

Week 1 - Foundations of Criminal Justice – What is a Crime?

Defining the Nature of a Crime

The definition of a crime or offence is fundamentally understood as "**a legal wrong that can be followed by criminal proceedings which may result in punishment,**" a concept popularized by academic Glanville Williams. This definition shifts the focus from the inherent nature of the act itself to the legal response it triggers. This perspective is mirrored in judicial history by **Lord Aitken** in the landmark case *Proprietary Articles Trade Association v AG (Canada)*, where he asserted that the "criminal quality" of an act cannot be identified through intuition or a specific moral standard; rather, it is defined solely by whether the act is **prohibited with penal consequences**.

International Human Rights Framework

The exercise of criminal law is bounded by international standards, notably the **Universal Declaration of Human Rights**. Under **Article 29**, while individuals have duties to their community to facilitate the full development of their personality, any limitations placed on their rights and freedoms must be determined by law. These limitations are only justifiable if they serve to secure **recognition and respect for the rights of others** or meet the **just requirements of morality, public order, and general welfare** within a democratic society.

Determining the Content of Criminal Law

There are several competing philosophies regarding how the state should decide what conduct becomes criminalized:

- **The Harm Principle (John Stuart Mill):** Mill argued in *On Liberty* that the only justified reason for the state to exercise power over a member of a civilized community against their will is to **prevent harm to others**. This principle raises critical analytical questions for legal scholars, such as whether "offense" constitutes harm, whether indirect harm should be included, and if the criminal law should ever be used for self-protection.
- **The Enforcement of Morality (Lord Devlin):** In contrast to Mill, Lord Devlin argued that society has a right to use the law to **preserve morality** as a safeguard for its own existence. He proposed a "test for immorality" based on whether specific conduct arouses feelings of **indignation or revulsion in ordinary people**. This approach views crime through the lens of inherent moral values or "public outrage," often raising the question of whether the law should simply reflect the morality of the majority.
- **Community Welfare and Public Interest:** This perspective views criminal law as a tool for the **maintenance of social order and national security**. It considers the financial and social costs to the community and balances individual autonomy against the collective welfare of the state.

The Purpose and Scope of Criminal Law

Criminal law serves a dual purpose in balancing power:

1. **Limiting the power of individuals:** It aims to keep the peace, allowing people to live in **reasonable security** by restraining liberty to promote a safer environment.
2. **Limiting the power of the state:** Criminal law and procedure act as a **shield for individuals against arbitrary state action**. It ensures that the government and police cannot impose punishment except according to established law, rather than based on political convenience or moral outrage.

Substantive vs. Procedural Law

The study of criminal justice is divided into two primary fields:

- **Substantive Criminal Law:** This focuses on the specific elements that make a person **guilty or not guilty** of a crime. The core requirement is that the state must prove its case **beyond reasonable doubt**.
- **Procedural Criminal Law:** This governs the system's operation, including **police powers** (arrest, search, use of force), **bail**, and **sentencing**.

The Criminal Process

The path from an alleged offence to a legal resolution involves ten distinct steps:

1. **Occurrence:** An alleged crime occurs, witnessed by or reported to police.
2. **Investigation Decision:** Police decide whether to investigate based on jurisdiction.
3. **Evidence Gathering:** Police collect statements, forensic evidence, and CCTV footage.
4. **Arrest:** A suspect is arrested once sufficient evidence is gathered.
5. **Charging:** The suspect is charged and becomes "the accused" or "the defendant," at which point they have the right to legal counsel.
6. **Custody/Bail:** The accused is either granted bail or remanded in custody.
7. **Case Building:** Police and the **Director of Public Prosecutions (DPP)** build the case, and the accused is served with the evidence against them.
8. **The Plea:** The accused pleads guilty (leading to sentencing) or not guilty (leading to a hearing).
9. **Hearing/Trial:**
 - **Local Court:** Heard by a **Magistrate** alone.
 - **District/Supreme Court:** Heard by a **Judge and Jury**.
 - *Note:* The **Jury is the judge of facts** (deciding guilt via a majority vote), while the **Judge is the judge of law** (applying legal principles to the case).
10. **Sentencing:** If found guilty beyond reasonable doubt, the accused is now referred to as the **"offender"** and is sentenced by the court.