

COMMONWEALTH OF AUSTRALIA

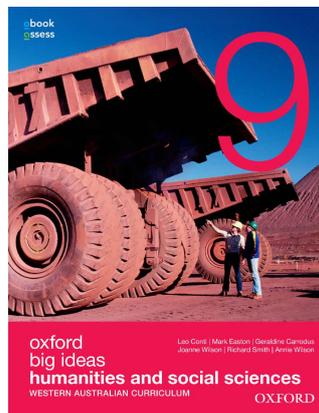
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Conti, L., Easton, M., Carrodus, G., Wilson, J., Smith, R., & Wilson, A. (2016). *Oxford Big Ideas Humanities and Social Sciences*. South Melbourne: Oxford University Press.

16.4 Undermining justice

While our legal processes and procedures are built on a number of key principles, or beliefs, that are designed to help protect the rights of all Australian citizens, our system is not perfect and sometimes injustices occur. Factors such as coercion of suspects and witnesses, trial by media, corruption and court delays can undermine justice.

Coercion of suspects and witnesses

The police must follow a range of legal processes and procedures when investigating a crime to make sure that suspects and witnesses are treated fairly. If these procedures are not followed injustices may occur. For example, all suspects have a right to silence (meaning they do not have to answer any questions from police other than giving their name and address) and a right to an interpreter if they cannot understand English. Injustice may occur if these rights are not observed and a suspect or witness feels compelled or forced to answer questions against their will.

Even a suspect who is informed of their right to silence may still answer police questions when it is against their best interests – particularly if they are not familiar with English or have trouble communicating. For example, various groups of people like Aboriginal people or Torres Strait Islanders, those from a non-English speaking background, and those who have a mental disorder or other disability (for example, a hearing impairment) may be disadvantaged when dealing with the court system because they do not have adequate communication skills, confidence or knowledge to negotiate with the authorities. The police and lawyers have the potential to easily confuse or persuade these individuals to make untrue or conflicting statements that may result in the wrong person being found guilty of a crime.

Trial by media

The media – both traditional and online media – can spread information quickly in a way that can create the impression of a person’s guilt before they have even been to court.

Trial by media can undermine the basic principle that all individuals who have been accused of a crime have a presumption of innocence and must be treated

casestudy

Victim’s mother fights for justice

In October 2014, Gene Gibson, a 23-year-old Aboriginal man from a remote community in Western Australia, was sentenced by a Supreme Court judge to spend a minimum of five and a half years in prison after pleading guilty to unintentionally killing Josh Warneke by striking him with a pole in an unprovoked attack along a roadside in 2010. Surprisingly, however, the victim’s mother, Ingrid Bishop, does not believe that Mr Gibson is her son’s killer and is bravely fighting to have him released from prison and his name cleared. Ms Bishop believes the police investigation surrounding her son’s death was not well conducted, that Mr Gibson did not understand the procedures and questioning that took place when police arrested him, and that he was coerced or pressured into confessing to a crime he did not commit. Interestingly, after the trial, the Western Australian Corruption and Crime Commission examined the case and found faults in the way it was investigated by the police. Changes to police procedures have been introduced to ensure all Indigenous people who are suspects and witnesses in a crime are provided with interpreters.



Source 1 Ingrid Bishop is fighting for justice – she believes the wrong man is serving prison time for her son’s death.

as innocent until proven guilty. For example, members of a **jury** (who are responsible for determining the guilt of an accused in a criminal trial) may be biased and think a suspect is guilty because of what they have seen and heard in the media before the trial has occurred. Potential jurors may also feel pressure to find a person guilty or **not guilty** based on public opinion, and find it difficult to remain impartial.

Over the years, intense and concentrated media coverage of high-profile court cases has jeopardised the ability of jurors to remain unbiased and led to unfair trials. Perhaps the most famous Australian case in which this occurred was in 1982 when a jury wrongly found Lindy Chamberlain guilty of murdering her baby at Uluru in the Northern Territory. The baby was actually taken by a dingo. Many commentators believe the extremely negative media campaign surrounding Mrs Chamberlain contributed to the jury's incorrect finding. It took Mrs Chamberlain more than six years to have her guilty verdict quashed (cancelled).



Source 2 Lindy Chamberlain was a victim of trial by media.

Corruption

Within any organisation, corruption can exist and unfortunately our legal system is no exception. Corruption is any form of dishonest or unethical behaviour that causes people to break rules for their own gain. Corruption can include things such as bribery, which in the court system might involve taking money from someone to alter the outcome of a court case. It is therefore essential that we have independent and unbiased anti-corruption agencies to investigate and punish those involved in the legal system (such as police, lawyers, magistrates, judges and politicians) who may misuse their power and authority for their own benefit. We also rely on 'whistle blowers', or people who are willing to come forward and report corrupt behaviour to the anti-corruption agencies in order to investigate those cases.

Court delays

Taking a case to court takes time and unfortunately will often involve delays. Delays in **criminal cases** can be caused by a variety of factors, including a lack of legal assistance for those who cannot afford a lawyer, complex and time-consuming court processes and procedures (such as the requirement that most evidence

must be given verbally in court and the use of a jury in criminal cases), and the increasing number and complexity of cases being brought before the courts.

Delays can cause many problems for those involved in a court case, including increasing the cost associated with taking the case to court, causing emotional stress and hardship for the parties and reducing the ability of the witnesses to accurately recall their evidence. In some instances, a **civil case** can take so long that people have to abandon their case because they cannot afford to pay the money that the legal system requires.

Check your learning 16.4

Remember and understand

- 1 State three groups of people who may be particularly disadvantaged when dealing with the police and court system. Give reasons for your choice.
- 2 Explain three ways that court delays can lead to injustices for parties involved in a criminal or civil case.

Apply and analyse

- 3 Explain the concept of trial by media. Undertake some Internet research to find an Australian criminal case that has attracted a large amount of media interest.
 - a Outline the facts of the case and reasons why you think it received such intense media commentary.
 - b Explain how the media coverage could have influenced the ability of the accused to receive a fair trial.

Evaluate and create

- 4 Read the case study 'Victim's mother fights for justice' and undertake some Internet research into the Josh Warneke case to answer the following questions.
 - a Outline the basic facts of the case, including basic details of the incident, charges and sentence imposed upon Mr Gibson.
 - b Explain why Ms Bishop believes that Mr Gibson did not kill her son, despite Mr Gibson being sentenced by the court.
 - c Explain some of the factors that may have contributed to Mr Gibson not receiving a fair hearing or trial.
 - d Explain the outcome of any appeal case.

16A rich task

Social media and the right to a fair trial

In a criminal trial, a jury of 12 randomly selected citizens determines the verdict as to whether or not the accused is innocent or guilty. One benefit of having a jury of 12 ordinary people determine the verdict, rather than a single judge, is that they will be able to reflect a range of different views and values in their discussions and deliberations. Similarly, it is argued that it is fairer for the accused to be judged by their peers or a group of independent 'everyday people', rather than a legal authority.

People who oppose the use of a jury, however, argue that jury trials can be unfair because individual jurors cannot be prevented from conducting their own online research into the case they are hearing and finding information that may cause them to develop a bias against the accused. For example, in 2015, a Victorian judge had to abandon a trial that had been running for five weeks after it was discovered that two of the jurors had used the internet to research information about the accused. Similarly, in 2015, former television star Robert Hughes, who had been found guilty of various sexual and indecent assault charges dating back to the 1980s, lodged an appeal because he believed the massive media coverage surrounding his trial (including a huge amount of false and vicious social media commentary) would have caused the jury to be unfairly biased against him. The problem with jurors conducting their own research into a case is that the internet and social media are often flooded with false information or unproven opinions. A juror may be biased by what they read, believing it to be true, although there is no actual evidence provided.

Source 1 People who oppose the jury system in criminal trials argue that social media platforms, such as Twitter, Facebook, Snapchat and Instagram, are threatening the right to a fair trial because information on court cases is now so freely available to members of the jury.

skilldrill

Preparing a written critical evaluation of information and ideas

Being able to critically evaluate information and ideas is a key skill. Critically evaluating something involves the following steps:

Step 1 Examine evidence from a wide range of sources about an issue.

Step 2 Review evidence that should come from sources that both agree with and contradict an argument on the issue.

Step 3 Decide to what extent a statement or findings within a piece of research are true, or to what extent you agree with them.

Step 4 Finally, reach a conclusion or verdict based on what you judge to be the most important factors, and justify how you have made your choice.

Critical evaluation enables us to gain an understanding of views and opinions that may be different from our own, and develop empathy for people who hold and express different beliefs and values. Having the ability to consider different perspectives also enables us to expand our perceptions and make more informed judgements.

When preparing a written critical evaluation, you must provide more than an explanation of the information or ideas – you must identify the key features of the material and issues, and assess their relative merits by explaining the associated strengths and weaknesses. You should also provide a concluding statement, which can include your own opinion.

The table in Source 2 outlines the steps involved in preparing a written analysis or critical evaluation of a controversial issue.

