“Now it is a terrible business to mark a man out for the vengeance of men. But it is a thing to which a man can grow accustomed, as he can to other terrible things... And the horrible thing about all legal officials, even the best, about all judges, magistrates, barristers, detectives and policemen, is not they are wicked (some of them are good), not that they are stupid (some of them are quite intelligent), it is simply that they have got used to it. Strictly they do not see the prisoner in the dock; they see the usual man in the usual place. They do not see the awful court of judgment; they only see their own workshop.”

- Commissioner Antonio Lamer quoting from G.K. Chesterton who had sat on a jury almost 100 years ago and had been impressed by the fresh perspective that a jury could bring to the work of professionals who could become insensitive because of familiarity.

From Settlement to Confederation

Canada

To understand the nature and purpose of criminal law as it applies in Newfoundland and Labrador, it is necessary to understand its sources. Our criminal law principles are founded on British Law as it became introduced into Canada, developed from colonial times. Under the British colonial system, the letters patent or instructions issued by the Crown to the Governor governed the constitution of a settlement. When unsettled territory was conquered by or ceded to England, it was a matter of royal prerogative whether the Crown would grant the territory its own constitution.

Settlers of unsettled territory were deemed to take with them the common law and applicable statute law of England. Accordingly, the unsettled territories that were to become Canada had a criminal law from the moment of their settlement. That law consisted of the common law and applicable statute law of England as of the date of settlement. In addition, each territory had a legislature with limited power to amend existing laws or enact new ones.
When settled territories were conquered or ceded, England did not always automatically impose English law. If the territory already had a legal system, England often allowed the system to remain in force, at least for a time. For example, when New France was ceded to Great Britain, the civil law (including criminal law) and customs continued until 1764. Then, in accordance with *The Royal Proclamation of 1763*, English common law and statute law replaced the existing legal system, and the French colonial courts were abolished and replaced by common law courts. This change caused chaos for almost a decade. Finally, in 1777, under the *Quebec Act*, a variation of the original civil law was reinstated. However, the criminal law of England remained in force.

The basic criminal law of each territory varied according to the date of initial settlement or conquest. For example, the date of "reception" fixed for Ontario was September 17, 1792. Just before Confederation, the criminal law of Canada consisted of that part of the criminal law of England applicable as of the reception date for each territory concerned, and any alterations made by the legislature of the territory. Because the various colonial and provincial legislatures had passed criminal laws, striking differences existed in the criminal law from one jurisdiction to another. The system of criminal law at Confederation was therefore not consistent across Canada, except for the common law base. Immediately after Confederation, that criminal law remained in force. However, the *British North America Act* [now the *Constitution Act, 1867*], transferred the amending power to the federal government.

Section 91 of the *Constitution Act, 1867* empowered Parliament to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects assigned exclusively to provincial legislatures. Clause 27 of this section covered the criminal law, including procedure in criminal matters.

The task of unifying and consolidating the new Canadian criminal law began almost immediately after Confederation. Parliament enacted several pieces of criminal legislation. Of particular importance was *The Criminal Procedure Act*, which formed the basis for much of today's criminal procedure. By 1892, the criminal law of Canada consisted of several elements: the common law and statute law of England as of the various reception dates, the statute law of the individual provinces, and federal legislation since Confederation.
The Criminal Code

In 1833, Lord Chancellor Henry Brougham appointed a Criminal Law Commission, consisting of a group of eminent practitioners, to draft a comprehensive code of criminal law for England\textsuperscript{10}. The initial process took more than ten years, during which time the commissioners made a comparative study of codified legislation in other jurisdictions. The commissioners submitted a draft code in 1843. Brougham introduced the code in the House of Lords as a private bill in 1844. Despite numerous debates and supplementary reports, the bill was never passed. Instead, it was sent for further study to a select committee, where it remained in limbo.

In 1877, Lord Chancellor Cairns asked James Fitzjames Stephen to draft a penal code and a code of criminal procedure. In 1878, Stephen completed a draft code covering both penal and procedural matters. Although the Attorney General of England presented the English Draft Code as a bill before the English Parliament on two occasions, it was never enacted. However, the attempt at codification and the proposed code received widespread publicity throughout the British Empire.

In Canada, the proposal for a comprehensive code of criminal law received significant encouragement. In 1890, Sir John Thompson, the Attorney General of Canada, approached Robert Sedgewick, Deputy Minister of Justice, and Mr. Justice Burbidge of the Exchequer Court of Canada (a former Deputy Minister of Justice) to draft legislation codifying the Canadian criminal law\textsuperscript{11}. On March 8, 1892, the Attorney General introduced Bill 7 into Parliament -\textit{The Criminal Code, 1892}\textsuperscript{12}. The Bill was based on the English Draft Code, \textit{Stephen's Digest of the Criminal Law} (1887 ed.), \textit{Burbidge's Digest of the Canadian Criminal Law} (1889 ed.), and existing Canadian statute law. The Bill was a code of the criminal law, but not a complete code.

It reduced the existing law to an orderly written system, though it did not purport to reduce all the criminal law in Canada into one comprehensive document. It would still be necessary to refer to the common law. As well, many previously enacted federal statutes were preserved and listed in a schedule to the Bill\textsuperscript{13}.

The Bill was proclaimed in force on July 1, 1893. The criminal law in Canada then consisted primarily of \textit{The Criminal Code, 1892} and federal
legislation preserved in the schedule to the Code. It also consisted of the common law of each province as of the reception date, except where the common law had been altered by federal legislation. As well, any imperial criminal statutes that had not been superseded by Canadian legislation remained in force.

In 1947, the Government of Canada appointed a Royal Commission to revise the Criminal Code. In 1953, Parliament enacted a revised Criminal Code\textsuperscript{14} that came into force in 1955. Section 8 of the revised Code abolished all common law offences, offences under Imperial acts, and offences under pre-Confederation acts. The Code consisted of statements of general principles followed by parts dealing with specific offences. The second part of the Code dealt with procedure and punishments. Besides the Code, other federal criminal statutes remained in force. The structure of the criminal law remains in this state today.

In addition to federal criminal law, there is also a body of provincial laws which may be described as "quasi-criminal" or "penal". Section 92 of the Constitution Act, 1867 assigned jurisdiction to the provinces over a variety of subjects including property and civil rights in the province. Clause 15 of that section allowed for the imposition of punishment to enforce any law of the province made in relation to any matter coming within any of the classes of subjects set out in section 92. The provinces have legislated procedures for applying these penal laws. Many provincial procedural acts incorporate the relevant procedures of the Criminal Code.\textsuperscript{15}

**Newfoundland and Labrador**

The Province of Newfoundland and Labrador became a part of Canada in 1949. The Criminal law changes then came about as a result of the Royal Commission to revise the Criminal Code and became applicable in the Province when the Code came into force in 1955.

For an excellent account of the early development of the court system and early laws in Newfoundland see the Commemorative Essay titled *A Cautious Beginning - The Court of Civil Jurisdiction 1791*.\textsuperscript{16}

**Purpose of the Criminal Law**

The Supreme Court of Canada has held that the objective of the criminal law is to maintain a just, peaceful and safe society\textsuperscript{17}. Criminal law is premised
on the belief that some acts ought to be prevented, and that the criminal process is the best way to prevent them. The criminal law achieves its objective through punishment. As the Supreme Court has stated:

…the ultimate purpose of criminal proceedings is to convict those found guilty beyond a reasonable doubt. Our system of criminal justice is based on the punishment of conduct that is contrary to the fundamental values of society, as statutorily enshrined in the Criminal Code and similar statutes.¹⁸

The essence of criminal law is its public nature. A crime is not a wrong against the actual person harmed, if there is one, but a wrong against the community as a whole. Protection of the public cannot be left to the individual, but is instead the responsibility of the community and, in a larger sense, the state. The Supreme Court has noted this in a leading judgment dealing with the principles of sentencing:

Our criminal law is also a system of values. A sentence which expresses denunciation is simply the means by which these values are communicated. In short, in addition to attaching negative consequences to undesirable behavior, judicial sentences should also be imposed in a manner which positively instills the basic set of communal values shared by all Canadians as expressed by the Criminal Code.¹⁹

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² See generally, Mewett and Manning, Criminal Law, (3d ed.) (Toronto: Butterworths, 1994) at 3-33.

³ Ibid, at 3.

⁴ 1774, 14 Geo. III, c. 83 (U.K.).


⁶ Criminal Law, note 2, at 4.

⁷ G.W. Burbidge, Digest of the Criminal Law of Canada, (Toronto: Carswell, 1980), foreword by The Honourable Mr. Justice Fred Kaufman.
The statutes dealt with various aspects of substantive criminal law such as forgery, larceny, perjury, and offences against the person and coinage.


S.C., 1892, vol. 1-2, c. 29.

*Criminal Law*, note 2, at 6.


See the Provincial Offences Act SNL 1995 CHAPTER P-31.1.

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