

The Sociology of Crime

Augustine Brannigan © 2015

Winter 2015

Prepared by Dr. Augustine Brannigan

Table of Contents

Unit 1: Justice and The Rule of Law

Unit 2: The Legal Elements of Crime

Unit 3: Measuring Crime

Unit 4: The Crime Drop and the Enterprise of Criminology

Unit 5: Explaining Crime: The Two Different Traditions

Unit 6: Realist Theories: Crime and Social Structure

Unit 7. Relativistic Theories: Crime and Cultural Transmission Theories

Unit 8. Thou Shalt Not Kill: Understanding 'mere murder'

Unit 9. Murder Extraordinaire

Unit 10. Defining Policy Considerations

Let's Get Started: The Major Institutions of Justice and two Discourses on Law

This course is devoted to "The Sociology of Crime". We begin by identifying the major institutions that create, foster, influence and/or explain the "behaviour of law" in society. By "behaviour of law" we refer to the logic that determines the shape of justice in terms of its institutional structures, the way offenders and their crimes are defined, the methods used to classify and intervene with them, and the longer term patterns of development in understanding crime, both nationally and internationally. Actually, law does not behave (contra Black 1976). People do. So when we refer to the behaviour of law, we are invoking all those circumstances where people act to create and respond to institutions and codes that embody their ideas about law and how it directs and constrains their social behaviour.

The crime system has four primary institutional components that are presumed to operate more or less together or in a coordinated fashion. These are (a) the parliament or system of governance in the common law countries (i.e. Britain, the US, Canada, Australia and New Zealand) that creates the laws, (b) the police who monitor crime and are charged with enforcing the laws, (c) the courts which evaluate the cases against individual suspects brought to them by the police, prosecuted by a Crown attorney, adjudicated by judges trained in the law, challenged on their merits by a defence counsel and tried by a judge and jury, and (d) the correctional sequence which administer(s) the judgments of the court.

Sometimes it is useful to expand these four institutions to include stakeholders that are more diffuse and peripheral to the legal process. These include (e) the media which help to shape public perceptions about the behaviour of law, (f) interest groups who lobby for legal changes in laws and procedures, and (g) family and victims' groups who work to elevate the costs of crime to the victims and their communities. In each of these contexts, the problem for us is to separate the determinants of "the behaviour of law" in terms of two contrasting perspectives.

On the one side is *jurisprudence*. This is the legal reasoning, the principles and the philosophies that dictate the course of "the rule of law" as a body of reasoning that is dedicated to the principles of justice (for example, fairness, impartiality, proportionality of punishment etc.) This is an "internalistic" perspective. It is sometimes called the Justice Model. It holds that society is made possible by the laws. One of the first great proponents of this view was Thomas Hobbes who composed his famous treatise, *The Leviathan* in 1651 during the English Civil War. He proposed that human nature created an inherent tendency of competition between citizens that always left them in mortal fear of their lives from competitors each pursuing their own self-interests. Hobbes proposed that by engaging in a social contract with *The Leviathan*, their absolute sovereign, citizens could ameliorate their conflicts. By voluntarily submitting to the absolute rule of a benign sovereign, citizens could create a commonwealth that ensured the prosperity of the general population. By contrast, the state of nature doomed persons to a constant fear of one another.

"In such condition there is no place for industry, because the fruit thereof is uncertain, and consequently, not culture of the earth, no navigation, nor the use of commodities that may be imported by sea, no commodious building, no instruments

of moving and removing such things as require much force, no knowledge of the face of the earth, no account of time, no arts, no letters, no society, and which is worst of all, continual fear and danger of violent death, and the life of man, solitary, poor, nasty, brutish, and short."

By entering into a social contract with the sovereign, the law becomes autonomous from society and independent of competing interests and extralegal influences, and creates conditions for a commonwealth of prosperity and security. Hence, law makes society possible.

The other perspective is the *sociology of law*. It advocates the idea that law is an *outcome* of social forces, that it is a predicate or effect of society. This is an externalist perspective. It emphasizes how laws are created and utilized by social groups to secure their own advantages and ideals. There is no one sociology of law. The sociologies of law reflect the various theoretical traditions in the discipline. Here we identify three:

Marxist theories are based on the philosophy of historical materialism. Marx and Engels were greatly influenced by the ideas of the German philosopher Georg Wilhelm Friedrich Hegel. Hegel believed in the dialectical nature of history, that history was undergoing constant change, and societies were succeeding one another as the underlying spirit of humanity realized its inherent potential. Marx and Engels rejected the suggestion that any transcendental spirit lay behind appearances and substituted the idea of material competition between the dominant groups in society for control of the resources necessary for life. In the 19th century these were the classes of labour and capital. Marxists tend to view the legal process as part of the "superstructure" of society, i.e. the belief systems that give legitimacy to the uneven distribution of wealth. These included religion and law. For them the ideas of the ruling class are the ruling ideas and tend to be determined by economics. In capitalist societies, the law is premised on the protection of private property, and the unencumbered accumulation of capital. Capitalism pits the interests of capitalists against the interests of labour. However, the approach also allows for more complexity, for example, the struggles among different kinds of capitalists, and the possibility of in-roads made by disadvantaged groups through law reform by which it is possible to wrestle some power away from the elites and win greater equity in the legal process.

Durkheim, a leading founder of academic sociology, was associated with the French commitment to positive science, that is, the idea that social differences and social change could be explained scientifically by determining their social causes, just as the natural world could be explained by physics and chemistry. Crime took on the emotional valence as a result of how it was defined. Primitive societies with little division of labour tended to react to suppress unwanted activities with retributive and punitive responses while more complex societies evolved more restitutive and integrative laws. This type of thinking paved the way for the Labeling Theories which argue that social movements and charismatic leaders can introduce legal changes that arbitrarily make behaviours criminal, and apply criminal labels to activities that are not inherently harmful but merely unconventional. The leading examples concern the prohibition movement and the criminalization of narcotics use. Labeling theory stresses that the prosecution of crime re-

emphasizes moral boundaries, and that sometimes crimes can be invented when they do not occur naturally. Witchcraft is a good illustration. These prosecutions were functional in terms of “boundary maintenance” in societies facing challenges to their orthodox beliefs (Szasz 1997). However, for the victims falsely called before the Inquisition (in Europe) or the courts (witchcraft was a felony in England), the results were fatal. While we might not see anything so extreme in today’s society, anytime we observe the scapegoating of specific groups whose activities are not prima facie harmful, this suggests the operation of a labeling process. This has been explored in American sociology by Howard Becker in *Outsiders* (1963) where he researched the criminalization of marihuana, and in British sociology by Stanley Cohen in his studies of the mods and rockers in British youth culture (*Folk Devils and Moral Panics* 1972).

Weber and bureaucracies. The sociology of Max Weber derived from German romantic philosophy that emphasized the distinctive meanings of specific cultures and social practices. Where French positivism emphasized causality, German philosophy emphasized meanings and interpretative action. One of Weber’s most notable achievements was the description of the development of bureaucracies associated with the rise of 19th century European states. Although the bureaucracies were created to serve the policies of the sovereigns, sometimes they created their own initiatives for change, and sometimes the initiative for legal change, including the criminalization of certain behaviours advocated by members of the law control bureaucracy themselves. For example, in the US in the 1930s there was an attempt to suppress marihuana use by reliance on a marihuana tax (Becker 1963; also see Comack 1985). This permitted law enforcement to use allegations of tax evasion for criminalizing drug possession and trafficking. Today there has been an expansion of administrative law to regulate the behaviour of suspected criminals by creating peace bonds that regulate movements and time curfews the violation of which create criminal liabilities (Freiberg 2007). Social control based on the maintenance of a peace bond allows the agents of social control to exercise the power of the criminal law through the back door.

Implications in System Operations: What are the competing assumptions of these different orientations in the two discourses, the Justice Model versus the Crime Control Model (Goff 2008)

The Justice Model (also called the Due Process Model)

- All legal rules and procedures must be publicly defined, transparent and just
- Presumption of innocence of accused
- Right of accused to remain silent at trial other than submitting a plea
- Right of accused to legal representation
- Minimum disparity and discrimination in the treatment of the accused
- Onus is on the crown to establish guilt
- Judgment by an impartial judiciary or jury of peers
- Emphasis on the legal rights of the accused and the liberty of individuals

The Crime Control Model (following the sociologies of law)

- Objective of justice is to incarcerate offenders, to marginalize opponents and create “outsiders”
- Presumption of guilt
- Widespread use of discretion by police and prosecutors to facilitate selective enforcement of “outsiders”
- Adoption of measures against gangs, suspected terrorists and panhandlers that heightens their liability to surveillance, prosecution and incapacitation
- Emphasis on public security and order

Four Ideals of Good Law following the Justice Model

Let us examine some key elements of the behaviour of law from a Justice Perspective, and identify some situations that test the presuppositions of these principles of jurisprudence.

- Politicality
- Specificity
- Uniformity
- Penal Sanction

I. In their analysis of the grounds of good law in the common law tradition, Sutherland, Cressey and Luckenbill (1992: 4-6) describes four things that are consistent with “the ideal characteristics of criminal law.”ⁱ The first of these is the political nature or *politicality* of law. In this perspective *justice* is intimately related to the concept of *sovereignty*—or governance in the absolute state. When states emerged at the end of feudalism, the Royalty ruled with absolute authority from their “courts”. They consolidated their powers by sharing them through intermarriage with rival clans, and with the rising middle classes and the artisans. The *politicality* of law increasingly referred to the legitimacy of the legal system in the eyes of those governed by it. In the common law countries, the monarchs ruled increasingly with the consent of the population. Weber argues that the states of Europe gradually disarmed the lesser knights and nobles and acquired “the monopoly over the legitimate use of force.” This was legitimate to the extent that the population became a key stakeholder in the creation of laws and the administration of justice. Such enfranchisement was acquired first by the feudal barons in concessions from the monarch in the Magna Carta (*The Great Charter of the Liberties of England 1215*) by championing the idea that no freemen could be punished except according to the law of the land (see links to information below). This was a significant early step in checking the power of despots that was ultimately followed by the Habeas Corpus Act (1679) and the Bill of Rights (1689).

Politicality these days point to the question: Does the law reflect the will of the body politic that makes up the state and is it based on a legitimate act of parliament (as opposed to the law based on political corruption and deceit)? Democratic government is representative, elected by the entire adult population with each vote counting equally (which is problematic in cases of gerrymandering – i.e. electoral boundary changes to influence the

number of voters needed to elect a member of parliament- in some jurisdictions a government can obtain a majority of seats in parliament with as little as 35% of the popular vote). Other jurisdictions draw the electoral boundaries to capture populations of homogenous voters resulting in a situation in which politicians choose their electorate, not the other way around. Politicality also raises the question of the responsiveness of the parliament to the aspirations of the electorate (i.e. passing laws which do not enjoy societal support – or failing to pass laws which do). In both cases the political legitimacy of governments is called into question. Many theorists trace the origins of political violence to the failure of democratic institutions to provide an avenue for non-violent change, and explain the demise of personal security in “failed states”.

In Canada we have another issue of politicality of laws in which a local population finds itself under a rule of law that amounts to “foreign” domination. Historically there have been some very disquieting cases associated with imperialism, European settlement and/or cultural conflict. Here are three examples.

- The 1755 Oath of Allegiance which the British government tried to extract from the Catholic Francophone population settled in Annapolis valley in the Bay of Fundy led to the forced expulsion of 10,000 Acadians from their farmlands and re-settlement in other parts of colonial North America, primarily the New England states and Louisiana. Many did not survive the deportation and others sought their return to Francophone communities in the Miramichi River valley in New Brunswick over the next quarter century. See <http://www.cbc.ca/acadian/timeline.html>.
- John A. Macdonald suppressed the Metis republic created on the banks of the Assiniboine River under Louis Riel in 1869. The provincial government subsequently suppressed the French culture in western Canada via the Manitoba School Act of 1890. This effectively ended bilingual schools - contrary to the BNA Act - a fact pointed out by the Supreme Court in 1990 - requiring all the provincial laws to be written in both languages). See <http://www.canadahistoryproject.ca/1890/index.html>.
- The de facto suppression of First Nations rights, laws and customs by annexation during the period of European settlement in the absence of treaties. In BC for example, the first treaty was signed with the Nisga'a in 1990. See <http://www.aadnc-aandc.gc.ca/eng/1100100016428/1100100016429>
- During World War I the Canadian government incarcerated immigrants who were suspected of loyalties to Canada's enemies in the European conflict, including suspected espionage or other illegal activities. Specifically 8,579 men were detained in 24 camps across Canada. These included 5,954 of Austro-Hungarian origin including 5,000 Ukrainians, over 2,000 Germans and some Turks and Bulgarians. They were denied habeas corpus, and were not convicted of any crimes. During World War II approximately 20,000 persons of Japanese origins or Canadian-born persons of Japanese descent were evacuated from the Pacific coast after the Japanese attack on Pearl Harbor. The Canadian government seized their property and sold it at discounted prices. It evacuated the communities inland to agricultural locations where they were held involuntarily and conscripted for agricultural and forest labour. See <http://www.thecanadianencyclopedia.ca/en/article/internment/>

II. Second Element, is the law UNIFORM? This principle does not mean that everyone is treated the same, but rather no one can be exempted from the law because of *irrelevant* characteristics, such as social status, wealth or political connections. These cases are food for thought:

- The case of *R v A* (1974). An attempted rape (a serious indictable crime) was plea-bargained to indecent assault (a summary offence) permitting the accused to receive a *suspended sentence* requiring payment of \$1000 to the victim in compensation. "A" was a successful businessman who had managed to keep the charge secret from his family, the press and the public. The sentence had the effect of nullifying any criminal record suggesting that social class matters.
- Michael Mandel's 1983 study of employment records suggests that for persons who commit the same kind of crime and are convicted, those who are NOT employed are sentenced more harshly. The implication he draws is that people who are not employed are viewed as relatively less worthy of consideration when they go before the courts.
- The McDonald Commission (established 1977; issued its final report, 1981) investigated irregularities in the conduct of members of the RCMP security force before the creation of CSIS. On several occasions members illegally trespassed into and stole private property in the 1960s and 70s from targets under surveillance. The crimes were recorded originally as "break, enter and theft". When individual Mounties were identified and brought to justice (by other Mounties) they were charged with the relatively minor offence of "failing to obtain a warrant" - permitting them to receive a *conditional or absolute discharge* (hence no criminal record) and no consequences in terms of being unfit to continue to serve as peace officers.
- The old soliciting law (1972-1985) which made it a crime to solicit in public for the purpose of prostitution was typically laid against the sellers - usually women - and many courts refused to hear cases involving men caught by undercover female officers in 'sting operations' designed to catch them. If it takes two to tango, the law was only applied against the seller. The new anti-communication law passed in 1985 removed this inequality.
- In 1885 parliament passed the Chinese Immigration Act. In order to deter the immigration from China, the act imposed a tax of \$50 on every Chinese person who disembarked from a ship at a Canadian port. The tax was raised to \$100 in 1900, and increased to \$500 in 1903. Parliament ended virtually all Chinese immigration in 1923. These sorts of discriminatory procedures were aimed exclusively at Asian immigrants (Chinese, Japanese and Indian). No European immigrants ever faced such repressive conditions of immigration. See <http://www.roadtojustice.ca/laws/chinese-head-tax>

III. SPECIFICITY is the third characteristic. It refers to the accuracy with which laws describe forbidden behaviours. Good laws spell out what constitutes a violation in detail, while poor laws do not. One cannot send a meaningful signal to citizens with laws that say something like - *do not drive too fast*. You have to say how fast you can drive before

breaking the law. But we have some parallels in the criminal laws that are like this.

- Vagrancy law made it a crime for a person simply to be found in public, without being able to give a good account of what the person was doing, especially when the individual did not appear to have any visible means of support. The law did not require that the person be found to be doing something illegal.
- The Obscenity Law. Prior to about 1950 throughout the common law world, an obscene publication was defined by the *Hicklin* rule. *Hicklin* arose from a British case in the 1860s. It defined an obscene publication as one in which “the tendency of the matter is to deprave and corrupt those whose minds were open to such influence and into whose hands an item of this sort might fall”. The Canadian criminal code attempted to tighten up this vague law with a change currently contained in s 163. The law says anything is obscene which consists of “the undue exploitation of sex, or sex in conjunction with crime, horror, cruelty or violence”. This means that writers and film-makers could explore sex if this was done *duly*. The courts have held that such a decision is to be based on community standards. These are supposed to be national in character, objective (not merely a judge's opinion), and standards of tolerance (i.e. what you would tolerate your neighbour to watch, not what is in good or bad taste). *R v Butler* (1992) attempted to put the matter straight by suggesting that *if the materials were harmful*, this would be *undue exploitation*. But the law is still like a sign that says: “don't drive too fast” because it is extremely difficult to determine if a film or book is harmful to an audience. The Child Pornography law is more specific because it deems that some materials are harmful to the underage actors regardless of the effect on the audience.

IV. Lastly (Fourth), laws must have a penalty or *penal sanction* to give gravity to the conviction of offenders. However, the penalty should be meaningful by being only as intrusive as the transgression. This means that the penalties must be just, i.e. appropriate and measured or proportional. However, there are a number of conflicting theories that justify different kinds of penalties. The problem raised is this: different judges can award radically different sentences for similar crimes based on their adoption of different sentencing philosophies. Here are the leading theories of sentencing:

- Incapacitation or imprisonment - protect society by removing offenders from society
- Retribution - punish the offender to symbolize society's rejection of the offender
- Denunciation - condemn the offence verbally to represent society's rejection of the behaviour
- Fines – usually related to deterrence
- Deterrence - punish the crime only so much as to offset the gains of crime. This also raises the question of *specific* deterrence - the effect on the accused versus *general* deterrence - the effect on other potential offenders versus *marginal* deterrence - the effect of one kind of punishment versus another kind of punishment (i.e. imprisonment vs. capital punishment)
- Compensation - make the offender re-pay the losses caused by the crime

Unit 1: Justice and The Rule of Law
File: 1. 305 - Final Unit 1.docx 10,315 wds

- Rehabilitation - reform the offender to help the offender reintegrate into society as a law-abiding citizen
- Community service to allow the accused to redeem him- or herself by contributing to society
- Absolute and conditional discharges of convictions that expunge the record of conviction because of conditions that ameliorate the accused's guilt.

If differences in sentences follow no discernible pattern, this raises questions about the UNIFORMITY of law. The following letter, written in 1871, from John A. Macdonald, Prime Minister of Canada, to John Creighton, Warden of the Kingston Penitentiary, is a good illustration of the ambiguity of theories of punishment.

Box 1. Prime Minister Macdonald's Dilemma

Ottawa, October 31st, 1871

Private my dear Creighton -

I have yours of the 25th which I have read with all the attention you bespeak. I can quite appreciate your anxieties in your office, it is a most responsible one, not without care but as you remark, it has also its bright side. I never had any doubt of and do not now doubt your ultimate success in making the Penitentiary a school of reform as well as a place of punishment, of course you feel that inexperience at first, that everyone does in a new situation. My only fear is that your natural kindness of disposition may lead you to forget that the primary [purpose] of the penitentiary is punishment and the incidental one reformation.

You say that you desire to feel that you are the means of making five or six hundred of your fellow creatures more happy than they have previously been in the Penitentiary. I could quite sympathize with your desire if it were to make them less miserable than they have been previously rather than more happy--happiness and punishment cannot and ought not to go together. There is such a thing as making a prison too comfortable and prisoners too happy. . I am pleased to think that I have in any way strengthened your hands by the release of some prisoners, the power of release should however be exercised very sparingly. Severity of punishment and more especially, certainty that the sentence pronounced will be carried out is of more consequence in the prevention of crime than the severity of sentence. . .

John A. Macdonald.

The PM's letter obviously embodies conflicting objectives of incarceration.

Discussion

The four characteristics of good law illustrate the sort of issues that preoccupy students of jurisprudence and are discussed less often by sociologists. The major issue discussed

among contemporary sociologists is whether the laws have been invented to serve the interests of particular groups or whether the laws are derived from a situation of value consensus and are an expression of the collective will. Speaking generally, there are few proponents of the idea that most or even the most important of our laws reflect the feelings of the majority of people in society. James Q Wilson (*Thinking About Crime*) was one of the few theorists who adopted a consensus approach. He stressed that crimes, especially predatory crime and crimes of theft, undermine the feeling of community and the citizens' feelings of security. The contemporary debate in criminology is animated by the extent to which interest groups are able to dominate governments to ensure that the laws reflect their own interests. Conflict theorists take the view that the state and the legal apparatus are an arrangement for the perpetuation of the capitalist system of production. Generally, criminal law is seen as a device to protect private property and to prevent interference with the capitalist process of production—and to prevent the interference with the enjoyment of private property. Other conflict theorists argue that--whatever the economic basis of society--elites will struggle for control over the scarce resources of society and will employ law as a weapon to control dependent and subordinate classes and groups. These include racial and gender groups. The sociologies of law differ on where the influences arise. All such approaches stress externalist influences on law - but differ on where these influences arise. This unit will examine two such processes. First we examine laws that have clearly evolved from the influence of powerful political and economic forces in society. Second, we examine legal changes that have been fostered by the moral leaders in the society.

Illustrating Sociologies of Law

I. Economic Determinism: Vagrancy in Africa and England

One of the best examples of laws of this type is discussed by William Chambliss and concerns the introduction of poll taxes and registration taxes in colonial East Africa in the period 1890-1930. One of the major problems facing European settlers in Uganda, Kenya and Tanganyika after colonization was that of getting large numbers of natives to leave their traditional lifestyles of herding and slash and burn agriculture to work on the large English plantations raising tea, coffee and sisal for export. The new agriculture depended on the creation of large pools of cheap labour and the legal code was at the forefront of the solution to this problem. The "poll tax" and "registration" laws required everyone of working age to pay a small tax, purportedly to support the colonial rule. Since the natives were subsistent agriculturalists, they had never previously participated in a money economy--until this law forced them into it.

To guarantee the unwilling African's compliance with this "forced labour" arrangement, fines, imprisonment and corporal punishment were imposed on people who failed to pay the tax. Even this was not completely successful and more comprehensive and sterner guarantees were required. Labourers were required to register fingerprints so that runaways could quickly be returned to their plantation employers. Vagrancy laws prevented natives from leaving their reserves for anything for anything other than wage labour. In addition, wages were kept deliberately low to prevent workers from generating

sufficient cash to quickly payoff the poll tax and quit work.

This sort of legal exploitation was not limited to exotic colonial societies but was found even in England, the home of the common law tradition. Chambliss reviewed the history of the vagrancy law and showed that this residual type of social control was redefined and interpreted over time to serve the interests of the shifting power blocks in English society.

The English Vagrancy Laws

In 1274 a pre-vagrancy statute was passed that made it unlawful for travellers to live off the largesse of the abbies and religious monasteries and houses, for the biblical injunction to feed and house strangers and travellers was becoming a grave economic burden for religious orders. This, however, was not a true vagrancy law.

In 1349, a law was passed making it a crime to give alms or handouts to any beggars who were able, but unwilling, to work for a living. Consequently, beggars would be forced to take work to support themselves. The law also made it illegal for any man or woman without a trade to refuse work, and gave the individual who apprehended the latter the right to his or her service at a fixed wage for two years. This law overlapped with the Statutes of Labourers (1349-51) which fixed the price of labour, made it unlawful to accept more than this, made it unlawful to refuse work, and made it unlawful to flee one locality to another to avoid offers of work or to seek higher wages.

According to Chambliss, the rationale for these laws was purely economic. The Black Plague (1347-50) had wiped out about half of the English population, creating a general labour shortage. The labour-intensive manorial system was put into jeopardy. The 1349 vagrancy law effectively minimized the ability of freemen to move about to maximize their economic self-interests. The net effect of the laws was to impress into jobs all those who were available to work and to make it difficult for anyone to move about to exploit wage differentials and thereby threaten the manorial reliance on cheap peasant labour. Despite being a criminal law, the law had an obvious economic motive. Following 1349 punishments for vagrancy became more severe. The initial penalty of 15 days in jail changed to indefinite terms in the "stocks" until an employer could be found. With later population growth, the statute appears to have become dormant.

In 1530 a new vagrancy statute was written to specifically cover what we would today recognize as criminal and potentially criminal activities. It identified as "vagrant" those persons without any visible means of support, as well as those who lived by gambling and trickery. The punishments for vagrancy at this point were extremely cruel. Whipping and mutilation (e.g., cutting off the ears) were expanded in 1535 to include the use of the death penalty for repeat offenders. Chambliss argues that the vagrant was now conceived as a serious felon and not just a vagabond who did not want to work. In 1547, vagrants were branded on the chest or the forehead, indicating in a permanent way the view that such persons were inherently dangerous, rather than being mere nuisances. This was formalized in a 1571 law that laid down the conditions for first-, second- and third-time offenders (first--grievous whipping and burning "thru the gristle" of the right ear;

second--impressed for two years forced work; third--death without benefit of clergy).

Chambliss argues that the change in the definition of vagrancy reflected the power of the new interest groups, the manufacturers and traders whose business in wool and cloth grew to international proportions in the 15th and 16th centuries. In 1400 there were 169 wool merchants in England. A century later there were 3000. Vagrants were prosecuted because of the threat they posed to the safe transportation of merchant's goods. The vagrancy act identified the vagrants as threats specifically on the highways.

The last notable change in the vagrancy laws occurred in 1743 when the vagrancy categories took a more modern twist, de-emphasizing the danger to trade of marauding bands and labeling the destitute wanderers and other marginal actors as threats to public order. The law was aimed at beggars, gamblers, runaways, vagabonds and the like. These were largely the sort of offences found in the first Canadian criminal law on vagrancy: the people identified were less a specific threat to trade, and more an undifferentiated threat to normative life styles and the public peace and order.

In Canada - aside from economic concerns - the vagrancy law was used until 1972 to make it a crime to be a prostitute found in public (this was Vagrancy "C" and, as noted earlier, it was criticized because it made a crime out of being some kind of disvalued person - not for actually doing anything wrong - i.e. it did not prosecute prostitution, but people standing around waiting for "dates". Also in 1985, vagrancy was changed to cover convicted pedophiles found within 500 feet of schoolyards - where they might reasonably be expected to be stalking children.

But in general, the vagrancy laws shifted their focus over time to include different categories of "enemies" or "delinquents." When the manorial system required labourers, the law was used to force labourers into the feudal system. When the merchants required freedom from threat of highway robbery, the law was retooled to serve this interest. And when the needs of the merchant class passed in importance, the law came to serve a more general interest in the control of marginal people.

The Rule of Law in Thompson (2001) and Hay (1975)

In the various case studies, it is apparent that power blocks (or vested interests) in the state have influenced the creation of criminal and administrative laws to maintain or protect their own political and/or economic status. Marxists have argued for a century and a half that the ideas of the ruling class are the ruling ideas. Ideas, including laws, are determined by the all-important economic substructure of the society. The case of vagrancy examined above appears to broadly bear out this observation. Yet, the idea that law=class power cannot survive for very long. It draws into question the legitimacy of the legal structure, it challenges the idea that "the rule of law" is autonomous or independent - and if people lose respect for it, it no longer governs their behaviour. This point is made by Edward P Thompson in *Whigs and Hunters*. This is a study of the Black Act of 1724.

This law introduced about 200 new capital crimes in England - including putting pitch on

the face as a disguise and going about the countryside after dark. The law was designed to suppress the 'hunters' who lived in the forests and countryside which were bought up by the new business class - the new Liberals or Whigs - who were building opulent country estates outside London and who were pushing people off the land who had lived there for generations, and whose rights to do so, in theory, were protected by forestry law.

Thompson points out that the law was clearly a class biased law - but that it created a framework which even the disadvantaged could call on for their own purposes, especially after the working classes arrived and expanded in the cities after the age of steam (post 1790). Thompson - a Marxist - said that "the rule of law was a cultural discovery of universal significance" - a remarkable position for scholars who typically reduce all superstructure (including law) to the (material) base or substructure (the economy).

Thompson's work raises the question of how political states with biased laws could survive without becoming simply naked oppression. But in the English tradition, the laws were never generally so regarded. The laws always had a sense of autonomy.

Box 2. Thompson on the Rule of Law

People are not as stupid as some structuralist philosophers suppose them to be. They will not be mystified by the first man who puts on a wig. It is inherent in the especial character of law, as a body of rules and procedures, that it shall apply logical criteria with reference to standards of universality and equity. It is true that certain categories of person may be excluded from this logic (children and slaves), that other categories may be debarred from access to parts of the logic (as women, or...those with certain kinds of property), and the poor may often be excluded, through penury, from the law's costly procedures. All this, and more, is true. But if too much of this is true, then the consequences are plainly counterproductive. Most men have a strong sense of justice, at least with regard to their own interests. If the law is evidently partial and unjust, then it will mask nothing, contribute nothing to any class's hegemony. The essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation, and shall seem to be just. It cannot seem to be so without upholding its own logic and criteria of equity; indeed, on occasion, by actually being just. (Thompson 2001: 436).

So while the Whigs may have created a legal system that served their interests, the paradox of the law was they could not abandon it willy-nilly to suit their own purposes. It was not a sham. They were constrained by it. It defined not only their relationships in commerce, but also their marriages, rights of inheritance, and their protection for the sovereign.

Subsequently, the lowly free-born English people could access that same legal structure to advance their own interests. As a result, the legal process became partially autonomous from those privileged classes who originally pulled all the strings for their own self-interests, and acquired a broader utility to mediate conflict between all manners of society.

After the Norman conquest (1066), the French rulers instituted a system of justice based on (1) independent circuit judges who tried cases at arms length from politics, (2) a special form of reasoning called the common law which based decisions on reasoned insights and considerations from previous judges which bound those who followed them in similar

jurisdictions. This is the idea that judges are governed by precedents, that certain questions of law have already been decided (the concept of *stare decisis*) and (3) a provision for a jury of one's peers, or neighbours. These three factors were crucial for establishing justice as an independent force in English society. English society may have been subordinated to the French Normans politically, but the form of justice which was created adopted key features that made those subjected to Norman rule stakeholders in how their security was negotiated.

In a similar vein, Douglas Hay argues that in the 1700s, when the law was biased in favour of the business classes, the rule of law continued to have an independent status, and a deeply divided class society was governed with neither a uniformed police force nor a standing army because of the perceived legitimacy of the justice system. Three key elements he stressed were (1) the "majesty of the law" - all the dramatic trappings of the pomp and circumstance of the courts, the wigs, the formalities, the predictability of the circuit pleas etc. (2) a stress on the peculiar logic of legal reasoning (i.e. jurisprudence) and exacting, precise procedures required by it (without which no one could be tried or convicted), and (3) the royal prerogative of mercy which allowed the Crown to pardon felons who enjoyed popularity. So while the law was extremely harsh, the elite ingratiated itself to the poor by actually being merciful!

Between Chambliss and Thompson we see a range of understanding premised on the primacy of the use of a law as a resource in group or class conflict. The cases that Chambliss and Thompson examine capture the tension between law as a form of coercion, and law as a legitimating institution. Both acknowledge the intergroup or class conflicts. What Thompson recognizes is the integrative potential of an institution whose origins started in a more coercive context.

2. Labeling Theory: Laws as Symbols of Morality

Much of the sociological literature on law reform has centered on changes in law designed to regulate moral behaviour including sexuality, drugs and alcohol. This literature argues that from time to time certain groups in a society effect changes in law that have a largely symbolic significance. Unlike the economic entrepreneurs who seek control over the legal process for financial gain, "moral entrepreneurs", as Howard Becker (1963) calls them, seek changes in the law for symbolic ends. They seek passage of laws to criminalize the activities of other groups and consequently to upgrade, through invidious comparison, the moral superiority of their own group. The laws they advocate are largely symbolic. That is, the laws do not change, but merely deprecate the behaviour of the out-groups. The leading examples of this process are found in attempts to control elements of lifestyle and leisure, and surround the creation of laws against the use of liquor and drugs.

Prohibition and Temperance

The classic sociological study of prohibition is Joseph Gusfield's *Symbolic Crusade* (1963). It traces the rise of 19th century temperance movements and the eventual adoption of outright prohibition. The periods of temperance were different in the USA and Canada. In

the USA, the 1919 Volstead Act made the 18th Amendment to the constitution that outlawed alcohol production enforceable by funding the positions in law enforcements required by the law. This Act was repealed in 1933, ending prohibition. In Canada, a Prohibition Act was passed by the federal Parliament in 1916 allowing provinces the right of separate ratification. Except for Quebec, provincial ratifications of the prohibition appeared over a two-year period following 1916, and continued to 1924: even after 1924, when provinces began to opt out, there was widespread exercise of "local option," that is, decisions at the village, city, town or county level on whether to go "wet" (i.e., allow beverage rooms) or stay "dry." There was a one-year period from November 1919 to October 1920, when the law was not enforceable on inter-provincial trade, allowing persons in a dry province to import liquor from another province. We tend to equate prohibition with these well-known periods in the second and third decades of this century. However, the temperance movement was a widespread 19th-century movement that effectively banned the trade in liquor in many local jurisdictions.

James Gray's popular study of this episode in Canadian history is *Booze: The Role of Whiskey in the Prairie West*. Gray suggests that the use of liquor among the settlers of British North America was staggering. In Upper Canada in 1842 there were 147 distillers and 96 breweries serving a population of 500,000. This constituted about one manufacturer for every 2,000 men, women and children. In Winnipeg, in 1881, for the population of 8,000 people, there were 64 hotels with bars, 5 breweries, 24 wine and liquor stores. In 1882, the number of hotel bars jumped to 86, and there were 64 grocery stores selling bottled whisky, as well as a score of "wholesalers" in wagons. We do not have figures for the volume consumption of alcohol in Canada over time, but our consumption is probably comparable to the Americans. Table 1, which shows total per capita volume alcohol consumed, indicates that 19th- century and early 20th-century consumption was higher than today.

Table 1: Annual Consumption of Alcohol in the U.S. (Gusfield, 1963: 132)

1850	2.07 gallons / person over 13 yrs. old
1911-15 (average)	2.56
1940	1.56
1957	1.91

The dramatic change in drinking habits is also reflected in the type of alcohol consumed. In 1850, 90% of the volume consumed was distilled spirits (i.e. hard liquor) and 7% was beer. In 1957, 40% was spirits and 50% was beer. Rorabaugh also provides information about historical consumption patterns in the US in *The Alcoholic Republic* (1979). "Between 1800 and 1830 annual per capita consumption of [of distilled spirits] increased until it exceeded 5 gallons—a rate nearly triple the rate of today's consumption. After 1830 the temperance movement, and later on high federal taxation discouraged the drinking of distilled beverages. Annual per capita consumption fell to less than 2 gallons, a level from which there has been little deviation in more than a century" (1979: 8). As Ohio and Kentucky were settled, farmers found it more economical to ship distilled spirits than actual grain or corn. And the price of whiskey fell dramatically. In addition, drinking was undertaken privately and in binge sessions in contrast to earlier habits that were more communal and

meal-oriented.

With this rise in volume of consumption, there was a proliferation of temperance movements. In 1835, the Montreal Temperance Society was founded. In 1836 in Montreal there was a convention of 30 societies from numerous jurisdictions. In 1847, the Sons of Temperance was founded in New Brunswick, Nova Scotia and Lower Canada. The Independent Order of Good Templars flourished across British North America in the 1850s with a total membership of 20,000 as did the Women's Christian Temperance Movement and charters of numerous American groups.

Who were the backers of these movements? According to Gusfield, they were predominantly fundamentalist Protestant, white settlers, largely from rural areas, and initially of middle-class background. They were the icons of the old Protestant ethic and valued hard work, self reliance and self-denial. What theory accounts for their participation in the temperance movement and the ultimate enactment of the national prohibition laws? Gusfield argues that increasingly over the 19th century the traditional settlers of Canada and the USA experienced a loss of social status compared to the urban classes and a challenge to their traditional values with the increases of urban, non-Protestant, and non-Anglo-Saxon immigration. Consequently, the status of the original settlers vis-a-vis those who came later was falling. The temperance movements were a form of status politics, not class politics, whose aim, unlike the vagrancy laws and the poll tax, was not economic gain but the reaffirmation of the prestige of a lifestyle. They tried to obtain these ends by getting others who were viewed as individual sinners or "backsliders" as well as alien groups like the urban Irish Catholics, or the beer-loving Germans, to accept the values of the temperate and the abstainers. The leaders of the movement were congregational church ministers, but the membership was overwhelmingly female, representing the first women's political struggle in North America. This is a point that is not fully acknowledged by Gusfield, but consistent with his position. Immigrant men, with the exception of Asians, qualified for suffrage, i.e. political representation through the federal ballot, before this was acquired by women in Canada in 1918, and through the *Persons Case* in 1929 that defined women as 'persons', i.e. entitled to sit in the Canadian Senate (Historica Canada 2014).

In the early period of the movements (1825-1875) the norms of the Protestant middle and upper class dominated the societies. The strategies of the movements were those of education, persuasion, and the reform of social conditions that caused excessive drinking. However, as the industrial capitalists rose to power with the success of American mining and railway conglomerations, the temperance movement's members lost political control with increases in urbanization, and non-English immigration, and the tactics changed from "assimilation" to coercive reform, that is, from a temperance movement to a prohibition movement.

The fight for prohibition represented the attempt of the old middle class from rural and small-town communities to enforce their ideas on the rest of the population, even if only symbolically. What is unclear about these laws is the extent to which they radically altered drinking behaviour over the long run. Law enforcement was often half-hearted. Local stills sprang up everywhere, and organized crime grew to fill the vacuum created by the

temperance movement's lobbyists. While before prohibition every saloon required a license, prohibition actually multiplied the number of saloons operating in urban areas. Now that it was illegal, no one was worried about the license, and everybody who wanted to open up a bar or speakeasy (a.k.a. "blind pig" or "blind tiger"-- an establishment that sprang up to sell alcohol illegally), but was previously restricted by the law, was now unrestrained, at least by the licensing boards. In Canada the volume of illicit liquor manufactured and consumed is nearly impossible to calculate. However we can be fairly certain that Canadian palates did not do without alcohol just because of the law, just as we are fairly certain that nowadays anybody who wants marijuana or crystal meth need not go without if they are prepared to flout the law. Also we know that in the western provinces the liquor inspectors were tracked by the railway engineers as they moved across the provinces to enforce the law, and whiskey merchants were tipped off. There was also political pressure to police the political opposition by pressuring police to ignore certain addresses and prosecute others (Lin 2007). In addition, opposition to enforcement led to violence against the police in the Crew's Nest Pass, and motivated the termination of the prohibition experiment.

However, in rural areas, and especially in the west where the temperance movement (and the women's movement) was strongest, Gray suggests that drinking fell to 20% by volume of what it had been earlier (1972). Where did the 20% come from? Contrary to popular opinion, it was still legal to manufacture alcoholic beverages for the export market and for medicinal purposes. Much if not most of the Canadian liquor manufactured for export was illegally diverted to domestic sources or illegally exported south of the border. This was the experience of the early Bronfman operation in the fledgling distillery in Yorkton, Saskatchewan.

Also, alcohol could be obtained by doctor's prescription from a pharmacy. James Gray (1972: 92) relates an instance from Calgary where a party of fishermen heading for a day at Banff, and fearful of "catching a chill" had a prescription filled for a quart of Scotch at the local pharmacy. Lastly, breweries were permitted to produce "temperance beer," a weak beverage ranging in strength from 0.5% to 4% depending on the year and the province. However, strong beer (5%-7% alcohol by volume) was often brewed and substituted in the taverns. Needless to say, the new laws dampened the rowdiness of the bars. No matter what was coming through the spigots, it was imperative to maintain an appearance of respectability to avoid the involvement of curious police officers.

After 1924 the province-wide dry laws were repealed, though local option continued to keep many places effectively dry until the last two decades. The 1923-24 votes that removed prohibition replaced it with strict laws that turned over the retail distribution of liquor to provincial government control and regulated the operation of beverage rooms under provincial laws. Thereafter there were to be no more wide-open towns and no more rambunctious saloons. The new drinking laws forbade such things as standing on the table, singing in the bars and standing with a beer in hand.

The reformists who pushed for prohibition were responsible for the curtailment of the legal marketing of alcohol. This served the symbolic interests of the temperance backers--

the rural, traditionalist, fundamentalist classes, but, inadvertently, it also served the interests of illicit entrepreneurs in organized crime. These laws scored a temporary symbolic victory over the newer elements in the ideological interests of a downwardly mobile sector of society. The temperance movement was an attempt to re-assert the righteous lifestyle of this formerly dominant group. Consequently, for Gusfield the rise of the prohibition laws was symbolic, not economic. Nonetheless, the demise of the laws reflected the economic interests of the legitimate brewers and distillers, and, with government in the business of distributing liquor, created an alliance between government and business by which government was given a share of the retail profits as well as the liquor taxes. And business, which had continued throughout this period to make liquor allegedly for export, was guaranteed a legitimate system of distribution in the home market. What this suggests is that to explain the rise of particular laws, we ought to examine the competing interest groups that arise to contest new laws and to reform old ones, and the moral *as well as* the economic elements that underlie the respective positions of such groups.

Overview

This brief examination of several different laws illustrates that social causes or conditions dictate or influence the laws a society adopts. Laws do not always respond to some external ideal of universal justice that transcends society and to which society naturally aligns itself. In democracies, laws are passed by politicians, and are formed under a variety of conditions. We have focused on several of these.

First, we examined laws passed and changed in response to the economic aspirations of certain elite groups of society. This was reflected in the evolution of the vagrancy laws in England, and in East Africa. In the guise of controlling unruly public behaviour, vagrancy was a method of exerting control over marginal or rebellious elements of the labour force.

Second, in the prohibition case laws which were introduced as reforms of illicit conduct by moral entrepreneurs can have underlying economic consequences. These may be undertaken by specific interest groups, as in the case for prohibition led by the temperance movements. In the introduction to this unit, we identified several elements that are relevant when determining whether laws are good laws. These were politicality, uniformity, specificity and penal sanction. These are not narrow concerns of jurisprudence but are important ideals in democratic forms of society. They provide grounds for making and for challenging laws. The question of politicality has arisen in most of the illustrations we have examined. The thrust of the vagrancy laws, the drug laws, and prohibition are of note in sociological studies because they smack of one-sidedness, of political domination of one group over another by virtue of its control over the legal apparatus. In other words, they raise questions about the politicality of the law. In addition, we find many of these laws objectionable because they defy the ideal of uniformity. For example, Canada's first anti-opium law pinpointed Asian users and avoided the high- status medical pushers; contemporary narcotics legislation targets potheads for criminal processing but fails to regulate habit-forming prescription drugs.

Politicality and uniformity exist in a special tension in democratic states. To recognize that laws are political or conventional, and that they are self-serving for those groups who control their passage, is to detect a loss of innocence in man-made law that was never problematic when laws were given to society from above. To say that the laws are politically motivated is to raise the question of who is benefiting and who is suffering from them. Cui bono? The standard of uniformity tends to control the politicality of the law. While legal systems in every country are politically organized, the hallmark of democratic societies is the uniformity of law. This puts enormous importance on the legal standards by which criminal behaviour is judged. Obviously, to be judged criminal one must be more than simply a foreigner and more than merely unusual. The distinguishing elements of criminal behaviour have preoccupied students of law for centuries. We shall turn to those issues momentarily, but first some background.

In his history of the development of criminal law, C.R. Jeffrey (1957) points out that while a concern for morality is found in all human groups, the control of behaviour under a set of distinctively criminal laws emerged in British society following the eleventh century Norman invasion. Prior to that time, wrongful behaviour, whether murder, theft or rape, was viewed as an interfamilial or intertribal affair, and was settled by acts of revenge or feud, or by payment of material compensation. Saxon law even specified the magnitude of penalty for various transgressions. The Normans, in an effort to enforce the centrality of English society under the authority of the King, redefined wrongful behaviour by members of feudal groups as a breach of the King's peace, and the King was made the victim of the wrongful act.

Consequently, transgressors became answerable to the King and a system of circuit judges was devised to enforce the King's peace, and to assess penalties for his coffers. Today, while the victim of a harmful act typically has recourse against an assailant by invoking the criminal law in the fashion of the Normans, he or she can also bring a civil action or tort for the same transgression in the fashion of the Saxons. By way of illustration, O.J. Simpson was acquitted of murdering his estranged wife and her lover by a criminal jury but found at fault in a successful civil litigation. Criminal law is not a static entity; just as it came into being under the political struggle of the Normans and the Saxons, so it has continued to evolve.

Some of the central questions dealt with by legal scholars throughout common law history concern the criteria of criminal behaviour. What is it that distinguishes criminal behaviour from other behaviour? What are the necessary aspects of the criminal act? How do these distinguishing components interact? These questions tend to offset the notions of some sociologists of law who propose to reduce criminal laws to the class bias of the lawmakers. While certain laws clearly reflect this type of influence, it is important to remember that the modern state is composed of numerous interest groups even within the major social classes. Consequently, any account of the social origins of law must be sensitive to the complexities of influence-group relationships. Behaviour is not criminal merely by virtue of its class or group origin. Nor is behaviour criminal just because it is called criminal. Contrary to the position of the labeling theorists, if mere labels were sufficient to make behaviour criminal, we could never experience injustice nor criticize our system of laws.

Unit 1: Justice and The Rule of Law
File: 1. 305 - Final Unit 1.docx 10,315 wds

Part of our ability to do so comes from our sense of what makes laws good, and what makes conduct bad. In Unit One we have touched on aspects of the former question. In Unit Two we will examine the six distinguishing elements of criminal conduct.

In the following section we highlight several things:

- key concepts with which students should be familiar
- a list of the cases mentioned
- links to information
- Required readings
- Practice questions
- References

Key Concepts

- Major Legal Institutions in Canadian legal process
- Jurisprudence
- Sociologies of law (Marx, Durkheim, Weber)
- The Leviathan and the Social Contract (Hobbes)
- The Justice Model vs. the Crime Control Model
- Politicality
- Issues of Politicality in Canadian history
- Sovereignty
- Specificity
- Uniformity
- Penal Sanctions
- Economic determinism
- Vagrancy law
- *Stare decisis*
- Moral entrepreneurs
- Symbolic crusades

Key Cases

- R v A (1976) 25 C.C.C. (2d) 417
- Hicklin test of obscenity (1868)

Links to Information

- Thomas Hobbes. See <http://www.gutenberg.org/files/3207/3207-h/3207-h.htm>
- Magna Carta web source at British Library. See <http://www.bl.uk/magna-carta>
- Roscoe Pound's famous discussion of "The need of a Sociological Jurisprudence": See [http://www.minnesotalegalhistoryproject.org/assets/Pound-soc.%20juris.%20\(1907\).pdf](http://www.minnesotalegalhistoryproject.org/assets/Pound-soc.%20juris.%20(1907).pdf)

Required Readings

Siegel, Brown and Hoffman (2013) Chapter 1: Crime and Criminology pp. 2-22 in in *CRIM*, Toronto: Nelson Educational. COURSE TEXTBOOK.

Cesare Beccaria (1764) On Crimes and Punishments, pp. 5-15 in Eugene McLaughlin and John Muncie (eds.) *Criminological Perspectives: Essential Readings*, 3/e London: Sage.

Shirley Cook (1969) "The Canadian Narcotics Legislation 1908-1923: A Conflict Interpretation," *Canadian Review of Sociology and Anthropology* 6: 36-46.

Practice Questions

1. Identify 5 principles that Beccaria discusses in the readings. What are the justifications for them that he offers?
2. What are the ideal elements of law according to Sutherland, Cressey and Luckenbill? Identify laws or legal cases that fall short of the standards they identify.
3. In John A. MacDonald's letter to Creighton (see above), identify the competing rationales that he invokes (including some owed to Beccaria). How does MacDonald reconcile the severity of punishment versus the welfare of inmates? Can such objectives be applied simultaneously and can they be applied uniformly to all inmates?
4. What is the difference between "jurisprudence" and "the sociology of law"? Illustrate the different concerns to which each concept refers with reference to examples. Identify proponents associated with each idea. How do they relate to the 'justice' model versus the "crime control" model of criminal law?
5. Outline the labeling perspective on crime. How does it apply to the cases of prohibition of alcohol and narcotics?

References

Becker, Howard (1963) *Outsiders*, New York: Free Press of Glencoe.

Black, Donald (1976) *The Behavior of Law*, Bingley UK: Emerald Group Publishing.

Chambliss, William (1969) "The Law of Vagrancy," pp. 51-62 in William Chambliss (ed.) *Crimes and the Legal Process*, New York: McGraw-Hill.

Cohen, Stanley (1972) *Folk Devils and Moral Panics*, London: MacGibbon and Kee.

Comack, A. Elizabeth (1985) "The Origins of Canadian Drug Legislation: Labeling vs Class Analysis," pp. 62-86 in Thomas Fleming ed., *The New Criminologies in Canada: Crime, State and Control*, Toronto: Oxford University Press.

- Freiberg, Arie (2007) "Jurisprudential miscegenation: strict liability and ambiguity of law," pp. 75-90 in Augustine Brannigan and George Pavlich (eds.) *Governance and Regulation in Social Life*, London: Routledge-Cavendish.
- Gray, James H. (1972) *Booze: The Impact of Whiskey on the Prairie West*, Scarborough: New American Library.
- Gusfield, Joseph (1963) *Symbolic Crusade: Status Politics and the American Temperance Movement*, Urbana: University of Illinois Press.
- Feuer, Lewis S. (1959) *Marx and Engels: Basic Writings on Politics and Philosophy*, (see esp FE's letters to Schmidt and Bloch), New York: Anchor Books.
- Historica Canada (2014) *Women's Suffrage*, accessed on line
<http://www.thecanadianencyclopedia.ca/en/article/womens-suffrage/> accessed on 12 May 2014.
- Hobbes, Thomas (1851) *The Leviathan*, New York: Penguin Classics. 1982 Imprint.
- Jeffrey, C.R. (1957) "The development of crime in early English society," *Journal of Criminal Law, Criminology and Police Science* 47: 647-66.
- Mandel, Michael (1983) "Imprisonment, Class and democracy in contemporary Canadian capitalism," Faculty of Law mimeo, Toronto: Osgoode Hall.
- McDonald Commission (1981) Royal Commission of Inquiry in Certain Activities of the Royal Canadian Mounted Police, Ottawa: Supply and Service.
- Rorabaugh, W. J. (1979) *The Alcoholic Republic: An American Tradition*, New York: Oxford University Press.
- Sutherland, Edwin, Donald Cressey and David Luckenbill (1993) *Principles of Criminology* 11/e, Lanham MD: Rowman and Littlefield.
- Szasz, Thomas (1997) *The Manufacture of Madness: A Comparative Study of the Inquisition and the Mental Health Movement*, Syracuse: Syracuse University Press
- E.P. Thompson (2001) "The Rule of Law: From Whigs and Hunters, The Origin of the Black Act," pp. 432-442 in Dorothy Thompson (ed.) *The Essential E.P. Thompson*, New York: The New Press.
- Wilson, James Q. (2013) *Thinking About Crime*, Revised Edition, New York: Basic Books.

ⁱ In an earlier draft of this discussion, these 4 ideals were wrongly attributed to Roscoe Pound. A brief introduction to Pound's sociological approach to

jurisprudence can be found in the links to information in the end matter of this unit. It was Sutherland's work which first alerted the writer to the work of Pound.

Let's Get Legal: Canadian Criminal Law

Canadian criminal law is described primarily in the Canadian Criminal Code and the Controlled Drugs and Substances Act. There are sundry other laws such as the Competition Act which is a federal law governing business in Canada that contains both criminal and civil remedies aimed at preventing illegal trusts or threats to competition that undermine competition in free markets. The Canadian Criminal Code is federal jurisdiction although the operation of the criminal courts and the police is conducted under provincial powers. The first Canadian Criminal Code was adopted in 1892. It was based on a proposed code for Great Britain. Great Britain never adopted it, and continued to operate its criminal laws and procedures under common law precedents which had clarified the elements of offences in case law according to precedents (*stare decisis*). The Canadian law similarly recognizes precedents arising from specific criminal cases that help interpret the meaning of the statutory laws created by Parliament. These requirements would limit the criminal law to willful crimes of violence, and serious crimes of dishonesty and misrepresentation, i.e. force and fraud in the pursuit of self-interest.

In 1976 the Law Reform Commission of Canada (LRCC) tackled the question of “the scope” of the criminal law. It argued that the law was ultimately based on a society’s values, and that it was designed to condemn things that people considered wrong. However, in suppressing such things it should be restrained since the law is the bluntest instrument of the state in an otherwise free and democratic society. It was not sufficient that things be considered wrongful. The LRCC argued that it must cause harm to other people, to society or to those needing protection from themselves (in certain circumstances}. It must cause harm that is serious in its nature and degree. And the criminal law must be the optimum mechanism for addressing this harm, all less intrusive approaches having been ruled out (LRCC 1976: 27-28).

In 1982 the Canadian Charter of Rights came into effect. The Charter superseded the 1960 Bill of Rights that had been introduced by the conservative government of John Diefenbaker. That bill simply spelled out rights that had been acknowledged in the common law – the right of free speech, the right of association, freedom of religion, and freedom of the press, equality before the law, etc. However, when individuals tried to use the bill to challenge inequalities under the Indian Act, the bill had no traction. The Canadian Constitution, the British North America Act (1867), was a bill passed by the British Parliament. It was fundamental legislation. It spelled out powers that created the Indian Act. The Indian Act provided for inequalities by holding that a female Indian who married a non-Indian lost her treaty status, while a male did not (*Lavell and Bedard* 1974). The act also permitted the Yukon to punish a native found intoxicated more harshly than a non-native (*Drybones* 1970). To use the powers of the 1960 bill that guaranteed equality before the law would mean that a piece of legislation passed under the powers of Parliament, i.e. that was derivative legislation, could essentially alter the underlying constitution itself, i.e. fundamental legislation, which was an act passed by the British Parliament. The Supreme Court of Canada pointed out that it could not remedy the obvious inequalities for *Drybones* or *Lavell and Bedard* that were created by the Indian Act by exercising judicial powers it did not possess. The Charter of Rights was passed hand in hand with the Constitution Act that repatriated the constitution, the British North America Act, and made it possible for the Canadian parliament to amend its own constitution. This put the Canadian Parliament in charge of its own house, and it gave the judiciary powers to challenge Canadian laws that were derivative from the constitution since the charter

was now linked with it. Box 1 shows three sections of the charter: fundamental freedoms, legal rights and equality rights.

Box 1. THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS (1982)

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

1. *The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*

Fundamental Freedoms

2. *Everyone has the following fundamental freedoms:*
 - (a) *freedom of conscience and religion;*
 - (b) *freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;*
 - (c) *freedom of peaceful assembly; and*
 - (d) *freedom of association.*

.....

Legal Rights

7. *Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*
8. *Everyone has the right to be secure against unreasonable search or seizure.*
9. *Everyone has the right not to be arbitrarily detained or imprisoned.*
10. *Everyone has the right on arrest or detention*
 - (a) *to be informed promptly of the reasons therefor;*
 - (b) *to retain and instruct counsel without delay and to be informed of that right; and*
 - (c) *to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.*
11. *Any person charged with an offence has the right*
 - (a) *to be informed without unreasonable delay of the specific offence;*
 - (b) *to be tried within a reasonable time;*
 - (c) *not to be compelled to be a witness in proceedings against that person in respect of the offence;*
 - (d) *to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;*
 - (e) *not to be denied reasonable bail without just cause;*
 - (f) *except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;*

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

.....

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Other sections of the charter cover democratic rights (the right to vote), mobility rights (the right to re-settle anywhere), language rights and aboriginal rights. The charter also provides for remedies if government legislation or policies are found in breach of things guaranteed by the charter. As the charter came into force, no one could predict its profound influence on Canadian society. Unlike the 1960 Bill of Rights that simply spelled out things already presumed to exist, the charter paved the way for many fundamental legal changes.

When the charter appeared, John Chretien was Minister of Justice. In 1982 he released a report from the Department of Justice, *The Criminal Law in Canadian Society* (CLCS), which identified the scope, purpose and principles of the criminal law. This document was to provide a set of ideas to guide all future revisions of the criminal code. Like the earlier Law Reform paper, the CLCS cautioned about the over-reach of criminal law into areas where it was probably not needed. The purpose of the law was defined as twofold: the pursuit of security and justice. By security the CLSC referred to “the preservation of peace, prevention of crime [and] protection of the public”. By justice it meant “equity, fairness, guarantees for the rights and liberties of the individual against the powers of the State, and the provision of a fitting response by society to wrongdoing” (Chretien 1982: 40).

The CLCS suggested “the major criterion for determining what conduct merits response from the criminal law is whether the conduct causes or threatens serious harm to individuals or society” (Chretien 1982: 3). This is the essence of J.S. Mill’s thesis on liberty: that the only grounds for infringing on a person’s actions are that they interfere meaningfully with the liberty of others. However, the CLCS appears to wander beyond this limit when it suggests the following:

The concept of justice, as well as imposing constraints on the manner in which the state can act, also imposes a positive duty in requiring the criminal law to respond to certain forms of conduct: anything short of such a response would imply an inappropriate attitude to the public interest or societal value attacked by that conduct (Chretien 1982: 48).

According to this position a sexually explicit performance, an act of prostitution or a gambling arrangement could be criminalized independently of a demonstration of harm to the public or the participants. It would be criminalized not to prevent a harm, but, in the words of CLCS to prevent justice from showing “an inappropriate attitude”. This possibility is open to abuse by political groups who would use society’s most coercive method of social control, the criminal law, to impose their values on others. This brings us to the legal elements of criminal behaviour.

The Legal Elements of Criminal Behaviour

1. Crime as harm and the limits of law
2. No crime or punishment without law
3. The *actus reus* or physical element
4. The *mens rea* or mental element
5. Coincidence of act and intent
6. Causation of harm by illegal act

I. Crime as Harm

Criminal behaviour is conduct deemed to be harmful. Typically, criminal behaviour involves causing pain, distress, or loss to other individuals, groups, or to one's self, or to property. The existence of this harm, usually associated with the imagery of a victim or an injured party, suggests that crime has a moral element. It involves conduct that deserves to be punished because it is hurtful. Indeed, often the religious morality of a group determines what things its members criminalize. But in secular society, the link between crime and sin is debatable. Many crimes retain dimensions from a time when religion controlled the content of criminal law. Secular law puts a premium on protecting society from harms, not from sins. One of the central debates in the sociology of law concerns “victimless crimes” and the question of whether the criminal law should be employed to regulate the citizens' morality. Nonetheless, observers suggest that the prohibitions contained in the criminal law are designed to protect four things. Such laws as obscenity and prostitution control are designed to protect society’s values by preserving morality. Other laws are designed to insure the security of the person from assault and murder, and the security of their property from theft and robbery. Laws against riot and causing disturbances are designed to guarantee the public peace. And laws against treason and terrorism are designed to suppress challenges to the legitimate organs of the state.

1b. The Debate over Victimless Crimes

If we assume that criminal law only comes into play where social conduct is harmful, then some critics of the law have argued that many things currently under the control of the state are none of the law's business. Drug and alcohol use and addiction, prostitution-related activity like soliciting, “swinging” and group sex between consenting individuals, public nudity, suicide and suicide assistance, abortion and euthanasia are victimless crimes. They are victimless, it is argued, because the participants willingly and knowingly participate in these activities. However, these harms or costs result not from simple alcohol or drug use, but overindulgence and abuse. Offences such as prostitution, gambling and heroin use also generate revenue for organized crime, which has more obvious victims. Loan sharking, bribery, and the infiltration of legitimate businesses are

all bank-rolled by vice rackets such as prostitution. However, this observation argues as much for the de-criminalization of these vices as for their continued proscription, in that de-criminalization would remove major sources of funding for organized crime, and open up new sources of tax revenue for governments.

Other victimless crimes, such as nudism, offend the public morality in a marginal though obvious way. It is one thing to pursue alternative lifestyle practices such as nudity in the confines of one's own home or one's own social club or private setting. However, "streaking" is a defiant public act. It flaunts a counter morality. It challenges the taken-for-granted expectations of public life, and attempts to disrupt the sense of civility or decency of public life. However, the harm of "streaking" is nothing more than transient discomfort or even amusement. Legally speaking, this is not a criminal but only a mischievous act. S. 174 of the Criminal Code indicates "a person is nude who is so clad as to offend against public decency or order". In *R. v. Springer* (1975), the accused was acquitted of a charge of committing an indecent act following a naked run through a football stadium in Regina. Since this was done as a joke, and there was little evidence of moral turpitude, there was no crime. The same reasoning applied in *R. v. Benolkin et al* (1977) where a group of three young men were acquitted on appeal of a charge of public nudity that arose from an incident of "skinny dipping on a sand bar in the South Saskatchewan River." Obviously being nude in public is not enough. However, 15 years later Gwen Jacob was arrested for indecent exposure for stripping to her waist on a hot and humid July day in Guelph in 1991 while walking in public and sitting outdoors on her verandah. When advised by police to put her top back on she noted that men could act similarly without attracting attention. At first the police ignored her, but after receiving complaints, she was arrested, tried and convicted. On appeal in 1996 she was acquitted because the court reasoned that her conduct was not intended to be offensive, and was not necessarily sexual in nature.

1c. Nudity, Free Speech and the Doukhobors

When nudity comes to the attention of the criminal law it typically is associated with some motive of sexual immorality, deviation or exploitation. However, the deviation need not be specifically sexual. Charges of public nudity and indecent exposure were frequently laid against members of the Sons of Freedom Doukhobors religious sect of Western Canada to control their collective defiance of Canadian law and traditional values. The more radical sect members resisted integration into traditional religious, economic and educational institutions, and when confronted by the police burned property, not exclusively their own, and frequently paraded nude through numerous towns, particularly in southern Saskatchewan and British Columbia. As a result of their activities, sect members faced charges of arson, morality offences, as well as actions of neglect that resulted in the seizure of their children. In fact the provision of the Criminal Code covering public nudity was passed by Parliament to control the Doukhobors. In 1932, 725 naked parading Doukhobors were arrested, 150 children made wards of the government, and the remainder of the group sentenced to confinement in a special camp on Piers Island in the Strait of Georgia. Should the state have the right to imprison someone for public nudity - even in the case of the Sons of Freedom radicals? Certainly there were grounds for seizing children for child neglect and truancy, and for the internecine warfare which resulted in murder, attempted murder and arson - all religiously motivated. But what about religiously motivated nudity?

Let's look at some other cases of nudity. *Johnson versus the Queen* (1975) was a Calgary case from Dino's Hideaway. Kelly Johnson was an exotic dancer who performed strip tease and eventually danced naked at a lunchtime show. Undercover detectives who testified that she did not do anything immoral or "offensive in any way" busted the "theatre". This means that, on the evidence, she was not involved in an "immoral theatrical performance" which would have been contrary to the Code. However she was arrested for performing in an immoral performance because part of the performance involved public nudity - which was (thanks to Doukhobor control) made contrary to law. The detectives linked the two sections - i.e. since she was doing something that was against the law (public nudity), this made the dance immoral - even though it was not immoral per se. Also, the criterion of what is "immoral" was determined in other cases to correspond to what was obscene (i.e. undue exploitation of sex - based on community standards). Conviction was quashed on appeal.

Two decades later a more sexually provocative case came to the courts. *Tremblay and Five Others vs. the Queen* (1993) was a Montreal case involved exotic dancing - with a twist. The dancers performed in "bedrooms" in a club for individuals who were encouraged to arouse themselves in the dancer's presence. The Quebec Court of Appeal called this activity "prostitution" and wanted those involved charged with keeping a common bawdy house (as well as being "found-ins" in the case of customers, and being an occupant in the case of the dancers). The Supreme Court of Canada (SCC) used the "harm criterion" under the obscenity law. What would the public tolerate? The SCC argued that in the age of AIDS, the public would tolerate this form of expression - particularly since there was no physical contact. There was no discussion about the treatment of women in the sex trade. In fact, the leading obscenity decision (*Butler* 1992) had classified obscene materials in terms of violence against women and degradation of women - suggesting that the dancing was neither violent nor degrading, and hence simply erotic. What is problematic here is that in other decisions specifically involving prostitution - namely communication for the purpose of prostitution - the SCC held that the limits of free speech were justified as follows. *Jahelka; Stagnitta* (Alberta CA); *Skinner* (Nova Scotia CA); *Reference re: S. 191 (anti-communication)* (Manitoba CA) all arose out of appeals of convictions under the 1985 anti-communication law. Two women appealed convictions for communication unsuccessfully in Alberta - although an identical appeal in NS resulted in a striking down of the law there (*Skinner*). In a reference to the Manitoba Court of Appeal brought by the provincial Attorney General the court justified the limits of speech imposed by the law. The SCC upheld the limits to free speech due to the objective of the law - to end the negative effects of the traffic associated with the street trade in prostitution, but such negative effects are not elements of the offence. The two female Justices dissented and would have struck down the law as unconstitutional.

The harm criterion is not an entirely settled matter at the Supreme Court. In 2005 the court heard two appeals in two cases arising from the operation of a private "swing club" (*R v Labaye*) and a bar providing opportunities for group sex (*R. v Kouri*). Both cases occurred in Quebec. Both were convicted at trial for operating a bawdy house, i.e. an establishment kept for practices of "acts of indecency". In both cases the SCC set aside convictions holding that there was no evidence of harm associated with the alleged indecencies. However, in the earlier case of *R v Malmo-Levine* (2003), which arose from challenges to the Narcotics Control Act, based on the idea that proof of harm was an element of fundamental justice required by the Charter, the Supreme Court did not invoke the harm criterion. As the dissenting opinion in *Labaye* and *Kouri* noted, it is not essential to prove

objective harm. According to Judge McLachlin, “the existence of fundamental social and ethical considerations is sufficient” (Stuart et al 2005: 124).

Is simple speech - whether disruptive or not, no matter how quiet or unobtrusive - fit for inclusion in the Criminal Code? What about speech that promotes cigarette smoking? Parliament passed laws to limit the advertising of tobacco products, and the sorts of information that could be contained on cigarette packages. In 1995 RJR-MacDonald appealed most of the provisions successfully as infringement on free speech rights under the Canadian Charter. The limits on cigarette advertising were struck down by the SCC - yet the normal use of cigarettes can kill the users. Again the harm criterion is ambiguous. It is invoked for swing clubs but waived for tobacco advertising. This is a question of the over-reach and under-reach of law. There is a tendency of over-reach in moral questions, and under-reach in controlling the harms of corporations.

All these cases attract our attention because they test our intuitions about the law, and what should be in it, and what should not. The law limits our freedoms to do things we might otherwise choose to do. While some idealists will despair that the perception of harm ultimately comes down to politicality, this is not such a bleak situation. The politicality of harmfulness reflects an ability to modify and rehabilitate our conception of crime as our morals, science and experience change and as different groups in society are able to change the public's sensitivity to what is defined as criminally harmful. Clearly over the last quarter century Canadians have witnessed a liberalization of many laws, including those controlling gambling, abortion and homosexuality. While these changes do not reflect an outright endorsement, they nonetheless reflect concessions to counter moralities as their proponents come to political prominence and as we reassess the harm of victimless vice. That is not to say that the law is consistent; as our cases on free speech show, they are not. Cigarette advertising is protected speech. Communication for the purposes of prostitution is not. However, the latter has come under attack in a decision in *Bedford v The Queen* (2013). The SCC struck down the bawdyhouse laws as well as the law forbidding living on the avails of prostitution. It did not reverse the Ontario Court of Appeal's defence of the suppression of communication but noted that it might fail under a fundamental freedom challenge. It directed parliament to re-examine the laws. The *Bedford* case acquired traction in the Ontario courts in no small part because of the high levels of murder of prostitutes identified in the Willy Picton conviction in Vancouver, and the recognition that the laws themselves were the source of harm by endangering the working conditions of prostitutes.

The proposals brought before parliament in the summer of 2014 in the aftermath of *Bedford* would criminalize prostitution for the first time. The conservative government of Stephen Harper would make those seeking to acquire the services of prostitutes to be breaking the law, and it would outlaw the advertising of sexual services by prostitutes. The law is premised on the belief that prostitution is inherently harmful, and both the supply and the demand sides of the equation need to be suppressed. If Terri Jean Bedford, Amy Lebovitch and Valerie Scott wanted the government out of their sexual services business, the new law would have been something of a surprise. It is more repressive than anything every witnessed in the past, and contrary to the sorts of recent law reforms in Australia and New Zealand which have basically legalized prostitution. We re-examine the Bedford case in Unit 10.

2. No Crime or Punishment Without Law

A second major criterion of criminal behaviour is the principle of *nullum crimen sine lege* (no crime without law) or *nulla poena sine lege* (no punishment without law). This principle respects the difference between simple harmfulness, which is indicated by our ethics, and harmfulness that is actually prohibited by the law. To be a criminal, it is not enough to be anti-social or sinful: the act must specifically be forbidden in a penal law. This was a live issue at the famous Nuremberg trials held after World War Two to prosecute leading Nazi government elites and industrialists for undertaking aggressive war. This was the first occasion in modern times when such an indictment was employed. The accused argued that at the start of the war, there did not exist any binding international treaty under which they had surrendered their sovereign right to make war, and that they were not committing any crime recognized by the international community when they invaded Poland, France, Belgium and the Netherlands. The prosecutors produced the 1928 *Pact of Paris* under which leading nations had committed themselves to using diplomacy as the remedy for settling international disputes. The pact had no binding provisions that specified penalties or identified courts of competent jurisdiction to bring non-compliant members to account. When Japan invaded Manchuria in 1931 and Italy invaded Ethiopia in 1935—without consequences—the pact was shown to be inconsequential. Both Italy and Japan were signatories of the pact, and their abrogation of it was inconsequential. However, in 1945 the victors who supplied the judges for the Nuremberg court accepted the pact as binding international law, a decision many described as victor's justice.

The law in Western societies provides the individual with an inadvertent civil rights safeguard: the existence of a specifically proscribed set of criminal conducts shows the individual on which side of the law he or she stands. Pragmatically, this underscores the difference between what is socially disvalued or disliked and what is actually criminal. Again the principle of *nullum crimen sine lege* points to the politicality of the criminal law. The main point here is that this principle prevents or *should prevent* retroactivity, i.e. applying a criminal liability to an act not forbidden at the time it occurred, i.e. *ex post facto* law.

3. Actus Reus: The Physical Element

The actus reus is the guilty or wrongful act. It is the physical element of the crime. Generally, the actus reus of a crime consists of a certain type of conduct, a consequence of that conduct, and/or the circumstances surrounding it. In a case of murder, the act of pointing the gun and pulling the trigger is the conduct. An example of consequence might be cutting the brake cable of another's car, thereby ensuring the driver will come to harm. Circumstance is a more technical matter. It refers to the specific elements of the offence spelled out in the law. For example, section 143 of the Criminal Code, which was in effect until 1983, defined rape. It read:

143. A male person commits rape when he has sexual intercourse with a female person who is not his wife (a) without her consent, or (b) with her consent if the consent (i) is extorted by threats or fear of bodily harm (ii) is obtained by impersonating her husband, or (iii) is obtained by false and fraudulent representation as to the nature and quality of the act.

Given this wording, to demonstrate in court that section 143 had been violated it would be necessary to establish the following circumstances: that the complainant was a female, that the

accused was a male, that they were not married, that sexual intercourse occurred and following section (a), that the act of intercourse transpired without the female person's consent. Where there was no actual penetration, the actus reus might not substantiate rape, but attempted rape or indecent assault. If there had been consent, it would be necessary following paragraph (b) that the consent was invalid and meaningless because it had been obtained by threats, impersonations of the husband or by false advertising about the status of the act.

In 1983 the crime of rape was eliminated from the Criminal Code and a new law was passed. Sexual crimes became part of the assault laws. Assault is the application of force or the threat of force against another person without the person's consent or with consent obtained by force or fraud.

265. (1) A person commits an assault when (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly; he attempts or threatens, by an act or gesture, to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has present ability to effect his purpose; or while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.
(2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

Where the actus reus of rape involved sexual intercourse, the new law covers any kind of assault involving sexual activity. Kissing, fondling or sexual intercourse without the consent of the victim could constitute an offence under section 265. Unlike the old section 143, under the new law, both males and females can be victims of sexual assault, both males and females can be charged with breaching section 265 and a spouse can be charged by the other spouse. These provisions are in marked contrast to the actus reus of rape that was confined primarily to a man who had sexual intercourse with a woman other than his wife without her consent. Unlike rape, a conviction for sexual assault does not require the corroboration of the testimony of the victim by other evidence, and the "recency" of the complaint cannot be used to assess its truthfulness. Previously, if the testimony of a victim of rape was uncorroborated by other evidence, the trial judge would instruct the jury about the danger of convicting the accused. Also, the delay in registering a complaint was sometimes employed to infer the validity of the complaint. The new law also clarifies the question of consent. If the victim of rape was perceived to have had consented to intercourse, this belief, no matter how improbable in light of the circumstances could be offered as a reasonable excuse to the charge.

The introduction of the sexual assault act fundamentally redefined the character of sexual offences in Canada. Where the rape law stressed the sexual aspects of these offences, the new law stresses the violent character of these crimes. They are now a species of assault. The law also revises the conduct of the criminal trial by minimizing the chance for the harassment of the victim who testifies at the trial, and, in recognition of variations in the gravity of the crime, allows the courts to proceed on different levels of the charge depending on differences in the physical elements of the crime.

In sum the actus reus of an offence refers to a certain illegal conduct, a consequence of this

conduct or specific circumstances described in the law. The *actus reus* or physical element includes all the elements of the offence except for the *mens rea*.

4. *Mens Rea*: The Guilty Mind

The rule of *mens rea* refers to the requirement that, in a criminal act, the individual must be willfully engaged in the commission of the act. In other words, one must foresee the consequences of one's behaviour and be aware of the circumstances that make the behaviour criminal. The implication here is that one does not inadvertently commit a crime; one must mean to do it. The mental element is construed in three ways: intention, knowledge and recklessness.

4.1 Intention

Intention is the most obvious form of the *mens rea*: it is the subjective monitoring and control of conduct. I pull the trigger because I intend to shoot. I light the fuse with the intent to explode a bomb. I break the window with the intent to enter a building. Intention here refers to the immediate control we possess over our conduct and the use of such control to fulfill our objectives and desires.

Intention is often distinguished from motivation. Motivation is considered the final product one aspires to, or the longer-term objective. It refers to the end state that the commission of the act will achieve. Sutherland and Cressey (1966: 13) distinguish these two things in the following example. "If a man decides to kill his starving children because he feels they will pass on to a better world, his motive is good, but his intention is wrong."

4.2 Knowledge

The second method by which *mens rea* is determined is knowledge. A person may have the guilty mind even if he did not undertake an activity with clear intent to break a law, but if he finds that subsequently his conduct is in contravention of the law. Perjury is a good instance. Few individuals take the stand with the express intention to mislead the court. However, they may find that under questioning they begin to guard their statements and avoid incriminating admissions even though they know this results in a criminally inaccurate picture of the evidence (Brannigan and Lynch 1987).

4.3 Recklessness

Lastly, *mens rea* can be construed in recklessness. Persons who refuse to exhibit care and control of themselves and their possessions, and who consequently injure others can be held accountable for their behaviour just as though they had purposefully undertaken the injury. For example, someone who practices target shooting in a schoolyard, and who accidentally kills a child, can be held guilty of homicide whatever the subjective intention as a result of the recklessness of his or her conduct.

Exceptions - (1) Duress and Necessity

Necessity and duress are similar though not equivalent. In certain situations, they may be offered as excuses that mitigate the degree of responsibility for the commission of a criminal act by pointing to the lack of real choice faced by the accused. Necessity concerns a situation in which natural forces curtail the choice of individuals and necessitate the commission of a crime. In the British case of *R. v. Dudley and Stephens* (1884), the accused were charged with homicide in a cabin boy's death. Several people abandoned a sinking ship for the safety of a small open rowboat. While adrift on the high seas, the accused killed and ate the cabin boy who was dying and thereby survived to be rescued. Cannibalism was common among shipwrecked sailors before the introduction of steam engines in sea-going vessels. The court rejected their defence of necessity, though they were convicted not of murder, but of manslaughter, and received relatively light jail terms. The court held that the evil avoided by the crime must be greater than the evil inflicted by it. The court was not moved by the argument that one life was sacrificed to save two lives since it was not clear that the death of the three was inevitable for no one could foretell the hour of rescue. This case jolted the maritime community and ended tolerance of cannibalism among shipwrecked sailors.

The issue of necessity was also raised in the prosecution of *Morgentaler, Smoling and Scott* that the Supreme Court heard in 1985. The accused were charged with providing abortions to women privately without regard to the certificates issued by therapeutic abortion clinics. The relevant sections of the criminal code are shown below.

287. (1) Every one who, with intent to procure the miscarriage of a female person, whether or not she is pregnant, uses any means for the purpose of carrying out his intention is guilty of an indictable offence and liable to imprisonment for life.

(2) Every female person who, being pregnant, with intent to procure her own miscarriage, uses any means or permits any means to be used for the purpose of carrying out her intention is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years

- *(4) Subsections (1) and (2) do not apply to*
 - *(a) a qualified medical practitioner, other than a member of a therapeutic abortion committee for any hospital, who in good faith uses in an accredited or approved hospital any means for the purpose of carrying out his intention to procure the miscarriage of a female person, or*
 - *(b) a female person who, being pregnant, permits a qualified medical practitioner to use in an or approved hospital any means for the purpose of carrying out her intention to procure her own miscarriage*

The accused argued that the abortion law interfered with the security of the person, and that the services they provided were required of necessity. The court rejected the argument since there was no evidence of necessity brought in respect of any particular case to show on the facts that resort to the private clinic was unavoidable for the health of the patient.

Duress or compulsion is a more technical matter. The Criminal Code spells out certain circumstances in which a person, who is forced by others to commit a crime, may be excused because of duress or compulsion. Section 17 specifically states that such an excuse cannot apply to certain crimes (treason, murder, piracy, attempted murder, assisting in sexual assault, forcible abduction, robbery, causing bodily harm, or arson), that it only applies where the individual is facing threats of *imminent* death or grievous injury where such threats are made by someone immediately present at the time of the offence, and where the person is not participating with the group committing the offence. In *R. v. Carker* (1967), the accused pleaded he had been compelled to trash his own prison cell during a riot "in the course of which a substantial body of prisoners, shouting in unison from their separate cells, threatened the accused, who was not joining in the disturbance, that if he did not break the plumbing fixture in his cell he would be kicked in the head, his arms would be broken and he would get a knife in the back at the first opportunity". As in the previous case of necessity, the court rejected this defence of duress because Carker, being locked up in his own cell, was not facing threats of immediate harm or loss of life as required in section 17. His excuse of compulsion was rejected. This rather narrow reading of duress or compulsion overlooked the fact that Carker would probably have been attacked subsequently. However, this situation would not have been a certainty, for Carker could have spent the rest of his sentence in protective custody or could have been transferred to another institution.

Exceptions - (2) Maturity or Age

The next illustration of the idea that criminal responsibility is a function of the ability to form an intention is associated with age. Where early English criminal codes hanged young and old alike for criminal infractions, we have evolved the notion that young people do not have the same capacity for evil intentions as older people. In Canada, prior to 1981, no person under the age of seven years could be convicted of an offence. Likewise, no child between the ages of 7 and 13 could be held responsible for a criminal act unless first, the child's competence to judge the nature and consequences of the child's conduct, and second, the child's ability to appreciate that it was wrong, were expressly demonstrated by a prosecutor. Furthermore, in some cases, the law expressly ruled out the culpability of children on the basis of age. For example, section 147 (see above) indicated that no male child under the age of 14 could be convicted of rape. Similarly, no person under the age of 14 was deemed capable of giving consent in sexual matters. The Young Offenders Act (1981) changed the age of culpability and replaced the Juvenile Delinquency Act (1908). It set culpability at ages 12 to 17. In the 1990s the maximum penalty was raised from three years, first to five, and then to 10 years, and provided for transfer of youth to adult courts. The Youth Criminal Justice Act in turn replaced the YOA in 2002. The YCJA has attempted to divert more non-serious young offenders away from court processes, and to subject the more serious offenders to adult penalties within the youth court. However, overall the philosophy of the court stresses the significance of diminished accountability for youth offenders. In *R v D.B.* the Supreme Court (2008) stated: "Because of their age, young people have heightened vulnerability, less maturity and a reduced capacity for moral judgment. This entitles them to a presumption of diminished moral blameworthiness or culpability." (S.C.J. No. 25 (S.C.C.))

Exceptions -- (3) Mental Disorder and Culpability

Section 16 (2) of the Criminal Code states that "every person is assumed not to suffer from a mental disorder so as to be except from criminal liability". Usually, the burden of proving issues in criminal cases lies with the Crown. However, where mental disorder is a live issue, and where it constitutes a defence for a crime, the burden of proof lies with the accused. In Canada, the defence of insanity is based on section 16, which reads:

16 (1) No person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable from appreciating the nature and quality of the act or omission or of knowing that it was wrong.

The concept of "mental disorder" replaced the earlier concept of insanity. The first Canadian law was an amplification of the famous, though now dated, *M'Naghten rule*. In England in 1843, *M'Naghten* was found not guilty of murder by reason of insanity. This decision was influenced by the testimony of physicians who treated individuals suffering from diseases of the mind that affect the faculties of reason and morality. The House of Lords argued that to establish a defence on the ground of insanity, the defence must establish that the accused was laboring under a defect of reason because of a disease of the mind so as not to know the nature and quality of the act, and not to understand that it was wrong. The new Canadian law defines "mental disorder" as "a disease of the mind."

These sweeping changes occurred in the aftermath of the case of *R v Swain* (1991). Swain had been acquitted of a criminal charge on the earlier defence of insanity. Swain challenged the automatic detention imposed following such an acquittal without any rights of appeal. The law at the time dictated that the person so acquitted would be held indefinitely "in strict custody pending the Lieutenant Governor's pleasure". The Supreme Court found that this amounted to arbitrary detention, and struck down the relevant sections of the law as unconstitutional, triggering a parliamentary re-evaluation of the entire approach to insanity under Canadian criminal law in 1992. The case was doubly provocative because the Crown raised the issue of insanity over the objection of the accused.

When a defence is available to a criminal charge on the basis of mental disorder, the courts make two determinations. First, the court determines whether the person is fit to be tried, that is whether the disorder prevents the accused from understanding the nature of the proceedings against him or her. If the accused is fit, and mental disorder is established and connected to the accused's capacity to assume responsibility for the crime, the verdict is "not criminally responsible on account of mental disorder". In the past, courts would commit such persons to indeterminate supervision for treatment in a psychiatric facility. The new law precludes the automatic incarceration for treatment. Once a disposition is reached the court can convene a "disposition hearing" to determine how the person should be treated. Alternatively, a Review Board is constituted to consider various options including a discharge, or detention in a hospital for treatment. The determination is based on a balance of the risks to the public on the one side, and the need for the person's treatment on the other. The boards review such files annually. The new law is controversial because it has resulted in cases where persons who have caused great harm to others have been discharged from the courts without further judicial consequences. Consider the case of Vincent Li who beheaded a fellow passenger on a Greyhound Bus in 2008. He was found not guilty by reason of mental illness, in his case, schizophrenia, and was released into the

community without supervision in 2014. He was deemed to be a model non-violent patient.

Box 2. Vince Li, Greyhound Bus Beheader Granted Unsupervised Outings (The Canadian Press, 13 May 2014)

WINNIPEG - *A man who beheaded a fellow passenger on a Greyhound bus in Manitoba will soon be allowed to leave a mental hospital without an escort. Thursday's ruling by the Criminal Code Review Board means Vince Li will be on his own in public for the first time since he stabbed Tim McLean and then ate parts of his body six years ago. The board granted Li all the new freedoms his psychiatric team had requested at a hearing earlier this week. Lead psychiatrist Dr. Steven Kremer said Li, a schizophrenic, has stopped experiencing delusions and is a model, non-violent patient. Instead of the supervised outings Li had been granted previously, he will be allowed unescorted trips from the Selkirk Mental Health Centre into the nearby city of Selkirk. The visits, to begin next Thursday, are to start at 30 minutes and increase to full days. As well, Li's supervision on outings to other communities — Winnipeg, Lockport and nearby beaches — will be relaxed. He is to be part of a group without a staff member dedicated to monitoring him. Li is also to be moved to an unlocked ward at the hospital from the secure wing where he has been kept. For McLean's mother, the changes were an outrage. (CP 2014)*

Exceptions – (4) Officially Induced Error

In the case of *R v Jorgenson* (1995) the accused was charged with “knowingly” selling obscene materials that had been acquired by undercover police officers. The offending materials were eight videotapes that had been classified and approved by the Ontario Film Review Board (OFRB). According to Canadian law in 1995 (following *Butler*) material is considered obscene if it contains sexually explicit materials that portray violence of explicit sex that is degrading or dehumanizing, or is harmful. Jorgensen could not claim that he did not know generally the content of all the materials in his store, since that would amount to a defence of mistake of law, i.e. ignorance of the law, but ignorance of the law is not a legal defence. The matter was whether he was aware of the specific nature of the eight videotapes, and the fact that they unduly exploited sex and violence. The fact that he had approached a government official charged with the classification of such materials and had been misled by such an official meant that he had committed an error in law that was induced by the OFRB. He was found not guilty as a result of officially induced error. In fact it is not the job of the OFRB to determine whether sexually explicit materials are obscene according to the criminal code, since that is a determination that only a court can make. The OFRB can suggest the age criterion of the potential audience for the subject matter. The retailer acted in good faith that the materials he was selling were legal, when in fact they were not. The obscenity law holds persons culpable if they knowingly circulate materials that are obscene. Jorgensen had good authority to believe that his goods were permissible under Canadian law.

Officially induced error is a mistake of law. It can be contrasted to the mental element that is associated with a mistake of fact. The leading case on this matter is *Pappajohn*.

Box 3. Honest but mistaken belief (*Pappajohn 1980*). Summary from the Supreme Court of Canada:

The appellant listed his house for sale with the real estate firm with which the complainant, a real estate saleswoman, was associated. After an appointment at a downtown restaurant for lunch to discuss the house sale, during which lunch a good deal of liquor was consumed by both parties, they went to the appellant's house, the one which was listed for sale. There, the complainant contended, she was raped over her protests and struggles, while the appellant claims he had an amorous interlude involving no more than a bit of coy objection on her part and several acts of intercourse with her consent. Whatever occurred in the house, the complainant eventually ran out of the house naked with a man's bow tie around her neck and her hands tightly tied behind her back with a bathrobe sash. She was in an upset state and exhibited great fear and emotional stress.

When the defence closed its case and before the trial judge commenced his charge, the jury was excluded while counsel for the appellant argued that the trial judge should put the defence of mistake of fact to the jury, i.e. that the judge tell the jury that if the appellant entertained an honest though mistaken belief that the complainant was consenting to the acts of intercourse as they occurred, the necessary mens rea would not be present, and the appellant would be entitled to an acquittal. The trial judge refused to accede to the request and the appellant was eventually convicted of the rape of the complainant. The conviction was affirmed in the Court of Appeal with one dissent, upon the fact that the trial judge failed to put to the jury the defence of mistake of fact, the majority adopting the view that the issue emerging from the evidence was a simple one of consent or no consent.

Pappajohn established the defence of honest but mistaken belief but the Supreme Court did not accept it in his case. However, the case was important in the drafting of the 1983 law that replaced rape with sexual assault. A mistaken belief was recognized as a valid defence but that belief had not only to be honest but had to be reasonable in light of the circumstances of the behaviour.

5. Concurrence or Coincidence of Action and Intent

In the criminal act, the physical and mental elements must be fused or concurrent. For example, it is possible for a person to form the intent to kill another person, and subsequently to actually cause the death accidentally. A man swears to kill his alienated wife in June. On a dark and stormy night in July she steps off the curb into the path of her former husband's car and is accidentally killed by the person who vowed to take her life a month before. Though acquaintances might observe presumptuously that he had only carried out his wishes, there is no crime if the wish or intention is not the responsible factor behind the actual deed. If the deed truly was accidental, if for example someone just happened to accidentally run over an archenemy, then the matter is only a coincidence, not a crime. If you remove the wrong coat from a coat check and only discover the mistake later, you may have complied with the physical requirements of theft; however, there is no concurrence, no fusion of the act with the intent. But if you realize the error and subsequently decide not to return the item to its owner, then there is a fusion of the criminal intent and the criminal conduct (Parker, 1983: 90-91).

This point was illustrated by an English case, *Fagan v. Commission of Metropolitan Police* (1969) that involved a traffic constable and a driver he was directing. The constable directed the driver

into a parking space but found the driver had stopped the car on his foot. The car remained there either because the engine stalled or because it was turned off (depending on whose word you believe). The constable implored the driver to move but the driver swore and told the officer to wait. He only moved after repeated requests. He was arrested for assaulting a police officer. In court, the accused's lawyer argued that there could be no finding of guilt because there was no concurrence. The physical element, actually driving the car onto the constable's foot, occurred independently from the mental element, the intention to assault the officer. While the driver may have formed the intent to assault, this occurred after the accidental stop on the officer's foot. This argument was rejected by the court in a judgment that suggested that the driver's failure to remove the car *once the harm was recognized* constituted a fusion of conduct and intention. Though the event may have been initiated by accident, it was maintained and prolonged willfully by the driver (See Parker, 1983: 148-150).

6. Causality: The Relationship Between Harm and Conduct

In criminal cases, the issue of causality is not raised in most situations because the relationship between one's conduct and the harm suffered by another is typically clear-cut. However, in certain cases the harm is not immediate and is not direct. For example, in a 1974 U.S. court case, *Fuller v. Preis*, a woman sued the estate of a man who had caused an automobile accident involving the woman and her husband. The man whose estate was being sued had died in the crash, which evidence showed was caused by his intoxication. The woman's husband suffered extreme injuries as a result, injuries that rendered him an invalid. After several months in convalescence, the husband became depressed and committed suicide. The woman brought suit successfully and won a settlement from the estate of the deceased driver. The court recognized that there was a causal relationship between her husband's suicide (i.e., the harm) and the other man's impaired driving (the criminal conduct). In this case, the demonstration of causality was heard in a civil court, not a criminal court. In civil court, the test for truth depends on "the balance of probabilities," which either support or fail to support the complaint. In criminal court, the rule of truth is much stricter: "beyond a reasonable doubt." Presumably, such distant causality would be harder to establish in criminal court.

Aside from the question of determining the measure of causality between individual conduct and individual harm, students of jurisprudence have considered the question of determining causation of harm from corporate activities. Faulty products cause deaths, disfigurements and injuries. Companies pollute the water we drink and the air we breathe, and saturate the environment with chemical contaminants and electronic radiations. Companies can affect the marketplace by artificially controlling the price of commodities, and precipitate financial losses through reckless investments. Though the harm from such activities is increasingly easy to detect, the questions of the culpability of a non-human corporation and the determination that harmful effects arise causally from group-mediated actions are sometimes difficult to assess.

If the lack of product safety has been a direct effect of a policy of financial restraint by a manufacturer, it may be easier to establish causality. However, most relevant cases are not so clear-cut. For example, cigarette smoking is recognized universally in the scientific community as a contributing cause of cancer. However, since not everyone who smokes gets cancer and not everyone who gets cancer smokes, tobacco company lawyers have been quick to point out that the

chain of effects is questionable.

Likewise, though a particular automobile may have hazardous operating features that contribute to accidents, since not every driver of this car is doomed to an accident, the link is contentious. These situations are aggravated by the fact that most manufacturing policies are functions of committee decisions and are subject, even within one company, to much interpretation and latitude as the decision is distributed through the division of labour. Even if a policy is dubious at one point, it may be harmful at another as it gets enacted or transformed in the production process. Tracing the resulting harm to some particular committee or person can be highly problematic, especially when no one is governed by any unlawful intentions. Analysts of this situation have recommended that the criminal law be structured to make corporate actors liable for their policies and for the way such policies are implemented so that they would become criminally liable for exercising "due negligence"...as opposed to "due diligence".

Box 3. The Westray Mine Disaster

"On May 9, 1992 the Westray mine in Plymouth, Nova Scotia blew up, taking the lives of 26 miners working at the time. Shortly thereafter, the premier of the province appointed Justice Peter Richard to sit as a Commission of Inquiry, empowered by broad terms of reference, to look into the causes of the explosion. At the Inquiry miners, safety experts, engineers, Westray supervisors, union representatives, members of provincial and federal government and two former Westray senior managers testified. Justice Richard's report, released in 1996, described a workplace characterized by unsafe practices and an overriding concern for productivity. He did not spare Curraugh resources, Westray's parent company, its executives and managers in his assessment. He cited the company's tough negotiating stand to secure government backing, its autocratic style of management, management's contempt for miners who complained about safety and both tacit and overt encouragement of unsafe practices in the interest of production. Justice Richard was equally condemnatory of provincial mine inspectors who disregarded the complaints of miners and operated in a bureaucratic system unable to follow up, manage or enforce its own regulations" (Mills, Simmons and Mills 2010: 267).

Hazardous levels of methane gas and coal dust that had accumulated as a result of negligent control procedures caused the explosion. After much delay, charges were laid against two mine managers for manslaughter arising from breaches of health and safety regulations. No senior executives were ever charged, nor was the company held accountable as a corporation. These charges were stayed when the Crown determined that convictions were unlikely. However, in 2003 the criminal code was amended to add offences of negligence against organizations and their responsible officers to hold them accountable for acting in a way that contributed to Westray-like disasters (Stuart et al 2006: 1075).

Overview

In this unit we have also reviewed the six leading criteria or elements of criminal behaviour. These have several sources. The elements of harmfulness, and the principle of *nullum crimen sine lege*, emanate from the existence of the state and the political regulation of social life. The other

elements, *actus reus*, *mens rea*, concurrence, and causation, reflect a more concrete understanding of how behaviour originates and how it is organized. These structural and psychological dimensions collectively provide a vivid sense of what we are talking about when we speak of criminal behaviour. However, as the Westray case suggests, our concepts of what constitutes good law as well as the elements of crime continue to evolve.

In what follows there is a list of:

- key concepts with which students should be familiar
- a list of the cases mentioned
- hyperlinks to legal sources
- Required readings
- Practice questions
- References

Key Concepts

- Crime and harmfulness
- Victimless crime
- *Nullum crimen sine lege; nulla poena sine lege*
- Retroactivity
- *Actus reus* (3 points)
- *Mens rea* (3 points)
- The laws of rape versus sexual assault
- Duress and necessity
- Maturity and criminal culpability
- Officially induced error
- Honest but mistaken belief
- The mental disorder defence
- Concurrence
- Causation
- Corporate negligence

Key Cases

Attorney General of Canada v J.V.C. Lavell and Isaac and Bedard [1974] S.C.R. 1349.
R v Drybones (1970) S.C.R. 282; 3 C.C.C. (2d) 303.
R v Butler (1992) 1 S.C.R 452
R v Springer (1975) 24 C.C.C. (2d) 56
R v Benolkin (1977) 36 C.C.C. (2d) 206
Johnson v The Queen (1975) 2 S.C.R. 160
Tremblay and Five Others (1993) 2 S.C.R 932
R v Jahelka, R v Stagnitta (1987) A 13 S.C.C.B.C.A 153
R v Labaye; R v Kouri (2005) 3 S.C.R. 728
R v Malmo-Levine (2003) 179 C.C.C. (3d) 417
JRJ-MacDonald v The Queen (1995) 3 S.C.R. 199
Bedford v The Queen (2013) 3 S.C.R. 1101

R v Pappajohn (1980) 2 S.C.R. 1299
R v Dudley and Stephens (1884)
R v Morgentaler, Smoling and Scott (1985) 48 C.R. (3d) 1
R v Carker (1967) S.C.R. 114, 2 C.R.N.S. 16
R. v M’Naghten (1843)
R v Swain (1991) 1 S.C.R. 933
R v Jorgensen (1995) 4 SCR 55
Fagan v Commission of Metropolitan Police UK (1969) 3 All E.R. 442

Links to Information

- Accessing the Criminal Code of Canada. See <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html>.
- Alternatively a copy of the Canadian Criminal Code can be downloaded here: <http://www.yourlaws.ca/criminal-code-canada/321>
- Search a legal case. See <http://www.canlii.org/en/index.html>
- Access the Youth Criminal Justice Act. See <http://laws-lois.justice.gc.ca/eng/acts/Y-1.5/>

Assigned Readings

1. Siegel, Brown and Hoffman (2013), Chapter 2: The Nature and Extent of Crime pp. 24-47 in *CRIM*, Toronto: Nelson Educational.
2. Stuart, Don, Ronald J. Delisle and Steve Coughlan (2006) “Role of the Criminal Justice System in Canadian Society: The Harm Principle in *Malmo-Levine, Labaye* and *Kouri*,” pp.111-125 in *Learning Canadian Criminal Law 10/e*, Scarborough: Thompson Carswell.

Practice Questions

1. Identify the legal elements of criminal offences. How would you establish these in specific legal charges? For example, how would they apply to the prosecution of Robert Latimer in the case of the murder of his daughter? [See Siegel et al 2013: Ch. 1]. Could these elements support the criminal prosecution of persons responsible for the Westray Mine disaster? Or for the manufacture of dangerous consumer products?
2. Stuart et al identify some inconsistency across several legal cases for the way in which Canadian courts employ the harm criterion to criminalize (or alternatively decriminalize) certain socially provocative activities. Explain the inconsistencies of the court findings discussed in Stuart et al (2006). More to the point, if harm is not the major element used to justify criminalization, what other considerations are important, and how much weight can be attached to them?
3. What is the legal issue behind each of the following legal precedents? Drybones/Lavell and Bedard? Butler? Pappajohn? Dudley and Stephens? M’Naghten? Swain? Fagan v Commission of Metropolitan Police?
4. Describe the legal changes that accompanied the replacement of the law of rape with the law of

sexual assault in Canada.

References

- Brannigan, Augustine and Michael Lynch (1987) "On bearing false witness: perjury and credibility as interactional accomplishments." *The Journal of Contemporary Ethnography*, Vol. 26, No. 2, pp. 115-146.
- CP (Canadian Press) (2014) "Vince Li, Greyhound Bus Beheader, Granted Unsupervised Outings", Huffington Post accessed online http://www.huffingtonpost.ca/2014/02/27/vince-li-unsupervised_n_4869267.html 12 May 2014.
- Chretien, John (1982) *The Criminal Law in Canadian Society*, Ottawa: Department of Justice
- Clark, Kenneth, Richard Barnhorst and Sherrie Barnhorst (1977) *Criminal Law and the Canadian Criminal Code*, Toronto: McGraw-Hill Ryerson.
- Historica Canada (2014) *Women's Suffrage*, accessed on line <http://www.thecanadianencyclopedia.ca/en/article/womens-suffrage/> accessed on 12 May 2014.
- LRCC Law Reform Commission of Canada (1976) *Our Criminal Law*, Ottawa: LRCC.
- Mills, Albert J., Tony Simmons and Jean Helm Mills (2010) *Reading Organizational Theory*, 3/e, Toronto: University of Toronto Press, A Garmond Book.
- Parker, Graham (1983) *An Introduction to Criminal Law in Canada*, Toronto: Methuen.
- Stuart, Don, Ronald J. Delisle and Steve Coughlan (2006) *Learning Canadian Criminal Law* 10/e, Scarborough: Thompson Carswell.

What counts anyways? Measuring Crime in Canada

This unit introduces the student of crime to questions pertaining to how it is counted, classified and otherwise measured. This requires some appreciation of the larger societal context in which statistics of crime are utilized, and how they are employed in the ways societies are governed. It requires us to question the very possibility of valid and reliable knowledge about crime in society. A recent Canadian publication posed this question when it suggested provocatively in headlines that “the actual volume of crime is unknown and unknowable” (Anderson 2012). This might suggest that the search for valid and reliable knowledge of crime is futile. It would be useful to know if such a conclusion is warranted since whatever the merits of crime counts, they have become relevant for the development of public policies designed to manage misconduct in society, and to address the needs of communities in their search for freedom from insecurity and harm associated with criminal and quasi-criminal activities. In addition, crime counts have become of some utility for sociologists and criminologists in explaining the causes of crimes, or conditions that either exacerbate or ameliorate it. In other words, they have policy as well as intellectual implications. In addition, they are politically contentious. Liberal politics appear to favour a Justice Model model that advocates for individual rights and the legalization of drugs (CBC News 26 July 2013). Conservative politics appear to favour a crime control perspective that puts a premium on more severe punishment and prison expansion, and a heightened vigilance over the alleged decline in personal safety in everyday life. In 2010 the treasury Board Minister, Stockwell Day, noted that unreported crimes were on the rise, a difficult conclusion to draw if they were in fact “unreported” (*Globe and Mail* 3 August 2010). Public Safety Minister, Vic Toews, referring to the 2009 General Social Survey on victimization, noted with concern that there was a decline in calls to the police for help compared to the 2004 survey (*CBC News* 28 Sept 2010), suggesting the public’s loss of confidence in the police. The current government favours prison expansion. At the same time Statistics Canada was reporting an on-going decline in the aggregate crime rate in police-reported crime statistics. These observations raise several obvious questions: Are crime statistics valid? Are they socially and politically relevant? And do they shed light on the causes of, or conditions that contribute to, crimes in Canadian society? These are some of the questions we should be better able to tackle at the completion of this unit.

Unit Objectives

In this unit we plan to explore the following issues:

- The intellectual debates about the social relevance of “official statistics” in constructivist sociology
- The origins of the institutional collection of official statistics in Canadian society and their role in Canadian settlement policy and government
- Patterns of crime in historical judicial statistics
- How contemporary crime statistics are produced, the development of the Uniform Crime Report (UCR aggregate), the revised Uniform Crime Report (UCR incident-based)

Unit 3: Measuring Crime
File: 3. 305 – Final Unit 3.docx 13,303 wds

- The development of the Severity Crime index
- Results from the Police-reported Crime Statistics in Canada 2012
- The development of victimization surveys via Statistics Canada's General Social Survey (GSS 2004 and 2009)
- Measuring violence against women
- Correctional Statistics

The Constructivist Perspective on Official Statistics

The 1960s produced a large literature critical of the positivist tradition in scientific sociology. Positivism was equated with causal modeling, quantitative measures and statistical inferences. Symbolic interactionism and ethnomethodology represented perspectives that sought to replace scientific sociology with its emphasis on "explanation" with a radically interpretive alternative that emphasized "understanding" (i.e. Max Weber's *verstehen* methodology; Weber 1949). Social statistics were a challenge to this perspective because they appeared to assume that it was possible to represent social facts with objective observations, and that such facts could be counted, and used in quantitative models to test the significance of associations between such facts without regard to the variability of opinion as to how they were actually interpreted in everyday life. This was at the core of Kitsuse and Cicourel's (1963) famous paper, "A Note on the Use of Official Statistics". Their intellectual outlook was essentially a labeling perspective that holds that events become crimes because of how they are labeled, and not because of any intrinsic characteristics. In the last unit it was argued that crime was characterized by harmfulness. The labelers would argue that things are harmful only because they are labeled as such. So labeling does not appear to acknowledge a definition based on objective criteria. The task of a labeling sociology is to investigate the labeling process. In this case Kitsuse and Cicourel say that the theoretical conception that guides them is that "*the rates of deviant behavior are produced by the actions taken by persons in the social system which define, clarify and record certain behaviors as deviant*" (1963: 135). Hence we observe people in society naming things as delinquent, and calling them to the attention of police who do likewise. The police clerks register the labels and record them into documents that are used to implement criminal processes that are recorded by state agencies, and published as though they were simply engaged in representing society objectively. In this world of linguistic surrealism, no one is actually hurt, injured or killed. They are just labeled as such. Kitsuse and Cicourel note several points that reinforce their position. The American Bar Foundation acknowledges that there is always some ambiguity in how crimes are defined. There is considerable discretion throughout the justice system in how the facts and the crimes themselves are negotiated. The prosecutions are seldom contested at trial due to plea bargains, and so their underlying facts are taken for granted. In the result the outcomes tallied as judicial statistics mask the social processes that produced them (1963: 137-138). Ergo, ignore the official statistics, and focus on how they are created. Alternatively, should we focus on both how they are constituted and what information they may contain?

In *The Social Organization of Juvenile Justice*, Aaron Cicourel (1968) would argue that the beliefs of police constables and detectives in processing juvenile delinquents resulted in a self-fulfilling prophecy. Boys from poor backgrounds and few resources were tracked more closely than other boys because they were thought to be more prone to crime, and their files attracted longer paper trails that registered every infraction. Eventually they became more stigmatized as a result of police intervention. The implication is that some boys were labeled criminals *arbitrarily*. This study was based on 10 cases with no controls, and with no way to access how delinquent careers would have proceeded independent of the police intervention. Other labeling theorists speculated that the rising crime rate of the 1960s and '70s was simply a function of the enlargement of police resources that permitted the police to document more and more crime without any reference to the actual underlying patterns of crime (see Koenig 1996). There are two potential lessons to be learned from this perspective. One lesson is that official statistics are flawed because they fail to capture the reality they are thought to represent. In other words, there is a gap between the record and the reality. Arguably, this form of labeling is based on philosophical realism that assumes the existence of an independent world that is poorly represented by the official record. The alternative form of labeling is based on the idea that all facts are hypostatizations or reifications. This is not a denial of reality, but an acknowledgement that the apprehension of a social fact is primarily judgmental. Social reality is brought into focus by certain filters – presuppositions, perspectives, expectations, experiences, etc. It is a rejection of *naïve empiricism*, the idea that if you want to know what exists, just open your eyes. It also acknowledges that we make reality accessible through language and conventions, and that these are largely socially based. However, the discovery that objects are socially constructed, judgmental or conventional does not mean they are arbitrary. Recall the difficulty in the last unit for persons who tried to dispose of clothing while appearing in public. Yes clothing is conventional, but that does not make it arbitrary or dispensable?

What are the implications of these versions of labeling? The first perspective suggests that any use of formal knowledge, including statistical descriptions of the world, will have a degree of error. In some cases the representation will be pure fantasy, myth, eyewash, presumption etc., and will not provide the foundation for informed social action. In other cases, the representation may have utility *despite* its incompleteness or bias. It does not mean that knowledge is impossible. The claim that official statistics gloss the activities that underlie them presupposes that such activities are real. With respect to the second perspective, there is no impediment to valid knowledge by acknowledging the conventional nature of definitions and social actions. When an observer charges that so-and-so committed rape, we mean so-and-so committed rape-as-we-know-and-define-it. Indeed, acknowledgement of the conventional nature of judicial facts permits them to be revised and renegotiated as societies change. Neither of these forms of labeling precludes the use of official statistics, including crime statistics. What they *do* preclude is their naïve usage. The history of the development of Canadian statistics suggests that the imperfections in measures of social facts and the conventional nature of the categories used to describe them have been on-going concerns among professional statisticians from the start.

The Historical Origins of Policy Statistics in Canada

Unit 3: Measuring Crime
File: 3. 305 – Final Unit 3.docx 13,303 wds

The etymology of the term, “statistics”, refers to “the science dealing with the condition of a state or community”. The German “statistik” referred to a “political state”. The Italian “statistica” refers to a politician or statesman. In Canada there was a concern for a systematic collection of statistics on the population of the country from its very inception. It was a blend of the European concept of *statistica*, and the Anglo-Saxon concept of “political arithmetic” that was articulated by William Petty in 1690. Petty’s “political arithmetic” was a discourse on the enumeration of national wealth constituted by the value of lands, public buildings, animal husbandry, manufacture, commerce, fishing, public revenues, banks, etc. Petty was a physician, a musician, a physicist, a mathematician, a solicitor, and one of the first persons to develop econometrics, the science of the measurement of wealth (McCormick 2009).

After the rebellions of 1837 and the recommendations of the Durham Report, British colonial authorities forged the Union of Upper and Lower Canada, creating the Province of Canada in 1841. The government of the province commissioned a census in 1851-52 and 1861, even before confederation in 1867. The government created a Board of Registration and Statistics in 1847. The board was tasked with providing a complete description of the social realities of the new province, including a complete description of the population, births, deaths, towns, cities as well as a description of all trades, occupations and manufacturers, including a description of all the land holdings, housing, public buildings, shipyards, mills and factories, as well as all the agricultural and mechanical output. The objective of the Board was to record the prosperity and growth of the new province. The Board was absorbed by the Department of Agriculture, and in 1864, was headed up by Joseph Charles Taché. Taché noted many instances of incompetence in the previous board – reports of mills with tons of grain consumed but no flour produced, or tons of flour produced without reference to the raw materials from which they were processed. From the start, he set about to rationalize the office. He served with the Department of Agriculture Statistics Department from 1864 to 1888. The Department of Agriculture became the hub of statistical profiling for the province and later for the Dominion because it was at the centre of so many developing conditions in Canadian society. The enormous growth in immigration was an agricultural concern since the vast majority of immigrants were settled on farms. In turn the focus on immigrants led to assumption of responsibility for quarantine regulations and public health. The patents registered in the province were largely in respect of agricultural implements, often manufactured for export (Warton 1998). Taché recorded the vision he brought to the job:

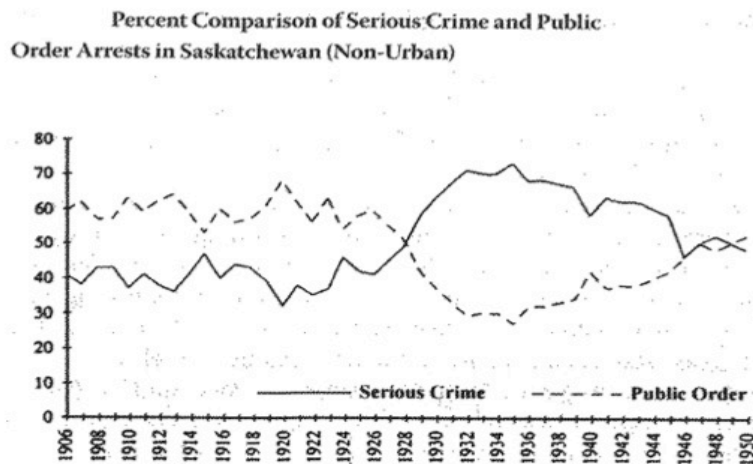
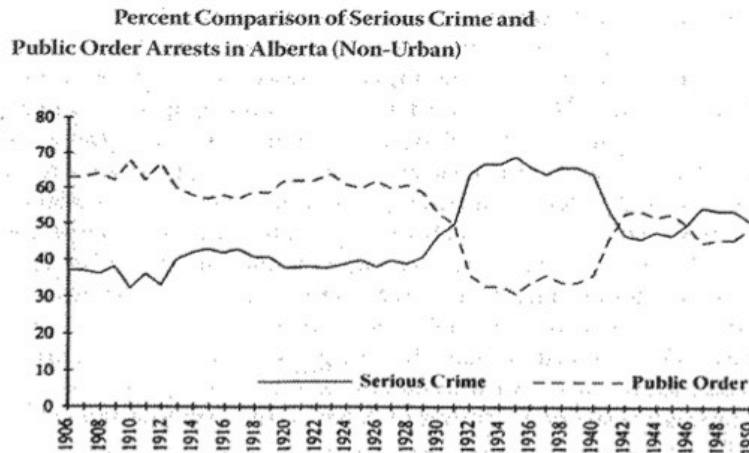
*My project, then, would be to gather carefully all...information as is to be found in old and recent Censuses, in the printed and manuscript documents of all sorts collected in our libraries, in our religious, **judicial**, and administrative archives, to complete them at the light of statistical intrinsic and extrinsic criticism, and to arrange them in the shape of abstracts, with indexes, notes and indications of the sources from which they are drawn (emphasis added; quoted in Worton 1998).*

One of the first documents to be produced on an annual basis was *The Blue Book*, which started as an internal departmental record of employees, projects, achievements, costs, projections etc. When it began to publish accounts of agricultural productivity—acres

under cultivation, harvests of various crops, miles of railway lines and canals, heads of livestock, etc., it was made available to the public and attracted considerable interest. It was superseded by the annual *Canada Year Book* which was first published in 1867 and continuously thereafter until 2012. One of the core items of information in these statistical reports was the picture of judicial activities, including the numbers and kinds of criminal convictions. These were the first crime statistics in Canada. One of the archives created by Statistics Canada describes “Convictions for indictable offences by type of Offence, Canada, 1886 to 1972” (Table Z79-84). It included Offences Against the Person, Offences Against Property with Violence, Offences Against Property without Violence, Malicious Offences Against Property, Forgery and Offences Against Currency, and Other Offences. The counts prior to 1886 were omitted because of inconsistencies in the count criteria. Prior to 1886 only one criminal conviction was reported per accused. After that, the counts included all the convictions at trial. This represented a shift from counting convicted persons to counting their various and sundry crimes. Also between 1876 and 1936 no distinction was made between convictions for an indictable offence and summary convictions. This distinction refers to the method employed to prosecute an accused. A summary offence is usually a minor crime and must be heard in a lower court before a judge, and attracts a minor penalty. An indictment can be heard in a higher court before a judge and jury and attracts much stiffer penalties. In addition, the counts of convictions from 1886 to 1921 lumped adults and persons under 16 years of age into one figure. With the establishment of the juvenile courts post-1908, it was possible to report juvenile convictions separately since they were tried in separate courts. This reporting started in 1922 after the courts began to register significant juvenile convictions.

Another area of interest in judicial reporting concerned the convictions for drunkenness, and public order offences and vagrancy. This reflected the interest in temperance discussed in the last unit. The Year Books from the 1890s onwards reported annually on these convictions and published trends that eventually covered the period from 1900 to 1950. To be sure, drunkenness and vagrancy are summary offences, and the volume of such misconduct inferred through the records of court convictions may be more a barometer of the activities of the police than the actual amount of drunkenness and disorderliness in society. If we examine the judicial statistics gathered by the Department of Agriculture for the period 1886 to 1930 there were over 2,173,000 summary convictions excluding traffic offences. Seventy percent of these offences consisted of drunkenness (51.6% i.e. over 1 million cases), and vagrancy (18.5% i.e. over 400,000 cases). According to Thorner (1979), drunk and disorderly conduct rose dramatically before 1900 and constituted about 40-50 percent of all crimes committed in southern Alberta. There was a similar situation in rural Alberta in the first two decades of the twentieth century. From 1906 to 1917, drunk and disorderly conduct made up about 23 percent of the annual public order offences on average. After 1917, these offences were chargeable as violations of the Alberta Liquor Act that continued to account for a significant proportion of public order offences. In addition, vagrancy also constituted a significant percentage of the public order offences (about 14 percent) although from 1917 to 1923, the number of vagrants arrested decreased (Lin and Brannigan 2005).

Public order offences are subject to an unusual amount of police discretion. This is because many offences are a matter of degree and reflect the perception of the individual citizen and constable. This is where the labeling perspective is quite insightful. At what point does public inebriation amount to public “drunk and disorderly conduct”? How many times must citizens be confronted by a needy homeless man before requests for personal assistance amount to “vagrancy”? Both are matters of judgment. In this sense there is no such thing as “an actual volume of crime” since the same activity may become more or less pressing under different circumstances. In addition, many crimes, particularly public order offences, can be resolved without arrest or detention, and so would never end up in the judicial statistics. The drunkard can be put to bed. The needy can be run out of town or turned over to a church or charitable organization. A lot of offences are not worth the paper work and court time that an arrest entails. And the part time magistrates who were created under provincial laws and who were paid from the fines collected from offenders were not likely to relish sentencing a lot of vagrants with little means to pay the court costs. In addition, as Lin shows, the security needs of the public eventually forced police attention towards incidents of more serious violent, personal victimization and property crimes. These progressively replaced attention to the highly discretionary public order offences that preoccupied the earlier period. Monkkonen (1981) came to the same conclusion in US jurisdictions. In his book, *Policing the Wild North-West*. Lin identifies the crossover in these two kinds of arrests in the late 1920s-early 1930s. The following figures from his book are reproduced here (2007: 74).



We began the Unit by examining concerns arising from labeling theorists. An argument on the one side was that the activities of the police more or less created the crimes. In the cases we have just examined it might be more accurate to say, not that the police created drunks and vagrants, but that they certified them through arrest. However, one does not have to repudiate the value of official statistics because they reflect the activities of the police since, in the case of drunkenness and vagrancy, who is so naïve as to overlook the discretionary nature of these kinds of arrests? The “actual volume of crime” is probably irrelevant. However much existed, that was enough to attract the interests of the police to restore public order. And though this process was highly judgmental, it would be another matter to claim that the accused were labeled as drunk and or disorderly *arbitrarily*. The accused had their own opportunities in the magistrate’s court to define reality from their perspectives. Also, following the lessons on law from Unit One from Thompson and Hay, the constabulary and the magistrates had a professional investment in making sure that the accused *were* drunk and disorderly and that their courts were not a sham.

On the other constructivist issue, the conventionality of what constitutes a crime and populates the crime statistics, we find significant continuity between the 19th century and the 21st century in the focus on crimes against the person versus crimes against property (with violence, i.e. robbery; and without violence, i.e. theft). Because the harms underlying these activities are so blunt, their continuity is hardly surprising. On the other hand, changes in the nature of the society have profoundly effected what crimes are possible. In the historical statistics there is no reference to car theft, child pornography, identity theft, terrorism or child stalking. However, “offences against the person” included bigamy and polygamy, seduction, procurement, carnally knowing a girl of tender years, wife desertion, endangering safety of passengers on a railway and threatening letters, among other things (Reed 1999). Conversely, the contemporary statistics make pay little heed to drunk and disorderly conduct or vagrancy. In addition, all the historical statistics were simple tallies of arrests, convictions, fines, police strength, executions etc. And while the Year Books always strove to depict crimes in continuous time series of several years, none of the reports computed tallies on *rates* based on changing population levels. Nor did they attempt to summarize all crimes into a single number. That would come later.

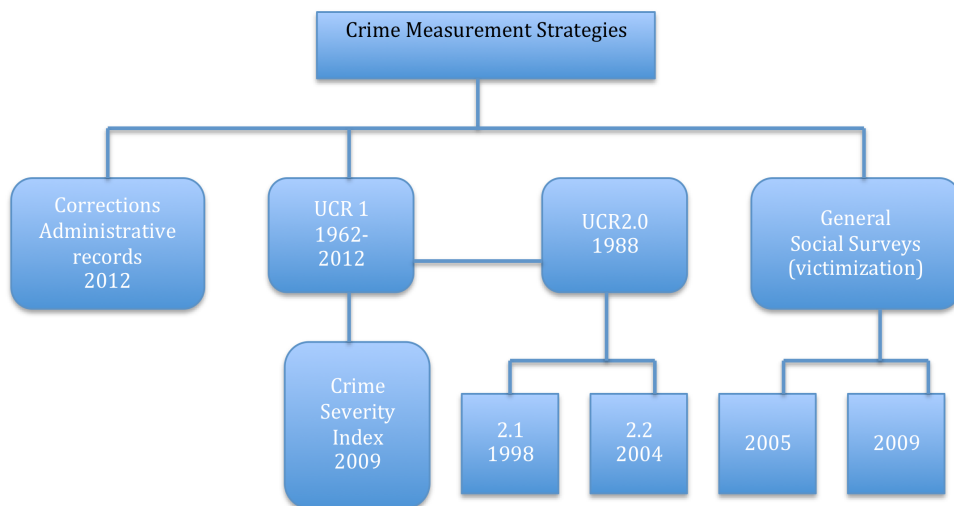
Contemporary Crime Statistics in Canada

The judicial statistics reviewed in the last section were collected initially by the Department of Agriculture. After the First World War this function was taken over by the Dominion Bureau of Statistics in 1918, which assumed the role of information needs for the entire government. After the second world war there was an unprecedented demand for accurate statistics in the areas of industrial production, the behaviour of the domestic economy and labour force participation. At that time, the demands continued to increase. As the official history of the DBS puts it: "the increased complexity of the world's social and economic problems in the postwar period, the trend toward social security, the acceptance by governments of responsibilities concerning high employment, all led to increased needs for statistics at the national level. For instance, such policies as government tariffs, taxation, unemployment insurance, old age pensions, etc., must be planned, their incidence studied, and the extent of the burdens they impose in relation to the national economy known before they are put into effect" (DBS 1952: 10). Statistics and the government of mass society went hand in hand. The economy was not Canada's only concern. The unprecedented population growth in the postwar period, the baby boom, was associated with an unprecedented rise in crime. This intensified the need for reliable information about criminal activities and the corresponding implication for assessing structural demands on policing, courts and corrections as offenders wound their way through the entrails of the various judicial institutions. Before that change the DBS was restructured with the mushrooming information needs of the new society by the Statistics Act in 1971 and was replaced by Statistics Canada in the same year. The DBS worked with the Canadian Association of Chiefs of Police to develop the first Canadian system of police-based Uniform Crime Reports.

The UCR: Aggregate and Incident Based Measures of Crime

Unit 3: Measuring Crime
File: 3. 305 – Final Unit 3.docx 13,303 wds

The Uniform Crime Reports were based on surveys of Canadian police forces starting in 1962. As such the measures were an *estimate* of trends in Canadian crime based on information conveyed to and processed by the police. Because a significant portion of crime is not detected or not reported, it is not investigated, and cannot be prosecuted, punished or enumerated statistically. This means that the resulting counts reflect to some degree the organization and the survey employed to collect information as well as the public’s need for police assistance. Also, as cases enter different spheres of contact, they may be enumerated differently. The police count incidents known to them. The courts count prosecutions and convictions. The correctional sequences count penalties. Trends assessed from these different institutions are counting different aspects of the same, original events. “Since the measure of crime is a function of the level and nature of law enforcement and judicial activity, it is not possible, using official statistics, to measure the extent and nature of crime in Canada independently of measuring the behaviour of the justice system” (Reed 1999). In addition, in the first instance, if we can conjure up an imaginary criminal event, it is easy to understand the difficulty of summarizing it accurately, with minimum information loss and in a fashion that makes it comparable to others events, elsewhere and at other times. A person breaks into a private club, robs four patrons, sexually assaults the bar maid, and kidnaps another person while escaping and steals her car. How many crimes are committed, and how many are recorded, if the incident is reported at all? Generally speaking the UCR survey emphasizes the most serious offence, and counts a crime for every case of individual victimization. In the hypothetical example, the report would probably record one count each of sexual assault, kidnapping and robbery. But it is unlikely that the breaking and entry or the car theft would be noted, because of the more serious personal injury offences, but that is not necessarily the case since the UCR has evolved significantly since it was created initially in 1962. We can represent the current crime measurement strategy schematically as follows:



The schema displays four sources of information from which trends in crime can be assessed: (a) the UCR surveys, (b) the General Social Surveys (2005 and 2009) designed to measure unreported crime through victimization surveys of the Canadian population, (c)

Correctional administrative data based on annual inmate counts and characteristics and (d) the crime severity index. UCR1 is the basic Uniform Crime Survey initiated in 1962, and is still in use today. It is also known as the “aggregate” survey that is designed to reduce complex events to the simplest reliable summary based on the most serious offence. In 1988 Statistics Canada, in concert with the Canadian Centre for Justice Statistics (CCJS), initiated the UCR2.0, or “incident based system”. This was designed to collect more detailed information on each criminal incident including an account of the numbers of victims and perpetrators. The incident based survey was modified in 1998 by introducing efficiencies for police services and lowering the response burden by eliminating or simplifying certain variables. This was called UCR2.1 In 2004 another incident based survey was implemented named UCR2.2 which was designed to take into account new variables not processed separately in previous surveys such as organized crime, cyber crime, hate crime and geocode information. The Crime Severity Index was introduced in 2009. This tool provided a way of describing the varying degrees of severity that existed between different offences based on an assessment of the magnitude of penalties for such convictions in the previous five years. It captures not just the incidence of such crimes but their relative gravity.

The centerpiece of the crime measurement strategies is the Uniform Crime Report survey. Initially, it was directed in 1962 at all police services in communities with a population of 750 and over. There were 698 such centers and the survey received a 91.4% compliance rate. By 1975 due to amalgamations and mergers, there were 503 such urban communities, and reports were filed from 96.2% of police detachments. Today every Canadian community is covered by the survey, over 1,200 police detachments participate, compliance is mandatory and there is virtually 100% population coverage (Reed 1999). Commencing in 1974 the police reported offences in several important clusters: (1) crimes of violence (2) property crimes (3) other Criminal Code offences (4) federal drug offences (5) other federal statute offences (6) provincial statute offences and (7) municipal bylaw offences. However, the divisions were in some cases a little arbitrary. Because of low numbers, kidnapping was not included in crimes of violence but “other federal statutes”. Likewise arson and willful damage to property were not included in property crimes, but also in “other federal statutes”. Robbery, which was classified in the Criminal Code as a crime against the right of property, was reported as a crime of violence. Lastly, the law of theft has been revised repeatedly over time to reflect inflation. Theft was initially divided into theft under and over \$50. In 1972 the level was raised to \$200, then to \$2,000. Now the reports distinguish thefts under and over \$5000. As a consequence, a time series of counts of “theft over” from 1962 to 2015 would be based on shifting criteria to reflect, however crudely, changes in the real magnitude of the currency.

The current UCR is reported in digitized form, submitted monthly and subject to on-going error corrections as police learn more information about individual incidents. The UCR collects summary data on nearly 100 separate criminal offences. Currently these are selectively clustered around six categories: (1) Violent Crime (2) Property Crime (3) Other Criminal Code offences (counterfeiting, weapons violations, child pornography, prostitutions etc.) (4) Criminal Code Traffic Violations (primarily Impaired and Dangerous Driving) (5) Drug Offences (possession and trafficking) and (6) Other Federal Statute violations (including all the Youth Criminal Justice Act violations and other federal

statutes). Many minor crimes can be prosecuted under parallel provincial and/or municipal laws, and are not reported in the UCR. In fact the municipal bylaw and provincial statute offences reported in 1974 are no longer covered in the UCR. The raw numbers are divided by the annual population and multiplied by 100,000 to provide a rate of crime by this unit of population. Crimes may be more *prevalent* from year to year (i.e. there are more of them in absolute terms), but this method of reporting them permits an inference as to whether the *incidence* of crimes is changing (i.e. the number of crimes per unit population).

The broad range of crime coverage by the Canadian UCR differs from the reporting of UCR in the US that is based more narrowly on what are labeled “index crimes”. These include four violent crimes—murder, forcible rape, robbery and aggravated assault, and property crimes—burglary, larceny-theft, motor vehicle theft and arson. No drugs or driving offences are reported in the index. In the US, crime is primarily a state matter. The attempts to identify national trends in crime were undertaken initially by the FBI in the 1930s.

In Canada the basic or “aggregate” UCR survey—UCR 1—classifies crimes according to the MSO criterion, the *most serious offence* occurring in the incident, where the MSO is defined according to the maximum penalty among the various crimes associated with the incident. Violent offences always take precedence in how events are recorded. An incident involving a break and entry followed by an assault would be recorded as an assault. Hence, less serious offences are under-reported in the UCR 1. However, the “incidence-based” survey—UCR 2—allows the identification of up to four violations per incident, thereby capturing the lesser offences. This information is not routinely published but can be obtained from the CCJS on request.

UCR 2 has been introduced gradually into the police surveys. It covers nearly 200 separate criminal code offences and by 2007 virtually all police departments were providing incident-based information. The detailed incident-based information permits the police to improve the crime data with greater attention to the actual structures of the crime. This can be seen in two particular areas: counterfeiting and robbery. Counterfeiting used to be reported for every incident in which a bogus bill was passed during a financial transaction. This sometimes occurred hundreds of thousands of times annually, and threatened to skew the overall crime rate into which it was aggregated. In 2007 the police began to distinguish cases in which someone was knowingly passing fraudulent currency from other cases. This reduced the incidence of counterfeiting drastically. In the case of robbery, the standard practice in this case was to report incidents of robbery. In bank robberies for instance, there may have been many persons present in the bank, but they were not necessarily the targets of the robbery. The UCR 2 survey permitted distinguishing such cases from cases in which specific individuals in an incident were individually targeted. This brought the counting of robbery into line with how other violent crimes were counted. It was possible to revise prior counts of both counterfeiting and robbery back to 1998, to the first use of UCR 2. It was then possible to revise the aggregate numbers of crime with which these offences were tallied. The UCR 1 and UCR 2 survey numbers are compared in the next chart. It is taken from *Measuring Crime in Canada* (Canada 2009: 32). These are counts, not rates.

Unit 3: Measuring Crime
File: 3. 305 – Final Unit 3.docx 13,303 wds

Robbery, counterfeiting and other *Criminal Code* offences, before and after adjustments, Canada, 1998 to 2007

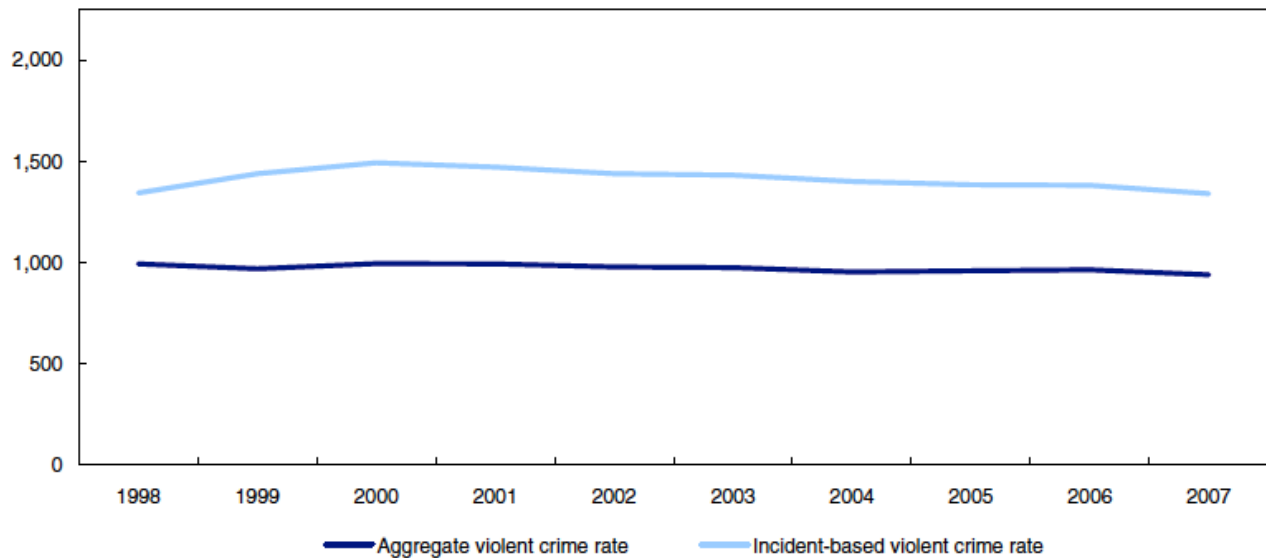
	Robbery		Total violent crime		Counterfeiting		Total other <i>Criminal Code</i> offences		Total <i>Criminal Code</i> offences excluding traffic	
	Original	Revised	Original	Revised	Original	Revised	Original	Revised	Original	Revised
	number									
1998	28,963	32,855	296,166	300,058	39,830	1,601	787,089	762,691	2,461,156	2,440,650
1999	28,740	32,593	291,327	295,180	36,265	1,709	765,523	744,548	2,356,831	2,339,709
2000	27,037	30,582	302,098	305,643	35,937	1,360	798,283	777,510	2,352,768	2,335,540
2001	27,284	30,756	305,186	308,658	38,674	1,737	827,689	804,335	2,374,811	2,354,929
2002	26,662	30,036	303,946	307,320	79,970	2,523	867,017	802,692	2,417,444	2,356,493
2003	28,437	32,084	305,667	309,314	139,267	2,763	968,276	844,711	2,579,172	2,459,254
2004	27,495	30,990	302,147	305,642	201,108	2,183	1,038,825	852,296	2,610,971	2,427,937
2005	28,798	32,437	306,687	310,326	165,014	1,517	996,670	844,892	2,510,461	2,362,322
2006	30,752	34,641	311,419	315,308	119,405	1,147	977,154	870,656	2,462,641	2,360,032
2007	29,600	33,304	306,559	310,262	55,517	697	901,638	858,090	2,302,900	2,263,053
	percent									
Percentage change 1998 to 2007	2.2	1.4	3.5	3.4	39.4	-56.5	14.6	12.5	-6.4	-7.3

Note(s): Data in this table refer to offence groupings used in the Aggregate Uniform Crime Reporting Survey. Refer to Appendix C for more information.
Source(s): Statistics Canada, Canadian Centre for Justice Statistics, revised data from the Aggregate Uniform Crime Reporting Survey.

The counterfeit counts (columns six versus five) drop dramatically while the robbery counts (Columns two versus one) increase. This affects the clusters into which they are added, enlarging the “Total violent crimes” for robbery, and diminishing “Other Criminal Code” offences for counterfeiting. UCR 2 represents an improvement in the way in which police collect crime statistics in several discrete ways. First, it provides the ability to count all the offences in an incident, not just the most serious. Second, it provides the ability to show both the number of incidents and victims in the case of violent incidents, And lastly it revises the category of violent crime to include criminal harassment, sexual offences against children, forcible confinement or kidnapping, extortion, uttering threats and threatening or harassing phone calls (not shown). Previously, these had been incorporated into “Other Criminal Code offences”. This means that when the historical trends are revised and expressed as rates per 100,000 persons, the levels will be higher. The following graph is from *Measuring Crime in Canada* (Canada 2009: 43). While the revised rates from UCR 2 (i.e. incident-based) are higher than the UCR 1 (aggregate rates), the trends are identical i.e. flat from 1998 to 2007.

Aggregate violent crime rate and incident-based violent crime rate, Canada, 1998 to 2007

rate per 100,000 population



Source(s): Statistics Canada, Canadian Centre for Justice Statistics, Aggregated Incident-based Uniform Crime Reporting Survey and Aggregate Uniform Crime Reporting Survey.

So what information is the UCR providing? It is covering reported crimes and/or crimes known to the police. It is covering the most serious kinds of offences against the person and against property, and a host of other offences including narcotics and dangerous driving. It is providing rates that permit estimates of trends over time in both aggregate and incident-based approaches. But how can we be certain that the survey is capturing serious crimes, and that changes in the crime rate are not simply the tallying of a lot of minor offences? The Centre for Justice Statistics addressed this question with the introduction of another measure of crime—the crime severity index.

The Crime Severity Index (CSI)

One of the limitations of the traditional aggregate approach to calculations of the crime trends is that the changes in the trends in less serious crimes can mask more serious changes. For example significant changes in common offences such as mischief or theft under \$5000 can skew the overall crime trends and wash out increases in homicide or robbery. The CSI tries to minimize this possibility. “The CSI is calculated by assigning a weight to each type of offences based on the customary sentences handed down by the courts for each type of offence” (Canada 2013: 7). The CSI uses national penalties averaged for the previous five years. The more serious the average sentence, the higher the index score. Homicide obviously earns a higher score than crimes such as theft and mischief. The CSI covers all crimes including drug offences and traffic violations. The CSI is reported as a score that varies below, above or equal to 100. The CSJS selected 2006 as the baseline year for points of comparison. Average sentences for all crimes in 2006 were calculated in months. The average sentence x the number of offences was calculated for each crime

Unit 3: Measuring Crime
File: 3. 305 – Final Unit 3.docx 13,303 wds

category. This value was set at “100”. The crime numbers employed were from the UCR 1 survey. The sentences were based on national judicial statistics. Then it was possible to calculate the index back until 2002 to capture any trends based on this measure. The basic record of police-reported crime trends for 2002-2012 (Canada 2013: 27) illustrates how such information is displayed. For the purpose of illustration, this table shows total crime, violent crime and non-violent crime. Notice that the values for the indexes in 2006 appear as 100. Higher number for previous dates indicates that CSI estimates (rates x penalties) were greater. Lower numbers post-2006 suggests that the indexes were smaller. The year-to-year change can be represented as percentages for convenience.

Police-reported Crime Severity Indexes, Canada, 2002 to 2012

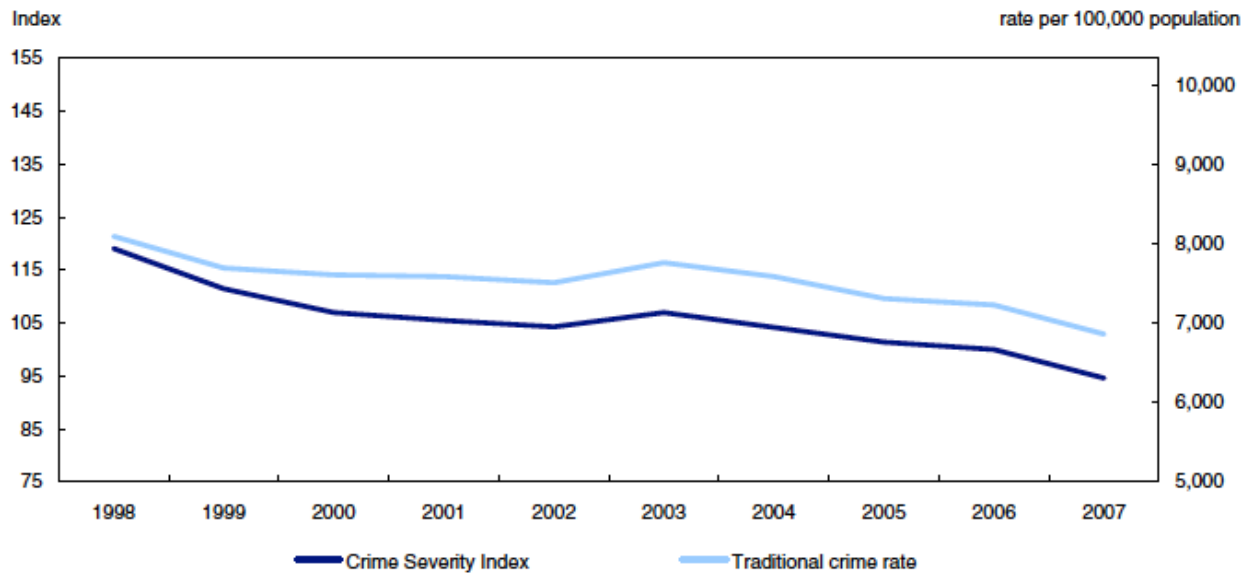
Year	Total Crime Severity Index		Violent Crime Severity Index		Non-violent Crime Severity Index	
	index	percent change from previous year	index	percent change from previous year	index	percent change from previous year
2002	104.1	-1	96.2	-1	107.2	-1
2003	106.8	3	97.6	1	110.4	3
2004	104.1	-3	96.0	-2	107.2	-3
2005	101.3	-3	98.5	3	102.4	-4
2006	100.0	-1	100.0	2	100.0	-2
2007	95.2	-5	97.7	-2	94.2	-6
2008	90.4	-5	94.9	-3	88.7	-6
2009	87.5	-3	94.0	-1	85.0	-4
2010	82.7	-6	88.9	-5	80.3	-6
2011 ^r	77.4	-6	85.4	-4	74.4	-7
2012	75.0	-3	81.4	-5	72.5	-3
Percent change 2002 to 2012	...	-28	...	-15	...	-32

... not applicable
r revised

Note: Data on the Crime Severity Indexes are available from 1998. The base index was set at 100 for 2006 for Canada.
Source: Statistics Canada, Canadian Centre for Justice Statistics, Uniform Crime Reporting Survey.

Over the period 2002 until 2012 the average sentences for both reported violent crimes and for non-violent crimes show decreases. In fact the CSI declined by 15 percent for all violent crimes, and 32% for all non-violent crimes, and for an average of 28% for the total crime index. The trend in CSI and the traditional UCR 1 crime trends can be displayed together in a single graph. The following graph from *Measuring Crime in Canada* (Canada 2009: 14) shows that for the period 1998 until 2007 both the CSI and the UC 1 show a modest but steady decline for the total reported crime rate in Canada, particularly after 2003. Note that the measurement axis on the left and right sides of the graph are calibrated differently. The right side displays variations in rates per 100,000 population from 5,000 to 10,000. The rates on the left display index values that vary from 75 to 155. In the graph below, the top line represents the trends measured by the traditional UCR1 measure. The bottom line shows the trends measured by the CSI. The bottom line representing the CSI does *not* mean to imply that the CSI rate is *lower* than the traditional crime rate as in the previous graph (which measured two trends on the *same* axis). The question both lines pose is whether the trends from 1998 onwards suggest an increase, decrease or stability in the amount of crime measured separately in these two methods.

Overall Crime Severity Index and traditional crime rate, Canada, 1998 to 2007



Note(s): The crime rate does not include traffic offences, drugs, or other federal statutes.

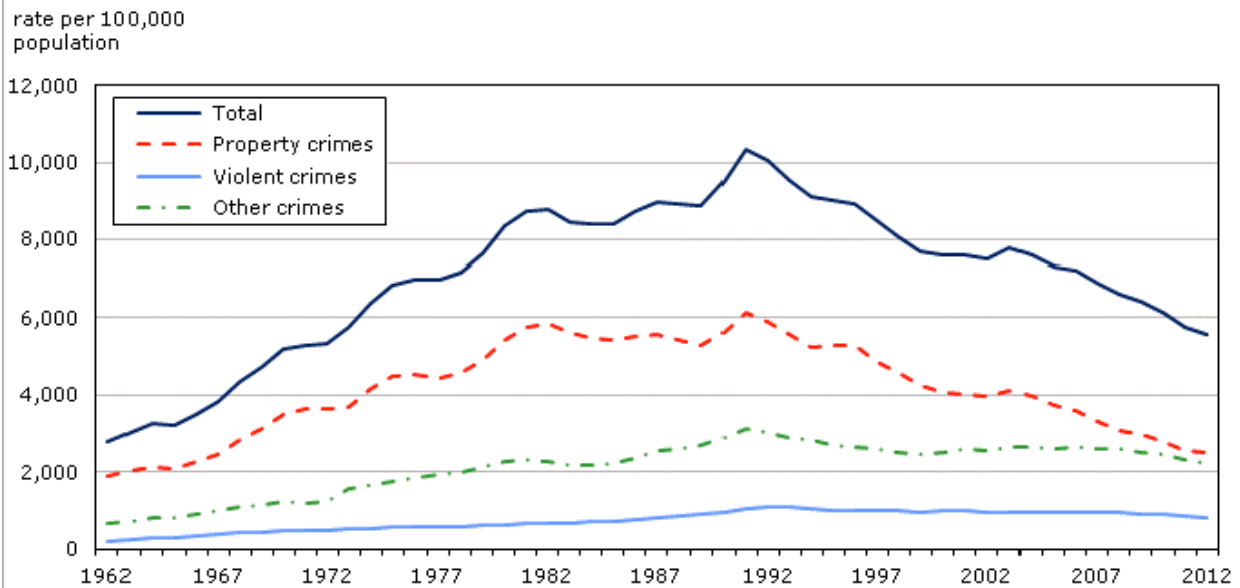
Source(s): Statistics Canada, Canadian Centre for Justice Statistics, Aggregated Incident-based Uniform Crime Reporting Survey.

Canadian Crime in 2012: The Police-based profile of crimes in Canada

Now that we are familiar with the protocols used to measure crime, it is possible to examine the most recent national reports of crime in Canada. The first figure to examine is the 51-year time series of police-reported crimes in Canada from 1962 to 2012. Figure 2.5 is taken from the most recent police-reported crime profile for 2012 (Canada 2013: 5). The figure reports rates per 100,000, and displays the total property, violent and other crimes separately. This figure is based on the UCR 1 survey results, and suggests that the volume of crime has generally declined since a peak in 1991. In 2012 the total crime rate reached its lowest level since 1972. Even though the 2012 rate was the lowest in years, it included *more* offences in the violent and “other” category than earlier points in the series. The violent crime trend is obviously lower than property and other crimes, but the graph nonetheless suggests a modest decline.

Unit 3: Measuring Crime
 File: 3. 305 – Final Unit 3.docx 13,303 wds

Police-reported crime rates, Canada, 1962 to 2012



Note: Information presented in this chart represents data from the UCR Aggregate (UCR1) Survey, and permits historical comparisons back to 1962. New definitions of crime categories were introduced in 2009 and are only available in the new format back to 1998. As a result, numbers in this chart will not match data released in the new UCR2 format. Specifically, the definition of violent crime has been expanded. In addition, UCR1 includes some different offences in the 'Other' crimes category.

Source: Statistics Canada, Canadian Centre for Justice Statistics, Uniform Crime Reporting Survey.

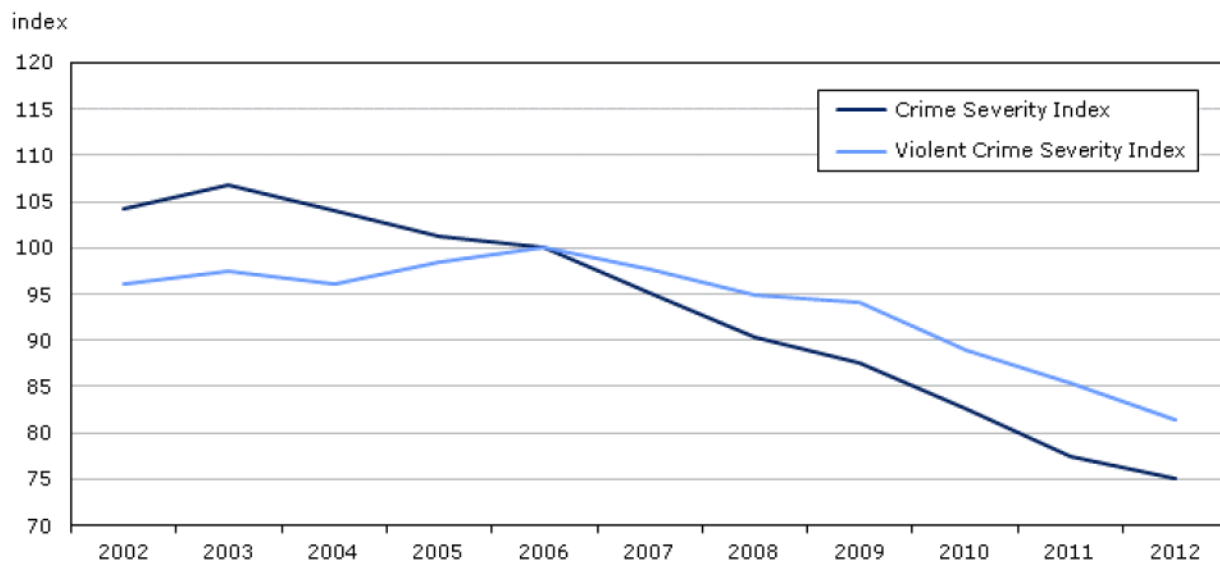
One method of determining more precisely what the trends are is to consult the actual numbers and rates for the main clusters of offences. These are reported in the next table. It reports the number and the rate for total criminal, violent, property, other criminal code, drug, other federal statutes and total violations (Canada 2013: 36-38).

Police-reported Crime for Selected Offences, Canada, 2011 and 2012

Type of offence	2011		2012		Percent change 2011-2012	Percent change 2002-2012
	number	rate	number	rate		
Total crime (excluding traffic, drugs and other fed statutes)	1,984,790	5,756	1,949,160	5,588	-3	-26
Violent Crime	424,338	1,231	415,119	1,190	-3	-17
Property Crime	1,214,312	3,521	1,190,972	3,414	-3	-33
Other Criminal Code	346,140	1,004	343,069	984	-2	-1
Criminal Code Traffic	145,529	422	140,869	404	-4	7
Drugs	113,345	329	109,455	314	-5	6
Other Federal statutes	32,253	94	35,841	103	10	-20
Total, All Violations	2,275,917	6,600	2,235,325	6,409	-3	-23

The Table also shows the percentage change in 2012 from 2011 and from 2002. In the short-term change (one year) the only category that recorded an increase was “other federal statutes” (10%). Total violations were down 3% on the year. The last column represents the long-term change (10 years). Here all trends are downwards except for criminal code traffic offences (i.e. impaired and dangerous driving), which were up 7%, and drugs, which were up 6%. Long-term violence was down 17% and property crimes down 33%. What do the long-term changes look like if we examine the Crime Severity Index? The CSI was initiated in 2009, and the data have been reconstructed only to 2002. The next figure (Canada 2013: 6) displays both the crime severity index for *all* criminal code offences as well as for *violent* crimes, and again, the trend is downwards.

Police-reported Crime Severity Indexes, 2002 to 2012



Note: The base index was set at 100 for 2006 for Canada.

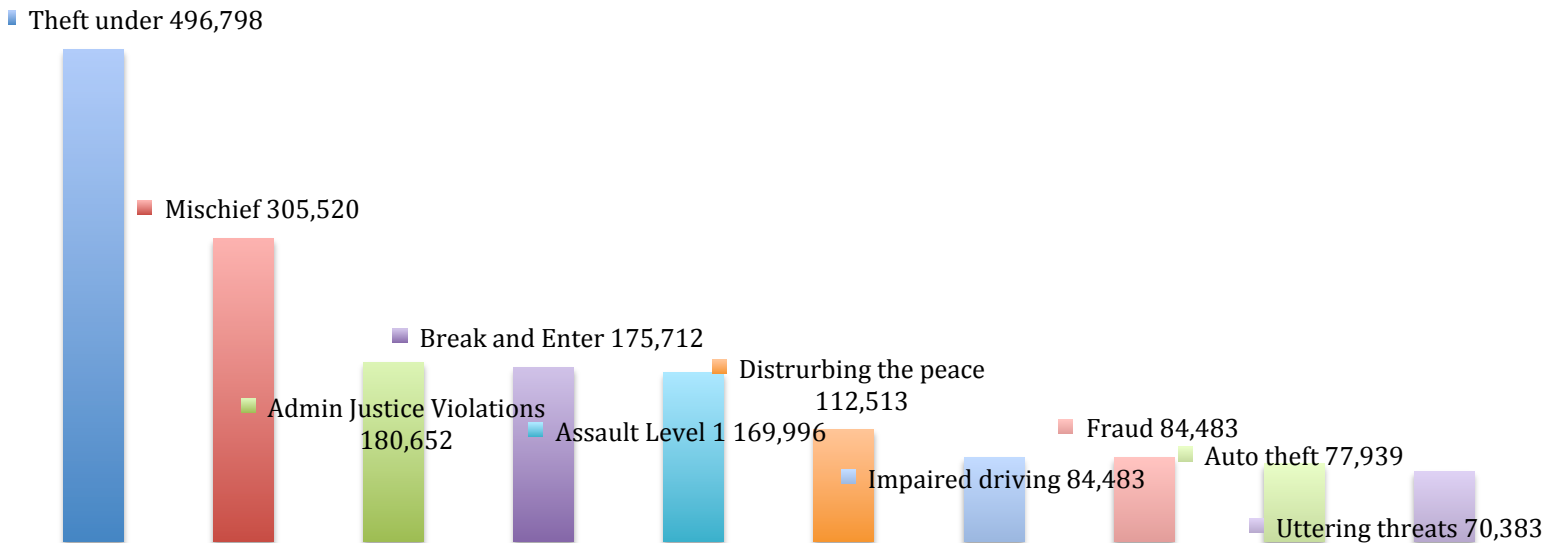
Source: Statistics Canada, Canadian Centre for Justice Statistics, Uniform Crime Reporting Survey.

If we look more closely into the offences that constitute the 2012 violent crime cluster, a more nuanced picture emerges. In 2012 there were 543 homicides in Canada, down 55 from the previous year. As a result, the homicide rate fell to its lowest level since 1966. (We will return to these provocative declines in crime in the next unit.) However, there were 11 more attempted murders, and 21 more other offences causing death compared to 2011. As for the other violence offences the largest decreases were for major sexual assaults, robbery, assaults on a police officer, and indecent or harassing phone calls. Offences causing death other than homicide (i.e. criminal negligence), as well as extortion, violent firearms offences, and sexual offences against children rose in 2012. So too did terrorism-related incidents (including “hoax terrorism”), identity theft and arson. However, the numbers of these incidents is too small to impact the overall direction of the cluster in which they appear (i.e. other criminal code offences).

In total there were 2,235,325 offences reported by the police in the UCR in 2012, including

criminal code, narcotics, criminal code driving offences, youth crime and federal statute offences. What were they composed of? One way to investigate this is to examine the 10 most prevalent offences (see below). In descending order of magnitude these were Theft Under \$5,000, Mischief to Property, Violations against the Administration of Justice (primarily violations of conditions of release, failure to appear etc.), Breaking and Entry, Assault Level One, Disturbing the Peace, Impaired Driving, Fraud, Auto Theft and Uttering Threats. These represent 78% of the total “all violations” for 2012 that were recorded in (see above).

10 Most Prevalent Crimes 2012



Youth Crime

Police-recorded total youth crime was down 3% in 2012 compared to 2011. Total youth crime was down 25% from 2002. The next figure (Canada 2013: 41) is based on Criminal Code incidents excluding traffic. The numbers refer to persons age 12 to 17 who were either charged, or recommended for charging by the police, or were diverted from the formal criminal justice system through the use of warnings, cautions, referrals to community programs or otherwise dealt with informally. The Youth Criminal Justice Act replaced the Young Offenders Act in 2003, so that the time series bridges these two pieces of legislation. Consistent with observations for adults, the decline is sharper for property crime than violent crime.

Unit 3: Measuring Crime
File: 3. 305 – Final Unit 3.docx 13,303 wds

Youth accused of police-reported crime, Canada, 2002 to 2012

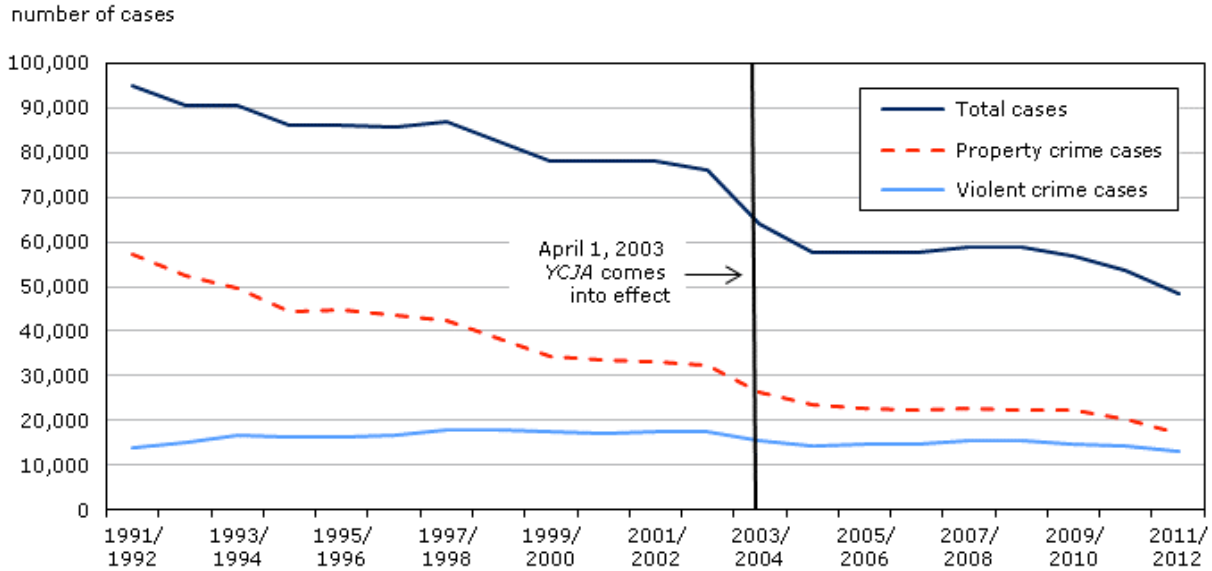
Year	Total crime (youth crime rate)			Violent crime			Property crime			Other Criminal Code offences		
	number	rate	percent change in rate from previous year	number	rate	percent change in rate from previous year	number	rate	percent change in rate from previous year	number	rate	percent change in rate from previous year
2002	175,537	6,945	-3	47,960	1,898	-4	98,021	3,878	-2	29,556	1,169	-3
2003	186,041	7,280	5	50,106	1,961	3	105,625	4,133	7	30,310	1,186	1
2004	179,670	6,959	-4	49,695	1,925	-2	99,601	3,858	-7	30,374	1,176	-1
2005	172,024	6,596	-5	49,430	1,895	-2	92,631	3,552	-8	29,963	1,149	-2
2006	178,839	6,812	3	51,452	1,960	3	94,835	3,612	2	32,552	1,240	8
2007	177,400	6,783	0	51,144	1,956	0	93,701	3,583	-1	32,555	1,245	0
2008	169,747	6,578	-3	49,130	1,904	-3	88,878	3,444	-4	31,739	1,230	-1
2009	167,103	6,594	0	48,030	1,895	0	88,309	3,485	1	30,764	1,214	-1
2010	153,728	6,187	-6	46,056	1,854	-2	78,772	3,171	-9	28,900	1,163	-4
2011 ^r	136,494	5,599	-10	43,004	1,764	-5	67,230	2,758	-13	26,260	1,077	-7
2012	125,368	5,224	-7	39,336	1,639	-7	60,989	2,541	-8	25,043	1,043	-3
Percent change 2002 to 2012	...	-25	-14	-34	-11	...

... not applicable
^r revised

In the UCR the number of accused youth includes both those who are formally charged as well as youth who were dealt with by other means. Historically, there was a greater emphasis on formally processing youth accused of crime, but there has always been a utilization of more informal treatments or dispositions in respect to persons under the age of 18. In 2012 only 44% of the youth suspects were formally charged, a course of action favoured by the Youth Criminal Justice Act 2003 (YCJA).

The Youth Court statistics (Canada 2013a) report a similar long term decline overall from 1992. The YCJA may have intensified the drop by stressing non-custodial interventions where appropriate. The following figure represents completed cases against an accused that may have been involved in more than one offence. The “total cases” include violent offences, property offences, administration of justice offences, other Criminal Code offences including serious traffic violations, and other federal statutes including drugs. In 2011/2012 the cases completed in youth courts reached the lowest point in 20 years.

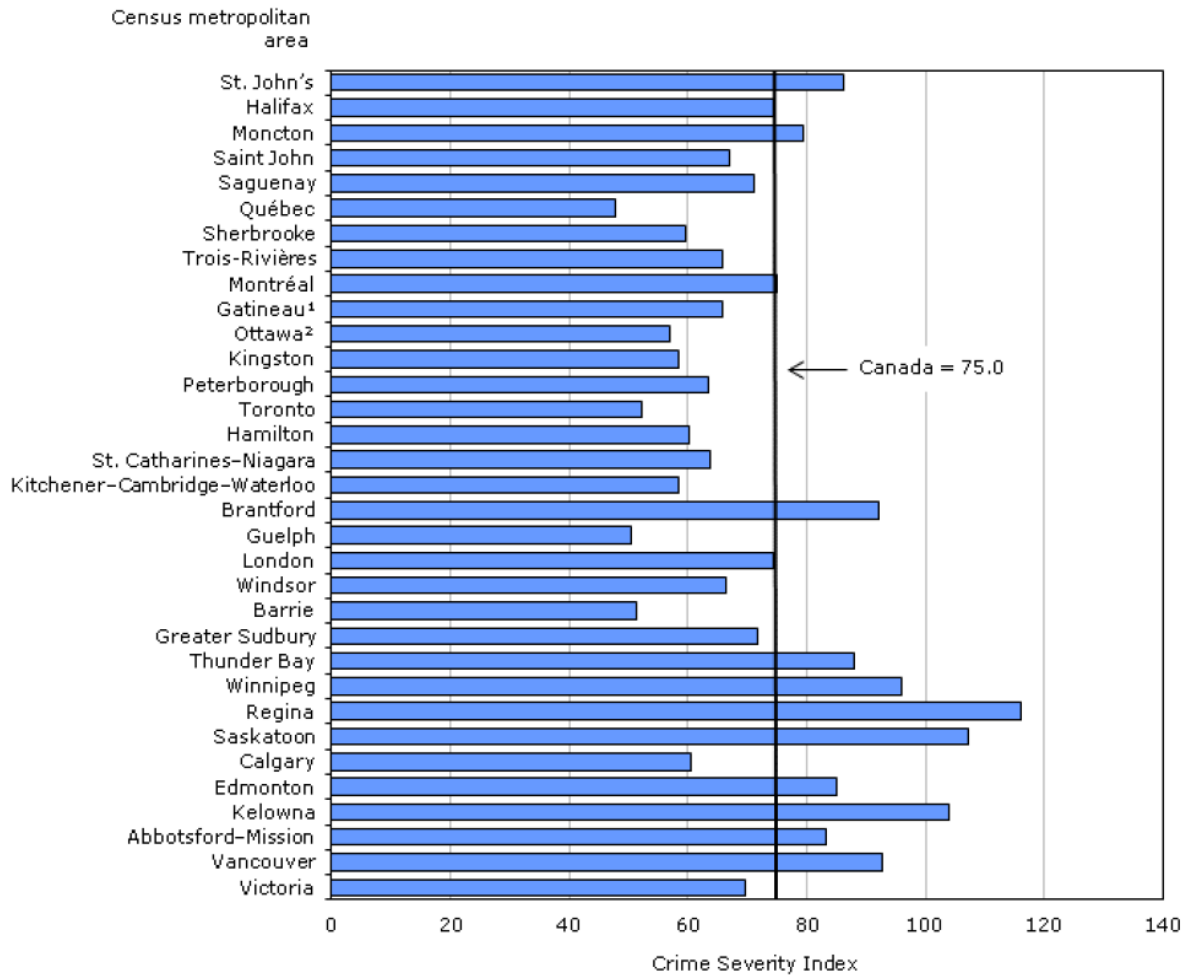
**Cases completed in youth court, Canada,
1991/1992 to 2011/2012**



Geographic Variations in Crime: Canada in Cross Section

The annual statistical profiles provided by Statistics Canada based on the UCR surveys are very detailed documents, but they are necessarily selective in what they publish. In previous years they have published gender differences, regional differences and urban differences. They have also featured trends in specific crimes such as homicide, robbery and assault. In this section we will examine provincial differences as well as some urban differences. The supply of crime varies dramatically from one province in Canada to another and even between urban areas in the same province and region. The next table displays the Crime Severity Index for Canada's major urban areas (Canada 2013: 11). The CSI combines information about the rate of crime *and* its seriousness.

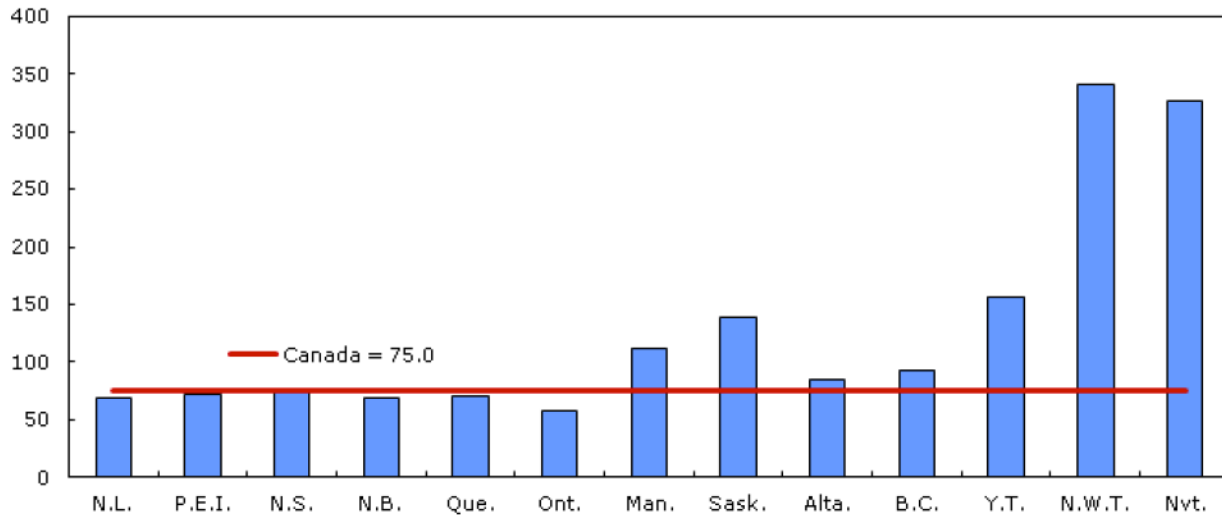
Police-reported Crime Severity Index, by census metropolitan area, 2012



The CSI is based on census metropolitan areas that include the municipality and the surrounding urban areas. In the above figure, Gatineau (in Quebec) is represented separately from Ottawa (in Ontario). Remember that the CSI was set in 2006 and arbitrarily assigned a value of 100, reflecting the average sentence for the previous five years. The figure (.75) shows the Canadian index score in 2012 for *all* crimes (as opposed to Violent & Property crimes etc.). This graph (above) suggests that crime is more prevalent in a number of western cities. Regina, Saskatoon, Winnipeg, Kelowna and Vancouver are the top five. However, these measures are based on urban areas. What does the picture suggest when we compare the provinces and territories? (see next graph and table).

Police-reported Crime Severity Index, by province and territory, 2012

Crime Severity Index



Source: Statistics Canada, Canadian Centre for Justice Statistics, Uniform Crime Reporting Survey.

Police-reported crime rate, by province and territory, 2012

Province or territory	Total crime (crime rate)			Violent crime		
	number	rate	percent change in rate 2011 to 2012	number	rate	percent change in rate 2011 to 2012
Newfoundland and Labrador	31,766	6,196	-3	7,888	1,539	1
Prince Edward Island	9,532	6,524	4	1,707	1,168	2
Nova Scotia	60,042	6,329	-2	12,954	1,365	-6
New Brunswick	41,723	5,519	4	11,155	1,476	-1
Quebec	347,650	4,316	-3	84,352	1,047	0
Ontario	542,445	4,016	-4	121,725	901	-5
Manitoba	111,614	8,809	-2	25,858	2,041	-1
Saskatchewan	124,339	11,513	-7	23,767	2,201	-8
Alberta	281,329	7,262	-2	53,535	1,382	-2
British Columbia	357,192	7,727	-2	63,885	1,382	-5
Yukon	7,479	20,717	1	1,457	4,036	-3
Northwest Territories	20,830	48,052	1	3,465	7,993	-5
Nunavut	13,219	39,229	3	3,371	10,004	2
Canada	1,949,160	5,588	-3	415,119	1,190	-3

The CSI by province and territory suggests that crime is more prevalent in the west than in the east, and *far more prevalent in the north* than in the south (Canada 1913: 14). A more detailed examination of the police reported crime by province and territory sheds light on this. The table above shows UCR 1 Total Crimes and Violent Crimes (numbers and rates) for the provinces and territories (Canada 2013: 28). If we compare, for example, Newfoundland and Nunavut in terms of Violent Crime, we find that there were 7,888 offences confirmed by the police in N.F. and half that number in Nunavut, 3,371. However,

Unit 3: Measuring Crime
File: 3. 305 – Final Unit 3.docx 13,303 wds

because the population of Nunavut is so small (around 36,000 people versus well over 500,000 for N.L.), the *rate* of violent crime in Nunavut is staggeringly higher—over 10,000 offences per 100,000 population.

In the next table we examine the variability among the major western cities. It displays total crime, violent crime, property crime, other crime code offences and drug crimes (see below). The estimates are given in crime rates based on the UCR 1 survey, and indicate short-term changes (1 year) and long-term changes (5 years) for total crime.

Police-reported crime rate, by census metropolitan area, 2012

Census metropolitan area	Total crime (crime rate)		Violent crime		Property crime		Other Criminal Code offences		Drug offences		
	rate	percent change in rate 2011 to	percent change 2007 to	rate	percent change in rate 2011 to	rate	percent change in rate 2011 to	rate	percent change in rate 2011 to	rate	
		2012	2012		2012		2012		2012		2012
Winnipeg	6,222	-3	-35	1,265	-5	4,243	-4	714	5	127	-14
Regina	8,755	-10	-26	1,367	-9	4,988	-12	2,400	-7	459	24
Saskatoon	8,512	-10	-29	1,472	-11	4,684	-14	2,355	0	242	-5
Calgary	4,330	-6	-29	735	-9	3,177	-5	418	-9	141	-6
Edmonton	6,796	-2	-27	1,210	-2	3,955	-3	1,631	-1	244	-2
Kelowna	8,875	6	-21	1,527	-3	5,640	14	1,708	-8	628	2
Abbotsford–Mission	6,148	-7	-40	1,125	-6	4,058	-7	964	-6	464	6
Vancouver	6,958	-2	-25	1,125	-6	4,682	3	1,152	-14	432	-11
Victoria	5,958	-7	-34	1,119	-10	4,082	-2	757	-24	446	-6
Canada	5,588	-3	-19	1,190	-3	3,414	-3	984	-2	314	-5

The urban areas are census metropolitan centers. The crime rates are based on Criminal Code and narcotics offences, and are expressed as rates per 100,000 population. Among western cities Kelowna has the highest total crime rate, followed by Regina and Saskatoon. Calgary has the lowest rate for all the categories included here: violent, property, other and drugs.

At this point it may be useful to take stock of the UCR. The amount of information that is published is very impressive, and the amount of information that can be obtained from the unpublished files is more impressive still. In this unit we have only been able to hint at the extensiveness of the content of the UCR surveys. What is it that they tell us, and what do they not tell us? First, the surveys provide information for every single census metropolitan area in Canada, which includes every major city, as well as every province and territory. Second, they provide information on some 100 (UCR 1) to 200 (UCR 2) individual offences. This is remarkably broad coverage in comparison to the index-crime approach found in the US, which focuses on just 8 of the most serious crimes. Third, the surveys report the *levels* of the offences in terms of counts *and* rates per unit population, they provide a “volumetric” count in the aggregate survey, as well as a more detailed account in the incidence based surveys. In addition they describe the offences in terms of their inherent seriousness based on the sentencing severity information in the CSI. Fourth, the counts are sensitive to the

addition of new crimes by parliament that reflect more contemporary social issues such as terrorism, child pornography, child sexual exploitation, identity theft etc. Fifth, the records of crime are revised from time to time and re-computed when more relevant ways of representing offences are acknowledged, as in the case of counterfeiting and robbery discussed earlier. Sixth, the surveys are also able to report *changes* in the levels of crimes, both in a short-term year-to-year frame of reference, as well as in a longer-term perspective. The aggregate survey is a remarkable 51-year series. The incident based is more than a decade long. In addition, all this information is supplied in a remarkably timely fashion thanks to the frequency of data submission (monthly), use of digitized records and a centralization of the data collection at the CCJS. All this is remarkable, and it represents the culmination of an attention to detail that can be traced to JC Taché who was discussed earlier. But what the surveys cannot do is explain anything. They raise more questions than answers. Why is the crime rate higher in the north than the south, why in the west, more than the east, why in Kelowna more than in Calgary? What the records do is provide evidence of the variability in the frequency and distribution of crimes. It is the challenge of sociology to make sense of these phenomena.

The other thing that the surveys cannot do is address unreported crime. That however is the task of the victimization surveys to which we turn next.

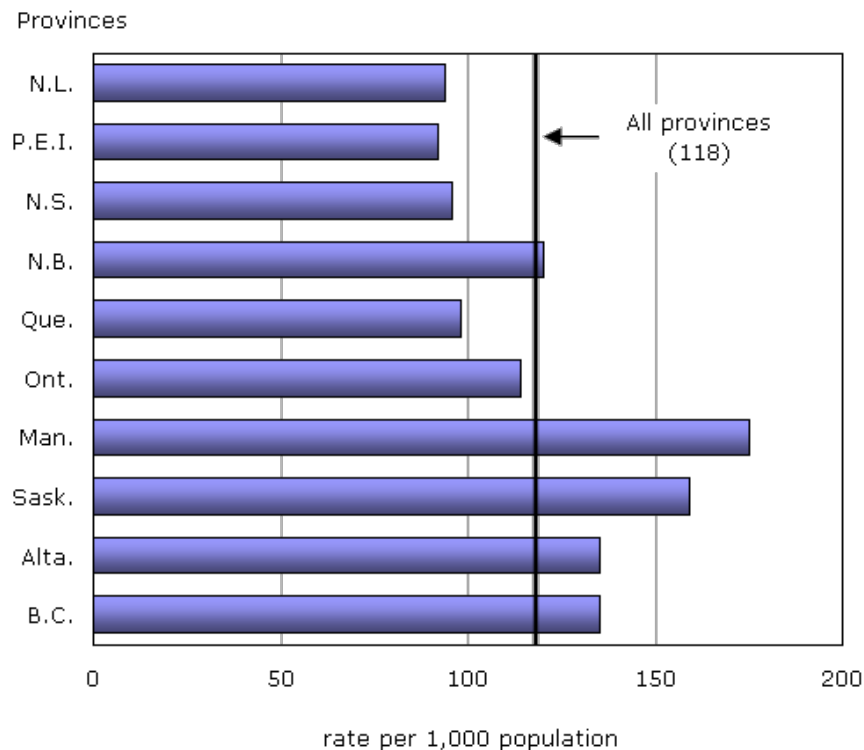
The General Social Surveys (2004 and 2009)

The primary mandate of Statistics Canada is to conduct the national decennial census survey at the beginning of every decade. This is a mandatory survey which citizens are compelled by law to complete. However, Statistics Canada also conducts numerous other surveys on pressing issues in Canadian social life, one of which is the General Social Survey. This survey has been utilized to capture information from Canadians about their experience of criminal victimization five times: 1988, 1993, 1999, 2004 and 2009. The survey is designed to capture the personal experience of respondents with respect to eight criminal offences, to assess the risk factors associated with victimization, to examine the reporting rates to the police in regard to those offences, to measure the nature and extent of spousal violence, to measure the fear of crime as well as public perceptions about the justice system. The respondents are asked about (1) sexual assault (2) robbery (3) physical assault (4) break and enter (5) motor vehicle theft (6) theft of household goods (7) vandalism and (8) theft of personal property. In the 2009 survey 31,510 households were contacted through random digit dialing for a telephone interview that typically lasted 45 minutes. This method provided coverage of 91% of the population (i.e. those with phones). Over 19,000 usable responses were obtained, representing a 62% response rate. The design targeted the non-institutionalized Canadian population aged 15 and over, and the responses were weighted to give a reliable estimate of the population averages.

What were the findings? First the victimization rates remained stable between the 1999 and 2004 surveys (Canada 2013b). According to the 2009 survey, about 7.4 million Canadians (just over a quarter of the population aged 15 and over) were the victims of some sort of criminal incident in the previous twelve months. However, many individuals were victimized more than once. In fact, there were a total of 9,432,00 victimizations.

Unit 3: Measuring Crime
File: 3. 305 – Final Unit 3.docx 13,303 wds

Victimizations (as opposed to victims) are the main unit of analysis in the survey. The majority of these incidents were non-violent. They included the following: theft of personal property (34%), theft of household property (13%), vandalism (11%), break-ins (7%), and theft of motor vehicle or motor vehicle parts (5%). These accounted for 70% of the incidents captured by the survey in 2009. The violent incidents accounted for the balance, and they involved: physical assault (19%), sexual assault (8%), and robbery (4%). The victimization rates were higher in western Canada (as were the UCR surveys), both for violent victimization incidents, and household victimization incidents. The next figure displays provincial variations for violent victimization by province. The provincial average was 118 incidents per 1000 population, with Manitoba, Saskatchewan, Alberta and BC showing levels of victimization higher than the average.



An analysis of census metropolitan areas (not shown) indicated that Regina reported the highest rate of violent victimization (273 per 1000) while Toronto showed the lowest (90 per 1000). Regina also showed the highest rate for household victimization (453) followed by Winnipeg (413), Saskatoon (348) and Edmonton (328). Again, this mirrors the UCR urban crime differences.

In terms of specific forms of violent victimization, in 2009 nearly 1.6 million Canadians or 6% of the population over the age of 15 reported having been the victim of a sexual assault, a robbery or a physical assault in the previous 12 months. This was similar to the 2004 findings. Physical assault was the most common form of violence followed by sexual assault and robbery. One in six respondents reported that they had been victimized twice, and 10% reported they had been victimized three times. Victimization was reported higher among single people than people who were married, higher among youth (ages 15-24),

those with aboriginal status and homosexuals. The rate of sexual assaults was twice as high among females (34 per 1000 incidents) than males (15). Of the sexual assaults reported in the GSS, 70% involved a female victim. By comparison, males were the victims in 62% of the physical assaults.

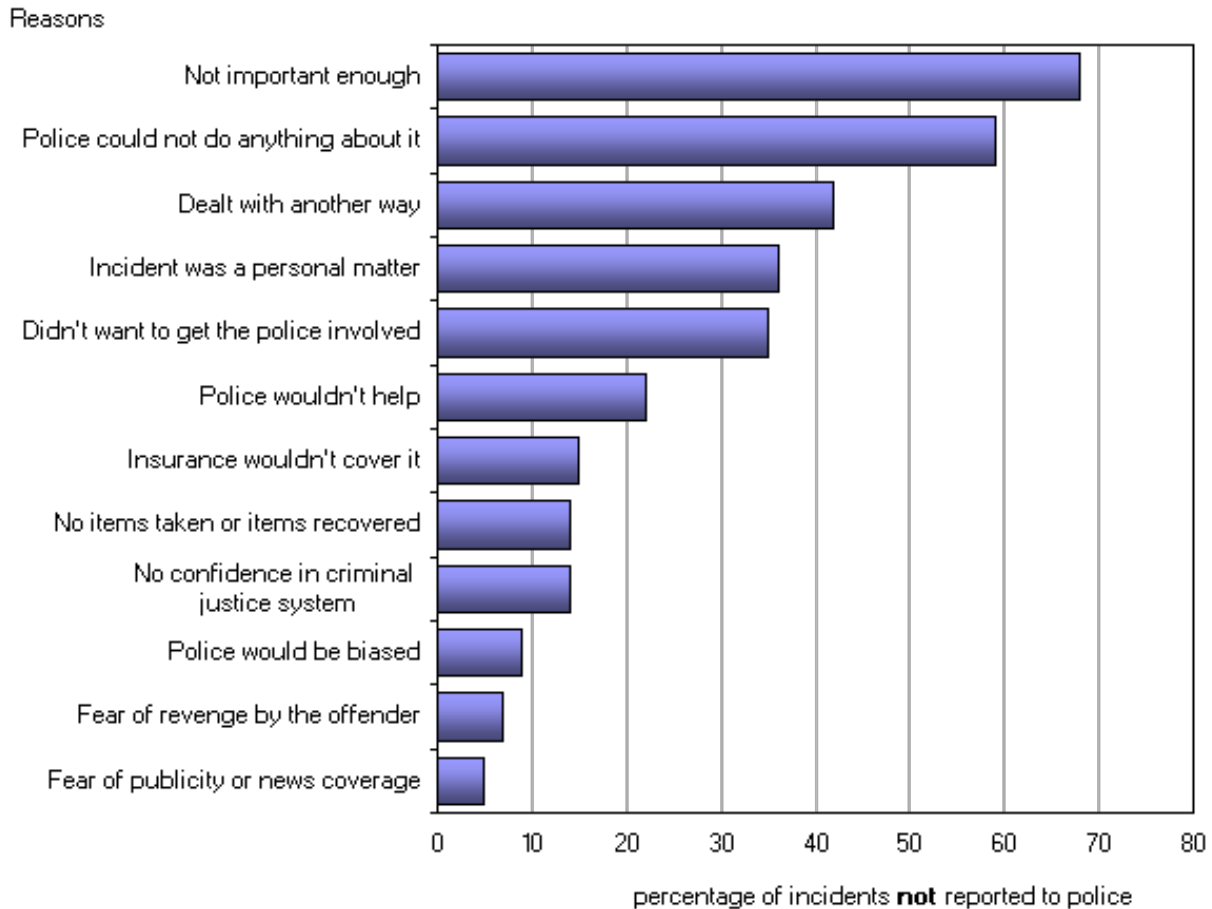
What were the trends? Self-reported robbery rates were unchanged since 2004. The same conclusion was drawn for self-reported physical assault, self-reported household victimization, self-reported property theft and self-reported vandalism. Self-reported motor vehicle thefts decreased from the 2004 survey. These findings contrast with the UCR surveys of crime that suggest a downward trend. How many of these incidents resulted in a call to the police? The calls to police are displayed in the next table (see Perreault and Brennan 2010, Table 10).

Self-reported victimizations reported to police, 1999, 2004 and 2009

Type of offence	1999		2004		2009†	
	number (thousands)	percent	number (thousands)	percent	number (thousands)	percent
Total victimization¹	2,417	37*	2,613	34*	2,770	31
Violent victimization¹						
Sexual assault	F	F	42 ^E	8 ^E	F	F
Robbery	105	46	127	46	158	43
Physical assault	460	37	519	39	572	34
Total	603	31	687	33	777	29
Household victimization						
Break and enter	365	62*	275	54	337	54
Motor vehicle/parts theft	303	60*	281	49	227	50
Household property theft	240	32*	330	29*	250	23
Vandalism	273	34	303	31*	346	35
Total	1,181	44*	1,188	37	1,160	36
Theft of personal property	633	35*	738	31	833	28
† reference category * significantly different from reference category (p < 0.05) 1. Excludes all incidents of spousal sexual and physical assault. Note: Excludes data from the Northwest Territories, Yukon and Nunavut which will be published at a later date. Don't know and not stated are included in the total but not shown. Source: Statistics Canada, General Social Survey, 1999, 2004, 2009.						

In 2009 only 31 percent of the victim incidents actually called the police. The responses were highest for break and enter (54%), motor vehicle/parts theft (50%) and robbery (43%). The numbers for sexual assault are displayed as 'F' to indicate that the estimates were too small or erratic to be reported reliably. The symbol E for 2004 (sexual assault) indicates *marginally* reliable estimates. In 2009 about 80% of the self-reported sexual assaults were described as level one assaults under the criminal code – unwanted touching and other forms of contact. The response rate in respect of the balance which were more serious sexual assaults (8% in 2004) is the lowest figure for any form of victimization

investigated. Perreault and Brennan (2010) reported that in the 2009 survey, 88% of the incidents of sexual assault were not reported to the police. If the respondents did not call the police, the interviewer asked why. The next figure shows the respondents' reasons (Canada 2013b: 11).



The most prevalent reason for not reporting to the police is that the event was *not considered important enough* (68%), followed by *police could not do anything about it* (59%). Other reasons included having *dealt with the situation in some other way* (42%) and feeling that the *incident was a personal matter* (36%). Among those who *did* report incidents to the police, the most common reason cited was “a sense of duty”. However, the reasons also varied on the basis of the crime. Victims of personal violence called the police looking for protection, while victims of theft were more likely to report the incident as part of their attempt to obtain compensation or insurance benefits. Of those who did contact the police, the majority (63%) was satisfied by the police response.

The survey also tapped feelings of personal safety. In the 2009 survey 93% of respondents reported feeling very satisfied (48%) or somewhat satisfied (45%) with their personal safety, unchanged from 2004. (See the next table.) Ninety percent reported that they felt safe when walking alone in their neighbourhood at night, also unchanged since 2004. Also,

of those who used public transport, 58% reported that they felt safe using these services at night. Of those who were home alone at night, the vast majority (83%) was not at all worried over their safety (Perreault and Brennan 2010: 12).

Self-reported feelings of safety from crime, 2004 and 2009

	2004		2009	
	number (thousands)	percent	number (thousands)	percent
Personal safety¹				
Very satisfied	11,464	44	13,162	48
Somewhat satisfied	12,888	50	12,477	45
Somewhat dissatisfied	1,028	4	1,370	5
Very dissatisfied	280	1	358	1
Walking alone after dark²				
Safe	17,694	90	19,351	90
Unsafe	2,024	10	2,057	10
Home alone in the evening or night³				
Not at all worried	20,596	80	22,823	83
Somewhat worried	4,665	18	4,265	16
Very worried	431	2	337	1
Using public transportation alone after dark²				
Not at all worried	3,697	57	3,658	58
Somewhat worried	2,434	38	2,356	38
Very worried	300	5	209	3
<p>1. Responses of "no opinion" were excluded from analysis. 2. Based on responses of people who engage in these activities. 3. Based on responses of people who are home alone in the evening or night. Note: Totals may not add to 100% due to rounding. Excludes data from the Northwest Territories, Yukon and Nunavut which will be published at a later date. Don't know and not stated are included in the total but not shown. Source: Statistics Canada, General Social Survey, 2004 and 2009.</p>				

If the UCR surveys painted a picture of modest declines in the incidence of serious crimes, the conclusion suggested by the GSS is more of a continuity in the patterns of victimization, as well as in the patterns of feelings of security.

Measuring Violence Against Women

For several decades the federal, provincial and territorial ministers responsible for the Status of Women (FTP) have shared a concern for monitoring and ending violence against women. Statistics Canada has partnered with this group to provide information about various forms of violence, including spousal violence, violence in the context of dating, violence against girls and women that occurs outside of the intimate partner/family sphere, and violence in vulnerable northern populations including Aboriginal communities. The latest report in this series is *Measuring Violence Against Women: Statistical Trends*, edited by Maire Sinha (Canada 2013c). It pulls together information gathered from the UCR incident-based surveys that capture victim data, the Homicide Survey, the GSS victimization surveys and two administrative surveys, namely the biannual Transition Home Survey and the Victim’s Services Survey. The latter two surveys are directed towards

organizations that supply emergency shelters and services for endangered women and their families. Drawing from these various sources of information, it is possible to provide fairly rich information about (1) the prevalence and severity of violence against women, and such trends in recent years (2) risk factors associated with violence against women (3) the impact of violence against women on the victims and (4) responses to violence against women. In the following, the key findings are highlighted.

Drawing from the police-reported survey data, five findings are reported (Canada 2013c: 8):

*According to police-reported data, about 173,600 women aged 15 years and older were victims of violent crime in 2011. This translates into a rate of 1,207 female victims for every 100,000 women in the population, **slightly higher than the rate for men** (1,151). (emphasis added)*

Some forms of violence against women have decreased in recent years. Data from the Incident-based Uniform Crime Reporting trend file show a decrease in police-reported attempted murders and physical assaults against women between 2009 and 2011. However, the rate of police-reported sexual assaults against women increased in 2010 and remained stable in 2011. Following nearly three decades of decline, the rate of homicide against women has been relatively stable over the past decade, according to data from the Homicide Survey.

In 2011, the five most common violent offences committed against women were common assault (49%), uttering threats (13%), serious assault (10%), sexual assault level I (7%), and criminal harassment (7%). With the exception of sexual assault and criminal harassment, these were also the most frequently occurring offences against men. Women were eleven times more likely than men to be a victim of sexual offences and three times as likely to be the victim of criminal harassment (stalking).

Overall, men were responsible for 83% of police-reported violence committed against women. Most commonly, the accused was the woman's intimate partner (includes both spousal and dating) (45%), followed by acquaintances or friends (27%), strangers (16%) and non-spousal family members (12%). This contrasts violent crimes against men, where intimate partners were among the least common perpetrators (12%).

Intimate partner violence, which was nearly four times higher for women, was characterized by physical assaults and the use of physical force rather than weapons. About half (51%) of female victims of intimate partner violence suffered some type of injury.

Based on the GSS survey data, three conclusions are drawn:

According to victimization data, rates of self-reported violent victimization against women have been stable between 1999 and 2009. Among the three types of violent

victimization measured by the General Social Survey (GSS) on victimization, robbery was the only type against women to have increased since 1999.

While women and men self-report similar rates of spousal violence, women's experiences are different from men. Women are more likely than men to experience the most severe forms of self-reported spousal victimization, such as multiple victimizations and incidents with physical injuries.

When examining self-reported spousal violence, there has been a significant decline in spousal violence against women since 1999, mainly attributable to a decrease in violence involving previous spouses. (ibid.)

In terms of risk factors, several things were highly prominent. First, the likelihood of victimization is inversely related to age. Younger women were far more likely to experience violence than older women. Second, the Homicide Survey indicated that Aboriginal women were disproportionately likely to be murdered. Aboriginal women also self-reported higher levels of both spousal and non-spousal violence. Third, women were not only subject to physical abuse but were disproportionately exposed to emotional and financial abuse. Finally, women most at risk of non-spousal abuse tended to be those who were younger, who participated in social activities in the evenings, were single, were Aboriginal, and who lived in communities with a higher level of social disorder characterized by vandalism, noisy neighbours and the presence of persons dealing with or using narcotics.

What was the impact of experiences of violence? First, compared to men, women generally experienced higher levels of fear of crime. This fear was elevated if the women had been the victims of non-spousal violence. Second, the self-reported *stress levels* were elevated if women had reported being violently victimized in the preceding 12 months. Of those victimized by a spouse, over half (53%) stated that their days were "quite a bit or extremely stressful". This was significantly higher than the proportion of women victimized by someone else (41%) and the proportion of women who were not victimized (23%). Third, 26-27% of the victims of spousal and non-spousal abuse reported *using medications* to help them to cope with depression to calm them down or to help them sleep. This was significantly higher than the proportion of women who were not violently victimized (18%). Fourth, although both male and female victims of violence experienced negative emotional consequences, these were graver for female victims. Female victims of spousal violence were seven times more likely as male spousal victims to be *fearful* (27% versus 4%), three times as likely to be *depressed or anxious* (23% versus 7%), and twice as likely to be *angry* (35% versus 18%). These findings were essentially the same for victims of non-spousal violence. And fifth, "female victims of spousal violence were twice as likely as male victims to be *physically injured*, three times as likely to experience disruptions to their daily lives, and almost seven times as likely to fear for their life. These gender differences were not evident for non-spousal violence, with the exception of finding it difficult or impossible to carry out everyday activities" (emphasis added Canada 2013c: 9).

What were the responses to the experiences of violence?

According to victimization data, less than one-third (30%) of female victims of spousal violence stated that the incident came to the attention of police, down from 36% in 2004. No change was recorded in the levels of reporting to police for non-spousal violence against women (28%).

The increased seriousness or severity of violence heightens the likelihood of police involvement for spousal violence incidents against women. Reporting to police was higher among those female spousal victims who sustained physical injury, who feared for their lives and who suffered the greatest number of spousal violence incidents.

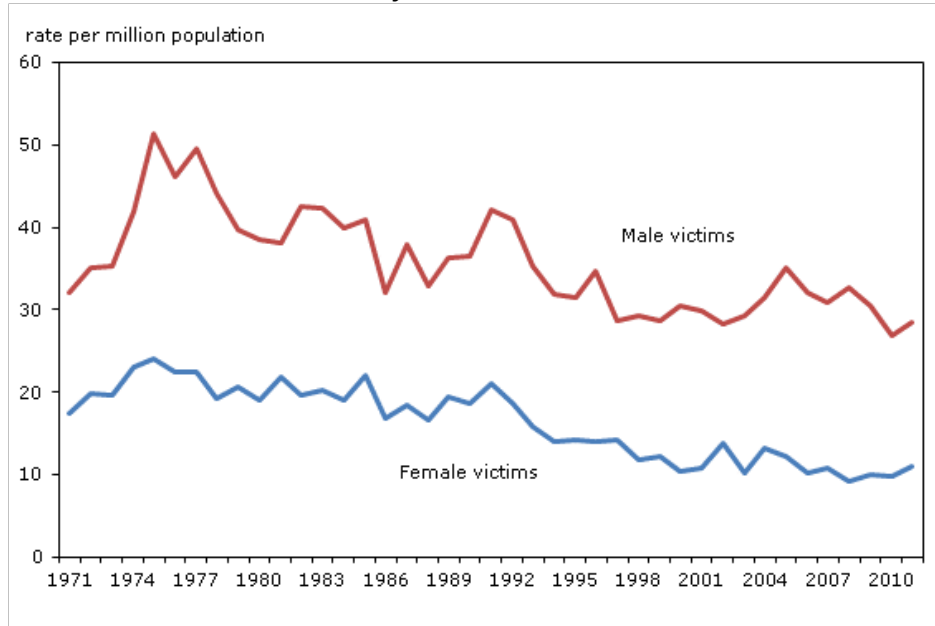
*Certain types of spousal violence were more likely to come to the attention of police, including incidents where the woman was sexually assaulted (53%) or beaten, choked or had a weapon used against them (60%). By contrast, sexual assaults perpetrated by someone other than a spouse were least likely to come to the attention of police. **Nine in ten non-spousal sexual assaults were never reported to police.** (emphasis added)*

According to police-reported data, 76% of violent incidents against women reported to and substantiated by police were solved. Of these, about seven in ten (71%) resulted in a charge being laid or recommended. Spousal and dating violence against women were most likely to result in criminal charges (84% and 83%), followed by stranger perpetrated violence (73%).

Women also turned to other sources of support beyond police. According to the Transition Home Survey (THS), there were 4,645 women residing in shelters across Canada on the snapshot day (April 15th, 2010), most of who were escaping abuse (71%). (Canada 2013c: 10).

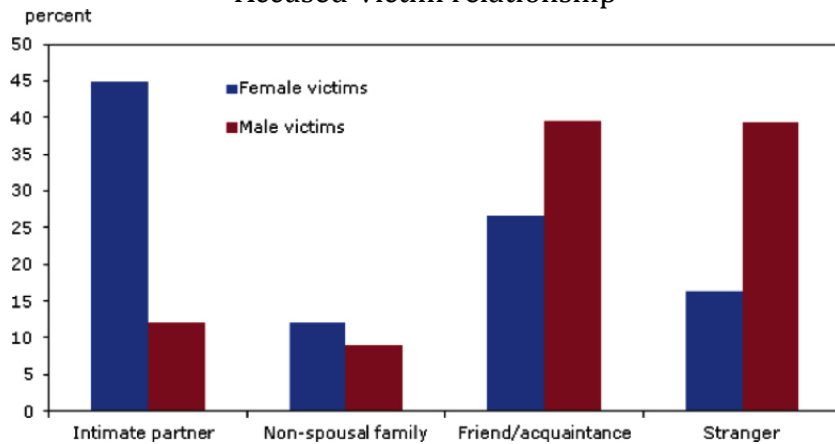
The report of the victimization of women does not diminish the violence experienced by men. If we examine the rate of homicide from 1971 to 2011 by gender of the victim, the levels of male deaths occlude those of female in every year (Canada 2013c: 12). See the next figure.

Rates of Homicide by Gender of Victim 1971 to 2011



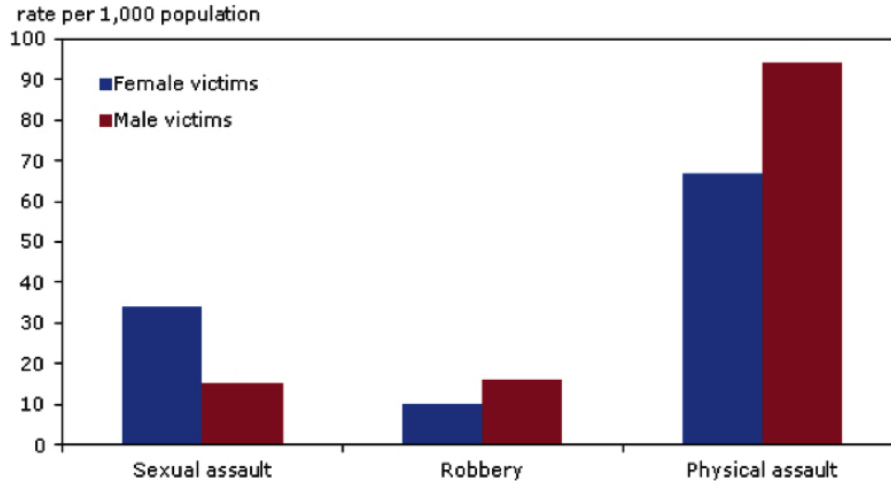
What is distinctive is that males are more likely to be victims of stranger violence, and females victims of intimate violence as the following figure based on UCR 2 data suggests. In the next figure “intimate partner” refers to spousal and dating partners (Canada 2013c: 14).

Victims of police-reported violent crimes by gender of victim and Accused-victim relationship



Also there is a dramatic difference in gender patterns in sexual versus physical assault. Females are far more likely to suffer sexual assault, and males, physical assault. The difference in robbery is not statistically significant (Canada 2013c: 17).

Self-reported violent victimization by gender of victim and by type of offence



In summary the most recent attempt to measure violence against women has drawn attention to a pressing issue in Canadian society. Although the long-term trends in homicide show a gradual decline, and sexual assaults appear to be relatively stable in recent years, violence against women remains a serious problem in Canadian society. Obviously much work remains to be done to prevent such violence and its emotional and physical consequences since the levels, as opposed to the trends, continue to represent unacceptably high patterns of victimization in both the public and private spheres of women's lives. In addition, the actual incidence of violence is higher than the official police-reported statistics suggest, since a large percentage of victimizations, especially violent victimizations go unreported, including 90% of non-spousal sexual assaults. While the surveys are an important tool in bringing such unreported cases of violence to the surface, it remains an open question as to how much violence is under-estimated by the self-report surveys themselves.

Correctional Statistics

There is one final area of national data on crime and crime trends that requires attention. This is the report on *Corrections and Conditional Release: Statistical Overview* (Canada 2012). The CCR report is produced by Public Safety Canada, and employs police-data from the UCRs to describe the crime trends, the Adult Criminal Court Survey, as well as administrative data from the correctional service to describe the nature of penalties awarded by the courts, as well as the size and characteristics of those incarcerated in federal and provincial correctional institutions. It describes fatalities among inmates, records of escape as well as complaints from inmates received by the Office of the Correctional Investigator. Unlike Statistics Canada, the CCR report includes traffic statistics and offence against federal statutes.

Some of the highlights of the report's analysis of the criminal justice system include the following (Canada 2012: 5-19):

- Canada's incarceration rate (117 inmates per 100,000 population) is higher than

most European countries but considerably lower than the US whose most recent reported rate was 730 per 100,000 population in 2012.

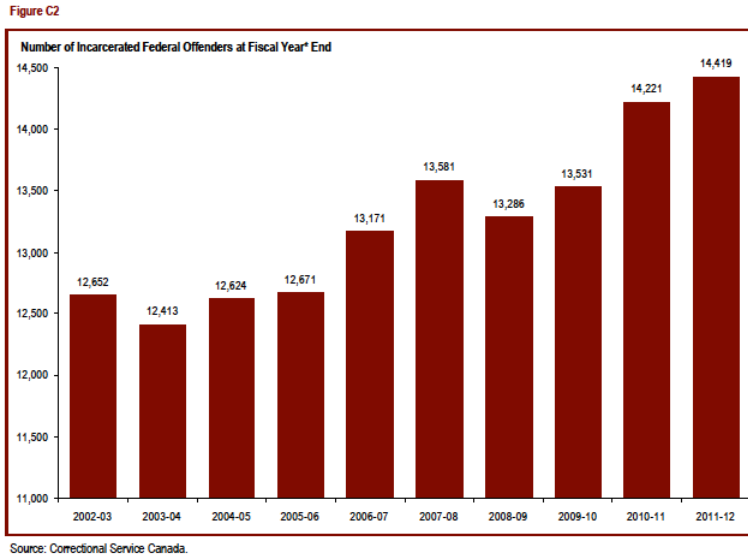
- Since 1998 the rate of adults charged with a crime has declined overall with some gender differences. The rate for men declined from 3,819 men per 100,000 men in the population in 1998 to 3,287 in 2011, while the rate for women *increased* from 718 women per 100,000 women to 785 over the same period.
- Crimes against the Administration of Justice were the most prevalent cases charged in Adult courts, accounting for 21.1% of all charges according to the Adult Criminal Court Survey (2010-11). These include such charges as failure to appear for a scheduled court appearance, failure to comply with a court order, breach of probation, unlawfully at large etc. This differs from the most prevalent crimes known to the police reported earlier in the unit from the 2012 UCR survey (see above). The difference may reflect the disposal of thefts under and minor mischief charges through plea bargains that reduce and/or drop initial charges as cases move from the police to the court jurisdiction.
- Most adult custodial sentences ordered by the court are short: one month or less (51.5% for men versus 66.9% for women). Of all the guilty findings that result in incarceration, only 4% result in a sentence to a federal institution (i.e. a penalty greater than two years).
- The rate of youth crime, including property and violent crime, has declined from 1998 to 2011 for both males and females.
- The principal charge of young persons in youth court in 2010-11 was a charge of theft (14.8%) followed by charges involving the administration of justice (10.7%), breaking and entry (8.2%), common assault (7.9%) and narcotics (7.1%).
- The most common penalty for youth in the YCJA courts was probation, which was received in about half of all cases since the implementation of the YCJA in 2003.

The expenditures on federal correctional services in 2010-11 totaled approximately \$2.4 billion, an increase of about 30% from 2006-07. This represented a per capita cost of \$51.80 per Canadian. However, the average cost per federal inmate was \$114,364 in 2010-11. When broken down by gender, this represents \$111,042 for each male, and \$214,614 for each female. The costs are fifty percent higher for males in maximum security (\$147,418). To maintain an offender in the community costs \$31,148 annually. Going to prison costs way more than going to Harvard!

As of April 15, 2012 there were 23,156 individuals under federal jurisdiction. This represents 14,419 in penitentiary, and 8,737 under community supervision. While all the estimates of crime that we have referred to throughout this unit suggest that the trends are downwards, the number of incarcerated federal offenders has been on the increase. The next figure depicts the trend from 2002-03 to 2011-12. There were consecutive increases in persons incarcerated in Canadian prisons from 2003-04 to 2007-08, followed by a decrease in 2008-09, subsequently followed by an increase of 1.4% in 2011-12. Note that these are actual counts (not rates per population). In addition, the offender population under provincial and territorial detention increased from 19,595 in 2002-03 to 24,339 in 2010-11 (not shown). The total number of persons incarcerated at the federal level, and

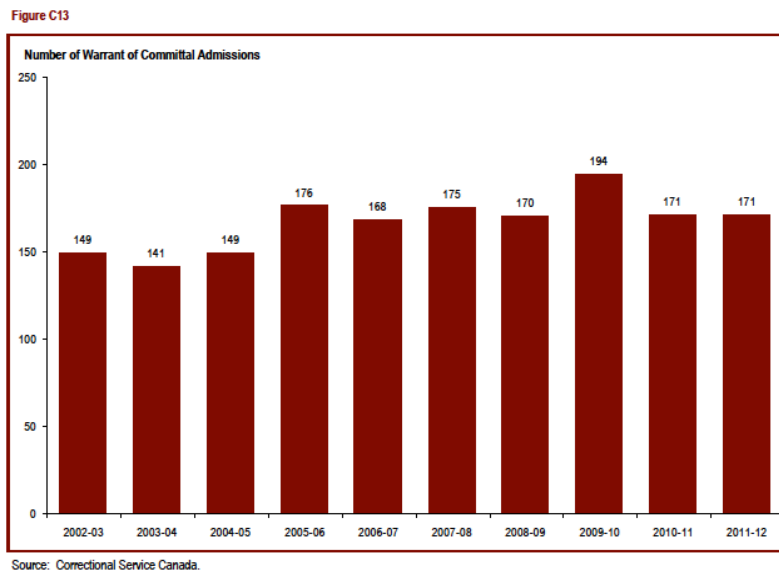
under provincial jurisdiction (including sentenced, remanded in custody and temporary detention) increased from 32,247 in 2002-03 to 38,560 in 2011-12 (Canada 2012: 36). Note that these are total persons *in detention*, not new admissions that occur annually.

THE NUMBER OF INCARCERATED FEDERAL OFFENDERS INCREASED IN 2011-12



How can the prison population continue to grow while the crime rate appears to be on the decline? There are several clues to this question in the next figure.

ADMISSIONS WITH A LIFE OR INDETERMINATE SENTENCE WERE STABLE IN 2011-12



One is that the prisons continue to receive warrants of committal for individuals sentenced to life imprisonment or indeterminate sentences. Persons convicted of first-degree murder must serve 25 years before applying for release under parole. Persons declared as

“dangerous offenders” serve indeterminate sentences until such time as the parole board makes a determination that they no longer pose a threat to the security of the public. While many such individuals are ultimately released back into the community, this process takes decades. In addition, those crimes that showed the most dramatic declines in their rates were relatively minor, and changes in their rates would only have a weak effect on the prison populations since they would rarely if ever have resulted in committal to a federal institution. Finally, the changes in the levels of prison populations described in the CCR reports are relatively small numbers, and are expressed as actual counts, not as rates. If they were expressed as annual rates of persons incarcerated, the increases would appear to be more modest. One of the reasons for the report of *actual* counts as opposed to rates is that the counts may present a more human face of the ultimate result of violent crimes. Rates tend to flatten our appreciation of the criminal events, and take away the human face of victimization and perpetration. In addition, the counts force us to reflect on the staggering financial costs associated with society’s responses to them. So while the crime rate may be dropping, there are good reasons for the minister of security to be concurrently exploring the question of prison expansion after all!

Overview

To this point in this unit the materials have introduced students to (1) questions about whether we can learn anything from official statistics given the institutional processes that influence them and (2) the conventional nature of the categories which constitute the phenomena defined, described, catalogued and counted. The “actual volume of crime” may be “unknowable” in some philosophical sense, but the system, which has evolved over the past century and a half, cannot be dismissed capriciously. Extremely thoughtful efforts have contributed to a system designed to capture some of the most injurious threats to human security, and to track these events on an annual basis. The “volumetric” UCR 1 has been complemented by the incident-rich record produced by UCR 2. Both are complemented by a system that reflects changing levels of the seriousness of crimes based on court-awarded penalties in the CSI. Attempts to uncover “the dark figure of crime”, that is, the events that are not brought to official attention, have been addressed in the GSS in a series of social surveys designed to tap victimization across a host of personal and property injuries. Particular attention has been devoted to capturing the victimization of females using all available information, and to track such patterns over time. And finally, correctional data has been explored to shed light on the expanding prison population in Canada. Critics of the Canadian Centre for Justice Statistics point out that the annual surveys misrepresent cases of some crimes that increase in this or that year, and in this or that province (Newark 2013) and fail to sound the alarm among Canadians for American-style crime vigilance. This perspective has been criticized in turn (Anderson 2013). Students can engage the debates and determine for themselves how strong or weak a case can be made for the claimed deficiencies of recent reports on Canadian crime trends.

Endnotes

In what follows there is a list of

- key concepts with which students should be familiar

Unit 3: Measuring Crime
File: 3. 305 – Final Unit 3.docx 13,303 wds

- Links to statistical sources in Canada
- Required reading
- Practice questions
- References

Key Concepts, Facts and Issues

- Labeling theory
- Politics and the crime rate
- John Charles Taché and the role of the Department of Agriculture in 19th century Canadian statistics
- The Canada Year Books
- Crime counts versus crime rates
- Prevalence of drunkenness and vagrancy in 19th century Canada
- Police discretion
- The Dominion Bureau of Statistics
- Statistics Canada
- The Uniform Crime Reports (aggregate or “volumetric” approach)
- The MSO method
- The Uniform Crime Reports (incident based)
- Incidence versus prevalence in the measures of crime
- The Crime Severity Index
- The General Social Surveys
- Victimization surveys (persons versus incidents)
- Index Crimes (USA)
- The Canadian Centre for Justice Statistics
- Indictable versus summary conviction offences
- The 1991 crime peak and the crime drop
- The Youth Criminal Justice Act (2003) and the Young Offenders Act (1980)
- Geographic variations in the distribution of crime in Canada
- Self-reported victimizations reported to the Police in the GSS
- Self-reported feelings of safety from crime in the GSS
- Trends in crimes and in incarceration in Canada
- The “dark figure” of crime
- Costs of incarceration in Canada

Links to Statistical Sources in Canada

- *Police-reported crime statistics in Canada, 2012*
 - <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11854-eng.htm?fpv=269303>
- *Measuring Violence Against Women: Statistical Trends (2013)*
 - <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766-eng.htm>
- *Youth Court Statistics in Canada 2011/2012 (Mia Dauvergne)*

Unit 3: Measuring Crime
File: 3. 305 – Final Unit 3.docx 13,303 wds

- <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11803-eng.htm?fpv=2693>
- *Criminal Victimization in Canada, 2009:*
 - <http://www.statcan.gc.ca/pub/85-002-x/2010002/article/11340-eng.htm?fpv=2693>
- Scott Newark, *Police-reported Crime Statistics in Canada, Still More Questions than Answers*, MacDonald-Laurier Publication 2013.
 - <http://www.macdonaldlaurier.ca/files/pdf/Police-reported-Crime-Statistics-in-Canada-February-2013.pdf>

Required Reading

Corrections and Conditional Release: Statistical Overview. The CCR document is 145 pp. The assigned reading covers Sections A,B,C and D (pp. 1-99). However, most of the content consists of graphs and tables. Notice that the crime totals differ from those reported by Statistics Canada. Read the figure and table notes to learn why. Pay particular attention to those aspects of the report that deal with aboriginal Canadians. The document can be downloaded here:

<http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2012-ccrs/index-eng.aspx>

Practice questions

1. Explain the major sources in crime trends in Canada since 1962? What are the UCR1, the UCR2 and the Severity index? How do such measures differ from the FBI's "crime index" in the US?
2. In your view do the Canadian crime statistics provide a valid picture of crime in Canada? Are they socially and politically relevant? And do they shed light on the causes of, or conditions that contribute to, crimes in Canadian society?
3. Describe the profile of Aboriginals in the federal correctional system (numbers, proportions and trends), and compare them to non-Aboriginals. Discuss possible alternative reasons for the distinctive pattern of Aboriginal representation in Canadian correctional institutions based on (a) the Justice Model and (b) the Crime Control Model (see Unit 1).
4. How is victimization information collected in Canada? What are the major findings about gender differences in victimization measured in the General Social Surveys?

References

Anderson, John (2012) "The actual volume of crime is unknown and unknowable," *Crime in Canada: Law, Crime and Punishment*, Nanaimo: Vancouver Island University.

Unit 3: Measuring Crime
File: 3. 305 – Final Unit 3.docx 13,303 wds

- Anderson, John (2013) “Scott Newark misleads Canadians about crime,” *Crime in Canada: Law, Crime and Punishment*, May 17th, Nanaimo: Vancouver Island University.
- Canada (2009) *Measuring Crime in Canada: Introducing the Crime Severity Index*, Catalogue 85-004-X, Ottawa: Statistics Canada.
- Canada (2012) *Corrections and Conditional Release: Statistical Overview*, Ottawa: Public Works and Government Services.
- Canada (2013) *Police-reported Crime Statistics in Canada 2012*, Catalogue 85-002-X, Ottawa: Statistics Canada
- Canada (2013a) *Youth Court Statistics in Canada 2011/2012*, Ottawa: Statistics Canada.
- Canada (2013b) *Criminal Victimization in Canada, 2009*, Ottawa: Statistics Canada.
- Canada (2013c) *Measuring Violence Against Women: Statistical Trends*. Edited by Maire Sinha, Juristat, February 25, Ottawa: Minister of Industry.
- Cicourel, Aaron (1968) *The Social Organization of Juvenile Justice*, New York: Wiley.
- DBS (1952) *Dominion Bureau of Statistics, History, Function, Organization*, Ottawa: Supply and Services.
- Kitsuse, John I. and Aaron V. Cicourel (1963) “A note on the uses of official statistics,” *Social Problems* 11(2): 131-139.
- Koenig, Dan (1996) “Do police cause crime?” pp. 82-89 in R.A. Sullivan, J.J. Teevan and V.F. Sacco (eds.) *Crime in Canadian Society* 5/e, Toronto: Harcourt Brace.
- McCormick, Ted (2009) *William Petty: And the ambitions of Political Arithmetic*, Oxford; Oxford University Press.
- Monkkonen, Eric (1981) *Police in Urban America 1860-1920*, New York: Cambridge University Press.
- Newark, Scott (2013) *Police-reported Crime Statistics in Canada: Still More Questions Than Answers*, Ottawa: MacDonald-Laurier Institute.
- Perreault, Samuel and Shannon Brennan (2010) *Criminal Victimization in Canada, 2009*, Juristat, Summer, Ottawa: Statistics Canada.
- Reed, Paul (1999) “Section Z: Justice Statistics,” *Historical Statistics of Canada*, Ottawa: Statistics Canada.

Unit 3: Measuring Crime
File: 3. 305 – Final Unit 3.docx 13,303 wds

Thomas Thorner (1979) "The Incidence of Crime in Southern Alberta,' pp. 53-88 in L.A. Knafla and D.J. Bercuson (eds.) *Studies in History (No. 2)*, Calgary: University of Calgary Press.

Weber, Max (1949) *The Methodology of the Social Sciences*, translated by Edward A. Shils and Henry a. Finch, Glencoe, Illinois: The Free Press.

Worton, David (1998) *The Dominion Bureau of Statistics*, Queen's-McGill University Press.

Zhiqiu Lin (2007) *Policing the Wild North-West*, Calgary: University of Calgary Press.

Zhiqiu Lin & Augustine Brannigan (2005) "The Idea of a Provincial Police Force," pp. 232-265 in *Law and Societies in the Canadian Prairie West 1670-1940*, edited by Louis Knafla and Jonathan Swainger, Vancouver: UBC Press.

Let's See the Big Picture: Historical and Contemporary Trends in Crime Rates

The sociology of crime focuses on two main things: crime and criminality. The former is the act that constitutes the dependent variable around which the enterprise is organized, and to which students of crime apply their scholarship to understand what it is, and why it occurs. Sometimes the dependent variable is referred to as “Y”—the outcome, or the effect that is the consequence of prior independent causes or conditions. In contrast, criminality is the motivational question that seeks to shed light on the motives of persons who commit crimes, and is the obvious first independent variable in an explanatory scheme. Naturally, persons who seek to develop expertise in crime will want to know under what conditions it occurs, as well as why the supply of crime grows or contracts in certain places, and times, and under certain conditions. Crime is not a constant. The level of crime changes over time. So does the content. There is marked variability in the gender and age of those who commit crimes, as well as important individual differences among offenders versus non-offenders. In this unit we examine large and significant shifts in the amount of crime that occurs and that is recorded more or less accurately by society through its agents of social control. We shall first explore the interest in the judicial records of crimes that have been uncovered by historians working in England and in specific jurisdictions in Europe, and the subsequent attempts of sociologists to provide estimates of *the rate* of crime over very long periods of time measured in centuries based on these judicial records. Although what counts as crime is subject to much reinterpretation across various historical periods, the judicial records focus on the most serious types of offending—particularly homicide—which is treated as reprehensible by most societies within living and historical memory. The combined efforts of historically minded criminologists have suggested that in England and various locales in Europe from the period of about 1300 to 1950, the trends in homicide have declined dramatically. Despite the massive deaths in world wars and collective conflicts in modern times, the records of *interpersonal* violence suggest that Europeans were far more secure in the modern period than at any time prior to it.

Students of crime were alarmed that this trend towards a pacification of humanity seemed to be undergoing a reversal at the same time that these optimistic conclusions were being drawn from the historical trends. The 1960s and 70s were marked by unprecedented levels of crime, at least as compared to patterns in the earlier decades of the century. Furthermore, by the mid-1990s, a number of prominent criminologists were predicting that a new wave of violence was in store for society as a generation of “superpredators” was coming of age. These were young male hooligans in the narcotics industry, armed with automatic handguns, raised in fatherless families, and emotionally insensitive to violence. Experts predicted unprecedented levels of bloodshed. However, these predictions proved to be unfounded. After the early 1990s, the crime trends across most categories of offence were declining. This was noted in the last unit in the Canadian case. But what does the record suggest for other jurisdictions such as the US and Britain? The record is the same. In this unit we explore several major jurisdictions that have professional statistical departments that all point to an anomaly in the trends in crime: despite the rising levels of population, there has been a remarkable decline in crime measured both in the rate, as well as the absolute numbers of offences. Not having been very reliable in predicting such changes, the enterprise of criminology has been plagued by doubts about how to explain

Unit 4: The Crime Drop and the Enterprise of Criminology

File: 4. 305 – Final Unit 4.docx 11,050 wds

such changes. In this unit we shall review the leading explanatory contenders, and highlight the theoretical challenges that such dramatic shifts in crime pose for the intellectual integrity of the sociology of crime, and its ability to understand the changing behaviour of its main dependent variable. After all, what is the credibility of an economics that cannot anticipate major changes in the economy, or an epidemiology that cannot predict future trends in disease? Such knowledge deficits call into question the academic credibility of the scientific enterprise, whether in economics, epidemiology or the sociology of crime.

Unit Objectives

In this unit we plan to explore the following topics:

- The growth of research in sociological criminology in identifying and understanding the long term trends in the historical patterns of crime as evidenced by the meticulous records and systematic judicial reports kept in England and other parts of Europe following the end of feudalism
- Discovery of a long-term decline in violence wherever long-term systematic records were maintained, and correlated with independent observations from other European jurisdictions
- Observations of the same common co-variables of crime in the historical record in terms of gender, age, circumstances of conflict, etc. from diverse jurisdictions in terms of place and time
- Explanations for the long-term decline in homicides and violent offences from the 13th century to the 20th century in Europe
- The resurgence of crime in common law jurisdictions in the 1960s and ‘70s despite the long-term historical changes
- Labeling of the “superpredator” juvenile offenders in the 1990s, predictions of escalating crime trends based on their misconduct, and the subsequent legal changes designed to suppress them
- The systematic and long-term decline in recorded crime after about 1991 in Canada, the US, England and Wales, and other jurisdictions, and into the 21st century and its theoretical significance
- The attempts by criminologists to explain the unforeseen decline in crime with reference to various factors including: changes in the nature of the narcotics rackets, increased patterns of incarceration, the impact of changes in the economy, the demographic profile of the population, abortion laws, and the disappearance of toxins, primarily lead, from human environments

Historical Changes in the Levels of Crime in Britain and Europe

In England in the 12th and 13th centuries, small groups of judges were sent from the central courts in Westminster to all the counties of England to hear criminal and civil cases or “pleas”. These courts and the circuits they followed were known as “eyres”. James B. Given (1977) assembled the information associated with 3,000 homicides from twenty eyres in seven counties of thirteenth-century England. The court records

contained rich information about the crimes, ages of perpetrators and victims, what caused the conflict and how the courts decided the cases. By estimating the population in specific jurisdictions, it was possible to identify a homicide rate, and to compute its change over time. Ted Robert Gurr (1981) assembled a series of such court records for Elizabethan England and a series of homicides in Surrey for the period 1663-1802 collected by John Beattie (1974) and plotted them in a time series. He estimated that the homicide rate was about 20 victims per 100,000 population in the High and Late Middle Ages, dropping to about half that level by 1600. Figure 1 (below) summarizes his findings in this now famous and highly suggestive s-shaped curve.

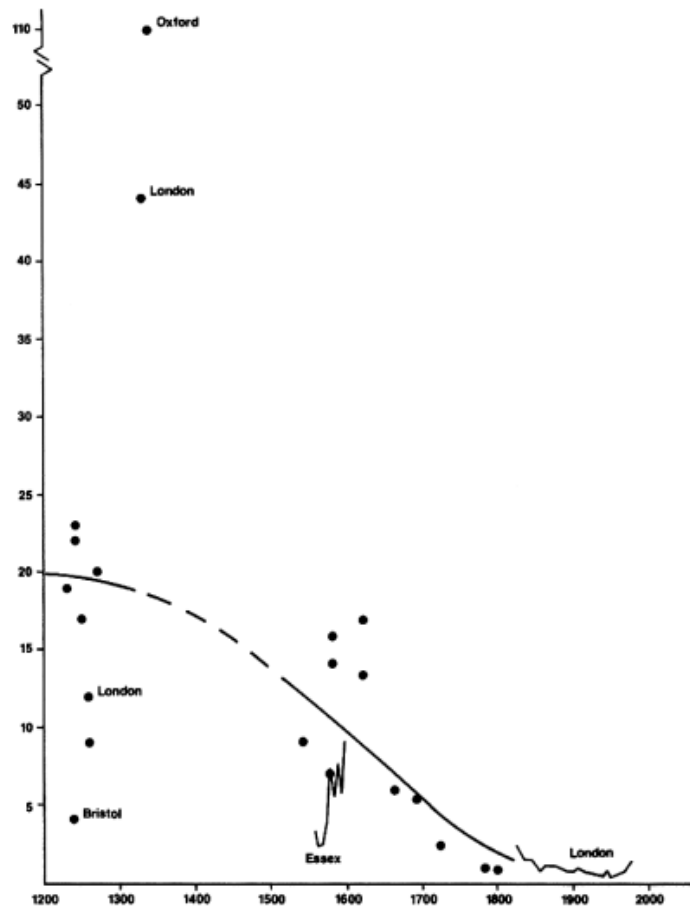


FIG. 1.—Indicators of homicides per 100,000 population in England, thirteenth to twentieth centuries. Note: Each dot represents the estimated homicide rate for a city or county for periods ranging from several years to several decades. Source: Gurr 1981, p. 313.

There is some debate in social sciences as to whether it makes any sense to compare such crimes across changing historical periods. Cultural theorists would suggest that the meaning of violence, of insults and associated homicides are constantly being redefined and renegotiated. Behaviourists take a more universal perspective and suggest that events as dramatic as murder can be counted fairly objectively because they tend to provoke fear and retribution and are recorded accurately. Gurr's work was followed by Cockburn (1991) who investigated an uninterrupted time series of

homicides in the Kent county court records in England from 1560 to 1985. The data showed a 10-fold decline over this period from a rate of 3-6 offences of homicide per 100,000 persons to a rate of 0.3 to 0.7 some 400 years later. There followed a number of long term studies of homicide in Norway, Finland, Sweden and Holland covering a period of 700 years, again suggesting that homicide dropped from about fifty per 100,000 population in the medieval period to about one per 100,000 in the 19th century. Manual Eisner (2003) assembled an extensive database of serial information on homicide in Europe. *Table 1: Homicide Rates in Five European Jurisdictions* (below) is Eisner's summary of the overall trends (Eisner 2003: 99). The numbers are the estimated homicide rates per 100,000 population. Irrespective of location, the estimates suggest that the rate of homicide has declined dramatically over time.

Homicide Rates in Five European Regions

Period	England	Netherlands and Belgium	Scandinavia	Germany and Switzerland	Italy
Thirteenth–fourteenth centuries	23	47	...	37	(56)
Fifteenth century	...	45	46	16	(73)
Sixteenth century	7	25	21	11	47
Seventeenth century:					
First half	6	(6)	24	11	(32)
Second half	4	9	12	(3)	...
Eighteenth century:					
First half	2	7	3	(7)	(12)
Second half	1	4	.7	(8)	9
1800–1824	2	2	1.0	3	18
1825–49	1.7	...	1.4	4	15
1850–74	1.6	.9	1.2	2	12
1875–99	1.3	1.5	.9	2.2	5.5
1900–1924	.8	1.7	.8	2.0	3.9
1925–49	.8	1.3	.6	1.4	2.6
1950–74	.7	.6	.6	.9	1.3
1975–94	1.2	1.2	1.2	1.2	1.7

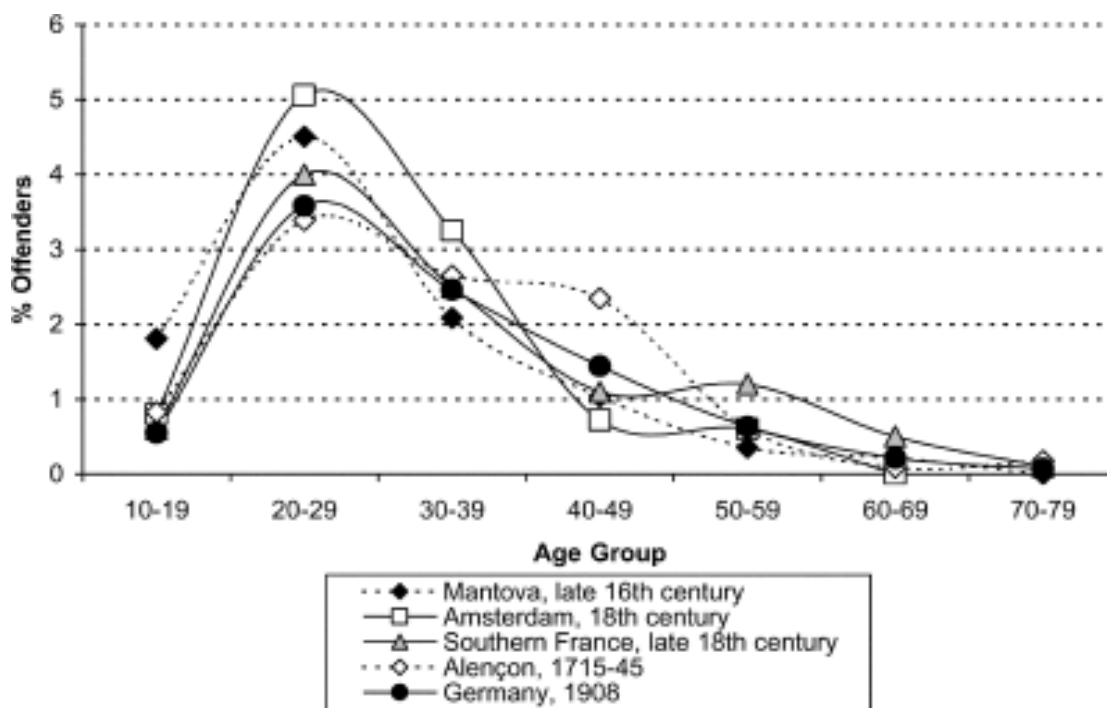
SOURCE.—History of Homicide Database.

NOTE.—Data are arithmetic means of all available estimates for a given period and region. Estimates based on local data are rounded to the next integer. Figures in parentheses are particularly unreliable because they are based on fewer than five estimates. Figures in italics are based on national statistics.

Eisner's synthesis included an examination of trends in terms of gender and age of persons implicated in homicide. Although female participation in theft was frequently significant and changed with women's role in the preindustrial economy, their participation in violent offences was low and steady. Eisner (2003: 109): "*A series of estimates for the percentage of female offenders from 1200 to 2000 show that female involvement in violent crime has been much less susceptible to social change. Records across Europe over 800 years consistently show that the proportion of women committing homicide (excluding infanticide), assault, or robbery was hardly ever above 15 percent and typically ranged between 5 and 12 percent.*"

The age of homicide offenders displays the same age-crime curve that can be found in any contemporary textbook on delinquency: the next figure contains the *Age Distribution of Homicide Offenders in various historical periods and places*. What the figure shows is the sharp increase in crime from the teens to the twenties, and a decline throughout the balance of the life cycle.

Eisner (2003: 115) observes “at present, one may cautiously conclude that evidence from six different areas in Europe and extending over a period of some 400 years shows a strikingly similar overall pattern. If this finding can be generalized, we may conclude that historical variation in overall levels in serious violence does not covary with differences in the age distribution of violent offenders. That would imply that changing cultural definitions of youth and young adulthood, changing marriage patterns, or varying economic prospects for young men did not result in major changes of the age distribution of serious violent offenders.”



Eisner also points out that over the 700+ years in the homicide database, the majority of victims were male, although the gender ratio diminished from about 12.5 males to 1 female in the thirteenth to sixteenth centuries, to an average of 2.7:1 in the eighteenth century. One of the most significant covariates of killing was conflict between male acquaintances associated with quick tempers, strong drink and ready access to knives, rarely premeditated, and frequently in the course of social intercourse around taverns and other social gatherings—what Daly and Wilson (1988) have called “trivial altercations” over honor challenges. As the general trends towards the elimination of such conflicts reduced the overall homicide rates, family killings, which were rare in medieval times, became more prominent.

There are obviously serious methodological questions associated with this assemblage of

judicial records from various jurisdictions across Europe and across different societies and different centuries. There is no control of unreported crime, or crimes involving persons whose social worth did not merit taking their victimization seriously. There are significant differences in laws throughout and across the research domain. Having recognized all that, the patterns which historians and sociologists have put together are profoundly important since they suggest some dramatic conclusions about one of the most serious forms of crimes known to mankind: homicide. Eisner's homicide database suggests five specific conclusions (2003: 122):

1. When we examine the records across the centuries from the middle ages to the recent decades, there appears to be little change in the sex and age structure of serious violent offenders.
2. Serious interpersonal criminal violence has declined significantly throughout Europe over the past six or seven centuries; this decline was noticeable as early as the fifteenth century, but is well-documented between the long period between the early seventeenth and mid-twentieth centuries.
3. There is significant variation in where such declines first emerged with evidence suggesting that they occurred initially in the Netherlands and England, later in Sweden, and most recently in Italy.
4. High overall levels of violence were "associated with high levels of elite involvement in physical violence. Drops in lethal violence were disproportionately related to a decline in elite violence" (Eisner 2003: 123). In other words, while elites killed with regularity in medieval society (i.e. 1300), this patterns fell from fashion in the renaissance (i.e. 1700).
5. The record shows that the majority of cases of homicide are male-on-male encounters between people of similar backgrounds "arising out of situational conflicts involving clashes over honor, property, or other entitlements" (ibid.) Sustained declines in violence are associated with the pacification of social interaction in the increasingly shared public spheres of life.

How does Eisner explain this remarkable pattern of change? There are several potential leads in terms of explanations, not all mutually exclusive. One of the most attractive is the thesis of *The Civilizing Process* published originally by Norbert Elias in 1939. Elias argued that in medieval Europe the warring families consolidated power through "elimination contests" where they exterminated each other, and/or built coalitions through intermarriage. These strategies eventually led to the rise of absolute monarchs some centuries later. The courts of the emerging families required the class of warring knights to sublimate their aggression, to cultivate diplomacy over brute force, and to develop control of impulses to facilitate the harmony of increasingly more complex social relations. With the changing division of labour, people became more sensitive to the reactions of their neighbours, and as the population increased, people began to require of one another a predictability of emotional reactions, greater levels of cooperation, and longer-term horizons of social planning. For Elias, this was captured in the books of etiquette that were employed to teach manners to the sons of the nobility. With the integration of nobles, craftsmen and paupers, the ideals of civilization took root across all the social classes, and civility, or self-control, became a national objective in the emerging mercantile economies

in Britain, France and Germany. One of the unintended consequences of this change in the division of labour, and the rise of common urban spaces, was a growing intolerance of uncontrolled spontaneity, whether this consisted of sexuality, violence, cruelty or simply mirth.

Eisner also mentions that as the European economies developed, and persons pursued their material self-interests, state forces began to play a more intrusive role in everyday life. So in addition to Elias's emphasis on self-control or self-restraint, social control became a more potent fact of life as the populations grew into towns and cities. However, it was not the physical force associated with police or quasi-military organizations that suppressed crime. It was the need to plan social life on an informal level through the cultivation of trust among neighbours, fellow workers, and churchgoers. Informal social control as well as impulse control became normative. Violence declined as a consequence. Eisner also mentions the disciplinary consequences of both Protestantism and capitalism, and their contributions to self-regulation. The religious changes of the sixteenth century made a priority of literacy and education for the entire population. The ability to read the bible on one's own opened up the public to knowledge of every sort and variety in books, newspapers and written texts. As mechanical production spread through manufacture, it became imperative for work groups to understand the technological premises of the steam-driven economies. Again, the division of labour required a more circumspect, calculating, self-disciplined homo sapiens, in short, what Durkheim called "an individual", an actor freed from collective commitments to family and vendettas, and more oriented to self-interests and material self-advancement. The changes did not occur simultaneously throughout Europe, and experienced significant differences from country to country and decade to decade over time, but they resulted in a profound change in the levels of interpersonal violence that we have reviewed here. And they led to the conclusion that the most secure societies in Europe that had ever existed, at least from the perspective of interpersonal homicide, were those that had evolved in the 20th century.

One of the projects mentioned in an earlier unit was the rise of the temperance movement which combined Calvinistic self-control through voluntary alcohol abstinence, social control through the suppression of public drunkenness, and self-advancement through the cultivation of reliable character and work habits. It was associated with delays in self-gratification and the management of interpersonal relations on the basis of mutual restraint (Wilson 2013: 233-34). Just as crime reached a long-term apogee in the mid-20th century, the tide began to turn with the new generation of children born after WW II. Previously there had been a downturn in fertility associated with The Great Depression and World War Two. History was about to take an about-face. The post-war produced a boom in fertility that became associated with a wave of crime that had not seen its like for centuries.

That was then, this is now: The 1960s and the Boomer Crime-wave

The baby boomers were born in the first 20 years after the end of the Second World War starting in 1946. They started to come of age after about 1960. In the uniform crime reports, the evidence shows that violent crime increased by double-digit numbers

throughout the 1960s. In fact, in Canada the violent crime rate doubled from 221 crimes per 100,000 population in 1962 to 453 per 100,000 in 1969 (Bunge, Johnson and Baldé 2003: 56). There was also an explosion in the use of narcotics among younger people, and the growth of a youth culture that celebrated autonomy and self-exploration. The birth control pill contributed to more casual attitudes towards premarital sex, and universities became hotbeds for radical student movements and political challenges to authority. The boomer crime wave occurred during a period of remarkable economic expansion in Canada and the US, although unemployment rates for young persons were typically twice that of older workers, and persons born towards the end of the baby boom generation were entering institutions, whether educational, employment or otherwise, already populated by their older siblings.

Bunge et al (2005: 18) offer a summary of this demographic picture by Quebec criminologist, Marc Ouimet: *“Ouimet...contends that a very large cohort of people born in Canada during the early 1960s had higher levels of criminal involvement than any other due to more serious difficulties integrating into the job market during the recession in the early 1980s. This group has also been criminally active for a longer period of time than any other cohort. He argues that the offending behaviour of this group helped extend the period of growth in violent crime rates well into the early 1990s. Demographer David Foote...points out that the largest single-year age group in Canada is those born in 1961. Compared to the boomers born earlier, this group has had a difficult time making a successful transition into adulthood. Foote maintains that 1961 was “one of the worst years in this century to be born” in part because the mass of older boomers who preceded this group pushed the price of rents and housing up and occupied most of the best jobs and opportunities.”*

This fostered speculation that the youngest and last-to-be-born into the boomer generation would become more prone to violence because of struggles for opportunities for social and economic advancement. The boomer children born in 1961 would enter their crime prone years 16-24 years later (1977-1984). Indeed the rate of homicide reached its highest points in the late 1970s moving from 2.34 per 100,000 population in 1972 to 3.03 per 100,000 in 1975, 3.00 in 1977, 2.76 in 1978, and declined thereafter until there was a sharp increase in 1991 when a rate of 2.69 was recorded.

Boomers give way to the “Superpredator”: Get Ready!

By the early 1990s, there was speculation that the *children* of boomers would present an even graver picture of violence than the late-appearing boomers themselves. This prediction was made by several leading American social scientists. In a paper on *Trends in Juvenile Violence*, James Alan Fox, Dean of Criminal Justice at Northeastern University in Boston, provided a briefing to the US Attorney General, Janet Reno, on the projected rates of juvenile offending in 1995. He noted that the rate of murder committed by teenagers aged 14-17 had increased 172% among both black and white teenagers from 1985 to 1994, despite the relative stability in the homicide rate for the other age groups. Black males aged 14-24 who constituted about 1% of the population constituted some 17% of all the victims of homicide and over 30% of the perpetrators. The surge in homicide was attributed to conflicts in the illicit crack cocaine market and the proliferation of illegal handguns that

quadrupled over this period. The largest increase in juvenile homicides involved offenders who were among the friends and acquaintances of the teen victims. Fox noted that from 1989 to 1994 the arrest rate for violent crimes, including murder, rape, robbery and assault, had increased 46% among young teenagers, a figure that was higher than the arrest rate for young adults aged 18-24. Fox further noted that the changing demographics threatened to add substantially more persons in these extreme crime-prone years to the urban landscape. Fox (1996: 2-3) wrote that “this generation of youth has more dangerous drugs in their bodies, more deadly weapons in their hands and a seemingly more casual attitude about violence...Even if the recent surge in teenage homicide rates slows, our nation faces a future juvenile violence problem that may make today’s epidemic pale in comparison”.

In 1996, Bennett, DiIulio and Walters wrote a popular book, *Body Count*, warning of the rise of a new kind of offender: the juvenile superpredator: "Based on all that we have witnessed, researched and heard from people who are close to the action,...here is what we believe: America is now home to thickening ranks of juvenile “super-predators”--radically impulsive, brutally remorseless youngsters, including ever more pre-teenage boys, who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs and create serious communal disorders" (Bennett, DiIulio, & Walters, 1996: 27). They were described as acting without pangs of conscience, and indifferent to penalties. Basically, they had no moral conception of right and wrong. These youth were described as fatherless, Godless and jobless. John DiIulio also contended that by 2010 there would be a further 270,000 more juvenile superpredators on the street than in 1990, and that the justice system would probably need to incarcerate 150,000 of them to protect society from their excesses.

James Q. Wilson (1995: 507) joined the chorus of alarmists when he predicted that by 2000 “there will be a million more people between the ages of 14 and 17 than there [were in 1995]. . . Six percent of them will become high rate, repeat offenders—thirty thousand more young muggers, killers and thieves than we have now. Get ready.” Like DiIulio, Wilson had taken the historical estimate of chronic juvenile male offenders from Marvin Wolfgang’s famous Philadelphia Birth Cohort Study. Wolfgang, Figlio and Sellin (1972) identified every boy born in Philadelphia in 1945, and who lived in the city between his 10th and 18th birthdays. They identified about 10,000 boys and linked them to 10,214 offences. They discovered that only about one-third of the boys had committed an offence. However, they also discovered that about 6% of the entire sample (16% with an arrest record) accounted for over half of the offences that they measured. Wolfgang et al referred to these as “chronic offenders”. Wilson extrapolated superpredatory juvenile crime predictions based on the future population changes in youth using Wolfgang et al’s estimate of chronic offenders from the 1945 birth cohort.

The Legal Consequences

These dire warnings alarmed the public, and created a flurry of legal changes designed to provide more serious penalties for adolescent offenders. It turns out that the moral panic was totally unjustified since the predicted explosion of juvenile crime collapsed almost as soon as it was announced. In fact in 2012 a consortium of 46 academics prepared an *amici curiae* for the US Supreme Court in support of a petition from Evan Miller against the state

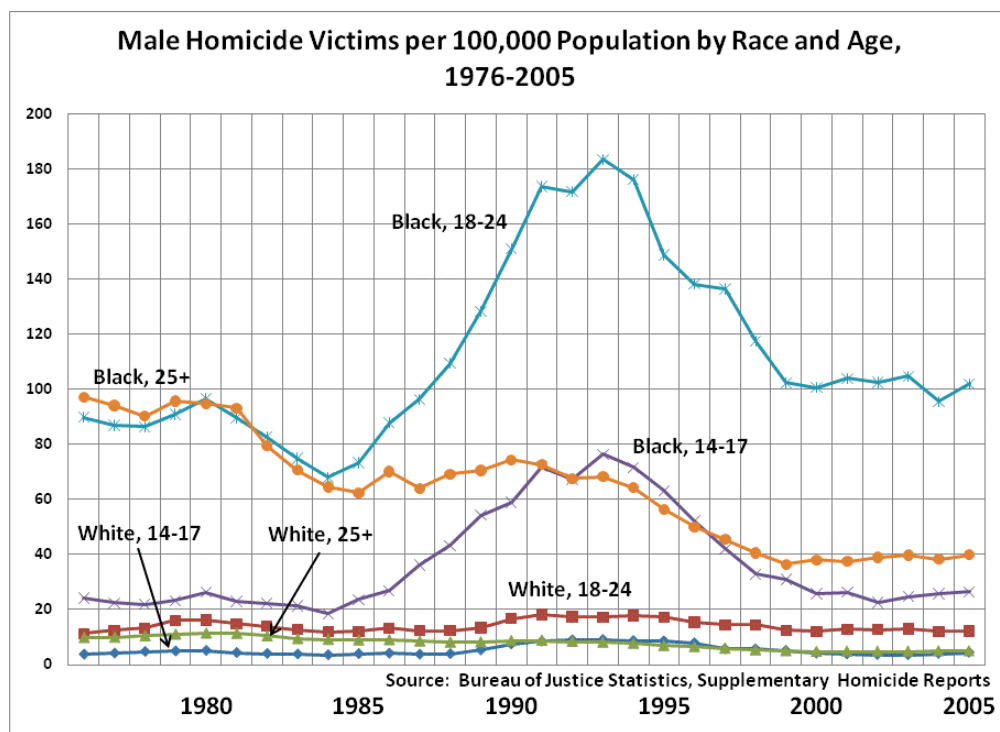
of Alabama (Fagan and 45 others, 2012). The state had passed a law providing for the provision of life imprisonment without possibility of parole for juveniles convicted of murder. An *amici curiae* is a statement from “friends of the court” who possess a special interest in, or special expertise in a legal question before the court. Among those who signed the statement were the leading advocates of the crime wave that never happened. They all admitted that their predictions had been false, and that legal changes such as those adopted by Alabama amounted to cruel and unusual punishment.

The argument from the 46 friends of the court noted that there had been a spike in juvenile crime in the late 1980s and early 1990s, and that the term “superpredator” had been coined to signal the rise of a new class of offender characterized as a ruthless psychopath who lacked a moral conscience and was neither concerned about the consequences of his or her actions nor deterred by punishment. As a result of such claims, 29 states changed their laws to transfer juveniles to adult courts and to subject them to some of the harsh penalties directed at serious adult offenders, including sentences of life imprisonment without parole. “However, the fear of an impending generation of superpredators proved to be unfounded. Empirical research that has analyzed the increase in violent crime during the early- to mid-1990s and its subsequent decline demonstrates that the juvenile superpredator was a myth and the predictions of future youth violence were baseless” (p. 8). The argument continued by suggesting that prison sentences without parole had no deterrent effect on juvenile crime, and that reversing the law would not cause an increase in juvenile violence. In June 2012 the US Supreme Court banned the mandatory life terms without parole for juveniles in murder cases.

In Canada, The Youth Criminal Justice Act was revised in 2002 over frustrations about the ability of society to create a legal response to extremely violent youthful crime that was proportionate to the gravity of the offence. However there was never any academic support for the sort of harsh punishments proposed in the US states. In fact provisions to transfer adolescents to adult courts that were available under the Young Offenders Act were replaced with YCJA requirements to keep young offenders within the youth courts, although providing those courts with powers of incarceration for certain offenders of up to five years. In the US, the politics around punishment were also largely racial, which may explain their extremes.

The evidence for the “spike” in youthful homicide victimization in the US was presented in the *amici curiae*. It argued that juveniles (aged 14-17) and young adults (18-24) accounted for the entire increase in the homicide rate. The brief did not discuss race but it seems to have been a significant subtext. The homicide rate for juveniles increased most dramatically, from approximately 10 per 100,000 in 1985 to a peak of approximately 30 per 100,000 in 1993 (Fagan et al, 2012: 9). The following figure covers the period 1976 to 2005 and is based on the Bureau of Justice Statistics Supplementary Homicide Reports compiled by Richard Rosenfeld (2010). It breaks down both race and age, and indicates that the homicides were largely associated with Black youthful victims age 14-17 and 18-24 peaking around 1993. The three lines for White age categories are found in the bottom of the following figure, and Black ages at the top. The homicide rate for White youth age 18-24 peaks at around <20 per 100,000 population in contrast to the peak of >180 per 100,000 population for Blacks in 1993-94 (six times higher). White

youth age 14-17 peak at about 10 per 100,000 population compared with Blacks <80 per 100,000 (eight times higher).



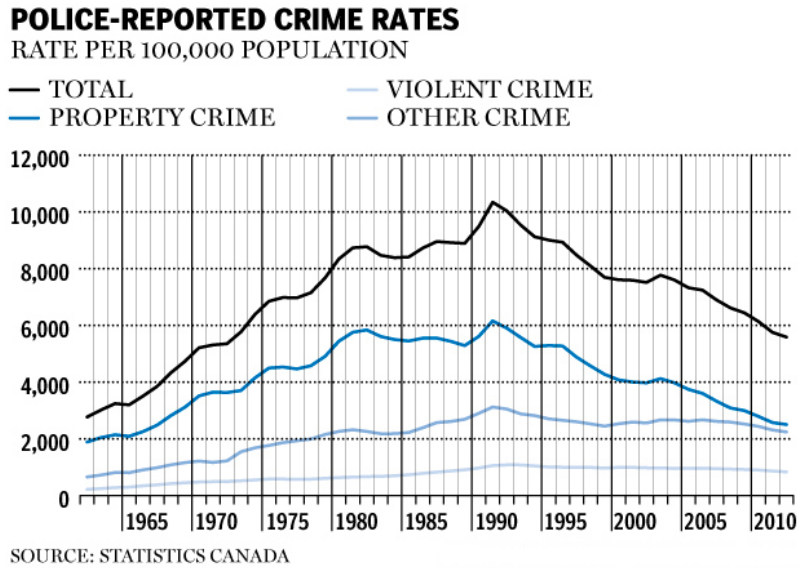
Narratives discussed earlier around the concept of “superpredators” referred to a moral panic. Moral panic suggests “much ado about nothing”. Several alternative observations might be examined in view of these more recent data. First, the level of victimization is most worrisome with young adults (Black 18-24 and 25+), not with the youngest age cohorts as was suggested in the superpredator narratives, the sociopathic teens. Second, victimization of youthful Blacks is staggeringly more serious than threats to non-Blacks. However, what criminologists were talking about was making sentences tougher for offenders. That was the probable subtext of Wilson’s injunction to “get ready”. This vision ignored the fact that the perpetrators were typically of the same backgrounds as their victims. The legislative response was imprisoning them for life, despite their age, while ignoring the frightfully different levels of insecurity across the races. And finally, what the *amici curiae* never began to address was why there was *any drop at all* in the rate of crime, even allowing for these secular trends in increased homicide.

Since criminologists began to comment on the changes in the level of crimes dating from about the early to mid 1990s, there has been considerably more time to access the actual trends. There has also be more time to reflect on the factors that might play a role in such changes. In the next section we again take a longer view of crime trends in several jurisdictions, and explore what may be behind them.

Cross-National Trends in the Recent Crime Drops

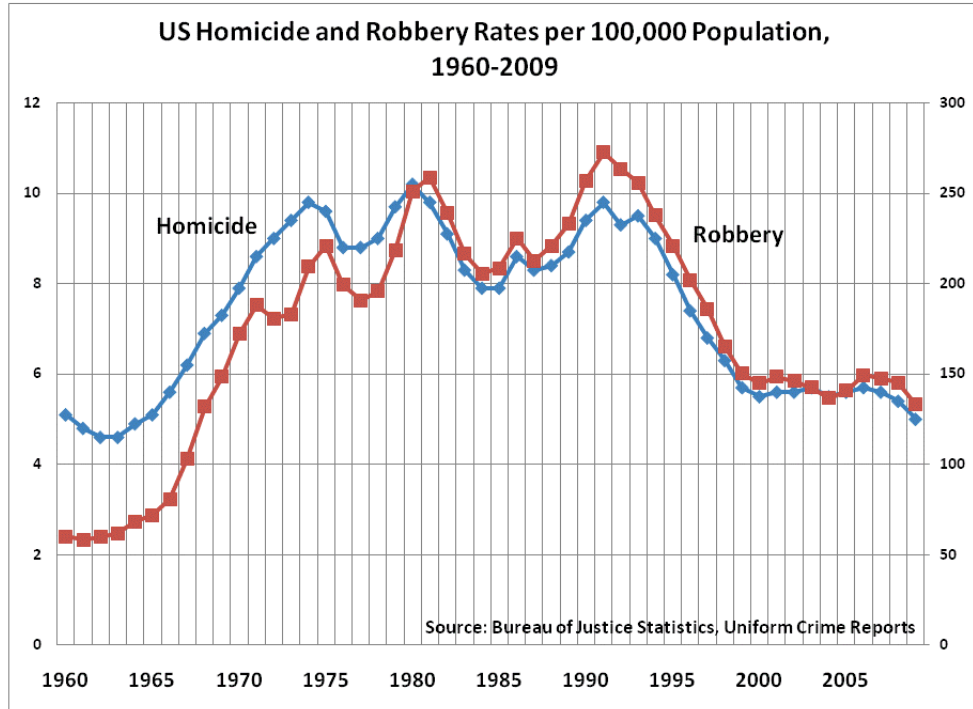
i. Canada and the US

In this section we examine trends in crime from various jurisdictions covering the past several decades to explore the evidence for the current crime drop from a cross-national perspective. The first figure is based on Canada’s UCR police survey that covers the period 1962 to 2012. It suggests that the rate of crime peaked in 1991, and that there was a similar trend in all major crime categories including violence, property and other crimes. This was reported in Unit 2. The UCR is based on a count of over 100 violations.

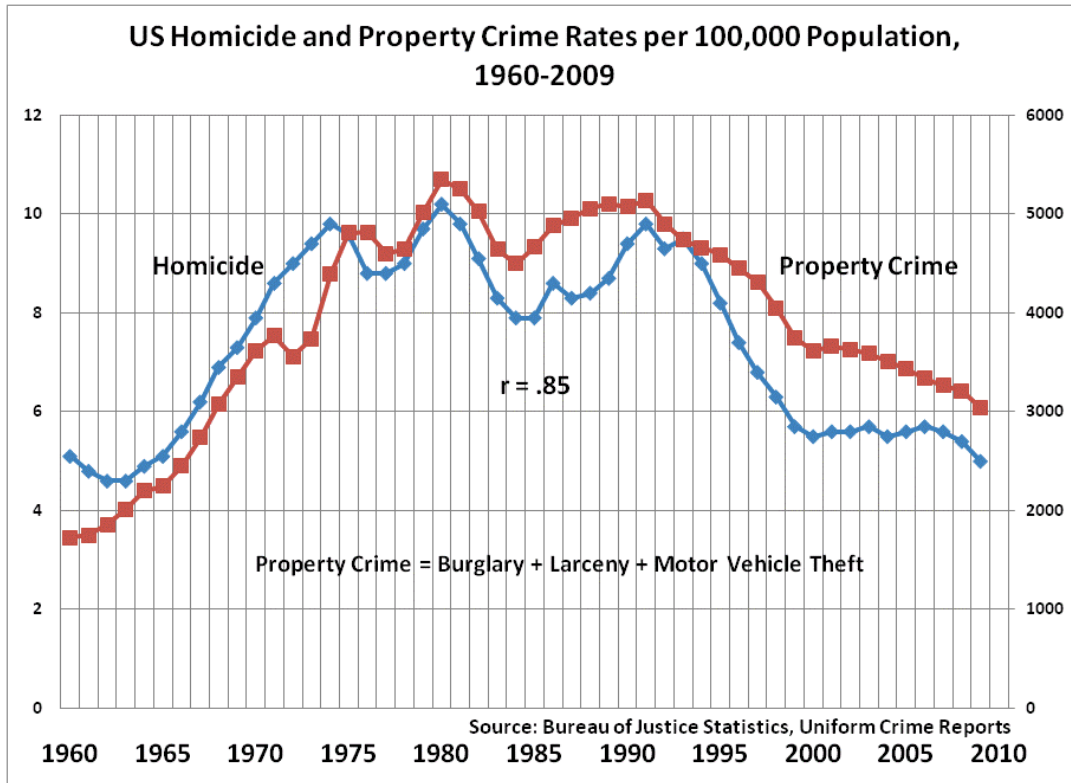


The next two figures are based on data from the US Bureau of Justice Statistics covering the period 1960 to 2009. The first displays a double-y graph to include trends in the rates of homicide and robbery. The left y-axis represents homicide (which varies 0-12 offences per 100,000 population). The right y-axis represents robbery (which varies between 0-300 offences). The US index crimes track far fewer items than the Canadian UCR police surveys (8 index crimes), but the trends are comparable: a large increase in the 1970s, a peak in the 1990s, and a sharp decline thereafter.

Unit 4: The Crime Drop and the Enterprise of Criminology
 File: 4. 305 – Final Unit 4.docx 11,050 wds

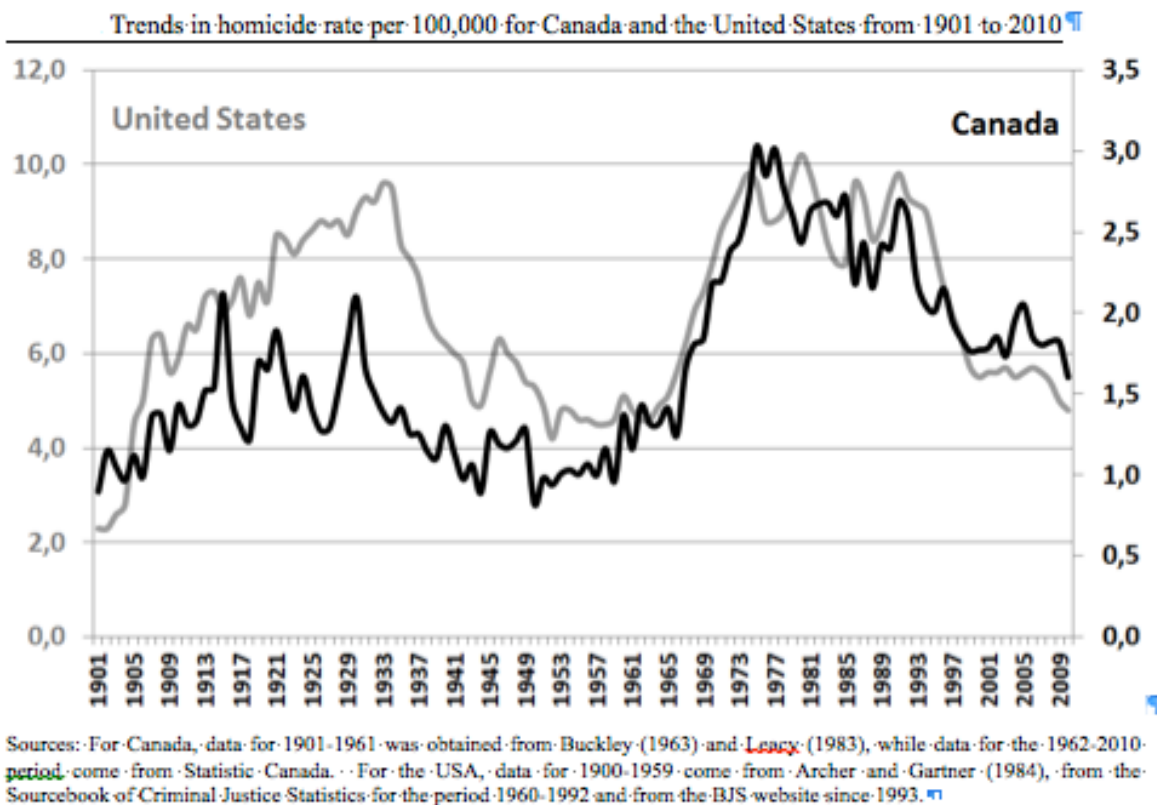


We see the same patterns if we examine the US trends for homicide versus property crimes over the same period. These figures are from Rosenfeld (2012).



How similar are the Canadian and US crime trends? As mentioned earlier, the crime surveys in each country are based on different categories. However, if one examines an

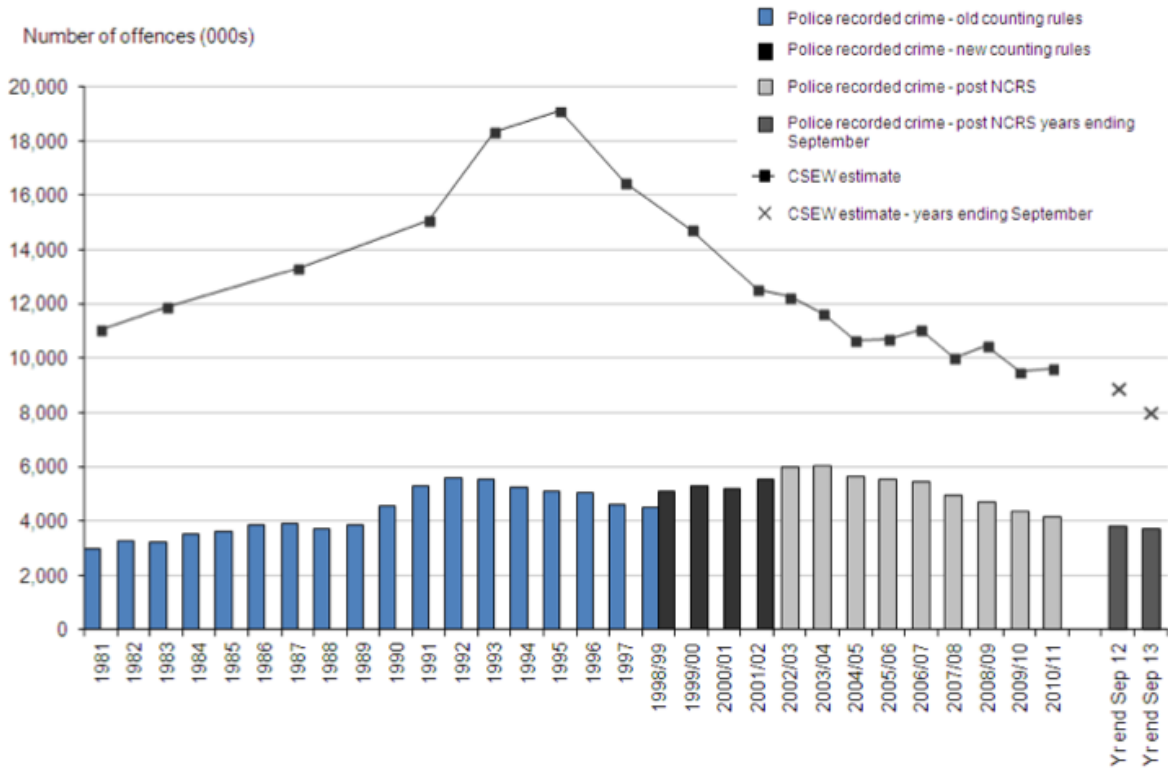
important crime defined more or less in the same way, it is possible to evaluate whether the two countries are experiencing common underlying dynamics. Marc Ouimet (2012: 4) calculated the trends in the homicide rate from 1901 to 2010 in each country. Over a period of 110 years, homicide appears to follow the same “signature” in each country. Where the two nations differ is in the scale of violence. The Y-scale on the left (US) is 3.4 times larger than the Y-scale on the right (Canada). The last 40 years of the time series that show the huge crime bubble from about 1965 to 2009 is more common than criminologists usually acknowledge.



2. British data from England and Wales

The next figure covers the official police-based estimates of crime in England and Wales. It is based on the Crime Survey for England and Wales (CSEW) Although the period covered is somewhat different (1981-2013) from Canada and the US, the same signature can be observed in the crime trend. The crime trend appears to peak in 1995, somewhat later than Canada and the US. The Y-axis shows the number of incidents in thousands (0-20,000 x 1000) for the CSEW in a line trend, and the actual numbers of offences known to the police that are depicted as histograms at the bottom of the figure. The x-axis indicates the years in which the surveys and crime tallies were computed. The crime trends indicate a sharp increase in the 1980s, a peak in the mid-1990s, and a continuing decline thereafter. The histograms of police crime counts at the bottom of the figure vary in colour to indicate changes in the methodology used by police to count

Trends in police recorded crime and CSEW, 1981 to year ending September 2013
(Police recorded crime data are not designated as National Statistics)

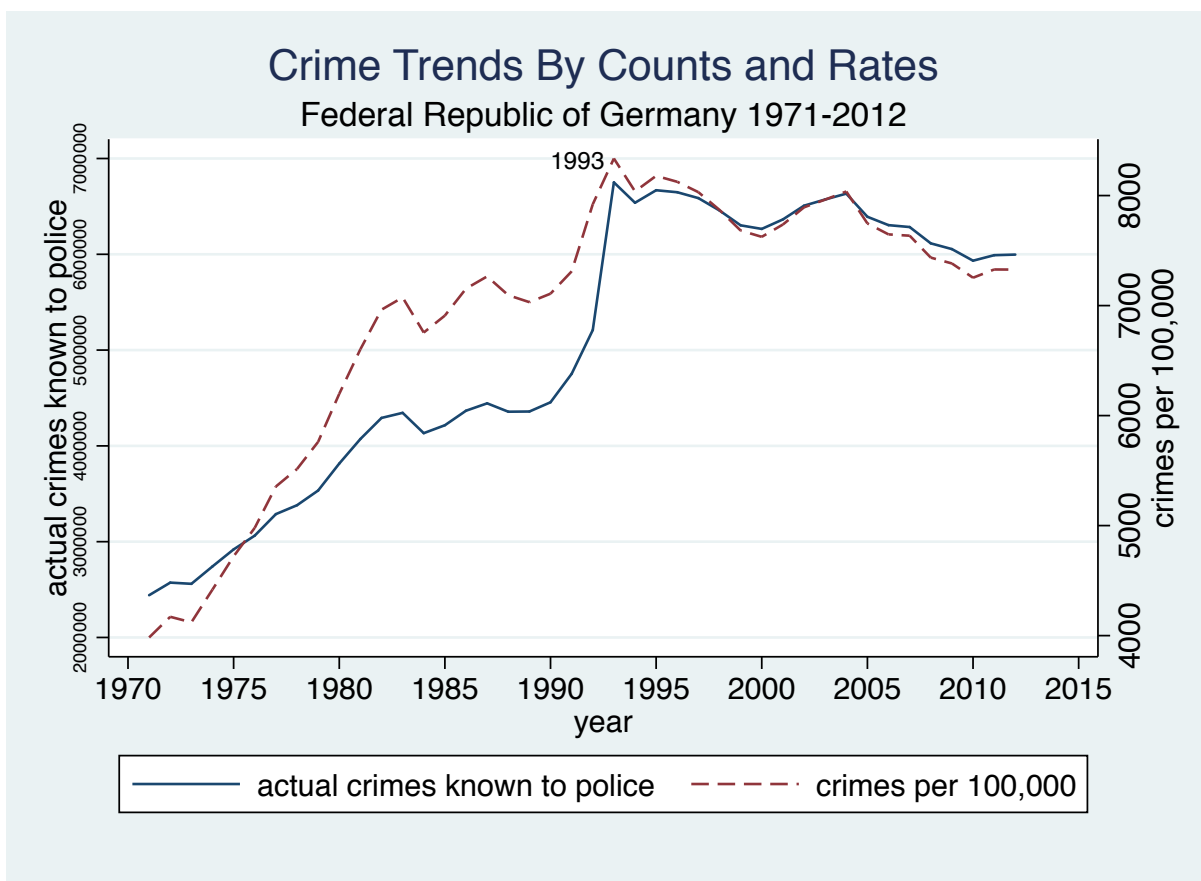


offences, and the change in the periods covered. From 1981 to 1988, reports are based on the calendar year ending in December. This was switched to a reported year that ended initially in March, and more recently in September. Also, beginning in 2002 the police method of counting crime was modified according to criteria from the National Crime Recording Standard (NCRS) to base the tallies on the number of *victims*, as opposed to the number of *incidents*. Because of inconsistencies with the police data, they do not meet the criteria to be classified as “national data”. The only crime trend to be defined as national data is the CSEW.

Again the patterns observed in the British case appear to be generally consistent with the Canadian and American police statistics. In addition, the trends for the last 10 or so periods of observation show that not only are the number of offences per 1,000 population on the decline, but the actual number of crimes reported by the police has been declining. How do we know that, and why is it important? The histograms refer to how many crimes actually were reported to the police. This is an actual count. The CSEW is a *rate* of crime per units of population. Both were declining in this period. This is important since some observers will justify changes in the fear of crime based on the actual numbers of criminal events by suggesting that the population increases mask the changing volume of crime by “reducing” it in the rate. And certainly, other things being equal, we would expect that as the population increases, the numbers of offences should increase even if the rate of crime remains the same. The British data suggest that the crime count is falling despite the growth in population.

3. The Federal Republic of Germany

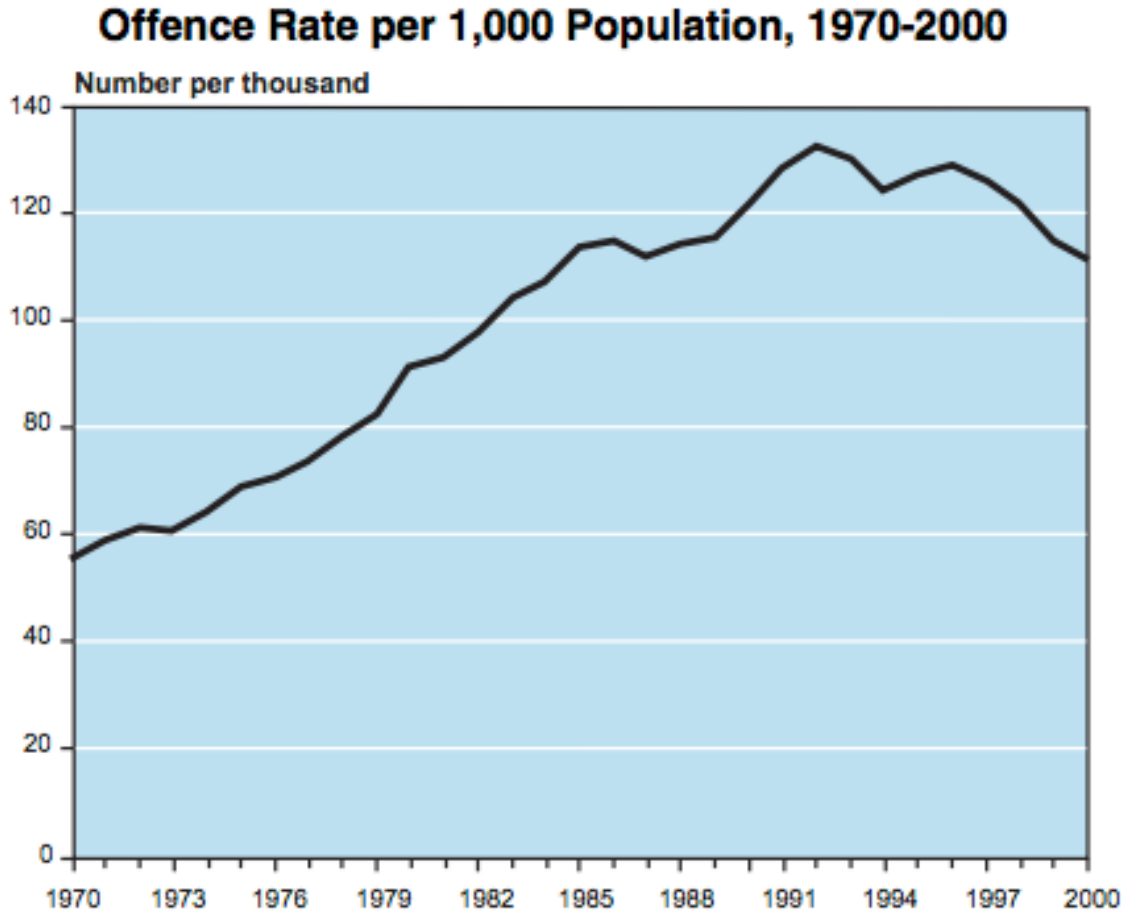
Similar patterns are evident elsewhere. The next figure shows the crime trend in the Federal Republic of Germany from 1971 to 2012 (FCPO 2002, 2012). After the collapse of the Berlin Wall in 1989, the German Democratic Republic (East Germany) was re-united with the Federal Republic (West Germany) in 1990. This added five states as well as East Berlin to the national crime profile. The trend in what was West Germany prior to 1990 was on a steady upward trajectory. Reunification resulted in the addition of the former East German information to the time series. However, the implementation of systematic crime counts was problematic in the former East Germany until 1993 when it was brought into line with the rest of the country. That year—1993—shows the highest point in the overall time series. However, in spite of the addition of the new communities in 1990, the overall crime rate and the crime count in the united German federation began a gradual decline for the next two decades after 1993, as in Canada, the US and England and Wales.



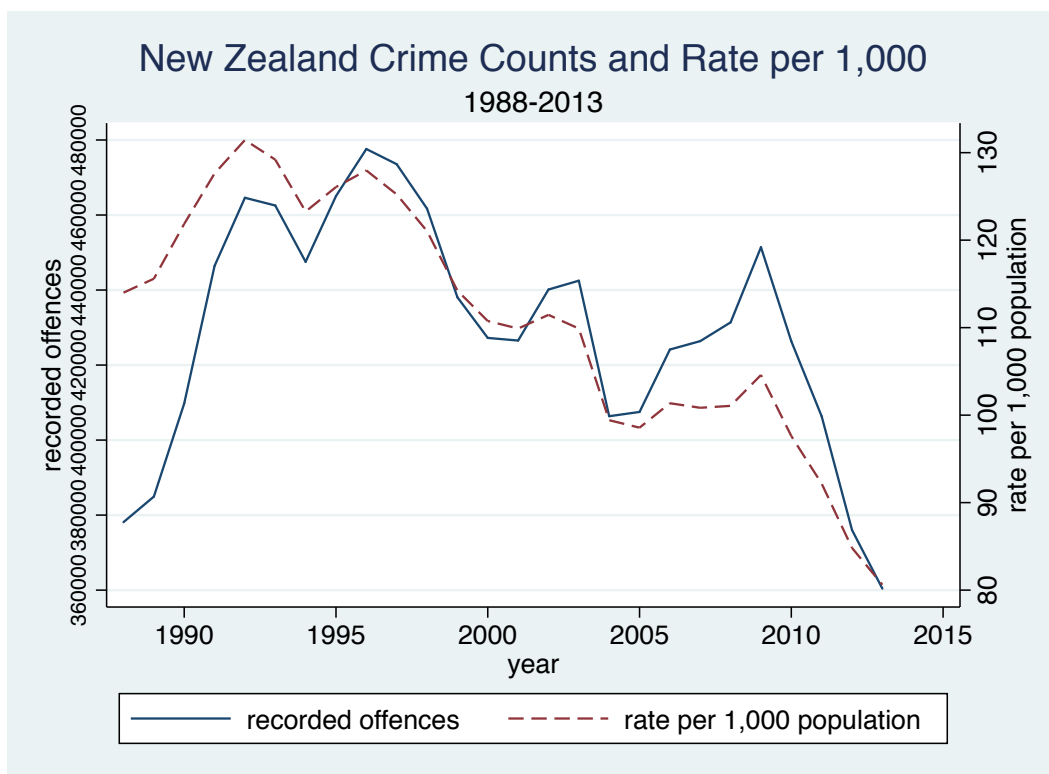
4. New Zealand

The next case comes from New Zealand from 2001 and 2013 national records of recorded and resolved offences. The 2001 report from New Zealand Statistics covered the period

from 1970 to 2000 (NZ 2001), and provided this profile for that period displaying the crime rate per 1000 population:



The 2013 Police Crime Report picks up the series in 1988 (next figure). This displays both the crime rate and the crime count. Between the two figures we discern a pattern consistent with the other jurisdictions explored here: a sharp increase in the rate of crime from 1970 to the early 1990s, followed by a declining rate in the most recent years (NZ 2014). The trends are represented in different figures because they were obtained from different sources. Where they overlap, the numbers are identical. Annual police data rarely report long historical trends, and tend to focus on the previous decade. Also, the figures presented here look different because the scales on the y-axis are different. The crime rate for 1970-2000 is measured on a scale from 0-140. This tends to compress or smooth-out year-to-year differences, and emphasizes the long-term trend. The crime rate for 1988-2013 is measured on a scale from 80-130. This tends to magnify year-to-year differences. But that should not undermine our ability to stitch the sources together in order to infer the overall, long-term trend. This suggests the rise of a crime bubble in the 1990s, and a long-term drop thereafter.



Some Methodological Cautions

This unit is exploratory in nature. It is dealing with significant swings in the rise and fall of crime. We have been reviewing the evidence for the long-term decline in homicide from the middle ages to modern times, and the dramatic rise and fall in crime in the past generation. However, we need to recognize some limitations in our approach to the crime trend materials before we move to the potential explanations of these changes. Five points are pertinent here.

First, we are relying on an eyeball inspection of data in which quantitative changes have been graphed for ease of understanding. We have not examined any tests of significance to determine statistically whether these changes are significant, i.e. whether the mean or average values of crime measured at the start of the series are different from the mean value at the peaks. Fortunately, this is typically unnecessary since the numbers of observations are so high in official statistics that even minute percentage changes from year to year will almost always be statistically significant.

Second, if our inferences are based exclusively on eyeball inspection of quantitative trends, the eye can be tricked to some extent by how the trends are depicted, particularly in respect to how the y-axis is scaled or calibrated. As we saw with the New Zealand crime trends, the y-axis can be given a large scale (zero to the moon), and the lines will tend to flatten out whatever changes are actually occurring. Or the scale can be tailored so that the lowest and the highest values on the y-axis correspond to the actual minimum and maximum observations. Whatever year-to-year variations occur will be magnified. The

following figure illustrates this. Rate 1 and Rate 2 are based on *the exact same numbers* but Rate 1 on the left y-axis is scaled from 80-130 while Rate 2 on the right y-axis is scaled from 0-150. But they appear to the naïve observer to be different variables. Scale matters when simply eyeballing the trends.

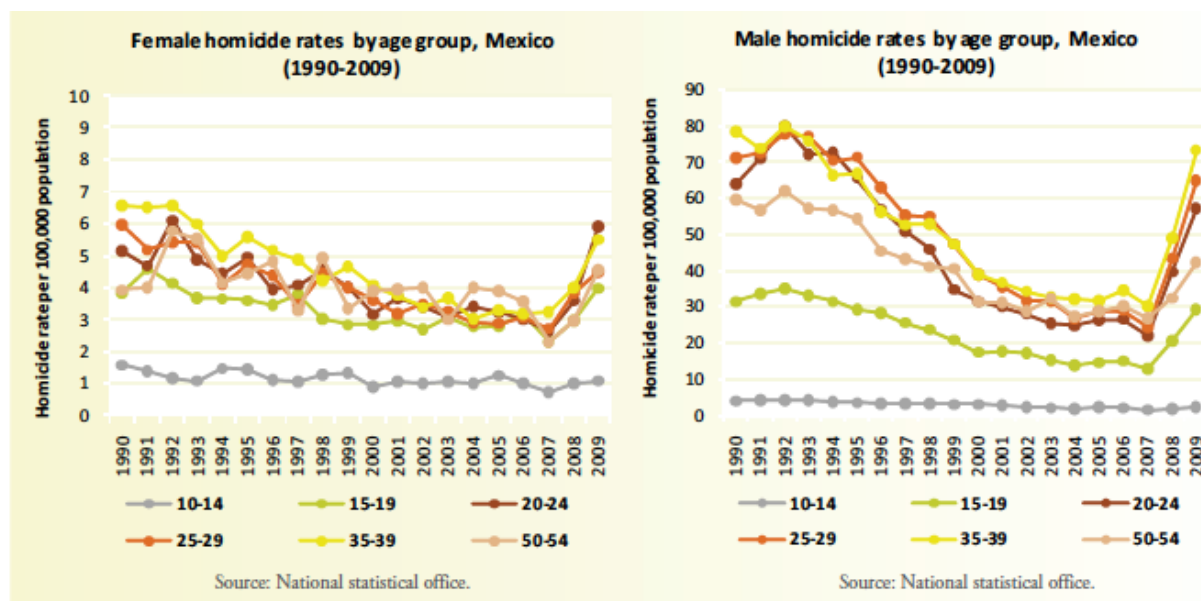


Third, the cases examined in this unit were not randomly chosen, and are not a representative sample of countries from around the world. Canada is of prime interest to us because we are Canadians, and these changes are part of our history, and have implications for our public policies. The US case provides a good reality-check since our two nations enjoy many similarities in terms of language, economic relations, common popular cultures etc. The other cases were chosen because the national police crime statistics are reliable and are readily available. This requires a strong national bureaucracy capable of developing valid definitions of crime, and able to undertake the systematic annual measures of crime in cooperation with country’s policing institutions. Britain, New Zealand and Federal Republic of Germany meet these criteria. But they are also of interest because they represent relatively diverse modern states. All these countries post their reports on the net – in English (including Germany).

Fourth, in examining long-term trends in crime, we tend to focus on the aggregate long-term crime count, i.e. the total rate of crime. This ignores two factors. First, it overlooks changes in the law that result in the deletions of old offences, and the additions of new ones. In Canada arcane laws such as “gross indecency” were counted in the UCR surveys and are now deleted. New laws, such as child sexual exploitation in pornography and internet bullying, have been added. These changes introduce a certain amount of error or noise in

the analysis of change, but as we saw in the last unit, the overall crime trend is dominated by events that have not changed and which are comparable across jurisdictions—assault, robbery and theft. The second problem with this approach is that it tends to disregard differences in changes in the subcategories of crime. Violence may fall while theft increases. Fortunately, where such crime statistics have been broken down, as in Canada and the US, these kinds of offences in the long run tend to rise and fall in lock step, in spite of year-to-year fluctuations in direction.

Fifth and finally, the crime bubble that we have observed across these five different jurisdictions and the subsequent crime drop are not universal phenomena. Here is an exception. Mexico has been seized by a decade of violence since the petty drug trade evolved into secretive cartels shipping narcotics worth billions of dollars into the US. Tens of thousands of people have been murdered as a result of competition between gangsters for control of this “business”. Prior to this violent struggle, the trend in Mexican homicide was downwards. The following figures were compiled by the Mexican National Statistics Office and published in the *Global Study of Homicide* (UN Office on Drugs and Crime, 2011: 65). It provides a time series of homicide rates per 100,000 population covering the period 1990-2009, and shows victims by various age groups. The male and female victims are displayed in separate panels. Notice the difference in the scales on the y-axis for females (0-10) and males (0-90). The overall trends suggest a decline in all age categories from 1990 to 2007 (except 10-14 which is stable). In the next two years, the homicide rate triples from 20 to 60 homicides per 100,000! Prior to that, the Mexican homicide rate mirrored the peak in the mid-1990s and the subsequent fall observed in other jurisdictions. While we do not know what contributed to the high points in the 1990s, the evidence for 2008-2009 is directly attributable to narco warfare.



Understanding the change in levels of crime over time, including the crime drop, is of more than academic relevance. It is a way for citizens to gauge changes in their individual and collective security, and to highlight areas of vulnerability. It makes it possible to prioritize

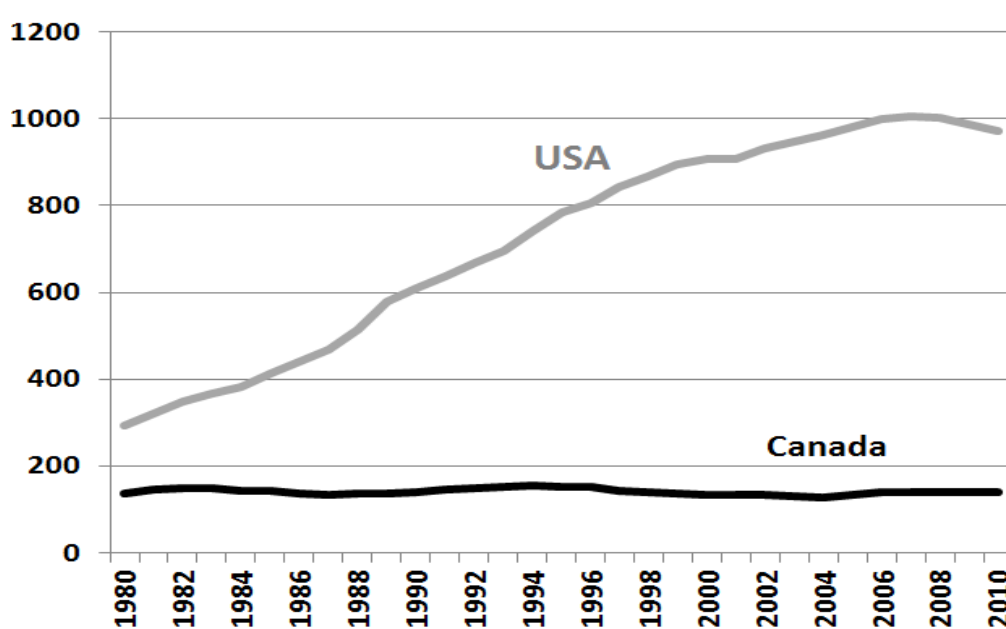
evidence-based public policies to target specific areas that merit social intervention—domestic violence, terrorism, narcotics, internet exploitation etc. The social sciences are not altogether impartial observers of social reality, but have what Habermas called “an emancipatory interest” in their subject matter i.e. improving the conditions of humanity. What they require that common sense does not is objective evidence, or the most reliable evidence available. In terms of the crime drop there are no shortage of common sense explanations of why this occurred. Also, we are not talking about a small change. For example in the US the homicide rate dropped 44% from 1991 to 2000 (Levitt 2004: 165). There was a feeling in New York City that Mayor Rudy Guiliani’s no tolerance for petty crimes reeled in hundreds of felons who were unlawfully at large, and who were apprehended for such petty offences as jumping the fare booths in the NYC subway. In other words, new policing strategies stopped crime in its tracks, and the aggregate levels dropped. While it is probably true that a zero tolerance threshold for all crimes, even minor ones, will bring more offenders into contact with the justice system—since people who break the law do not particularly specialize in particular forms of crime—the crime rate had begun to drop before Guiliani came to office.

Lott (2007:144) argued that the “increased use of the death penalty, rising arrest and convictions rates, and the passage of right-to-carry [concealed weapons] laws—account for between 50 and 60 percent of the drop in murder rates during the 1990s”. That might make sense in the US, but none of the other jurisdictions examined here employ the death penalty, and they certainly do not permit the right to carry concealed hand guns, yet they all experienced a similar drop in crime.

Blumstein (2006: 28) argued that the crime drop in America was a result of changes in the crack cocaine epidemic in US urban areas. “The downturn that began in 1993 was largely a consequence in the drop in demand for crack by new users; they saw the harm that the drug had visited on their parents, to their older siblings, and to their friends, and so the word went out in the street that this drug was bad for you and to be avoided”. If true, this would have been the first time in the history of crime that addicts simply said “no” to drugs. Again, this looks like a narrative that only applies to the US (and doubtful even there), since other jurisdictions did not experience this wave of violence associated with crack cocaine. In addition it is unclear why something so peculiarly related to narcotics would influence all other areas of crime, including theft, other property crimes, assault and sexual violence (See Levitt 2004: 166).

Another popular explanation for the crime drop is the effect of incarceration in incapacitating those inclined to break the law. The effect does not consist of deterrence by warning potential offenders of the costs of misconduct. It simply reduces the capacity of potential offenders by taking them out of circulation. In the US, there has been a dramatic increase in the rate of incarceration over the past thirty years. Policies such as “three-strikes-and-you-are out” in states such as California have led to massive levels of imprisonment for life for offenders whose crimes have typically been minor, or narcotics related. However, as Marc Quimet (2012: 11) has shown, this trend is unique to the US.

Incarceration rate per 100,000 adults in Canada and the United States from 1980 to 2010



Sources: US Bureau of Justice Statistics and Statistics Canada.

The crime drop in Canada could not possibly be related to incarceration trends since these have been relatively stable for decades. As a result of punitive sentencing policies, the rate of incarceration in the US (971 per 100,000 adults) is higher than Russia (about 400) and South Africa (about 300). In the US “in 1974, there were only 200,000 people in local jails and state prisons. This number went up to 600,000 in 1990 and now stands at 2,200,000 persons” (Ouimet 2012: 11).

Explaining the Crime Drop

There appear to be lots of opinions as to the cause (or causes) of the crime drop but many lack credibility, particularly when we take a multi-national perspective, and focus on the generality of the drops across difference forms of crime. The crime drop is one of the great mysteries of our time. Whatever explains it would appear to reflect transnational factors. It is unlikely to be a result of specific crime reduction strategies in this or that city, province or state, since the drop occurs whether there have been changes in policing policies or not. It also appears to result from some general condition since the changes are observed in virtually all crimes whether property or violent. And it must be a dynamic phenomenon, i.e. changing, since the process is not a steady state, and continues to produce increasingly lower levels of crime.

There are several credible candidate explanations to examine in the balance of this unit: changes in the economy, demographic changes, changes in fertility associated with abortion and changes in environmental toxins (i.e. lead). This is a sampling of a larger number of causes and conditions covered in the contemporary literature. Where the long-term changes examined at the start of this unit emphasized a “civilizing process” that

developed over centuries, the changes we have been examining here have been much quicker to appear, and seem to require a more modest explanation.

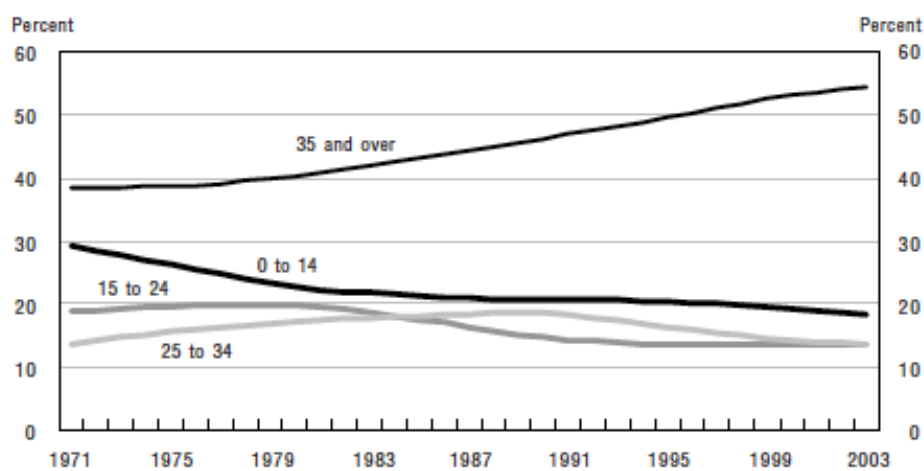
1. The Economy

Bunge, Johnson and Baldé (2005) used information from the Canadian crime surveys and national economic data to predict various crime rates between 1962 and 2003. The main conclusion drawn from this quantitative analysis was that inflation was the best predictor of changes in the rates of certain property crimes including robbery, burglary and motor vehicle theft, but not homicide. Homicide was best predicted by the unemployment rate and alcohol consumption. This reflected the fact that inflation was very high in the 1970s when crime was rising sharply. And it fell in the 1990s, when crime began to also fall off. The problem with such models is that the effects are quite weak, and very likely to be spurious. In other words, economic factors are always in flux, so that any number of correlations may have a statistical association with crime without having any substantive connection. The analyst can test labour force participation, the unemployment rate, inflation, retail sales, the changing price of housing, school attendance, the performance of the TSE, the bank rates and any number of other macroeconomic indicators. If enough correlations are undertaken, some will be significant by chance. When we reflect on the findings from this study, we should ask: Why should inflation cause theft, but not murder? Why should unemployment cause murder, but not theft? And how can we determine that it is the persons who are unemployed and suffering the consequences of inflation (i.e. lower purchasing power) who are the ones that are actually breaking the law? These kinds of data do not permit such facts to be linked. Nonetheless, the analysis is worth consideration because it implies that crime is a rational behaviour, that people engage in crimes because of some sort of economic privations, in short, that they steal because they are hungry. If that were the case the worst offenders would be the most destitute (i.e. poor old women), but that is not what we find. It is young males. Why should anyone steal, and risk imprisonment and social ostracism when there is ample access to social assistance and food banks? There may be a link between the economy and crime, but it is not very obvious or direct. And the statistical findings raise more questions than answers.

2. Demography

A second important contender is the demographic argument. This position notes that the tendency of young persons generally, and males in particular, to break the law is more or less stable, and that the crime rate fluctuates as the portion of those most at risk of crime rises and falls in the population. The following graph (Bunge, Johnson and Balg  2005: 12) shows that between 1975 and 1995, the percent of the population aged 15-24 (i.e. the crime prone years) dropped from about 20% to 15%, but the decline occurred well before the 1990s, and closer to 1980, which suggests the crime drop should have occurred prior to the 1990s.

Proportion of population by age group, Canada, 1971 to 2003



Data source: Statistics Canada, Demography Division.

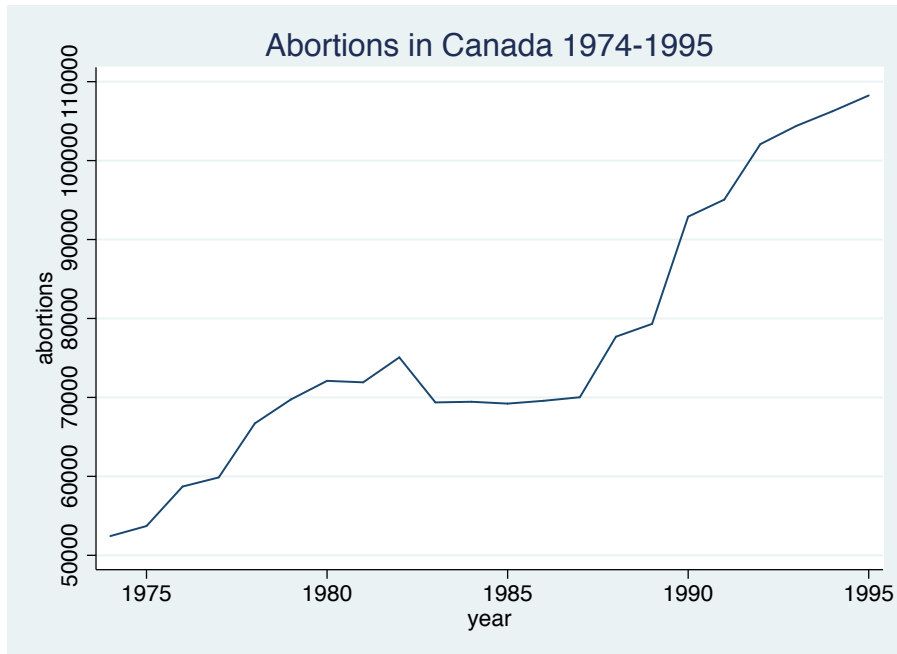
Figure source: Statistics Canada, 2005, *Exploring Crime Patterns in Canada*, Catalogue no. 85-561-XIF2005005

Also, the age profile in the population changes very slowly from one year to another. The crime drop consisted of rather dramatic changes that took place over a relatively short period of time. Other studies which have tested the statistical relationship between changes in crime prone years and the annual changes in crime rates have suggested that demography contributes only marginally to the crime drop (Levitt 1999; Steffensmeier and Harer 1999). However, it does contribute *something* to the changes, but it is not capable on its own of explaining the magnitude of the changes. Also, the demographic shifts may ignore cohort effects, i.e. the tendency of some birth cohorts to be more criminogenic because of greater competition or pressure due to its relative size and/or integration with schooling, housing and the economy.

3. Abortion

One of the most provocative explanations for the crime drop was offered by Stephen Levitt (Levitt and Dubner 2005). Levitt claimed that the rise of legalized abortion dramatically altered the demographic structure in ways that were unanticipated in the legal case that led up to it, *Roe vs. Wade* (1970). Abortion removed from the population children who would have been born primarily to young, unmarried women, and who would have been relatively “unwanted”, unloved, unsupervised, and, as a result, at an elevated risk for crime once they matured. Although legalized abortion was available in several states prior to this decision, the ruling removed restrictions nation wide, so that starting 15 years later there was a developing demographic trough of what would-have-been at-risk young persons. Abortion took them out of the equation. Note that this is not a simple demographic argument based on a reduction in numbers, but an argument about the removal of a subpopulation of potential young offenders from unplanned pregnancies who otherwise were more likely to come into conflict with the law when they grew up.

In Canada, the landmark *Morgentaler* case was not settled until 1988. It effectively removed legal impediments to abortion created by the criminal code, and its requirement of approval from a therapeutic abortion committee. However, abortions had been widely available prior to that. Statistics Canada's annual abortion surveys recorded substantial numbers of abortions starting in 1974 when 52,435 cases were procured. That number increased substantially after 1988 following the *Morgentaler* case, and doubled by 1995 when 108,248 abortions were recorded. The numbers are based on reports from hospital and private clinics. The Canadian Institute for Health Information now collects the information on annual abortions. The highest count for abortions was recorded in 1997 (n=111,526). The most recent year in which statistics are available is 2010 in which year 64,641 abortions were reported. However, this figure was significantly lower than previous years since many clinics and hospitals in BC and Quebec have stopped reporting their caseloads. Over the past 40 years some three million pregnancies in Canada have been medically terminated. If framed more positively the abortion argument suggests that children born in periods where miscarriages can be acquired easily tend, other things being equal, to be planned and more cherished.



If Levitt's hypothesis is correct, abortions could contribute to the removal of a sizeable element of the population that would have been at elevated risk of crimes as the young persons came into high risk ages for offences 15-24 years after the event. The access to abortion is common across all the jurisdictions that we have examined in this unit (the US, the UK, NZ and Germany).

4. Environmental Lead

The final potential cause of the crime drop that we shall consider has been the reported effects of the removal of lead (tetraethyllead or TEL) from gasoline and from household

paints over the past 5 decades. Lead was introduced into gasoline in the 1920s to minimize piston-knock in automotive engines. Although TEL had been recognized as a neurotoxin, and was frequently lethal to those who manufactured it, it was thought to be harmless in low concentrations, and remained under the radar until the late 1950s when the fledging environmental movement revised concerns, particularly as the supply of airborne lead was increasing. This was more acute in urban areas with the proliferation of the possession of automobiles. It took three decades to convince regulators to remove lead from all automotive fuels. Lead damages neural tissue in the brain's frontal lobes, the "organs of civilization", and in high doses can produce psychoses. The changing levels of lead were documented by a young geochemist, Clair Patterson in the 1950s. He studied samples from Greenland ice cores, and was able to show that environmental lead was present throughout the industrial period, but increased dramatically in the 1950s. This is documented in a short and fascinating history by Herbert Needleman (2000: 22).

In Cincinnati between 1979 and 1984, a group of researchers at the Cincinnati Children's Hospital Medical Center studied several hundred individuals housed in older, lead-contaminated housing. Maternal blood lead concentration was measured during the first trimester of pregnancy, and after birth, the child's blood lead level was measured annually for the next six and a half years. The researchers then obtained records of arrest from the Hamilton County criminal justice crime files for 250 subjects in the study, following them until the age of 18. "The researchers found that increased blood lead levels before birth and during early childhood were associated with higher rates of arrest for any reason and for violent crimes. For example for every 5 mg/dL increase in blood lead levels at age six years of age, the risk of being arrested for a violent crime as a young adult increased by almost 50% (the "relative risk" was 1.48)." (Editor's summary to Wright et al 2008: 740). The exact mechanism is not well understood. Exposure to environmental lead also impairs development of intelligence, so that low IQ may mediate the link between early lead exposure and crime. This study is very important because it presents individual-level data that links individuals, their level of contamination and subsequent criminal activity. Usually researchers only have access to ecological level data, i.e. the levels of lead in various communities and the average level of crime associated with such communities.

This methodology may commit what is called the "ecological fallacy". For example, when Emile Durkheim measured suicide in various administration units in France, he correlated these with the percentage of Protestants and Roman Catholics in the population. Areas with high percentages of Protestants had higher rates of suicide. However, he had no way of knowing whether those who killed themselves were Protestant. Having said that, not all ecological correlations are fallacious. And sometimes they may be the best data available.

Such ecological level data were presented by Rick Nevin (2007). He examined the national trends in air-borne lead associated with lead in paint and gasoline in each year during the 1950s, 1960s and 1970s. He lagged impact on violent crime in the same jurisdictions over the following two decades in the US, Canada, France, Australia, Finland, Italy, West Germany and New Zealand. Nevin (2007: 333) concluded that: *"This analysis adds to mounting evidence that preschool lead exposure affects the risk of criminal behavior later in life. Arrest rate shifts and international trends suggest that preschool blood lead especially*

affects juvenile offending and related trends in index crime (mainly property crime) and burglary. Violent crime trends and shifts to higher adult arrest rates suggest blood lead also affects violent and repeat offending.” Nevin also pointed out that the exposure to environmental lead was higher in dense urban areas characterized by pockets of poverty, unemployment and minority-group housing, areas also marked by higher crime rates. While the North American economies have now removed the lead from automobile fuel, the remaining risk is the paint remaining in older housing units.

Overview

These four factors are all suggestive of changing conditions that might contribute to significant changes in the supply of crime. While their proponents tend to favour one or another of the factors, what is needed is a study that can incorporate each of these potential covariates of crime in the same models so that it is possible to parse out the relative contribution of each factor. Such a study has never been undertaken, but until it is, we shall probably never completely understand the crime drop that started in the 1990s, and continues to this day.

Endnotes

In what follows there is a list of

- Key concepts with which the students should be familiar
- Links to information
- Required Readings
- Practice questions
- References

Key concepts, facts and issues

- Crime versus criminality
- Long term trends in historical patterns of crime
- Co-variates of long term crime trends (age, gender, circumstances of conflict)
- English circuit courts or “eyres”
- Gurr’s S-shaped curve in long term crime trends
- Eisner’s findings on homicide in five European jurisdictions in historical crimes
- The age-crime curve
- Trivial altercations and inter-male homicide
- Norbert Elias and “the civilizing process”
- Informal social control
- Durkheim and “the individual”
- Baby boomers and crime
- The “superpredator” myth
- Wolfgang’s Philadelphia Birth Cohort Study
- Wolfgang’s “chronic offenders”
- *Evan Miller vs. the State of Alabama* (US Supreme Court 2012)

Unit 4: The Crime Drop and the Enterprise of Criminology

File: 4. 305 – Final Unit 4.docx 11,050 wds

- *Amici curiae*
- Racial differences in US homicide patterns in the 1990s
- X- axis and y-axis in graphed crime trends
- Double-y graphs (display of two rates for same time series)
- Concordance in US and Canadian long-term homicide rates
- Crime Survey for England and Wales (CSEW)
- Eye-ball inspection of data and its dangers
- Recent Mexican homicide trends
- Zero-tolerance crime policies
- The “emancipatory interest” of the social sciences
- Role of the economy in crime trends
- Role of demography in crime trends
- Role of the abortion in crime trends
- Role of environmental toxins (lead) in crime trends
- Individual level data versus ecological data
- Ecological correlations and the ecological fallacy

Links to information

Crime Statistics in Canada. *Exploring Crime Patterns in Canada* (Statistics Canada), Valerie Bunge, Holly Johnson and Thierno Baldé. 2005.
<http://www.publications.gc.ca/Collection/Statcan/85-561-MIE/85-561-MIE2005005.pdf>

Crime Statistics for the USA. <http://www.fbi.gov/about-us/cjis/ucr/ucr-publications#Crime>

Crime Statistics for England and Wales. <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-december-2013/stb-crime-stats-dec-2013.html>

Crime Statistics for Federal Republic of Germany.
http://www.bka.de/nn_194552/EN/Publications/PoliceCrimeStatistics/policeCrimeStatistics_node.html?_nnn=true

Crime Statistics for New Zealand. <http://www.police.govt.nz/about-us/publications/statistics>

Amici curiae in *Miller* case (US Supreme Court 2012).
http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/10-9647_petitioner_amcu_fagan_etal.authcheckdam.pdf

Required Readings for Unit Four

1. Siegel, Brown and Hoffman (2013) *CRIM* 2nd Edition, Chapter 3 Victims and Victimization pp. 48-67 in *CRIM*, Toronto: Nelson Educational.

Unit 4: The Crime Drop and the Enterprise of Criminology

File: 4. 305 – Final Unit 4.docx 11,050 wds

2. Levitt, Stephen D. and Stephen J. Dubner (2005) Chapter 4: “Where have all the criminals gone?” pp. 117-141 in *Freakonomics*, New York: HarperCollins.
3. Nevin, Rick (2007) “Understanding international crime trends: The legacy of preschool lead exposure,” *Environmental Research* Vol. 104: 315-336.

Practice questions

1. What is Eisner’s evidence for a long-term drop in European crime over the past 8 centuries, and how has Norbert Elias’s theory tried to explain this? What do long-term trends in violent crime say about differences in age, gender and circumstances of violence?
2. What is the evidence for a recent drop in aggregate crime levels nationally and internationally since the early 1990s? What are the major potential explanations of these trends?
3. What is the major explanation for the crime trends in the 1960’s through to the 1990s?
4. What is the evidence for the emergence of superpredators and their impact on the crime rates of the 1990s in Canada and the US?

References

- Beattie, John M. (1974) “The Pattern of Crime in England, 1660–1800.” *Past and Present* 62: 47–95.
- Bennett, W. J., DiIulio J.J. & Walters, J.P. (1996). *Body count: Moral poverty--and how to win America’s war against crime and drugs*. New York: Simon & Schuster.
- Blumstein, Alfred (2006) “The Crime Drop in America: an exploration of some recent crime trends,” *Journal of Scandinavian Studies in Criminology and Crime Prevention* Vol. 7(2): 17-35.
- Bunge, Valerie P., Holly Johnson and Thierno A. Baldé (2005) *Exploring Crime Patterns in Canada*, Catalogue no. 85-561-MIE, No 005, Ottawa: Statistics Canada.
- Cockburn, J.S. (1991) “Patterns of Violence in English Society: Homicide in Kent, 1560–1985.” *Past and Present* 130: 70–106.
- Daly, Martin and Margo Wilson (1988) *Homicide*, Hawthorne, NY: Aldine De Gruyter.
- Eisner, Manuel (2003) “Long-Term Historical Trends in Violent Crime” pp. 83-142 in Michael Tonry (ed.) *Crime and Justice: Annual Review of Research* Vol. 30, Chicago: University of Chicago Press.
- Elias, Norbert (2000; 1939) *The Civilizing Process: Sociogenic and Psychogenic Investigations*, translated from the German (1939) and edited by Eric Dunning and Stephen Mennell, London: Wiley-Blackwell.
- Fagan and 45 others (2012) *Amici Curiae* in the case of *Miller vs. Alabama*, US Supreme Court 10-9647.

Unit 4: The Crime Drop and the Enterprise of Criminology

File: 4. 305 – Final Unit 4.docx 11,050 wds

- FCPO - Federal Criminal Police Office (Bundeskriminalamt) (2002 and 2012) *Police Crime Statistics*, Federal Republic of Germany, Weisbaden, Germany.
- Fox, James Alan (Presented in 1995, published in 1996) *Trends in Juvenile Violence: A Report to the United States Attorney General on Current and Future Rates of Juvenile Offending*, Prepared for the Bureau of Justice Statistics, United States Department of Justice.
- Given, James B. (1977) *Society and Homicide in Thirteenth-Century England*, Stanford, CA: Stanford University Press.
- Gurr, Ted Robert (1981) "Historical Trends in Violent Crime: A Critical Review of the Evidence," In Michael Tonry and Norval Morris (eds.) *Crime and Justice: Annual Review of Research*, Vol. 3, Chicago: University of Chicago Press.
- Levitt, Stephen D. (1999) "The limited role of changing age structure in explaining aggregate crime rates," *Criminology* Vol 37(3) 581-597.
- Levitt, Stephen D. (2004) "Understanding why crime fell in the 1990s: Four factors that explains the decline and six that do not," *Journal of Economic Perspectives* 18(1): 163-190.
- Levitt, Stephen D. and Stephen J. Dubner (2005) Chapter 4: "Where have all the criminals gone?" pp. 117-141 in *Freakonomics*, New York: HarperCollins.
- Needleman, Herbert (2000) "The Removal of lead from gasoline: historical and personal reflections," *Environmental Research* 84: 20-35.
- Nevin, Rick (2007) "Understanding international crime trends: The legacy of preschool lead exposure," *Environmental Research* Vol. 104: 315-336.
- NZ (2001) *Crime in New Zealand 1994-2000*, Wellington: Statistics New Zealand.
- NZ (2014) *New Zealand Crime Statistics 2013*, Wellington: Police National Headquarters, April.
- Ouimet, Marc (2012) "Crime, Police, Guns and Punishment," unpublished manuscript pp. 1-15, School of Criminology, Université de Montréal, October.
- ONS - Office for National Statistics (2014) *Crime and England and Wales, Year Ending September 2013*, London: UK Statistical Authority.
- Rosenfeld, Richard (2010) *Crime Trends: Comprehensive and Current Data and Information on Crime Trends in the United States and Other Nations*, Retrieved at <http://www.crimetrends.com/id3.html> May 25 2014.
- Steffensmeier, D. & M.D. Harer (1999) "Making sense of recent US crime trends, 1980 to 1996/1998: Age composition effects and other explanations" *Journal of Research in Crime and Delinquency* 36 (3): 235-274.
- United Nations Office on Drugs and Crimes (2011) *Global Study of Homicide*, Vienna: UN.
- Wilson, James Q. (1995) *Crime: Public Policies for Crime Control*, edited by J.Q. Wilson and Joan Petersilia, The University of Michigan: ICS Press.

Unit 4: The Crime Drop and the Enterprise of Criminology

File: 4. 305 – Final Unit 4.docx 11,050 wds

Wilson, James Q. (2013) *Thinking About Crime*, Revised Edition, New York: Vintage Books.

Wolfgang, Marvin, Robert Figlio and Thorsten Sellin (1972) *Delinquency in a Birth Cohort*, Chicago: University of Chicago Press.

Wright, John Paul, Kim Dietrich, Douglas Ris, Richard Hornung, Stephane Wessel, Bruce Lanphear, Mona Ho ,and Mary Rae (2008) Association of prenatal and childhood blood lead concentrations with criminal arrests in early childhood," *PLoS Medicine* May Vol 5(5) 734-740.

Unit 5: Explaining Crime: The Two Different Traditions

File: 5. 305 – Unit 5.docx 11,212 wds

Let's Get Some Background: The Emergence of Two Schools of Crime Theory: The Classical School, the Positivist School and the aftermath

There are two great schools of thought in explanations of crime: the classical school and the positivist school. The “classical school” emerged in the late 18th and early 19th century writings of jurists who had become highly critical of the barbarity of criminal justice systems in punishing offenders. The rise of the Enlightenment in early modern Europe was associated with reflections about the role of laws in society, and skepticism toward fanatical inquisitorial methods of disposing of religious dissidents and free thinkers through torture and immolation at the stake. Aldous Huxley (1952) demonstrates that the demonic possessions in Loudun, France in the 1630s were orchestrated by religious authorities to stoke fear in the general population about Satanism, and to legitimate the extraordinary violence that was supposedly justified to extirpate it. This religious brutality was openly scorned and condemned by Protestant observers. However, the methods of punishment in secular society were also spectacularly cruel. Pinker (2011: 130ff) describes the numerous museums throughout Europe displaying various implements of torture used to impale the accused through all the human orifices, to saw the bodies suspended upside down through the genitals, to break all the major bones of the accused on a wagon wheel, and the widespread use of display in the public stocks, the pillory and the ducking stool, as well as physical disfigurement to add humiliation to the pain. Scalding, boiling, ducking and drowning were also common. In hanging, drawing and quartering the accused would be partly strangled, castrated, and his major organs disembodied and burned before the torso was quartered through hacking the torso with knives and tearing it apart with the considerable effort of four large horses. Crowds of on-lookers watched such public tortures with glee. In *Discipline and Punish*, Foucault (1977: 3) describes the execution of Robert François Damiens in Paris in 1757 for his attempted murder of King Louis XV. The king was only slightly wounded but Damiens’ cruel fate declared by the parliament of Paris marked symbolically the beginning of the end of cruel and unusual punishment in Europe. Foucault reports his sentence:

On 2 March 1757 Damiens the regicide was condemned ‘to make the amende honorable before the main door of the Church of Paris, where he was to be taken and conveyed in a cart, wearing nothing but a shirt, holding a torch of burning wax weighing two pounds’ then, ‘in the said cart, to the Place de Grève, where, on a scaffold that will be erected there, the flesh will be torn from his breasts, arms, thighs and calves with red-hot pincers, his right hand, holding the knife with which he committed the said parricide, burnt with sulfur, and, on those places where the flesh will be torn away, poured molten lead, boiling oil, burning resin, wax and sulfur melted together and then his body drawn and quartered by four horses and his limbs and body consumed by fire, reduced to ashes and his ashes thrown to the winds’.

One of the persons who learned of the case and who invoked it in his essay on *Crime and Punishment* (1764) was the Italian jurist and economist, Cesare Beccaria. His essay proved to be extremely influential, not only because it was a backlash against barbarity in criminal justice but also because it laid down the foundations of the classical perspective. This perspective was based on the assumption that all people are free moral agents, and that

they are responsible for their behaviour, even when it is criminal. The core of Beccaria's treatise is that the purpose of the law is to enhance human happiness, and that it can only do so by promoting a legal system that is just. Such a system has to recognize that persons who disregard the law deserve to be punished, but only proportionately to the magnitude of their crime. The punishment ought to emphasize certainty, swiftness (or celerity) and proportionality. There should be no latitude in penalties that leave them to the discretion of magistrates, rendering them open to the charge of arbitrariness. There could be no secret accusation or politically motivated prosecutions. In addition a punitive legal system ought to be combined with positive incentives and education to curtail the attraction of criminal choices. As we shall see, Jeremy Bentham, and his analysis of the modern prison system developed Beccaria's ideas further in the 19th century.

At this point I want to contrast the approach associated with the classical school with what has become known as the positivistic (i.e. causal) or scientific approach to criminal activity. The key figure here is the Italian criminologist and pathologist, Cesare Lombroso. In 1876 he published his most famous work, *L'uomo delinquente*, *Criminal Man*. In 1899 he published a more inclusive work, *Crime: Its causes and remedies*. Unlike Beccaria who focused on the deficiencies of criminal justice, Lombroso was more oriented to the causes of crime per se. Beccaria did not consider criminal motives to be inherently problematic. By contrast Lombroso believed they were inherently pathological. Lombroso dates his discovery of criminal pathology to the examination of the skull of a famous French robber in 1870. He noticed that there were a series of anomalies in the bone structure that appeared highly primitive. He had earlier noted other anatomical abnormalities among convicted criminals. His discovery was cited in Taylor, Walton and Young's *New Criminology* (1973:41).

This was not merely an idea, but a sudden flash of inspiration. At the sight of that skull, I seemed to see all of a sudden, lighted up as a vast plain under a flaming sky, the problem of the nature of the criminal – an atavistic being who reproduces in his person the ferocious instincts of primitive humanity and the inferior animals. Thus were explained anatomically the enormous jaws, high cheek bones, prominent superciliary arches, solitary lines in the palms, extreme size of the orbits, handle-shaped ears found in criminals, savages and apes, insensibility to pain, extremely acute eyesight, tattooing, excessive idleness, love of orgies, and the irresponsible craving of evil for its own sake, the desire not only to extinguish life in the victim, but to mutilate the corpse, tear its flesh and drink its blood.

Atavism in evolutionary theory is the re-appearance of a primitive trait in a contemporary species that represents a lower level of sophistication, and, in the case of criminals, an emergence of animal-like brutishness, or the barbarity of uncivilized human groups. This attention to the distinct physiology of the criminal had been anticipated much earlier by the work of Franz Joseph Gall, the founder of phrenology. Gall had claimed that the skulls of criminals showed significant anomalies that represented brain disorders lying beneath the cranium. Gall's school became known rather disparagingly as "the bumps and grunts" school of criminology. Where Lombroso differed was in the invocation of evolution as providing the source of the degeneracy. But in invoking atavism as a form of both physical

and moral baseness, Lombroso was not only required to argue that the characteristics he associated with criminals were degenerate, but also that the animals themselves frequently exhibited traits that were deeply immoral. So he describes ants that rape the infertile female workers, ants that murder defenseless aphids, beavers that gang up and kill solitary conspecifics and an adulterous stork who murders her “husband” with her new mate. This is outlined with some astonishment in Gould’s *Mismeasure of Man* (1982: 125). Lombroso also drew on 19th century ethnographies of primitive people who were said to be highly insensitive to pain, tattooed provocatively and incapable of blushing, or exhibiting a moral sense. Later criminologists such as Charles Goring (1913) were content to leave the bugs and natives to other criminologists and to investigate the physiology of incarcerated offenders, which he compared with other institutionalized populations (university students) in search for any systematic differences between known criminals and non-criminals. While little evidence accumulated for atavism, Lombroso began to explore a wide range of effects in the search for other “causes” of crime including epilepsy, the climate, extreme weather, passion, personal incorrigibility, homosexuality etc.

The Italian school changed the game in the study of crime from voluntary behaviour by persons poorly restrained by justice to degenerate behaviour dictated by biological causes and other external forces. This bifurcation of the study of crime survives to this day. There are proponents of neo-classical perspectives, and they continue to focus on the consequences of punishment on criminal misconduct as well as on-going searches for neural and developmental anomalies in the backgrounds of serious offenders. Rather than accepting one or the other of the two different traditions, we would be prudent to keep our minds open to the evidence that supports either approach, particularly given the heterogeneity of crimes and analogous behaviours.

Unit Objectives

In this unit we explore the following topics:

Part One: Classical and Neo-Classical Theory

- The principles and assumptions of classical theory are identified with attention to the centrality of the concept of autonomy, agency or voluntarism in human action and its propensity towards rationality.
- The concept of the moral philosophy of Utilitarianism is examined in the works of J.S. Mill and Jeremy Bentham and its relationship to the concept of “hedonic calculation” by potential offenders.
- Bentham’s invention of the “panopticon” as a design feature in the new model prisons in 19th century America is examined as a device intended to create reform of inmates through contemplation, constructive labour or a combination of both, all the while subjecting the prison population to on-going surveillance.
- The special focus on deterrence and the economic analyses of “the supply and demand” of crime has given way to neo-classical theories.

Unit 5: Explaining Crime: The Two Different Traditions

File: 5. 305 – Unit 5.docx 11,212 wds

- The Deterrence Model as a rationale for controlling behaviour is contrasted with the rise of a “Pure Justice” Model based on simple retribution for previous misconduct.

Part Two: Positivistic and Neo-Positivistic Criminology

- We examine the developments in positivistic criminology following Lombroso
- We review evidence for the heritability of crime in studies of adoptees in Denmark whose natural fathers and adoptive fathers were known criminals.
- What is the link between physiology and crime? We examine the anomaly of low resting heart rate in youth and subsequent delinquency.
- Brain and Environment interaction: Can early life experience lead to a change in the neurology in “the organs of civilization”?
- We examine more contemporary concerns with Attention Deficit Disorder, and Fetal Alcohol Spectrum Disorder that link neurological disorders with dysfunctional behaviour.
- What are the Policy Problems when crime is viewed as mental illness? The legal side of criminology (following Beccaria) that emphasizes criminal justice and requires *mens rea* may be inconsistent with the scientific understanding of criminal behaviour (following Lombroso) that explains crime in more deterministic fashion.

Part Three: Some Other Key Theoretical Issues

- General Theories of Crime versus Theories of Particular Crimes and Particular offenders. Should we advocate some general theories that emphasize certain core determinants or conditions of action, and which provide a parsimonious approach by having a wide application (such as rational choice or some sort of biological degeneracy)? Or are the causes of different crimes different? If so, what are the consequences for crime theory?

Part Four: The Stubborn Particulars of Empirical Criminology

- Some of the stubborn particulars of common crimes complicate attempts to explain crime. Whatever theory the sociologist of crime advocates, there will be certain general phenomena that occur whether specifically recognized in that theory or not. This suggests that certain factors may operate independently to produce crime. These include the following:
 - The age-crime curve
 - Gender differences in crime
 - The exposure of minorities to criminalization
 - The banality of most crime in terms of rewards
 - Non-specialization in most offender careers
 - The association of crime with analogous behaviours in work, personal relationships, substance abuse and educational achievement

Part One: Classical and Neo-classical Theory

The core of classical theory is its assumption about human nature that derives from the Enlightenment. Human beings are moral agents with free will. They have the capacity to enter into situations essentially in a voluntary way, and are responsible for their conduct. They also have the capacity to act rationally in choosing between alternatives including those that are consistent with or contrary to law. These understandings were associated with the evolution of the concept of *mens rea* – the idea that persons can only be held accountable for breaking the law if they knew they were doing so. In the 19th century, developments in psychiatry gave rise to the acceptance that some persons' capacity to make rational decisions is crippled by diseases of the mind, i.e. insanity. The courts increasingly acknowledged that children have diminished moral capacity due to immaturity and need to be judged by more lenient standards if they break the law. These developments are owed to classical theory.

J.S. Mill and Jeremy Bentham advocated a moral philosophy to describe the mainspring of moral behaviour called "utilitarianism". The object of agency is "utility" or the use to which an action can be directed in order to serve human happiness and pleasure. But the standard to be met is not any one person's happiness but the greatest amount of happiness of the social group together. That might require individual nobility of behaviour and self-sacrifice to enhance the common happiness, and entails not merely sensual pleasures but intellectual pleasures as well, and is achieved without expunging the ability of others to achieve happiness themselves by curtailing their liberty. Bentham had also discussed utilitarianism, particularly the role of the state and the law in helping achieve the maximum pleasure for the greatest number. The state punishes acts that tend to disturb the happiness of the society. The system of state initiated sanctions under a clear definition of crime and an efficient indictment of offenders promotes "hedonic calculation", the estimation of the costs and benefits of alternative courses of action, in other words, the actor's rational estimation of the likelihood and magnitude of pain. Such calculation was thought to contribute to self-restraint in the pursuit of pleasure.

Bentham's related idea of the "panopticon" arose in his discussion of the creation of architectures of penitentiaries designed to promote self-reflection. Where earlier jails confined captives willy-nilly in ill-smelling, poorly serviced dungeons, frequently without windows, and aggregating every manner of offender in the same units, the new prison reform movement highlighted issues of adequate rations, effective ventilation, access to clean water, effective sewage removal and thoughtful prisoner classifications and space allocation. Another innovation suggested by Bentham was the panopticon. This was a circular design in which a central observer station could easily inspect the peripheral walls containing all the prison inhabitants connecting every cell to the command post through a system of corridors like spokes on a wheel. The idea was that prisoners could be observed, often without their direct knowledge, but that their general knowledge of on-going surveillance would heighten their self-reflection, and, ultimately, their increased sense of personal responsibility, and personal reform. Prison reformers faced an uphill battle against traditionalists who thought that the objective of the prisons was not merely to deprive offenders of their liberty, but to make them suffer at the same time. In addition, the

psychological assumptions underlying Bentham's progressive architectural solutions to individual reform were deeply suspect, and the institutions remained centers of human misery. The path to self-enlightenment is not paved by the deprivation of privacy. The huge new institutions built during the period of penitentiary reform in the 19th century lasted well into the 20th century. There were a number of innovations over that period in the areas of offender classification and experimental use of tickets of leave, i.e. parole. But the real stimulus for new theoretical reflections on the ideal treatment of offenders did not become a live issue in modern societies until the 1950s when the baby boomers started to exceed the capacities of all the criminal justice institutions including the police, the courts and the correctional facilities.

What is called neo-classical criminology is associated with the renewed interest of economists with crime, taking the explanation of criminal misconduct in two unlikely directions at once—back to the hedonic calculus of Bentham, and the criteria for effective crime suppression suggested earlier by Beccaria—a system of sanctions based on certainty, celerity and proportionality. Economists argued from the basic laws of supply and demand: products that are cheap experience a lot of demand. Raise the price, and the demand falls. Combine this with a second economic truism (associated with operant conditioning theory in psychology): people are governed in their future behaviours by the consequences of similar behaviours in the past. Here is the translation into criminology: if crime is its own reward, failure to increase the costs of crime will contribute to the increase in its supply. What is the cost of crime? Pain, that is, the deprivation of liberty, the stigma of conviction, the deprivation of liberty, and, in the most extreme case, capital punishment. However, the calculation of costs and benefits, is not as straightforward as some proponents of rational choice theory suggest. Such things can mediate estimations of criminal gain as (low) IQ, where the offender may not have the capacity to make reliable choices designed to minimize friction with the law. In addition, some offenders may put a greater premium on the immediate benefits of crime, and discount the longer-term consequences. Sometimes the objective of misconduct is NOT material benefit, but the achievement of status and “street credibility,” a reputation for cruelty or indifference, and a cultivation of power. Finally, when individuals choose between alternative courses of action, they may find their alternatives (legitimate work, for example) are unavailable in their social environment. As Marx once famously noted: “Men make their lives but they don't always do so in situations of their own choosing.” Opportunity structures may come and go without the ability of individuals to exploit them.

Moving Away from Rehabilitation, Deterrence and Incapacitation

Contrary to economists, contemporary criminologists are skeptical about the extent to which criminal law inhibits criminal behaviour. That is to say, trends in crime are only weakly responsive to initiatives associated with the criminal justice system. This does not mean that formal institutions of justice are dispensable. On the contrary, they are essential to ensure that there is an appropriate response to crime. Specifically, police and prisons are essential for removing harmful elements from society. However, if one were looking to eradicate social misconduct in a free and democratic society, these formal correctional institutions would have a much weaker effect than such institutions of informal social

control associated with families, schools, and communities (Sampson and Laub 1993).

The history of criminal justice over the past half century has shown that the leading penal philosophies are a poor investment if the object of intervention is “crime control”, i.e. policies designed specifically to suppress the rate of crime. In the 1950s, in the age of Skinner, it was believed that tendencies to commit offences among crime-prone populations could be reversed by rehabilitation, that is, by systematically rewarding desired outcomes and shaping more pro-social responses. This perspective was succeeded by deterrence theory, based more or less on the same underlying understanding of human nature, but emphasizing the value of negative reinforcements or “costs”. This approach was favoured widely among economists, based on their assumption that people generally respond to incentives, particularly penalties. Despite significant investments in both types of interventions, the evidence based on patterns of recidivism suggests that outcomes measured by recidivism show little positive evidence of either kind of treatment (Martinson 1974; also see Zeisel 1982). Both approaches tend to overlook the individual differences in self-control that make some persons resistant to change, particularly as they mature. The latest trend in penology has involved incapacitation, particularly of that section of the offending population that commits crimes at a high rate, relative to their composition of the population. If these individuals could be selectively removed from society by behavioural classification early in their careers, public security would increase proportionally. Unfortunately, this would require detention before the offenders had made a nuisance of themselves, something reprehensible under the rule of law. In addition, the ability of scientists to diagnose future behaviour from past behaviour is rife with estimation problems due to the individual differences among those who break the law. As a result, selective incapacitation would remove too many offenders who would be of little subsequent risk to society, and would miss many who would merit incapacitation according to the theory.

The frustration with attempts to develop an approach to penology based on scientific expertise that would give greater ability to manage offender populations than policies based on common sense led to a sentencing reform movement based almost exclusively on “the justice model” and offender culpability. One of the proponents of this approach, Andrew von Hirsch (1976), advocated the abandonment of sentencing rationales based on the offender's supposed need for treatment, his alleged underlying dangerousness, and/or the need for future deterrence. Von Hirsch argued for several things. The likelihood that the offender might repeat the crimes should be irrelevant to the length of sentence. Indeterminate sentences based on the expectation of maturational reform should be abolished. Discretion in sentence type, and length, should be sharply curtailed, and penalties should be based exclusively on seriousness of the offence and applied equitably. Imprisonment would be confined to the most serious crimes, and the widespread use of lengthy penalties would be curtailed, as would policies such as parole, which often make the length of sentences arbitrary and unpredictable. As an aside, I would suggest that von Hirsch's “hard-nosed” approach never contemplated life sentences or determinate incarceration for decades, never mind the death penalty.

The current sentencing practices in the common law countries are a mix of crime control

strategies and the justice model. Over the career of individual offenders, these practices amount to post hoc selective incapacitation. Offenders face increasingly severe penalties arising from repeated offences because repeated convictions raise the tariffs on future crimes. The effectiveness of this form of sentencing as crime control is critically hobbled by the deep chasm between the individual criminal act and the ability of the society to observe it, to apprehend the offender, to meet the test of evidence required to establish guilt, and to provide a penalty sufficient to provide a deterrence to crime. This is the problem of attrition in the criminal justice system. The link between any one criminal act, including serious crimes, and subsequent incarceration for that act is remarkably tenuous (Polk 1985).

Part Two: Positivist and Neo-Positivist Theory

Lombroso created a deterministic approach to the explanation of crime through his concept of atavism, the idea that criminals were biologically regressive or primitive expressions of lower orders of evolution. The first person to test this idea was Charles Goring. Goring undertook multiple measures of the physical anatomy and craniology of inmates in English prisons, with specific interest in any physical anomalies among the inmates. He found none. However, he did find that the inmates were shorter in stature and lighter in weight than the population at large. The latter may have been a function of the prison food. The former may have been a condition that made it easier for the constabulary to out run and apprehend these individuals, but there was no evidence of any biological deficiency or peculiarities among the inmates. With the development of genetics in the 1950s, researchers looked for anomalies in the genetic makeup of serious offenders. In the 1960s a number of clinical reports surfaced indicating that males with a rare chromosomal condition – and extra Y – were physically different, i.e. were several inches taller than average, and that the condition was found in small samples of men involved in murder and other acts of violence. This allegation proved false when systematic karyotyping for the XYY condition was undertaken with non-incarcerated populations. Under these conditions, men with the syndrome were no more or less prone to violence than others.

Sarnoff Mednick (1987) re-opened the biological search for the causes of crime in his study of adopted boys in Copenhagen, Denmark. The Scandinavian countries maintain remarkable long-term individual-level records of various population characteristics, including whether an individual was adopted, and whether the person's name appeared in the registry of convicted criminals. What Mednick and his colleagues tested was the likelihood that a boy would become criminal if his biological father versus his adoptive father was criminal. When both had criminal records, the percentage of boys who themselves became criminal was 36.2% (out of 58 cases). Presumably this situation contained both biological propensity towards crime (through the biological father) and environmental propensity towards crime (through the adoptive father). What happened when one examined the condition where the adoptive father was non-criminal? Boys whose biological fathers had criminal records were twice as likely (22% vs. 10.5%) to themselves acquire a criminal record than boys whose biological father had no record—suggesting an inheritance of a proclivity towards crime. However, the statistical test was non-significant! In a replication, Mednick claimed that enlarging the sample to a national

basis, including maternal criminality as well as several other changes, produced a result that was statistically significant. The controversy that developed turned on the issue of whether the initial cases from Copenhagen should have been added to the national “replication”. Gottfredson and Hirschi (1990: 53-60) argued that such methods were inappropriate and that, even allowing for an appropriate design, the magnitude of the effect across one generation would be on the order of .03, which would be real, but trivial.

Investigations of the linkage between biology and crime are not limited to genetics. One of the most robust discoveries in biological criminology is the link between low resting heart rate and anti-social behaviour including aggression and violence. This finding has been replicated scores of times in both cross-sectional studies (where LRHR is measured at the same time that evidence of anti-social behaviour is acquired) and prospective studies (in which LRHR in children is used to predict anti-social behaviour later in life). In one of the most recent studies, Armstrong et al (2009) tested the resting heart level of just over 100 undergraduate criminology students with a simple finger pulse oximeter. The average cardiac rate was recorded for the group as a whole, and then the group was divided into three sections (high, average and low) by taking those with a LRHR one deviation above the average rate, one deviation below the average, and the average. Participants subsequently completed a self-reported delinquency scale measuring antisocial behaviour, severe antisocial behaviour and aggression, as well as various other items. “Participants with low resting heart rates reported significantly higher levels of both severe antisocial behavior and aggression” (2009: 1132). What explains the relationship? Armstrong et al thought that LRHR might be associated with one of the known covariates of delinquency, so they tested the effect of cardiac rate on self-reported misconduct while controlling for low self-control, association with delinquent peers, gender (i.e. being male) and family attachment. They found that for both severe antisocial behaviour and aggression, the effect of LRHR continued to be significant in the presence of these other predictors. In other words, the effect of LRHR is not spurious or confounded by these other measures. They speculate that LRHR may motivate some people to crave stimulation and to raise their levels of arousal by risk-taking behaviour, including delinquency. However, at this point, the precise mechanism which links variability in this normal cardiac function to serious misconduct is not presently understood. Note that LRHR is not a defect nor is it what Siegel, Brown and Hoffman (2013: 88-111) describe as a “trait”.

There are other biological conditions that are associated with delinquency that arise from developmental conditions. Probably, the most famous is low self-control. This seems to be cultivated as a direct result of child-parent interaction very early in life, and directly influences the development of the orbitofrontal cortex, part of the frontal lobes also known as “the organ of civilization”. Baar and Gage (2010: 406) write that “scientists have known for years that early sensory stimulation promotes the development of visual cortex in the occipital lobes, and early-life sensory deprivation retards its development. It is possible that social stimulation is to the development of the frontal cortex what visual stimulation is to the development of the occipital cortex”. Without light, that part of the brain that processes vision never develops. Without strong bonding, moral behaviour appears to be inhibited. Alternatively, *damage* to the orbitofrontal cortex results in patients who become “behaviorally and emotionally disinhibited...They have no foresight of the consequences of

their actions” (ibid p. 415) and engage in a range of antisocial activities, many of which are criminal in nature.

Advances in the study of neuroanatomy, neural transmitters and brain injuries have proven very fruitful in understanding the links between neuro-anatomical defects, and criminal behaviour. Two of the most recent areas of exploration involve Attention Deficit and Hyperactivity Disorder, and Fetal Alcohol Spectrum Disorder. Each produces impediments to normal processes of bonding, self-regulation and empathy for others. There is no automatic outcome that results in criminal behaviour. Rather there are “spectrums” or ranges of dysfunctional behaviour of variable consequence. At this point in time, it is unclear how such conditions can be treated, or how many repeat offenders in the justice system suffer from these and other psychiatric deficits.

These more recent diagnoses of biologically related cognitive dysfunctions and their contributions to criminal conduct complement the large psychiatric literature on psychopathic behaviour and personality disorders. While the criminal law has been sensitive to the implication of mental illness for the culpability of the accused, in the past the courts tended to discount the relevance of psychosis and schizophrenia to the defence of insanity since it was not also clear that such personality disorders were actually diseases of the mind with corresponding anomalies and/or injuries in the brain. However, systematic examinations of persons with psychiatric diagnoses such as schizophrenia suggest several things. *Most* such persons are not violent or prone to aggression. However, compared to persons without such diagnoses the group as a whole were nonetheless 4-5 times more likely to engage in violent behavior and 14-25 times as likely to commit homicide (Siegel et al 2013: 105).

The courts have also taken a new view regarding the significance of a plea of not guilty as a result of a mental illness. Persons with a mental illness cannot be found guilty of a crime. Nor can they be retained in custody if they are asymptomatic. Vincent Li was found not guilty of beheading a fellow Greyhound bus passenger in July 2008. He claimed that he heard voices telling him to kill Tim McLean, or that McLean would kill him. Li was treated at the Selkirk Mental Health Centre for his previously undiagnosed schizophrenia. In 2014 he was permitted unescorted leaves from the centre, and is on daily medication (Olanzapine) for his disorder. He reports that he no longer suffers from delusions, or hears voices, and appears to be well adjusted (CP 2014). Nonetheless, many people were disturbed by his unsupervised release. The case illustrates the interaction in criminology between the legal perspective (following Beccaria) represented by the classical school that emphasizes criminal justice and requires *mens rea* to establish guilt – and the scientific understanding of criminal behaviour (following Lombroso) that promotes a deterministic understanding of crime in terms of its underlying causes, in this case, schizophrenia. The problem is that we do not know the causes of schizophrenia, and the “cure” amounts to the administration of mood-altering medications, and cognitive-behavioural therapy.

Part Three: Some Other Key Theoretical Issues

One of the first major questions to consider is the *scope* of theories. Are theories general inasmuch as they are assumed to apply to all crimes, or are they designed to apply only to specific crimes? In this section we review several perspectives that make this general assumption.

I. Does the rational choice explanation of crime apply equally to crimes of violence as well as to crimes against property? Does it apply to choices that favour the use of illegal narcotics and the excessive consumption of alcohol? The theory of rational choice presupposes a hyper-alert actor who can readily anticipate, for example, the consequences of an act of aggression. However, many acts of aggression appear to be made in the heat of passion that, by definition, suggests little reflection. Jack Katz (1988) describes a number of cases of murder as “righteous slaughter” where, for example, a spouse defiantly engages in open sexual infidelity and is murdered in *flagrante delicto*; or where a wife avenges years of abuse by burning to death her intoxicated husband while he sleeps; or a child repeatedly defies parental authority and invites aggression through provocation. The emotional dynamics are described as follows. The perpetrators are humiliated by the victims’ actions, and reach a point where they decide to defend their sense of The Good by transforming their humiliation into rage and striking back righteously at the source of provocation. Katz suggests that sometimes there is “artifice” in their rage in the sense that they let themselves “go ballistic” to legitimate their escalation of violence. In that case, even the most impassioned violence might still amount to rational choice. Alternatively, in his discussion of “cold blooded murder”, Katz’s perpetrators sometimes engage in the most senseless killings to cultivate a sense of their mastery of evil and a reputation undiminished by pedestrian calculation of mere material benefits. Katz extends his analysis to shoplifting, vandalism and burglary, as well as robbery. His point is that this form of “rational choice” puts the emphasis on the immediate moral and sensual attractions of crimes, as opposed to the material benefits, and often in retrospect appears “irrational”. Katz moves away from the idea that there are background causes that “make” people commit crimes. He emphasizes that actors make decisions to fashion their reputations and identities by drawing on the moral and sensual opportunities that arise in the lived experiences of everyday life, and that this applies to all crimes if we can understand the symbolic significance of the crimes to those who perpetuate them. Katz’s perspective is controversial because it moves away from the background conditions that general theorists tend to prefer (Turk 1991). Merton and Sutherland offer more standard general theories.

II. In the 1930s Robert Merton (1938) updated Durkheim’s earlier concept of “anomie” to propose a general theory of crime based on the strain between culturally defined expectations of success, and the adaptations chosen by individuals whose aspirations were being thwarted by structural blockages (lack of economic and educational resources). While most people adapted by accepting the means as well as the aspirations to social advancement, and lived crime-free lives, some people took other paths. Those who accepted the aspirations but employed criminal means to achieve them were classified as innovators (crooks, thieves, robbers etc.). Those who accepted the means (hard work) but rejected the ends became the poor, but honest lower classes. These were the ritualists. And those who rejected both means and ends were the retreatists (substance abusers). Merton added another possibility: those who rejected both means and ends and replaced them

with new means and ends were labeled as rebels or revolutionaries. Hence anomie was a concept developed in theory to explain the major categories of crime (See Siegel et al 2013: 125).

III. Sutherland's differential association theory (1939) also advocates a general theory. His first proposition about crimes is that "all crime is learned". Students of crime learn both the techniques required to execute the crimes, as well as the rationales that create incentives for crimes and justify their commission. They acquire them from contact with existing (peer) groups in which such activities are considered normal and are culturally transmitted through differential association between existing groups and new recruits. Presumably Sutherland's theory would apply equally to crimes of violence, property crimes and substance abuse. Presumably differential association does not require a different explanation for male crimes versus female crimes, nor does it make other such distinctions, which would limit its generality.

IV. The most famous recent exploration of a strong, cover-all approach to crime is Gottfredson and Hirschi's *A General Theory of Crime* (1990). In his earlier classic work, *Causes of Delinquency* (1969), Travis Hirschi had laid out his "control" or "social bond" theory. The evidence for this theory was based on a study of delinquency in the Richmond Youth Study in Richmond, California. The social bond theory demonstrated that attachment to parents, commitment to conventional norms, involvement in supervised activities and belief in the value of laws and law enforcement diminished the attractions of delinquency. Hirschi's measure of a Mertonian "gap" was unsupported as was Sutherland's cultural transmission theory. The social bond theory is an indirect learning theory inasmuch as it provides evidence that effective socialization (i.e. learning) in the home at an early age prevents delinquency and, by inference, that delinquency per se is not learned, but occurs in the *absence* of effective teaching and supervision, i.e. it is the default setting in the absence of effective socialization. Gottfredson and Hirschi's subsequent *General Theory* took the argument one step further. Effective attachment, involvement, commitment and belief produce stable traits of self-control in individuals that tend to persist throughout the life course. In other words, impulse control absorbs the effects of the social bonds and operates even in their absence. The result is a Beccarian actor who makes choices with respect to long-term outcomes that minimize friction with the law. Many critics of self-control theory were alarmed that such an individual level trait was employed to explain all crimes.

In contrast to these general theories, some perspectives appear to advocate different approaches to different forms of crime.

I. Criminology textbooks since the time of Sutherland have typically contained chapters on white-collar crime, organized crime and/or corporate crime. Certainly the legal structures may differ in how courts establish culpability for income tax evasion, insurance fraud or embezzlement (i.e. white collar crimes), gang murders, narcotics trafficking and corruption of officials for government construction contracts (i.e. organized crimes) and price-fixing, environmental pollution and the creation of unsafe products and workplaces (corporate crimes). Also, the impact of such crimes may be more insidious because they are

not as apparent to the public, not tracked as well by the uniform crime reports or identified as index crimes, and more difficult to prosecute successfully. Such crimes, if successful, may also yield superior financial outcomes. These are important matters for students of criminal justice because the processes regarding their monitoring and indictment may be different from garden-variety or street crimes. They may provoke more moral indignation in the public because the crimes are also embedded in breaches of trust and betrayal. But are they different in terms of criminological explanations? Is the *explanation* for someone like Bernie Madoff who duped investors of millions of dollars in a decades-long ponzi scheme different from someone who robs a bunch of banks? When the Westray Mine managers flagrantly dismissed obvious signs of inflated methane and elevated levels of combustible coal particulates which ultimately turned the mine into a charnel-house – and sustained their own lucrative employment security - were they acting with qualitatively less self-interest than the crooked car mechanic who replaces perfectly serviceable parts in a bogus engine repair? Is the latter more atavistic, and the former more rational? That question captures this issue. The focus on white collar, organized and corporate crimes seems to imply that they require theories specific to them.

II. In the past two or three decades Canadian criminology has increasingly included discussions of radical, “left realist” and/or Marxist criminology, and again separate chapters are devoted to such perspectives. These approaches highlight the critical role of the state in defining crime, the direction of social control against classes and groups with diminished social power within the state, and the role of law in the struggle between labour and capital since the industrial revolution. What this scholarship highlights is the under-extension of social control to the crimes of the powerful, the role of wealth in minimizing the ability of the justice system to establish the culpability of elite offenders, and the diminished public awareness of the impact of elite crime through the dominance of media by corporate control (Reiman and Leighton 2012). In addition, the literature has directed victimology away from the privations at the hands of common criminals and domestic violence to a greater understanding of liabilities of citizens to the apparently legitimate products of capitalist production (i.e. unsafe cars and other consumer items), to the pollution of the water, air and land from capitalist production, and the manipulation of financial markets by international banking consortia. What this scholarship suggests is that the sorts of exploitations and hazards discovered are unique to capitalism. There is virtually no discussion of how similar offences are common to socialist states. Consider air pollution corruption of government officials, and worker injury in the People’s Republic of China – all of which are widespread. In addition, much of the analysis is better understood as *the sociology of law*, and the relationship of the legal structure to other elements in the society, including political and economic structures. The question that is begged is whether the explanation of violence in capitalism requires a different criminological theory than violence in socialism. Or whether the general theories like rational choice, structural blockage, cultural transmission and/or self-control already provide the tools to understand the phenomena of crime despite differences in the economy and culture.

III. The same issues are raised by the chapters on feminist criminology. The scholarship here emphasizes the differential treatment of females in the criminal justice system, bias in laws against the interests of women in areas of fertility and sexuality, and patterns of

victimization against women both in normal domestic situations and in marginal populations such as the sex trade. Where radical criminology uses class as its point of departure, the victimological perspective here is organized around the concept of *patriarchy* as a form of society based primarily on male dominance. The implication of this perspective is that feminist criminology is primarily aimed at explaining crime as it impacts on and/or arises from women. Like radical criminology, this is not a general perspective that applies irrespective of gender, age, class, ethnicity etc. And it presumably does not venture opinions about crime in non-patriarchal societies.

We began this discussion by outlining the great theoretical divide in criminology between the rational choice or voluntarist tradition, versus the positivistic or deterministic tradition. However, these distinctions are further nuanced when we consider whether the theories, (Beccarian or Lombrosian), are meant as general theories or, whether the theories are only meant to explain certain things, i.e. financial crimes, or class-related crimes or gender-related crimes. The general theories are attractive because they are premised on parsimony – that certain conditions comprehend enough of social reality that we can be optimistic that an explanation effective for understanding murder also applies to robbery and sexual assault as well as other crimes. The downside of such an ambitious assumption is that one-size-fits-all. For the sake of argument, let us assume the opposite situation: every different kind of crime requires a separate explanation. If we need a different explanation for every entry in the criminal code, the result would be rather messy in terms of criminological explanation, and criminological knowledge would lack coherence because the subject matter underlying it would be assumed to be so disparate that it contained nothing in common except for the fact that everything discussed was something defined as contrary to law. No doubt the truth lies somewhere between these extremes. As a result, when we look at criminology textbooks, they contain a series of chapters on the various general theories, as well as specific chapters on violence, property crime, substance abuse etc. This seems to imply that the general theories laid out in the former chapters do not readily explain the specific kinds of crimes examined in the later chapters; or (equally problematic) that each general theory explains the main categories of crime in different and mutually inconsistent ways.

Part Four: The Stubborn Particulars of Empirical Observations of Crime

We have examined the two main direction of crime theory, as well as differences in how general or specific such theories might be. Now we tackle a separate problem. There are many observations about crime that have been made recurrently, independent of the observers' theoretical preferences. These are facts or correlates about crime that are not derived from any particular perspective, whether voluntarist or determinist, general or specific. However, they may pose a challenge to the explanation of crime because they seem to be stubborn particulars about criminal events and criminal careers that are not often directly dealt with by specific theories, or specifically explained by them. They suggest that crimes exhibit certain patterns howsoever specific theorists choose to explain them. There are six points.

I. The age-crime curve

Based on UCR police data from Stats Canada, Siegel, Brown and Hoffman (2013: 40) report a typical age-crime curve for 2009 showing the rate of all offences for ages 12 through 55. The bar graph shows a sharp increase from 2,000 offences per 100,000 population at age 12 to just over 14,000 at ages 17-18-19. The rate drops off gradually to about 7,000 in the late 20s, 5,000 in the late 30s, and 3,000 in the late 40s (see textbook graph). In Unit 4 we reviewed Eisner's historical homicide data of the percentage of offenders in various age groups covering several centuries and many different European countries. While these data are from court reports for homicide and cover a remarkably long period of time, they display a similar age-crime curve that suggests that homicide increases sharply in the teen years, peaks in the 20s and declines gradually thereafter. Goring's study of English Inmates (1913: 201-2) shows a similar pattern when examining age at first conviction. The age of first conviction is highest in the teen years, and declines for every age-group thereafter. In a now-classic paper by Hirschi and Gottfredson (1983) they conclude that the age-crime curve is largely invariant in historical and transnational comparisons where comparable measures are available, that the curve is simply an effect of maturation or "aging out", and that it occurs whether or not there are significant other changes in work, school or family in the lives of young people. This effect will operate independently of whatever main effect is specified by various general theories. For example, if a country has a national conscription of 17 year-old males for two years of military service, the age-crime curve may reflect the suppression of some crime by heightened military supervision and reduced opportunity, but it does not disappear. It is an underlying recurrent phenomenon.

II. Gender differences in crime

As noted in Unit 3 in Canada the crime rate for males in 2011 was 3,287 offences per 100,000 population compared to 785 per 100,000 for females. In other words, based on reports of crime gathered by the police, men were over 4 times as likely to be identified as perpetrators than women. The FBI data for all persons arrested for criminal offences in 2011 was 5,510,637 cases for males versus 1,970,089 for females, a ratio of 2.8:1. However, for violent crimes the difference was somewhat higher: 278,050 (males) versus 67,327 (females), a ratio of 4:1. There was even more convergence for property crime (a ratio of 1.65:1). The counts for embezzlement were virtually identical (n = 5,500 arrests for both genders) (FBI 2011). While it is true that recently there has been some evidence of a rise in female crime participation, the evidence is far from showing substantive convergence at any foreseeable time in the future. Such changes could simply reflect changes in opportunity with changes in female labour force participation, which is an effect of changes in routine activities. As for historical data, again if we refer to Eisner's historical homicide data, the cases are overwhelmingly suggestive of male on male violence despite the periods and locations. The gender difference in perpetration found in official statistics is likewise reported in self-report studies. In a summary of 13 self-report studies, Gottfredson and Hirschi (1990: 146) report consistently high male to female crime rates. The gender ratio was about even for delinquency such as running away from home, striking and/or defying parents; however for robbery, serious damage to property, car theft, and assault the median ratios were in the order of 2.9 to 3.6 males to females. Not only that, Hirschi's data from the Richmond Youth study suggests that for similarly high levels of supervision, males

were eight times as likely to report “3 or more delinquencies” compared to females (ibid p. 149). Despite some ratio variations across type of crime, the gender difference remains one of the best-known generalizations in criminology.

III. The Exposure of Minorities to Criminalization

In all contemporary industrialized societies, evidence suggests that minorities tend to be over-represented in the criminal justice system. Schmallegger (2015: 209) suggests that African Americans commit violent crimes at a rate that is six to eight times higher than the rate found among whites, and three to four times higher than the rate among Latino Americans. An astonishing percentage of African American males (over 30%) are or have been incarcerated for narcotics possession – a felony that expunges the future right to vote. While these patterns may reflect a certain amount of prejudice among the police, similar disparities are found in self-report studies that identify the race or ethnicity of the perpetrators (Hindelang 1978). In Unit 2 when we examined the Canadian correctional statistics, we observed the dramatic levels of over-representation of Canadian Natives in the offender population. West European countries have their over-representation of Roma and other East Europeans. Japanese have over-representation of Korean-descendant Japanese. And the English over-represent the Irish. Are these patterns spurious? In other words, does race or ethnicity capture the extent to which certain groups inhabit socially disorganized or poorly integrated communities? Or are there inherent dispositions towards criminality as Lombroso suggested? Surely that is too far-fetched an argument to advance in today’s society. Isn’t it? Note that in the North American context certain minority groups, particularly those of Asian decent, are under-represented in criminal justice statistics. Based on these observations, a Canadian psychologist, Phillippe Rushton (1997), made the case that differences between persons of Asian, African and European descent were inherently different on a range of measurable social and biological characteristics (including crime) as a result of different evolutionary pressures, and that these differences were heritable. Like Herrnstein and Murray’s earlier study of racial differences in intelligence, *The Bell Curve: Intelligence and Class Structure in American Life* (1994), it created an intellectual firestorm, and like the latter, was resolved for all who joined the fray largely on their pre-existing ideological or moral positions. It is not our intent here to resolve this issue one way or the other, but merely to identify minority over-representation in criminal justice statistics as a recurrent observation in empirical studies of crime. And to remind the reader that the opposing explanations of such differences actually echo the great opposing intellectual traditions in criminological explanation with which we started: atavistic biology versus action/choice theory.

IV. The banality of common crimes

Jack Katz (1988: 164) notes that among the “heavies” he studied who engaged in robbery there was a big paradox. Their patterns of street robbery were typically spur-of-the-moment affairs undertaken without much reflection or preparation. Even bank robberies were hit-and-run affairs with hardly any time spent on “casing the joint” and planning an escape route. The amount of money obtained was largely a matter of chance. According to a national sample of victims, losses from personal robberies were over \$250 only in a

quarter of the cases. Robberies at gas stations yielded barely over \$300. Studies of burglaries suggested that the average take was about \$80. The pickings were much better at banks—over \$2,600—but the surveillance cameras insured that virtually every bank robber is identified and apprehended. Bank robbery is a crime where even first time offenders can expect to go to jail. Robbers end up doing a lot of jobs, and obtaining on average pretty slim pickings, split among all the crewmembers. The proceeds are quickly dissipated on booze and narcotics that invariably requires a treadmill of on-going sprees of robbery that raise the probability of apprehension every step of the way. Gottfredson and Hirschi (1990: 18, 29) report similarly to Katz that the average loss for personal robbery was more like \$50, and for burglary was something like \$100. Losses in Britain for burglary were less than 100 pounds sterling in two-thirds of the cases (p. 26). Stolen cars typically are used for joy riding and are usually recovered. Rarely do stolen vehicles end up in lucrative chop shop operations. The average offence is a simple affair usually perpetrated close to home with victims from the same background as the offenders. The more you look at it, the less rational it appears to be.

The mystique around the drug trade suggests that this is a much more lucrative criminal enterprise. Sughir Venkatesh who studied gangs in the housing projects in Chicago during the early 1990s, the period of the crack cocaine epidemic, shed some light on this. He befriended the leader of a gang who controlled the cocaine trade in a section of the black housing projects in Chicago. The story was written up by Levine and Dubner (1995) in *Freakonomics* in a chapter titled: “Why do drug dealers still live with their moms?” J.T., the gang leader was making over \$100,000 tax-free annually on cocaine, and more from licensing others to sell heroin. His records showed that he budgeted \$9,500 combined salaries a month for everyone working for him. “His three officers each took home \$700 a month, which works out to about \$7 an hour. And the foot soldiers earned just \$3.30 an hour, less than the minimum wage” (Levine and Dubner 1995: 103). That’s why they lived at home, and spent long hours on the street hustling drugs in a neighbourhood where shootings were common. The top 100 heavies like J.T. in control of the projects were taking home most of the profits from the trade, and the vast majority of foot soldiers were basically working for cigarette money, and hoping unrealistically to move up the ranks.

None of what we are arguing here denies that some individuals profit spectacularly from crime. We are talking about the average criminal. Recall from Unit 2 that the most prevalent crimes in Canada were “theft under” and mischief to property, crimes which by definition are unlikely to furnish a superior life style.

V. Non-specialization in criminal careers

Wolfgang, Siglio and Sellin’s analysis of the careers of all the males in the 1945 birth cohort in Philadelphia suggested that about 16% (see Unit 4) of the boys who got in trouble with the law were responsible for over half of all the recorded offences. In other words, those who got in trouble with the law, got in trouble for everything. Katz similarly identified a group of serious persistent criminals variously labeled “heavies”, “violent predators” and/or “career criminals”. Although he discusses them in the context of robbery, he says “they are generally not crime specialists who trade exclusively in robbery. They also deal in

illegal drugs and commit various other property offences, as well as personal assault offences, at unusually high rates” (Katz 1988: 165-66). Whatever hedonic opportunities are available – gambling, prostitution, narcotics or assault – connect the lives of these persistent offenders through various episodes of “action”. These patterns are inconsistent with the assertion that crime is a form of work. It is more a life devoted to “kicks”.

Gottfredson and Hirschi (1990: 21) similarly argue that “the evidence shows that specific crimes, regardless of their outcome, do not tend to be repeated. That is, burglary, even “successful” burglary, does not tend to be followed by burglary, *even in the short run*. Robbery is not followed by robbery with any more likelihood than by some other short-term pleasure, a pleasure that may well be inconsistent with another robbery (such as rape, drug use, or assault”. Why? The typical offender is not a rational actor with a long-term plan to accumulate wealth as much as someone looking for immediate gratification across a range of criminal plays. This brings us back to Katz’s paradox: street crimes like theft and robbery, when considered as financial crimes, are on average not all that rewarding.

VI. The Association of crime with analogous failures in work, personal relationships, educational attainment, and substance abuse

Federal authorities in western correctional institutions sometimes survey the inmate population regarding their personal profiles on the day that led to their most recent period of incarceration. What have such inquiries discovered? The majority of the inmates were intoxicated, stoned or both on the day of the most recent arrest that led to their incarceration. Their average level of education was *less* than the eighth grade. They were perennially unemployed or under-employed, and had little work-related expertise, training or experience. In addition, they had interpersonal frictions with family and often violent conflicts with those they were otherwise intimate with. In other words, the fact they had broken the law was ancillary to a host of failures and deficits in virtually every other area of life: personal sobriety, family functioning, educational accomplishment and job success. A host of deficits across the board tend to cluster in the persons who come to society’s attention due to their conflict with the law. This may reflect a life-long sequence of deficits (Wade et al 1999; Moffitt 1993). In addition, inmates tend to have elevated risks for illness and injury, and elevated symptoms of psychological instability. These generalities probably do not fit the case of the Canadian newspaper magnate, Conrad Black, but he is not a typical offender in a federal institution. If anything, some criminologists have said, tongue in cheek, that our correctional institutions need a better class of inmates! But the ones we incarcerate tend to have, not just criminal records, but a number of other “co-morbidities” as described here.

Overview

We have juxtaposed the classical school and the positivist school as radically different in orientations. The former seems to emphasize actions that are wholly social in origin, and learned through experience. The latter stresses biology and innate dispositions. The former emphasizes the rational; the latter emphasizes the instinctual. The former stresses free will, the latter determinism. This radical juxtaposition may be helpful to capture some of the

opposing intellectual roots of theory in criminology, but the juxtaposition can be misleading if taken too much at face value. When Beccarian actors make choices based on their free will about courses of action that provide pleasure, many of the appetites to which such choices correspond are wholly or partly biological including food and water, sexuality and intimacy, as well as the need for acceptance, status and the high regard of others. Past survival of the species has made a priority of certain utilities to ensure species survival. In addition, recent advances in the neurosciences have emphasized the plasticity of parts of the cortex and its response to social conditioning, which suggests a two-way street between biology and social structure. We have also noted that many of the choices made by individuals in the context of free will are often more emotional than rational, impulsive more than thoughtful, and short-term versus far-sighted, addressing immediate hedonistic agendas as opposed to long term material advantages. Beccarian actors also vary significantly in their resources for making choices, including individual differences in intelligence and self-control.

We have also raised the question of the scope of theories attached to these two traditions, and the degree to which they are viewed as general theories that apply to all crimes, or theories which are designed only for certain types of crimes, certain economic structures and certain gendered conditions. On the one end of the continuum are the most general theories with the greatest intellectual parsimony. At the other end are theories with diminished scope and more narrow application. This raises questions about whether the materials that underlie the criminological enterprise are inherently coherent and admit of law-like generalizations, or are so idiosyncratic as to permit little more than unique descriptions of specific crimes and forms of criminality. This question is important since the ability of society to abate crime depends not only in our ability to explain and understand it, but also on its inherent cohesion and predictability.

Lastly, we identified six empirical features of crime that have been reported widely in the empirical literature, and which must be considered when evaluating any specific explanation of crime. These “hard facts” or “stubborn particulars” point to the association of crime with age, gender, minority status, banality, non-specialization (or versatility) and behaviours analogous to crime.

End notes

In what follows there is a list of

- Key concepts with which the students should be familiar
- Links to information
- Required Readings
- Practice questions
- References

Key concepts, facts and issues

- The prevalence of cruelty in medieval justice

Unit 5: Explaining Crime: The Two Different Traditions

File: 5. 305 – Unit 5.docx 11,212 wds

- Cesare Beccaria (1738-1794) and his role in the classical school
- Cesare Lombroso (1835-1919) and his role in the positivist school
- Atavism and criminal behaviour
- Franz Joseph Gall (1758-1828) and phrenology
- Charles Goring (1870-1919) and *The English Convict* (1913)
- The concept of *mens rea*
- Jeremy Bentham (1748-1832) and utilitarianism
- Hedonic calculation
- The panopticon and prison architecture
- Crimes and the laws of supply and demand
- Material and non-material appetites in rational choice theory
- Rehabilitation, deterrence and incapacitation as penal policies
- Andrew von Hirsch and “the Justice Model”
- Current sentencing practices in the common law countries
- The XYY chromosomal abnormality
- Sarnoff Mednick and the Danish adoption studies
- Low resting heart rate and anti-social behaviour
- The frontal lobes, moral behaviour and self-control
- ADHD and FASD
- Schizophrenia and violent behaviour
- “righteous slaughter” and “cold blooded murder” in the context of rational choice
- anomie and crime (Merton)
- differential association and the cultural transmission of crime (Sutherland)
- social bond theory in Hirschi, *Causes of Delinquency* (1969)
- self-control in Gottfredson and Hirschi, *General Theory of Crime* (1990)
- controversy of the distinctiveness of white collar, organized and corporate crime
- the scope of radical criminology
- the scope of feminist criminology
- general theories versus narrowly focused theory
- stubborn particulars or “hard facts” of empirical criminology
- the age-crime curve
- gender and crime
- minorities and crime
- the banality of common crimes
- non-specialization (versatility) in ordinary crimes
- crime and analogous failures of adjustment

Links to Information

Federal Bureau of Investigation (2011) *Crime in the United States 2011*.

<http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/persons-arrested/persons-arrested>.

Required Readings for Unit Five

Unit 5: Explaining Crime: The Two Different Traditions

File: 5. 305 – Unit 5.docx 11,212 wds

1. Siegel, Brown and Hoffman (2013) 2nd Edition, Chapter 4 Choice Theory: Because they want to pp. 68-87 in *CRIM*, Toronto: Nelson Educational.
2. Siegel, Brown and Hoffman (2013) 2nd Edition, “Chapter 5 Trait Theory: It’s in their blood pp. 68-111 in *CRIM*, Toronto: Nelson Educational.

Practice questions

1. What are the “stubborn particulars” or hard facts of empirical criminology? And what, if any, is there relationship to classical and positivist approaches to crime?
2. What are the different assumptions behind the classical versus the positivist schools of criminology? Identify major proponents of each perspective, and the basis for their differing approaches to the study of crime. Contrast the approaches to crime control from a strictly classical perspective and the approaches from a positivistic perspective.
3. What is the difference between rehabilitation, deterrence and incapacitation in terms of their underlying approaches to crime control. How could they be applied to violent persons with a serious mental illnesses, or an injured cortex?

References

- Armstrong, Todd A., Shawn Keller, Travis W. Franklin and Scott N. Macmillan (2009) “Low Resting Heart Rate and Antisocial Behavior: A Brief Review of Evidence and Preliminary Results From a New Test,” *Criminal Justice and Behavior* 36: 1125-1140.
- Beccaria, Cesare (1764) *Essay on Crime and Punishment*, translated by Henry Paolucci, 1963, Indianapolis: Bobbs-Merrill.
- CP Canadian Press (2014) “Greyhound bus beheader Vince Li wins right to leave mental hospital without an escort”, *National Post*, February 27.
- FBI (Federal Bureau of Investigation) (2011) *Crime in the United States 2011*.
<http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/persons-arrested/persons-arrested>, retrieved on September 16, 2014.
- Foucault, Michel (1977) *Discipline and Punish: The Birth of the Prison*, translated from the French by Alex Sheridan, New York: Vintage Books.
- Gottfredson, Michael and Travis Hirschi (1990) *A General Theory of Crime*, Stanford CA: Stanford University Press.
- Goring, Charles (1913) *The English Convict*, Revised 1919, London: Her Majesty’s Stationary Office.
- Gould, S.J. (1981) *The Mismeasure of Man*, New York: Norton. Revised and expanded 1996.

Unit 5: Explaining Crime: The Two Different Traditions

File: 5. 305 – Unit 5.docx 11,212 wds

- Herrnstein, Richard and Charles Murray (1994) *The Bell Curve: Intelligence and Class Structure in American Life*, New York: Free Press.
- Hindeland, Michael J. (1978) "Race and Involvement in Common Law Personal Crimes," *American Sociological Review* 43: 93-109.
- Hirschi, Travis (1969) *Causes of Delinquency*, Berkeley: University of California Press.
- Hirschi, Travis and Michael Gottfredson (1983) "Age and the Explanation of Crime," *American Journal of Sociology* 89 (3): 552-584.
- Huxley, Aldous (1952) *The Devils of Loudun*, New York: HarperCollins.
- Katz, Jack (1988) *Seductions of Crime: The Moral and Sensual Attractions of Doing Evil*, New York: Basic Books.
- Levine, Steven and Stephen Dubner (2005) *Freakonomics*, New York: William Morrow.
- Merton, Robert (1938) "Social Structure and 'Anomie'," *American Sociological Review* 3: 672-82.
- Martinson, Robert (1974) "What Works? Questions and Answers about Prison Reform," *The Public Interest*, 35: Spring 22-54.
- Mednick, Sarnoff, William Gabrielli and Barry Hutchings (1984) "Genetic Influences in Criminal Convictions: Evidence from an Adoption Cohort," *Science* 224: 891-94.
- Moffitt, Terrie (1993) "Adolescent Limited and Life-Course Persistent Antisocial Behavior: A Developmental Taxonomy" *Psychological Review* 100 (4): 674-701.
- Pinker, Steven (2011) *The Better Angels of Our Nature: why violence has declined*, New York: Penguin Books.
- Polk, Kenneth (1985) "A Comparative Analysis of Attrition in Rape Cases", *British Journal of Criminology* 25 (3): 280-84.
- Reiman, Jeffrey and Paul Leighton (2012) *The Rich Get Richer, The Poor Get Prison*, 10/e New York: Pearson.
- Rushton, J. Phillippe (1997) *Race, Evolution and Behavior*, New Brunswick NJ: Transaction Books.
- Sampson, Robert and John Laub (1993) *Crime in the Making*, Cambridge MA: Harvard University Press.

Unit 5: Explaining Crime: The Two Different Traditions

File: 5. 305 – Unit 5.docx 11,212 wds

Siegel Larry, Gregory Brown and Ron Hoffman (2013) *CRIM*, 2/e Toronto: Nelson.

Sutherland, Edwin (1939) *Principles of Criminology*, Philadelphia PA: Lippincott.

Taylor, Ian, Paul Walton and Jock Young (1973) *The New Criminology: for a social theory of deviance*, London: Routledge and Kegan Paul.

Turk, Austin (1991) Seductions of Criminology: Katz on Meanness and Other Distractions (review essay of Katz), *Law and Social Inquiry* 16 (1): 181-94.

Von Hirsch, Andrew (1976) *Doing Justice: The Choice of Punishments*, New York: Hill and Wang.

Wade, Terry J., David Pevalin & Augustine Brannigan (1999) "The Clustering of Severe Behavioural, Health and Educational Deficits in Canadian Children: Preliminary Evidence from the National Longitudinal Survey of Children and Youth," *Canadian Journal of Public Health*, Vol. 90 (40) 253-259.

Zeisel, Hans (1982) "Disagreement over the evaluation of a controlled experiment," *American Journal of Sociology* 88 (2): 378-89.

Let's get real: Crime as a social fact

Through his study of *Suicide* (1898) Emile Durkheim (1857-1917), one of the founding figures of the discipline, put the sociological study of crime on the agenda. Durkheim was particularly attracted to suicide since the existing theories explained it in terms of individual factors, deficits in a person's character, or psychological weaknesses. Durkheim argued that persons who suffered from suicidal thoughts, and who experienced deep anguish about the purpose of their lives were inhabitants of a social structure that was pathological, and which was unnerving them. Social circumstances were capable of throwing individuals out of their zones of comfort, and forcing them to question their own self-worth. The evidence for this was Durkheim's recognition of the social distribution of suicidal behaviour; he found it to vary systematically by religion, marital status and political conflict. Social upheavals that unite persons around a common cause drive away the impulse to commit suicide by making persons close ranks to confront a common danger. Extreme deficits in **attachment** (more common with the Protestant faith, or non-married status) sometimes created a pathological condition marked by *egoism* or self-centeredness. At the other extreme, excesses of attachment were similarly problematic because they smothered individuality in favour of a pathological condition described as *altruism*. These two conditions arose when social conditions created stress due to their intrusiveness on the one side (pathological altruism), and their complete absence on the other (pathological egoism).

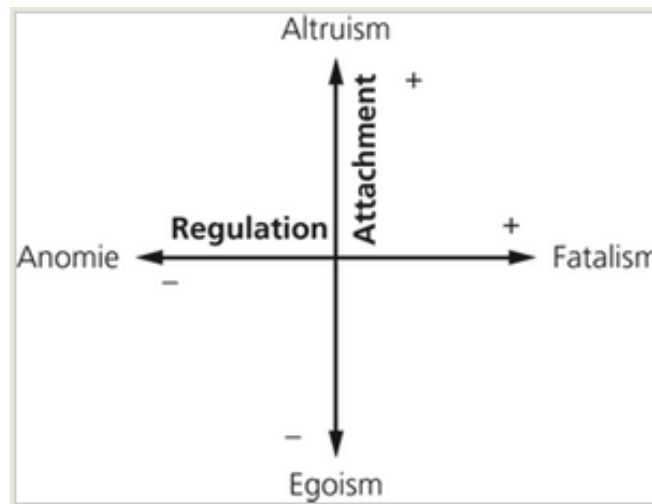
Durkheim suggested that a second key dimension in social life – **regulation** – created similar liabilities in its extremes. Persons undergoing great disturbances in their material fortunes, either favourable or unfavourable, faced an increased risk of self-destruction through the displacement of regulation that was attributable to such shifts in fortune. This collapse of regulation he called “anomie”. Anomie or lawlessness detaches individuals from their daily routines and obligations, and undermines their security. Similarly, divorce or widowhood, particularly for males, severs the individual from the predictable elements of everyday life, leaving the survivor without direction, and prone to losing a sense of purpose. Durkheim added a final form of pathology that he called “fatalism” which arose when regulation and supervision curbed the individuals' freedom so much as to make suicide preferable. He describes the life of the slave who is so burdened with obligation and regulation that life becomes futile.

Durkheim employed suicide to illustrate how aberrations of regulation and attachment disrupted healthy patterns of adjustments. He proposed that the four conditions (egoism, altruism, anomie, and fatalism) yielded separate forms of pathology. His analysis has been extended beyond the case of suicide to all sorts of problems, including crime and illness. Durkheim introduced a paradigmatic way of thinking about pathology that redirected the focus away from the individual, and his or her inherent characteristics, to his or her circumstances. This paradigm was later extended to a sociological approach to epidemiology known as “the social determinants of health”. There have been some methodological issues in his work that required further research. For example, there is some debate as to whether Durkheim's four types are mutually exclusive. Durkheim's analysis of the altruistic suicide of the military men who lay down their lives for the

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

leaders, the country, and the greater good, might be better described as fatalistic, since their combat roles often give them little choice. Also, Durkheim's measures of association were not based on individual measures of traits (i.e. religion and causes of death of individuals), but ecological measures (jurisdictions which have levels of certain religions correlated with high levels of suicide). Though valid, these methodological questions are less relevant for our purposes than the theoretical issues. Criminologists usually depict the typology as a cross with four points representing the separate kinds of suicide based on regulation and attachment as shown in the next figure.



Durkheim's legacy within sociology was that he pioneered the sociological preference for approaches to crime that favoured a social structural explanation. North American sociologists have especially favoured the role of anomie in crime, in part because anomie had become so prominent in explaining social conflicts during the periods of industrial strife described in Durkheim's first major work, *The Division of Labour in Society* (1893). The anomic division of labour was characterized by a breakdown in communication between workers and employers, the demise of traditional methods of production, rapid patterns of urbanization and the pauperization of large sections of the working classes. Crime associated with anomie was real. It was associated with objective human misery, suffering and death, and signaled that something was amiss or broken in society. It was not a disagreement about how things should be labeled, or cultural differences in the definition of crime. Crime was recognized as a social fact. The theories described in this unit share that assumption. It is for that reason that they are described as "realist".

Unit Objectives

In this unit we explore the following topics:

- The extension of Durkheim's analysis of suicide to Merton's analysis of crime in America ("gap" theory or early strain theory), and the effect of social stratification on crime

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

- The rise of the Chicago School and the ecological structure of crime in the work of Shaw and Mackay
- The contribution of social disorganization to delinquency
- The rise of contemporary strain theory (Agnew)
- The rise of contemporary control or bond theories
- Self control in the work of Travis Hirschi, Mischler and Norbert Elias
- The shift from self-control to social control and social capital theories in the work of Sampson and Laub
- The emergence of criminal career paradigm

Structural Theories

Merton and the Gap

Merton's theory of crime is derived from his analysis of the integration of institutionally defined goals and the normative means of achieving these goals. The stratification system in capitalist societies places individuals in different places of advantage and disadvantage but puts an emphasis on acquiring prestigious mates, properties, cars, clothing and material goods. In contemporary capitalist society, the dominant institutional goals are defined largely in terms of material success, typically achieved through education and employment. In most societies, *conformity* to both the culturally defined goals and the legitimate means of acquiring them is the most common form of adaptation (see cell 1 below). Without this match, the stability and continuity of society could be endangered. Social order is achieved with the successful assignment of individuals to conventional roles oriented towards the basic values of the group. It is this fact that provides for the cohesion of society (Merton 1938: 667). This form of adaptation reflects an effective level of integration between desires and legitimate access to wealth and status. Merton's typology of adjustments is depicted below.

Merton's Typology of Crime		Accept the institutional goals	
		Yes	No
Accept the Means	Yes	1. Conformity: Get rich legally	3. Ritualism: Stick to the job and never get rich
	No	2. Innovation: Get rich illegally	4. Retreatism: Forget about getting rich and forget about work

5. Rebels: Reject and replace both the goals and the means of attaining them

However, the system is not completely effective. Merton describes four different ways in which people can respond to frustrations created by barriers to advancement: innovation, ritualism, retreatism and rebellion.

Adaptation in cell 4 (“retreatism” or the rejection of goals and means) is the least common. Persons in this category are maladjusted, and alienated from the mainstream of the society. Persons in this category do not accept the common frame of orientation of the majority. To accept the dreams of property, prestige, material comforts and happiness when these are beyond one’s reach can be extremely frustrating and painful. One option is to disinvest in the goals, and opt out of the means. Into this category Merton assigned “the activities of psychotics, psychoneurotics, chronic autists, pariahs, outcasts, vagrants, vagabonds, tramps, chronic drunkards and drug addicts” (ibid). While persons with mental illness may be handicapped by that fact in the competition for advancement, Merton seemed to think that the frustration of that competition was the cause of their mental problems. “Defeatism, quietism and resignation are manifested in escape mechanisms which ultimately lead the individual to “escape” from the requirements of the society” (p. 677). The self-medicating winos and drug-users are buffering themselves from the treadmill of frustration. Neuroses and other disorders reflect the pain associated with this form of “maladaptation”.

The ritualists (cell 3) were people who accepted their station in life, and who refused to invest in “the American Dream”. These were typically immigrants from traditional cultures in which there was greater acceptance of social differentiation, and where work of any kind was accepted with resignation. For these people, family solidarity was of greater value than a car and a new house in the suburbs, although the first generation of immigrant children were more liable to gravitate to the materialist ideals of North American life.

In explaining the conditions under which persons are pressured to “innovate” (cell2), Merton invoked accounts of persons who turned to “specialized areas of vice in the near north side of Chicago.” This was a normal response “to a situation where the cultural emphasis upon pecuniary success has been absorbed, but where there is little access to conventional and legitimate means for attaining such success” (1938:679). Persons in such neighbourhoods were almost completely confined to jobs consisting of poorly paid manual labour. Given the stigma of manual labour and the correspondingly prestigious status of white-collar work, persons who aspired to wealth and material progress would experience a strain or gap between their aspirations and the legitimate methods available to achieve them. Organized vice provided a superior source of income compared to manual labour, and attracted persons to crime who would never consider it, if effective means of getting ahead were at their disposal. The lack of high integration between means and ends in the lower classes heighten the frequency of antisocial conduct in such groups. In addition, such groups face a double barrier since they enter the labour market with little educational advantage.

Merton: “Within this context, [Al] Capone represents the triumph of amoral intelligence over morally prescribed “failure,” when the channels of vertical mobility are closed or narrowed *in a society which places a high premium on economic affluence and social ascent for all its members*” (1938: 680).

In other words, it is not social inequality or poverty by itself that promotes crime. It is the acceptance of the belief that anyone can and should “make it” under conditions where this is structurally improbable. It is this, which creates the various dysfunctional consequences – anxieties, hostilities, neuroses and antisocial behaviour.

In *Delinquency and Opportunity*, Cloward and Ohlin (1960) extended Merton’s analysis by arguing that access to illegitimate opportunities (as well as legitimate ones) varied by social class. In other words, persons at the top of the social structure had relatively easy access to legitimate employment since they entered the labour market with strong family backgrounds, education and good connections to advancement. By contrast, those at the bottom of the social structure lacked these, but had a greater access to the illegitimate economy associated with organized crime, gang life, narcotics and other sources of illicit income.

The analysis of anomie in social structure by Merton and his successors was highly speculative at the time of writing, in the sense that Merton never tested his theory empirically, and offered it more as a schema for explaining crime in a sociological fashion consistent with the ideas originally proposed by Durkheim. Merton seems to assume that everyone buys into the materialist dream, i.e. that happiness is acquired with money. As a result, his schema tends to (over) emphasize the motives for financial crimes, but does not readily suggest why persons who are disadvantaged economically would be more prone to, for example, violence, particularly against persons much like themselves. In addition, the typology suggests that narcotics use is an alternative to robbery and theft, and that each represents a mutually exclusive form of adaptation. However, as was explained in the last

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

unit, persons who have conflict with the law do not tend to specialize in robbery as opposed to narcotics or assault. They probably are inclined to be associated with different forms of crime. Merton's ideas on innovation were suggested by the activities of organized crime in the Chicago immigrant communities. Chicago proved to be a laboratory for the examination of criminological models of crime causation. We turn to that situation now.

The Chicago School and the ecology of crime

The Chicago School refers to the development of a focus on urban settlement primarily in the city of Chicago in the early decades of the 20th century. Chicago, as the head of the Midwest railways, was a magnet for immigration throughout the last part of the 19th century and the first decades of the 20th century. Scholars in Sociology at the University of Chicago produced a series of classic empirical studies based largely on their focus on the dynamic changes in American society associated with immigration and industrialization. These included Robert Park and Ernest Burgess, *The City: Suggestions for Investigation of Human Behavior in the Urban Environment*, 1925; W.I. Thomas, *The Unadjusted Girl* 1923; W.I. Thomas and Florian Znaniecki's multi-volume *The Polish Peasant in Europe and America* 1918-20, George Herbert Mead, *Mind, Self and Society* 1934; and Louis Wirth, *The Ghetto* 1928, to name a few. The department founder, Albion Small, established the most important journal in the field, the *American Journal of Sociology* in 1895 as well as the first national association of professional sociologists.

Methodologically, the Chicago School advocated empiricism. The city was their laboratory and the researchers advocated close analysis of the people and processes that contributed to Chicago's vibrant urban life. Favoured methods included participant observation studies, ethnographies, interviews, and close description of the actual neighbourhoods occupied by the changing cohorts of immigrants. Fieldwork and exploration of specific neighbourhoods were a major priority. Theoretically, the sociological perspectives were eclectic, and there was a strong interest in combining empirical observations with social reform policies designed to abate the miseries of poverty and social disorganization. Chicago at this time was also home to Jane Addams who worked at Hull House an agency established in 1899 to facilitate the settlement and education of immigrants (Knight 2005).ⁱ Most of the professors at the Universities of Chicago and Illinois came from stable, rural American farms, towns and villages. By contrast the city of Chicago was under a constant process of change. The immigrants were disconnected from stable, rural European communities and thrust into urban, industrial labour markets where neighbourhood populations were dense, and the housing shabby and dilapidated. Park and Burgess (1925) observed that neighbourhoods were further disrupted by the arrival of the automobile, the circulation of sensationalist newspapers, and the spread of dance halls and saloons close to residential areas. Social disorganization and the demise of traditional mores were recurrent themes in Chicago sociology in the 1920a.

Two graduate students who came of age during this period, Clifford Shaw and Henry McKay, were recruited at the *Illinois Institute for Juvenile Research* to work on programs and policies aimed at tackling the city's delinquency problem. Clifford Shaw created and found the funding for the Chicago Area Project in 1932. The CAP continues to this day to

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

work with young people in Chicago's disadvantaged areas. Although neither Shaw nor Mackay completed his doctoral degree, their work with disadvantaged youth yielded many important contributions. The most important became a core contribution to the ecological aspect of the Chicago School – *Juvenile Delinquency and Urban Areas* (1931/1942). This work provided a detailed mapping of the locations of various social pathologies on Chicago's urban landscape, including delinquencies, murders, suicides and other crimes. The division of Chicago into distinct ecological zones was borrowed from Park and Burgess's earlier work, *The City*. Five zones were identified. At the core was the Central Business District with "The Loop", the turn-around point for Chicago's subway/train system. The next area on the periphery of the CBD was described as "the transitional zone". This had been the traditional settlement neighbourhoods for Chicago's immigrants and was characterized by deteriorated housing, abandoned buildings and some factories and commercial establishments. Further out there was the Working Class Zone of single-family tenements where first generation immigrant children settled. Further into the urban hinterland was the Residential Zone of single-family, middle-class homes with yards and garages. And beyond this was the more affluent Commuter Zone. (See Siegel et al 2013: 120.) Delinquency, poverty and welfare-dependency declined in direct relation to the distance from the city center to the periphery

One of the major questions that had preoccupied Shaw and Mackay was whether race and/or nationality were causes or determinants of crime. What their research suggested was otherwise. From 1884 to 1930 they were able to establish that the areas marked by inflated crime rates were the same. However, the makeup of the immigrant groups changed from decade to decade in these neighbourhoods of transition. Crime appears to have been associated with the slum conditions, not the groups moving through them. "As assimilation took place and the nationalities were dispersed to outlying areas of Chicago, their delinquency rates approximated to those of 'native Americans'. Thus, crime and delinquency were caused by the social conditions, not by racial and ethnic origins" (Snodgrass 1976: 5). However, this was NOT true of African Americans. The social structure did not appear to open up for them as they migrated from the southern former plantation communities to the urban north.

The explanation that Shaw and Mackay returned to repeatedly was one of "social disorganization". What this meant was that in the zone of transition, the existing forms of family and community controls became ineffective as the businesses and industries in the center of the city invaded the residential areas of the immigrants. "Shaw and McKay explicitly and repeatedly mentioned industrial invasion as a primary source of communal disorganization, although other sources, e.g. the influx of successive waves of highly mobile immigrant groups, were additional contributing factors, though not unrelated to business expansion" (Snodgrass 1976: 9-10). For Shaw and McKay, social disorganization appeared to attribute the problem to something within the communities themselves, i.e. culture conflict, gangs, interpersonal family conflict etc. They simultaneously acknowledged the intrusion of the CBD into residential areas. What their ecological approach failed to spell out explicitly was the link between the pockets of delinquency and their proximity to the core.

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

Jon Snodgrass (1976: 10) offers a more concrete explanation of the link: "Owners of land and property in the interstitial area retained ownership knowing that land values would go up and that eventually wealthy enterprises would pay handsome prices for the territory as more and more of it was required for expansion. They refrained from making new investments in construction and refused to make "wasteful" repairs on the property since the buildings would be demolished sooner or later to make way for the expansion. Land values remained high, but property rentals stayed comparatively low. Over time the areas deteriorated. Into these slums were drawn impoverished migrants and immigrants who struggled for an existence by performing the menial work in the central city, whose meager wages enriched the absentee landlords and whose children in large numbers became the "notorious" delinquents."

The owners of businesses in the CBD had a vested interest in holding onto properties on the periphery of the city core since urban expansion would prove highly profitable. These were virtually all rental properties and were not maintained since this would simply diminish the potential capital gains since renewal would require that the old buildings be torn down. The fact that the inhabitants of the transition zone in Chicago and other large urban areas like it were politically impotent and financially resourceless seems to have escaped the advocates of "disorganization theory". But again, why the link? Snodgrass emphasizes an exogenous factor – urban expansion. But this should not automatically make anyone criminal. Shaw and Mackay emphasize family failure or conflicts. But why should that be unique to such ecological zones? This is an issue we shall pick up later when we discuss the work of Sampson and Laub.

It is instructive to consider how Shaw and Mackay mobilized within the framework of the Chicago Area Project to tackle the problem of delinquency. The *Illinois Institute for Juvenile Research* already employed street workers to reach out to troubled youth. Shaw and Mackay's action-orientation was far more progressive than what had been found earlier in Park and Burgess's analysis of the Chicago slums. Park and Burgess wrote that "Our great cities, as those who have studied them have learned, are full of **junk**, much of it human, i.e., men and women who, for some reason or other, have fallen out of line in the march of industrial progress and have been scrapped by the industrial organization of which they were once a part. A recent study by Nels Anderson of what he calls "Hobohemia," an area in Chicago just outside the "Loop," that is to say, the downtown business area, which is almost wholly inhabited by homeless men, is a study of such a human **junk** heap. In fact, the slum areas that invariably grow up just on the edge of the business areas of great cities, areas of deteriorated houses, of poverty, vice, and crime, are areas of social **junk**" (*The City* 1925: 107).

Under Shaw's direction, the CAP became very committed to community organization and Shaw became very active in recruiting social leaders to participate in community committees to help advise and administer the CAP programs. He recruited members of disadvantaged groups, including serious delinquents, for participation in three specific programs. First, he created outreach athletic programs, and was able to organize several dozen teams of young males to play baseball. Second, he organized summer camps to get young people out of the city during the summer months, and started a program to improve

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

the parks near the zone of transition to provide a wholesome place for families to recreate. And finally, he worked with social workers and counselors to provide support and therapy for specific maladjusted individuals. Shaw was a great advocate of “self-help” principles that often put him in conflict with professional social workers. The CAP was also criticized for its tolerant attitude towards young persons who were known thieves and towards promiscuous young women. Shaw managed to create a number of part time jobs for area youth who assisted in the parks and recreation programs. Shaw and Mackay’s records suggested that police arrests of juveniles dropped dramatically in the areas where CAP was active throughout the 1930s and early ‘40s (Schlossman and Sedlak 1983: 456), although other areas also experienced declines without CAP interventions. Shaw did not have much success in making education a priority for the youth, nor engaging with the city’s political authorities, which put him in conflict with some of his more radical caseworkers, such as Saul Alinsky (Snodgrass 1976: 7; Schlossman and Sedlak 1983: 454). What Shaw was attempting to create in the impoverished areas of the city was the sort of social organization found elsewhere in the city, and to a small extent he succeeded. But one project could not compensate for the lack of financial and institutional structures that flourished beyond the zone of transition.

Fast-forward to the present, and what is the current picture regarding the Chicago slums? The dilapidated housing of the Great Depression has been torn down, and the poor have been housed in high-density housing projects. The Italians, the Irish, the Austrians, the Poles and the Russian Jews have all transitioned out of the slums, leaving behind the African Americans. The latter have become what William Julius Wilson (2012) has described as “the truly disadvantaged”. What happened? During the 1970s, businesses relocated high-paying manufacturing jobs to the suburbs and to satellite communities, leaving behind low paying service jobs. The tax base was consequently eroded, making it impossible to fund high quality schooling. The Black middle class moved to the suburbs, taking with them the expertise to operate community institutions and political structures. The international liberalization of trade further eroded the manufacturing strength of the state by shipping jobs overseas. Unemployment of African Americans has persistently been twice that of other Americans despite the swings in the economy. This has resulted in what Wilson describes as a permanent “underclass”. But there was another critical change. The so-called “war on drugs” has further marginalized the population of the housing projects, and has resulted in the criminalization of nearly 80% of African American males in Chicago. According to Michelle Alexander (2010), “these men are part of a growing undercaste -- not class, caste -- permanently relegated, by law, to a second-class status. They can be denied the right to vote, automatically excluded from juries, and legally discriminated against in employment, housing, access to education, and public benefits, much as their grandparents and great-grandparents were during the Jim Crow era”. As a result, crime control has contributed to the structural blockage that Merton originally identified with the class structure, and erected even higher barriers to the successful adaptation of those who are already most disadvantaged.

Strain versus Social Control

When Ruth Kornhauser (1978: 51ff) analyzed Shaw and Mackay’s explanation of delinquency in terms of social disorganization, she concluded that they adopted at times

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

two different and potentially inconsistent explanations of the mechanisms implicated by the concept. On the one hand, social disorganization was thought to produce strain or blockage that led the poor to construct (“innovate”) lives of crime as positive livelihoods, suggesting that prostitution, robbery, and protection rackets were viewed as acceptable career options, and that these became normal subcultural ideals that were transmitted across generations. On the other hand, social disorganization was viewed as the failure of communities to effectively control the behaviour of their citizens. In the absence of controls, according to this view, persons reverted to the Hobbesian natural state of egotistic self-gratification indifferent to the consequences for others. Kornhauser was a realist. She resisted the idea that crimes occur because there is a wholesale adoption of crime as a way of life, and that it gets transmitted cross-generationally, and that rape, murder and robbery are consistent with social survival. For her, it was the lack of money and effective institutions to control social behaviour that characterized “social disorganization”, and not the belief that crime is just another form of work.

However, there may have been subtle elements of both strain-leading-to-adaptation as well as control failures in Shaw and Mackay. Short (1969: xli) suggests that because delinquency was so much a part of everyday life, “as play more than problem-solving”, that Shaw and Mackay did *not* develop “the subcultural point of view” to explain the cultural transmission of delinquency. However, Solomon Kobrin (1951: 22) offered a more nuanced view. “Delinquency as a problem in the modern metropolis is principally a problem of the breakdown of the machinery of spontaneous social control”. This breakdown is a result of the cataclysmic rate of change faced by immigration from rural, peasant societies to high-density urban areas. He goes on to say “delinquency was seen as adaptive behavior on the part of the male children of rural migrants acting as members of adolescent peer groups in their efforts to find their way to meaningful and respectful adult roles.” Their parents could not offer much help in terms of social advancement and there were already numerous criminal models to imitate. Hence, for some, crime appears to have been “adaptive”, but this model falls short of occurring as a result of close schooling in crime by elders, i.e. cultural transmission. The point? The structural theory of social disorganization has elements of both subcultural theory and strain theory.

Contemporary strain theory owes its origins to Merton’s analysis of anomie. It’s main current advocate, Robert Agnew (2001), takes a more social psychological approach to “strain”. Agnew emphasizes “stress” more than Merton’s structural “gap”. “General strain theory (GST) argues that strains or stressors increase the likelihood of negative emotions like anger and frustration. These emotions create pressure for corrective action, and crime is one possible response...Crime may be a method for reducing strain (e.g., stealing the money you desire), seeking revenge, or alleviating negative emotions (e.g., through illicit drug use)” (2001: 319). Strain can be caused by the removal of a positive stimulus (loss of a lover), or the appearance of a negative stimulus (an insult), or the failure to be treated fairly, and/or with respect. Hence strains can be objective or subjective, and can vary depending on individual sensibilities or weaknesses, and how individuals evaluate a stimulus, and/or how they react emotionally or spontaneously to it.

Reactions can vary by gender. According to Agnew (2001: 322) “males and females often

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

differ in their emotional reaction to subjective strains. Although both males and females may experience anger, the anger of females is more likely to be accompanied by feelings of guilt, depression, and anxiety. These additional emotions are said to reduce the likelihood of other-directed crime, thereby helping us explain gender differences in such crime”.

What sorts of events actually result in the kind of strain that can result in delinquency? There have been an impressive number of (self-report) tests particularly among university students that throw light on this question. Agnew (2001: 324) mentions negative life events, life hassles, negative relations with adults, and parental fighting. These are significantly associated with delinquency. On the contrary, neighborhood problems, unpopularity with the opposite sex, occupational strain, and “clothing strain” do not appear to be associated with delinquency. Others have found that neighborhood problems, negative life events, school/peer hassles, and negative relations with adults are significantly associated with subsequent delinquency. Family and peer conflict (through anger) are related to some types of delinquency. Poor relations with peers *can* be related to delinquency, but unpopularity with peers may not be. Physical and emotional abuse in the household (toward the juvenile and others) is related to delinquency but tests of classic strain theory typically find that the failure to achieve educational goals is not. And, consistent with Merton’s gap theory, the failure to achieve economic goals, however, may be related to delinquency. His empirical tests are frequently inconsistent.

Agnew argues that strains are more likely to result in crime under certain conditions. He identifies four:

- first, when the stress arises from a situation that is viewed as unjust or unfair;
- second, when the strain is substantial;
- third when the strain is associated with low self-control; and
- fourth, when the strain creates an incentive to misbehave or cope.

In the previous unit (5) we briefly reviewed some general theories, including the work of Hirschi (1969) and Gottfredson and Hirschi (1990), which are control theories based on an analysis of social bonds. Hirschi had identified 4 elements in his control theory that included:

- *attachment* to family (emotional bonds to and respect for parents),
- *involvement* in normative activities (school, organized sports, music),
- *commitment* to normative goals (education, employment, success),
- as well as subscription to normative *beliefs* (respect for police and the law).

In his large-scale study of adolescents in the Richmond Youth Project, Hirschi found that these 4 factors were negatively correlated with self-reported misconduct as well as with official delinquency records. In their later work, Gottfredson and Hirschi noted that the process of socialization that resulted in the effective acquisition of these bonds results in a stable pattern of self-control that tends to persist over the life-course. So what is the problem when Agnew emphasizes low self-control? Two points will suffice here. First, imagine that you are trying to determine which theory better predicts crime – strain or control? You administer a questionnaire to a suitable sample of young persons (for

example) and determine their self-reported levels of delinquency as well as their relationship to parents (among other things). If young persons have “negative relationships” with their parents and other adult figures, is this “strain” or “low attachment”? What is the difference? It turns out that questions that ask about child-parent conflicts are highly predictive of delinquency. But conflicts are simply another way of talking about problems in the attachment process. Same phenomena, different language.

Second, when Agnew studies the relationship between delinquency and *low self-control*, he is importing into his equations the main explanatory variable that characterizes self-control theory (Gottfredson and Hirschi 1990). Self-control is the main buffer against delinquency. When he asks about self-control *and* poor attachments to parents, he is importing *two* key features of control theory. This overlap in the way strain and control theories are tested frequently makes it difficult to distinguish the relative explanatory power of these two theories. Nonetheless, they are quite different in terms of their assumptions. Control theory takes the classical view of crime and simply assumes that people have natural appetites (pleasure) which they pursue subject to natural, moral, informal and criminal justice sanctions (pain). There is no cultural transmission of arbitrary definitions of what constitute crime. Strain theory assumes that the individual aspirations are “institutional goals”, and that the “structure” blocks their attainment. The imputation of subcultural support for crime in Shaw and Mackay is ambiguous (although Siegel et al 2013 embrace it uncritically). Merton never postulated any role for family bonds or stable, individual characteristics such as self-control. When Agnew re-invented strain theory as psychological stress, he crossed into territory that was already fairly well comprehended by control theorists who have tended to operate more at the level of individuals and families. Having recognized this ambiguity in the “boundary” between strain and control theories, the consensus of opinion in contemporary criminology is that theories based on self-control which are typically empirical tests of Gottfredson and Hirschi are strongly supportive of that perspective. Pratt and Cullen (2000: 931) write: “To determine the empirical status of Gottfredson and Hirschi’s (1990) “general theory of crime,” we conducted a meta-analysis on existing empirical studies. The results indicate that, regardless of measurement differences, low-self control is an important predictor of crime and ‘analogous behaviors.’ Also, low self-control has a general effect across different types of samples.” A meta-analysis amalgamates the conclusions from all existing comparable studies. In this case, it was based on 21 studies based on over 49,000 individual respondents. Delinquency was related to low self-control, whether this was measured behaviorally (i.e. persons too lazy to wear a seat belt) or attitudinally (i.e. “I often act impulsively”). There is no comparable meta-analysis of strain theory.

The Generality of Deviance: Self-Control in Hirschi, Mischel and Elias

We have alluded to control theories at various points in this unit. In this section we describe the theory more formally. In *The Generality of Deviance*, Hirschi and Gottfredson (1994) indicate the crimes are a subset of acts in which the actor ignores the long-term consequences of his or her behaviour in favour of immediate gratification. The drug user ignores the health risks of substance abuse, the adulterer ignores that spousal reaction to infidelity, and the thief ignores the penalty for theft. The immediate benefits are obvious to

the actor, and no special skill or learning is typically required. “The property of individuals that explains variation in the likelihood of engaging in such acts we call “self-control”” (1994: 2). Variations in self-control are established relatively early in life and remain reasonably constant over the life course. This theory suggests that people without self-control will engage in a wide variety of criminal and analogous acts (smoking, reckless driving etc.), that they will not specialize in some acts to the exclusion of others, and that they will not escalate into more serious or skillful criminal behaviour over time. The stability of differences between those with and those without self-control and the versatility of offences are derived from the fact that “all such acts follow a predictable path over the life course, peaking in the middle to late teens, and then declining steadily throughout life” (ibid).

This theory is consistent with a large literature that establishes a link between family dysfunctions and juvenile delinquency, the importance of opportunities in crime causation and the observations of sharp declines in crimes and analogous behaviours with age. It is inconsistent with the idea of a criminal career based on well-planned and sophisticated crimes escalating over time. It is inconsistent with the idea of highly profitable and long-term organized crime. It is inconsistent with the idea that the causes of juvenile crimes are different from the causes of adult crimes. Or that crime is a learned behaviour transmitted from one subculture to new recruits.

While Hirschi and Gottfredson were working on criminological evidence for self-control, a psychologist, Walter Mischel, was following up on his study of delayed gratification among a group of kindergarten children aged 4-5. In the famous “marshmallow test” Mischel issued a challenge to individual children: they could receive a marshmallow and could eat it right away, or they could get two marshmallows if they waited while the experimenter left the room and returned 15 minutes later. Over 600 children were put through the exercise, and filmed. This was in the late 1960s at the Bing Nursery School at Stanford University. The films revealed a host of strategies among the delayers to manage the temptation in order to delay gratification for the greater reward. Many looked away, turned their backs to the marshmallow, wrung their hands together etc. Others showed no self-restraint at all, rang the bell, summoned the tester and ate the marshmallow. Mischel was interested in personality differences, and did not initially appreciate the significance of his discovery. His own daughters had participated in the test, and knew many of the other children. When Mischel asked the daughters in later years how things had turned out for the other children, he discovered that the hi-delayers had rather different career trajectories compared to the low delayer children. “Starting in 1981, Mischel sent out a questionnaire to all the reachable parents, teachers, and academic advisers of the six hundred and fifty-three subjects who had participated in the marshmallow task, who were by then in high school. He asked about every trait he could think of, from their capacity to plan and think ahead to their ability to “cope well with problems” and get along with their peers. He also requested their S.A.T. scores” (Lehrer 2009: 2). Mischel discovered that the low delayers had had more behavioural problems at home and at school. They also had trouble paying attention, trouble coping in stressful situations and making friends. The hi-delayers had S.A.T. scores that were 210 points higher on average than the low-delayers. Subsequent follow-ups revealed that the low delayers had a significantly higher average body mass index, and

were more likely to report having had problems with drugs. Using MRI scanners, Mischel (2014) has subsequently been examining the neurological substructures that develop in the brains of persons who learn self-control (Mischel 2014). While self-control is relatively stable, it is not innate, and it can be learned.

This is consistent with the views of Norbert Elias. The work of Elias was mentioned in Unit 4 in the context of the historical declines in violence in Europe from the fourteenth century to the present. Elias argued that over this period there was a dramatic increase in self-regulation, and a suppression of emotional spontaneity in public life. One of the instruments to which he pointed in bringing about such change was the enormous investment in the instruction of behavioural decorum and etiquette in children and youth. The general level of self-control adopted by communities became second-nature (“habitus”), and self-restraint became increasingly adopted as the normative course of action in civil society. However, this does not guarantee that it is effectively established the same way in every circumstance. Mischel detects significant variability as early as ages 4-5 which persist into adulthood, and which cover the “generality” of outcomes that Hirschi and Gottfredson identify—troublesome interpersonal relationships, poor academic performance, drug use, etc. This convergence suggests that this is a very core concept in understanding criminal behaviour.

How do we explain the link between the larger society, and the emergence of interpersonal circumstances that, in turn, control the emergence of delinquency? Sampson and Laub tackled that question.

Linking Structure and Process: Social Capital Theory and Informal Social Control

The most important response to Gottfredson and Hirschi’s *General Theory of Crime* was a book by two of their students, Rob Sampson and John Laub, *Crime in the Making* (1993). The book was based on a re-analysis of the famous Glueck and Glueck longitudinal study of delinquent boys in Boston. Beginning in 1939 the Gluecks began to identify white boys convicted of crime in the juvenile court in Boston and sent to correctional schools. The boys ranged in age from 10 to 17. The average age was 14. They selected 500 cases and matched each delinquent boy with 500 non-delinquent boys from the same neighbourhood, the same ethnicity, and the same level of intelligence. They collected information about all delinquent activities, family life, school performance, church attendance, participation in sports and other leisure activities. In fact they collected information not only from official records from the courts but also from extensive interviews with the boys, their parents, teachers, local police, parole officers, correctional workers, social workers as well as recreational leaders. They collected up to 2,500 variables on each boy. They also followed the boys, delinquents and controls, into their adult lives, and analyzed their criminal activities in three periods of life: birth to age 17, 17 to 25, and 25 to 32. Some of the boys were followed to age 45. Needless to say the Gluecks collected a mountain of information during the study that was initially published in 1950 in their classic book, *Unraveling Juvenile Delinquency*. They also published several other books into the late 1960s as the longitudinal data came in. However, their work never attracted a lot of attention within sociology. It tended to be descriptive and atheoretical. The Gluecks were also interested in

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

biological correlates of delinquency, something that had gone out of fashion in criminology since the time of Goring. Their studies were also quite unsophisticated statistically, and consisted largely of bivariate analyses of delinquency and other factors (delinquency and assertiveness, delinquency and church attendance, delinquency and reading performance etc.). Fortunately, the entire data collection was archived at the Law School at Harvard where Sheldon Glueck had worked as a professor.

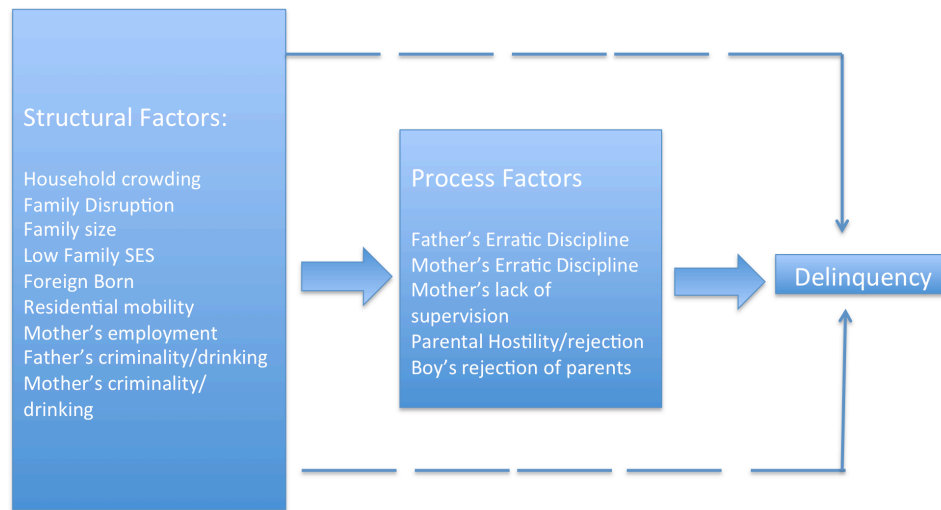
Sampson and Laub re-analyzed the data with the intention of shedding light on the debates that had emerged in criminology following the publication of Gottfredson and Hirschi's *General Theory of Crime*. The *GTC* created the impression that all one needed to investigate in explaining crime was the level of self-control since this was assumed to be stable over the life course. Sampson and Laub advanced an alternative theory. Without denying that there is a tendency for persons to experience inertia in their life course, there must be room for individual change as well as influence from salient life transitions as the offenders get older. They pioneered what has become known as the life course perspective. They advanced their theory based on informal social control and social capital. Informal social control is based on the idea that persons are more governed by the opinions and advice from persons they know personally, and less by formal court sanctions. These sources of control are age-graded. Children are responsive to the institutions of the family and school, parents and teachers. As they grow up, they are responsive to educational institutions, and places of occupational training, and as adults they move into the spheres of employment. The idea of social capital is that people engage in roles in which they draw on the social and psychological resources of others as they move through life transitions and trajectories. These tend to be reciprocal. If financial capital is folding money, and human capital is *what* you know (education), social capital is *who* you know. Social capital may be as important as money in achieving success and social advancement. Sampson and Laub predicted that in spite of a serious record of delinquency in childhood and adolescence, persons with social attachments in later life would have a tendency to desist from crime because of the social ties that they are negotiating throughout the life course.

The other major prediction that they investigated was that structural factors would prove important for causing delinquency, but only indirectly (see the broken lines below). This addresses the question of the mechanism behind "disorganization" raised in the work of Shaw and Mackay. Social structural deficits cause delinquency by undermining the formation of strong social bonds in the home, and the development of high self-control (Hardwick and Brannigan 2008). The failure of effective family life is the direct cause of delinquency (see the large arrows). This approach recognized the role of both Mertonian structural factors AND family factors employed by control theory.

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

Structure and Process in Delinquency Causation



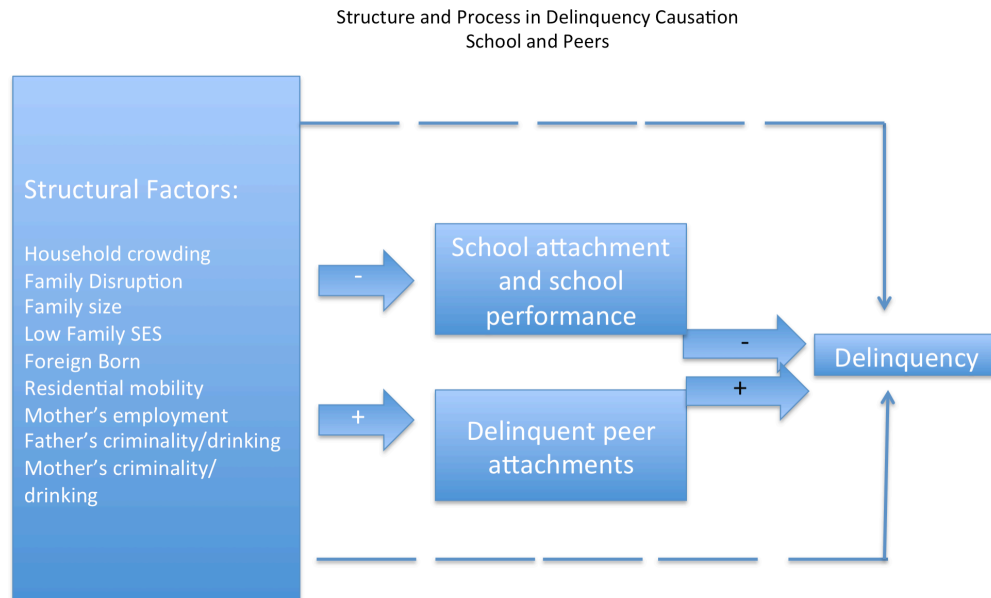
How was structure measured? It consisted of counting the number of siblings in each boy's household to get a measure of crowding, as well as family size. Their assumption was that large crowded households do not have the same capacity to supervise and socialize children as smaller families. Family disruption was measured by divorce and/or desertion by a parent, and was taken as an indication of family-level conflict. The family socio-economic status (SES) was an estimate of the parental education and family income. If either parent was an immigrant, the family was classified as "foreign born". Residential mobility was the number of times in which the boy had moved during childhood. The average was 6.75 moves, a chilling indirect measure of the instability of these families. Mother's employment was viewed as a deficit since in the period in which the study was undertaken, it was normative for married women to remain at home to care for children. The other two measures tapped into whether parents themselves had criminal records and/or had habits of drunkenness. These factors have consequences for delinquency, not as direct effects, but by undermining the process variables.

The process variables dealt with various family dynamics: whether the parents engaged in erratic, harsh and/or threatening discipline (the sort of discipline that borders on abuse), the amount of active supervision undertaken by the mother and the negative parental attitude to the boy or the boy's emotional rejection of the parents. These provide good measures of what control theories define as attachment. These five factors "absorb" the deficits of the social structure and directly contribute to delinquency. Delinquency was measured by whether the boy had an official record, and a count of total delinquent acts (which ranged from 1 up to 26 offences). What they found was that (1) when they test for the effects of structure on delinquency, the statistical models show a significant relationship. But (2) when they add the family process variables, the structural variables tend to become non-significant, and all the individual process variables show strong correlations. The logical inference is that structure works indirectly through the family processes. For example, large family size, divorce or desertion and low SES create poor intergenerational attachments and poor supervision, and these are a direct cause of delinquency.

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

Sampson and Laub also examined the contribution of school and delinquent peer attachment. Again the structural factors tended to lower the boys' attachment to school, and their teachers, as well as their school grades; and tended to increase the likelihood that the boys would have close friends who were also delinquents. The school process variables decreased the delinquency score while the delinquent peers increased delinquency. Again,



the effects of the structure tended to disappear when the relationship was tested together with the process variables, suggesting that the structure works indirectly through the school and peer processes.

Sampson and Laub then examined the record of delinquency at different points in adult life. Basically what they discovered was that the prior record of juvenile delinquency was positively correlated with patterns of adult crime (evidence of stability), but that measures of attachment to spouses and to employers tended to reduce patterns of adult crime, consistent with the social capital theory. So there is some measure of both stability *and* change in adult careers of crime. One unexpected finding was that the pattern was the same for both the original delinquents *and* the controls. Not all the controls were angels. Many acquired juvenile records after they joined the study. But in the absence of spousal and/or employer attachments, even they became prone to crime as adults.

The criminal career paradigm

The focus on the life course raises an important methodological issue in criminology. In the analysis of criminal events is it necessary that they be investigated as part of the individual's overall career? This is the position of those who advocate the criminal career paradigm. This is not the same thing as focusing on career criminals, i.e. those persons who are thought to live exclusively on the proceeds of crime. This perspective is motivated by a

concern for the role of crime in the lives of “persistent criminals” such as those studied by Glueck and Glueck (1950) in the famous Boston study. In their study, the delinquent boys had an average of over 8 convictions (Sampson and Laub 1993: 72). In Wolfgang’s famous study of some 10,000 Philadelphia males born in 1945, and followed to the age of 18, about one third had been arrested and convicted of at least one crime. But one-sixth of the delinquents were responsible for about half of all the crimes recorded in the study (10,214 crimes), and were designated as “chronic offenders” (Wolfgang, Figlio and Sellin 1972). That is over 9 offences each. In the Cambridge Study in Delinquent Development, West and Farrington (1977) followed the careers of 411 boys from age eight to the age of thirty-two and documented the existence of chronic, persistent offenders who engaged in a diversity of misconduct throughout their careers. Lyle Shannon (1981) investigated several birth cohorts born in Racine, Wisconsin in 1942, 1949 and 1955, and followed them through to their 18th birthdays. He found that about 5% in each of the cohorts was responsible for 80% of all the felonies associated with those cohorts, again suggesting the existence of a subpopulation of chronic offenders.

Although the main contemporary proponent of the criminal career paradigm is Alfred Blumstein (Blumstein, Cohen and Farrington 1988), the concept has been familiar in criminology for decades. Clifford Shaw published *The Natural History of a Delinquent Career* in 1931. This was the life history of a single individual who had a string of infractions starting at the age of eight and leading up to his incarceration for rape and robbery at age 16. In his life course approach, Shaw (1931: 8) advocated “the need for taking into consideration the whole process of behavior of the offender in our efforts to understand his specific offences. From this standpoint, delinquency is viewed, not as an isolated act, but in its relation to the mental and physical condition of the offender, the whole sequence of events in his life, and his social and cultural situations in which his delinquent behavior occurred.” According to Shaw, unless the delinquency was viewed in relation to the whole life history of the individual, it could not be understood nor treated effectively. This book was based on a single case. Shaw’s *Brothers in Crime* (1938) was based on the life histories of five brothers. Using quantitative methods, Sheldon and Eleanor Glueck published *500 Criminal Careers* (1930), followed by *Later Criminal Careers* (1937) and *Criminal Careers in Retrospect* (1943). They also believed that comprehension of the trajectory of the life course was essential to understanding what contributed to crime, and what leads to its cessation. This is the same perspective advocated by Blumstein and contemporary advocates of longitudinal research designs.

The concept of *criminal careers* highlights specific questions. What conditions lead to the *onset* of crime? What contributes to the individual’s *level* of activity. Blumstein specifically advocated that we should calculate not just the *prevalence* of offending (did the individual break the law or not), nor the *incidence* of offending (how many crimes per year) but the “*lambda*” or total number of crimes in the criminal’s career, since this is thought to differentiate between individual offenders. In addition, the focus on career emphasizes the conditions that *escalate* crime, and/or lead to *specialization*, and conditions associated with *desistance* or de-escalation in crime, and what role, if any, the justice system played in the termination of criminal careers.

Britta Kyvsgaard (2003: 4) writes that while recent research usually emphasizes that the term “career” is not synonymous with livelihood or profession.

“Some conceptual characteristics of criminal career research correspond to aspects of occupational careers. For example, criminal career research examines whether specialization occurs, that is, a tendency to repeat the same type of crime, and suggests that skills necessary to commit more refined and successful offences will develop through repetition. Here is an obvious parallel to ordinary occupational careers. A similar parallel is found in changes in crime seriousness over time. Escalation in the criminal career corresponds to advancement in an occupational career: One climbs in rank or in seriousness. The analogy between occupational careers and criminal careers is probably unavoidable since both concern the development of skills and techniques, and abide by the fundamental assumption that ‘practice makes perfect.’”

One of the problems with investigations of criminal careers is that they take a lot of time and money. Glueck and Glueck started their study of Boston delinquents in 1939, and published their longitudinal results almost 30 years later. *And* they started their research with boys who were *already* identified as delinquent. Prospective studies are even more problematic since they begin with a specific cohort without knowing how many people born in any one year will eventually be of interest because they break the law. Other longitudinal studies such as Wolfgang et al are retrospective. They start with a birth cohort from the past and investigate two decades of administrative records from the courts and juvenile facilities to determine who got into trouble, for what and at what date. But this is a long way from understanding any specific offence in relationship to the overall trajectory of the career, as Shaw advocated. Also, if we imagine the process of following a large number of persons over a long period of time, it is not as though the data collection is like a movie where we can observe crime and the events immediately before and after it occurred. Typically, we would contact our subjects every year or two, to determine whether they had broken the law, how often, for what offences etc. And, like the Gluecks, we might validate this through a search of official records. We would also ask questions about family attachments, school performance, peer delinquency – and every other thing we thought might be associated with crime. However, it is typically impossible to put these events in a sequence except to say that both things happened during the same 12-month or 24 month measurement period. This is precisely what a one-time cross-sectional snapshot provides. Neither solves the problem of temporal sequence that is necessary, at least ideally, to determine causal ordering. So the longitudinal approach is not inherently superior to cross-sectional studies.

Another approach was advocated by Britta Kyvsgaard (2003) in a longitudinal study of career criminals in Denmark. Like other Scandinavian countries, Denmark has a centralized person registry that catalogues census-type information for every individual in the country and which has been in operation for decades. These were the sorts of data that permitted Mednick to examine the relationship between adoption and crime mentioned in Unit 5. Kyvsgaard used the Danish Crime Register, which was computerized in 1979, to examine the career characteristics of some 45,000 persons convicted of crimes in Denmark. What

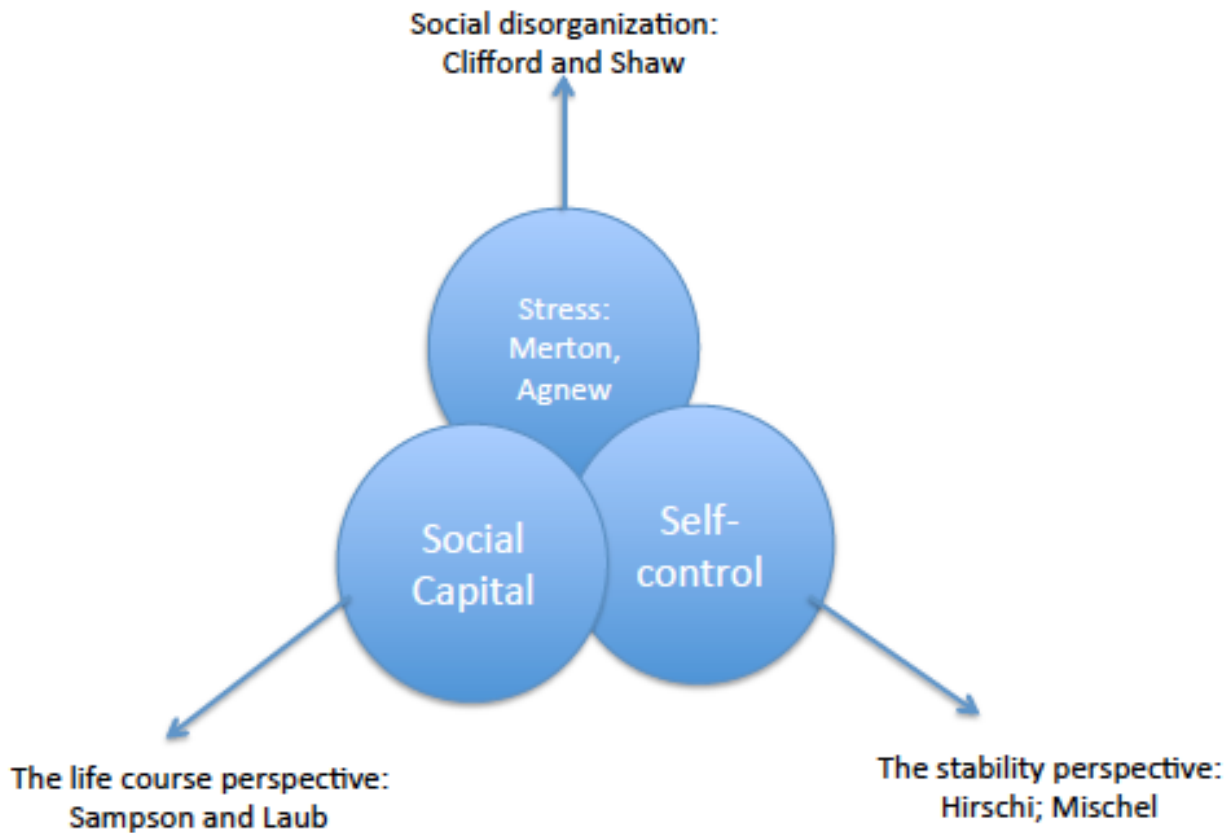
did Kyvsgaard discover? In Kyvsgaard's data, the duration of most offenders was 0 since the vast majority of offenders were only registered for one offence (2003: 234). In 95% of the cases, the "lambda" statistics did not exceed 1. Hence for the vast majority of the cases that come to the attention of the criminal justice system, the term "criminal career" is irrelevant since the crimes are minor and transitory – shoplifting and traffic offences. Hence criminal justice policies of deterrence, rehabilitation and/or incapacitation are irrelevant since the vast majority of Denmark's "criminals" are not incarcerated and most only experience a small fine. Only one out of every fifty offenders has a long-term criminal trajectory suitable for longitudinal analysis. And even these cases tend to describe processes of de-escalation, rather than inverted u-shaped patterns of crime over time and age, i.e. increases followed by desistance as implied by the "career" metaphor. One of the most important findings is that 75% of all crime is committed by recidivists, and that recidivists tend to commit more serious crimes than one-crime offenders. Older offenders who tend to be hi-rate show a decline in frequency of crime that is probably influenced by incarceration.

The study replicates the well established picture of crime discovered elsewhere. Those who start early commit many more crimes than those characterized by late onset. However, this is an effect of age-related differences in frequency. If offenders start early in life, they are at the age in which crime occurs at a high frequency associated with age. "Crime frequency at any given age is more strongly related to the current age of the offender than to age at onset" (Kyvsgaard 2003: 239). Other findings: crime is higher among those who are unemployed. There is a clear difference between Moffitt's "adolescent-limited" and "life-course persistent offenders". Incapacitation reduces crime. But, according to Kyvsgaard, we need to invest more in rehabilitation. None of these "discoveries" actually produces new knowledge, and none established that longitudinal research is required to arrive at these conclusions. The one positive aspect of Kyvsgaard's work is that it did not take decades to complete, thanks to the citizen registry system in Denmark. But it does represent a sobering evaluation of how criminologists ought to conduct their research.

Overview

In this unit we have examined the major structural theories of crime: Merton's anomie, Shaw and Mackay's social disorganization, Agnew's strain theory and Hirschi's control theory (and its variants). We did not emphasize "cultural transmission theory" (contrary to Siegel et al 2013) since it is not an idea that enjoys a lot of empirical support. We shall discuss it in the context of "relativistic theories" in the next unit. We have also reviewed the life course approach with longitudinal data and the concept of criminal careers. Neither makes sense unless the focus is on the small subpopulation of offenders who chronically break the law. The evidence from self-control theories argues strongly for significant and stable individual differences in the propensity to commit or desist from crime, and that these differences change over the life cycle due to aging, social capital effects and changing opportunities.

Realism and Social Structural Theories : what causes crime



End notes

In what follows there is a list of

- Key concepts with which the students should be familiar
- Links to information
- Required Readings
- Practice questions
- References
- Final endnote

Key concepts, facts and issues with which students should be familiar:

- Attachment and regulation in Durkheim's study of suicide
- Durkheim's suicide typology: egoism, altruism, anomie and fatalism
- Merton's definition of anomie: the gap between goals and means
- Merton's typology: conformists, innovators, ritualists, retreatists and rebels
- Delinquency and Opportunity (Cloward and Ohlin)
- The Chicago School and urban sociology

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

- The ecology of crime and social disorganization
- Shaw and Mackay, *Juvenile Delinquency and Urban Areas*
- Chicago's 5 zones of land use
- Shaw's Chicago Area Project: athletic program, summer camps, individual therapy
- "the truly disadvantaged" William Julius Wilson (2012)
- the "underclass" (Wilson 2012) and the "undercaste" Alexander (2010)
- strain and subcultural transmission theory
- General Strain Theory (GST) and psychological stress in the work of Agnew
- Hirschi's theory of control through social bonds: attachment, involvement, commitment and belief
- Crime and "analogous acts" in Hirschi and Gottfredson (1994)
- Mischel's "marshmallow test" and the consequences of low self control
- Self-restraint in the work of Norbert Elias
- Glueck and Glueck's Boston study of delinquency: *Unraveling Juvenile Delinquency* (1950)
- Sampson and Laub's focus on informal social control and social capital
- Financial, human and social capital: what is the difference?
- Structure versus process in Sampson and Laub's *Crime in the Making* (1993)
- The criminal career concept
- Evidence of "chronic offenders"
- Measuring crime in terms of prevalence, incidence and lambda
- Issues of onset, escalation, specialization and desistance
- Kyvsgaard's evidence of criminal careers in the Danish register crime data

Links to Information

Michelle Alexander on the New Jim Crow laws in the US in relation to contemporary Chicago and poverty: <http://www.huffingtonpost.com/michelle-alexander/the-new-jim-crow-how-the-b-490386.html>. Retrieved 1 October 2014.

Jonah Lehrer "Don't: The secret of self-control, *The New Yorker* May 18, 2009
<http://www.newyorker.com/magazine/2009/05/18/dont-2>

Required Readings for Unit Six

1. Siegel, Brown and Hoffman (2013) Chapter 6: "Social Structure Theories" (pp. 112-133) in *CRIM*, Toronto: Nelson Educational, Second Edition.
2. Siegel, Brown and Hoffman (2013) Chapter 7: "Social Structure Theories" (pp. 135-155) in *CRIM*, Toronto: Nelson Educational, Second Edition.

Practice questions

1. What are the major perspectives that have been identified in this unit under the concept of realist approaches to the explanation of crime? What makes them realist?

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

Who are the major proponents? How do these theories explain crime, and how do they differ from one another?

2. What is the difference between informal social control theory and self-control theory? Who are the major proponents and what are the mechanisms that each perspective emphasizes to explain crime?
3. What were the major contributions of the “Chicago School” to the understanding the origins of crime? Who were the major contributors? And what did they discover? What relevance, if any, does this have for understanding the rise of an underclass in impoverished urban areas, particularly in cities such as contemporary Chicago?
4. In measuring crime, what is the difference between prevalence, incidence and lambda?
5. What are the elements of the bond theory in the work of Travis Hirschi, and how do they influence the development of crime?

References

Agnew, Robert (2001) “Building on the Foundation of General Strain Theory: Specifying the Types of Strain Most Likely to Lead to Crime and Delinquency,” *Journal of Research in Crime and Delinquency* 38 (4): 319-361.

Alexander, Michelle (2010) *The New Jim Crow: Mass incarceration in the age of colorblindness*, New York: The New Press. Also see http://www.huffingtonpost.com/michelle-alexander/the-new-jim-crow-how-the-b_490386.html

Blumstein, Alfred, Jacqueline Cohen and David Farrington (1988) “Criminal Career Research: Its Value for Criminology,” *Criminology* 26: 1-36.

Durkheim, Emile (1997) *Division of Labour in Society*, Translated by W.D. Halls and introduction by Lewis Coser. First published in 1893. New York: Free Press.

Durkheim, Emile (1997) *Suicide: A Study in Sociology*, translated by Jonathan A. Spaulding, edited by George Simpson. First published in 1897. New York: Free Press.

Glueck, Sheldon and Eleanor T. Glueck (1930) *500 Criminal Careers*, New York: Alfred A. Knopf.

Glueck, Sheldon and Eleanor T. Glueck (1934) *Later Criminal Careers*, New York: The Commonwealth Fund.

Glueck, Sheldon and Eleanor T. Glueck (1943) *Criminal Careers in Retrospect*, New York: The Commonwealth Fund.

Glueck, Sheldon and Eleanor Glueck (1950) *Unraveling Juvenile Delinquency*, New York: The Commonwealth Fund.

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

- Kelly Hardwick and Augustine Brannigan (2008) "Self-Control, Child Effects, and Informal Social Control: A Direct Test of the Primacy of Sociogenic Factors," *Canadian Journal of Criminology and Corrections* (50) 1: 1-30.
- Knight, Louise W. (2005). *Citizen: Jane Addams and the Struggle for Democracy*. Chicago, IL: University of Chicago Press.
- Kobrin, Solomon (1951) "The Conflict of Values in Delinquency Areas", *American Sociological Review*, October, pp. 651-61.
- Kornhauser, Ruth (1978) *The Social Sources of Delinquency*, Chicago: University of Chicago Press.
- Kyvsgaard, Britta (2003) *The Criminal Career: The Danish Longitudinal Study*, Cambridge: Cambridge University Press.
- Merton, Robert K. (1938) "Social Structure and Anomie", *American Sociological Review* 3 (5): 672-82.
- Mischel, Walter (2014) *The Marshmallow Test: Mastering Self-Control*, New York: Little, Brown and Company.
- Pratt, Travis and Francis Cullen (2000) "The Empirical Status of Gottfredson and Hirschi's General Theory of Crime: A Meta-Analysis," *Criminology* 38 (3) 931-64.
- Sampson, Robert and John Laub (1993) *Crime in the Making: Pathways and Turning Points through Life*, Cambridge MA: Harvard University Press.
- Schlossman, Steven and Michael Sedlak (1983) "The Chicago Area Project Revisited", *Crime and Delinquency* 29: 398-462.
- Shannon, Lyle (1981) *Assessing the Relationship of Adult Criminal Careers to Juvenile Careers*, Washington DC: National Institute of Juvenile Justice and Crime Prevention.
- Shaw, Clifford R. (1931) *The Natural History of a Criminal Career*, Chicago: University of Chicago Press.
- Shaw, Clifford R. (1938) *Brothers in Crime*, Chicago: University of Chicago Press.
- Shaw, Clifford R. and Henry D. McKay (1942). *Juvenile Delinquency and Urban Areas*, Chicago: University of Chicago Press. Revised in 1969. Based on an earlier 1931 study published by the USGPO, *Social Factors in Juvenile Delinquency*.
- Short, James F. (1969) "Preface to the Revised Edition" pp. xxii-liv in *Juvenile Delinquency and Urban Areas* [Shaw and Mackay], Chicago: University of Chicago Press.

Unit 6. Realist Theories: Crime and Social Structure

File: 6. 305 - Final Unit 6.docx 10,874 wds

Siegel Larry, Gregory Brown and Ron Hoffman (2013) *CRIM*, 2/e Toronto: Nelson.

West, Donald and David Farrington (1977) *The Delinquent Way of Life*, London: Heinemann.

Wolfgang, Marvin, Robert Figlio and Thorsten Sellin (1972) *Delinquency in a Birth Cohort*, Chicago: University of Chicago Press.

Wilson, James Julius (2012) *The Truly Disadvantaged: The inner city, the underclass and public policy*, 2/e Chicago: University of Chicago Press.

ⁱ Jane Addams (1860-1935) also won the Nobel Peace Prize in 1931 for her pacifism and opposition to The Great War. She is also credited with the creation of the profession of social work as a result of her work with immigrants, delinquents and prostitutes.

Let's get surreal: How crimes get labeled

This unit explores a number of perspectives that are premised on the idea that what counts as crime is inherently arbitrary. For some, crime is simply a learned behaviour. In any generation, so the story goes, some kids are socialized to be lawyers or priests, and others are socialized to be robbers or thieves. In this view, crime is a construct of unique cultures, and cultures are differentiated or distinguished in how certain sections of the community arrive at their definitions of right and wrong. This implies that crime is transmitted across generations by sub-cultural differences. Alternatively, the definition of crime can vary by what group one associates with, or which class one grows up in. In the 1938 Hollywood movie, *Angels with Dirty Faces*, James Cagney played the role of Rocky Sullivan, a high-level offending, "career criminal". Pat O'Brien played the role of Jerry Connelly, a person from the same part of town who became the parish priest where they both grew up. When young, the two were close friends and sometimes committed petty crime together, but, as they aged, each gravitated to completely opposite lifestyles. Each acquired a different model of acceptable behaviour based on their social influences. They were all angels, including the Dead End Kids depicted in the movie, since there was nothing inherently different in the kids. Just a matter of learning.¹

How credible is this assumption? For criminological realists, nothing could be further from the truth. But let's examine a couple of cases that appear to lend credence to this relativistic perspective. As we have noted in earlier units, most crimes appear to be simple acts committed without much preparation or skill, and yielding little by way of long-term advantage, particularly material advantage. Recall Kyvsgaard's Danish study that reported that virtually all those who names appeared in the crime registry appeared just once, and for quite minor offences.

But this is not the whole story. Crime pays. Sometimes it pays a lot. Here are some illustrations. On July 28 2013, a lone robber entered the lobby of the Carlton Cannes Hotel on the French Riviera where the Leviev diamonds company had a display of jewels. This was the most glamorous hotel in town, and one of the most impressive displays of jewellery to the well-healed clientele of Cannes. "There, cool as ice, his face concealed by a motorcycle helmet, [the thief] threatened hotel staff with a automatic pistol before swiping a pile of diamonds and other gems from an exhibition in the lobby . . . Right under the noses of hotel security guards, the masked crook shovelled the jewels into a brief case and then calmly strolled off" (Mount 2013). The heist took thirty seconds. The loot was valued at £88,000,000. It was the latest in a string of robberies dating back to 1992.¹ The perpetrators have been labeled as "the Pink Panther jewel thieves" in reference to Peter Seller's portrayal of Inspector Clouseau in the Pink Panther movies. Other crimes attributed to the Pink Panthers in chronological order include:

- theft of £39,000,000 from the jewellery store in the Carlton Cannes Hotel in 1994 by three machine gun-armed masked bandits

¹ £ = British pound sterling which was worth from \$1.50CAN to \$2.00CAN in the past 2 decades in the following reports.

Unit 7. Relativistic Theories: Crime and Cultural Transmission Theories

File: 7. 305 – Final Unit 7.docx 12,950 wds

- theft of a £500,000 blue diamond ring from Graff's Jewellers in England in 2002
- in May 2005 Graff's Jewellers was hit a second time with a loss of £1,000,000 in gems
- In 2005 the gang robbed a jewellery store in St. Tropez, France wearing face masks and Hawaiian shirts, and escaped by speedboat. Losses were not published.
- In 2007 three gang members robbed a Japanese jeweller of £15,000,000, including the Comtesse de Vendome necklace with its 116 diamonds and 125 carat diamond centerpiece
- in 2007 in the Ginza district of Tokyo the gang dressed in trim-fitting suits and crisply ironed shorts stole a £1,500,000 diamond tiara in some 36 seconds, and escaped on bicycles in heavy traffic
- In 2008 dressed as women the gang robbed Harry Winston in Paris and grossed emeralds, rubies and diamonds worth £70,000,000
- In 2009 it was back to Graff's on Bond Street in London for a heist of £40,000,000 of various jewels
- theft of £1,000,000 million of jewellery taken from a safe in a hotel room during the Cannes Film festival in May 2013
- theft of £1,600,000 necklace from the resort at Cap d'Antibes also on the French Riviera in May 2013 (Mount 2013)

The Pink Panthers have attracted the attention of Interpol due to the international nature of their offences. Their thefts and robberies are estimated to have yielded about £380,000,000 across 120 jewellery stores in more than 20 countries including France, Spain, Dubai, the USA and Japan. While very little of the stolen property has been recovered, a number of panthers have been arrested and convicted (MailOnline 2014). Interpol has learned that the gang originated in the armed forces in the former Yugoslavia among soldiers tasked with importing arms into Serbia in the face of an international embargo during the 1992-95 civil wars. The men were loyal, highly trained, and well organized. If apprehended they are reluctant to implicate others, and the organization appears to have continued the recruitment and training of journeyman thieves in Serbia long after the demise of the Balkan conflicts, and long after the decommissioning of official fighters. It is estimated that some 200 individuals have participated in various thefts. The crimes have a classic "smash-and-grab" design, but these crimes require enormous preparation to evaluate potential high-value targets, to case the premises extensively beforehand to ensure split-second execution, to determine effective methods and routes of escape, to create effective disguises to minimize identification during the crime, and to circulate the loot through the underground trade in gems in the Balkan states. There have also been daring rescues of gang members who have been convicted and imprisoned. And the gang organization appears resilient in spite of the convictions of individual participants. The documentary, *Smash and Grab*, (2013) was based on interviews with gang members.

The press has romanticized the gang's activities by linking them to the Peter Seller comedies. However, their use of force has been extremely dangerous. At various times they have carried AK-47s, magnum hand guns and grenades, and have shot one shop-keeper point-blank. The public is apparently amused by their activities because their targets are

associated with excessive wealth, and because they seem to carry out their crimes with such panache and expertise. Their MOs put them in venues publicized by decades of James Bond movies, and they have often mimicked the Ian Fleming scripts -- gems hidden in jars of face cream, escapes on motorcycles along side streets too narrow for pursuing police cars, and on fast powerboats into the Riviera sunsets beyond the reach of the law. Their formula? Crime = glamour. Have the Pink Panthers crossed the point where the identification of an appropriate target escapes criminal condemnation? Where breaking the law can be normalized? And where ordinary persons can be recruited in Serbia because of out-group antagonism where no harm is acknowledged? These assumptions approximate the relativist perspective.

Contrast the Pink Panther exploits with the previously largest heist in modern Britain – the Great Train Robbery. In 1963 a gang of 15 thieves took control of the Royal Mail train on its transit between Glasgow and London and stole £2.6 million in cash. They were unarmed and well coordinated, although the conductor was seriously assaulted in the theft with a crowbar, and was thereafter unfit for work. Eventually, all the perpetrators were apprehended and jailed, although little of the money was recovered. Ronnie Biggs later escaped custody and enjoyed international freedom for three and a half decades before returning to England to face the rest of his sentence. All the thieves had criminal records for petty theft, burglary and the like. This was the most ambitious heist any of them had ever attempted, and it was their last. Many people admired the crime because it was so ambitious and the “victim” so unsympathetic. In retrospect, none of the thieves settled into “la dolce vita” which such illicit wealth is supposed to bring. The theft was unprecedented at the time, but was soon superseded by the massive jewel thefts in London attributed to the Pink Panthers and still unsolved.

A second case is raised by the recent apprehension of "El Chapo," Joaquin Guzman, the former notorious head of the Sinaloa drug syndicate in Mexico (Grillo 2014). Guzman had been declared America's Most Wanted Criminal after the apprehension of Osama Bin Laden. The US government had placed a \$5 million reward for information leading to his arrest and conviction for drug crimes. Guzman was the CEO of a criminal organization that brought marijuana, cocaine, heroin and crystal meth into the US across the international border with Mexico. He was arrested in 2014. At the time, he had been on the run following an escape from a Mexican prison 13 years earlier. He is said to have operated the largest narcotics enterprise in Mexico prior to his capture. He was apprehended on February 22nd in a resort in Mazatlan on the Sea of Cortez. A week earlier, a raid on one of his safe houses in Culiacan, capital city of the state of Sinaloa, by the Mexican marines led to the discovery of a network of underground tunnels designed to expedite Guzman's escape from the law. The Mexican marines were unable to break down the front door because it was built of reinforced steel with internal chambers of water to prevent metal fatigue from over heating. By the time the marines entered the premises, they had been vacated. Guzman had accessed a secret passage under the bathtub to an underground tunnel that was connected to several other safe houses, as well as remote exits. Guzman had also developed a communication system that severed his Black Berry phone from general circulation. Associates could only communicate with him through a system of encryption by two successive subordinates on independent Wi-Fi devices. This level of sophistication was

Unit 7. Relativistic Theories: Crime and Cultural Transmission Theories

File: 7. 305 – Final Unit 7.docx 12,950 wds

unprecedented in previous narcotics operations. It is also believed that Guzman paid millions of dollars in bribes annually to persons in authority to make sure he was never found (CBS 2014).

The full truth about the Guzman case is not known with certainty. During his previous period of incarceration, it is said that he had access to prostitutes, fine food and wine, family visitors and enjoyed a free run of the facility. He continued to further his narcotics enterprise while incarcerated in a maximum security prison. Some allege that he bribed the prison employees to facilitate his “escape”, and indeed after he escaped some seventy prison personnel were investigated for corruption (Keefe 2014).

Where did the money come from? The narcotics business is financially gargantuan. The US economy in illicit drugs is said to be worth \$60 Billion annually. In Mexico, struggle for control of access to the lucrative US market resulted in some 70,000 murders between 2006 and 2014 as gangs struggled to get a piece of the illicit action. Guzman was a billionaire. Many gangs engaged in brutal mass murders of rival “crews”, torturing and beheading them, hanging bodies prominently from bridges and lampposts, and indiscriminately shooting rivals and policeman, sometimes along with their families. The narco economy appears to have normalized crimes. But only so far. The crooks often displayed themselves in black masks with their automatic weapons for the media to ensure their anonymity. By 2014, the Mexican marines similarly sported face-masks to protect themselves and their families from gang reprisals as they captured Guzman.

With so much violence associated with the narco-trade, it is disturbing to observe the positive light in which the activities of the criminals have been cast. Street musicians began to lionize the glory and bravery of the narcos in a form of music labeled “narcocorridos” -- the narratives of the successful exploits of the home-boys who made good by becoming leaders in the new business of drugs. The narcos were adulated for the contributions to their local communities, for patronizing locals’ restaurants, bars and car dealers, and for their contributions to the poor and disadvantaged.ⁱⁱ Many referred to Guzman as “Santa Claus” following his alleged support of the down and out. He was honoured because of his rise from an impoverished background and celebrated in song as a kind of Hispanic Robin Hood who overcame his past, and achieved levels of power even greater than that of the police and the state, and, so the legend goes, shared his fortune with others. Like the case of the Pink Panthers, the Mexican narco-trade has evolved into a lucrative business. It is labelled by its producers, suppliers and end-users as a legitimate social enterprise. No one would get hurt except for the fact that the trade has been arbitrarily labeled as criminal. Can the same be said of train robbery and jewel theft? Some might argue that these are simply unorthodox ways of re-distributing wealth in an unjust society. That is the sort of question raised by the cultural transmission or social process perspective.

Unit Objectives

In this unit we explore the following topics:

- Learning theories in psychology: classical conditioning (Pavlov), operant conditioning (Skinner) and social learning theory (Bandura)

- Violent entertainment, imitation and crime
- Social Learning Theory in Criminology: the process of differential association
- Sutherland and White Collar Crime
- Subcultural Deviance Theories: the focal concerns of delinquent youth, techniques of deviance neutralization, and ethnic subcultures as units of deviance transmission
- Labeling Theories and the Stigmatization of Difference
- The conventionalization of crime as a form of de-labeling

Crime and Cultural Transmission Theories

Learning theories in psychology

One of the most famous contemporary introductions to crime was *Crime and Human Nature* (1985) by James Q. Wilson and Richard J. Herrnstein. The authors claimed that all crimes could be explained by the central mechanisms identified in the field of learning. These consisted of classical conditioning and operant conditioning. Classical conditioning was illustrated by Pavlov's studies of salivation in dogs. When dogs sense that they are going to eat by smelling or tasting food (Pavlov used powdered meat), they salivate. Pavlov paired the introduction of the food with a light. After this was done numerous times, the light by itself could elicit the salivation reaction without the presence of food. The process occurs when an unconditioned (i.e. spontaneous) response is arbitrarily associated with another stimulus; the new stimulus may cause a conditioned response on its own. By extension, if a parent is confronted by anti-social behaviour in a child, such as shouting or swearing, one way to extinguish that behavior is consistently to register strong disapproval of it. That behaviour and parental reaction will become paired with feelings of anxiety. If a child is praised by parents for washing her hands before dinner, the act of hand-washing will itself subsequently create pleasure since the satisfaction has been internalized.

By contrast, operant conditioning involves the selection or choice between alternative courses of action, each with different consequences in terms of rewards and/or punishments. This is often referred to as "instrumental learning" in the sense that the individual engages in strategies whether consciously or intuitively to maximize pleasure and minimize pain. Skinner demonstrated operant conditioning when he rewarded rats for making certain choices in T-mazes. These studies suggested that behaviour was relatively plastic and could be shaped by a careful regimes of rewarding preferred behaviours or, alternatively, punishing non-preferred behaviours (i.e. avoidance learning). Both crimes and conventional choices have costs and benefits. Avoidance of crime has such gains as a clear conscience, protection of one's reputation and avoiding punishment. Or crime might be attractive because of material rewards, peer approval and/or domination of others. Criminal behaviours become more frequent when the rewards outstrip the costs. This is the process behind deterrence policies which are implemented to suppress crime. However, the emergence of criminal (or lawful) patterns is also influenced by individual differences in IQ and impulsiveness that influence how well the individuals can perceive the outcomes of behaviour as well as differences in tolerance for delayed gratification. Furthermore, Wilson and Herrnstein advocated the importance of the individual's sense of equity. People

are constantly assessing the extent to which they and persons like them are obtaining what they feel they deserve and are entitled to. If one feels deprived by society, illegal acts may be attractive since they provide, in addition to the proceeds of crime, a short-cut remedy for their feelings of deprivation. Operant conditioning is just another term for rational choice theory, and covers much of the same territory as Bentham's hedonic calculus. Also, the theories are naturalistic in the sense that they are thought to govern the behaviours of both humankind and animals, although it is unlikely that non-humans have a sense of equity. Even so, psychologists prefer to use the term "aggression" as opposed to "violence" since the former is less moralistic. Aggression is natural; violence sounds like inappropriate behaviour.

In the 1960s Albert Bandura began to work on a new theory of learning that came to be known as "social learning theory". This approach placed less emphasis on the effects of reinforcements on shaping behaviour, and more on the cognitive role of perceptions and identification in the acquisition of new behaviours. For Bandura, a person could acquire new repertoires of behaviour by observing them in other people, and by seeing the consequences of those activities for the persons engaging in them (Bandura, Ross and Ross 1963). At the time of his research, there were dramatic changes in the nature of popular culture. Comic books appeared in 1938. Among the first successful heroes in the DC line (i.e. detective comics) were *Superman*, followed by *Batman and Robin* and *Wonder Woman*. Then came *Crime Does Not Pay*, *Suspense Comics* and a new genre of horror comics. In a world recovering from the Depression, they were an instant commercial success, and continued to grow in circulation throughout the 1940s and '50s. Television replaced radio as a focal point of entertainment in the 1950s. And the 1950s saw an explosion in adolescent delinquency films of the "Rebel without a cause" and "Young, Desperate and Lonely" genre, films that captured the sense of alienation of adolescent youth. No previous generation had been bombarded with such a frank treatment of violence, sexuality and crime in the mass media as entertainment. Indeed, there was moral panic over the invasion of the family by the new mass media. Bandura wanted to determine if young viewers of such materials were acquiring delinquent behaviors by what they read in comics and saw on television and at the movies.

Media, Imitation and Crime

One token of the extent of the concern over these changes in Canada was the reform of the criminal code to identify crime comics as a form of obscene publication in 1949. Section 163 describes the offence:

Section 163. (1) Every one commits an offence who

(b) makes, prints, publishes, distributes, sells or has in his possession for the purpose of publication, distribution or circulation a crime comic.

(7) In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

(a) the commission of crimes, real or fictitious; or

(b) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

This section of the code remains in Canadian law today although the greater concern recently has been over “child pornography” (s 163.1). When the criminal code was changed in 1949, the bill’s sponsor, E. Davie Fulton, addressed parliament with the following rationale: “Mr. Speaker, this Bill is designed to amend the criminal code to cover...crime comics, the publication of which, it is widely felt, tend to the lowering of morals and to inducing the commission of crime by juveniles.” Many politicians were persuaded by the writings of New York psychiatrist, Frederic Wertham who published many popular articles and a best-selling book, *Seduction of the Innocents*, that chronicled his studies of the link between delinquency and crime comics often in melodramatic terms: “‘The Boy Who Thought Crime Could Pay.’ When finally cornered he would not surrender and was shot in a battle with the police. A sten gun and a crime comic lay beside his body” (see Brannigan 1986). To be sure, the new comic literature was provocative. The covers often portrayed crime in vivid terms and represented women with deep cleavages (earning the term “headlight” comics), and frequently represented the police and detectives as bumbling fools. The comics were outlawed in Canada, Britain, most Australian states, and in many American jurisdictions, and many countries tried to block the import of these American products. Neither measure succeeded for long. In the television media, broadcasters adopted voluntary standards to schedule violent and sexually vivid content at hours when children would be in bed. The motion picture industry in Hollywood used a film classification system to steer provocative materials away from younger audiences.

In the psychology labs, psychologists tested for the effects of imitative violence arising from cartoons such as the Roadrunner and Wile E. Coyote. In his famous exposition of social learning theory, Albert Bandura observed the effects of such stimuli on pre-teen behaviour in his famous “Bobo Doll” experiments. This involved exposing children between the ages of three and six years of age to films depicting adult aggressive behavior. One group of children watched an adult hitting the doll, another saw an adult playing quietly with the doll and other toys. The third group saw neither scenario. Bandura reported that children who had observed the aggressive adult were more likely to imitate violent behavior when they were given an opportunity to play with the doll. The other groups did not. Other studies began to look at the long-term effect of exposure to violent television programs.

Wilson and Herrnstein (1985: 337ff.) reviewed the case for television and the mass media impact on crime in *Crime and Human Nature*. Of the field studies they say, “the best studies come to contradictory conclusions, and even when all doubts are resolved in favor of a causal effect, they account for only “trivial proportions” of individual differences in aggression” (ibid: 346). When experts assembled by the National Research Council in the US reviewed the 1982 National Institute of Mental Health report, they concluded that televised violence “may” be related to aggression, “but the magnitude of the relationship is small and the meaning of aggression is unclear” (ibid: 353). “Even giving to existing research the most generous interpretation, viewing televised violence cannot explain more than a very small proportion of the variation in aggressive acts among young persons” (ibid.). Similarly Kaplan and Singer argued, following a review of the literature, that “this

research has failed to demonstrate that TV appreciably affects aggression in our daily lives" (1976:62): Feshbach and Singer reported no evidence from field studies that violent fantasy programming aroused aggression. In fact, there was some evidence "that exposure to aggressive content on television seems to reduce or control the expression of aggression in aggressive boys from low socioeconomic backgrounds" (1971:145). In Freedman's review of the field studies, he reported that "not one study produced strong consistent results, and most produced a substantial number of negative findings" (1988:158). David Gauntlett reported "the search for "direct" effects of television on behavior is over: Every effort has been made and they simply cannot be found" (1995: 120). Gadow and Sprafkin: "The findings from the field experiments offer little support for the media aggression hypothesis" (1989: 404). Attempts to replicate abroad earlier work conducted in America by Huesmann et al. drew the same disappointing reactions. The issue of media effects was also discussed in *A General Theory of Crime*. In their review of psychological positivism, and its preoccupation with aggression, Gottfredson and Hirschi (1990: 67ff.) note that psychologists sometimes stumble into the larger world of misconduct outside aggression. Huesmann, Eron, Lefkowitz and Walder define aggression as:

an act that injures or irritates another person. This definition excludes self-hurt . . . but makes no distinction between accidental and instrumental aggression or between socially acceptable and antisocial aggression. The assumption is that there is a response class, aggression, that can include a variety of behaviors, exhibited in numerous situations, all of which result in injury or irritation to another person. This category includes both hitting and hurting behaviors, whether or not these behaviors are reinforced by pain cues from the victim or target person. This category also includes injury to or theft of property (cited in Eron 1987: 435).

How can aggression include property crimes? The inclusion of such crimes would make sense if the "response class" is a general tendency toward dysfunctional or impulsive behaviour. That comes close to the criminological understanding, as we shall see. In the "Rip Van Winkle study," as it has become known, Huesmann, Eron, Lefkowitz and Walder examined 875 subjects in grade three classes in upper New York State starting in 1960, identifying television viewing habits and peer-nominated levels of aggression. Mothers were asked to identify the children's three most popular television programs, which were then classified as either violent or nonviolent. Ten years later and again twenty-two years later, the subjects were followed up to determine their viewing habits as well as their criminal involvement. The findings suggested that early signs of aggression, especially in males, predicted patterns of aggression later in life, that the most aggressive children watched the most television, and that aggression was also related to lower IQ. Eron attributed the aggression to "continued television violence viewing" (1987: 440) (although continued viewing was not observed). However, as Gottfredson and Hirschi point out, television-viewing at age eight would equally well predict "theft, motor-vehicle accidents, trivial nonviolent offending, drug consumption, and employment instability, behaviors hard to attribute to the number of shootings or fistfights watched on television twenty years previously" (1990: 69). Indeed Eron (1987: 440) reports that childhood aggression in fact predicted "social failure, psychopathology, aggression and low educational and

occupational success" twenty-two years later. Why? All kinds of dysfunctional behaviors tend to cluster in the same persons. Individuals who are "aggressive" do not tend to specialize in aggressiveness but exhibit a short temporal horizon or impulsiveness across whole "response classes." Gottfredson and Hirschi: "it therefore seems unlikely that the specific content of television programming viewed at age eight could contribute independently to subsequent levels of aggression" (1990: 69). This is because they are all an expression of the same stable traits. This could explain why media viewing habits could be correlated with a range of dysfunctional behaviours without being an important determinant of them. Persons with a high tolerance of risk are not disturbed by provocative excitement. Indeed, persons with low resting heart rates might seek out such forms of entertainment for kicks. The traits that Huesmann et al (1988: 1133) documented show remarkable stability over the life course. "What is not arguable is that aggressive behaviour, however engendered, once established, remains remarkably stable across times, situations, and even generations within a family". This is consistent with the findings of Olweus (1979: 866) who showed impressive continuity in individual traits over the life cycle. Over a 10-year period the estimated correlation for aggression was approximately .60 for aggressiveness and .70 for intelligence.

With so many failures to establish a clear and convincing link between television violence and aggressive behaviour, the credibility of social learning theory as an explanation of crime declined. However, the moral panic over crime comics and TV violence was subsequently transmitted to other changing media including first, explicit and violent pornography, and, next, to realistic video games, accompanied in each case with causal attributions ("pornography is the theory, rape is the practice") which again proved groundless when examined empirically. The fact is that persons are not randomly assigned to highly stimulating violent or sexual entertainment. Their choices largely reflect existing dispositions. In addition, the ability of young persons to watch materials created for a more mature audience may reflect a lack of parental supervision, that itself may have consequences for the development of self control. Over the years, junior's unbridled consumption of violent comics, TV, digital pornography and violent video games may be an indirect measure of failures of informal social control and family socialization.

Social Learning Theories in Criminology: Differential Association

Social learning theory in sociological criminology was pioneered by Edwin Sutherland in his 1939 textbook, *Principles of Criminology*. Sutherland rejected the idea that crime was caused by poverty or by personal and social characteristics thought to be associated with poverty "including feeble-mindedness, psychopathic deviations, slum neighborhoods, and 'deteriorated' families." His views would be at odds with the theories that offenders were the products of defective genes, arrested development, personality disorders, or dysfunctional parenting. In Sutherland's world, no one is catapulted into crime because of stress. No one finds the way to crime cleared by the removal of outer or inner controls. Crime is not an innate human capacity. It must be learned. At the heart of his thinking, Sutherland holds that persons become criminals because they are socialized to accept values that condone crime. Sutherland spelled out the theory famously in his nine

propositions found in every sociological account of crime (see Siegel, Brown and Hoffman 2013: 139-40).

- Criminal behaviour is learned.
- Criminal behaviour is learned in interaction with other persons in the process of communication.
- The principal part of the learning of criminal behavior occurs within intimate personal groups.
- When criminal behaviour is learned, the learning includes the techniques of committing the crime, and the motives, drives, rationalizations and/or attitudes that support the criminal behaviour.
- The specific direction or appeal of motives and drives is learned from definitions of the legal codes that define them favorably or unfavorably.
- Persons become delinquent because the balance of definitions favours violation of the law.
- Differential associations vary in frequency, duration, priority, and intensity over the life course.
- The process of learning criminal behaviour through differential association involves all the mechanisms that are involved in any kind of learning.
- While criminal behaviour is an expression of general needs and values, it is not explained by those general needs and values since non-criminal behaviour is an expressions of those same needs and values.

Bandura's social learning theory implies that persons are led astray by mimicry of what they see in the mass media, Sutherland's theory goes one step further by suggesting that no one is led astray at all. They simply acquire the values of the culture into which they are socialized. Kornhauser (1978: 29) writes disparagingly that within Sutherland's world "there is no such thing as deviance in the ordinary sense of the word. If conformity is defined as obedience to the norms of one's culture and deviance as violation of these norms, then human beings apparently lack the capacity for deviance...the universal experience of mankind is conformity to the norms of the groups into which they have been socialized and to whom they owe allegiance. People never violate the norms of their own groups, only the norms of other groups". Deviance only becomes problematic when some groups have a greater capacity to enforce their definitions of law against outsiders. Crime causation is reducible to the sociology of law. i.e. how things are defined. There is no acknowledgement that certain things are inherently evil or criminal. A person becomes a norm violator only in the eyes of those who control an alien or outside justice system. In the eyes of his culture, he or she is simply conforming to the group's norms and values.

Sutherland's approach was influenced by the work of Thorsten Sellin who represented the cultural conflict theory of crime. Sellin rejected the idea that most criminal laws from different countries tend to cover many of the same sources of violence and fraud, and tend to be relatively stable over time. He took an extreme relativistic perspective which suggested that whatever was prohibited by law at one place and time would be advocated as lawful at other places and times, suggesting that law was entirely variable over time and

across cultures. Many of his examples came from colonial experiences, and the different attitudes of African natives and European colonizers. Sellin offers the practice of killing adulterers in native cultures with the relative tolerance of infidelity among Europeans. Sutherland later cited an anecdote of the Sicilian American father who kills the 16 year-old youth who seduced his daughter and expressed surprise that a father could be arrested for this under American law. As Kornhauser notes (1976: 185) this example is so often repeated because there are few relevant examples in North America and Europe.ⁱⁱⁱ So how can crime occur for a theorist like Sellin? First, people might fail to learn or be ignorant of certain of the norms of their own groups for any number of reasons. Or they may acquire norms from exposure to communication with members of a competing group. This was possible (first) because of “the growth of civilization,” by which he meant the endless differentiation of groups with the evolution of humanity from “primitive” to modern times. It was possible (second) due to the “migration of conduct norms” associated with military conquest and colonization on the one hand, and immigration on the other. Certainly, the Chicago School had recorded the huge impacts on cities of the teeming levels of immigration in the late 19th and early 20th centuries from diverse linguistic, religious and cultural backgrounds. And successive immigrant populations had difficulty adjusting. However, the types of aggression and petty scams like jack-rolling, shoplifting and prostitution that were documented by Shaw and Mackay in their studies of urban crime were not imported cultural values. In the end, Sellin points to *the loss of control* within families during the re-settlement process as a condition for cultural conflict. However, this is not a cultural transmission phenomenon based on the successful socialization of neophytes into revered values of the in-group as much as a *breakdown* in socialization—quite the opposite of Sutherland’s nine propositions which emphasize learning as a constructive transmission of values from the larger group to the individual.

This does not rule out the possibility that certain immigrant groups arrived with traditions of secret criminal societies. We know that Sicilian society has a reputation for clan-based criminal enterprises, and that some ethnic-based gangs flourished during the period of Prohibition. The *Sopranos* TV drama was based on such legends, as was Hollywood’s *Godfather* odyssey. But even if real, it is not as though all the clan members aspired to the *Goodfellas* lifestyle or treated it as legitimate. In addition, would criminologists in the Sutherland tradition assume that *all* crime derives from such “in-house” legitimating value systems? How about spousal abuse, driving under the influence and/or arson? Probably not. Why? Because the violence and loss of security and trust associated with crime is inconsistent in the long-term with the creation of stable, pluralistic societies.

Sutherland and White Collar Crime

Although many criminologists are critical of Sutherland’s perspective, it is worthwhile exploring one of the reasons he advocated the learning perspective so strongly: white collar crime. Sutherland laid out his perspective in the *American Sociological Review* in 1940 in a classic piece titled “White-Collar Criminality”. He notes that official statistics unequivocally indicate the incidence of crime is highest in the lower class, and very low in the higher class – as crime is popularly conceived and officially measured. “These statistics refer to criminals handled by the police, the criminal and juvenile courts, and the prisons,

and to such crimes as murder, assault, burglary, robbery, larceny, sex offences, and drunkenness,” often designated as “crimes of the street.” However, this is a biased sample of crime since it studiously avoids any focus on people who are not in the lower class. One of the neglected areas is “the criminal behavior of business and professional men”. Hence the theories based exclusively on the lower class sample are biased. The focus on the lower orders of society picks up conditions of social disorganization which may be true in such communities, and which are not found in the upper classes, but which probably do not explain crime in either class. A key problem for Sutherland is that there is no systematic information, i.e. “uniform crime reports,” for crimes covering business and the professions, i.e. “crimes of the suite.” This remains largely true today (Friedrichs and Schwartz 2008). As a result, Sutherland’s evidence is often anecdotal.

“The ‘robber barons’ of the last half of the nineteenth century were white-collar criminals, as practically everyone now agrees. Their attitudes are illustrated by these statements: Colonel Vanderbilt asked, ‘You don’t suppose you can run a railroad in accordance with the statutes, do you?’ A. B. Stickney, a railroad president, said to sixteen other railroad presidents in the home of J. P. Morgan in 1890, ‘I have the utmost respect for you gentlemen, individually, but as railroad presidents I wouldn’t trust you with my watch out of my sight.’ Charles Francis Adams said, ‘The difficulty in railroad management . . . lies in the covetousness, want of good faith, and low moral tone of railway managers, in the complete absence of any high standard of commercial honesty.’ “

In the mid-20th century Sutherland reviewed a whole variety of white-collar crimes in business that typically escaped social control. These included misrepresentation of financial statements of corporations to share-holders, manipulation of stock prices, commercial bribery and bribery of public officials to secure favourable contracts on the one side and favourable legislation on the other, misrepresentation in advertising and salesmanship, embezzlement of funds from employers and from clients, short weights and measures, trafficking in adulterated commodities, tax frauds, misapplication of funds in receiverships and bankruptcies designed to evade legal liabilities etc. (1940: 3-4).

Sutherland also reported corruption among physicians including the creation of fraudulent testimony in accident cases, provision of expensive but needless medical care and fee-splitting. A family doctor engages in fee-splitting when he or she refers a patient to a high-priced specialist who kicks back part of his fee to the referring physician. As a result patients end up being referred on the basis of kick-backs, and not based on their best medical interests. Sutherland reported that “two-thirds of the surgeons in New York City split fees.”

These sorts of infractions tend to evade surveillance of the police and the criminal courts and end up before civil courts, security and exchange commissions, administrative boards, trade associations, the Better Business Bureau and professional disciplinary boards. In these venues the offenders rarely face the moral condemnation associated with public exposure in court and the social stigma of criminal conviction.

In addition, the costs to society from these kinds of infractions are far higher than costs associated with street crimes. “An officer of a chain grocery store in one year embezzled \$600,000, which was six times as much as the annual losses from five hundred burglaries and robberies of the stores in that chain.” Sutherland reported that the total losses through robbery and theft for “public enemies numbered one to six” amounted to \$130,000 while a single corporate theft in the same year resulted in a loss of \$250,000,000. Yet the white-collar criminals, if caught, are segregated administratively from other criminals and as a consequences “are not regarded as real criminals by themselves, the general public, or the criminologists” (1940:8). However, once the gravity and prevalence of white-collar crime is recognized, how can it be explained? Obviously, poverty, feeble-mindedness or deteriorated families are largely irrelevant for this class of people. Here Sutherland turns to his general theory of crime.

“The hypothesis which is here suggested as a substitute for the conventional theories is that white-collar criminality, just as other systematic criminality, is learned; that it is learned in direct or indirect association with those who already practice the behavior; and that those who learn this criminal behavior are segregated from frequent and intimate contacts with law-abiding behavior. Whether a person becomes a criminal or not is determined largely by the comparative frequency and intimacy of his contacts with the two types of behavior. This may be called the process of differential association. It is a genetic explanation both of white-collar criminality and lower class criminality. Those who become white-collar criminals generally start their careers in good neighborhoods and good homes, graduate from colleges with some idealism, and with little selection on their part, get into particular business situations in which criminality is practically a folkway and are inducted into that system of behavior just as into any other folkway” (1940: 10-11).²

This does not deny the circumstances in which lower class criminals get started. They start their careers in deteriorated neighbourhoods, but they must make contacts with existing delinquents from whom are acquired the attitudes towards and the techniques required for “systematic criminality.” The essentials of the process are the same for both street and white-collar criminals. But the process is not entirely one of assimilation, since both classes of criminals invent new ways to evade the law, perhaps more so, according to Sutherland, among the white-collar criminals. “The inventive geniuses for the lower class criminals are generally professional criminals, while the inventive geniuses for many kinds of white-collar crime are generally lawyers.”

Lawyers? God forbid!

Subcultural Deviance Theories

² In this context Sutherland’s reference to “a genetic explanation” means that both garden-variety crime and white-collar crime derive from (or inherit) the same process.

What is the evidence that subcultural values are transmitted across generations and that this is a major source of crime? Siegel et al (2013: 118) write that “ a unique lower class culture develops in disorganized neighbourhoods. These independent subcultures maintain unique values and beliefs that conflict with conventional social norms. Criminal behaviour is an expression of conformity to lower class subcultural values and traditions, not a rebellion from conventional society. Subcultural values are handed down from one generation to the next in a process called cultural transmission.” However, as Kornhauser (1978: 244) notes “delinquent norms, delinquent values, and delinquent subcultures have too long dominated the thinking of criminologists; there is no evidence of their existence.” The areas of social disorganization studied by Shaw and Mackay to which Siegel et al refer were populated with Polish immigrants who were overwhelmingly poor and devout Roman Catholics. Kornhauser’s point is that there was no secret underground society with its own “independent” conventions, values and beliefs. There may have been conflicts between the immigrants and the high expectations of schools. The schools valued ambition, self-reliance, individual responsibility, self-denial, rationality, delay of gratification, industry, manners, control of aggressions and a respect for persons and property – all middle class values, but these were things that virtually every immigrant group that transitioned through the Chicago slums acquired. Who can speak of a lower class “tradition” of robbery or shop-lifting or burglary? Since the victims of lower class crime tend to also be lower class, how would they ever come to endorse criminal acts as normative (i.e. desirable) and as an expression of class solidarity and conformity?

Walter Miller identified the “focal concerns” of young males associated with gangs in poor immigrant areas (see Siegel et al 2013: 129-30). These may have been transmitted in subcultures and they included:

- Trouble – being constantly on the watch for conflict, interference, disappointments and status challenges which are part of the neighbourhood.
- Toughness – being able to handle yourself in a fight or conflict, and being “cool and collected” when others react to adversity with stress. Being defiant in the face of authority.
- Smartness – knowing how to handle people and situations with a kind of insider knowledge, street smarts or “moxie”.
- Excitement – finding, creating and enjoying situations that yield immediate gratification. Drinking, sexuality and small-time criminal “scores” play a role here.
- Fate – acceptance of the limitations of one’s place in life and self-consolation that most people cannot do much to change things. Gambling and taking one’s chances.
- Autonomy – cultivating a reputation for independence from authorities, neighbours and family, and being self-reliant.

These focal concerns all have a grain of truth to them, although Miller never attempted to establish how prevalent they were in the gang circles he studied. However, they are not concerns that would be alien to middle class young people, and they do not amount to an autonomous subculture unique to the working classes as cultural transmission theorists imply.

Sykes and Matza's discussion of the techniques of deviance neutralization have the same status. These maxims were associated with working class males who were involved in delinquent behaviour. They have a post hoc orientation designed to limit attributions of guilt and responsibility after a crime has already occurred or is being contemplated (see Siegel et al 2013: 141-42).

- Denial of responsibility – *I'm just a misunderstood kid*
- Denial of injury – *nobody was really hurt, just some stuff was taken*
- Denial of the victim – *he got what he deserved*
- Condemnation of the condemners – *who are those hypocrites to denigrate us? They are just as bad or worse*
- Appeal to higher loyalties – *I look out for my families, my buddies and my partners, not the law*

These techniques are devices for identity management. If crimes attract a stigma, these devices act to deflect criticisms so that they do not have to be acknowledged. No one has to change. These techniques are part of the rationality that Sutherland referred to when he said that persons learn not only criminal techniques but attitudes, rationales and justifications that legitimate crime. However, there is no evidence of how prevalent they are, that they are transmitted systematically across generations and that they contribute in measureable ways to crime net of other factors (social disorganization, stress, absence of social and self-control, delinquent peers, etc.).

Labeling Theory

If subcultural theory suggested that there was a unique set of values adopted by some groups internally, however much they differed from main street society, labeling theory placed more emphasis on the power of external observers to characterize or label the subculture as disreputable. The first recognition of this perspective in criminology came in the 1930s from prison psychologist, Frank Tannenbaum, who wrote *Crime and the Community* (1938). In this work he coined the term "the dramatization of evil" to characterize the inadvertent effects of the social responses to crime. The arrest, prosecution and conviction of individuals represent a profound change in their social status in the eyes of the community as well as in their personal identities. In some cases, offenders come to embody evil as such. Tannenbaum was one of the first of many criminologists to advance the idea that the naming of certain persons as "criminal" marks them off significantly from the rest of society, and may inadvertently lead to a social stigma that reduces their chances of rehabilitation and re-entry into society as trusted citizens. This tradition became known as the labeling perspective. In 1951 Edwin Lemert proposed a distinction between *primary* and *secondary* deviance. **Primary deviance** was the initial commission of an act that was contrary to law. It arose from many possible sources -- short-lived lapses in good judgment or restraint, peer pressure, misunderstandings etc. Lemert argued that there followed in some cases a more worrisome change in the individual as a result of primary labeling: **secondary deviance**. As a result of societal

reactions, some persons accepted the label as a statement of their basic identities and became more prone to long-term patterns of offending for a number of reasons. This could be traced to their rejection by the law-abiding community, entrenchment in associations with other offenders, and seductions of the ease of material advancement and street status through crime.

Durkheim had written about the consequences of societal reactions to crime in *The Division of Labour in Society*.

We have only to notice what happens, particularly in a small town, when some moral scandal has just occurred. Men stop each other on the street, they visit each other, and they seek to come together to talk of the event and to wax indignant in common. From all the similar impressions which are exchanged, and the anger that is expressed, there emerges a unique emotion, more or less determinate according to the circumstances, which emanates from no specific person, but from everyone. This is the public wrath . . . Crime brings together honest men and concentrates them.

Criminals come to embody evil, and their condemnation results in "boundary maintenance", i.e. the communal renewal of the demarcation between good and evil. Durkheim suggested that even if it did not exist, crime might have to be invented because of its functional reinforcement of collective norms and values. This perspective led to investigations of arbitrary labeling of behaviour designed to create and condemn "outsiders." These included studies of the labeling of witches for unorthodox beliefs, the labeling of undesirable interpersonal behaviour as mental illness, the stigmatization of alcohol consumption and narcotics use, and the medicalization of homosexuality as a psychiatric disorder. This resulted in the identification of labeling as a distinctive explanation of crime.

Social groups create deviance by making the rules whose infraction constitutes deviance and by applying these rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an "offender". The deviant is one to whom that label has successfully been applied; deviant behaviour is behaviour that people so label (Becker 1963: 9)

Deviance is not a property inherent in certain forms of behaviour; it is a property conferred upon these forms by the audiences which directly or indirectly witness them. Sociologically, then, the critical variable is the social audience (Erikson 1966)

An older sociology tended to rest heavily on the idea that deviance leads to social control. I have come to believe that that the reverse idea i.e. that social control leads to social deviance is equally tenable and the potentially richer premise for studying deviance in modern society (Lemert, 1967: 22)

The period of deinstitutionalization of mental patients in the 1960s and '70s was accompanied and reinforced by a range of sociological studies which suggested that

- mental illness was "a myth," not a fact (Szasz, *The Manufacture of Madness* 1971),
- was a learned role (Scheff, *Being Mentally Ill* 1966)
- and/or was a consequence of institutionalization (Goffman *Asylums* 1961).

Howsoever it was defined, for labeling theorists it was not a disease. It was a way of invalidating the behaviour of people who were contrarian, and unorthodox, who drank too much and had bad dreams. But it had no organic bases, since the presence of the latter would be evidence of illness per se – not *mental* illness. Labeling someone as insane was like accusing a non-traditional female healer with witchcraft. And it led to dire consequences: involuntary incarceration in a hospital for the criminally insane in the one case, and burning at the stake in the other. Scheff argued that those who were recruited for treatment for mental problems were taught to perform according to institutional and professional expectations that stabilized what he believed were otherwise normal and transitory periods of anxiety that were natural reactions to the pressures of everyday life. Goffman argued that total institutions such as mental hospitals required a ratio of caregivers to inmates that was extremely skewed, and which required the removal of personal clothing, property and rights on which the individual's sense of dignity and self-confidence depended. The result was a feeling of dehumanization, and profound anxiety whether the inmates were in a mental hospital, an English boarding school or a prison. This suggested that psychiatric symptoms of deep anxiety, fear and delusional thinking would occur to non-psychiatric populations if they were arbitrarily placed in such institution. This was exactly what Rosenham (1973) reported in his study, "Being Sane in Insane Places," where researchers simulated psychiatric symptoms to gain admission to mental hospitals. They reported that the institutional classification, treatment and evaluation processes were producing, on their own, the sorts of behaviours thought to characterize insanity itself.

Erickson's study of *Wayward Puritans* (1966) documented the arbitrary judicial processes that led to the identification, conviction and execution of witches in Salem, Massachusetts in 1692. Szasz (1971) studied the parallel campaign against heretics by the European Inquisition who were accused of witchcraft and burned at the stake to destroy parties who were perceived to be threats to traditional church beliefs. He also described how the psychiatric classification of homosexuality as a mental disorder invalidated this pattern of affiliation, and condemned its adherents as insane. Gusfield (1963) had documented how "moral entrepreneurs" in the Protestant Churches in 19th century North America led a crusade to criminalize the manufacture, possession and consumption of alcoholic beverages. Becker (1961) documented how marijuana was similarly stigmatized and criminalized through propaganda such as the film, "Reefer Madness". The public campaign to criminalize traditional narcotics was frequently associated with "moral panics". Moral panics are public campaigns designed to heighten the emotional insecurity of the public through accounts of grave challenges to the social order associated with the stigmatized group or the drug associated with it. Hence the suppression of opium in Canada was associated with stories of the seduction of young Anglo-Saxon young by Chinese pimps in

opium dens, and the totally debilitating effects of other drugs such as marijuana. "The users of this drug smoke the leaves which has the effect of making them completely insane" - according to Alberta Judge Emily Murphy in her 1922 book, *The Black Candle*.

These are all historical cases, and many cases of criminalization look questionable in retrospect. A case against the recent labeling theory was made effectively by Walter Gove (1980). Few observers actually accept the parallel between the suppression of witches and the marginalization of mental patients, and Gove's work answers the question as to whether those labeled insane acted differently from others. They did. One of the last relevant studies in the labeling tradition was an experimental test of expectation effects in the school system. Rosenthal and Jacobsen (1968) hypothesized that teachers who expected certain students to bloom in their primary grades would experience a self-fulfilling prophecy. A procedure that randomly created expectations of a spurt in academic achievement would actually raise the IQs of students who were labeled as late bloomers. The experimenters administered an IQ test in several early grades and subsequently identified 20% of the students as individuals whose IQ was expected to increase significantly. Unknown to the teachers, the students were chosen at random. The study became known as the "Pygmalion Effect" based on George B. Shaw's play, *Pygmalion*, in which Professor Higgins taught a working class "wench" proper English diction. As a consequence, people started treating her like a lady. Rosenthal and Jacobsen's reported results showed highly significant jumps on IQ measured one and two years later. The study proved to be a phenomenal popular story since it seemed to suggest that the academic careers of students were only controlled in part by the innate talent of the students. This was subject to sabotage by indifferent or hostile teachers, as had been suggested by Cohen (1955) who attributed the school failure of working class children to the middle class expectations of their teachers. By inference, academic performance could be boosted significantly by teachers who were optimistic and enthusiastic about the potential of their students. The study attracted close attention from educational psychologists (i.e. persons more realistic about IQ). The methods employed were found to be unreliable (i.e. the pre-tests were based on kindergarten students who could barely read and who had never completed a multiple choice questionnaire), and independent attempts to replicate the findings failed to do so (see Brannigan 2004: 74ff).

Pygmalion was a test of the effects of a positive label that was expected to improve performance. Evidence suggests that a negative label may have the sort of effect which labeling theorists have predicted for decades. In recent years, there have arisen discussions of the "school-to-prison pipeline." This body of work has suggested three things. First, there is a long-term continuity in the identification of misconduct in school children who are well below the age of criminal liability for behavioural problems, and the subsequent school failures, school dropouts and incarceration of such individuals as juveniles and young adults. Discipline for misconduct by teachers in grades 1-3 correlates with arrest and incarceration a dozen years later for criminal misconduct. The evidence comes from US jurisdictions such as the state of Texas which has highly detailed individual-level data about the performance of students throughout their school careers. Second, the persons with the highest average numbers of disciplinary calls for perceived misconduct are African-American and Latino boys and girls. The Caucasian students also attract

disciplinary measures for misconduct but this leads to the third and most problematic observation. Third, Caucasian students who engage in the same activities as the minority students do not attract the same harsh levels of discipline where the educators can be seen to exercise discretion between verbal reprimands, out of class suspensions, and school suspensions (Fowler 2007; also see Knefel 2013).

The “school to prison pipeline” is not just “primary” labeling. A system of discrimination such as this ultimately reduces the human potential of the targeted out-group in a more or less permanent way. People do not aspire to go to prison but the paths they take may be dictated inadvertently by “zero tolerance” policies regarding school misconduct. Discipline in the early grades often means removal from classes, i.e. removal from education. Students who experience this often re-enter classes with a diminished ability to stay academically competitive. Whatever behavioural issues may have attracted discipline as “primary deviance” gets repeatedly stamped on the proverbial educational passport as “fail,” “foreign” and “antisocial”. The student’s self-esteem and actual academic competence begins to slide. This is Lemert’s secondary deviance. The vector that directs the pressure against the individuals is race or ethnicity. Individuals and their parents may struggle against this, but their life chances are diminished by labeling of race by teachers of a majority membership in society. Mental illness may not be caused by labeling (contrary to Scheff and Goffman), but ethnic discrimination remains a live issue for labeling theory. Recall the over-representation of Natives in Canadian prisons (Unit 3) and the “truly disadvantaged” Blacks in the Chicago housing projects (Unit 6). Wherever people are processed differentially in the criminal justice system by being selected *in* for “treatment” or diverted *out* on discretionary grounds, and where these decisions are based on factors that are irrelevant to the specific offence, i.e. race, ethnicity, religion, language, sexual orientation, etc., this is bias, and labeling theory could not be more relevant.

The Conventionalization or “De-labeling” of Crime

The possibility of labeling outsider activities as worthy of stigmatization was widely appreciated in criminology. However, not everyone appreciated one thread of Becker’s sociological definition of crime associated with the concept of “conventionalization”. Just as a labeling process could take an ordinary activity and redefine it as a reviled and repulsive crime, other processes could take a deplorable crime and re-define it as tolerable behaviour. W. G. Carson explored this possibility in his analysis of the 19th century British Factory Acts legislation. Despite the rise of progressive legislation designed to protect the health and safety of proletarian workers in 19th century England, many manufacturers were able to escape the criminalization of their activities despite their flagrant violation of the laws. His analysis identified

“the processes whereby, despite a succession of criminal laws purporting to restrict the hours of labour to be performed by children and young persons in cotton and other textile mills, their early nineteenth century employers successfully retained a ‘right’ . . . to substantial immunity from the penal and other adverse substantial implications of their criminal conduct” (Carson 1979: 37-8).

Following Becker, he called the process “the conventionalization” of crime. Such crimes escape stigmatization. “A wide range of criminal activities...although banned, are freely resorted to, and while proscribed, are only infrequently punished” (1979: 38). Attached to these crimes are a series of justifications or rationalizations which tend to undermine the negative moralizations of the offence, and minimize the spontaneous emotional rejection of crime that Durkheim associated with retributive justice. Exactly what crimes were conventionalized? In the context of 19th-century manufacture, Carson reports the public discovery of brutalizing working conditions in which employees were fettered, flogged, starved and tormented to the point of suicide. Children as young as nine years of age were forced to work fifteen-hour days, and sometimes relegated to night-shifts for a period of up to a year. In a similar vein, Engels (1892) described the widespread starvation of impoverished workers employed in English mills as “social murder.” Though widely reported in the press, such cases went unacknowledged by the manufacturers and their class allies.

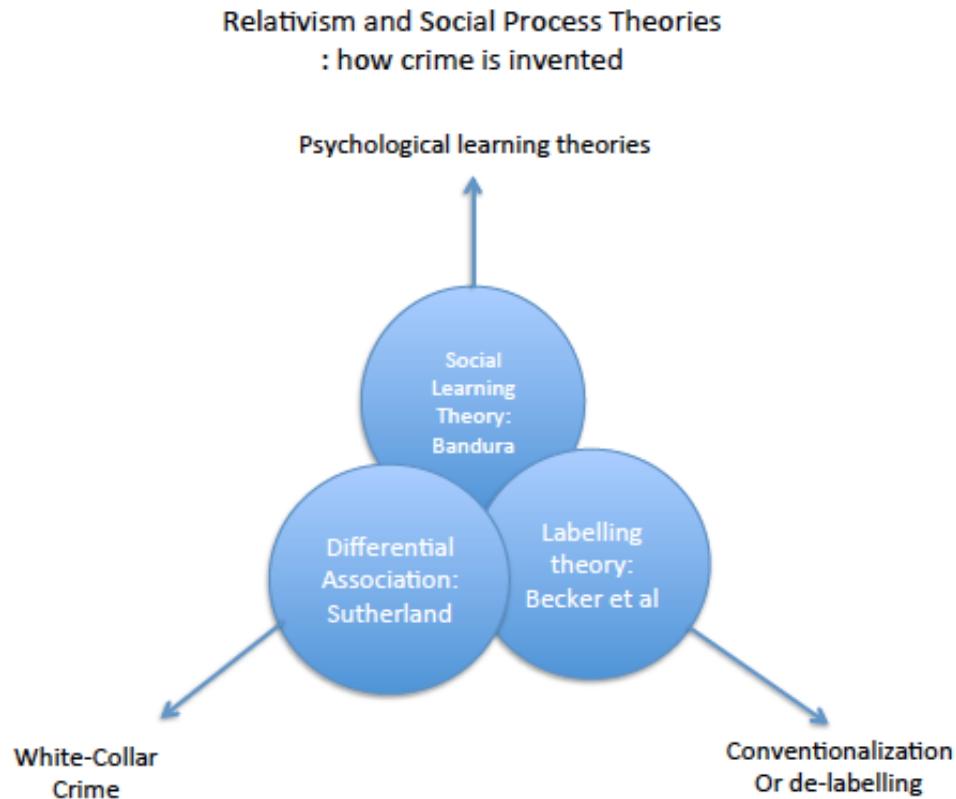
Karl Marx had similarly reported on the privations associated with work in London and Manchester including the occupational diseases such as lockjaw associated with the manufacture of Lucifer matches. He discussed children as young as nine or ten years of age who were routinely dragged out of their squalid beds at two or three o'clock in the morning to work in the lace trade where small hands were a necessity. In addition to the interminable hours required of bakers and their assistants, he reported on the wholesale adulteration of bread which contained “human perspiration mixed with the discharge of abscesses, cobwebs, dead black beetles, and putrid German yeast, without counting alum, sand, and other agreeable mineral ingredients” (Tucker 1978: 367-9). Agreeable in a chemistry set, but hardly in food! According to Carson, these cases caused enormous public alarm, but attempts to bring such activities under the control of the law proved difficult for the factory inspectors. Fines were opposed because they would put a burden only on those businesses “caught,” and would artificially undermine their competitiveness. The motives of the employers were not criminal, but consistent with the creation of national wealth and domination of international trade. The factory regime also contained the promise of educating the great underclass of society, and advancing the industrial success of capitalism as a whole. In this context, prosecutions were infrequent, penalties were minor, and the modal form of control consisted of a cease and desist order, effectively transferring the role of legal control to industrial diplomacy. This situation persisted in spite of the abysmal human carnage it created.

The process of conventionalizing occupational health and safety crimes has persisted in certain industries largely unchanged to the present day. Carson's research on oil exploration in the North Sea documented the epidemic levels of preventable deaths in the offshore petroleum industry in *The Other Price of Britain's Oil* (1982). In 1982 the Ocean Ranger oil-drilling platform went down in a storm off the coast of Newfoundland. The problem was traced to a substandard window in the control room that smashed in the storm and flooded the electrical control system. The vessel experienced electrical short-outs and the rig tipped into the ocean. While the hydraulics could have been operated manually, the rig operator had not permitted more than rudimentary time for such practice, or safety drills and emergency preparations. None of the lifeboats could be launched successfully. All 84 men on board were

drowned. The explosion in April 2010 on the BP Deepwater Horizon oil rig in the Gulf of Mexico took the lives of eleven workers and polluted hundreds of miles of coastal waters, but resulted in no criminal charges until 2012. Likewise, the 2008 worldwide trafficking of worthless financial instruments that precipitated the worst financial collapse since the Depression resulted in not a single criminal prosecution. The fact that entire economies were swindled with worthless and dubiously rated financial investments was not crime, but business (Lewis 2011). Sutherland would have explained this in terms of subcultural “folkways” in which the perpetrators would simply have not even questioned whether their activities were legitimate since they were acquired by persons who also subscribed to them and advocated on their behalf. This is not so easy to do in the face of charges that the work conditions result in “social murder”. By contrast, the conventionalization explanation emphasizes how the key stakeholders can de-stigmatize an otherwise offensive situation in the eyes of government regulators and the public, and legitimate criminal activities in terms of an apparent social good. In the case of the criminogenic oil industry, it generates massive tax revenues to support general social programs from which we all benefit. Otherwise this would be condemned as reckless exploitation of natural resources that cost workers their lives while putting the executives into stylish European sport cars and Mediterranean holidays.

Overview

In this unit we have explored the major “cultural transmission” or “social process” theories of crime. They have been described collectively as “relativistic” because they are more directed at the process of how crime is invented, negotiated and constructed through social interaction. Theorists in this tradition have been more sensitive to the fluid and changeable nature of criminal labels and how they are learned and transmitted, how they are applied, and how the applications can be resisted. The range of theories can be depicted as follows:



They do not presume the objective existence of crime. Much of the theory is more the domain of the sociology of law, i.e. how do particular behaviours become known as crimes (see Unit 1 and 2). In contrast the realists explored in Unit 6 treated crime as an unambiguous fact that could be defined and explained scientifically. Also, those theorists tended to see crime as the outcome of social processes that failed, and criminal behaviour as a regrettable and avoidable consequence.

The treatment of structural and social process theories in this class differs somewhat from contemporary textbooks, including (our own course textbook) Siegel et al (2013). The latter treats “cultural transmission” as a structural theory. We have classified it with differential association that is explicitly a learning theory. We have also included control theories (self and social) as structural theories (Unit 6) because they tie social control to specific institutions (family, school, community), and they are avidly objective in their orientation. Subcultural transmission is not.

We began this unit with a discussion of the Pink Panther jewel thieves, and the Mexican narcotics dealers. Has the theft of jewels with violence reached a point that observers fail to register a breach of the law? Probably not. Has the provision of narcotics to persons who want to consume them arrived at a point where observers see no evil? That is a more difficult question. The narco wars in Mexico have resulted in unspeakably high levels of murder, torture and mutilation, all in the service of the end-user, the Canadian and American drug consumers. The narratives around both forms of crime tend to celebrate

their perpetrators. In the case of jewel thieves, we perceive unworthy victims, the super-rich. We imagine ordinary Serb militia men becoming instant millionaires, comparable to the British train robbers. And no victims? Not quite. In Mexico – absolute, bloody carnage. Here is where Sykes and Matza’s analysis comes to the forefront: condemn the condemners! Those who criminalized the narco-trade are to blame for all the bloodshed. Legalize the drugs, and “peace and love” will follow. Are we prepared to legalize the drugs El Chapo trafficked in to make his billions? And what about our Pink Panther heroes? Can we legalize robbery or punish it lightly? Food for thought.

These are the questions that cases like the Pink Panthers and El Chapo raise. It is interesting that the “social process” perspective is based largely on anecdotes and journalistic sources. All this makes for engaging reading. When the readers make their way through these materials, they will be faced with dilemmas. As they read the newspapers and listen to the news, how much insight can they apply from what the academics in our units have been saying about crime? And which schools of thought survive critical assessment -- social process or social structure?

End notes

In what follows there is a list of

- Key concepts with which the students should be familiar
- Links to information
- Required Readings
- Practice Questions
- References
- Final endnotes

Key concepts, facts and issues with which students should be familiar

- Classical conditioning
- Operant conditioning; instrumental learning
- Social learning theory (Bandura); imitation learning
- Obscenity law in Canada; criminalization of crime comics
- Links between media violence and criminal behaviour
- The Rip Van Winkle study (Huesmann, Eron, Lefkowitz and Walder)
- Edwin Sutherland and differential association theory; social learning theory in criminology
- Thorsten Sellin and cultural conflict theory of crime
- Explaining white-collar crime as differential association
- Robber barons
- Cultural transmission theory and crime
- The focal concerns of gang members (Walter Miller)
- Techniques of Deviance Neutralization (Sykes and Matza)
- Primary versus secondary deviance (Lemert)
- The labeling theory of mental illness (Szasz, Goffman, Scheff)

Unit 7. Relativistic Theories: Crime and Cultural Transmission Theories

File: 7. 305 – Final Unit 7.docx 12,950 wds

- Moral entrepreneurs
- The Pygmalion effect and self-fulfilling prophecies
- The school-to-prison pipeline
- The conventionalization of crime
- Structural versus social process theories of crime

Links to Information

Keefe, Patrick R. (2014) The Hunt for El Chapo: How the world's most notorious drug lord was captured, *The New Yorker*, May 5th edition. Accessed on October 15, 2014 at http://www.newyorker.com/reporting/2014/05/05/140505fa_fact_keefe?printable=true¤tPage=all.

Moral Panics: Mods and Rockers (Stan Cohen) <http://www.slideshare.net/mattyp99/7-moral-panics-mods-and-rockers>. Accessed on 18 October 2014.

Knefel, Molly (2013) "The school-to-prison pipeline: A national problem for equal rights," *Rolling Stone Magazine* <http://www.rollingstone.com/music/news/the-school-to-prison-pipeline-a-nationwide-problem-for-equal-rights-20131107>. Accessed on October 21 2014.

Required Readings for Unit Seven

1. Siegel, Brown and Hoffman (2013) Chapter 8: "Social Conflict Theory" (pp. 156-175) in *CRIM*, Toronto: Nelson Educational, Second Edition.
2. Siegel, Brown and Hoffman (2013) Chapter 9: "Integrated Theories" (pp. 176-195) in *CRIM*, Toronto: Nelson Educational, Second Edition.

Practice Questions

1. Learning theories, cultural transmission theories and labeling theories have been described as "relativistic." What makes them relativistic?" Provide illustration of such crimes. Who are the major proponents? How do these theories explain crime, and how do they differ from one another?
2. The school-to-prison pipeline controversy raises serious questions about discrimination against minority students (see the links to Knefel 2013 and Fowler 2007). What evidence supports the charge that the differential disciplining of minorities is unjustified?
3. What do we mean by the conventionalization of crime? Explain it. Give some examples from the unit. And compare it to labeling theory.
4. Explain the relationship between labeling and "boundary maintenance." Review the discussion of labeling and "victimless crimes" in Unit 2. How does the condemnation of crime reinforce moral boundaries? In your view, how do stories of the Pink Panther jewel thieves and narco king pins such as "El Chapo" contribute to

boundary maintenance? Do such stories glorify criminals and lead to the conventionalization of crime? Or to its active suppression?

References

- Bandura, Albert, D. Ross and S.A. Ross (1963) "Imitation of film-mediated aggressive models," *Journal of Abnormal and Social Psychology* 63: 3-11.
- Becker, H. (1963) *Outsiders: Studies in the Sociology of Deviance*, NY: Free Press.
- Brannigan, Augustine (1986) "Mystification of the innocents: comics and delinquency in Canada 1931-1949." *Criminal Justice History*, Vol. 7, pp. 111-144.
- Brannigan, Augustine (2004) *The Rise and Fall of Social Psychology: The Use and Misuse of the Experimental Method*, New Brunswick NJ: Aldine Transaction.
- Carson, W.G. (1979) "The Conventionalization of Early Factory Crimes," *Journal for the Sociology of Law* 7: 37-60.
- Carson, W.G. (1982) *The Other Price of Britain's Oil*, Oxford: Martin Robertson.
- Cohen, Albert K. (1955) *Delinquent Boys: The Culture of the Gang*, New York: Free Press.
- CBS (2014) "Joaquin 'El Chapo': Behind the arrest of public enemy number one," *60 Minutes* Broadcast, October 12th. Accessed on 16 October 2014 at:
<http://www.cbsnews.com/news/joaquin-el-chapo-guzman-drug-cartel-kingpin-behind-the-arrest-of-pubic-enemy-number-one/>.
- Durkheim, Emile (1984) *The Division of Labour in Society*, Translated by W.D. Halls, (1893) Introduction by Lewis Coser, New York: Macmillan.
- Engels, Frederick (1892) *The Condition of the Working-Class in England*, 1892 English edition translated by Florence Kelley Wischnewetzky. Originally written in German in 1844, New York: Allen Unwin. Available online at
<http://www.gutenberg.org/files/17306/17306-h/17306-h.htm>
- Erikson, K. (1966) *Wayward Puritans*. New York: Wiley.
- Eron, Leonard (1987) "The development of aggressive behavior from the development of a developing behaviorism," *American Psychologist* 42: 435-4
- Fowler, Deborah F. (2007) *Texas' School-to-Prisons Pipeline*, Austin TX: Appleseed.
<http://www.texasappleseed.net/pdf/Pipeline%20Report.pdf>. Accessed Oct 29 2014.

Unit 7. Relativistic Theories: Crime and Cultural Transmission Theories

File: 7. 305 – Final Unit 7.docx 12,950 wds

Freedman, J.L. (1988) "Television and Aggression: What the research shows," pp. 144-62 in Stuart Oskamp (ed.) *Television as a Social Issue*, Newbury Park CA: Sage.

Feshbach F. and R.D. Singer (1971) *Television and Aggression: An Experimental Field Study*, San Francisco: Jossey-Bass.

Friedrichs, David O. and Martin Schwartz (2008) "Low self-control and high organizational control: the paradoxes of white-collar crimes." Pp 145-159 in Erich Goode (ed.) *Out of Control: Assessing the General Theory of Crime*, Stanford: Stanford University Press.

Gadow K. D. and J. Sprafkin (1989) "Field Experiments of Television Violence and Children: Evidence for an Environmental Hazard?" *Pediatrics* 83 (3): 399-4-5.

Gauntlett, David (1995) *Moving Experiences: Understanding Television's Influences and Effects*, London: J. Libbey.

Goffman, Erving (1961) *Asylums*, New York: Ransom House.

Gottfredson, Michael and Travis Hirschi (1990) *A General Theory of Crime*, Stanford CA: Stanford University Press.

Gove, Walter (1980) *The Labeling of Deviance: Evaluation of a Perspective*, 2/e Beverley Hills CA: Sage.

Grillo, Ioan (2014) "What the arrest of 'El Chapo' means for Mexico," *Time Magazine*, February 23rd. Accessed on 16 October 2014 at: <http://time.com/9283/what-the-arrest-of-el-chapo-means-for-mexico/>.

Gusfield, Joseph (1963) *Symbolic Crusade: Symbolic Crusade and the American Temperance Movement*, Urbana: University of Illinois Press.

Huesmann, R.L., L.D. Eron, M.M. Lefkowitz and L.O. Walder (1984) "Stability of Aggression over time and generations," *Developmental Psychology* 20: 1120-34.

Kaplan R.M. and R.D. Singer (1976) "Television violence and viewer aggression: A re-examination of the evidence," *Journal of Criminal Psychopathology* 3: 112-37.

Keefe, Patrick R. (2014) The Hunt for El Chapo: How the world's most notorious drug lord was captured, *The New Yorker*, May 5th edition. Accessed on October 15, 2014 at http://www.newyorker.com/reporting/2014/05/05/140505fa_fact_keefe?printable=true¤tPage=all.

Kornhauser, Ruth (1976) *Social Sources of Delinquency*, Chicago, University of Chicago Press.

Unit 7. Relativistic Theories: Crime and Cultural Transmission Theories

File: 7. 305 – Final Unit 7.docx 12,950 wds

Knefel, Molly (2013) “The School-to-prison pipeline: A national problem for equal rights,” *Rolling Stone Magazine* November 7th.

Lemert, Edwin (1951) *Social Pathology*, New York: McGraw-Hill.

Lemert, Edwin (1967) *Human deviance, social problems, and social control*, Englewood Cliffs, NJ: Prentice Hall.

Lewis, Michael (2012) *Boomerang: Travels in the New Third World*, New York: Norton.

Olweus, Dan (1979) “Stability of aggressive reaction patterns in males: A review,” *Psychological Bulletin* 86: 852-75.

MailOnline (2014) “Police arrest alleged leader of the notorious Pink Panther jewel theft gang behind more than 120 robberies including £88m Cannes heist” *The Daily Mail*. Accessed on 16 October, 2014 at <http://www.dailymail.co.uk/news/article-2557815/Police-arrest-alleged-leader-notorious-Pink-Panther-jewel-theft-gang-120-robberies-including-88m-Cannes-heist.html>.

Mount, Harry (2013) “Why no one can stop the Pink Panther jewel thieves: As brutal as they’re cunning, they’re the gang of 200 ex-soldiers who’ve struck across the world,” *The Daily Mail*, Accessed at Mail Online on 16 October 2014 at: <http://www.dailymail.co.uk/news/article-2381103/Pink-Panther-jewel-thieves-Gang-200-ex-soldiers-struck-world.html>.

Rosenthal R. and E. Jacobsen (1968) *Pygmalion in the Classroom*, New York: Holt, Rinehart and Winston.

Scheff, Thomas (1966) *Being Mentally Ill*, Chicago: Aldine.

Siegel, Brown and Hoffman (2013) *CRIM 2/e* Toronto: Nelson.

Sutherland, Edwin (1940) “White-collar criminality,” *American Sociological Review* 5 (1): 1-12.

Szasz, T. (1970) *The Manufacture of Madness*, New York: Harper & Row.

Tannenbaum, Frank (1938) *Crime and the Community*, New York: Columbia University Press.

Tucker, Robert C. (1978) *The Marx-Engels Reader 2/e*, New York: Norton.

Wilson, James Q. and Richard J. Herrnstein (1985) *Crime and Human Nature*, New York: Simon and Schuster.

ⁱ Tony Simmons suggested a rather different comparison -- between Condoleezza Rice and Angela Davis, who were both born in Birmingham, Alabama, at the height of the Civil Rights movement. Each was the daughter of respectable middle-class families who moved in the same social circles, according to various biographies. Each moved on to great fame, becoming pioneers of sorts as the "first black woman" in different fields. But their outcomes could not have been more different.

According to Simmons (personal communication, 2014) *"Rice seized the opportunities of the Civil Rights movement to make something magnificent of herself. With hard work, she excelled first in classical music and then in foreign affairs, where she became one of America's top experts on the Soviet empire and communism. She capped her career as America's first black Secretary of State — a post she served with grace, polish, fairness, knowledge and dignity. After that, she became provost at Stanford University.*

Davis also studied at a university. But instead of excelling as Rice did, she was drawn to philosophy with European intellectuals of anti-American and anti-free market thinking. These included UC San Diego's Herbert Marcuse, who led her to embrace communism, anti-Americanism and the Soviet-financed Communist Party U.S.A."

See <http://news.investors.com/ibd-editorials/050914-700393-academia-goes-bonkers-in-insulting-condoleezza-rice-and-embracing-angela-davis.htm>.

ⁱⁱ This is similar to such insurgent groups as Hezbollah and Hamas who combine revolutionary activities with active community engagement, making it difficult to attribute "terrorist motives" to them unambiguously.

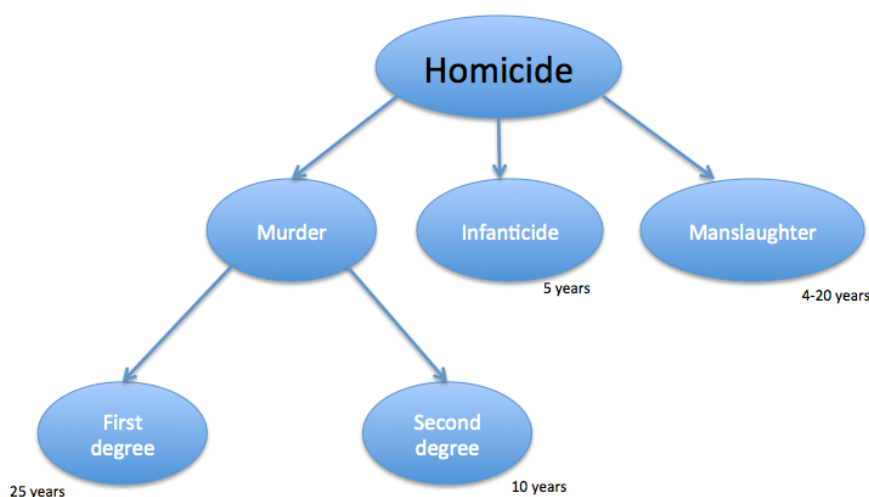
ⁱⁱⁱ We shall deal with Canadian cases of "honour killings" in the next unit. Although we define "honour killings" as extreme forms of violence against females in patriarchal societies, this form of violence is not limited to rural cultures in Pakistan, India, the Middle East and parts of Africa. It takes a different form in Canadian society in relationship to infidelity and desertion. However, the practice of female genital mutilation, which is designed to suppress sexual arousal in women, is quite prominent in these societies, and would have been exactly the sort of relativistic perspective on crime that Sellin had identified. FGM is practiced in Africa, the Middle East, Indonesia and Malaysia, as well as some migrants in Europe, United States and Australia. It is also seen in some populations of South Asia. The highest known prevalence rates are in 30 African countries, in a band that stretches from Senegal in West Africa to Ethiopia on the east coast, as well as from Egypt in the north to Tanzania in the south. See http://en.wikipedia.org/wiki/Prevalence_of_female_genital_mutilation_by_country.

Let’s get even: Murder and intimacy

“Thou shalt not kill.” This was the fifth of the Ten Commandments said to have been given by Yahweh to Moses on Mount Sinai to govern the Jewish tribes as they moved from enslavement in Egypt to the Promised Land in Palestine. This has been an injunction in Judeo-Christian civilization for several thousand years. But how extensive or inclusive is this credo? What actors or agents are governed by it? Is it limited to individuals, or does it extend to families, clans, institutions, politics and even nations? This injunction has been absorbed into legal codes all over the world in one form or another, including national criminal laws and international conventions. The Canadian Criminal Code includes a number of specific proscriptions that apply to “homicide.” Our inquiry into killing will start (but not end) here (see the link to the CCC in Unit 2). The Code does not base law on “killing” per se. The global crime it names is called “culpable homicide,” and it refers to causing the death of another person, either purposely (culpable means blameworthy) or by acting recklessly. It is defined as follows:

229. *Culpable homicide is murder*
(a) *where the person who causes the death of a human being means to cause his death, or*
(b) *means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not.*

To regard killing as homicide requires intentionality in the first instance (you have to *mean* to do it), or reckless disregard for life in the second instance (you don’t care what happens). The global concept of homicide includes murder, manslaughter and infanticide. The Code distinguishes between types of murder in section 231.



231. (1) *Murder is first degree murder or second degree murder.*
(2) *Murder is first degree murder when it is planned and deliberate.*

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

The law distinguishes the level of “culpability” or guilt by degree. “Planning and deliberation” implies that the perpetrator undertakes the activity with full knowledge of the consequences. However, short of full knowledge, actors may nonetheless have some appreciation of the inappropriateness of their actions and the likelihood of harm arising from them. That would result in murder in the second degree. The code goes further by creating liabilities to perpetrators who need to be held responsible for their actions to the highest degree, i.e. the “first,” even if the acts were not entirely under their planning and deliberation, but for which they are nonetheless responsible.

- Under the Code, any scheme by one party to contract another to carry out homicide would constitute a planned and deliberate act, i.e. first degree murder, and would hold the contractor who enlisted a killer to answer an indictment for first degree murder, even if the contractor did not commit the crime him or herself.
- In addition, homicide is first degree when carried out under a terrorist act, or on behalf of a criminal organization. In these cases, parliament has removed the diminution of responsibility of the individual because he or she is acting as an agent for the criminal organization; in other words, the participation with the organization is deliberation enough to attract responsibility for the consequences where homicide occurs.
- Murder of a police officer is automatically classified as first degree murder, a step undertaken to raise the liability against those who would endanger the lives of persons representing the justice system.
- Likewise, homicide occurring in the context of other very serious crimes that result in unpredictable deaths is classified in the highest degree of liability. These include hijacking an aircraft, sexual assault, kidnapping or hostage taking where someone is killed as a result of the crime, whether it was planned or not.

These killings are all classified as first degree murder even if they are not specifically planned and deliberate. Second degree murder is not defined so precisely. “All murder that is not first degree murder is second degree murder.” This is homicide where the level of planning and deliberation is less evident i.e. a person takes another’s life in a spontaneous altercation. The Code then describes infanticide.

233. A female person commits infanticide when by a wilful act or omission she causes the death of her newly-born child, if at the time of the act or omission she is not fully recovered from the effects of giving birth to the child and by reason thereof or of the effect of lactation consequent on the birth of the child her mind is then disturbed.

What the law of infanticide recognizes is the problem of post-partum depression, but it provides only a diminished defence for infanticide by reducing the penalty. It recognizes diminished responsibility akin to the legal theory underlying manslaughter. Manslaughter is less culpable than murder because the actors are provoked and impassioned, and lose their self-control:

232. *(1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.*

(2) A wrongful act or an insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section if the accused acted on it on the sudden and before there was time for his passion to cool.

234. *Culpable homicide that is not murder or infanticide is manslaughter.*

So far, so good. Now the law begins to differentiate crimes in terms of the gravity of their penalties. The penalty for murder and manslaughter is “imprisonment for life.” The penalty for infanticide is a period of imprisonment not exceeding five years. Persons convicted of first degree murder must serve 25 years before eligibility for parole. Persons convicted of second degree murder must serve 10 years before eligibility for parole. In the case of manslaughter, those convicted of a crime employing a firearm face a *minimum* punishment for a term of four years. In the past, those convicted of several counts of murder served all penalties concurrently. Recent changes to the law now make them liable to *consecutive* sentences. Other changes to the law require that persons who have previously been indicted on a charge of manslaughter or infanticide, and who subsequently commit homicide, will be charged automatically with murder, and not with its diminished forms i.e. manslaughter or infanticide. These changes increase the tariff for multiple offenders, and for re-offenders.

The section of the code that defines homicide is followed by the definition of the law regarding suicide. Until 1970, suicide per se was a criminal offence. The code now criminalizes only the counseling or aiding of suicide.

241. *Every one who*
(a) counsels a person to commit suicide, or
(b) aids or abets a person to commit suicide,
whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Fourteen years? For talking to some one (i.e. counseling)? Why so harsh? It is important to include a discussion of suicide in the context of killing since it overlaps with the issue of euthanasia, i.e. the willful termination of life due to terminal, incurable and/or debilitating illness as practiced in certain European countries. Euthanasia is not recognized under Canadian law. It amounts to homicide. Abetting suicide may amount to contributing to euthanasia, i.e. homicide. If one examines the frequency of homicide and suicide in recent years, it will come as a surprise to many readers that the level of suicide in Canada is about six times the level of homicide. Persons are more likely to take their own lives than they are to take the lives of others, as suggested in the following table. Note that the table refers to suicides per se, not assisted suicides. We will return to the link between homicide and suicide in greater detail later. The evidence suggests that a significant number of those who commit suicide also commit homicide, but not in that order.

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

Homicide and Suicides in Canada 2007-2012

	2007	2008	2009	2010	2011	2012
Number of Homicides		611	610	554	598	543
Rate by Population		1.83	1.81	1.62	1.73	1.56
Number of Suicides	3,611	3,705	3,890	3,951	3,728	
Rate by Population	11.00	11.09	11.54	11.55	10.78	

Source: Statistics Canada CANSIM table 102-0551

It is difficult to understand homicide or killing by numbers alone. The Canadian Uniform Crime Reports tend to represent crimes as aggregate phenomena, often bereft from the social context that influences their production. If Robert William Pickton kills sixty street women from Vancouver’s notorious eastside ghetto on his rural pig farm (1990s-2000s), or Paul Bernardo kidnaps and murders two teenagers in his house in St. Catharine’s (1991-1992), or Justin Bourque murders three RCMP officers and attempts to kill another two in Moncton, New Brunswick (2014), each murder ends up as a proverbial statistic, part of an annual count of crime. There are no threads that tie homicides to one another across different years, no evidence of “criminal careers” among offenders who may be disproportionately responsible for many of the same crimes in the same year or different years, and no way of linking different criminal events such as serial rape and serial murder to the same perpetrators.

A second major problem is that we tend to confine our examination of killing to the misconduct of individuals acting alone, but not completely. The criminal code is indirectly sensitive to this limitation by raising the degree of culpability in homicide penalties to those *associated* with organized crime, and terrorist groups. This reflects recognition of the corporate nature of certain forms of homicide. The heightened liability of homicide committed in the context of other serious crimes (i.e. aircraft hijacking, sexual assault etc.) is an oblique recognition of criminal careers, i.e. that those who break the law are not necessarily one-time, one-type offenders, but persistent and “omnivorous.”

A third major problem is that the focus on UCR type offences overlooks the sorts of massive forms of repressions associated with political conflicts. In the post-Columbian Americas, there was ample evidence of massacres of native populations by the European settlers to push them off the land. That form of out-right killing is a thing of the past in North America. However, within our life times there has been brutal suppression of the political opponents of dictatorial governments in Indonesia (1965), East Bengal (1971), and Rwanda (1959-1994) to name a few cases. And when we raise the specter of political repression *within* states, it is natural to expose the issue of international aggression *between* states, and the phenomenon of war crimes against non-combatants.

As we raise the unit of analysis from individuals to conflicts within clans, institutions, nations and states, we confront a changing narrative of the nature of killing, the changing legal frameworks to describe and prosecute it, and the different sociological frameworks to analyze the activities of those who breach the fifth commandment.

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

Unit Objectives

In this unit we explore the following topics:

- First, we examine the national patterns of homicide in Canada when we review the Homicide Survey to determine trends over time, national differences in homicide rates, age and gender of victims and of perpetrators, relationships between victims and offenders, the role of weapons and gangs, and of intoxicants and mental disorders.
- Second, we analyze homicide as an expression of conflict between individuals characterized by “trivial altercations” with an emphasis on its ambiguity in terms of outcome, gender characteristics, backgrounds of offenders and explanation in terms of honour challenges.
- Third, we analyze homicide within families and clans covering a range of concerns arising from the defence of family or clan integrity, and extending to instances of “domestic” murder, “honour killings” and euthanasia.
-

Understanding transgressions by context

The Homicide Survey: The national level

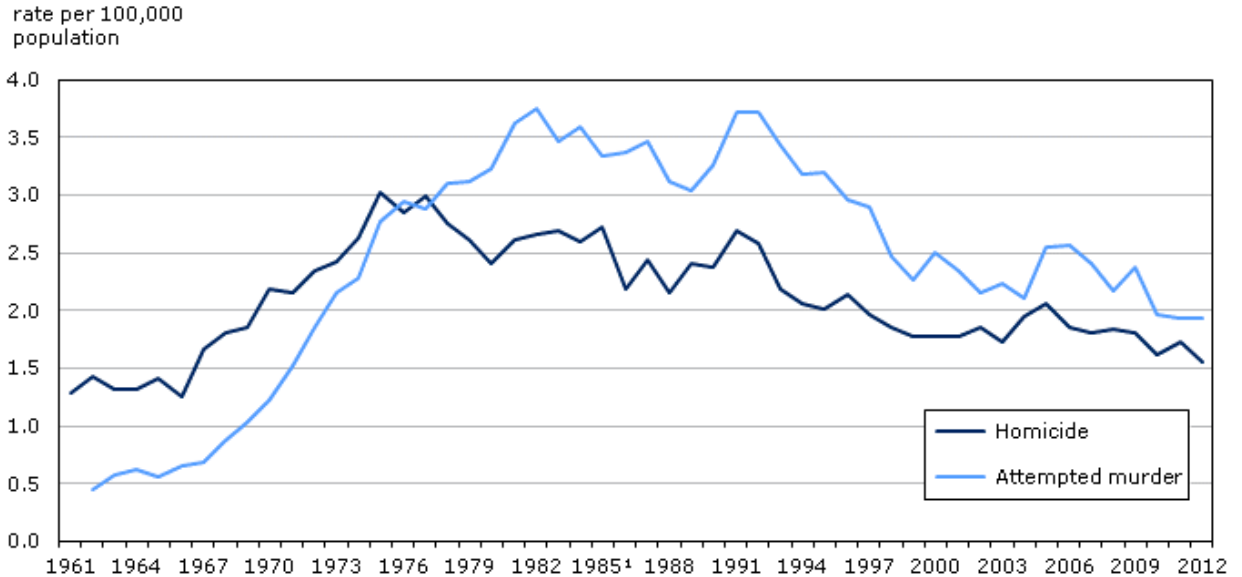
In Canada the annual Homicide Survey (Canada 2013) is prepared from police surveys completed as part of the Uniform Crime Reports. Statistics Canada has been collecting information on homicide incidents, victims and known accused persons since 1962. *Juristat* publishes annual reports of *Homicide in Canada*. The latest report covers the period up to and including 2012. In 2012 there were 543 homicides known to the police, 55 fewer than in 2011. Of these cases some 76% were declared “cleared” or solved. The vast majority of cases were cleared through a charge being laid or recommended (88%). The remainder were cleared by suicide of the accused (an astonishing 11%), or cleared by some other means (1%). However, homicides involving gangs, the drug trade or firearms typically have lower clearance rates than other homicides.

As the following chart shows, the **trends** in both Homicides and Attempted Murder have been in decline since 1991. The per capita homicide rate in 2012 was the lowest since 1966.

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

Homicides and attempted murders, Canada, 1961 to 2012

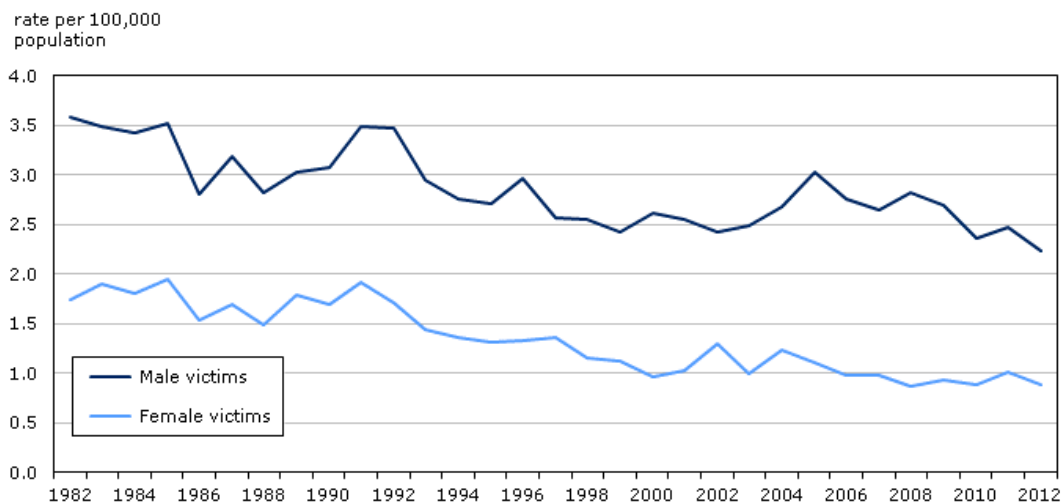


1. Excludes 329 victims killed in the Air India incident in 1985.

Source: Statistics Canada, Canadian Centre for Justice Statistics, Homicide Survey and Uniform Crime Reporting Survey.

If we examine the **gender** of the victims in the 1982-2012 series, males are consistently about 2.5 times as likely to be victims of homicide as females. Domestic homicide will present a different picture that we will explore later.

Homicides, by sex of victim, Canada, 1982 to 2012

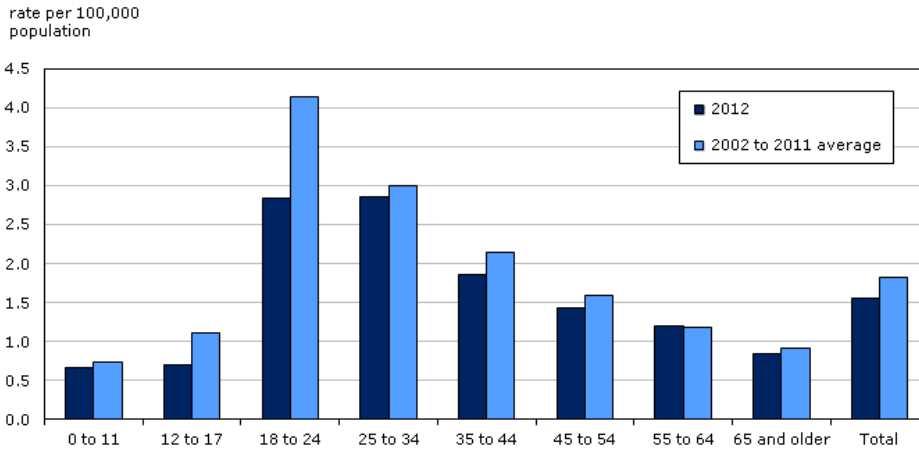


The **age** of homicide victims in 2012 peaks in the 18-24 and 25-34 age categories. In the prior period, the risk of homicide was higher in the younger group, 18-24.

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

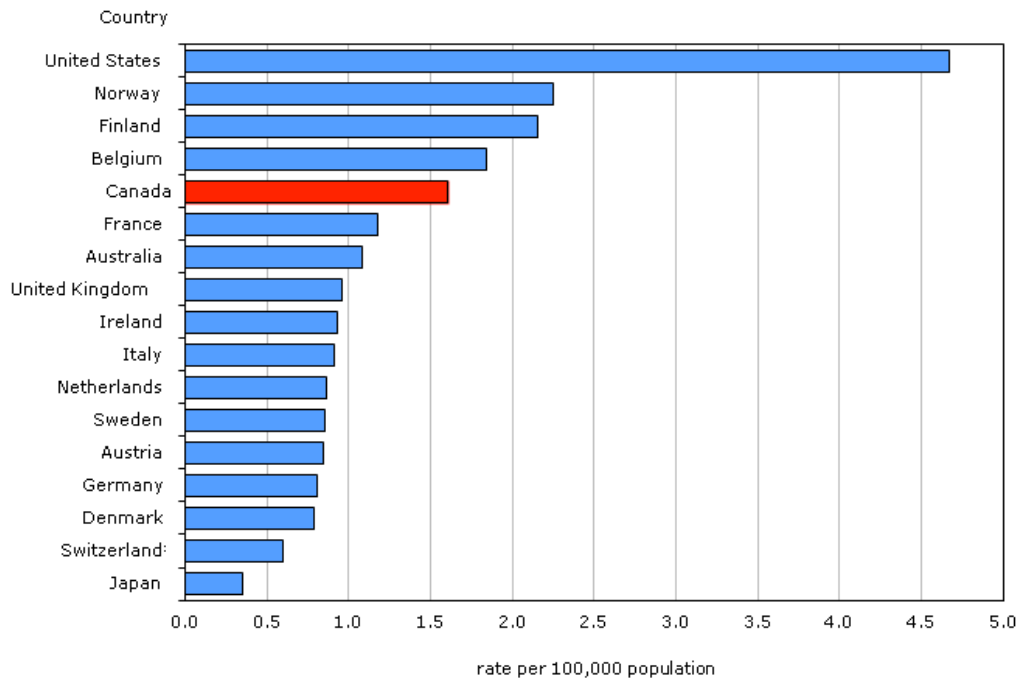
File: 8. 305 – Final Unit 8.docx 12,455 wds.

Homicides, by age group of victim, Canada, 2012



How does the Canadian rate of homicide compare with similar “peer” countries? It is about one-third the per capita rate compared to the US, but about 50% higher than Australia, The United Kingdom (England and Wales), and Ireland. In the following chart, the year of comparison was 2011 for most of the peer countries. For the Netherlands, the latest year of comparison was 2010.

Homicide rates, by peer countries, 2012



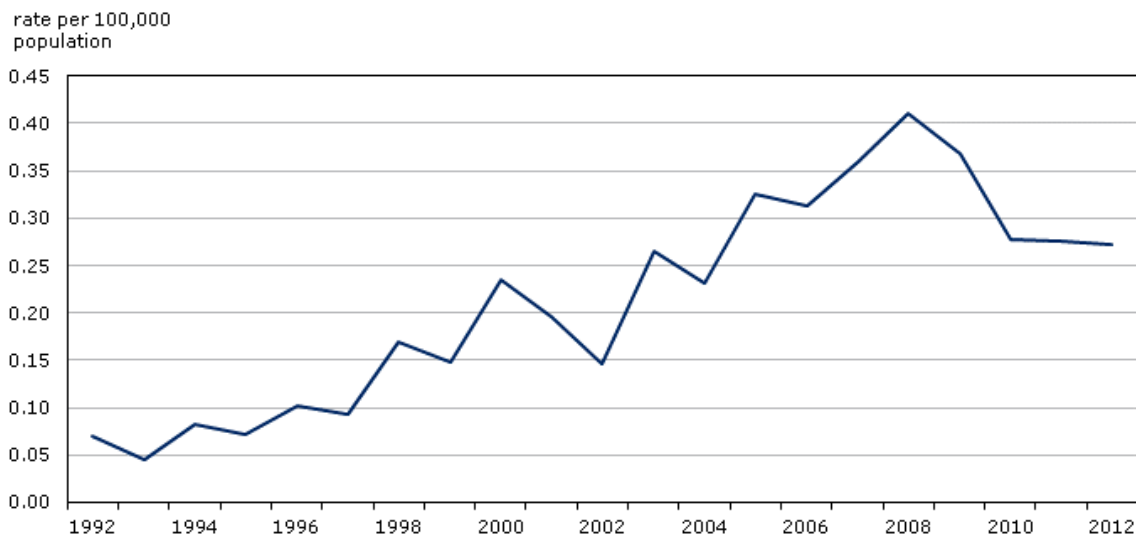
In 2012 the most common method of homicide was comprised of shootings and stabbings, followed by assault (not shown). More specifically, in 2012 there were 172 shootings compared to 155 in 2011. These accounted for about one-third of the 543 homicides in 2012. The most common type of firearm since 1991 has been a handgun, followed by rifle or shotgun. In urban areas 76% of fire-arm homicides were committed with handguns. In

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

the smaller centers and rural areas about 60% of fire-arm homicides were committed with a rifle or shotgun. The urban figure appears to reflect the sharp rise in gang activity since 1992.

Gang-related homicides, Canada, 1992 to 2012



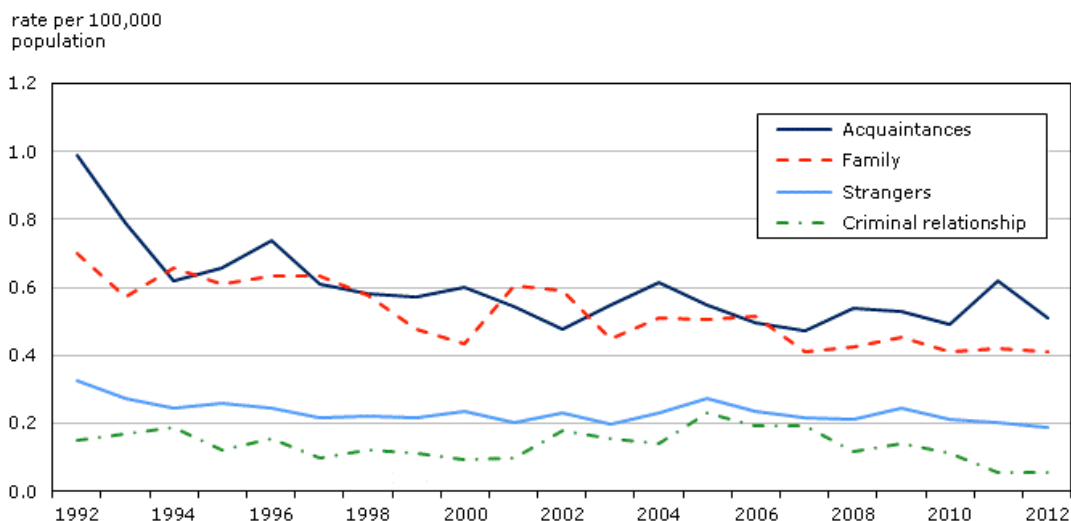
The Homicide Survey tracks the number of homicides that are “gang-related,” that is, apparently associated with organized crime activity or a street gang. In 2012 police reported that 95 homicides were determined to be gang-related (more than 1 in 6 homicides). Gang-related homicides appear to have peaked in 2008 (see graph above). The police survey prior to 2005 simply asked if the homicide was gang-related. Afterwards, the survey asked whether the homicide was “confirmed” as gang-related or “suspected” as gang-related. This may have led to the inclusion of more cases after 2005. In addition, about 75% of the gang-related homicides were associated with the use of a firearm, and in 80% of these cases, the weapon was a handgun (Canada 2013).

What is the relationship between the victim and the offender? Persons are about three times as likely to be killed by an acquaintance or family member as opposed to a stranger. Acquaintances include casual and close friends, persons who are dating, neighbours or business associates. Families include spouses, children, siblings and other extended family members. In fact, intimate partner homicide made up about 20% of all the cases in 2012. “In total, there were 82 intimate partner homicides in Canada in 2012 – 7 fewer than the previous year – with the majority (83%) involving a female victim” (Canada 2013: 15).

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

Homicides, by accused-victim relationship, Canada, 1992 to 2012

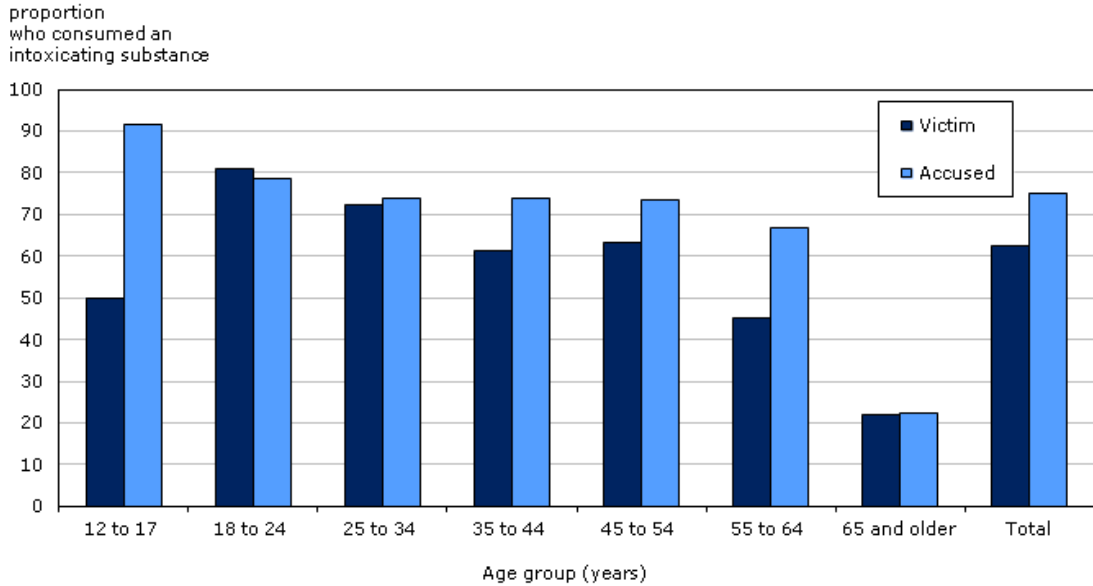


One of the most alarming discoveries in the Homicide Survey is the level of association between homicide and the use of alcohol and drug consumption. In 2012, 246 persons *were known* to have consumed alcohol, drugs and/or other intoxicants (including glue, aerosols, gasoline or solvents) at the time of the incident. Ironically, we find similarly high levels among the victims. Some 238 victims of homicide had also consumed an intoxicant at the time of the incident. The Homicide Report breaks down the usage by age. The proportion of persons, both victims and accused, under the influence of an intoxicating substance is relatively stable across the age categories. For victims, the overall level was 60%; for perpetrators, the level was 75%. The exceptions were the very young and the old. The young accused had a use of intoxicants of 92%, while the oldest group of accused had a level of 22%.

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

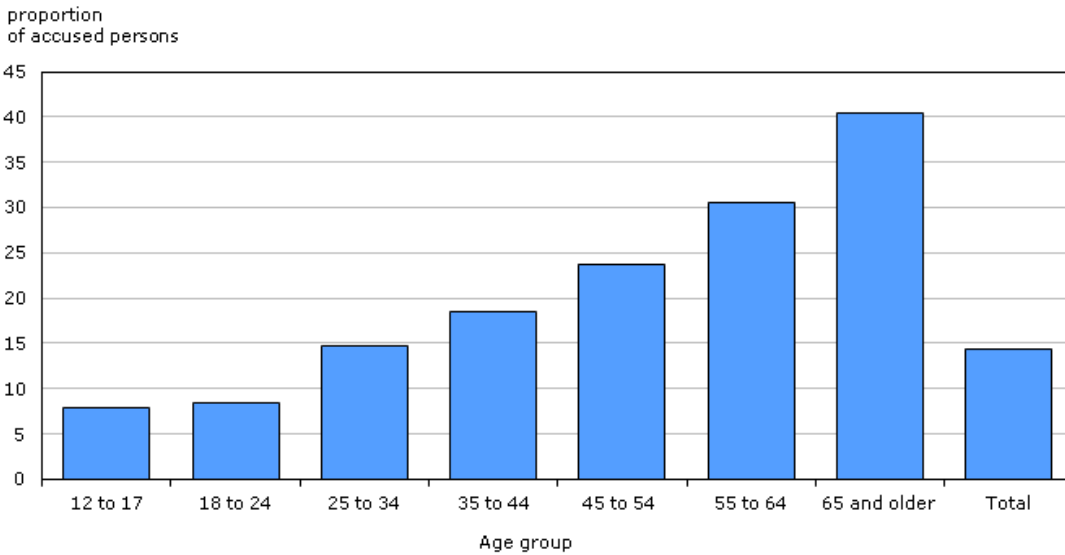
File: 8. 305 – Final Unit 8.docx 12,455 wds.

Homicide victims and accused persons who had consumed alcohol and/or drugs, by age group, Canada, 2012



The final section of the survey that concerns us is the association between homicide and the mental health of the accused. The survey collected information about whether an accused person was suffering from, or was suspected of suffering from, a mental or developmental disorder such as schizophrenia, depression, bi-polar disorder or dementia. These were not clinical determinations as such, but information gathered by the homicide investigators. Not all the files yielded such information (information was unknown or not reported for some 22% of cases), but where it was part of the record, police had reason to believe that 74 accused persons in 2012 had such a disorder. In addition, the disorder was much higher among older accused (see chart below) and female accused (not shown).

Persons accused of homicide with a suspected mental or developmental disorder, by age group, Canada, 2002 to 2012



What conclusions can be drawn?

The Homicide Survey has some predictable as well as surprising observations. The predictable observations: first of all, the decline in murder reflects the overall “crime drop” that was addressed in Unit 4, although the same question presents itself here as before – whatever is behind the decline in the overall crime rate is probably the same thing behind the decline in homicide. Second, the major observations in criminology about gender are strongly reflected in the 2012 homicide data. The perpetrators of crime are disproportionately male. The victims of homicide are also disproportionately male. Homicide is primarily a male versus male problem. However, when we break down the elements of homicide in respect of family victims and perpetrators, the perpetrators are still male, but the victims are disproportionately female. The survey does not explain why, but this is a question to which we will return later. Third, in terms of age, the victims of homicide are overwhelmingly in the 18-24 year category, which is also the prime age at risk for offending of all types. Why is age such a liability for criminal behaviour? The survey is not designed to answer this question. Again, we shall return to this question later.

What were the surprising observations? There is a strong association between homicides committed by gang members in urban areas with handguns implicated in the narcotics trade. That is not itself surprising. What is surprising is, first, that while aggregate crime has been on the decline, gang related homicide has been on the rise, as has the use of handguns related to such crimes. Second, there is compelling evidence that homicide is associated with cognitive impairments of two separate types. (a) Homicide is strongly associated with the use of intoxicants, among both victims and perpetrators, and such intoxicants are known to inhibit normal levels of self-control that suppress crime. And (b) homicide is significantly associated with perpetrators who have on-going mental disorders that may compromise their ability to control themselves emotionally and behaviorally. Neither alcohol use nor mental distress is a strong predictor of violence or murder by itself. Nonetheless, murder is significantly associated with both conditions. Why? Most people who get “into their cups” stay out of fights, and most people who have mental disorders stay under the radar and stick to their medications. This suggests two things. First, both substance abuse and mental disorder *exacerbate* other conditions that expedite the violence associated with homicide. Where there is already conflict over household income or spending, or child rearing decisions, these two factors (intoxicants and mental problems) might act like catalysts that accelerate aggression. Second, aggression and conflict that sometimes eventuates in murder may pressure people to self-medicate with alcohol, and/or drugs and may create depression, and dissociation or trigger underlying mental vulnerabilities. The Homicide Survey cannot rule out either possibility. Indeed, the effects may work in both directions.

However, crime does not cause age or gender. There is no issue of directionality of potential effects with respect to those variables. Nor does homicide produce changes in its *own* frequency over time. The causes of the crime drop must be prior to, “exogenous” and independent of homicide itself. In other words, there must be something outside of, or separate from crime (i.e. exogenous) which constitutes an “independent variable” that

occurs before the changes in homicide occur. That condition seems satisfied for changes in levels of homicide, and the association of age and gender with crime. But who would argue that homicides cause gang formation? that the murder causes the use of firearms? that gangs and guns and drugs are caused by homicide? Such an argument seems unlikely. Or does it? Some might argue that once the markets in illicit goods arises (i.e. drugs, prostitution), competition results in violence including homicide. Violence requires persons to create extra-legal associations, i.e. gangs, and extra-legal security for protection, i.e. crews with handguns. Indeed a leading source of homicidal motivation is criminal associates. Then the direction of effects becomes reversed, at least to some extent. Crime is not only an expression of violence; it escalates more violence. Such questions cannot be resolved by the use of annual police survey data. We turn to more sociological studies of violence to assess how they sort out these kinds of associations. At the core of sociological studies of “mere” murder is the concept of *trivial altercations*, particularly in the case of homicide among persons already associated with one another.

The Theory of Trivial Altercation

In *Patterns of Criminal Homicide* (1958) Marvin Wolfgang produced the first detailed examination of murder in modern criminology. It was based on a systematic analysis of the files of the Philadelphia police department. Wolfgang examined the 588 cases classified as criminal homicide in Philadelphia that had occurred between 1948 and 1952. He recorded the same systematic facts that the police paid attention to – age, gender, race, weapon, neighbourhood, type of establishment, etc. But as a criminologist, he was also interested in “motive.” Why did people kill? For 588 cases, he could classify any of twelve discrete motives that led one person to take the life of another. They are described in the next table.

Motive categories and number of cases in Criminal Homicides in Philadelphia 1948-52

Motive	Number of Cases	Percentage
• Altercation of relatively Trivial origin; insult, Curse, jostling, etc.	206	35
• Domestic quarrel	83	14.1
• Jealousy	68	11.6
• Altercation over money	62	10.5
• Robbery	40	6.8
• Revenge	31	5.3
• Accidental	23	3.9
• Self-defence	8	1.4
• Halting of felon	7	1.2
• Escaping arrest	6	1.0
• Concealing birth	6	1.0
• Other	20	3.4
• <u>Unknown</u>	<u>28</u>	<u>4.8</u>
Total	588	100

Source: Wolfgang (1958: 195)

This classification turned out to be a little puzzling since the most frequent motive he identified for the most heinous crime in the human lexicon was counter-intuitive. It was a dispute between people that was quite minor, and perplexing or stupid in retrospect: “Altercation of relatively trivial origin; insult, curse, jostling, etc.” It occurred in over one-third of all cases, more than twice as prevalent as the next motive. Wolfgang’s finding was replicated in studies of other cities. “Such altercations constitute the most prevalent variety of urban homicide” (Daly and Wilson 1988: 125). This finding also shows up in historical materials. Roger Lane (1979: 59) reported that “the modal homicide in nineteenth-century Philadelphia resulted from a brawl or quarrel originating in a saloon before reaching a climax in the street.” As we noted in an earlier unit, alcohol consumption in the early 19th century North American urban centers was relatively high, and it appears to have been a contributing cause to lower self control. Lane’s report continues: “Other than the alcohol itself, whatever allegedly precipitated the trouble—a spilled drink, a careless remark, an argument about the merits of different steam engines—almost always seemed tragically out of proportion to the aftermath.”

Gottfredson and Hirschi (1990: 33) describe the same type of sequence. People who are already known to one other get into an argument about some small difference of opinion or some perceived insult to their honour. As in the past they may have jostled verbally and may have even pushed one another around—like two bears seeking to establish dominance in the wild, or two boys wrestling in a playground. “In the present instance, one of them has decided that he has had enough, and hits a little harder or with what turns out to be a lethal instrument. Often, of course, the offender simply ends the dispute with a gun” (ibid).

Two interesting things are associated with such trivial altercations. First, the motive to kill may be quite weak or ambiguous. People may want to “make a point” by their escalation of differences into actual assault, but whether an assault ends in homicide may be the result of other factors beyond their control, i.e. whether a by-stander intervenes – or alternatively whether friends and/or associates goad the disputants into prolonged conflict, or whether there is an honourable path of de-escalation and departure. The outcome may be determined by the presence of a firearm and the ability of the owner to use it effectively. It may be the weight of the pan used to strike the opponent, the availability of emergency services and/or the distance to an emergency medical room. The point is that the most prevalent form of conflict resulting in death begins where that outcome is not the calculated end-point of the transaction.

The second important point discovered by Wolfgang was that many acts of aggression resulting in homicide are “victim precipitated.” The person killed appears to have been the one who initiated the conflict. David Luckenbill (1977) examined the files of 71 murders in California that covered a ten year period. He found that the roles played by the victims and killers sometimes became reversed from the beginning to the end of the event. For example, an argument erupts. One of the contestants draws a knife to intimidate the other. They struggle. But the unarmed person takes the knife away from the other and stabs him fatally with his own weapon. The victim may have initiated the conflict through provocation. The perpetrator may not experience any particular guilt or pangs of conscience because he was acting righteously in self-defence. Such persons do not feel compelled to exit the scene

since, in their eyes, they have done nothing wrong. That means that these are not premeditated morally self-conscious acts, or decisions to commit murder in the first degree. They are “situated transactions,” to use Luckenbill’s term. They are not cold-calculated murders for profit or assassinations for vengeance. They are often undertaken in states of anger, rage and/or intoxication. Recall that in the 2012 Canadian Homicide Survey three-quarters of the perpetrators were intoxicated. They are not “practical” behaviours or expressions of strategic self-interest, instrumental learning or based on rational calculations of long-term gain—things implied by various theories. They tend to be spontaneous, or instinctual, and arise in the absence of self-reflection and calculation. Contrary to Sutherland, they do not appear to be learned, either in their pushing behaviour or unique subcultural justifications over sheltering the “trivia” that makes up their trivial altercations. Also, they seem to involve males more than females, and younger persons more than those with many more miles on the human odometer.

Can all these observations be understood coherently? To call them “trivial altercations” does not explain them. Daly and Wilson (1988) offered one of the most sweeping explanations of such behaviour based on long-standing Darwinian principles. They note several key points about the literature on “trivial altercation.” It applies primarily to men, to those who are young, and to those who are poor. Daly and Wilson’s line of argument is called “evolutionary psychology.” What is it that such men are fighting about? Basically, they are defending their honour, or their sense of “self-respect.” Really? Why do not women get into similar fights? Don’t they have honour? According to Daly and Wilson, they do not have the same intuition about what is at stake. For men, such conflicts are a test of their masculinity that has an unlearned or instinctual basis. It may be intensified by cultures that elaborate a machismo identity, but the basic phenomenon is an unlearned gender-based appetite for “honour,” and a yen for violence to achieve it.

How does the theory work? Evolutionary theory suggests that *homo sapiens* has been a polygamous species, or more exactly a polygynous species. Polygamy implies that either males *or* females can choose multiple mates; polygyny refers specifically to the ability of males to mate with multiple female partners. Polyandry refers to the practice of females to engage multiple husbands. (See <http://grammarist.com/usage/polygamy-polygyny-polyandry/>) Although boys and girls are born into each generation in roughly the same proportions (with a small surplus on the male side), males have historically competed with each other to attract several mates. Polygyny was common in the Old Testament, and is recognized today in Islamic law. It was ubiquitous in virtually all pre-industrial or foraging societies. It is also the pattern of breeding among all the great apes who are genetically related to our species. Polygyny is associated with sexual dimorphism – different average body sizes of males versus females. Generally speaking, the males are larger and stronger than females because they have evolved under competition with other males. Polygynous species experience differences in senescence by gender; females tend to outlive males. Males are here for a good time (fierce competition and reproduction), not for a long time. There is also variation in sexual maturity by gender; females are sexually fertile at an earlier age, suggesting that they may have evolved abilities to recreate with males older than themselves. All these factors are evident in *homo sapiens*.

These changes are said to have occurred under evolutionary competition – but not through the proverbial competition *between* species associated with ideas of the “struggle for existence” (Charles Darwin) and the “survival of the fittest” (Herbert Spencer).” The pressures that Daly and Wilson focus on are changes brought about through *sexual* selection and competition *within* species. For example, male peacocks compete with each other with elaborate and colourful displays and strutting behaviour to attract peahens. All that fancy feather-work does nothing to frighten predators or to put food on the avian table. It is to attract females, and the more the better. The result is that a small number of males in any generation will fertilize the majority of females, and their off-spring will have the same inherited disposition.

From an evolutionary perspective, polygyny has powerful implications for reproductive fertility. It means that virtually all the females will have off-spring, but virtually none of the males will father them. This creates the basis for male-on-male competition, and, in the context of criminology, why evolution has made aggression mostly the preoccupation of males. In human societies the male ability to dominate and suppress competitors is intuitive. According to evolutionary theory, this competitive rationale does not have to be learned, or culturally transmitted. But it is not understood expressly or consciously as a value that is acquired through civilization. We are born with evolutionary priorities that go beyond the preferences for food, water and shelter. It is an “appetite” which was never previously explained in classical theory. But it is dramatically gender specific. In a polygynous species, the need for females to compete with other females is diminished by the fact that females are the objects of fierce male competition. In addition, the costs of parental investment are enormously different for males and females. As a result of mating, a woman will be pregnant with a child for nine months, and attached to it during the period of lactation and training for years. It is a fact of nature that the costs of pregnancy are less burdensome on the fathers. As a result, there are enormous instinctual differences in the investment in reproduction by males and females. In a polygynous species, a male can increase his “fitness” (reproductive success) by having access to “one more fertile female, regardless of whether he presently has no mates or fifty, whereas a woman . . . typically would not enhance her expected fitness by gaining sexual access to every fertile male on the planet” (Daly and Wilson 1988: 139). She has just so many eggs – 400 in a lifetime. Four hundred reproductive opportunities. As for eggs, the male has millions every day.

How does this apply to trivial altercations? For those men who engage in them, there is nothing trivial about them. They are all about honour, face or character. As Luckenbill (1977) puts it, they are a character contest: “a confrontation in which opponents seek to establish or maintain “face” at the other’s expense by remaining steady in the face of adversity.” They make sense uniquely to men who have a residual evolutionary pressure to acquire dominance since this leads to reproductive success. And this motive is most intense at the age of sexual maturity and competition for mates. By contrast, men with substantial material benefits already have status that makes them attractive as mates, and, as a result, their honour is not so fragile and worth quarrelling over. It is palpable. It is backed up by educational degrees, job titles, nice cars, property and smart clothes. Men with such resources have bigger fish to fry than “trivial altercations.”

Daly and Wilson extend this evolutionary psychology perspective to the explanation of robbery. Gottfredson and Hirschi (1990: 33) argued that, besides trivial altercations, the “second standard form” of murder is one associated with robbery. “Sometimes for no apparent reason at all the offender fires his gun at the clerk or store owner.” Daly and Wilson argue that one of the reasons for such violence is status. Robbery is not about poverty in the tradition of Robin Hood, i.e. penury and income re-distribution. There is an enormous gender difference in the practice of robbery. Daly and Wilson (1988: 178) observe: “If theft were related simply to penury, then the majority of thieves would be women.” Men’s needs for survival and sustenance are not greater than those of women. It is not about the poverty. But in a species where women look towards men who have a capacity to invest in their off-spring, the men who can display their material achievements extravagantly will attract more partners. According to Daly and Wilson “males gain reproductive success by commanding and displaying resources that exceed their own subsistence needs” (p. 179). That is why robbery is an attractive option to poor, young males, even if it results predictably in long prison sentences (Katz 1988: 164ff). But robbery is also an attractive criminal project because it invokes the intense male versus male emotional catharsis that enervates trivial altercations. Daly and Wilson: “robbery homicides contain some of the same confrontational elements of face and male rivalry that characterize “trivial altercations.”” Murder sometimes occurs because the victim resists the humiliation and domination that is part of the crime, and which not only makes him poorer, but makes him less of a man. For the perpetrators, that dynamic explains the attraction of a project that is likely to have them imprisoned for long periods of time throughout their adult lives. Evolutionary psychology does not advocate that we follow or excuse such instincts, or that they are morally defensible. It suggests that evolved preferences are a stumbling block to otherwise rational choices.

Let’s get back to the big heists discussed in the last unit. What were the Pink Panthers thinking when they stole hundreds of millions of dollars in gems? What were the perpetrators of the Great Train Robbery thinking with their £ 2.6 million pound heist? Not one of them was starving. They inherited none of this from their culture. It was not atavistic behaviour. They were not drunk. None of this was psychopathic behaviour. If we follow the logic of Daly and Wilson, their motivation, however unconscious, was simple: sex. They were not plotting this explicitly from the start. Somewhere in the deep recesses of their male minds was a hunch that a man with a pocket full of diamonds, or a trunk full of money, is bound to get loved. This does not make sense (as a project) to women at all. It has no appeal to those who are already materially successful in life. But according to evolutionary psychology, if you are young, male and poor, robbery is, following the old Beatles tune, your “ticket to ride.”¹ And murder associated with it is collateral damage.

Intimate Variations in Compassionate Murder

We return once more to the annual Homicide Survey in Canada. The next table provides a good snap shot of the annual levels of homicide associated different relationships between the perpetrator and the victim. There were 543 homicides recorded in 2012. The most

¹ Slang for sex.

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

prevalent cases, what we have been discussing as “trivial altercations,” are classified as “acquaintance” homicides. There were 178 cases in 2012, 43.8% of the total count.

The second most prevalent form of homicide was homicide in “family relationships.” In 2012 there were 143 cases, 35.2% of the total. Strangers made up the third leading category of homicide (n = 65, 16%), followed by homicide among partners in crime (n=20, 4.9%). [See following table; key aspects are highlighted in yellow.]

Statistics Canada

Homicides, by accused-victim relationship, Canada, 2011 and 2012

Relationship type (Victim killed by)	2012		2011 ^r		Average 2002 to 2011	
	number of victims	percent ²	number of victims	percent ²	number of victims	percent ²
Family relationship	143	35.2	145	32.5	154	34.0
Spousal relationship	62	15.3	66	14.8	71	15.8
Legal husband/wife	27	6.7	23	5.2	25	5.6
Common-law husband/wife	20	4.9	29	6.5	29	6.4
Separated or divorced husband/wife	11	2.7	9	2.0	12	2.6
Separated common-law husband/wife ³	2	0.5	3	0.7	7	1.5
Same-sex spouse ⁴	2	0.5	2	0.4	1	0.2
Other family relationship	81	20.0	79	17.7	82	18.2
Father or mother ⁵	26	6.4	27	6.1	29	6.4
Son or daughter ⁵	28	6.9	23	5.2	21	4.6
Sibling	7	1.7	13	2.9	10	2.3
Extended family ⁶	20	4.9	16	3.6	23	5.0
Acquaintance	178	43.8	213	47.8	175	38.8
Close friend	44	10.8	33	7.4	32	7.1
Intimate relationship ⁷	20	4.9	23	5.2	20	4.4
Neighbour	11	2.7	22	4.9	13	2.8
Authority figure	0	0.0	7	1.6	2	0.5
Business relationship (legal)	10	2.5	10	2.2	8	1.7
Casual acquaintance	93	22.9	118	26.5	101	22.3
Criminal relationship⁸	20	4.9	19	4.3	49	10.9
Stranger	65	16.0	69	15.5	74	16.3
Unknown relationship	5	...	9	...	4	...
Total solved homicides	411	100.0	455	100.0	456	100.0
Unsolved homicides	132	...	143	...	143	...
Total homicides	543	...	598	...	599	...

... not applicable

^r revised

1. Includes homicides with a known accused. If there were more than one accused, only the closest relationship to the victim was recorded.
2. Solved homicides where the type of relationship was unknown were excluded from the calculation of percentages.
3. Response categories for "separated common-law husband" and "separated common-law wife" were introduced to the Homicide Survey in 2005. As such, the average number and percent are calculated from 2005 to 2011.
4. Includes current and former same-sex spouses.
5. Includes biological, adopted, step and foster relationships.
6. Includes nieces, nephews, grandchildren, uncles, aunts, cousins, in-laws, etc. related by blood, marriage (including common-law) or adoption.
7. Includes current and former dating relationships, same-sex dating relationships as well as other intimate relationships.
8. Includes, for example, sex workers, drug dealers and their clients, loan sharks, and gang members. Where more than one relationship applies (e.g. criminal relationship and close friend), police are asked to report the primary relationship. Includes homicides with a known accomplice.

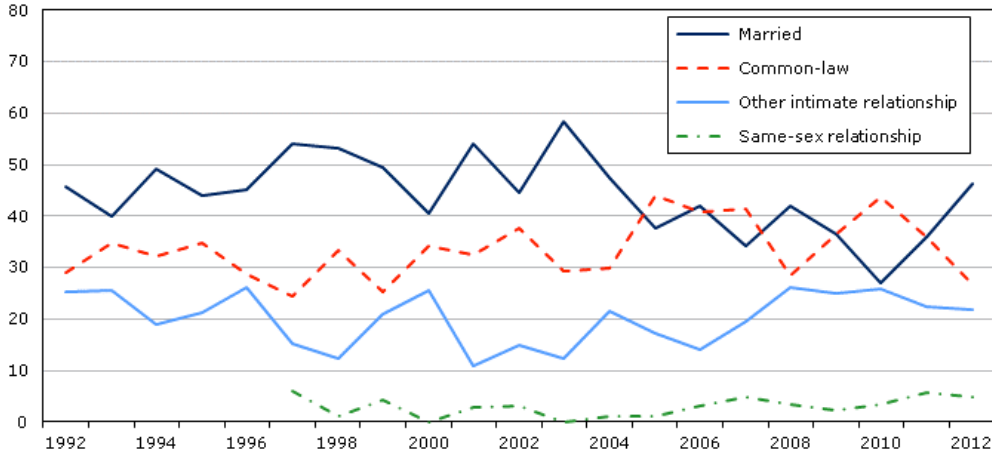
Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

Why would persons united by intimate family bonds kill one another? If we look at long-term trends (1992-2012), persons who kill one another are more likely to be involved in heterosexual marriages or common-law relationships as suggested by the following chart.

Intimate partner homicides, by relationship type, Canada, 1992 to 2012

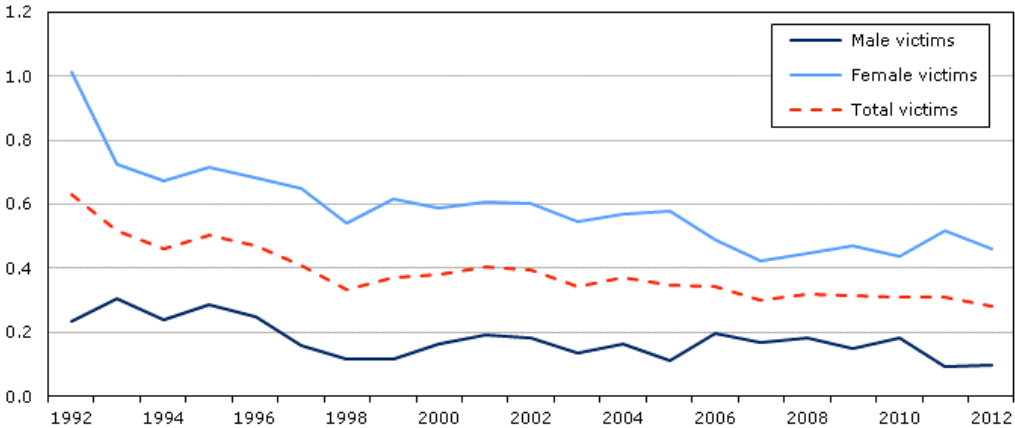
proportion of intimate partner homicides



From 1992 to 2012 the *victims* of such homicides were predominantly women.

Intimate partner homicides, by sex of victim, Canada, 1992 to 2012

rate per 100,000 population aged 15 years and over



There are several key conditions that help us understand the paradox of killing in relationships that are otherwise characterized by their intimacy. These conditions are bound together with understandings of the honour of the domestic or marriage relationship, and the protection of the integrity of the family as a social unit. These killings have a compassionate dimension at one level, since they represent the defence of a social principle, but the compassion is mixed with violence since the achievement of integrity

requires the loss of someone’s life. Within this framework, persons take one another’s lives for one of five principal reasons:

- as a way of protecting a loved one
- as assistance to the loved one’s desire to end his or her life through suicide
- as a method of repressing challenges to the marital union through apprehended separation, infidelity, and/or desertion: unfaithful spouses
- as a method of repressing challenges to the honour of the family: unfaithful daughters
- as a method of terminating a relationship that is threatened by senility, mental illness, medical incapacitation and old age

Protecting a Loved One: Compassionate Homicide

The most famous Canadian case is that of Robert Larimer who was convicted of taking the life of his 12 year old daughter, Tracy, in 1993 by poisoning her with the carbon monoxide from the tail pipe of his truck. Tracy was born with grave physical and mental disabilities. She was severely disabled with cerebral palsy, and at age 12 had the mental capacity of a 3 month-old child. She was completely dependent on round-the-clock parental care and had been so throughout her entire life. She faced a series of operations to correct a hip dislocation that had been caused by scoliosis, a condition that resulted in the divergence of her spine from its normal perpendicular growth. She was in constant pain, and subject to epileptic seizures that prevented the administration of pain killers stronger than Tylenol. Future operations required to treat her scoliosis were expected to subject her to increased pain and discomfort. Tracy’s father decided to end her life rather than subject her to more medical interventions that had no prognosis of a pain-free recovery, or any kind of normal adaptation to life. After confessing his crime to the RCMP, he was charged with first degree murder. His explanation was that he acted solely to end the suffering of his child. The case was difficult because Larimer’s motive went some distance to reduce his culpability. In his mind, he was acting in the best interests of his daughter despite the fact that she had no capacity to acknowledge or approve his decision, nor was her mental condition ever expected to improve. At the time of her death she weighed less than 40 pounds, and she would never enjoy a normal life or anything resembling it. A jury convicted Larimer of second degree murder in 1994.

When capital punishment for murder was abolished in Canada in 1973, the penalties for first and second degree murder were given significant *minimum* limits as discussed earlier: 25 years (first degree) and 10 years (second degree) respectively before the accused could apply for parole. Larimer’s behaviour clearly fit the requirements for a first degree murder charge since his activity was planned and deliberate, and the death of his child was clearly the objective of gassing her. The jury partially nullified this charge because of the inflexibility of the penalty that, in the circumstances, seemed unduly harsh. However, the defence thought the reduced penalty under a second degree murder conviction was also unjustifiably inflexible, and amounted to a cruel and unusual sentence in the circumstances. Larimer’s appeals were several and complex. In 1997 the Supreme Court of Canada

quashed the original conviction and ordered a new trial because the Crown Prosecutor had inappropriately screened out potential jurors by asking whether they approved of euthanasia. Latimer was re-tried and convicted of second degree murder in 1997. However, the trial judge accepted the defence argument that the 10 year minimum sentence was unconstitutional in the Latimer fact situation, and imposed a sentence of one year in jail, and another year of house arrest. The Crown appealed this decision successfully in 1998 in the Saskatchewan Court of Appeal, and Latimer was sentenced to 10 years. His first application for parole was denied since he would not acknowledge that he had acted wrongfully, and so showed no evidence of rehabilitation. He was ultimately released on parole in 2008. The Latimer case established that the 10 year minimum is not open to judicial discretion, and that it is neither cruel nor unusual punishment. Many Canadians believe that a case such as this should never have been brought to court. But that would have given the RCMP an unusual level of discretion. Others thought that Larimer’s imprisonment was warranted because of the need to protect those made defenceless by illness and/or age.

Assisted Suicide

The Latimer case attracted a great deal of attention from critics of euthanasia who were advocating on behalf of the vulnerable. The critics of euthanasia fear that it could be used to terminate the lives of persons too weak or inarticulate to advocate for themselves. Canadian law on euthanasia was litigated in the case of Sue Rodriguez, a 42 year old mother from British Columbia. In 1992 Rodriguez was diagnosed with “Lou Gehrig’s disease” (ALS), an incurable, degeneration of the central nervous system. Patients with ALS can experience their progressive incapacitation, and are aware of its terminal prognosis. It may affect speech and mobility, leaving the victim trapped inside a body that is totally immobile, incommunicative and unable to eat normally. Sue Rodriguez wanted to explore the option of taking her own life before reaching this stage. As an invalid, she was incapable of committing suicide on her own, and wanted to explore the use of a physician to give her a treatment that would terminate her life at a point of her own determination. Parliament had removed suicide per se from the Criminal Code of Canada in 1970, but maintained the offence of assisting suicide. Any physician who administered drugs designed to terminate her vital signs, however humanely, would be assisting suicide and would attract a potential penalty of 14 years imprisonment.

In 1993 Rodriguez challenged the suicide-assistance law in the BC Courts. Her case made its way through appeal to the Supreme Court of Canada. She argued that under section 7 of the Charter of Rights and Freedoms she was entitled to “the right to life, liberty and security of the person” and not to be deprived thereof except in accordance with “fundamental justice” (s 15). Criminalization of assisted suicide denied her autonomy and personal liberty, in this case to take her own life (which is legal) but which was in her case impossible due to her illness. The Supreme Court rejected her case in a close 5-4 decision. Sue Rodriguez committed suicide the following year with the assistance of a doctor, and in the presence of, and with the moral support of, Vancouver MP Svend Robinson. In her view, each of us has jurisdiction over our own bodies; we, in effect, own our own lives, and it is not up to the state to interfere in the disposition of our own lives, even where we seek the

assistance of others to end them. In 2014 the National Assembly in Quebec adopted an act respecting end-of-life-care that reflects the right-to-die-with-dignity movement, effectively legalizing euthanasia through physician-assisted suicide in that province. Gloria Taylor died of ALS in 2012 but initiated a case in the BC courts to re-open the right-to-die-with-dignity argument initiated by Rodriguez. In 2015 the Supreme Court of Canada will decide her case on its merits. While it will not affect the outcome of her life, the decision could acknowledge a right that has proven too divisive for parliament to tackle directly (CBC 2012).

Jealousy, Infidelity and Unfaithful Spouses

Daly and Wilson explain trivial altercations resulting in murder as well as certain forms of robbery in terms of selection theory. They also extend their explanation to “jealousy murders” in which a spouse is murdered for desertion, infidelity or suspected infidelity by a male morbidly pre-occupied with his own paternity. Their view is that one of the consequences of a polygynous ancestry is that males sometimes show a pathological impulse to control the movements, associations and autonomy of their girlfriends and wives. They are hyper-vigilant about the spouse’s association with other males, i.e. competitors. If rejected, they frequently engage in relentless harassment, stalking, and attempts at reconciliation, even when these are actively rejected by the female recipient. In many cases, these attempts at control result in “domestic” homicide. The Homicide Survey shows that “family relationships” are the second largest category of association known in Canadian homicides in 2012. Of the 543 homicides that year, 62 involved some sort of conjugal union (married, common-law, separated, divorced).

In the Wolfgang homicide file from Philadelphia noted earlier, the second most prevalent motive for the 558 homicides (after trivial altercation) was “domestic quarrel” (14% of cases), and the third was “jealousy” (11.6% of cases). That amounts to a quarter of the entire record. Another fact that has been acquired through criminological studies is that such conflicts are not one-time, one-event phenomena. We often imagine that homicides of this form are events that occur in the “heat of the moment.” Evidence suggests that such moments are embedded in on-going situations of conflict. The “dark figure of crime” masks previous episodes of violence that had non-lethal outcomes. In a national survey of domestic violence in the US, Straus, Gelles and Steinmetz (2006: 32, 34) reported significant levels of aggression that did not result in homicide, but was evidence of threatening behaviour.

Every year about one out of every six couples in the United States commits at least one violent act against his or her partner. . . . The rates for actually using a knife or gun on one’s spouse are one out of every two hundred couples in the previous year, and almost one out of twenty-seven couples at some point in the marriage over 1.7 million Americans had at some time faced a husband or wife wielding a knife or gun, and well over 2 million had been beaten up by his or her spouse.”

Studies of police calls support the same conclusion. Breedlove, Kennish, Sandker and Sawtell (1977) studied police involvement with domestic homicides in Kansas City. If one

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

examined the two years prior to the domestic homicide, police had intervened previously at the house of the victim in some 90% of the cases. For about half the homicide cases, the police had responded to emergency calls at least five times previously. In other words, the crimes of passion, thought to be so irregular, occurred like clockwork.

Another source of Canadian domestic homicide has been produced by the Ontario coroner’s office in an annual report, *Domestic Violence Death Review Committee Annual Report* (Ontario 2014). It examines all cases of homicide that appear to be associated with some form of domestic conflict or abuse. The report provides a time series of events that describe the annual number of cases, the number of homicides per case, and whether the homicide was followed by the suicide of the perpetrator, as well as the age, gender and relationship of the victim and perpetrator. The most recent report provides a summary of the period 2002-2010 for Domestic Violence Deaths for Ontario.

	2002	2003	2004	2005	2006	2007	2008	2009	2010	Totals
Number of Cases	30	22	22	29	33	27	20	20	26	229
Homicides	19	18	13	21	26	17	15	15	20	164 (72%)
Homicide-Suicides	11	4	9	8	7	10	5	5	6	65 (28%)
Total Number of Deaths	46	26	32	37	52	44	29	29	33	328
Total Number of Homicide Victims	35	22	23	29	45	34	24	25	27	264 (80%)
Female (adult)	26	19	21	29	28	27	20	20	22	212 (80%)
Female (child)	4	1	1	0	8	1	0	3	1	19 (7%)
Male (adult)	4	1	1	0	3	4	4	2	4	23 (9%)
Male (child)	1	1	0	0	6	2	0	0	0	10 (4%)
Average Age of Homicide Victim	37.8	34.9	40	38.2	28	34.7	43.3	37.2	36.1	36.7
Total Number Perpetrator Deaths (suicide or other)	11	4	9	8	7	10	5	4	6	64 (20%)
Female (adult)	0	0	1	0	0	1	0	0	0	2 (3%)
Male (adult)	11	4	8	8	7	9	5	4	6	62 (97%)
Average Age of Deceased Perpetrator	42.5	45.5	42.2	45	51.1	45.2	43.8	60	44.67	46.7

Over this period there were 264 victims of murder in some 229 cases. These were described as domestic violence deaths, or DVDs. Of these 212 were adult females (80%). Nineteen were female children (7%). The balance of the victims was male (n = 33, 13%). However, there were a total of 328 deaths. What the coroner’s report uniquely captures is the prevalence of murder followed by suicide of the perpetrator. In over one-quarter of the murders reported in Ontario during this period (n= 65 cases, 28%), the perpetrator

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

committed suicide. This accounted for a further 64 deaths. These were almost all male killers (n = 62, 97%).

The report also identified the risk factors by clinical analysis of each case based on police reports and interviews with family survivors, social workers, and other professional caregivers. They were able to identify 39 specific risk factors for domestic homicide. The coroner’s report reviewed all cases from 2003 to 2012 and recorded which factors were present in each case. The ten most prevalent risk factors are described in the following list along with the percentage of cases in which they were reported.

- history of domestic violence (73%)
- actual or pending separation (72%)
- obsessive behaviour (54%)
- a depressed perpetrator (55%)
- escalation of violence (52%)
- prior threats or attempts to commit suicide (45%)
- prior threats to kill the victim (45%)
- prior attempts to isolate the victim (42%)
- victims who had an intuitive sense of fear (40%)
- a perpetrator who was unemployed (39%)

The fact that a homicide occurred after a “history of domestic violence” is consistent with information reported from US studies. This was present in 73% of the cases. However, actual or pending separation is equally prevalent. These findings suggest that in this period, males killed spouses who were separated or planning separation in 72% of the cases. In 54% of cases, the perpetrator displayed obsessive behaviour. These findings are highly consistent with Daly and Wilson’s focus on male jealousy and obsessive control of spouses.

The coroner’s report also finds that most cases are associated with multiple risk factors. In the cases reviewed over the period 2003-2012, seven risk factors were present in 75% of all cases of domestic homicide. The coroner’s list of risk factors is impressive but is probably not complete. Notably absent is any analysis of alcohol substance or abuse among perpetrators and victims, which is as high as 75% for family perpetrators, and 60% for victims in the most recent annual Homicide Survey.

The coroner’s report also collected narrative summaries of illustrative cases. Here is a typical history from Ontario Coroner file number 2005-13026 (Ontario 2014: 17):

This case involved the homicide of a 63-year-old female by her 66-year-old husband; the couple had been married for 45 years. The perpetrator was described as being physically, emotionally and verbally abusive with a volatile temper. He was also jealous, controlling and possessive towards the victim. The perpetrator had demonstrated these characteristics early in the marriage.

The victim had indicated that she wished to end the relationship and asked one of her

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

children to help her obtain information on how to leave, including addresses for shelters. The victim had confided in her family doctor, her daughter and friends that she was afraid of the perpetrator. On the morning of the homicide, the perpetrator drove his son to work, returned home and killed the victim with a baseball bat. Following the homicide, he drove to the police station and confessed. In his statement to police, he reported that the victim had been refusing him sex, and that morning, having refused him again, he “exploded.” He reported that he believed she was having an affair. He also admitted that he used to hit her, but claimed it hadn’t happened in a long time.

This was an impressively long marriage, but one marked by persistent domineering behaviour by the husband. Infidelity and sex were core elements of the case, as was the pending desertion of the husband by his long-standing partner. But women can also be jealous and possessive as the next case shows (Ontario Coroner file number: 2007-2340)

This case involved the homicide of a 51-year-old male by his 31-year-old female common-law partner; the couple had been together for two years. The perpetrator was described as an alcoholic who was often “odd and incoherent,” and considered unstable and violent when drinking. Both the victim and perpetrator had a history of domestic violence with previous partners. There were no recorded incidents of prior domestic violence involving the perpetrator and the victim.

The perpetrator was known to host parties and would often become jealous when her partner interacted with other women. In February 2007, the perpetrator returned home to find the victim with an ex-girlfriend. The perpetrator attacked the ex-girlfriend and kicked her out of the house. Another friend drove the woman home and when he returned a few minutes later, he found the victim on the floor suffering from multiple stab wounds. The perpetrator and friend called 911 and when police arrived, the perpetrator appeared to be intoxicated, and admitted to stabbing the victim in self-defence.

Like other reports of domestic homicide, this occurrence was embedded in prior histories of domestic violence and on-going conflicts. Alcohol was apparently another key factor in this case, as was infidelity and jealousy. However, in both of these Ontario cases the perpetrators were acting violently out of a concern for the integrity of a relationship that had failed or was failing. Katz (1988) talks about righteous slaughters where the perpetrators are taking a stand in defence of what they see as the Social Good – the marriage and its normative obligations of fidelity. The homicide registers the depth of desperation or despair in these relationships where personal investments in the other are not reciprocated. However, these are not solutions that enjoy any social support. They raise questions about self-control, and stress that lower the threshold towards acts of violence. The next category of cases is somewhat different since they seem to have a normative foundation, at least in certain cultures. These cases are referred to as honour killings and typically involve challenges to family integrity by “unfaithful” daughters.

Honour Killings

In 2012, a jury in Kingston, Ont., found a Montreal couple and their son guilty of first-degree murder in the deaths of four family members. Mohammad Shafia, his wife Tooba Yahya and their son Hamed, were sentenced to life imprisonment with no chance of parole for 25 years. The family members were accused of drowning three teenage sisters and Mohammad Shafia’s first wife from a polygamous marriage. The judge described the murders as crimes stemming from a “twisted concept of honour.” The three teenage Shafia sisters were killed by their family for bringing shame to the family by dating without parental approval, rejecting traditional Islamic garb and skipping school (CBC 2012b).

Abdul Malik Rustam pleaded guilty to second degree murder after strangling his estranged wife in July 2011. Shahdaddy Rustam had left the couple’s home with their child after finding his controls overbearing. He objected to her use of a cellphone, and her suspected communication with another man. The couple was wed following an arranged marriage in Pakistan when Shahdaddy was 17 or 18, and Abdul was 25. Rustam gained entry to Shahdaddy’s apartment disguised in a burka. “Tarek Fatah, founder of the Muslim Canadian Congress, said the murder is an honour killing” (Pazzano 2014). He went on to suggest that this use of the burka as a criminal disguise discredited Muslims generally. But the killing also brought into question the viability of marriages arranged in traditional societies like Pakistan where the couples expected to settle in western societies like Canada where female roles are not subject to traditional patriarchal management.

Other cases found in the court records included the following (Muhammad 2010: 8-11)

- In June 2010 Amandeep Kaur Dhillon, aged 22, was fatally stabbed by her father-in-law. He told investigators he was justified in killing Amandeep because she was going to dishonour their family by leaving his son for another man. He was convicted of first degree murder.
- 16 year old Aqsa Parvez was strangled in a conspiracy by her father and brother following conflicts with her family for rejection of the hijab and traditional Muslim values. The father and brother pled guilty to second degree murder.
- In 2009 Hasibullh Sadiqi was convicted of two counts for first degree murder for killing his sister and her fiancé. Hasibullah told the court he had wanted his sister to show greater respect for their father and became angry when the fiancé did not support him on this point. The Crown argued it was an honour killing sparked by anger over the couple’s engagement that was not authorized by the father.
- In 1991, Kulvinder Dulay killed his younger sister, Kulvinder Dulay, her husband, Gurdawr Dulay and the man they lived with in Calgary, Mukesh Sharma. Dulay indicated that his family had disapproved of sister’s marriage and that as the eldest son he was responsible for repairing the family honour by killing them. He was sentenced to two counts of first degree murder and one count of second degree murder.
- In November 2009, Sugirthanraj Kailayapillai was sentenced to life imprisonment for the 2006 killing of his wife. The accused claimed that his wife was “of bad

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

character” because she had developed a romantic relationship with someone with whom she worked. He was sentenced to 14 years imprisonment.

- In 2004 Muhammad and Fatima Khan were convicted of first-degree murder for the killing of Muhammad’s five-year-old daughter, Farah. Her father argued that he had to restore his honour because his daughter was the child of his first wife and another man.
- Adi Abdul Humaid was convicted of first degree murder in the death of his wife in 1999. Humaid claimed that his wife’s insinuations of infidelity caused him to lose control because of the significance of female infidelity in Islamic religion and culture.
- In March 2005, Rajinder Singh Atwal, originally from the Punjab region of India, was convicted of second-degree murder for killing his daughter Amandeep Atwal, who died of multiple stab wounds in 2003. Atwal disapproved of the 17-year-old’s love affair with a classmate. He was convicted of second degree murder and sentenced to imprisonment for 16 years.
- In 2001, Mr. Nahar fatally stabbed his wife, and was charged with second degree murder. He raised the defence of provocation on the grounds that her disrespect and defiance were inconsistent with the expectations of the Sikh community and brought shame upon his family. The victim, Kanwaljeet Kaur Nahar, allegedly smoked, drank alcohol and socialized with other men.

These cases are instructive since they provide some basis for the cultural transmission approach to crime described in unit 7. If Thorsten Sellin could think of few cases of homicide associated with European traditions (i.e. the Sicilian father who murdered the young man who seduced his daughter), the experience of immigrants from the Indian subcontinent, for example, provides more than a few examples. These cases have been a source of concern for imams across the country. They argue that such honour killings are not consistent with orthodox Islamic teachings. But neither is female genital mutilation. Nor sexual enslavement of Christian girls by Boko Haram in Nigeria. But then again, neither is murder in the Sicilian case alluded to earlier prescribed by Roman Catholicism. Nonetheless, there appears to be an honour ethic among certain immigrant families that surfaces when women explore the freedoms associated with European and North American post-industrial societies. These cases appear to emerge from a cultural conflict as immigrant families adapt to the norms of the new society. Nonetheless, it should be noted that these cases, however horrifying, are rare. In addition, many of these cases share some of the characteristics of the jealousy killings discussed earlier, and the male imperative to control female sexuality. And the latter cases are certainly more numerous. In both cases, the irony is that extreme violence is perpetrated under the pretext of a pro-social cause – defence of the integrity of the marriage and family. The next set of cases are more troubling because they point to the fact that age and disease can make family life unsustainable.

Murder-suicide among the elderly

We have examined cases in which homicide occurs because someone concludes that the other spouse is not upholding his or her end of the contract. What happens when people

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

simply lose their ability to comply through age and disease? We return again to the Ontario Coroner data for some illustrations.

Ontario Coroner file numbers 2011-8966 and 2011- 8965

This case involved the homicide of an 83-year-old female and the suicide of the perpetrator, her 77-year-old husband. The couple had been married for approximately 23 years, and each had adult children from previous relationships. They were both recovering alcoholics who were well-respected within their community. By all accounts, the couple had a good marriage and there was no known history of domestic violence. The victim suffered from a number of medical conditions including long-term low-grade depression, and dementia that appeared to be getting increasingly worse. The victim had recently had her driver’s license suspended for medical reasons. This caused her to feel isolated and more dependent on the perpetrator. As the victim’s dementia progressed, the perpetrator took an increasingly active role in looking after her. The perpetrator was generally believed to be in good health. He had attempted suicide in the early 1980s following the break up of his first marriage.

On several occasions, the perpetrator had let his family know that if he were to become incapacitated in any way, he would not want to be kept alive. He also inferred that he did not wish to be separated from the victim and that neither of them wanted to go into a nursing home.

In June 2011, police were dispatched to the couple’s residence after receiving a 911 call, believed to be from the perpetrator. When police arrived, they found the perpetrator on the kitchen floor suffering from a self-inflicted gunshot wound to the head. He was transported to hospital, but died en route. The victim was found deceased in her bed with a gunshot wound to the head.

This scenario is full of pathos and tragedy. It harkens back to Durkheim’s discussion of fatalistic suicide. A person’s options for life gradually diminish. In this case the perpetrator is faced with increasing obligations in terms of caring for a spouse whose health is failing. The murder might be better described as a mercy killing, an act of altruism akin to the Latimer case. The murder ends the suffering, but the perpetrator has no future without his spouse, and takes his own life. Fatalism and altruism seem to converge. This case involved a hand gun, but that is by no means sufficient to account for the outcome. Similar themes are evident in the next case (Ontario Coroner file numbers 2011-6977 and 2011-6974).

This case involved the homicide of an 85-year-old female by her 83-year-old husband, who subsequently committed suicide; the couple had been married for over 50 years and had two adult children. The victim was in poor health and was taking multiple medications. She had sustained a stroke about six years prior, leaving her with limited mobility. She also suffered from dementia, macular degeneration, thyroid problems, and high blood pressure. The perpetrator suffered various health issues including arthritis, headaches and ear problems that had been getting worse. Physician notes and interviews with family indicated that the perpetrator was suffering from

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

depression. The perpetrator reportedly liked to maintain control and was verbally abusive. As the perpetrator got older and suffered progressive hearing loss, his personality reportedly changed.

With the victim’s poor health and mobility problems, the perpetrator was her primary caregiver, preparing the meals and administering her medications. He had the help of his daughter, a cleaning person, and a home-care service that came in three times a week. Although the perpetrator found it difficult, he took good care of his wife and resisted the idea of sending her to a nursing home. Several weeks prior to the homicide-suicide, several people in regular contact with the couple reported that the perpetrator appeared to be discouraged about life

On the day prior to the homicide-suicide, things appeared quite normal with the perpetrator. At about 8:00 p.m., the daughter spoke with her father on the phone and he indicated that “life was not worth living,” that he felt alone, didn’t want to be around, and that “life is hell.” His daughter suggested taking him to see the doctor regarding his medication, but he declined. On the day of the homicide-suicide, a new personal support worker arrived at the couple’s house for an appointment with the victim, but nobody answered the door. The daughter attempted to contact her parents. When she did not get an answer, she went to their house and found her parents deceased in bed.

There was no definitive cause of death for the victim, although there was evidence to suggest that she had been smothered. It is believed that duct tape was placed over her nose and mouth, and then removed after she stopped breathing. Sedating anti-depressant medications were found on toxicology testing. Her manner of death was classified as homicide. The cause of death for the perpetrator was smothering by duct tape. His manner of death was suicide. There were no other signs of trauma on either person (Ontario 2014: 24).

Murder and suicide by duct tape! Again, the case evokes an overpowering sense of helplessness. Homicide brings the suffering to an end. This case is dramatically different from killing based on a sense of jealousy, or conflict. Indeed, this couple had been married for half a century. It fits the category of compassionate homicide since it reveals a desire to preserve the integrity of life before disease and age became entirely overpowering and beyond anyone’s control. The act of killing can be described as altruistic – as well as fatalistic.

What do we learn from these cases? Unlike trivial altercations, these murders were all deliberate. Most do not appear to be spontaneous, regrettable acts undertaken with a transitory loss of control. The elderly murder-suicides are not preceded by patterns of conflict, but relatively stable, long term and successful social relationships. Like honour killings, they are rare. Most persons who find themselves in such dire circumstances will not turn to murder-suicide. Unlike honour killings, there is no social tradition that prescribes these solutions to crises at the end of life. On the other hand, few human generations have seen couples survive to such senior years. This suggests that this form of

homicide promises to become more prevalent, despite the general decline in homicide over the past 5 decades.

Overview

In our examination of homicides in Canada, there is no single pattern of offending which underlies all homicides. They vary dramatically in terms of the relationships between the perpetrator and offender. The most prevalent homicides involve persons who are already acquainted with one another, followed by homicides involving family members, and then strangers. These offences vary dramatically in their degree of premeditation. At the one end of the continuum are the honour killings, and the murder-suicides. At the other end are the trivial altercations among acquaintances that seem to reflect less evidence of planning. The domestic murders appear to be somewhere in between. Surveys of family violence, police studies and the Ontario coroner reports suggest that homicides, even those characterized by passion, typically occur in the context of on-going interpersonal conflicts. This raises the question of the rationality of homicide. We have seen little evidence that homicide is undertaken for discrete material advantage. On the contrary, across a variety of cases, a more pertinent issue is honour, compassion and/or integrity. A family member kills an offspring or a spouse to spare them from suffering, or assists his or her suicide for the same reason. Poor, young males die in spontaneous contests arising from preservation of face or honour. A spouse or daughter is punished for infidelity to the marital union or the family. If the embezzler acquires financial capital through his crime, these offenders are seeking a kind of *moral capital* through their crimes.

The evidence suggests that age and gender are major covariates in the overall crime picture, that primarily young males undertake homicide, and that young males are the main targets of homicide. However, when we examine homicide in intimate contexts, the perpetrators are older males, and the victims are overwhelmingly female. It is difficult on the sort of evidence reviewed here to choose between rival theories of homicide, but evidence of strain or stress is highly pertinent given the role of conflict frequently associated with homicide. So too is the evidence of diminished self-control, given the recurrent evidence of alcohol and drug use among the perpetrators and victims, and given the evidence of anger, impulsivity and obsession associated with domestic murder. These are factors that might contribute to strain. Learning has a minor, although not a separate role. Honour killings may reflect the cultural transmission of codes of honour that legitimize murder, but these are embedded in larger on-going situations of strain. Likewise, it might be argued that a belief in death-with-dignity is culturally transmitted, as is the expectation that one owes fidelity to one's spouse. What this suggests is that when we examine cases of homicide in everyday life, different theories may explain different aspects of the activities that result in homicide. And finally, the link between the risk conditions and the outcomes is actually quite remote. Meaning what? Most trivial altercations do not end in murder. Most spouses in conflict separate and/or reconcile without killing anyone. And most persons who live with loved ones in pain do not take their lives. Part of the reason they do not is the injunction with which we started the unit: *thou shalt not kill*.

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

In this unit we have tended to focus on intimate homicides. In the next unit we examine homicides involving strangers and others.

End notes

In what follows there is a list of

- Key concepts with which the students should be familiar
- Links to information
- Required Readings
- Assignments
- References

Key concepts, facts and issues with which students should be familiar

- Culpable homicide
- First and second degree murder
- Infanticide
- Manslaughter
- Counseling or aiding/abetting suicide
- The ratio of homicide to suicide in Canada
- The annual Canadian Homicide Survey
- Gender and age in Canadian homicide
- Guns, gangs and narcotics in homicide trends
- The association of homicide with alcohol and/or drugs among perpetrators and victims
- Suspected mental or developmental issues among perpetrators of homicide
- The theory of trivial altercations
- Wolfgang’s study of homicide motives in Philadelphia
- Homicide as a “situated transaction”
- Daly and Wilson’s “evolutionary psychology”
- Polygyny in human societies and the consequences for inter-male competition
- Polygyny and robbery
- Leading relationships between perpetrators and victims in Canadian homicide
- Compassionate murder
- Euthanasia and assisted suicide; Sue Rodrigues and the charter challenge of the suicide law
- Jealousy murders
- Ontario Coroner’s Domestic Homicide Death Review reports
- Honour killings
- Murder-suicide among elderly

Links to Information

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

Honour Killings in Canada, Report for Department of Justice (2010)

http://www.justice.gc.ca/eng/rp-pr/cj-jp/fv-vf/hk-ch/hk_eng.pdf

Ontario Annual Domestic Violence Homicide Reports (2014)

http://www.mcscs.jus.gov.on.ca/english/DeathInvestigations/office_coroner/PublicationsandReports/DVDR/2012Report/DVDR_2012.html

Required Readings for Unit Eight

Siegel, Brown and Hoffman (2013) Chapter 10: “Violent Crime” (pp. 196-221) in *CRIM*, Toronto: Nelson Educational, Second Edition.

Practice questions

1. What are the major legal forms of homicide? Explain each, and how they are different. How do the penalties differ? And how does this relate to the concept of *mens rea*?
2. What are the major co-variates or characteristics of perpetrators and victims in the most recent Canadian Homicide Survey? Co-variates refer to age, gender, relationships between the actors, etc. And how can they be explained in terms of criminological theories?
3. What are the similarities and differences between “domestic homicides” and “honour killings”?
4. The most common form of conflict leading to death among males is defined as “trivial altercation.” Define it. What is the evidence for it? And how is it explained by sexual selection theory?
5. What evidence is there that homicide arises from “strain” (following Agnew), diminished “self-control” (following Hirschi) and/or “learning” (Sutherland)?

References

Breedlove, Ronald K., John W. Kennish, Donald Sandker and Robert Sawtell (1977)
Domestic Violence and the Police, Police Foundation, Washington DC: National Institute of Justice.

Canada (2013) *Homicide in Canada 2012*, Juristat Report prepared by Jillian Boyce and Adam Cotter, 85-002-x, Ottawa: Statistics Canada.

CBC (2012) “The fight for the right to die,” CBCNEWS Canada

<http://www.cbc.ca/news/canada/the-fight-for-the-right-to-die-1.1130837>

accessed on 21 November 2014.

Unit 8. Thou Shalt Not Kill: Understanding “mere murder”

File: 8. 305 – Final Unit 8.docx 12,455 wds.

- CBC (2012b) “Muslim community grapples with Shafia verdict,” CBC News Online 30 January 2012, <http://www.cbc.ca/news/canada/muslim-community-grapples-with-shafia-verdict-1.1150020> accessed on 21 November 2014.
- Daly, Martin and Margo Wilson (1988) *Homicide*, New York; Aldine de Gruyter.
- Gottfredson, Michael, and Travis Hirschi (1990) *A General Theory of Crime*, Stanford CA: Stanford University Press.
- Katz, Jack (1988) *Seductions of Crime: Moral and Sensual Attractions of Doing Evil*, New York: Basic Books.
- Lane, Roger (1979) *Violent Death in the City: Suicide, accident, and murder in nineteenth century Philadelphia*, MA: Harvard University Press.
- Luckenbill, David (1977) “Criminal homicide as a situated transaction,” *Social Problems* 25 (2): 176-186.
- Muhammad, Amin (2010) Preliminary Examination of so-called “Honour Killings” in Canada, Ottawa: Department of Justice. http://www.justice.gc.ca/eng/rp-pr/cj-ij/fv-vf/hk-ch/hk_eng.pdf accessed on 21 November 2014.
- Ontario (2014) *Domestic Violence Death Review Committee 2012 Annual Report*, Toronto: Office of the Chief Coroner for Ontario. http://www.mcscs.jus.gov.on.ca/english/DeathInvestigations/office_coroner/PublicationsandReports/DVDR/2012Report/DVDR_2012.html accessed on 21 November 2014.
- Pazzano, Sam (2014) “Hubby disguised himself in burka for honour killing,” The Toronto Sun, February 24, <http://www.torontosun.com/2014/02/24/hubby-wore-burka-to-kill-wife-court-told> accessed on 21 November 2014.
- R v Latimer (2012) <http://casebrief.me/casebriefs/r-v-latimer/> accessed on 21 November 2014.
- Straus, Murray, Richard Gelles and Suzanne Steinmetz (2006) *Behind Closed Doors: Violence in the American Family*, Revised edition. Piscataway NJ: Transaction Books.
- Wolfgang, Marvin (1958) *Patterns of Criminal Homicide*, Philadelphia PA: University of Pennsylvania Press.

Let's Get More Involved:
Killing strangers, and targets beyond the family and acquaintances

In the last unit we confined attention to the law of homicide, and patterns of homicide between individuals acquainted with one another and between family members. The largest group omitted involved homicide committed by strangers, 16% of the total incidents in 2012. We have already touched on stranger murders that occur in the context of other crimes, such as robbery. In such cases, murder seems incidental to the perpetrator's motive. But the most engaging form of stranger homicide occurs where a perpetrator takes the life of the victim as the main purpose of the act of killing. We turn to that category here, and begin our analysis of stranger murder with two leading Canadian cases: the Bernardo/Homolka murders, and the case of Colonel Russell Williams.

In 1991 and 1992 Paul Bernardo and his wife Karla Homolka kidnapped, raped and murdered two adolescent girls, Leslie Mahaffy (age 14) and Kristen French (age 15). At the time, the couple was living in St. Catharines, Ontario. They were also implicated in the earlier accidental killing of Karla's younger sister, Tammy. She died under the influence of Halcyon, a sedative obtained from the veterinarian clinic where Karla worked. Karla wanted to make a Christmas "present" of her 14-year-old sister to her future husband. When Tammy was unconscious, they both had sex with her. She died from asphyxiation when she vomited. This occurred in the basement of the Homolka family household. They were never charged in respect of her death. The coroner did not detect the Halcyon, and the death was ruled accidental. During his relationship with Karla, and starting in 1987, Paul Bernardo committed some 12 brutal rapes in Scarborough, a suburb in east Toronto, about an hour and a half drive from St Catharines. This was in the neighborhood in which Paul was living with his family. The Toronto police and the Niagara Regional Police failed to link the "Scarborough rapist" and the perpetrator of the St. Catharines kidnap-murders. The case broke only when Karla left Paul in January 1993 after he had beaten her repeatedly about the face with a flashlight. Her lawyer persuaded the Crown to enter a plea bargain in which she confessed to murder in the unsolved cases of the two kidnapped adolescents. Her confession also solved the outstanding Scarborough rape cases. In a closed court session, she pleaded guilty to 2 counts of manslaughter for which she would serve twelve years imprisonment. The rationale for her misconduct was described as "battered spouse syndrome". This doctrine implied that Karla was herself a victim of abuse, and that she did not act with free will in her crimes against Mahaffy and French. At the time, the Crown believed that Karla's evidence was essential to convict Paul. He was defined as the main initiator of these grisly murders.

However, it was subsequently learned that the rapes of the kidnapped girls had been videotaped, and that these tapes showed that Karla had been a very active partner in the sexual domination of the adolescent girls. The videotapes also showed that Paul and Karla had sexual intercourse with several adolescent "Jane Doe's" who were "friends" of Karla, and who were also drugged. Since Karla had already pled guilty to manslaughter, the new evidence of her active involvement in rape and accidental death was inconsequential as far as her negotiated plea was concerned. For Paul, the videotapes sealed his fate. He was convicted of two counts of first-degree murder, and he was declared an habitual offender.

Declaration of habitual offender status is generally thought to preclude parole at any foreseeable time since the offender is deemed to represent an incorrigible threat to the community. The legal process resulted in two radically different outcomes for the perpetrators. As a consequence of the plea bargain, Karla got manslaughter, in exchange for her evidence against Paul. He was imprisoned for life without any chance of release. The videotapes suggest they were equally culpable (Williams 2014).

In fact, the Crown or the police did not originally retrieve the tapes. The Bernardo household was torn to pieces by detectives and investigators in the search for physical evidence of foul play (it was eventually torn-down and re-built), but the tapes were hidden, and only recovered after Bernardo's lawyer examined the house with information obtained from his client. The tapes shocked the defence counsel. They captured the rapes and sodomy of the victims in graphic detail. They implicated Paul (and Karla) without question. A defence counsel has complex responsibilities. He or she must provide the best possible defence to the client. But he or she also has a duty to provide the court with information that he or she learns about that bears on the central question before the court. In this case, it would mean providing the Crown with the evidence sufficient by itself to convict his own client. The defence counsel sat on the tapes for over a year. He ultimately withdrew from the case and turned the defence over to another lawyer, before surrendering the tapes to the Crown. He was later acquitted of charges of professional misconduct by the law society for this delay in disclosure. Karla was released from prison in 2006. She never received parole or mandatory supervision (Williams 2004).

Russell Williams had been a colonel in the Canadian Air Force and became commanding officer of the Canadian Forces Base Trenton, Canada's largest air force base in 2009. In 2010 he was arrested for a series of violent crimes including 2 counts of first-degree murder, two counts of sexual assault, forcible confinement and breaking and entering. Williams did not appear to engage in such crimes until 2007 when, at age 44, he began breaking into neighbour's homes when they were absent. He stole women and children's undergarments and bras, and took pictures of himself dressed in their clothes. It is estimated he broke into some 47 homes, although in the small towns around Trenton many people do not always lock their doors; he entered some of the homes on numerous occasions. He committed two sexual assaults in September 2009, and sexual assault and murder in November 2009 and again in January 2010. He maintained meticulous records of his crimes, and took thousands of photos of himself in female clothing, and like Bernardo, he videotaped his brutal sexual murders. He received two life sentences for first-degree murder in the cases of Cpl. Marie-France Comeau (age 38) and Jessica Lloyd (age 27). He also received an additional 102 years for the other crimes (Austen and Carey 2010).

There was nothing in Williams' background that would suggest that he was the victim of childhood abuse or neglect. He attended Upper Canada College, graduated from the University of Toronto's Scarborough College in economics and politics, and took graduate training at the Royal Military College in Kingston. Bernardo also had graduated from the University of Toronto with a degree in Accounting. However, Bernardo had a very violent dating history with a series of young women prior to meeting Karla Homolka, and a predilection for humiliating sex. He also had a very acrimonious relationship with his

mother, and was told by his father that she had conceived him with another man. He also had career difficulties. He declared personal bankruptcy in 1990 and started working illegally as a smuggler of US liquor and cigarettes in 1991. Williams, by contrast, had no comparable interpersonal conflicts or career setbacks. His criminal activities were completely under the radar. After murdering Jessica Lloyd he piloted a troop flight that day to California. After murdering Cpl. Comeau, he drove three hours to attend a professional meeting. He moved easily back and forth between his professional and his criminal careers.

These two cases are stranger murders. The killings were planned and deliberate, and were embedded in larger projects of sexual sadism, domination of women, extreme cruelty and total indifference to the suffering inflicted on his victims. How can we make sense of them? And how do they compare to other stranger homicides?

Unit Objectives

In this unit we explore the following topics:

- Explaining multiple murder of strangers with particular attention to social-cultural versus psychiatric perspectives
- Serial killers: sexuality, racism, resentment and grudges as motives
- Mass murderers: school shootings, police killings

Multiple murderers

Elliott Leyton (2003) has written one of the most important Canadian books on homicide: *Hunting Humans: The Rise of the Modern Multiple Murderer*. For Leyton, multiple murderers include two types of killers: serial killers and mass murderers. Mass murderers have existed throughout history, but the term, “serial killer,” was only coined relatively recently by FBI profiler, Robert Ressler, during the 1970s “son of Sam” shootings in New York (Hickey 2013). Leyton also argues that multiple murders are becoming more prevalent, especially in the US. This raises an important question about the explanation of such crimes. Are they the result of psychiatric problems such as psychopathology, psychosis or schizophrenia? Or do they reflect extreme marginalization of certain individuals based on changing social-cultural conditions? One would expect that psychiatric conditions would be more or less stable in human populations. But this type of crime seems to be on the rise, and is more prevalent in the US than elsewhere. For these reasons, Leyton prefers a social/cultural approach.

Leyton points out that the phenomenon of mass murders has become something of a mainstay in the entertainment industry. Mass murderers have acquired a celebrity status in such films as *Silence of the Lambs*, *Natural Born Killers*, *No Country for Old Men*, etc. *The Basketball Diaries* incurred criticism because of charges of copycat killings at the Columbine High School massacre and the Heath High School shooting. The names of actual mass murderers are well known – not just Jack the Ripper, but Son of Sam Berkowitz, Ted Bundy, Gary Ridgeway--the Green River killer, Albert de Salvo--the Boston Strangler, Peter

Sutcliffe--the Yorkshire Ripper, Jeffrey Dahmer, John Gacy, the D.C. Snipers (Muhammad and Malvo), and Ann Wuornos – but no one remembers the names of the victims. “No one ever became famous by beating his wife to death in an alley, but virtually all our multiple murderers achieve true and lasting fame. For the remainder of their lives, they are the subjects of articles and books, radio and television shows” (2003: 27). Also, the multiple murderer “who sacrifices his own life, and that of the innocent” is making “an art form out of killing strangers.” That art forges the link between the crimes against innocent victims, and the story of multiple murder as entertainment. The multiple murderers can refashion their identities as sources of frightful evil with a cosmic indifference to the security of normal society, and cause a wave of fear in the target audience, i.e. the public at large. Jenkins (1994) argues, “the serial killer has become an American original, a romantic icon, like a cowboy.”

These killers are not motivated by profit. Nor, as in the case of government bureaucrats such as Adolf Eichmann, do they kill for career advancement. “We are concerned only with those who appear to kill *for its own sake*, those for whom killing alone is the apparent goal” (2003: 29). Leyton calls them “joy-murderers” who appear to kill out of personal satisfaction, but not just mere pleasure. The killers achieve “a substantial social profit of revenge, extortion, celebrity, identity and sexual relief” and their work is undertaken as “a kind of mission, task or crusade” (p. 31). Oftentimes they act out of a sense of exclusion from society, an act of revenge for other people making their lives unendurable, and extract satisfaction from the innocent by exploiting the vulnerability of persons considered even lower in the social order than themselves (such as prostitutes or drug dealers). For Leyton, students of crime must determine the meaning of the killing project to those who undertake it, and try to understand it in terms of affronts incurred as the fault of others requiring a need for settling accounts in the most outrageous ways.

In the aftermath of the Russell Williams’ conviction there was attempts to explain his behaviour in terms of psychopathology. This label had often been used in the press to describe the behaviour of Paul Bernardo. Psychopathy (sometimes labeled sociopathy) was a term coined to describe the behaviour of people whose conduct was chronically offensive, but which was not associated with any evidence of an organic mental illness, or a brain injury. Such persons frequently engaged in selfish, hedonistic behaviour indifferent to the harm done to others, and without signs of remorse or pangs of conscience. However, these persons did not experience dissociative states, i.e. psychosis. They didn’t hear voices. They didn’t experience massive and unaccountable mood swings between depression and euphoria. Psychopathy became known as a “personality disorder.”

Hervey Cleckley attempted to analyze “psychopathy” in a series of clinical cases encountered in the Department of Psychiatry at the University of Georgia School of Medicine in the 1930s. His results were published in *The Mask of Sanity*, a book which first appeared in 1941 and that went through numerous subsequent revisions. Most persons with a disorder typically want it taken care of. In contrast, psychopathy was a paradoxical condition since “interest in the problem was almost never manifested by the patients themselves. The interest was desperate, however, among parents, wives, husbands, brothers, etc., who had struggled long and helplessly with a major disaster.” This disaster

was incurable, and defied legal and medical definitions (1950: 7). Cleckley developed a checklist on the basis of clinical evaluations. The “Cleckley psychopathology checklist” included the following traits: *superficial charm, absence of delusions, and absence of anxiety or neurotic symptoms*. These are probably quite common in the normal population. But add *unreliability, disregard for obligations, untruthfulness and insincerity, and antisocial behaviour stemming from inexplicable impulsiveness*. These traits simply do not correspond to a highly functional career in military command, such as Russell Williams. Psychopathic behaviour represents a great departure from normal adjustments, and is impossible to miss by persons well known to the psychopath. The psychopath is depicted as someone morally vacuous and emotionally unresponsive. Nonetheless, psychopathy was the conclusion drawn by journalists McIlroy and Anderson (2010) writing in the *Globe and Mail* regarding the behaviour of Colonel Russell Williams.

The brains of psychopaths seem to be stunted in the machinery involved in humanity's ability to feel empathy and kindness, even love. In adult psychopaths, the almond-shaped structure called the amygdala that generates emotions like fear and is also involved in learning, is significantly smaller . . . The theory is that neglect, abuse and early trauma somehow desensitize children to the feelings of other . . . but it still has not been proven. Not all psychopaths had horrible childhoods. Some come from stable families . . . Though never officially diagnosed as a psychopath, Mr. Williams appears to fit the profile.

But what was the evidence for unreliability, disregard for obligations, untruthfulness and insincerity—some of the other characteristics of psychopaths? Aside from the crimes themselves, there was none. An alternative diagnosis was offered by journalist Timothy Appleby (*A New Kind of Monster* 2011). He argued that there was plenty of evidence that Williams could demonstrate genuine concern for friends and enlisted personnel, empathy for kittens and kids, and was also vulnerable to feelings of shame. One of the things that Appleby discovered was that the screening of Williams' computer turned up considerable evidence of child pornography that had been downloaded from the Internet. During his 12 hour interrogation by police, Williams agreed to plead guilty to all other charges on the condition that there be no indictment for possessing child pornography. This represented something considered especially reprehensible, and inconsistent with his military bearing and achievements. He also was willing to plead guilty to shield his wife from the ordeal of a trial. This was not the behaviour of a psychopath. Nonetheless, Appleby entertained another kind of psychiatric diagnosis: “sexual deviance with obsessive-compulsive disorder.” This means that he reached a stage where he became obsessed with violent sexual fantasies (i.e. sexual arousal combined with physical aggression) and that he did not exercise restraint of his behaviour in respect of these thoughts (i.e. he became compulsive). In other words, at some point in his career, he lost his self-control. This is not an explanation as much as a re-description of his crimes in psychiatric language. But neither of these kinds of diagnosis (psychopathy versus obsessive-compulsive sexual deviance) is accepted within the Leyton social/cultural framework. Psychiatry and anthropology seem to offer mutually exclusive explanations.

Quest for the middle ground

Linda Mealey was a sociobiologist who proposed an integrated theory of sociopathy. Sociopathy, psychopathy, and psychopathic personality disorder are different terms for the same type of dysfunctional behaviour observed among a small percentage of the population who are prone to getting into conflict with others, and hence into conflict with the law. Her theory was premised on the proposition that sociopaths are designed for successful deception of others for their own advantage by feigning intimacy to attract resources away from others without reciprocity (including their sexuality, status, wealth etc.). In other words, some persons lead a life of deception, manipulation and predation to advance their own “fitness”. Their associates are not as inattentive as to miss this, so it occurs infrequently because it is usually unsuccessful. Her argument suggests the following. First, there is a genetic disposition underlying sociopathy which is normally distributed in the population. Some people have more of it; some people have less. Some people will be deemed “morally insane” in any culture, particularly when their sociopathy is extreme. However, some people whose sociopathic tendencies are not so extreme will be able to rely on this tendency in conjunction with favourable environmental conditions that include learning, cultural beliefs, and childhood experiences, to profit from the gullibility of others when the antisocial strategy proves more successful than a prosocial or reciprocal strategy. The prevalence of these behaviours in the population will be small, and it will be “normal” to those who pursue them. It will strike them as an appealing source of gratification that would not prove enticing to others, and it will be context dependent, i.e. opportunistic. Mealey’s views attracted considerable discussion before her premature death (Oakley 2007). They are distinctive for a number of reasons. They are premised on the evolutionary idea that altruism is based on the inherited tendency to protect others at the cost to oneself if, in the long run, such a tendency will result in reciprocal protection. Under such a condition, some individuals may have a tendency to free ride on the charity of others. Most will be caught, and shamed. But for some percentage, a tendency to exploit the altruism of the others may express itself in specific environments where such activities have few perceived penalties, or risks of apprehension and deterrence. It also does not assume an underlying organic illness, something that under Canadian law would permit a plea of “not guilty by reason of mental illness”. And it presupposes an interaction between nature and nurture, biology and society. For persons following such a “script,” it is both exciting and normal, although it has to be managed to prevent other persons from intervening, i.e. unmasking the manipulation, i.e. wives have to be deceived when hubby goes on the prowl (Williams) or have to be part to the offence (Homolka). . But it is not a (designated) mental illness.

Serial Murder as Deviant Leisure

The view advanced by Mealey is also consistent with the finding that a great deal of criminal behaviour arises from thrill seeking. Zimring and Zuehl (1986: 30) coined the term “recreational violence” to capture the pattern of aggression and brutality in many acts of robbery and homicide that appeared to arise as part of a gamefulness and competitiveness. Kicking to death the victim of robbery is not required for strictly instrumental purposes, nor is burning down the premises of a theft, but both can be “fun.” Leisure theorists have coined such terms as “purple recreation” to describe “acts and

pursuits that bring a degree of pleasure or escape to the participants, but which suggest gross self-indulgence, greed, immorality, or cruelty and arouse repugnance in most of the remainder of society" (Curis 1979: 283). Also Rojek (2000: 176-177) referred to "abnormal leisure" which he defined as pushing the limits of experience "so that it threatens the self or others . . . it occurs when the individual refuses to bestow respect or trust on the other . . . it typically involves treating the other as immune to valid feelings" (p. 176-177). Dunn and Cassie (2006) reported a study of 14 male-female partners who engaged in serial murder between 1947 and 1992. They reviewed books, articles, newspaper stories and court records on each pair. The sample was opportunistic. The perpetrators were involved in the murder of 76 known victims (it is not always certain that every victim was identified successfully). They found that the killers spent an inordinate amount of time planning the crimes, stalking victims, kidnapping them, taking time to violate them in humiliating sexual acts and finally taking their lives. The couples frequently made videotapes, photographs, and audio-recordings of their crimes that they spent time reviewing afterwards to re-live their experiences. They also collected trophies from the victims as though they were souvenirs, things like watches or jewelry, but also body parts. "As a result, we concluded that the perpetrators utilized serial murder as a leisure activity, albeit a deviant (non-traditional) one." In only one case, was there an indication that one of the offenders suffered from psychosis. Dunn and Cassie's conclusion (2006: 47) is that we tend to overlook that certain crimes, like legitimate forms of pro-social leisure, can be a source of personal pleasure, play, thrill seeking, escape from boredom and companionship, including some forms of murder. Leisure activities are usually assumed to be wholesome and multiple murder is assumed to be a mark of insanity. Neither assumption is entirely valid.

Implications and Questions:

1. Why is it so difficult to determine which models of the causes of multiple murder have the most empirical merit? First of all, these are relatively rare events. In his study, Leyton examined six major cases. These are described in compelling detail. But they amount to a few cases chasing a lot of theories. Such case study methods are good for suggesting hypotheses, but less compelling for testing them. Not only that, if researchers wanted to link a condition such as psychopathy or sociopathy with crimes such as multiple murder, they would need ideally to test all persons convicted of multiple murder to determine whether they were psychopaths. They would then need to know what the population estimate of psychopathy was. This would presume that they have reliable ways of classifying psychopathy as a determinate psychiatric condition. But this condition is not like an organic disease; it is a personality disorder. There are no estimates of mental problems published annually and broken down by provinces by government agencies as for other diseases. In addition, even if persons who became multiple murderers experienced psychopathy at higher rates than expected, it would be another matter to attribute the crime to psychopathy per se without testing for other co-variates of crime such as alcohol and narcotics involvement, IQ, and the much vaguer rationales associated with deviant leisure (Dunn and Cassie) and individual grievances (Leighton). In order to chose between competing explanations, we would require large scale measurements which have what is called "statistical power" i.e. enough cases for each variable to permit the

testing of differences in the level of association between a number of competing predictors and a single outcome. Our knowledge consists of quite the opposite: small samples from clinical settings where diagnoses are based on individuals for the purpose of treating a behavioural condition, not testing a theory.

2. Leyton's *Hunting Humans* redirects our attention away from multiple murders undertaken for financial profit as opposed to those pursued for what he described as "substantial social profit," or what we identified in the last unit as "moral capital." As a result, he misses the inclusion of killings among criminal associates as potential multiple murders. In 2012 killings among persons in a criminal relationship composed 4.9% of the cases in the Homicide Survey. After stranger homicide, this was the next most prevalent form of killing in Canada. The first famous mass murder in memory of this sort was probably the St. Valentine's Day Massacre of February 14, 1929. Dressed as policemen, Al Capone's crew "arrested" 7 rival gangsters from "Bugs" Moran's bootleggers and their mechanic at the SMC Cartage garage in Chicago, and lined them up against a wall. They then sprayed them with machine guns, shot guns and a revolver. At the time it was the most infamous gangland slaying in America (O'Brien 2014). Later developments in the Mexican drug wars would bypass it by a much higher order of magnitude, but at the time it was unprecedented.

Leyton's approach also misses the multiple murders undertaken by criminals against strangers and police personnel. For example, in the early 1930s the infamous pair, Bonnie and Clyde, went on a robbery spree that resulted in some 13 murders, mostly of policemen, sheriffs and other lawmen (see FBI nd). The lawmen subsequently responded by ambushing them along a highway in Louisiana in 1934, shooting them down without warning. Drawing a radical distinction between material and emotional motives is probably misleading, particularly as in the cases mentioned (Capone and Bonnie and Clyde). The principals were not driven by simply "getting ahead" but by making larger-than-life statements of their careers in crime. Jack Katz says that even those who claim "mere" material motives are getting a *moral* satisfaction out of evading taxes they can afford to pay, by-passing invasive worker safety codes as contrary to their higher capitalist ethics, taking government grants to do research at the university while falsifying findings and collecting payoffs from pharmaceutical companies, etc. Much of this is otherwise known as "screwing the system." What this suggests is that the attractions of crime are not only material but also moral.

3. The illustrations discussed earlier (Bernardo, Williams), the approach advocated by Leyton, the deviant leisure perspective and the proposed socio-biology synthesis suggested by Mealey, are all premised on the rejection of a mental illness or psychiatric explanation. But can they rule it out? Do these approaches apply where the mass murder is associated with definable mental illness, such as schizophrenia? The infamous case of Peter Li who decapitated a fellow passenger on a Greyhound Bus in 2008 resulted in a finding of not guilty by reason of mental illness. In his case, he was found to be suffering from undiagnosed schizophrenia (not a personality disorder). This was a stranger murder, although not a multiple murder. However, if Li had not been apprehended, he may have repeated his crime. There is other evidence that many multiple murderers are mentally ill

in the legal sense of the term. This was the conclusion of a CBS news investigation for the program, *60 Minutes*. A mass shooting at the Washington Navy Yard in September 2013 resulted in the deaths of 13 people, including the gunman. It was the 23rd such incident in the previous seven years. According to some leading American psychiatrists, a significant portion of the people shooting in such incidents have turned out to be severely mentally ill, and untreated. Hence, these crimes may have been preventable. In addition, the rise in such crimes may have been an unforeseen consequence of the anti-psychiatry movement that started in the 1960s and 1970s. Large asylums and mental hospitals subjected persons suffering with mental disorders to mandatory institutional confinement and subjected them to involuntary psychiatric treatment. Reports suggested that the institutions were themselves a source of de-humanization and mortification (Goffman 1961; Szasz 1974, 1977). The alternative was supposed to be a more humane community-based approach to mental adjustment with walk-in clinics and mobile support workers. The consequence has been that large numbers of persons with especially acute psychiatric problems fell between the cracks, resisted the regulations in voluntary shelters and self-medicated with alcohol and street drugs. The population of homeless people expanded dramatically, and persons faced with the challenges of fending for themselves found themselves being re-institutionalized in jails and prisons. Without medication, some became unpredictably violent.

Five weeks before the shooting at the Washington Navy Yard, the gunman, Aaron Alexis, told police that he was hearing voices and being bombarded by strangers with a microwave machine. If he had been transported to a psych ward, the shootings might never have happened.

In 2007, Virginia Tech student Seung-Hui Cho was behaving so irrationally that a court ordered him to seek mental health care. The order was never carried out. Cho killed himself and 32 others.

And before James Holmes dressed up as the Joker and shot 70 people in a movie theater, campus police at the University of Colorado had been warned that he was potentially violent. Holmes had been a brilliant graduate student there studying the inner workings of the brain, until something suddenly went wrong with his own brain (Kroft 2013).

According to Jeffrey Lieberman, president of the American Psychiatric Association and a leading psychiatrist, these were “preventable tragedies,” and symptoms of a failing mental health system. Lieberman’s view was that many of the multiple murderers in America are suffering from psychoses including schizophrenia, that they have no institutional support and are not receiving psychiatric treatment for their illnesses. However, they continue to act irrationally and end up back in institutional supervision in prisons and penitentiaries for conflicts with the law where their psychiatric care is secondary to concerns for restraining their misconduct. Steve Croft interviewed the sheriff in charge of security at the Cook County Jail in Chicago, which houses the largest number of mentally ill people in the US. Tom Dart reported that the jail houses 2,500-

2,800 persons every day who have an identifiable mental illness. Some of the inmates have been jailed scores if not hundreds of times. They are sentenced to jail for a breach of the law, receive minimal psychiatric assessment and pharmaceutical treatments, and, once stabilized, are re-released into the community where they are often re-arrested for shop-lifting to pay for narcotics, or breaking into private property to find a place to sleep. To sum up, there is compelling evidence that mass murderers frequently are people who hear voices, i.e. are dissociative and in psychotic states. Frequently these voices direct them to kill other people, as in the Peter Li case. However, such illnesses can be managed to reduce the risk of these kinds of murders

Serial Killers versus Multiple Murders

Serial killers are those persons who secretly hunt and kill their targets with stealth over a protracted period of time, and who take 3 or more lives, although how many victims they overcome is probably an outcome of their organization and self-control. They transition from one crime to another through periods of “cooling off.” Many escalate their activities from voyeurism and burglary to actual sexual assaults and sexual homicides, as in the case of Colonel Williams. This cooling off suggests that the activities are premeditated. They operate in a fashion that is designed to avoid detection, and may engage in homicide over a period of decades. They tend to kill their victims through strangulation or other methods designed to dramatize their deaths. Serial killers often engage in necrophilia after they kill their victims, and often engage in cannibalism with the remains. Most serial killers experience extended careers because they either live alone or can successfully compartmentalize their activities. They may engage in apparently normal relationships with girlfriends or wives, keeping their dark appetites hidden. Most victims of serial killers are young women, although other vulnerable groups, especially children and the elderly are sometimes targeted. Most victims are intra-racial, and heterosexual, although some of the most notorious serial killers preyed on young gay men. There is an exception to this profile. A number of serial killers have been apprehended in hospitals and care-facilities where they have played God with the lives of the patients and clients, administering toxic pharmaceuticals to “euthanize” them involuntarily (Miller 2014).

In Canada the consummate serial killer in the public’s mind was Clifford Olson. Olson had been a career criminal. After 1957 Olson barely lived a total of 4 years outside of custody. When journalist Peter Worthington published his Olson interviews in 1993, Olson had spent 32 out of his 53 years in jail. In 1981, Olson, age 40, began murdering children. In 1980 and 1981 he killed three boys and eight girls ranging in age from nine to eighteen. “In the 19 month period from November 17, 1980 to July 30, 1981, he drugged, raped, and sodomized his victims, male and female, then murdered them variously by strangulation, bludgeoning, and stabbing” (Worthington 1993: 32). The RCMP had not recovered any bodies. As his trial began, Olson pleaded guilty, but none of the sex offences, kidnappings, or indignities to a human body charges were in the indictment. By pleading guilty, these charges were never heard, and the evidence associated with them became irrelevant at sentencing. He received the mandatory 25-year minimum life imprisonment. In addition, he persuaded the BC Attorney General to pay his estranged wife \$10,000 for his

identification of the remains of each of the bodies which had been hidden in the lower mainland forests. In this “corpses-for-cash” arrangement, the Attorney General of BC paid him \$100,000, and he “threw in an eleventh victim for free”. He also bragged that he had committed numerous other murders that were never discovered. In prison he was one of the most litigious inmates in corrections’ history and repeatedly dragged correctional services before the appeal courts in challenges to his conditions of imprisonment. He died in custody in 2011 from cancer.

In Canada the second most infamous serial killer was Robert Pickton who was convicted in 2007 at age 60 of second degree murder charges in respect of the disappearance of six Vancouver prostitutes in the lower east side. He was sentenced to a minimum term of 25 years imprisonment. Some 27 women implicated in prostitution and narcotics disappeared from the Lower East Side between 1997 and 2001. At the time of his conviction, Pickton faced a further 20 homicide charges for these other women. These cases had been separated from the original indictment to be tried separately, but were eventually dropped. Prosecution on the six initial charges was based primarily on physical evidence based on human remains and DNA identification.

In 1997, a woman appeared in a Vancouver hospital with multiple stabs wounds and said the perpetrator was her john, a man named “Rob.” Police eventually arrested Robert Pickton but were forced to release him without charges. The victim was high on cocaine at the time of the attempted murder and proved to be an unreliable witness. While the disappearance of adolescents in the lower mainland in the early 1980s produced a wave of fear, the disappearance of the women in Vancouver concerned only social workers. Police followed rumours in respect of various suspects. Robert Pickton, his brother and several associates were questioned as early as 2002 about the disappearances. Rumours circulated that the men took prostitutes to parties at the Port Coquitlam pig farm that Pickton operated. One investigating officer retrieved some evidence from the 1997 case, a piece of bloody clothing that belonged to Pickton. When tested, it proved to contain evidence of Pickton’s DNA as well as that of two missing women. Eventually, police acquired a search warrant to look for evidence of foul play on the pig farm. They found evidence of human remains in a green garbage pail inside the slaughterhouse. One of Pickton’s former girl friends reported that he told her that there were bodies on the farm and that it might be advisable for them both to commit suicide to escape further investigation. Another woman testified that she saw Pickton with a dead woman’s body at the farm. Eventually, the DNA from the remains was matched to three missing women. Further investigation resulted in the discovery of buried clothing, and the half-eaten remains of human bodies that had been fed to the pigs.

What police uncovered there haunts their memories today. In addition to mounds of evidence, including hundreds of items of personal effects from missing women, they discovered blood-covered chopping blocks, tufts of hair and bloodied articles of clothing. As they dug deeper throughout the property the full scale of the horror was revealed. The half-devoured remains of six women were discovered. Their mutilated bodies had been fed to the pigs the brothers raised on the farm. In the pig pen police discovered human bones and even a half-eaten arm. Buried under the barn police

found more human remains. Officers left the scene retching, and many were traumatized (Canada Alive: 2013).

After Pickton was arrested, he made a statement to an undercover jailhouse policeman that he had killed 49 women, and wanted to make it an even 50 (CBC 2010). Evidence of human flesh ground up with pork was found in Pickton's freezer, suggesting cannibalism. The jury returned a verdict of "not guilty" on the charges of first-degree murder, but guilty of second-degree murder. The judge nonetheless awarded the maximum penalty for second-degree murder – 25 years before eligibility to apply for parole.

Mass Murderers

The profiles of mass murderers are quite different from serial murderers. Multiple murderers act dramatically with force and in public. Their activities are typically limited to a single catastrophic event in which the offenders use the most advanced firearms to kill as many people as quickly as possible and take their own lives as a finale at the scene of the crime to end their project "with glory," or to perform a self-sacrifice in battle with the police, what some have called "suicide by cop". These crimes are all premeditated and amount to first-degree murder of strangers. We can break these activities into two main areas: school shootings, and police shootings. In the US mass shootings have also occurred in workplaces. In Canada, they have also occurred in political institutions.

The School Shootings (aka "Rampages")

1. The worst mass shooting in Canadian history occurred on December 6 1989 at the École Polytechnique at the University of Montreal. It was the largest engineering school in Canada with an enrolment of about 5,000 students. Marc Lepine, age 25, the shooter, had been born Gamil Gharbi, and was the son of an Algerian immigrant and a French-Canadian mother. His childhood had been abusive, and Gamil changed his name to Marc Lepine to dissociate himself from his father. Nonetheless, he retained his father's view of women as second-class citizens and subservient to men. Just after 5 pm he entered classroom C-230 and tried to separate the students by gender, and began to kill the women. He shot people as they tried to escape through the doors and walked around the room shooting at students cowering under their tables. One victim was wounded and asked for assistance. He sat beside her, pulled out a hunting knife and stabbed her in the heart. He murdered 14 women, and wounded another 10 women and 4 men. He was armed with a Sturm Ruger Mini-14 .223 calibre semi-automatic rifle with a high capacity 30 round clip, and carried spare ammunition. As police entered the college, he shot himself in the head with his own rifle.

In the aftermath there was much discussion of the reactionary roots of Lepine's views towards women, and the tension on campuses between men and women as women entered competition for traditional male jobs. However, in his suicide note, Lepine also pointed out that the armed forces had rejected his application because he was anti-social. By the fall of 1989, he was no longer financially solvent, and had been rejected for engineering. In addition, he had a reputation as a disagreeable, quarrelsome individual, and

had been ejected from campus previously in the term (Ramsland 2014). On the Saturday January 25 2005 presentation of CBC's *Doc Zone*, Lepine's mother speculated about the role of adverse childhood experiences on dysfunctional adult behaviour (CBC 2005). But this type of shooting by a hostile individual against a public institution was not the first of such events, nor would it be the last.

In 1984 Denis Lortie attacked the Quebec National Assembly dressed in military fatigues and armed with a submachine gun and a pistol. He was a former soldier and was disgruntled with the provincial government, and wanted to make a violent political protest. He shot 16 employees in the Assembly, killing three outright. He was unaware that none of the people present were members of the National Assembly, i.e. politicians. After a four-hour siege in which he locked himself inside the Chamber, he surrendered to the sergeant-at-arms, René Jalbert. He faced three charges of first-degree murder. His defence produced evidence to suggest that Lortie was a paranoid schizophrenic. The judge told the jury to ignore this evidence as hearsay. He was convicted as charged. However, his conviction was overturned on appeal, and a new trial ordered. At the second trial in 1987 he pled guilty to reduced charges of second-degree murder and nine counts of attempted murder. After hearing psychiatric evidence of Lortie's mental illness, the judge negated the guilty plea, and ordered yet another trial. The third trial judge accepted the guilty pleas, Lortie's madness notwithstanding. Lepine had been an admirer of Lortie (Ramsland 2014).

2. Dawson College. On September 13, 2006 Kimveer Gill went on a shooting rampage at Dawson College, a CEGEP in Montreal. He was 25 years old and dressed in a black leather Matrix-style trench coat and black combat boots, and carrying three weapons. He shot at people outside the college and proceeded indoors to a crowded cafeteria. He killed one student, Anastasia Sousa, shooting her repeatedly with his rifle, and wounded 19 others. Over a rampage lasting about 10 minutes, he fired 72 times with a semi-automatic rifle and 6 times with a handgun. He used students as human shields while being pursued by police. He was ultimately wounded in the arm by police and shot himself fatally in the head (Daly 2009). The Quebec legislature subsequently passed a law banning firearms from schools, daycare centers and public transit, and created an onus on doctors and therapists to report signs of high-risk behaviour to police (CTV 2008). Gill had posted pictures of himself on the VampireFreaks blog, posing with his knives and automatic rifle. His screen name was Fatality666. His favorite video game was "Super Columbine Massacre" in which the player assumes the role of one of the two Columbine High School perpetrators (1999), and walks through a cartoon scenario killing students and teachers. He posted that he was drinking whiskey on the morning in which he undertook his killing spell at Dawson. He had no association with Dawson College (Cohen-Almagor, Haleva-Amir 2008). Incidentally, the VampireFreaks website was frequented by 12-year-old Jane Doe and her 23-year old boyfriend, Jeremy Steinke, who murdered her parents and brother in Medicine Hat in April 2006 (ibid.)

Was Gill insane? Since he died at the scene of the crime, no one can be sure. No trial was required, and no evidence was produced in support of a defence of mental illness. As for Lortie, different judges drew different conclusions about whether he suffered from a mental illness or not. However, no one accepted it as a lawful defence to the charge of

murder. Nonetheless, the three previous cases represent individuals with strong grudges against society. Lepine targeted women in particular; Lortie targeted those he mistakenly believed to be politicians. And Gill simply picked on an inauspicious but vulnerable target.

The Police Shootings

On 3 March 2005 James Roszko, age 46, assassinated four RCMP constables in Mayerthorpe, Alberta, who were executing a warrant on his farm to re-possess a stolen truck and investigate a marijuana grow-op. The officers were ambushed inside a quonset by Roszko who had returned to his property surreptitiously, after having fled the day before. He lay in wait for the officers armed with a Heckler and Koch 91, a semi-automatic assault rifle. After fatally shooting the officers, Roszko was confronted by a fifth officer who wounded him as he left the quonset. Roszko retreated back into a quonset and killed himself. After losing contact with the four Mounties, the RCMP sent in personnel in an armoured vehicle from Canadian Forces' Edmonton garrison who discovered the extent of the tragedy. Roszko had had a history of violence and conflict with the police. At the time of his final confrontation, he was under an order that prohibited him from possessing weapons. This was the single worst loss of life for the Mounties in their history. Two persons, apparently acting naively, who assisted Roszko in returning him to his property and providing him with a rifle, were tried and convicted with being accessories to homicide.

In St. Paul in May 2014, a gunman, a health food store owner, shot and wounded three RCMP officers, but died as a result of return fire. Like the Mayerthorpe incident, the case consisted of a concerted attempt by an offender to settle accounts with anyone in uniform. The incident started when the perpetrator shot at the St. Paul detachment, then drove at high speeds downtown, and rammed the first police vehicle he encountered. He then shot at other police vehicles in pursuit. The perpetrator is believed to have murdered a local priest before going on his rampage against the RCMP (CTV News 2014). This time, none of the Mounties died.

In August 2014 Justin Bourque, age 24, was sentenced to life imprisonment after pleading guilty to first degree murder in the killing of three Mounties in Moncton, New Brunswick, and the attempted murder of two others in June 2014. He was sentenced to 75 years imprisonment before becoming eligible for parole – the longest sentence ever given to anyone in Canadian history. The police were responding to complaints about a man wandering the streets with a firearm. He was actually stalking the police in a “blind rage.” He approached cruisers from behind. In this way, he killed three officers and wounded two others. “Victor Bourque says his son went from living with his parents and six siblings in Moncton to buying a gun, getting kicked out of the house and becoming depressed and paranoid” (Thomson 2014). His father reported that Justine “was ranting and raging against all authority and concerning himself with matters which were well beyond his control and some issues not even relating to Canada . . . This behaviour I can only describe as paranoia.” After arrested, in a police interrogation released to the public in December 2014, Bourque bragged about his feat and remained utterly defiant of authority, and self-satisfied with his accomplishment. At his sentence review, he was inexplicably more

contrite. No evidence was ever led formally to suggest that his judgment was impaired by mental illness (CBC 2014). Obviously, his family concluded otherwise.

Another relevant case was that of the shooting spree which occurred on April 2, 2014 at several locations on the Fort Hood military base near Killeen, Texas. Four people, including the gunman, 34-year-old, Army Specialist Ivan Lopez, were killed, while sixteen additional people were injured. Lopez, an Iraqi veteran was being treated for mental illness (Guardian 2014).

On Monday October 20 2014, Martin Coutre-Rouleau ran his car into two uniformed military men from the Collège militaire royal de Saint Jean, an academy run by the Department of National Defence, after parking for some time waiting for a suitable target. One of the soldiers, Warrant Officer Patrice Vincent, died from his injuries. Coutre-Rouleau was challenged in a high-speed car pursuit by police and shot multiple times before his vehicle lost control and rolled into a ditch in St. Jean sur Richelieu, about 40 kms south-east of Montreal. He was found dead at the scene. Coutre-Rouleau had converted to Islam the previous year and targeted Canadian military personnel as part of his “jihad,” or struggle against infidels and non-believers. The Canadian military were targets as a result of Canadian policy against radical jihadists in the Middle East that resulted in posting of Canadians in combat roles in that theatre of operations. Coutre-Rouleau’s passport had been seized because authorities feared he was planning to join radical Islamist fighters in Syria or Iraq (G&M 2014). Coutre-Rouleau was on a “watch list” of potential violent jihadists compiled by CISIS.

Two days later, on Wednesday October 22nd Michael Zehaf-Bibeau launched a one-man attack against the parliament in Ottawa. He shot dead Cpl. Nathan Cirillo, a reservist from Hamilton, who was standing guard—unarmed—at the National War Memorial. He commandeered a private vehicle at gunpoint and drove to Parliament Hill. There he entered into the Parliament building after discharging his rifle at the entry post, wounding the guard. After a lot of shooting inside, he was shot dead by the sergeant-at-arms. Like Coutre-Rouleau, he was also a recent convert to Islam and had a grudge against Canadian policies in the Middle East. However, he also was a drug addict and petty criminal with a litany of convictions for minor crimes associated with drug and alcohol abuse. The fact that he was not a multiple murderer was simply a result of effective security within the House of Commons, and the fact that he was not all that well prepared. He had only acquired the 30-30 Winchester hunting rifle and a large knife the night before from an aunt’s house in Mont Tremblay. He was basically destitute and deranged in his thinking (NP 2014). His actions led to the closure of Parliament for 24 hours.

It may be factually misleading to conflate the case of Zehaf-Bibeau with that of Roszko and his like. One was a mass murderer with a grudge against the police. The other was a wanna-be mass murderer who had kitted himself out poorly for the project in terms of weapons. Both were long time offenders, and their redress of grievances was out of any proportion to the magnitude of the injuries they were redressing. Where does this leave the debate between psychiatry and social science in the context of multiple murderers? Of the seven cases that have been raised, only one, that of Martin Coutre-Rouleau, appears to leave no

indication of a mental weakness that might have precipitated his misconduct. As for the others, this is the assessment. Lepine's background suggests childhood trauma that left him defiant and aggressive. Lortie was schizophrenic according to his defence counsel. Kimveer Gill was mesmerized by Goth's death-worship culture, and appears to have internalized these values and norms to such an extent that he was no longer able to discriminate between good and evil. He was normal in other spheres of his life, but delusional in respect of his ties to strangers. Roszko? The evidence suggests that he was bad but not nuts. Justine Bourque? His family claims his personality underwent a relatively dramatic shift marked by paranoia, but no psychiatric assessment was ever made. And Michael Zehaf-Bibeau? He was drug addicted but sought out help for this. Unsuccessfully. He was certainly a troubled young man, but there is no evidence that he experienced psychosis or anything comparable. He became, like Martin Coutre-Rouleau, fanaticized by an ideology that justified mass murder against innocent strangers.

Why are we unable to draw less impressionistic conclusions? First, when we examine these various cases, we have only the available fragments of life details reported by the press to illuminate the motives of the perpetrators. There is no psychiatric evaluation available for any of them. Second, many of the subjects of interest are deceased through violent deaths, as a result of conditions that make them subjects of interest in the first place. Third, these cases are few in number. This makes it difficult to develop a reliable database from which to generalize to other cases. Fourth, even if we had a larger number of cases, the psychiatric categories, which cover such things as personality disorders and psychoses, are not completely objective in their definition, and the relationships between the psychiatric category and the outcome of interest, homicide, are typically quite weak. Virtually no one who hears voices from outer space, and communicates with aliens, also commits murder. So in this dark corner of criminology that covers some of the most senseless and disturbing acts of violence against innocent civilians, our knowledge is wholly inadequate. We simply have no reliable information with which to make public policies designed to abate these types of murder. Having said that, we should also note the self-righteousness of the perpetrators of these crimes. None of the perpetrators exhibits any sense that they were practicing evil, or doing something that was morally reprehensible. The most offensive misconduct forbidden by the Ten Commandments—*thou shalt not kill*—is undertaken typically without any remorse, shame or pains of conscience. And, for survivors, that simply adds insult to injury.

Overview

If we raise the level of analysis to state-sponsored killing, the situation does not get better. It gets worse. *The Act of Killing* was a documentary produced by Josh Oppenheimer in 2013. It documented the mass murder of approximately 500,000 people throughout the archipelago of Indonesia in 1965 and 1966. In 1965 a military force that established a dictatorship that created a witch-hunt against communists overthrew the government. Any one who opposed the military was accused of being a communist. As a result, union members, landless farmers, intellectuals and ethnic Chinese (thought to be sympathetic to Mao Zedong) were targeted. In less than a year, paramilitary groups killed tens of thousands of people. The "paramilitary" groups included gangsters. The documentary

which formed the basis of *The Act of Killing* employed one of the 1965 killing squads to re-enact their murderous behaviour. Oppenheimer did not hire actors. He engaged the individuals who actually carried out the murders in 1965 and 1966. They explained that initially they stabbed their victims to death, a process that created bloody consequences that nauseated all the participants. They then moved to garrotting the victims with wire on a second story out-door balcony which proved far more efficient and less emotional for the perpetrators. They attached a wire to the fence and simply twisted and pulled it tight around the victim's neck until the victim stopped breathing. The gang led by Anwar Congo killed thousands in this fashion. And dumped the bodies in the near-by river. Congo's re-enactment of the crime is breath taking. The murders were undertaken without any sense of compunction, remorse or grief. The old gang paraded themselves around the movie theatres, and emulated the dress of Elvis Presley and Frank Sinatra. They were heroes, and played the part. Mass murder was part of Indonesia's "good old days."

The killings in Indonesia were deliberate. Students of crime have become more sensitive to massive life-taking that proved to be a little more subtle but far more consequential. In *The Famine Plot*, Tim Pat Coogan (2012) makes the argument that the British government managed the Irish potato famine that started in 1845 to basically eliminate the Irish peasants (also see Woodham-Smith 1991; and Kinealy 1994). The potato blight did not have similar effects anywhere else in Europe or North America. The landowners in Ireland were largely absentee landholders who had no direct responsibility for those working on their properties. The British government took the position that persons receiving government relief during the famine were required to work for it. However, government was not in the business of providing services already provided for by private enterprise. So the relief plans for the starving population ended up building roads that started from nowhere and went nowhere. The government in Westminster wanted the peasants off the land, and treated the potato blight as a blessing in disguise. It wanted them replaced with cattle that yielded more income and required less farm labour. In an island of 6 million, a million starved to death and another million emigrated on coffin ships to North America. Coogan argues that a food support program such as that initiated by the Quakers would have forestalled the massive loss of life, and that the deaths of a million Irish citizens was basically dictated by English public policy. So what is the lesson? If sociology is determined to put multiple murder on the agenda, then acts of state that are so consequential in expunging human lives need to be addressed (see Davis 2000).

A similar argument is made in respect of the Plains Indians by James Daschuk (2013) in a remarkable book, *Clearing the Plains*. Herds of millions of bison provided a remarkable food source for native tribes from the Gulf of Mexico to the arctic tundra. Plains natives thrived after the introduction of horses following the arrival of Christopher Columbus in 1492. The control of the plains territory by aboriginal natives was so successful that it impeded European expansion on all sides. The French could not expand from Louisiana westward. The Mexicans could not expand north of the Rio Grande. And the Americans could not expand eastward from Los Angeles due to the successful control of the territory by the Comanche nation (Gwynne 2010). However, by 1869 the numbers of bison running from Mexico in the south to Canada in the north were noticeably reduced from over-hunting. Within a decade, the bison were virtually eliminated. The Sioux nation had

negotiated a massive reserve system in South Dakota in the 1860s but deserted it by 1870 and were hunting in the unregistered territory, now known as Montana, when they were confronted by Lieutenant Colonel George Armstrong Custer's US Army 7th Cavalry at Little Big Horn in 1876. The Sioux and the Northern Cheyenne obliterated Custer's command. In Canada, Chief Sitting Bull surrendered the Sioux nation to the North West Mounted Police in 1877 at Fort Walsh, Saskatchewan. Prime Minister, John A. MacDonalD resented the presence of the Sioux on Canadian soil, because he considered them "American" Indians, although they had historically pursued bison on both sides of the border. Canadian Blackfoot, Cree and Assiniboine leaders also condemned the Sioux for harvesting bison from their traditional Canadian lands. Eventually, Sitting Bull returned to his reservation in South Dakota, The Canadian plains had become empty of bison. Daschuk's analysis of the treaty-making process emphasizes how John. A. MacDonalD capitalized on the starvation of the plains natives to encourage them to surrender their traditional territory to the Canadian government. Starvation made the interlocutors in Treaty 6 and 7 compliant partners. As in Ireland, the Imperial government wanted these people off the land, and onto reservations where they would have no role in future social development.

The policies of government in Ottawa and London were clearly different from policies in Jakarta, Indonesia that led to the murder of 500,000 "communists." Nobody commandeered gangs of unemployed youths to murder millions of Plains Natives or Irish peasants. On the other hand, no one blinks in embarrassment, or with a twist of regret, that whole generations of human life passed wholesale into history—starving—without any accountability from persons who could have made a difference.

In this unit we have extended the analysis from trivial altercations and family murder to serial killers and mass murderers. We have concluded by elevating the analysis to higher levels of accountability that touch on the analyses of death devoid of traditional weapons, and more closely associated with policy, i.e. structural violence in how we govern ourselves and "others." One of the paradoxical observations throughout the analysis of homicide is how frequently the architects of the demise of other persons' lives rarely seem to assume responsibility for their actions. Trivial altercations are not meant to result in death. An elder gentleman tapes the nose and mouth of an aging loved one with duct tape for her benefit. Communists are garrotted for the protection of the state. Whole populations are allowed to starve for the improvement of mankind.

Yet the overall trend in homicide is downwards. Despite all our fears of serial killers, mass murderers and terrorists, no generation of Europeans has slept more securely in its beds at night than us.

End notes

In what follows there is a list of

- Key concepts with which the students should be familiar
- Links to information
- Required Readings

Unit 9. Murder Extraordinaire
File: 9. 305 – Final Unit 9.docx 11,055 wds

- Practice questions
- References

Key concepts, facts and issues with which students should be familiar

- Plea bargaining (case of Karla Homolka)
- Serial killers (i.e. Robert Pickton) versus mass murderers (Marc Lepine)
- Celebrity status of multiple murderers
- Psychopathy versus psychosis; personality disorder versus mental illness
- Cleckley's psychopathy checklist
- Sexual deviance with obsessive-compulsive disorder (Williams)
- The leisure perspective and serial murder
- The sociobiology of sociopathy (Linda Mealey)
- Statistical power and small versus large samples
- Moral capital (versus financial, social and human capital)
- Clifford Olson and Robert Pickton: serial killers
- Marc Lepine and Kimveer Gill: school assassinations
- James Roszko and Justine Bourque: police assassinations

Links to Information

Mental Illness and Multiple murders: see <http://www.cbsnews.com/news/untreated-mental-illness-an-imminent-danger/> Retrieved 7 December 2014.

Robert Picton Case <https://canadaalive.wordpress.com/2013/10/28/serial-killers-robert-pickton/> Retrieved 10 December 2014.

Required Readings for Unit Nine

Siegel, Brown and Hoffman (2013) *CRIM* 2nd Edition, Chapter 11 "Property Crime" pp. 222-39, Toronto: Nelson.

Practice Questions

1. Leyton distinguishes *serial* killers from *multiple* murderers. Using Canadian examples (Homolka/Bernardo, Russell Williams, Marc Lepine, James Roszko etc.), distinguish these forms of homicide and suggest how they might be explained, and whether these kinds of murder should be explained differently.
2. When we examine mass killings, two rather different psychological explanations are found. One refers to "psychopathy" (Paul Bernardo, Russell Williams). The other refers to "psychosis." What is the difference, what difference does it make legally, and which perspectives on crime are involved (classical versus positivistic)?
3. Compare and contrast Cleckley's and Mealey's approach to the understanding of psychopathy.

4. Are there any theoretical grounds for distinguishing between the murderous behaviour of Paul Bernardo and Russell Williams on the one side, and Marc Lepine, and James Rosko on the other?

References

Appleby, Timothy (2011) *A New Kind of Monster*, Toronto: Random House

Austen, Ian and Benedict Carey (2010) "Experts review Canadian commander's sadistic crimes," *New York Times*,
http://www.nytimes.com/2010/10/21/world/americas/21psych.html?_r=4&ref=americas&, retrieved 5 December 2014.

Canada Alive! (2013) "Serial Killers: Robert Pickton,"
<https://canadaalive.wordpress.com/2013/10/28/serial-killers-robert-pickton/>
retrieved 10 December 2014.

CBC (2005) "Did abuse turn Marc Lepine into a mass murderer?" DOC ZONE
<http://www.cbc.ca/doczone/features/did-abuse-turn-marc-lepine-into-a-mass-murderer/> retrieved 10 December 2014.

CBC (2010) "Pickton trial timeline," *CBCNEWS Canada*
<http://www.cbc.ca/news/canada/pickton-trial-timeline-1.927418>, retrieved 10 December 2014.

CBC (2014) "Justin Bourque gets 5 life sentences, no chance of parole for 75 years,"
CBCNEWS New Brunswick, October 31. <http://www.cbc.ca/news/canada/new-brunswick/justin-bourque-gets-5-life-sentences-no-chance-of-parole-for-75-years-1.2818516/> retrieved 12 December 2014.

CTV (2008) "Coroner seeks ban on gun used in Dawson shooting," *CTV News*, September 4,
<http://montreal.ctvnews.ca/quebec-story-of-the-decade-dawson-shooting-sept-13-2006-1.465746/> retrieved 12 December 2014.

CTV News (2014) "RCMP calling death of St. Paul priest a homicide, search for links with Mountie shootings," CTV News Edmonton, May 23rd.

Cleckley, Hervey (1941) *The Mask of Sanity: An Attempt to clarify some issues of the so-called psychopathic personality*, 2nd edition 1950. 5th edition 1976, St. Louis: Mosby Publishers.

Cohen-Almagor, Raphael and Shaon Haleva-Amir (2008) "Bloody Wednesday at Dawson College: The Story of Kimveer Gill, or why should we monitor certain websites to prevent murder," *Studies in Ethics, Law, and Technology* 2(3): 1-37. Published online. https://www.academia.edu/907981/Bloody_Wednesday_in_Dawson_College_-

The Story of Kimveer Gill or Why Should We Monitor Certain Websites to Prevent Murder/ retrieved 12 December 2014.

Coogan, Tim Pat (2012) *The Famine Plot: England's Role in Ireland's Greatest Tragedy*, London: Palgrave Macmillan.

Curtis J.E. (1979) *Recreation: Theory and practice*. St. Louis, MI: C.V: Mosby.

Daly, Brian (2009) "Quebec story of the decade: Dawson shooting," CTV New Montreal, <http://montreal.ctvnews.ca/quebec-story-of-the-decade-dawson-shooting-sept-13-2006-1.465746/> retrieved 12 December 2014.

Daschuk, James (2013) *Clearing the Plains*, Regina: University of Regna Press.

Davis, Mike (2000) *Late Victorian Holocausts: El Nino Famines and the Making of the Third World*, London: Verso

FBI (n.d.) Famous Cases And Criminals: Bonnie and Clyde, <http://www.fbi.gov/about-us/history/famous-cases/bonnie-and-clyde>, retrieved 9 December 2014.

Guardian Newspaper (2014) "Fort Hood Shootings: Iraq veteran kills three people at Texas Military Base," 3 April. <http://www.theguardian.com/world/2014/apr/03/fort-hood-shootings-iraq-veteran-four-dead/> retrieved 20 December 2014.

G&M (2014) "Two soldiers struck in hit-and-run," *Globe and Mail* October 20th.

Goffman, Erving (1961) *Asylums*, New York: Anchor Books.

Gunn, Lynn and Linda T. Cassie (2006) "Serial murder as an act of deviant leisure," *Leisure/Loisir* 30 (1): 27-53.

Gwynne S. E. (2010) *Empire of the Summer Moon*, New York: Scribner.

Hickey E. (2013) *Serial murderers and their victims* (6th ed.), Belmont, CA: Wadsworth.

Jenkins P. (1994) *Using murder: The social construction of serial homicide*, New York: Walter de Gruyter.

Kinealy, Christine (1994) *This Great Calamity*, London: Gill & Macmillan.

Kroft, Steve (2013) "Untreated mental illness: An Imminent danger? How many of the recent shootings in the US were preventable tragedies" *60 Minutes at CBS News*, broadcast 29 September 2013.

Leyton, Elliot (2003) *Hunting Humans: The Rise of he Modern Multiple Murderer*, New York: Carroll and Graf Publishers.

- McIlroy A. and E Anderson (2010) "How a psychopath is made," *Globe and Mail* (October 22) <http://www.theglobeandmail.com/life/health-and-fitness/health/conditions/how-a-psychopath-is-made/article4268124/> Retrieved 5 December 2014.
- Mealy, Linda (1995) "The sociobiology of sociopathy: An integrated evolutionary model," *Behavioral and Brain Sciences* 18: 523-99.
- Miller, Laurence (2014) "Serial Killers: I. Subtypes, patterns, and motives," *Aggression and Violent Behavior* 19: 1-11.
- NP (2014) "How Michael Zehaf-Bibeau went from petty criminal to the face of homegrown terrorism," *National Post*, November 7, Postmedia News, <http://news.nationalpost.com/2014/11/07/how-michael-zehaf-bibeau-went-from-petty-criminal-to-the-face-of-homegrown-terrorism/> retrieved 12 December 2014.
- Oakley, Barbara (2007) *Evil Genes: Why Rome Fell, Hitler Rose, Enron Failed, and My Sister Stole My Mother's Boyfriend*, Buffalo: Prometheus Books.
- O'Brien, John (2014) "The Saint Valentine's Day Massacre," *Chicago Tribune*, http://articles.chicagotribune.com/2014-02-14/news/chi-chicagodays-valentinesmassacre-story_1_al-capone-smc-cartage-co-george-bugs-moran, Retrieved 9 December 2014.
- Ramsland, Katherine (2014) "Marc Lepine," <crimelibrary> *Criminal Minds & Methods* http://www.crimelibrary.com/notorious_murders/mass/marc_lepine/index.html/ retrieved 10 December 2014.
- Rojek C. (2000) *Leisure and culture*, New York: St. Martin's Press.
- Szasz, Thomas (1974) *The Myth of Mental Illness: Foundations of a Theory of Personal Conduct*, New York: Harper & Row. 1974
- Szasz, Thomas (1997) *The Manufacture of Madness: A Comparative Study of the Inquisition and the Mental Health Movement*. Syracuse, New York: Syracuse University Press.
- Thomson, Amy (2014) "Justin Bourque pleads guilty to murder in Moncton RCMP shootings," *Toronto Star* August 8, http://www.thestar.com/news/canada/2014/08/08/man_accused_in_moncton_mountain_shooting_in_court_today.html/ retrieved 12 December 2014.
- Williams, Stephen (2014) *Invisible Darkness: The Horrifying Case of Paul Bernardo and Karla Homolka*, Revised, Kitchener: S.D.S. Communications Corporation. Originally published 2001.

Unit 9. Murder Extraordinaire
File: 9. 305 – Final Unit 9.docx 11,055 wds

Williams, Stephen (2004) *Karla: Pact with the Devil*, Toronto: Seal Books.

Woodham-Smith, Cecil (1991) *The Great Hunger: Ireland 1845–1849*, New York: Penguin.

Worthington, Peter (1993) "The journalist and the killer," *Saturday Night*, July/August: 30-55.

Zimring, Franklin B. and James Zuehl (1986) "Victim Injury and Death in Urban Robbery: A Chicago Study," *Journal of Legal Studies* (15) 1-40.

Let's Get Finished:
Paradox of Making Policy in the Shadow of the Crime Drop

Most introductions to the Sociology of Crime end the Grand Narrative with some considerations about how it is possible to reduce crime through thoughtful public policies. After all, the study of crime is not entirely objective like the study of physics or chemistry, nor is it based on the same type of knowledge. The physicist or chemist is not trying to change the laws of nature. The study of crime has what Habermas (1987) once referred to as “an emancipatory interest,” i.e. reflections on society which are designed to make it possible to improve the human condition. And the type of knowledge, according to Habermas, is not “empirical-analytic” as much as it is “hermeneutic” or interpretive. The paradox is that crime has, generally speaking, been on a continuous decline since about 1991, despite warnings that “super predators” were going to dwarf the crime wave of the baby boomers in the 1960s and ‘70s. This decline has occurred in Canada, the US, Britain, Germany, New Zealand and other countries as outlined in unit 4, and it is found in the most serious crime, homicide, as well as one of the least serious crimes, “theft under.” It is evident whether measured by Canada’s Uniform Crime survey that includes over 100 offences, or by the US measure of Index Crime, which includes only 8 offences. Most important of all, this declining trend does not seem to have been the result of any specific crime control policies which have been proven “to work,” and which have been adopted consciously across all these different jurisdictions.

What do the leading theorists on crime have to recommend about the best strategies to reduce crime? And could they be related to the recorded crime drop? We review three key sources. We will start with a leading conservative, then examine a leading Marxist perspective, followed by a small “I” liberal voice.

For over 40 years in North America the leading conservative theorist regarding the causes of crime was James Q. Wilson (1931-2012). Along with George Kelling he advocated the “broken window” theory of crime. That theory advocated that when communities lose their informal control over their streets and neighbourhoods, this encourages the marginal population – the drifters, the prostitutes, the gangs, and the drug dealers – to take over the streets, and to drive away the respectable working class and middle class families. In inner cities, a sign that such informal control is disappearing would be found in properties that are not maintained. A broken window that does not get repaired invites hoodlums to break more windows because it’s fun, and they believe they can do so with impunity (Kelling and Wilson 1982). Wilson was not an advocate of fundamental change as a key to crime control since in his view this would require society to change things that it probably could not change, or at least could not change easily without dramatically intervening in the lives of ordinary citizens. Indeed, he was a vocal critic of criminologists who perennially pointed to the “root causes of crime” – poverty, marginalization, racism and discrimination, things difficult to legislate out of existence. He noted that schemes devised to put ex-offenders on some sort of welfare or social assistance after release from jail to pull them out of poverty had not ever proven very effective, and that they discouraged people from looking for work (2013: 139-40). For him poverty and crime were separate problems that required attention, but the solution to one problem was not the solution to the other.

So what did he recommend? Citizens should organize self-help groups to patrol their own neighbourhoods, and to monitor misconduct. This fell short of vigilante justice because he thought such citizens would merely act as the eyes and the ears of the police, and that arrest should remain a police domain. He also advocated a return to neighbourhood foot patrols to increase the bond between police and the community, and to strengthen confidence in law enforcement. In addition, serious offenders should have their cases expedited into court to face justice swiftly. Minor offenders should be dealt with in community-based corrections, and not jailed. Those serious felons sent to jail should be separated from others, and contraband such as narcotics should be completely suppressed behind bars. The correctional facilities should be small, housing no more than 300 inmates in any one facility. And the taxpayers should get used to the idea that their security cannot be achieved by vetoing taxes to support the justice system. Wilson acknowledged that the criminal justice system “does not operate as I have suggested” (2013: 257). What is perhaps more relevant is that none of these things occurred, but the crime rate fell nonetheless.

Jeffrey Reiman and Paul Leighton (2010) advocated an expressly Marxist approach to crime causation, and derived policies specifically around the analysis of the criminal justice system understood as an ideology. The ideology promotes the belief that the poor are morally deficient and commit the bulk of serious violent crimes. The violent crimes of the well-to-do such as poisoning the environment, marketing dangerous drugs such as tobacco, fostering dangerous work sites, fleecing the average loan-holder of their savings by manipulating the loan market and rigging the security exchanges, are beyond the reach of the criminal law, and dealt with in administrative tribunals or self-regulatory industries where individual culpability is rarely established, and jail is never the answer because these offenders are not part of the root problems of crime. Riemann’s book title says it all: *The Rich Get Richer and the Poor Get Prison*. It has been in print since 1979.

What do Reiman and Leighton recommend to curtail the crime problem?

- End crime-producing poverty.
- Let the crime fit the harm and the punishment fit the crime. This means that any activities whether in business or government that create harm should be treated as crimes, and such offenders prosecuted accordingly.
- Legalize “illicit” drugs and treat addiction as a medical problem.
- Institute strict gun control laws as found in Canada, Britain and elsewhere.
- End the wholesale discretion of police, prosecutors, judges and correctional authorities that currently choose arbitrarily which offenders and offences are seriously held to account.
- Ensure that all accused have legal defence of the same quality and competence.
- Create a more equitable distribution of wealth in society (2010: 202-215).

Some of these measures are utopian. Also, they are not premised on the need to lower the crime rate, but on the need to reduce the liability of the poor to criminal conviction, and to expose white collar and professional offenders to the bite of criminal justice. The objectives

are to protect society, promote justice and de-bunk the class bias in the current system of criminal justice. As with Wilson, none of these prescriptions has occurred. The gap between the rich and poor has widened, the war on drugs continues, justice is rife with arbitrary exercise of discretion etc. – but the aggregate crime rate has decreased without these measures. There are some exceptions to this downward trend. As we saw in unit 8, homicides by gangs implicated in drugs is on the rise in Canada, and the single most prevalent offence resulting in incarceration in the US is a narcotics conviction.

Finally, we turn to a small “l” liberal prescription for crime reduction. Gottfredson and Hirschi’s *General Theory of Crime* (1990) is noticeably silent on a preferred political orientation. They suggest that the most important determinants of crime are individual properties, age and gender (see unit 6). The key individual property is impulsiveness, or low self-control. But in addition to this, no matter whether individuals have high or low levels of social control, everyone will experience an inflation in crime associated with late adolescence and the early twenties (the age crime curve), and boys will have higher levels of offences in most categories than girls, net of the effect of individual variations in self-control. This approach has profound implications for thinking about crime control policies. If self-control is well established by ages 6-8, i.e. very early in life, then interventions aimed at adults will have little impact on crime since they come too late in the life cycle to alter its trajectory. Likewise, for most persons, whether there is an intervention during adolescence is largely inconsequential since the age-crime curve implies that most adolescent-limited crime will terminate with maturation. They also reject the shifting penal treatment philosophies because they are inconsistent with the stability of levels of control over the life cycle. The enthusiastic support for rehabilitation (in the age of Skinner) was a bitter failure, not because persons cannot change, but because the capacity for such change is largely limited to the early years of life when self-control is still nascent. Persons can learn to behave themselves if they are constantly supervised (i.e. social control) but that is an external constraint or coercion. As for deterrence (in the age of economics), the same problem arises. Those who have self-control can foresee the long-term consequences of impulsive behaviour, and have few brushes with the law. The people who lack that ability are indifferent to changing penalties. Even differences in the utilization of the death penalty have no measureable impact on crime; the only modern nation that uses it frequently—the US—has the highest rate of crime comparable to any common law or European country where the penalty has been abolished. The latest popular approach to sentencing—incapacitation—might have an effect if it were possible to know who was going to make real nuisances of themselves before they did so, in order that they could be segregated from society before their criminal careers took off. But we lack the skills to predict prospectively who those persons are, and would not have the stomach to proactively curtail their liberties *before* they offended.

So “what works” from this perspective? The most important institution in which society can invest to contribute to the abatement of crime is the family, followed by schools and intimate, informal community organizations. These have the capacity to inculcate a conscience in individuals that produces the self-restraint and foresight that characterize those who manage to avoid criminal misconduct, theft and aggression. But to return to the paradox with which we started: have societies all of a sudden started to invest more in

families and schools, and has this resulted in the crime drop? There is no evidence of a sea change in socialization arrangements, although as mentioned in unit 4, there has been an enormous rise in abortions, and a probable reduction in average family sizes as a result. The strength of this approach is that the proportion of persons in the crime-prone years (age 15-24) may have started to shift downwards since the early 1990s, and this shift to smaller families may have resulted from the dramatic expansion of abortion in Canadian society (see unit four). But again, even if true, changing the age distribution of societies has never been discussed as a policy that could be advocated to deal with the crime problem.

There are undoubtedly elements in each of these perspectives that have measureable consequences for the supply of crime, both positive and negative. Rather than trying to choose between them, this unit will focus on several matters drawing selectively from each perspective where this seems justified to identify areas of concern for public policy. These will be presented as things that represent either an “over-reach of law” where the criminal justice system is arguably too intrusive into the lives of Canadians, as well as areas of “under-reach of law” where the system arguably does not do enough to ensure security and justice for Canadian society. These areas are identified in the unit objectives.

Unit Objectives

In this unit we explore the following topics:

- Over-representation of Natives in the Justice System
- The reinstitutionalization of the mentally ill in jails and correctional facilities
- Over-reach of the law: the War on Drugs
- Over-reach of the law in the criminalization of morality: prostitution in Canada
- Under-reach of the law: Environmental Crime

1. Over-representation of Natives in the Justice System

According to the latest report on incarcerated offenders in Canada, *Corrections and Conditional Release: Statistical Overview 2012*, aboriginals represent 3% of the Canadian population. However, in 2011-2012 they accounted for 19.3 % of the total offender population in federal custody. In other words, they are incarcerated at the federal level at more than 6 times their rate in the population. Furthermore, persons under federal jurisdiction are divided into those who are incarcerated in a penitentiary facility versus those who are being supervised in the community. From 2002-2003 to 2011-2012 aboriginals were incarcerated (versus held in the community) at just over 70% of the time, compared with non-aboriginals who are incarcerated about 60% of the time. In other words, aboriginals in federal corrections jurisdiction face “harder time” than non-aboriginals. And female aboriginals do “harder time” than male aboriginals. This is based on the finding that female aboriginals made up 34% of all females incarcerated, while male aboriginals made up 21.5% of all males incarcerated. Both are over-represented based on the aboriginal contribution to population, but this is more true of females than males.

These trends continue in spite of the 1996 report of the *Royal Commission on Aboriginal Peoples* that brought to the attention of governments and Canadians the severity of problems for aboriginal peoples in Canada. The Commission had concluded that “the justice system has failed Aboriginal peoples” and the key indicator of that failure in 1996 was the aboriginal over-representation in Canadian penitentiaries and prisons, a condition that continues today (Canada 2011). In light of that situation, parliament introduced changes to the Criminal Code in respect of sentencing of aboriginal offenders. Section 718.2(e) specifically required that sentencing judges must consider all available sentencing options other than imprisonment for all offenders, but particularly aboriginal offenders, and must weigh the circumstances of aboriginal offenders in determining a just sentence. This matter came to the attention of the Supreme Court in the case of *R. v. Gladue*. Gladue was an aboriginal woman who murdered her husband on the night of her 19th birthday. She suspected that her husband was having an affair with her older sister at a party where there was a substantial amount of alcohol consumed. According to the summary of evidence, when they got home, Gladue “confronted the victim with his infidelity and he told her that she was fat and ugly and not as good as the others. A few minutes later, the victim fled their home. The accused ran toward him with a large knife and stabbed him in the chest” (*R. v. Gladue* [1999] 1 S.C.R. File No. 23600). At the time of the stabbing, Gladue had twice the legal limit of blood alcohol concentration considered in drunk driving cases. She pleaded guilty to manslaughter.

At the sentencing hearing the judge considered the *mitigating* factors. The accused was a young aboriginal mother who had no prior convictions, aside from impaired driving. Her family was supportive, she had taken counseling for alcohol abuse and was upgrading her education. She had been provoked and insulted by the victim. At the time of the stabbing, she had a hyperthyroid condition that may have made her over-emotional. She had shown remorse at the trial and had pleaded guilty. The judge then turned to the *aggravating* factors. She had stabbed the victim twice, the second time after he had fled the townhouse, and at the time she was heard saying, “I got you, you f---g bastard.” The judge rejected non-carceral options including a suspended or conditional sentence, and concluded that a specific deterrence was required in respect of this offender. What became the bone of contention was that she observed that both the accused and the victim, while Natives, were living off the reserve, and so the judge concluded that the provisions of s. 718.2(e) did not apply. That decision was what brought the case to the BC Court of Appeal, and ultimately to the Supreme Court. The highest court rejected the decision of the trial judge to dismiss the relevance of aboriginal status. The court held that trial judges must consider all the unique systemic or background factors that may have played a part in bringing the particular aboriginal offender before the courts, and must weigh the sentencing options in view of these facts. It is not in the discretion of the trial judge to ignore the aboriginal heritage merely because the accused did not reside on a reserve. Indeed, half the status natives in Canada do not live on reserves, and indeed many may have left the reserves because the conditions there are frequently intolerable.

A unique observation of the contact of natives and the courts was provided by John Reilly who had served as a judge in the provincial courts, criminal division, for over 30 years in Cochrane and Canmore. Between these two towns lies the Stoney-Nakota Reserve, the

largest reserve in terms of territory in Canada. This reserve has three First Nations: the Wesley, the Chiniki, and the Bears paw. In his book, *Bad Medicine*, Reilly (2010) documents how his courts were preoccupied with Native cases. The reserve has a population of about 5,000 but it made up about 90% of the cases he heard in court. He reports that many of the defendants were on a treadmill of alcohol abuse, unemployment, and violent conflicts with spouses and family members. There was an on-going epidemic of suicide, particularly among young band members who despaired of making a success of their lives. From one year to the next, there were virtually no high school graduates. Yet the reserve received massive support from governments based on treaty settlements, as well as substantial income from petroleum royalties. Reilly seems to have undergone an epiphany in the aftermath of the trial of Ernest Hunter for brutally assaulting his common law wife. When off the reserve, Hunter, who had numerous convictions for alcohol-related violence, had taken counseling for alcohol abuse and had made considerable positive adjustments after that. Following the introduction of s. 718.2(e), Reilly wanted him into treatment again – on the reserve. Authorities in Morley said that the budget for treatment counseling was empty. In 1997 Reilly took the unusual step of ordering the Crown prosecutor to investigate the financial mismanagement of the reserve (Alberta Court 1997). In the subsequent course of events he accused Chief Snow (at the time there was only one chief) of looting the Stoney treasury, including the misappropriation of funds from the education budget. He accused him of illegally harvesting tens of millions of dollars worth of forests from reserve land and diverting all the profits to himself. He pointed out that band council meetings were sometimes held in New Mexico to prevent ordinary band members from attending them. In short, he suggested that there was no rule of law on the Native reserves, that the leaders acted like dictators, and that the elections were won simply by the constituency with the largest family and friendship network. Once elected, they were unconstrained by regulations that applied to comparable governments. Reilly was disciplined by the Chief Justice of Alberta, and temporarily removed from his post. Chief Snow never sued for liable or defamation of character since, as Reilly points out, these charges are not inappropriate if true, and a lawsuit would require the respective parties to enter discovery to determine the factual record. That would have opened the band's financial records to scrutiny. That never happened. Reilly established that his removal from the Cochrane bench amounted to interference with his judicial autonomy, and he was re-instated. The band threatened to sue again after *Bad Medicine* appeared in 2010 (Junkin 2010), but never did.

Needless to say, Reilly's charges and his judicial behaviour were unprecedented. He justified them by the necessity of understanding and resolving the conditions that were making life on reserve so dysfunctional for so many members, and filling up the docket of Cochrane's small criminal court. After retiring in 2010, he continued to serve on the bench in Calgary on a part-time basis. He ran for the liberal party in a national election (and lost). This electoral campaign prevented him from serving further as a part-time judge in the provincial courts. Were his allegations well grounded? A partial answer appeared after parliament passed the *First Nations Financial Transparency Act* that required all First Nations to publish an audited annual financial statement. In 2014 the Stoney Chiefs and the councilors paid themselves \$2,700,000 in salaries and benefits. Salaries for the three chiefs varied according to the size of their bands, but ranged between \$125,000 and \$183,000 with additional expense allowances ranging between \$90,000 and \$110,000. Fourteen

councilors earned an average of \$85,000, each also receiving about half that amount again for expenses. Because this is Federal Reserve land, these incomes are tax-free. The entire balance of the reserve population lives at or below the poverty line. Morley is the town at the centre of the reserve. The Morley Food Bank distributes as many as 300 food hampers a week with help from the Cochrane Activettes. How does the compensation of reserve leadership compare with nearby Cochrane? The Mayor in Cochrane administers a town with a population of 21,000 for a salary of \$68,500 with expenses of \$2,100. The six councilors earn \$26,000 with an average expense allowance of about \$100 (Seewalt 2014). Cochrane is a town with over four times the population of the Stoney reserve but governs itself with 10% of the reserve's budget. The situation on the Stoney Reserve is common across Canada.

This disparity in the distribution of income on reserves may be a contributor to the social dysfunctions identified by Reilly. The suicide rate among youth is epidemic because those persons in families disconnected from the power structure have no future. Many people receive checks for holding positions that require no work aside from loyalty to the chiefs. , In earlier times, these unearned payments were traditionally called "sinecures." One of the legacies of the residential school system is that parents are reluctant to prioritize the attachment of students to schools, which otherwise would be a key to careers off the reserve. On the reserve there is no industry or commerce, aside from casinos. Under these conditions, many people medicate themselves with alcohol that contributes to their quarrelsomeness, and lowers their threshold to aggression. Even accepting all this as true, the remedies are difficult to identify. The Canadian governments cannot abolish reserves since these were established in the Indian Treaties of the 19th century in a nation-to-nation framework. While a direct payment of treaty benefits to individual natives would profoundly alter the circumstances on reserves that would deny the leadership role created hand in hand with the reserve systems. The movement to re-distribute band revenues more equitably must come internally from the leadership, i.e. from those who currently flourish under the current system, and who control the budgets. On the other hand, reserve lands that are detached from their own autonomous economic enterprises are not sustainable. Effective remedies for the poverty created by reserve unemployment and the inequitable distribution of the existing band funds would significantly lower the Canadian crime rate, and reduce the over-representation of aboriginals in corrections.

2. The reinstitutionalization of the mentally ill in correctional facilities

Mental health is an extremely complex issue. Nearly all of us will experience "poor mental health" at some point in our lives, although usually we will experience discomforting symptoms that are transitory and might arise from unavoidable stressors that are endemic to everyday demands, or passing depressions, and/or slowly emerging dementias associated with aging. *Quick Facts* (MDSC 2009) suggests that 1 in 5 Canadians will have a *mental illness* at some point in their lives. At any one point in time, 10% of the population will experience one. Eight percent of the population will experience a major depression at some point. Twelve percent will experience an anxiety disorder. However only 1% of the population will develop schizophrenia or bipolar disorder. These latter illnesses often become chronically debilitating, and are treated to varying degrees by psychotropic drugs.

Personality disorders will touch 6-9% of the population, and they do not seem to be treatable. The severity of symptoms may be intensified by environmental factors such as lack of social support, stressful work or family conditions and physical illnesses and disabilities etc.

In Canada there has been a movement to fuse the problems of mental health into treatments for persons with addictions. In 2011 Alberta Health Services created the Provincial Advisory Council for Addiction and Mental Health (Alberta 2011). The rationale for this move was several fold. First, it was recognized that persons with addictions engage in behaviour that is compulsive and irrational, and not always under self-control, a condition common with those with mental health problems. Second, addictions are medical problems, even if they are also associated with criminal trafficking and possession of narcotics. Also, many addictions involve prescription drugs that are not classified as criminal narcotics. Third, the community resources required for both addictions and mental health issues are the same. They involve clinics that offer medical diagnoses and interventions designed to restore individuals to a condition where they can act independently and responsibly. Last, there is strong evidence that there is significant overlap in these classifications: there are persons with poor mental health, persons with addictions, and persons with both. The new policy is designed to capture them all.

Deinstitutionalization of the mentally ill from asylums started in the 1960s through to the 1980s. As observed in the last unit, there was a public backlash against the institutionalization of the mentally ill because conditions created for their treatment were frequently inhumane. One of the landmark reports published in *Science* is owed to David Rosenham (1973) who had a group of university students fake psychiatric conditions (hearing voices, dissociation etc.) to gain admission for observation into an asylum: “Being sane in insane places.” Once inside they acted normally but kept extensive notes of what they observed. The nurses recorded this compulsive writing behaviour, but never noticed that these patients were asymptomatic. When the pseudo-patients went to the toilets to spit out their medications, they discovered that many of the real patients had already done the same thing. The pseudo-patients had extremely little time with psychiatrists to have their cases reviewed and their diagnoses confirmed, and illnesses treated. What struck Rosenham was the powerless and sense of depersonalization of the clients, as well as the stigma of being labeled mentally ill. Rosenham wrote:

The data I have presented do not do justice to the rich daily encounters that grew up around matters of depersonalization and avoidance. I have records of patients who were beaten by staff for the sin of having initiated verbal contact. During my own experience, for example, one patient was beaten in the presence of other patients for having approached an attendant and told him, "I like you." . . . A nurse unbuttoned her uniform to adjust her brassiere in the presence of an entire ward of viewing men. One did not have the sense that she was being seductive. Rather, she didn't notice us . . . [An] error in psychiatric diagnosis does not have the same consequences it does in medical diagnosis. A diagnosis of cancer that has been found to be in error is cause for celebration. But psychiatric diagnoses are rarely found to be in error. The label sticks, a mark of inadequacy forever.

As a result of criticisms such as this, the medical establishment decided to close the asylums, and to shift treatment to community-based services. This decision coincided with the appearance of large numbers of persons in urban areas who became homeless as they tried to fend for themselves. Their conditions became aggravated with urban renewal in the largest cities as landlords demolished the cheap, single room occupancy hotels on the edge of the urban core to make way for expensive high-density accommodation for the new urban elite. Peter Rossi documented this in his study of the origins of modern homelessness (1991).

How has that deinstitutionalization experiment worked out in Alberta? First of all, there was no special provision of funds to ensure the support of individual persons who would have formally been taken care of previously 24/7. This vulnerable population has a number of needs. They require access to clinics for medication, access to employment support organizations to help them find work, access to agencies that assist them with finding housing, access to food banks, effective methods of coordinating with probation officers (in many cases) to ensure they attend court dates when and if required. Police have to know the backgrounds of persons they apprehend to know if their breaches of the peace arise from mental disabilities, and they have to have the ability to coordinate across cities as the population moves around. Many of these problems were described in a recent report by a front-line mental health worker, C. Hincks (2014). Because of the dispersion of services across a large number of agencies, inter-agency communication is difficult, but also limited by privacy issues. If a temporary housing agency wants to determine an individual's criminal record or psychiatric diagnosis in order to screen out potential liabilities, that information cannot be shared. Those who are receiving medications may not always take them as prescribed, and many individuals prefer to use alcohol and street drugs to ameliorate their stress. Agencies that provide temporary shelters have strict rules to ensure the safety of all their clients but many individuals are barred from the service due to intoxication, violence and disregard for curfews and other rules. As a result many people who need institutional support "prefer" to sleep outside. Many addicts and persons with mental handicaps find themselves in conflict with the law for shoplifting and public intoxication. Institutions can usually provide short-term care that permits the individuals to be apprehended until such times as they are stabilized, given prescriptions and released. Oftentimes these persons come to the attention of authorities scores of times, if not hundreds of times, annually. For many agencies they have burned their bridges, and the frontline workers experience "empathy fatigue." Hincks stresses that this is not the majority of the vulnerable population, but a 5-10% part of it that overstretches the ability of the network to deliver the care they are mandated to deliver, and which the clients need.

There is a direct overlap with the correctional system. BC is the only province in Canada that has a dedicated Director of Mental Health Services in its correctional system. The BC Ministry of Justice reported, "more than half of offenders (56 %) admitted into the corrections system are believed to have a substance abuse and/or mental illness disorder" (BC 2013). Repeat: more than half! Looking at the entire nation, the Correctional Investigator reported that "upon admission, 80% of federally sentenced male offenders have a substance abuse problem and nearly two-thirds reported that they were under the influence of substances

during the commission of their offence” (Canada 2014a). The Correctional Services of Canada (2012) profiled those who entered correctional facilities with a mental health disorder. They identified 202 offenders who had been classified as OMDs, (offenders with serious mental disorders). They were compared with a comparable sample of 594 offenders without the OMD classification. The Offenders with Mental Disorders were:

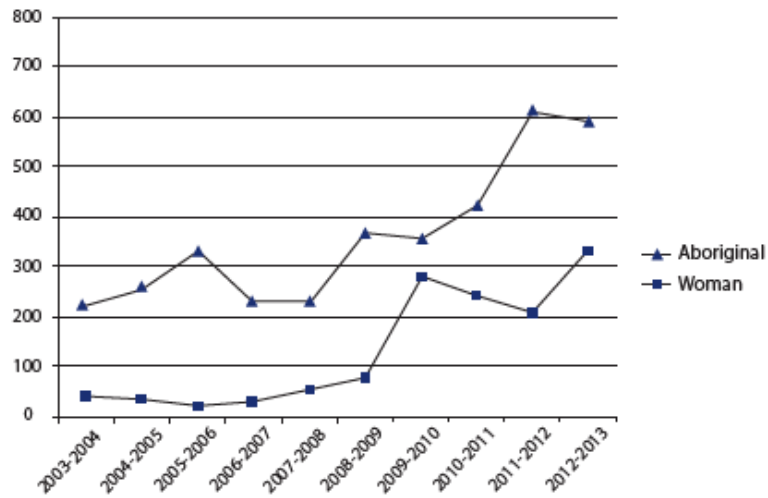
- More likely to be considered higher risk and higher need.
- More likely to be serving a sentence for a violent offence (robbery, assault, sexual offence) but less likely to be serving a sentence for homicide.
- Tend to be more socially isolated (for example, less likely to be married or living common law).
- More likely to be placed in maximum security penitentiary.
- Less likely to be granted parole and more likely to be released by statute (two-thirds of the sentence).
- More likely to serve a greater proportion of their sentence behind bars.
- More likely to be revoked for technical violations of parole conditions.
- More likely to incur more minor and major institutional charges leading to higher rates of voluntary and involuntary segregation.

However, the OMDs are not the only persons suffering from mental health issues. The Correctional Investigator (Canada 2013) reported that “the most recent data available indicates that the Correctional Service delivered at least one institutional mental health service to 48.3% of the total inmate population, with 47% of Aboriginal offenders and 75% of women offenders receiving services in FY 2011-12. Just over 90% (or 4,065) of newly admitted offenders were comprehensively screened for potential mental health problems last year; nearly two-thirds were flagged for follow-up mental health interventions.”

The most prominent recent correctional case suggesting mental health problems was that of Ashley Smith who strangled herself in her cell in 1997 at the Grand Valley Institution for Women, in Kitchener, Ontario as guards looked on and failed to intervene. An inquest jury ruled in 2013 that 19-year old Ashley Smith’s death was homicide, and that correctional personnel were responsible by virtue of their negligence (NP 2013). Ashley Smith had a history of self-harm. She had spent five years in the youth justice system in New Brunswick before being transferred to the care and custody of the Correctional Service of Canada at age 18. Smith’s troubled history in provincial and mental health systems was well documented but she was never given a formal mental health assessment while under federal jurisdiction (Canada 2014b).

However, self-destructive behaviour is more common in correctional services than most people imagine. The following chart is from the 2013 Annual Report of the Correctional Investigator (Canada 2013: 17). It shows that there has been a dramatic increase in the self-destructive behaviour among female inmates and aboriginals in the most recent 4-5 years on record.

Self-Injurious Incidents Involving Women and Aboriginal Offenders



This seems to coincide with the sharp uptake in minorities in the criminal justice system over the past decade. The Correctional Investigator (2014a: 2) reported that since March 2005 until 2014 the federal inmate population increased by 17.5. “Over the same period, the Aboriginal population grew by 47.4% and Black offenders by 75%. These groups now comprise 22.8% and 9.8% of the total incarcerated population respectively. The federally sentenced women population has increased 66%, with the Aboriginal women count growing by 112%. Over the same period the number of Caucasian offenders has actually declined by 3%.” The final point from the Correctional Investigator concerns “force interventions” by guards. This is where guards take action to physically restrain an inmate. According to correctional records, 30% of all such cases arose from “mental health concerns.” In 2013-14 incidents involving self-injurious behaviours accounted for 19% of force interventions. “The use of pepper spray in nearly 60.4 % of all use of force incidents reviewed suggests an increasing reliance on inflammatory agents to respond to behaviours associated with mental illness” (2014b: 37). The Correctional Investigator has also identified a number of cases where the mental illness of inmates is so severe that the institutions do not have the capacity to treat them adequately.

What appears to have occurred over the last several decades is that asylums for the mentally debilitated have been phased out in favour of community-based psychiatric support. Such services have enjoyed only a mixed success. Many people flourish in the community with minimum interventions, but those with the gravest mental health issues are suffering. The correctional services have replaced the asylums of the past in respect of this more deeply disturbed and addicted population, and seems to have little capacity to deal with them medically. Indeed, re-institutionalization has intensified self-destructive behaviour and is ill-equipped to deal with the aggressive behavior of persons placed therein short of the use of pepper spray. This is a sub-optimal solution to the problem of mental illness. Those “graduates” from corrections who entered as a result of mental health issues re-enter society with a predictably high probability of re-offending. If persons with such grave mental health/addictions problems could find more therapeutic, long-term support and supervision—without the dehumanization of the traditional asylums—their

liability to re-offend would probably decline. That would be a positive contribution to the crime drop.

3. Over-reach: the War on Drugs

Reiman and Leighton (*supra*) advocated the decriminalization of illicit narcotics, and the treatment of addictions as a medical problem. In their view, prostitution, gambling, vagrancy, drunkenness, and recreational drug use are “victimless crimes” which involve adults who have freely chosen to participate. “They are no threat to the liberty of any citizen. This also means that there is generally no complaint for these crimes, no person who is harmed by these acts and who is ready and able to press charges and testify against the wrongdoers” (2010: 207). As Reiman and Leighton point out, the suppression of these activities has required the use of shady, undercover sting operations that border on entrapment when undercover police officers act as prospective johns or as drug dealers to catch the players in their underworld economies.ⁱ There are two perspectives to consider: the long-term global perspective, and the short-term local perspective.

An illustration of the global instance comes recently from Afghanistan. The development of poppies in Afghanistan is at an all-time high, despite the coalition’s defeat of the Taliban terroristsⁱⁱ who, ironically, banned the production of poppies when they were in power (Aikins 2014). Matthieu Aikins, a Canadian investigative journalist working in Afghanistan, documents how the harvest of opium has doubled since 2000, and accounts for 15% of the country’s economy. It enjoys the total support of senior political and military leaders, working hand in hand with the drug lord landowners. Afghanistan currently supplies 90% of the world’s opium.ⁱⁱⁱ In order to build bridges with the enemies of the Taliban, and to win the war on terror, the CIA chose to lose the war on drugs since it secured the loyalty of the drug lords by turning a blind eye to their opium production. Opium is manufactured to produce heroin for export to Europe and North America. The wealth produced by this drug is unevenly distributed. The farmers barely survive planting it, and virtually every free hand is required to harvest it (students, teachers, policemen). Meanwhile the drug lords have become immensely wealthy, and use their wealth to control the political course of the country. This is not unprecedented. In the Escobar-era in Columbia, the production and export of cocaine made the drug cartel in the country a government within a government with its own security forces, and territorial claims. Currently, Mexico is undergoing a similar situation: production and export of cocaine, marijuana and crystal meth has created drug wars between rival cartels that has cost the lives of tens of thousands of Mexicans caught between drug lords for control of the illicit markets. North American and European demand for illicit narcotics has crippled democratic development in the producing nations. Our theories about “victimless crimes” are not without international implications.

The trans-national impact of the narcotics trade is not unprecedented. In the 1830s the British East India Company forced the Chinese to open their markets to the delivery of Indian opium. This had a devastating effect in the Chinese port cities where tens of thousands of people became addicted and dysfunctional. Chinese governors initially seized the opium cargoes and dumped them into the sea. Resistance to the export of Indian opium to China resulted in the Opium Wars of 1839-42 and 1856-58. One of the settlements of

those conflicts was an indemnity extracted by Britain from China in the form of the creation of a British trade monopoly on the island of Hong Kong on a 99-year lease. Writing in the *New York Daily Tribune*, Karl Marx (1858) observed the devastating effects of the opium trade, not only on the degradation of those who became addicted, but on the retardation of commerce, as all Chinese silver went to opium at the expense of the acquisition of manufactured goods from British industry. “The payment for opium ... absorbs the silver to the great inconvenience of the general traffic of the Chinese.” The sales of Chinese silk and tea financed the purchase of opium but little else. The opium trade was not like that of other commodities, because it created addictions, and wasted the lives of otherwise productive individuals.

While Reiman and Leighton talk about people “freely engaging” in victimless crimes, that argument is less compelling in the case of narcotics that create dependencies. It might be useful to examine a slightly different case: tobacco. It has been just over 50 years since the publication of the US Surgeon General’s 1964 Report on the Health Consequences of smoking. Since that time governments have undertaken public health policies to reduce the devastating effects of this legal commodity. It is estimated in the US that from 1965-2014, there were over 20,000,000 preventable, premature deaths caused by tobacco use (US 2014). Narratives have changed to the extent that it is no longer credible to talk about tobacco use as a “victimless” commodity. A series of targeted public service programs were undertaken to reduce tobacco consumption. These included aggressive taxation, limitations of advertising, grotesque pictures on the covers of tobacco cartons, control of sales by age, smoking prevention in work places and public conveyances etc. These have resulted in a reduction of smoking from about 43% of adults in 1965 to 18% in 2014.

Premature deaths caused by smoking and exposure to secondhand smoke, 1965–2014

Cause of death	Total
Smoking-related cancers	6,587,000
Cardiovascular and metabolic diseases	7,787,000
Pulmonary diseases	3,804,000
Conditions related to pregnancy and birth	108,000
Residential fires	86,000
Lung cancers caused by exposure to secondhand smoke	263,000
Coronary heart disease caused by exposure to secondhand smoke	2,194,000
Total	20,830,000

Source: Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, unpublished data.

In an earlier unit we have learned that narcotics use—which is sometimes associated with graver physical consequences and more serious addictive effects than tobacco—is common among the *majority* of persons incarcerated in federal institutions. In addition, the 2001-2012 Homicide Uniform Crime Reports indicates that alcohol and/or drug consumption is associated with 75% of the known homicide perpetrators in Canada.

In view of those observations, it is somewhat surprising that in 2014, the Centre for Addiction and Mental Health (CAMH) in Toronto advocated the legalization of marijuana, suggesting that sales should be regulated and sold like alcohol with age restrictions (Ubelacker 2014). The Centre’s rationale was that (a) the current regime, which makes cannabis illegal, is ineffective in controlling its use, since Canadians are among the highest producers and users in the world, and (b) legalization may make regulation of use, and analysis of its health consequences, more subject to management. The recommendation of the Centre did not extend to other drugs such as heroin, cocaine, ecstasy or crystal meth. The Centre’s reticence with respect to these other narcotics is that, aside from cannabis which was used by about 10% of the Canadian population in 2013, no other drug is used by more than 1% of the population. In addition, the legalization of pot could sever the contact of users from suppliers who traffick in all drugs. The Centre published the prevalence of cannabis use in Ontario for 1997-2013 (Ontario 2014: 2).

CANNABIS USE IN ONTARIO: percentage of the population using cannabis in the past year

	1997	2001	2005	2009	2013
General population (age 18+)	9.1	11.2	14.4	13.3	14.1
By gender					
• Men	11.4	15.4	18.8	17.4	17.6
• Women	7.0	7.3	10.3	9.5	10.8
By age					
• Grades 7-12	28.0*	28.6	26.5	25.6	23.0
• Age 18-29	21.4	26.8	38.2	35.8	40.4
• Age 30-39	9.8	15.8	16.9	12.9	17.3
• Age 40-49	4.3	7.2	10.8	11.7	8.4
• Age 50+	1.7	3.3	2.6	4.7	5.9

These findings indicate that there has been an increase of cannabis use in Ontario between 1997 and 2013 (9.1% vs. 14.1%), that the use is higher among males than females, and that it is highest among the 18-29 age group, and has doubled in that group from 1997 to 2013 (from 20% to 40%). In addition, about a quarter of high school students report use in all the years tested, but this has declined somewhat over time. Keep in mind that these are prevalence measures (*“in the last year, have you ever used marijuana?”*), not habitual use.

How does the legalization of drugs contribute to the crime drop? At one level, the answer is smoke and mirrors: we simply remove an offence from the books and stop counting it as crime. The crime picture artificially improves. On the other hand, the policy *may* lead to an undermining of the profits accrued to organized crime, which may have long-term

consequences. But when we look at realistic proposals in Canada such as that from the CAMH, this would apply only to cannabis. And the legalization of drugs used by less than 1% of the population (heroin, cocaine etc.) probably would be a poor policy choice. Nonetheless, we should not ignore the fact that under legalization the costs to society of addiction may simply migrate from the criminal justice side of the ledger, to the mental health side of the ledger. Reiman and Leighton support decriminalization of drugs without acknowledging that this is simply a way of substituting a medical problem for a criminal problem.

Contemporary discussions of drug policy are somewhat straight-jacketed by the conventional wisdom about the effects of Prohibition. When the manufacture and sales of beverage alcohol were suppressed in Canada and the US, an underground economy developed to meet a demand that persisted despite the law. In the US, this led to one of the most violent periods of organized crime in history since it persisted so long (1919-1933). In Canada, prohibition was a spent public policy by the early 1920s in most provinces, and replaced with provincial regulation of sales and consumption. Prohibition had led to intolerable levels of violence including the shooting of police officers, political corruption in law enforcement, and stern citizen resistance. In *Booze, The Impact of Whiskey on the Prairie West*, James Gray (1972) nonetheless records the profound change in habits after the prohibition was replaced with regulation. After the early 1920s when provincial regulations were instituted, the previous patterns of excessive drunkenness which were the ordinary outcomes of men congregating in taverns became, and for the most part, socially unacceptable. The CAMH's proposals for decriminalization of cannabis may take some solace from Gray's conclusions about the demise of prohibition. Legislation may permit society a way of managing tolerable consequences of use.

One of the most interesting experiments in contemporary public policies regarding narcotics was undertaken in Portugal in 2001. At the time, Portugal had a very high use of narcotics. Some one percent of the population was using or had used heroin and other opiates. The government undertook a harm reduction policy that permitted the possession and use of small amounts of virtually any type of drugs, including cocaine, heroin and crystal meth. Sales remained criminalized, but all the expenses previously devoted to the war on drugs were re-directed towards health-maintenance policies as well as job training. After a decade, Washington DC's CATO Institute concluded that the policy has largely reversed the negative effects of criminalization. "drug-related pathologies—such as sexually transmitted diseases and deaths due to drug usage—have decreased dramatically. Drug policy experts attribute those positive trends to the enhanced ability of the Portuguese government to offer treatment programs to its citizens—enhancements made possible, for numerous reasons, by decriminalization" (Greenwald 2009). Drug use per se has not necessarily fallen, but the experience in Portugal offers hope to methods of managing narcotics use outside the framework of the traditional war on drugs.

4. Over-reach: the Criminalization of morality and prostitution in Canada

Until December 2014, prostitution per se had never been illegal in Canada. From 1985 onwards, prostitution was suppressed by four laws that (1) made it illegal to communicate

publicly for the purpose of prostitution, (2) to operate a common bawdy house, (3) to live off the avails of prostitution and (4) to procure someone to become a prostitute. However, the act of prostitution was not a crime. In 2010 three sex trade workers, Terri Jean Bedford, Amy Lebovitch and Valerie Scott successfully challenged the first three of the above laws in a charter challenge in the Ontario Superior Court of Justice. Madame Justice Himel accepted the argument that the laws designed to suppress prostitution violated the charter rights of the three parties by denying them security of the person in accordance with the principles of fundamental justice. Evidence led by an Osgoode Hall Law School professor, Alan Young, showed that the laws forced prostitutes to work in unsafe environments that exposed them to violence and murder. The argument was all the more poignant as it appeared in the aftermath of the Pickton conviction of multiple murders of Vancouver prostitutes. The decision in *Bedford v. Canada* (2010) struck down the three federal laws designed to suppress prostitution. The Ontario Court of Appeal concurred with the challenge of the bawdyhouse and living on the avails law, but would not support the finding of unconstitutionality in respect of the communication law. On appeal to the Supreme Court of Canada, the court unanimously supported the lower court decision and found all three laws unconstitutional. It suspended the laws for a year, and referred the matter to parliament since it was of great public concern, and since, in the absence of new parliamentary action, the criminal code controls would be confined exclusively to forcible procurement.

Parliament could have adopted the system of regulation introduced in New Zealand in 1999 and most Australian states prior to that date, which regulates prostitution through zoning laws that control the location of brothels, restrict participation by age, but otherwise makes prostitution a matter between consenting adults. The alternative “Nordic model” makes the practice of prostitution illegal for the buyer, but decriminalizes it for the seller. For the first time, it criminalizes the activity of the “john” but not the prostitute. Parliament adopted the Nordic model, which came into effect in December 2014 (Schwartz 2014). The new law makes it an offence to buy or to try to buy sex. The crime is a hybrid offence. It can be prosecuted either as an indictable offence with a maximum penalty of 5 years imprisonment in respect of an adult prostitute, and 10 years in respect of a child prostitute (i.e. someone under 18 years of age). Alternatively, it can be prosecuted as a summary offence with a maximum of 18 months imprisonment, and subject to fines that escalate with repeated offences.

This law also makes it illegal to advertise sexual services, whether in the print media or on web sites. The rationale is to reduce demand for prostitution, including the advertising by prostitutes who make a living through prostitution. The offence is a hybrid with a maximum of 5 years imprisonment when prosecuted by indictment, and 18 months when prosecuted as a summary offence (DOJ 2014).

The new law also re-defines “living off the avails” as “receiving a material benefit from prostitution”. This law is designed to exclude family members, and persons who are providing security for the seller, in other words, persons who are in a non-exploitative relationship to the seller. The penalty for receiving a material benefit is a maximum of ten years in respect of an adult prostitute, and 14 years in respect of a child with a two-year

minimum sentence. The law also recognizes that prostitutes can operate from “fixed indoor or other locations” although it is unclear whether such persons would be creating material benefits that are criminal for property owners who rent their premises to the prostitutes.

The new law reflects a shift away from the treatment of prostitution as a mere nuisance, particularly in respect of the communication that transpires publicly in the case of street prostitution. It emphasizes the treatment of prostitution as a form of sexual exploitation that primarily impacts women and girls negatively. By implication, it implies that no one chooses prostitution, and that it only occurs as a result of coercion, force and gendered violence. Seventeen year olds, who are old enough to consent to sexual relationships, are classified as “children,” and the assumption that all women who sell sex are not free agents infantilizes them as well. It is unclear how this model makes life safer for prostitutes. It removes their right to communicate in the media, although prostitutes can still communicate in public. It is not as though prostitutes can conduct their business as usual, or operate out of known premises since this would create liabilities for their customers, and would simply raise the imperative to move their business into hidden locations, e.g. remote pig farms.

How have the Nordic laws actually worked in the Nordic countries? Skibrei and Holström (2014) argued that the “the Nordic model of prostitution is a myth.” First of all, only Sweden, Norway and Iceland adopted laws unilaterally criminalizing the purchase of sex. Denmark legalized it. The Nordic model brought more attention onto prostitutes as police targeted East Europeans working the sex trade. For these women, prostitution was grounds for deportation. The apparent decline in the sex trade in Sweden was also a function of changing technology. “Since 1999 or so, mobile phones and the internet have largely taken over the role face-to-face contact in street prostitution used to have.” And while the Swedes supported the law, according to Skibrei and Holström, public opinion polls also support the view that the sellers should be prosecuted. The Nordic model is not a panacea, and will inevitably face legal challenges. However, these will require years of application, resistance and the development of case law before the effect of the law can be assessed in terms of its Charter integrity. How can parliament make it legal to sell something but illegal to buy it? And by what legal reasoning can sex workers not be party to the offences of their customers? Also, the penalties created by the new law give enormous discretion to the Crown since, as hybrid offences, they can be prosecuted as indictments (with a 60 month penalty) or as summary offences (with an 18 month penalty), giving justice the arbitrary character that Reiman and Leighton criticized.

5. Under-reach of the law: Controlling Environmental Crime (Smoke, lead and CO₂)

In the past two decades, a new field of study has emerged in criminology that has been concerned with environmental crime. Environmental crime is an activity that results in the culpable poisoning or degradation of the state of nature that poses serious threats to human health. This is typically not the intent of the perpetrator, but an inadvertent side effect of an otherwise legitimate activity. In this respect, it overlaps with white-collar crime. It is culpable to the extent that the perpetrator becomes aware of the harm, and fails to ameliorate it. It is further culpable where the perpetrator ignores evidence of harm, or

takes steps to suppress evidence of harm. The paradigm case is the tobacco industry, and the health effects of cigarette smoking. Use of tobacco is legal. Smoking is also a personal choice. However, nicotine stimulation can become addictive, and many tobacco users find it difficult to quit smoking because cessation creates withdrawal symptoms. The most important case to examine these issues was a civil case brought in the US by the Department of Justice in 1999 against the major tobacco companies: *United States v. Philip Morris*. In 2000 the DOJ won a ruling that permitted the government to seek damages under the Racketeer Influence and Corrupt Organizations Act (RICO). RICO was created to combat organized crime by permitting the government to seize the assets of criminal organizations. The DOJ filed 1,400 pages of evidence of misconduct on the part of the tobacco manufacturers who had engaged in a decades-long conspiracy to (1) mislead the public about the risks of smoking, (2) mislead the public about the danger of secondhand smoke (3) misrepresent the addictiveness of nicotine, (4) manipulate the nicotine delivery of cigarettes to stimulate addiction, (5) deceptively market cigarettes characterized as “light” or “low tar,” while knowing that those cigarettes were at least as hazardous as full flavored cigarettes, (6) targeting the youth market to ensure life-long dependency; and (7) to reject the production of safer cigarettes (PHLC 2010). In 2006 Judge Kessler issued a 1,683 page opinion finding that the tobacco companies had violated civil racketeering laws by lying for decades about the health risks of smoking and marketing to children. However, the appeal court denied the government’s remedy of a disgorgement of profits of \$280 Billion (Campaign TFK 2014).



The evidence suggested that the tobacco industry funded extensive pseudo-scientific research in an attempt to discredit the efforts of various regulatory agencies to document the effects of environmental tobacco smoke, including second-hand smoke (Muggli et al. 2001). In the 2006 decision the Court found that *"each and every one of these Defendants repeatedly, consistently, vigorously - and falsely - denied the existence of any adverse health effects from smoking, despite the massive documentation in their internal corporate files from their own scientists, executives, and public relations people that confirmed that there was little evidence supporting their claims. Specifically, Defendants knew there was a consensus in the scientific community that smoking caused lung cancer and other diseases by at least January 1964. Despite this internal knowledge, the Defendants embarked on a campaign of proactive and reactive responses to scientific evidence that was designed to mislead the public about the health consequences of smoking"* (US v. Philips Morris 2012). The court went on to say that the defendants publicly denied and distorted the truth about the addictive nature

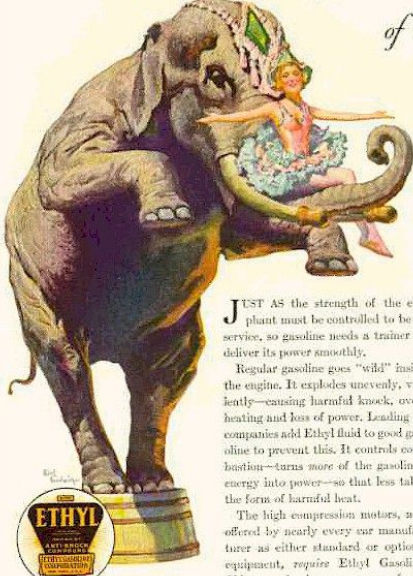
of nicotine, and designed their cigarettes to deliver the nicotine “sufficient to create and sustain addiction.” They knowingly denied the dangers of second-hand smoke, and misrepresented the so-called health benefits of low tar and mild tobacco.

The remedies are still under negotiation. As of 2014, the US government and the tobacco companies continue to negotiate how the industry would communicate the truth about the health effects of tobacco in announcements to be printed in newspapers and on websites, as well as messages on cigarette cartons. The industry continues to face individual lawsuits from estates of persons who have died of lung cancer and/or other tobacco-related diseases. In Canada, the provinces are negotiating with tobacco manufacturers to seek relief from costs inflicted on provincial health schemes from illnesses related to tobacco use. But tobacco remains legal and none of the tobacco executives have faced any criminal liabilities. Even after being directed by the court during the initial trial to preserve all business records, 11 tobacco executives were found to have erased incriminating emails covering a two and a half year period before the initial trial judgment. The companies were fined \$2.75 Million (Levin 2004). Not the individuals.

This camouflaging of dangerous products behind dubious science is quite prevalent. Consider the case of leaded gasoline. One of the problems with early gasoline engines was piston “knock,” the vibration caused by the friction against the cylinder walls as the fuel ignited unevenly. Thomas Midgley was an inventor with Dayton Engineering. In 1921 he experimented with several additives to reduce the “ping” of early, internal combustion engines, including iodine that proved to be effective, but highly expensive and prone to create a very foul odour at the tail pipe. He found that small amounts of tetraethyl lead (TEL) eliminated engine knock. TEL is basically elemental lead (Pb) dissolved in a solution. TEL raised the potential octane level in fuels and permitted the auto manufacturers to use higher compression rates in engine design that increased horsepower and fuel economy. His partner, Charles Kettering, a mechanical engineer and fellow inventor became vice-president at General Motors in 1920, and together they promoted the adoption of leaded fuel. However, from the very start, it was clear that medical experts found the application extremely worrisome since lead was a known neurotoxin from the time of the ancient Greeks and that its incorporation into gasoline risked widespread lead poisoning (McGrayne 2001: 88). Indeed, Midgley himself experienced the effects of lead poisoning as a result of handling TEL so casually. Symptoms of lead poisoning include headache, anorexia, insomnia, hearing loss, vomiting, diarrhea, blindness, seizures, kidney failure, cancer, palsies,

Ethyl CONTROLS

the GIANT POWER
of Gasoline




JUST AS the strength of the elephant must be controlled to be of service, so gasoline needs a trainer to deliver its power smoothly.

Regular gasoline goes "wild" inside the engine. It explodes unevenly, violently—causing harmful knock, overheating and loss of power. Leading oil companies add Ethyl fluid to good gasoline to prevent this. It controls combustion—turns more of the gasoline's energy into power—so that less takes the form of harmful heat.


The high compression motors, now offered by nearly every car manufacturer as either standard or optional equipment, require Ethyl Gasoline. Older cars thank you even more for its greater power.

Stop at the Ethyl pump today and get the full value—the best performance of the car you own. Ethyl Gasoline Corporation, New York City.



© M. G. C. 1928

Buy ETHYL GASOLINE



AS POWERFUL AS ETHYL GASOLINE

THE leaping, racing fight of the marlin is a breath-taking display of power under perfect control.

To get the power of gasoline under control, leading oil refiners add Ethyl fluid. This prevents the uneven explosions that cause power-waste, harmful "knock," and even hearing. It controls combustion, delivering power to the pistons with a smoothly increasing pressure.

Controlled combustion makes such an improvement in car performance that Ethyl Gasoline is now the biggest selling motor-fuel in the country. Practically all leading refiners add Ethyl fluid to good gasoline to form Ethyl Gasoline, and nearly every filling station now has one or more Ethyl pumps. Look for the Ethyl emblem, Ethyl Gasoline Corporation, New York City.



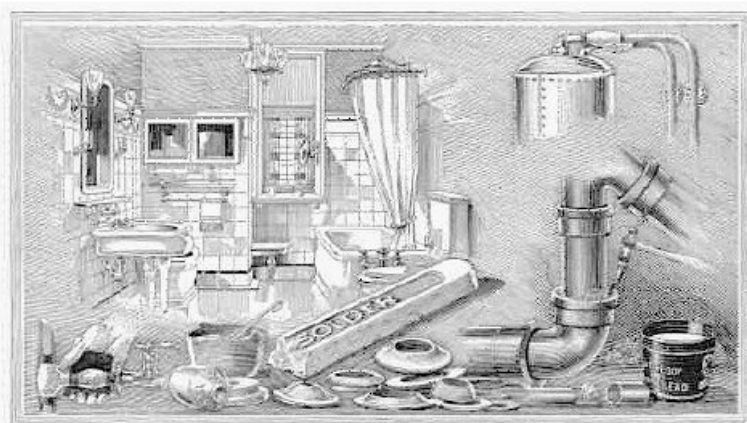
FOR SUMMER DRIVING
Ethyl Gasoline keeps the motor cool. It keeps the engine in excellent condition. It's the only motor fuel that's so good.

hallucinations, and convulsions. Children are more susceptible and can experience IQ deficits, learning disorders, hyperactivity and behavioural problems. By 1924, with a fixation on the bottom line, leaded gas was widely adopted as car fuel, and promoted by the newly formed Ethyl Corporation which manufactured it (see 1920s ads above).

GM officials contacted the Bureau of Mines to evaluate the toxicity of the vapors released from engines burning leaded fuel. The Bureau of Mines was concerned with TEL as an occupational health issue, not as an environmental hazard. In its agreement with GM, the Bureau agreed to submit any publication of its findings to GM for approval, effectively giving the industry a veto over any negative publicity (Adler 2006: 67). GM did not stop here. It acquired the expertise of Robert Kehoe, a University of Cincinnati pathologist. In the course of time, GM would build him his own laboratory, pay his salary and fund most of his research. Hardly surprisingly, Dr. Kehoe was a supporter of the "careful" use of TEL in gasoline, and became the industry's watchdog against critics.

Enter Clair Cameron Patterson (Needleman 2000). Patterson was a geo-chemist who was interested in dating the age of the earth. He developed a technique to measure isotopes in lead based on the observation that lead is created by the decay of uranium. Patterson employed techniques that he had worked on during the Manhattan Project where he employed mass spectrometers to determine the purity of the fuel used to manufacture the first atomic weapons. Since the rates of decomposition of Uranium 235 and 238 are known, he could determine how old the earth was by measuring the remnants of U²³⁵ and U²³⁸ in contemporary lead (Pb²⁰⁶ and Pb²⁰⁷). He used the same techniques to estimate the age of

meteorites, and determined that meteorites and the terrestrial lead showed comparable levels of decomposition, and suggested that the earth was approximately 4.55 billion years old. However, in trying to measure the purity of the lead in his samples, he had to create the first “clean lab” in which to conduct his research since he found that levels of lead were contaminated by exposure to the atmosphere. Q: Where was all that lead coming from? A: Industrial processes! Patterson became a critic of lead in contemporary industrial society. It was found, not only in gasoline, but also in paint, in solders used to seal canned food, in plumbing and many other household items. Surprisingly, in the 1920s, lead industries advertised the health *benefits* of lead despite its known neurotoxic effects (see the 1924 ad from The National Lead Company below).



Lead helps to guard your health

Lead plumbing installations could last for decades and provided fresh water – with traces of heavy metals that we have now eliminated from the water supply since lead piping has been eliminated in contemporary construction.

Lead had become such a common element in modern manufacture that Patterson’s criticism of its use was described initially as alarmist and unscientific. After all, there is a normal level of lead present in nature. Patterson’s work led him to conclude that the atmospheric levels of lead were thousands of times higher than what would be expected from the natural release of lead minerals in nature. He examined core samples from the ice pack in Greenland that permitted him to identify the atmospheric levels of lead prior to the industrial revolution. They showed that after the industrial revolution, atmospheric lead started to increase noticeably, and after 1923 when TEL was added to gas, it increased dramatically. Measures of lead in the ocean were anomalous. Other heavy metals such as barium are found equally distributed at the surface and the bottom of the oceans, but lead was concentrated near the surface layers, suggesting it uniquely was absorbed from the atmosphere. Finally, he analyzed the lead content in the tissues of 16th century Peruvian mummies, and found levels at a fraction of the levels in contemporary North Americans. The lead in TEL was not metabolized during combustion as the automotive industry had claimed; it was entering the biosphere at an unprecedented rate, and being absorbed by everyone exposed to the atmosphere.

When Patterson pointed to the petroleum industry as the major source of atmospheric lead, he found that his research funds started to disappear. The American Petroleum institute cancelled a contract with Patterson. The US Public Health Service did likewise, and Patterson found himself excluded from the 1971 National Research Council panel created to examine the issue of atmospheric lead, despite the fact that he was one of the nation's top experts in the area (Armfield and Armfield 2014). Ethyl Corporation tried to recruit him to work for the industry, but Patterson was ill disposed to pervert his research to advance the bottom line of fuel producers who were poisoning the planet.

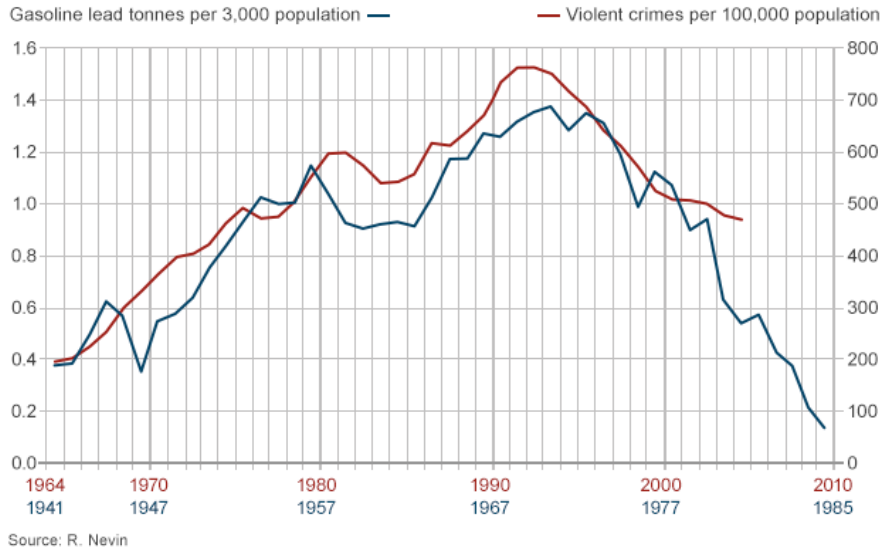
Kehoe became a determined critic of Patterson. He claimed that his own work showed that the levels of lead in the atmosphere were normal. Keyhole's strategy was a caricature of scientific objectivity. He demanded black and white proof. *"The heart of the Kehoe Paradigm was to first piously state that if it could be conclusively shown that tetraethyl lead was a public health danger, then of course the lead industry would stop, as the only rational and morally acceptable response. But then he would go on to argue that it wasn't conclusive at all, yet – so the default response should be to allow industry to continue to profit until the consequences to public health were undeniable"* (Nriagu 1998). Kehoe played on the uncertainty of science in a world of imperfect information. He stressed the immediate benefits of TEL to transportation versus the vagueness of future public health illnesses. This was a strong defensive strategy and resulted in the unfettered proliferation of TEL-based pollution as 350,000 tons of leads annually were pumped into the atmosphere worldwide by the 1970s. But Patterson began to turn a corner at the Muskie Senate Hearings on the Clean Air Act in 1966. Kehoe made outrageous claims throughout the hearings with an unshakeable confidence. *"He even stated that not the slightest increase in lead exposure to motorists had occurred since tetraethyl lead's introduction. This was clearly not the case. Dr. Patterson also made the important point that a person could suffer ill effects from lead without being lead poisoned. Muskie and other senators supported Dr. Patterson's claims over Keyhole's because Patterson's were based on painstaking research while Keyhole's were supported only by his extreme self confidence"* (Armfield and Armfield 2014; see Needleman 2000: 24-26).

Following the hearing, the government passed the Clean Air Act in 1970. California banned leaded gasoline in 1974. Lead was removed from paint in 1979. Lead was banned from food packaging in 1981. Leaded gasoline was banned across the US in 1986. As a result of changes in automotive manufacturing in the US, the ban on lead products was followed elsewhere. By 2005 leaded gasoline had disappeared from virtually every market on the planet. Patterson, acting virtually alone, had probably more impact on reversing environmental degradation through the industrial use of lead than any other person in the 20th century. His courageous opposition to GM and Ethyl Corporation continues to have positive benefits into the 21st century as nations like China are starting to ban widespread use of lead in consumer products. Yet who has ever heard of this unsung hero, Claire Cameron Patterson?

Unlike the tobacco industry, the petroleum industry was never brought to account for its suppression of information about the harmful effects of its TEL products, and its use of phony science to delay the abolition of this environmental toxin. Ironically, the removal of

lead from consumer products may have had a significant effect of the crime rate. Rick Nevin (2007) has suggested that there is a lagged effect of environmental exposure to lead in early life, and the rate of violent crime in the US twenty-four years later.

Lead exposure and violent crime, USA



In a similar vein, Wright et al (2008) report that evidence from the Cincinnati Lead Study showed that women exposed to lead during pregnancies gave birth to children whose criminal records decades later were a direct function of the level of intrauterine and early childhood exposure to lead. Two hundred and fifty women were recruited for the study between 1979 and 1984. Later researchers investigated the court and police records for the offspring of these women when they were 18 to 24 years of age. The results showed that serious criminal offences were associated with early childhood lead exposure. Lead is a neurotoxin that interrupts normal development in the prefrontal lobes, the organs that mediate self-control. If the lead-crime link proves to be accurate, it turns out that a policy adopted for environmental protection has been one of the most important crime control policies in history, for which no one can take credit (Casciani 2014).

The final case we examine is the great oil sands development in Northern Alberta and the environmental concerns that have arisen around it. The oil sands represent the largest industrial project in Canada. The petroleum deposits are probably the biggest unconventional source of oil on the planet, and are locked into sticky tar-like formations underneath the northern boreal forests. The industrial process devised to exploit the resource has resulted in the open pit exposure of the resource over an area covering hundreds of square miles. The initial phases of mining have created massive sludges of toxic wastewater used to separate the oil from the associated sand and gravel. These tailing ponds are preserved behind some of the largest earthen dams in the world. The size of the development is so massive that it can be seen plainly from outer space. The only other feature on the planet that can be similarly recognized is the Great Wall of China since it snakes across hundreds of miles of land. Both have a gargantuan footprint on the face of nature. There the similarity ends. The oil sands have been labeled “the most destructive project on earth” by Toronto’s Environmental Defence (Hatch and Price 2008). The project

is the single largest source of green house gases in the country, and green house gases, primarily carbon dioxide created from industrial projects, are the major contributor to global warming. In addition, all that water vapor created in the process of separating the oil from the sand is creating acid rain downwind of the oil sands in northern Saskatchewan.^{iv}

Environment Canada scientists have also established that industrial pollutants have leached from the tailings ponds into the natural water systems in the drainage basin of the Athabasca River. Although some toxins occur naturally in areas with such large underground bitumen deposits, scientists were able to compare the chemical “fingerprints” found in free flowing rivers and underground aquifers, and in the sludge ponds. They found that the chemical fingerprints were different, and that sludge chemicals had entered the groundwater surrounding the ponds, and under the Athabasca River. Specifically, they were able to identify “significant concentrations of acid-extractable organics” which are created by oil sands treatment processes in the ground water. They concluded that oil sands process-affected water (OSPW) is found in the ground water and that “OSPW-affected groundwater is reaching the river system” (Frank, Roy, Bickerton et al 2014). How much leakage is there? According to Canadian Press, studies have estimated “the leakage of 6.5 million litres a day from a single pond” (CP 2014).

The Athabasca River drains the traditional hunting lands of Northern Cree in Fort Chipewyan, and empties into the enormous Lake Athabasca, a traditional source of food for the Cree. According to Environmental Defence (Hatch and Price 2008: 3):

Scientists are worried since the levels of notorious carcinogens in sediments and waterways are steadily rising. First Nations downstream see the impacts first hand: “There’s deformed pickerel in Lake Athabasca... Pushed in faces, bulging eyes, humped back, crooked tails... never used to see that. Great big lumps on them... you poke that, it sprays water...”

Fish and game animals are being found covered with tumours and mutations. Some First Nations describe how fish frying in a pan smell like burning plastic. One study by a Tar Sands company concluded that arsenic could be as much as 453 times the acceptable level in moose meat from the region. The Alberta government responded with an assessment that arsenic levels are “only” 17 to 33 times the acceptable levels. Both reports’ estimates were well beyond the “acceptable” rate of additional cancers of 1 per 100,000 people.

Dr. John O’Connor, a physician with a family medical practice in Fort Chipewyan reported numerous cases of unusual diseases among his native patients: bile duct cancer (cholangiocarcinomas), colon cancers, lymphomas, leukemia, autoimmune diseases such as lupus, as well as thyroid cancers, overactive thyroid, and unusual skin rashes. He reported this to Alberta Health but was basically rebuffed.

At the request of Health Canada and Alberta Environment, the Alberta College of Physicians launched investigations against Dr. O’Connor to stop him speaking out. The government of Alberta quickly produced a statistical study denying any toxic

problems. The government's study did no testing for chemicals in the residents' bodies, rivers or food and did not even survey medical records of fatalities that the local doctor had diagnosed (Hatch and Price 2008: 4).

Eventually Dr. O'Connor re-located his practice, and the conventional wisdom is that these disease patterns are not unusual, and if they are, it is merely a coincidence that they are occurring downstream of the largest industrial oil complex in the world where the poisoning of the ground water has already been established.

There are other concerns. The petroleum industry has undertaken commitments to reclaim the lands disturbed by the extraction of the resource. Reclamation on such a scale has never been undertaken anywhere. If private interests declare bankruptcy as the resource becomes uneconomical to extract, the task will fall to the public sector to make amends. There are lessons elsewhere. The Sydney tar ponds in Nova Scotia sat for decades as an environmental nightmare after the steel mills and coalmines went out of business. Governments devoted \$400,000,000 for the clean up. That was for an area of 31 hectares. The oil sands already cover over 5,000 hectares. A comparable bill for a public clean up would be over \$64 Billion. The English-Wabigoon River systems in northern Ontario were polluted with mercury from pulp and paper mills that went bankrupt. The pollution poisoned the food source for several northern native communities who experienced Minamata disease. This is a neurological injury arising from mercury pollution in the food chain. The disease got its name from the city of Minamata, Japan, whose harbor and fishing grounds were recklessly poisoned by effluent from local industries. The victims suffered profound neurological injuries. The English-Wabigoon River systems have never been restored. Even if the oil sands landscapes are ever rehabilitated, the existing ponds are an on-going hazard for thousands of migrating birds that land during fall and spring migrations looking for forage in the poisoned water.

Risks arising from pollution of the eco-zone and all its inhabitants are aggravated by the energy policies of the Harper Conservative government. Greenpeace UK makes this point in an article titled: "Canada: climate criminal." Weyler (2012) points out the conservatives have a record of denial of climate change, that they have reneged on Canada's 2004 commitment at the Kyoto Accord to reduce greenhouse gases, and in 2011 announced they were abandoning commitments accepted 7 years earlier. The conservative government is committed to putting jobs before the environment. However, this formula means expansion of the oil sands production in Ft. McMurray, development of pipelines to the west coast of BC, and to the refineries in Quebec and New Brunswick.^v This means massive pipeline development – and all the good jobs associated with it, as well as resource royalties. It also means unprecedented oil tanker traffic through the precarious coasts of BC where the weather is often treacherous at sea. It also means more pollution of Native settlements and their food resources in northern Alberta. And it means a complete indifference to the long-term contribution of the oil sands to the production of greenhouse gases and climate change. This is a kind of Faustian bargain with the devil. In the German legend, Faust, bored with life, gave his soul to the devil in exchange for earthly fame. Current Canadians, particularly Albertans, exploit oil to the maximum, and pay lower taxes, earn higher salaries and overcome the limits of an agricultural economy. However, they have to turn a

blind eye to the existing predations of bitumen extraction as it impacts the northern Natives in the province, and, as a result of global warming, ignore the hardships of dramatic climate change for future generations all over the world.

It is too soon to draw definitive conclusions about this last case. The medical damage to the northern Cree continues to be contested. Fish and animal tumours are attributed to pre-existing conditions in the north. Recovery of spoiled landscapes is still possible. And whether global warming is a result of human activities more than natural variations in climates – the answer to that question will not be known with certainty for decades. When we compare this case to tobacco and lead, there are suggestive parallels: dangers denied, experts aligning with “the bottom line,” and an indifference to the human costs of commodity production. In addition, there is no evident law that champions the causes of the victims and the potential victims. This is what makes environmental crime an area of under-reach of social control, and why it makes it criminology’s unfinished business.

Overview

In this final unit we have explored several areas of over-reach of the criminal justice system. These included the over-representations of aboriginal Canadians, and the over-representation of the mentally ill. In addition, we have explored the question of over-reach in respect of narcotics and prostitution. The perspective developed here does not accept that society has no interest in controlling narcotics. When we examined the problems associated with nicotine in tobacco, we see that there are grounds for regulating the product, not so that its use can be unimpeded, but because a legal regime might make it easier to monitor and ameliorate the harms associated with it, particularly marihuana that the Center for Addictions and Mental Health proposed to legalize. A similar remedy would make for good public policy in respect of prostitution, but the most recent changes to the law in Canada following the Nordic model promises to push the practice of prostitution into the shadows to the potential detriment of those involved. The attempt to criminalize vice ironically makes it less easy to manage. Finally, the examination of under-reach in the case of environmental crimes extends the usual concern for white-collar crimes in business to products the manufacture of which compromises human health in a wholesale fashion, and typically without liability to the individual actors responsible for the products. This raises the legal issue of causality raised in unit two, and the concept of “due negligence” which has been advanced in the context of occupational health and safety cases (specifically the Westray Mine disaster). The question of negligence was never raised in the case of leaded gasoline since there were never any prominent cases where civil action was taken against the manufacturers of tetraethyl lead. And the matter has yet to lead to litigation in the case of the oil sands. However, the scientific establishment of leaks of poisonous chemicals from the tailing ponds into fresh water and into the food supply may open the door to that situation. That would be a step forward in the establishment of environmental justice. And getting a reduction in the massive emission of greenhouse gases might even help to save the planet (Klein 2014).

End Notes

In what follows there is a list of

- Key concepts with which the students should be familiar
- Links to information
- Required Readings
- Key cases
- Practice questions
- References
- Final endnotes

Key concepts, facts and issues with which students should be familiar

- The “emancipatory interest” of social science
- The “broken windows” theory of crime and informal social control
- Remedies for crime according to James Q. Wilson, Reiman and Leighton, and Gottfredson and Hirschi
- Criminal justice as an ideology
- Why control theory disputes the relevance of rehabilitation, deterrence and incapacitation
- The over-representation of Natives in the correctional system
- Judge Reilly’s findings in *Bad Medicine* (2010)
- The First Nations Financial Transparency Act (2014)
- Deinstitutionalization of the mentally ill
- Reasons for the failure of community-based mental health services
- Correctional experiences of Offenders with Mental Disorders (OMDs)
- The case of Ashley Smith
- Trends in the incidents of self-destructive behaviours in corrections
- Opium production in contemporary Afghanistan
- The Chinese Opium Wars
- US Surgeon’s Report on fatalities related to cigarette use and second-hand smoke
- Ontario’s Centre for Addictions and Mental Health and the 2004 policy on marijuana use
- James Gray’s conclusion about the regulation of alcohol after prohibition
- The Nordic model of prostitution control
- Tetraethyl lead (TEL) and its effect on the human body
- The relationship between uranium and lead and its relevance for dating the earth
- The “Kehoe paradigm” in debating the effects of lead on humans
- The Cincinnati Lead Study and the link of lead to crime
- Dr. John O’Connor’s medical practice in Fort Chipewyan
- Costs of restoration of the Sydney tar ponds and implications for the oil sands
- Greenpeace’s criticism of Canada’s energy policy

Key Cases

R. v Gladue [1999] 1 S.C.R. 688.

Bedford v. Canada [2013] 3 S.C.R. 1101.

United States v. Philip Morris USA, Inc., et al., [2006] No. 99-2496, US District Court for the District of Columbia.

Links to Information

Guide to disclosure of Native salaries and expenses: <http://pse5-esd5.ainc-inac.gc.ca/fnp/Main/Search/SearchFF.aspx?lang=eng>.

The Ashley Smith Story: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20080620info-eng.aspx>

Ontario Cannabis Plan to Legalize Pot:

http://www.camh.ca/en/hospital/about_camh/influencing_public_policy/Documents/CA_MHCannabisPolicyFramework.pdf

Executive Summary of the US Department of Justice legal case against tobacco manufacturers: http://www.library.ucsf.edu/sites/all/files/ucsf_assets/uspm2.pdf

Environmental Defence Guide to the Alberta Oil Sands:

<http://environmentaldefence.ca/reports/canadas-toxic-tar-sands-most-destructive-project-earth>

Required Readings for Unit Ten

1. Siegel, Brown and Hoffman (2013) *CRIM*, 2nd Edition, Chapters 12 “White Collar Crime” pp. 240-61, Toronto: Nelson.
2. Siegel, Brown and Hoffman (2013) *CRIM*, 2nd Edition, Chapters 13 “Public Order Crimes” pp. 261-285, Toronto: Nelson.

Practice Questions

1. Outline the three different approaches to public policy advocated by the leading conservative (James Q. Wilson), American Marxists (Reiman and Leighton) and a classical liberal orientation (Gottfredson and Hirschi).
2. Review the issues of causality and due negligence (Unit 2), and describe how they might apply to the marketing of dangerous products (such as tobacco and leaded fuel) and the production of energy which could contribute to climate warming, and how these activities could be suppressed under the criminal law.
3. In your view, are Native Canadians and the mentally ill over-represented in the Canadian Criminal Justice System? What is the evidence for such conclusions? What theory or theories explain these patterns?

4. In 2014 the Ontario Addictions and Mental Health Center advocated the legalization of marihuana. What was their objective? How did it compare to the achievements of the end of alcohol abolition as suggested by James Gray?
5. Some criminologists advocate the legalization of illicit narcotics at the same time that liberal social forces are trying to reduce the dependence on such legal products as tobacco. Is there any social policy that minimizes the creation of narcotic dependencies without criminalizing those who are vulnerable? Is this the Portugese model?
6. Prostitution has been viewed from various perspectives: as a form of crime or delinquency, as form of exploitation of women, or as a marginal but legitimate “trade” or business. Outline the current Nordic Model which has been adopted recently by the Canadian government, and assess it in terms of these three different perspectives.

References

- Adler, Rebecca (2006) *Clair Patterson’s Battle Against Lead Pollution*, Pasadena CA: California Institute of Technology.
- Aikins, Matthieu (2014) “Afghanistan: the making of a narco state,” *Rolling Stone Magazine* 4 December 2014.
<http://www.rollingstone.com/politics/news/afghanistan-the-making-of-a-narco-state-20141204/> retrieved 25 December 2014.
- Alberta (2011) Alberta Health Service’s *Provincial Advisory Council for Addiction and Mental Health*, <http://www.albertahealthservices.ca/6070.asp/> retrieved 24 December 2014. Also see AHS’s *Alberta Addiction and Mental Health Research Partner Program*, <http://www.albertahealthservices.ca/2770.asp/> retrieved 24 December 2014. AHS has also created a Strategic Clinical Network for Addiction and Mental Health, <http://www.albertahealthservices.ca/2770.asp/retrieved> 24 December 2014.
- Alberta Court (1997) *Application for an Order of Certiorari*, Court of Queen’s Bench, Judicial District of Calgary, Special Chambers. See <http://www.usask.ca/nativelaw/factums/view.php?id=370/> retrieved 23 December 2014.
- Armfield, Margaux and Brenna Armfield (2014) *Clair Patterson’s Crusade Against Tetraethyl Lead*, <http://67022014.weebly.com/> retrieved on 7 January 2015.
- Bedford v. Canada* (2010) ONSC 4264, Court File No.: 07-CV-329807 PDI, 29 September 2010.

- BC (2013) “Mental Health Services,” British Columbia Ministry of Justice,
<http://www.pssg.gov.bc.ca/corrections/mental-health/index.htm/> retrieved 24
December 2014.
- Campaign TFK (2014) Washington DC: Campaign for Tobacco-Free Kids.
[http://www.tobaccofreekids.org/what_we_do/industry_watch/doj_lawsuit/tim
eline/](http://www.tobaccofreekids.org/what_we_do/industry_watch/doj_lawsuit/timeline/) retrieved 7 January 2015.
- Canada (2011) *Strategic Plan for Aboriginal Corrections*, Ottawa: Corrections Service.
- Canada (2012) *Corrections and Conditional Release: Statistical Overview 2012*, Ottawa:
Public Safety Canada.
- Canada (2013) *Annual Report of the Correctional Investigator 2012-2013*, Ottawa: Office of
the Correctional Investigator.
- Canada (2014a) *Annual Report of the Correctional Investigator 2012-2013*, Ottawa: Office of
the Correctional Investigator.
- Canada (2014b) “Backgrounder: A Preventable Death” Report of the Correctional
Investigator of Canada, Ottawa: Office of the Correctional Investigator.
[http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20080620info-
eng.aspx/retrieved](http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20080620info-eng.aspx/retrieved) 24 December 2014.
- Canada v. Bedford* (2013) 3 Supreme Court Records 1101. [https://scc-csc.lexum.com/scc-
csc/scc-csc/en/item/13389/index.do/](https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do/) retrieved 2 January 2015.
- CP (2014) Canadian Press, “Study confirms oil sands tailings seeping into Athabasca
River,” 20 February 2014, The Toronto Star.
[http://www.thestar.com/news/canada/2014/02/20/study_confirms_oilsands_taili
ngs_seeping_into_athabasca_river.html#%29:/](http://www.thestar.com/news/canada/2014/02/20/study_confirms_oilsands_tailings_seeping_into_athabasca_river.html#%29:/) retrieved 9 January 2015.
- Casciani, Dominic (2014) “Did removing lead from petrol spark a decline in crime?” *BBC
News online* 20 April. <http://www.bbc.com/news/magazine-27067615/> retrieved
23 December 2014.
- Correctional Services of Canada (2012) *Federally Sentenced Offenders with Mental
Disorders: Correctional Outcomes and Correctional Response*, Research Report,
Ottawa: CSC. <http://www.csc-scc.gc.ca/research/005008-0268-eng.shtml/>
retrieved 24 December 2014.
- DOJ (2014) Department of Justice Technical Paper: Bill C-36, Protection of Communities
and Exploited Persons Act, Ottawa: Department of Justice.
<http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html/> retrieved 2
January 2015.

- Frank, R.A. James W. Roy, Greg Bickerton (2014) "Profiling oil sands mixtures from industrial developments and natural groundwaters for source identification," *Environmental Science and Technology* 48(5): 2660-2670.
<http://pubs.acs.org/doi/abs/10.1021/es500131k?journalCode=esthag&/> retrieved 15 June 2014.
- Gottfredson, Michael and Travis Hirschi (1990) *A General Theory of Crime*, Stanford CA: Stanford University Press.
- Gray, James (1972) *Booze: The Impact of Whiskey on the Prairie West*, Scarborough: New American Library.
- Greenwald, Glenn (2009) *Drug Decriminalization in Portugal: Lessons for creating fair and successful drug policies*, White paper, Washington DC: Cato Institute.
<http://www.cato.org/publications/white-paper/drug-decriminalization-portugal-lessons-creating-fair-successful-drug-policies>. Accessed 22 February 2015.
- Habermas, Jurgen (1987) *Knowledge and Human Interests*, See Appendix for "A General Perspective," Cambridge UK: Polity Press.
- Hatch, Christopher and Matt Price (2008) *Canada's Toxic Tar Sands: The Most Destructive Project on Earth*, Toronto: Environmental Defence.
- Hincks, Crystal (2014) *In Pursuit of the Golden Mean: Experiences of Frontline Workers in the Mental Health System*, MA Thesis, Department of Sociology, University of Calgary.
- Junkin, Sarah (2010) "Judge Reilly being sued," *Cochrane Times*, November 17.
- Kelling, George and James Q. Wilson (1982) "Broken Windows: The Police and neighborhood safety," *The Atlantic*, March Issue.
<http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465//> retrieved 24 December 2014.
- Klein, Naomi (2014) *This Changes Everything: Capitalism versus the Climate*, New York: Simon and Schuster.
- Levin, Myron (2004) "Judge orders Philip Morris, Altria to pay \$2.75 Million," *Los Angeles Times* 22 July. <http://articles.latimes.com/2004/jul/22/business/fi-smoke22/> retrieved 7 January 2015.
- Marx, Karl (1858) "Trade or Opium?" *New York Daily Tribune*, 20 September 1858.
<http://www.marxists.org/archive/marx/works/1858/09/20.htm/> retrieved 25 December 2014.

- McGrayne, S.B. (2001) *Prometheans in the lab: chemistry and the making of the modern world*. San Francisco: McGraw-Hill.
- MDSC (2009) The Mood Disorder Society of Canada, *Quick Facts 3/e*, <http://www.mooddisorderscanada.ca/page/quick-facts/> retrieved 24 December 2014.
- Muggli, M.E., J.L. Foster, R.D. Hurt and J.L. Repace (2001) “The smoke you don’t see: Uncovering tobacco industry scientific strategies aimed against environmental tobacco smoke policies,” *American Journal of Public Health* 91(9): 1419-1423.
- Needleman, Herbert (2000) “The Removal of lead from gasoline: Historical and personal reflections,” *Environmental Research* 84: 20-35.”The
- Nevin, Rick (2007) “Understanding International Crime Trends: The legacy of preschool lead exposure,” *Environmental Research* 104: 315-336.
- NP (2013) “Ashley Smith death rule a homicide by inquest jury,” *National Post* December 19, Canadian Press.
<http://news.nationalpost.com/2013/12/19/ashley-smith-death-ruled-a-homicide-by-inquest-jury/> retrieved 24 December 2014.
- Nriagu J.O. (1998) “Clair Patterson and Robert Keyhole’s paradigm of “show me the data” on environmental lead poisoning,” *Environmental Research* 78(2): 71-8.
- Ontario (2014) *Cannabis Policy Framework*, Toronto: Centre for Addiction and Mental Health.
http://www.camh.ca/en/hospital/about_camh/influencing_public_policy/Documents/CAMHCannabisPolicyFramework.pdf/ retrieved 25 December 2014.
- PHLC (2010) *United States v. Philip Morris (D.O.J. Lawsuit)*, St. Pauls MN: Public Health Law Center at William Mitchel College of Law.
<http://publichealthlawcenter.org/topics/tobacco-control/tobacco-control-litigation/united-states-v-philip-morris-doj-lawsuit/> retrieved 7 January 2015.
- Reilly, John (2010) *Bad Medicine: A Judge’s Struggle for Justice in a First Nation’s Community*, Calgary: Rocky Mountain Books.
- Reiman, Jeffrey and Paul Leighton (2010) *The Rich Get Richer and the Poor get Prison*, 9/e, Boston: Allyn and Bacon. Reiman was sole author before the seventh edition. The book is currently in a 10th edition.
- Rosenham, David (1973) “Being sane in insane places,” *Science* 179: 250-58, January 19 1973.

- Rossi, Peter (1991) *Down and Out in America: The Origins of Homelessness*, University of Chicago Press.
- Schwartz, Daniel (2014) “New prostitution laws unlikely to be challenged soon, legal experts say,” *CBC News* online, posted 12 December 2014.
<http://www.cbc.ca/news/politics/new-prostitution-laws-unlikely-to-be-challenged-soon-legal-experts-say-1.2870523/> retrieved 2 January 2015.
- Seewalt, Lindsay (2014) “Stoney salaries/expenses over \$2.7M,” *The Cochrane Eagle*, October 9.
<http://www.cochraneagle.com/article/20141009/COE0801/310099995/0/coe/> retrieved 23 December 2014.
- Skibrei, May-Len and Charlotta Holmström (2014) “The “Nordic model” of prostitution is a myth,” LSE Blog, 3 January 2014, London: London School of Economics and Political Science. <http://blogs.lse.ac.uk/europpblog/2014/01/03/the-nordic-model-of-prostitution-law-is-a-myth/> retrieved 2 January 2014.
- Ubelacker, Sheryl (2014) “Pot should be legalized, regulated and sold like alcohol: addiction centre,” *Globe and Mail* Thursday 9 October 2014.
<http://www.theglobeandmail.com/life/health-and-fitness/health/pot-should-be-legalized-regulated-and-sold-like-alcohol-addiction-centre/article20995728//> retrieved 25 December 2014.
- U.S. v. Philip Morris* (2012) Judgment of United States District Court for the District of Columbia, Civil Action No. 99-2496 (GK), November 27.
http://www.tobaccocontrolaws.org/files/live/litigation/1064/US_U.S.%20v.%20Philip%20Morris%20USA.pdf/ retrieved 7 January 2015.
- US (2014) *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, Rockland MD: Office of the Surgeon General.
- Weyler, Rex (2012) “Canada: Climate Criminal,” Internet posting of Greenpeace UK, 12 January 2012, <http://www.greenpeace.org.uk/blog/climate/canada-climate-criminal-20120109/> retrieved 7 January 2015.
- Wilson, James Q. (2013) *Thinking About Crime*, Revised Edition, New York: Basic Books. First published in 1975, and revised in 1983.
- Wright, J.W., K.N. Dietrich, M.D. Ris, R.W. Hornung, S. D. Wessel, B.P. Lanphear, M. Ho and M.N. Rae (2008) “Association of prenatal and childhood blood lead concentrations with criminal arrests in early adulthood,” *PLOS Medicine*, 5(9): 732-741.

ⁱ In Canada, this sting operation has become known as the “Mr. Big” technique - (http://en.wikipedia.org/wiki/Mr._Big_%28police_procedure%29)

ii The Taliban originated as a “resistance movement” rather than as a “terrorist” group. The Taliban was never a global jihadist movement; it was mainly concerned to drive foreign invaders (Soviets, then American/NATO coalition forces) from Afghanistan. Today, some elements of the Pakistan Taliban appear set to ally themselves with the Islamic State. However, there is still evidence to suggest that regular Afghan Taliban commanders are opposed to the ISIS. See: <http://www.independent.co.uk/news/world/middle-east/syria-iraq-and-now-afghanistan-isis-advance-enters-helmand-province-for-the-first-time-afghan-officials-confirm-9974304.html>

iii Even the late Ahmed Wali Karzai who was the brother of the former President of Afghanistan (Hamid Karzai) was suspected of direct implication in the narcotics trade. See: <http://www.nytimes.com/2008/10/05/world/asia/05afghan.html?ref=asia&r=0>

iv Oil sands extraction is different from “fracking” which is fracturing underground seams of hydrocarbons with high intensity horizontal drilling to separate the oil from the shale. The oil sands are mined in open pits. It takes an enormous amount of natural gas to heat the water to drive the hydrocarbons out of the sand. See the Links to Information Section regarding the *Alberta Oil Sands*.

^v As of February 2015 US President Obama vetoed the Keystone pipeline proposal that was designed to export oil sands crude to the Texas gulf for refinement.

Practice Questions Unit 1

1. Identify 5 principles that Beccaria discusses in the readings. What are the justifications for them that he offers?
2. What are the elements of good law according to Sutherland, Cressey and Luckenbill? Identify laws or legal cases that fall short of the standards he identifies.
3. In John A. MacDonald's letter to Creighton identify the competing rationales that he invokes (including some owed to Beccaria). How does MacDonald reconcile the severity of punishment versus the welfare of inmates? Can such objectives be applied simultaneously and can they be applied uniformly to all inmates?
4. What is the difference between "jurisprudence" and "the sociology of law"? Illustrate the different concerns to which each concept refers with reference to examples. Identify proponents associated with each idea. How do they relate to the 'justice' model versus the "crime control" model of criminal law?
5. Outline the labeling perspective on crime. How does it apply to the cases of prohibition of alcohol and narcotics?

Practice Questions Unit 2

1. Identify the legal elements of criminal offences. How would you establish these in specific legal charges? For example, how would they apply to the prosecution of Robert Latimer in the case of the murder of his daughter? [See Siegel et al 2013: Ch 1]. Could these elements support the criminal prosecution of persons responsible for the Westray Mine disaster? Or for the manufacture of dangerous consumer products?
2. Stuart et al identify some inconsistency across several legal cases for the way in which Canadian courts employ the harm criterion to criminalize (or alternatively decriminalize) certain socially provocative activities. Explain the inconsistencies of the court findings discussed in Stuart et al (2006). More to the point, if harm is not the major element used to justify criminalization, what other considerations are important, and how much weight can be attached to them?
3. What is the legal issue behind each of the following legal precedents? Drybones/Lavell and Bedard? Butler? Pappajohn? Dudley and Stephens? M'Naghten? Swain? Fagan v Commission of Metropolitan Police?
4. Describe the legal changes that accompanied the replacement of the law of rape with the law of sexual assault in Canada.

Practice questions Unit 3

1. Explain the major sources in crime trends in Canada since 1962? What are the UCR1, the UCR2 and the Severity index? How do such measures differ from the FBI's "crime index" in the US?
2. In your view do the Canadian crime statistics provide a valid picture of crime in Canada? Are they socially and politically relevant? And do they shed light on the causes of, or conditions that contribute to, crimes in Canadian society?

3. Describe the profile of Aboriginals in the federal correctional system (numbers, proportions and trends), and compare them to non-Aboriginals. Discuss possible alternative reasons for the distinctive pattern of Aboriginal representation in Canadian correctional institutions based on (a) the Justice Model and (b) the Crime Control Model (see Unit 1).
4. How is victimization information collected in Canada? What are the major findings about gender differences in victimization measured in the General Social Surveys?

Practice questions Unit 4

1. What is Eisner's evidence for a long-term drop in European crime over the past 8 centuries, and how has Norbert Elias's theory tried to explain this? What do long term trends in violent crime say about differences in age, gender and circumstances of violence?
2. What is the evidence for a recent drop in aggregate crime levels nationally and internationally since the early 1990s? What are the major potential explanations of these trends?
3. What is the major explanation for the crime trends in the 1960's through to the 1990s?
4. What is the evidence for the emergence of superpredators and their impact on the crime rates of the 1990s in Canada and the US?

Practice questions Unit 5

1. What are the "stubborn particulars" or hard facts of empirical criminology? And what, if any, is there relationship to classical and positivist approaches to crime?
2. What are the different assumptions behind the classical versus the positivist schools of criminology? Identify major proponents of each perspective, and the basis for their differing approaches to the study of crime. Contrast the approaches to crime control from a strictly classical perspective and the approaches from a positivistic perspective.
3. What is the difference between rehabilitation, deterrence and incapacitation in terms of their underlying approaches to crime control. How could they be applied to violent persons with a serious mental illnesses, or an injured cortex?

Practice Questions Unit 6

1. What are the major perspectives that have been identified in this unit under the concept of realist approaches to the explanation of crime? What makes them realist? Who are the major proponents? How do these theories explain crime, and how do they differ from one another?
2. What is the difference between informal social control theory and self-control theory? Who are the major proponents and what are the mechanisms that each perspective emphasizes to explain crime?
3. What were the major contributions of the 'Chicago School' to the understanding the origins of crime? Who were the major contributors? And what did they discover?

- What relevance, if any, does this have for understanding the rise of an underclass in impoverished urban areas, particularly in cities such as contemporary Chicago?
4. In measuring crime, what is the difference between prevalence, incidence and lambda?
 5. What are the elements of the bond theory in the work of Travis Hirschi, and how do they influence the development of crime?

Practice Questions Unit 7

1. Learning theories, cultural transmission theories and labeling theories have been described as “relativistic.” What makes them relativistic? Provide illustration of such crimes. Who are the major proponents? How do these theories explain crime, and how do they differ from one another?
2. The school-to-prison pipeline controversy raises serious questions about discrimination against minority students (see the links to Knefel 2013 and Fowler 2007). What evidence supports the charge that the differential disciplining of minorities is unjustified?
3. What do we mean by the conventionalization of crime? Explain it. Give some examples from the unit. And compare it to labeling theory.
4. Explain the relationship between labeling and “boundary maintenance.” Review the discussion of labeling and ‘victimless crimes’ in Unit 2. How does the condemnation of crime reinforce moral boundaries? In your view, how do stories of the Pink Panther jewel thieves and narco king pins such as ‘El Chapo’ contribute to boundary maintenance? Do such stories glorify criminals and lead to the conventionalization of crime? Or to its active suppression?

Practice questions Unit 8

1. What are the major forms of homicide? Explain each, and how they are different. How do the penalties differ? And how does this relate to the concept of *mens rea*?
2. What are the major co-variates or characteristics of perpetrators and victims in the most recent Canadian Homicide Survey? Co-variates refer to age, gender, relationships between the actors, etc. And how can they be explained in terms of criminological theories?
3. What are the similarities and differences between ‘domestic homicides’ and ‘honour killings’?
4. The most common form of conflict leading to death among males is defined as “trivial altercation.” Define it. What is there evidence for it? And how is it explained by sexual selection theory.

Practice Questions Unit 9

1. Leyton distinguishes *serial* killers from *multiple* murderers. Using Canadian examples (Homolka/Bernardo, Russell Williams, Marc Lepine, James Roscko etc),

distinguish these forms of homicide and suggest how they might be explained, and whether these kinds of murder should be explained differently.

2. When we examine mass killings, two rather different psychological explanations are found. One refers to “psychopathy” (Paul Bernardo, Russell Williams). The other refers to “psychosis.” What is the difference, what difference does it make legally, and which perspectives on crime are involved (classical versus positivistic), and which individual theories are relevant?
3. Compare and contrast Cleckley’s and Mealey’s approach to the understanding of psychopathy.
4. Are there any theoretical grounds for distinguishing between the murderous behaviour of Paul Bernardo and Russell Williams on the one side, and Marc Lepine, and James Rosko on the other.
5. What evidence is there that homicide arises from “strain” (following Agnew), diminished “self-control” (following Hirschi) and/or “learning” (Sutherland)?

Practice Questions Unit 10

1. Outline the three different approaches to public policy advocated by the leading conservative (James Q. Wilson), American Marxist (Reiman and Leighton) and a classical liberal orientation (Gottfredson and Hirschi).
2. Review the issues of causality and due negligence (Unit 1), and describe how they might apply to the marketing of dangerous products (such as tobacco and leaded fuel) and the production of energy which could contribute to climate warming, and how these activities could be suppressed under the criminal law.
3. In your view, are Native Canadians and the mentally ill over-represented in the Canadian Criminal Justice System? What is the evidence for such conclusions? What theory or theories explain these patterns?
4. In 2014 the Ontario Addictions and Mental Health Center advocated the legalization of marijuana. What was their objective? How did it compare to the achievements of the end of alcohol prohibition as suggested by James Gray?
5. Some criminologists advocate the legalization of illicit narcotics at the same time that liberal social forces are trying to reduce the dependence on such legal products as tobacco. Is there a social policy that minimizes the creation of narcotic dependencies without criminalizing those who are vulnerable?
6. Prostitution has been viewed from various perspectives: as a form of crime or delinquency, as a form of exploitation of women, or as a marginal but legitimate ‘trade’ or business. Outline the current Nordic Model which has been adopted recently by the Canadian government, and assess it in terms of these three different perspectives.

Questions for review

SOCI 305 - Final Examination Review Questions

Final Examination

After you have completed all 10 units, the assigned readings, and the practice assignments, you will be ready to write the final examination to finish the course. The final examination covers the entire course — the *ten units* as well as the required readings. The examination consists of four (4) essay questions to be drawn from the list of review questions included below. Two questions will be long format (800-1200 words) and two will be short format (350-600 words). You will have three hours in which to complete this examination under supervised conditions. This will be a closed-book online examination, and no textbooks or notebooks will be permitted in the examination area. The final examination is worth 100 per cent of the overall course grade. To pass the examination, you must receive a mark of 60 per cent or more. In order to obtain credit for the course, it is necessary to pass the final examination.

You will find it helpful to review your course assignments, the study questions, and the assigned readings in preparation for the examination.

When you are ready to write the examination, consult the section of the online *Student Manual* titled “[Procedures for Applying for and Writing Examinations](#)” or the current [Athabasca University Calendar](#) for the procedures to be followed. For more information about online exams, review the [Student Manual](#) and visit the [Online Exam Project](#), Office of the Registrar.

Final Examination Review Questions (12)

PART A (time: allow 2 hours, 1 hour per question)

For the exam you will be presented with four (4) questions drawn from this list of twelve (12) study questions. You must write answers to two (2) of these four questions. Each of the two answers should be approximately 800 to 1200 words in length. Ensure that whenever possible you make reference to the relevant course materials, and that you demonstrate your knowledge and understanding of the key concepts associated with the questions of your choice. Remember that this is your opportunity to show that you have read and understood the course readings and that you are able to use these readings to illustrate the points contained in your answers.

1. What is the difference between “jurisprudence” and “the sociology of law”? Illustrate the different concerns to which each concept refers with reference to examples. Identify proponents associated with each idea. How do these fields relate to the “justice” model versus the “crime control” model of criminal law?
2. Identify the legal elements of criminal offences. How would you establish these in specific legal charges? For example, how would they apply to the prosecution of Robert Latimer in the case of the murder of his daughter? Could

Questions for review

these elements support the criminal prosecution of persons responsible for the Westray Mine disaster? Or for the manufacture of dangerous consumer products?

3. Describe the profile of Aboriginals in the federal correctional system (numbers, proportions and trends), and compare them to non-Aboriginals. Discuss possible alternative reasons for the distinctive pattern of Aboriginal representation in Canadian correctional institutions based on (a) the Justice Model and (b) the Crime Control Model.
4. What is Manuel Eisner's evidence for a long-term drop in European crime over the past 8 centuries, and how has Norbert Elias's theory tried to explain this? What do long-term trends in violent crime say about differences in age, gender and circumstances of violence? How do we explain the recent crime drop?
5. What are "the stubborn particulars" of empirical criminology? How can they be explained by realist theories such as strain theory or control, and relativist theories such as labeling theory and cultural transmission theory?
6. What are the different assumptions behind the classical versus the positivist schools of criminology? Identify major proponents of each perspective, and the basis for their differing approaches to the study of crime. Contrast the approaches to *crime control* from a strictly classical perspective and the approaches from a positivistic perspective.
7. What are three major perspectives that have been identified under the concept of "realist" theories of crime? What makes them *realist*? Who are the major proponents? How do these theories explain crime, and how do they differ from one another?
8. What were the major contributions of the "Chicago School" to the understanding the origins of crime? Who were the major contributors? And what did they discover? What relevance, if any, does this have for understanding the rise of an underclass in impoverished urban areas, particularly in cities such as contemporary Chicago?
9. Learning theories, cultural transmission theories and labeling theories have been described as "relativistic." What makes them relativistic? Provide illustrations of such crimes. Who are their major proponents? How do these theories explain crime, and how do they differ from one another?
10. What are the major co-variates or characteristics of perpetrators and victims in the most recent Canadian Homicide Survey? Co-variates refer to age, gender, relationships between the actors, etc. And how can they be explained in terms of criminological theories?
11. Leyton distinguishes *serial* killers from *multiple* murderers. Using Canadian examples (Homolka/Bernardo, Russell Williams, Marc Lepine, James Roscko, Justin Bourke etc), distinguish these forms of homicide and suggest how they might be explained, and whether these kinds of murder should be explained differently. Do alternative explanations result in alternative possibilities in findings of individual responsibility?

Questions for review

12. What is the empirical evidence for the over-representation of Canadian Natives, and the mentally disadvantaged in the criminal justice system?

Final Examination Review Concepts (12)

PART B (time: 1 hour; allow 30 minutes per item)

The following fifteen (15) concepts have appeared in various readings throughout the course. For the exam you will be presented with four (4) questions drawn from this list of fifteen (15) concepts or issues. You must write answers to two (2) of these four questions. Each of the two answers should be approximately 350-600 words. Each answer should define and explain each concept; relate the concept or issue to relevant themes in the course; and illustrate the significance of each concept for the sociological study of crime.

1. the Canadian law of rape versus sexual assault.
2. Measuring crime versus victimization
3. Rehabilitation vs deterrence vs incapacitation
4. Jurisprudence versus the sociology of law
5. the conventionalization of crime
6. "trivial altercations"
7. informal social control theory versus self-control theory?
8. forms of homicide
9. Psychopathy versus psychosis
10. The Nordic model of prostitution control
11. The criminal career perspective
12. Cultural transmission theory
13. Conventionalization of crime
14. The "crime drop" (post 1991)
15. Strain versus control in crime causation



Arts Final Grade Report

Start Date

Please use ink only

SOCIOLOGY	SOCI 300	IFA:revised - 2014
Course name and number		Form no. Office use only

Student to complete (please print)

Name _____ Student ID number _____
Last First Middle

Address _____ Tutor name _____

Postal Code _____

Student signature _____ **Date** _____
 Must be signed and dated to validate examination

Examination invigilator to complete

Note: Please place this form along with the examination, student response(s) in the self-addressed stamped envelope. If there is any problem, please call the Office of the Registrar at: **1 - 800 - 788 - 9041**

Name _____ Telephone _____

Date exam received by invigilator _____

This is to certify that the above student wrote the examination under supervision between the hours of _____ (am/pm) and _____ (am/pm) on the specified date at _____

Name of the examination centre or invigilator's address

Invigilator signature _____ **Date** _____
 Must be signed and dated to validate examination

Athabasca University staff to complete

Date received by Faculty _____

Marker to complete

Examination mark _____

Marker signature _____ **Date** _____

Professor to complete

(Note: Composite grade cannot be calculated until marks are received from the tutor)

Final Grade _____ Credits earned _____ PASS/FAIL
 Comments/Missing items _____

Professor signature _____ **Date** _____

Students wishing to appeal an examination result should read and follow the instructions regarding Appeals Procedures in the Calendar.

SOCI 305
Sociology of Crime
Final Examination
Version A

Instructions to Examination Invigilator

Thank you for taking the time to supervise this examination for an Athabasca University student.

1. This is a *closed-book examination*. Only materials distributed with this examination may be used by the student to answer examination questions. The student is **NOT** allowed to use texts, workbooks, or notes, or to consult with other people while writing this examination.
2. A maximum of *three (3) hours* is allowed for this examination.
3. Please ensure that you, the Examination Invigilator, and the student fill in the appropriate sections of the *Final Grade Report*. Please indicate the *exact* time taken by the student to complete the examination.
4. All examination materials are to be returned to you, the Examination Invigilator, when the student has finished writing the examination.
5. Before the student writes the examination, please refer to the Examination Invigilation Procedures for more detailed instructions as well as for information regarding problems/exceptions.
6. If the student has trouble understanding what is required to answer a particular question, please tell him or her to:
 - a. note the difficulty beside the question; and
 - b. try to answer the question as best as he or she can.

Again, thank you for your cooperation.

ATTACH THREE EXAMINATION BOOKLETS

SOCI 305
Sociology of Crime
Final Examination
Version A

Instructions to Student

1. This is a *closed-book examination* to be written without books, tapes, or notes, and to be supervised by a person authorized by Athabasca University.
2. This examination is made up of two sections:

Part A requires you to write two (2) essays of 800 to 1200 words.

Part B requires you to write two (2) essays of 350 to 600 words.

Please check to see that both parts of the examination are included.
3. The pass mark is 60 percent.
4. You will be allowed *three (3) hours* to complete the examination.
5. Please complete the information requested on the *Final Grade Report* included in your examination package.
6. On completion of the examination, hand in the total examination package (examination questions, examination booklets, Final Grade Report) to your examination supervisor.

SOCI 305
Sociology of Crime
Final Examination
Version A

PART A (time: 2 hours)

Write essays of 800 to 1200 words on *two (2)* of the following four questions, ensuring that whenever possible you make some reference to the relevant course materials, and that you demonstrate your knowledge and understanding of the key concepts associated with the question of your choice. Remember that this is your opportunity to show that you have read and understood the course readings and that you are able to use these readings to illustrate the points contained in your answers. Part A is weighted at 60% (30%+30%) of the total grade.

1. Identify the legal elements of criminal offences. How would you establish these in specific legal charges? For example, how would they apply to the prosecution of Robert Latimer in the case of the murder of his daughter? Could these elements support the criminal prosecution of persons responsible for the Westray Mine disaster? Or for the manufacture of dangerous consumer products?
2. What were the major contributions of the 'Chicago School' to the understanding the origins of crime? Who were the major contributors? And what did they discover? What relevance, if any, does this have for understanding the rise of an underclass in impoverished urban areas, particularly in cities such as contemporary Chicago?
3. Learning theories, cultural transmission theories and labeling theories have been described as "relativistic." What makes them relativistic?" Provide illustrations of such crimes. Who are their major proponents? How do these theories explain crime, and how do they differ from one another?
4. What are "the stubborn particulars' of empirical criminology? How can they be explained by realist theories such as strain theory or control, and relativist theories such as labeling theory and cultural transmission theory?

PART B (time: 1 hour)

The following concepts have appeared in various readings throughout the course. Write short essay answers (between 350 – 600 words) on *two (2)* of the following four concepts. Each essay should define and explain each concept; relate the concept to relevant themes in the course; identify the theorist associated with each concept; and illustrate the significance of each concept for the sociological study of organizations. Part B is weighted at 40% (20%+20%) of the total grade.

1. The criminal career perspective
2. Cultural transmission theory
3. Incapacitation theory
4. Conventionalization of crime

©Athabasca University

***** END OF EXAM *****



Arts Final Grade Report

Start Date

Please use ink only

SOCIOLOGY

SOCI 300

IFB:revised - 2014

Course name and number

Form no.

Office use only

Student to complete (please print)

Name _____ Student ID number _____

Last First Middle

Address _____ Tutor name _____

Postal Code _____

Student signature

Date

Must be signed and dated to validate examination

Examination invigilator to complete

Note: Please place this form along with the examination, student response(s) in the self-addressed stamped envelope.
If there is any problem, please call the Office of the Registrar at: **1 - 800 - 788 - 9041**

Name _____ Telephone _____

Date exam received by invigilator _____

This is to certify that the above student wrote the examination under supervision between the hours of _____ (am/pm) and _____ (am/pm)
on the specified date at _____

Name of the examination centre or invigilator's address

Invigilator signature

Date

Must be signed and dated to validate examination

Athabasca University staff to complete

Date received by Faculty _____

Marker to complete

Examination mark _____

Marker signature

Date

Professor to complete

(Note: Composite grade cannot be calculated until marks are received from the tutor)

Final Grade _____ Credits earned _____ PASS/FAIL

Comments/Missing items _____

Professor signature

Date

Students wishing to appeal an examination result should read and follow the instructions regarding Appeals Procedures in the Calendar.

SOCI 305
Sociology of Crime
Final Examination
Version B

Instructions to Examination Invigilator

Thank you for taking the time to supervise this examination for an Athabasca University student.

1. This is a *closed-book examination*. Only materials distributed with this examination may be used by the student to answer examination questions. The student is **NOT** allowed to use texts, workbooks, or notes, or to consult with other people while writing this examination.
2. A maximum of *three (3) hours* is allowed for this examination.
3. Please ensure that you, the Examination Invigilator, and the student fill in the appropriate sections of the *Final Grade Report*. Please indicate the *exact* time taken by the student to complete the examination.
4. All examination materials are to be returned to you, the Examination Invigilator, when the student has finished writing the examination.
5. Before the student writes the examination, please refer to the Examination Invigilation Procedures for more detailed instructions as well as for information regarding problems/exceptions.
6. If the student has trouble understanding what is required to answer a particular question, please tell him or her to:
 - a. note the difficulty beside the question; and
 - b. try to answer the question as best as he or she can.

Again, thank you for your cooperation.

ATTACH THREE EXAMINATION BOOKLETS

SOCI 305
Sociology of Crime
Final Examination
Version B

Instructions to Student

1. This is a *closed-book examination* to be written without books, tapes, or notes, and to be supervised by a person authorized by Athabasca University.
2. This examination is made up of two sections:

Part A requires you to write two (2) essays of 800 to 1200 words.

Part B requires you to write two (2) essays of 350 to 600 words.

Please check to see that both parts of the examination are included.
3. The pass mark is 60 percent.
4. You will be allowed *three (3) hours* to complete the examination.
5. Please complete the information requested on the *Final Grade Report* included in your examination package.
6. On completion of the examination, hand in the total examination package (examination questions, examination booklets, Final Grade Report) to your examination supervisor.

SOCI 305
Sociology of Crime
Final Examination
Version B

PART A (time: 2 hours)

Write essays of 800 to 1200 words on *two (2)* of the following four questions, ensuring that whenever possible you make some reference to the relevant course materials, and that you demonstrate your knowledge and understanding of the key concepts associated with the question of your choice. Remember that this is your opportunity to show that you have read and understood the course readings and that you are able to use these readings to illustrate the points contained in your answers. Part A is weighted at 60% (30%+30%) of the total grade.

1. What is the difference between “jurisprudence” and “the sociology of law”? Illustrate the different concerns to which each concept refers with reference to examples. Identify proponents associated with each idea. How do these fields relate to the “justice” model versus the “crime control” model of criminal law?

2. What are three major perspectives that have been identified under the concept of “realist” theories of crime? What makes them *realist*? Who are the major proponents? How do these theories explain crime, and how do they differ from one another?

3. What are the different assumptions behind the classical versus the positivist schools of criminology? Identify major proponents of each perspective, and the basis for their differing approaches to the study of crime. Contrast the approaches to *crime control* from a strictly classical perspective and the approaches from a positivistic perspective.

4. What is Manuel Eisner’s evidence for a long-term drop in European crime over the past 8 centuries, and how has Norbert Elias’s theory tried to explain this? What do long-term trends in violent crime say about differences in age, gender and circumstances of violence? How do we explain the recent crime drop?

PART B (time: 1 hour)

The following concepts have appeared in various readings throughout the course. Write short essay answers (between 350 – 600 words) on *two (2)* of the following four concepts. Each essay should define and explain each concept; relate the concept to relevant themes in the course; identify the theorist associated with each concept; and illustrate the significance of each concept for the sociological study of organizations. . Part B is weighted at 40% (20%+20%) of the total grade.

1. “trivial altercations”
2. the Canadian law of rape versus sexual assault
3. The Nordic model of prostitution control
4. the criminal career perspective

©Athabasca University

***** END OF EXAM *****

SOCIOLOGY 305 – SOCIOLOGY OF CRIME

THE CHALLENGE EXAM – TWO PARTS - FULL DAY

TIME ALLOWED FOR PART 1 – THREE (3) HOURS

TIME ALLOWED FOR PART 2 – THREE (3) HOURS

THE TWO PARTS OF THIS EXAM ARE TO BE COMPLETED ON THE SAME DAY. PART 1 IS TO BE COMPLETED IN THE MORNING SESSION; PART 2, IN THE AFTERNOON SESSION.

SOCIOLOGY 305 – SOCIOLOGY OF CRIME

CHALLENGE EXAM – PART 1 – THREE (3) HOURS

MORNING SESSION

PART 1: TIME – THREE (3) HOURS – (60% OF EXAM GRADE)

Write 800 to 1000 word essays on four (4) of the following eight (8) questions. Each is worth 12.5% of the final grade.

Please read through the following questions carefully before selecting the three (3) of the following six (6) questions that you intend to answer. When answering these questions, try to ensure that you answer everything asked by the question. Most of these questions are compound, which means that they are made up of several parts. Please try to write legibly and refrain from using a pencil.

1. Describe the profile of Aboriginals in the federal correctional system (numbers, proportions and trends), and compare them to non-Aboriginals. Discuss possible alternative reasons for the distinctive pattern of Aboriginal representation in Canadian correctional institutions based on (a) the Justice Model and (b) the Crime Control Model.
2. What is the difference between “jurisprudence” and “the sociology of law”? Illustrate the different concerns to which each concept refers with reference to examples. Identify proponents associated with each idea. How do these fields relate to the ‘justice’ model versus the “crime control” model of criminal law?
3. What is Manuel Eisner’s evidence for a long-term drop in European crime over the past 8 centuries, and how has Norbert Elias’s theory tried to explain this? What do long-term trends in violent crime say about differences in age, gender and circumstances of violence? How do we explain the recent crime drop?
4. What are the different assumptions behind the classical versus the positivist schools of criminology? Identify major proponents of each perspective, and the basis for their differing approaches to the study of crime. Contrast the approaches to

crime control from a strictly classical perspective and the approaches from a positivistic perspective.

5. What are three major perspectives that have been identified under the concept of “realist” theories of crime? What makes them realist? Who are the major proponents? How do these theories explain crime, and how do they differ from one another?
6. What were the major contributions of the ‘Chicago School’ to the understanding the origins of crime? Who were the major contributors? And what did they discover? What relevance, if any, does this have for understanding the rise of an underclass in impoverished urban areas, particularly in cities such as contemporary Chicago?
7. Learning theories, cultural transmission theories and labeling theories have been described as “relativistic.” What makes them relativistic? Provide illustrations of such crimes. Who are their major proponents? How do these theories explain crime, and how do they differ from one another?
8. Leyton distinguishes serial killers from multiple murderers. Using Canadian examples (Homolka/Bernardo, Russell Williams, Marc Lepine, James Roscko, Justin Bourke etc), distinguish these forms of homicide and suggest how they might be explained, and whether these kinds of murder should be explained differently. Do alternative explanations result in alternative possibilities in findings of individual responsibility?

CHALLENGE EXAM – PART 2 - THREE (3) HOURS (40% OF EXAM GRADE)

The following pairs of terms have become central to the language of sociology. Write short (350-600 words) essays on four (4) of the following eight (8) pairs of concepts. Each essay should define and explain each concept; identify the relevant theorist, or theoretical orientation that is associated with the concept; and show the relationship of each concept to other concepts within the same theoretical perspective.

1. self control: informal social control
2. The classical perspective: the positivist perspective
3. Psychosis vs psychopathy (as a causes of crime)
4. Rehabilitation: incapacitation
5. Learning theory: social learning theory
6. Rape: sexual assault (laws of)
7. Measuring crime versus victimization
8. Strain versus control in crime causation

SECTION - B (10%) - Suggested Time - (90 minutes)

Write an essay (of between 800-1000 words that analyzes a particular crime situation using the **framework**, and associated **key concepts**, of one of the major theoretical perspectives currently used in sociological studies of crime. Your example should focus on one of the three central issues in the sociological study of crime:

Sociology of Crime - 305
Multiple Choice Midterm (35%)

**SOCI 305 – Mid–Course Quiz – 60 multiple-choice questions
(35% of total course grade). Time allowed on-line for completion is 75 minutes.**

Due Date: After you have completed Unit 6.

Instructions: This quiz evaluates your understanding of material described in the units 1-6. The questions will be scored automatically. However, if you have any questions about your grades, please contact your tutor. Select the *best* answer for each question. Your quiz score will be recorded as a percentage grade. **You can attempt this quiz only one time.** Once you begin this assignment, there will be a maximum of 60 minutes to answer all questions. At the end of 75 minutes, your quiz will automatically be submitted for grading unless you have finished earlier and submitted it before this time is up. After that, **no more attempts will be possible. All questions are derived from units 1-6 of SOCI 305**

Question 1

_____ represents one of “the two great narratives” of law. It refers to the fact that laws are based on principles and philosophies that strive to achieve fairness, impartiality, and justice based on due process.

Select one:

- a. jurisprudence*****
- b. the crime control model
- c. politicality
- d. Marxian dialectics
- e. the sociology of law

Question 2

According to Roscoe Pound, good law in the English tradition is based on several concepts. Which of the following was NOT among the four specific elements identified as constituting good law?

Select one:

- a. the classical tradition*****
- b. politicality
- c. specificity
- d. uniformity
- e. penal sanction

Sociology of Crime - 305
Multiple Choice Midterm (35%)

Question 3

The “crime control model” of the justice system is often contrasted with the “due process model.” Which of the following is NOT an element of the crime control model?

Select one:

- a. the objective of justice is to incarcerate offenders
- b. the widespread use of discretion by police and prosecutors facilitates selective targeting of outsiders
- c. emphasis on public security and order
- d. adoption of policies to elevate the surveillance, prosecution and incapacitation of gangs, panhandlers and suspected terrorists
- e. Presumption of innocence of the accused*****

Question 4

What does the term, *stare decisis*, refer to?

Select one:

- a. a person is innocent until proven guilty
- b. no persons are liable to conviction if they lack the guilty mind
- c. legal cases heard in courts of appeal which settle interpretations of law become precedents for future decisions*****
- d. the accused is entitled to all the law he or she can afford to buy
- e. an honest but mistaken belief is a legal defence

Question 5

The requirement of _____ holds that no person should be except from criminal prosecution because of irrelevant social characteristics such as status or wealth.

Select one:

- a. classical theory
- b. politicality
- c. specificity
- d. uniformity *****
- e. penal sanction

Question 6

Sociology of Crime - 305
Multiple Choice Midterm (35%)

The requirement of _____ holds that the laws should be written in order to describe clearly and unambiguously what the forbidden behaviours consist of.

Select one:

- a. classical theory
- b. politicality
- c. specificity*****
- d. uniformity
- e. penal sanction

Question 7

According to William Chambliss, the first attempt to suppress vagrancy as a serious criminal activity (1349) co-appeared with other legislation aimed at controlling the independence of agricultural labour. What historical event was critically related to these laws?

Select one:

- a. The Crusades
- b. the Norman Invasion of England
- c. the Black Plague*****
- d. early prohibition law
- e. the introduction of money in the form of coins

Question 8

In his study of The Black Act, E.P. Thompson, a Marxist historian, described this as “a cultural discovery of universal significance.” To what was he referring?

Select one:

- a. class biases in the definition of crime
- b. The rule of law*****
- c. the determination of judicial thinking by class interests
- d. the selective over-reach and under-reach of the criminal law
- e. the completely arbitrary nature of justice in modern English law

Question 9

If financial entrepreneurs use the law to further their material self-interests, these people use law and law reform to advance their own group values and beliefs. Howard Becker referred to them as _____

Sociology of Crime - 305
Multiple Choice Midterm (35%)

Select one:

- a. the consensus builders
- b. political “fixers”
- c. “PITAPs” or pain-in-the-ass-politicians
- d. conservative activists
- e. moral entrepreneurs*****

Question 10

The first Canadian anti-opium legislation was aimed at the suppression of the activities of which group?

Select one:

- a. Chinese opium users*****
- b. doctors who prescribed narcotics to cure addictions
- c. radicals in the early Canadian labour movement
- d. persons who were growing and using marihuana illegally
- e. persons who refused to pay the Immigration Head-tax

Question 11

Typically, criminal behavior must involve pain, distress or loss to a person or to property. This is the requirement of _____

Select one:

- a. mens rea
- b. actus reus
- c. nullem crimen sine lege
- d. stare decisis
- e. harmfulness*****

Question 12

Narcotics use, nudism and prostitution are frequently cited by sociologists as examples of _____

Select one:

- a. immoral entrepreneurs
- b. victimless crimes*****
- c. nullem crimen sine lege

Sociology of Crime - 305
Multiple Choice Midterm (35%)

- d. rebellious behaviours
- e. under-criminalization of marginal behaviours

Question 13

The principle of _____ is supposed to prevent the state from retroactively labeling as criminal any conduct that at the time it occurred was not unlawful.

Select one:

- a. mens rea
- b. actus reus
- c. nulleum crimen sine lege*****
- d. stare decisis
- e. harmfulness

Question 14

The actus reus of a crime may be established by virtue of _____

Select one:

- a. intention
- b. knowledge
- c. recklessness
- d. all of the above
- e. none of the above*****

Question 15

The cases of *Benolkin et al* (1977), *Springer* (1975) and *Gwen Jacob* (1996) all were concerned with whether _____ was a matter of criminal offence.

Select one:

- a. abortion
- b. nudity or nakedness in public*****
- c. hate promotion
- d. obscene publication
- e. commercial sex

Question 16

Sociology of Crime - 305
Multiple Choice Midterm (35%)

The *current* Canadian criminal law defining sexual assault requires _____
Select one:

- a. that the victim be female
- b. that the accused be a male
- c. that the victim and accused be unmarried
- d. that sexual penetration be established
- e. none of the above*****

Question 17

In the *Pappajohn* rape case (1983), the precedent-setting issue at trial was whether

Select one:

- a. the victim's account was corroborated by other evidence
- b. the victim's complaint was 'recent'
- c. an honest, mistaken belief in the victim's consent could be offered as an excuse or legal defence to rape*****
- d. the victim's previous moral reputation cast doubt on her credibility as a witness
- e. the accused's confession was admissible

Question 18

Someone who practices target shooting near a school yard and who unintentionally kills a child may be held accountable for homicide by virtue of _____

Select one:

- a. recklessness*****
- b. intention
- c. knowledge
- d. actus reus
- e. mistake of fact

Question 19

In the case of *Fagan v. Commission of Metropolitan Police* (1969) in England, a driver was charged with assault of a police officer after the officer directed the driver into a parking lot from which space the policeman had not removed one of his feet in time. Fagan's unsuccessful defence was based on what issue?

Sociology of Crime - 305
Multiple Choice Midterm (35%)

Select one:

- a. actus reus
- b. causation
- c. coincidence or concurrence*****
- d. mens rea
- e. nullem crimen sine lege

Question 20

Dudley and Stephens were charged with murder in the case of cannibalism in 1884 arising from a shipping disaster in which they killed and consumed the ship's cabin boy. Their trial explored the defence of _____

Select one:

- a. duress
- b. necessity*****
- c. insanity
- d. honest but mistaken belief
- e. ignorance of the law

Question 21

What is meant by the term, 'the dark figure of crime'?

Select one:

- a. trends in the arrest of persons of colour for criminal offences
- b. the dark figure consists of less serious kinds of offences
- c. records of crime kept by the police in secret during criminal investigations
- d. the dark figure consists of only the most serious kinds of crime
- e. crimes which are unreported and unknown to the police*****

Question 22

After Confederation until the creation of the Dominion Bureau of Statistics, judicial statistics were collected by which government department?

Select one:

- a. the Ministry of the Solicitor General
- b. the Office of the Prime Minister
- c. the Department of Agriculture*****

Sociology of Crime - 305
Multiple Choice Midterm (35%)

- d. the Royal Canadian Mounted Police
- e. the Department of Justice

Question 23

According to labeling theorists such as Kitsuse and Cicourel, official statistics are essentially a reflection of _____

Select one:

- a. the institutions that collect them*****
- b. behaviours of persons who break the law
- c. the way that crime is covered in the mass media
- d. all of the above
- e. none of the above

Question 24

In Canada, which measure of crime is based on self-reported experiences of crime by victims?

Select one:

- a. the Uniform Crime Reports 1
- b. the Uniform Crime Reports 2
- c. the Crime Severity Index
- d. the Index crime summary
- e. the General Social Survey (Victimization Reports) *****

Question 25

In Canada which measure of crime is based on the “MSO” or most serious offense recorded?

Select one:

- a. the Uniform Crime Reports 1*****
- b. the Uniform Crime Reports 2
- c. the Crime Severity Index
- d. the Index crime summary
- e. the General Social Survey (Victimization Reports)

Question 26

Sociology of Crime - 305
Multiple Choice Midterm (35%)

In Canada, which measure of crime is based on the “incident based” reports from Canadian police services?

Select one:

- a. the Uniform Crime Reports 1
- b. the Uniform Crime Reports 2*****
- c. the Crime Severity Index
- d. the “index” crime summary
- e. the General Social Survey (Victimization Reports)

Question 27

In Canada, estimates of the changes in crime over time that reflect the magnitude of penalties that various crimes result in after trial are known as what?

Select one:

- a. the Uniform Crime Reports 1
- b. the Uniform Crime Reports 2
- c. the Crime Severity Index*****
- d. the Index crime summary
- e. the General Social Survey (Victimization Reports)

Question 28

What is the general trend in crime in Canadian society since about 2002 to the present?

Select one:

- a. the aggregate measure of crimes (both in terms of counts and rates) has declined
- b. the crime severity index has shown a gradual decline
- c. both violent crimes and property crimes have declined
- d. all of the above*****
- e. none of the above

Question 29

In 2012, what was the most prevalent crime recorded under the Criminal Code for adults?

Select one:

- a. theft under \$5,000*****
- b. mischief to property
- c. violations of the administration of justice in such areas as parole and probation

Sociology of Crime - 305
Multiple Choice Midterm (35%)

- d. break and entry into a private residence
- e. assault against the person (level one)

Question 30

Measures of criminal victimization (1999, 2004 and 2009) suggest that only about 31-37% of these events were reported to the police. What was the leading reason for victims to fail to report their experiences?

Select one:

- a. victims did not think the events were important enough to report them*****
- b. victims felt the police could not do anything about them
- c. victims thought the matter could be dealt with “in another way”
- d. victims didn’t want to get the police involved
- e. victims reported that the police “wouldn’t help”

Question 31

As a discipline responsible for explaining changes in the supply of crime over time and across jurisdictions, “the sociology of crime focuses on two main things: _____”.

Select one:

- a. exploiter and exploited
- b. truth and consequences
- c. crime and criminality*****
- d. good and evil
- e. profit and loss

Question 32

Manual Eisner created a homicide data base covering eight centuries of crime in Europe. In which century did he discover the highest estimated rate of homicide?

Select one:

- a. the 13th century*****
- b. the 14th century
- c. the 17th century
- d. the 20th century
- e. Eisner could not determine any difference in the levels of homicide over time

Sociology of Crime - 305
Multiple Choice Midterm (35%)

Question 33

Manual Eisner's study of long term homicide trends in England and Europe suggested certain common findings in characteristics of murder in his records.

Select one:

- a. the vast majority of homicide perpetrators were 20 to 30 year olds
- b. the vast majority of homicide offenders were males
- c. the vast majority of homicide victims were males
- d. all of the above *****
- e. none of the above

Question 34

What legal changes resulted in numerous US states after criminologists predicted the appearance of a new generation of "superpredators" in the 1990s?

Select one:

- a. states passed laws permitting the sentencing of juvenile offenders to life terms without parole*****
- b. states passed laws decriminalizing the use of crack cocaine in the case of young juveniles
- c. states introduced legislation to help marginal youths obtain needed education and employment opportunities
- d. states failed to take any action
- e. states initiated community-based programs to end the poverty-crime link

Question 35

The concept of "chronic offenders" was associated with the work of _____ in a study of the careers of all juveniles born in Philadelphia in 1945.

Select one:

- a. Emile Durkheim
- b. Edwin Sutherland
- c. Howard Becker
- d. Wolfgang, Siglio and Sellin*****
- e. Travis Hirschi

Question 36

Sociology of Crime - 305
Multiple Choice Midterm (35%)

An unprecedented drop in the level of crime was observed in Canada, the US, the UK, Germany and New Zealand (as well as elsewhere) beginning in the 1990s. Many explanations were considered. Which of the following was never examined seriously? Select one:

- a. changes in the economy and opportunities for material advancement
- b. changes in the demographic composition of the population
- c. changes in the widespread utilization of abortion
- d. changes in the exposure to environmental toxins such as lead
- e. changes in the new technologies and the participation of young persons in the internet*****

Question 37

Which of the following countries currently has the highest level of per capita incarceration of its citizens? Select one:

- a. the Russian Republic
- b. Canada
- c. the USA*****
- d. Great Britain
- e. South Africa

Question 38

The crime drop observed starting in the 1990s included a trend towards a reduction in the rate of homicide in most countries. Which of the following cases was an exception? Select one:

- a. the USA
- b. Canada
- c. England and Wales
- d. Germany
- e. Mexico*****

Question 39

Many observers claim that crime is a direct effect of material deprivation. If that were the case, the majority of offenders would be _____

- a. old women*****

Sociology of Crime - 305
Multiple Choice Midterm (35%)

- b. young men
- c. immigrants
- d. professionals
- e. mentally defective individuals

Question 40

Durkheim concluded that towns whose populations were largely Protestant had higher rates of suicide than towns whose populations were largely Catholic. He concluded that certain religions were more likely than others to predispose their adherents to suicide.

This inference was criticized as _____

Select one:

- a. a tautology
- b. an ecological fallacy*****
- c. religiously intolerant
- d. statistically insignificant
- e. empirically untrue

Question 41

In the history of criminology _____ is associated with the classical tradition, while _____ is associated with the positivistic or scientific tradition.

Select one:

- a. Lombroso.....Beccaria
- b. Michel Foucault.....Robert Merton
- c. Karl Marx.....Emile Durkheim
- d. Jack Katz.....Jeremy Bentham
- e. Beccaria.....Lombroso*****

Question 42

Jeremy Bentham advanced the concept of “hedonic calculation” to describe how potential offenders would estimate the costs and benefits of crime. This 19th century idea has been superseded by the focus on _____ by modern economists.

Select one:

- a. rehabilitation
- b. deterrence*****

Sociology of Crime - 305
Multiple Choice Midterm (35%)

- c. incapacitation
- d. all of the above
- e. none of the above

Question 43

Cesare Lombroso, the great Italian criminologist was also a medical pathologist. He explained the appearance of crime in model society as a result of _____

Select one:

- a. cranial deformities associated with brain disorder
- b. hereditary feeble-mindedness
- c. undiagnosed insanity
- d. untreated physical diseases such as syphilis, measles and small pox
- e. atavism*****

Question 44

According to “the Justice Model” advocated by Andrew Von Hirsch, the primary justification for punishment of an offender should be based on _____.

Select one:

- a. the seriousness of the crime*****
- b. the need to prevent future criminal behaviour of the perpetrator
- c. the need to deter non-offenders from imitating the crimes of others
- d. the rehabilitation of the offenders, and the successful re-integration of offenders into society
- e. the moral indignation which leads the community to ostracize the offender

Question 45

Jack Katz argues that criminologists should explain things like righteous slaughter and cold-blooded murder by focusing on _____.

Select one:

- a. background factors that cause ordinary people to break the law
- b. the material benefits of the crime to its benefactor
- c. the underlying evidence of mental instability or personality disorder
- d. the low IQ typical of offenders, and their inability to appreciate the consequences of crime

Sociology of Crime - 305
Multiple Choice Midterm (35%)

- e. the moral satisfaction of the offence to the offender*****

Question 46.

According to _____, all crime is learned, and is transmitted by differential association

Select one:

- a. Sarnoff Mednick
 b. Edwin Sutherland*****
 c. Robert Merton
 d. Karl Marx
 e. Emile Durkheim

Question 47

According to _____, all crime results from “the gap” between the aspirations of the criminal and his or her ability to achieve them legally.

Select one:

- a. Sarnoff Mednick
 b. Edwin Sutherland
 c. Robert Merton*****
 d. Karl Marx
 e. Emile Durkheim

Question 48

According to _____, the tendency to commit crime has a biological basis that tends to be inherited.

Select one:

- a. Sarnoff Mednick*****
 b. Edwin Sutherland
 c. Robert Merton
 d. Karl Marx
 e. Emile Durkheim

Question 49

Which of the following is not among “the hard facts” of criminal behavior?

Sociology of Crime - 305
Multiple Choice Midterm (35%)

Select one:

- a. crime is largely a male activity
- b. crime is distributed predictably over the age-crime curve
- c. most violent crime occurs in groups*****
- d. most offenders do not specialize in particular types of crime
- e. the material benefits to most street crimes are typically small

Question 50

Generally speaking, the root cause of crime in feminist criminology is _____, while the root cause of crime in radical criminology is _____.

Select one:

- a. poor education.....unemployment
- b. patriarchy.....capitalism*****
- c. hormonal abnormalities.....individual differences
- d. individual differences.....attitudes to the poor
- e. capitalism.....patriarchy

Question 51

The two key concepts in Emile Durkheim's analysis of how individuals interact effectively with society are _____.

Select one:

- a. social and financial capital
- b. commitment and belief
- c. regulation and attachment*****
- d. faith and charity
- e. vision and hard work

Question 52

A slave takes his own life because the burdens on him are so intrusive that they stifle his sense of autonomy and self-control. How would this type of suicide be classified in Durkheim's typology of suicide?

Select one:

- a. egoistic
- b. altruistic

Sociology of Crime - 305
Multiple Choice Midterm (35%)

- c. anomic
- d. fatalistic*****
- e. rebellious

Question 53

According to some criminologists, society defines the goals and sets the expectations for achievement in modern life, but the economy and educational differences prevent some people from achieving those goals. They may turn to other means, as was the case with Al Capone and the Chicago rackets in the 1920s. How would Merton classify such an adaptation?

Select one:

- a. Capone is a conformist
- b. Capone is an innovator*****
- c. Capone is a retreatist
- d. Capone is a rebel
- e. Capone is a ritualist

Question 54

In the ecological analysis of crime that was associated with the Chicago School in the 1920s and 1930s, which zone of the city showed persistent and elevated trends in crime and disorder?

Select one:

- a. the "Loop"
- b. the zone of transition*****
- c. the immigrant working class zone
- d. the residential zone
- e. the commuter zone

Question 55

In contemporary Chicago, Michelle Alexander argues that a specific social policy has created a permanent "undercaste" in the African American residential projects. What is it?

Select one:

- a. the war on drugs*****
- b. the war on terror

Sociology of Crime - 305
Multiple Choice Midterm (35%)

- c. the war on poverty
- d. the war on tax reform
- e. the war on voter registration

Question 56

A modern version of Merton's "gap theory" has been developed by Robert Agnew. It is called _____.

Select one:

- a. bond theory
- b. social disorganization theory
- c. social capital theory
- d. strain theory*****
- e. the theory of informal social control

Question 57

Travis Hirschi's analysis of delinquency and crime emphasized the positive effects of social bonds on minimizing the attractions of crime. Which of the following was not one of the elements of bond theory?

Select one:

- a. involvement in normative activities
- b. attachment to parents
- c. high IQ*****
- d. commitment to prosocial goals like education and work
- e. belief in and respect for authority

Question 58

Walter Mischel's famous "marshmallow experiment" identified one of the long term consequences of an individual level trait for success later in life in education and employment. What was it?

Select one:

- a. self-confidence
- b. self-control*****
- c. athleticism
- d. literacy

Sociology of Crime - 305
Multiple Choice Midterm (35%)

- e. religious belief

Question 59

The criminal career perspective attaches significant theoretical importance to many things. Which of the following is irrelevant to this perspective

Select one:

- a. conditions of onset of crime
- b. specialization in crime
- c. patterns of desistance in crime
- d. conditions of escalation and de-escalation of crime
- e. individual differences in self and external differences in social control*****

Question 60

In social theory, “capital” comes in many forms, and may have significant consequences for an individual’s trajectory through life. Consider the observation: *“it’s not what you know, it’s who you know. That’s what gets you ahead in life.”* What kind of capital is that?

Select one:

- a. financial
- b. human
- c. symbolic
- d. social*****
- e. political