Major Principles of the Classical School

- Humans are fundamentally rational; most human behavior results from free will and rational choice

- Pain and pleasure are the two central determinants of human behavior

- Punishment deters law violators and serves as an example to others

- Root principles of right and wrong are inherent in the nature of things
Major Principles of the Classical School

• Society provides benefits to individuals that they would not receive in isolation

• Society requires individuals forfeit some benefits

• Certain human rights are inherent in the nature of things

• Crime is immoral because it disparages the quality of the bond that exists between individuals and society
Forerunners of Classical Thought

- Primitive societies did not have the concept of crime as a law violation

- All societies had notions of right and wrong

- William Graham Sumner - behavior is governed by
  - **Mores**: proscriptions covering potentially serious violations of a group’s values
  - **Folkways**: customs whose violation is less likely to threaten group survival
  - **Laws**: codified into formal structures for enforcement purposes
Forerunners of Classical Thought

- **Mala in se**
  Acts said to be fundamentally or inherently wrong regardless of time or place

- **Mala prohibita**
  Acts said to be wrong only because they are prohibited
The Demonic Era

• Attempts to explain evil conditions individuals and social groups endure

• Some forms of evil seem cosmically based (plague, Holocaust)
  – Divine punishment
  – Karma
  – Fate
  – Vengeful activities of offended gods

• Others the result of individual behavior (victimization, crime, deviance)
  – Demonic possession
  – Spiritual influences
  – Temptation by fallen angels
Early Sources of Criminal Law

- Code of Hammurabi
- Early Roman Law
- Common Law
- Magna Carta
Code of Hammurabi

• First known written body of law to survive

• Created in 1700s B.C. in Babylon

• Emphasized retribution and attempted to limit cruelty of punishment
Early Roman Law

• Derived from the Twelve Tables (450 B.C.)
  – Regulated family, religious, economic life
  – Based on generally accepted common and fair practices

• Justinian Code
  – Institutes
  – Digest
  – Code
Common Law

• A traditional body of unwritten legal precedents
  – Created through everyday practice in English society
  – Supported by court decisions during the Middle Ages

• Declared the “law of the land” by King Edward the Confessor
The Magna Carta

- Signed on June 15, 1215 by King John of England
  - Bound the king by law to respect traditional landowning rights of barons
  - Guaranteed freedom of the church
  - Guaranteed respect for customs of towns
- Later interpreted as supporting individual rights and jury trials
- Guarantees basic liberties for all British citizens
- “The foundation stone of our present liberties”
The Enlightenment

• Age of Reason

• Important social movement in 17th and 18th centuries

• Emphasis on free will, rational thought as basis of human behavior
The Enlightenment

- Thomas Hobbes (1588-1679)
  - *Leviathan* (1651)
  - Social contract

- John Locke (1632-1704)
  - *Essay Concerning Human Understanding*
  - Humans a blank slate at birth
  - Social contract concept expanded
  - Governmental checks and balances
The Enlightenment

• Jean-Jacques Rousseau (1712-1778)
  – In natural state, humans are good and fair
  – Natural law – immutable laws fundamental to human nature
  – Human-made law – derived from human experience and history, continually changing

• Thomas Paine (1737-1809)
  – Only democracy can guarantee natural rights
The Classical School

• A product of the Enlightenment

• Explained crime as resulting from the exercise of free will
  – Explained crime as a particularly individualized form of evil
  – Moral wrongdoing fed by personal choice
Cesare Beccaria

- *Essay on Crimes and Punishments* (1764)

- Philosophy of punishment
  - Punishment based on degree of injury caused
  - Purpose of punishment – deterrence, prevention
  - Swift, certain
  - Severe enough to just outweigh personal benefits from crime

- Three types of crimes recognized
  - Property crimes – punish with fines
  - Personal injury crimes – corporal punishment
  - Serious crimes against the state – death

- Condemned use of torture
Jeremy Bentham

• An Introduction to the Principles of Moral Legislation (1789)

• Hedonistic calculus/utilitarianism
  – People are rational, weigh pain of punishment against pleasure from crime
  – Pain from punishment should outweigh pleasure from crime
  – Punishment should be swift and certain

• Panopticon House – model prison
Heritage of the Classical School

- Rationality
- Hedonism
- Punishment

- Human rights
- Due process
Neoclassical Criminology

• Positivism
  – The application of scientific techniques to the study of crime
  – Replaced Classical School by end of 1800s
  – Based on *hard determinism* - the belief that crime result from forces that are beyond the control of the individual
  – Rejects concept of free will
Neoclassical Criminology

• Resurgence of classical ideals in 1970s
  – Emphasized importance of character
  – Dynamics of character development
  – Rational choices when faced with opportunities for crime

• Middle ground between total free will and hard determinism
Neoclassical Criminology

• Robert Martinson’s national survey of rehabilitation programs
  – “Nothing works doctrine”

• James Q. Wilson
  – Crime is not a result of poverty or social conditions – it cannot be affected by social programs

• David Fogel’s justice model
  – Prisons do not rehabilitate or cure
  – Offenders deserve punishment because of their choices
Rational Choice Theory

• Criminals make a conscious, rational choice to commit crime

• Cost-benefit analysis
  Behavior is a personal choice made after weighing costs and benefits of available alternatives

• Main types
  – Routine activities theory
  – Situational choice theory
Routine Activities Theory

• Lawrence Cohen and Marcus Felson
  Lifestyle and changes in society contribute to crime rates

• Three elements needed for crime:
  – Motivated offender
  – Suitable target
  – Absence of capable guardians
Situational Choice Theory

- Ronald V. Clarke and Derek Cornish

- Soft determinism
  - Crime is a function of choices and decisions made within a context of situational constraints and opportunities
  - Crime requires motivation and opportunity

- Reduce crime by changing the environment
Situational Choice Theory

Objectives of situational prevention:
- Increase effort involved in crime
- Increase risks associated with crime
- Reduce rewards of crime
- Reduce provocations for crime
- Remove rationalizations that facilitate crime
The Seductions of Crime

• Jack Katz explains crime as the result of positive attractions of the experience of criminality
  – Crime is often pleasurable for those committing it, which is the motivation behind crime

• Suggests criminology be redirected to situational factors that directly precipitate crime and reflect crime’s sensuality
Situational Crime Control Policy

• Situational crime prevention shifts the focus away from the offender and onto the context in which crime occurs

• Emphasizes opportunity – reduce opportunities to reduce crime
  – Target hardening
  – Access control
Critique of Rational Choice Theory

• Overemphasis on individual choice and relative disregard for the role of social factors in crime causation

• Assumes everyone is equally capable of making rational decisions

• Displacement may occur as a result of situational crime prevention strategies
Punishment and Neoclassical Thought

• Classical School emphasizes deterrence as purpose of punishment

• Neoclassical view adds retribution
  – Individuals choosing to violate the law deserve to be punished
  – Criminals must be punished to curtail future crime
Just Deserts

• Just deserts model of sentencing
  The notion that criminal offenders deserve the punishment they receive at the hands of the law and that punishments should be appropriate to the type and severity of crime committed

• Justice is what the individual deserves when all circumstances are considered
Deterrence

• Specific deterrence – focuses on the offender
  Seeks to prevent a particular offender from engaging in repeat criminality

• General deterrence – works by example
  Seeks to prevent others from committing crimes similar to the one for which a particular offender is being sentenced
Recidivism

• *Recidivism*: The repetition of criminal behavior by those already involved in crime

• *Recidivism rate*: The percentage of convicted offenders who have been released from prison and are later rearrested for a new crime (usually within 5 years of release)
Recidivism

- American CJ system seems ineffective at preventing crime
- Contemporary criminal law rarely applied to the majority of offenders
Capital Punishment

- Capital punishment brings together notions of deterrence, retribution and just deserts

- Considerable disagreement over the efficacy of death as a criminal sanction
Capital Punishment and Race

• Opponents of capital punishment cite research suggesting it has been imposed disproportionately on racial minorities.

• Advocates are more concerned with whether it is fairly imposed than with ethnic differences in rates of imposition.
Is the System Flawed?

- Research into the exoneration of convicted offenders by postconviction DNA evidence shows the fallibility of the justice process.

- Some jurisdictions are rethinking the use of capital punishment.

- Not all claims of innocence are supported by DNA testing.
Policy Implications of the Classical School

Policy Implications of the Classical School

- Determinate sentencing
  Mandates a specific and fixed amount of time to be served for each offense category

- Truth in sentencing
  Requires judges to assess and make public the actual time an offender is likely to serve

- Incapacitation
  The use of imprisonment to reduce the likelihood that an offender will be able to commit future crimes
A Critique of Classical Theories

• Represents more a philosophy of justice than a theory of crime causation

• Does not really explain criminal motivation

• Little empirical scientific basis for claims made by the Classical School