



Précis Paper

AUTHORS' CORNER: JUSTICE ON TRIAL: Radical Solutions for a System at Breaking Point

A comprehensive discussion about the criminal justice system, what is wrong with it, and Chris Daw presents a radically new set of crime and punishment solutions.

Discussion Includes

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- How Chris Daw depicts the criminal law to be so interesting
- Is the whole criminal justice system wrong?
- What is the true cost to society of incarcerating people?
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- Do we need better policy to aid in the protection of our children against drugs?
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Authors' Corner: Justice on Trial: Radical Solutions for a System at Breaking Point

1. In this edition of BenchTV, Chris Daw QC (Barrister, Millennium Chambers, Manchester), and Alice Dyson (Chief Operating Officer, One Media, Manchester), discuss what is wrong with the current state of the criminal justice system around the world, and introduce some radically progressive solutions for crime and punishment.

Background

2. Chris Daw QC is a practising criminal lawyer with over twenty-six years of experience in Britain's criminal justice system. The book is about Chris Daw's case histories and global reporting, including the 2019 London Bridge attack, and his radical solutions to crime and punishment.
3. Justice on Trial provides a rare insight into a criminal justice system at breaking point, while offering a blueprint to a potential future beyond the binary of good and evil.

How Chris Daw depicts the criminal law to be so interesting

4. Chris discloses that the book is set within the context of his career as a criminal defence lawyer. It is set within the world of serious crime and English criminal cases over his twenty-six year plus career as a criminal defence QC in the UK.
5. Chris thinks that criminal law is the area of law that most people who are not lawyers find the most fascinating, because it is dramatic and it takes the human experience and exposes it in a very raw way.
6. Criminal law is popular in nonfiction and fiction, and is often turned into dramas and movies. Chris hopes that everybody can take something from his book because it comes with a pertinent message about the criminal justice system.

Is the whole criminal justice system broken?

7. The problem with justice in the form of crime is that it is such an emotive subject, driven so heavily by public opinion. Tabloid media headlines often drive public opinion about soft sentencing.
8. The problem is that the public responds emotionally to those stories about these tragic cases of child deaths or severe injuries or other cases, and the public demands higher sentences.
9. Moreover, what then happens is whenever there is an election cycle, at least one of the parties, if not both, campaign that they will get more tough on crime. Politically, this means that they will arrest more people, imprison more people, and ultimately imprison them for longer.

10. Consequently, the UK's prison population has more than doubled, sentence lengths keep going up and up, and there has been an explosion in the crime rate.

What is the true cost to society of incarcerating people?

11. The average cost of incarceration per person in Britain is around £50,000 per year.
12. Compare the incarceration cost to the fees at one of the most expensive boarding schools in the UK, such as Eton. Incarcerating someone is considerably more than sending a child to one of the UK's most expensive public schools. Furthermore, the difference in outcome is quite astonishing.
13. Whereas Eton College has produced many Prime Ministers, including Boris Johnson, prisons often produce people who commit more crime at an astronomical cost to society as a whole.
14. Thus, the monetary value of £50,000 per year for someone to go to prison so that they can come out years later and commit more crime is an absolute waste of money.
15. One of the book's central propositions is to abolish prisons as they are today and replace them with custodial institutions geared towards success, not failure as they are today.

Should criminals not be seen to be punished?

16. Throughout all of our history, there has been a clamour for vengeance and punishment in the minds of the public, in the minds of victims, and, therefore, in judges and politicians' minds.
17. However, the public does not always reconcile their gut reaction to the policy that a person should be punished and locked away for a long time, with the impact and consequences of that policy.
18. So, people want something. They want the severe sentences, but what they do not want are the consequences. When you increase sentence levels, as they have in the US, they now have nearly two and a half million prisoners. Furthermore, around 80,000 people are in UK prisons, which is the highest rates of imprisonment in Western Europe.

Which countries have implemented the worst criminal justice system?

19. The US is such a large system and a system that is at the extreme end of sentences. It is imperative to consider the economic circumstances of a country before you necessarily are entirely judgmental. Developing countries have high levels of crime, particularly in Central and South America, a lot of which is driven by the US drug market and the billions of US dollars flowing into gangs and cartels in those countries, to supply the insatiable demand in the US for what are illegal drugs. So, the US is driving crime up in Mexico and numerous countries around its borders.
20. It is challenging to judge developing countries or countries exposed to enormous outside influence from huge amounts of drug money from Western Europe and the US. Suppose you

take the G20 countries, the westernised but wealthier countries that have the economic means to make decisions and implement policy, which is the most sensible and the most rational. You have to say that the US is by far the worst in every measure in terms of levels of violent crime in society. Most people are concerned about not becoming victimised, and America has the highest imprisonment budget, the highest spend on imprisonment, and the highest rate of imprisonment in the world.

Has the US criminal justice system been commercialised?

21. The private sector in US criminal justice is the majority of the prison system. In terms of running prisons, probation services, and a whole range of other criminal justice services, many of which have been privatised. With nearly two and a half million people in the US prison system, private corporations supply the needs of that enormous population, which would be the fifth-largest city in America.
22. In the US, the private sector prison suppliers and prison operators are among the most influential lobby groups. Unsurprisingly, they have this vast war chest of revenue from the government, in effect from the taxpayer, and they use it to influence politicians to vote for more prisons. Moreover, they influence politicians to vote for even longer sentences and more prisons around the country.
23. In policy terms, everything is scalable. You can scale policy for what works on a relatively small local level, and you can scale that policy up to operate on a much larger level. Countries with the most successful criminal justice systems are countries with the lowest levels of crime, the lowest levels of imprisonment, and crucially the lowest levels of reoffending when someone has been through the criminal justice system.
24. The most important hallmarks of a successful criminal justice system are the product it produces, being people who do not reoffend when they get out.
25. Norway is one of the most enlightened countries, focusing on how they get people out of the door in a way that they are going to get a job and be someone to look after their family. Norway's criminal justice system focuses on the principle of restorative justice and rehabilitating prisoners.
26. It would help if you looked at the victims as well as the offender. The public tends to feel that they are more likely to be victims of crime, as they are not criminals. Therefore, if you look at the system from the perspective of victims, the UK system and the US system are such failures because there are countless victims.

Is Norway's criminal justice system the most correct?

27. Most European nations conduct their criminal justice policy more pragmatically. They look at what works. The UK system of justice, the common law system, is no different from England to Australia, and many other countries have adopted the common law system, including the US,

and that system, in particular, is an adversarial system. It is the prosecution trying to prosecute someone and put them away. And the defence trying to defend them to keep them out. That is the binary confrontation that they have in many countries. However, Europe does not operate as an adversarial system.

28. Europe has an inquisitorial system, which is not adversarial. There are lawyers and prosecution, but essentially you have a judge or a magistrate responsible for trying to get to the truth and try to establish what's happened as an inquiry, rather than just being combative.

Should juries be abolished altogether or be replaced by AI algorithms?

29. One basic system that does work is the jury system. In the sense that, when it comes to the task that the jury is given, of assessing the evidence in the case and deciding whether the prosecution can prove the case beyond a reasonable doubt, overall juries do that quite well. However, of course, one can never know, because, by definition, the jury is reaching a verdict on something in dispute.
30. There is a considerable over-representation of people of minority ethnic communities in the criminal justice process. Moreover, that is not because people who are from those communities are more inherently criminal. It is because the criminal justice system has criminalised those races, and those communities, by the way, police resources are deployed, and to a degree, racial prejudice by those police officers, lawyers, and everyone in the system. So, unfortunately, if race was put into an algorithm, overwhelmingly, the algorithm would conclude that someone of colour is more likely to have committed a crime than their white counterpart.

Could an AI algorithm remove legal bias from the legal justice system?

31. AI and other forms of algorithmic analysis for criminal justice must be reviewed carefully. It has been done many times and has resulted in the victimisation of minority communities. So that may be a result of the algorithms imperfections.
32. When it comes to AI and bail, there is the possibility that it could be successful. If the only variable that the algorithm had to determine were whether a person would breach bail or not, it would likely work. However, because there are numerous other variables, there will likely be a similar incorrect outcome. Because there is a massive overrepresentation of certain independent racial and economic, and social groups, a minority will likely be identified as likely to breach bail, as they are more likely to have been in prison.

The issue of illegal drugs.

33. There is an argument that psychotropic plants and the human species co-evolved because the thing about psychotropics is that they can allow the human brain to think of things or imagine things that otherwise are unimaginable. Psychotropic drugs are chemicals that change the

nervous system function, and the result is alterations in perception, consciousness, mood, cognition, or behaviour.

34. Now, of course, most of the time, it is not suitable for human beings to operate in our society whilst they are under the influence of psychotropics. Nevertheless, you can imagine how early humanoids had not thought of setting things on fire. However, when they chewed on a few leaves, their brain starts to fire up, and they would get all sorts of crazy ideas, some of which were evolutionarily beneficial.
35. Thus, there is evidence from fossil records of co-evolution of the human species and taking psychotropics.
36. History is mentioned because the conclusion that has been reached is that people will take drugs, and you are not going to stop people taking drugs, and we know that to be the case because it has been going on for tens of millions of years.
37. Society should not criminalise something that's going to happen regardless, because criminalising it would cause an undesired impact.
38. Since drug prohibition has been adopted in most of the Western world, many other parts of the world have been conducting this war on drugs, which has resulted in one fascinating phenomenon, perhaps unsurprising when you think about it. It has resulted in an enormous increase in the use of drugs.
39. Fast forward ten years after the Misuse of Drugs Act 1971 (UK), in the early 1980s, there were 300,000 heroin addicts in Britain. With many of them contracting HIV. Of course, by passing one law, in an attempt to criminalise the trafficking of drugs, a heroin boom was created, which was never seen before.

Do we need better policy to aid in the protection of our children against drugs?

40. People would not die from drugs if they had a controlled dosage, and they knew exactly what was in it. Because nobody in their right mind, unless they were intent on suicide, would take something that they knew would kill them.
41. A regulated drug market would dramatically reduce drug-related death, as with regulation, people would actually know what is in what they are taking.

Should children be taken out of the criminal justice system?

42. In the UK and Australia, children as young as ten years old are criminalised. Anyone who is a parent or even knows ten-year-old children knows that a ten-year-old child does not have a developed sense of morality, but they have a basic sense of right and wrong.
43. Theoretically, If someone is mature enough to be treated as a criminal, they should be able to vote.
44. However, there is something deeply amoral about the criminalisation of any young child. The UN advocates for the age of criminal responsibility to be fourteen, but that is even too young.

Furthermore, in the book, the age of criminal responsibility should be the same as the age of maturity and the age at which we take on all of the other rights, and that is eighteen.

45. In the last 150 to 160 years, we have gotten rid of the death penalty, but we have only moved the dial two years in terms of child criminal responsibility from eight to ten.
46. Sadly, there have been many high profile cases in Britain, the most notorious one of them being the killing of James Balfour in 1993.¹ The case was about a toddler who was abducted by two ten-year-olds from a shopping centre, and beaten to death.
47. Moreover, the abovementioned killing was the case that became the sort of rallying cry for the criminalisation of children. Those boys spent many years in custodial environments, and in and out of prison, even in their adult life due to that crime. Furthermore, millions have been spent on the criminal justice process just for those two alone.
48. That is not the only cases of that level of notoriety. There are numerous young people under eighteen being criminalised in courts and being sent to youth prisons.
49. The truth is that anyone who is criminalised as a child may as well have criminal tattooed on their forehead because the chances of them going on from the experience of being criminalised, and the experience of being incarcerated, and then becoming a law-abiding citizen are infinitesimally small.
50. Therefore, anyone who is incarcerated as a child will likely be in and out of the criminal justice system for life.

What type of welfare would best replace the juvenile justice system

51. Children should not be looked at through the lens of an adult criminal. Children need to be dealt with to ensure that the public is protected from any violence if they remain dangerous, but looking to treat them as a child and look at their welfare, their education, and support the child.
52. Child crime should be deferred to re-education rather than punishment, as the outcome for the child and society would benefit from the vastly different outcome.
53. As we want to have low levels of crime in our society and fewer people being victimised. There is a choice to be made from a spectrum of one end to the other. Nevertheless, fundamentally, most lawyers and professional are primarily pragmatic. Moreover, they would say, look at the evidence, as most criminal lawyer would. They may not agree on all these points, but most criminal lawyers would agree that there are many fundamental law elements.

Is it possible to take crime out of society by not criminalising it?

54. The purpose of the book is to get people thinking about these core issues, which are the most important;

¹ *Reg. v. Secretary of State for the Home Department; Ex parte V. and Reg. v. Secretary of State for the Home Department; Ex parte T.* UKHL (1997).

- a. The history of crime and punishment;
 - b. Why we should close all prisons;
 - c. Why we should legalise drugs;
 - d. Why children are never criminals;
 - e. Why people are neither good nor evil.
55. The most significant change of all is the approach to children and young people. If you can significantly impact an entire generation of young people, who would otherwise enter the criminal justice system at a young age. If you can divert that group away from the criminal justice system, you may not see a huge impact today, or even in the next five years, but over a generation, you will find that that generation of children for whom society cares for correctly, that is given a decent education, proper access to a good home, and decent food to eat. Furthermore, all the other things which are still huge issues in many parts of our society for children and young people, if we can join all of that up at the same time as diverting children away from the criminal justice system, we will see a generational shift in levels of crime.
56. The criminal justice system is trying to engage with a problem that is not fundamentally a criminal justice problem. It is a social problem. You need to apply social solutions to social problems. Thus you apply welfare solutions to welfare problems, particularly with children.

BIOGRAPHY

Chris Daw QC

Barrister, Millennium Chambers, Manchester UK

Chris Daw OC was called to the Bar in 1993 and was appointed Queen's Counsel in 2013. Before taking silk, Chris built his reputation in the criminal courts, acting in high profile trials and appeals, from serious organised crime to commercial fraud. As a QC, whilst maintaining a substantial criminal and serious fraud practice, Chris acts in a broader range of matters, including business, regulatory and professional discipline instructions. Chris accepts instructions throughout the UK and, where necessary, in international jurisdictions.

Alice Dyson

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Alice Dyson is COO at One Media IP PLC. and a highly regarded member of the independent music community, representing the Independent recorded music sector at the highest level in the UK as an elected Director of the British Phonographic Industry.

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