**SOC 3395: Criminal Justice & Corrections**

**Overheads Class 10: Issues in Canadian Policing**

Today we will continue our look at issues surrounding the police, particularly controversies arising in recent years:

**(1) Police Discretion:**

\* Police don’t have to arrest, may use judgement to intervene/ ignore

\* Use of police discretion is subject to legal challenges under Charter:

- R. v. Beare (1988) discretion cannot be improper/arbitrary

- Discretion cannot violate s.15(1) equality rights

- Such abuses of process can lead to stay of prosecution

- Clear evidence of discrimination needed

\* Research on police discretion. 3 factors typically influential (i.e. arrest vs. warning):

(1) Type of crime

(2) Suspect’s attitude

(3) Departmental policies

\* Elements of police discretion:

(1) Getting involved (or not)

(2) Deciding how to behave

(3) Selecting between alternatives

\* Goldstein: invocation vs. non-invocation discretion significant

\* Factors influencing arrest:

Situational:

Seriousness of crime Suspect’s demeanor

Strength of evidence Neighborhood characteristics

Preference of victim Victim-suspect relationship

Community:

Racial/class composition

Officers’ perceptions of danger

Citizens’ attitude to police

Community legal culture

Extralegal:

Race, class and gender of suspect

\* The race issue: over-representation of Aboriginals in arrests

\* Sexual assault: many charges not laid/ discontinued: mandatory arrest?

\* Characteristics of the victim significant?

\* Other studies dispute these patterns as appearances: legal variables = main determinant in arrest decisions (methodological differences explain discrepancies)

**(2) The Police Subculture:**

\* A tight bond exists between officers due to nature of job

\* 6 basic values in police subculture:

(1) Police = only real crime fighters

(2) No one else understands police work

(3) Loyalty to colleagues is paramount

(4) To beat crime rules must be bent

(5) The public is unsupportive/unreasonable

(6) Detective work is preferable to patrol duty

\* Positive aspects: sense of collectiveness, dealing with stress, controlling inappropriate actions, and an informal teaching tool

\* Negative aspects: resistance to innovation, support for rights violations, misuse of authority and resistance to accountability

\* Insulates from stresses when officers deal with the public and their superiors. Officers cope by: suspiciousness, “maintaining the edge” or “laying low”

\* Culture exists due to danger of the job and need to stick together

\* Some argue police exhibit unique personality traits (i.e. cynicism, hostility, dogmatism & conservatism). Dangerous if affects discretion.

**(3) The “Police Personality”:**

\* Studies of police personality: “environmental” vs. “predispositional” explanations

\* Niederhoffer (1967) and Skolnick (1966) favor former “socialization” explanation

\* Predispositional explanation unsupported by evidence (Bennett & Greenstein, 1975)

**(4) Higher Education and Policing:**

\* Authoritarian, conservative & rigid attitudes most apparent in least educated officers

\* Officers with a degree are more professional/ cope better/ show greater initiative/ receive fewer complaints/ act more professionally

\* Police forces emphasize higher education in recruitment

**(5) Police Use of Deadly Force:**

\* Police subculture may be expressed through use of discretion/authority

\* Deadly force= force used with intent to cause bodily injury/death

\* Until 1995, police could shoot a “fleeing felon.” R. v. Lines struck down as violating s. 7 of Charter

\* Parliament introduced new defense: s. 25(4) of Criminal Code: Deadly force authorized when suspect fleeing. Officer must:

- believe

- on reasonable grounds

- force is necessary

- to protect officer or any other person

- from immanent or future death/ grievous bodily harm

\* Questions:

- what is “as much force as necessary?”

- doesn’t state how much force may be used

\* Mechanisms to control police use of deadly force:

(1) Reasonableness standard (hard to prosecute/ police stick together)

(2) Legislation to force cooperation in cases of death, injury, or other use of force (e.g. Ontario).

\* Most deadly force incidents in Ontario/Quebec (though NWT has highest incidence by population)

\* Size of police force not as important as lack of community cohesion, organizational values of force, and training in this regard

\* Question of “confrontation situations” vs. “fleeing felon” incidents

\* Race and use of deadly force a hot issue

\* Police themselves may be recipients of deadly force (relatively rare)

**(6) Police Misconduct:**

\* Defined as police activity inconsistent with legal authority, organizational authority, and standards of ethical conduct: 3 types:

(1) Occupational deviancy

(2) Abuse of authority

(3) Selective, discriminatory enforcement of laws

\* Excessive force not as common/ selective as media suggests

\* “Problem officers” younger, less experienced

\* Some argue problem officers are reflective of wider problems in a given force

\* “Early warning systems” have been implemented by management to deal with problem officers in many forces

\* Mechanisms to “police the police”:

(1) Internal investigations

(2) Citizen oversight (e.g. police commissions)

(3) Civil liability (rare)

**(7) The Changing Composition of the Police:**

\* Over last 25 years more women, visible minority & Aboriginal police

\* Women officers/ senior administrators growing (employment equity/ move away from traditional female police roles)

\* Women officers report gender conflicts on the job

\* Aboriginal/ visible minority officers growing in number (discriminatory job requirements gone/proactive recruitment programs)

\* Glass ceiling vs. benefits of community representation

**(8) The Police and Private Security:**

\* Private security has been growing, now a larger sector than public police forces

\* Differences with public police:

- private security employs more women

- more security guards under 25 or over 54 than police

- police are better educated

- more visible minorities among private security

- police have better incomes

\* Police are accountable to the state, the law, and many forms of oversight, private security is variously regulated through provincial legislation

\* Growth of security reflects:

- studies

- structural changes

- police opposition

- differences in conduct

- government support

- public concerns over abilities of police

\* Issues of concern:

- security distributed on basis of who can pay

- less respect for those detained

- lower levels of professional competence

- offences not being referred to the CJS/dealt with privately

- avoiding civil rights protections

- dual criminal justice systems: public and private

**Summary:**

\* Many critical issues face Canadian police today. Among the most important are:

- effectiveness vs. discretion

- discrimination vs. situational/community factors

- women and minority representation at all levels

- the use of force vs. citizen review

- public vs. private policing