

The Next Step

A guide to first principles
for idea junkies.

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Introduction

If you don't know what 'first principles' are then this booklet isn't for you – at least not yet. There are other publications where you can glean the basics of what first principles are and why they are important¹, and I would strongly encourage you to seek them out. But if you're reading this then chances are that you already know all that. What you want now is to take the next step.

That's harder than it sounds because the vast majority of debating publications are aimed at novices, which is obviously important, but for intermediate speakers the pathway to the higher echelons of debating is far from clear.

Even if there was a concise list of first principles concepts to guide your study (and I've appended a limited list to this document) that doesn't help you understand how much detail you need to know about each idea to be useful in the context of a debate. A lack of such benchmarks means that the task can seem endless and occasionally pointless, because hours spent exploring a particular idea can still leave you unprepared for a relevant topic.

With that in mind, the idea behind this guide is very simple. It presents three examples of first principles with an eye to showing how much depth of knowledge is necessary to use these ideas effectively as a strong framework for cases.

It is critical to stress that the following articles should not be seen as 'all that you need to know' about a given principle – they are *guides* to the level of detail that will *usually* be necessary to construct a strong and consistent case on a variety of related topics. In higher level debates you may well need to go significantly beyond what is included here, and obviously if you assume that some of your opponents will also read this guide, then you'll need to be able to rephrase, expand or innovate on the concepts here if you want to have the advantage. But hopefully this will help to clarify one of the most vitally important concepts in competitive debating and encourage you to explore some or all of the ideas not included here.

One final caveat I need to make is that the contents of this document are my own work, presented in good faith, but as such any deficiencies in the analysis or characterisation of ideas is entirely my own fault. Readers are strongly encouraged to do their own research on these ideas to confirm or refine the analysis provided here before use in debates.

As I like to tell young speakers, good debaters should be addicted to ideas and so if you're not already, I sincerely hope that this guide will help get you hooked!

¹ I would humbly suggest one of my own previous publications – *Training Guide for University Debating: Tips, Tactics and First Principles*.

Chapter One: Debates About Democracy

Defining Democracy

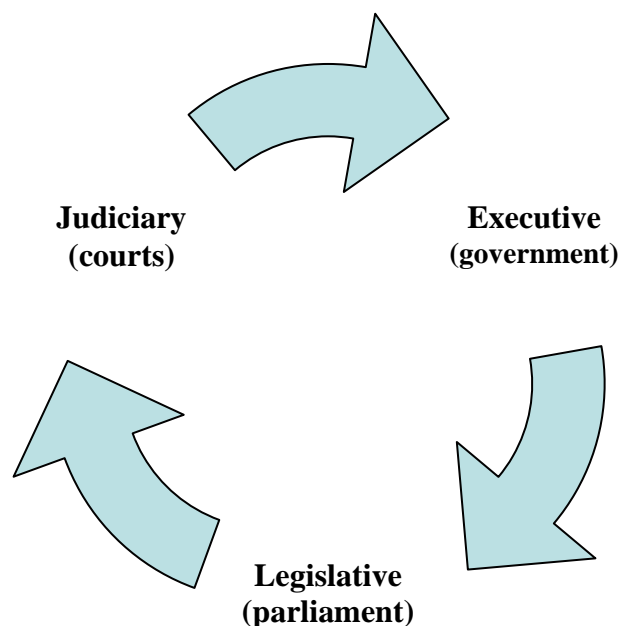
There are many debates, ranging from Australian politics to third world development priorities, which require you to have an understanding and definition of democracy. Please avoid the temptation to wax lyrical about the ancient Greeks - or anything else you have learned in any course that includes the words "introduction to..." and instead simply say that democracy is a system of governance that seeks to maximise:

- ❖ Accountability
- ❖ Representation
- ❖ Participation.

"Accountability" means that at every level there is some sort of oversight and everyone is answerable to someone. Basically it's what people mean when they talk about 'checks and balances'. So the lower Houses of both State and Federal Parliament, (the government at least), are held accountable to their upper Houses (houses of review), and the whole parliament is answerable to the people every 3-6 years when there are elections.

Plus the decisions of parliament can be scrutinised by the court system, in accordance with the Constitution - which is enforced by the High Court and the Governor General. But the courts themselves are also accountable. Firstly the judges are picked by the parliament and can be sacked by them too. Plus the Constitution can be changed by the people via a referendum (or in some jurisdictions by a simple act of parliament) and the courts can usually only interpret laws, not create them, which again come from the parliament. In short it's what called:

"The Separation of Powers"



"Representation" refers to the fact that democracy is a system where leaders derive their credibility, their 'mandate', directly from the people. I'll talk about mandates in more detail later, but the principle of representation means that all citizens and people have a right to be heard in their political system.

This is problematic though because democracy is also about voting and that's a process that inherently benefits 'majorities' over 'minorities,' so how can minorities be assured of proper representation? That's the question that leads to many debates, but there are a number of structural responses built into most democracies. For one there are different levels or 'tiers' of government (local, state and federal) which give people multiple opportunities to be heard (it's worth learning more about the concept of *subsidiarity*, which is another first principle).

Secondly remember that the minority is not excluded from the system - that's what the Opposition is for, and it has many powers. Additionally there the rights and restrictions built in to the Constitution to protect minorities.

And finally there are different voting systems in use that attempt to compensate for the tendency of majorities to dominate the system. The simplest example is "Proportional Voting" which is used in the federal upper house (Senate), which means that political parties receive a percentage of the available seats, equal to the percentage of the overall votes they received. So if a party represents the views of 10% of Australians, assuming all 10% voted for that party at an election, the party would then control 10% of the Senate seats. Whereas in the lower house, which uses a different voting system ("Preferential") that same party, with the same number of voters, would be unlikely to win any seats at all. This is why the Senate is considered a 'house of review' - because it includes a far greater spectrum of views than are represented in the lower house, and so it modifies potential laws to be inclusive of the minority views that they represent.



But it's obviously not perfect. Many minority groups are not officially represented in the Senate (eg there are no parties specifically representing the views of minority religions, sexualities or ethnicities - which can sometimes be a problem). That's why you need to debate these issues and why I'm writing this article.

Finally, "Participation" is the most basic and arguably the most important principle of democracy. It's so crucial because it underpins the other two principles and because it is the fundamental basis for democracy - government 'by' the people, 'for' the people... blah, blah, blah. So simply put, participation means that; unless there is a very good reason, everyone deserves a vote and all votes should have equal weight.

Clearly there are exceptions to this – for example we don't let mentally ill people vote, or children (but there was a finals debate at 2004 Worlds on the topic that we should give children voting rights), or hard-core criminals (but round one of Australs 2003 was on the topic of prisoners voting rights) - so you need to think very carefully about this issue. Denying people the right to vote is one of the most serious things a government can do in a democracy, and something that has been thoroughly abused in the past 100 years.

Deeper Analysis

Ok, now you have the basics of democratic theory, how can you build on it and develop it into more sophisticated analysis - since that's the stuff that wins debates against strong teams. There are many ways to develop democratic theory, but here's one example - mandate theory.

As I said before, a mandate is the authority politicians have to make decisions that derives from the fact that you voted for them. That's a 'direct' mandate. There are also indirect mandates, for say appointed officials (judges, public servants, etc.) They have a mandate (or authority) because they were given power by people who you voted for, or the law/constitution empowers them to act on behalf of other people.

So how is it used? Well the clearest example of a direct mandate is when a government tries to implement policies they ran as an election platform. Basically political party X campaigns before an election saying "vote for us and we'll do A, B and C". Then they win the election and claim a 'mandate' to do A, B and C - because you voted for them knowing it would mean those policies would be enacted. That's the way that mandates are traditionally conceived.

Simple right? Sometimes. But the deeper analysis stems from the understanding that elections are far more complicated than that. It would be fine if every political party only had a couple of policies - but in fact they score (for example, in the 2006 Victorian election, the then Bracks Government put out almost 50 policy documents including over 400 specific promises). And this is compounded by the fact that there are so few viable political parties (there are over a hundred registered parties but very few have the cash, the brains or the organisational capacity to seriously campaign) that people almost never vote for a party they entirely agree with - they vote for a party they mostly agree with.

So to use my previous hypothetical - the majority of people might have wanted policies A and B, but not C. But they liked even less of the policies advocated by the other parties, so still voted for party X. Does that mean party X has a mandate for all their policies? Most people would say no. Plus what about spontaneous policies - not everything a government does was part of their election platform. What about in emergencies (like September 11?) The government didn't campaign on specific policies relating to events that no one imagined would happen - so they have no mandate. Or do they?

Well strictly speaking, no they don't have a direct mandate but they do have a lot of legitimacy that comes from the fact that the majority of people voted for them. You see political parties don't just campaign on policies - they campaign on philosophy, and people know that. Voters know that electing the Liberal Party in Australia means

4 years of philosophically "conservative" policy and knowing that, if they still vote for the Liberals, then surely they are delivering a mandate for conservative policies in general, and the election platform more specifically?

You could argue that. But as usual, there are problems. You see most democracies are bi-cameral (two houses of parliament) and the weird thing is that very, very few political parties in Australia, Britain and everywhere except America, get a majority of seats in both houses. It happens sometimes (think of the Kennett years, the second term of the Bracks government, or the fourth terms of the Howard government) but it's increasingly rare as more and more minority parties gain prominence. So what does that mean? Well it could be that voters are just a bunch of stupid monkeys OR it might be that they are in fact highly intelligent monkeys who purposefully split their vote between the two Houses to deliberately create conflicting mandates. "Whoa, slow down egghead", I hear you say. Let's look at that more closely.

For the first three terms of the Howard government the majority of Australians clearly wanted the Liberal Party to be the government. But if that same majority had wanted all of the Liberals' policies and 4 years of totally conservative policies, why didn't they give the Libs a majority of seats in the upper house so they wouldn't have tree-huggers and communists modifying and blocking their legislation? Well maybe they wanted it that way. Take the GST for example. Howard made it pretty clear that if he was elected to a second term, he'd introduce a GST on almost everything. And the people voted him in, so I guess they were ok with that. BUT they also gave the Democrats the balance of power (the deciding votes) in the Senate - and they had made it pretty clear that although they would support the GST, they would want to modify it in certain ways. So if we assume people aren't stupid, then it means they wanted a GST, but not the exact GST being offered by the Libs, so they split their vote (voted Lib in the lower and Democrat in the upper) and got what they wanted. In that case the Libs had every right to claim a 'mandate' to pass the GST, but the Democrats also had mandate to modify it... complex stuff, eh?

What about the fact that politicians often hate each other & won't compromise?

That's another problem. The previous example shows that "conflicting mandates" can sometimes be resolved fairly easily through a degree of compromise. But there are times when compromise is impossible. The US political system provides generates this sort of situation virtually on purpose, which seems sort of odd, but they're the leaders of the free world so who am I to judge?

The problem in America is of course the fact that the Executive and Legislative branches of government are entirely separate, so it is easy for conflicting mandates to arise. Former Democratic President Bill Clinton experienced this problem follow the Congressional election in 1994 when the Republicans gained the majority in both Houses. This meant that there was a socially progressive President and a socially conservative Congress. Trouble was unavoidable.

The obvious issue was abortion. While Clinton was elected on an explicit 'pro-choice' platform, the Republicans campaigned hard on 'pro-life' policies. In 1996 the Congress passed H.R. 1833, a bill that would have imposed a nationwide ban on the type of abortion known as dilation and extraction (sometimes controversially referred

to as ‘partial birth abortion’). Both sides could claim a mandate (and both did) so what should happen?

1. The should be enacted. Congress should prevail because they are the legislators and they have a direct mandate from the people. Clinton might not like it but he doesn’t have the right to block it.
2. President should veto it – he has a clear mandate and on an issue this divisive you have to ensure that people’s rights are protected.
3. Whoever has the ‘fresher’ mandate - i.e. whoever was elected more recently, since that reflects the most recent desires of the people.
4. No one does - it's fucked, call elections or toss a coin...

If you’re interested, the outcome in 1996 was that Clinton vetoed the bill, as well as several others that the Republican controlled Congress put up over the remainder of his term in office. But that doesn’t the resolve the question of what he *should* have done, which is certainly a matter of considerable debate today in the US where the situation is reversed – a Republican President facing a newly elected Democrat-majority Congress. In March 2008 President Bush vetoed H.R. 2082, the Intelligence Authorization bill, which would prevent the CIA and other agencies from using techniques widely considered to be torture during interrogations. The use of torture by the US military was a key issue in the previous Congressional elections, but equally President Bush could claim a conflicting mandate on ‘homeland security’ issues as a result of his re-election.

But you should be ready for lots more debates than the few examples I have given here. Think about how you could use democratic and mandate theories for these common topics:

That we should elect our judges

That we should abolish the Senate/States/Local Government

That we should extend voting rights to minors/criminals

That we should become a republic (and any republican model debate)

That we need a Bill of Rights

That we should have quotas in parliament for women/minorities

That the third world should put democracy before economic development.

Further reading

J.R. Nethercote, “Mandate: Australia's Current Debate in Context”, ”, *Research Paper 19 1998-99*, Australian Parliamentary Library (available online)

Margaret Healy, “Deadlock? What Deadlock? Section 57 at the Centenary of Federation”, *Research Paper 2 2000-01*, Australian Parliamentary Library, (available online)

http://www.elections.org.nz/printer_mps-make-decisions.html

Todd S. Purud, “Shutdown by US fast approaches in budget battle”, *New York Times*, 12/11/95 (available online)

Chapter Two: Debates About The Criminal Justice System

Introduction

After basic debates about the ‘role of government’ (banning drugs, gambling, guns, offensive speech etc) and democracy, arguably the next most common category of topics relates to what I’ll call ‘crime and punishment’. Generally speaking these debates involve a simple clash – harsh punishment for criminals versus a greater focus on rehabilitation. Some examples of debates featuring this clash include; mandatory sentencing, public registries for paedophiles (variations of which are sometimes referred to as Megan’s Law and Sarah’s Law), death penalty, at-home detention, juvenile detention, etc.

Like most debates, there are sophisticated and interesting ways of debating these issues, and then there are boring and simplistic ways. Hopefully this article will steer you away from the latter category which is all too common even at the university level.

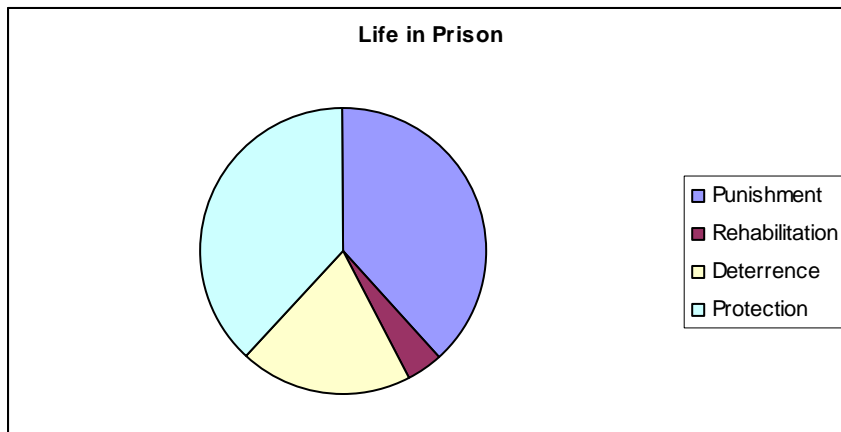
The Criminal Justice System

The phrase ‘the criminal justice system’ (CJS) is commonly used, but somewhat poorly understood. The CJS is the entire process of law enforcement – from the police, to the courts and finally punishment (sometimes in prison, sometimes in another form of punishment). It is widely recognised that there are four aims of the criminal justice system, these are:

- ❖ **Punishment/Retribution (of criminals)**
- ❖ **Protection (of society from further criminal acts)**
- ❖ **Deterrence (of similar acts)**
- ❖ **Rehabilitation (of the criminal)**

While most debaters can easily recite these aims, few have really considered how they interact with each other. The simplest example is the relationship between punishment and rehabilitation. The tougher you punish a criminal the more difficult it is to rehabilitate them. The reasons for this fact are straight forward. The more you isolate and disconnect someone from society, the more you brutalise or dehumanise someone, the harder it is to successfully reintegrate them back into society. The flippant response from many people to this claim is to say “so what? They don’t deserve to be well treated, they did despicable things”. However, regardless of whether or not criminals ‘deserve’ to be well treated, since the vast majority will eventually re-enter society at some point, we all have an interest in ensuring that they emerge better adjusted than when they went in. Otherwise it will be one of us that suffers when they re-offend.

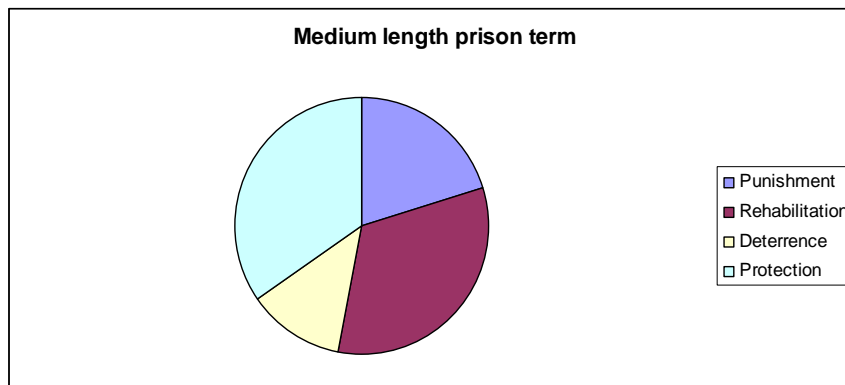
So the four aims of the CJS need to be seen as (to some extent) competing interests, and that any time you increase the focus on one element, by necessity there is a reduction in focus on at least one of the others. Think of it as a pie chart – if you want to increase the size of one ‘slice’, you have to decrease the size of another.



This is a rough representation of sentencing a criminal to 'life in prison' (with parole as a possibility).

In this scenario, punishment and protection factors are high (because

the criminal will not leave prison for a long time), but rehabilitation is very low (in part because neither the criminal, nor the state, have much incentive) and deterrence is medium (since most criminals don't expect to get caught, deterrence is always less than we might hope, which is why there is no statistically proven link between the use of the death penalty a reduction in associated crimes).



In this second scenario of a moderate term of imprisonment (say 10 years) you naturally see a significant decrease in the level of punishment. But protection is only

slightly lower because there is a large increase in rehabilitation, which helps to off-set some of the loss of 'protection' because of the far lower likelihood of re-offence. Deterrence is also a little lower, but again, deterrence is already substantially lower than most people realise to begin with because any level of jail time generates a certain base level of deterrence, but there is not a linear relationship between increased lengths of jail time and increased levels of deterrence.

So when you're debating about the CJS remember that it's a complex and inter-related system where any change to one element, affects all the others (positively or negatively). Finding the right balance between all four legitimate (but competing) aims is very difficult (that's why judges get paid the big bucks), but that's also why they make such interesting debates.

If you do the crime...

One of the easiest rhetorical devices is the 'tough on crime' mantra, because it aligns so closely to most people's base assumptions about crime and criminals. If any of these phrases sound familiar (either from debates, or from politicians during elections) then you'll understand what I mean:

"We're not going to be soft on crime"

"If you do the crime, you should do the time"

“Criminals give up their rights when they decide to hurt other people”

“We need to send a strong message to the criminal elements in our society that their behaviour will not be tolerated”.

“All this talk about the rights of criminals, what about the rights of victims and their families?”

The point I’m trying to make isn’t that these messages are entirely wrong – they wouldn’t resonate so strongly with the average person if they didn’t contain just enough truth to generate an intuitive sense of accuracy. But if when viewed in isolation these sentiments don’t seem simplistic and reactionary then you’re probably not thinking about it carefully enough.

The simple fact is that in a democratic society, people never lose all of their rights. Even convicted criminals have the right to appeal, to a fair trial and legal representation, the right to be free from torture, and the list goes on. But of course they must lose some rights – imprisonment entails the loss or diminution of freedoms of association, speech, movement, voting (sometimes), etc.

So the real question that underlies all ‘crime and punishment’ debates is; where do we draw the line? To put that another way; what balance of loss and preservation of the rights of criminals is appropriate in a given situation? The purpose of this article is to give you the philosophical tools to construct consistent and sophisticated cases on either side of the divide.

The state of nature

Whenever you need to make the hardline – ‘hard on crime’ – argument, there are few concepts more useful than that of the ‘Social Contract’. Its worth pointing out, as a disclaimer of sorts, that what I’m about to say about social contract theory is a selective interpretation of elements of the theory that are relevant to criminal justice theory. This is in no way intended to be a comprehensive or authoritative discussion of the general concept. But that said, I’ve rarely lost a debate when I’ve used this principle as the cornerstone of my case.

The Social Contract is a theory about the nature and origins of rights. Even amongst theorists who agree that there are such things as rights, there is fierce debate over their origins, since their origins have a substantial impact on questions of what rights people have, and when they can be legitimately breached. For some thinkers, human rights are an extension of the fact that man was created by a divine power, in His image, and therefore we enjoy a privileged status. But you don’t need to be religious to justify the existence of rights. For social contractarians rights are (as the name implies) the result of a ‘contract’ between citizens and the state – a *quid pro quo*, in which the people agree to limit their personal autonomy by granting their government the legitimate power to set and enforce laws. In exchange for this reduced freedom the state agrees to use its power to enforce and protect those liberties that remain.

To put that another way, without government we would have anarchy (the state of nature) – I mean that in the literal sense of people being able to do anything they liked because there would be no such thing as ‘laws’. Under a system of anarchy we would have ultimate freedom, we can kill, steal, cheat, and no institution would seek to prevent it or punish it. But anarchy is also dangerous for obvious reasons. If I can kill

you without consequence, then you can also kill me without consequence, and that's not a great position for me to be in unless I'm a lot stronger than everyone else (which unfortunately I'm not). So it makes sense to make deals with people for mutual protection – you help protect me and I'll help protect you. The social contract is the idea that the whole reason for the existence of government is because it functions as one big mutual protection society. We all give up option of killing each other without consequence, in exchange for the protection of the group against those who might refuse to be part of the deal or to try to cheat.

Lock em up and throw away the key

Any time you need to argue in favour of a 'tough on crime' response you need to prove at least two things – firstly that it's necessary (i.e. that there is a serious problem) and secondly that a strong punishment is appropriate and proportionate to the crime. I'll come back to the issue of 'necessity' in a moment, because the second problem is usually the more difficult and important, and social contract theory has important implications for demonstrating the appropriateness of harsh punishments. Firstly it establishes the idea that rights are artificial, and therefore can be rescinded (especially useful in death penalty debates for obvious reasons) or at least curtailed to meet society's needs. Second they establish a wider societal interest in a given criminal act. This is a little complicated, but astonishingly important and useful.

When you want to argue that truly vile criminals – murders, rapists, paedophiles – should be punished harshly, you can get away with making the argument that the devastating suffering inflicted on the victim is justification for a stiff penalty. However when you need to argue that lesser criminal acts (such as drug crimes, or property crimes) should be punished harshly (e.g. a '3 strikes law' debate) you need a better argument because the impact on the victim is much less, or might be nothing at all (in the case of say graffiti of public property). Here is where the impact on society is especially useful. Drugs are a good case study. In a debate about mandatory death penalty for drug traffickers (such as in Singapore) the social contract is a critical concept to justify such a draconian policy. The argument works like this:

“When seen in isolation, the impact of a single drug offence – importation of a bag of marijuana, or a few hundred ecstasy tabs - doesn't really justify the death penalty. Even in instances where these drugs result in the death of the user, that's usually not intended – since dead drug users make terrible customers – and in any case the 'victim' was an accessory to the crime by purchasing an illegal substance. But to view drugs in this way would be to ignore the pervasive social impacts of drugs, which are the real reason why responsible governments have responded by instituting the harshest punishment, and strongest deterrence available”.

“Drugs don't just injure people, they damage societies. It fuels crime, funds corruption, turns family members against each other and creates ghettos and no-go areas in our cities. Each of these is a harm of its own, but in total drugs rob people of their sense of safety and personal security, which is the single most important obligation of the state. Without a broad sense of trust and security, the social capital of our societies is eroded, and our ability and willingness to pursue our other rights is dramatically reduced. Property rights are meaningless in suburbs where addicts regularly break into homes looking for ways to fund their addiction. Freedom of movement and association is meaningless if you're too scared to use public transport or venture into the city at night”.

“When seen in this way, the potential harm of drugs is very high, and avoiding what amounts to a fundamental break-down of society’s rights is justification enough for severe punishments. The comforting sense of security you feel on the streets of Singapore is evidence enough for the effectiveness of appropriately strict punishment for drug offences”.

It should be reasonably clear that this type of argument can be extended to cover most, if not all, of the topics where you would be required to advocate a stiff punishment for a particular category of crime.

“<insert crime here> is out of control!”

Having seen how social contract theory can help you to build a coherent argument justifying strong punishments as appropriate, even for seemingly moderate crimes, we can turn to the issue of proving the necessity for such punishments – in other words, how do you show that there is a problem that needs the solution you’re proposing?

The most obvious problem facing the ‘tough on crime’ advocates is that in Australia (and many other parts of the developed world) serious crime isn’t actually a big problem because it doesn’t happen very often. One of the reasons why virtually all of Australia’s major cities are rated amongst the ‘world’s most liveable cities’ is because of the very low crime rates.



But that fact isn’t very helpful to the team that is proposing a tougher line of crime. So what should they do? Well what school kids do is simply lie. They tell the audience that crime is out of control, and because the media constantly tells us that it is, a lot of oppositions (and adjudicators) will believe them. But lying (on purpose or not) is never a good strategy, because sooner or later you’re going to come across someone who knows the truth. So the more effective, and honourable, strategy is to come at the issue from another angle – public perception – and again social contract theory provides the justification.

While it may be true that crime rates are generally low and have remained that way for many years, it’s also true that in the public imagination the opposite is true. Tabloid media (like Today Tonight and the Herald Sun) play up the crime rate to boost their ratings, and politicians (especially Conservatives, but Opposition parties generally) also have a vested interest in heightening public fears about crime. Surveys consistently show people have a distorted view of the prevalence of crime, especially serious crime, despite very little evidence to support such views. Similarly, there is a widespread public perception that the punishment meted out to convicted criminals is too lenient, and that judges are ‘out of touch’ with public expectations about sentencing. Again, neither of these things is actually true but it’s a persistent myth and governments have an obligation to respond to those fears.

Broken Windows

But why does elevated perceptions of crime and lenient sentencing justify harsher punishments? Doesn’t it justify better public education? Maybe, but if you’re the ‘tough on crime’ team, the answer has to be ‘no’. Firstly, the tough on crime team

doesn't admit that the perception is wrong, you just talk about the perception and how important it is to address it. Secondly, it's not very easy to simply re-educate the public on this issue, and even if you could it wouldn't be a quick process. In the meantime (going back to the social contract) the government has an obligation to make people *feel* safe, because perception matters as much as fact – since if you don't feel safe you'll behave in the same inhibited way as you would if you were actually unsafe.

Furthermore, this principle extends equally to the CJS. It's just as important for justice to be *seen* to be done as it is for just to actually *be* done. If people lose confidence in the CJS, then they begin to feel unsafe, with all the loss of liberty and social capital that was discussed above. So one of the burdens for the 'tough on crime' team is to show that harsher punishments will make people *feel* safer, and improve their confidence in the CJS.



These ideas were embodied in the so-called “broken windows” theory of crime prevention propounded by Wilson and Kelling, and enacted by New York City's former mayor Rudy Giuliani in what he called “zero tolerance” policing. Boiled down, zero tolerance means cracking down harshly on minor crimes such as littering, graffiti and minor property damage (like broken windows) because of the belief that tolerance of these lesser offences undermines the social conventions that discourage more serious crime. Streets covered in graffiti and litter, neighborhoods in disrepair, are places where people *feel* very unsafe, even if they're actually not. Why does this perception matter? Well it matters because a seemingly permissive attitude towards crime might encourage more serious crimes, but also because honest, decent people will flee these kinds of neighborhoods, reducing them to ghettos and further increasing the likelihood that these places will descend into crime and dysfunction.

Hopefully you can now see how even without the reality of a crime wave, the 'tough on crime' team can still justify a crackdown on what little crime there is, because of the importance of public perception. A combination of arguments about addressing public perceptions of crime and lenient punishments, coupled with a clear analysis of the appropriateness of particular 'tough' policies, is a very consistent and powerful case – and there is no need to lie about anything!

Hug a criminal

OK, now that I've shown you how to argue for a focus on punishment and protection in the CJS, how do you defend a more rehabilitation focused system? The most important thing to do is to be well prepared with the facts about the status quo.

Firstly, as mentioned above, crime rates are low and falling across Australia and most parts of the developed world. So the 'problem' of crime is much more about perception than reality.

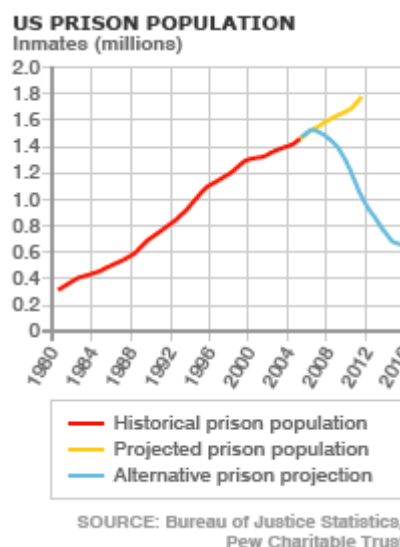
Second, punishment for criminals is not 'soft', nor is it getting 'softer'. The Australian CJS generally traps criminals between a rock and a hard place. The rock is that more

people are going to jail – the size of the Australia’s prison population is rising year on year – in part because now even ‘lesser’ criminals are regularly being sent to prison for crimes that would not normally have led to jail time. One good example is culpable driving. In 1998-99, 54% of culpable drivers were jailed, but in 2005 the figure was 77%, a massive increase.

The hard place is that the perception that the worst criminals are getting off lightly is also wrong. 96% of murders go to jail, and the average sentence for convicted murders is a little over 18 years – meaning that judges are certainly not hesitating to hand out long sentences if that’s the appropriate penalty.²

Thirdly, the idea that judges are out of touch with community standards on sentencing is also untrue. Last year a team of Melbourne Uni researchers released the findings of a two-year study into community standards on sentencing. They gathered groups of people from across Victoria and presented them with all the evidence and testimony of four real-life serious crimes, but didn’t tell them the sentence handed down by the court. In three out of four cases the community juries handed down sentences that were, on average, *less* than those actually imposed.³ Basically, when the public is *fully* informed about the circumstances of a given crime, they tend to be more forgiving than judges. Unfortunately the media doesn’t fully inform people of all the facts, they summarize the crime and focus on the most lurid and distressing elements. No wonder public perception is so off the mark!

Fourthly, rehabilitation of criminals really works – meaning it reduces rates of re-offence, which reduces the suffering associated with future crimes, and saves governments the extremely high cost of incarceration. To realise how important rehabilitation is, consider the fact that, despite the increasingly rates of imprisonment, and the increasing average sentences, on average 800 people are released from prison *each day* across Australia. That means that roughly 30,000 convicted criminals will re-enter society each year.⁴ That means we can either do everything within reason to try to ensure that people come out of prison better than when they went in, or we can roll to dice and hope that their next crime isn’t going to be committed against us or someone we care about.



In 2000 the Victorian Government initiated a \$334.5m program designed to boost rehabilitation of prisoners – it included three new prisons (to reduce overcrowding), community corrections (e.g. at home detention and ‘half-way houses’ like the Judy Lazarus Transitions Centre⁵), specialist Koori courts and diversionary programs for drug offenders. The result of that program is that Victoria now has a prison population

² <http://www.theage.com.au/news/national/judges-tough-on-killer-drivers/2005/09/11/1126377206386.html>
³ <http://www.theage.com.au/news/in-depth/time-fits-the-crime/2006/09/29/1159337334468.html?page=fullpage>
⁴ <http://www.abc.net.au/4corners/content/2007/s1863714.htm>
⁵ <http://www.news.com.au/sundayheraldsun/story/0,,21377015-2862,00.html>

that is half the size of NSW (who have followed a strict ‘tough on crime’ approach) on a per capita basis.⁶

Finally, remember that safeguards such as judicial discretion over sentencing, and rigorous appeals processes exist for good reason. Judges are highly trained and are well equipped to dispassionately assess the fairest punishment for a given crime. Each crime should be assessed individually, on their specific merits, since every crime is different. People who favour mandatory sentencing of any variety seem to ignore the fact that different criminals have different levels of culpability, different levels of remorse and different likelihoods for rehabilitation. It doesn’t make sense to treat them all the same, and more importantly, it doesn’t work. As Tony Blair used to say, we need to tough on crime, but also tough on the causes of crime”.

Further Reading:

Therapeutic Jurisprudence

- Karen Kissane, “Healing side of the law” *The Age*, 21/7/07 (available online)

Neighbourhood Justice Centres

- “One-stop legal shop”, *The Law Report*, ABC Radio National, 3/4/07 (online)

Koori Courts

- “Koori Courts in Victoria” *The Law Report*, ABC Radio National, 3/4/07 (online)

Circle Sentencing/Circle Courts

- “Indigenous justice in Australia - Community and government interventions in Indigenous justice”, Australian Institute of Criminology, www.aic.gov.au

⁶ Geoff Wilkinson, “Trading Places”, *Herald Sun*, 17/3/07

Chapter Three: Debates About Secularism

Introduction

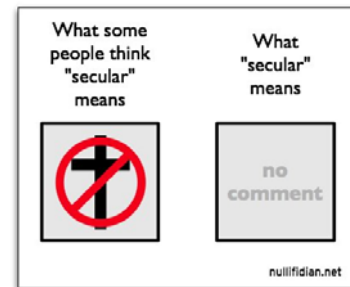
How much should religion influence politics? Before you answer too quickly, consider what your answer might mean. Would you support the government providing funding to religious organisations? What if there is a non-religious group providing the same service, should the government have a *preference* for non-religious groups? And while we're talking about preferences, what about political leaders – is it right for them to support or block policies on the basis of their personal religious beliefs?

These are some of the most difficult questions facing any democracy, and as Western democracies become increasingly multi-cultural (generally bringing with it greater diversity in religious views) these issues are even more important and difficult.

You can't have one without the other...

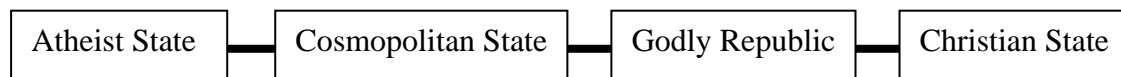
It's tempting to think that these issues are actually very simple. Liberal democracy includes the notion of *secularism* - a separation between church (or mosque) and State right? So while people are free to worship as they please, religious beliefs have no place in politics. That would be fine if most people were not religious, but we live in a society of believers.

A further complication is the fact that the definition of secularism is a matter of perspective – is the separation between church and state intend to insulate government from the pressures of religions, or the other way around? Both views have some merit.



The Secularism Spectrum

Like all first principles, secularism exists on a spectrum. Where you sit on the spectrum depends in part on your inherent views about religion (a source of truth or just well intentioned fairytales?) and partly on your views on the limits on the public/private spheres. Let's sketch each of the key points on the spectrum.



An **Atheist State** generally conjures images of *militant* atheism – such as the former USSR, where all religious creeds are actively suppressed, but that is not a version of secularism so it doesn't belong in this conversation (but is valid in some debates).

The second form of atheism is more *passive*, and advocates for a strict and total separation between the functions of the State and religion. So while there would be tolerance of religion in private, there would be no government support for it – no funding for religious schools or charities, no religious holidays, and no consideration of religious beliefs in the creation of laws or the delivery of public services (e.g. no exemption from equal opportunity laws or special status for the purposes of taxation).

Cosmopolitanism can be summarised as a 'live and let live' philosophy – beyond *tolerance* of difference, its much closer to a general *acceptance* even *encouragement* of different views. To the cosmopolitan religion is a private matter, belonging at home, in the church, etc. The public sphere should be limited to regulations that promote the general good (e.g. seat belt laws) and leave matters of morality to

personal conscience (e.g. abortion should be legal not because its *good*, but because women should not be denied access to it because of moral views they don't share).

So naturally cosmopolitans oppose the involvement of religion in politics – its unnecessary (because no one will be forced to act against their conscience, and that should be all that matters) and dangerous (if religious views are included in decision making it will invariably be the religion of the majority – oppressing the views of minority faiths as well as atheists). The only way to protect everyone's rights is to give preference to none.

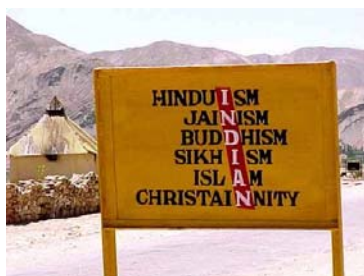
A **Christian State** is one where the majority faith (in the case of virtually all liberal democracies that's a Christian creed) is supported by the State. It's not a theocracy – that's not on the spectrum of secular democracy any more than militant atheism is.

In its purest form, it means that Christian values should be actively promoted by the government and the Christian tradition should be elevated above that of other faiths. It's undeniable that Western nations have a common Christian heritage, and that despite immigration and multiculturalism, Christianity has remained the dominant faith – that means that the majority of people see Christianity as integral to the values and culture of the nation. That sounds extreme but you can see traces of this view even in Australia – we have multiple public holidays for significant days on the Christian calendar – Easter, Christmas – but none recognising other faiths.

In the United States the most distrusted category of people amongst those standing for elections are atheists. Even after September 11, it's easier for a devout Muslim to get elected than a committed humanist. As it stands there is only one openly atheist member of the US Congress – Pete Stark (D-Cal) – and despite being elected in 1973 he only officially 'outed' himself in 2007!

A softer view might be called a **Godly Republic** (a term coined by John DiIulio) and this perspective borrows a little from both of the previous two positions. A Godly Republic respects the role of religion in public life, but also respects the right for people to be free from religious influence.

In practice that means that the government should fund religious groups when they have the capacity to make a positive contribution, as long as the money isn't used to seek conversions, or in ways that exclude non-believers (e.g. Habitat For Humanity). Religious schools should be subsidised so that they are within the reach of average families – because in a nation of believers you shouldn't have to be rich to be able to have your children schooled in line with your beliefs.



Conclusion

The principle of secularism is relevant to a variety of contemporary political issues such as; education (sex education, chaplains in schools, etc), social welfare (so-called 'faith based initiatives' and 'charitable choice' laws) and health (abortion, circumcision and stem cell research). All four strands of thinking (and many variations in between) are represented in political discourse on these issues – and like

the choice between big and small government, each society is generally an uneasy mix of all the options rather than a single, consistent application of one concept to all issues. By way of illustration the table below sketches out responses to two common battleground issues in the secularism debate – but you should hopefully now be able to see how each position would respond to any of the issues identified above. Just remember, this debate isn't static. The appropriate secular balance is constantly being negotiated and renegotiated by society – that's what makes it so interesting!

	Atheist State	Cosmopolitan	Godly Republic	Christian State
Marriage	Only civil unions carry weight of law. Civil unions have all the rights and stature accorded to 'marriage' today. Sexuality is irrelevant.	Civil unions available regardless of sexuality. Religiously sanctioned unions recognised as equal unless incompatible with common law – such as polygamy.	Civil and religious unions are equal in most cases. Common law accommodates some religious views (no gay 'marriage', but lesser 'unions' are ok. Polygamy is not necessarily allowed).	Civil and religious unions equal in most cases. Common law accommodates majority religious views (no gay marriage, civil unions, registries or anything like it).
Education funding	No public funding of any kind to religious schools. Private religious schools should be rare	Limited public funding for religious schools is ok, on the basis of need, not to facilitate access. Majority of system is public	Funding for religious schools acceptable to assist religious families' access to a religious education. Private schools common – even the majority	Funding for Judeo-Christian schools should ensure and promote access to religious schools. Public schools are a minimal 'safety net'.

Further Reading

- John DiIulio Jnr, *The Godly Republic*, University of California Press, 2007.
- Esther Addley, "Cardinal attacks 'aggressive' secularism gaining ground in UK", *The Guardian*, 2/4/08 (available online)
- "Defining the Limits of Exceptionalism", *The Economist*, 14/2/08 (available online)
- Seumas Milne "Religion is now a potential ally of radical social change", *The Guardian Weekly*, 27/3/08 (available online)
- Lisa Miller "In Defense of Secularism", *Newsweek*, 25/2/08 (available online)
- James Carrol, "Carroll: America's politics of religion", *International Herald Tribune*, 17/12/07 (available online)