

# **The Citizen and the State**

## Praise for *The Citizen and the State*

This is a timely, thought-provoking book which challenges us to re-evaluate our interpretations of justice, human rights, proportionality and the criminal justice system. Underpinned by critical thinking and rigorous scholarship throughout, this book is essential reading for anyone seeking a more nuanced understanding of the precarious balance between 'effective' justice policies and our civil liberties.

**Neil Chakraborti**, Professor in Criminology and Head of the School of Criminology, University of Leicester, UK

Angus Nurse provides an incredibly lucid and unswervingly critical analysis of the criminal justice system. Picking apart the underlying conflicts, inconsistencies and contradictions between the citizen and the state that emerge through the normal working practices of criminal justice processes, this book represents an important step toward understanding the complex intersection of human rights, justice and inequality. Through a range of assiduously selected examples, Nurse illustrates the power imbalances that characterise the legal landscape of contemporary society, in contexts as varied as the suppression of dissent, creative and sexual expression, and public enquiries. In a world where access to justice for the most vulnerable in society is becoming increasingly tenuous, *The Citizen and the State: Criminal Justice and Civil Liberties in Conflict* is essential reading for those interested in redefining *who* justice is for.

**Oliver Smith**, Associate Professor, School of Law, Criminology and Government, University of Plymouth, UK

Dr Angus Nurse has written extensively on a number of social issues such as human rights, environmental crime and green criminology. Prior to becoming an academic he had a professional background as an Ombudsman's Investigator and for a non-governmental organisation as a Wildlife Investigations Co-ordinator. He has brought this wide knowledge and experience together in a critical manuscript that deconstructs the questions of what and who the

criminal justice system is for? The work is accessible and is usefully underpinned with case examples. The conflict between civil liberties and criminal justice will deservedly appeal to a wide audience, beyond criminology and legal scholars.

**Anthony Goodman**, Professor of Criminology, Department of Criminology and Sociology, Middlesex University, UK

Dr Angus Nurse has written a concise, accessible and engaging introduction to the big ideas driving the debates around the criminal justice system. It is an exploration as to what we want and should expect from our justice system and the balance between upholding the rights of its citizens and delivering effective justice on the part of the state.

**Jon Robins**, Freelance Journalist, Lecturer and Editor of The Justice Gap and Proof, UK

A hallmark of Angus Nurse's scholarship has been discussing complex issues (such as animal harm and wildlife crime) in clear and accessible ways. In *The Citizen and the State*, Nurse tackles questions regarding the purpose and operation of criminal justice and the extent to which the balance between criminal justice and civil liberties is problematic. Nurse's elegant prose and thoughtful cases and examples – examined through the lenses of critical criminology and human rights – shed new light on the inherent conflict between the citizen and the state in a post-9/11 world. A timely and important book!

**Avi Brisman**, Associate Professor, School of Justice Studies, Eastern Kentucky University, USA

Angus Nurse is an outstanding socio-legal scholar, and this book crystallises his academic innovation and acumen with an inspiring and cutting-edge exegesis of the interrelated contradictions and complexities between state power, citizen freedoms and the administration of justice. The book is beautifully written, and it insightfully and lucidly unpacks key democratic concepts and relationships in an accessible and engaging way that makes a unique contribution to criminological discourses.

**Reece Walters**, Professor of Criminology, School of Humanities and Social Sciences, Deakin University, Australia

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# **The Citizen and the State: Criminal Justice and Civil Liberties in Conflict**

**BY**

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Middlesex University, UK*



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# Acronyms

CCRC	Criminal Cases Review Commission
CICA	Criminal Injuries Compensation Authority
CPS	Crown Prosecution Service
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IOPC	Independent Office for Police Conduct
IPCC	Independent Police Complaints Commission
ILO	International Labour Organisation
NGO	Non-Governmental Organisation
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
VPS	Victim Personal Statement

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# Preface

What (and more importantly, *who*) is criminal justice for? This question lies at the heart of this book which brings together a range of ideas from a more than decade-long of enquiry into the workings of criminal justice, criminal law, human rights law and the behaviour of actors and institutions that operate the 'criminal justice system'.

I say, 'criminal justice system' (in quotes) in part because this phrase is arguably open to interpretation and debate. The notion of there being an integrated 'system' that delivers effective justice is one that raises questions from a critical criminological perspective. The ideal for criminal justice is of a system that provides for, or at least facilitates, an objective enquiry into who has committed crime and then seeks to determine the facts of that crime and bring an offender to justice. Criminal justice arguably also serves the wider objectives of preventing crime, protecting the public and maintaining accepted, if not agreed upon, standards of law and order. Justice, carried out by the state on behalf of its citizens, should be fair and should be seen to be fair. It may be punitive in places, retributive in others but also at times be rehabilitative, considering the needs of victims of crime (in both narrow and wide perspective) and users of justice systems and participants in justice.

Dependent on political persuasion (and perhaps which newspapers one reads) an individual may believe that the 'rules' of criminal justice favour offenders who have too many rights within a system that prevents effective policing and prosecution. Alternatively, an individual may hold the view that alleged offenders have no rights within a system that has arguably eroded the right to silence, made the job of criminal defence lawyers harder and where policy and practice routinely interferes with the rights of individuals in a manner that raises concerns about civil liberties. At first glance this book may appear to sit firmly in the latter camp, but as you read through what follows in its various chapters I encourage all readers to look a little harder as the answer lies somewhere in between.

The objective in writing this book is to examine criminal justice through a human rights and critical criminology lens. While the core question of what criminal justice is for arguably has a simple answer, examining whether criminal justice is 'fair' or human rights compliant is considerably more complex. This is especially so in the post-9/11 world where various non-governmental organisations and commentators have raised questions about the extent to which justice has become increasingly retributive and civil liberties risk being undermined in order to pursue national security and policing objectives. Thus, human rights are sometimes

interfered with in order to pursue policing and national security goals leading to concerns over increased use of police powers and increased state surveillance of citizens, as well as concerns about the use of detention without trial which has been justified in some terrorism-related cases, some of which are discussed in this book. Elsewhere, state controls on and interference with freedom of expression and freedom of assembly identify that not only are citizens being increasingly policed where there are concerns about terrorism threats, the state arguably also seeks to exert greater controls over what citizens can say, which ideas they might be exposed to or wish to express, and over their rights to associate with others.

The majority of the intrusions in rights mentioned above are legal as long as they are carried out in accordance with the law and it can be demonstrated that they are *necessary* within a democratic society. Any action carried out must also be proportionate; that is, it represents the minimum interference necessary in our rights in order to provide for public protection, prevent crime or otherwise protect society's health or morals. Central to this book's discussion is an analysis of those issues of necessity and proportionality which are arguably becoming stretched as a result of the need to develop policing and criminal justice in response to contemporary terror threats.

As I say, these interferences with rights can be legal and frequently are. But the question this book raises is what happens when they are not. Research consistently shows that criminal justice processes are mainly targeted at marginalised and vulnerable groups including women, Black and Minority Ethnic (BME) and indigenous communities and those otherwise from the lower socio-economic strata of society. In addition to being the groups generally most likely to suffer from crime, they are also the groups most likely to suffer the effects of criminal justice policy and practice whilst also being least able to assert their rights and engage with redress mechanisms. As several of the examples in this book show, challenging the state's perspective is not easy. It requires tenacity, can engage detailed and complex discussions concerning how the law should apply, and in some cases can take years to achieve an outcome if indeed one can be achieved at all.

This book considers these issues from a critical criminological lens that argues for an alternative approach. Along the way, it examines a range of cases and examples that show how citizens wishing to challenge the state face an uphill battle although some successes have been achieved along the way. The examples and cases used in this book are primarily European ones, reflecting the reality that much of my work and the legal jurisdiction relevant to much of the cases and debates I engage with is one influenced by the European Convention on Human Rights (ECHR). The ECHR and the decisions of the European Court of Human Rights (ECtHR) provide a rich source of contemporary discussion on the interplay between criminal justice and human rights. Among other things, the ECHR provides a form of legal protection against state interferences with free speech and freedom of assembly, protection from inhuman and degrading treatment, state interference in private and family life and sets out a framework for fairness in criminal trials. All these issues (and some others) have been examined in cases where the state has allegedly overstepped the boundaries of its criminal justice powers and policies.

However, where possible I have also used cases and examples from other jurisdictions (frequently the US) that also illustrate some of the issues concerning state use of criminal justice powers and the might of the state brought to bear on individuals in a manner that infringes fundamental rights. Undoubtedly there are some omissions from the list of subjects, and I have no doubt that I have dealt with some subjects in more detail than others. This is not to suggest that some subjects are more important than others or that by omission I believe that some issues relating to rights are undeserving of consideration within this book. The selection of topics is a combination of choice and expediency and primarily reflects the cases and debates that have been brought to my attention and that have informed public policy discourse on human rights and criminal justice within the UK and Europe. Issues such as prisoner's rights, for example, have been hotly debated in the UK Parliament and the media as the UK government was repeatedly taken to court for its failure to reform what was originally a blanket ban on prisoners being allowed to vote. Accordingly, this is a subject of considerable interest in the UK and one that it would be difficult to ignore as I have developed this project. Other subjects reflect areas of personal interest and experience such as changing conceptions on freedom of expression and the way free speech has arguably been 'criminalised' in a post-9/11 world. While in one sense this may not seem to be a serious issue that directly affects most people's liberty, potentially this limits access to information and ideas for some of the most vulnerable and marginalised communities. Restrictions on free speech also have potential for suppressing dissent and alternative voices which is problematic from a variety of perspectives. The critical criminology focus of this book, therefore, almost demands inclusion of this topic as it is concerned with how one critiques the status quo and considers alternatives to the mainstream.

The selection of topics was also limited by space and inevitably I could not include everything I wanted to and made some harsh choices along the way. I have some personal favourite human rights texts that run to more than a 1000 pages and that are excellent course readers and research tools. But my aim (at least for this project) was to produce a reasonably accessible book rather than a detailed technical 'omnibus' text.

**Angus Nurse**  
London, February 2020

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This book would not have been possible without the help, support and influence of several people to whom I owe a debt of thanks.

Firstly, Anne Dennett from the University of Lincoln whose administrative and public law module 'The Citizen and the State' helped inspired my long-running research enquiry into the interplay between administrative and structural conceptions on law and justice and on the relationship between citizens and state actors and institutions which ultimately influenced the title of this book. It was a pleasure to participate in this module. I would also like to thank Sam Poyser and Rebecca Milne, my collaborators in the miscarriages of justice project that has led to two books (so far). Sam and Rebecca's work on contemporary problems in criminal justice systems has influenced my thinking as we have worked through our analysis of systemic flaws in criminal justice processes and considered both how and why miscarriages of justice occur. We approach these issues from different perspectives, and it is always illuminating and educational to share comments and insights with two such excellent scholars. Thanks are also due to Jon Robbins, whose work with the Justice Gap and as an investigative journalist continues to shine a light on contemporary miscarriages of justice and reminds us that these are not confined to historical policing practices that have allegedly been resolved in the age of human rights. I also give thanks to the human rights and criminology students I have worked with at Birmingham City University, the University of Lincoln and at Middlesex University over the past 10 years. Many of the questions raised in our classroom discussions and in their excellent work have inspired the examination that has found its way into this book.

Last but by no means least, thanks are due to Jules Willan for her boundless enthusiasm for all things critical criminology and for encouraging me to write this book, something I had been mulling over for some time.