Policy Making in Criminal Justice

Policies: guidelines for action that dictate the priority of goals or efforts
- Can be formal or informal
  - Formal policy making done by:
    - Executive Branch
    - Legislative Branch
    - Agencies in the CJ system
  - Can have tremendous impact on the enforcement of laws
    - Zero tolerance - war on drugs

Informal Policies
- May be related to an individual's view of justice or self-interest
- Sometimes usurp or subvert formal policies
**Ideology**

- **Ideology:**
  - “a set of general and abstract beliefs or assumptions about the correct or proper state of things particularly with respect to the moral order and political arrangements which serve to shape one’s positions on specific issues”
  - Hornum and Stavish, 1978: 143

- Ideologies influence policies

**Ideologies of Liberalism and Conservatism**

- Liberalism and Conservatism
  - Opposing ideologies
  - Both operate under a consensus paradigm (both accept the definition of crime as given by law)

**The Liberal Perspective in Policing**

- **Causation/Responsibility**
  - Causes of crime are psychological, social, or biological
  - Individuals are **not** completely culpable for crime

- **Policing**
  - Use of police officers as a positive social control
    - Providing services to the community would influence pro-social values
      - Community Policing
      - Team Policing
      - Youth Groups
  - Police seen as part of the community and involved in non-crime issues also
The Liberal Perspective in Courts

- Human behavior is complex; justice should be individualized
- Courts should consider the offender rather than the offense
  - Acceptance of the reasons or rationales for unlawful behavior
- Courts should use discretion in punishment
  - Individual backgrounds considered regarding responsibility and punishment

The Liberal Perspective in Corrections

- Correctional programming should target psychological, social, or biological problems (make criminals more like us)
  - Vocational training
  - Education (literacy)
  - Social skills training
  - Substance abuse treatment
- If the problem is corrected, the criminal will no longer commit crime

The Liberal Perspective (in a nutshell)

- Any treatment of an offender that does not take into account individual factors would be unethical
  - Evidence of coercion
  - Prisoner's need for special attention or medical care
  - Prosecute juveniles or young offenders the same as older offenders
  - Ignore evidence of mental illness
- Concerned when the law tries to uphold some unrealistic standard of objective justice
The Conservative Perspective

- Offenders freely choose actions and must be held accountable for them
- Public safety is paramount
- Victims deserve more attention than offenders

The Conservative Perspective in Policing

- Police are the enforcers of society’s morals
  - Any attempt to weaken that role should be resisted
  - Court restrictions against police powers should be limited
- Police have become “soft”

The Conservative Perspective in Courts

- Courts are the worst threat to society because they let criminals go free
- Majority of judges are seen as “do-gooders”
- Death penalty is justified, but not used often enough
- Criminals have too many rights-victims none
The Conservative Perspective in Corrections

- Correctional facilities have too many programs
  - "Coddle" prisoners
- Old fashioned punishments are the way to go
- Prisons should satisfy basic needs: anything else is a luxury and reduces deterrent effect

The Conservative Perspective (in a nutshell)

- Concerned with criminal justice practitioners who use their powers of discretion too freely would be unethical
  - Plea bargains or letting criminals off because of procedural errors
  - Police who ignore illegal behavior by informants
  - The granting of special privileges to criminals because of status or money
- Concerned when the system is less than objective when handing out punishment

Liberalism vs. Conservatism

<table>
<thead>
<tr>
<th>Liberalism</th>
<th>Conservatism</th>
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</thead>
<tbody>
<tr>
<td><strong>Most important value:</strong> Justice</td>
<td><strong>Most important value:</strong> Order</td>
</tr>
<tr>
<td><strong>Basis of a just society:</strong> Fair &amp; equitable distribution of power, wealth, prestige, &amp; privilege</td>
<td><strong>Basis of a just society:</strong> A binding morality</td>
</tr>
<tr>
<td><strong>Greatest danger:</strong> Injustice</td>
<td><strong>Greatest danger:</strong> Disorder</td>
</tr>
</tbody>
</table>
  - Social, Moral, Political |
Ideologies of Liberalism and Conservatism

- Simplistic generalizations
- *But*, be aware of them in:
  - News coverage
  - Political speech
  - Policy development
  - Research

**Quote**

- “There are three kinds of lies: lies, damn lies, and statistics.”
- “Facts are stubborn, but statistics are more pliable”
  - Mark Twain

Myths that Influence Criminal Justice Policy

- More police patrols reduce crime
- Crime waves/crime is increasing
- Child abduction
- Drug crisis
- Equal justice
- Utility of punishment
- Lenient criminal justice system
**Myths and Realities in Criminal Justice**

- Myths influence policy
- How do myths develop?
  - Media
  - Government
  - Criminal Justice research

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**Criminal Justice Researchers - Participants in Myth Making?**

- Can social science ever be truly objective?
- Research influenced by:
  - Personal value system
  - Competence
  - Laziness
  - Ideology
  - Perceptions of reality
  - Pressure from special interest groups (funding)
  - Political agendas

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**The Scientific Method**

1. Observe natural phenomena
2. Formulate Hypothesis
3. Test hypothesis via rigorous experiment
4. Modify Hypothesis
5. Establish Theory based on repeated variation of results
The “Actual” Method

- Modify Theory to fit data
- Make up Theory based on what Funding Agency wants it to be true
- Design minimum experiments that will prove Theory is true
- Publish Paper: rename Theory a “Hypothesis” and pretend you used the Scientific Method
- Defend Theory despite all evidence to the contrary

Criminal Justice Researchers – Participants in Myth Making?

- Which question to ask may be more important than the answer

Ethical Dilemmas for Criminal Justice Researchers

- Pressure to study a certain topic/issue/question
- Pressure to influence findings
- Protection of subject confidentiality
- Negative effects of research on a client
- Deception of subjects
- Obtaining informed voluntary consent
- Withholding benefits/services to subject for purpose of research
- Use of research findings to justify otherwise illegal or unethical treatment
Ethical Dilemmas for Criminal Justice Researchers

- Interaction of ideology, knowledge acquisition, and policy is complicated
  - Policies may originate in ideology and then become supported by research
  - Research may influence a shift of ideology

- The danger is:
  - Individual decision making may be subverted by myths
  - Individual ethics may be the victim of misguided ideologies

Balancing Law and Justice

- In order for a law to be effective, it must be enforced
- Policy-making affects passage of laws as well as their implementation
  - Discretion present at each step
  - Thus, enforcement can be independent of legislative intent
    - Police become the *de facto* definers of the law

Balancing Law and Justice

- Individual officers often administer *street justice* (*Justice defined by the individual*)
  - Definition of what is "just" varies from person to person
- Problem with *street justice* and *de facto* justice:
  - Once law is ignored in favor of subjective justice, individual definitions of what is “fair” become arbitrary and capricious
**Balancing Law and Justice**
- Many laws are routinely ignored, especially in the area of private behavior
  - “Blue” laws
  - Private sexual behavior
- Studies indicate most corruption and graft come from the **gray areas of crimes**
  - Prostitution
  - Gambling
  - Drugs

**Following Orders and Criminal Justice Professionals**
- Is an individual excused from moral culpability when following orders?
- Should one disobey orders that he or she believes to be illegal or immoral?
- Does a criminal justice have a duty to use personal moral judgment, or is it obedience to superiors mandatory?
- Since it is difficult to challenge authority, few take an individual stand against a law or practice

**Ethical Issues for Criminal Justice Professionals**
- Questions of responsibility and culpability
- The limits of the state’s right to control the individual
- The exercise of discretion
- The use of power
**Ethical Choices for Criminal Justice Professionals**

- Individual morality vs. obedience and loyalty/friendship
  - Very difficult to go against colleagues or superiors
- Client (offender) needs vs. bureaucratic efficiency and institutional goals
- Personal goals or biases vs. fair and impartial treatment of the public and the clients served
- The inappropriate use of discretion occurs when the professional uses unethical criteria to resolve decisions

**Leadership and Training**

- Ethical organizations must have ethical administrators/managers
  - Responsibility and accountability
  - Commitment (to organization and laws)
  - Responsiveness (and flexibility)
  - Knowledge and skills
  - Conflicts of interest
  - Professional ethics

**Ethical Leadership**

- Strong leadership involves caring and commitment to the organization
- Idealistic realism: the ability of good leaders to acknowledge and understand social realities while avoiding the trap of cynicism
- Ethical leaders possess vision and moral responsibility and engage in enlightened reasoning
How Leaders Can Foster Ethics

- Establish realistic goals and objectives
- Provide ethical leadership (set a moral tone by actions)
- Establish formal written code of ethics
- Provide a whistleblowing mechanism
- Discipline violators of ethical standards
- Train all personnel in ethics

Ethical Leadership

- Remember - rules are not ethical standards.
  - Without a commitment and belief in the legitimacy of the rules, more rules will not have any effect on the ethics of an organization
- Accountability for actions of subordinates
  - Leads to greater awareness, interaction, and responsibility

Teaching Ethics in CJ

- Best to teach before individuals are faced with ethical dilemmas
- Problem - often to told to forget what they have learned once they leave
  - “Book” vs. “Street”
- Individual left with three choices:
  - Ignore - unethical behavior continues
  - Participate - facilitate further unethical behavior
  - Confront - can be costly
Cynicism and Burnout - How to Avoid

- Adopt realistic goals
  - Do one's best and follow the law vice saving the world
- Find and nurture a network of mentors and colleagues that promote ethical values
  - Cynical people are contagious
  - Cynicism breeds rationalization
- Seek self-fulfillment and personal enrichment
  - Higher education
  - Participate in the community
    - Promotes communication and interaction with others; counters negative aspects of the CJ field