Lecture Notes

# Chapter 3: Contemporary Classical and Deterrence Research

**Learning Objectives**

* + Identify what were the primitive types of “theories” explaining why individuals committed violent and other deviant acts for most of human civilization.
  + Describe how the Age of Enlightenment drastically altered the theories for how and why individuals commit crimes, and how it also altered criminal justice policies.
  + Explain how Cesare Beccaria’s book in 1764 drastically influenced various criminal justice systems throughout the world, and be able to list the types of concepts or propositions were recommended in his book.
  + Summarize what Jeremy Bentham contributed to this movement toward the Classical School of criminological thought.
  + Explain what the Neoclassical School of criminology contributed to the propositions of the Classical School that led most of the Western world (including the United States) to embrace this model as the major paradigm for the criminal justice system.

**Summary**

This chapter examines explanations of criminal conduct that emphasize individuals’ ability to make decisions based on the potential consequences of their behavior. The natural capability of human beings to make decisions based on expected costs and benefits was acknowledged during the **Age of Enlightenment** in the 17th and 18th centuries. This understanding of human capability led to what is considered the first rational theory of criminal activity—namely, deterrence theory. Of any other perspective to date, deterrence theory has had the most profound impact on justice systems in our nation. Furthermore, it is easy to see examples in contemporary life of offenders engaging in such rational decision-making, and a number of variations of this theoretical model have been developed that focus on the reasoning processes of people considering criminal acts.

Such theories of human rationality stand in stark contrast to the theories perpetuated for most of human civilization, up to the Age of Enlightenment—theories that focused on religious or supernatural causes of crime. Additionally, the **Classical School** theories of crime are distinguished from the other theories we examine in future chapters by their emphasis on free will and rational decision-making, which modern theories of crime tend to ignore. Specifically, the theoretical perspectives discussed in this chapter all focus on the human ability to choose one’s own behavior and destiny, whereas paradigms popular before the Enlightenment and in contemporary times tend to emphasize the influence of external factors on individual choice. Therefore, the Classical School is perhaps the paradigm best suited for analysis of what types of calculations go on in someone’s head before committing a crime.

The aspects of Classical School theory presented in this chapter vary in many ways, most notably in what they propose as the primary constructs and processes by which individuals determine whether or not to commit a crime. For example, some Classical School theories emphasize only the potential negative consequences of criminal actions, whereas others focus on the possible benefits. Still others concentrate on the opportunities and circumstances that predispose one to engage in criminal activity. Regardless of their differences, all the theories examined in this chapter emphasize a common theme: individuals commit crimes because they identify certain situations and actions as beneficial due to a perceived lack of punishment and a perceived likelihood of profits, such as money or peer status. In other words, the potential offender weighs out the possible costs and pleasures of committing a given act and then behaves in a rational way based on the conclusions of that analysis.

The most important distinction of these Classical School theories, as opposed to those discussed in future chapters, is that they emphasize individual decision making regardless of any extraneous influences on a person’s free will, such as the economy or bonding with society. Although many outside factors may influence an individual’s ability to rationally consider offending situations—and many of the theories in this chapter deal with such influences— primary responsibility rests on the individual to take all influences into account when deciding whether to engage in criminal behavior. Given this emphasis on individual responsibility, it is not surprising that Classical School theories are used as the basis for U.S. policies on punishment for criminal activity. After all, in the conservative “get-tough” movement that has existed since the mid-1970s, the Classical School theories are highly compatible and consistent with such a perspective because they focus on individual responsibility. Thus, the Classical School still retains the highest influence in terms of policy and pragmatic punishment in the United States, as well as throughout the Western world.

As you will see, the Classical School theoretical paradigm was presented as early as the mid-1700s, and it is still the dominant model of offending behavior in criminal justice systems. The Classical School paradigm remains the most popular theoretical framework among U.S. legislators and society, and throughout the world. Although the Classical School theories have remained dominant in most Western societies, the scientific and academic circles have somewhat dismissed many of the claims of this perspective. For reasons we explore in this chapter, the assumptions and primary propositions of the Classical School theories have been neglected by most recent theoretical models of criminology, which is likely premature given the impact this perspective has had on understanding human nature, as well as its profound influence on most criminal justice systems, especially in the United States.

The first theory addressed in the chapter is the Rational Choice theory. Rational Choice theory is a perspective that criminologists adapted from economists who used it to explain a variety of individual decisions regarding a variety of behaviors. This framework emphasizes all important factors that go into a person’s decision to engage, or not engage in a particular act. In terms of criminological research, the rational choice model emphasized both official/formal forms of deterrence, as well as the informal factors that influence individual decisions for criminal behavior. This represented a profound advance in the understanding of human behavior. Studies on rational choice such as those by Cornish and Clarke and Katz have shown that while official/formal sanctions tend to have some effect on individuals’ decisions to commit crime, they almost always are relatively unimportant compared to extralegal/informal factors. Perhaps the most important finding of rational choice research was that the expected benefits, particularly the pleasure they would get from such offending, had one of the most significant effects on their decisions to offend. Many other conclusions have been made regarding the influence of extralegal/informal factors on criminal offending, but the ultimate conclusion that can be made is that these informal deterrent variables typically hold more influence on individual decision-making regarding deviant activity than the official/formal deterrent factors that were emphasized by traditional Classical School models of behavior. The second theory presented in the chapter is Routine Activities Theory. Routine Activities Theory is another contemporary form of the Classical School framework in the sense that it assumes a rational, decision-making offender. The general model of routine activities theory was originally presented by Cohen and Felson in 1979. This theoretical framework emphasized the presence of three factors that come together in time and place to create a high likelihood for crime/victimization. These three factors are: motivated offender(s), suitable target, and lack of guardianship. Regarding the first factor noted as being important for increasing the likelihood of criminal activity—motivated offender—the theory does not provide much insight. The strengths of the theory are in the elaboration on the other two aspects of a crime-prone environment: suitable targets and lack of guardianship. When these three factors converge, the likelihood of a crime being committed increases. Locations that have a high convergence of motivated offenders, suitable targets, and lack of guardianship are typically referred to as “hot spots.” Another category of theory that is very strongly related to routine activities theory is that of the lifestyles perspective. This theory claims that individuals increase the probability to become victims (as well as offenders) due to the type of lifestyle they choose to engage in. There are three main policy implications related to the previously mentioned theories. The first is the policy of broken windows, which has many assumptions similar to those of routine activities and rational choice theories. The broken windows perspective emphasizes the need for police to “crack down” on more minor offenses to reduce more major crimes. Although many cities have claimed reductions in serious crimes by using this theory (such as New York and Los Angeles), the fact is that crime was reduced by the same amount across most cities during the same time. The second policy is the “three-strikes-you’re-out”. This policy assumes that offenders will make a rational choice not to commit future offenses because they could go to prison for life if they commit three. For deterrence to be effective the punishment must be swift, certain, and severe. Given the philosophy of Beccaria, this policy will probably not work because it is not certain or swift. In relation to specific deterrence, these types of policies work because offenders who are in prison for the rest of their lives cannot commit more crimes on the streets. When attempting to determine if such policies act as a general deterrent, there is no easy answer. One study from California shows that three-strike legislation reduced crime, but the remaining studies show either three-strikes laws have no effect on crime of that is actually increases crime. The final policy is strongly based in the rational choice model. Shaming has become increasingly used by a number of judges to deter offenders from recidivating. They have ordered everything from publicly posting pictures of men arrested for soliciting prostitutes to forcing offenders to walk down Main Streets of towns wearing signs that announce they committed a crime. Unfortunately, to date there have been virtually no empirical evaluations of the effectiveness of such shaming penalties, although studies of expected shaming for doing an act consistently shows a deterrent effect.

**Chapter Outline**

* Pre-Classical Perspectives of Crime and Punishment
  + For the vast majority of human civilization people believed that criminal activity was caused by either supernatural causes or religious factors.
    - In many societies at that time if a person had committed criminal activity, it was common to perform exorcisms or primitive surgeries, such as breaking open the skull of the “victim,” to allow the demons to leave the head of the individual.
  + Some of the primitive theories of crime had some validity in determining when crime was more common.
    - However, virtually none of the primitive theories accurately predicted who would commit the offenses.
  + Punishments During the Middle Ages (Dark Ages)
    - Beheading
    - Torture
    - Burning Alive at the Stake
    - Drowning
    - Stoning
    - Quartering
    - These punishments were relatively harsh by contemporary standards, but given the context of the times, they were fairly standard and accepted practices
* The Age of Enlightenment
  + Thomas Hobbes
    - *Leviathan* (1651)
    - Proposed a rational theory of why people are motivated to form democratic states of governance.
    - People are rational, so they will logically organize and form a sound form of governance, which can create rules to avoid a constant state of fear of being offended by others.
    - Until the citizens were entitled to a certain degree of respect from their governing bodies, as well as their justice systems, the citizens would never fully buy into the authority of government, or the system of justice in such societies.
    - Presented a drastic paradigm shift to this new idea of social structure, which had extreme implications for justice systems throughout the world.
    - Human beings were rational beings, who chose their destiny by creating a society.
    - **Social Contract**
      * The arrangement of citizens promising to abide by the rules or laws set forth by a given society in return for protection.
  + Shared Beliefs Among Enlightenment Philosophers
    - The social contract concept was shared by all Enlightenment Philosophers
    - The idea that people invest in the laws of their society, with the guarantee that they will be protected from others who violate such rules.
    - Each individual should have a say in the government, especially that of the justice system.
    - Fairness in determining who was guilty, as well as the appropriate punishments or sentences for conduct.
    - Human beings are rational, and therefore have free will.
* The Classical School of Criminology
  + Cesare Beccaria (1738–1794)
    - *On Crimes and Punishments* (1764)
      * Wrote this book at the age of 26 and published it anonymously.
    - Considered by most as
      * The Father of Criminal Justice;
      * Father of the Classical School of Criminology; and
      * The Father of Deterrence Theory.
  + Influences on Beccaria and His Writings
    - Beccaria was a child of the Enlightenment.
    - Places an emphasis on the idea of social contract, and incorporates the idea that citizens give up certain rights in order for protection from the state or government.
    - The government that violates the overall sense of unity will not be accepted by the populace, largely due to the need for the social contract to be a fair deal.
      * Laws are compacts of free individuals in a society.
    - Utilitarianism
      * The ideal of the greatest happiness shared by the greatest number.
    - Emphasis of free will and individual choice by individuals is key to his propositions and theorizing.
  + Beccaria’s Proposed Reforms and Ideas of Justice
    - The seriousness of a given act was how much damage it did to society.
      * For a given act, a given punishment should be given by law, regardless of the contextual circumstances.
      * Beccaria’s propositions focus on only the **actus reus**, because he claimed that an act against society was just as harmful, regardless of the intent, or **mens rea**.
        + Most societies factor in the intent of the offender in criminal activity.
      * This proposal of “a given act should be given equal punishment” certainly seemed to represent a significant improvement over the arbitrary punishments in the regimes and justice systems of the day in the 1700s.
    - Witnesses should be able to be confronted and cross-examined.
    - Torture should not be used against defendants.
      * Beccaria reveals the policy implications from such use of torture in stating that “The impression of pain may become so great that, filling the entire sensory capacity of the tortured person, it leaves him free only to choose what for the moment, is the shortest way of escape from pain.”
    - Defendants should be tried by fellow citizens or peers, not by judges.
      * This proposition is representative of Beccaria’s overall philosophy toward fairness and democratic process.
    - Emphasis was placed on making the justice system, particularly the laws and decisions made in processing, more public and understood.
      * If a person knows the consequences of their actions, they will act accordingly.
    - The important stages and decision-making processes of any justice system should be public knowledge, rather than held in secret or decided behind closed doors.
    - “The surest but most difficult way to prevent crimes is by perfecting education.”
      * most profound and important proposed reforms is one of the least noted
      * reinforces his ideas about people’s knowledge of the justice system
  + Beccaria’s Ideas of the Death Penalty
    - Beccaria was against the use of capital punishment.
    - Why he felt the death penalty was not an efficient and effective punishment.
      * The use of capital punishment inherently violated the social contract.
      * By the government endorsing the death of a citizen, it would provide a negative example to the rest of society.
        + **Brutalization Effect**

Increase of homicides after executions.

A similar phenomenon can be seen at sporting events, such as boxing matches, hockey games, and soccer/football games, when violence breaks out among spectators.

* + - * Thought that a punishment that was quick, such as death penalty, could not be an effective deterrent as compared to a drawn out penalty.
  + Beccaria’s Concept of Deterrence and the Three Key Elements of Punishment
    - Swiftness of Punishment (Celerity)
      * Two reasons why swiftness of punishment was important.
        + The first dealt with Beccaria’s reforms, that some defendants were spending many years awaiting trial.

As Beccaria stated, “[t]he more promptly and the more closely punishment follows upon the commission of a crime, the more just and useful will it be” (p. 55).

* + - * + The second reason that Beccaria emphasized a swift sentencing was related to the deterrence aspect of punishment.

As Beccaria stated (p. 56): “[p]romptness of punishments is more useful because when the length of time that passes between the punishment and the misdeed is less, so much the stronger and more lasting the human mind is the association of these two ideas, crime and punishment … the other as the necessary inevitable effect.”

* + - Certainty of Punishment
      * Beccaria considered this the most important quality of punishment.
        + “[T]he certainty of punishment, even if it be moderate, will always make a stronger impression that the fear of another which is more terrible but combined with the hope of impunity.”
    - Severity of Punishment
      * In order for a punishment to be effective, the possible penalty must outweigh the potential benefits (e.g., financial payoff) of the given crime.
        + “For a punishment to attain its end, the evil which it inflicts has only to exceed the advantage derivable from the crime; in this excess of evil one should include the … loss of the good which the crime might have produced. All beyond this is superfluous and for that reason tyrannical.”
    - A modern example of how punishments can be taken to an extreme, and thereby cause more crime rather than deter it, is shown by current “three-strikes-you’re-out” laws.
  + Beccaria’s Conceptualization of Specific and General Deterrence
    - **Specific Deterrence**
      * Punishments that focus primarily on the individual.
    - **General Deterrence**
      * Emphasizes the deterrence of “others,” regardless of whether the individual criminal is deterred.
    - Although these two forms of deterrence tend to overlap in most sentences by judges, they can be distinguished in terms of the intended target of the punishment.
    - In today’s society, virtually all criminal punishments given to individuals (i.e., specific deterrence) in our society are done in court, a public venue, so people are somewhat aware of the sanctions (i.e., general deterrence).
    - Ultimately, Beccaria seemed to emphasize general deterrence, and overall crime prevention, which is suggested by his statement, “[i]t is better to prevent crimes than to punish them.
  + Summary of Beccaria’s Ideas and His Influence on Policy
    - Summary of Ideas
      * Processing and punishment administered by justice systems must be known to the public that delegates such authority to the state to make such decisions.
      * Punishment must be appropriately swift, certain (i.e., necessary), and appropriately severe, which fits his concept of deterrence.
      * The need to have equal punishment for a given criminal act, as opposed to having arbitrary punishments imposed by one judge.
    - Beccaria was considerably worried about being accused of blasphemy by the church and of being persecuted by governments for his views.
      * The Roman Catholic Church excommunicated Beccaria when it became known that it was he who wrote the book.
        + His book remained on the list of condemned works until relatively recently (the 1960s).
      * The government officials of the time surprisingly embraced his work.
        + Beccaria was invited to visit many other country capitols, even those of the most authoritarian states at that time, to help reform their criminal justice systems.
      * Governments who tried to apply his ideas to the letter experienced problems, but generally most European (and American) societies who incorporated Beccaria’s ideas were more fair and democratic in their justice systems than any framework that had existed prior to Beccaria.
  + Impact of Beccaria’s Work on Other Theorists
    - His propositions and theoretical model of deterrence were incorporated into many of the newly formed constitutions of countries, most formed after major revolutions.
      * The most notable of these was the Constitution and Bill of Rights of the United States.
    - It is quite obvious that the many documents that were constructed before and during the time of the American Revolution in the late 1700s were heavily influenced by Beccaria and other Enlightenment philosophers.
      * The concept that our government is “… of the people, by the people, and for the people.”
      * The emphasis on due process and individual rights in the US Bill of Rights.
        + Right to trial by jury;
        + Right to confront and cross-examine witnesses;
        + Right to a speedy trial;
        + Public must be informed of all decisions regarding their justice system.
    - The impact of Beccaria’s work cannot be overstated in the working ideology of our system of justice.
      * The public nature of our justice system comes from Beccaria, as does the emphasis on deterrence.
      * Our criminal justice system (as well as virtually all western countries) uses the system of increasing the certainty and severity of punishment to reduce crime.
        + This system of deterrence remains the dominant model in criminal justice, in which the goal is to deter potential and previous offenders from committing crime by enforcing punishment that will make them reconsider the next time they think about engaging in such activity.
    - Beyond his impact on the workings of justice systems, Beccaria also had a large impact on further theorizing of human decision-making regarding decisions to commit criminal behavior.
      * Jeremy Bentham (1748–1832)
        + Bentham further refined the ideas presented by previous theorists, and his legacy is well known.
        + Hedonistic Calculus

The weighing of pleasure versus pain.

If the expected pleasure outweighs the expected pain, a rational person will engage in the act.

* + - * + Panopticon Prison Design

This model of prisons involved using a type of “wagon wheel” design, in which a post at the center allowed 360-degree visual observation point for the various “spokes” of hallways that contained all of the inmate cells.

Used in several countries, including the United States in early Pennsylvania penitentiaries

* The Neoclassical School of Criminology
  + The only significant difference between the Neoclassical School and the Classical School of Criminology is that the Neoclassical (“neo” means new) School takes into account contextual circumstances of the individual or situation that allows for increases or decreases in the punishment.
    - This “change” resulted from the French rejection of the equality of punishment when they quickly realized that the system was neither fair nor effective in terms of deterrence.
    - The French system found that sentencing a first-time offender the same as a repeat offender did not make much sense, especially if the first-time offender was a juvenile.
  + Loss of Dominance of Classical/Neoclassical Theory
    - Virtually, every society still uses the Neoclassical/Classical model as the framework for their system of justice.
    - The Classical/Neoclassical framework lost dominance among academics and scientists in the 19th Century, especially after Darwin’s publication of *The Origin of Species* in the 1860s, which introduced the concept of evolution and natural selection.
* Policy Implications
  + Many policies are based on deterrence theory: the premise that increasing punishment sanctions will deter crime. This is seen throughout the system of law enforcement, courts, and corrections.
  + “Three-strikes” laws have become quite prevalent in many states, as are police department gang units and injunctions (which condemn any observed loitering by or gathering among gang members in a specified region by listed members of established gangs).
  + Some jurisdictions, such as California, have created gang enhancements, in which juries make separate decisions at trial as to whether the defendant is guilty of a given crime and then make a decision as to whether the person is a gang member.
    - If a jury in California decides that the defendant is a gang member (usually determined by evidence provided by local police gang-units), it automatically adds more time to any sentence given by the judge if the individual is convicted of the crime.
  + Also, the still common use of the death penalty, as well as programs like “scared straight” are based heavily on the deterrence framework of the Classical/Neoclassical perspective, despite much evidence that neither tend to be effective in deterring individuals from committing offenses.
  + In terms of individuals’ decision-making when it comes to crime, formal deterrence elements such as law enforcement or possible severe sanctions for a given act tend to have little impact on such decisions.
    - This is because such a model assumes people are rational and think carefully before choosing their behavior, whereas most research findings suggest that people often engage in behaviors that they know are irrational or that offenders tend to engage in behaviors without rational decision making, which criminologists often refer to as “bounded rationality,” which means that individuals tend to be oblivious to many risks that may result from their behavior.
  + On the more macro- or group-level, the same can be said for adding more officers to the street on random patrol in a given neighborhood or area, which show negligible effects on crime reduction.