

SOC 3395: Criminal Justice &
Corrections
Lecture 1: Overview of the Canadian Criminal
Justice System 1

* The criminal justice system (CJS) consists of 3 major agencies:

- the police
- the courts
- the correctional system

* Each works together following formal rules & informal procedures

* Illustration: the Latimer case:

- accused killed disabled daughter: alleged “mercy killing”
- police charged with first degree murder, he claimed “necessity”
- convicted on 2nd degree, multiple appeals
- SCC ordered new trial
- second trial, convicted on 2nd degree
- question re; minimum sentence/ judge’s instruction to jury
- more appeals, ending up again in SCC
- outcome: (1) defense of necessity narrower than alleged
- (2) judge’s response to jury question not prejudicial
- (3) mandatory minimum sentence not “cruel & unusual punishment”

- ultimately: Latimer sentenced to 10 years before parole eligibility

(Note: much of this was served under house arrest/ on weekends)

- this is despite much public support for the accused (polls)

- this case touches on many significant issues re: crime &

punishment (e.g. discretion, public perceptions, constitutional

rights, role of juries, prison vs. house arrest, offender

reintegration, etc.)

* Our CJS provokes a lot of controversy & debate; its complexity is mirrored by the intricacies of the law.

* Cultural norms are often be violated by anti-social behavior. Society must establish approved rules or norms, usually reflected in systems of criminal justice

* Social control = various types of organized responses to problematic behavior

* Canada's approach to control criminals is to establish a system enabling institutions of social control to investigate, detect, prosecute and punish offenders within constitutional limits

* The CJS is a vast network of institutions and facilities, interdependent but not always coordinated. It is often controversial

* Three general purposes of the CJS:

- crime control (e.g. arresting, prosecuting & punishing offenders)
- crime prevention (e.g. incapacitation & deterrence)
- to maintain justice (conflicting views of fairness problematic)

* Some considerations about justice (consensus hard to achieve as legal rights disproportionately invoked/ conflict with each other):

- equality before the law
- protection from arbitrary decisions
- fair treatment
- balance between the state & individual liberties

What is Crime?

* Common definitions:

- (1) Crime = violation of existing legal code;
- (2) Crime =determination of guilt by court

* Problems:

- (1) Not every offender caught and punished;
- (2) Many acts not prosecuted when known;
- (3) Neglect the issue of why some disapproved behaviors are criminal, others not;
- (4) Separation of criminal process from social context

* Other approaches:

- (1) Crime as violation of moral codes;
- (2) Crime as a social construct

* All definitions raise questions about the nature of crime in society

What is Criminal Justice?

* The CJS has 3 main goals:

- (1) to control crime;
- (2) to prevent crime;
- (3) to maintain justice (not easy)

* Criminal justice is said to occur when the 3 agencies in the CJS:

- (1) determine guilt, innocence & punishment in accordance with
the evidence
- (2) the punishment fits the crime
- (3) similar cases are treated alike; different ones differently

* Two major forms of unfairness: disparity & discrimination

* *Disparity*: inconsistencies due to illegitimate factors influencing decisions

* *Discrimination*: differential treatment of individuals based on negative judgements about group (e.g. race). Several types:

- systemic: consistent differences over time throughout CJS
- institutional: the unequal effect of established policies
- contextual: occurring in certain situations
- individual: based on the actions of a specific person

* Substantive vs. procedural justice:

(1) Substantive justice=the accuracy or correctness of outcome

(2) Procedural justice=the fairness of the procedures used

* Procedural aspects of our CJS: the *adversarial system*:

- each party has the right to argue about the evidence
 - the prosecutor (state) lays appropriate charges and supports them
 - the judge (impartial fact finder) ensures proper questions asked/
rules followed
 - defense counsel questions prosecutor's case, argues for client
 - goals=search for truth (guilt or innocence)
protection of accused's rights
fair verdict & sentence
 - criticisms: more theory than practice: more often "bargain justice"

The Structure of the Criminal Justice System:

* We now consider the three major agencies of the CJS

* *Police*: municipal, provincial & federal forces:

- municipal police serve specific municipal areas (67%)

- provincial police (26%) deal with areas outside municipal jurisdiction (OPP, QPP, & RNC)

- federal police (RCMP) deals with broader concerns (7%)

- in 2005 there were 61,050 sworn police officers in Canada,

 - Heavily concentrated in Ontario, Quebec & BC

* *Courts*: 3 levels in each province:

- Provincial courts: deal with routine criminal cases: many plead guilty

- Superior/ Supreme courts: try certain offences/ election offences/
hear appeals from provincial court

- Provincial appeal courts: hear appeals on procedure/ sentence

- only court above these is the SCC (must obtain "leave to appeal")

* *Corrections*:

- deals with offenders found guilty & sentenced to a

term in system

- provincial corrections deals with those sentenced to under 2 years

 - & non-custodial sentences

- federal corrections (CSC) deals with adults sentenced to more than 2 years

- 2003-2004: 32,007 adults in 186 facilities across Canada

 - 70 federal & 116 provincial/territorial institutions (85% of the latter "secure"/15% "open")

- most in correctional population serving sentence under some

 - form of "community supervision" (122,599). These include

 - probation, conditional sentences, or conditional release)

 - most of correctional population is male (90%)

 - most serve relatively short periods of incarceration:

 - 54% less than 1 month provincially

 - 55% between 2-4 years federally

 - much criticism of the system by the public for apparent disregard

 - for public safety: yet may play a role in public safety through

 - gradual reintegration of offenders

 - needs to balance deterrence, incapacitation & rehabilitation

* Next class: Processing cases through the CJS