

THE CLASSICAL SCHOOL

Introduction

- For much of the Western history the dominant explanation for crime was the “demonic perspective.” Some authors cite that the demonic perspective was prevalent from 5,000 BC to the 1690s.
- Crime was said to be the result of supernatural forces.
- People engaged in crime because they succumbed to the temptations of evil forces or because they were possessed by evil forces.
- Crime is sinful behavior or an offense against God (or the gods).
- Because it was an offense against God, brutal methods were used to determine whether people were possessed or had given into evil forces; one of them was torture.
- Punishments: Burn alive or slowly tortured to death.
- The role of the Church on punishments.
- These punishments were designed to “purge the body of a sinner of traces of the devil and thereby restore the body of the community as a whole to its proper relation too God” (Pfohl, 1985, 25).
- The demonic perspective is not a scientific theory of crime. Demonic possession cannot be proved by science.
- The demonic perspective was dominant through the 1700s, when it was challenged during the Age of Enlightenment by a group of individuals who came to be known as the “classical” criminologists.

The Social Heritage of the Classical School

- The eighteen century was a period of major change in Europe. Thus, the reign of the Catholic Church and aristocratic feudal structure, dating from the Middle Ages and before, was about to be over.
- The new social order was criticizing the old aristocracy, for its claim to natural superiority and for its corrupt political practices.
- The middle-class was rising due to the profits from mercantilism and the beginnings of the industrial revolution.
- Societies were becoming urbanized and traditional conceptions of property and ownership were also disrupted (i.e. During the middle ages

only aristocrats could own land to farm and hunt – Peasants had to do those jobs for them).

- The rule of the Church and the Aristocracy was seriously threaten by the influence of the rise of the protestant ethic, which promulgated the idea that hard work in this work will result in an improvement in one's life and led people to expect a direct connection between hard work and success. As such, the rising middle-class adhered to this idea instead of the Church-promised afterlife.
- The emerging middle-class gained political power displacing monarchs, aristocracy and the Church to a secondary role. The lost of power by royal families and aristocrats created a new and highly volatile political system.
- The Classical Period was an era of great thought and expression: In close proximity to the time when people were reading Beccaria's great treatise, *On Crimes and Punishments* (1764), the young British colonies were about to erupt into the American Revolution; and the Declaration of the Independence, the U.S. Constitution, and the Bill of Rights were written.
- The judicial system was also marked by changes. Founded in the religious structures of the Middle Ages, pre-Classical law was mainly the product of judicial interpretation and caprice. That is, the accused often secret accusations, torture, and private trials.
- Arbitrary and overly harsh sanctions were often applied to the convicted.
- Generally, there were a few written laws, and existing law was applied primarily to those who were not of the aristocracy.
- Law was often used as a political tool to suppress those who spoke out against the aristocracy or the Church (Example: The Spanish Inquisition).

The Intellectual Heritage

- The prevailing ideas of the eighteenth century were those of reform.
- A group of reformers called the **Naturalists** rebelled against the authority of the Church and emphasized an order to things that were separate from religious revelation. This order was based on experience and observation.
- Morals, ethics, and responsibilities became major topics of discussion
- The application of science to the physical world had begun to reveal truths (e.g. The earth was round and not plane like the Church believed). Philosophers believed that critical thinking was to reveal the truth about moral and political questions.

- The major explanation for human behavior was **hedonism**. That is, people are assumed to automatically attempt to maximize pleasure and minimize pain.
- The value of any pleasure or pain would be determined by its intensity, duration and certainty.
- Hedonism became the basis for the concept of **deterrence**.
- Deterrence theory contends that if the public knows the consequences of deviance, many individuals will not commit a crime. "Through punishment, corrections serve to deter the offender from deviating again and it scares others who might be tempted into crime" (Robertson, 1989, p.129).
- One of the major new philosophical viewpoints rested on so-called **natural rights** and justified the existence of government as a **social contract**.
- The concept of natural rights received one of its most forceful expositions in the writings of Englishman **John Locke** (1632-1704), who argued that man was originally born into a state of nature where he was rational, tolerant, and happy. In this original existence man was entitled to enjoy the rights of life, liberty and property.
- "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by the Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness" U.S. Declaration of Independence written on July 4th 1776.
- However, not all men chose to live within the confines of the natural laws and presented threats to the liberties of the others. At this stage man entered into a social contract in which a state (government) was formed to guarantee the rights of the members of society.
- Locke believed that the only reason for the existence of government was to preserve natural rights and, by extension, man's happiness and security.
- **Emphasis on Human Dignity**, stemming from the Enlightenment.
- Writers such as Beccaria, Montesquieu, Hume, Rousseau, Diderot and Voltaire glorified people in their writings instead of the Church or the state. A concern with improving social conditions accompanied this growth interest in humanity, making possible the rise of social sciences.

Cesare Beccaria

- **Cesare Beccaria** was born on 1738 into an Aristocratic family in Milan, Italy
- The treatise *On Crimes and Punishments* was published in 1764, but since Beccaria feared a political backlash, he published it anonymously.
- The treatise was publicly praised by Katherine the Great, Maria Theresa of Austria-Hungry and quoted by Voltaire, Thomas Jefferson and John Adams.
- Beccaria, like all classical theorist, believed that all individuals have freewill and make choices on that freewill.
- Beccaria stated that all individuals rationally look out for their own personal satisfaction. This is key to the relationship between laws and crime. While individuals will rationally look for their best interest, and this might entail deviant acts and the law, which goal is to preserve the social contract, will try to stop deviant acts. This ends up with the individuals and the society rationally looking for satisfaction, and at times these interests clash.
- For Beccaria, the job of the criminal justice system is to control all deviant acts that an individual with freewill and rational thought might do in the pursuit of personal pleasure. This is made easier by the fact that human actions are predicable and controllable. With the right punishment or threat the criminal justice system can control the free-willed and rational human being. The problem the criminal justice system has is finding the right punishment or threats.
- Beccaria believed in the social contract, or the idea that freewill and rational individuals made a choice to live in a society instead of living alone. When one chooses to live in a society, then one chooses to give up some personal liberties in exchange for the safety and comfort of a society. Laws are designed as the framework of the society and the rules for which acts are encouraged or prohibited. Laws are the conditions of a society of free-willed and rational individuals. There is a need to have some system set up in order to ensure that the individuals in the society are protected against any individual or groups that want to take back the personal liberties forfeited in the social contract and those who want to also harm the personal liberties of others in the society.
- Beccaria stressed the importance of a to create laws for the "greatest happiness shared by the greatest number" (Utilitarianism). To ensure that laws of that nature were formed, an educated and enlightened male

should create the laws that would benefit the entire community, and he should do so without looking for only his benefit or passions. Laws should be enlightened, rational, logical and should be the greatest good for the greatest number. He felt that criminal laws should be formed with rational thought and not passions.

- With the creation of criminal laws and a criminal justice system, a rational form of punishment must also be created. Beccaria was very much against the cruel and arbitrary punishments of the day, but he did feel that the government had the right and duty to punish those individuals that threatened the society. The government had only the right to inflict punishments that were necessary for the crime → The punishment should fit the crime.
- Legislators must define the punishments for each crime.
- To stop individuals from committing prohibited acts, punishments must be set to make the punishment just over the amount of pleasure the individuals receive from the deviant acts. Any punishment that grossly or even slightly goes over the amount necessary to stop individuals from committing prohibited acts would be considered unjust.
- Laws must be set by legislators, legislators cannot judge persons, judges in criminal cases cannot interpret the laws, laws must be clear and in need of no interpretation, offenders must be judge by its peers (half of the victim half of the criminal), right of the criminal to refuse some jurors, no secret accusation by government, judges should be impartial searcher of truths and judges should not become part of the treasury so that they do not look to criminals to make money.
- Beccaria went further and gives rules and principles for the rights of the offender once arrested. Some of these include: imprisonment before conviction is important and accepted, certainty is demanded if they are to deserve punishment, laws should forbid leading or suggestive questions in trial, no torture to receive a confession and the right for the criminal to defend himself if certainty is found, but not so long as to make the punishment not prompt.
- Beccaria believed that punishments must be certain and prompt. He stated that, "the certainty of a punishment, even if it be moderate, will always make a stronger impression than the fear of another which is more terrible but combined with the hope of impunity."
- Beccaria was a strong opponent to the death penalty, for he felt that a laborious loss of liberty was harsher than a quick death. He also stated about the death penalty that, "it seems to me absurd that the laws, which

are an expression of the public will, which detest and punish homicide, should themselves commit it, and that to deter citizens from murder they order a public one." Beccaria felt that the death penalty, while cruel and excessive, it also was an ineffective measure to reduce or punish crime.

- Implications of Beccaria's work in the United States: Around the time that Beccaria was writing *On Crimes and Punishments*, the United States was coming together as a nation. Our founding fathers were greatly influenced by Beccaria, Bentham and other classical criminologist. In our Constitution and Bill of Rights, many of the rights that we, as U.S. citizens, accept as fundamental come from the works of classical criminology. Some of our rights include: rules against vagueness, right to public trial, right to be judged by peers, right to dismiss certain jurors, right against unusual punishments, right to speedy trial, right to examine witnesses, coerced or tortured confessions are considered invalid, right to be informed of accused acts and the right to bear arms. Our Constitution was greatly influenced by Beccaria, and many of the rights that he advocated were made the foundation of the United States.

Jeremy Bentham

- Jeremy Bentham was an English philosopher and political radical. He is primarily known today for his moral philosophy especially his principle of utilitarianism, which evaluates actions based upon their consequences. The relevant consequences, in particular, are the overall happiness created for everyone affected by the action.
- Influenced by many enlightenment thinkers, especially empiricists such as John Locke and David Hume, Bentham developed an ethical theory grounded in a largely empiricist account of human nature. He famously held a hedonistic account of both motivation and value according to which what is fundamentally valuable and what ultimately motivates us is pleasure and pain. Happiness, according to Bentham, is thus a matter of experiencing pleasure and lack of pain.
- For Bentham, morals and legislation can be described scientifically, but such a description requires an account of human nature. Just as nature is explained through reference to the laws of physics, so human behavior can be explained by reference to the two primary motives of pleasure and pain; this is the theory of psychological hedonism.
- Bentham's moral philosophy reflects what he calls at different times "the greatest happiness principle" or "the principle of utility" –

Utilitarianism – a term which he borrows from Hume. In adverting to this principle, however, he was not referring to just the usefulness of things or actions, but to the extent to which these things or actions promote the general happiness. Specifically, then, what is morally obligatory is that which produces the greatest amount of happiness for the greatest number of people, happiness being determined by reference to the presence of pleasure and the absence of pain.

- Bentham says that “Liberty is the absence of restraint” and so, to the extent that one is not hindered by others, one has liberty and is “free.”
- Bentham holds that people have always lived in society, and so there can be no state of nature (though he does distinguish between political society and “natural society”) and no “social contract” (a notion which he held was not only unhistorical but pernicious). Nevertheless, he does note that there is an important distinction between one’s public and private life that has morally significant consequences, and he holds that liberty is a good – that, even though it is not something that is a fundamental value, it reflects the greatest happiness principle.
- Bentham (as Thomas Hobbes before him) viewed law as “negative.” Given that pleasure and pain are fundamental to – indeed, provide – the standard of value for Bentham, liberty is a good (because it is “pleasant”) and the restriction of liberty is an evil (because it is “painful”). Law, which is by its very nature a restriction of liberty and painful to those whose freedom is restricted, is a one of the main evils.
- Law is, Bentham recognized, necessary to social order and good laws are clearly essential to good government. Indeed, perhaps more than Locke, Bentham saw the positive role to be played by law and government, particularly in achieving community well-being. To the extent that law advances and protects one’s economic and personal goods and that what government exists is self-government, law reflects the interests of the individual.
- Unlike many earlier thinkers, Bentham held that law is not rooted in a “natural law” but is simply a command expressing the will of the sovereign. Thus, a law that commands morally questionable or morally evil actions, or that is not based on consent, is still law.
- Bentham concludes, therefore, that the term “natural rights” is “simple nonsense: natural and imprescriptible rights, rhetorical nonsense, – nonsense upon stilts.” Rights – what Bentham calls “real” rights – are fundamentally legal rights. All rights must be legal and specific (that is, having both a specific object and subject). They ought to be made because

of their conduciveness to “the general mass of felicity,” and correlatively, when their abolition would be to the advantage of society, rights ought to be abolished. So far as rights exist in law, they are protected; outside of law, they are at best “reasons for wishing there were such things as rights.”

Current Directions and Policy Implications

- The Classical School still has a dominant effect on today’s criminal justice system policies. Most Western nations still adhere to most of the Classical inventions under due process of law and the rights of individuals, largely because these concepts are imbedded in various constitutions.
- Deterrence is the main focus of the criminal justice system in the United States. In fact, legislators and the public are moving toward a more conservative and punitive mode by arguing for tougher sentences for criminals.
- One of the problems with deterring criminals is that our criminal justice system does not proceed quickly.
- Many scholars have been engaged in research to see if deterrence works. Three of the favorite research topics have been the death penalty, drunken driving and drug use. At this point, the collective evidence points to a short-term effect for drunken driving, probably no effect for the death penalty and a little for drug use.
- The public and the government have virtually embraced the notion of a rational criminal. This makes it easier to blame the offender for all the aspects of a crime, rather than share some of that blame with society for creating conditions that force some people into crime. Indeed, if it is an individual’s decision to commit crime, then he or she is morally responsible and deserves to be punished.
- Criminologists have also granted a good deal of popularity to the concept of rational offenders.
- The rational choice theories generally suggest a connection between opportunities for offending, the environmental conditions at the time, and the readiness of the offender to engage on the offense.
- “Just desserts” punishment theory returns to the classical concept of retribution and argues that, because offenders make the choice to offend, punishment is deserved. The “just” portion of the theory restates the classical notion of equitable punishment – no more or less punishment than what is required to correct the harm from the crime.

- Our criminal justice system has become so punitive and unwidely that we need a similar period of reform and revision in order to insure fairness and proportionality in our law.
- Zero Tolerance, mandatory sentences, three-strikes-you-are-out are examples of harsh policies in our system.

Sources

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