PART 1
Canadian Corrections
Setting the Framework

CHAPTER 1 Perspectives on Crime and Punishment

CHAPTER 2 The Origins and Evolution of Canadian Corrections

CHAPTER 3 Contemporary Canadian Corrections

CHAPTER 4 Sentencing: Beginning the Corrections Process

Introduction to Part 1

The chapters in this opening section of the text provide the foundations for examining the various facets of Canadian corrections. Chapter 1 provides a definition of corrections, identifies the components of correctional change, explores how punishment has evolved since early times, and discusses several factors that have influenced responses to criminal offenders. Also presented are the competing perspectives on crime, criminal offenders, and the criminal justice system, as well as features of crime and punishment in the early 21st century.

Chapter 2 describes the origins and evolution of Canadian corrections, identifying a number of eras during which specific approaches were taken toward offenders and using prison architecture as an approach to reflect on how the philosophy of corrections has evolved over the decades.

The historical materials in Chapters 1 and 2 highlight the role that legislation, events, and personalities have played in the response to criminal behaviour. The discussion highlights a critical point: Systems of corrections exist within, not apart from, the broader societal context. Put another way, society's political, economic, and religious beliefs may strongly influence what behaviours are defined as criminal, what sanctions are imposed on those persons who commit these acts, and the objectives of those sanctions. Similarly, racism, bias, and discrimination in Canadian society will also be manifested in the response of the criminal justice system, including systems of corrections.

The materials on the evolution of Canadian corrections will also illustrate the difficulties of using incarceration as a response to criminal offenders.

While reforms to both institutional and community corrections have been recommended over the decades, many of the issues that confront corrections today arose nearly two centuries ago. This reality underscores the significant challenges in ensuring that systems of corrections contribute to community safety while at the same time addressing the needs of victims and offenders.

Chapter 3 identifies the *who* and the *what* of contemporary Canadian corrections. The corrections process begins at the sentencing stage of the criminal justice system, and in Chapter 4, the purpose and principles of sentencing as well as sentencing options are discussed.

1 Perspectives on Crime and Punishment

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LEARNING OUTCOMES

At the end of this chapter, you should be able to:

LO 1.1 Define corrections and the indicators of correctional change.

LO 1.2 Discuss how punishment has evolved since early times and the factors that have influenced the punishment of criminal offenders.

LO 1.3 Compare and contrast the conservative, liberal, and radical perspectives on crime, offenders, and punishment.

LO 1.4 Discuss the functions and objectives of punishment.

LO 1.5 Define and describe the approach of restorative justice, noting its key principles and contrasting it with those of the traditional adversarial justice system.

LO 1.6 Discuss the rise of punitive penology and penal populism.

LO 1.7 Describe recent reforms the federal government has proposed to address bias, discrimination, and systemic racism within Canadian corrections.

Introduction

How societies and groups have chosen to respond to those who violate norms, mores, and laws has varied over the centuries. A review of the history of punishment and corrections reveals several distinct trends. There has been increasing centralization and professionalization of punishment and corrections, with formal agents of control (e.g., police officers, judges, corrections officials) assuming responsibility for identifying, responding to, and sanctioning offenders. Concurrent with this trend has been an expansion of surveillance and control over offenders. There has been increasing use of electronic monitoring of offenders in the community and extensive video surveillance in correctional institutions, as well as a diminishing role for the community in the correctional process.

Historically, government responses to persons who come into conflict with the law have given little attention to the factors that precipitated the criminal behaviour. It can be argued that, even today, systems of corrections struggle to effectively address the reasons why people engage in criminal behaviour.

In this chapter, we examine perspectives on crime, offending, and punishment. Then, in Chapter 2, we look at the origins and evolution of Canadian corrections.

A Definition of Corrections

corrections
the structures, policies, and programs to sanction, punish, treat, and/or supervise persons who have been accused or convicted of criminal offences

Corrections can be defined as the structures, policies, and programs delivered by governments, not-for-profit organizations, and members of the general public to sanction, punish, treat, and/or supervise, in the community and in correctional institutions, persons who have been accused or convicted of criminal offences. Note that the definition includes punishment and treatment as well as correctional institutions and the supervision of offenders in the community. Also, in this text, the sentencing stage of the criminal justice process is included in the discussion of corrections. It is at this juncture that judges' decisions determine whether the offender will be under the jurisdiction of the federal or provincial/territorial system of corrections, whether the person will be subject to a community sentence and/or term of confinement, and the length of the sentence.

The Process of Correctional Change

The response to persons in conflict with the law is dynamic; that is, it changes over time. We can say that correctional change has taken place when one or more of the following occurs:

1. the severity of punishment of convicted persons is modified;
2. explanations of criminal behaviour change;
3. new structural arrangements, such as the penitentiary, are established to sanction offenders; and
4. the number or proportion of offenders involved in the correctional process changes (Shover, 1979).

Why do these changes occur? Why, for example, did prisons become widely used as punishment in the 19th century? Scholars of penal history study correctional change from several perspectives. Some have focused on early reformers' humanitarian ideals; others have argued that prisons were designed primarily to control people who were perceived as threatening the emerging capitalist system of an industrializing Europe. The latter argued

prisons were not intended to be a humane alternative to the death penalty and corporal punishment; rather, they were designed for isolation and punishment (Foucault, 1979; Ignatieff, 1978; Rothman, 1990). The origins and evolution of systems of corrections in Canada are also viewed through the lens of the colonization of Indigenous peoples and systemic discrimination and racism against Indigenous peoples and racialized groups.

The Evolution of Punishment

The Early Days

Before there were nation-states and written laws, personal retaliation was the primary response to disruptive and harmful behaviour against others. This practice was later augmented by the *blood feud*, in which the victim's family or tribe avenged themselves on the family or tribe of the offender. Before the Middle Ages (i.e., before 500 CE), the responses to wrongdoers were predicated mainly on punishment. The death penalty was carried out by hanging, live burial, stoning, boiling alive, crucifying, or drowning. **Corporal punishment** was also used, as were exile and fines.

corporal punishment when the state responds to an offence by imposing physical punishment that is designed to cause the person pain

It was during the Middle Ages (roughly from 500 to 1500; often referred to as *medieval times*) that punishment took its most gruesome forms. Societies were afflicted by feuding families and tribes (Newman, 1978). It was a time of death, violence, and disease. Vengeance and blood feuds were common. Various corporal and **capital punishments** included flogging, branding, stretching (racking), amputations, boiling alive, and other mutilations (Miethe & Lu, 2005).

capital punishment when the state puts a person to death as punishment for the offence(s)

Many of the punishments were designed to publicly stigmatize offenders or to shame them. The historical record indicates that, in the 15th century, petty traitors in England were drawn (cut up) and hung, while in Paris, criminal offenders were burned at the stake, buried alive, or subject to other severe public punishments. The most common capital punishment administered to criminals in Europe at that time was hanging.

These punishments were inflicted primarily upon persons who had threatened the king's peace and engaged in moral infractions against the Church (Mays & Winfree, 2014). These publicly administered punishments served a symbolic function of denouncing what was considered evil conduct.

However, the historical record indicates that punishments were not always blood and gore. The majority of offenders were not subjected to these severe forms of punishment (Mills, 2005). Banishment and exile were extensively used. And in the early Middle Ages, reparations were often used to settle disputes (Chazelle, 2012). In these cases, the wrongdoer would make amends by paying money or providing other assistance to the offended party. To learn more about crime during the Middle Ages, refer to the short video in Dig Deeper 1.1.

DIG DEEPER
1.1 Crime in the Middle Ages
www.emond.ca/CC7/links

The history of imprisonment stretches back to around 2000 BCE, where there is evidence that political offenders were exiled and imprisoned (Johnston, 2009). Confinement was often used in Greece until a fine was paid, the person was exiled, or the person committed compulsory suicide (Johnston, 2009). Generally speaking, punishment by imprisonment was rare. Confinement was employed mainly to hold those awaiting trial, execution, or corporal punishment, or to compel the payment of fines.

Prisons run by the Catholic Church existed as early as the 6th century and were common by the 9th century. At a time when torture and execution were commonly resorted to in many countries, the Catholic Church used imprisonment as a form of punishment. Centuries later, prison design would be influenced by these church prisons, which isolated prisoners, fed them a strict diet, and provided time for self-reflection. In the 1200s, during the

galley slavery
a practice used to remove poor people from the streets and as a sentence for convicted persons whereby these individuals worked as rowers—often on military or merchant ships

transportation
a sentence whereby the convicted person was sent via a ship to a remote location, often a penal colony, where they could be subject to providing labour for a certain period of time

hulks
decommissioned navy vessels that were converted into floating jails and prisons

DIG DEEPER
Child Convicts of Australia:
1.2 The First Fleet
1.3 A Day in the Life
1.4 Work
1.5 Reform and Freedom
www.emond.ca/CC7/links

Inquisition, accused persons were often held for months or years. Punishment by imprisonment was rarely resorted to until the 1500s in England and the early 1600s in continental Europe (Johnston, 2009).

The British Legacy

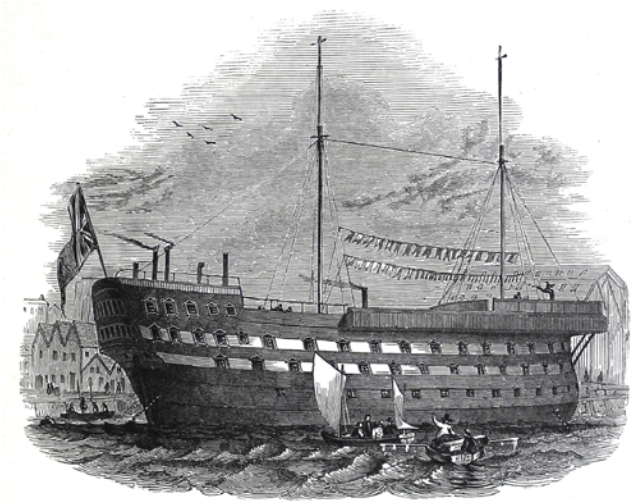
How the government in England responded to offenders had an impact on the development of corrections in Canada. The first house of correction in England opened in a former royal palace at Bridewell, in London, in 1557. This facility operated on the principle that subjecting people to hard labour was the best solution to the rising population of criminals.

The 1700s saw the start of the Industrial Revolution, which led to the breakdown of England's feudal, rural-centred society. Courts increasingly resorted to the death penalty in an attempt to stem the rise of what the emerging middle class saw as the "dangerous classes." In 18th century England, under what had become known as the Bloody Code, more than 200 offences were punishable by death (Ignatieff, 1978). Refer to the film "The Death Penalty: Capital Punishment" listed in the Additional Dig Deeper section at the end of the chapter.

England used **galley slavery** as a sentence to remove poor people and those who committed crime from the streets and as free labour to propel ships on expeditions (Stohr & Walsh, 2016). England also disposed of a large number of offenders through **transportation**, a form of banishment, to the country's American and Australian colonies. Between 1718 and 1775, Great Britain sentenced more than 50,000 offenders to transportation and sent them to its American colonies (Ekirch, 1985). This practice ended in 1776, although England transported an estimated 160,000 offenders to Australia over the next approximately 100 years (Kercher, 2003). Refer to the short videos in Dig Deeper 1.2–1.5 to learn more about transportation and life for "child convicts" in England's Australian colonies.

From 1776 until about 1850, England also confined convicted people in **hulks**, decommissioned navy vessels that had been converted into floating prisons, anchored in rivers and harbours. The hulks were overcrowded, filthy, and plagued by disease and high mortality rates (Banham, 2012). At its peak, the hulk prison system comprised about 10 ships holding more than 6,000 prisoners (PortCities London, n.d.). Refer to Figure 1.1 for an illustration of a hulk.

FIGURE 1.1 The Warrior



The *Warrior*, a hulk anchored off Woolwich in 1848, was a floating prison.

During the late 1700s, the prison reformer John Howard pioneered efforts to reform conditions in English prisons. In his classic work *The State of Prisons in England and Wales*, Howard (1777) proposed several prison reforms, including eliminating the fee system whereby prisoners paid a fee for various services, providing single sleeping rooms for prisoners, segregating women and young people from men, building facilities for bathing, and employing honest and well-trained prison administrators. Positive changes that resulted from Howard's work and that of other reformers of the time included the prohibition of alcohol sales within prisons and improvements to sanitary conditions (Johnston, 2009).

Although well intentioned, some of Howard's proposals—for example, that prisoners be placed in solitary confinement to protect them from the corrupting influences of other offenders and to provide the proper solitude for moral reflection—contributed to the deprivations these people experienced (and that many incarcerated persons continue to experience). Even so, his humanitarian ideals live on in Canada through the work of the John Howard Society of Canada. Refer to the short video "John Howard Was a Badass" to learn more about John Howard and the work the John Howard Society engages in today.

DIG DEEPER
1.6 John Howard Was a Badass
www.emond.ca/CC7/links

There is no simple explanation for why imprisonment became such a core part of the sanctioning process whereby punishment shifted from a focus on the body to a focus on the mind (Foucault, 1979). That it did can be attributed at least in part to a desire to maintain the social order, often at the expense of society's lower classes. That would explain why the use of imprisonment continued to expand even though there was evidence, very early on, that it did little to reduce criminal behaviour. This highlights the symbolic function of imprisonment.

Perspectives on Crime, Offenders, and Punishment

Punishment is commonly defined as "the act of inflicting a consequence or penalty on someone as a result of their wrongdoing, or the consequence or penalty itself" (Your Dictionary, n.d.). Upon whom and by what means punishment has been inflicted, as well as the objectives of punishment, have continually changed over the centuries.

punishment
inflicting a consequence or penalty for wrongdoing, or the consequence or penalty itself

Criminologists have pointed out that underlying all of the justifications for punishment are certain assumptions about human nature. Explanations of crime and responses to criminal offenders have always been strongly influenced by social, political, religious, economic, and demographic factors. The types of actions defined as criminal, the explanations for criminal behaviour, the types of sanctions imposed on offenders, and the objectives of those sanctions are always changing. The particular perspective that is taken as to why individuals engage in criminal behaviour influences the sanctions imposed and the objectives of those sanctions.

There are many competing perspectives on crime and criminal offenders and on what the objectives of corrections should be. Generally, these approaches can be categorized as conservative, liberal, or radical (refer to Table 1.1 at the end of this section).

The Classical (Conservative) School

During the 18th century, later known as the Age of Enlightenment, several ideas emerged that would strongly influence Western society's perception of and response to criminal offenders. During this time, a transition occurred from corporal punishment to imprisonment as a frequent form of punishment. This change was due in large measure to the writings of Enlightenment philosophers such as Charles Montesquieu, Francois Voltaire, Cesare Beccaria, and Jeremy Bentham, who embodied the **classical (conservative) school**.

classical (conservative) school
a perspective on criminal offenders and punishment based on the view that people exercise free will and engage in criminal behaviour as a result of rational choice, and that punishment must be swift, certain, and proportionate to the crime yet severe enough to outweigh the pleasure of engaging in crime

The classical school held that offenders were exercising free will and that they engaged in criminal behaviour as a result of rational choices.

In his major work, *An Essay on Crime and Punishments*, Beccaria (1764) argued the gravity of the offence should be measured by the injury done to society and that certainty of punishment was the most effective deterrent against criminal behaviour. Furthermore, punishments that were too severe served only to embitter offenders and perpetuate criminal conduct. Beccaria also argued the law should be applied equally to all people with punishments being the same for persons convicted of identical crimes.

It was Jeremy Bentham, the leading reformer of English criminal law during the late 18th century and early 19th century, who coined the term *hedonistic calculus*. He held that the main objective of intelligent human beings was to achieve the most pleasure while receiving the least amount of pain. Sanctions, it followed, should be applied to ensure the pain resulting from the punishment outweighed any pleasure derived from committing the offence; also, the punishment should be no greater than necessary to deter the potential offender. For Bentham, imprisonment was a more precise measure of punishment than corporal punishments: the more heinous the crime, the longer the period of confinement. In this view, criminal behaviour was not influenced by external societal factors or by deterministic forces internal to the offender; rather, the offender was responsible for their crimes.

According to the classical school, the primary goal of the criminal justice system should be deterrence, not revenge, and to be effective, punishment must be certain and must fit the crime. A person can be dissuaded from committing a crime by the spectre of certain, swift, and measured consequences. This has been the perspective of "tough on crime" approaches of the sort that involve mandatory minimum sentences (refer to Chapter 4) and mass incarceration to "reduce" crime rates.

Several criticisms have been levelled at the classical school with its emphasis on free will. Foremost among them is that it ignores the role of external factors such as poverty and racism (Welch, 2011). Also, there is no evidence that tougher sanctions and zero-tolerance policies in themselves contribute to specific or general deterrence in the absence of attempts to address other, more individualized factors that may have contributed to criminality (e.g., substance use). Also, incarceration policies are expensive, especially when you consider that many people who thereby land in prison would otherwise have been diverted to other, less costly forms of supervision in the community.

In retrospect, Beccaria and Bentham and their contemporaries were somewhat successful in mitigating the severity of punishments imposed on people convicted of crime.

The Positivist (Liberal) School

positivist (liberal) school
a perspective on criminal offenders and punishment based on the view that criminal behaviour is determined and that those who engage in crime require individualized treatment

The **positivist (liberal) school** that arose in the 1800s, as set out in the writings of Cesare Lombroso, Enrico Ferri, and Raffaele Garafalo, held that criminal behaviour was determined by biological, psychological, and/or sociological factors. It followed that the scientific method should be used to study criminal behaviour and identify criminal types.

From the positivist perspective, criminal offenders are fundamentally different from others in society, so explanations for crime should centre on the individual's characteristics and societal circumstances. Sanctions should focus on treatment and be individualized so they reflect the unique qualities and circumstances of the offender. The positivist perspective calls for "selective incapacitation," whereby only serious offenders likely to commit heinous crimes are sent to prison. This approach is contrary to the mass incarceration that often results from laws and policies informed by the classical perspective.

One weakness of the positivist perspective is that it fails to consider the role of free will in criminal offending.

The Critical (Radical) School

In contrast to the preceding perspectives, the **critical (radical) school** focuses on power and control. Its explanations of crime centre on the exploitative nature of the capitalist system, which uses the justice system to oppress the lower classes. This perspective was first set out by Karl Marx and is reflected to this day in the work of critical social theorists, including convict criminologists—academics across various disciplines (e.g., criminology, sociology, and criminal justice) with a history of criminal conviction (Greene & Gabbidon, 2009).

critical (radical) school a perspective on crime, offenders, and punishment that highlights the role of economics, politics, power, and oppression in the formulation of laws and the administration of justice

Proponents of this perspective point out that, for centuries, the justice system has drawn into its clutches a disproportionate number of persons who are impoverished and who live on society's margins. These people often experience high rates of mental health disorders, substance use disorders, and homelessness, and often have limited skills. A prominent theme among critical social theorists has been to critique the prison-industrial complex that profits from laws and policies (e.g., the war on drugs) that render marginal people more susceptible to punishment. The prison-industrial complex leads to mass incarceration, which does nothing to contribute to a safer society (Hartnett, 2011).

A weakness of this perspective is that it gives little attention to the victims of crime and the impact of criminal behaviour on communities.

Refer to Table 1.1 for a summary of the three perspectives.

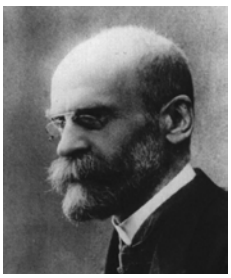
TABLE 1.1 Perspectives on Crime, Criminal Offenders, and the Criminal Justice System

TOPIC	CLASSICAL (CONSERVATIVE) PERSPECTIVE	POSITIVIST (LIBERAL) PERSPECTIVE	CRITICAL (RADICAL) PERSPECTIVE
Political System	Proponents of this perspective believe the political system in Canada, and capitalism, are sound.	Proponents of this perspective believe the political system in Canada, and capitalism, need improvement to promote socio-economic equality.	Proponents of this perspective believe the principles of capitalism are unsound, and cause the rich to exploit the poor.
Focus of the Corrections System	The corrections system should focus on victims of crime, including the community.	The corrections system should focus on offender rehabilitation and prevention.	The focus of this perspective is how inhumane the corrections system is.
Primary Values	Its primary values are "law and order" and social order.	Its primary values are individual rights and humane treatment: "doing justice."	Its primary values include socio-economic equality: "no classes, no exploitation."
Cause of Crime	Crime is caused by a breakdown of traditional institutions and values; lack of discipline in society; and a criminal justice system that is not tough enough.	Crime is caused by social injustices such as racism and poverty. Crime is a result of society not meeting the needs of its citizens.	Crime is caused by the inherent inhumanity of capitalism and the rich.
How to Stop Crime	To stop crime, social order and discipline must be established, and punishment should be proportionate but severe enough to outweigh pleasure derived from criminal behaviour.	To stop crime, social order must be reformed to better meet the needs of marginalized and disadvantaged citizens; and the criminal justice system should focus more on rehabilitation.	To stop crime, capitalism must be replaced with socialism.
Historical Influences	Historical influences of this perspective are the classical and neoclassical schools of criminology.	The main historical influence of this perspective is the positivist school of criminology.	The historical influences of this perspective are Karl Marx and contemporary criminologists, such as Welch and Lynch.

The Functions of Punishment

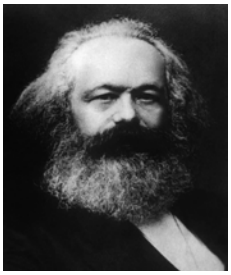
Historically, and in contemporary times, there have been various perspectives offered on the functions of punishment. One observer, for example, noted the study of punishment by sociologists has been characterized by "a noisy clash of perspectives and an apparently incorrigible conflict of different interpretations and varying points of view" (Garland, 1991, p. 121). The works of Émile Durkheim, Karl Marx, and Michel Foucault illustrate the range of sociological perspectives on punishment and its role in society.

FIGURE 1.2 Émile Durkheim (1858–1917)



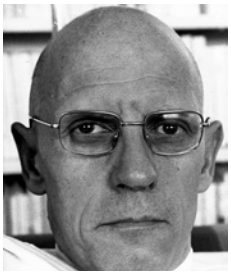
French sociologist, social psychologist, and philosopher.

FIGURE 1.3 Karl Marx (1818–1883)



German philosopher, economist, sociologist, journalist, and revolutionary socialist.

FIGURE 1.4 Michel Foucault (1926–1984)



French philosopher, historian of ideas, social theorist, philologist, and literary critic.

Sociological Perspectives on Punishment

Historically, sociologists have made significant contributions to the study of punishment and its functions in society. Thus, sociologists are the focus of this discussion. Three prominent scholars represented in the literature are Émile Durkheim (Figure 1.2), Karl Marx (Figure 1.3), and Michel Foucault (Figure 1.4).

For Durkheim, punishment was a moral process serving to reinforce and preserve shared values and norms in society. Punishment not only sanctioned offenders but served to strengthen the solidarity of the social order. The criminal law, through which punishment was administered, reflected core moral values.

The rituals of punishment, including the use of incarceration, were expressive:

> In reacting against violators of the conscience collective, penal institutions demonstrate the material force of basic social values and restore collective confidence in the integrity and power of the moral order … Punishment is directed less at the individual offender than at the audience of impassioned onlookers whose cherished values and security had been momentarily undermined by the offender's actions. (Garland, 1991, p. 123)

Among the critiques of Durkheim's perspective on punishment is the argument that the law and the response to offenders may serve to marginalize certain groups in the community, thereby promoting divisions rather than solidarity. This may occur, for example, when legislation criminalizes a portion of the population for behaviour such as drug use (Garland, 1991).

The Marxist perspective focuses on punishment as an instrument of the ruling class to preserve the economic order and ensure maintenance of the status quo. This includes the subjugation of marginalized persons and groups. Penal policies are used to maintain class rule and are part of a wider strategy to control the poor. The high numbers of vulnerable and marginal persons in the criminal justice and corrections systems are cited in support of this perspective. On the other hand, Marx did not consider that there is broad public support for most laws.

In his book *Discipline and Punish*, Foucault (1975) documented the transition from corporal and capital punishment to the expanded use of prisons in the late 1700s. This evolution was viewed as a shift from traditional punishments focused on the crime to efforts to understand criminals and their offences to effect reformation. Punishment moved from the public realm into the invisible confines of the prison and experts became involved in efforts to reform individuals. Foucault sought to analyze punishment in its social context and to examine how changing power relations affected punishment. In his view, the calls for reform of punishment in the 18th century were designed not to improve the welfare of prisoners but to increase the efficiency of the exercise of power over individuals. The prison

was a manifestation of this total control over offenders, and the so-called Enlightenment, in Foucault's view, was nothing more than increased oppression.

The Objectives of Punishment

Closely related to the perspectives on crime and criminal offenders are the objectives of punishment. There are five principal justifications for punishing criminal offenders: retribution, denunciation, deterrence, incapacitation, and rehabilitation/reintegration (refer to Table 1.2). These, in turn, are associated with how criminal behaviour is viewed.

TABLE 1.2 Five Principal Justifications for Punishment

JUSTIFICATION FOR PUNISHMENT	FOCUS	PERSPECTIVE OF OFFENDERS	STRATEGY	JUSTIFICATION FOR RESPONSE
1. Retribution	Offence	Free agents who need to be held accountable for criminal behaviour	Punishment	Moral "just desserts"
2. Denunciation	Offence	Blame not affixed to offender; focus on expressing society's values	Express societal disapproval through sanction	Moral
3. Deterrence	Offenders and potential future offenders	Rational beings who weigh the costs/benefits of their choices	Certain, swift, and severe punishment	Crime prevention
4. Incapacitation	Offenders	Need constraints, not trustworthy	Imprison people so they cannot further offend	Control and public safety
5. Rehabilitation/ Reintegration	Needs of offenders	Moral beings who make mistakes and will respond to correctional programming	Provide programming and support for re-entry into society	Correct individual-level factors that increase risk for criminal behaviour

As we will see throughout the text, Canada's laws and systems of corrections have long been influenced by the various punishment perspectives. In short, ideas on punishment go in and out of fashion. There is a "swinging pendulum" wherein at certain points in history there has been an emphasis on one punishment perspective, while at other times other perspectives have predominated (Walgrave, 1991). Myriad factors may explain shifts in perspectives on punishment and its objectives, including changes in the political landscape, economics, social movements, and perceived threats to the safety and security of citizens. In Chapter 2, to illustrate these changing perspectives on crime, offenders, and punishment, we will trace the emergence of the prison in Canada and show how prison architecture reflects philosophies of corrections.

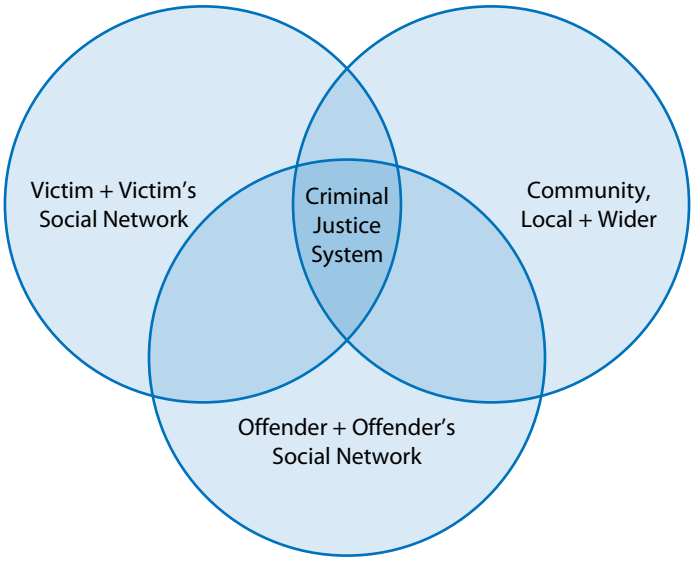
Restorative Justice: An Alternative Approach to Crime and Criminal Offenders

Concerns about the effectiveness of the traditional adversarial system of criminal justice and a variety of other influences have led to the search for alternative ways to respond to

restorative justice an approach to responding to offenders based on the principle that criminal behaviour injures victims, communities, and offenders, and that all of these parties should be involved in efforts to address the causes of the behaviour and its consequences

people in conflict with the law. **Restorative justice** is based on the principle that criminal behaviour injures not only victims but also communities and offenders, and that efforts to address and resolve the problems created by criminal behaviour should involve all of these parties (refer to Figure 1.5).

FIGURE 1.5 The Relationships of Restorative Justice



Many concepts and processes inherent in restorative justice initiatives reflect Indigenous teachings and cultural practices, although restorative justice and Indigenous justice are different (e.g., Chartrand & Horn, 2016).

Key features of restorative justice initiatives integrated in the traditional criminal justice system are healing, reparation and reintegration, and the prevention of future harm. Restorative justice initiatives focus on problem-solving with the primary objectives of addressing the needs of victims and offenders, involving the community on a proactive basis, and fashioning sanctions that reduce the likelihood of reoffending.

Offenders are required to acknowledge and take responsibility for their behaviour, and efforts are made to create a "community" of support and assistance for the victim and the offender and to address the long-term interests of the community. In fact, a key feature of restorative justice strategies is the community's involvement in addressing the issues surrounding criminal offending. This places community residents in a proactive, participatory role—one that is not typically available in traditional justice processes.

Restorative justice approaches attempt to address both the ethical and legal dimensions of justice. The ethical objectives of justice are, ideally, achieved by all parties—including the victim, the offender, and the community—feeling that their concerns, feelings, and rights are respected. The legal objectives of justice are also addressed, in that throughout restorative justice processes the legal rights of all parties are safeguarded (Tonry, 1991). Read the selection "Forgiveness: The Margot Van Sluytman Story" listed in the Additional Reading section at the end of the chapter.

Key differences between restorative justice and the traditional, adversarial justice system are listed in Table 1.3.

TABLE 1.3 Comparison of Traditional/Adversarial and Restorative Justice Principles

TRADITIONAL/ADVERSARIAL JUSTICE	RESTORATIVE/COMMUNITY JUSTICE
Crime violates the state and its laws.	Crime violates people and relationships.
Justice focuses on establishing guilt so that doses of pain can be meted out.	Justice aims to identify needs/obligations so that things can be made right.
Justice is sought through conflict between adversaries in which the offender is pitted against state rules, and intentions outweigh outcomes—one side wins and the other loses.	Justice encourages dialogue and mutual agreement, gives victims and offenders central roles, and is judged by the extent to which responsibilities are assumed, needs are met, and healing (of individuals and relationships) is encouraged.

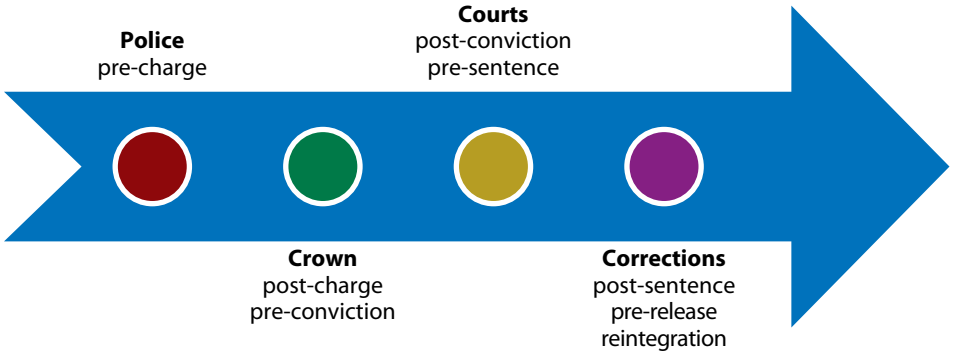
Source: Zehr (1990).

Note there are several "entry" points in the traditional criminal justice system where restorative justice approaches can be used (refer to Figure 1.6). Further, although restorative justice approaches can be used in cases where the offender is incarcerated, this is less common than its use as an alternative, community-based measure (refer to Chapter 5). Refer to the video "The Cop and the Ex-Criminal: The Power of Restorative Justice" for a unique perspective of the power of restorative justice initiatives offered in the community.

DIG DEEPER

1.7 The Cop and the Ex-Criminal: The Power of Restorative Justice
www.emond.ca/CC7/links

FIGURE 1.6 Restorative Justice: Entry Points in the Criminal Justice System



Restorative justice initiatives have been operating in Canada for several decades. Despite the existence and use of such initiatives, surveys reveal many people have a low level of knowledge about restorative justice. Yet, public opinion surveys have consistently found most Canadians support alternative measures, including restorative justice programs, that provide an opportunity to address the needs of victims, survivors, and accused/convicted individuals (Department of Justice Canada, 2018).

Restorative justice advocates are concerned these approaches have remained at the fringes of the traditional criminal justice system due to the absence of a comprehensive plan for how restorative justice practices can be a core component of the justice process. Existing programs are often "one-offs" operated by individual community-based organizations that are dependent upon "soft" government funding, which may be unpredictable. This challenge exists despite efforts over the past three decades to educate criminal justice professionals about the benefits of restorative justice (Abramson, 2018). The challenges that have been experienced in moving restorative justice practices into the mainstream criminal justice system are evidence of how resistant the system is to change.

Corrections, Punitive Penology, and Penal Populism

punitive penology
a response to criminal offenders characterized by severe criminal sanctions, including "tough-on-crime" legislation

penal populism
corrections policies that are formulated in pursuit of political objectives, often in the absence of an informed public or in spite of public opinion, and that are centred on being "tough on crime"

A key concept in understanding corrections is that of **punitive penology**, which is characterized by laws and correctional policies that increase the severity of criminal sanctions and expand the control exercised over offenders by systems of corrections.

The consequences of this phenomenon may include "tough-on-crime" legislation, including an increase in mandatory minimum sentences, increased carceral populations, a de-emphasis on funding and supporting rehabilitation programs within institutions, and fewer resources directed toward community-based programs and services for offenders (Roberts et al., 2003).

Penal populism occurs when politicians advance "tough-on-crime" policies that appeal to the public to improve their chances of re-election but that do little to reduce crime rates or to ensure justice is achieved. These policies often do not reflect public opinion, or they are formulated in the absence of an informed public (Roberts et al., 2003).

A good example of punitive penology and penal populism is provided by the response to criminal offenders in the United States and how this approach has changed in recent years (refer to Corrections File 1.1).

CORRECTIONS FILE 1.1

Mass Incarceration and the Move Toward Decarceration in the United States

In the 1970s, criminal justice policies in the United States began to shift away from rehabilitation and toward retribution. As a result of punishment emerging as a political issue, indeterminate sentences were replaced with determinate (fixed) ones, including mandatory minimum sentences. The purpose of this approach and other initiatives was to reassure the public that something was being done about the crime problem (Page, 2011). The rate of incarceration in the United States quadrupled from 1972 to 2007. While it has decreased since then, as of 2025, nearly 2 million individuals were imprisoned across the country (Sawyer & Wagner, 2025).

By the early 21st century, many American states were confronting the realities associated with their "get tough" policies, and this marked the advent of penal moderation, an era of what has been referred to as *mass decarceration*. This shift was due to several factors, including:

- the high costs of incarcerating large numbers of people (the United States spends approximately $81 billion annually on public prisons and jails) (Prison Policy Initiative, 2025);
- court decisions holding that overcrowding in correctional institutions was unconstitutional;
- the efforts of advocacy groups and researchers arguing that drug laws, in particular, were discriminatory against racialized persons;
- a decline in public support for punitive policies in favour of rehabilitation; and
- evidence that incarceration was not increasing the safety and security of communities by effectively addressing either the offender's or society's needs and reducing the rates of reoffending (Petersilia, 2016; Petrich et al., 2021; Ramirez, 2013; Schoenfeld, 2016).

In 2018, the US Congress passed the *First Step Act* that was designed to reform sentencing laws and federal correctional institutions to reduce the federal incarcerated population while maintaining public safety. To date, provisions of the Act have expedited the release of nearly 45,000 people (Brenner & Wylie, 2024). In 2025 in the United States, under the federal Republican government, there appeared to be a swinging of the pendulum back to a more enforcement/incarceration approach.

The discussion in Chapter 2 will reveal that Canada has experienced a similar process whereby a punitive penology was implemented by a federal Conservative government, only to be challenged by the courts, and, to a lesser extent, by its Liberal government successor.

A 2023 survey administered by Justice Canada and involving nearly 5,000 Canadians aged 18 and older found moderate levels of confidence that the criminal justice system is fair and accessible to all people. There were high levels of support for the use of restorative justice processes despite more than half of the respondents knowing very little about restorative justice initiatives (Duff, 2024).

Bias, Discrimination, and Racism in Systems of Corrections

> *There's absolutely no doubt in my mind that there is systemic racism in federal corrections.*
>
> —Federal Correctional Investigator, October 2020
> (as cited in Cardoso, 2020, para. 20)

A key theme of the text is that there is evidence the criminal justice system in Canada, including systems of corrections, discriminates against Indigenous peoples, members of racialized groups, persons living in poverty, and those who are vulnerable and at-risk (e.g., gender-diverse folks). Prisons are disproportionately populated with Indigenous peoples, Black persons, persons who live on the margins of society, and those with mental health issues.

Concerns exist about how correctional services treat these populations. To illustrate, in late 2023, a class action lawsuit was filed against the Correctional Service of Canada (CSC) with current and former federally sentenced Black persons alleging they were the victims of anti-Black systemic racism (Fagan, 2023).

When the Liberal government was elected in 2015, they made various promises to facilitate correctional reform. In November 2022, the Senate passed a Liberal bill to reduce the number of mandatory minimum sentences for drug- and tobacco-related offences and some offences involving firearms. This legislation targets offences that contribute to the overrepresentation of Indigenous and Black people in the criminal justice and corrections systems. Further, it expands the use of conditional sentences (discussed in Chapters 4 and 5) for individuals who do not present a high risk to the public, and it increases the use of diversion for crimes such as simple possession of drugs (Department of Justice Canada, 2023). Critics argue the bill does not go far enough to expand judicial discretion to allow for more extensive use of conditional sentence orders (Cimellaro, 2022) or to address judicial biases (Goudou, 2024) against Indigenous and Black persons.

Other measures the Liberal government has initiated to address the overincarceration of Indigenous peoples and racialized persons include funding to enhance the use of Gladue Reports for Indigenous peoples before the courts, and Impact of Race and Culture Assessments for racialized persons before the courts (both are discussed in Chapter 4; Department of Justice Canada, 2023).

In early 2025, the Liberal government released Canada's first federal Indigenous Justice Strategy. The Strategy is to address systemic discrimination toward Indigenous peoples and their overrepresentation in Canada's criminal justice system (Department of Justice Canada, 2025). The Strategy, developed in collaboration with diverse Indigenous peoples and nations, provides funds for various initiatives, including the revitalization of Indigenous

laws and legal systems, the Indigenous Courtwork Program (https://www.justice.gc.ca/eng/fund-fina/gov-gouv/acp-apc/index.html), and the Indigenous Justice Program (https://www.justice.gc.ca/eng/fund-fina/acf-fca/ajs-sja/index.html).

Notably, the history of Canadian corrections is replete with efforts to reform what many would call an unreformable system.

SUMMARY

This chapter has examined the various perspectives on crime, criminal offenders, the criminal justice system, and punishment. Responses to persons convicted of crime have always been strongly influenced by social, political, religious, economic, and demographic factors. Because of this, explanations for why people commit crime and the most appropriate response to those who engage in crime are constantly changing. The three general perspectives of crime, offenders, and the criminal justice system are the classical (conservative), positivist (liberal), and critical (radical) schools of thought. There are also differing views on the functions and objectives of punishment and several justifications offered for why offenders are punished.

Restorative justice was introduced as an approach to responding to crime and criminal offenders—with such initiatives integrated at various points in the traditional criminal justice system. The basic principles of restorative justice were discussed and a comparison with the retributive approach of the traditional adversarial criminal justice system was offered.

Two key concepts in understanding corrections are punitive penology and penal populism, both of which highlight how punishment can become a political issue. Also, it is important to note the increasing attention being given to bias, discrimination, and racism in Canadian criminal justice, and the overrepresentation of Indigenous and Black people in correctional populations.

KEY POINTS REVIEW

- There are several explanations for correctional change.
- The history of imprisonment dates back to around 2000 BCE.
- How societies and groups have chosen to respond to those who violate norms, mores, and laws has varied over the centuries.
- Developments in England had an impact on the emergence of corrections in Canada.
- Imprisonment became a core component of the sanctioning process in England in the 16th century (1500s).
- There are competing perspectives on crime and criminal offenders and on what the objectives of corrections should be.
- Both historically and during contemporary times, various perspectives have been offered on the functions of punishment.
- Various sociological perspectives on punishment are reflected in the works of Émile Durkheim, Karl Marx, and Michel Foucault.
- The objectives of punishment include retribution, denunciation, deterrence, incapacitation, and rehabilitation/reintegration.
- Restorative justice is an alternative approach to crime and criminal offenders that operates on principles considerably different from the adversarial system of criminal justice.

KEY TERM QUESTIONS

1. What is the definition of *corrections*?
2. What is the difference between *corporal punishment* and *capital punishment*?
3. What is the relevance of the practices of *galley slavery*, *transportation*, and *hulks* to the study of Canadian correctional history?

4. How is *punishment* commonly defined?
5. What are the basic tenets of the *classical* (conservative), *positivist* (liberal), and *critical* (radical) perspectives on crime, offenders, and the criminal justice system?
6. Define *restorative justice* and discuss how its principles differ from those of the traditional adversarial criminal justice system.
7. Discuss the concepts of *punitive penology* and *penal populism* and their role in the response to crime and criminal offenders.

CRITICAL THINKING EXERCISES

1.1. Perspectives on Crime, Criminal Offenders, and the Criminal Justice System

Review Table 1.1 on the perspectives on crime, criminal offenders, and the criminal justice system.

1. In your view, which perspective on crime, criminal offenders, and the criminal justice system is most valid?
2. Which of the three approaches (conservative, liberal, and radical) comes the closest to your views?

1.2. Penal Populism: The Relationship Between Punishment and Politics

Politics play a key role in the ever-shifting perspectives on crime, offenders, and punishment. Go online and find three examples in the media that reflect various political views of accused and convicted persons and the most appropriate response to crime.

1. In what ways does social media contribute to public perceptions of crime, violence, and objectives of punishment in Canadian society?

CLASS/GROUP DISCUSSION EXERCISES

1.1. The Death Penalty

Refer to the short video, "The History of Capital Punishment in the United States" (https://youtu.be/D9DtjJFQnmY).

1. What does the brief video reveal about the factors that influence punishment generally?
2. What were the key influences on the use of capital punishment historically?
3. Which of these influences would you argue are present in Canada in the early 21st century?

1.2. Restorative Justice Programs/Initiatives: Is "Justice" Achieved?

Go online and find an example of a restorative justice program/initiative operating in your province or territory.

1. Who operates and funds the program/initiative?
2. At what stage of the criminal justice system is the program/initiative available?
3. Who are the key participants in the program/initiative?
4. What is known about the effectiveness of the program/initiative?
5. What are your thoughts about how this program/initiative may help achieve "justice" for victims, the community, and accused/convicted persons alike?

MORE MEDIA

Visit www.emond.ca/CC7/links to find direct links to the media listed here.

Additional Reading

- John Howard Society of Canada. (2017, September 21). *Forgiveness: The Margot Van Sluytman story*.
- John Howard Society of Canada. (2019, November 2). *Why we like punishment*.
- Penal Press. (n.d.). *Documenting prisons from within*. The Gaucher/Munn Penal Press Collection.
- The Proceedings of the Old Bailey: London's Central Criminal Court, 1674–1913.

Additional Dig Deeper

- 1.8 The Death Penalty: Capital Punishment
- 1.9 Recovering from Crime
- 1.10 What Actually Happened to Criminals Sent to Australia?

Podcasts

- *A Social History of Punishment*—The Brian Lehrer Show.
- Cruel and Unusual: A Podcast on Punishment. A diverse range of podcast episodes, hosted by Zachary Baron Shemtob, examining punishment in the United States and throughout the world.