1. **Legal Process: An Overview**
   A. [Legal Process](Hart & Sacks) Rubin (pp. 1394-96); [Roach](review) (pp. 363-66)
   - institutional design & institutional competence
     - making and application of law
     - making vs. (“mere” interpretation vs.) application; “common law” vs. “civil law” vs. “statutory law”; legislators vs. judges vs. administrators
     - functional, purpose-based approach re: design and implementation
     - MPC as Legal Process document/project
     - see purpose section in MPC (§ 1.02) (crim)
     - [Willis](p. 59, § IV) (admin)
     - discretion: acknowledge and guide
     - interpretation maxims (see MPC §§ 1.02(3), 2.02(3), (4), 2.05)
     - [Interpretation Act](see § 3)
   - systemic, comprehensive, comparative
     = see civil law materials, e.g., on codification (Hart & Sacks 772-77; 787-91)
B. Legal Process, Professionalism and Ethics
   = systemic
      - process unmodified
      - norms
         - actions
         - actors (incl. qualification)
   = comprehensive (less so)
   = comparative
      - internal
         - civil, criminal, administrative
      - external
   = contextual
      - law
      - ethics
   = historical (e.g., jury)

C. Types of Process
   = functions, rationales, purposes
   - private law
      - "civil"
        - “alternative” (mediation, arbitration, etc.)
   - public law
      - administrative
      - public
      - “private”
        - disciplinary ([Wigglesworth](#), paras. 16-28)
        - labor ([Dunsmuir](#) para. 74)
   - criminal

D. Principles
   = nature & sources of norms?
      - common law
      - principles
      - caselaw
      - constitution
      - admin
        - procedural fairness/natural justice
          - audi alteram partem
          - nemo iudex (but see [Vermeule](#) pp. 386-90) ([Ocean Port](#) paras. 39-43)
          = arbitration (§§ 19, 20 Ont. Arb. Act)
      - US: con law: due process
        - [Goldberg](#) (pts. I & II) vs. [Nicholson](#) (paras. 18-26)
      - crim
        - due process
          - post-“natural justice”
        - “general principles of criminal procedure” ([LRCC](#) pp. 23-28)
- civ (values, principles, objectives)
  - fairness, order, efficiency, justice (to all parties), comity, predictability, security, stability (Van Breda paras. 25-27, 34, 38, 66, 73, 79 (jurisdiction) (also: balance, reconcile (paras. 66, 73)); see Dutton below (balance efficiency & fairness)
  = Rules of Civil Procedure (Ont.) (1990) (§ 1.04)
  - “the just, most expeditious, and least expensive determination of every civil proceeding on its merits”; proportionality
  = Federal Rules of Civil Procedure (U.S.) (1938)
  - “the just, speedy, and inexpensive determination of every action and proceeding”
- due process
  - US vs. Canada (jurisdiction)
  - Int'l Shoe (319: “relation to the fair and orderly administration of the law which it was the purpose of the due process clause to insure”) vs. Morguard ("demands of order and fairness"); “proper,” “appropriate”

E. Mode(l)s of process
  = parameters
  - aims
  - functions
  - “meaning”
  - significance
  = truth
  - wrongful convictions (China)
  = legitimacy
  = civility
  - order, “repute”
  = protectionism/elitism (CBA Futures p. 18)
  - lawyers' interest
  = types of model
  - systemic/general
  - adversarial vs. inquisitorial
  - justice vs. efficiency
  - by area
  = criminal
  = civil
  = administrative

F. Focus areas
  = habeas corpus
  - history (Halliday thesis 943-46) (Halliday & White 6-7, 16-31)
  - jurisdictional, hierarchical
  - beacon of liberty
  - values
  - justice
  - royal authority
- prerogative writ
- civil vs. criminal procedure
- collateral
- flexible (standard vs. norm)

= jury
- history (Brunner thesis)
  - peer judgment vs. tax collection
  - local self-government vs. central authority
  - royal (common law) courts vs. manorial courts
  - English vs. French
- values
  - justice
  - royal authority
= wrongful convictions
- process vs. substance; process vs. truth
- wrongful conviction vs. mistaken identity vs. false positive
- finality/accuracy/resources
- collateral
  - habeas corpus
- legal vs. political; judicial vs. executive
- adversarial vs. inquisitorial

G. Legal process
- rule of law?
  - the “legal” in legal process
    - Legal Process?
      - intro. H & S (ch. I, § 1, A. (pp. 1-9))
      - Hart, Aims of the Criminal Law (401-06)
      - Fuller on Law
      - ego: law = autonomy (vs. police)
  - law vs. police; legality vs. “managerial direction”
    - why process?
      - discretion
      - police process? vs. legal process?
  - process vs. substance
    - John Hart Ely (representation-reinforcement); Kent Roach (dialogic judicial review pp. 49-55)
    - procedural vs. substantive review (Can. admin law)
    - process as substance
      - e.g., federal habeas in state cases (U.S.): statute of limitations (1 year), exhaustion (state remedies), successive petitions, retroactivity (“new” rules)
  - process vs. substance?
    - process = neutral?
    - principles = neutral? (Wechsler pp. 15, 19-20)
  - autonomy
- self-judgment: legitimacy?
  - representativeness
    - jury
      - M (Fritz Lang 1931) (jury of M’s peers)
    - participation (audi alteram)
    - self-designed process
      = omnis iudex in sua causa
- “rule of law”/principle of legality? (Fuller)
  - generality/equality
    - formality of process
      - standards vs. rules
    - objectivity (neutrality)
      - nemo iudex in sua causa
      - but see self-designed process
  - certainty/predictability (prospectivity)
    - predetermined process vs. ad hoc
  - specificity/clarity
  - consistency (internal, temporal)
    - “legitimate expectations” (Agraira paras. 93-97); executive estoppel/officially induced error (see below)
- publicity
- congruence
- speed/efficiency
- accuracy
- finality
- process vs. procedure?

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2. Legislation: Making Law

A. Law
  = legislativity
    = delegation (Willis) (admin); Mistretta (pts. I-III & Scalia dissent)
    = common law crimes, Frey
  = codification
    = criminal code (Friedland 145-55, Linden 1-8, 12-20) Alberta Nurses
    = civil code vs. criminal code (Kasirer pt. II)
    = admin code (StVollZG)
      - BVerfGE 33, 1 (1972): substantiality; non-delegation
      - statute vs. code
  = “rules of procedure”
    - making law about applying law
    - rules vs. code vs. act
  = Rules of Civil Procedure (Ont.) (Civil Rules Committee; Process)
- as is/are just = 79 (31/48) times: “justice,” discretion
  = “liberally construed to secure the just, most expeditious, and least
  expensive determination of every civil proceeding on its merits”
  = Federal Rules of Civil Procedure (Process)
  = “construed and administered to secure the just, speedy, and inexpensive”
  determination of every action and proceeding”

B. Ethics
  = legislators
    - Ont. Members’ Integrity Act (preamble & §§ 2-9); Ont. Integrity Commissioner
      (2013-14 Report pp. 1-12)
    = legislative drafters (pp. 125-26, pt. IV)
    = lobbyists (Can. Code of Conduct; Lobbying Act § 5(1))
      - Democracy Watch (paras. 1-9, 27-54)

C. Who?
  = right to vote
    = felons (Sauvé paras. 1-62)
    = Fair Elections Act (UofT profs)
    = citizenship (Toronto PR voting proposal)
  = right to be voted for
    = s. 750 Criminal Code, citizenship

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3. Adjudication & Administration: Applying Law

A. Law
  (i) Basic Features: General Part
    = models
      - areas
        - criminal (Packer, Roach I-III)
        - civil (Scott)
        - admin (Willis) (p. 59, §§ III-IV)
      - systems
        - adversarial vs. inquisitorial
          - criminal (Roach: wrongful conviction (causes) pts. I & II); (Langer
            pts. II & III)
          - civil (Jolowicz) [Langbein vs. Allen]
            = 10th District Court (France) (trailer)
        = interpretation
          - Willis (pp. 4-16); Llewellyn
            - Schreiber paras. 52-80 (bijural/bilingual)
          - Rizzo (civil), Régie (paras. 147-48, 158-60) (admin), Canadian Foundation
            (paras. 28-43) (con), Paré/McIntosh/Sharpe/L.B. (crim),
        = discretion
= crim
- judges ([Summers](paras. 20-69) [Nur (supplemental)]
  - U.S. Sentencing Guidelines ([intro § 1A1(1)-(3)]
- prosecutors ([Krieger](paras 1-15, 24-32, 40-end)
  = discretion not to prosecute (plea bargaining)
  - criticism ([Canada](US pp. 115-17, 122-23, 125-26, 130-33)
- “prohibition”
  - Germany: Legalitätsprinzip (StPO § 152), Opportunitätsprinzip §§ 153-154; fact vs. fiction (pp. 547-553; 558-60); “legalization” (StPO §§ 257b & 257c: in practice pp. 72-79); Fed. R. Crim. Pro. 11
- police ([Ladouceur](Cory judgment))
  = discretion not to investigate ([Beaudry](Charron judgment))
  (obstruction of justice)
  = admin: [Suresh](paras. 29, 33-38)

(ii) Selected Issues: Special Part
  = jurisdiction
  = “jurisdiction” (vs. jurisgeneration; vs. law “enforcement”)
  - senses: activity, power, scope ([Dubber](256-63)
  - civil (international & interprovincial)
    - ([Morguard](1990) 3 S.C.R. 1077, 1082-83, 1095-end); ([Saldanha](paras. 1-11, 24-77)); ([Van Breda]
  - criminal
    - legislative competence: power to make law ([Firearms Reference](paras. 15-16, 24-25, 31-35, 41-42, 54-55)
    - adjudicatory/applicatory competence: power to apply law ([Stucky](Libman paras. 1-11, 43-44, 55-78) ([Morgan on Libman, pp. 246-47, 269-77)
      - territoriality et al. ([Dubber](263-65); [Code of Service Discipline]; Comp Crim L 144-46
  - administrative
    - “true” jurisdiction ([Alberta Teachers](paras. 30-42)
    - vs. civil ([Weber](McLachlin judgment paras. 32-58))
  = justiciability/standing/statute of limitations/mootness
  = justiciability (issue)
    - ([Black](Guergis) paras. 1-22, 50)
  = standing (person)
    - civil
      - private interest standing (animals) ([Nakhuda](paras. 1-4); environment ([Sierra Club](majority and dissents))
      - public interest standing ([Downtown](paras. 1-8, 18-end)
    - criminal
      - search ([Edwards](paras. 1-57); competence ([Whittle](paras. 28-33, 48); [pro se
      - administrative (initial determination, not judicial review)
        - public interest standing ([Finlay](paras. 1, 17, 22, 23, 27, 31-36)
= intervention
  civil (Pictou Landing First Nations) (Choc)
= statute of limitations/delay
  - civil: Bond (paras. 34-end)
  - crim: LRCC p. 34; summary convictions (Dudley paras. 1-46); speedy trial (Morin (Sopinka judgment)); Minnesota
  - admin: Bagambiire (LSUC; summarizing Blencoe)
= mootness
  - G.(L) (paras. 1-2, 41-48)
= procedural rights/due process
= “natural justice”/“procedural fairness”/nemo iudex & audi alteram partem
  - admin (vs. due process): Schauer 47-58, 71-72 (Consolidated Bathurst paras. 2-3, 22-23, 42-51)
  - civil: Ariston Realty Corp; Kallaba (para. 31); Beidas (paras. 36, 79)
  - criminal: Villota (paras. 47, 77-78, 90-119, 123, 131-33) (certiorari)
= independence & participation
  - jury (Spence (paras. 1-25, 77-78); race; Kokopenace (paras. 1-12, 137-39, 144-51, 205-12, 227-28: underrepresentation)
  - administrative tribunal (NF Telephone)
    = (Ocean Port paras. 39-43); (Vermeule pp. 386-90)
  - judge (NF Telephone) (Provincial Judges) (paras. 94-95, 105-07, 109)
  (R v S (RD) (paras. 31-49, 52-53 (L’Heureux-Dubé), 118-20, 158-59 (Cory) (crim)
= discovery/notice & privilege
  - civil Grossman
  - admin May (paras. 89-120)
= privilege
  - Blank (paras. 1-65) (solicitor-client, litigation privilege)
    [- paralegals Chancey (paras. 1-3, 26-57) (supplemental)]
= right to (paid) counsel
  - criminal: Bartle (pts. I-III, IV(a), (b), (e), (g)(ii))
  - admin: G.(L) (paras. 1-2, 41-48 (mootness), 56-61, 68-75, 81, 91)
  - civil: P.D. (paras. 1-14, 148-58)
= pro se (advice to lawyers)
= burden of proof
  = crim vs. civil Starr (paras. 91-101, 136, 139, 150-51, 230-43)
= civil & admin McDougall (paras. 1-50)
= over- and abuse of process
  - res judicata/double jeopardy; abuse of process; estoppel & (“the rule against”) collateral attack
    - CUPE 79 (admin/crim) (paras. 1-59); Penner (civil/admin) (paras. 1-72); Mahalingan (crim: estoppel/double jeopardy) (paras. 1-59);
    $787,940 (crim/admin); Berkowitz (crim/crim); Rasouli (admin/civil; + privilege)
      - admin flip-flop
- crim: executive estoppel/mistake of law (Studifin); officially induced error (Tétreault paras. 20-28); cf. legitimate expectation
- double jeopardy: Wigglesworth (paras. 1-31) (admin/crim); Shubley (majority opinion) (same)
- habeas corpus: May (paras. 1-54, 64-86) (also see above: discovery)
- procedure as substance; process v. merits (Teague pp. 1-6)
- wrongful conviction (Roach: More Procedure, Less Justice pp. 283-86)
  = alternative procedures
  = crim: plea bargaining (Nixon) (abuse of process) (paras. 1-17, 33-end)
  - plea bargagining as “alternative” process?
  = admin: environmental ADR (model legislation pp. 106-21)
  = civil: mediation (Sable Offshore); class action (Dutton) (paras. 1-10, 19-end) (“balance efficiency & fairness”)
  = “motions”
  = injunctions
  = civil: RJR (pts. VI & VII); Morland-Jones
  = admin: Tomko (pp. 116-25) (“cease and desist”)
  - contempt: Alberta Nurses
  = crim: sureties (Crim. Code §§ 810-811)
  = motion to strike
  = civ: Hunt (pts. 1-3 & 4(1)(b)) Joly (“person”)
  = admin: Majesty (Human Rights Tribunal)
  = summary judgment
  = civil: Hrynaiak (paras. 1-68, 85-end) (“access to justice”; roadmap)
  = crim: summary conviction (Crim Code Pt. XXVII)

B. Ethics
  = judge's ethics
  - code of conduct (pp. 3-7, 13, 17, 23, 27-29)
  - Judges Act §§ 63-66
  - Cosgrove (report 2) [report 1 (paras. 121-64, 182-90) (supplemental)]
  = adjudicator
  - LSUC tribunal adjudicator code of conduct
  = lawyer
  - LSUC Rules of Professional Conduct
    = e.g., § 1.02 (“conduct unbecoming a barrister or solicitor”; UCMJ); 1.03;
    2.01; 2.02(1), (5); 2.03; 2.03(1)-(4); 3.01(1); 4.01; 4.06(1); 5.02(3); 6.01(1),
    (3); 6.03(1); 6.11
    - civility (Woolley uncivil I; uncivil II (intro, pts. III-V))
    - ungovernability: Shifman
    - fraud: Nguyen
    - conflict of interest/duty of loyalty: Neil
    - crim: defense (Martin) (Simon 1703-06); prosecution (Krieger) (see above)
  = administrator's ethics
  = police (Code of Conduct ON; RMCP)
  [· Bridgman (penalty) (supplemental)]
C. Who?
   = judge
      = judicial qualifications (Supior Ct) [Supreme Court (Nadon) (supplemental)]
   = jury
      = right (eligibility) to sit on jury
      = civil
         = Can: Guardian of Civil Rights (pts. I & II, IV)
      = crim
         = Can: overview (pts. I-III)
      = admin
         = lay participation (e.g., Competition Tribunal Act) (NF Telephone (above))
   = lawyer
      = Nat'l Admission Standards Project; LSUC (e.g., pt. IV (good character))
      = law schools/LPP (Pathways (executive summary))
      = students (Moran (paras. 1-3, 24-52)) (see also competence (above))