

## Criminology Notes:

# WEEK 1: READING NOTES.

## Criminology as a field of study:

- Each country may have its own unique social concerns, intellectual milieu (a person's social environment, background etc.), political traditions, historical development, and hence its own theoretical emphases and biases.

**E.g.** In the **UK**, debates over policing and antisocial behaviour have been prominent in recent years, whereas in the **USA** major concerns have been expressed over ghetto neighbourhoods, unemployment and the social prospects of the huge numbers of offenders re-entering the community after serving time in prison. In **Canada**, debates have centred on changes to drug law enforcement, while media treatment of criminal justice issues in **Australia** has featured extensive moral panics over so-called ethnic youth gangs and the use of illicit drug 'ice'.

- **Major themes of the book are:** - to explore the nature of the more generalised statements regarding crime; to examine the broad social and historical context within which certain theories and concepts have emerged; and to demonstrate the application of these theoretical understandings to selected issues and criminal justice reform.

- **Dual nature of contemporary criminology:**

**1. Administrative/professional view:** role of criminology is tied to improving the immediate practices of the criminal justice system and to solving the crime problems in the community. Study, analyse and research alternative theories in order to institute reform. Directed at making some aspect of the legal system 'better'. Attempts to solve a social problem.

**2. Critical or analytical approach:** stands back from policy decisions and ask the bigger questions such as "What if..." Delve into deep philosophical issues. Not to suggest improvements to the system but to question if it is valid/viable to begin with.

- **Criminology focuses on three main areas:**

1. The sociology of law, which examines how and why societies define crime a particular way and the implications this understanding has for the lives of people within those societies.
2. Theories of crime causation, sometimes referred to as criminogenesis
3. The study of social responses to crime, which examines in more depth the formal institutions of criminal justice, such as the police, courts and corrections.

## Defining Crime:

- **Formal legal definition:** Crime is whatever the states identifies as a crime. (i.e. it is written into the criminal law and subject to penalty or sanction)
- **Social harm conception:** Crime involves both criminal offences (such as assault) and civil offences (such as negligence)
- **Labelling perspective approach (sociological):** Crime only really exists when there has been a social response to a particular activity that labels the activity as criminal. (Will explore this idea in week 10)
- **Historical constructions:** Key idea is that morality is variable and 'crime is... an offence of the time e.g. 1743 Vagrancy Acts in England; Crimes of witchcraft in Europe; homosexual sex between men was only decriminalised in Tasmania in 1997.

## WEEK 2 - Classical Theory

### Social Context:

- The specific contours of legal change associated with the classical perspective in criminology varied greatly, depending upon the national context.
- In England, the seventeenth century, was a time when the power of the monarch was directly challenged in a number of ways
- One outcome of the conflicts over power, authority and the role of the law embodied in this struggle was the development of a body of principles about the supremacy of law, the fundamental rights of human beings, equality before the law and the democratic bases of political authority (Kelly 1992)
- As part of the reform processes taking place across Europe, the basis of criminal law and the nature of punishment were called into question.
- Major social, economic and political changes occurring throughout Europe were revolutionising the institutions of power and social relationships generally.
- The 'revolutions' were at two levels: economic and political.

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- Since lawmaking was a matter of birthright and religious conviction, the aristocracy was for a time able to rule with absolute power.
- In the feudal era, there was an absence of formal legal status as such
- Any rights that did exist were linked to individual station and class
- One's social rank this determined the nature and extent of the rights one was able to claim or exercise.
- Just as rights and laws were moulded around the specific interests of powerful individuals, so too, the 'justice' system reflected the personal ties or connections of the powerful.
- Justice was personalised; that is, decisions regarding whether particular acts were deemed criminal or not, and the responses to criminal acts, were essentially a matter of the personal opinion or whim of the presiding judge
- The legal system was highly localised, and revolved around the existing power relationships of the landed gentry and church officials.
- The penalties for crime were also highly individualised and varied greatly.
- Torture and death were not uncommon penalties for even minor offences.

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- The rise of the state, initially linked to the extension of monarchical power, saw the legal and criminal justice systems start to change
- If we take the English case, the monarchs were able to fuse local traditions and customs into a general form of law administration — and hence the development of a 'common law' system of justice.
- Each system of law served to entrench and consolidate the power of the monarch over that of local landowners, so that the monarch was then able to rule much more absolutely than had previously been the case.
- For economic reasons (such as long term planning purposes) as well as political reasons (such as the holding of decision-making power), a new form of law and criminal justice system evolved.

- A central feature of this system was that it was bureaucratic in nature (rather than personalised), and it provided a more systematic and impersonal method of judicial administration (Walklate 2007)
- The role of the state was now to preserve the rule of law.
- In this system the state apparatus acts as a distinct public authority to guarantee 'equality under the law' in relation to freedom, rights and obligations (Walklate 2007)
- The idea was that all social attributes, such as class, rank and social background, should be ignored once a person entered the court.
- Once in court, participants are transformed into 'abstract legal subjects' who, regardless of background, should be treated equally (O'Malley 1983; Massoglia & Macmillan 2002)
- Economically, the demand for individual rights was important in a number of ways.
  1. According to Fine (1984) it first helped to bolster the idea that 'private property' was a right that did not have to be seen in relation to customary or traditional obligations.
  2. The notion of rights was used to justify a breaking of bonds between peasants and the landed aristocracy (Fine 1984). No longer tied by traditions or custom to the land, peasants were allowed the legal rights to freely sell their labour.
- The **classical approach** in law and criminology was thus born of momentous changes occurring across the political, legal, social and economic domains.
- The rights of human beings, it was felt, should be protected against arbitrary uses of power.
- A rational system of production and exchange (that is, the capitalist market) demanded a legal system that was predictable, systematic, and regular (Walklate 2007)

#### Basic Concepts:

- Classical theory is premised upon the notion of individual rights, the human capacity to reason and the rule of law. (see chart below)

chart 2.1   classical theory	
definition of crime	legal <ul style="list-style-type: none"> <li>- violation of law</li> <li>- rights and social contract</li> </ul>
focus of analysis	the criminal act <ul style="list-style-type: none"> <li>- specific offence</li> <li>- the criminal law</li> </ul>
cause of crime	rationality <ul style="list-style-type: none"> <li>- individual choice</li> <li>- irrational decisions</li> </ul>
nature of offender	voluntaristic <ul style="list-style-type: none"> <li>- free will, self-interest, and equal capacity to reason</li> </ul>
response to crime	punishment <ul style="list-style-type: none"> <li>- proportionate to the crime</li> <li>- fixed or determinate</li> </ul>
crime prevention	deterrence <ul style="list-style-type: none"> <li>- pleasure-pain principle</li> <li>- reform of the legal system to make it more accessible</li> </ul>
operation of criminal justice system	legal-philosophical approach <ul style="list-style-type: none"> <li>- basic principles</li> </ul>

- Classical theory has a *voluntaristic* view of human nature that emphasises free will and individual choice.

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- Rather than analysing the customary or other links between people, the theory emphasises the status of human beings as *rights-holders*.
- Each individual is to be granted equal rights under the law.
- In order to guarantee both individual rights and some semblance of order, classical theory considers the role of the state to be central.
- Specifically the theory rests upon the notion of a *social contract* between individual rights-holders and the state.
- In this model, there is an implied consensus or agreement: individuals in society give up certain rights to the state in return for the protection of their rights and the security of their person and property from other individuals, and from the state itself

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- If human beings are seen as essentially self-interested and self-seeking, then there needs to be some kind of mechanism that will, in effect, protect us from the self-interested behaviour and actions of others.
- Hence, the role of the state is to regulate human interaction, and to be a site where rights in general can be protected by not allowing their infringement in specific instances.
- The legal manifestation of the social contract is expressed in the phrase 'the rule of law'.
- The rule of law means that everyone is to be treated equally, without fear or favour, in the eyes of the law.
- The first principle of the justice system is equal protection of rights.
- A crucial assumption here is that the social contract will protect each individual against the excesses and corruption of institutions and other individuals, by treating all people the same.
- The theory assumes a consensus in society regarding what is considered 'good' and what is 'bad', and this is reflected in the specific criminal laws.
- Crime is defined in the first instance as simply a *violation of the law*.
- Put simply, individuals are to be *held responsible* for their actions.
- Since each person is seen to have equal capacity to reason, and given that every effort is made to make citizens familiar with the law, and with its punishment, crime is in essence a matter of free choice.
- Crime is the result of individuals either making a calculated decision to do wrong or engaging in what might be seen as irrational behaviour.
- The social contract is maintained in practice through the use of *punishment* (Carlsmith & Darley 2002)

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- Punishment is based on the pleasure-pain principle
- In which the pain of the sentence would outweigh any pleasure to be gained from committing the crime.
- The 'rule of law' demands that each violation of the law be treated in the same way; that is, like cases should be treated alike.
- To put it differently, the emphasis is on equality in legal proceedings (everyone is equal in the eyes of the law) and equality in punishment of offenders (similar crimes are punished in the same way)
- The uniformity of the law is guaranteed by set penalties for particular offences.
- The punishment is thus meant to fit the crime.
- Punishment, therefore, is to consist of *deterrent sentences*, which clearly link to specific offences with specific penalties, and which are applicable to anyone who has committed the offence in question.

#### Historical development:

- The two leading figures in the development of classical criminology were Cesare Beccaria and Jeremy Bentham.
- The work of Beccaria provided a profound critique of the existing systems of law and criminal justice.
- He opposed the arbitrary nature of judicial law-making that was characteristic of the courts of his day, and he was critical of the unduly harsh and barbaric forms of punishment. (including death penalty and the routine use of torture)
- According to Beccaria (2009 [1767]), the basis for all social action should be the utilitarian concept of the greatest happiness for the greater number in society.
- This meant that crime should be considered an injury to society as a whole.

- The purpose of punishment is not simply social revenge or retribution, but to ensure the greatest overall good for everyone.
- This means that punishment should be orientated towards deterring individuals and others from committing crime, rather than wreaking vengeance.

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- It was felt that prevention of crime was more important than the punishment itself.
- The deterrent effect of punishment would only be attainable if there were a certainty of punishment.
- Ethically, the utilitarian principle demands that the punishment should fit the crime.
- As Beccaria (2009 [1767]: 43) put it: The end of punishment, therefore is no other, than to prevent the criminal from doing further injury to society, and to prevent others from committing the like offence.
- Likewise, seeing human beings and society within a framework of utilitarianism, Bentham argued that all behaviour is deductible to that of seeking pleasure and avoiding pain.
- Criminal behaviour, in particular, was also seen as reflecting this universal tendency or generalised pleasure-pain principle.
- Given that human beings were seen as having free will, and have equal capacity to reason, the central question for criminal justice revolved around how to make crime painful and how to reduce the rewards for criminal behaviour.
- The criminal law reflects a social contract between individuals and the state; a contract that is based upon a rational exchange of rights and obligations.
- In a nutshell, punishment should offer more pain than the transgression of the law is worth.

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- Classical thinking met considerable challenges when put into practice.  
**First challenge:** To make such general principles serve the interests of justice and equality when faced with a specific defendant in court.  
Some defendants clearly did not conform to the abstract concept of being rational and equal.  
**Second challenge:** The second challenge came from the grown bureaucratisation of the state. As capitalism grew, so did the need for a coordinating bureaucracy to ensure the smooth running of commerce.  
The courts, as part of the state, had to fulfil the bureaucratic criterion of efficiency as much as those of justice and fairness.
- **Third challenge:** The third challenge to classicism came from vested interests. Those in positions of power viewed classicism as a challenge to their entrenched authority, which they fielded through considerable discretion in application of the law in practice.

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### Classical theory

- People make free and rational choice that the gains from offending outweigh the costs
- Make sentencing rational so the pain outweighs the gain
- Some theories, such as positivist perspectives and strain theory largely reject, or at least downplay, the idea that free will leads to offending.
- In contrast to classical theory, these theories emphasise how behaviour is determined by factors outside of the actor's immediate control.

### **Contemporary examples:**

- The classical perspective is reflected in many aspects of the contemporary criminal justice system.
- Classical thinking is evident in legal doctrine that emphasises conscious intent or choice, and in sentencing principles (for example, the idea of culpability or responsibility) and the structure of punishment (e.g. gradation of penalties according to seriousness of offence)