

SOC 3395: Criminal Justice and Corrections:
Lectures 6& 7: Crime Control & Criminal Justice Policy

There are 6 distinct philosophies underlying our CJS. Traditionally, deterrence and rehabilitation were most prominent, emerging in the 18th and 20th centuries respectively. In the past 1/4 century, these have been supplemented by selective incapacitation and the justice model. The former focuses on controlling the most “dangerous offenders; the latter on the rights of accused and offenders. Finally, most recently, RJ and Aboriginal justice models have been added to the mix of CJS policy alternatives.

Essentially, these all speak, in one way or another, to the question of how best to control criminal behavior. In attempting to solve this problem, one approach, say, rehabilitation, would emphasize prevention and programs meant to reintegrate offenders back into the community. Conversely, deterrence would suggest sentencing offenders to stiff prison terms to teach them - and others - a lesson. Depending on the type of offence, one policy may work better than another, and some may be best to consider using an alternative approach like RJ. Yet, regardless of the angle you approach it, the legal rights of the offender must be considered.

Today, for example, there are a number of alternatives available for controlling sex offenders (e.g. community notification laws and sex registries). Following much public concern, Ontario, followed by B.C. and other provinces, have introduced registries of those offenders convicted of sexual assault, child molestation and other sex offences. Names are added once an offender is released, and offenders have to register with police within 15 days of moving to a community or face a fine/jail term. In Ontario, 5000 names were added in the first year, though this does little to protect the public when an offender leaves the province.

The federal government has also introduced legislation in this regard. In 1994 a National Screening System was introduced to enable volunteer organizations (e.g. Big Brothers) to screen applicants for criminal records involving sex crimes. As well, a special flagging system was created within CPIC for those offenders who have been pardoned of such offences. Both strategies have been strongly criticized since, without the name of the offender, nothing can be done. Nor does the system force offenders to report their latest change of address. After 2 years of intense pressure, the government in 2002 finally introduced a national registry in which all convicted sex offenders are required to register their new addresses, along with other information such as name changes, with local police once they move - enabling police to quickly search by geographic area when a sex crime occurs.

Despite widespread support, however, these laws have faced criticisms: (1) they provide a false sense of precision, since the prediction of sexual re-offending isn't very accurate; (2) this may create a false sense of security that may actually expose children to risk; (3) disregard for offenders' privacy rights; and (4) ignoring the fact that treatment programs in our correctional system are inadequate. Yet, experts in the field of child molestation simply argue that critics of these types of laws have a terrible time accepting that this is a reality. They still can't believe it."

Today we will be considering different ways of understanding how various crime control philosophies may influence the CJS in this and other controversial situations.

Crime Control in Canada:

One common complaint about the CJS is that it is too soft on criminals (e.g. crime by parolees, plea bargaining, lenient sentences and offenders being let off by police with only a warning). Such critics argue that such practices grease the slippery slope towards higher crime rates. Conversely, others argue that parole boards make informed decisions, plea bargaining is efficient to the successful resolution of cases, and that judicial discretion in sentencing prevents injustice. At the same time, they argue that much more is behind rising crime rates than alleged leniency in the CJS. Naturally, such public issues spill over into public policy, such as whether mandatory sentences ought to be imposed, parole restricted, plea bargaining banned, police budgets increased, or judicial discretion reined in. On top of that, many consider it extremely difficult to introduce clear policy directives into the CJS that couldn't be sliced and diced by the complexity, informal operation, and vested interests of those working within the system. As a result, the major crime control models to be discussed are conceptualized in an ideal manner.

Crime Control Philosophy and Criminal Justice

Policy:

Four major philosophies guide the operation of our CJS: the justice model, deterrence, selective incapacitation, and rehabilitation. None of these exclusively guide the operation of our CJS, usually several are combined (e.g. the old YOA combined the justice and deterrence philosophies; the new YCJA added rehabilitation and RJ principles). Combining models leads to confusion about which strategy is most important in a given situation - raising questions about what leads to the success or failure of any particular initiative.

The philosophies also address different issues, though some share conceptual features. Rehabilitation focuses on the criminal actor,

emphasizing the individual treatment of convicted criminals. The other 3 philosophies tend to focus on the criminal act (e.g. justice on the seriousness of the offence; deterrence and selective incapacitation have a similar focus but on preventing future crimes).

Following Price and Stitt (1986) these 4 philosophies can be described as follows:

The Justice Model:

Though a recent creation, the justice model has had a significant impact on the operation of the CJS. Beginning with the 1971 publication of Struggle for Justice after a New York prison riot, it was recommended that the CJS be guided by the ideals of justice, fairness, and the need to protect human rights and dignity. Specifically, this meant the elimination of the discretionary powers held by prosecutors, the judiciary and parole boards. Most importantly, it was felt that sentences needed to fit the crime, not the offender. All convicted of the same offence should receive the same sentence, though there was some leeway allowed for repeat offenders. A similar message was found in Frankel's (1972) Criminal Sentences: Law Without Order. It was stated that the principles of objectivity, fairness and consistency be the basis for the operation of the CJS, particularly that punishments reflect the severity of crimes. But perhaps the most influential argument came from the 1975 book Doing Justice where sentencing guidelines were proposed based on the seriousness of the crime and the prior record of the offender - including generally shorter punishments and the expansion of alternative sanctions.

The first CJS's based on the justice model emerged in the U.S. during the 1970's and '80's. Though each state varied in the particular manner in which they developed their systems, all shared a number of features: the elimination or control of prosecutorial discretion, the abolition of individualized sentencing practices, limited treatment programs for prisoners, and the termination of parole. During the late 1980's the Canadian Sentencing Commission proposed a similar approach, but it was never implemented.

Under the justice model, the essential factor is to punish offenders-fairly and with justice - through lengths of confinement proportionate to the gravity of their crimes (e.g. the most serious offences proportionally deserve the most severe punishments). However, it is also important that the rights of the accused be guaranteed by due process protections from arrest to incarceration.

The justice model assumes a direct relationship between the seriousness of the offence and the severity of the punishment. Ideally, any

personal circumstances of the accused are ignored other than their prior record. This “ensures that the individual is not made to suffer disproportionately for the sake of social gain, outlawing disproportionate severity and leniency at the same time (e.g. mandatory prison terms for minor offences such as parking violations would be disproportionate).

In Canada, the federal government determines the proportionality of sentences that link an offence to its punishment. Though it seems easy to say that a violent offenders should receive a harsher sentence than a parking violator, it isn't east to develop a comprehensive list of proportional punishments given the wide variety of crimes in our Criminal Code (e.g. who should get a longer sentence, a child molester or a weapon-wielding bank robber?) Much discussion re: which offences are more harmful is required to create a workable system based on proportionality since these matters are not objective facts.

The major contribution of the justice model in punishment is its support for the creation and proliferation of alternative sanctions, such as when a convicted person is allowed to serve part or all of the punishment in the community in the case of minor offences. For example, probation orders and community service orders are favored for many first/second time property offences. Dangerous violent offenders, in contrast, should ideally be incarcerated for the longest times, even with no prior convictions.

One significant aspect of the justice model is that it guarantees the due process rights of all accused. Pre-trial, trial and post-trial rights are guaranteed, so each suspect receives protections to ensure that CJS officials do not overextend their powers. All are presumed to be factually innocent before being proven guilty (e.g. even when there is a confession, legal guilt still must be established). Due process ensures that only the facts gathered according to the rules established by the courts will be considered, in formal hearings with impartial arbitrators, and in which procedural regularity are maintained. Extralegal information will be considered to be inconsistent with fundamental justice.

Essentially aimed at the elimination or control of discretion in the CJS (“the source of injustice”), proponents of the justice model attempts to operate the CJS in a fair and equitable manner. Their main policy recommendations are thus to (1) eliminate or control discretion, and (2) to enhance due process protections for all who enter the CJS.

The role of the police is key, because their decisions affect all other groups involved later on. Under the justice model, the police should allocate most of their resources to investigating crimes classified as the most serious. How they react to crime is also important, with minor offenders ideally being recommended for diversion or other similar types of

alternative sanctions. Arrest and prosecution should be more likely if the accused commits a more serious crime with an extensive criminal record. Prosecutors would then have to prosecute the accused on the basis of all charges laid - with plea bargaining either eliminated or controlled by strict legislative guidelines (bans are hard to achieve in practice, as Alaska found out in 1975).

Supporters of the justice model argue that the problem with traditional sentencing approaches is the great discretion held by judges, leading to concerns about discrimination in sentencing. As a result, proponents advocate a determinate sentencing approach where judges are required to follow sentencing guidelines based on the crime and an offender's record. Research shows that, when implemented, judges do follow such guidelines.

These two criteria are the most significant matters in determining the type of correctional facility or diversion program to which an offender is sent (e.g. federally Minimum, Medium, Maximum, or Special Handling Unit). Since most sentences specify only the maximum sentence, the decision about an inmate's exact length of incarceration is usually made by a parole board. The discretionary powers of such bodies are a concern to justice model advocates, since these boards can - and do - release inmates prior to serving the full terms of their sentences. The justice model's solution is either to eliminate these boards entirely, or to remove from it the decision to release an inmate - making it responsible only for supervision. However, this could easily lead to prison overcrowding, resulting in the need to shorten sentences as happened in Minnesota. Finally, when treatment programs are offered to inmates, the justice model urges that they be limited in scope and voluntary in nature.

Deterrence:

The second major philosophy, deterrence, is an idea rooted in the 18th century writings of Cesare Beccaria and Jeremy Bentham. They both argued that the purpose of the CJS was to prevent future crimes by those who were caught and punished (e.g. specific deterrence), as well as by members of the broader society who might consider committing a crime (e.g. general deterrence). Faced with a CJS that was biased, arbitrary, and based on extensive discretion, Beccaria sought to achieve reforms that were equitable and eliminated favoritism. His influential recommendations underlie modern CJS's, including our own. Beccaria demanded due process rights throughout the CJS, proportionate sentences, and that punishments be swift, certain, and contain a degree of deterrence. Based in the social contract ideas of the time, Beccaria demanded that punishment be

constituted by uniform and enlightened legislation, that imprisonment replace torture and capital punishment, that punishment fit the crime, and that it be prompt, certain, and have a duration reflecting the gravity of the offence and the social harm done. Bentham, in turn, argued that legislators need to calculate the amount of punishment needed to prevent crimes and punish criminals. His calculus could include both positive sanctions (rewards) and negative sanctions (punishments). The CJS, he felt, should operate in a manner allowing it to catch suspects with certainty, process criminal cases in a speedy yet efficient manner, and to punish those convicted with an appropriate (not excessive) amount of punishment.

Underlying the approach of both thinkers was a strong belief that all people are rational and have free will. The only difference in criminals is their choice to engage in crime. Over time, however, we have come to recognize limitations to such arguments (e.g. the insanity defense). Nevertheless, the contemporary deterrence model assumes that people choose an action only after a careful cost-benefit analysis. Punishment is introduced as a means to induce compliance with the law, as people would calculate this in and see that the crime is just not worth it.

In reality, however, not all crime has been found to be governed by careful, rational consideration. Some is unplanned and habitual, some done impulsively or 'under the influence.' Yet, rational choice is involved in some criminal activity: some offenders attempt to cut the risks by careful planning and target selection. That doesn't mean that they will be successful in their plans or estimates, but that some may at least make the rational attempt.

In such circumstances, a criminal sanction might act as a negative inducement, discouraging people from engaging in illegal behavior. Deterrence is in reality the threat of legal punishment, or fear of physical and material deprivation from legally imposed sanctions. An objective phenomenon, it implies a behavioral result of the fear a potential offender feels because s/he thinks an illegal act may lead to arrest and punishment. Supporters hope anyone contemplating a crime will be deterred because of the certainty, or risk, of being caught and punished.

This approach assumes a direct relationship between the certainty of punishment and the severity and swiftness of punishment. With regard to severity, the pain should exceed the pleasure of the offense for the majority of potential offenders. Much emphasis is placed on the efficient, speedy operation of the CJS as well. Yet, researchers have found that individuals have very imperfect knowledge of the sentences for various crimes. Rather, behavioral choices are based on varying perceptions of the severity of sanctions, the certainty with which they believe punishments will be used, and how swift the punishment will be. Not only that, some crimes are more

easily deterred than others (e.g. planned, goal-oriented behavior like bank robbing is more easily deterred than expressive behavior resulting from the inner needs of the offender, such as violent crimes of passion). Not only that, the success or failure of deterrence is linked to an offender's commitment to crime: those highly committed to a criminal lifestyle are more difficult to deter.

Any deterrence based CJS introduces policies to attain the greatest certainty of capture, swiftness of prosecution, and, when convicted, severity of punishment - all to prevent future crimes. More emphasis is placed on protecting society and the law-abiding public than on protecting the legal rights of accused. To ensure maximum efficiency, resources have to be poured into all CJS agencies such as police, prosecutors, judges, and correctional facilities. Not only would more institutions have to be built and new technologies implemented, laws would have to be streamlined to grant more powers to police. Essentially, the CJS would operate to widen the net and push offenders as efficiently as possible through conviction to punishment. Factual, not legal, guilt would be emphasized.

As well, due to the emphasis on crime prevention, more resources would be given to proactive police activities such as Neighborhood watch, Operation Identification, and Crime Stoppers. Since these get the community involved, it frees up police time to pursue serious offenders, again increasing the odds of capture and punishment.

Deterrence also advocates the control of all forms of plea bargaining, as this "could be the greatest single step to increase both certainty and severity of punishment." Bail would be restricted due to the presumption of guilt, and prosecutors would pursue all charges laid by police. Judicial discretion would be similarly restricted through a system of legislatively set, mandatory sentences. This would lead not only to uniformity but also certainty of an offender receiving a designated (generally more severe) punishment. Parole would be abolished as well, with more prisons being built in order to deal with overcrowding and to send a message to potential offenders. Risk assessments of offenders would become standard procedure, with offenders classified according to their likely future behavior. Under this model, the entire range of sanctions would essentially be evaluated in terms of their effectiveness in preventing future offences.

Two recent additions to the *Criminal Code*, the DNA data bank and the sex offender registry, formally introduced in 2000 and 2004 respectively, fit in well with the deterrence philosophy. The former helps facilitate the investigative process, favoring this over privacy rights, by requiring accused convicted of "primary"(usually serious, violent) offences to provide blood or other bodily samples. A court can order samples be taken in less serious ("secondary") offences if the facts warrant it (e.g. possession of child porn).

Indeed, amendments require these samples to be provided retroactively from offenders convicted before the law was passed - and this has been upheld in court (R.v. Rodgers). As for the federal sex offender registry, which followed provincial initiatives, the earlier introduction of a screening system for volunteer organizations, a flagging system within CPIC, and much lobbying, this enables a court to order an individual convicted of a selected offence to register within 15 days of conviction or release from prison - and to re-register when they move. This registry is also retrospective, covering individuals convicted before it was enacted.

Selective Incapacitation:

The third approach, selective incapacitation, is a policy that tries to separate high-risk offenders from low-risk ones, incarcerating for a lengthy period those who are most likely to be dangerous once released. Rooted in the work of James Q. Wilson and a study by the Rand Corporation, the argument was that serious crimes would be reduced by 1/3 if each person convicted of a violent crime got 3 years with no parole. They claimed to have developed a system enabling to distinguish offenders who should be so incapacitated from others posing less risk.

These ideas were followed up by Greenwood who claimed that such offenders tended to have earlier convictions for the same offence, recent prior imprisonments, convictions under age 16, serving previous juvenile time, use of heroin or barbituates, and recent unemployment. A sentencing approach directed at such offenders would, he claimed, reduce robbery by 15% and cut the prison population by 5%. The incarceration of more high-risk offenders would be more than offset by the elimination of many low-risk offenders from prison. Greenwood's report got much attention since it concluded that more effective crime control could be achieved more cheaply. Another study sponsored by the U.S. Justice Department concluded that \$430 million could be saved annually if such an approach were adopted.

Yet, critics argued that many errors could be made here as prediction is not an exact science. Indeed, Zimring and Hawkins (1988) argue that the reduction in crime promised by advocates of selective incapacitation has not happened. There may be problems, for example, in identifying high risk offenders and the possibility that new offenders may step up to fill the shoes of those incapacitated. Moreover, if gang members are arrested, the gang will continue to operate to commit the same amount of crime. Thus, while this approach may have some impact, its success would largely depend on the ability of the CJS to identify chronic offenders in the early stages of their careers.

This approach focuses on those few individuals committing the greatest number of crimes, particularly chronic, career, or repeat offenders.

Under this approach, the crime rate is seen as a function of the total number of offenders minus those imprisoned, multiplied by an average number of crimes per offender. Thus, by incarcerating chronic offenders for long periods, the crime rate is reduced. Research has indeed shown that relatively few offenders are responsible for the vast majority of violent offences (e.g. in Wolfgang's 1972 work, it was found that 6% of the males in his study of juvenile crime in Philadelphia were responsible for over half of all offences committed by the group). Other studies have turned up similar results for both juveniles and adults - identifying a small group of high-rate offenders responsible for both most offences as well as most violent crimes.

The selective incapacitation philosophy is directed at this group. Those most dangerous to society are those not only who have committed the most crimes in the past, but those likely to commit them in the future. Future crimes are determined either by the number of prior convictions or by the number of crimes that similar offenders committed upon release.

In 1990, the Solicitor General recommended the elimination of parole for convicted drug dealers. This policy was to be implemented if the parole board suspected a continuation of such behavior upon release (i.e. they were to be punished, in effect, for crimes not yet committed). A similar approach is to be found in Washington State's sexual predator law allowing an offender to be locked up indefinitely if he has committed at least 1 violent sex crime after being released. Legislation has also been introduced in Canada to incarcerate and/or carefully control potential high-risk offenders.

While there is support for such policies, there is also criticism. The most serious problem is that the CJS lacks the capacity to accurately predict future violent behavior. This challenges the legitimacy of selective incapacitation under the common legal maxim: "It is better that 10 guilty persons escape than 1 innocent suffer," embodying the value that our society places on individual liberty. Since judges would be given the power to prevent violent offenders and drug offenders from obtaining parole until serving $\frac{1}{2}$ their sentences, those incarcerated as dangerous would serve more time than those not so designated. Essentially, 2 offenders could commit the same crime and receive different sentences based on inaccurate predictions of future dangerousness.

Essentially, this approach is based on the assumption that the best predictor of future behavior is past behavior. While the CJS would operate on the basis of deterrence for most offenders, those considered to be dangerous would have special resources and measures targeted at them on this basis. Because it is so narrow, this approach is easily attached to any of the other 3 models (e.g. Washington's sexual predator law supplements an otherwise justice based system). Under such a model, police would arrest

suspected offenders, conduct careful background checks, and place offenders under pre-trial detention if considered dangerous. Plea bargaining would be eliminated and prosecutors would process such cases as quickly as possible to ensure offenders aren't released into the general population. Once designated a "dangerous offender" the person would be sentenced to a lengthy term with no parole. The correctional system would essentially become a holding pen for such offenders - as is seen in the 3 strikes and you're out policies in some states in the U.S.

The Rehabilitation Approach:

This model assumes that the source of crime is determined by factors outside of the individual's control. Since criminals don't freely choose their behavior, punishment is seen as wrong. Instead, individualized treatment is proposed in the hope that the causes of their behavior will be discovered and dealt with. The goal is to influence the character, attitude and behavior of convicted offenders to strengthen the social defense against unwanted behavior and help offenders as well. This rehabilitation approach focuses much more on the offender than the criminal act, with sanctions to be tailored to treating his/her needs. As a result, the indeterminate sentence becomes essential, with serious offenders to remain in jail for as long as it takes to find the appropriate cure.

To facilitate an individual based system, probation and parole were introduced along with indeterminate sentences in the late 19th / early 20th centuries. The idea was that the type of punishment would be decided by an offender's need for treatment. Duration would depend on behavior as well as the crime. Inmates who showed improvement would be released earlier than those who resisted or failed to respond. Early 'treatment' involved programs of work, moral instruction, discipline and order designed to instill personal habits related to a law-abiding life.

The test most often used to evaluate the success of rehabilitation programs is whether convicted offenders recidivate - commit another offence after their sentence is completed. CSC (1996) indicates that 5 years after completing full parole, 27.6% of former inmates recidivate, and 39.6% of those granted statutory release after serving 2/3 of their sentence do as well. As a result, the debate about the worthiness and effectiveness of rehabilitation rages on.

Supporters of rehabilitation believe it is necessary to look at criminals and find out why they commit crimes. Only then can an appropriate criminal sanction may be applied. Thus, punishment must be flexible, based on the needs of the individual (even if committing the same crime their needs may be better met by different sentences). Such a system is highly discretionary, with all court and correctional agencies having the power to determine the

type and length of sentence to individualize the punishment.

Interestingly, following a lengthy period of criticism, rehabilitation seems to be gaining support again among correctional officials (e.g. a survey of U.S. prison wardens show it to be a more important goal than punishment).

Whereas the other models have problems with discretion, the rehabilitation model urges enhancement of the discretionary powers of the main agencies of the CJS. Focused on individual needs as it is, each agency has to have the power to make decisions to enhance the offender's return to society as a better person. This requires the CJS to focus more on the criminal than the crime. Agencies intervene in order to change the offender, hoping that this will eliminate the pressures that forced the person to commit crime in the first place. As a result, much of the focus of this model is on the sentencing and correctional stages of the CJS.

As a result, the police role would not change dramatically, and prosecutors would be allowed to plea bargain. Yet judicial discretion would be seen as essential. The judge would have to consider a pre-sentence report from a probation officer and consider carefully any recommendations made as to sentence. The Crown and defense counsel would also carefully consider this report in their summations. The ultimate sentence would have to reflect the "best interests" of the offender, involving an indeterminate sentence that best fits his needs. Offenders would only have to serve the minimum length of their sentence. The correctional service would become the most important part of the CJS here, expanding to be able to individualize the treatment program for each offender, adding discretion to the system in the process. Within prisons, correctional services would also become more treatment-oriented, attempting to ascertain the needs of offenders before proceeding to treatment. As a result, the type and length of treatment could vary significantly.

Aboriginal Justice and Restorative Justice: An Introduction:

Both Aboriginal and RJ systems represent significant shifts away from the four principal crime control philosophies discussed above. Both demand that government give up its monopoly over responses to crime to those who are directly affected: the victim and offender. Further, both attempt to involve people in a circle to avoid the type of hierarchical relationship that exists in our CJS. As well, major goals are to rebuild or restore the relationship between victims and offenders in a process enabling both parties to participate. Aboriginal justice also focuses on the quality of life in communities, redefining the formal role of CJS agencies in a more informal way to heal the injury between victims, offenders, and the community. This

enables local communities to direct what happens within community boundaries.

Aboriginal Justice Systems:

Many Aboriginal communities have traditionally emphasized RJ, an approach to remedy crime that recognizes that all things are interrelated, that crime disrupts the harmony that existed, or should have existed before. As such, the appropriateness of a particular sanction is largely determined by the needs of the parties. The focus is on the real human beings closely affected by crime.

In the past, there was much discussion re: the creation of formal Aboriginal Justice Systems in this country. Systems administered by an Aboriginal Court have become a major area of interest since they would respect traditional conflict resolution practices. Many accept this idea in principle as avoiding the “foreign” system imposed on Aboriginals, but disagree about the specifics. The Campbell government rejected a separate Aboriginal system in the early 1990's in favor of one integrating aspects of the Aboriginal value system into the existing CJS. In 1996, the federal government formally adopted this position, asserting that the Charter applies to everybody, Aboriginals included. It recommended that Aboriginals be given a greater role in sentencing their own and in developing alternatives to prison. Some provincial governments have also rejected the idea of separate legal systems. As a result, most Aboriginal systems in Canada have worked with the existing CJS in order to accommodate their own approach to justice (e.g. in Manitoba a pilot project was proposed for summary conviction and YOA cases, though no separate system was introduced; Saskatchewan, in contrast, stands out by setting up a separate Aboriginal JP program on reserves, the precursor to the establishment of a full-blown Aboriginal system).

But how would an Aboriginal system look like? Many views exist, but all share the conviction that any system must be faithful to Aboriginal traditions and cultural values, while adapting them to modern society. This could include a focus on the interests of the collectivity, reintegrating the offender into the community, mediation and conciliation in the community, and respecting the important role of community elders and leaders. Each Aboriginal community may develop and practice different systems, but all tend to focus on reparations and making the parties ‘whole’ after injury. Another common element is avoidance of blame in favor of repairing injury and making the community whole again. As such, there is more persuasion than coercion, with respected community members in key decision-making roles. As such, the meaning of justice may differ substantially from that found in wider society: (i.e. instead of disciplining or punishing those found guilty of harmful behavior, the emphasis is on restoring peace and

equilibrium between the parties and within the offender him/herself).

Different goals of Aboriginal justice (Alberta Justice on Trial): (1) to focus on problem solving and the restoration of harmony; (2) to use restitution and reconciliation as a means of restoration; (3) to use community acts as a facilitator in the restorative process; (4) to impress the offender with the impact of his action on the total; (5) to take into consideration the holistic context of an offence - its moral, social, economic, political, and cosmic considerations; (6) to remove the stigma of offences through conformity; (7) to recognize remorse, repentance and forgiveness as important factors; and (8) to have offenders take an active role in the restorative process.

Ross (1994) has also identified two essential features of Aboriginal justice systems: (1) a dispersal of decision making among many people, as suggested by a regular emphasis on consensus decision making and regular denunciation of hierarchical decision making structures; and (2) a belief that people cannot be understood or assisted so long as they are seen as isolated individuals. People must be seen as participants in a large web of relationships. As a result, the emphasis is on healing, allowing the spiritual needs of the individual to be addressed. Another is "cultural imperatives" involving the promotion of positive interpersonal relationships, averting intergroup rivalry, controlling disruptive emotional responses, and sharing for the benefit of the group.

Beyond such general characteristics Aboriginal justice exhibits much diversity (e.g. sentencing circles, elder's community sentence panel, sentence advisory committees or community mediation committees?) All approaches, while different, still incorporate many features of Aboriginal practices (e.g. spirituality and community consensus). It is also important to note, however, that some use different approaches, incorporating their local practices into the Western legal system by placing Aboriginal people into selected advisory roles (e.g. Sandy Bay, Manitoba incorporated them at the sentencing stage, with an elders' panel assisting a provincial court judge. Noncompliant offenders may be "banished" to the Western legal system). Other systems incorporate the Western system as well, but in different ways.

Significantly, the first Aboriginal court system in Canada opened in 2000 on a reserve near Calgary in an attempt to address the glaring problems of the traditional CJS when dealing with Aboriginals. Known as the Peacemaker Court, it comprises an Aboriginal judge, peacemaker program, and control over the administration of the court in line with the band's cultural traditions. The court works much like the provincial court, with jurisdiction over summary conviction and hybrid offences. But before a case proceeds a "peacemaker" reviews cases and decides which ones to

divert to ‘resolve problems, investigate and discover the root cause of the behavior, etc.’ Any question of whether the case should be so referred is settled by the Aboriginal judge. The peacemaking process itself focuses upon community harmony and RJ. If successful, the Crown drops the charges laid against the accused.

Restorative Justice:

RJ is a significant new development in the philosophy of crime control, proposing that an offender’s conscience (internalized norms) and significant others can be incorporated into deterrence to function as potential sources of punishment. Supporters believe they can influence criminal behavior by moving beyond legal sanctions to the consideration of negative sanctions such as shame.

Braithwaite, for example, emphasizes “reintegrative shaming,” a system of justice based on the idea that it is better to shame some offenders than to punish them within the formal system. Shame, in effect, controls crime, while the CJS leads to stigmatization, offenders becoming outcasts, severing ties to society, and being freer to commit crime (e.g. secondary deviance). Because shaming is disapproval dispensed within an ongoing relationship based on respect, the offender is still connected to society. The process here involves the offender being confronted by victims and significant others in order to moralize the offender and explain the harm suffered. Disapproval is counteracted by the community’s efforts to build a moral conscience and strengthen social bonds.

The key here is to change the perception of the offender. Instead of viewing them as offenders to be punished, an attempt is made to reintegrate offenders by holding a “shaming” ceremony in which they realize the pain they have brought to the victim, the community and society. Shaming is more likely to become reintegrative and successful when a high degree of interdependency exists between the victim and offender.

While new to North America, RJ has a long history in Japan. There is a high degree of social order and a relatively low crime rate in Japan, rooted in the religious ideals of Confucianism. Braithwaite notes that when someone is shamed in Japan, it is shared by the collectivity to which that person belongs. In addition, the CJS in Japan work with the offender and victim to develop alternatives to formal punishment. Social control is thus diverted back to the family, the community, and the offender’s social environment. The high rate of conformity there is rooted in dependence on the group for social reward, the fact that behavior is often highly visible to the group, and that Japanese norms are relatively strongly upheld by such groups.

RJ sanctions are developed to represent the interests of the victim, the public and the community. These are essentially alternatives to incarceration, either served in the community or that convey to the community the decision of the court. The goal is to make the offender aware of the moral wrong committed and to indicate that no more such actions are expected. Three types of shaming sanctions are currently practiced in North America: public exposure sanctions (letting out what was done); debasement penalties (forcing the offender through embarrassment to reflect on the experience of the victim; and apology penalties (making an apology).

The primary focus of RJ is not to determine guilt and punishment but to address a harm. This is a useful alternative to the traditional adversarial system, but often only certain criminal acts may be considered (e.g. non-serious property crimes and minor violent offences). Usually CJS officials such as police or prosecutors recommend a conference take place and start the process of diverting the case to a trained facilitator. While most RJ programs begin pre-charge, some programs that have varying entry points (e.g. post charge, post-conviction or post-sentence/pre-reintegration). Whenever it begins, a conference is usually arranged, with the voluntary involvement of the parties, to work out an acceptable solution. Significantly, an offender must have accepted responsibility for his actions. Also, because the community interest is recognized, supporters of both the victim and offender are invited to both take part in the shaming process and to serve as a social support mechanism. Professionals and law enforcement personnel may also be involved. The group is expected to arrive at a consensus on the outcome of the case. Goals include accountability, prevention and healing. Potential benefits include the recognition of victims, the involvement of a wider group of participants, and acknowledgment of the importance of the family in the offender's life. In the end, a consensus should be reached on the best way to deal with the harm and all participants sign a contract to that effect.

Conclusion:

Today we have reviewed different approaches and models of justice concerned with the goal of reducing crime. No single philosophy alone is sufficient to do this in contemporary society. As such, it is best to think of an integrated approach. While the treatment of offenders and protecting their rights are important, so are the rights of victims and others to live in a crime-free society. Also, some dangerous offenders cannot be treated, so we have to consider all sides.

Overall, while it appears that most people want punishment for offenders, they also want justice done and the protection of due process rights under the Charter. Hence, Canadians should expect to see

combinations of the various crime control strategies enunciated here - along with the tensions, conflicts, and problems that this brings.

The purposes of our CJS can be interpreted differently in these models, particularly in relation to whether they emphasize the act or the actor. Three emphasize the criminal act and demand that discretion within the system be removed. For example, the justice, deterrence and selective incapacitation models emphasize the act, but favor either extensively regulating discretion through legal rights (justice) or removing discretion either entirely or selectively to achieve deterrence or incapacitation of offenders. Conversely, the rehabilitation model focuses on the actor and thereby favors more discretion within the CJS to better enable the reintegration of offenders into society according to their needs.

The philosophy of RJ differs from the ideas above by emphasizing both the involvement of the victim and the community. Aboriginal justice systems, predicated largely on a RJ philosophy, now operate in various locations across Canada. The communities in question work to integrate Aboriginal cultural ideals into the Western legal system in order to assist in the social control of as many Aboriginal offenders as possible, often including elders, community members, the offender, victim and police.