Changes to Law: Demographic, Technological, Values & National Emergencies

- most often laws change in response to broad shifts in society resulting from demographic changes, technological changes, or changes in value; or quick changes in response to a national emergency

- a demographic change relates to birth and death rates, or trends in immigration, education and employment (population factors) e.g. women joining the labour force in 60s & 70s led to anti-sexual discrimination laws

- a technological change relates to new inventions which the federal gov't must decide which level of gov't has jurisdiction: federal or provincial e.g. the regulation of TV and radio is a federal responsibility

- a change in values results in new laws e.g. anti-smoking bylaws by towns and cities

- a national emergency leads to new laws e.g. WWI's War Measures Act last invoked by Trudeau during the October Crisis in 1970; also the Anti-terrorism Act invoked after 9/11 terrorist attack on U.S.

- new laws can be:

  1) made in the courts by judicial decisions (case law); case law is based on previous judicial decisions (known as precedents)
  2) passed by parliament (statutory law); statutory law involves passing bills into law/legislation
CLN 4UI Notes

Day 2: (pp. 10-14)

The Possibility of Change

- for legal change to occur in an orderly fashion, not by the dictates of a dictatorship, the country must respect what legal experts call the “rule of law”
- the rule of law was formulated in the Magna Carta, the list of legal rights the English barons forced King John to sign in 1215:
  1) general recognition that law is necessary in an orderly society
  2) that the law applies equally to everyone, including the highest officials
  3) that a person's legal rights cannot be take away
- legal change is easiest in a democratic country where unpopular gov'ts, with unpopular laws, can be voted out
  e.g. P.M. Brian Mulroney's P.C. gov't brought in the unpopular goods and services tax (GST ) in 1990; in 1993 the campaigning Jean Chretien Liberals promised to repeal the GST (a broken promise)
- most democracies have constitutions and a bill of rights giving a clear idea to the people of their rights and freedoms; they have the right to challenge laws in court that they think violate their rights
- other ways to advocate for legal change (change laws): work thru lobby groups, sign petitions, participate in demonstrations, vote in referendums
- we have an ‘independent justice system’ where appointed judges don't have to worry about losing their jobs or being jailed with unpopular decisions
- the judiciary is also independent in that the court system is hierarchical or pyramidal and you can appeal a decision up from the lower courts to the highest court (the Supreme Court), which can result in changes to case law (common law) or to the interpretation of statute law (legislation)
Change as a Result of Individual Action

- history is full of individuals who have struggled to change unjust laws: Nelson Mandela propelled the dismantling of apartheid in South Africa (systemic segregation of blacks); Louis Riel was pivotal in the creation of Manitoba and protecting Metis rights to their land

- since the passage of the Constitution Act, 1982 which included the Charter of Rights and Freedoms, many laws have been struck down as unconstitutional in cases initiated by individuals e.g. Dr. Henry Morgantaler won a landmark decision which legalized abortion in Canada in 1988 (his case proved the abortion law in the Criminal Code violated a woman's right to security of person under s. 7 of the Charter)

- another example: Sue Rodriguez challenged the Law on Assisted Suicide (a crime under s. 241 of the Criminal Code) and lost the Supreme Court case; the sanctity of life is a value enshrined in s.7 of the Charter (see pp.17-18)

- another example: Richard Sauve's 10-year fight to win voting rights for prisoners proving the denial of this right in the Elections Act violated his rights under s.3 of the Charter “every Cdn. citizen has the right to vote” (interesting twist: Parliament responded by trying to circumvent the Court's 1993 decision by rewriting the law to apply only to federal prisoners; Sauve remounted his charge and in 2003 the Supreme Court ruled in his favour and chastised Parliament)
CLN 4UI Notes

Day 4: (pp. 21-27)

**Change as a Result of Collective Action**

1. Lobby Groups
- lobby groups are the most effective form of collective action for changing the law
- defined as a number of people trying to influence legislators towards their cause
- each province has its own lobby group in Ottawa
- example: an ad hoc organization created for a specific purpose, the Coalition for Gun Control (arose after Montreal Massacre in 1989) pressured gov't to legislate the Firearms Act in 1995 (= gun registry)
- example: a national organization, the Canadian Association of Chiefs of Police, lobbied for a national sex offender registry
- lobby groups also work to raise public awareness, as well as influence legislators
- example: the Canada Council for Tobacco Control (CCTC) which has helped Canada be at forefront of global campaign to reduce smoking (as well as change cigarette packaging and effect public smoking bans)

2. Royal Commissions
- defined as a board of inquiry appointed by the gov't to investigate & report on a particular issue
- include public meetings, testimony from citizens, expert witnesses and scholarly research
- their recommendations influence Parliament to change outdated/unjust laws
- example: Royal Commission on the Status of Women, 1967 led to improved rights for women, especially in the workplace
- example: Commission of Inquiry on the Blood System in Canada (a.k.a. Kreever Commission) to look into AIDS/HIV contaminated blood transfusions; led to charges against the Red Cross and establishment of Canadian Blood Services
3. Legal Scholarship
- law reform also comes out of scholarly writing of articles and books
- example: feminist research on battered women's syndrome led to its acceptance as an exculpating factor in some murder cases where a woman pleads self-defence (exculpating means to clear the defendant of blame)
- this set a legal precedent (a legal decision that is taken as a guide for subsequent cases)

4. Political Demonstrations
- the right to participate in demonstrations is guaranteed under s.2 of the Charter
- most common form = protest rallies where large numbers of people gather to march, carry signs, and listen to speeches
- sometimes they work, sometimes they fail, sometimes they turn violent
- protest rallies can lead to civil disobedience = people refuse to obey a law as a matter of conscience
- e.g. Gandhi freed India of British rule using this form of protest
- e.g. boxer Muhammad Ali refused to register for the U.S. draft in 1967
- e.g. Martin Luther King, Jr. used peaceful demonstrations to win political and legal rights for African-Americans
Primary Sources of Canadian Law
- the parts of the legal system that have the longest historical development are known as primary sources of law e.g. ancient religious commandments
- Canada's law reflect our Judeo-Christian religious heritage e.g. Old Testament's first 5 books comprise the Jewish Torah, the story of Moses climbing Mt. Sinai with a vision of God handing down the Ten Commandments
- Christian religion adopted many aspects of Jewish law
- Christian missionaries and colonists brought the religion with them to Canada
- laws also based on moral philosophy and ethics
- as moral values change, so do laws e.g. Lord's Day Act 1906 gives way to Sunday shopping in multicultural Canada
- the Supreme Court struck down the Lord's Day Act as unconstitutional in 1982 after Calgary's Big M Drug Mart challenged it
Day 7: (pp. 36-43)

**Historical Influences**
- Cdn. law reflects British and French laws, in turn influenced by Greek and Roman laws, in turn influenced by ideas of private property of ancient Mesopotamia

**Greek Influences**
- ancient Greece had a limited democracy- women, slaves and foreigners were excluded; native born men expected to take active role in politics/military
- had juries who voted by secret ballot on verdicts and punishments
- ancient Greece gave us two important principles, citizen participation and trial by jury

**Roman Influences**
- in 449 BCE, Romans drew up a code of laws, inscribed on 12 tablets displayed in the Forum: the Law of the Twelve Tables
- in the 6th century CE the Emperor Justinian ordered all the, by now voluminous laws, organized into a huge new code by legal experts (the first lawyers), published as the Justinian Code in 529CE
- Canada has adopted the use of codes and the use of lawyers e.g. Criminal Code

**Aboriginal Influences**
- aboriginal populations had their own legal systems before contact with Europeans which were transmitted orally down the generations
- the Iroquois Confederacy, a union of 5 nations with a formal constitution, took 40 years to form by two great chiefs
- every man and woman had a say in tribal affairs
- in the 18th century their Great Binding Law was written down and became an influence on the US Constitution and the Charter of the United Nations
- there is a trend toward self-government on Native lands
- the Nunavut legislature follows the Inuit tradition of making decisions based on consensus rather than majority vote
Day 7 cont’d

**British Influences**
- Britain has had the greatest influence on Canadian law: trial by jury of one's fellow citizens (from Greek law), presumption of innocence, the rule of law are all entrenched in the Charter
- medieval England had no standards of law practice: trial by ordeal, trial by combat
- in 11\textsuperscript{th} century, William the Conqueror gave legal power to land barons—still inconsistencies
- in 12\textsuperscript{th} century, King Henry II, sent out trained circuit judges to hold trials (assizes) and eventually they developed written laws and punishments that became English common law or case law
- his son, King John, signed the Magna Carta bringing in the rule of law, the right to trial by jury and the right to be presumed innocent until proven guilty

**French Influences**
- settlers of Quebec brought French civil law with them, with its roots in Roman Law
- the Napoleonic Code or French Civil Code came into effect in 1804 and forms the foundation of the Civil Code of Quebec
- precedents not as important in this system as in common law, rather one must refer to the Code

**Influence of Customs and Conventions**
- customs are long-established ways of doing something that over time has acquired the force of law (i.e. shortcut across private property to beach)
- conventions are ways of doing something that has been accepted for so long that it amounts to an unwritten rule esp. regarding political practices (i.e. Governor Generals are, since 1952, always Canadian citizens)
CLN 4UI Notes

Day 8: (pp. 43-47)

**Influence of Customs and Conventions and Social and Political Philosophy**

- in patriating the Constitution, Trudeau was challenged in the Supreme Court by several provincial premiers who said that by convention (usual political practice), Trudeau should be consulting them rather than unilaterally trying to pass his Constitutional amending formula through Parliament

- Canadian Human Rights Act, 1977 born of public reaction to the horrors of the Holocaust and to the US civil rights movement in 50s and 60s

- the socialist political philosophy of the CCF party (forerunner of NDP party), forged during the Depression, led to new legislation for social services: UIC, welfare, workers’ comp.

- the separatist political philosophy of the Parti Quebecois and the Bloc Quebecois have forced further changes to Confederation (Quebec has never signed the Constitution)
Day 9: (pp. 47-55)  **Secondary Sources of Canadian Law**
- consists of laws & reported cases that have been written down:
- in Canada, lawmakers include M.P.s and judges who render legal decisions

**Constitutional Law**
e.g. *Constitution Act, 1982*

**Statutes or Acts**
e.g. the *Criminal Code*

**Case or Common Law**
e.g. *R v. Robertson & Rosetanni*

The Constitution:
- two important principles
  a) Judicial independence – judges function independently of the gov't that appoints them & can't be fired for an unpopular decision
  b) Parliamentary supremacy – Parliament, which represents the Cdn. people, has the supreme power of making laws
- the Constitution Act, 1982, contains:
  - the Constitution Act, 1867 (formerly BNA Act)
  - the Canadian Charter of Rights and Freedoms
  - the Amending Formula

Statute Law:
- any law passed by federal or provincial gov'ts
- a bill gets 3 readings in the House of Commons & is also sent to committee; same process in the Senate; if approved it gets Royal Assent by the Gov.General
- the Constitution Act, 1867 divides responsibilities between the federal and provincial gov'ts
- if a provincial gov't passes a law outside its particular areas of jurisdiction, the federal gov't can strike the statute down in court on the grounds that the prov. gov't had acted *ultra vires* (beyond its power)
- if a statute is within the power of a gov't., it is *intra vires*

Statutory Interpretation:
- judges interpret laws through the cases they decide
- they interpret the *intent* of the law
- sometimes they use the ‘mischief rule’ to better understand a statute = focussing on the problem or mischief it was intended to correct
Case Law:
- the written decisions of judges and explanations of their rulings form a substantial body of case law
- case law is distinct from statute law
- the concept of stare decisis (to stand by a decision) means that a precedent must be considered when ruling on a similar case
- a judge has the option of “distinguishing the precedent” (not following it) if it's outdated or not quite the same situation
- lawyers brush up on case law in law reports, many now found on the Internet
- judges sometimes cite scholarly legal writings from law books and articles in their decisions
Categories of Law

Substantive law - a law that identifies the rights and duties of a person or level of gov’t e.g. criminal laws which define the nature or substance of crimes

Procedural law - a law that outlines the methods or procedures that must be followed in enforcing substantive laws e.g. laws explaining how arrests & trials must be conducted

International law - a law that has jurisdiction in more than one country

Domestic law - laws that govern activities within a country

Public law - law that regulates activities between a state and its citizens
- includes constitutional law (parliamentary legislation/statutes), administrative law (governs relations between people & gov’t agencies) and criminal law (law which prohibits and punishes behaviour that injures people, property and society)
- Crown attorneys must prove crime “beyond a reasonable doubt"

Private law - law that regulates disputes between individuals, businesses or organizations; a.k.a. civil law (no Crown attorneys)
- cases involve plaintiffs suing defendants
- includes family law (governs relations among family members), contract law (governs agreements between people or companies for goods & services), tort law (covers civil wrongs and damages, negligence), estate law (regulates wills and probates), and property law (applies to buying, selling and renting of land & buildings–real property– and personal property like jewellery)
- the standard of proof for judges is “on the balance of probabilities” (not beyond a reasonable doubt)

See Figure 2.15 Categories of Law p. 61

See following chart
<table>
<thead>
<tr>
<th></th>
<th><strong>Criminal Law (a public law)</strong></th>
<th><strong>Civil Law (a.k.a private law)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Types of offences</strong></td>
<td>criminal code offences against society e.g. manslaughter, assault</td>
<td>civil offences between persons or persons and organizations e.g. negligence, trespassing</td>
</tr>
<tr>
<td><strong>Parties involved</strong></td>
<td>Regina vs. defendant</td>
<td>plaintiff vs. defendant</td>
</tr>
<tr>
<td><strong>Example case</strong></td>
<td>R. v. Smith</td>
<td>Smith v. Walmart</td>
</tr>
<tr>
<td><strong>Burden of proof &amp; Standard of proof</strong></td>
<td>Crown attorney must prove guilt beyond a reasonable doubt to judge or all 12 jurors</td>
<td>plaintiff must prove defendant is at fault on the balance of probabilities</td>
</tr>
</tbody>
</table>
| **Types of courts**                  | criminal courts: inferior & superior  
superior court = choice of judge or jury  
inferior court = judge only                  | civil courts: e.g. family, small claims; judges only, no juries; no lawyers for minor claims & offences |
| **Penalties**                        | imprisonment or diversion programs: absolute or conditional discharge, suspended sentence, conditional sentence, deportation, fines | 1) general damages 2) special damages 3) punitive damages 4) aggravated damages 5) nominal damages  
Other remedies: 1) injunctions 2) costs         |

Natural Law vs. Positive Law:

Natural Law is based on the belief in a wise God who created eternal laws to regulate the natural world. By using reason, one can know the laws.

In contrast, positive law is made by a head of state for the good of the citizens, it is not linked to religion or morality. Reasoning is unnecessary.
Modern and Contemporary Theories of Law

Legal Realism:
- At start of 19th c., legal scholars & judges in the U.S. rejected legal theory and instead observed what actually happened in the justice system: it became known as the school of legal realism.
- American Supreme Court justice, Oliver Wendall Holmes, summarized it as: “law is a prediction of what courts will decide.”
- It focuses on the temperament of individual judges & how their backgrounds influence judgements (i.e. what law they practised and where).
- The U.S. has developed a system of confirmation hearings in the selection of judges, taking the principle of legal realism into account.

Marxism: An Economic Analysis of Law:
- Karl Marx wrote the Communist Manifesto with Frederick Engels in 1848.
- He studied the capitalist economy, advocated for workers’ rights and wrote Das Kapital while living in England.
- It was during the Industrial Revolution, a great technological and demographic shift where most of the population left farming for industry, and left rural living for the cities.
- Based on his observations of worker oppression by capitalists and British laws which favoured the wealthy, he developed a new theory of law: Marxism.
- Marxism: an economic and political theory that states that law is an instrument of oppression and control that the ruling classes use against the working classes; “law is an instrument used for maximizing ruling class interests in society and controlling the working classes.”

Feminist Jurisprudence: The theory that law is an instrument of oppression by men against women.
- They cite 1) historical examples of discriminatory laws; 2) law’s historical failure to respond to women’s needs as distinct from men’s; and 3) that legal institutions are systematically biased against allowing women to attain positions of power and prestige.
Day 18: (pp.85-92)

**Procedural Justice**
- theory developed by Harvard law professor Lon Fuller (1902-1978) that a country's laws must have a procedural fairness that makes them workable
- the law is meant to guide human behaviour in such a way as to create and maintain social order
- to judge the validity of law, one must answer the question: are its procedures fair and workable?

**Restraint of Power**
- Philip Selznick, a law professor at Stanford University in the U.S., developed a standard to assess the quality of a country's laws whereby a country with the best laws and justice will be achieved when there is an independent body or branch of gov't that can challenge, review and limit the laws made by the ruling power
- therefore, the quality of law is very poor in a dictatorship where no one can challenge or restrain the dictator's laws

**Application of Legal Theory to Canadian Law**

**Rule of Law and Restraint of Gov't Power**
- most challenges to Canadian law or government actions have been mounted in the court system
- e.g. p. 89 Roncarelli v. Duplessis, the Supreme Court acted as a restraining influence on the sovereign power of the premier of Quebec by enforcing the 'rule of law'

**Positive Law in the Constitution**
- loyalty to the King and the gov't in New France was an example of positive law
- at Confederation, the federal gov't was given strong powers, another example of positive law: s. 91 of the Constitution Act, 1867 gave federal Parliament the general power “to make laws for the peace, order and good gov't of Canada”
- invoking the War Measures Act in WWI, WWII and 1970 October Crisis illustrates intervention by a strong federal gov’t
- another example of intervention, Trudeau's Anti-Inflation Act, 1975, granting the gov't the right to set wage and price controls for 3 years

**The Charter**
- the Charter lists many fundamental freedoms that reflect a natural-law perspective, like the right to “freedom of conscience and religion” and the “right to life, liberty and security of the person”
- the Charter also reflects a positive-law perspective: e.g. in s.1 where individual rights may be limited; and s. 33, the “notwithstanding clause” which permits federal and provincial legislatures to declare laws that violate Charter rights for a 5-year period
Day 25: (pp.102-105)

**Importance of a Constitution:**
- a constitution provides the basic framework for a nation's form of gov't and its legal system:
  - structure of federal and provincial gov'ts & their powers, + procedures for making laws
- ‘Canada’s rulebook’, founded on ideas of freedom, equality & democracy
- U.S. constitution is written, Britain's is largely unwritten, Canada’s is both written and unwritten

**Sources of Canada's Constitution:**
1. the Constitution Act, 1867 (originally the BNA Act) and the Constitution Act, 1982
2. unwritten set of rules and conventions
3. court rulings that interpret the Constitution: precedents, guides for future constitutional cases

1. **The British North America Act:**
   - changes to the BNA Act, 1867 had to be made by British parliament before it was patriated to Canada and renamed the Constitution Act, 1867
   - it is now contained in the Constitution Act, 1982, along with the Charter (of Rights and Freedoms) and the new amending formula
   - it divides powers between the federal and provincial gov'ts
   - federal powers are issues of national concern, such as defence and economics
   - issues that might cause conflict between competing interests were given to the provincial gov'ts, for example, education (Quebec wanted Fr-language Catholic schools)

2. **Canada's Unwritten Constitution:**
   - no mention of Prime Minister, Cabinet (ministries), and party system (all adopted from Britain) plus conventions of political conduct

3. **Court decisions:**
   - the courts resolve disputes over the meaning or intent of certain sections, phrases, and words in the constitution
   - gov'ts must comply with these decisions, precedent-setting cases
Day 26: (pp.106-113)

**The Division of Powers:**
- federal gov't given sweeping powers, like taxation & economics, in s. 91 of The Constitution Act, 1867
- provincial gov't given control (s.92) over local matters: education, hospitals, forestry

**Education:**
- has special section (s.93) of the Const. Act, 1867
- guaranteed educational rights of French- and English-speaking, Roman Catholics and Protestants (i.e. French Catholic ed. in Quebec)

**Municipal Level:**
- Canadian cities and rural municipalities have no constitutional rights of their own
- the Const. Act, 1867 made municipalities the responsibility of prov. gov'ts.
- provincial municipal acts give towns and cities authority to provide services & pay for them by levying property taxes & service charges
- they can pass by-laws (e.g. poop and scoop)
- in recent years large cities like Toronto have been pushing for more power & stronger ties to other cities & levels of gov't
The Role of the Courts:
- courts often have to rule on which level of government has jurisdiction over an issue because:
  1) the issue didn't exist at the time of the BNA Act, 1867 (e.g. air travel, television, internet)
  2) “social safety net” matters weren't thought of as gov't responsibilities until after the Depression of the 1930s (e.g. health care, employment insurance)
- structure of the courts: based on British model, hierarchical, Supreme Court on top, provincial courts at the bottom

Historic Role of the JCPC: (Judicial Committee of the Privy Council in Britain): was final court of appeal until 1949; changed course of history with its decision in the “persons” case in 1929, overturning a Supreme Court ruling
- JCPC based its decision on the “living tree” approach to judicial review: judicial interpretation of the Act had to reflect great changes, unforeseen by the Fathers of Confederation in 1867

The Supreme Court: is an appeal court, created in 1875, and consists of 9 justices appointed by the federal Cabinet who can serve until age 75
- 3 judges must come from Quebec (& understand its Civil Code)
- hears important cases that deal with civil, criminal and constitutional law
- its decisions are binding on all lower courts across Canada and ‘final’ (cannot be appealed further)

Pith and Substance: courts examine the ‘pith and substance’ of a law—the main purpose of a law, as opposed to its incidental effects
The Evolution of Canada's Constitution Act

- Canada remained subject to British law and bound by Britain's foreign policy for a long time
- when Britain declared war in 1914, Canada was automatically at war with Germany
- by the end of the war, Canada was allowed to sign the Treaty of Versailles on its own
- Britain's Statute of Westminster, 1931, handed over to Canada control over foreign policy
- patriation of the Constitution took a long time as Canadian leaders tried to agree on an amending formula to make constitutional changes; Trudeau's 1971 Victoria Charter failed
- Trudeau led the successful fight against the Parti Quebecois referendum on sovereignty-association, whereby Quebec would become a sovereign jurisdiction (independent, in charge) in all areas of law but would retain economic association with Canada (e.g. currency)
- Trudeau then worked toward patriating the Constitution from Britain (bringing it home)
- the federal gov't and 9 of 10 provinces agreed to the patriation of the constitution with an entrenched charter of rights and freedoms (entrenchment: protecting a portion of the constitution by ensuring it can be changed only through constitutional amendment)
- the constitution was patriated on April 17, 1982
- P.M. Brian Mulroney's Meech Lake Accord was an attempt to get Quebec to sign the Constitution by recognizing it as a "distinct society" and giving the provinces more power (to suggest nominees for the Senate and the Supreme Court), but this agreement was not ratified by all the provinces within the 3 years deadline because it was stalled by Manitoba's native MLA (MPP) Elijah Harper and Newfoundland's Premier Clyde Wells
- after Meech Lake, Mulroney tried again with the 1992 Charlottetown Accord which would have abolished the federal power of disallowance (veto power over provincial legislation, not used since WWII and considered invalid)
- it also addressed issue of Aboriginal self-government, changing the Senate to an elected body with equal representation from each of the provinces and entrenching the appointment process to the Supreme Court
- it was defeated in six provinces and one territory
- its failure led to another independence referendum in Quebec in 1995 where the “no” forces won by a very slim margin (50.56 %)
- Quebec has still not signed the constitution
Chapter 5: The Charter and the Courts

The Charter

- the evolution of the *Canadian Charter of Rights and Freedoms* falls into 4 periods

1. English common law and customs – the principle of parliamentary (legislative) supremacy
2. The *Canadian Bill of Rights* – Diefenbaker follows thru on his campaign promise by enacting a Bill of Rights in 1960, which codified existing human rights in Canada
   - it had limited effect because it was just an ordinary statute & could be easily changed by Parliament; it wasn't entrenched in a Constitution so it was not high priority; it applied only to areas under federal jurisdiction; judges were hesitant to use it to strike down laws or expand rights because it wasn't part of the constitution
3. The *Victoria Charter* – Pierre Trudeau's first attempt to reform the constitution; a meeting in Victoria where the P.M. and provincial premiers debated entrenching a charter of rights and bringing home (patriating) the constitution from the U.K.; ended in a stalemate
4. The Charter as Law – on April 17, 1982 on Parliament Hill, Queen Elizabeth II signed legislation changing the name of the *BNA Act* to the *Constitution Act, 1867* and adding the *Constitution Act, 1982* to it; included was an amending formula and the Charter
Day 31: (pp.133-140)

**The Canadian Charter of Rights and Freedoms**

Section 52 of the Constitution Act, 1982, states that “the Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is...of no force or effect”

Section 1 Guarantee:

- our rights and freedoms are not absolute and unlimited; Section 1 “guarantees our rights and freedoms set out in it subject only to such **reasonable limits** prescribed by law as can be demonstrably justified in a free and democratic society”
- thus, any limits must be (1) important and (2) reasonable & justified for the benefit of society as a whole
- e.g. freedom of expression may be limited by laws against hate or pornography/obscenity in the Criminal Code
- Charter rights will not always prevail over criminal law
- the main rights and freedoms that form the nucleus of the Charter fall into the following 7 categories:

1. fundamental freedoms (s. 2) pp. 136-137: conscience & religion, thought, belief, opinion & expression, incl. freedom of the press and other media, peaceful assembly, association
2. democratic rights ( ss. 3-5): to vote, run for election, and Sections 3-5 limit duration of legislatures & ensure they sit1/yr.
3. mobility rights (s. 6): in and outside Canada
4. legal rights (ss. 7-14): right to life, liberty & security of person; s. 8 search & seizure: s. 9-11 not to be detained or imprisoned arbitrarily, right to lawyer, to be tried in a reasonable time, innocent until proven guilty; s. 12 cruel & unusual punishment; s. 13 right against self-incrimination; s. 14 interpreter for trial parties & witnesses
5. equality rights (s. 15): freedom from discrimination on basis of race, national or ethnic origin, colour, religion, sex, mental or physical disability, or age; can be restricted by s.1 (reasonable in
a free and democratic society: e.g. age to drive, vote, drink
6. official language rights (s. 16-22): French & English two official languages for gov't services
7. minority language rights (s. 23): French & English education rights

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Day 32: (pp.141-143)

**Limits on Charter Applications**
- although supreme law, the Charter contains 3 major limitations:
  1) s.1 justifies some violations of the charter ('reasonable limits')
  2) s. 32 states that the Charter applies only to relations between governments and citizens, not between private citizens which is governed by human rights legislation
  3) s. 33, the "notwithstanding clause" which allows governments to pass legislation notwithstanding (in spite of the fact) that it might violate one of a certain group of rights

**Use of the Notwithstanding Clause:**
- for important issues, the federal and provincial legislatures can invoke s. 33 if the law infringes on Charter rights, though some that cannot be avoided (ss. 3-6, ss. 16-23)
- a 5-year limit on rights-offending legislation means the law is reviewed and re-enacted once per election period, thus risking loss of an election if the measure is unpopular
- has been used very little; Saskatchewan invoked s. 33 in 1986 with back-to-work legislation
- controversially, Quebec used it in 1988, to pass a law allowing French-only signs in Quebec
- the federal gov’t has never invoked s. 33 even when pressure groups wanted it to, to entirely ban child pornography

**Legal right to be assumed innocent until proven guilty**
- at one it was in the Criminal Code that time drug trafficking suspects had to prove their innocence, which is referred to as reverse onus
- reverse onus still allowed for peeping toms caught in the act, known burglars caught with burglary tools, and suspects seeking bail

**Legal right against self-incrimination**
- this right against self-incrimination differs between Canada and the US
- in Canada, we can be compelled to testify but the incriminating evidence cannot be used
against us (we cannot be prosecuted for it)
- in the States, witnesses can ‘take the 5\textsuperscript{th} Amendment’ and refuse to testify on the grounds of our testimony being self-incriminating
- Canada has no equivalent to ‘taking the 5\textsuperscript{th}

CLN 4UI Notes
Day 33: (pp.145-153)

\textbf{The Role of Courts}
- there are about 750 courts across Canada
- judges are appointed by provincial and the federal gov't appoints superior court judges
- in the Supreme Court if a unanimous decision isn't reached the justices release majority and minority judgments
- all judges in Canada come from the legal profession; 10 years practice for federal appointments
- retire at 70 or 75 or are removed “for cause” (rare)
- most U.S. judges are elected (run campaigns, seek voters, etc. hard to be impartial)
- unconstitutional laws can be struck down or a law might undergo a “read down”: to rule that, while a piece of legislation may generally be consistent with the Charter, it is inconsistent in the particular case at hand and must therefore be forced to comply
- another option is consideration of s. 24 of the Charter: the admissibility of evidence can be called into question if a charter right was violated by police (e.g. search without a warrant)
CLN 4UI Notes

Day 48: (pp.228-235)

Unit 3: Criminal Law

Chapter 8: Crime and Criminal Law

What is Crime?
- federal gov't has sole jurisdiction over criminal law & defines wrongful acts as crimes in the Criminal Code, a federal statute passed by Parliament, which applies everywhere in Canada
- Criminal Code outlines crimes, how offences to be prosecuted and penalties
- it's not the only statute to control crime, e.g. Controlled Drugs and Substances Act
- criminal offences differ from regulatory offences such as traffic and pollution offences

Judge-Made Criminal Law:
- the code identifies offences, judges interpret them and not all crimes are clear in the Code;
  e.g. knowingly transmitting HIV

(pp. 236-239)

Purpose of the Criminal Law
- criminal law labels wrongful behaviour, identifies violations, and imposes sanctions (penalties) to achieve two purposes: retribution and the protection of society

Retribution:
- involves public denouncing & punishing of wrongful behaviour
- it reaffirms social values and delivers ‘justice’, and should be ‘fair’

Protection of Society:
- focus on public security & prevention of crime, plus rehabilitation of wrongdoers
- the protection of society is justified by philosophers, politicians and criminal theorists with the following principles:
  - private harm principle (prevent harm to individuals)
  - public harm principle (prevent harm to public institutions & practices)
- offence principle (prevent offence to others)
- legal paternalism (prevent harm to self)
- legal moralism (prevent immorality)
- some are up to debate (e.g. morality: Trudeau said “the state has no place in the bedrooms of the nation”, which led to the decriminalization of homosexual sex)

CLN 4UI Notes

Day 49: (pp. 240-245)

Who Commits Crimes?
- theories based on physiology, biology, psychology, sociology, politics & economics
- during late 19th c and early 20th c, two schools of thought: 1) Chicago school - social & environmental factors = deviant behaviour 2) Sigmund Freud's finding of faulty identification of child with parent = criminal behaviour
- until the 1960s it was assumed poverty bred crime; most criminals were poor, uneducated young males
- since then, researchers have found girls are more likely to have broken the law and rich kids just as likely (read pp.240-242 excerpt from Justice and the Poor)
- crime statistics underestimate white-collar and corporate crime

Conclusions:
- all Canadians break the law at some point in their lives, usually not serious and done in adolescence
- among older youths and adults, criminals are men at either end of the spectrum: 1) presently poor or destitute men without employment, feared by public, causing street crimes, and 2) higher class, white-collar criminals, responsible for more deaths and stealing much more money than the poor, seldom called criminals and seldom condemned by society who believe 'greed is good' (look how Martha Stewart has bounced back into peoples' hearts)

Who are the Victims of Crimes?
- read p. 245
Day 50: (pp. 246-254)

**Elements of an Offence**
- criminal offences are made up of two basic elements that must be proven by the Crown attorney: actus reus (a prohibited/wrongful act) and mens rea (a criminal intent/guilty mind)

**Actus Reus:**
- the actus reus of homicide is causing the death of a human being, as defined in the Criminal Code; the actus reus of a Criminal Code offence is the act or omission (failure to act)
- judges often have to interpret what exactly the actus reus of a crime is
- actus reus must be committed voluntarily to be a crime

**Mens Rea:**
- the mens rea is the mental element that goes with the commission of the actus reus
- the mens rea is often described as a willful commission of a crime, or negligent, or fraudulent and one must look to judges’ decisions in interpretation of these descriptors

**Analysing a Criminal Offence:**
- to prove actus reus, the Crown must prove all parts of it: e.g. “A person commits an assault when...without the consent of another person, he applies force intentionally to that other person, directly or indirectly”– a conviction is only possible if direct or indirect force is shown, plus lack of consent
- to prove mens rea of assault, the Crown must prove the force was intentional and that a reasonable person would realize there was no consent

**Subjective or Objective?**
- at one time (19th c) mens rea was established objectively (if the accused failed to perform as a reasonable person would, he or she was said to have intent)
- today, Canadian courts prefer a subjective approach to mens rea, whereby the Crown must prove the accused had the requisite intention to commit the offence (consciously chose to act criminally)

**Absolute and Strict Liability**
- for regulatory offences (traffic, pollution, unfair commercial practices) the Crown only has to prove actus reus, not mens rea
- until the mid-1970s, they were treated as absolute liability offences, whereby only actus reus had to be shown
- since a 1978 SCC case, the crown must prove strict liability, which is actus reus in the absence of due diligence (the accused cannot prove that he or she took due diligence – all reasonable care to avoid the crime

**Mens Rea and Fundamental Justice**
- the Charter has had an immense impact on criminal law: sections 7 to 14, the legal rights, are primarily concerned with the rights of individuals being investigated, charged, arrested, detained or tried by the state: all citizens are entitled to fair treatment and the potential of a law to convict & imprison a person who has intended no harm offends principles of fundamental justice

**CLN 4UI Notes**

Day 51: (pp. 260-268)

**Crime Scene Investigation**
- crimes scenes must be secured to protect against contamination, tampering or loss of evidence
- first officer on scene determines the boundaries of the crime scene & cordons it off to restrict people
- crime scenes are freed up by the chief investigating officer or coroner in the case of a sudden and unexpected deaths, deaths of persons in custody, or in institutions, violent deaths, suicides and suspicious deaths

Processing the Crime Scene - collection of physical evidence like a gun or finger prints & forensics
- police depts. take precautions to properly seize, handle and store evidence, to safeguard the continuity of evidence (see list p. 263)
- forensic scientists analyse evidence using many sciences
- fingerprints and DNA are the best evidence to place a criminal at the crime scene
- fingerprint patterns will be one of 3 types: 1. arches 2. loops 3. whorls
- there are invisible latent prints made by oil and sweat on the finger tip left on a surface
- there are also moulded fingerprints which leave a visible impression in soft materials like clay, wax or putty
- crime scene fingerprints are sent to an RCMP central repository in Ottawa
- trace elements of fibres, hair, dirt, dust and residues can be used to link a suspect to a crime
- hair roots can provide blood type
- blood is important to impaired driving cases and where mens rea is an issue b/c of intoxication
- blood splatters reveal important information: height of fall, direction of blow, motion
- gunshot residue (GSR) leaves trace elements on shooter's hands using a handwash test or scanning electron microscopy (SEM) test using a gummy substance & electron microscope
- DNA (deoxyribonucleic acid) is the distinctive genetic code within the 46 chromosomes of human beings found in blood, semen, saliva, vaginal secretions, skin and hair follicles and can lead to the i.d. of individuals

**CLN 4UI Notes**

Day 52: (pp. 269-280)

**Impact of the Charter on Police Powers**
- some say that the entrenchment of the Charter in 1982 shifted the balance in favour of individual rights over law enforcement
- in common law, police powers are limited & the right to privacy in one's home has been around since the Magna Carta
- we still have the writ of habeas corpus (remedy to test the legality of detention or imprisonment; right to appear before a judge in a reasonable time)
- courts have had the benefit of centuries old common-law precedents in interpreting the Charter
- what changed with the Charter, is courts have the power to enforce compliance with constitutional rights & freedoms and provide a remedy when these rights are violated
- s. 24(2) courts have the discretion to exclude evidence from trials; but illegally obtained or unconstitutionally obtained evidence is not automatically excluded; only that which would bring justice “into disrepute” (see text R v. Stillman, p.269 bottom)

**The Arrest Power**
- police & in limited cases private citizens can make arrests with or without a warrant
- there are 1) indictable offences (serious crimes; more complex procedures; harsher penalties), 2) summary conviction offences (less serious) and 3) hybrid offences which can proceed as either of the above, like assault
- suspects can be arrested after a police officer presents an information to a justice of the peace that sets out reasonable and probable grounds to believe an offence has been committed
- arrest & detention are infringements of individual liberties & the Charter says there must be reasonable grounds
- at issue is racial profiling, the practice of suspecting someone based on their race based on stereotypes

**The Search Power**

- privacy of the person is a main reason police are restricted in when they can search; they have to have reasonable grounds & usually a search warrant (Charter s. 8 right to be free from “unreasonable search and seizure”)
- police can search as part of the process of arrest in order to 1) ensure the safety of police and public, 2) protect evidence from destruction and 3) discover evidence

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**CLN 4UI Notes**

Day 53: (pp. 280-285)

**Ensuring the Accused's Appearance in Court:**

- most people are not incarcerated waiting for their trial, and not shackled, because presumption of innocence prevails
- people who are detained in custody are held for various reasons: 1) to establish their identity, 2) to secure evidence, 3) to prevent further or repeat offences 4) or to ensure a person's attendance in court
- the procedural Criminal Code options for summary conviction, hybrid and less serious indictable offences (listed in s. 553 of Code) to ensure the accused's appearance in court are:

1) **Appearance notice** - a document, issued by police officer when no arrest is made, informs accused person of the offence with which they are charged, the date to appear for fingerprinting, if required, and court date
2) **Summons** - document issued by a justice or judge after an arrest has been made, serves same function as an appearance notice
3) **Promise to appear** or **recognizance** - documents issued by officer in charge of police station after accused has been arrested and taken in; a promise to appear is an agreement by the accused to appear in court at stated time and place; a recognizance is a promise the accused will pay a certain amount of money if he or she fails to appear
people charged with more serious indictable offences are detained in custody to await a judicial interim release (pending trial or appeal) or bail hearing (within 24 hrs.); Crown must prove detention in custody is necessary except for a small group of extremely bad crimes

**Method of Trial**
- two criminal courts in Ontario: 1) the Ontario Court of Justice (formerly “Provincial Court”) which is a court of inferior jurisdiction; judges appointed by the provincial gov’t; hears lesser (‘inferior’) crimes: summary conviction offences and hybrid offences which the judge has decided to try summarily, and 2) the Ontario Superior Court of Justice which is a court of superior jurisdiction
- in most cases, a person accused of an indictable offence has a choice of court, except those at either end of the spectrum of seriousness: least serious crimes go to the inferior court and are heard by a judge only (theft, fraud, possession of stolen property) and most serious crimes go to superior court (murder, sedition)
- only a superior court judge can preside over a jury trial
- accused persons charged with superior court indictable offences are entitled to a preliminary inquiry, a hearing to ensure enough evidence exists to proceed to trial
- before all jury trials and non-jury trials if requested by the judge, there is a pre-trial conference attended by judge, lawyers on both sides and sometimes the accused, to decide on matters that will lead to a fair and expeditious trial

**Crown Disclosure**
- the crown must disclose its case and all its evidence in the pre-trial period, even if it weakens its case, to ensure a fair trial and allow the defendant's lawyer time to prepare a proper defence
- full disclosure by the Crown protects the accused's constitutional right to a “fair and public hearing” (s. 11d, Charter)
- see R v. Stinchcombe (p. 285)
Chapter 10: The Criminal Trial

Criminal Trial Principals and Procedures

- more than 80% of all criminal charges are dealt with guilty pleas: no trial
- criminal trial principles try to strike a balance between the power of the state and the civil liberties of the accused:

1) **Rule of Law** - everyone equal before law; law the only legitimate authority for the exercise of power

2) **Specific Allegation** - accused entitled to know exactly what they're charged with

3) **Case to Meet** - a case for the Crown strong enough to support a conviction; has the following procedures: Crown presents its evidence first, the state bears the burden of proof, accused has the right to remain silent and not take the stand

4) **Presumption of Innocence** - Crown must prove guilt beyond a reasonable doubt, or accused is acquitted

5) **Open and Public Trial** - trials open to the public; they should appear fair & unbiased

6) **Independent and Impartial Adjudication** - judges and juries must be impartial

**Criminal Trial Process**

- most trials are held before a judge, without a jury
- after the Crown presents its case, the defence can ask for a **directed verdict** of acquittal which will be granted if the judge decides there’s insufficient evidence to support a conviction (rare)
- if the Crown presents a case to meet, the defence presents evidence to raise a reasonable doubt
- judge decides which facts have been proven, which witnesses credible & comes to decision

**The Jury**
- option of a judge & jury only for serious indictable offences
- juries have 12 members; provincial legislation governs the forming of a jury pool, a.k.a. a **jury array**, jury panel or jury roll of candidates 18 yrs.+; certain people ineligible = lawyers, law students, doctors, law enforcement agents
- the jury array can be challenged by the Crown or the defence but only on the grounds of partiality, fraud, or willful misconduct by the sheriff
- once the array is assembled by the sheriff, the process of jury selection occurs as per the Criminal Code and is called empanelling a jury

**Jury Challenges** - there are 2 ways that both defence & Crown can challenge potential jurors:
1) **peremptory challenge** - without giving a reason; 2) **challenge for cause** - for reasons listed in the Criminal Code, usually partiality, bias and prejudice

**Evidence**
- evidence given by a witness is given by **examination in chief** (questioning by the lawyer who summoned the witness to testify)
- the witness is then subjected to **cross-examination** by the opposing lawyer, who tries to challenge the witness's credibility & reliability of the evidence
- the judge and jury are considered as a **trier of fact** in determining which facts are “true”

**Rules of Evidence**
- rules of evidence are designed to prevent the trier of fact from being misled e.g. rule against **hearsay** means a witness can’t testify about indirect second-hand knowledge
- much of the law of evidence is about the exclusion of evidence to ensure 1) reliable evidence and 2) fair trials and proper administration of justice so as not to bring it into disrepute

**Voir Dire**
- when the question of the admissibility of evidence arises in court, a hearing called a **voir dire** is held (a trial within a trial); it there's a jury, it is removed for the voir dire

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**CLN 4UI Notes**

Day 55: (pp. 298-314)

**Defences**
- two types of defence are available:
  1) negating defence: raises reasonable doubt as to whether actus reus or mens rea occurred; negates Crown’s case; includes mistake of fact, mental disorder, automatism and intoxication
  2) affirmative defence: justifies an accused’s criminal conduct; includes self-defence and compulsion (duress)

**Mistake of Fact**
- accused might have innocently committed a crime by mistaking the factual context of the offence & thus not have the mens rea; e.g. buying stolen goods
- most often used in sexual assault cases where force and lack of consent must be proven; if the accused believed consent was given, he has a potential mistake-of-fact defence which negates mens rea
- what's debated is whether the court should go with what the accused thought at the time or what a reasonable person would have thought: in R v. Pappajohn (p. 299), a rape case, the Supreme Court ruled the mistaken belief did not have to be reasonable, only honestly held, to negate mens rea: some applauded the clarification, others were appalled by the
Court's excuse of rape

Mental Disorder
- defence of mental disorder attempts to identify people whose disorder renders them blameless and to identify those who pose a continuing danger to society
- an accused found not criminally responsible (NCR) is not simply acquitted, but gets a verdict of “NCR on account of mental disorder”, whereupon the court or a special review board decides how to deal with the NCR acquittee: treatment & restrictions on freedom, whatever is least restrictive or onerous for the accused

Automatism
- like the defence of mental disorder, automatism is a defence which calls into question the voluntariness of actus reus; the crime must be a voluntary or conscious choice to be deemed a criminal act

- automatism has been defined by the S.C.C. as “a state of impaired consciousness, rather than unconsciousness, in which an individual, though capable of action, has no voluntary control over that action”, and therefore not guilty
- two types of automatism: caused by a mental disease or the “non-insane” variety
- if caused by disease, the defence and remedies of mental disease can be used
- if non-insane, the acquittal leads to freedom
- this defence has been used in cases of stroke, psychological trauma, hypoglycemia and a severe blow to the head, as well as sleepwalking (R. v. Parks 1992; p. 305)

Intoxication
- this defence is not allowed for general intent offences (an offence where the accused's intent is limited to the prohibited act itself, no other criminal purpose, like assault), but is allowed for specific intent offences (where the accused's intent goes beyond the prohibited act itself to include another criminal purpose, like break & enter in order to commit a robbery)
- the defence would use evidence of intoxication to show the accused did not possess the specific intent to commit the offence
- Criminal Code amended in 1995 to not allow intoxication as a defence in cases involving assault and interference with bodily integrity of the victim (change in response to the SCC allowing this defence for a general intent sexual assault case)
Self-defence
- for this defence, the Criminal Code requires that the threat is imminent and no alternative to the defensive action is possible
- battered women's syndrome, accepted now as a defence, has reconceptualized self-defence whereby fear in abusive relationships is akin to imminent danger & lack of alternatives

Compulsion
- compulsion, or duress, excuses individuals whose criminal conduct is compelled by threats that have immediacy and presence (see list p. 312)
- recently, these statutory requirements of immediacy and presence have been debated and the S.C.C. that the threatening person need not be present at the commission of the crime

CLN 4UI Notes
(pp. 464-474)
Chapter 16: Principles of International Law
- international law is a body of agreements among nations that decide to be parties to them
- there is no international force to police broken agreements and international courts have very specialised and limited jurisdiction
- the UN comes closest to being a world law-making body, but it too is limited in law-making & enforcing
- in a globalized world, everything is affected by international considerations: e.g. trade agreements, shipping regulations, international trade marks, copyrights, manufacturing standards

State Sovereignty
- there are tensions between the idea of state sovereignty—that nations have the right to make and implement laws within their own boundaries without outside interference—and the idea that international rules apply to all humanity, nations and common areas of the Earth, like oceans
- state sovereignty is defined as the lawful control by a state over its territory, right to govern in that territory, and authority to apply law there to the exclusion of other states
- international agreements and laws tend to limit sovereignty
- idea of exclusive sovereignty developed from the 17th to the 19th centuries, as the world was divided up between ruling states, but since WWII ended this idea gave way to a broader view of
rights and responsibilities of states due to advances in technology, especially transportation and communications, trade, population, travel, and the rise of multinational corporations
- the atrocities of WWII, especially the state-sanctioned genocide of Jews by Germany, also propelled world leaders to establish international laws and courts: e.g. Nuremberg trials
- traditional views of state boundaries and exclusive sovereignty were challenged by new technological developments: space exploration, space vehicle overflights & remote sensing from satellites
- states have surrendered much of their freedom of action in order to gain the political, economic, or scientific advantages of cooperation and standardization
- the term “international law” now describes relations among states and how states handle such matters as human rights within their borders

CLN 4UI Notes
(pp. 474-479; pp. 480-485)

The Development of International Law
- early international law involved treaties: an agreement between or among nations, usually concluded in writing and governed by international law
- international law does not exist within a formal justice system, i.e. there is no international legislature
- some international judicial bodies of limited application exist, e.g. International Court of Justice and the International Criminal Court (est. 2002 with 120 member states)
- nations tend to obey international law not out of fear of legal sanctions, but perhaps economic sanctions by other nations, e.g. countries opposed to child labour might refuse to buy products from a nation who doesn't agree to abide by the International Labour Organization's Program on the Elimination of Child Labour; therefore, compliance is largely voluntary
- international law attempts to regulate situations in which activities are extraterritorial: actions in one state infringe on the sovereignty of another state, or cause damage to its territory, interests or citizens

Extraterritorial Legislation
- e.g. U.S. legislated the Helms-Burton law in the 1990s which would have persecuted Canadian executives whose companies were involved in Cuba's nationalized industries that Americans had claims in since Castro seized them in 1959 and the U.S. retaliated in 1962 with trade sanctions imposed against Cuba
- cross border pollution is another extraterritorial issue, like the crash of Soviet spy satellite Cosmos 954 in northern Canada, spreading radioactive material over 124,000 k²; Canada sought compensation and the Soviets eventually paid $3 million of the $14 million clean-up

**The Importance of Treaties**
- treaties are like contracts that regulate legal relations; they are documents which may be called a “treaty”, “convention”, “protocol”, “agreement”, “memorandum of understanding”, “accord”, “exchange of notes”, or “arrangement”
- Canada has hundreds of treaties with the U.S. and many other bilateral (two-party) and multilateral (multiple-party) treaties, like a 2003 agreement between ice wine producing countries to establish standards for its production
- the main rules of treaty formation, application and enforcement have been established by international treaties (like the 1969 *Vienna Convention on the Law of Treaties*), as developed over the course of history through **customary law** *(a common pattern that has emerged over time to become binding in international law)* and practice
- a treaty must be negotiated, signed, ratified (in Canada, given formal consent by Cabinet with or without reservations: modification), and implemented within each state that is a party to it (has signed it)
- in Canada, implementation of a treaty involves legislation, as governed by Sections 91 & 92 of the Charter, so it won't enter into a treaty which can only be legislated by provincial governments unless it has their prior approval
- since Alberta and Ontario objected to the terms of the *Kyoto Protocol* (to reduce carbon monoxide emissions), our gov't is working on a **“federal state clause”** whereby provinces are not obliged to abide by a treaty unless they are willing
- most treaties have **dispute resolution mechanisms**, like through the International Court of Justice
- some treaties require countries to meet every few years, like the *UN Framework Convention on Climate Change* which adopted the Kyoto Protocol in 1997, to make amendments

(pp. 485-492)

**Diplomatic Relations**
- some of the oldest rules of international law deal with diplomatic protection; the ancient laws were codified in the 1961 *Vienna Convention on Diplomatic Relations*
- diplomatic immunity is a fundamental rule that the “person of a diplomatic agent shall be inviolable”, i.e. protected from physical harm, arrest or detention
- embassies are also “inviolable”, as are diplomatic documents, files and bags
- the International Court of Justice decided that the Islamic Republic of Iran violated obligations to the United States in not protecting its embassy from militants who seized it in 1979, taking hostages
- in March 2002, a Russian diplomat was found guilty in Russia for the drunk-driving death of an Ottawa woman, although Russia was adamant that he should not be prosecuted in a Canadian court
- diplomatic asylum is when protection is sought in embassies of other countries by individuals fearing for their safety

CLN 4UI Notes

(pp. 496-506)

Chapter 17: International Organizations

- one of the first international organizations was the Red Cross, established in 1859, as a non-governmental organization (NGO)
- NGOs that operate worldwide include humanitarian, medical, scientific and sporting organizations including Amnesty International, Oxfam, Greenpeace, Doctors Without Borders, and International Olympic Committee
- the first global permanent political organization created was the League of Nations, founded in 1919 as part of the Treaty of Versailles, the peace treaty which ended WWI: it had 57 members at its largest but not the U.S.
- the League of Nations was unsuccessful in preventing WWII; it dissolved in 1946 and transferred its mission and ideals to the United Nations

The United Nations

- almost every nation in the world is a member of the UN, which numbers at 191 (the Vatican and Taiwan are not members but participate in its activities)
- the fundamental concepts of international law are embodied in the Charter of the United Nations and its purpose is to:
  - maintain international peace and security
  - develop friendly relations among nations
• to solve international problems
• to promote respect for human rights and harmonizing the actions of nations
- the UN is headquartered in New York, except for the International Court of Justice (ICJ) which is located in The Hague, Netherlands
- the six main organs of the UN are the ICJ, the General Assembly, the Security Council, the Secretariat, the Economic and Social Council, and the Trusteeship Council

The General Assembly
- is the central body of the UN where every member country is represented and gets one vote
- closest thing to a world parliament: examines and debates issues of common concern, adopts resolutions
- includes the International Law Commission (ILC) which creates new legal norms

The Security Council
- it maintains international peace and security; is most powerful organ of the UN, it has the power to make decisions that are legally binding on members, supported by a system of sanctions (penalties or actions imposed) for enforcing compliance
- the Security Council has 15 members: the victors of WWII are the five permanent members: China, France, Russia, the United Kingdom and the United States, and the other 10 non-permanent members are elected every two years by the General Assembly
- the UN Charter empowers the Security Council to intervene in conflicts by taking action and using force if necessary (e.g. US led force pushing Iraqi troops out of Kuwait in first Gulf War)
- substantive matters like the use of force require nine affirmative votes, including all 5 of the permanent member votes; a veto by one of the five prevents adoption of the proposal
- the Security Council administers sanctions and establishes war crimes tribunals
- it supervises peacekeeping operations and disarmament programs

The Secretariat
- is like the UN's civil service, it carries out the day-to-day work of the UN, its policies and programs
- headed by a Secretary-General, elected for 5 years (Kofi Annan had 2 terms; 1997-2002, 2002-2006)
- administers peacekeeping operations, mediates disputes, surveys economic and social problems, and prepares studies on human rights, environmental problems and sustainable development

The Economic and Social Council
- the ECOSOC coordinates economic and social work: e.g. immunization of babies in Sudan, financing of refugee camps in Pakistan, UN's Children's Fund (UNICEF), and the International Labour Council (ILC)

The Trusteeship Council
- suspended in 1994, the Trusteeship Council oversaw the independence and self-government of colonies following WWII
- suggestions for its future role include overseeing the atmosphere, outer space and the oceans, and reconstruction of war-torn nations like Afghanistan and Iraq
Criticisms of the United Nations
- many people criticize the UN's ability to resolve conflicts because of all the politics involved
- some complain the UN is ad hoc and reactive, rather than planned and proactive
- to be more effective, the UN must be able to respond to international problems before they escalate into full-scale crises; this would require greater political will by members and greater financial and human resources
- there is debate about the composition of the Security Councils' permanent membership which reflects a post war world, not political realities of the 21st century; since 2/3 of UN nations are developing nations, shouldn't they have representation on the Security Council?
- should the Security Council be paralysed by the veto of a single permanent member, preventing passing of a resolution?
- developing nations are concerned over the power of the Security Council
- there are also questions about the United States ignoring the wishes of the UN in invading Iraq, pointing to the ineffectualness of the UN
- the UN has been criticized for not providing enough peacekeepers to stop the 1994 genocide in Rwanda: Hutu extremists massacred over 800,000 Tutsis and moderate Hutus, the worst genocide of the late 20th century (the UN peacekeeping force was led by Canadian Lieutenant-General Romeo Dallaire)

CLN 4UI Notes
The International Court of Justice (pp. 508-513)
- the ICJ, or World Court, is the main judicial organ of the UN, with 15 judges, each a different nationality, elected by UN General Assembly and Security Council for 9 year terms
- its dual role is to:
  1) settle the legal disputes submitted to it by states that have agreed to its jurisdiction, and
  2) give advisory opinions on legal questions referred to it by international agencies
- the UN Charter states that the ICJ's jurisdiction is based on the consent of the parties to the dispute, and its judgments are final and binding; if one state in the dispute fails to comply with a judgment, the other state may call upon the Security Council to take measures to enforce it
- most disputes involve territorial sovereignty & maritime boundaries; advisory opinions on human rights, use of nuclear weapons, and UN membership
- only disputes between nations are heard, and each nation can appoint its own ad hoc judge to the court for the duration of the proceedings
- Canada won the so-called "turbot war" with Spain, when the ICJ ruled in Canada's favour in this fisheries jurisdiction case in 1998 when it withdrew from hearing the case (ultra vires)

International Human Rights (pp. 513-520)
- idea that human rights are “natural” (or moral, or neutral) is accepted by the world community, though
some states oppose the viewpoint that human rights should be dictated by international norms rather than state policy
- the earliest expression of these norms was the **UN's Universal Declaration of Human Rights (UDHR)**, adopted in 1948
- there are 2 UN human rights treaties signed by member states:
  1) the International Covenant on Civil and Political Rights, and
  2) the International Covenant on Economic, Social and Cultural Rights
- together with the UDHR, these two covenants form the **International Bill of Rights**
- protection of human rights is a fundamental objective of the UN and all signatory states, like Canada, are regularly reviewed as to their performance on human rights
- it should be noted that UN human rights treaties can be viewed as adopting western norms, where individualism and individual rights are paramount, and this sometimes conflicts with the religious and cultural norms of some nations (for example, in communist states, Islamic, African & Asian nations)

**Amnesty International**
- Amnesty International (AI) is an international network of more than 1.5 million members in 150 countries & territories in every region of the world who campaign for the rights enshrined in the UDHR
- it is an NGO, independent of the UN and any gov't., political ideology, religion or economic interest
- it fights for internationally recognized human rights: to free political prisoners, prisoners of conscience, to ensure fair trials, abolish the death penalty, torture and other degrading treatment, as well as ensuring that the perpetrators of such injustices are brought to justice

**CLN 4UI Notes**

( pp. 534-558 )

**Chapter 18: International Law and Common Heritage: The Kyoto Protocol**
- greenhouse gas emissions affect the atmosphere as a whole and have a global impact; thus, the atmosphere is viewed in international law as a global resource
- in 1988, the World Meteorological Organization and the UN Environment Program established the Intergovernmental Panel on Climate Change (IPCC) to research and report on climate change
- in 1992, one report led to the **UN Framework Convention on Climate Change**: parties to the framework, including Canada, then held conferences to plan programs to reduce emissions; the 1997 **Kyoto Protocol** emerged from these conferences, negotiated with the participation of over 160 countries
- the **Kyoto Protocol** is a complex plan for reducing gas emissions which damage the atmosphere
- it requires its signatories to reduce their emissions to at least 1990 levels, with a target date of 2012
- it includes a formula whereby countries can trade and sell credits towards achieving the target,
for example, if Canada helps a developing country switch from coal to wind power generation, Canada can be credited with a reduction
- to come into force, the Kyoto Protocol must be ratified by parties whose combined emissions account for at least 55% of the total world carbon dioxide emissions for 1990; today, the target still falls short
- Canada, with 3.3% of the target, ratified in 2002; the U.S., accounting for 36.1%, has signed but not ratified; if the States ratifies, the protocol will come into force
- for Canada, it's been a controversial decision: it requires Canada to cut emissions by 240 megatonnes a year between 2008-2012, about 20% less than what levels might reach
- public support has been high, but some provinces and business groups have been critical
- they have questioned the science behind the concept of climate change and have described the costs of cutting emissions as far too high:
  - loss of thousands of Canadian jobs
  - a slowdown in economic growth
  - the putting of Canada at a disadvantage compared to countries who haven't ratified, like the U.S. and Australia
  - high energy costs: gas at the pump, home heating, manufacturing
  - other technical and economic implications
- see the competing viewpoints: Alberta Premier against the Kyoto Protocol versus Alberta Scientists for the Kyoto Protocol on pp. 556-558

CLN 4UI Notes

(pp. 385-398)

Unit 4: Labour (and Environmental) Law

Chapter 13: The Government and the Workplace
- the provincial and federal gov'ts play a role in regulating employment standards in the workplace
- employment legislation is concerned with issues such as wrongful dismissal, health and safety and human rights in the workplace, compensation and minimum labour standards such as wages & hours
- in the last 60 years employment standards have improved, with working hours reduced, minimum wages raised and safety standards enforced

Employment Standards
- today, workplace conditions and employer-employee relations are covered by labour laws
- the Canada Labour Code governs federal gov't workers, the railways, telecommunications,
ferries, tunnels, bridges, canals, banks, uranium mining, and federal Crown corporations
- all the provinces have labour code legislation that imposes minimum standards, like Ontario's
  Employment Standards Act (ESA)
- standards prescribed by the ESA and similar statutes are inalienable: they cannot be ignored
- many of the issues relating to the enforcement of employment standards are decided in the
courts
- Ontario's Occupational Health and Safety Act is intended to reduce workplace accidents and
  risks for workers: all workplaces have a health and safety representative or committee,
  composed of workers and management; the Ministry of Labour enforces the act and can impose
  fines for violations
- workers' compensation programs are publicly supervised insurance schemes; when a worker is
  injured, a claim for compensation is submitted to a workers' compensation board
- Human Rights Codes protect workers from discrimination in the workplace and allow victims
to complain to the Human Rights Commission, a tribunal capable of issuing binding orders on
public and private sector employees
- the issue of gender-based discrimination in employment compensation revolves around the
  "gender gap" when it comes to earnings: women earn 78 cents to every dollar earned by men,
  and is addressed by gender pay equity legislation like Ontario’s Pay Equity Act to address
  “systemic discrimination” on the principle of pay equity or “equal pay for work of equal value”