Learning Objectives

Upon completion of this unit, students should be able to:

1. Define and discuss criminology terms introduced in Unit II.
2. Compare and contrast the role of punishment in the classical and neoclassical schools of criminological thought.
3. Identify past legal codes and principles and discuss their impact on modern criminal law.
4. Recall and discuss theories and movements that influenced the development of criminological thought.
5. Discuss the pros and cons of the death penalty, its potential for being wrongly or unfairly imposed, and its effect on recidivism.

Written Lecture

History of Criminology

Although they had socially proscribed rules, primitive societies did not have a concept of crime as a violation of law. These rules could be broadly categorized into two groups: actions that were fundamentally wrong regardless of time or place, called *mala in se*, and actions that are wrong only because they are prohibited, called *mala prohibita*. Murder is an example of a *mala in se* act, while status offenses, such as underage drinking and traffic violations, are examples of *mala prohibita* acts.

As people began to transition from a transient lifestyle to permanent social structures, the need to solidify these socially proscribed rules into established laws became evident. The first known body of laws, the Code of Hammurabi, governed the city of Babylon. The Code emphasized retribution and attempted to place limits on the cruelty of punishment. English common law is another example of early attempts at developing a structured set of legal values. It was developed out of common practices and supported by court decisions during the Middle Ages. During the eleventh century, common law was declared the law of the land by King Edward the Confessor. Common law is still recognized in the American legal system, as typified by higher courts setting precedence and lower courts using these decisions as the rule of law. In addition, some states still recognize common law marriage.

Science vs. Superstition

A long time ago, criminal behavior was attributed to the work of the devil or evil spirits. As the concept of scientific validation began to flourish, the spiritualistic explanation of criminal behavior was replaced with naturalistic theories. These theories sought to explain crime causation within the physical realm and allowed for scientific testing.

The Classical School of Criminology was the first to arise out of the naturalistic movement with the Age of Enlightenment (Lilly, Cullen, & Ball, 1995). It was a response to the cruel, corrupt, and unpredictable legal system of the 1700s. Although the primary goal of Classical theorists was legal system reform, they
also developed a theory of criminal behavior within the critique of the system. They believed that people were rational and calculated their actions based on risk-benefit analysis. They felt that by ensuring that the legal system was swift, certain, and proportional to the crime, criminal behavior would be deterred. Many aspects of our current legal system are based on the principles established by the Classical School (Cullen & Agnew, 2011). Examples of this include determinate sentencing, truth in sentencing laws, and incarceration.

The Classical School developed eight principles:

- Humans are primarily rational beings, and most human behavior occurs from rational choice and free will.
- The two central determining factors of human behavior are pain and pleasure.
- Punishment dissuades violations of law and sets an example for others.
- The basic principles of right and wrong are intrinsic to the nature of all things.
- Society provides benefits to individuals that they would not obtain independently.
- In order to benefit society as a whole, society requires individuals to sacrifice some benefits.
- Certain basic human rights are innate to the nature of things.
- Crime is immoral because it degrades the bond between individuals and society.

These principles were found in the ideals of the social contract of Thomas Hobbes, as well as in the works of Cesare Beccaria and Jeremy Bentham. Beccaria’s *Essay on Crimes and Punishments* (1764) argued that punishment should be used as a deterrent and based on the degree of harm caused by the criminal act. Bentham believed that people are essentially hedonistic, and thus weigh the pain of punishment against the pleasure obtained from crime. Therefore, to be effective, the pain from punishment should outweigh the pleasure from crime (Schmalleger, 2012).

**Classical, Positivist, and Neoclassical**

During the late 1800s, the Positivist School of Criminology challenged the predominating school of thought, the Classical School. The Positivist School rejected the Classical School’s assumption that criminals were rational individuals who were exercising free will and replaced it with hard determinism, a theory that crime was caused by forces outside the control of the individual. “In a positivist view of the world, science was seen as the way to get at truth, to understand the world well enough so that we might predict and control it” (Positivism & Postpositivism, n.d., para. 4). The Positivist School encompassed theories of crime from the biological to the sociological.

Although these theories play a large role in contemporary criminology, many of their assumptions have been undermined by the apparent failure of rehabilitation efforts, *get tough on crime* campaigns, and a general cultural reaffirmation that humans are rational beings. Encouraged by these factors, there has been a resurgence of the classical ideals. Neoclassical theorists continued in the tradition of the Classical School; however, they considered that there was criminal behavior that the free will model was inadequate to explain. Some of these behaviors included long-accepted exceptions within the legal system, including such classic criminal defenses as self-defense and diminished mental capacity. With these exceptions in mind, neoclassical criminologists support...
individual rights and due process (Reed & Yeager, 1996). Punishment considerations are based on the nothing-works doctrine that was the foundation for the three-strikes legislation.

Criminological theories that arose out of the Neoclassical School include the *rational choice theory*, *routine activities theory*, and *situational choice theory*. The rational choice theory states that criminals make conscious, rational, and mostly informed decisions to commit crimes. The decision to commit crimes is simply based on a risk-benefit analysis. Based on this, crime will decrease when the risk is increased, the benefit is decreased, and the opportunities are limited. If you think back to the eight principles of the Classical School listed earlier, you can clearly see that this theory strongly expresses classical ideals. It is discussed in the neoclassical section only because it was a product of the late 1970s. If it had been suggested during the 19th century, it would be considered classical.

The routine activities theory and situational choice theory are variations of the rational choice theory. The routine activities theory argues that lifestyle contributes significantly to the amount and type of crime a person commits. According to this theory, for crime to occur, there must be a motivated offender, a suitable target, and the absence of capable guardians. The situational choice theory expands this further by arguing that crime is a matter of opportunity as well as motivation.

Both the Classical and the Neoclassical schools addressed the role of punishment in criminology. The Classical School considered deterrence to be the purpose for punishment. In contrast, the Neoclassical School also added the aspect of retribution to the role of punishment. However, regardless of the purpose of punishment, an examination of the recidivism rates in the United States demonstrates that the American criminal justice system seems to be ineffective at preventing crime. Some studies have shown that recidivism rates have reached levels as high as 80% to 90% in some instances (Schmalleger, 2012, p. 71).

**Something to Think About**

So we are left with the following questions: What is the best way to discourage criminal behavior? Is capital punishment an effective method for ensuring compliance with the law? The idea of capital punishment is perfectly classical: it brings together the notions of deterrence, retribution, and just deserts in one swift and certain sentence. However, there are many arguments against this highly debated idea.

Opponents of capital punishment have cited research studies suggesting a disproportionate imposition on racial minorities, as well as recent examples of cases where DNA established the innocence of people who have been tried and put on death row (Schmalleger, 2012). However, one might argue that regardless of the punishment, criminal justice needs to ensure accountability to reduce crime.

Regardless of the position you take on capital punishment, ponder this hypothetical situation:

In order to deter speeding, a fictitious state is considering the following two options:

- Option 1: Only 1 out of every 10,000 offenders who exceed the speed limit by 5 mph will be apprehended, and the punishment will be an immediate death penalty.
• Option 2: Every individual exceeding the speed limit by 5 mph will be apprehended and issued a $120.00 ticket.

Is the harshness of the sentence really the deterrent, or is it the guarantee of punishment (regardless of type)?

References


**Supplemental Reading**

Click [here](#) to access a PDF of the Chapter 3 Presentation.

Look in the CSU Online Library’s Criminal Justice Periodicals Index for articles pertaining to the early schools of thought concerning criminology. For example, “How Much Do We Really Know About Criminal Deterrence?” by Raymond Paternoster discusses deterrence from the time of Cesare Beccaria and Jeremy Bentham and how it has evolved up to the present time.

Suggested Online Searches:

“UCL Bentham Project” Web site to learn more about Jeremy Bentham, one of the founders of the Classical School of criminological thought.

“The Enlightenment by Roger Jones” Web site provides information about the Enlightenment social movement and its philosophers, including Immanuel Kant.

Check out the Web site “1000+ Death Penalty Links,” compiled by the Office of the Clark County Prosecuting Attorney, to learn more about the death penalty.