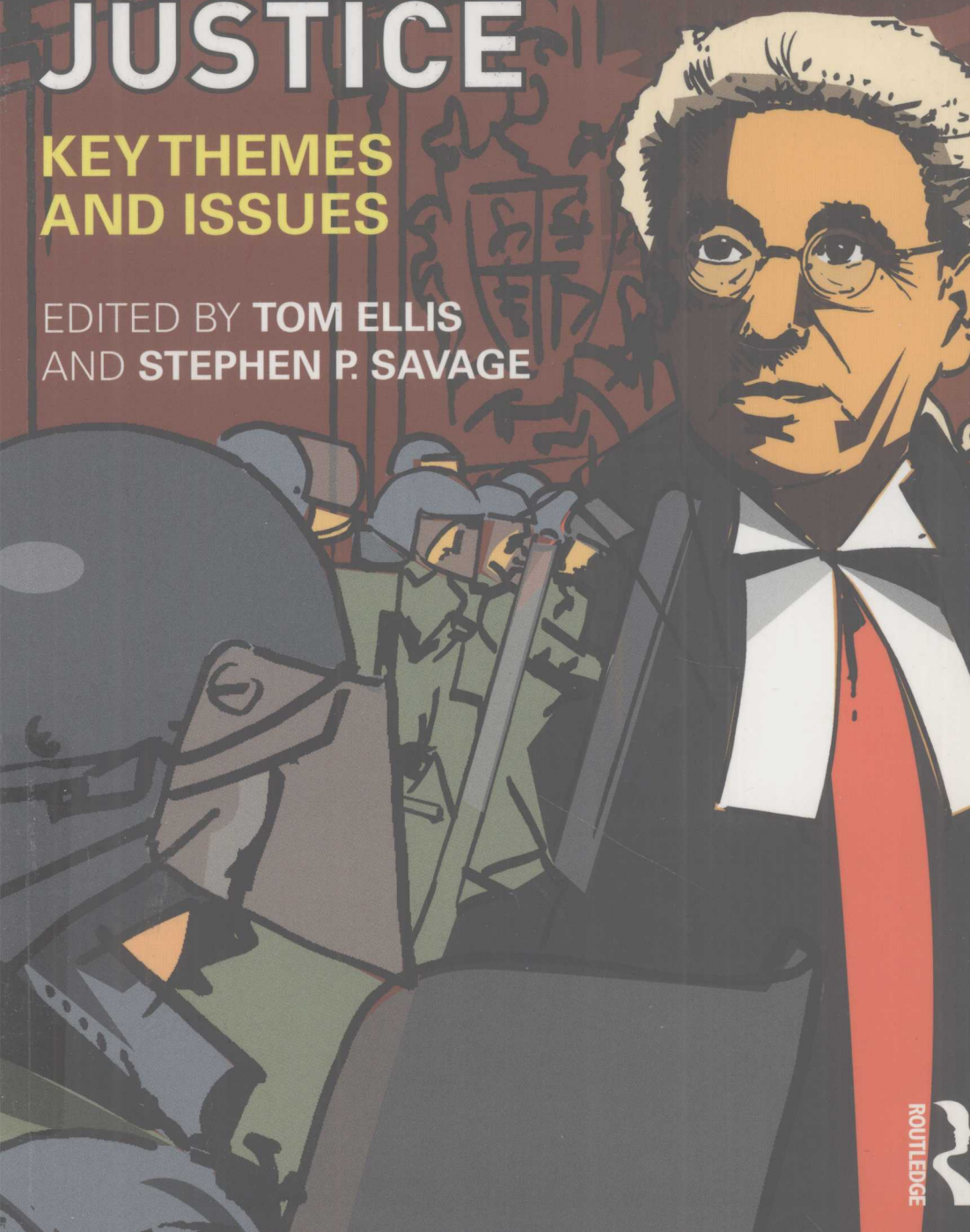


DEBATES IN CRIMINAL JUSTICE

**KEY THEMES
AND ISSUES**

EDITED BY **TOM ELLIS**
AND **STEPHEN P. SAVAGE**



ROUTLEDGE



Debates in Criminal Justice

Key themes and issues

Edited by Tom Ellis and Steve Savage



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Introduction

From the 1990s onward, criminal justice legislation, policy and organisation have changed at an incredible pace in England and Wales compared with previous decades. This has been matched by a huge growth in what is written about criminal justice, by academics and by others, most notably journalists, who are able to publish much more quickly, but perhaps to different requirements and standards of evidence.

This book does not therefore seek to replace other existing texts and sources, but, rather, to assist in studying them effectively and teaching criminal justice within a framework that is both appealing and interesting to students and staff alike. We have used and developed the debate format for over 10 years and it has been very successful and popular in achieving its learning outcomes in what is potentially a very dry, though necessary, key area within criminological studies.

NB It is important to note that the authors have, for the most part, argued from relatively extreme positions. They have acted as devil's advocates in order to comply with the format demanded by a debate approach. Therefore, it is important to bear in mind that the views presented should not be taken as the actual views of those authors.

This book will not give you 'the answers'. It will identify the key questions within each topic and give you the means to find the sources so that you will be able to answer them in a balanced and logical way. The book contains ten carefully, though contrastingly constructed, debates that are designed to provide the student with a clear basic framework within which they can develop their knowledge and analysis of key criminal justice dilemmas and issues.

The debate format is familiar to most through the approach most often taken in press, radio and other media, and even in student debating societies. As such, the book allows students to start from a level that they are more

2 Introduction

familiar with and to progress beyond this so that they understand the limits of 'for and against' approaches in academic study. Some of the chapters are therefore developed beyond the debate format in order to help students to progress to the higher levels of critical thinking required as they progress through their courses. For instance, Chapter 5, on restorative and retributive justice approaches, uses established arguments between these two approaches as a way of progressing to understanding and applying all of the key philosophies of punishment.

If used well, this book should enable students to understand the key underpinning concepts to criminal justice, such as 'What is criminal justice for?' or 'Why is punishment necessary?' For each issue, we also provide you with further reading, further questions to ask yourself, and further answers to seek within your additional reading. **It is essential, therefore, that you use the book as intended, and complete your additional reading, to gain the full benefit of its design.** Most assessments will require more than a simple recapitulation of the debates contained here. These debates necessarily overlap and assessments are likely to require you to use materials from at least two different chapters in order to ensure that you integrate your learning.

The content is not exhaustive, but we have picked what we think are a good mix of key issues and contemporary dilemmas which are based on the authors' fields of study. We have also endeavoured to include a number of 'jump off points' for those who wish to deepen their studies in a particular area, perhaps when thinking about a dissertation topic.

The book is split into two parts. **Part 1** is more conceptual and based on key *themes* that form the basis of criminal justice studies. For instance, by debating the arguments for crime control or due process, the first debate is a device for introducing the different models of criminal justice. It also requires you to read further and decide for yourself whether models need to be developed in a different way to provide an explanation of what criminal justice *should* be for and what it actually *does*. Similarly, arguments for and against whether imprisonment 'works', lead to questions about how success or failure of punishment *can* be measured and/or *should* be measured, and whether these measures are determined by which philosophical standpoint is used.

Part 2 of the unit presents *issues* in criminal justice, two of which ('legalisation of drugs' and 'capital punishment') have been selected based on long running areas of debate within criminology and criminal justice, while others are of more recent contemporary concern.

As noted, each debate is approached and delivered in a different way. We hope that this variation in approach allows your learning to stay fresh. What is common to all of the debates are the indications of the additional work you need to carry out in order to underpin your learning fully.

Finally, this is an easy book to use, but it is not designed for lazy scholarship. It is not intended as a reference source that should be cited in itself, but as a way of structuring your reading of the key sources referred to in

the text. Referring only to this book, or simply quoting from it, shows that the student has not done some of their own expected 'spadework' and it will be easy for tutors to spot this. That said, it does make it as easy as possible to decide on which sources you should read.

Academic and non-academic sources

In many of the debates, extensive use has been made of press and other web-based sources. These are included in order to provide you with a richer source of materials and should mainly be used to illustrate the issues derived from the required academic reading. However, you should be clear that such sources are *not* usually peer reviewed and should therefore not be used *instead* of academic sources. 'A hierarchy of evidence' is provided at the end of Chapter 1 to help you decide on the relative value of the sources.

The book has been developed as the basis of both campus-based and distance learning modules, with students ranging from full-time undergraduates to police and probation officers. The book is also designed as an introductory text for Master's students who have no prior experience of criminal justice, or who need to refresh their knowledge. Tutors should therefore find it easy to adapt it to particular courses and integrate additional materials. We hope you enjoy reading it as much as we enjoyed producing it.

Tom Ellis and Steve Savage

September 2011

Online resources

This book is supported by online resources that can be found at:

<<http://www.debatesincriminaljustice.com/>>

This is intended, first, for use by students as a way of using the links provided in some chapters to access the key sources more effectively in an e-learning environment. It is also intended for use by lecturers who wish to build or adapt a course around the book and related materials. Suggested module/course outlines, typical assessments and updates are provided. Exemplar on-line chapters are provided here to aid students and staff alike and, depending on demand, further resources and new debates chapters may be added.

Part 1

Themes in criminal justice

1 Crime control or due process?

Tom Ellis and Mike Nash

Introduction

What is criminal justice for? How does criminal justice function? This first, relatively simple chapter, starts by outlining the key features of a crime control model from the type of perspective that those who often advocate it adopt. You will find this type of argument most commonly in popular newspapers and media, but also to some extent among criminal justice professionals who work in agencies tasked with crime control, such as the police. This approach is then criticised and an argument is made that the due process model is the one on which criminal justice should be based. This view tends to be popular among academics and also those criminal justice professionals involved in the court process itself, such as probation officers. Having established the oldest framework for models of criminal justice, in the final section of this chapter, we broaden the focus to include other models and explanations. As we note throughout the text, it is important for you to use the debate format as the framework from which to develop your understanding and it is important to use the final section, and the additional reading suggested there, to gain a full understanding of the key issues. By the end of working through this chapter, you will therefore: be familiar with the key **models of criminal justice**, be able to distinguish between them, and will have developed a critical understanding of their uses.

For those of you who have already covered the basic structure of criminal justice in England and Wales, and relationships between the various agencies involved, it would be better at this point to read:

- Newburn, T. (2007) *Criminology*. Cullompton: Willan, pp. 542–57.

An alternative, but now somewhat dated source is:

- White, R.C.A. (2002) 'The structure and organization of criminal justice in England and Wales: an overview'. In M. McConville

and G. Wilson (eds) *The Handbook of Criminal Justice Process*. Oxford: Oxford University Press, pp. 5–21.

A more basic but up-to-date source is:

- Blake, C., Sheldon, B. and Williams, P. (2010) *Policing and Criminal Justice*. Exeter: Learning Matters Ltd, <<http://www.learningmatters.co.uk>>

The latter book has the advantage of being written since the division of responsibilities between the Home Office and the newly created Ministry of Justice has made the picture a little more complex. If you need to understand this in more detail, the following sources will be very useful:

- Ministry of Justice (2009) 'Business Model'. London: Ministry of Justice, <<http://www.justice.gov.uk/publications/ministry-of-justice-business-model-2009.htm>>

The first 21 pages are a useful exposition of what the MoJ says it is for and how it will go about it.

- Ministry of Justice Corporate Plan 2009–11. London: Ministry of Justice, <<http://www.justice.gov.uk/publications/docs/corporate-plan-2009-11.pdf>>

In support of crime control

It is hard to find much support (as opposed to critiques) among academic criminologists for a crime control approach, perhaps because their livelihoods depend on significant levels of crime! However, a crime control approach is very well supported in the popular press, particularly tabloid newspapers, which after all form the bulk of what the public reads. It seems clear that the current criminal justice process was designed for the much lower level of crime that existed in the past and is too bureaucratic, time-consuming and inefficient to deal effectively with the sheer volume of crime that now exists. If a law-abiding member of the public becomes a victim of crime, they find themselves lost in a legal process that values the rights of the suspects above the rights of those who have been wronged.

Crime control – a popular press example?

Your house is reduced to a wreck. Your family treasures are trashed, your doors and windows broken, your money and valuables stolen . . . You may never again feel at ease in your own home.

Only the victims can fully understand the shock and misery of being burgled . . . For that reason, prison has always been considered the appropriate penalty. No longer. A drug addict who committed 18 break-ins over seven months walked grinning from court.

The message could hardly be more damaging. The fact is that burglars are hardly ever caught.

Now, even the ones who are caught won't be jailed. It is almost as if they are being encouraged to rob [sic].

Lord Woolf says he wants to reduce overcrowding and that prison does nothing to reform burglars.

In a Britain where police so seldom manage to catch thieves, where witness intimidation is almost routine and where the legal system increasingly seems impervious to common sense, Lord Woolf has confirmed his reputation as a man more concerned about the welfare of criminals than the plight of their victims.

(*Daily Mail*, Saturday, 21 December 2002, p. 12)

It is clear that there is a frustration here with a system that is designed to ensure the rights of the offenders, but is not really concerned about the victims.

More examples

- 'Ex-New York cop sacked from probation service for putting public safety first', *Daily Mail*, 5 June 2006, <<http://www.dailymail.co.uk/news/article-389092/Ex-New-York-cop-sacked-probation-service-putting-public-safety-first.html>>

See also:

- 'Convicts who have killed on probation', *Daily Mail*, <<http://www.dailymail.co.uk/legacygallery/gallery-7656/Convicts-killed-probation.html?selectedImage=67179>>

This will also be relevant when reading the chapter on victims' rights and suspects' rights.

The overwhelming idea is that criminal justice should have **crime control** as its main aim.

What is crime control?

The **crime control model** is about focusing the purpose of the criminal justice process on the demands of the majority of citizens who are

law-abiding. Under these conditions, criminal justice is about the efficient control of crime.

Task

- Read: Davies, M., Croall, H. and Tyrer, J. (2010) *Criminal Justice: An Introduction to the Criminal Justice System in England and Wales* (4th edn). London: Longman, Chapter 1.

Limit your reading to these two models at this point. Another basic introductory text that can be used is:

- Smart, U. (2006) *Criminal Justice*. London: Sage, Part Two, pp. 15–134.

Essentially there should be a unified or ‘joined up’ criminal justice **system**, where all parts of the system work in harmony to reduce or prevent crime and to apprehend, prosecute, convict and punish most, or all, of those who offend. In this way, the public are protected by reduction of crime, and effective detection and prosecution of those who do offend.

This model of justice accepts that there will be a few aberrant cases where the innocent are convicted, but this is justified by the utilitarian notion that crime control overwhelmingly achieves the greater good for the majority (see Chapter 5 on restorative and retributive justice and the other philosophies of punishment).

Task

How do we decide what is an acceptably small number of cases in which innocent people are wrongly convicted?

- Read: ‘The scales of injustice’ by Michael Naughton, *Observer*, 28 July 2002 <<http://observer.guardian.co.uk/crimedebate/story/0,12079,764137,00.html>>

Make notes for and against the crime control approach. You will also find a useful set of sources for further illustrative examples at the following website:

- <<http://www.innocent.org.uk/misc/articles.html>>