Chapter 1: Introduction to Criminal Justice in Canada

This chapter provides context for the rest of the volume. It begins by noting two alternative models of criminal justice, and then reviews the core objectives and principles of criminal justice. These guide the exercise of discretion by professionals in the criminal justice system. The chapter then discusses the need for discretion in criminal justice decision-making. It is important to recognise the limits of criminal justice and the ways that the CJS disproportionality affects certain people. The chapter notes recent concern about the treatment of Black individuals, as well as the long standing problem of indigenous disproportionality in criminal justice statistics. Since it is important that the principles and practice of criminal justice are supported by the community, periodic reference is made to surveys that explore the views of the public.

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Criminal justice in Canada—as elsewhere—involves a complex system of checks and balances in which responsibility for a criminal case is divided among many different decision makers. The justice system is complex because it must respond to a wide diversity of crimes. If crime comprised only a limited number of proscribed acts, the criminal justice system (CJS) could adopt a uniform response to it. But criminal behaviour is very diverse, and the system needs to vary its responses accordingly. The CJS must respond to cases of premeditated murder, minor acts of vandalism or shoplifting, and all crimes between these extremes. In addition, even if they have been convicted of the same offence, no two offenders are ever alike.

The criminal law distinguishes between offenders in many ways. For example, people who intend harm are considered more blameworthy than others who inflict criminal harm through mere negligence. Likewise, two people convicted of burglary may have very different backgrounds. One individual may be more blameworthy (having planned the crime and pressured the other offender to join). Another may be more likely to re-offend. Consider a case of break and enter in which one offender is 45 years old and has six previous convictions for breaking into houses (as well as other crimes), while his co-accused is 18 with no previous convictions. The older offender appears to be a professional burglar, while the younger individual may simply have made a single bad decision. Even if they have committed the crime together, their life experiences and current circumstances are very different, and it is appropriate that the justice system treat them differently.

The Role of Discretion in Criminal Justice Decision Making

The most important element of criminal justice is the discretion that professionals exercise. This is a finely balanced issue, like many others in the field of criminal justice. Too much discretion increases the risk of discrimination and disparity of treatment. Judges who have wide discretion and little guidance as to how to exercise that discretion will impose sentences that vary greatly (Palys and Divorski 2004). On the other hand, when discretion is removed entirely, another form of injustice occurs.

Mandatory sentencing laws are a good example. These laws, which have proliferated across the United States and other nations, require judges to impose the same sentence on all offenders convicted of a particular crime—regardless of their individual circumstances. Canada operates a number of mandatory sentences and these have caused considerable injustice over the years, particularly with respect to Indigenous Canadians. Research has demonstrated that some mandatory minimum sentences are more likely to affect Indigenous defendants and this contributes to the high numbers of First Nations people in Canada's prisons. A just system will provide guidance for all actors in the criminal process: police, prosecutors, judges, probation officers, and parole boards, while allowing them the discretion to individualize their decisions to reflect the characteristics of individuals caught up in the criminal justice system. The Canadian public supports the existence of discretion by judges. A poll conducted in 2017 found that almost three-quarters of respondents wanted judges to have the flexibility to decide sentences—without the restrictions created by a mandatory sentence law. Only 4 percent endorsed the use of mandatory sentences that impose the same punishment on all offenders (Department of Justice Canada 2018, 23).

Two Models of Criminal Justice: Crime Control and Due Process

In thinking about criminal justice, its institutions and procedures, it is helpful to consider models of justice. Two competing models underlie western criminal justice systems. These are closely associated with the writings of Herbert Packer, a scholar who many years ago identified two distinct (and competing) models of criminal justice: *crime control* and *due process* (see Packer 1968).

As the name implies, the crime control model stresses the importance of controlling crime and endorses providing criminal justice professionals with considerable powers for responding to crime. Crime control advocates support giving police wide powers to search suspects, enter private residences, and detain persons suspected of a crime. In contrast, the due process model limits the powers of the criminal justice system to investigate and prosecute accused persons. Due process advocates argue that if the state—which has unlimited resources to prosecute suspects—is not subject to some limits, society will become intolerable, as people will be subjected to constant surveillance and police interventions. For this reason, we set limits on the powers and actions of the police, and indeed all state actors in the criminal justice system. For example we require police to obtain permission from a court prior to placing a wiretap on a suspect's telephone line. Similarly, police officers cannot stop and search a person without reasonable grounds for doing so. In these (and many other) ways, the due process model prevents the state from having unlimited power over the lives of suspects and accused persons. The due process model is therefore more concerned with protecting the rights of the accused and following legal procedure.

The two models differ in their concern for efficiency. Crime control advocates pursue the goal of preventing crime in the most efficient way, even if this means forgoing some due process safeguards. Crime control advocates favour the speedy resolution of cases without trials, and one way of achieving this is by offering defendants great incentives to plead guilty. When they do, this saves the CJS the time and expense of conducting a trial. Due process adherents worry about the possibility that these incentives to plead may induce some defendants to plead guilty even when they have a legal defence to the charge—just to get a more lenient sentence. If this occurred, it would be an obvious miscarriage of justice.

For almost every important issue in criminal justice, one can find crime control as well as due process approaches. Criminal trials provide examples of the conflict between due process and crime control models of criminal justice. During a criminal trial, an accused person is not obliged to take the stand and testify in his or her own defence. The onus is on the state to establish the guilt of the accused beyond a reasonable doubt, without any help from the testimony of the accused. The due process model defends this procedural rule by arguing that the accused should not have to cooperate with the state's case. In contrast, crime control proponents might argue that the accused *should* have to testify because this may be the only way to get to the truth.

A criminal justice system founded exclusively on due process or crime control principles would be troubling. Pursuing crime control to the total exclusion of due process considerations would inevitably

increase the number of persons wrongfully convicted because due process procedural safeguards provide the innocent with protection against a false accusation and subsequent prosecution.

Limits on the Powers of the CJS

A liberal society such as Canada places limits on the extent to which the state is allowed to intervene in the lives of its citizens. An authoritarian state would not be so restrained; its residents might be subject to random and unauthorized searches of their person and property, simply because the police harbour some suspicions. (Let's face it; there are quite a few such countries around the world). If the state granted itself unlimited powers to investigate, prosecute, and punish suspected offenders, we might all be constantly under suspicion. If arrested, we would struggle to defend ourselves—against the vast resources that the CJS can mobilize.

For example, if you are charged with a criminal offence, the prosecutor cannot spring the case against you on the first day of trial: you (and your lawyer) need to know the case against you in advance. In this way, you can prepare your defence—or have sufficient knowledge of the Crown's case to decide whether to plead guilty. In addition, the Crown (representing the state) must share all relevant evidence against the defendant with his or her lawyer. This duty to disclose is grounded in the accused's right to make a full answer and defence to the charge, and has been strongly endorsed by the Supreme Court of Canada (see *R. v. Stinchcombe*, [1991] 3 SCR 326).

The *Standard of Proof* is another important protection against state power. At trial, the prosecution has the burden of proving each element of the offence 'beyond a reasonable doubt.' In addition, it is not enough just to prove that it is more likely than not that the offender is guilty. It is not enough to prove that he committed the crime; the state must for most crimes prove that he *intended* to commit the offence.

Limits on the powers of criminal justice professionals are '*Due Process*' protections. The state should prosecute only in accordance with the principles of due process. If CJS professionals such as the police violate these principles, the court will intervene. Imagine that following an unauthorized search of your home, the police find evidence, which is then used to prosecute you. If the court accepts that the search was illegal, the evidence will normally be excluded. If that is the only evidence against you, the court will order an end to the state's prosecution. The evidence may conclusively demonstrate that you have committed a crime—but if it was illegally gathered, it will not be admissible.

A system that takes due process limits to the extreme would result in a higher number of wrongful acquittals: guilty people would evade punishment because the police would always be hampered in their search for incriminating evidence. For this reason, the Canadian justice system has elements of both perspectives.

A Question of Balance

Balance is the key consideration in criminal justice in Canada and other countries. The justice system must weigh the interests of the suspect, defendant, or offender against the interests of society. The Victim Impact Statement (VIS) at sentencing (discussed in Chapter 9) is a good example. Crime victims may depose a VIS to assist a court at sentencing. This right is now part of the Canadian Victims' Bill of Rights. The VIS documents the effect of the crime on the victim and the victim's family. It provides the court with a unique source of information about the offence from the person most directly affected: the crime victim. Yet if victims were allowed to say anything about the offender, or to make an emotional appeal for the court to impose a particular sentence (as is the case in many US jurisdictions), sentencing would become unfairly tilted toward the victim. The sentencing process would lose balance. For this reason, the VIS restricts victims to documenting the impact of the crime, and they are prevented from recommending a sentence to the court, or comment on the offender (Roberts 2012).

Criminal proceedings typically begin when a victim reports a crime to the police, yet this does not mean that the CJS is exclusively about victim welfare. Politicians talk about the victim being "at the heart of the justice system," but this is rhetoric; victims have many rights and are

entitled to a range of services, but a criminal prosecution in the adversarial system of justice involves only two parties: the State v. the Defendant. As a case moves through the criminal process—from arrest through to trial and followed by the imposition of sentence—a range of decisions will be made. The professionals making these decisions balance the interests of the victim, the due process rights of the defendant, and the broader public interest, as well as considerations of cost effectiveness. Some agencies associated with criminal justice (such as Victim Witness Assistance Programs, discussed in Chapter 9) are clearly victim-oriented, but the system as a whole has multiple (and potentially conflicting) objectives.

But even a balanced approach can result in miscarriages of justice. Chapter 17 shows that wrongful convictions can and do occur, resulting in the imprisonment of innocent people, sometimes for many years. The public is aware of the importance of this aspect of criminal justice. When asked to identify important objectives of the criminal justice system, reducing the chances of convicting an innocent person was identified as important by 83 percent of the national sample (Department of Justice 2017, 29).

The Supreme Court of Canada (SCC) is the ultimate arbiter of conflicts between the two models of criminal justice. Decisions of the SCC are binding upon Parliament and all courts in Canada. The Supreme Court hears arguments regarding the constitutionality of specific pieces of criminal justice legislation and decides whether a particular law is consistent with the rights guaranteed by the *Canadian Charter of Rights and Freedoms*. A law that goes too far in the direction of controlling crime may violate one of the provisions of the *Charter*. (The impact of the *Charter* on criminal justice is discussed in Chapter 2.)

The Primary Purposes of Criminal Justice: Punishment and Prevention

Cross-cutting the models of criminal justice, there are two competing objectives: *punishment* and *prevention*. The CJS attempts to prevent crime, but when prevention fails, offenders are punished. As with the models of justice, these perspectives can also clash. The best way of preventing crime may sometimes mean withholding punishment. The criminal justice response to young offenders offers a good example.

Young people lack the life experience and the moral and cognitive development of adults. As a consequence, they may be less able to comply with the law. For many young people, low-level offending occurs during a phase in their life; when this period passes, most young offenders cease to offend. This can be seen in the well-known 'Age-Crime' curve: the incidence of offending rises sharply in the late teens and then drops off equally steeply. This means that many young people who break the law will do so once or twice, and then never again. The State should be slow to punish these individuals because a conviction, even in youth court, can make matters worse. It may be more effective (and is certainly cheaper) to divert these cases away from the youth courts, and hold them accountable in some other way. Punishing young offenders by putting them through youth court, and ultimately imposing a punishment under the *Youth Criminal Justice Act* (YCJA) may satisfy society's desire to see offenders punished, but will often be more likely than diversion to result in re-offending. Research in other countries has shown that contact with youth courts makes the young offenders more, not less likely, to re-offend (McAra and McVie 2007). This is why youth justice systems around the world, including Canada, treat young offenders differently than adult offenders, often through the use of warnings or cautions (Alain and DesRosiers 2016; Winterdyk and Smandych 2012).

Prevention is always preferable to punishment. Crime prevention involves far more than the criminal justice system. Many agencies and systems outside the CJS contribute to crime prevention (Tilley and Sidebottom 2017). Mental health services, school programs and community agencies all play a key role in preventing crime. Despite its importance, prevention strategies generally take a back seat to punishment as a way of preventing crime. The courts and prisons account for a much larger slice of the criminal justice budget than crime prevention programs, yet community-based prevention programs offer better value for money in terms of

the volume of crimes prevented. Crime prevention initiatives that improve social conditions or increase employment opportunities prevent offending more effectively than the imposition of prison sentences on those who are prosecuted and convicted.

Crime prevention assumes many forms. Situational crime prevention is perhaps the most well known and most effective. There are three kinds of situational crime prevention. One involves *increasing the effort* that offenders must spend to commit a crime. Steering wheel locks, enhanced security barriers, sophisticated locks for property, and gun control involving time-consuming registration are examples of this form of crime prevention. *Increasing the risks* of detection is a second approach. More police patrols, more frequent or intrusive searches of persons at border controls, and enhanced baggage screening are all strategies that raise the likelihood of apprehending an offender. Finally, many businesses have *reduced the rewards* gained by criminal behaviour by lowering the amount of cash or valuables held in a facility.

The Limits of Criminal Justice in Preventing Crime

As noted, most people look to the CJS to reduce or prevent crime, yet the most important causes of crime, and the remedies for those causes, lie outside the scope of the system. Alcohol abuse is a prime example of a cause of crime that lies outside the scope of the criminal justice system. A defence lawyer once remarked that if alcohol were prohibited, her practice would dry up overnight. She was right: alcohol is the single most important trigger for many forms of criminal behaviour. Some of this alcohol-fueled criminality can be reduced through increased policing, and by court-imposed restrictions on offenders convicted of alcohol-induced crimes. However, the most effective solutions lie in better regulation of alcohol sales (including minimum pricing and discouraging incentives to over-consume); improved alcohol awareness education in schools; and more sophisticated licensing hour arrangements and other interventions that lie outside the CJS. As a society, however, we tend to see crime and disorder as problems that can be solved by more police, more prosecutions, and harsher punishments. Again, the Canadian public appears aware of the limits of criminal justice and the importance of community-based solutions to the crime problem. Most Canadians agree that a greater focus on community-based programs is an effective way to prevent crime.

Case Attrition

Another important limit on the criminal justice system concerns the attrition of cases through the system. Offenders appearing for sentence represent the tip of the proverbial iceberg, a very small percentage of all perpetrators. Of all crimes committed, only about 10 percent are reported to the police. Victims may not want to get involved with the CJS—because the crime was a personal matter, or was not that serious, or because the victim thought the police could or would do nothing about it. Of all crimes, then, only some will come to the attention of the police. Of those reported crimes, the police will only lay a criminal charge in a minority of cases—many will be dropped for various reasons, such as the police deciding no crime was actually committed. Once a charge is laid, some cases will drop out of the system because of problems with the prosecution's case; the charges may be stayed or withdrawn. And some offenders will be acquitted because there was insufficient evidence to prove the crime beyond a reasonable doubt. It has been estimated by researchers that a sentence is imposed in only about 3–5 percent of all crimes committed. Data illustrate the phenomenon. In 2014, over 2 million criminal incidents were recorded by police services; only approximately 225,000 convictions were recorded (Public Safety Canada 2017). Attrition rates will vary greatly across crimes.

Why is case attrition important? If courts deal with only a very small percentage of all offenders, sentences will have little effect on *overall* crime rates. While it may be true that imposing a very severe sentence may prevent the offender from re-offending, it will likely not affect the overall prevalence of the crime in society. Imagine that all convicted offenders were sent to prison. If they represent only around 5% of the total offender population, even this very punitive policy would not reduce the overall crime rate, as the 95% who are not sentenced would be unaffected.

If we agree that the most important goal of criminal justice is to prevent crime, we should look not to the courts for prevention but should instead turn to earlier stages of criminal justice, and indeed outside the CJS. Crime prevention is more effectively achieved by societal programs, better (and more effective) policing, and related initiatives, in contrast to practices that focus on changing the policies targeting the small percentage of offenders who end up being sentenced.

The criminal justice system is now recognizing the importance of addressing problems giving rise to crime, rather than just punishing people who break the law. Tackling the causes of crime is the most effective way of preventing further offending. Problem-solving courts are a good example. These courts attempt to address the causes of crime, as well as holding the offender accountable. Drug Treatment Courts do more than simply punish offenders with drug addictions. These offenders often commit crimes such as robbery or burglary in order to buy drugs to feed their addiction. Offenders processed in a DTC are required to consent to treatment, and to abstain from taking drugs. The goal is to prevent further crimes by eliminating the cause of the offending: a drug dependency. Mental Health Courts (discussed in Chapter 15) are another example of this problem-solving approach, dealing with people caught up in the court system as a result of their mental health issues. In both contexts, the goal is to address the problems underlying the offending. The public sees the benefits of this way of responding to crime. A nationwide survey found that approximately 60 percent of the public viewed problem-solving courts as a method that should be promoted, and a similar percentage agreed that problem-solving courts can adequately hold people to account for their crimes (Department of Justice Canada 2018, 34).

Public Views of Prevention vs Punishment

Where does the public stand on the question of punishment or prevention? The public is often described as wanting simply to punish offenders. However, polls reveal that there is widespread support for crime prevention. In fact, given a choice between punishment and prevention, Canadians have always preferred prevention. Over the years, surveys have asked respondents to choose between punishment and prevention. In 2003, Canadians were asked to identify "the main goal of the criminal justice system," and there was more support for prevention than for punishment (41 percent compared to 23 percent). Indeed, Canadians have always expressed more support for prevention than for punishment. A more recent survey reported by Focus Canada found that almost two-thirds of the Canadian public believe that the emphasis should be on prevention and not punishment (Focus Canada 2014). This was the highest level of public support for crime prevention in 20 years. A nationwide survey in 2017 asked Canadians to rank a number of goals. The top three goals were, in this order: 'treating everyone fairly'; 'preventing crime'; and 'reducing the chances of convicting an innocent person' (Department of Justice 2017, 34). Finally, this survey also revealed that prevention headed the list of spending priorities for the CJS. Spending money on prisons attracted the lowest level of public support (Department of Justice 2017, p. 82).

Principals of Criminal Justice: Restraint and Proportionality

Beyond the models and objectives of criminal justice, several key principles guide the decision making of criminal justice professionals. Let's take the principle of *Restraint.* The idea here is that the criminal justice system is a last resort; it should only be involved if lesser, noncriminal responses have failed, or are inappropriate. This principle of restraint applies throughout the CJS and even earlier. Parliament should only criminalize conduct that is sufficiently serious as to justify the imposition of criminal sanctions. Legal philosophers cite the '*Harm*' principle to guide the decision as to whether a given act should be designated a crime (see Husak 2008). The idea is that conduct should not be criminalized unless the act is sufficiently harmful or has the potential to cause harm. Stealing creates harm, to the owner of the property stolen. Being rude to someone in public is wrong, but in most cases falls short of being sufficiently wrongful or harmful to justify a crime of 'being rude in public.'

The restraint principle guides all criminal justice interventions -- they should involve the minimal response necessary. This applies to all professionals in the system: police, prosecutors, judges, and parole boards. If a police warning or caution is sufficient to make the offender desist, police should not charge him or her with an offence. Similarly, prosecutors should not prosecute *every* allegation of an offence; they should only launch a prosecution when it is in the public interest and when a conviction is likely (see Chapter 6). As for sentencing, if a fine is sufficient punishment for the crime, the court should not send the offender to prison. If a two-year prison sentence is sufficient to denounce the crime and prevent the offender from re-offending, the sentence should not exceed two years. The state should be restrained in its use of the criminal sanction, in recognition of the impact that criminal prosecution and punishment (particularly imprisonment) can have on the lives of defendants and offenders.

Another principle may be the most important of all. In determining the level of State intervention and punishment, the CJS should be guided by the principle of *Proportionality*. This simply means that the severity of the criminal justice response should increase as the crime becomes more serious, and as the offender is deemed more blameworthy. This guides the exercise of discretion by police, prosecutors, judges, and parole boards. If a warning or official caution by police is sufficient to prevent re-offending by an individual, then a criminal prosecution may be disproportionate. The proportionality principle is most important at sentencing. In fact, Parliament has codified the principle, in s. 718.1 of the Code: *'A Sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender*' (see Cole and Roberts 2020). Sentence severity should rise in proportion to the seriousness of the crime, and the extent to which the offender is responsible for that crime.

Public Opinion and the Principles of Criminal Justice

The public supports these principles of justice. Let's start with the *Restraint* principle. Research by the federal Department of Justice found significant public support for diversion—the process by which an accused person is held accountable without having to go through a criminal trial. Diversion is consistent with the restraint principle because we should prosecute in the courts only if some form of diversion program would fail to address the problem. Diversion options include community service, mediation, programs for counselling or treatment, and victim-offender reconciliation programs. Fully 80 percent of Canadians supported the use of diversion or other alternatives to the CJS (Department of Justice Canada 2018, 7). Support for diversion was greatest for persons accused of nonviolent crimes. Respondents were asked about an offender convicted of drug trafficking. She had been selling some of her prescription opioids. The woman had been struggling with prescription drug abuse for some time, and had two children. Given a choice between sending this defendant to court or diverting her into a specialized rehabilitative program, most (two-thirds) respondents favoured diversion (Department of Justice Canada 2018, 28).

The same is true for the principle of proportionality. Surveys of the public have demonstrated that the public supports the application of this principle at sentencing. Indeed, at sentencing, penal restraint means using the harsh punishments sparingly, and reserving prison for the most serious crimes. This is reflected in s 7182(d) of the *Criminal Code*, which instructs courts that: '*an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances*.' Here, too, the public agrees. Approximately two-thirds of Canadians agreed that incarceration should only be used for those committing serious crimes (Department of Justice 2017, 55). The same survey showed that Canadians feel the system is failing to respect this principle: most respondents agreed that there were too many people in prison (Department of Justice 2017, 55).

Criminal *In*justice

No book about criminal justice should overlook criminal injustice. Injustice occurs in many ways: Innocent people may be charged and even convicted of crimes they did not commit—wrongful convictions; guilty parties may evade punishment entirely— wrongful acquittals. Offenders may

be punished more or less than they deserve—over or under punishment; defendants from different racial or ethnic backgrounds may be treated more harshly—discrimination. Wrongful convictions are generally considered the worst form of injustice: the prospect of an innocent person languishing in prison seems worse to most people than the existence of an offender remaining at liberty for a crime (see Chapters 12 and 28). People of colour, Indigenous peoples, and persons from lower socioeconomic strata of society are all more likely to be drawn into the criminal justice system (Owusu-Bempah and Wortley 2014). This is true in all western systems of criminal justice, not just Canada (Tonry 1997). Discrimination is one of the worst forms of criminal injustice. Canadians are particularly concerned about fairness. When asked to rank the goals of criminal justice, 'treating everyone fairly' was ranked highest (Department of Justice 2018, 34).

Racial Disproportionality

Minorities account for disproportionate numbers in criminal justice statistics; this is true all around the world. The group is usually a visible or ethnic minority. Here in Canada, Indigenous peoples are over represented in criminal justice statistics, particularly imprisonment statistics (see Chapters 22 and 23). One explanation is that these groups have suffered economic and social exclusion; their social conditions have created the conditions for crime. Yet higher rates of offending are only part of the story.

Differential treatment at various stages of the CJS also plays a role. The police are more likely to concentrate their resources in neighbourhoods with high crime rates. If these areas also have a higher proportion of minority residents, inevitably the police will stop (and arrest) more minority citizens. The neighbourhood generates crime through a complex set of reasons, such as poverty, unemployment, and drug use. It then attracts more police, and the result is a higher rate of minorities entering the criminal justice statistics. Discrimination can take many forms; courts may imprison visible minorities at a higher rate or for longer periods. Correctional staff may abuse visible minority prisoners. Concern has long been expressed about the way the CJS treats Black and ethnic minorities (Commission on Systemic Racism in the Ontario Criminal Justice System 1994). Unfortunately, at present, the necessary data to explore this issue are limited in Canada, as discussed in Chapter 24. We can at least note that while Black Canadians represent less than 4% of the general population, they account for almost 10% of the prison population (Dugas, 2020, p. 107).

All Canadians should be aware that racial injustice is a reality in our criminal justice system. Much remains to be done to identify the causes of disparity of treatment, and to devise appropriate remedies. Racial injustice has come to the fore in recent years. For example, courts in Ontario and other provinces have acknowledged the existence of racial discrimination and racism in Canadian society. This recognition has led some courts to adjust sentencing when these circumstances have played a role in bringing the offender before the court. Courts in a number of provinces courts now consider documents called *Impact of Race and Culture Assessments* (IRCA). These reports operate from the assumption that an offender's race and culture may play an important role in determining the appropriate sentence. For example, IRCAs provide a sentencing court with information about the impact of any racism on Black offenders (see Dugas 2020). The reports -- which originated in a pioneering Nova Scotia program, are now being adopted by the federal government. IRCAs are similar to what are known as 'Gladue' reports, which provide information on the background of indigenous offenders. These reports should be prepared and provided to the court whenever an indigenous person is beings sentenced (see Chapter 22).

We should also recognise that the criminal justice system also pays more attention to some crimes. In an ideal world, the CJS would concentrate its resources on the more serious crimes and the most dangerous offenders. The investment of time and resources would reflect the seriousness of the crime. In practice, certain forms of offending attract disproportionate attention from the CJS. Crimes generally come to the attention of the police and result in official action following a report by a victim. The consequence is that some crimes—for example, against the institutionalized, the isolated elderly, and the environment—are far less likely to come to the attention of the CJS.

Alternatives to Criminal Justice

To conclude, although this text explores *criminal* justice, it is important not to lose sight of other ways of resolving conflicts and addressing wrongs in society. Many countries, including Canada, also promote *restorative* as well as criminal justice (see O'Mahoney and Doak 2017). This alternative approach seeks to reconcile victims and offenders, and to promote reparation and restoration, rather than punishment. Restorative justice can (and should) operate at all stages of the criminal process. Victims and offenders may meet in some form of mediation, where the offender offers an apology, and possibly some compensation to the victim. In return the State may not proceed with a prosecution. Restorative justice may also play a role at sentencing. In 1996, the federal Parliament acknowledged the importance of the restorative justice approach when it included the following objective of sentencing: 'to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community' (s. 718(f)). The range of restorative justice initiatives demonstrates that justice involves much more than the police, the courts, and the correctional system (see Correctional Service of Canada 2016; Roach 2012). Returning to the public, it is clear that Canadians support the restorative approach. Fully four-fifths of respondents to a nationwide survey agreed that CJS officials should be required to inform victims and offenders of any opportunities for restorative justice to take place (Department of Justice, 2017, p. 75). This finding is consistent with a number of earlier studies which have shown string public supportive for restorative justice initiatives (e.g. Roberts and Stalans, 2004).

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