

- Hollywood prefers to have criminals who are significantly (biologically or psychologically) different because movies have to have an ending, and it's easier to have a happy one if it's black and white and the villain is only bad.
- Most theories emerged between 1920's and 1960's

## Overview

- Criminologists rarely conduct experiments due to their vulnerable subject groups (criminals + victims)
  - Criminals are more likely to give biased answers based on what they think researchers do or do not want to hear

## What is criminology?

- "Criminology is the body of knowledge regarding crime as a social phenomenon. It includes within its scope the process of making laws, of breaking laws, and of reacting towards the breaking of laws. The objective of criminology is the development of a body of general and verified principles and other types of knowledge regarding this process of law, crime, and treatment" - Sutherland and Cressey
- Sutherland believed that the main reason for crime was differential association
  - Criminality is a learned behaviour acquired from peers, role models, etc

## How do we define crime?

- Legal: Crime is the behaviour prohibited by the Criminal Code
  - Crime is defined by the laws dictating behaviour
  - Focuses on the act itself
- Social norms: Crime is that behaviour which violates social norms
  - How anti-social behaviour (Ex. Causing physical or emotional damage such as bullying, graffiti, sexual harassment) goes against moral values and community standards
  - Focuses on the undesirable effects of criminal behaviour
- Social constructionist: Crime is that behaviour so defined by the agents + activities of the powerful
  - The belief that there is no "crime"; crime is created by the powerful, who have certain interests they seek to protect by criminalizing the poor
  - The law is being used to disadvantage certain groups
  - Focuses particularly on white-collar crime and on who decides what "crime" is
- *Our ideas about what crime is change over time and in different places; crime is not universal*
- Soon to be decriminalized in Canada: Marijuana, assisted dying, prostitution

## Euthanasia + Assisted dying

- A university student wrote his theses on assisted dying while it was still illegal. He would visit with and speak to ill patients who wished to be euthanized, and was present at their deaths. Got into ethical trouble due to the fact that he was technically a witness to a crime.
- The actions of Sue Rodriguez, a woman diagnosed with ALS, sparked a free debate in Parliament on the subject of doctor assisted suicide.
  - “If I can’t give consent to my own death, whose body is this? Who owns my life?”
- [CASE] R. Latimer killed his 12 year old daughter who: had cerebral palsy, was in severe pain, and who could not take anything stronger than Tylenol.
  - Convicted of first degree murder, sentenced to the minimum life sentence (parole after 10 years). Appealed to Supreme court which ordered a new trial, and charged the original prosecution with obstructing justice through jury tampering. The new judge believed that the mandatory sentence of 10 years was “cruel and unusual punishment” and sentenced Latimer to 1 year in prison and 1 year house arrest. The case was again taken to the Supreme Court, where the original life sentence with parole after 10 years was upheld.
- The court didn’t want to denounce punishment or encourage similar mercy killings.
- The difference between Rodriguez and Latimer is that Sue consented (and even asked for) her own death, while Tracey didn’t.

## How do we respond to crime?

- If crime is, as Sutherland said, learned, then how does one respond to crime?
  - Re-educate criminals (rehabilitation) through positive peer groups or role-models.
- Where can criminologists look for signs of potential criminality?
  - Poor family environment (abuse, jailed parent, etc), “bad apple” schools/classes/neighborhoods, criminal or delinquent groups.
- Opinions on crime response
  - Consensus (legal): Laws are the only fair way to respond to crime. The law is fair, and people are treated fairly under it. We all agree about the laws, and, because we all agree, we should all follow it and receive punishment if we don’t.
  - Interactionist (social norms): Laws are constantly changing. Laws result from interactions between individuals and groups (Ex. when a moral entrepreneur tries to convince others to believe their values). Concerned that being labeled as ‘deviant’ under the law creates stigma, and that stigma has negative social/economic effects (unemployment, untrue assumptions, etc)
  - Conflict (social constructionist): Skeptical or law as a response to crime because laws protect the interests of the powerful, and are directly in opposition of the lower class. The law is used to increase the power of the wealthy while criminalizing the poor (Ex. Ontario Safe Streets Act outlawed squeegee kids, affecting their source of income and punishing their efforts to be “employed”)

- Think: White collar crime, ie. Westray Mine Disaster
- Deepwater horizon + Lac Megantic. When such accidents occur, they're referred to as disasters or accidents instead of crimes. Serial/spree killings are associated with adjectives like "evil, terrorist, deplorable, etc." Different language is applied when corporations are involved in crime. The powerful are treated differently than the original.

## How do we study crime?

- Laws
  - Criminal Code
  - Parliamentary statutes
- Norms
  - Rules and expectations by which society guides the behaviour of its members
  - May 'prescriptive' (shouldn't do) or 'proscriptive' (should do)
  - If we violate norms, we feel ashamed or guilty - social pressure dictating what we should or shouldn't do
- What do criminologists study?
  - Abolitionism/alternatives to criminal justice
  - Crimes of the powerful
  - Criminological theory and socio-legal studies
  - First nations, racism, and injustice
  - Gender, sexuality, and injustice
  - Policing governance and insecurity
  - Popular culture, media, and technology
  - Prevention and intervention
  - Prison, punishment, and social controls
  - Youth, age, and injustice

## How do we know about crime? (Sources of criminological knowledge)

- The news
- First-hand accounts / word of mouth
- Police records / court cases / official documents
- Pooling knowledge (soc, anthro, psych, poli sci, bioecon, law, etc)
- Surveys, interviews, stats
- Criminology focuses not only on the study of crime, but how society interacts with criminals
  - Paul Bernardo/Karla Homolka: Crafted a sense of fear in Canadian Society. Criminology studies how crime affects society/public response

## Crime vs Deviance

- Deviance violates social norms; subject to social control

- Not all crime is deviant and deviance is crime
  - Criminologists study deviance because not all criminologists agree on the definition of “crime”

## Moral entrepreneurs

- Individual or group who aims to influence the norm

## History of Criminology

### Middle Ages

- “Discipline and Punishment” (Foucault). Damians the regicide.
- People who violated religious norms or social practices were believed to be witches or possessed by demons and were burned at the stake
- An estimated 100 000 people were prosecuted for witchcraft across Europe in the 16th and 17th centuries
- In addition to church authorities, secular rules were absolute and capital punishment for petty offences was common
  - Up to our time, people were punished frequently and harshly. There was no such thing as “prison”
  - Trial by ordeal (placing the decision in God’s hands)

### Classical Criminology

- During The Enlightenment, a more rational (as opposed to supernatural) approach was adopted
- People were believed to be rational and acted of their own free-will; therefore, punishments only needed to be sufficiently painful enough to outweigh the pleasure of committing the crime
- Shift away from corporal to carceral punishment
- Population boost. Urban cities: anonymity, loss of tight-knit communities, more difficult to pinpoint outcasts or deviants. Demographics changed
- Shift from feudalism to capitalism. Self-sufficiency and individualism
- Influence of the church began to wane

### Cesare Beccaria (“On Crimes and Punishment”)

- The right of governments to punish offenders derives from a contractual obligation among the citizenry not to pursue self-interest at the expense of others
- Punishment must be committed by uniform and enlightened legislation
- The punishment must fit the crime. Punishment must be swift, certain, and severe to deter crime
- Imprisonment must replace torture and capital punishment as a standard of punishment

## Jeremy Bentham

- Hedonistic Calculus: the principle that rational calculators will choose of their own free-will to be law-abiding if the pain of punishment outweighs the pleasure of committing a criminal act

## Positivist criminology

- Scientific discoveries, particularly in biology, were being applied to human behaviour
- Instead of free-will, human behaviour was believed to be a function of external forces
- Looking for scientific reasons for the causes of crime, including: social (wealth/class), political (war/famine), personal, and psychological
- Abnormality was associated with criminality

## Phrenology: Franz Gall (1758 - 1828)

- Charted out the “normal” diagram of a human skull
- If you had a bump on your head (a physical abnormality), this could be taken as a sign of possible future deviance

## Lombroso and the born criminal

- Drew on physiognomy and social Darwinism to develop theories of anthropological criminology
- Studied the cadavers of executed criminals, soldiers, and inmates to determine whether they were physically similar
- Born criminal: criminality is genetically inherited
- Atavistic traits: Determined that criminals are physical throwbacks; criminals are distinguished by multiple physical anomalies (ie. sloping forehead, ears of unusual size, asymmetry of face or cranium, etc)
  - Problematic: Did not consider that all people have physical differences; what is “abnormal” in Northern Italy is normal in Southern Italy. Subjective study.
  - Leads to marginalization of people based on certain traits that may be characteristic of certain races. Selective breeding of traits (eugenics). Not accounting for the “nurture” component of development.

## The Jukes and Kallikaks

- Someone named Jukes had two relationships: one legitimate marriage and one affair with a barmaid. The children he had with the barmaid became criminals -- as did their own children
- There is doubt as to the legitimacy of the story (whether the barmaid existed). Stories/photos have been altered through the years

- The story supports the concept of “born criminals” (criminality being genetically inherited) without taking into account the environmental, physical, situational, and familial forces present

## What does this tell us about criminology?

- Criminology is historical and subject to change. It is not a perfect science, and it is very open to the influences of the times. The church, the Enlightenment, then the Scientific and Industrial revolutions influenced how crime and criminals were understood and responded to.

## Theories of Crime and Criminality

- What is a theory? A theory is a set of interrelated propositions, constructed and fitted together logically, which claims to explain one or more aspects of the world around us
- Theories are stories we tell each other in order to make sense of the world around us
- Theories outline paths that lead to particular outcomes, or they explain why things happen

## Evaluating a theory

- Scope: The range of phenomena it can explain
- Accuracy: How it matches with empirical data
- Parsimony: Whether it is the most logical and simple answer (Occam’s Razor: The simplest theory is usually the most accurate)
- Can the theory be falsified?
- We will see how criminological theories determine
  - Who is deemed criminal?
  - Which expert(s) should deal with the criminal?
  - What should be done to reduce crime?

## Biological theories

- Biochemical imbalances (the twinkie defence)
  - Dan White murdered 2 city officials. His defence was that his diet of junk food (twinkies) caused hypoglycemia (known to have adverse biological effect on the brain). This biochemical imbalance led him to commit two murders. He was found guilty of manslaughter instead of 1st degree murder.
- Testosterone
  - Known to increase aggression
- PMS
  - May lead to antisocial aggressive behaviour
- Neurological impairments
  - Abnormal ECG levels are attributed to violent crimes

- Tumours, injuries, and diseases
  - Contribute to hallucinations, psychotic episodes, and personality changes
- Twin and adoption studies
  - Children are more similar in behaviour to their biological parents
  - Identical twins are more aggressive than fraternal twins.
- These theories are not popular with criminologists because if humans are rational beings, then attributing crime to biological factors rather than choice takes away from the severity of their actions.
- If the only reason for committing crimes is in our DNA, then there is no such thing as criminology. Criminologists prefer to explain crime with social causes.
- Biological theorists don't claim that one single biological factor is the reason for criminality. If someone has a genetic predisposition to aggression and are exposed to environmental stimuli, they are more likely to commit crime.
- These theories focus on predominantly on violent crimes, which can be solved through: Eugenics, behaviour modification, rehabilitation / therapy versus incarceration.

## Psychological theories

- Psychodynamic
  - Focus on the development of the unconscious personality in youth. Traumatic childhood, abuse, etc.
- Behavioural
  - People rolemodel after others. Learned behaviour.
- Cognitive
  - Individual reasoning processes influence behaviour
- Criminologists dislike theories because if the problem is inside somebody's brain, the problem is not in crime rates or social injustices
- Attributes criminality to the individual. Focuses on violent crime.  
Psychologists/psychiatrists would treat criminals with: Therapy and medications

## Social ecology/Chicago school (Paris + Burgess)

- Crime rates reflect rapid social change.
- Certain areas of the city were more prone to crime (downtown/ghetto).
- These areas were characterized by recent immigration groups (regardless of ethnic group), poor housing, factories.
- Community deterioration (disorder, poverty, alienation, disassociation, fear of crime) who both evidence of and contributed to high crime rates.
- According to this theory, criminals are predominantly poor people (thrust into poverty by the environment) rather than individuals. Social conditions as being the primary reason for crime. Focuses on street crime (theft, drugs, vandalism, gangs) rather than focusing solely on violent crime
- Ways to deal with crime: Urban planning, improved housing

## Learning theories

- Criminal behaviour is learned, and that learning process occurs through interactions with others as individuals learn criminal techniques, motives, and rationalisations.
- Criminals learn definitions favourable to breaking the law from peers or role models.
- Behaviour learned from peers, family, social media, etc. Typically, adolescents are vulnerable to learning behaviour such as theft, vandalism, drugs, etc, and how to commit the crime without getting caught.
- Motives for (adolescents) to commit (learned) crimes: Recognition, popularity, money, rebel against power. Rationalize it by justifying their actions (not a big deal, everybody's doing it, it's not fair, etc)
- Response is typically tough on crime/scared straight: Boot camp, YCJA

## Strain theory

- Conflict or disparity between culturally specific goals (wealthy, education, marriage, etc) and institutionally available means to achieve the goals.
- Access to means is stratified, but goals are universal.
- Strain theory explains: Drug addiction, alcoholism, financially motivated, crime, incorrectly collecting government funding.
- Ways to respond: Get rid of unjust processes: Give everybody the institution means to succeed
- Merton's typology of adaptation to anomie:

	Culture Goals	Institutionalize Means
I. Conformity	+	+
II. Innovation	+	-
III. Ritualism	-	+
IV. Retreatism	-	-
V. Rebellion	+ -	+ -

## Labelling theories

- Criminality is a social reaction to deviance
- We all have a master label/status (ie. Student, employee, mother/son).
- When a deviant act is committed and a person is labelled as 'criminal,' it may change that person's master status.
- As a result, this new master status (ie. criminal) is internalized and leads to further deviance; this is called the self fulfilling prophecy

- Belief that there is no such thing as crime; however, when people are labelled as criminals, they are more prone to commit deviant acts.

## Criminal Law

### General

- “Legally, a crime is defined as ‘an intentional act or omission in violation of the criminal law, committed without defense or justification and sanctioned by the state’ (Tappan 1946:10)” p. 42
- Without law, there is no crime
- Development of criminal law in Canada
  - Common law
    - Laws created by judges
    - *Stare decisis* (to stand by previous decisions)
    - Basis for criminal law in Canada
  - Statutory law
    - Laws created by parliament
    - Reflect existing social conditions and behaviours that are of concern
      - E.g. anti-terrorism laws after 9/11
- Functions of criminal law
  - Provide social control
  - Discourage revenge
  - Express public opinion and morality
  - Deter criminal behaviour (Effectiveness is debatable)
  - Maintain social order
  - Punish crime
- Process of criminalization
  - Identifying problematic behaviour
    - The most important part
    - Who gets to define this?
  - Defining certain behaviour as crime through legislation
  - Regulating this behaviour through law enforcement
  - Punishing those found guilty in a court of law
- Elements of *corpus delicti*
  - Elements that must be proven for a conviction
    - Legality (Can't be convicted of a crime that isn't contained in the laws)
    - Mens reas
    - Actus reus
    - Concurrence of mens rea and actus reus
    - Harm
    - Causation



- He was acquitted; judge said that this wasn't how justice worked
- Actus reus
  - Assumption that the actor alone is responsible for his or her actions
  - Could include acts of commission or omission
    - Commission: presence of an act
      - Ex. Assault
    - Omission: failure to act where there is a duty
      - Ex. criminal negligence causing death
- Legal defenses to a crime
  - Two general categories of legal defences
    - Excuse defences
      - The defendant admits to the criminal act but argues cannot be held responsible for the act
        - Age
          - Rests on ability to formulate required intent
          - 3 age based stages of criminal responsibility
            - Children under 12: no criminal responsibility
              - Doll incapax
            - Youth 12 - 17: limited criminal accountability
              - Youth criminal justice act
            - Adults 18 and over: full criminal accountability
      - Mental disorder
        - Accused lacks mens rea to commit the offence
          - Incapable of appreciating the act or of knowing it was wrong
        - Must be a "disease of mind"
          - Self-induced states are excluded
          - Lasting condition that impedes the person's ability to see consequences of actions
        - Burden of proof rests with party who raises issue
        - Not criminally responsible on account of mental disorder (NCRMD)
      - Automatism
        - Unconscious or involuntary behaviour
          - Not in conscious control of bodily movements
        - Rarely used
          - Requires strong evidence from witnesses
        - R. v. Parks (1992)
          - Family has sleep issues
          - Underwent stress at work

- Sleep walked/drove to parents' house to attack them
    - Mistake of fact
      - Illegal act committed under mistaken belief about circumstances
      - Successful if:
        - Mistake was honest
        - No offence would have been committed if the circumstances were as the accused believed
      - Limited use of defence
    - Mistake of law
      - Ignorance of the law is no excuse
      - Generally raised on appeal based on:
        - Alleged misinterpretation of law
        - Incorrect instructions to jury
  - Justification defences
    - The defendant admits to the criminal act but argues the act was justified
      - Necessity
        - Crime committed because:
          - Danger caused by forces of nature or human conduct other than threats of harm
        - The accused:
          - Was in imminent peril
          - Had no legal alternative
          - Harm done was proportionate to harm avoided (most important)
        - Complete defence because no mens rea
      - Duress
        - Crime committed because:
          - Threat of bodily harm or imminent death
          - No realistic alternative action
        - Actions "blameworthy but forgivable"
        - Complete defence because no mens rea
      - Self-defence
        - Use of force against another person to defend self, others, or property is justified
          - Force used must be proportionate to threat
          - Excess force could result in criminal charges
        - Battered woman syndrome



- 1908 Opium act was enacted, making possession, manufacturing, selling, importing, etc illegal, resulting in the emergence of the black market for it
    - 1911 stronger crackdown on it alongside other drugs like cocaine and morphine
    - 1920 cannabis was added to the list
  - Crack in US
    - Crack cocaine had higher sentences than powdered cocaine; the former was more commonly used by impoverished minorities, the latter by wealthy white people
    - 5g of crack cocaine = min 5 year sentence
      - Reasoning
        - More addictive
        - Provoked violent behaviour
        - Easier to get because of cheap cost
        - Adversely affects fetuses
        - More easily available to youth
    - 500g of powdered cocaine = min 5 year sentence
- Results of drug laws (Stats Can)
  - In 2013, 67% of all police-reported drug offences involved cannabis, followed by cocaine (16%), crystal meth (4%), heroin (1%), ecstasy (>1%)
  - BC consistently has the highest rate of drug crime
    - On the coast; easy to import drugs
    - Wealth disparity between rich and poor
    - Opium history; high asian organized crime rates
  - Rate of persons accused is highest for youth 18-24
  - Current drug laws contribute significantly to Canada's prison population
    - Drug users may end up in prison for drug offences or drug related crimes
  - Of drug-related cases completed in adult criminal court that resulted in findings of guilt, 1 in 3 involved a sentence of custody
- Does criminal law reduce or increase drug related harms?
  - Criminal penalties are counterproductive because
    - Large seizures can have negative effects by driving up the price, which may cause drug users to look for more efficient means to use drugs, such as by injection, leading to increased risk of HIV or Hep C; alternatively, those who can no longer afford the drug may shift to another drug, or commit crimes to obtain funds
    - Little evidence that laws deter drug use
      - Drug use in Netherlands is lower than the US, and has no drug laws
      - Drug use is based on culture, friends, image of drugs, government's word on drugs, and user's economic situation
    - Prohibiting the supply of a drug forces users to buy it on the illegal market

- The funds generated by the black market help finance criminal, terrorist, and insurgent groups, contributing to instability, violence, and corruption
    - Law enforcement only marginally reduces supply of drugs, but doesn't affect availability of price
- Other consequences of prohibition
  - Violation of rights through the war on drugs
    - Surveillance in schools and on homes, police raids of private dwellings, increased powers of search and seizure, employee drug testing
  - Sends people to jails and impacts ability to get jobs
  - Money spent on enforcing drug laws and building prisons could be spent on programs to reduce problematic drug use
  - Doesn't address causes of problematic drug use, such as alienation, homelessness, physical and sexual abuse, mental illness, trauma, etc
- Does prohibition work?
  - Abraham Lincoln and Einstein think not; in fact, they believe that it's problematic
- Why continue prohibition?
  - Who benefits?
    - Tough on crime politicians trying to get elected
    - Police organizations who receive funding
    - Crime control industry
  - What if we look at drugs as medical, rather than a criminal, issue?
- Options for dealing with psychoactive drugs
  - Minimal restrictions on production, sale, and possession
    - Ex. Tea and coffee
  - Impose testing, quality control and labelling standards
    - Ex. Over the counter cold and allergy medications
  - Limit who can produce and buy drugs, as well as where and when drugs can be consumed
    - Ex. Alcohol and cigarettes
  - Make drugs available only through prescription
    - Ex. Sleeping pills and antidepressants
  - Involve criminal law only when the actions of a person are impaired by drugs
    - Ex. Driving under the influence
  - Ban or make drugs illegal
- Typology for dealing with drugs
  - Criminalization: Includes manufacturing, distributing, possession
  - Legalization: Regulated
  - Decriminalization: Elimination or reduction of penalties, usually for personal possession
  - Harm reduction: Attempts at reducing physical, psychological, and social harm associated with drug use; drugs as a health rather than criminal issue

# Crime Control Philosophy and Policy

## The criminal justice system

- Police
- Courts
- Corrections

## Philosophy and policy

- Justice model
  - *Offenders must be punished fairly and with justice through prisons sentences that match the seriousness of their crimes*
  - Problem identified: the existing cjs was discriminatory, treating members of marginalized groups more harshly, and was unable to deliver justice to offenders
  - Goals: to eliminate discretion within the cjs and to protect the legal rights of the accused, ensuring the cjs is guided by the ideals of justice, fairness, and the need to protect human rights and dignity
  - Practical response: the elimination of discretionary powers held by prosecutors, the judiciary, and parole boards; all individuals convicted of a certain crime would receive the same sentence and treatment
- Deterrence model
  - *The application of punishment is to affect future behaviour rather than inflict pain*
  - Problem identified: a biased and barbaric system
  - Goals: prevent future crimes by appealing to the rational choice of individuals
  - Practical response: swift, certain, and severe punishment
    - Problems: Trial within a reasonable time (argument for man (Jordan) suspected of selling cocaine) 18 months to go to trial for less serious cases, 30 months to go to trial for more serious cases was the change as a result of this case.
    - Trials that take too long are now called challenged via a “Jordan challenge”
    - Problems: Offence punishment varies even between the same crime (ie. theft can be 6 months, to two years of imprisonment)
- Selective incapacitation model
  - *To incarcerate the worst and repeat offenders in order to reduce crime and increase community safety*
  - Problem identified: a low percentage of offenders accounts for a high percentage of crimes
  - Goals: prevent future crimes by incapacitating the worst offenders, thereby ensuring an increase in community safety and savings

- Practical response: separate high-risk offenders from low risk ones and incarcerate them for a long time (indefinite)
  - How to be labeled as a dangerous offender (their convicted offence is a serious personal injury offence and the offender constitutes a threat to the life, safety, and physical or mental well-being of other persons)
    - Pattern of repetitive behaviour by the offender that's likely to repeat in the future and cause harm to another
    - Pattern of persistent aggressive behaviour that demonstrates indifference to their actions
    - Have actions that are of such a brutal, inhuman, and unexpected nature, that they have the danger of doing something again
    - In the case of sexual offenses, demonstrates inability to control sexual impulses in a way that will harm others
  - Paul Bernardo: Famous Canadian dangerous offender
  - Clifford Olson: Most famous Canadian dangerous offender (murdered 11 children)
    - Cash for bodies deal: Was offered money in order to find the bodies of the children he killed as evidence against himself
  - Johnson Aziga: Convicted of first degree murder through transmission of HIV of two sexual partners, whom he didn't inform. Seven others were infected.
- Rehabilitation model
  - *To positively intervene in the life of an individual criminal in order to effect positive change*
  - Problem identified: criminals don't freely choose their behaviour, so punishment is the wrong policy
  - Goals: rather than focusing on the criminal act, respond to the needs of the actor to facilitate change
  - Practical response: individualized treatment to change the offender
    - Problems: resource issue, compulsion; if a person were compelled to go to a treatment, it might not always be for the best. Are they required to participate in treatment, or did they make the choice to get better? Is that the most effective way to treat someone?

## Crime Rates, trends, and Perceptions

Side note:

- Between 2013 and 2014, crime rate dropped 5%. During that same time, violent crime rate dropped 5% as well. Of the three major categories of crime (property, violent, other), property crime decreased the most. During this time, the economy was starting to improve. 20% of crime in Canada are violent crimes. Canada's homicide rate is staying the same. The most common type of property crime is theft under \$5000.

## Crime rates in Canada

- The crime rate in Canada has decreased in recent years; between 2004 - 2014 the crime rate decreased by 34%
- All major categories of crime (violent, property, and other) declined in that decade by 26%, 40%, and 15% respectively.

### EXHIBIT 4.1 The Social Construction of Crime Statistics: Selected Elements

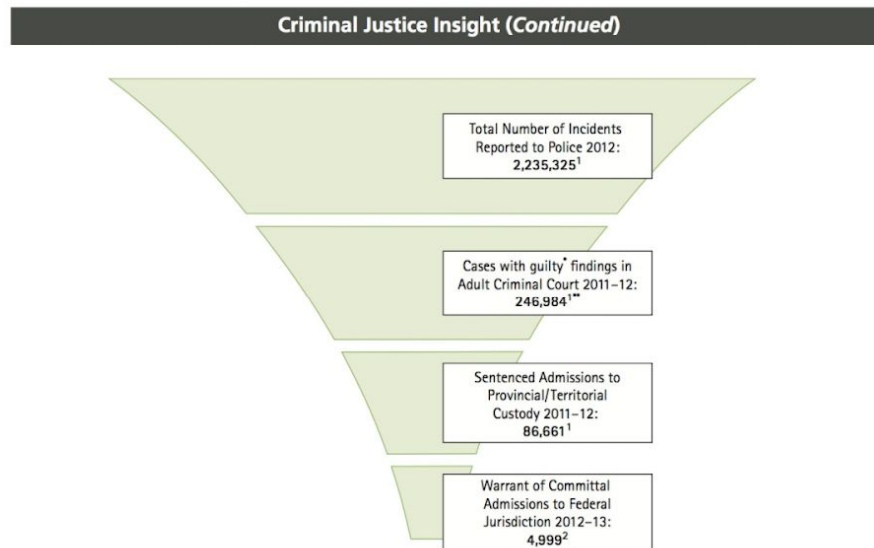
When people say that crime statistics are socially constructed, they are generally referring to the belief that official crime statistics are not an accurate portrayal of crime in society. Instead, they are the "outcomes of social and institutional processes" (Coleman and Moynihan 1996:16). According to social constructionists, crime statistics are not a true representation of all crimes that occurs in society (e.g., the overemphasis of street crimes and the de-emphasis of white-collar crimes). Rather, official crime statistics reflect attitudes toward certain types of behaviour that change over time. A number of factors influence the production of official crime statistics, including:

- The reasons why the behaviour in question was criminalized in the first place
- Changes over time in society's attitudes about what is acceptable and unacceptable behaviour
- Which social groups created the laws, the infraction of which is defined as criminal
- The criminalization of behaviour through a process of social perception and reaction as interpreted and applied by the various criminal justice agencies
- Police responses that vary over time with the priorities of the police operations
- Changes in the public's reporting practices

- 
- Police reported crime stats in Canada (2014)
  - Violent crimes: 21%
  - Property crimes: 61%
  - Other crimes: 18%
- **Crime rates**
  - Crime rate = crimes / population x 100 000
    - Makes comparison possible
  - In 2014, there were over 516 homicides reported, an increase of 4 over the previous year
    - There was also a population increase, which was why the crime rate remained the same
  - The homicide rate was 1.45 per 100 000 population
  - Therefore, the homicide rate was the same in 2013 and 2014
  - In both 2013 and 2014, Canada experienced its lowest homicide rate since 1966
- Factors affecting police-reported crime stats
  - Demographics
  - Public reporting rates to police
  - Local police policies and procedures
  - Legislative changes
  - Social and economic factors
  - Technological change
  - Trust
- Alternative sources of data
  - Victimization surveys
    - Not all victims report crimes to police



- Homicide
  - Homicide is a unique crime because
    - It is widely perceived to be the most serious of all criminal acts
    - It is more likely than any other crime to be discovered by the police and to be the subject of a police investigation
      - Missing or murdered indigenous women and street sex workers are more vulnerable, and have crimes relating to them more difficult to solve
    - Unlike other crimes, the definition of homicide is fairly consistent across nations
    - Most victims (87%) knew their killer
- Assault
  - The most frequently occurring crime in the violent crime category
  - Males more likely than females to be the victim of a physical assault
  - Most perpetrators were strangers and the most common location of the incident was at a commercial establishment (ie. bars, concert areas, etc)
- Other crime
  - The greatest decrease in this category was prostitution offences (down 48%)
- White collar crime
  - Describes crimes of fraud carried out during the course of a seemingly legitimate occupation
  - Other categories of crime include:
    - Cybercrime
    - Hate crime (Jews consistently has been the highest target in Canada)
    - Organized crime
    - Environmental crime
- Reasons crime stats change
  - Report sensitive: public may or may not be willing to report crimes, which then determines whether or not we know about it
  - Policing sensitive: police might prioritize different sorts of crimes
  - Definition sensitive: crime rate changes if the law does
  - Media sensitive: media changes perceptions of the public and their willingness to report
- **The criminal justice funnel**
  - Crimes committed
    - Refers to all crimes committed, including the ones we aren't aware of
  - Crime reported
  - Crimes cleared
  - Convictions
  - Custodial sentences



**FIGURE 1.8** The Criminal Justice Funnel

The criminal justice funnel reveals that at each stage in the criminal justice system, fewer numbers of people are processed at the next stage.

- Numbers don't always reflect the true picture of what's going on

## Fear of crime

- **Fear of crime doesn't correlate with crime rates/likelihood of crime occurring**
- *Intense fear*: suffered by victims of crime and their family, friends, neighbors; fear comes from physical injury, property loss, economic costs, psychological trauma
- *Concrete fear*: fear of a specific crime, especially a violent one
- *Formless fear*: a general feeling that one is unsafe
- Canada's improving crime stats
  - Professor at UoT
    - Crime stats have been improving since 1991, long before Harper's tough on crime policy
    - In line with decline of crime in other western countries
  - Police chief
    - Police doing better at targeting specific crime areas
  - Professor at UoO
    - Better technology (i.e. alarms, security systems, etc)

## Crime prevention strategies

- Routine activity theory
  - Lack of capable guardians (lack of enforcers/security)
  - Suitable targets
  - Motivated offenders
    - All three leads to crime

- Situational crime prevention\*\*
  - Guard potential targets
  - Control the means to commit crime
  - Monitor potential offenders
    - Crime prevention through environmental design (CPTED) is related. The idea of affecting the environment in ways that'll make it more difficult to commit a crime.
  - Increasing perceived effort
    - Target hardening: slug rejector devices, steering locks, bandit screens
      - Set up a protective shield around what you want to protect. Can be physical or not.
    - Access control: parking lot barriers, fenced yard, entry phones, concert venue entry/exit points
    - Deflecting offenders: bus stop placement, tavern location, street closures, RCMP car placement
    - Controlling facilitators: credit card photo, called id, gun controls
    - Entry/exit screening: automatic ticket gates, baggage screening, merchandise tags
    - Formal surveillance: burglar alarms, speed cameras, security guards
    - Surveillance by employees: pay phone location, park attendants, cctv
    - Natural surveillance: defensible space, street lighting, cab driver id, signs, changing the atmosphere of the location (i.e. planting a garden in front of a store)
  - Reducing the anticipated rewards
    - Target removal: removable car radio (take the radio home with you at night), women's refuges, phone card
    - Identifying property: property marking, vehicle licensing, cattle branding
    - Reducing temptation: gender-neutral phone lists, off-street parking
    - Denying benefits: ink merchandise tags, PIN for car radios, graffiti cleaning
  - Inducing guilt or shame
    - Rule setting: harassment codes, customs declaration, hotel registrations
    - Moral condemnation: shoplifting is stealing, roadside speedometers, "idiots drink and drive"
    - Controlling disinhibitors: drinking age laws, ignition interlock, server intervention
    - Facilitating compliance: improved library checkout (if the line's too long, you could try to just walk out, they're too busy, etc), public lavatories, trash bins

# Midterm 2 content

## Police

### Historical development

- Prior to Norman Conquest (pre-1066)
  - Every person was responsible for assisting neighbours and protecting the village from thieves or other criminals
  - Interdependence required
- Pledge system (post-1066)
  - Groups of ten families known as tithings were set up in villages to police their own minor problems
  - Ten tithings formed a hundred, whose affairs were looked after by a constable appointed by the local nobles
  - The constable, considered to be the first police officer, dealt with the most serious law violations
  - The hundreds were then amalgamated into shires and the top law enforcement officials became shire-reeves (sheriffs). This individual was appointed by the Crown or local landowner to supervise a specific area to maintain law and order and apprehend law violators
  - System based on feudal system (from interdependence to individual landowner property protection)
- Constable watch system (statute of westminster, 1285)
  - Created to protect the property of people in larger towns and cities
  - One constable per parish, who appointed watchmen
  - Watchmen patrolled predominantly at night and were responsible for protecting citizens from robbers, ensuring citizens were safe, and detecting fires (not just protecting land belonging to nobles)
  - Unpaid watchmen = duties not always performed as instructed
  - Statute required all males between 15 and 60 to possess weapons and to be ready to participate in the hue and cry, or to come to the assistance of a watchman when assistance was needed
    - If they didn't respond to offer aid, then they'd be held responsible for helping the offender
  - Exists within a framework of law for the first time
- Bow street runners (mid-1700s)
  - London had a growing crime problem
    - The industrial revolution dramatically increased the size of urban populations while at the same time, traditional forms of social control broke down.

- Social problems such as poverty, crime, and disorder began to increase (competition for resources).
    - Concerns such as the rise of the dangerous class and crime and disorder drew the British Parliament into a debate about the best way to deal with criminal activity
  - Henry Fielding, Chief Magistrate of Bow Street, introduced the Bow Street Runners in 1748. Their duties were to catch criminals and recover stolen property.
  - City officials were given control of the military
    - Disproportional use of powers
    - Improper training for how to deal with domestic policing
    - Used police force for own personal interest
    - Provoked suspicion in citizens
- Peel's principles (1829)
  - Sir Robert Peel and the London Metropolitan Police Act
    - Lead to the creation of a 3200 member professional police force which replaced the various existing systems
    - They were recognized by their uniform (blue coats and top hats) and had a military structure (ranks)
      - Military wore red
    - Became the template on which most police forces in the Commonwealth are based
  - Their major responsibility was to serve the public by engaging in the prevention and detection of crime. This approach to policing was based on the principle of policing by public consent
    - For the first time, there was prevention instead of just reaction
  - **Police are the public, and the public are the police**
    - **The police were no more powerful than the public they served. Police force was to serve the public as opposed to simply upholding laws or serving just the wealthy.**
  - Peel's principles:
    1. The basic mission for which the police exist is to prevent crime and disorder
    2. The ability of the police to perform their duties is dependent upon public approval of police actions
    3. Police must secure the willing cooperation of the public in voluntary observance of the law to be able to secure and maintain the respect of the public (community policing centers to develop relationships with community)
    4. The degree of cooperation of the public that can be secured diminishes proportionately to the necessity of the use of physical force

5. Police seek and preserve public favour not by catering to the public opinion, but by constantly demonstrating absolute impartial service to the law
  6. Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient
  7. Police, at all times, should maintain a relationship with the public that gives reality to the historical tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.
  8. Police should always direct their action strictly towards their function and never appear to usurp the powers of the judiciary
  9. The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it
- The NWMP (1873)
    - Created to police and control the lands purchased from the Hudson Bay Company by the federal government in 1869
    - Has a paramilitary structure (military and police duties)

### Police and technology

- Police introduce technology as it develops into their operations
- Telephones, patrol vehicles, two-way radios, fingerprinting, criminal record system, toxicological analyses, etc were introduced in the early 20th century
- This contributed to a shift from preventative policing (as in the Peel model, the goal of which was to prevent crime) to reactive policing

### Historical development (cont)

- Reactive policing (1920 - 1950)
  - Reactive/professional policing was characterized by
    - Centralization of police authority
    - Creation of specialized crime-fighting units such as homicide and robbery
    - Move from foot patrols to motorized patrols
    - Patrols based on criteria such as crime rates, calls for service, and response times
    - Recruited new officers through psychological testing and civil service tests
    - Reactive, incident-driven responses to crime
  - Critique of the professional model
    - Police tactics at the core of the professional model (random patrol, rapid response) don't control crime or reduce fear of crime

- Even if police arrest suspects, it is unlikely that most individuals convicted of a crime will serve time in a correctional facility
- The role of technology has changed how the police operate as well as the types of criminal activity police have to monitor
- Private security is surpassing the police as a means to control crime, fear and disorder

## What are police supposed to do?

- Criminal law enforcement
  - Police are responsible for enforcing the law and detecting those who violate it
  - Try to prevent crimes, investigate crimes and identify suspects, arrest suspects, and assist prosecutors in developing a case against defendants
- Order maintenance
  - Maintain public order so that the public can go about their daily activities without being fearful of crime
- Service
  - Resolving arguments between neighbours, responding to noise complains, directing traffic, participating in community service activities, etc

## Police legitimacy

- Factors police are rated on by the public
  - Being approachable
  - Ensuring the safety of citizens
  - Enforcing laws
  - Treating people fairly
  - Responding promptly to calls
  - Supplying information on reducing crime

## Police in Canada facts

- Three levels of policing: municipal, provincial, federal
- 66% of police officers are municipal
- Toronto has the largest municipal police force in Canada
- Ottawa employs one of the lowest numbers of police officers per 100 000 people
- Increasing focus on selecting police officers from diverse backgrounds in order to better understand, communicate with, and gain the trust of the communities they serve
- Historically, both women and members of visible minorities faced significant barriers to unemployment within police organizations
- In 1980, 2.2% of police officers in Canada were women; today, it's over 20%
- Numbers of visible minorities have not increased as substantially (9%)

## Indigenous policing

- The federal government created the First Nations Policing Policy in June 1991 to allow indigenous communities more control over policing on reserves. Goals included
  - Helping improve social order, public security, and personal safety in indigenous communities
  - Establishing indigenous police services that were professional, effective, and responsive to the particular community's needs.
  - Ensuring that indigenous people's enjoyed the right to personal security and public safety
  - Supporting indigenous communities in acquiring the tools to become self-sufficient and self-governing

## Practice of policing

### Criminal investigations

- Investigation is the second main function of the police
- 80% of all arrests of suspects are made by patrol officers rather than detectives
- Advances in technology, such as DNA analysis, have allowed police to maintain high clearance rates for certain crimes (ex. murder)
- Majority of murders (76%) solved in less than a week of their occurrence between 2003 and 2013
- [CASE] Ardeth Wood. Inspired one of the largest searches in Ottawa's history. Disappeared Aug 6 (2003), found Aug 11 (2003). Unusual in that it took a long time to solve. Chris Meyers was tried and convicted of her murder.
- Missing women inquiry (Vancouver)
  - Initiated as a result of a serial killer (Pickton). Multiple women (accused of 49 murders). Why did this happen? What went wrong?

### Patrol

- Patrol is the main function that the majority of police do
  - Preventative patrols: to deter criminality
  - Reactive patrols: to respond to criminal incidents after the fact
    - Potential problem: displaces crime, associates certain communities more with crime
- Activities of patrol officers
  - Deterring crime by maintaining a visible police presence
  - Maintaining public order within the patrol area
  - Enabling police departments to respond quickly to law violations or other emergencies

- Identifying and apprehending law violators
- Aiding individuals and caring for those who cannot help themselves
- Facilitating the movement of traffic and people
- Creating feelings of security in the community
- Obtaining statements from crime victims and witnesses
- Arresting suspects and transporting them to a police facility for supervision
- Goals of patrol
  - To maintain a police presence in the community
  - To respond quickly to emergencies
  - To detect crime

## Policing (1960's)

- Goals of professional policing
  - Preventative patrol
  - Rapid response rates
  - Criminal investigations
- By the 1960's, it became clear that the goals of the police were not met very well
  - Social/racial unrest, civil rights movements, crime boom
  - Interaction became reactionary and confrontational instead of relationship building
  - Criticized for efficiency. Rapid response rate didn't make catching criminals any more effective
  - Multiple experiments conducted by criminologists as a result in order to improve policing practices
- Kansas City Preventive Patrol Experiment
  - *Does random preventative patrol deter crime?*
  - During the one year evaluation, police studied the effects of preventative patrols by applying three different patrol strategies in different areas
    - Reactive beats
      - No patrolling; police only reacted to 911 calls
    - Preventive beats
      - Increased preventive control; greater police presence and more aggressive patrolling
    - Control beats
      - Normal level of patrol
  - Hypothesis: Preventative/proactive beats expected to reduce crime rate the best and improve citizens' feelings of safety.
  - Results showed that:
    - Crime rates remained constant
    - Crime reporting rates remained constant
    - The level of fear of crime remained constant
    - Opinions about police enforcement remained constant

- Respect for police increased in the control beat
  - Conclusion: Aggressive patrolling has little effect on crime
- Kansas City National Institute of Justice
  - *Does rapid response deter criminals?*
  - Concluded that there was no relationship between the likelihood of response-related arrests by patrol officers and reporting time after the reporting time exceeded **nine** minutes
- Greenwood and Petersilia
  - *Do reactive investigations solve crimes?*
  - Concluded that only 20% of cases given to detectives were solved by detectives; the primary job of a detective is collecting information to successfully prosecute suspects
- These studies led to further experiments
  - Flint Neighborhood Foot Patrol Program
    - Tried putting police officers on foot instead of in cars
    - When officers were on foot patrol, crime went down slightly, but there was a significant impact on lowering residents' fear of crime. Massive improvement on police-community relationships.
  - Directed Patrol
    - Officers given orders on what specific things to do with their time while on patrol (spend x amount of time at x area)
    - This type of patrol activity can reduce certain types of crime (e.g. theft)

## Policing models; the shift away from crime fighting

- Four policing methods
  - Zero tolerance policing
  - Problem-oriented policing
  - Community policing
  - Intelligence-led policing
- Broken window theory
  - Expand jurisdiction to include public order
  - If there is disorder in community, it signalled that nobody cared about that community
  - Citizens feel unsafe as a result of
    - Social incivilities (loitering, street people, public drinking, etc)
    - Physical incivilities (graffiti, broken vehicles, etc)
  - Citizens move away, criminals move in
  - Started safe streets act, and lead to zero tolerance policing
- Zero tolerance policing
  - A rigid and inflexible law and order approach to minor violations of the law, particularly those that are thought to cause fear of crime
  - Most famous city to adopt this is New York (early 1990's)

- Increased police officers by 40%
  - Crime went down
  - Problem: crime also went down across the rest of the country, even in cities without zero tolerance policing
- Problem-oriented policing
  - Instead of responding to calls about criminal incidents, police become more proactive by directing their energies to the causes of crimes and complaints
  - SARA
    - Scanning (identify and describe problem/crime)
    - Analysis (identify persons involved, document scope of problem, determine causes of problem, identify the physical setting and social context)
    - Responding (collaborate on solutions, solicit community involvement, create a plan of action)
    - Assessing results (impact evaluation)
- Community policing
  - Involves the use of police-community partnerships and problem-solving techniques to proactively address conditions that are of concern, including crime, social disorder, and fear of crime
  - Goals
    - Restore public confidence and trust in police
    - Encourage public safety and confidence
    - Increasing citizen involvement
- Intelligence-led policing
  - Formal relationships established to exchange information in a timely manner and to arrive at strategic crime solutions with various police partners (e.g. regarding terrorism, human trafficking, illegal drug trade)
  - Newest development in history of policing
  - Similar to professional policing

## Police and the law

### Factors affecting police discretion

- Situational factors
  - Certain situations (ex. domestic violence)
- Extralegal factors
  - Demeanor of the suspect (aggressive, compliant, etc)
  - Relationship with others, interaction history, etc
- Community factors
  - Crime trends (ex. increase in X type of crime in X location)
- Legal factors

- Seriousness of the crime
- Can the suspect be identified for smaller crimes? If not, then searching is a waste of effort.

## Making an arrest

- Police must believe they have reasonable grounds
  - Lesser standards than “beyond a reasonable doubt”; that’s for courts
- The police officer must verbally inform the suspect and take physical control
- On arrest or detention, there is a Charter right to be informed promptly for the reasons
  - Instead of the right to remain silent, the person is cautioned twice that they’re not obliged to say anything in Canada

## Arrest without a warrant

- If they are found in the act of committing any criminal offence
- They are about to commit an indictable offence, on the basis of reasonable and probable grounds
- The police officer, on reasonable and probable grounds, believes there is an outstanding warrant within the jurisdiction
- The police officer knows the individual has committed an indictable offence

## Search and seizure

- Search: the intrusion of a government representative into an individual’s privacy
- Seizure: the exercise of control by a government representative over an individual and/or item
- Prisons and airports/border security over lower expectations of privacy, as well as public spaces or cases where something criminal is in plain view
- Police can seize things outside of what’s outlined on a warrant if they have reasonable grounds to believe that it was a part of the crime
- When police make an arrest, they are able to search the individual in order to protect themselves; they may search for weapons or to preserve evidence
- Police don’t require a warrant to enter a dwelling when:
  - In hot pursuit
  - There are reasonable grounds to suspect that entry into the dwelling house is necessary to prevent bodily harm or death to any person
  - Entry is necessary to prevent the imminent loss or destruction of evidence

## On arrest

- On arrest, there is a Charter right to contact a lawyer without delay
  - Police can’t question the suspect until the lawyer has arrived

## Police misconduct

- Occupational deviancy
  - Criminal or non criminal behaviour committed during the course of normal work activities or while out under the guise of a police officer's authority
  - Ex. sleeping on duty, mis-subordination, misuse of firearms
- Abuse of authority
  - [CASE] Sammy Yatim (Mental health issues, knife, shot on bus, Forcillo case)
- Selective enforcement of law

## Body worn cameras

**TABLE 7.1** Perceived Benefits and Concerns with Officer Body-Worn Cameras

Benefits	Concerns
Increased transparency and legitimacy	Citizens' privacy
Improved police officer behaviour	Officers' privacy
Improved citizen behaviour	Officers' health and safety
Expedited resolution of complaints and lawsuits	Training and policy requirements
Improved evidence for arrest and prosecution	Logistical and resource requirements, including data storage and retrieval
Opportunities for police training	

Source: Michael D. White. (2014). *Police Officer Body-Worn Cameras: Assessing the Evidence*. Washington, D.C.: Office of Community Oriented Policing Services, p. 18, <http://ojpdiagnosticcenter.org/sites/default/files/spotlight/Police%20Officer%20Body-Worn%20Cameras.pdf>.

## Courts and Criminal Trial Procedure

- "What are the elements of a fair trial?"
- Goals of the justice system
  - Providing people with a means to obtain justice
  - Dealing with people's issues in such a way they will accept and abide by the court decision
  - Retaining and enhancing the public's trust

## Adversarial court model

- The state against the accused
- Legal protections for defendants
- Includes due process and crime control model (Chap 1)

## Canadian courts

- Courts of general jurisdiction deal with most serious offences
  - May be decided by judge alone or judge and jury
  - To reduce caseload, special courts have been introduced (ex. Drug courts)

- Provincial/territorial accused courts
- Supreme Court of Canada
  - Leave of appeal (very important cases concerning laws etc..)
  - Right of appeal (legislative right to be heard by supreme court)

## Defence

- Ensures client's legal rights are protected
- Responsible for preparing the case
- Helps client understand what is happening in court and the consequence of the charge
- Sometimes hires people to investigate or to act as expert
- Assess chances of satisfactory plea bargain

## Crown prosecutor

- Primary duty is not to gain conviction, but to enforce the law and maintain justice by presenting all relevant evidence
- Takes cases to courts when:
  - The evidence demonstrates a reasonable prospect of conviction
  - It is in the public interest

## Malicious prosecution

- [CASE] Nelles v. Ontario (1989)
  - Crown prosecutors are not immune from civil liability
  - A number of children who were under her care died from overdose of a heart medication
  - After her arrest, the deaths stopped (hospital changed policy and restriction of drug)
  - The nights the children died, she had switched shifts with someone else
  - Was acquitted of murders
  - She sued a lot of people, the police, the ontario gov't, the attorney general

## Judge

- Upholds the rights of the accused and arbitrates disagreements
- When acting as trier of fact, determines whether defendant is guilty or not guilty
- Determines length and type of sentence
- Independent and impartial

## Judges have power to

- Decide questions of fact
- Questions of law
- Apply law to facts

- Interpret and apply the charter

## Trial procedure

- Opening statement
- Trial evidence
  - Testimony from sworn and expert witnesses
  - Reveal evidence
  - Direct evidence
  - Circumstantial evidence
- Defence representation of evidence
- Crown examination followed by defence
- Closing arguments charge of the jury
- Verdict
  - Jury verdict must be unanimous or else the trial will be called a mistrial

## Jury nullification

- Occurs when a jury disregards the law, nullifying or suspending the requirements of strict legal procedure
  - E.g. Latimer and R v. Morgentaler
  - Went to the supreme court in 1988 for Morgentaler because there were so many mistrials for his case, eventually resulting in the strike down of abortion laws
  - If a jury agrees that it's an act that's a matter of conscience and consequently doesn't want to apply, they can reject to be a member of jury

## Appeals

- The accused may appeal a conviction if it involves
  - A point of law
  - A question of fact
  - The length of sentence
- The prosecution may appeal an acquittal if it involves
  - A point of law
  - A sentence

## Mandatory victim surcharge

- Mandatory victim surcharge passed by parliament in October 2013 (Increasing Offenders' Accountability for Victims Act)
  - An additional sentence over the offender for if they can't pay a fine for victim services
  - If the offender can prove undue hardship or the judge decides not to do it, then they can provide a written paper that explains why they waived a fee

- If there's a fine imposed by the court (500\$), there has to be a fine on top of that of 30%, bringing it up to a \$650 fine.
  - At least \$100 or \$200 fine depending on each summary or indictable offense if they can't pay the 30% fine
- Caused major controversy. The issues were:
  - Judges' discretion
  - Law disproportionately affects the poor
  - Judges appeared to be making political statements
- Pg 310, 311 criminal justice insight boxes textbook (study)

## Sentencing and dispositions

### Nothing works?

- A 1974 study by Robert Martinson seemed to show that rehabilitation rarely impacted recidivism rates

### Sentencing

- The judicial determination of a legal sanction to be imposed on a person found guilty of an offence

### Purposes/objectives

- Deterrence
- Incapacitation (e.g. 3 strikes legislation)
- Rehabilitation
- Restitution (e.g. community service)
- Denunciation
- Responsibilization (e.g. having offender admit guilt for actions)

## Types of sentences

### EXHIBIT 10.1 Sentencing Options

Judges in Canada have a number of dispositions available to them when punishing a convicted offender. These include the following:

- **Imprisonment.** Canada has always imprisoned offenders, be it for the purpose of deterrence, incapacitation, rehabilitation, or justice. A sentence of imprisonment can be served in either a federal or a provincial correctional facility (see Chapter 12). In recent years, governments have been trying to limit the use of imprisonment except for the most serious offences.
- **Intermittent sentences.** These sentences allow offenders to serve their time on an intermittent basis (such as weekends) so that they can continue to engage in other activities (e.g., employment). By law, such sentences are limited to a maximum of 90 days.
- **Fines.** These can be levied by judges in combination with incarceration and probation or independently of other types of punishments. When a judge chooses to punish an offender with a fine only, it indicates that the judge considers the offender not to be a threat to the community and thus not in need of supervision.
- **Restitution and community service.** While fines are payable to a government, restitution and community service are paid to injured parties. These punishments are also referred to as "reparations." Restitution is a payment made directly to the victim; community service is an attempt to make the offender do something that will benefit the community.
- **Probation.** With this criminal sanction, offenders are allowed to spend their sentence (or part of it) in the community under supervision, provided that they follow certain conditions set by the court (see Chapter 11).
- **Restorative justice.** Some judges feel that when an offender has committed a non-serious crime, the relationship between the offender and the victim can be "healed" by having them meet and discuss the offence.
- **Absolute and conditional discharges.** An offender who receives an absolute or conditional discharge is not considered to have been convicted of an offence. A conditional discharge means that an offender is discharged with conditions and will be supervised as if on probation. An absolute discharge means that the offender does not need any supervision.
- **Community-based sanctions.** This approach emphasizes non-criminal alternatives to traditional punishments. These include referral to substance abuse or behavioural modification programs.
- **Conditional sentence.** A conditional sentence of imprisonment means that the execution of the prison sentence is suspended. A conditional sentence is more serious than probation but less serious than imprisonment.

- 
- **Alternatives to prison**
  - Probation
    - Non-dangerous offenders who serve part or all of their sentence in the community
    - The most common community-based punishment
    - Usually a sentence of one year
    - Rehabilitation is the primary objective
    - Mandatory conditions
      - Remaining within a particular jurisdiction
      - Reporting to a probation officer as required
      - Keeping the peace
      - Keeping authorities informed about changes of residence
      - Refraining from contact with criminal associates
      - Notifying the court or probation officer of change in employment
    - Optional conditions
      - Drug counselling
      - Avoiding contact with children
      - Performing a specified community service order
  - Conditional sentence
    - Sentence of imprisonment of less than two years that is served in the community
    - An alternative to imprisonment, although intended to be more punitive than probation
      - Initial sentence could be house arrest
    - The goal is to denounce and rehabilitate
  - Fines

- Approximately 30% of all guilty cases result in a fine
- Fine option programs
- Fines may discriminate against the poor
- Fines got more people criminalized because of the increased alternatives to prison give more sentencing options to more people

## Considerations in sentencing

- Aggravating/mitigating circumstances chart 10.5

## Special considerations in sentencing

- [Case] R v. Gladue (1999)
  - 2nd degree murder of a professor. Had an affair and stabbed him in the heart. Plead to manslaughter, got 3 years in prison and firearms prohibited. Mitigating factors include supportive family, treatment for alcoholism, showed remorse, plead guilty. Aggravating factor include stabbing twice, attempting to harm, and committing a serious crime
- S. 178(e) of the CCC
- “All available sanctions other than imprisonment that are reasonable in the circumstance, should be considered for all offenders. With particular attention to aboriginal offenders”
  - Judge should consider every other option prior to prison whilst sentencing, with special consideration for aboriginal offenders
- [Case] James Bulger
  - Two ten year old boys (Robert Thompson and Jon Venables) brutalized/tortured and murdered 2 year old Bulger by the train tracks after leading him away from the grocery store in the UK. Tried as adults. Imprisoned until they were 18 and then released under a new identity. Their pictures and names were posted everywhere.
  - Ruled to have not received a fair trial by being tried as children in an adult court. Didn't affect much; they were still found guilty, and case details were made public.

## Multiple murders in Canada

- 1976 capital punishment abolished
- Up to 2011, the harshest punishment was life in prison with no chance of parole for 25 years
- In 2011, the Protecting Canadians by Ending Sentencing Discounts for Multiple Murders Act was introduced
- Judges are now allowed to impose consecutive, rather than concurrent, sentences (Jason Bourque 2014)

## Mandatory minimum sentences

- 1892, 6 offences
- Currently, 70+ offences a year
- Most MMS fall into these categories
  - Murder
  - B&E
  - Firearms offences
  - Sexual offences involving young persons
  - Drug offences
- Support for MMS
  - Ensure crime doesn't pay
  - Lengthy sentences a deterrent
  - Prevent future crimes through incapacitation
  - Reduce sentence disparity
  - Respond to public onwands
- Criticism of MMS
  - Entrench some offenders in criminal careers
  - Little or no proven deterrent effect
  - Disproportionate sentences that don't take into consideration blameworthiness
  - Prosecutors get too much power since accused may plead guilty to other charges to avoid MMS
  - Increase prison populations
  - Inconsistent with principles of fundamental justice

## Is Canada following the US?

- "I signed a bill that made the problem worse and I want to admit it" (Bill Clinton)
- "Mass incarceration makes our entire country worse off, and we need to do something about it" (Barack Obama)
- Arnold Schwarzenegger, who supported 3 strikes legislation, admitted that the prison system was "collapsing under its own weight"

## Conditional release programs

- Full parole
  - Success rate (no recidivism) was 85%
- Day parole
- Statutory release
- Temporary release

# Miscarriages of Justice

## Wrongful convictions in Canada

- 2014: over 40 wrongful convictions documented
- 2015: at least 23 exonerations
  - Reasons for this low number:
    - Canada doesn't have a good system for dealing with wrongful convictions (retrial of the case)
    - Government not interested in pursuing case
    - Not enough evidence
- Factors leading to wrongful convictions
  - Eyewitness error (main cause)
    - Innocence Project overturned 250 wrongful convictions through DNA testing, identifying eyewitness error in 75% of those wrongful convictions
  - Erroneous forensic science
    - [CASE] Charles Smith testified for murders of children. Made errors for more than 40 autopsies on children, because of him testifying outside of his own area of expertise.
    - Changes in science. Convicted of hair analysis, DNA analysis exonerated him.
  - False confessions
  - Use of jailhouse informants
    - Informants could be bribed with money or leniency by providing false testimony
      - Polished and convincing liars
      - All confessions are given great weight by the jury, even second hand confessions
      - Jailhouse informants rush to testify
      - Always appear to have evidence that could only come from someone who committed the offence (could have been suggested to them through police or opposing counsel)
  - Professional and institutional misconduct
    - May overlook evidence (tunnel vision)
  - Racial bias

## Important wrongful convictions cases

- Steven Truscott
  - Convicted of rape and murder at age of 14; served 10 years; 48 years later the Ontario Court of Appeal unanimously overturned the conviction and acquitted him, awarding \$6.5 million.

- Unreliable witness testimony
- Donald Marshall Junior
  - Indigenous man convicted of murder at the age of 17 and sentenced to life. Released after 11 years and was exonerated by a royal commission. Systemic racism contributed to his wrongful imprisonment.
- David Milgaard
  - Convicted of rape and murder of nurse and sentenced to life. Appeals rejected; served 23 years in prison. His conviction was set aside. Cleared 5 years later of DNA evidence.
- Guy Paul Morin
  - Served 18 months, involved in legal systems for 10 years insisting he was innocent. Convicted of murder of child. Exonerated by DNA testing.
- Anthony Hanemaayer
  - Pled guilty to a knifepoint attack on a 15 year old on advice of his lawyer; served 2 years less a day; decades later Paul Bernardo confessed to the crime; acquitted; no compensation because he pled guilty

## Corrections

### Historically

- Prisons were used to hold people awaiting trial or to force fine defaulters and debtors to pay what they owed
- Prisons were not places of punishment
- There was a shift away from the punishment of the body to a punishment of the mind
- Bentham's Panopticon
  - A prison with a central structure with cells all around it in a circle. There would be guards watching the prisoners all the time in these central towers; idea was prisoners would start reforming themselves and behaving properly through surveillance.
- Goffman's Total Institution shows that Bentham's model doesn't work
  - Prison is a type of total institution
    - Separate and physically contained space
    - Under authority and there isn't that difference of interaction/relation that is hierarchical (prisoner under authority, and nothing more).
    - Mortification process: you're initiated into a total institution and then become a prisoner, losing your original identity and gaining the identity of a prisoner
- Syke's Pains of Imprisonment
  - Loss of liberty
  - Loss of goods and services
  - Loss of heterosexual relationships

- Loss of autonomy
- Loss of security

## Canada's correctional system

- Established in the early 1800's in Ontario with the opening of Kingston Penitentiary. IT included elements of
  - Pennsylvania System
    - Isolated inmates from outside and from each other so they could reflect on their actions
  - Auburn System
    - Encouraged reform through hard work. Inmates couldn't talk to each other either
- Kingston prison for women
  - Built in 1934
  - No windows
  - No education or vocational training
  - Sexual abuse
  - On April 22, 1994, an incident involving the Emergency Response Team made up of male correctional officers led to the Arbour Commission
    - Six inmates got into a confrontation with the correctional officers. Resulted in them later being dragged out of their cells, strip searched them, and being left undressed for a long period of time.
    - Issue: many women in prison have been sexually abused in the past already.
- Women in federal prisons
  - More than 60% are between the ages of 20 - 29
  - 75% are mothers to children under the age of 18
    - CSC can provide programs relating to parenting and reintegration skills
    - Women convicted were all sent to Kingston, making it difficult for family members to visit convicted mothers
  - 67% are single caregivers
  - Most are classified as high need and high risk (due to mental health, self-harm and substance abuse issues)
  - Demonstrate higher levels of motivation to reintegrate
  - Majority report being the victim of physical and/or sexual abuse
- Solitary confinement
  - Due to behavioural issues or for protection
    - Protection example: Paul Bernardo
  - CSC is increasingly turning to solitary confinement to deal with high-needs inmates, especially the mentally disordered
    - [CASE] Ashley Smith

- Increasingly erratic behaviour resulted in her being bounced around youth correctional facilities and eventually federal prisons. CSC didn't know how to deal with this, so she was placed in solitary confinement. Officers were instructed to not go in her cell to avoid excess paperwork, even when she strangled herself to death.
  - [CASE] Adam Snowshoe
    - In solitary confinement for 160 days straight.
- Issues in prisons
  - Drug use
  - Suicide
  - Violence between inmates
  - Violence against correctional officers
  - Prison gangs

## Aboriginal people and restorative justice

### Aboriginal people and the cjs

- In 2010-11, 20% of all adults in federal custody were indigenous, despite being about 3% of the population
- In 2011-2012, indigenous women accounted for 43% of
- Underrepresented in community supervision programs
- Overrepresented in maximum security institutions
- Disproportionately involved in institutional security incidents, use of force intervention, segregation, and self-harm
- Serve disproportionately more of their sentence behind bars
- More likely to return to prison on revocation of parole
- There's a difference in how indigenous people experience the justice system (more harsh)

### Aboriginal justice

- Crime = harm (ruins community life)
- Response emphasizes Healing and a return to Harmony
- Community collaboration vs criminalization victim, criminal, community together vs state and criminal)
  - Table 3.1
- Importance of spirituality and cultural values in the reconciliation process
- Difference in justice paradigms

**TABLE 3.1** Differences in Justice Paradigms

Aboriginal Justice Approach	Western Justice Paradigm
Communication is fluid.	The paradigm is vertical.
Native language is used.	Communication is rehearsed.
Oral customary law learned as a way of life, by example.	English or French language is used.
Law and justice are part of the whole.	Written statutory law is derived from rules and procedure.
The spiritual realm is invoked in ceremonies and prayer.	The paradigm features separation of power.
Trusting relationships are built to promote resolution and healing.	The process is adversarial, conflict-oriented, argumentative.
Talk and discussion is necessary.	Isolated behaviour is considered—freeze-frame acts.
Problems are reviewed in their entirety; contributing factors are examined.	A fragmented approach is taken to process and solutions.
Comprehensive problem-solving is undertaken.	The process is time-oriented.
No time limits are put on the process; it includes all individuals affected and solutions.	Limits are imposed on the number of participants in the process.
All extended-family members are represented.	Representation is by strangers.
The focus is on victim and communal rights.	The focus is on individual rights.
The process is corrective; offenders are accountable and responsible for change.	The paradigm is punitive and removes the offender.
Customary sanctions are used to restore the victim-offender relationship.	Penalties are prescribed by and for the state.
Offender is given reparative obligations to victims and community.	Rights of the accused are defended, especially against self-incrimination.
	Society is vindicated.

*Source:* Melton, A.P. 1998. *Indigenous Justice Systems and Tribal Society*. Washington, DC: National Institute of Justice.

○

## Restorative justice

- Based on a belief that governments need to give up their monopoly over our society's response to crime; collaborative participation of all those affected is required. Instead of determining guilt and punishment, the goal of RJ is to repair harm and restore relationships
- An alternative to traditional adversarial system
- Focuses on addressing harm
- [CASE] Reena Virk
  - 14 years old when she was swarmed by a group of friends in 1997. She was attacked by 6 people and drowned by 2. Warren Glowatski, 16, was convicted of a life sentence and given a chance for parole. Virk's family saw him express remorse, and was in favour of him being granted parole after 7 years. Kelly (15) stood trial 3 times for the murder and had a hung jury once. She never admitted to guilt nor shown any remorse. Kelly Ellard has been going through the justice system for 20 years now because of this.
  - Significance: shows the difference in effect between traditional system and more community oriented (family meeting offender) system