

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

System 1

The Canadian criminal justice system is made up of three major agencies: the police, courts, and the correctional system. These operate together and follow formal legal procedures to guide their actions. Perhaps more importantly for us as sociologists, these have their informal side as well - each operating in accordance with its own goals, sometimes to the detriment of not only the others, but also to the rights of those charged or convicted.

While your text discusses the 2005 Boxing Day shooting, along with the many, controversial, potentially ineffective proposals to “toughen” the operation of the criminal justice system emerging in its wake, to get a sense of how such matters may operate in a concrete fact situation, let us consider another example: the Latimer case:

Brief synopsis:

- accused alleged mercy killing of disabled daughter (asphyxiation)
- charged with first degree murder
- defense of necessity upheld at trial (acquittal on first degree/conviction on second). Sentenced to life/ no parole for 10 years
- accused appealed but was turned down (some difference of opinion re: minimum parole eligibility)
- accused appealed again re: prosecutor’s jury tampering (police polling re: mercy killing)
- appeal to SCC successful: new trial ordered
- second trial: Latimer charged with second degree murder & convicted
- question re: whether accused could be convicted + be given less than 10 year minimum for parole eligibility (jury recommended 1 year)
- constitutional exemption requested / granted by judge (otherwise “cruel + unusual punishment”). Sentenced to 2 years less a day/ half house arrest
- Another appeal by both accused and Crown over the sentence. Crown was successful and 10 year minimum for parole eligibility reinstated.

- Final appeal to SCC by Latimer. Issues: (1) defense of necessity; (2) jury input on sentence; (3) is 10 year mandatory minimum for parole eligibility “cruel and unusual punishment” such that Latimer should be granted constitutional exemption?
- Outcome: (1) defense of necessity is narrower more limited than this; (2) no prejudice in trial judge replying to jury’s question re: sentencing input; and (3) the 10 year minimum is not “cruel and unusual punishment” under s.12 of the Charter (i.e. not “grossly disproportionate” to the punishment required for the most serious crime of murder).
- Considerations: accused tried to conceal activities, showed lack of remorse, daughter was vulnerable, and mandatory minimum sends an important message to public about premeditated murder. Given public support, Latimer could always apply to parliament for the Royal prerogative of mercy.
- Ultimately, Latimer has to serve 10 years before parole eligibility
- If case went other way, sentencing would be inconsistent
- Much controversy remains: almost 3/4 of Canadians supported Latimer, yet people with disabilities and their advocates feel this was murder and case should be seen from victim’s standpoint
- This case touches on many significant issues re: crime and punishment (e.g. discretion, public perceptions, constitutional rights, role and rights of juries, prison vs. house arrest, reintegration of offenders into society, etc.)

The cultural patterns of society are often shaped by common ways of thinking, feeling and acting. Because some people engage in behaviors inconsistent with the welfare of society, however, it is important for society to establish approved rules or norms for people to follow. As the above example indicates, this is not always easy, because some individuals have differing perspectives, these are unclear or even in conflict, however. Nevertheless, a society must persevere in these respects. Societies often develop systems to indicate their disapproval of those who break with their norms and threaten social welfare. In the West, an important function of governments has been to develop and administer various systems of criminal justice - including both formal and informal sanctions to regulate behavior.

Social control is a term comprising the various types of organized reactions to problematic behavior. As societies evolve they adjust the ways that they understand criminal behavior (e.g. sickness and poverty are more

often seen as precursors of crime today than the devil and rational choice), as do the mechanisms for ensuring social control (e.g. capital punishment has given way to more rehabilitative approaches). Whatever approaches are in vogue, the objective is always to control behavior seen as criminal in some way.

In today's society, the usual approach to controlling crime and criminals is to establish a system of criminal justice that will enable the various institutions of social control - the police, courts and corrections - to investigate, detect, prosecute and punish offenders within the limits set by our constitution. The police, courts, and corrections are agencies designed to protect the public from offenders. These are vast networks of organizations and facilities linked together in what is called the CJS. Viewing these as a system enables us to see the interdependency of parts of the entire process. The conventional wisdom holds that these parts operate together in a coordinated fashion, though it would not be entirely accurate in practice to say that they operate in unison.

Our CJS provokes a lot of controversy and debate. Concerns about the operation and role of its major agencies occur almost daily - since it is this system that determines the fate of accused. These agencies and their employees work toward detecting and apprehending offenders, determining guilt or innocence, and punishing the guilty. The complexity of this system - broken up into different types of police organizations, levels of courts, and variety of correctional institutions, is mirrored in law with its myriad statutes, case law, regulations, etc.

The CJS has three general purposes: the control of crime, the prevention of crime, and the maintenance of justice. The first is possible, in part, by the arrest, prosecution, and punishment of offenders. This also serves, in part, to prevent crime through incapacitation and deterrence (general and specific). The goal of justice is more difficult as this is hard to define and potentially involves conflicting views about fairness (e.g. the controversy in the Latimer case).

It is very difficult to achieve collective agreement about justice in our society. Although all citizens share legal rights, these are disproportionately invoked and tend to come into conflict (e.g. concerns re: disorderly conduct by homeless people; the rights of minorities; the rights of victims). While generally justice means that all are equal before the law, must be protected from arbitrary decisions within the CJS, and treated in a fair manner (Rawls). Especially important is maintaining a balance between the state's interests in order and the public's interest in freedom from unnecessary interference. The 3 major agencies of the CJS are supposed to make decisions in such a fair manner, but frequently serious questions are raised about their actions in this regard. We must address two questions here: (1)

what is crime? And (2) what is “criminal justice?”

What is Crime?

Criminal law concerns wrongful acts that seriously threaten the social values of Canadians (e.g. the Creba case). Such acts are found in the various categories of crime set out in the Criminal Code. Crime largely defines society because it mediates the powerful forces of security, morality and control. It is always evolving hand in hand with society.

There are two commonly used violation of crime. The first focuses on the violation of a criminal law, the second on the determination of guilt in criminal court. Under the former, an act can only be called a crime when it violates the existing legal code of the jurisdiction. Yet, lawbreaking is not always considered a crime as criminal responsibility requires more than a “guilty act,” it requires a “guilty mind” (more on this in later classes). The second approach, often called the “black letter” approach) asserts there can be no crime until a court determines it and attaches a punishment to the act. There are important consequences to these definitions: (1) without a criminal law, there could be no crime; (2) no behavior or individual can be considered a criminal until formally decided upon by the criminal justice system.

Criticisms of these definitions followed: (1) not everyone who violates the criminal law is caught and punished; (2) many criminal acts are rarely prosecuted even when authorities know about them; and (3) these neglect the issue of why and how some acts are legislated as criminal while others remain subject to only informal control; (4) these definitions separate the criminal process from its social context (e.g. the processes whereby the law is not applied, but circumvented through informal processes like plea bargaining and the discretion of various personnel like police, Crown prosecutors and judges).

Other legal theorists argue crime is better viewed as a violation of moral codes (e.g. social injury and social harm). Sutherland, in claiming that crime is prohibited by the state as an injury to the state, says that this first necessitates not only legal definitions of an act as socially harmful, but the application of some sort of moral criteria. Thus, we need to consider how crime, law, and morality are linked in the development and amendment of criminal law - revolving around the question “what behaviors should be regulated?” (e.g. consider the controversy over Latimer, or the debate over panhandling).

Crime has also been defined as a social construct. It is seen as a result of social interaction, a negotiated process involving the alleged offender, police, court personnel, and even lawmakers. Under this view, the actions of

the former are important, but so are how the actions are perceived and evaluated by the actors in the criminal justice system (CJS), who decide whether a crime has been committed and how serious it is.

All of these definitions are used to analyze the nature of crime in our society. Since the police, courts and corrections are all involved in the social control of crime and criminals, many questions may be raised about how we respond to crime and about the role of the CJS. (e.g. is the law applied equally? Is there too much discretion involved in outcomes? How can both security and liberty both be promoted? And so on.

The Operation and Role of the Canadian Criminal Justice System:

What is Criminal Justice?

Canada has developed 3 main agencies to control crime - the police, courts and corrections - which collectively make up the CJS. They comprise a vast network of organizations and facilities charged with the investigation, detection, prosecution and punishment of offenders. While interdependent, they are not necessarily coordinated in their actions, nor are their actions without controversy and debate.

For our purposes, the CJS has 3 main goals: to control crime, to prevent crime, and to maintain justice. The first is possible in part by arresting, prosecuting and punishing criminals, and this may in part achieve the second goal as well: deterring offenders (both in the general and specific sense). The third goal, achieving justice, is much more difficult as this is hard to define in concrete terms and involves different views about what is fair and just in our society. Moreover, it is often mixed up with issues of rights - and rights often come into conflict with one another.

Most people consider justice to mean fairness, and criminal justice to occur when the various agencies comprising the CJS act fairly. There are 3 assumptions here: (1) guilt, innocence and punishment should be determined fairly in accordance with the available evidence; (2) punishment should fit the offence/ offender; (3) similar cases should be treated alike; different cases differently. These concerns about fairness lead us to consider two major forms of unfairness in the operation of the CJS: disparity and discrimination.

Disparity involves inconsistencies appearing due to illegitimate factors being used in CJS decisions (e.g. class, race, religion and gender). These are far from appropriate legal criteria like criminal record. The seriousness of the offence, etc. Generally, our CJS isn't supposed to operate or decide about a person's criminality on the basis of the group one belongs

to that are unrelated to the criminality of that individual.

Discrimination, on the other hand, refers to the differential treatment of individuals based on negative judgements about their perceived or real membership with a group. Here, something about a person (e.g. race) is seen to override all of his other qualities, and this, obviously, has the potential to run counter to fairness within the agencies of the CJS. This occurs in three ways. When *systemic*, discrimination can consistently be found in rates of arrest, types of charges laid, prosecutorial discretion, conviction rates, and types of sentences imposed without significant variation over a period of time. Provincial inquiries have highlighted this with regard to race (e.g. Ontario). *Institutional* discrimination, on the other hand, involves disparities appearing in the outcomes of decisions made under established policies. While not involving direct consideration of extralegal factors, these are disparities that occur as an outcome (e.g. if bail is more likely to be granted to employed individuals, and studies show that they appear in court more often, this discounts the fact that more men are employed than women, and that women may thus be adversely denied bail under this policy). *Contextual* discrimination is that which occurs in certain situations (e.g. police not enforcing the criminal harassment law due to the common withdrawal of complaints). Finally, *individual* discrimination occurs when a CJS employee discriminates against the members of certain groups (e.g. arresting members of certain groups but not others in similar situations).

A related matter concerns the issues of substantive and procedural justice. Substantive justice involves the accuracy or correctness of the outcome of a case (e.g. if the person is actually guilty, then a guilty verdict is substantially correct; if actually innocent, it is not). Substantive justice is mainly concerned with the truthfulness of the allegation, the accuracy of the verdict, and the appropriateness of the sentence. Procedural justice, on the other hand, involves the fairness of the procedures used to arrive at the verdict of a case. So, even when a person is in fact guilty, unfair procedures may be used in the investigation or the trial (e.g. planting evidence; inappropriate interrogations, etc.) Today, questions of procedural justice far eclipse those of substantive justice. Yet, these are quite closely related, and, for individuals to be treated fairly, procedural justice is the best way to guarantee substantive justice.

In this respect, we need to consider the procedural aspects of our adversarial system of justice. An adversarial system consists of 3 central factors. First, each party involved, in the hope that it will prevail, has the right to argue about what evidence is considered by the court. The prosecutor (representing the state) is concerned initially that justice is done (e.g. charged are laid only when evidence warrants), and with the successful prosecution of the case. The trial must be heard by an impartial

fact finder (the judge), not involved in the presentation of evidence or questioning of witnesses, whom ensures that the appropriate questions are asked, and that the rules are followed. Opposing the prosecutor is the defense counsel, who calls and questions witnesses, and presents evidence, on the other side of the issue at hand. In theory, all levels of our court system operate on the basis of such an adversarial system where the Crown and defense oppose each other and debate the facts of the case. The goal is to search for the truth - especially guilt or innocence. This system was designed to ensure that the accused's fundamental legal rights are protected, that the trial is fair, and the final decision impartial. Of course, critics argue that this is more theory than practice, and that many legal protections are plea-bargained away by counsel. As such, "legal justice" doesn't exist, but "bargain justice" - often falling more heavily on the poor and marginalized.

The Structure of the Criminal Justice System:

We now turn to consider the defining characteristics of the three major agencies of our CJS: the police, courts, and corrections.

Policing is the responsibility of all levels of government in this country, but, while having different jurisdictions, mandates and organizational structures as a result, they usually cooperate should the need arise. The 3 main levels of police agencies are municipal, provincial and federal. Municipal police, 67%, are located in almost every major Canadian city and province (this includes those municipalities that contract policing to the RCMP and provincial forces). Each province is responsible for developing its own municipal and provincial policing services (e.g. provinces may require municipalities over 10,000 population to maintain or contract its own policing services). Provincial police services involve the enforcement of all relevant laws in those areas of the province not under the control of municipal police. Besides the RCMP operating at the provincial level in most provinces, 3 police services provide such policing at the provincial level (the OPP, QPP, and the Royal Nfld. Constabulary). Finally, the federal government, through the RCMP, is responsible for enforcing laws created by parliament. Organized under the RCMP Act and managed by the solicitor general, the RCMP goes beyond its provincial and municipal involvements by enforcing federal statutes, carrying out executive orders, providing protection for foreign dignitaries, operating forensic facilities and the Canadian Police College, and maintaining the CPIC system.

In 2005, there were 61,050 sworn police officers in Canada, along with 23,391 civilian employees. Ontario, Quebec and BC had the most officers, and most work at the municipal level (67%), followed by provincial police (26%), and federal (7%).

Turning to consider the *courts*, we must consider that all provincial court systems in Canada have 3 levels (with varying titles). The provincial courts are on the bottom, followed by the Superior or Supreme Courts. At the top are the provincial Appeal Courts. The only thing above these is the SCC. Provincial courts are the first courts most people encounter when charged with a crime. These may be further divided into divisions that deal with particular types of crimes (e.g. provincial court, youth court, family violence court, etc.) Such courts deal with the vast majority of criminal cases, and tend to have very crowded dockets. Indeed, the courtrooms themselves have an air of “assembly line justice” as accused line up to enter and have their cases summarily dispatched. Defendants there rarely contest their cases in front of a judge, and many either plead guilty or find the original charges stayed or withdrawn by the crown (Desroches, 1995, found 90% of the robbers he interviewed plead guilty just to “get the thing over with.”) Most criminal cases in Canada end up being heard in these provincial courts which handle the routine criminal cases. Yet, for the majority of indictable offences (carrying a maximum sentence over 6 months), accused have the right to be tried in either provincial court or Superior Court, and certain offences are necessarily tried there (e.g. murder). The Superior Courts also hear appeals from provincial court. At all stages, accused must be afforded constitutional protections of their legal rights (e.g. legal representation, a speedy trial, facing and cross examining accuser, and to testify - or not). The highest level of court in a local jurisdiction is the provincial Appeal Court. These courts do not try criminal cases, but deal with issues such as procedural errors and length of sentences. Defendants rarely appear there, but have their lawyers debate the issues before a judge.

Finally, *corrections* deals with those offenders who are found guilty and sentenced to a term in either the federal or provincial correctional systems. In Canada, the correctional system involves a vast network of facilities, agencies and programs, with responsibility for adult corrections divided between provincial/territorial and federal governments. The former are responsible for inmates sentenced to less than 2 years and all non-custodial sentences; the federal government, through CSC, is responsible for all adults sentenced to more than 2 years (appeals of sentence are generally held provincially unless they waive their right to appeal). In 2003-04 there were an average of 32, 007 adults serving a custodial sentence in Canada on any given day (down 2% from the previous year). They were housed in 70 Federal and 116 provincial/territorial institutions (85% of the latter secure/ 15% open institutions). Yet most people in the correctional population are serving all or part of their sentence under community supervision (e.g. parole, probation, statutory release, and temporary absences). In 2003-04 a total of 122,599 offenders were serving their sentence on some form of community supervision (66% probation, the rest conditional sentences or conditional release programs as above).

Hence, our image of people in the corrections system as inmates is only partially correct. In addition, most inmates are male (females comprise only 10% of provincial/territorial offenders and 6% of federal). Most incarcerated offenders serve relatively short sentences (54% less than 1 month provincially; 55% between 2-4 years federally). The correctional system has been criticized by the public as well as others in the CJS for decisions that reflect an apparent disregard for public safety. Critics also point to perceived high recidivism rates as an indication of the failure of such institutions to rehabilitate offenders. It is argued that offenders easily fool authorities and are quickly released - contributing to higher crime rates. Yet, the correctional system plays an important role despite its sometimes contradictory roles of deterrence, incapacitation and rehabilitation - by reinforcing society's disapproval of criminal actions.

In the next class, we will begin by considering how cases are processed through the CJS.