Paradigms of Law

- The law is a written embodiment of society’s morals and ethics.
- Declarative as well as active
  - Declares correct behavior
  - Tool for enforcement
- Natural law refers to the belief that some law is inherent in the natural world and can be discovered by reason
- Positive law refers to written and enforced laws
Two areas of law

• Criminal
  – Punitive

• Civil
  – Reparative
Understanding the *Paradigm*

- A paradigm is a fundamental image of the subject matter within a science.
  - Subsumes, defines, and interrelates the exemplars, theories, and methods/tools that exist within it (Rich, 1978)
Consensus paradigm

- Views society as a community consisting of likeminded individuals who agree on goals important for ultimate survival.
  - Serves as a tool of unification.
  - *Durkheim* views criminal law as a manifestation of consensual norms.
- An action is defined as criminal because the majority holds the opinion that it is wrong.
  - *Mechanical solidarity* – common or collective conscience
  - Individual beliefs are indistinguishable from the whole
Conflict paradigm

- Law is viewed as a tool of power
  - Used by the powerful for their own purpose
- Law is restrictive or repressive
  - Criminal definitions are relative
  - Those in control determine how crime is defined
  - Defining crime is a tool of power
Pluralist paradigm

- Law is seen arising from interest groups that are influx
- Not to be confused with a *Marxist* system
- Power is exercised in
  - The political order
  - The economic order
  - The religious order
  - The kinship order
  - The educational order
  - The public order
- Law & Social control
Justification for law

- Major justification is the prevention of harm
- *Social contract theory* – law is a contract. Each person gives up some liberties in exchange for protection from others who are similarly restricted.
Legal paternalism

• The state protects people from their own behavior. Supported by an ethics of care.
  – Laws regulating
    • Seat belts
    • Motorcycle helmets
    • Speed limits
    • Drug use
    • Alcohol
    • Sexual behavior
Legal moralism

• Law acts as the moral agent of society in areas where they may be no moral agreement.
  – Certain sexual behavior
  – Gambling
  – Drug use
  – Pornography
  – Suicide
  – Ethanasia
Culpability

• Legal responsibility defined by positive law (human-made)
  – Need to distinguish between responsibility and liability
    • Legal liability relates to formal rules and decisions
    • Moral responsibility derives from ethical analysis
Issues related to culpability

- Mentally ill
- Juveniles
- White-collar crime
The mentally ill

- Humanitarianism requires mercy
- Can’t help themselves
- Retributive goals cannot be met
- Can’t spiritually prepare for death
  - Execution would be cruel
- Can’t assist in defense
Juveniles

• Historically treated differently than adult offenders
  – Main factor – maturity

• Today laws are changing allowing for greater controls and sanctions dealing with juvenile offenders
  – Are kids more violent today?
    • Columbine
    • Gang violence
White-collar crime

- Lines of corporate and individual responsibility may be blurred.
  - WorldCom
  - Tyco
  - ImClone
  - Martha Stewart
Immoral law

- Can law/government actions be immoral?
  - Spanish Inquisition
    - Rooted in religious belief
  - The Holocaust
  - Japanese interment during WWII
  - Segregationist laws
- “An unjust law is no law at all.” (St. Augustine)
- Civil disobedience is voluntary disobedience of established laws based on one’s moral beliefs.
- Can civil disobedience be justified?
Victims’ Rights

• Ancient law focused on compensating the victim.

• *Magna Carta* changed focus to the state

• Result was two systems
  – *Private wrong* – *civil law*
  – *Public wrong* – *criminal law*

• *Victimology* – a separate discipline within criminology. May provide a better balance between state harm and individual harm.
Rediscovery of Victims’ Rights

- Being present at trial
- Notification of hearing dates and plea-bargain agreements
- Victim-impact statements
- Courteous and compassionate treatment
The Media

• May be responsible for creating a false perception of crime.
  – Headlines and TV news only represent a small percentage of the overall picture.
  – Disproportionate representation of stories focus on violent crimes
Victim precipitation

- Refers to the victims role in the criminal event.
- Victims play a significant part in the crime.
  - Wolfgang noted victim-precipitated homicide
  - Drylie noted victim-scripted suicide
Restorative justice

• The current system is completely oriented to the offender
• Restorative justice describes the shift toward the center of the system.
  • Moving away from retribution