

Exercises

Comprehension

- 1 Describe four of Amnesty International's aims.
- 2 Mention one argument for, and one against, intervention against another country because of its human rights policies.
- 3 Name three international agreements on human rights.
- 4 True or false? Amnesty supports its criticisms with
 - a legal arguments.
 - b moral arguments.
 - c political arguments.
- 5 List five ways in which women in some countries appear to suffer unfair treatment.

Discussion

"Matters such as corporal punishment and the status of women should be left up to individual societies, not international organizations."

Write a paragraph containing two arguments for and two against this statement. Then discuss your answer with other students.

19 Enforcing the law

Governments have many ways of making sure that citizens obey the law. They make the public aware of what the law is and try to encourage social support for law and order. They use police forces to investigate crimes and catch criminals. They authorize courts to complete the investigation of criminal and civil offences and to pass sentences to punish the guilty and deter others. And they make efforts to re-educate and reform people who have broken the law. Which of these is most effective in enforcing the law?

The laws of all countries are to be found in written records—the legal codes of countries with continental systems, the statutes and case judgments of common law countries, warnings on official forms, and notices in public buildings. Many people do not know where to find these records and do not find it easy to read them. But ignorance of the law is almost never a defence for breaking it. Governments usually expect citizens to be aware of the laws which affect their lives. Sometimes this seems very harsh, for example, when the law is very technical. Shopkeepers in England have been prosecuted for selling books on Sunday, although they were allowed to sell magazines. However, there are many laws, such as those prohibiting theft, assault and dangerous driving, which simply reflect social and moral attitudes to everyday behavior. In such cases a person knows he is breaking the law, even if he doesn't know exactly which law it is.

Role of police force

The police have many functions in the legal process. Though they are mainly concerned with criminal law, they may also be used to enforce judgments made in civil courts (see Chapter 3). As well as gathering information for offences to be prosecuted in the courts, the police have wide powers to arrest, search and question people suspected of crimes and to control the actions of members of the public during public demonstrations and assemblies. In some countries, the police have judicial functions; for example, they may make a decision as to guilt in a driving offense and impose a fine, without the involvement of a court. In Britain, when someone is found in possession of marijuana, the police may confiscate it and issue a formal warning rather than refer the matter to a court.

The mere presence of the police is a factor in deterring people from committing offences. In Japan, you are rarely more than a ten-minute walk from a small police station. The city of Tokyo has more policemen than the city of New York. Could this be one reason there is less crime in Japan than

the United States? Comparing the crime figures of different countries is a complex matter. It is necessary to consider not only how many crimes are committed, but how many are detected and recorded. In 1989, over 13,000 offenses were reported in both New Zealand and Sweden for every 100,000 people, compared with less than 200 in Brazil and Argentina, but this does not necessarily mean that South Americans are 650 times more law-abiding. The type of crime is another important factor. Britain has more reported crime in general than Japan but about the same number of murders (1.5 per 100,000 people, compared with 8.6 in the United States and 29 in the Bahamas). Rich countries tend to have more car thefts than poor ones.



Figure 19.1 *The smiling face of law enforcement.*

A just legal system needs an independent, honest police force. In countries where the public trusts the police force, they are more likely to report crimes, and it seems that they are also more likely to be law-abiding. Because of their wide powers it would not be difficult for corrupt police forces to falsify evidence against a suspect, to mistreat someone they have arrested, or to accept bribes in return for overlooking offences. In 1991, the Osaka High Court ordered the review of a Hong Kong man's case after finding that the police had used a biased interpreter. In 1991, the Japanese Civil Liberties Union believes there have been numerous cases of police violence against foreign suspects, many of who are not told of their rights in a language which they can understand. In the Birmingham Six case, British police officers obtained confessions from men suspected of bombing a pub by beating them up. In the United States, illegally

obtained evidence is not valid in court, but in Britain the court decides whether it is fair to accept such evidence on a case-by-case basis. A confession obtained by force would not be allowed, but one obtained by trickery might.

Legal systems usually have codes of conduct for the police, limiting the time and the methods which they can use to question suspects and guaranteeing the suspects access to independent lawyers. In Britain, however, the Police and Criminal Evidence Act, and especially the Prevention of Terrorism Act, give the police some powers to delay access to lawyers. The Police Complaints Authority was set up in 1984 to supervise the investigation of allegations of police misconduct. No police officer or former police officer may be appointed to the authority. However, investigations themselves are carried out by police officers. Of course, private legal action can be taken against a police officer as against any other individual—for example, in the tort of false imprisonment. But many people feel it is difficult to gather evidence against the police.

In some countries, police officers are usually armed, whereas in others they only carry guns when engaged in certain kinds of work. Governments may also make use of the army to enforce the law, but this is only done on a regular basis when there is political dissatisfaction with the government, either from a large part of the civilian population (Paraguay), or from a well-armed minority (Northern Ireland). Since armies are trained for wartime conditions, their methods of law enforcement are unlikely to be completely impartial, although there are some countries where the army appears to enjoy more public confidence than the police (India).

The court system was discussed in Chapter 4. As with the police, it is important that the public feels the judiciary is independent and unbiased. Americans feel that the best way of ensuring this is to have elected judges. Britons fear this might lead to politicization of the judiciary and prefer to have judges appointed by the government on the recommendation of the lord chancellor.

Although courts have the highest legal authority, they rely on the power of the prison authorities to enforce their decisions. They can authorize the detention of an individual in order to gather evidence against him, compel him to obey a court order or punish him for a crime.

Civil and criminal penalties

There are several kinds of punishment available to the courts. In civil cases, the most common punishment is a fine, but specific performance and

injunctions may also be ordered (see Chapters 2 and 3). For criminal offenses fines are also often used when the offense is not a very serious one and when the offender has not been in trouble before. Another kind of punishment available in some countries is **community service**. This requires the offender to do a certain amount of unpaid work, usually for a social institution such as a hospital. For more serious crimes the usual punishment is imprisonment. Some prison sentences are **suspended**: the offender is not sent to prison if he keeps out of trouble for a fixed period of time, but if he does offend again both the suspended sentence and any new one will be imposed. The length of sentences varies from a few days to a lifetime. However, a life sentence may allow the prisoner to be released after a suitably long period if a review (parole) board agrees his detention no longer serves a purpose. In some countries, such as the Netherlands, living conditions in prison are fairly good because it is felt that deprivation of liberty is punishment in itself and should not be so harsh that it reduces the possibility of the criminal re-educating and reforming himself. In other countries, conditions are very bad. Perhaps because of an increase in crime or because of more and longer sentences of imprisonment, some prison cells have to accommodate far more people than they were built to hold and the prisoners are only let out of their cells once a day. Britain and the United States are trying to solve the shortage of space by allowing private companies to open prisons.

In some countries there is also **corporal punishment** (physical). In Malaysia, Singapore, Pakistan, Zambia, Zimbabwe, among others, courts may sentence offenders to be caned or whipped. In Saudi Arabia theft and possession of alcohol may be punished by cutting off the offender's hand or foot.

Capital punishment

The ultimate penalty is death (**capital punishment**). It is carried out by hanging (Kenya, for example); electrocution, gassing or lethal injection (U.S.); beheading or stoning (Saudi Arabia); or shooting (China). Although most countries still have a death penalty, 35 (including almost every European nation) have abolished it; 18 retain it only for exceptional crimes such as wartime offences; and 27 no longer carry out executions even when a death sentence has been passed. In other words, almost half the countries of the world have ceased to use the death penalty. The UN has declared itself in favor of abolition, Amnesty International actively campaigns for abolition, and the issue is now the focus of great debate.

Supporters of capital punishment believe that death is a just punishment for certain serious crimes. Many also believe that it deters others from committing such crimes. Opponents argue that execution is cruel and uncivilized. Capital punishment involves not only the pain of dying (James Autry took ten minutes to die of lethal injection in Texas, 1984) but also the mental anguish of waiting, sometimes for years, to know if and when the sentence will be carried out. Opponents also argue that there is no evidence that it deters people from committing murder any more than imprisonment does. A further argument is that, should a mistake be made, it is too late to rectify it once the execution has taken place. In 1987, two academics published a study showing that 23 innocent people had been executed in the United States. Research has shown that capital punishment is used inconsistently. For example, in South Africa, black murderers are far more likely to be sentenced to death than whites. During a crime wave in China in the 1980s, cities were given a quota of executions to meet; in a city where there weren't very many murders, people convicted of lesser crimes were more likely to be executed. In addition, while in some countries young people are not sent to prison but to special juvenile detention centres, in Nigeria, Iran, Iraq, Bangladesh, Barbados and the United States children under 18 have been legally put to death.

As the debate about capital punishment continues, the phenomenon of **death row** (people sentenced but still alive) increases. In 1991, no one was executed in Japan, but three people were sentenced to death, bringing the total number on death row to fifty. Sakae Menda lived under sentence of death for thirty three years before obtaining a retrial and being found not guilty. The debate also involves the question of what punishment is for. Is the main aim to deter? This was certainly the case in 18th century England when the penalty for theft was supposed to frighten people from stealing and compensate for inability to detect and catch thieves. Is it revenge or retribution? Is it to keep criminals out of society? Or is it to reform and rehabilitate them?