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Introduction to Criminal Justice

A. Origins of Criminal Law:

1. Consensus Model:

- a. Law reflect the need for order
- b. Law results from a consensus on widely shared values in society
- c. Law is an impartial system to protect the public
- d. Law provides a neutral means of resolving disputes

2. Conflict/Critical Model:

- a. Politically powerful groups influence the content of criminal law
- b. "Mala Prohibita" offenses are prohibited by governments, but not wrong in themselves
 - Laws that are bad because we say they are bad, but not necessarily negative
 - Laws made to maintain order
- c. "Mala in se" crimes so harmful they must be punished
 - Crimes thats are wrong in themselves
- d. Harsh penalties are sometimes enforced on the poor or disadvantaged
- e. Powerful people are given lighter sentences

3. Main types of Crime:

a. Occupational

- Crimes committed within the framework of legal business
- White collar crimes
 - ~ Crime committed by the powerful
- Crimes that can be done in a way that they will never be discovered

b. Organized Crime:

- Victimless crimes (called victimless because the people involved do not feel harmed)
- Usually in fields such as gambling, drugs, prositution
- Providing illegal services that are in great demand
- A network, crimes can take place over national and state borders
- Usually associated with the Mafia



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c. Visible Crime:

- Offenses committed by primarily the lower class
- Most upsetting to the public
- Violent crimes: crimes against people where death or physical harm results
 - ~ rape, assault, homicide, robbery
- Property Crimes: crimes that threaten a property and people that own them
 - ~theft, larceny, burglary, embezzlement
- Public Order Crimes: Threaten the well being of a society, challenge moral values
 - ~public drunkenness, vandalism, disorderly conduct



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The Rule of Law

I. Criminal law vs. Civil (or Tort) Law:

A. Criminal Law:

1. Laws that defines what acts are subject to punishment, and what punishments belong to what offense
2. You can be found guilty and punished in a criminal court
3. Crime is a public offense
4. Right of enforcement belongs to the state
5. Fines go to the state

B. Civil Law:

1. Laws that regulate relationships between people, involving problems with property or business
2. You can not be found guilty or punished in a civil court; you can only be found liable
3. The individual is responsible for the harm done

II. Procedural Criminal Law and Substantive Law:

A. Procedural:

1. How the state must process cases
2. The law that defines the specific procedure that must be followed by criminal justice officials must follow in enforcing, adjudicating, and corrections

B. Substantive:

1. Laws that define what specific acts yield to punishment
2. Specifies the punishments for certain offenses
3. Often referred to as the penal code, and defines what actually is illegal

III. Felony vs. Misdemeanors

A. Felony:



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1. More serious crimes (i.e. rape, murder)
2. Punishment includes prison time of a year or more, or death penalty

B. Misdemeanor:

1. Less serious crimes (i.e. traffic violation)
2. Punishment includes: probation or jail time of a year or less

IV. General Characteristics of Criminal Law:

A. Politically:

1. Authorized legislatures determine laws

B. Specificity:

1. Law must be documented

C. Uniformity:

1. The law must apply equally to all people, i.e. can not be racist

D. Penal Sanction:

1. All offenses must be punished
2. The penal code determines what is illegal, and what punishments should be enforced for certain offenses



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The Police: History

Police: Initiators of the criminal justice system

I. Early English Police: The Frankpledge System:

- A. There was no organized police agency, rather families bonding together for protection
 - 1. all people of age (around 14) carried a gun or some defense. (where the idea of "right to bear arms" in our constitution originated from)
- B. Tithing: 10 families bonded together
- C. Ten tithing bond together to make a group of one hundred, lead by one constable
 - 1. When Constable was working, he was referred to as the "Constable on Patrol" or C.O.P. for short, hence the reason why we refer to police officers as COPS.
- D. Hundreds of these groups formed together to form shires, supervised by shire reeves
 - 1. When Shire Reeve was on duty, he was referred to as "Shire Reeve on patrol," or Sheriff for short, hence the reason we refer to the head COPS as Sheriffs

II. The Watch System: 13 Century:

- A. Judicial duties were appointed to the "Justice of the Peace"
- B. Constables were assistants to the justices of the peace
- C. Watchmen Style:
 - 1. style of policing was informal, and even young boys of age 14 were appointed to help
 - 2. caretaking and maintaining order are the main responsibilities of officers

III. 18th Century: English Policing:

- A. Crime dramatically increases at the start of the Industrial Revolution
- B. The Metropolitan Police Act (MPA) was founded in 1829, and it created the first organized police force
- C. Goals of the MPA:
 - 1. prevent crime, without the use of force
 - 2. nonviolently maintain order
 - 3. reduce conflict between public and police
 - 4. show efficiency of system through deterrence of crime

IV. American Colonial Experience:

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- A. County Sheriff is most important law enforcer
 - 1. investigates complaints
 - 2. ran jail
 - 3. collect taxes, supervise elections
- B. Town Marshall, responsible for urban areas
- C. Vigilante groups are used to eradicate social problems
 - ex. KKK

V. 19th Century Policing:

- A. Mob violence prompts the creation of police agencies
- B. Increased crime rates lead to need of greater police agencies



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Courts and Adjudication

I. Federal:

- A. Jurisdiction over federal crimes
- B. Supreme Court, Circuit Court of Appeals, District Courts

II. State:

- A. Jurisdiction over state crimes
- B. Court of Last Resort, Court of Appeals, Trial Courts of General Jurisdiction, Lower Criminal Courts

III. Criminal Court Structure:

- A. Arranged like a pyramid
- B. Each jurisdiction is defined by laws

IV. Four Tier State Court Systems:

- A. Lower Criminal Courts:
 - 1. limited in what they can do
 - 2. These courts generally hear minor cases
 - 3. occasionally conduct pretrial activities for more serious cases
 - 4. This level of the court system is also known as limited jurisdiction
- B. Trial Courts of General Jurisdictions:
 - 1. These courts have exclusive jurisdiction to see felony cases
- C. State Appeals Court:
 - 1. An appeal is based on some contention of law
 - 2. Usually, more than one judge will review the case
- D. State's Court of Last Resort:
 - 1. This type of court is present in all states
 - 2. This is often referred to as the state's supreme court



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V. Specialty Courts:

- A. Focus is on a particular kind of case
- B. Specialization can be based on a number of different criteria:
 - 1. alleged perpetrator
 - 2. type of crime
 - 3. factors associated with the crime

VI. Federal Courts:

- A. US Supreme Court:
 - 1. highest court, court of last resort
 - 2. may choose to hear/not hear case
 - 3. decisions become precedents
- B. US Court of Appeals:
 - 1. aka, circuit courts because the jurisdiction covers a large geographical area
 - 2. can be found in major cities
 - 3. cases involve constitutional issues
- C. US District Courts:
 - 1. Each state has at least one federal district court
 - 2. 94 districts in the US
 - 3. Primary trial court of the US system



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Pretrial Process:

I. Importance of Pretrial Process:

A. Pretrial procedures are important components of the criminal justice process because the great majority of all criminal cases are resolved before the trial occurs.

II. Misdemeanor Procedures:

A. Usually released from police custody

1. release you on the assumption that you will return for court
2. filing of an information

B. Complaint filed, usually by police; the formal complaint identifies:

1. criminal charges
2. date and place of the crime
3. circumstances of the arrest

III. Arraignment (AKA Initial Hearing):

A. Step at which the accused are read charges against them and are asked how they will plea

B. Possible pleas:

1. guilty
2. not guilty
3. nolo contendere (no contest) you except the penalty, but are not admitting your guilt
4. not guilty by reason of insanity (depends on jurisdiction)

IV. Felony Procedures:

A. Because the crime is more serious, an intermediate step is required. This step defines the probable cause that a crime has been committed, and that the accused should be tried.

V. Bail:

A. The constitution guarantees our right to no excessive bail in the 8th Amendment

B. Does not guarantee that one will receive bail, but if they do it will not be excessive

VI. Purposes of Pretrial Release Services:

A. To improve the release and detention decisions

B. To identify those for whom alternatives to incarceration are appropriate

C. To monitor pretrial arrestees

D. Release options:

1. Conditional Release

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2. Supervised Release
3. Third Party Custody Release
4. Release on Recognizance (you must promise to show up)

VII. Grand Jury:

- A. Defendant and his/her lawyer are not present at the grand jury hearing
- B. Controlled by the prosecution
- C. One sided (ex parte) the accused is not allowed to attend
- D. Criticisms:
 1. Costly
 2. Causes delay of the case
 3. One sided and favors the prosecution



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Sentencing and Punishment

I. Appeals and Writs:

A. Appeals

1. when given the death sentence, there is an automatic appeal; all other appeals need filed

B. Writs

1. Habeas Corpus: writ to release the from confinement
(common occurrence)
2. Certiorari: appeal to review transcription on the assumption that the court made an error
(common occurrence)
3. Mandamus: the court in it's arrogance has failed to abide by the 6th ammendment
(rare occurrence)
4. Attachment: used in civil cases; sign everything the accused owns over to the government so that all of their possessions can be used to pay back what they owe

II. Goals of Punishment:

A. General Deterrence:

1. By punishing one, many are deterred

B. Specific Deterrence:

1. To prevent recidivism on part of the convicted

C. Retribution/Just Dessert:

1. Punishment fitting the crime and "eye for an eye"

D. Incapacitation:

1. Disabling the convicted in some way from re-committing
2. a.k.a. isolation

E. Rehabilitation:

1. Treating the offender so he/she can eventually readjust to society



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F. Equity/Restitution:

1. Paying back victims, the criminal justice system, or society

III. Forms of Punishment

- A. Fines
- B. Community Service
- C. Incarceration
- D. Capital Punishment

1. It is cheaper to keep a person in prison for life than to put them on death row, because of the many appeals they file



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Release and Supervision in the Community

I. Parole:

- A. Parole is: the conditional release from incarceration while remaining in a state of custody according to specific conditions.
- B. Parole in essence is a contract with the jurisdiction; and the demands of the contract must be met in order to stay out of prison.
- C. Parole is the extension of a sentence; Parole is not granted by the judge or the courts
- D. Alexander Maconochie:
1. First to come up with the idea of parole
 2. Believed prisoners were capable of reformation
 3. Established 3 grades for prisoners, and each grade allowed for more freedom
 4. Prisoners could earn their way to the next grade by good behavior and good work
 5. Parole was called "Ticket of Leave"
 6. Maconochie's system allowed for an unsupervised parole
- E. Sir Walton Crofton:
1. Used Maconochie's system in the Irish Prison System
 2. He added conditions to the system, which could result in one being returned to prison
 - a. Idle of dissolute living
 - b. Association with ex-cons
 - c. Lack of visible means of support
 3. Release from prison was based on discretion
 4. Crofton added supervision to his "ticket of leave" system
- F. Parole Boards:
1. Independent state agency
 2. Sometimes a part of the State Dept. of corrections
 3. Members are appointed, and usually no professional statutory is required
 4. Primary Functions:
 - a. Supervise paroles in the community
 - b. To determine when parole is complete and discharge parolees
 - c. To determine if parole revocation should take place



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G. Parole Guidelines:

1. Guidelines for parole which help the parole board to decide:
 - a. good decisions
 - b. limit their discretion

H. Conditions of Parole:

1. Rules fall into 2 categories:
 - a. general rules required of all parolees
 - b. specific rules, applied to individual cases
2. Rules prohibit some behaviors, but allow others
3. Violation of rules may lead to re-imprisonment
4. Generic Conditions that must be followed for most jurisdictions:
 - a. must have a job
 - b. must report to parole officer
 - c. no drugs/alcohol
 - d. no contact with ex-cons
 - e. must get permission to marry



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Corrections

*Corrections are the number of programs, services, etc. that are responsible for the management of people accused or convicted of criminal offenses.

I. Furloughs:

- A. Authorized leaves from confinement for specified time periods and for specific purposes
- B. Reasons may be academic or vocational

II. Halfway Houses:

- A. Provide a transition placement before parole or expiration release

III. Handicaps of released prisoners:

- A. Long absence from family and friends
- B. Legal and practical limits on employment
- C. Suspiciousness of acquaintances
- D. Strangeness of everyday living

IV. Recidivism Rates:

- A. Recidivism is the return to criminal behavior
- B. It is popularly believed that recidivism rates are at 70%
- C. A 1983 federal study found that 63% of criminals were rearrested for a new crime
- D. A 1992 federal study found that 49% successfully completed parole

V. Profile of a Typical Recidivist:

- A. Release at age 24 or younger
- B. Had more than 7 prior arrests
- C. Has a history of escape attempts
- D. Has committed burglary, robbery, and property crime offenses
- E. First arrested at an early age
- F. Has a prior drug and violent crime record

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*In short term circumstances, parole does prevent recidivism

*In long term circumstances (2 or more years), it does not prevent recidivism

VI. Pardons:

A. Reasons for granting a pardon:

1. To remove stigma of a conviction
2. To mitigate a penalty
3. To remedus a miscarriage of justice

B. Pardons are only granted by the president or a state governor

VII. General Rights that are lost after Parole: (varies with jurisdiction)

- to vote
- hold public office
- to an occupational
- to serve on a jury
- to be a witness
- to life and auto insurance
- to adopt children



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Juvenile Justice

I. Paren Patria:

- A. originated by the early English, gave the King rights to take a child from parents if he/she could not be properly supervised
- B. America adopted this system; it meant that the state was to act on behalf of the parent in interests of the child
- C. In the 1960's, the emphasis began to focus on a due process approach for the juvenile and put into reform schools and juvenile homes; run like a prison.
- D. Bad children, who created mischief and could not be supervised, were taken out of their homes

II. Juvenile Justice in the US:

- A. The Puritan Period (1646-1824)
 - 1. Major Developments: Stubborn Child Law in Massachussettes (1946)
 - 2. Causes: Puritan view children as evil
- B. The Refuge Period (1824-1899)
 - 1. Major Developments: Institutionalization of deviants, House of Refuge in New York
 - 2. Causes: Enlightenment; immigration and industrialization
- C. Juvenile Court Period (1899-1960)
 - 1. Major Developments: Establishment of a seperate legal system for juveniles
 - 2. Causes: Reformism and rehabilitation of ideology; increased urbanization, industrialization, and immigration
- D. Juvenile Rights Period (1960-1980)
 - 1. Major Developments: Increased legalization of the juvenile law; the Gault decision, and the Delinquency Prevention Act
 - 2. criticizes system on humane grounds; civil rights movement
 - 3. Gault: Law that gave due process to juveniles
- E. Crime Control Period (1980-present)
 - 1. Major Developments: Concern for victims, punishment orientating transfer to adult court, protect from abuses
 - 2. Causes: A more conservative public attitude; focus on serious crime by repeat offenders



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Juvenile Justice (Con't)

I. Modern Juvenile Courts:

- A. Adversarial in nature
- B. Concerned with the control of the chronic offender
- C. Tougher sentencing laws
- D. Earlier waiver to adult court jurisdiction
- E. The modern juvenile court system is cracking down on juveniles, and much more tough on them

II. Loco Parentis:

- A. loco parentis means to: "take the place of the parents"
- B. when a student is in school, the school administration has authority over the student
- C. The school administration adopts the role of the parent while child is under their care
- D. School administration has the right to search and seizure, and fourth amendment rights do not apply to the juvenile at this time.
- E. loco parentis only can be applied to grade school where most students are juveniles; generally this law does not apply to college students

III. Who is a juvenile?

- A. Age of juvenile is determined by jurisdiction
- B. Statutory provisions exist in each state, which allow juveniles to be tried as adults in a criminal court
- C. Juveniles are not entitled to public trial
- D. Judicial waiver
- E. Legislative Waiver

IV. Definition of a Juvenile:

- A. Juvenile Delinquents: Crime committed by a child that would be seen as wrong if an adult committed the same crime.



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B. Status offender: a child can commit a wrongful act that would not be seen as wrong if committed by an adult.