LAW AND SOCIAL CONTROL

Governmental Social Control

- Law as governmental social control
- Social control through
  - Criminal law and criminal sanctions
  - Regulatory law
  - Licensing systems
  - Financial incentives
  - Government subsidies for desired behavior

Governmental Social Control and Police Power

- Broad concept of “police power”
  - government’s general powers to protect the public health and safety
- Protect citizenry from criminals
- Maintain moral standards
- Protect public health
Legal Regulation of Morality

- Law as expression of moral codes
- Moral codes have roots in religious belief
- Examples of moral regulation in American history
  - Prohibition
  - Laws against fornication, adultery
  - Comstock Act

Moral Regulation Today

- Anti-vice laws
- Laws against “unnatural” sex acts
  - Sodomy
  - Bestiality
- (At least some) drug laws
- Anti-pornography legislation

Pornography Control in the U.S.

- Film
  - *Mutual Films Corporation v. Ohio* (1915)
    - Self-censorship
    - Licensing thru local censorship boards
  - *Burstyn v. Wood* (1952)
    - Continued some censorship
- England as comparison
  - Licensing by Lord Chamberlain until 1968
  - All public performances of theatre and film
  - Private theatre clubs
Defining Pornography

- **Roth v. United States** (1957)
  - National standard:
    - must be "utterly without redeeming social importance"
    - "Whether to the average person applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest"
  - Difficult to apply
    - What is a "prurient" interest in sex?

Abandoning Roth Standard

- **Miller v. California** (1973):
  - "Must appeal to the prurient interest in sex; portray sexual conduct in a patently offensive manner; be lacking in any serious literary, artistic, political, or scientific value."
  - Local not national standards for offensiveness
  - National standard for literary, artistic ... value
  - Limits to local standards

The Harm Principle

- Impact of pornography
  - Erotica vs. pornography
  - Traditional bans treated all sexual arousal as bad, corrupting morals
  - Pornography as invading women’s right to equality
    - Catherine MacKinnon & Andrea Dworkin
    - "Pornography is the theory and rape is the practice"
    - Promotes “subordination of women”
Applying the Harm Principle

- Protection of children
  - Banning the production and possession of child pornography?
  - What if no actual children involved in the production of the material?
- Violent pornography
  - Physical threat to women
  - Ordinances in Indianapolis & Minneapolis

Harm Principle in Canada

- Harm principle accepted in *R. v. Butler*
  - Obscenity defined as material for which the “dominant characteristic” is the “undue exploitation of sex, or of sex and ... crime, horror, cruelty and violence”
  - How to determine which pornography can be regulated under harm principle?
    - Explicitly violent—yes
    - Degrading and dehumanizing—maybe
    - No violence, children, degradation—no

Impact of *Butler*

- Sale of pornography is “booming in Canada as never before.”
- Most commonly targeted materials are those directed at the gay and lesbian communities
- No apparent impact on the status of women or the conditions of inequality for women
The Internet

- Pornography is the most profitable segment of internet business
- Finding a formula to regulate materials on the internet
  - Focus on minors
- Controlling providers outside the U.S.

What Impact Has Law Had?

- Assessing cause and effect:
  - Is heightened sexuality a result of greater access to erotica and pornography or is greater access a result of heightened sexuality?
  - How do we sort out the effects of
    - Pornography
    - Birth control
    - Popular culture
    - Changing expectations for women

Smoking

- Smoking in London, 1986
  - Restaurants
  - Buses
  - Tube stations
- King’s Cross Fire, 1987
- Changes since King’s Cross
  - No smoking on buses
  - Much less smoking in tube stations
  - Nonsmoking areas in some restaurants
Central Issues Regarding Smoking

- Public safety
  - Fire hazard’s of smoking
  - One third of fatal home fires in U.K.
  - About one quarter of fatal home fires in U.S.
  - 1,200-1,500 smoking related fire deaths in U.S. each year
- Public health
  - 440,000 smoking-related, premature deaths per year
  - More women die of smoking-related lung cancer than breast cancer
  - $1,600 per year per smoker in health care costs

Benefits from Smoking

- Smokers derive pleasure from the habit
- Government collects substantial taxes on tobacco
- Smokers’ children inherit earlier
- Pension plans pay out less in pensions
- Government pays out less in old age benefits

Adult Smoking in the U.S.
What Has Been the Role of Law?

- Did law stop people from smoking?
  - Increased costs
  - Made it inconvenient
  - Fear created by required warnings?
- Did law discourage people from starting the habit?
  - Persuaded of dangers
  - Costs and difficulties of obtaining cigs?
  - Overtaxation and bootlegging/smuggling
- Were legal changes just coincidental?
Law and Attitudes in Concert

- Negative health consequences have long been known
  - Research documenting negative consequences was widely disseminated starting in the 1960s
- Regulation of smoking:
  - Required health warnings
  - Restricted advertising: bye bye Joe Camel
  - Limited where smoking could occur
  - Created tighter controls on sales to minors
  - No more cigarette machines
- Increased costs by raising taxes

Restrictions in Face of Opposition

- Tobacco farmers
- Tobacco companies
- Smokers

Failures of Legal Control of Smoking

- Civil suits for damages
  - Multi-state settlement ($206 billion)
  - Some individual successes
  - Has increased cost of cigarettes
- Preventing teenagers from starting to smoke
  - Coolness factor
  - Health risks far in the distance
  - What if cigarettes were found to cause zits?
Changing Attitudes

- In part due to control
- In part due to broader interests in health-related issues
  - Organic food movement
  - Fitness movement
- Bogart: from a "glamorous indulgence" to a "dirty, deadly addition"
- Law in concert with cultural change

Contrast Smoking and Porn

- Cultural change running in opposite directions
  - Cultural changes regarding sexuality have defeated legal regulation of porn
  - Cultural changes regarding health have worked in concert with law to reduce smoking
- Can law lead or only follow cultural change?