



How America's Criminal Justice System Educates Citizens

Benjamin Justice, Rutgers University

Tracey L. Meares, Yale Law School

In the United States, citizens regularly encounter government in two core systems: public education and criminal justice. Most people, including public policy makers, think of these sets of institutions as entirely separate. Schools and other educational bodies are designed to produce good citizens, while criminal justice organizations corral and punish those who break the laws.

But the real-life divide is not so neat, because citizens learn from experiences as well as in school. Millions of Americans get daily lessons about citizenship and democracy from their encounters with courts, police stations, prisons, and probation officers.

Our research offers a framework for understanding how the U.S. criminal justice system teaches lessons – and what those lessons truly are. Borrowing ideas from educational researchers, we make a crucial distinction between formal lesson plans and what is actually taught. Formal lessons are what courts, prisons, and police are, ideally, supposed to be doing and saying to embody principles of U.S. justice. Actual lessons are the messages citizens receive from encounters with criminal justice routines that regularly proceed far differently from stated ideals.

Lessons from Courts and Prisons

Juries used to be far more a regular part of citizens' experience in the United States – in effect, they were intended to be schools that taught many people about an important part of citizenship and also gave many defendants a sense that fellow citizens were addressing their cases. But now juries rarely meet. Harsh mandatory sentencing laws give most of the decision-making power to prosecutors, who decide on charges and engage in plea-bargaining discussions with defendants and attorneys. *Ninety percent* of felonies are now adjudicated by guilty plea, not by a jury trial. And even on those rare occasions when juries do meet, jury selection rules often allow prosecutors to cull out people of color from serving on seated juries. The hidden curriculum – what criminal justice teaches in actual practice – is that those charged with crimes had best comply with prosecutors, who rarely have to make their case in court. For citizens at large, juries are an empty symbol or, if they happen to sit on one, a distorted lesson in who is a citizen.

Prisons teach harsh practical lessons as well. In democratic republics, prisons were designed to both punish and rehabilitate inmates, underlining the value of justice and liberty as core social values. But for many Americans convicted of felonies now, imprisonment has become a civic and economic death sentence. Draconian “three strikes” laws send many to prison for life or extraordinarily long terms, even if the third offense was relatively minor. Families and communities are hurt by the absence of so many imprisoned for so long. The prison experience itself offers few opportunities for meaningful rehabilitation, and once felons are released they often struggle to find jobs and rejoin the community. Many states deny voting rights to released felons, even after their sentences and probation terms are completed.

Police as Teachers

Police officers are variously understood as counselors, priests, and even street corner politicians, but – except for school resource officers – are not usually considered teachers. However, citizen interactions with police officers are among the most common experiences they have with government. So police actions do have a lot to do with how citizens think about our democracy and their own standing in it.

Looking closely suggests, once again, a gap between democratic ideals and the lessons taught by police activities. Recently, new approaches to policing have taken hold in many jurisdictions, in which police not only respond to possible crimes or requests for help, but proactively go into neighborhoods and “stop and frisk” people who look like potential lawbreakers. According to some scholars, variants of such proactive approaches can make communities safer and improve relationships between residents and police. But,

clearly, negative lessons can be taught by highly aggressive policing that singles out, for example, young black men for extra scrutiny or hassles, whether or not they are doing anything wrong.

In the case of “stop and frisk” efforts in New York City, for example, one could imagine a world where the officer and the apprehended citizens regard this practice with the same sense of legitimacy and fairness that, say, characterizes security frisking of people entering a sports arena or an airport. But, in daily practice, stop and frisk policing does not apply to everyone; it hits certain kinds of people and neighborhoods much more than others. Whether or not this approach reduces crime – and many experts say there is no evidence it does – racial factors are known to influence officers’ use of the practice. As a result, people in some neighborhoods either routinely experience being stopped themselves, or watch it happening to others on a daily basis, while it almost never happens in other neighborhoods. The hidden curriculum of such policing strategies sends clear, consistent message to all New Yorkers – declaring that some groups of citizens are trustworthy, while others are dangerous and prone to crime.

What Can be Done

Grasping the hidden curriculum in criminal justice – the unhealthy lessons that lived experiences with police, courts, and prisons are actually delivering to many Americans about their rights and dignity as citizens – poses important challenges. Leaders and policymakers will not be able to enhance citizen confidence simply by making idealist declarations or enacting formal rules about equal justice. These steps will ring hollow to many citizens, unless policymakers also take concerted steps to bring daily operations into line with the stated democratic ideals.

Improving fairness in street-level policing and enhancing the role of representative juries in criminal trials are both steps that could be taken to shift the practical lessons taught by criminal justice in a healthy direction. But merely incremental tweaks to minor parts of the system are unlikely to work. To revive and spread the sense that American criminal justice is fair, improvements will have to happen across the board – in courts, prisons, and policing together. In addition, criminal justice institutions will have to work more effectively with other institutions – from schools and churches to businesses and election systems – to ensure that apprehensions and punishments of wrongdoers are appropriate, tempered with mercy, and informed by intelligent efforts at rehabilitation. That is what it will take to rebuild citizen confidence.

Read more in Benjamin Justice and Tracey L. Meares, “How the Criminal Justice System Educates Citizens.” *The ANNALS of the American Academy of Political and Social Science* 651, no. 1 (2014): 159-177.