

Criminal justice system structures human behaviour

[Law](#), [Criminal Justice](#)



“ Law structures and guides human behaviour in a variety of ways: through the content of the rules it makes, the way its officials behave, and/or the severity of the penalties it imposed on those who do not conform to its requirements. ”(Hay, 2004) In this essay, I will examine to what extent does the Canadian Criminal Justice System structures human behaviour, and whether or not this behaviour portrays itself to reflect the values of the official version of law.

I will examine how the differences in behaviour, practices and priorities of each player in the criminal justice system conflicts with one another, and whether it contradicts or reflects the values of the official version of law. The official version of law is very significant to all aspects of the criminal justice system because the degree to which the system reflects these values tells us whether the system is just. The first case I observed was at Old City Hall, mentalhealthcourt, room 102. The accused in this case was a homeless middle aged woman who had attempted to push a woman and her baby onto the subway train tracks. The judge, who was wearing a red sash, was sitting at an elevated position in the court, and the accused was sitting in the witness stand. The counsels were asking her questions, in order to come to a decision on whether she is eligible to be released back into society. The availability of a surety was discussed; the defence explained that the accused has no due to the fact that she has no relatives.

The defence also argued how the accused does not have any previous encounters with the Criminal Justice System, which should be taken into account when considering her release. The defence’s language was very

professional, and she spoke to the judge with the highest respect, referring to her as your Honour or your Majesty. The Crown's language was very professional as well, however I found her attitude was somewhat rude, and her tone was very impolite. However, the Crown was very stern with her arguments and effectively attacked every claim the defence. When it came to making a decision, the judge stated how she did not have any primary or tertiary grounds in concern to her release. The most concern was under secondary ground concerns considering the serious allegations. The judge decided that the Crown had met the onus considering that there was insufficient release plans, and her psychiatric analysis claims that the accused is a danger to society.

Another case I observed was a bail hearing, which was led by a Justice of the Peace, which I noticed because she was wearing a green sash. When I walked in, the accused (black male) was sitting in the accused box, and there was a witness being questioned on the witness stand, who was a potential surety. The Crown was asking the witness why he feels he is an eligible surety, and how does he plan on assuring that the accused does not further engage in criminal behaviour. The witness said how if the accused did not abide by the conditions given he would go to jail for the accused. The Crown explained the witness that that was not legally feasible. The Crown and the witness discussed that if he was granted surety of the accused, and if the accused did not follow his bail conditions the witness would have to sell his car in order to pay the \$10,000 sureties. While this was going on I

noticed that the defence attorney would constantly go over and speak to the accused and whisper in his ear.

At one moment the Crown walked out to answer a phone call. I found this to be very informal and disrespectful to the courts. However, the call was concerning the case. What I found interesting about this case was how the witness advocated for the accused, and the remarks he was making. The witness expressed that the accused is aware of what he has done, and would like to be a law abiding citizen and have a good place in society once given the chance too. He also stated how the accused feels like a target in regards to police practices and how they have racially profiled the accused, and that it reflects how the system is unjust. The crown felt that the witness was making excuses for the accused, and asked the witness about his knowledge of the police and the courts, and how they play different roles in the system.

The crown also asked if the witnesses' cousin who happens to be the accused pregnant girlfriend is actually a blood cousin, or a term used to define a close friend. The court setting is presented as an adversarial system, which relies on the dispute between each advocate representing his/her party's positions and involves an impartial person trying to determine the truth of the case (September 22nd 2009). The ability for this adversarial system to function effectively in court, while embracing the fundamental aspects of the law is very important to how the law presents itself. I was able to observe an adversarial system of dispute taking place in the first case, when the adversary parties were disputing whether or not the accused was psychologically fit for release. The Crown attorney stressed how she was not

mentally stable to be released back into society. The Crown's behaviour in her strong arguments and stern attitude reflected the aspect that the role of the prosecutor is to protect the best interest of the public. The defence attorney argued in defence for her client stating that the accused has not had any previous encounters with the criminal justice system in all her years, and that it was a mitigating circumstance that may not happen again.

The defence was using any means that she could to succeed on the accused getting released. This portrays how the behaviours and priorities of each officer of the court conflict with one another because they have their own objectives to fulfill in order to portray that they are administering justice equally and legitimately, as a reflection to the values of the official version of law. Throughout my observations I looked for, but was unable to come across a non-adversarial system in the courtroom. Within an adversarial system, a 'morality play' takes place, where each player in the courtroom plays a significant role. Their interactions present what story the laws says about itself to the public, and teaches the public an ideological lesson between right and wrong, where right most commonly prevails (September 22nd 2009). The players in the court include: a judge, a crown attorney and a defence attorney. As I have observed the judge sits at an elevated position in the courtroom, and the adversary officials are positioned on each side of the courtroom.

A regular player in the court is the Crown attorney, who represents the power of the state, the Queen. Their objective is not focused on winning the case; they remain impartial and focus on finding the truth, and protecting

the best interest of the public. Another player in the court is the defence attorney, who is not impartial; they represent those who are accused of crimes, and they are not impartial because their objective is to win the case. I was able to observe how a morality play was taken place because the prosecutor advocated that what person in their right mind would attempt to push a woman and her infant onto the subway tracks and would be released back into society without any rehabilitative treatment. The prosecutor requested that if she were to be released that she must be appointed to a new psychiatrist that she must refer to frequently. This was an example of a morality play considering that the prosecutor formed an ideology of this woman and that she was mentally unstable. Considering that the accused was a homeless woman, whom I have personally seen in the subway cars begging for money, this would lead the public to believe that any homeless person who begs for money must be someone who is mentally unstable, when in actuality this may not be entirely true.

The conflict that arises in the outcome of morality plays is that certain ideologies would be imposed in the public's perspective against certain groups, which reinforce the targeting of these groups. This portrays how practices, behaviours and priorities produce systemic discrimination against certain groups which contradicts the official version of law in its claim to be blinded by difference, in order to balance and weigh justice evenly amongst all citizens. This makes one question that despite the incentive of the criminal justice system is to administrate justice evenly, does it work in specific ways that may disregard the official version of law, but it is disguised

by laws and practices which seem to justify these unjust distributions of law to occur. Another important aspect of this question is how well does the court portray balance within the system, and how does this balance effect the public's confidence in the system. Balance is a very important aspect of the official version of law, which is represented by the blindfolded maiden who balances and weighs justice. The players in the court must portray this balance by obtaining good relations within the court, in order to avoid incivility in the courtroom, to keep it from imploding (Manarin). Incivility in the courtroom may undermine the right to a fair trial, which causes the public to lose confidence in the administration of justice.

. I was also able to observe civility in the courtroom because despite how I found the Crown attorney's tone and behaviour to be somewhat rude, she was still able to address her opponent as ' my fellow partner' even though they do not necessarily work as a team considering they are adversary officials. She addressed her opponent in this manner in order to maintain civility in the courtroom in order to reach a verdict to her satisfaction.

Considering that the Crowns attorney behaviour in the courtroom was very stern and aggressive, and she fought very effectively to reach a verdict which would cause the accused to remain in custody it does not suggest that she is an impartial player who is not focused on winning the case. However, it is important to recognize that in his circumstance the prosecutors approach did reflect her interest in protecting the best interest for society, considering that her psychological analysis stated that she was a danger. With this being said, if civility and morality plays portray a certain story that

is supposed to be presented to the public, this makes one question to whether laws are essentially reflective of a shared morality, independently decided among a group, or whether officials have formulated this morality through their practices. The conflict that arises when questioning this is that as Hay argued, no matter what the law says, it may have little to do with what the law does(2004).

This means that despite what the law says, officials in our criminal justice system have many differences which affect whether the law is distributed proportionately among individuals. These differences include: authority, discretionary power and the primary goal that their job requires. The outcome of how the law is distributed among individuals form specific ideologies and creates an overrepresentation in the system of certain groups to which these individuals belong too. Police practices have an effect to how the law is distributed because of how their practices have a major effect on what is defined as a crime, who is caught up and the net and brought into the system (October 20th 2009). Police practices are influenced by a police subculture which consists of informal factors that affect their behaviour, reflective of shared norms, beliefs and values that differ from the larger culture around them (MacAlister, 2004). This police subculture causes their discretionary power to target those belonging to minority groups, due to perpetuated ideologies against certain groups. The outcome of this causes these groups to become overrepresented in the system (October 20th 2009).

I was able to observe that police practices governed by ideologies is a notion that is believed by citizens who feel they have become victims of police

practices such as, racial profiling. I observed this in the last case when the witness was expressing how the accused has felt targeted by the police due to their victimization of minority groups. This is supported by Brannigans argument, “ Just as the fisherman does not cast his net randomly, neither do the police (1984). It is important to recognize that these minorities experience these negative ideologies against them throughout all aspects of their lives, which usually causes them to belong to a lower economic status group. This puts them at a greater disadvantage in the court process, to those minorities who are most commonly one-shot players that receive legal aid workers, who have little time for investigative preparation. Their success in court reflects this as these lawyers receive a dismissal of charges in 8% of cases compared to 39% of cases in privately retained counsels (Brannigan, 1984). It is most commonly those belonging to minority groups who receive legal aid workers because they also belong to the lower economic status of society.

Considering legal aid workers do not have many successful cases, and most of their clients belong to minority groups, it is reasonable to say that this is another cause to their overrepresentation in the system. Therefore, police discretion comes into conflict with the overrepresentation of certain groups due to how policing behaviour and practices are regulated by the priorities they serve to the community. The police are the most visible aspects of the criminal justice system, therefore they must be perceived as the most effective, which they achieve by being tough on crime (MacAlister, 2004). As a consequence, due to perpetuated ideologies against certain groups that

are embedded in police subculture define their behaviour and practices cause certain groups become overrepresented in the system. This portrays how police behaviour, practices and priorities contradict the official version of law in the aspect that it is supposed to be impartial and blind to difference.