

SOC 3395: Criminal Justice and
Corrections:
Overheads Lecture 7: Crime Control & Criminal
Justice Policy 2

* Today we will conclude our look at criminal justice philosophies by reviewing:

- (1) Selective incapacitation (3) Aboriginal justice
(2) Rehabilitation (4) Restorative justice

Selective Incapacitation:

- * Selective incapacitation = a policy that separates high/low risk offenders, incarcerating the most dangerous
- * Rooted in the work of James Wilson, Rand Corporation, & Greenwood
(claimed to be able to distinguish repeat/dangerous offenders)
- * Critics argue prediction not an exact science / policies have not reduced crime as predicted (e.g. new offenders, gangs, etc.)
- * Proponents argue crime =

(total # of crimes - those imprisoned) X average # of crimes per offender
- * Research has shown relatively small number of offenders responsible for many crimes: selective incapacitation directed at this group:

- 1990 recommendation of eliminating parole for drug dealers
- sexual predator law
- dangerous offender law

* Biggest problem is “experts” lack of predictive capacity in face of values favoring liberty. Past behavior doesn’t necessarily translate into future behavior (2 offenders could get different sentences for same crime based on such inaccurate predictive capacity)

* This approach, due to its selective nature, can easily be attached to other approaches (e.g. deterrence) by instituting special programs for “dangerous offenders”

Rehabilitation:

* Rehabilitation assumes crimes caused by factors outside offender’s control (since no choice, punishment is wrong). Individualized treatment is needed to change offender.

* Focus is more on the offender than the offence

* Parole & probation were introduced in the late 19th century to help facilitate such treatment (earlier release possible)

* Recidivism rate = criteria for measuring success:

(1996) 5 years after release 27.6% of parolees recidivate

39.6% under statutory

release do

* Supporters argue it's necessary to look at offenders to tailor criminal sanction/ treatment to individual needs/ prevent recidivism.

* Flexibility/discretion necessary in CJS agencies dealing with offenders.

* Most emphasis on sentencing/correctional stages of CJS, though this approach also favors discretion throughout CJS for police, prosecutors, judges, etc. Discretion to be exercised in the "best interests" of the offender (&, ultimately, society)

Newer Approaches:

* Aboriginal justice & restorative justice:

- move away from government monopolization of criminal justice

- attempt to move away from hierarchy to involvement

- attempt to involve victim & offender/ restore relationships

- emphasize the role of community

Aboriginal Justice:

* Emphasizes view that all things are interrelated. Crime disrupts harmony, so response should be determined by parties' needs

* Various moves toward the creation of Aboriginal justice

system vs. the “foreign” CJS traditionally imposed on
Aboriginals. Details problematic

- BC rejected separate system in early 1990's in favor of integrating
Aboriginal practices into current system
- 1996: Federal government adopted same position
- Since, Aboriginals given greater role in minor cases/ sentencing

* Systems implemented must be faithful to specific Aboriginal traditions & cultural values (adapted to modern society).

* Goals of Aboriginal justice:

- (1) focus on problem solving / restoration of harmony
- (2) to use restitution /reconciliation as a means of restoration
- (3) community acting as a facilitator in the restorative process
- (4) to impress the offender with the impact of his/her action on the total
- (5) to take into consideration the holistic context of an offence
- (6) to remove the stigma of offences through conformity
- (7) to recognize remorse, repentance and forgiveness
- (8) to have offenders take an active role in the restorative process.

* Ross (1994): two essential features of Aboriginal justice systems:

- (1) a dispersal of decision making among many people
- (2) a belief that people cannot be understood, assisted or

healed so long as they are seen as isolated individuals

* Aboriginal justice exhibits great diversity (various formats, even incorporating local practices into the Western CJS)

* First Aboriginal court opened in 2000 near Calgary (“Peacemaker court”). Much like Provincial Court dealing with summary conviction/hybrid offences, but charges screened by a “Peacemaker” first, attempts to work things out in traditional fashion

Restorative Justice:

* Proposes that an offender’s conscience & significant others can be incorporated into deterrence

* Braithewaite: unlike the stigmatization & severing of ties associated with the CJS, “reintegrative shaming” (in an ongoing relationship) maintains pro-social ties / encourages better behavior (e.g. Japan)

* Proposes “shaming” ceremony where victim, community & offender recognize harm done/ work out a solution

* RJ sanctions serve as alternatives to incarceration, usually in non-violent property offences:

- public exposure
- debasement
- apologies

* RJ usually recommended by police or prosecutor.
Conference convened by trained facilitator/ when parties willing to work out consensus solution

* Goals: accountability, prevention, healing, recognition of victims, involving wider group of participants, & acknowledging significant others in offenders' lives.

Conclusion:

* No single philosophy is sufficient to reduce crime: integrated approach preferable to address specific matters (e.g. deterrence, legal rights, treatment).

* There may be some problems due to inconsistent goals, tensions, but less than if one approach were pursued alone

* Most traditional approaches emphasize the criminal act, rehabilitation focuses on the actor (as do RJ & Aboriginal justice).

* RJ & Aboriginal justice are growing, but there remain questions as to how they may be best integrated into our CJS.