

# Midterm

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**Norm:** established/approved ways of doing things in society. Regulates/predicts behaviour. (Ex. Personal space, lines)

1. Implicit
2. Explicit

**Deviance:** Violating cultural norms

- 2 types
  1. Formal
    - Individuals committing crimes. Jail
  2. Informal
    - Not codified into law. Thoughts, etc.
      - ◆ Won't go to jail, but can be embarrassed
    - Eg. Cutting nails in public, wearing indecent clothes, talking to self in public
- What's considered deviant changes over time
- Deviance can be positive - leads to social change

Media - we focus on street crime. NOT white collar

- We believe criminals have certain traits

Crime - key ingredients

1. **Actus reus:** guilty action
2. **Mens rea:** guilty mind...if you're insane, you don't have this
3. **Legal defence**

Not all deviant acts are criminal, vice versa. Eg. J-walking and some drug use is not considered deviant but is criminal.

Crime & Deviance is relative to:

1. **Time**
  - <1983, sexually assaulting wife was OK
  - In the past, homosexual acts = illegal
2. **Context**
  - Killing during war
  - Drinking in public on Canada day
  - Fighting in hockey
3. **Place**
  - Selling of bongs, sex, in Amsterdam
4. **Social status**
  - Celebrities getting off easier than regular people
  - Diplomats
5. **Relative to age**
  - Tantrums and fits (4 kids only)
  - Minors and crimes

Society dichotomizes criminal and non-criminal (black and white)

**Social constructivism:** Is all crime inherently bad? No. Society says its bad.

**Moral panic:** occurs when a condition, group, person, episode, is seen as a threat to societal values and interests.

- **Moral entrepreneurs:** the people who start the idea that there is a threat
- **Folk devils:** the groups targeted by the moral panic (the "problem")

## CRIMINAL JUSTICE SYSTEM

**Social control:** Organized reaction to behaviour viewed as problematic

**CJS:** network of organizations, institutions, facilities, charged with the investigation, detection, prosecution, and punishment of offenders.

3 agencies

### 1. Police

- 3 levels
  1. Municipal (Ottawa police department) - 67%
  2. Provincial (Ontario, Newfoundland, QC) - 25%
  3. Federal (RCMP) - 8%

### 2. Courts

- 3 levels (Majority of cases / Descending order)
  1. Provincial
  2. Superior
    - a) Trial
    - b) Appeals
  3. Supreme
    - a) Appeals

### 3. Corrections

- 2 levels (approx 200 jails )
  - Provincial (76)
    - ◆ 2 years less 1 day
  - Federal (114)
    - ◆ 2 years or over

Prisons have been around for less than 250 years. 300,000+ women processed through jails. Women are NOT becoming more violent. Females cost more per person in jail, just because there's fewer females, yet we still have to build institutions... Fixed costs are distributed.

2 types of justice

1. **Substantive:** accuracy of outcome, sentence deemed appropriate, truthfulness
2. **Procedural:** fairness of procedures (trial just?). Is evidence admissible (illegal searches?)

2 types of law

1. **Substantive:** declares which actions will be punished by the state
  - Eg. Criminal code
2. **Procedural:** says how rights of individuals can be enforced
  - Charter of rights and freedoms

2 key aspects of justice

1. Punishment should be proportionate to the crime
2. Similar cases should be treated alike

Crime Funnel

1. Total federal offences known to police
2. Estimated convictions in adult court
3. Estimated cases given a prison sentence
4. Total new convictions by federal offenders on conditional release

### 3 D's

1. Discretion
  - Use of individual decision making and choice to influence the operation of the CJS
    - Police officer giving warning instead of fine
    - Factors that influence decision
      - ◆ Attitude towards officer, quotas, familiarity
2. Disparity
  - Inconsistency as a result of the authorities using illegitimate factors in making decisions
    - Social class, racial profiling, gender
3. Discrimination
  - Differential treatment or negative judgments relating to group membership.
    - 4 categories
      1. Systematic
        - Exists in all aspects of the CJS.
        - ie. Aboriginals more likely to be jailed
      2. Institutional
        - Results of established policies
        - ie. Looking at unemployment for bail eligibility... Women who are stay at home mom get discriminated
      3. Contextual
        - Due to particular situations. Judge being biased.
        - ie. Korea harming Korea is more lenient than Korea harming others.
      4. Individual
        - Reflective of specific CJS employees. Racist police?

### Functions of CJS and criminal law

1. Punishment
2. Deterrent of crimes
  1. **General:** deters people in general through media
  2. **Specific:** deters a specific person from doing the crime AGAIN
3. Maintain order
4. Public safety
5. Define acceptable behaviour
6. Public opinion on morality

### CJS Models

1. **Crime control model**
  - **Goal:** protect citizens and community
    - Enforce law
    - Punish offenders
    - Deter crime
    - Efficient justice ("Assembly line justice")
  - **Policies:**
    - Increase # police
    - Increase correctional institutions
    - Increase sentences
    - "guilty until proven innocent"
    - More power to CJS
    - Eliminate parole
  - **Purpose:** reduce # of criminals, and quick arrest + convictions.
2. **Due process model**
  - **Goal:** protect individuals from powers of state
    - Enhance legal rights of accused

- Fairness, equality, justice
- Rights to lawyer
- Right to life, liberty, security
- Unreasonable search or seizure
- Unreasonable/cruel punishment
- Know why being arrested
- Remain silent
- CHARTER OF RIGHTS AND FREEDOMS 1982 - S. 714**
- **Policies:**
  - Limit and control powers of police
  - Limit discretion
  - Control activities of prosecutors
  - Innocent until proven guilty
- **Purpose:**
  - Ensure rights of defendant are protected
  - Reduction of error (wrongful convictions)

**Criminal law:** deals with conduct that is harmful to society as a whole

- Derived from BRITISH LAW
  - Redefined private wrongs as crimes VS state
  - King's court
    - Circuit judges: judges go around and take cases, then they come back and get together to make decisions
    - Stare decisis:** same circumstances = same sentence
      - "similar facts" = stability and predictability...
        - Became **precedents** in common law

Written sources of criminal law

1. Constitution
  - a. Federal
  - b. Provincial
2. Case law
  - a. Application and interpretation of laws as they apply in any case
3. Statute law
  - a. Criminal code
  - b. Prohibits / mandates certain acts
  - c. Only parliament has power to enact criminal law
4. Administrative law

Principles of fundamental justice

1. The right to silence
2. The right to disclosure
3. The right to make full answer and defence
4. The detention of those found NCR (reviewed every 12 months)

Rule of Law

1. Scope of law
  - Regardless of who you are, there are no privileged exemptions
2. Character of law
  - Law is available and understandable
3. Institution of law
  - Rules must exist to ensure law is fair

Sexual assault

- Least reported violent crime
- Prior to 1983
  - Complainant had to be female / accused had to be male
  - Not married, had to be sex, implied consent accepted, intoxication as an excuse, sexual history brought up
- After 1983
  - Bill C-127: change in SUBSTANTIVE law
  - **3 levels**
    1. Least physical injury - 10 years max
    2. Threat / use of weapon / bodily harm - 14 years max
    3. Wounding, disfiguring, endangering life - Life is max
  - PROCEDURAL changes
    - Gender, relationship disregarded, sexual history not brought up, consent not applied, intoxication not excuse

\*\*\*Legal defences\*\*\*

1. Excuse defences
  - No criminal intent, even though they admit they committed the act (deny criminal responsibility)
  - 1. **Age** (varies by country)
    - 0-12: no criminal resp.
    - 12-17: youth criminal justice act
    - 18+: adult
  - 2. **Mental disorder**
    - Lack of mens rea. Does not apply to alcohol, drugs...unless you didn't know you ingested it
  - 3. **Automatism**
    - Sleepwalking, concussion.
  - 4. **Mistake of fact**
    - Honest mistake. No mens rea. Circumstances.
      - ie. Buying an item that was stolen, not knowing it was stolen.
  - 5. **Mistake of the law**
    - Not the same as IGNORANCE of law.
2. Justification defences
  - Conduct is not wrong due to context in which it occurs
  - 1. **Duress**
    - If you don't do it, you will be harmed
    - Requires "imminent threat of bodily harm" to self or family
  - 2. **Necessity**
    - To prevent greater harm. Eating a dead person to survive. Cannot be avoided in any other way than to break law.
  - 3. **Self defence**
    - Defending oneself, family, property
    - Only necessary force / matching force
    - "battered wife syndrome"
      - Temporary state of insanity. Constant abuse.
  - 4. **Provocation**
    - Deprived an ordinary person of power of self-control
    - Only used with offence of murder
    - Walking in on cheating spouse / bullying
  - 5. **Entrapment**
    - Inducement to crime by police officer
    - Not the same as being provided the officer

Classification of offences

1. Summary conviction offences

- Provincial court judge trial - no jury
  - <6 month jail
  - \$2000 max fine
  - Not sever offence...petty crime
  - Charges must be laid within 6 months of offence
2. Indictable offences
    - a) Absolute jurisdiction I/O
      - Minor indictable
      - Theft < \$5000
      - Trial by provincial court judge - no jury
    - b) Supreme court exclusive I/O
      - Sexual assault, murder, serious convictions that would go to superior court
      - Heard by federally appointed judge + jury
    - c) Election I/O
      - Trial by provincial judge OR federal + jury
      - All convictions not under a, b
  3. Hybrid offence
    - Prosecutors can choose between trial under summary conviction or indictable offences.
    - Influenced by police officers
    - Based on
      1. Aggravating factors
        - Previous criminal record
        - Non-cooperation
        - Use of weapon
        - Brutal nature
        - Gang activity
        - Vulnerable victims (children, elderly, disabled)
        - Abuse of authority
      2. Mitigating factors
        - No previous record
        - Single parent with dependents
        - Character
        - Turning self in
        - Show remorse

Degrees of seriousness - homicide: (in)directly causing death

1. 1st degree
  - Killing a cop, sexual assault, hijacking, hostage taking, planned and deliberate, while committing another crime
  - 25 years before parole. Life
2. 2nd degree
  - Intent to harm (malice) but not premeditated
  - Didn't try to kill, but did try hurt, and they die
  - 10-25 years before parole. Life
3. Manslaughter
  - Caused by assault / negligence
  - 1/3 or 1/6 of sentence until eligible for parole. Max life.
4. Infanticide
  - When mother kills biological child
  - Child under age of 1
  - Max is 5 years

**Dangerous offender:** life, no parole. Too dangerous to be released into society because of their violent tendencies, but whose sentences would not necessarily keep them incarcerated under other legislation

## Ontario safe streets act (1999)

- Against aggressive panhandling, squeegee kids
- Fine - 500-5000
  - How can homeless pay??? So they end up going to jail...
- "Broken windows theory" led to its enactment
  - Area is unkempt
  - Nobody cares about neighbourhood.
  - People go there to do crime

## 4 models of criminal justice

### 1. Justice model

- Focus only on the ACT, but takes in prior record
  - Jail = holding cell
  - Minimizes extralegal factors by leaving out considerations surrounding the act
  - Principle of proportionality
  - Alternative sanctions such as serving time in community (minor crimes)
  - Dangerous offenders - incarceration
1. Main concerns
    - Eliminate discretion
    - Due process
  2. Police
    - Serious crimes
    - Divert minor offences away from CJS, such as to drug courts and mental health courts
  3. Prosecutor
    - Can't drop charges
    - No plea-bargaining
  4. Judges
    - Strict sentencing guidelines
    - No parole... But decreased sentence lengths
- Criticisms
    - Seriousness of crimes are not objective
    - Ignores individual circumstantial facts

### 2. Deterrence model

- Jail = punishment
- Jeremy Bentham and Cesare Beccaria - reform of CJS
  - Right to speedy trial
  - Right to jury trial
  - Abolish death penalty
  - Improve prison conditions
  - Classified offenders
  - Judges act as IMPARTIAL MEDIATORS
  - Laws are codified and consistent
- 3 components making punishment effective
  1. Proportionate
  2. Certainty
  3. Swift
- Fear of punishment = compliance to law
- Goals
  - Focus on crime control, not due process
  - Prevent future crime
  - Protect society rather than individual rights
  - More resources to fight crime, more power to police
  - Limit discretion

- Longer sentences, no parole, more prisons

### 3. Selective incapacitation

- Recognized that few offenders are responsible for a large portion of the crime
- Focuses on serious crimes / serious offenders
  - Have earlier convictions for similar offences
  - Have been imprisoned
  - Committed to juvenile institution
  - Convicted before 16 years
  - Use drugs during previous 2 years
  - Unemployment during previous 2 years
- Attempt to separate high risk offenders from low risk offenders
- Longer prison terms for more serious crimes
- Punishment is based on past and presumed future behaviour
- Emphasis on the offence
- Key aspects of operation
  1. Narrow focus - can be used with other models of justice
  2. No plea bargaining, little discretion, no parole, few prison programs
  3. Jail = holding cell
- Examples
  - 3 strike program
  - Dangerous offenders
  - Sexual predator law
  - Sex offender registry
  - DNA bank
  - Denying a drug dealer parole

### 4. Rehabilitation model

- Discover cause and eliminate
- Focus on ACTOR
- Punishment is wrong
- Individualized treatment
- Indeterminate sentences
- Crime = factors outside individual's controls
- Operations
  - Increase discretion
  - Plea bargaining
  - Probation and parole enhanced
  - More money for prison programs
  - Prison = treatment
  - Evaluation of success - recidivism rates (repeat offences once released)
- Criticisms
  - Discourse of non-responsibility
  - Legitimization of experts.
    - Puts all of the weight on what experts say we should do with the offender
  - Justifies repressive strategies
    - Shock therapy
    - Lobotomy

### Reintegrative shaming

- Shame rather than punish
- Condemn act, but not the offender
  - Contrary to dramatization of evil
- Makes offenders realize the pain they brought to community
- Reduce stigma attached with jail
- Effective in collective cultures

- 3 types
  1. Public exposure sanctions
    - Belittle the crime (holding signs)
  2. Apology penalties
    - Written / public statement
  3. Debasement penalties
    - Empathy (mcdonalds security guard example)

#### Lady justice:

- Blind / no bias
- Scale = weighing of evidence of case and equality
- Sword = justice & punishment

#### Justice assumptions:

1. Criminal justice assumptions - offenders get "just desserts"
  - i. Crime violates law + state - (what law was broken?)
  - ii. Violations creates guilt - (who broke it?)
  - iii. State determines blame (guilt) and imposes pain (punishment) - (who to punish?)
2. Restorative justice assumptions - victim needs + offenders duty to repair
  - i. Crime violates people + relationships - (who was hurt)
  - ii. Violations create obligations to restore - (what are victims needs?)
  - iii. Justice supports a healing process that involves key members in determining responsibilities (who is responsible for repairs?)

#### Restorative justice

- Voluntary participation of victims and offenders
- Offender must admit responsibility
- Offender and victim agree on essential facts of case
- Both parties can have legal advice
- Admission of guilt cannot be used as evidence in later legal proceedings
- Failure to reach agreement not justification for harsher sentence in later legal case
- Consequences for not honoring agreement
- Based on aboriginal justice
  - "circle sentencing"
    - Get together, sit down, discuss the offence and sentence
- Advantages
  - Addresses harm and underlying issue
  - Therapeutic
  - Empowers victim
  - Offender becomes accountable
  - Community involvement
  - Humanizes CJS
- Can be implemented at every stage in charge/conviction/sentence

#### DATA

- Property crime > violent crime
- 2.5M criminal code incidents reported 2005
- Highest VIOLENT crime rate = Saskatchewan; Lowest = Quebec
- Highest PROPERTY crime rate = B.C.; Lowest = Newfoundland
- Violent crime
  - Most common = Assault lvl 1
  - Least common = abductions
- Property crime
  - Most common = theft <\$5000

- Least common = theft > \$5000
- Those convicted of property crimes receive more prison sentences than crimes against persons
  - This is because those convicted of property crimes are usually repeat offenders
  - Violent crimes are usually 1 time, heat of the moment
- Other criminal code offence
  - Most common = mischief
    - Hindering others abilities to enjoy their goods. Damaging stuff, vandalism, includes destruction of data etc.
- Rate of crime is decreasing
- Fear of crime is increasing

#### Avoidance behaviours:

- Lifestyle changes designed to minimize risk of becoming a victim of crime
- I.e. Avoiding dangerous locations

#### Defensive behaviours:

- Specific anticrime measures to reduce risk of becoming a victim
- I.e. Carrying mace/alarms/cellphone/walking in groups

#### Public perception (descending)

1. Police
2. Courts
3. Corrections
  - a. Supervision
  - b. Rehabilitation
  - c. Parole

#### Influences of perception

1. Media reports
2. Visibility of personnel
3. Personal experience
  - Those who have had personal experience have worse perceptions overall
4. Gender
  - Men hold higher views for courts, prison, and parole
5. Age
  - 15-24 = police suck / courts are great
  - 65+ police are great / courts suck
6. Education
  - Lower education = higher view of CJS

Crime rate per 100,000 = (# of incidents / population) x 100,000

#### Factors influencing crime rate:

1. Report sensitive
  - Over time, tolerances for certain crimes change
    - Child abuse, domestic violence, drinking & driving
2. Media sensitive
  - Causing moral panics
  - Constantly publishing certain crimes
3. Policing (technology) sensitive
  - Police focusing on certain offences at certain times
  - Technology: breathalyzer, speedgun, red light cameras
4. Definition sensitive
  - Changes to law
    - Abortion is no longer illegal

- Cyber crime is relatively new
- 5. Demographics
  - Age
  - Social factors
    - Economic depression

#### Statistic Systems

1. Uniform crime reporting system (UCR)
  - Aggregated police statistics
  - No victim characteristics
  - Applies standard definition to all offences - UCR manual
  - UCR2: incident based
  - Provides info such as:
    - Time of offence
    - Circumstances
    - Victim/accused relationship
    - Age and genders
    - Use of weapons
  - Does not include social class
  - Is a non-representative sample (most from ON)
  - In order for a crime to be recorded
    1. Someone must be aware of the crime
    2. Crime must be recorded
    3. Police must confirm that a law was broken
  - Limitations
    1. Most serious offence rule (deflates overall crime count / skewed proportion between violent and non-violent)
    2. Violent crime (incident based)
      - 1 shot, 5 deaths = 1 entry
      - 5 people killing 1 person = 1 entry
    3. Property crime
      - One person steals from 10 victims during 1 go = 1 offence
    4. Police discretion
      1. Not arrest VS arrest
    5. Dark figure of crime
2. Victimization surveys
  - Advantages
    - Addresses dark figure of crime
    - ID's population at risk
    - Impacts of crimes on individuals
  - Limitations
    - People are used to it, and that it's not a crime in their opinion
    - Exaggerations
    - Conceal (embarrassment)
3. Self report surveys
  - Smaller
  - Advantages
    - Addresses dark figure of crime
  - Limitations
    - Smaller sample (not representative)
    - Focuses on youth (in school) and does not capture those who are skipping

Victim's reasons for reporting to police

- Most common: To catch and punish offender
- Least common: it was recommended by someone else

#### Reasons for not reporting

- Most common: not important enough
- Least common: fear of publicity

#### Risk factors associated with victimization

1. Age
  - Those 15-24 and 65+ are more fearful but actually are LESS targeted
2. Gender
  - Males = assault 1,2 / robbery
  - Females = assault 1, sexual assault
3. Relationship
4. Marital status
  - Women that have separated are at risk from ex-husband
5. Residence location
  - Urban = high risk
6. Residence ownership
  - Renting = higher risk
7. Income
  - Low income = higher risk
8. Seasons
  - Summer = higher risk...alcohol

1st female officer hired in 1913. Today, 18.5% of police force are women. Norway and Australia have highest % of female (30%), Mexico has lowest (2%)

#### History

English based: Criminal law + Police

- **Tithings**: groups of 10 families. Responsible for helping neighbors.
- **Hundreds**: 10 tithings and a constable appointed by nobles who dealt with serious offences
- **Shires/counties**: a bunch of hundreds. Shire-reeves = sheriff

13th century - constable "watch" system

- Constable appoints citizens as volunteer watchmen who patrol at night
- Males between 15-60 required to possess weapons for "hue and cry"
  - Respond to the "hue and cry" ... Siren type thing
  - If you don't respond, you will be punished

1700s

- Crime controlled by military
- Unpopular due to harshness...people don't want to call the military

1829

- **Sir Robert Peel**
- Appointed as "home secretary"
- Passed "London Metropolitan Police Act"
- 3,200 person distinguishable police force. Uniforms
- **4 Operational Philosophies** (prevent crime through patrols)
  1. Reduce tension between law enforcement officials and public
  2. Promote non-violent means in keeping peace
  3. To relieve the military from duties such as crime control
  4. To be judged on the absence of crime rather than by high-visibility police actions

#### Municipal Policing

- Functions (early days)
  1. Maintain public order

2. Prevent and control crime
  3. Provide services to community
- Developments in technology
    1. Police runners & call boxes -> signal, bell, phone -> direct line with HQ
    2. Patrol cars, 2 way communications
    3. Officers separated from community... No longer on foot/horse. Not as visible
  - Reforms on policing
    1. Focus on crime fighting
    2. Enhance training and qualifications

## Models of policing

### 1. Professional

- Characteristics
  1. Hierarchical differentiation
    - Top down
  2. Job specialization
    - Different departments for homicide, hatecrime, gangs, sexual assault
  3. Routinization of practices
    - Manuals created-minimize police discretion
  4. Centralization of command
    - Top down
- Criticisms
  1. Does not meet needs of contemporary society
  2. Does not promote personal initiative
  3. Reduces contact among members of police + community
- Patrol types
  1. Incident driven
    - Associated with crime control
    - 3 R's
      1. Reactive
      2. Rapid response
      3. Random patrols
  2. Directed patrol
    - Officers given orders on time use
    - Identify crime patterns in specific areas
    - Crime-mapping systems
    - Reducing crime, or displacing it?
    - Band-Aid solution... Root of problem not addressed
- Patrol strategies
  1. Proactive - heavy patrols
  2. Reactive - no patrolling, calls only
  3. Control - usual patrolling
    - They have no effect on crime rates or reported crimes....
      - 2 reasons why
        1. Patrol officers are spread thin, and can't see everything
        2. Many crimes can't be deterred by police patrols (not out in street)
- Patrol functions
  1. Deter crime by being visible
  2. Maintain public order and sense of security
  3. 24 hour provision of services that are not crime-related

### 2. Problem oriented

- Focus on causes of crime and complaints
- Characteristics
  1. Community focus

- 2. Patterns
- 3. Competing interests
- 4. Requires long-term solution
- 5. Requires creativity and initiative by police
- 4 stages (SARA)
  - 1. **Scanning:** ID issue, and assess
  - 2. **Analysis:** collect data
  - 3. **Response:** develop and implement solutions
  - 4. **Assessment:** success?
- 3. **Community**
  - Goals
  - When this is used, the RATE OF CRIME GOES UP. This just means more is being REPORTED...
    - Public safety and confidence
    - Reduce citizens' fear of crime
  - 3 P's
    - 1. Proactive
    - 2. Problem solving
    - 3. Partnership with community
  - 3 types of fear
    - 1. Intense (experienced by victim)
    - 2. Concrete (fear of specific type of crime)
    - 3. Formless (just fear of becoming a victim)
  - Advantages
    - More respect for officers
    - Community feels more safe
- 4. **Zero tolerance**
  - Goal
    - Target individuals they feel are responsible for disorder in community
    - Phase-specific interventions
  - Approach
    - Increased police force size
    - Confrontational style
    - Increased police powers for search and arrest
  - Results
    - Reduction in crime rates...
  - Risks
    - Civil rights violations, racism, discrimination, police brutality, unjustifiable use of force

#### How to measure police

- Response times
- Management of demand/differential response (how they categorize degree of urgency)
- Arrest rates (does not address dark figure of crime)
- Clearance rates (crimes that get solved... High for violent, low for property)
- Fear reduction

#### 4 Policing styles (Muir)

**Passion:** recognition that force can be used to control a situation and is a legitimate tool

**Perspective:** refers to ability of the police to empathize with human suffering and to use force ethically

1. **Professionals**
  - Officers have passion and perspective . Best.
2. **Enforcers**
  - Passion for occupation, including enforcing the law and making decisive actions
  - Allows them to be comfortable using force to deal with situations.
3. **Reciprocators**

- Lack passion.
- Difficult deciding how to make use of authority
- Difficult for them to use force to solve problems

4. **Avoiders**

- Possess neither passion nor perspective.
- Ignore problems facing citizens and take no action to assist

4 policing styles (**Wilson**)

1. **Social agent**

- Problem solvers who work with community members
- Focus on outsiders/strangers, and give local residents latitude

2. **Watchman**

- Public order
- Tolerant of private matters between citizens and minor offenses
- Restoring a sense of peace without arresting citizens involved in the dispute

3. **Law enforcer**

- Legalistic style
- Enforce all laws to the limit of authority
- All suspects are arrested and charged if enough evidence is found. No leeway
- Discretion is minimal

4. **Crime fighter**

- Detection and apprehension of criminals
- Focus on serious criminals
- Without the "thin blue line" society would be chaos
- Opposed to any sort of social service function

# Final

March-17-11  
3:05 PM

## POLICE MISCONDUCT

### 3 types

1. **Occupational deviancy:** criminal, non-criminal behaviour committed during the course of normal work activities or committed under the guise of the police officer's authority
  - Sleeping on duty, insubordination, misuse of firearms
2. **Abuse of authority (excessive force):** the application of various types of coercion when the police are interacting with citizens
  - 4 types of coercion (rarely involves weapons in rl...but media...)
    1. Verbal
      - Deceit, promises, threats, derogatory language
    2. Physical
      - Use of physical strength and body
    3. Non-lethal
      - Use of weapon instead of or in addition to officer's body
    4. Lethal
      - Use of a deadly weapon in a manner that a person is likely to be seriously injured or killed
3. **Selective enforcement of laws:** routine incidents of misconduct that reflect and reinforce race, class and gender bias

### Police use of deadly force

- Force that is used with the intent to cause bodily injury or death
- Use of firearms with citizens
- 1995, CC permitted the shooting of a "fleeing felon" w/o consideration of danger of suspect
  - New defence - CC
    1. As much force as necessary
    2. Acts on reasonable grounds
    3. Necessary for protection
- QUEBEC - highest deadly force

### Police discretion

- 3 elements
  1. Deciding whether to get involved
  2. Determining how to behave
  3. Selecting alternatives to deal
- Variables
  1. Situational variables
    - More likely to arrest suspects in public settings than private ones
    - Presence of other police officers
  - Legal variables
    - Seriousness of the crime
    - Strength of the evidence
  - Extralegal variables
    - Preference of the victim
    - Relationship between the victim and suspect
      - ◇ More likely to arrest if strangers
      - ◇ Least likely if family
    - Demeanour of the suspect

- ◇ But usually, they act poorly AFTER arrest... So no effect?
  - Characteristics of neighbourhood
    - ◇ Low-income neighbourhood = more arrests
- 2. Community variables
  - Ethnic and working-class communities
  - Higher rates of reported crime = perceived danger = arrests
  - Attitudes of citizens = reactive
  - Local legal culture = informal relationships between local officials and police department
    - Different communities request that their police enforce certain criminal offences more than others
- 3. Extralegal factors
  - Race, class, gender
- 2 categories
  1. Invocation discretion
    - Situations in which a police officer decides to arrest an individual
  2. Non-invocation discretion
    - Situation where police officer can arrest someone but chooses not to

#### Police culture

- "accepted practices, rules and principles of conduct that are situationally applied, and generalized rationales and beliefs."
- Basic values
  1. Police are the only real crime fighters
  2. Only police officers understand their work
  3. Loyalty to colleagues
  4. War against crime = must bend rules
  5. Public is critical and demanding
  6. Patrol work is a means to an end (it is boring and sucks)

#### Police personality

1. Conservative
2. Dogmatic
3. Hostile
4. Cynical
  - Rejection of ideals of justice and truth
  - Officers lose respect for law and replace it with other "legal" rules formed in and promoted by the police subculture
  - Increase police misconduct, corruption, and brutality

#### Problem police officers

- 10% of officers generate 90% of problems
- Response + reward = repeat
- 3 categories
  1. Rotten apples
    - Few problem officers who use their position for illegal personal gain, or who resort to the force.
    - When a few of them work together = rotten pockets
  2. Pervasive but unorganized misconduct
    - Majority of police personnel are engaged in questionable activities but don't really cooperate with one another
  3. Pervasive and organized misconduct
    - Almost all members of department are involved in systemic and organized misconduct

## Who will police the police

- Internal investigation
  - The police themselves investigate allegations of wrongdoing by police officers
  - Conflict of interest
- Citizen oversight
  - Opens the complaints process to individuals who are not police officers
  - Makes police accountable to public
- Civil liability

## PRE-TRIAL CRIMINAL PROCEDURES

**Lay of information:** written document alleging an individual has committed an offence

**Summons:** alternative to arrest. Order from court for an individual to appear in court.

**Judicial interim release hearing:** Bail hearing

**Surety:** takes responsibility for someone on bail

**A voir dire:** a hearing (judge) to determine whether statements made by the accused were voluntary. No coercion, pressure, drunk etc.

Section 10 of Charter of rights:

1. Right to legal council
2. Right to know reasons for being detained

## Arrest

- The power to deprive an individual of liberty
- To legally arrest:
  1. Physically take control with intent to detain individual
  2. Police must follow certain verbal mandates
    - a. Must say he will arrest
    - b. Must say they can have legal council
    - c. Must say what they are being charged with

## Investigative detention

- Police can:
  - a. Detain, interrogate, search individual even where there is less than reasonable grounds to believe an offence has been committed

## Charter of rights

Equivalent to American `Miranda Rights

- Right to remain silent
- Right to legal council (in US allowed to have it at police station, in Canada, can only call)

Arrests have little effect on future acts of domestic violence and drunk driving

- Doesn't address the underlying problem
- Spontaneous acts

## Arrests with a warrant

1. Police must lay an information with a justice of the peace to obtain warrant
2. Must suspect on reasonable grounds that individual committed an indictable offence
3. Committed lesser offence, but reason to believe they may not appear for trial
  - If a summons would not work...then you can arrest (not for mischief/theft)

4. Suspect must be brought before a justice of the peace without "unreasonable delay"
  - 24 hours on average is reasonable

#### Arrests without a warrant

1. Crime is in progress (summary/indictable)
2. Suspect known to have committed indictable offence or is about to (based on reasonable grounds)
  - People wearing masks, holding bags, looking like they're about to rob a bank
3. Has an outstanding arrest warrant
4. If the arrest will serve the public interest / prevent further offending

#### Options for compelling the appearance of accused

1. **Arrest**
  - Habeas corpus
  - With/without warrant
  - Unlawful detention must not occur
2. **Appearance notice**
  - Gives a court date and allegations, followed by laying an information
3. **Summons**
  - Lay an information, then justice of piece will issue summons with details
    - Someone comes to your house and serves you the summons (you've been served)

#### Custodial interrogation

- Purpose
  - **Solicit a confession from suspect**
  - Provide police with incriminating evidence
  - Discover stolen property
  - Locate accomplices
  - Indicate involvement in other unsolved crimes
- Interrogations
  - Suspect has the right to remain silent but
    - Can't obstruct or impede an investigation
    - Statements may be used at trial
  - When confessions are introduced in court
    - Was it the result of a conscious mind? Voluntary?
    - **A voir dire hearing**

#### Confessional devices

- Used to solicit confessions
  - In the past:
    - Torture
      - Sensory deprivation
      - Stretch wheel
      - Headcrusher
      - Nail seat
      - Judas cradle
    - "3rd degree": by the third degree of torture, people admit to crime even if they didn't do it.

#### Interrogation strategies

1. **Conditioning strategy**
  - Encourage suspect to trust questioner
  - Ease into it
  - Offer food, drinks, smokes

## 2. De-emphasizing strategy

- Focus on empathy of the victim
- Make them feel so bad that they talk
- Try to get them to forget their rights (remain silent)

## 3. Persuasion strategy

- Encourage suspect to speak so that his side can be heard (used on Col. Williams)

### False confessions

#### 1. Voluntary false confession

- Member of crime organization. Taking the hit for the org.
- Want to get famous
- Parent taking the hit for their child

#### 2. Coerced-complainant false confession

- Result of intense interrogation
- Just want to end the harsh interrogation, so they admit to it

#### 3. Coerced-internalized false confessions

- Suspect falsely recalls and involvement with a crime and confesses to it
  - Presented with false evidence
  - They start believing they did something they didn't
- Michael Crowe
  - Stephanie Crowe (sister) is found dead one morning in her room, stabbed
  - Michael Crowe, strange behaviour, playing video games instead of mourning
  - Interrogated him alone
    - He confessed...police came up with a motive for him
  - They interrogated his friends
    - One confessed with being involved
    - The other confessed with liking knives
  - Turns out, it was actually just some creep wandering in the neighbourhood

### Page - Procedures (statue)

### Most frequently heard offences in court

1. Impaired driving
2. Common assault
3. Theft < 5000
4. Breach of probation

### Age group

- 18-24 years of age

#### 1. Trial by ordeal

- Walk designated distance with a really hot rod in hand
- Walk on hot coal
- Bandage up wounds
- A few days later, a priest would look at the wounds
- If they began healing...it was determined that god intervened and that that were not guilty
- If not healed, guilty, capital punishment

#### 2. Trial by water

- Hands and feet tied together, then dropped in water
- If sink, they are not guilty
- If float, they are guilty

#### 3. Trial by battle

- Reserved for people with wealth
- Whoever wins, god intervened, and they're not guilty
- You buy fighters...don't fight yourself

- If you have money, you can get a good fighter...

#### Trial by court

- 4 levels (upside down pyramid)
  1. Provincial court (justice)
    - Judge, no jury
    - Usually for summary conviction
  2. Provincial superior court (trial)
    - Highest level of court in a province
  3. Provincial superior court (appeals)
  4. Supreme court of Canada
    - Court of final appeals
    - Located in wellington, Ottawa
    - To be a member
      - ◆ 10 years of standing at the bar
- Criminal courts
  - 2 fundamental decisions
    1. Guilt or innocence
    2. Assign punishment upon conviction (sentence)
  - 3 functions
    1. Due process
      - Making sure rights of accused are there
      - Ensure all procedural rules have been followed
    2. Crime control
      - Protecting society from criminals
      - Ensuring convictions and punishment of offenders
    3. Bureaucratic function
      - Speed and efficiency of the court system
        - ◇ Minimizing delays and backlogs
      - "Burden of the court"
        - ◇ Individuals self representing
        - ◇ They don't know anything about law... So they're slow, causing delays
      - Day to day operations of the court
- Drug treatment courts
  - Main goal is to eliminate drug use and related criminal activities
  - Based on the idea that CJ can be therapeutic rather than punitive
  - Offenders serve sentence in community under the supervision of the courts
  - First introduced in U.S
    - Florida, 1989
  - It actually reduced number of people appearing in courts due to drug problems
    - Reduced problem
  - First introduced in Canada
    - Toronto, 1998
  - In order to be eligible
    1. Admit guilt
    2. Be charged with non-violent offence
      - Petty theft, prostitution, small trafficking
    3. Undergo frequent, random urinalysis
    4. Accept sanctions for failure to comply with program requirements
    5. Develop vocational and other skills to promote re-entry into community
  - Successful completion
    - Drop charges, reduce sentence, end probation order
  - Unsuccessful completion
    - Appear in criminal court

## Key players

1. The defence
  - Ensures clients legal rights are protected
  - Helps clients understand laws, procedures, and possible sentence
  - Prepares case and determines strategy
  - Challenges the evidence and questions witnesses
  - May not allow client to lie on the stand
  - May try to get accused a more lenient sentence
2. The crown
  - Crown represents the state
  - Must present all relevant evidence/facts/witnesses
  - Make opening statements to the jury, sets the tone
  - Decides whether to go ahead with the case
    - Summary conviction VS indictment
  - Conviction rate is seen as success, acquittal as failure

## Arraignment

- Formal reading of criminal complaint
- Informs individual of charges against him/her
- Accused enters a plea
- 90% of defendants plead guilty
- Date for sentencing, preliminary hearing or trial is set

## Preliminary Hearing

- To review the evidence
- Strictly hear before a judge
- Based on Probable grounds
  - Not beyond a reasonable doubt (like in a trial)
- To avoid being placed on trial unnecessarily
- Reserved for indictable offences and heard before a provincial court judge
- **Bill C-15A-2003**
  - PH no longer automatic but must be requested
  - The right to waive the preliminary hearing
    - Don't want opinions to be tainted before actual trial
  - Plea guilty, efficiency, avoid negative publicity

## Plea bargaining

- Any agreement by the accused to plead guilty in return for the promise of some kind of benefit
- Very often used
- 5 types
  1. Charge bargaining
    - Reduce number of charges
  2. Sentence bargaining
    - Reduce sentence
  3. Procedural bargaining
    - Proceed by way of summary conviction instead of indictment
  4. Fact bargaining
    - Omit certain facts about the case or the background of the offence (that could be aggravating factors)
  5. Label bargaining
    - Prevent being charged with an offence that carries a negative label
      - Aggravated assault vs sexual assault with minor
- Advantages

- Ensures a conviction
- Reduces backlogs & costs
- May get more information on other individuals
- Victim doesn't have to go through trial (re-victimization)
- Lets courts focus on more serious cases
- Disadvantages
  - Coercion (happens behind closed doors)
  - People getting off with lesser punishments
  - Evidence that comes out after cannot be used (Karla Homoka)
  - The victim doesn't get closure, doesn't get trial

#### Why have jury

- Eligible for jury if
  - If convicted, 5 years or more
- Protect individual liberty
  - Arbitrary law enforcement
  - Overzealous prosecutors
  - Biased judges
- Section 11(f) of Charter of Rights
- Limited to certain offences
- Possible sentence of 5 years or more
- Serves as the conscience of the community
- Qualifications to serve as juror
  - Must be over 18
  - If you have served in jury for over 1 week, you won't have to go for next 3 years
  - Legal obligation to go if invited

#### The role of the jury

- Tries the facts and determines guilt
- Banned from asking questions of witnesses
- Must be unanimous to convict
- Don't have to give any reasons for their verdict
- No role in sentencing except:
  - Degree of offence (1st / 2nd degree murder)
  - Can make parole recommendations for 2nd degree murder

#### Jury selection

- 4 step process (1st 3 take place outside of courtroom)
  1. Assemble list of eligible jurors (an array)
  2. Remove those not eligible
  3. Summons a jury panel from the list
  4. In-court selection process
    - Jurors get questioned about any underlying biases they may have
- 12 jurors are typically used
  - Minimum is 10
- Challenges in lawyer selection
  - Reasons lawyers can use to not accept an individual
  - Questioned under oath
  - Challenges:
    1. Peremptory challenge
      - Requires no reason
      - Maximum 20 for 1st degree murder
      - 12 for all other offences
    2. Challenge for cause
      - Reason must be provided
        - ◇ Prior incarceration, relationship to the accused, non-citizen, certain

## occupations

### 3. Stand aside challenge

- Judge decides
- A juror can ask the judge to be stood aside for personal hardship

#### Peter Gill

- Charged with 2 counts of 1st degree murder
- Trial was 8 months...long, expensive
- Gillian guess was a juror
  - Entered into a relationship with the accused during the trial
  - He told her that he should be innocent
- Jury deemed him innocent because of her probably
- They later found out about the relationship
- Gillian and Peter Gill was then charged with obstruction of justice
- Set precedent
  1. Only case where relationship between juror and accused
  2. His innocence was because of Gillian
  3. The discussions juror had were brought to light (normally should be private)

#### Before the jury decides

- Judge-charge to the jury
  - Instructs jury on the principles of the law, requirements for evidence, procedures to follow, possible verdicts
- Final instructions include:
  - The definition of the crime with which the defendant is charged
  - The presumption of the defendant's innocence
  - The burden of proof that lies with prosecution

**Jury nullification:** a jury finds a defendant innocent because they find the law itself is unjust, or is unjust in a particular application, and so should not be applied

- Used when laws do not reflect the will of the people
  - Ex. Abortion...its factually illegal, but people keep letting him go

#### Public trials

- Purpose
  - "open court principle"
    - For the benefit of the accused
    - The idea the justice can't be upheld if held in "Secret"
- Publication bans
  - Judge may order ban on publication or exclude certain members of the public
    - Protection of young offenders
    - Undercover police officers involved (can't have their names / tactics revealed)
    - Witnesses and complainants in sexual offence cases

#### Appeals

- Both defendant and prosecution have the right to appeal
  - May order new trial or overturn conviction
  - May also overturn an acquittal and convict
  - May appeal sentence or criminal responsibility
  - May apply for release while under appeal
- Summary conviction appeals
  - Heard in superior courts
- Supreme court
  - Hears only cases involving important points of law

## Sentencing

- In the past...pain
  - Stocks and pillories
  - Whipped
  - Branding
- Prison
  - Highest incarceration: PEI
  - Lowest incarceration: NB and NS

## Capital punishment

- In the past
  - Made public to serve as a deterrent
- Canada got rid of it in 1976
- It's more expensive than keeping someone in prison for life (Appeals process \$\$\$)

## Purpose of prison sentencing

1. Denunciation of conduct
2. Proportionate punishment (Justice model)
3. Prevent misconduct (Deterrent model)
4. Protection of society (selective incapacitation)
5. Treatment of offender (rehabilitation model)
6. Reparation for harm done (restorative justice model)
7. Accountability for actions (Restorative justice model)

## Sentencing patterns in Canada

- Most common sentence
  - Probation
- Incarceration
  - 34%
  - 117 days
- Conviction rate
  - 65%
- Fines
  - Most common amount
    - \$758
  - Most common
    - Impaired driving
- **Overrepresented**
  - **Aboriginals**
    1. **More likely to be denied bail and then sentenced to prison**
    2. **More likely to be jailed for non-payment of fines**
    3. **Less likely to receive probation**
- When presented with sentencing options, public is more punitive toward
  - Arson, assault on police, forgery, theft and fraud > \$5000
- Judges are more punitive toward
  - Robbery, burglary, break & enter

## How do judges decide

1. Pre-sentence report
2. Victim impact statement
  - Bill c23 - allows victim to say what they think would be an appropriate sentence for offender
  - Most beneficial for victims

- Sexual assault cases
- 3. Seriousness of offence
- 4. Aggravating factors (EXAM)
  - i. **Previous record**
  - ii. Behaviour during arrest
  - iii. **Crime against vulnerable person (young, old, disabled)**
  - iv. Use of a weapon
  - v. Gang activity
  - vi. **Behaviour on bail**
  - vii. Abuse position of authority
- 5. Mitigating factors (EXAM)
  - i. **Show remorse**
  - ii. You have dependents
  - iii. Cooperation
  - iv. Social standing (letter of reference, pre-sentence report)
  - v. No previous record
  - vi. First time offender
- 6. Judicial discretion
  - Varies in 3 ways (EXAM)
    - 1. Case to case
      - Same judge
    - 2. Judge to judge
    - 3. Court to court
  - Race, quality of arguments of attorneys, impact of crime on victims
- 7. Judges have certain parameters however
  - i. Maximum penalties...
    - Judges don't really follow, they're too high sometimes
  - ii. Mandatory minimums
    - **Sexual assault involving children**
    - Breaking and entering
    - First and second degree murder

#### Sentencing Alternatives

- Intermediate sanctions
  - Alternatives to incarceration. Controlled supervision/surveillance
    - House arrest
    - Fines
    - Probation
    - Community service
  - Split sentencing
    - Combination of alternatives (house arrest + fine for example)
  - Pros:
    - Reduce crowding of prisons
    - Less cost
    - Proportionate punishment
    - Can contribute to society (still have a job)

#### Sentencing options

- Absolute discharge
  - Found guilty, but the person will not be given a sentence or criminal record
  - Normal for first time offenders
  - Adults and youth
- Conditional discharge

- Found guilty, but placed on probation, with conditions that they have to follow
  - Curfews, must live with certain person, must keep peace
- If they follow the conditions, and behave well, they will not be given a record
- If they breached the conditions, the probation will be revoked, and they will be convicted of the original sentence
- Can be used with both adults and youth
- Suspended sentence
  - Found guilty, but placed on probation, with conditions
  - Do get a criminal record
  - If you follow conditions, you won't get any other punishment (more severe sentence)
  - Not available to youth (18+)

#### The Fine

- Must pay within specified amount of time
- Statutory maximums outlined in CC
  - Summary offence \$2,000 (\$25,000 for corporations)
  - Young offender maximum is \$1000
  - No upper limit if offence is indictable
- Decreased in its use
  - Mostly used for impaired driving (\$300)
    - If first time offence... But will probably be a split sentence...fine + jail
- Fairness?
  - Judge may have little knowledge of ability to pay
    - Fines hurt the poor much more than the rich
  - Ability to pay may be included in pre-sentence report
  - 1 in 5 admissions to jail -> result of inability to pay fine
    - Even though the reason they were given fine was because the crime wasn't serious enough to give them jail time...
  - Affects minority groups / Aboriginals the most
  - Fine options program (2 years)
    - Individual has 2 years to do community service, which is used to pay back the fine, instead of actually paying.... Must complete it though...
  - Finland's approach
    - Fines go up with your income

#### Other options

1. Restitution
  - Compensating those you have harmed
2. Community service
  - Cleaning up public areas...
3. Intermittent sentence
  - Serving your time on certain days (weekend)
  - Jail sentence of 90 days or less
4. House arrest
  - "Virtual prison"
  - Restrictions on movement
    - Doesn't necessarily mean you must stay home...but it can
  - Electronic monitoring
    1. Continuously signalling system
      - No direct communication between individual under arrest and police
      - Ankle bracelet that registers whether the offender is where they must be
    2. Programmed contact information (electronic handshake)
      - The offender has to do something to prove he's where he should be using an electronic device
        - ◇ Voice recognition

- ◇ Must insert bracelet into something at specified time
- 2 years less a day
- Most popular in BC
- More successful with older people

#### Scared straight program

- Youths who are on the wrong path go on a "trip" to prison and are "scared straight"
- Not very effective

#### Difference between probation and parole

- Probation
  - A sentence you get handed when you're found guilty
- Parole
  - Happens after you have started serving your sentence

#### Probation

- Most commonly used sanction in Canada
- Contract between offender and state
  - Offender agrees to follow conditions
- Adult max length = 3 years (avg. 450 days)
- You offender max length = 2 years
- "super probation"
  - For individuals who are believed to still be a threat in society
  - 10 years - high risk offender
- Used more often for crimes against the person than property crimes
  - Crimes against the person are spontaneous...
  - Property crimes...usually not first time offender
- Conditions of probation
  1. Compulsory
    - Keeping the peace
    - Must report to probation officer when required
    - Staying within jurisdiction
    - Staying away from criminal associates
    - Reporting any changes in address / employment
  2. Optional
    - Curfew
    - No alcohol or drugs
    - No computers / no phones
    - Staying away from certain people / must stay with certain people
    - Stay away from certain areas
    - No firearms
    - Restitution
    - Community service
- If condition is breached
  - Charged with breach of probation
    - Hybrid offence
      - Indictable - 2 years
      - Summary - 18 months
- Risk for breaching conditions
  - High
    - Young, jobless males
    - Low income
    - Prior criminal record
    - History of instability

- Low
  - Females with stable marriages
  - High education
  - Employed
- Dual role of probation officers
  - Roles:
    1. Moral compass
      - ◆ Support the person
    2. Enforcer
      - ◆ Duty to make sure client is following conditions. Obligation to report of not.
  - Conflicting
- Intensive supervision probation
  - Officers have fewer clients, so have more time and energy to put towards their clients
  - Supervision is:
    1. Extensive
      - Frequent meetings
    2. Focused
      - All activities are monitored
    3. Pervasive
      - Offenders are frequently subjected to random drug tests
    4. Graduated
      - Gradually becomes less strict and severe, if client is behaving
    5. Strictly enforced
      - Penalties for new arrest / non-compliance to conditions
    6. Coordinated
  - Success?
    - Very successful when used in conjunction with rehabilitation programs

#### Conditional Sentence

- Created by Bill C-41 - 1996
- Sentence served in the community
- Can be imposed where the criminal code doesn't specify a specified sentence for the offence
- Average length = 8 months
- Violations lead to reverse onus
  - Onus is on the accused...must convince the judge why they shouldn't be sent to jail
- Difference between probation and a conditional sentence
  - Focus of conditional sentence is on denunciation of the committed crime
    - Much stricter conditions than probation
    - Can force individual into treatment (can't with probation)
  - If you breach, and can't convince judge, you will most likely go to prison
- Steady increase in use
- Advantages and disadvantages for conditional sentencing for (video of girl) EXAM:
  1. CJS
    - Advantages
      - Reduces cost
      - Reduces overcrowding
      - Emphasis on rehabilitation
    - Disadvantages
      - People don't feel justice is being served
      - Less of a general deterrent
      - Net widening (can increase # of people doing time... Breachers)
  2. Offender
    - Advantages
      - Don't have to go to jail

- Avoid the stigma of someone who's gone to jail
- Maintain employment / school
- Help the community
- Disadvantages
  - There's a lot of strict conditions
  - Could be longer sentence than going to jail
  - Could be targeted by friends of victim, etc... Taking law into own hands

### 3. Victim

- Advantages
  - May feel good about the person having to do good in the community
- Disadvantages
  - Not harsh enough
  - Revictimization (raped and then insulted by CJS)

### Country with highest rate of incarceration

- United States

### Countries with low rates of incarceration

- Japan
- India
- Finland
- Norway

### Jails

- Penitentiaries = refers to "penitent" which means feeling regret for something
  - Influenced by religious people
    - Take people away from society, where they could be penitent
- Jail = Less than 2 years
- Prisons = 2 years + a day

### Precursors to Prison

- Shift from the punishment of the body, to the punishment of the mind
  - Deprivation of Liberty was the idea put forth. This involves depriving the criminal of their freedom
    - More of a mental punishment, less physical.
- Laws were put in place forbidding the imprisonment of anyone not convicted
- John Howard and Elizabeth Frey were major players in the reform of prisons.
  - Howard recorded any deceptions in prisons in the UK
    - Their diets, the weight of the chains, etc
    - Howard believed in prisons, but he believed they must be reformed
    - He wanted clean and healthy accommodation
      - Treat the prisoner as people, not animals
    - He wanted prisoners to be occupied
      - Prisoners given bibles, learn their religions
  - Elizabeth Frey society:
    - A society which advocates for the rights of female prisoners, which was established by Mrs. Frey
- The Age of Enlightenment: AKA the age of reason
  - This is when Bentham et al were doing their research
  - They believe that for punishment to be effective, it must be proportionate, swift and accurate

### Prison Models

- Pennsylvania Model:

- Based on total isolation
- Spend time alone in a room
- Only a Chaplain may visit them
- They eat in the room, sleep in the room etc
- The belief was that other individuals would contaminate the prisoner, so they were isolated
- Only 1 hour a day of exercise granted, no communication with the outside world
- Negatives:
  - Inmates become isolated, can go crazy
  - The potential for suicide was higher; suicide rates were high
- The Auburn Model
  - Based on silent association
  - The individual only slept in a small room
  - During the day, they would eat/work with other inmates, but no contact with other prisoners were not allowed
  - No eye contact, no talking AT ALL
    - Prisoners would often wear masks
      - Masks were a form of isolation, and would discourage any misconduct
  - Within the auburn model, the Lockstep Shuffle was developed
    - Lockstep Shuffle: Prisoners all walk in a uniform, straight line
      - This takes away the individuality from the inmates
      - They no longer have name, prison number
      - Erodes personality, and any sense of being an individual

#### What are some Pains of imprisonment?

- Loss of Liberty
  - You are now locked up, not a free individual anymore
- Loss of heterosexual relationship
- Deprivation of autonomy
  - Every decision made for you, others dictate how you live
- Deprivation of goods and services
- Deprivation of security

#### Health issues facing prisoners?

- HIV/Aids is very prominent
- Hepatitis C is also prominent
- Both diseases much more prominent amongst women prisons.
- Sex work and drug related offenses are the most prominent w/in women prisons, so it makes sense that there would be such diseases present

#### Leading cause of death?:

- Suicide
  - They kill themselves most often by hanging
  - Usually occurs within the first year.

#### The Case of Ashley Smith: 1988-2007

- Committed suicide in prison
- Several guards watched on, and no one helped her.

#### Questions to ponder about:

- Do inmates' physical surroundings have an impact on their behavior?
- Do Correctional Officers' roles have an impact on prisoners behavior, as well as their own?

#### The Stanford Experiment

#### Stanford experiment:

- An experiment whereby regular people take part in an experiment to determine whether the roles occupied by a person affects how they behave
- 12 people were assigned as prisoners, another 12 were assigned as guards

- The “prisoners” went through what a criminal would experience:
  - o They were arrested at their home, given prison clothes etc.
- The “guards” became bossy towards the inmates.
- After 2 days, they made using a toilet as a privilege for the inmates.
- The guards would make them perform pseudosexual acts, removed mattresses etc.
- By day 5, prisoners started suffering detrimental effects.
- Experiment terminated by day 6
- This experiment shows the roles someone takes can be influenced by the environment.

### Prison Architecture

#### First-Generation facilities:

- Cells located in a long hall.
- Guard would have to walk down the long hallway to see each and every inmate
- This is known as intermittent supervision
  - o Unless the officer can see you, he cannot be able to see what is happening
  - o This lead to a lot of bad stuff happening in prisons

#### 2<sup>nd</sup> generation facilities

- Developed in 1960
- This prison design has indirect supervision
  - o The guards are in a control room, there is the potential for all prisoners to be monitored at the same time.

#### New/3<sup>rd</sup> generation facilities

- Created in response to behavioural
- 12-24 one person cells situated in a pod like shape
- In the middle, there is a pod in which a correctional officer will be situated
- To be alone in a cell, the prisoner must ask for permission
- There is a common room designed to make it a much nicer environment
- They noticed that with this design, there are fewer behavioural problems
- People with negative tendencies were minimized.

#### Security Levels involved in prisoners:

- Maximum
- Medium
- Minimum.
  
- Prisoner is classified as 1 of 3 types of security risk
- Placement on whether to place the prisoner in a maximum, medium or minimum prison is dependent on 3 components/factors:
  - o Is the inmate likely to escape? If yes, they go to maximum security
  - o Is the inmate dangerous?
  - o Will the inmate violate prison rules?
- An individual’s prior record and availability of programs in which they need are also considered in their placement.

Canada does not have a super max prison.

#### What does the “shu” stand for?

- Special Handling Unit
  - o Located in Quebec
  - o An individual that goes here (approx 90 are held here) are not initially placed there
  - o These people cannot be integrated in a regular prison and are extremely dangerous.
    - Eg: threaten guard, attempt to kill guard, try to escape

Reflective of behavior in prison.

Factors affecting types of prison (Ex. Maximum security, etc)

- Likelihood of escaping and posing a danger once escaped
  - Maximum security
- Likelihood of escaping, but won't really pose a danger
  - Medium security
- Not likely to escape, not pose any danger
  - Minimum security
- Will they place others in danger
- Will the individual be able to follow the regimen

SHU: special handling unit

- So dangerous that they are put here (super maximum prison)

20th century prison ideals

- 1990s - "policy of normalization"
- 1935 - rehabilitative
  - Treated with specialized knowledge
  - Psychologists, etc.
- 1953 - corrections
  - Total process by which society attempts to correct the antisocial attitudes and behaviours of prisoners
  - Make them productive members
- 1960s - reintegrative ideology
  - Allowing the person to come back to society successfully
  - Community sanctions introduced (sentences in community)
    - Justice model (punishment should be proportionate / prisoners have rights)
- 1990s - psychological based risk prediction ideology
  - Our model today
  - Focus is on individuals being unique persons with unique needs

**Total institution:** a place where people are isolated from the rest of society for a specified period of time and come under the control of officials who run the institution

- Examples
  - Residential school (aboriginals)
  - Boarding school
  - Prisons
  - Convent / nunnery
  - Military
  - Psychiatric hospital
  - Rehab
- Common characteristics of a total institution
  - Centralized authority
  - No individuality or privacy
  - Time scheduled by rules and regulations
  - Activities, time and space control focused on institutional goals correction
  - Information about the patient/client/inmate's fate is often withheld from them
- Purpose
  - Re-socialization
    - Radically changing a person's personality by carefully controlling the environment
    - 2 part process
      1. Staff tries to erode inmate's autonomy and identity
      2. Rebuilds the personality using rewards and punishments
- Risks
  - Make them antisocial
  - Disculturation

- Lose touch of the outside world
- Can't function once the return to that community
  - ◆ Not used to making their own decisions
- Deliberately do crimes to go back to prison / suicide
- 4 key responses to total institutions
  1. Situational withdrawal
    - They keep to themselves (introverted, antisocial)
  2. Intransigence
    - Rebellious
  3. Colonization
    - Individual starts to feel very comfortable in the prison setting
  4. Conversion
    - Inmate knows they're coming up for eligibility (parole, etc) and they become the perfect inmate...following rules, etc.

#### The first prison built in Canada?

1. Kingston penitentiary - 1835
  - Based on Auburn Model
    - "Silent association"
      - ◆ Can interact... But no direct/indirect communication with each other (laughing, etc)
  - Maintained features of Pennsylvania Model
    - Solitary confinement (for people who were problematic)
  - Enforced hard labour = punishment, reform and profit
    - "the chain gang" - breaking rocks...
      - ◆ Prisoner's stealing jobs??? Low wages, in real industries!!
2. New Brunswick - 1841
3. Nova Scotia - 1844

#### The female offender

- Types of offences that lead to incarceration
  1. Fraud
  2. Sex work
  3. Drugs
- Crimes of "survival"
- Based on CSC, the typical female offender:
  - 30 years old
  - Single
  - Have children
    - Generally while they were teenagers
  - Substance abuse problems
  - Victims of abuse (physical / sexual)
  - Grade 9 level education
  - Poor
- Recidivism rates
  - Very low rates
  - Rarely repeat offenders
  - In cases they do repeat, the crimes won't get increasingly worse
- Women and prison
  - Kingston penitentiary
    - Women offenders = inconvenience
      - ◆ Didn't know what to do with them
      - ◆ They were put in random places in male prisons
  - P4W - 1934

- Created for women
- Poor conditions
  - ◆ No windows, programs, etc.
- Went through several reviews
  - ◆ Deemed to be inhumane
- 1994 - riot
  - ◆ Male prison guards came in, and strip searched them out of nowhere...
  - ◆ Media got hold of this, as it was caught on tape
- Closed in 2000
- Replaced with several smaller prisons
  - Pseudo families
    - ◆ No segregations between races, like in male prisons
    - ◆ Prisoners take on roles of mother, and children...
  - Self-harm
    - ◆ Males attack each other
    - ◆ Females usually hurt themselves
  - Mother-child programs
    - ◆ Elizabeth
    - ◆ Allowed to have their kids with them in prison up until age 3-4

## Doing time

### 1. Prisonization

- Socialization process through which new inmates learn accepted norms, values, and culture of the prison

### 2. Inmate subculture

- Unique social code of unwritten rules that tell inmates how to behave, think, and interact with others
- Informal rules of social control
  1. Know the hierarchy
    - Lifers (Top of hierarchy)
    - Sex offenders (Bottom of hierarchy) - targets
  2. Do your own time (stick to yourself)
  3. Don't weaken, stay tough
  4. Avoid the prison economy
    - If you go into debt...
  5. Don't trust anyone
  6. Don't quarrel with or exploit inmates
- Some subcultures
  - Mean dude
    - Tough guy
    - Serves a lot of time in solitary
  - Hedonist
    - Builds his life around maximizing pleasure, and minimize pain
    - Drugs, gambling
  - Opportunist
    - Tries to make the best of prison
    - Programs, etc
  - Retreatist
    - Wants to retreat from realities of prison
    - Drugs, mental illness, depression
  - Legalist
    - Jailhouse lawyer
    - Trying to fight for the rights of prisoners through the law
  - Colonist

- Views prison as their home
- If released, will commit crimes to go back
- Religious
  - Found God while in prison
  - Religion becomes very important
- Realist
  - Sees prison as a natural consequence of their criminal activity
- Prison Argot (Jargon)
  - Fish
    - New guy
  - Hole
    - Solitary confinement
  - Shank
    - Homemade weapon
  - Goof/Skinner
    - Sexual crime against children
    - You will be a target
  - Rabbit
    - Person who tried to escape
  - Six up
    - Someone affiliated with institutional workers (guards, warden)
  - Tipped up
    - Affiliated with gang
  - Hooped/suitcased
    - People who smuggle things in their rectum
- How does the inmate society develop
  1. Deprivation Model
    - Developed as a way of adapting with the pains of imprisonment
  2. Importation model
    - Pre-prison attitudes and values guide their behaviours and responses to the internal conditions in prison
      - ◇ Pseudo families?

#### Community re-integration

- Difficulties
  - Colonization (getting used to prison life)
  - Social stigmatization
  - Gap in resume
  - Finding place to live
  - Catching up with technology, fashion, trends, other changes...

#### Pardon

- National parole board - federal agency
  - Issue / deny / revoke
- Removes disqualifications that come with criminal record
  - Doesn't guarantee you can travel internationally
- Eligibility
  1. All conditions of sentence must be fulfilled
  2. Completed parole / sentence / probation order
  3. Wait time
    - i. If convicted of summary conviction
      - ◆ Must wait 3 years after serving sentence
    - ii. Indictable offence
      - ◆ Must wait 5 years after serving sentence

## Conditional release

- Leave institution before warrant expiry (finishing sentence)
  - Returns to community, with conditions
    - If violate, revocation of release, and immediately sent back to jail
- Strict surveillance
- "nothing works article" - 1970
  - Releasing people into community isn't rehabilitating
  - It is just putting the community in danger
- In Canada
  - 1868 - System of Remission
    - Point system
      - ◆ Merit and Demerit points
        - ◇ Behaviour, work ethic, etc.
    - If enough points were accumulated, their sentence would be shortened
  - 1899 - Ticket of Leave Act
    - Independent of system of remission
    - Could be released early if the governor said so
      - ◆ Very arbitrary
    - Reduced sentence more than system of remission
  - 1958 - **Parole Act**
    - Originally based on hearsay... Applicant did not appear before board
      - ◆ Official sources
    - 3 provinces with parole boards
      1. Quebec
      2. BC
      3. Ontario
    - National parole board takes care of other provinces
    - 1973
      - ◆ Applicants were now allowed to appear before the board
    - If denied, reasons must be given in writing
      - ◆ So they can fix this before their next parole hearing
    - Less than 50% are successful
  - 1992 - Corrections and conditional release act
    - Replaced the parole act
    - Main goal = reintegration
    - "only most serious offenders should be incarcerated"
    - What does recidivism result from?
      - Pro-criminal values/cognitions
      - Pro-criminal associates
      - Antisocial personality characteristics in child/adulthood
        - ◇ Being impulsive
        - ◇ Lack of control
      - Poor socialization and inadequate parenting
      - Low levels of personal educational, vocational or financial achievement
    - Static factors
      - Unchanging
      - Ex.
        - ◇ Previous offences
        - ◇ Family, upbringing
        - ◇ Nature of current offence
    - Dynamic factors
      - Can be changed

- By changing them, we can reduce the recidivism
- Ex.
  - ◇ Education
- Ex.
  1. Parole
    - 2 types of parole
      1. Day parole
        - i) Eligible 6 months before full parole date or:
          - After serving 1/6 of sentence
        - ii) Works under minimal supervision
        - iii) Live in community facility
        - iv) Used to prepare for full parole
        - v) Is renewable for up to one year
        - vi) Granted by the national parole board
      2. Full parole
        - i) Eligible after serving 1/3 of sentence or 7 years
        - ii) Live at their own residence
        - iii) Serve remainder of sentence in community under guidance of parole officer
    - 7 factors when considering parole
      1. Criminal record
      2. Current offence
      3. Inmates insight into their behaviour
      4. Have they been involved in treatment and training
      5. Institutional behaviour
      6. Do they have previous parole violations
      7. What is the release plan
    - Criticisms
      - ◆ Lacking expertise... Parole board is made up of regular people
      - ◆ Decisions they make are behind closed doors...arbitrary
      - ◆ Parole board members don't get feedback on decisions they made
        - ◇ Only hear about the failures, not the positive stories
          - Makes them hesitant to release other people
  2. Cold turkey release
    - Straight from prison to the outside
  3. Temporary Absences
    - Leave institution temporarily
    - Decision made by prison administration
    - Can be made soon after admission to prison
    - 2 categories
      1. ETA
        - Escorted temporary absence
        - Eligible at any point
      2. UTA
        - Unescorted temporary absence
        - Eligibility depends on length and type of sentence (1/6 of sentence)
        - Few hours up to 15 days
    - 4 main reasons these are granted
      1. Medical reasons
      2. Compassionate reasons
        - Funeral
      3. Administrative
        - Paperwork... Things that were in place before you were put in prison

- Papers need to be signed,
  - ▶ Maybe for getting a job once released...
- 4. Family/community contact
  - To facilitate your re-integration as your are coming up on your release
  - Job interviews, etc...
- 4. Statutory release
  - For offenders who haven't been paroled
  - Must have served 2/3 of sentence
  - For federal inmates only (2 years plus a day)
    - ◆ Decision is made by Correction Services Canada (CSC) and they are supervised
      - Will have conditions when released
    - ◆ All cases are reviewed by the NPB (national parole board)
  - Highest recidivism rate
    - ◆ Due to breach of conditions

#### Preparing for release

- Case management
  - The process by which identified offender risks and needs are matched with services/resource
- 3 Objectives
  1. Provide monitoring during confinement
  2. Facilitate gradual release
  3. Prevent offender from reoffending

#### Faint hope clause (1976)

- Same year capital punishment was abolished
- Reduction of parole eligibility for Lifers
  - Instead of waiting the 25 years, they can be eligible before serving that time
- Eligibility
  - Must serve at least 15 years
- Onus is on the offender
- Jury of community residents
- Victim impact statements may be read
- Decision
  - Unanimous decision for reduction
  - 2/3 majority for the # of years to be served
- Purpose
  - Gives prisoners something to work towards
  - Encourage rehabilitation and cooperation
  - Allow non-dangerous offenders to be productive citizens
  - Deal with elderly offenders

#### Olson amendment (1996)

- Clifford Olson - serial killer
  - Kept applying for the faint hope clause
  - People felt this was bad
  - Led to this
- People who have committed multiple murders aren't allowed to apply for the faint hope clause

#### Final exam review

- In the gym mnt
- 60MC
- Short answers
- Chapter 6

- Topics
  - Different types of police misconduct
  - Police use of deadly force
  - Factors affecting police discretion
  - The police culture
  - The police personality
- Questions
  1. What factors can influence an officer's decision to arrests
    - Attitude
    - Not likely to appear in court
    - Seriousness of offence
    - Preference of victim
    - Relationship between victim and accused
  2. What section of the criminal code authorizes for Canadian police to use force
    - Section 25
  3. What are the 4 types of police coercion
    1. Verbal
    2. Physical
    3. Non-lethal
    4. Lethal
- Chapter 7
  - Topics
    - Arrest with and without warrant
    - Custodial interrogation
    - Confessions
      - ◆ Sometimes people do it when they are not guilty, 3 reasons
    - Jail house informants
    - Judicial interim hearing
    - Searches with and without warrant
  - Questions
    - Why was the case of R. V Feeney significant
      - ◆ Based on the Supreme Court's decision in Feeney, the police would now be required to gain prior authorization to enter the private of dwelling of an individual in order to search and collect evidence
      - ◆ In the case, they did an illegal search... Evidence was dismissed
    - What is the Doctrine of plain view
      - ◆ Don't need a warrant if the "thing" is in plain view
- Chapter 8
  - Topics
    - Organization of the court system
    - Different players
    - Criminal justice procedures
    - Arraignment preliminary hearing
    - Plea bargaining
    - Jury selection
    - Legal rights
  - Questions
    - According to stats from 06/07, what were the two most frequently heard offences in court
      - ◆ Impaired driving and common assault
    - What are the 5 types of plea bargaining
    - What is the "ducking stool"?
      - ◆ Wooden device, dunked into water to purify women
        - Women who talk too much, embarrass husband

- "burden of the court" hypothesis?
      - ◆ When the criminal decides to represent himself.... Now the court has to explain everything to the person
        - Results in time delays, etc
    - Peremptory challenge
      - ◆ Dismissing juror for no particular reason
- Chapter 9
  - Topics
    - Goals/purposes/objectives of sentencing
    - Mitigating/aggravating factors
    - Sentencing patterns
    - Issues in sentencing - sentencing disparity
  - Questions
    - Which of the following is an example of a split sentence
      - ◆ Fine and probation
- Chapter 10
  - Topics
    - Alternatives to prison
  - Questions
    - Which 2 countries have lowest rates of incarceration
      - ◆ Japan and india
    - What is the difference between a fine and restitution
      - ◆ Fine is paid to government / community
      - ◆ Restitution goes to the victim
        - ◇ Does not have to be financial... Can be a service
    - For adult offenders, maximum length of probation
      - ◆ 3 years
    - For youth
      - ◆ 2 years
- Chapter 11
  - Topics
    - History of prisons
    - Female
    - A few other things....
  - Questions
    - What was the design of the first-generational prisons
      - ◆ Can only see into the cell you're right in front of
    - Significance of Zimbardo's prison experiment
      - ◆ Can put normal people in a bad situation, and they will behave bad
- Chapter 12
  - Topics
    - Pains of re-entry
    - Other things...
  - Questions
    - Full parole eligibility
      - ◆ 1/3