

A person's hands are shown gripping vertical metal bars, likely from a prison cell. The background is a solid, dark blue color. The hands are positioned on the right side of the frame, with fingers wrapped around the bars. The lighting is soft, highlighting the texture of the skin and the metallic surface of the bars.

Do we need Criminal Law?

Professor Leslie Thomas KC



What is criminal law for?

- Punitive rather than compensatory
- Retributivist rationale – a person deserves to be punished for their wrongdoing
- Consequentialist rationales
 - General deterrence
 - Specific deterrence
 - Incapacitation
 - Rehabilitation



Criticisms of criminal law

- Criticisms may be reformist or abolitionist
- Criminal law criminalises actions that are more likely to be committed by the poor, while ignoring far more harmful actions that are likely to be committed by the rich
- Poor communities are over-policed, while problems in those communities (homelessness, lack of jobs, drug addiction) go unaddressed
- Disproportionate impact on people of colour and disabled people
- The evidence suggests that harsher punishment doesn't deter crime – though certainty of punishment may
- Imprisonment often has criminogenic effects

Abolitionists – Angela Davis, Mariame Kaba



The problem is not police training, police diversity, or police methods. The problem is policing itself.

Alex S. Vitale

The End of Policing

Updated edition





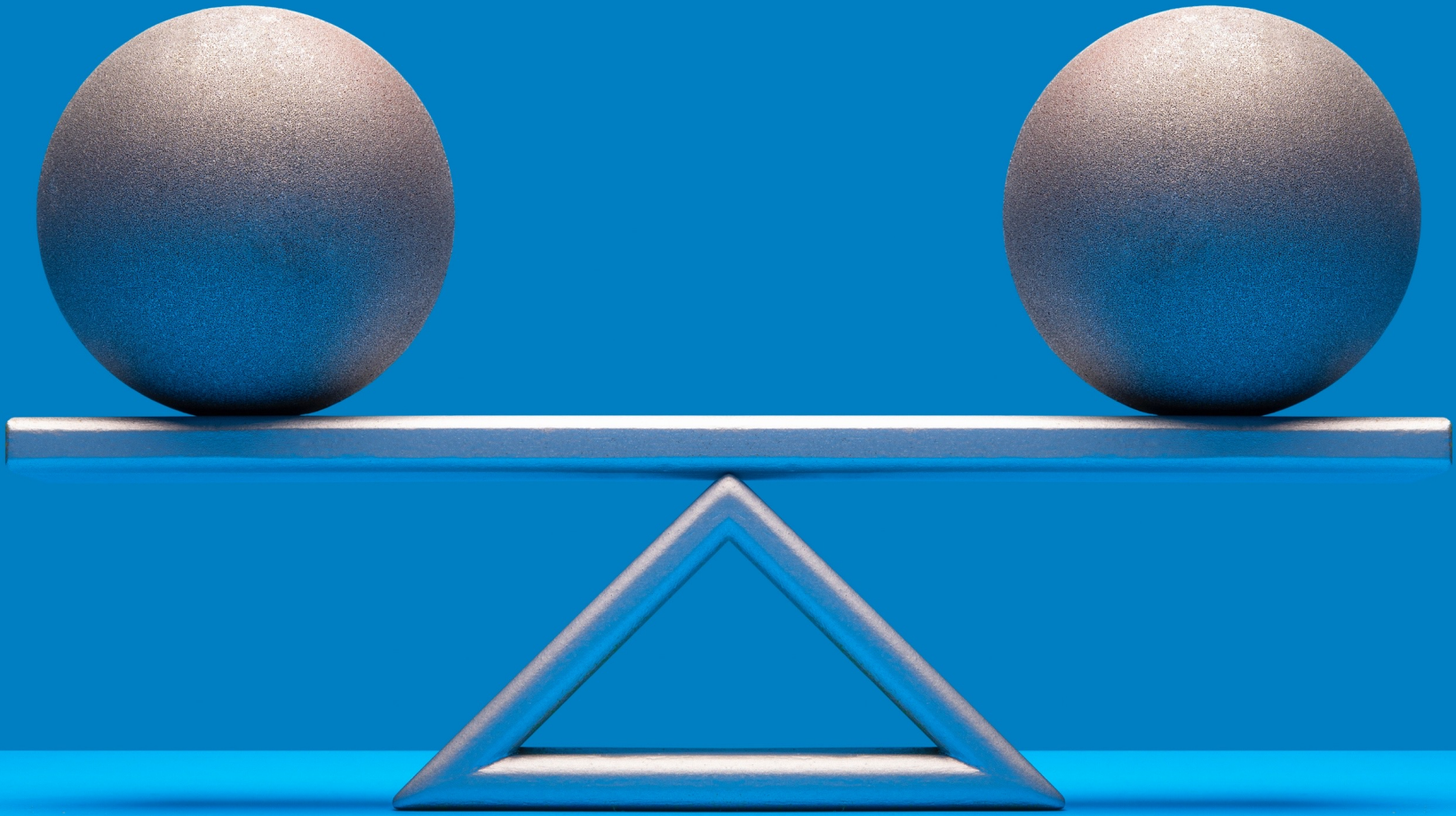
Restorative justice

- Seeks to heal the harm that has been done rather than punishing the offender
- Versions are practised in many cultures – e.g. Navajo peacemaking
- Some evidence that it is effective at preventing reoffending
- Limitations of restorative justice:
 - No process for finding facts – unsuitable where guilt is disputed
 - May be unsuitable e.g. where abuser may re-traumatise the victim and pose a risk to their safety
 - Usually an adjunct to the formal criminal justice system rather than a replacement for it
 - Doesn't always address all the harms done to victims



Community-based justice

- E.g. Koori Courts in Victoria and New South Wales, which involve community elders in sentencing of Indigenous defendants
- May improve experiences within the justice system for the accused
- But still part of the formal state court system – the judge has the final say



Transformative justice

- Recognises that harm is caused not only by individual actions but also by systemic inequalities and power imbalances
- Usually explicitly anti-carceral and abolitionist – opposed to reliance on the formal criminal justice system
- Rooted in anti-racist and anti-capitalist politics
- But will people accept a society without punishment – or will they simply take matters into their own hands, e.g. through vigilante justice?



Conclusion

- Can the criminal justice system be reformed, or should it be abolished?
- Not controversial to say that restorative justice is good – but it is usually an adjunct to the formal justice system rather than a replacement for it
- Transformative justice is more ambitious and is explicitly anti-carceral and abolitionist
- But would abolishing criminal law just lead to the gap being filled by vigilante justice?
- We should focus on addressing the social problems that cause harm and conflict, by providing high-quality education, housing, jobs and health care for all, and challenging the injustice of our capitalist economy

CENTRAL CRIMINAL COURT



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