

**SOC 3395: Criminal Justice and**  
**Corrections:**  
**Overheads Lecture 6: Crime Control & Criminal**  
**Justice Policy 1**

\* 6 Distinct philosophies currently underlie our CJS:

- |                              |                         |
|------------------------------|-------------------------|
| (1) Deterrence               | (4) The justice model   |
| (2) Rehabilitation           | (5) Restorative justice |
| (3) Selective incapacitation | (6) Aboriginal justice  |

\* Each outline, in different ways, how best to deal with criminal behavior (we deal with the first 2 today)

\* Example: different approaches to deal with sex offenders:

- community notification laws
- sex offender registries (provincial & national)
- screening youth volunteers
- computerized “flagging” programs

\* Each criticized as:

- providing false sense of precision/ prediction
- creating false sense of security
- disregarding offenders’ privacy
- ignoring inadequate treatment programs

**Crime Control Philosophy & Criminal Justice Policy:**

\* Many complain the CJS is either too “soft” or “hard” on offenders, others note that changing policies either way

tends to get lost in the complexities of the CJS

\* Nevertheless, from an ideal standpoint, several philosophies guide the operation of our CJS (often mixed up in different ways in real life)

\* Each philosophy addresses different issues (e.g. to focus on the actor vs. the act). Each will be dealt with in turn.

### **The Justice Model:**

\* Emphases:

- justice, fairness, protection of human rights & dignity

- elimination of discretionary powers
- the sentence must fit the crime
- everyone should be treated equally

\* The first CJS's based on this model emerged in various U.S. states in the 1970's-1980's. They emphasized:

- control of prosecutorial discretion
- abolition of individualized sentencing
- limited treatment programs
- termination of parole

\* The essential focus is on punishing offenders fairly & justly

- direct relationship emphasized between seriousness of offence & severity of punishment ("proportionality")

- due process protections important
- personal circumstances ignored besides criminal record

\* In Canada, the proportionality of sentences is set by the federal government. Not a simple matter in practice

\* Major contribution of justice model: support for alternative sanctions (e.g. probation / community service orders for minor property offences)

\* Strong emphasis on the due process rights of all accused (e.g. presumption of innocence, evidence must be gathered according to rules, etc.) Elimination or control of discretion emphasized throughout CJS process

\* Role of police: allocation of resources to investigating most serious crimes / referring others to alternative sanctions

\* Prosecutors would have to prosecute on all charges: plea bargaining banned or controlled (hard to achieve in practice)

\* Judges would have discretion curtailed: be required to follow sentencing guidelines

\* Parole boards, with their extensive discretionary powers, would be either eliminated or have power to decide release removed (i.e. become supervisory only). Possibility of prison overcrowding?

### **Deterrence:**

\* A traditional approach rooted in 18<sup>th</sup> century writings of Cesare Beccaria & Jeremy Bentham

\* Goal of the CJS is to prevent future crimes:

- by individual offenders (“specific deterrence”)
- by other members of public (“general deterrence”)

\* Punishments should not be discretionary, but equitable / no favoritism

\* Policies:

- due process rights throughout CJS
- proportionate sentences
- swift, certain, & effectively deterrent sentences (i.e. not too severe)
- punishments set by uniform / “enlightened” legislation (rewards & punishments)
- imprisonment to replace torture & capital punishment
- an efficient & effective CJS

\* This approach assumes uniform, individual rationality & free will. Criminals act through careful cost-benefit analysis. Deter by increasing the costs

\* Some problems include impulsive crimes, miscalculation, insanity, drunkenness, etc.)

\* Another problem involves the distinction between severity, certainty & swiftness of punishment:

- most people unaware of potential severity of punishments
- most punishments are neither certain nor swift
- perceptions rather than facts govern choices
- some crimes more easily deterred than others (i.e. planned ones)
- offender's commitment to criminal lifestyle not considered

\* This philosophy emphasizes :

- efficiency of CJS
- protecting society more important than rights of accused
- putting resources into police, prisons, streamlining the CJS, (community crime prevention)
- factual, not legal, guilt the priority
- control / elimination of plea bargaining
- restricting bail
- restricting judicial discretion
- eliminating parole
- CJS policy assessed solely in terms of preventing crime
- ultimately widens the net of social control

\* Two recent examples:

- DNA Data bank (2000)
- National Sex Offender Registry (2004)

\* Next class: selective incapacitation, rehabilitation, Aboriginal & restorative justice