

Chapter 1 - The Foundations of Criminal Justice

Thinking Critically About the Criminal Justice System

- Critical thinkers distinguish between fact and opinion; ask questions; make detailed observations; uncover assumptions and define their terms; and make assertions based on sound logic and evidence
- Also called thorough thinking
- To become a critical thinker, one must engage in the following
 - Ask questions
 - Engage curiosity and question statements and assertions
 - Consider multiple points of view
 - Be fair and open minded to all ideas
 - Draw conclusions
 - Examine the outcome of your inquiry in a more demanding and critical way

What is a Crime and Why?

- Crime
 - An act or omission which is prohibited by criminal law
- Two critical ingredients of a crime
 - Actus reus
 - Commission of an act
 - Mens rea
 - Mental intent to commit the act
- Occurs when a person
 - Commits an act or fails to commit an act when under a legal responsibility to do so; has the intent, or mens rea, to commit the act
 - Does not have a legal defence or justification for committing the act
 - Violates a provision in criminal law
- Crime is behaviour that breaks the law and deviance is behaviour that is contrary to the norms and values of the larger society
- Social construction of crime
 - The process by which the “same behaviour may be considered criminal in one society and an act of honour in another society or in the same society at a different time”

- Historical analyses are conducted to understand
 - The factors involved in the definition of behaviours as criminal
 - An increase or decrease in the severity of the criminal law
 - The response of the criminal justice system
 - The factors that influenced the repeal of a criminal law, resulting in the decriminalization of certain behaviours
- Moral entrepreneurs
 - Individuals, groups, or organizations who seek action against certain groups of people or certain behaviours and bring pressure on legislators to enact criminal statutes
 - Ex. MADD
- Value consensus model
 - Views crime and punishment as reflecting society's commonly held values as well as its limits of tolerance
 - Assumes that there is a consensus on what should be against the law
- Conflict model
 - The view that crime and punishment reflect the power some groups have to influence the formulation and application of criminal law

Types of Canadian Law

- Substantive law
 - Law that sets out the rights and obligations of each person in society; includes the Criminal Code
- Procedural law
 - The legal processes that protect and enforce the rights set out in substantive law

The Canadian Legal System

- Common law
 - Law that is based on custom, tradition, and practice and is generally unwritten
- Precedent
 - A judicial decision that may be used as a standard in subsequent similar cases
- Stare decisis
 - To stand by what was decided
 - The principle by which the higher courts set precedents that the lower courts must follow
- Statute law
 - Written laws that have been enacted by a legislative body such as the Parliament of Canada

- Case law
 - Law that is established by previous court decisions and is based upon the rule of precedent
- Criminal law
 - That body of law that deals with conduct considered so harmful to society as a whole that is prohibited by statute, prosecuted and punished by the government
- Rule of law
 - The requirement that governments, as well as individuals, be subjected to and abide by the law
- The Canadian Charter of Rights and Freedoms
 - The primary law of the land; guarantees fundamental freedoms, legal rights, and equality rights for all citizens of Canada, including those accused of crimes
 - Freedom of conscience and religion
 - Freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication
 - Freedom of peaceful assembly
 - Freedom of association
- Criminal code
 - Federal legislation that sets out criminal laws, procedures for prosecuting federal offences, and sentences and procedures for the administration of justice
 - First complete criminal code was produced in 1892

Chapter 1: The Foundations of Criminal Justice - Online Content

The Basic Structure of the Justice System

- Three major components to the Canadian criminal justice system
 - Police
 - Courts
 - Corrections
- Police
 - Responsible for the enforcement of law, investigation of crimes, and arresting of suspects
- Courts
 - Adjudicatory or fact finding bodies where criminal cases are prosecuted and determinations of guilt are rendered
- Corrections
 - Responsible for the administration of a sentence handed down by a judge including the management, treatment, and supervision of offenders in the community and correctional facilities

Goals of the Criminal Justice System

- Three main purposes of the criminal justice system
 - Control crime
 - Prevent crime
 - Maintain or achieve justice
- Justice
 - Refers to fairness and objectivity
- Criminal justice
 - Includes criminal law and procedures
 - Includes both substantive justice and procedural justice
 - Substantive justice
 - True justice
 - Accuracy of a decision or outcome
 - Ex. was someone found guilty of a crime actually guilty
 - Procedural justice
 - Fairness of procedures used in the justice system to arrive at these decisions
 - Safeguards in place to protect individuals

- Balance between the two justice systems can be achieved by organizing a legal system in one of two ways
 - Adversarial system
 - Involves a two sided structure in which advocates from each party (prosecution and defense) argue their cases to an impartial or neutral judge or jury to determine the verdict
 - Truth is discovered through an open competition where the prosecution and defense zealously represent their cases
 - Inquisitorial system
 - Found in civil law countries
 - More collaborative effort to arrive at the truth through an investigation of all available evidence by a judge or panel of judges
- Inequities, of course, still exist in society
 - Poverty
 - Racial inequality
 - Gender inequality
- Social justice
 - Broader view of justice that places the ideal of justice within a larger cultural, economic, and political context

Models of Justice

- Two competing sets of values underlying the criminal justice system, resulting in two models
- Crime control model
 - An “assembly line” model that emphasizes the early stages of the justice system through the efficient arrests and conviction of criminal offenders
 - Goals
 - Laws and practices that encourage deterrence and increase police powers
 - Crime control approach
 - Mandatory minimum sentencing laws
 - Greater police surveillance abilities
 - Bail
 - Release of an individual charged with a criminal offence pending a court appearance
 - Generally intended to balance public safety and confidence in the justice system with the presumption of innocence

- Due process model
 - An “obstacle course” model that emphasizes the due process rights of individuals
 - Focuses on ensuring protections of individual rights at each stage of the justice system and limiting the power of criminal justice personnel
 - Example
 - A Supreme Court of Canada decision that limits the admissibility of confessions from intoxicated suspects obtained from police interrogations

Crime Control Model vs Due Process Model

	Crime Control	Due Process
Purpose	Emphasizes early stages of criminal justice system through arrests of criminals	Emphasizes the rights of individuals
Goals	Laws and practices that encourage deterrence and increase police powers	Protecting individuals rights and limiting the power of criminal justice personnel
Policies	Crime control approach	Make sure all individuals get equal rights

The Rule of Law and Law of Nature

- Two central principles that govern or guide the limitations we place on our political leaders
- Magna Carta
 - Saw limits placed on the powers of the King at the time
- Rule of law
 - Belief that it is the law itself that is supreme and all government official and individuals must abide by the law
- Law of nature
 - Abstract limitation on the powers of the government
 - All individuals are born with certain “inalienable rights”
 - Rights that cannot be stemmed or violated by any state-created laws
 - Ex. basic notion of equality

Constitutional Law

- Constitution
 - The supreme law of a nation or state and sets out the blueprint for how a ruling government will be organized
 - Composition, structure, and powers of a government are set out in a constitution
 - Does not regulate behaviour
- Westminster model
 - Parliament, or elected officials, and the tradition of the rule of law are trusted to limit the powers of government and protect the rights of individuals
- Individual rights in the states are constitutionally entrenched
 - One single constitution that spells out the structure and powers of government
- Under the Westminster model, individual rights are protected by parliamentary supremacy, but the American model relies on judicial review

The Canadian Charter of Rights and Freedoms

- Federalism
 - A system of government in which power is distributed among a central or federal level of government and smaller regional governments
- The constitution act
 - Introduced as part of the Canada Act 1982, patriating the Canadian constitution and giving Canada total control over its own constitution
 - Canada is now following the American constitution model
- Basic freedoms
 - Section 2 of the charter
 - Freedom of conscience and religion, thoughts, belief, opinion, and expression, association, and peaceful assembly

Limits on Charter Rights

- Rights and freedoms not absolute
- Reasonable limits clause
 - States that our rights and freedoms are guaranteed “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”
- Limitations must be prescribed by law and the government must justify any reason for placing such limits

- Oakes test
 - Must determine whether the law or practice in question achieves a pressing and substantial objective
 - There must be a rational connection between the means adopted to limit rights and the original objective for limiting rights
 - Limitation of a right that is enacted to achieve a pressing objective must involve minimal impairment
 - Courts will look at the proportionate effect of any limitation on a right or freedom

Canadian Criminal Law

What is Criminal Law?

- Private law
 - Area of law that governs and protects the interests of individuals and relationships among individuals
 - Ex. tort law
- Public law
 - Governs and regulates matters of collective or public interest
- Criminal law is part of public law
 - Crimes like these are taken as harm against the collective or all Canadians
- Criminal law
 - Refers to that body of law that deals with conduct considered so harmful to society as a whole that is prohibited by statute and prosecuted and punished by the government
 - Acts as a mechanism of social control
 - Maintains order
 - Defines the parameters of acceptable behaviour
 - Reduces the risk of personal retaliation
 - Assists in general and specific deterrence
 - Criminalizes behaviour
 - Protects group interests

Sources of Criminal Law

- Statutes
 - Written laws
 - Only federal government has the power to define and codify criminal laws
- Criminal Code of Canada
 - Contains the definitions of all criminal offences
- Youth Criminal Justice Act
 - Sets out legal criteria for the criminal prosecution of minors (aged 12-17)
- Canada Evidence Act
 - Outlines the rules of evidence for criminal proceedings
- Common law
 - Unwritten laws based on judicial decisions and interpretations of statutes

- Precedent
 - Guiding or authoritative nature of judicial decisions
 - In common law, the decisions of higher courts set precedent or are binding on lower-level courts
 - Also known as *stare decisis*, or “let the decision stand”

Defining Crime

- Crime
 - An act or omission that is prohibited by criminal law
 - True crimes found in the criminal code can be distinguished from regulatory crimes or quasi-criminal laws that refer to offences under regulatory legislation that can be passed by federal, provincial, or municipal governments

Origins of Crime

- Moral entrepreneurs
 - Individuals, groups, or organizations that seek action against certain groups of people or certain behaviours and bring pressure on legislators to enact criminal statutes
 - Ex. MADD
- Value consensus model
 - View that the behaviours are defined as criminal and the punishment imposed on offenders reflects commonly held opinions and limits of tolerance
- Conflict model
 - View that crime and punishment reflect the power some groups have to influence the formulation and application of criminal law

Classification of Criminal Code Offences

- Organized into three categories
 - Indictable
 - Summary conviction
 - Hybrid
- Indictable offences
 - More serious offences that include a greater range of penalties that are spelled out in the charging section
- Summary conviction offences
 - Less serious offences that carry out a maximum penalty of six months imprisonment and/or a fine of \$5000
- Hybrid offences
 - Option of proceeding by summary or indictable offence; majority of offences

Elements of a Criminal Offence

- Two components/elements
 - Actus rea
 - “Guilty act”
 - The prohibited act or the commission of a prohibited act or a failure to act in certain situations
 - Three elements
 - Conduct
 - Circumstances
 - Consequences
 - Conduct must be voluntary and prohibited
 - Circumstances refer to the context in which the conduct is engaged that make it criminal
 - Certain offences require specific consequences to follow from the conduct
 - Mens rea
 - “Guilty mind”
 - Intent to commit the prohibited act
 - Not the same as motive
 - Concerns the willingness to commit a criminal act; motive refers to the reasons why an individual commits a criminal act
 - Mental intent takes one of two forms
 - General intent offences
 - Only require the Crown to prove that you intended to commit the offence in question and not any particular set of consequences
 - Specific intent offences
 - Require the Crown to prove that you intended a specific outcome when you committed the criminal offence

Criminal Defences

- Excuse defences
 - Criminal defendant acknowledges or admits that he or she did commit the criminal act, but argues that there was no intent to commit a crime
- Justification defences
 - Criminal defendant admits to committing the criminal act but argues that he or she was justified in committing the act under the circumstances

Excuse Defences

- Mistake of fact
 - Refers to a situation wherein an accused individual claims to have committed a criminal act but under the circumstances did not know or believe that he or she was doing anything illegal
 - Concerns the mens rea of the crime
 - Very limited in courts
 - Mistake must be an honest mistake or belief and it must be evident that no crime would have been committed had the circumstances the accused individual honestly believed in been true
- Mistake of law
 - Limited amount of circumstances
 - Person must take some responsibility for knowing the law
 - Officially induced error
 - A circumstance where an individual has relied on an interpretation of the law provided by a government official
- Insanity defence
 - Individuals who cannot understand their own actions or form intent to commit a criminal act
 - Wild beast standard
 - Eighteenth century
 - Jurors had to acquit if the accused was “totally deprived of his understanding and memory; not know what he is doing, no more than an infant, brute, or wild beast”
 - M’Naghten standard
 - “A person is presumed sane unless it can be clearly proven that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong”
 - Our modern insanity defence follows the M’Naghten standard
 - Three components
 - The individual must suffer from a serious mental disorder
 - The mental disorder must impact the individual’s ability to understand what he or she was doing
 - The mental disorder must impact the individual’s ability to know their actions were wrong

- Irresistible impulse test
 - Holds that individuals shouldn't be legally responsible for behaviours that emerge from mental illness that results in an inability to control their own behaviour
- Psychopaths generally cannot use the insanity defence
- Automatism
 - Legal excuse that refers to unconscious or involuntary behaviours
 - Dissociative state
 - Refers to a disconnection between our emotions, identity, memories, and thoughts
 - Ex. amnesia
 - The argument is that the individual did not have actus reus

Justification Defences

- Provocation
 - A situation wherein a wrongful act or insult causes the accused individual to completely lose the power of self-control
 - Criteria
 - Wrongful act or insult must be significant enough to deprive an ordinary person of self-control and the individual must act directly and immediately in response to this provocation with no time to cool off
 - Act must happen immediately
 - Only a partial defence
- Duress
 - A threat from another person causes another person to commit a crime that he or she would not have otherwise committed
 - Two forms of duress
 - First is available as a legal defence and is referred to as compulsion
 - He or she committed the crime because they honestly believed there was an imminent threat of death or serious bodily harm
 - The threats were made by a person who was physically present when they committed the crime
 - The accused was not a member of a criminal group planning to commit the crime
 - The crime did not include certain offences such as murder or sexual assault
 - Second is available when compulsion is not an option (common law)
 - Will fail if you had an opportunity to escape safely

- Necessity
 - Justifies a normally criminal act in those cases where a force of nature or human conduct (outside of an intentional threat) causes a person to commit a crime that he or she would otherwise not have committed
 - Can use it as a legal defence if
 - There was imminent danger
 - You had no reasonable legal alternative to the course of action you took
 - There was proportionality between the harm you inflicted and the harm you avoided
- Self-defence
 - Justifies the use of force against another person
 - Can use as much force as necessary to protect yourself
 - Criteria
 - Use in cases where an individual intends to cause bodily harm or death in defence of a threat
 - If someone kills someone in self-defence
 - There must be an unlawful assault
 - You must be under a reasonable fear of death or serious bodily harm
 - You must have reasonably believed that there was no other way to prevent your own death or serious bodily harm

Crime and Victims

Sources of Information About Crime - Official Sources of Information About Crime

- Maintained by the Canadian Centre for Justice Statistics
 - Has collected crime stats since 1962
- Two official sources of information about crime
 - CCJS collects crime stats using the Uniform Crime Reports, an aggregate census of crime in Canada using police reports as the source of information
 - UCR surveys the incidence of crime, which refers to the number of crimes reported to police during a given period of time
 - Crime rate
 - Ratio of the incidents of crime reported to police in a population expressed per 100,000
 - Standardized measure of crime; allows comparisons across areas that may have large differences in population size
 - Crime severity index
 - CSI is a measure of the severity of crime that is calculated by measuring the number of crimes reported to police relative to the seriousness of those crimes that are reported
 - Each criminal code offence is assigned a weight based on its seriousness with more serious crimes receiving higher weights
- Limitations associated with the UCR
 - Dark figure of crime
 - Refers to the difference between how much crime occurs and how much crime is reported to or discovered by police
 - Seriousness rule
 - Refers to the practice of classifying or recording police-reported crimes according to which of several offences is the most serious
 - Given that the crime rate is based on crimes reported to police, any differences across police services charging practices could be a source of bias
- Backwards law
 - The focus is on events that occur less frequently

Sources of Information About Crime - Victimization surveys

- A self-report survey that asks respondents whether they have been victimized during a given time period and whether they reported it to the police
- The data is collected as part of the General Social Survey (GSS)
 - Administered and collected by Stats Canada every 5 years
 - Respondents aged 15+
- More likely to detect unreported crimes, but underreporting still occurs
- Response bias
 - Potential biases that may influence who reports particular information or what information is reported by an individual

Crime and Victimization - Trends

- Official Canadian Crime Trends
 - The police reported crime rate has declined to its lowest level since 1972
 - The crime severity index has declined in the last decade
 - Crime rates are highest in western regions of Canada
 - Violent crime rates have generally declined but remain high in the territories and some western cities
 - Property crime rates have declined in the last decade
 - Police reported youth crime has declined
- Benefit of victimization survey data is its ability to address that “dark figure of crime”

Crime and Victimization - Programs and Services for Victims of Crime

- The main resource for victims of crime in Canada is the Office of the Federal Ombudsman for Victims of Crime (OFOVC)
 - Established in 2007 as an independent resource for crime victims and to facilitate access to services and information

Summary of Victim Services Available in Canada

<i>Source</i>	<i>Description</i>
System-based victim services	<ul style="list-style-type: none"> - Services that are offered independent from police, courts, and Crown attorneys, although victims can be referred to these services by any of these agencies - The general goal of these services is to assist the victim throughout their contact with the criminal justice system - Services include <ul style="list-style-type: none"> - Short-term counselling - Court prep & accompaniment - Assistance with prep of victim impact statements - Liaison services with police, courts, crown, & corrections
Police-based victim services	<ul style="list-style-type: none"> - Services provided by police services following a victim's first contact with law enforcement - While these services are offered through police departments, they may not always be provided by police staff - Services include <ul style="list-style-type: none"> - Information - Support - Assistance - Referral to other services - Court orientation
Court-based victim services	<ul style="list-style-type: none"> - Many courthouses in Canada offer services for both victims and witnesses - These programs typically include information and/or assistance and referrals to victims and witnesses to reduce stress associated with court procedures - Examples of services include <ul style="list-style-type: none"> - Court orientation - Preparation and accompaniment to court - Case progress updates - Coordinating meetings with the Crown
Community-based victim services	<ul style="list-style-type: none"> - Several community organizations offer direct services to victims - These services are typically by the federal and/or provincial governments but are independent of criminal justice agencies - In addition to general services, some community organizations provide assistance for specific victim groups including child victims, victims of family and/or sexual violence - Examples of services include <ul style="list-style-type: none"> - Emotional support - Referrals - Information - Court orientation

- Canadian Victims Bill of Rights
 - Offers more evidence that Canada is increasingly considering the role of victims in the justice system
 - Established clear federal statutory rights for victims of crime
 - A victim means “an individual who has suffered physical or emotional harm, property damage or economic loss as a result of the commission or alleged commission of an offence”
 - Allows victims to seek restitution
- Restitution
 - A court-ordered payment that an offender makes to the victim to compensate for loss or damage to property
- Victims can seek compensation through criminal injury compensation programs administered by the provinces that offer financial remuneration

Crime and Victimization - Racism, Prejudice and Discrimination

- Indigenous persons
 - Status and non-status Indians, Metis, and Inuit
 - Represent 4% of the population
 - 27% of homicide victims were indigenous
 - Indigenous women are more likely to be affected by all types of violent victimization
 - The homicide rate for indigenous women is nearly 6 times higher than that of non-indigenous women
 - Indigenous women experience higher rates of spousal abuse; three times more likely than non-indigenous women to report being a victim of spousal abuse
- Muslims
 - One third of Muslims surveyed indicated that they had experienced discrimination by others because of religion, ethnicity, language, or sex
- Blacks
 - Black individuals charged with drug possession are more likely to be taken to the police station than white people
 - Ontario human rights commission initiated an inquiry into racial profiling in policing

Crime and Victimization - Social Media and Criminal Justice

- Social media
 - Forms of electronic communication that allow users to post and share ideas, information, videos, and photographs
- Social media has been used for harassment
- Sextortion
 - A category of sexual exploitation or blackmail where an offender threatens to distribute sexual images or information to the public