Chapter 3

Classical and Neoclassical Thought—Choice or Consequences

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Learning Objectives

3.1 What are the major principles of the Classical School of criminology?

3.2 What were some forerunners of classical thought in criminology?

3.3 Who were some important thinkers of the Classical School of criminology, and what was their legacy?

3.4 What is neoclassical criminology, and how does it differ from the classical perspective? How does it build on it?

3.5 What is the role of punishment in neoclassical criminology?

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3.6 What are the policy implications of the Classical School and of neoclassical thought?

3.7 What are the criticisms of classical and neoclassical perspectives on crime?

Introduction

A number of crimes are relatively spontaneous unplanned events that occur in the heat of passion or when an unanticipated opportunity presents itself. A wallet left on the seat of an unlocked car whose window is rolled down, for example, is an invitation for anyone walking by to steal the wallet, and some people will be unable to resist the temptation to reach out and grab it. The majority of crimes, however, are likely planned—at least to some degree. Crime planning, which involves rational decision making on the part of the offender, means not only that criminals assess the pros and cons of perpetrating offenses (i.e., the benefits versus the likelihood of being caught and punished), but also the means of crime commission. An example of clear thinking in support of criminal activity was recently available on listverse.com, a site that touts itself as "focused on lists that intrigue and educate."[140] One list featured among the site's crime and mystery series is "Top 10 Tips to Commit the Perfect Crime."[141] Among the tips offered are ensuring that anyone contemplating an offense not leave any discoverable DNA at the scene of the crime. Because DNA is ubiquitous, the list author explains that "[t]he best solution ... is to commit your crime in a place that is likely to have a lot of DNA from strangers." A park, a shopping mall, or "anywhere that a lot of people tend to gather" is recommended as an offense location. The list author opines that "[f]inding your DNA will be like finding a needle in a haystack."[142]

This chapter examines the belief that at least some illegal activity is the result of rational choices made by individuals seeking various kinds of illicit rewards. The perspectives presented in this chapter form the basis for strict policies of social control—those based on punishment as a primary means for curtailing continued criminality. As you read through this chapter, however, you might ask yourself how the theoretical approaches that it describes can effectively

As you read through this chapter, however, you might ask yourself how the theoretical approaches that it describes can effectively counter the rewards of crime that might be imagined by those who are considering violating the law.

Major Principles of the Classical School

3.1 What are the major principles of the Classical School of criminology?

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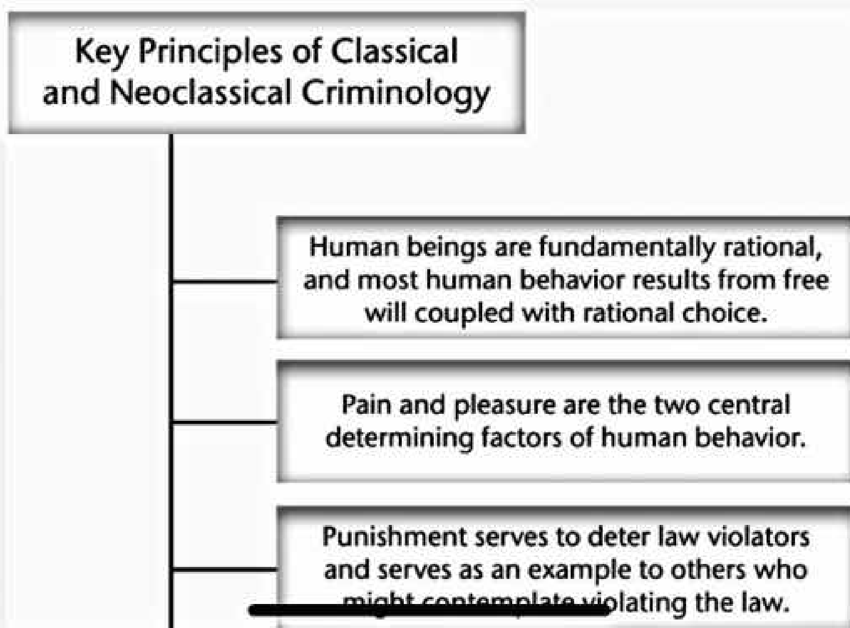
The first part of this chapter summarizes the central features of the Classical School of criminological thought, while a later section describes the neoclassical perspective—a modern day offshoot of that early school. The eight key principles of classical and current-day neoclassical criminology are shown in **Figure 3-1**.

Figure 3-1

Key Principles of Classical and Neoclassical Criminology



The principles of right and wrong are inherent in our nature and cannot be denied.

Society exists to provide benefits to individuals that they would not receive living in isolation.

When people band together for the protection offered by society, they forfeit some of their personal freedoms in order to enjoy the benefits of living among others cooperatively.

Certain key rights of the individual are necessary of the enjoyment of life, and governments that restrict and prohibit the exercise of those rights should be disbanded.

Crime lessens the quality of the contractual bond that exists between individuals and their society. Therefore, criminal acts cannot be tolerated by any members if everyone wants to receive the most benefit from living in a cooperative society.

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Forerunners of Classical Thought

3.2 What were some forerunners of classical thought in criminology?

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The notion of crime as a violation of established law did not exist in most primitive societies. Lack of law-making bodies, absence of formal written laws, and loose social bonds precluded the concept of crime as law violation, but all human societies, from the simplest to the most advanced, did evidence their own widely held notions of right and wrong. Sociologists call such fundamental concepts of

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Mores consist of proscriptions covering potentially serious violations of a group's values (e.g., murder, rape, and robbery). Folkways are time-honored customs; although they carry the force of tradition, their violation is less likely to threaten the survival of the social group. The fact that American men have traditionally worn little jewelry illustrates a folkway that has given way in recent years to various types of male adornment, including earrings, gold chains, and even makeup. Mores and folkways, although they may be powerful determinants of behavior, are nonetheless informal because only laws have been codified into formal strictures wielded by institutions and created specifically for enforcement purposes.

Another method of categorizing socially proscriptive rules is provided by some criminologists who divide crimes into the dual categories of

by some criminologists who divide crimes into the dual categories of *mala in se* and *mala prohibita*. Acts that are *mala in se* are said to be fundamentally wrong, regardless of the time or place in which they occur (e.g., forcing someone to have sex against his or her will and the intentional killing of children). Those who argue for the existence of *mala in se* offenses usually point to some fundamental rule, such as religious teachings (the Ten Commandments, the Koran, and so on), to support their belief that some acts are inherently wrong.

Offenses termed *mala prohibita* are said to be wrong in areas where they are prohibited (e.g., prostitution, gambling, drug use, and premarital sexual behavior). The status of such behaviors as *mala prohibita* is supported by the fact that they are not necessarily crimes in every jurisdiction; prostitution, for example, is legal in parts of Nevada, as is gambling.

The Demonic Era

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Since time began, humankind has been preoccupied with what appears to be an ongoing war between good and evil. Evil has often appeared in impersonal guise, as when the great bubonic plague (the "black death") ravaged Europe and Asia in the fourteenth century, leaving as much as three-quarters of the population dead in a span of 20 years. At other times, evil has seemed to wear a human face, as when the Nazi Holocaust claimed millions of Jewish lives during World War II.

Good and evil are shown attempting to influence a man. Crime and other social evils have always begged for explanation. What would today's criminologists think of the claim that "the devil made him do it?"
AlexandreNunes/Shutterstock

Whatever its manifestation, the very presence of evil in the world has begged for interpretation, and sage minds throughout human history have advanced many explanations for the evil conditions that individuals and social groups have at times been forced to endure. Some forms of evil, like the plague and the Holocaust, appear cosmically based, whereas others—including personal victimization, criminality, and singular instances of deviance—are the undeniable result of individual behavior. Cosmic-level evil has been explained by ideas as diverse as divine punishment, karma, fate, and vengeful activities of offended gods. Early explanations of personal deviance ranged from demonic possession to spiritual influences, to temptation by fallen angels.

Early Sources of Criminal Law

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Code of Hammurabi

Modern criminal law is the result of a long evolution of legal principles. The Code of Hammurabi is one of the first known bodies of law to survive for study today. King Hammurabi ruled the ancient city of Babylon from 1792 to 1750 b.c. and created a legal code consisting of strictures that were originally intended to establish property and other rights and that were crucial to the continued growth of Babylon as a significant commercial center. Hammurabi's law spoke to issues of theft, property ownership, sexual relationships, and interpersonal violence. Well-known criminologist Marvin Wolfgang observed, "In its day, 1700 b.c., the Hammurabi Code, with its emphasis on retribution, amounted to a brilliant

Code, with its emphasis on retribution, amounted to a brilliant advance in penal philosophy mainly because it represented an attempt to keep cruelty within bounds."[144] Prior to the code, captured offenders often faced barbarous retribution, frequently at the hands of revenge-seeking victims, no matter how minor their transgressions had been. Learn more about the Code of Hammurabi at **https://avalon.law.yale. edu/subject_menus/hammenu.asp.**

Early Roman Law

Of considerable significance for our own legal tradition is early Roman law. Roman legions under Emperor Claudius I (10 B.C.–A.D. 54) conquered England in the middle of the first century, and Roman customs, law, and language were forced upon the English population during the succeeding three centuries under the Pax Romana—a peace imposed by the military might of Rome.[145]

Early Roman law derived from the Twelve Tables, a collection of basic rules regulating family, religious, and economic life written around 450 b.c. They appear to have been based on common and fair practices generally accepted among early tribes existing prior to the establishment of the Roman Republic; only fragments of the tables survive today.

The best-known legal period in Roman history occurred during the reign of Emperor Justinian I (a.d. 527–565). By the end of the sixth century, the Roman Empire had declined substantially in size and influence and was near the end of its life. Possibly to preserve Roman values and traditions, Justinian undertook the laborious process of distilling Roman laws into a set of writings. This Justinian Code consisted of three lengthy legal documents—the Institutes, the Digest, and the Code itself—and distinguished between two major legal categories: public laws and private laws. Public laws dealt with the organization of the Roman state, its Senate, and governmental offices; private law concerned itself with contracts, personal possessions, legal status of various people (citizens, free people, slaves, freedmen, guardians, husbands, and wives), and injuries to citizens. It contained elements of our modern civil and criminal law, and it influenced Western legal thought up through the Middle Ages. Learn more about early Roman law at **https://**

Learn more about early Roman law at **https:// www.crystalinks.com/romelaw.html.**

Common Law

Common law refers to a traditional body of unwritten legal precedents that was created through everyday practice in English society, was based on shared traditions and standards, and was supported by court decisions during the Middle Ages. As novel situations arose and were handled by British justices, their declarations became the start for any similar future deliberations.

Common law was given considerable legitimacy in the eleventh century with the official declaration that it was the law of the land by King Edward the Confessor (A.D. 1042–1066). The authority of common law was further reinforced by the decision of William the Conqueror to use popular customs as the basis for judicial action following his subjugation of Britain in A.D. 1066.

Eventually, court decisions were recorded and made available to barristers (English trial lawyers) and judges. As criminologist Howard Abadinsky wrote, "Common law involved the transformation of community rules into a national legal system. The controlling element [was] precedent."[146] Today, common law forms the basis for much of our statutory and case law and has been called *the* major source of modern criminal law in English-speaking countries around the world. Learn more about common law at **https:// www.law.berkeley.edu/ wp-content/uploads/2017/11/ CommonLawCivilLawTraditions.pdf.**

Magna Carta

The Magna Carta (literally, "great charter"), another important source of modern laws and legal procedure, was signed on June 15, 1215, by King John of England at Runnymede, under pressure from British barons who took advantage of his military defeats to demand a pledge to respect their traditional rights and to be bound by law. At the time of its signing, the Magna Carta (63 chapters in length) was little more than a feudal document listing specific royal concessions.[147] Its original purposes were to ensure feudal rights, to

concessions.[147] Its original purposes were to ensure feudal rights, to guarantee the king would not encroach on landowning barons' privileges, to guarantee the freedom of the church, and to ensure respect for the customs of towns.

The Magna Carta, an important source of modern Western laws and legal procedure. What are some other significant sources of modern criminal law?
Chris Maddaloni/CQ Roll Call/Newscom

Its wording was later interpreted during a judicial revolt in 1613, however, to support individual rights and jury trials. Sir Edward Coke, chief justice under James I, held that the Magna Carta guaranteed basic liberties for all British citizens and ruled that any acts of Parliament that contravened common law would be void, a famous ruling that possibly became the basis for the rise of the U.S. Supreme Court, with its power to nullify laws enacted by Congress.[148] Similarly, a specific provision of the Magna Carta, designed originally to prohibit the king from prosecuting the barons without just cause, was expanded into the concept of due process of law, a fundamental cornerstone of modern legal procedure. Because of these later interpretations, the Magna Carta has been called "the foundation stone of our present liberties."[149]

The Enlightenment

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The Enlightenment (or the Age of Reason), a highly significant social movement occurring during the seventeenth and eighteenth centuries, was built upon ideas developed by many important thinkers. Because of their indirect contributions to classical criminological thought, it will be worthwhile to spend a few paragraphs discussing the writings of a few of these historical figures. Learn more about the Enlightenment and the intellectual figures who gave it life at **https://www.philosopher.org .uk/enl.htm.**

Thomas Hobbes

English philosopher **Thomas Hobbes** (1588–1679) developed what many writers regard as a negative view of human nature and social life, which he described in his momentous work, *Leviathan* (1651). Fear of violent death, he said, forces human beings into a social contract with one another to create a state that demands the surrender of certain natural rights and submission to the absolute authority of a sovereign while offering protection and succor to its citizens. The social contract concept significantly influenced many of Hobbes's contemporaries, but much of his writing was condemned for an overly pessimistic view of both human nature and existing governments.

John Locke

In 1690, English philosopher **John Locke** (1632–1704) published his *Essay Concerning Human Understanding*, putting forth the idea that the natural human condition at birth is like a blank slate upon which interpersonal encounters and other experiences indelibly inscribe the traits of personality. In contrast to earlier thinkers, who assumed that people are born with certain innate propensities and rudimentary intellectual concepts and ideas, Locke ascribed the bulk of adult human qualities to life experiences.

In the area of social and political thought, Locke further developed the Hobbesian notion of the social contract and contended that human beings, through a social contract, abandon their natural state of individual freedom and lack of interpersonal responsibility to join together and form society. Although individuals surrender some freedoms to society, government—once formed—is obligated to assume responsibilities toward its citizens, to provide for their protection and welfare, and to guarantee them certain inalienable rights such as the right to life, health, liberty, and possessions. A product of his times (the dictatorial nature of monarchies and the Roman church were being much disparaged), Locke stressed the duties that governments have toward their citizens while paying very little attention to the responsibilities of individuals to the societies of which they are a part, and he argued that political revolutions, under some circumstances, might become an obligation incumbent upon citizens.

Locke also developed the notion of checks and balances between divisions of government, a doctrine elaborated on by French jurist and political philosopher **Charles-Louis de Secondat Montesquieu** (1689–1755). In *The Spirit of Laws* (1748), Montesquieu wove Locke's notions into the concept of a separation of powers between divisions of government. Both ideas later found a place in the U.S. Constitution.

Jean-Jacques Rousseau

Swiss-French philosopher and political theorist **Jean-Jacques Rousseau** (1712–1778) further advanced the notion of the social contract in his treatise of that name (*Social Contract*, 1762), stating that human beings are basically good and fair in their natural state but historically were corrupted by the introduction of shared concepts and joint activities like property, agriculture, science, and commerce. As a result, the social contract emerged when civilized people agreed to establish governments and systems of education to correct the problems and inequalities brought on by the rise of civilization.

Rousseau also contributed to the notion of natural law, a concept originally formulated by Saint Thomas Aquinas (1225–1274), Baruch Spinoza (1632–1677), and others to provide an intuitive basis for the

A 2009 study conducted by Italian researchers focused on the large number of Italian inmates who were released in 2006 as efforts were made to reduce the prison population in that country.[182] A condition of release was that anyone who reoffended would face new sanctions *and* have to finish the term they were serving at the time of their release. The possibility of added time was found to have a "substantial effect" on the average prisoner, but the most serious offenders (those whose original sentences were 69 months or longer) appeared not to be deterred by the threat of enhanced sentences. The researchers concluded that career offenders were far less likely to be affected by penalty enhancements than offenders who were not as far down the path of criminality.

Rational choice theory assumes that everyone is equally capable of making rational decisions, which is probably not the case. Some individuals are more logical than others by virtue of temperament, personality, or socialization; some are emotional, hotheaded, and unthinking. Empirical studies of RCT have added scant support for the perspective's underlying assumptions, tending to show instead that criminal offenders are often unrealistic in their appraisals of the relative risks and rewards facing them.[183] Similarly, rational and situational choice theories seem to disregard individual psychology and morality, with their emphasis on external situations. Moral individuals, say critics, when faced with easy criminal opportunities, may rein in their desires and turn their backs on temptation.

Some contemporary researchers have pointed to the fact that offenders do not merely assess the risk of getting caught and rationally compare it with potential criminal gains, but instead face the fear brought on by the apprehension of being caught. Fear, those critics say, is separate from risk. Risk is a non-emotional assessment that can be judged by offenders prior to crime commission, but fear is an emotion that is not easy to quantify. The fear of arrest, say these critics, takes criminal decision largely out of the realm of clear thinking and rational choice and into an emotional gray area not appreciated by deterrence theorists.[184]

Also, in recent years, studies in neuroscience suggest that human

Thomas Paine (1737–1809), an English-American political theorist and the author of *The Rights of Man* (1791 and 1792), defended the French Revolution, arguing that only democratic institutions could guarantee individuals' natural rights. At the Second Continental Congress, Thomas Jefferson (1743–1826) and other congressional representatives (many well versed in the writings of Locke and Rousseau) built the U.S. Constitution around an understanding of natural law as they perceived it. Hence, when Jefferson wrote of inalienable rights to "life, liberty, property," he was following in the footsteps of his intellectual forebears and meant that such rights were the natural due of all men and women because they were inherent in the social contract between citizens and their government.

Natural law and natural rights have a long intellectual history. In a *National Review* article subtitled "If Natural Law Does Not Permit Us to Distinguish between Men and Hogs, What Does?" Harry V. Jaffa, director of the Claremont Institute's Center for the Study of the Natural Law, called an 1854 speech given by Abraham Lincoln "the most moving and compelling exhibition of natural-law reasoning in all political history."[150] In that speech, Lincoln argued in favor of freedom for slaves by succinctly pointing out there is no difference between people, whatever their color: "Equal justice to the South, it is said, requires us to consent to the extending of slavery to new countries. That is to say, inasmuch as you do not object to my taking my hog to Nebraska, therefore I must not object to your taking your slave. Now, I admit this is perfectly logical, if there is no difference between hogs and Negroes."[151] Lincoln's point, of course, was that there is a huge difference between human beings and animals by virtue of their nature and that such a difference cannot be denied by logic.

Other commentators have cited the "crimes against humanity" committed by Nazis during World War II as indicative of natural law principles. The chilling testimony of Rudolf Hess,[152] Hitler's deputy, during the 1945 war crimes trial in Nuremberg, Germany, as he recalled the Fuehrer's order to exterminate millions of Jews, indicates the extent of the planned "final solution": "In the summer of 1941, I was summoned to Berlin to Reichsfuehrer SS Himmler to receive personal orders. He told me something to the effect—I do not remember the exact words—that the Fuehrer had given the order for a final solution of the Jewish question. We, the SS, must carry out that order. If it is not carried out now then the Jews will later on destroy the German people. He had chosen Auschwitz on account of its easy access by rail and also because the extensive site offered space for measures ensuring isolation."[153] Although Hitler's Nazi Party made the law in Germany at the time, natural law supporters (largely in other countries) argued that Hitler's final solution to the Jewish "question" was inherently wrong and that any laws passed in furtherance of it were immoral and should have been struck down.

Although the concept of natural law has waned somewhat in influence over the past half century, many people today still hold that

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Although the concept of natural law has waned somewhat in influence over the past half century, many people today still hold that the basis for various existing criminal laws can be found in immutable moral principles or some other identifiable aspect of the natural order. Modern-day advocates of natural law claim that it comes from outside the social group and that it is knowable through some form of revelation, intuition, or prophecy.

The debate over abortion is an example of the modern-day use of natural law arguments to support both sides in the dispute. Antiabortion forces, frequently called "pro-lifers" or "right-to-lifers," claim that an unborn fetus is a person, that he or she is entitled to all the protection we would give to any other living human being, and that such protection is basic and humane and lies in the natural relationship of one human being to another within the relationship of a society to its children. Abortion (also called "pro-choice") advocates, who are striving for passage of a law or for a reinterpretation of past Supreme Court precedent that would support their position, maintain that abortion is a right of any pregnant woman because she is the only one who should be in control of her body and claim that the legal system must address the abortion question by offering protection for this natural right.

Perhaps the best-known modern instance of a natural law debate occurred during confirmation hearings for U.S. Supreme Court Justice Clarence Thomas. Thomas, who was confirmed in 1991, once wrote an opinion in which he argued from a natural law point of view, but that opinion was later challenged by Senate Judiciary Committee members who felt it reflected an unbending judicial attitude. Learn more about natural law at **http://www.iep.utm.edu/natlaw.**

The Classical School

3.3 Who were some important thinkers of the Classical School of criminology, and what was their legacy?

Audio

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Classical Thought in Criminology

The Enlightenment fueled the fires of social change, leading eventually to the French and American Revolutions and providing many of the intellectual underpinnings of the U.S. Constitution. It also inspired other social movements and freed innovative thinkers from the chains of convention. As a direct consequence of Enlightenment thinking, superstitious beliefs were discarded and men and women began to be perceived, for the first time, as self-determining entities possessing a fundamental freedom of choice; free will and rational thought came to be recognized as the linchpins of all significant human activity. In effect, the Enlightenment inspired the reexamination of existing doctrines of human behavior from the point of view of rationalism.

Within criminology, the Enlightenment led to the development of the

Within criminology, the Enlightenment led to the development of the Classical School of criminological thought. Crime and deviance, which had previously been explained by reference to mythological influences and spiritual shortcomings, took their place in Enlightenment thought alongside other forms of human activity as products of the exercise of free will. Once people were seen as having control over their own lives, crime came to be explained as a particularly individualized form of evil—that is, as moral wrongdoing fed by personal choice.

Cesare Beccaria

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Cesare Beccaria (1738–1794) was born in Milan, Italy, the eldest of four children; he was trained at Catholic schools and had earned a doctor of law degree by the time he was 20. In 1764, Beccaria published his *Essay on Crimes and Punishments*, which consisted of 42 short chapters covering a few major themes to communicate his observations on the laws and justice system of his time. In *Essay*, Beccaria distilled the notion of the social contract into the idea that "laws are the conditions under which independent and isolated men united to form a society."[*] More than anything else, his writings consisted of a philosophy of punishment. Beccaria claimed that the purpose of punishment should be deterrence rather than retribution, and punishment should be imposed to prevent offenders from committing additional crimes. Beccaria saw punishment as a means to an end, not an end in itself, and crime prevention was more important to him than revenge.

To help prevent crimes, Beccaria argued, adjudication and punishment should both be swift and, once punishment is decreed, it should be certain: "The more promptly and the more closely punishment follows upon the commission of a crime, the more just

Beccaria concluded that punishment should be only severe enough to outweigh the personal benefits to be derived from crime commission and that any additional punishment would be superfluous. "In order," he said, "for punishment not to be, in every instance, an act of violence of one or of many against a private citizen, it must be essentially public, prompt, necessary, the least possible in the given circumstances, proportionate to the crimes, [and] dictated by the laws."

Beccaria distinguished among three types of crimes: those that threaten the security of the state, those that injure citizens or their property, and those that run contrary to the social order. Punishment should fit the crime—theft should be punished through fines, personal injury through corporal punishment, and serious crimes against the state (such as inciting revolution) via application of the death penalty. (Beccaria was opposed to the death penalty in most other circumstances, seeing it as a kind of warfare waged by society against its citizens.)

Beccaria condemned the torture of suspects, a practice still used in the eighteenth century, saying that it was a device that ensured that weak suspects would incriminate themselves, whereas strong ones would be found innocent. Torture was also unjust because it punished individuals before they had been found guilty in a court of law. In Beccaria's words, "No man can be called guilty before a judge has sentenced him, nor can society deprive him of public protection before it has been decided that he has in fact violated the conditions under which such protection was accorded him. What right is it then, if not simply that of might, which empowers a judge to inflict punishment on a citizen while doubt still remains as to his guilt or innocence?"

Beccaria's *Essay* also touched upon a variety of other topics. He distinguished between two types of proof: "perfect proof," where there was no possibility of innocence, and "imperfect proof," where some possibility of innocence remained. Beccaria also believed in the efficacy of a jury of one's peers, recommending that half of any jury panel consist of the victim's peers and the other half of the accused's peers.

Beccaria's ideas were widely recognized as progressive by his contemporaries. His principles were incorporated into the French penal code of 1791 and significantly influenced the justice-related activities of European leaders like Catherine the Great of Russia, Frederick the Great of Prussia, and Emperor Joseph II of Austria. Evidence suggests that Beccaria's *Essay* influenced framers of the U.S. Constitution, and some scholars claim that the first 10 amendments to the Constitution, known as the Bill of Rights, might not have existed were it not for Beccaria's emphasis on individuals' rights in the face of state power. Perhaps more than anyone else, Beccaria is responsible for the contemporary beliefs that criminals have control over their behavior, that they choose to commit crimes, and that they can be deterred by the threat of punishment. Learn more about Cesare Beccaria at **https:// www.biography.com/ scholar/cesare-beccaria.**

Check Your Understanding: Cesare Beccaria, Crime, and Punishment

Select each of the rows below to learn more about Cesare Beccaria and his views on crime and punishment.

Did Cesare Beccaria create a new criminological theory?

Reveal Answer

Why did Beccaria oppose the death penalty for most crimes?

Reveal Answer

What were some of the changes in legal codes that Beccaria recommended?

Jeremy Bentham

Audio

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Jeremy Bentham (1748–1832), another founder of the Classical School, wrote in his *Introduction to the Principles of Morals and Legislation* (1789) that "nature has placed mankind under the governance of two sovereign masters, pain and pleasure."[*] To reduce crime or, as Bentham put it, "to prevent the happening of mischief," the pain of punishment must outweigh the pleasure to be derived from criminal activity. Bentham's claim rested upon his belief, spawned by Enlightenment thought, that human beings are fundamentally rational and that criminals will weigh in their minds the pain of punishment against any pleasures thought likely to be derived from crime commission.

Bentham advocated neither extreme nor cruel punishment—only punishment sufficiently distasteful to the offender that the discomfort experienced would outweigh the pleasure to be derived from criminal activity. The more serious the offense is, the more reward it holds for its perpetrator and therefore the more weighty the official response must be. "Pain and pleasure," said Bentham, "are the instruments the legislator has to work with" in controlling antisocial and criminal behavior.

Bentham's approach has been termed hedonistic calculus or utilitarianism because of its emphasis on the worth any action holds for an individual undertaking it. Bentham stated, "By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question; or, what is the same thing to promote or to oppose that happiness." In other words, Bentham believed that individuals could be expected to weigh the consequences of their behavior before acting to maximize their pleasure and minimize their pain, based on intensity, duration, certainty, and immediacy (or remoteness) in time.

Like Beccaria, Bentham focused on the potential held by punishment to prevent crime and to act as a deterrent for those considering criminal activity. Regarding criminal legislation, he wrote that "the evils of punishment must be made to exceed the advantage of the offence." Bentham distinguished among 11 types of punishment:

1. Capital punishment (death)
2. Afflictive punishment (whipping and starvation)
3. Indelible punishment (branding, amputation, and mutilation)
4. Ignominious punishment (public punishment involving use of stocks or pillory)
5. Penitential punishment (censure by the community)
6. Chronic punishment (banishment, exile, and imprisonment)
7. Restrictive punishment (license revocation and

6. Chronic punishment (banishment, exile, and imprisonment)

7. Restrictive punishment (license revocation and administrative sanction)

8. Compulsive punishment (restitution and appointment with probation officer)

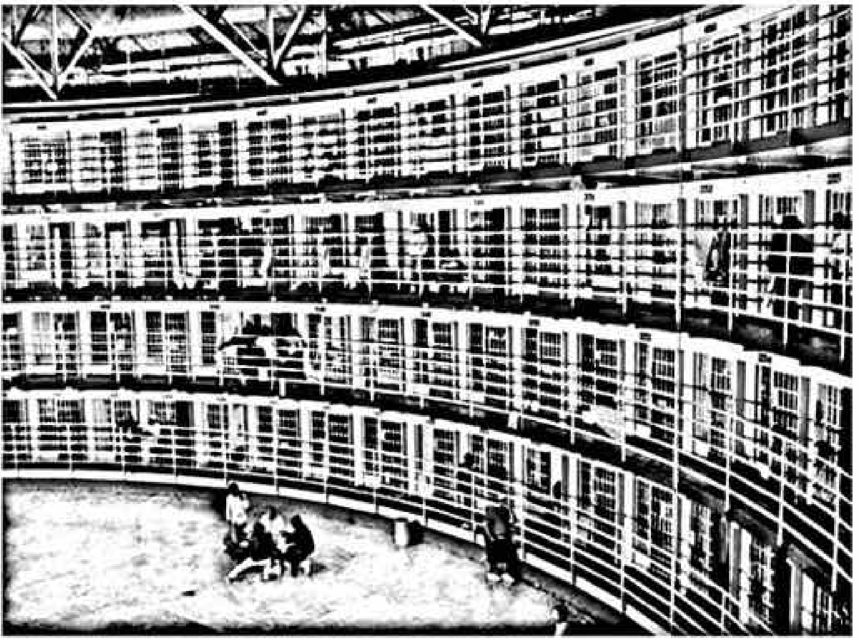
9. Pecuniary punishment (fine)

10. Quasi-pecuniary punishment (denial of services otherwise available)

11. Characteristic punishment (mandates such as wearing prison uniforms)

Utilitarianism is a practical philosophy, and Bentham was quite practical in his suggestions about crime prevention. He recommended the creation of a centralized police force focused on crime prevention and control—a recommendation that resulted in the English Metropolitan Police Act of 1829 establishing London's New Police under the direction of Sir Robert Peel.

Bentham's other major contribution to criminology was his suggestion that prisons be designed along the lines of what he called a "Panopticon House." The Panopticon was to be a circular building with cells along the circumference, each clearly visible from a central location staffed by guards, constructed near or within cities so that it might serve as an example to citizens of what would happen to them should they commit crimes. He also wrote that prisons should be managed by contractors who could profit from the labor of prisoners and that each contractor should "be bound to insure the lives and safe custody of those entrusted to him." Although a Panopticon was never built in Bentham's England, French officials funded a modified version of such a prison, which was eventually built at Lyons, and three prisons modeled after the Panopticon concept were constructed in the United States.



Stateville Correctional Center in Illinois. The prison, built with cells circling a control area, was based on the Panopticon design proposed by Jeremy Bentham. What did Bentham mean when he said that, for punishment to be effective, "it must be swift and certain?"
RICHARD A. CHAPMAN/Chicago Sun-Times/AP Images

Bentham's critics have been quick to point out that punishment often does not seem to work and that even punishment as severe as death appears not to have any effect on the incidence of crimes like murder (discussed in greater detail later in this chapter). Such critics forget Bentham's second tenet: For punishment to be effective, "it must be swift and certain." Learn more about Jeremy Bentham from the Bentham Project via **https://www.ucl.ac.uk/Bentham-Project.**

Neoclassical Criminology

3.4 What is neoclassical criminology, and how does it differ from the classical perspective? How does it build on it?

Audio

Listen to the Audio

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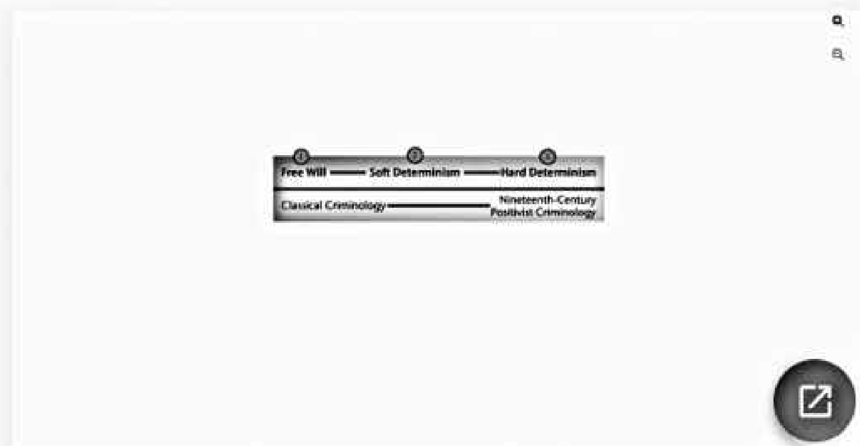
The Classical School was to influence criminological thinking for a

The Classical School was to influence criminological thinking for a long time to come, from the French Revolution and the U.S. Constitution to today's emphasis on deterrence and crime prevention. By the end of the 1800s, however, classical criminology, with its emphasis on free will and individual choice as the root causes of crime, had given way to another approach known as positivism. Positivism (discussed in greater detail in **Chapter 4**) made use of the scientific method in studying criminality and was based on an acceptance of hard determinism, the belief that crime results from forces beyond the control of the individual. The original positivists completely rejected the notion of free will and turned their attention to the impact of socialization, genetics, economic conditions, peer group influences, and other factors that might determine criminality. Acceptance of the notion of hard determinism implied that offenders were not entirely (if at all) responsible for their crimes and suggested that crime could be prevented by changing the conditions that produced criminality (see **Figure 3-2**).

Check Your Understanding

Figure 3-2: Classical Criminology versus Positivism - The Role of Free Will



Source: Schmalleger, Frank, Criminology. Printed and Electronically reproduced by permission of Pearson Education, Inc., Upper Saddle River, New Jersey.

While positivism remains an important component of contemporary criminology, many of its assumptions were undermined in the 1970s by (1) studies that seemed to show that offenders could not be rehabilitated no matter what was tried, (2) a growing and widespread public fear of crime that led to "get tough on crime" policies, and (3) a cultural reaffirmation of the belief that human beings had a rational nature. The resulting resurgence of classical ideals, called

Rational Choice Theory (RCT)

Audio

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Watch

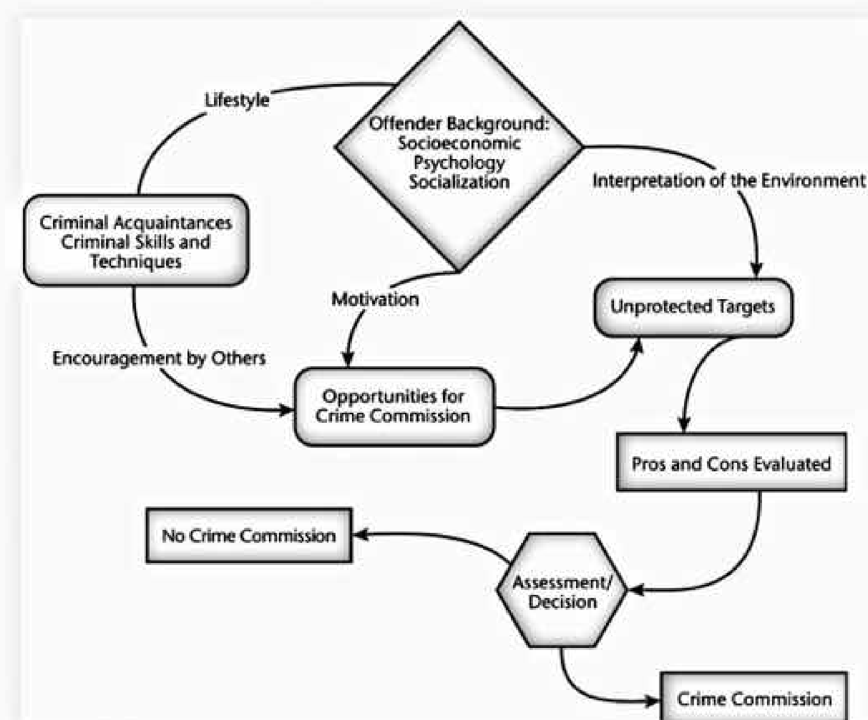
Rational Choice Theory

Rational choice theory (RCT), a product of the late 1980s, mirrors many of the principles found in classical criminology. The theory, as described by **Ronald V. Clarke** and **Derek B. Cornish**,[160] rests upon the belief that criminals make a conscious, rational, and at least partially informed choice to commit crime and employs cost–benefit analysis (as in the field of economics), viewing human behavior as the result of personal choices made after weighing both the costs and benefits of available alternatives. "[Rational choice] predicts that individuals choose to commit crime when the benefits outweigh the costs of disobeying the law. Crime will decrease when opportunities are limited, benefits are reduced, and costs are increased."[161] **Figure 3-3** diagrams the steps that are likely to be involved in making a choice to commit a property crime. A somewhat different model can be applied in the case of drug offenders since most people who decide to deal drugs do so with an entrepreneurial spirit and often see their activities as a kind of rational business undertaking. Some, in fact, have been known to keep records of their transactions, to include profit-and-loss statements—and even computer-based

include profit-and-loss statements—and even computer-based spreadsheets in an effort to maximize profits.

Figure 3-3

Rational Choice and Crime



Source: Schmalleger, Frank, *Criminology*. Printed and Electronically reproduced by permission of Pearson Education, Inc., Upper Saddle River, New Jersey.

Situational choice theory, an extension of RCT, provides an example of soft determinism, which views criminal behavior "as a function of choices and decisions made within a context of situational constraints and opportunities."[162] The theory holds that "crime is not simply a matter of motivation; it is also a matter of opportunity."[163] Situational choice theory suggests that the probability of criminal activity can be reduced by changing the features of the environment. Clarke and Cornish, collaborators in the development of the situational choice perspective, analyzed the choice-structuring properties of a potentially criminal situation, defining them as "the constellation of opportunities, costs, and benefits attaching to particular kinds of crime."[164] Clarke and Cornish suggested the use of situational strategies to lower the likelihood of criminal victimization in given instances. They also recognized that the rationality of criminal offenders is inevitably bounded or limited, as it is for all of us, by the amount and accuracy of information available to them at the time they are weighing the costs and consequences of future actions.[165]

future actions.[165]

In brief, rational choice theorists concentrate on "the decision-making process of offenders confronted with specific contexts" and have shifted "the focus of the effort to prevent crime from broad social programs to target hardening, environmental design or any impediment that would [dissuade] a motivated offender from offending."[166] Twenty-five techniques of situational crime control can be identified, and each can be classified according to the five objectives of situational prevention. **Figure 3-4** outlines those objectives and provides examples of each. All 25 techniques can be seen in the interactive Web graphic available at **http://www.popcenter.org/25techniques.** As shown in the figure, the five objectives are as follows:

1. increase the effort involved in committing a crime,
2. increase the risks associated with crime commission,
3. reduce the rewards of crime,
4. reduce the provocations that lead to criminal activity, and
5. remove the excuses that facilitate crime commission.

Check Your Understanding

Figure 3-4: Situational Crime Control Objectives with Examples

Source: Schmalleger, Frank, Criminology. Printed and Electronically reproduced by permission of Pearson Education, Inc., Upper Saddle River, New Jersey.

Earlier approaches focused largely on the balance between pleasure

Earlier approaches focused largely on the balance between pleasure and pain as the primary determinant of criminal behavior, whereas rational choice theory tends to place less emphasis on pleasure and emotionality and more on rationality and cognition. Some rational choice theorists distinguish among the types of choices offenders make as they move toward criminal involvement. One type of choice, known as involvement decisions, has been described as “multistage” and is said to “include the initial decision to engage in criminal activity as well as subsequent decisions to continue one's involvement or to desist.”[167] Another type of choice, event decisions, relates to particular instances of criminal opportunity (such as the decision to rob a particular person or let him or her pass by unmolested); in contrast to involvement decisions, which may take months or even years to reach, these are usually made quickly. Learn more about rational choice theories via **http://criminal-justice.iresearchnet.com/criminology/theories/rational-choice-theory.** You can read about the use of environmental design techniques to reduce crime at **http://www.ncpc.org**.

The Excitement of Crime

Audio

Listen to the Audio

In 2016 and 2017, a wave of car burnings swept across Sweden, a country that prides itself on its low levels of crime. More than 2,000 vehicles were damaged or destroyed, leaving the police with few clues and only a handful of arrests. A Stockholm police spokesperson offered an explanation for the arsons. “There are a few major reasons,” he said. “One is that .... that these youth or young men, when interviewed, say it is fun or exciting.”[168] One criminologist who focuses on the excitement of crime is **Jack Katz**, whose book *Seductions of Crime* explains crime as the result of the “often wonderful attractions within the lived experience of criminality.”[169] Crime, Katz said, is often pleasurable for those committing it, and

men, when interviewed, say it is fun or exciting."[168] One criminologist who focuses on the excitement of crime is **Jack Katz**, whose book *Seductions of Crime* explains crime as the result of the "often wonderful attractions within the lived experience of criminality."[169] Crime, Katz said, is often pleasurable for those committing it, and pleasure is the major motivation behind crime, even if the kind of pleasure to be derived from crime is not immediately obvious. According to Katz, criminologists have often depicted crime as something to be avoided and have failed to understand just how good crime *feels* to those who commit it:

> The social science literature contains only scattered evidence of what it means, feels, sounds, tastes, or looks like to commit a particular crime. Readers of research on homicide and assault do not hear the slaps and curses, see the pushes and shoves, or feel the humiliation and rage that may build toward the attack, sometimes persisting after the victim's death. How adolescents manage to make the shoplifting or vandalism of cheap and commonplace things a thrilling experience has not been intriguing to many students of delinquency. The description of "cold-blooded, senseless murders" has been left to writers outside the social sciences. Neither academic methods nor academic theories seem to be able to grasp how it makes sense to them to kill when only petty cash is at stake. Sociological and psychological studies of robbery rarely focus on the distinctive attractions of robbery, even though research has now clearly documented that alternative forms of criminality are available and familiar to many career robbers.[170]

For criminal offenders, crime is indeed rewarding, according to Katz. It is exciting and feels good: "The particular seductions and compulsions [which criminals] experience may be unique to crime," he stated, "but the sense of being seduced and compelled is not. To grasp the magic in the criminal's sensuality, we must acknowledge our own."[171] Katz described the almost sexual attraction shoplifting held for one young offender: "The experience was almost orgasmic for me. There was a buildup of tension as I contemplated the danger of a forbidden act, then a rush of excitement at the moment of committing the crime, and finally a delicious sense of release."[172]

A glittering jewelry store display window. Rational choice theory says that offenders make a conscious, rational choice to commit crimes. Might some crimes also be irrational?
Andrey Burmakin/Shutterstock

Katz's approach stresses the sensual dynamics of criminality, arguing that crime is sensually compelling for many people. As one writer noted, "Jack Katz argues for a redirection of the criminological gaze—from the traditional focus on background factors such as age, gender, and material conditions to foreground or situational factors that directly precipitate criminal acts and reflect crimes' sensuality."[173] Learn more about the excitement of crime at **https:// www. slideshare.net/mattyp99/2013-seductionsof-crimejackkatz.**

Who's to Blame—The Individual or Society?

The Excitement of Crime

Following his arrest for the theft of a police car, Moonbeam Kittaro met with one of his friends in the visiting area of the local jail. Here's what he said:

> I stole a cop car and s***, was it exciting!

> I mean, the thing was just sitting there running in the parking lot. Who wouldn't take it?

> I've never been so high on pure adrenaline. It was an adrenaline rush being behind the wheel of that f***ing car.

> It turned my girlfriend on too.

> I drove over to her place with the lights and siren on, and as soon as she saw the car she wanted to go for a ride.

> We must have hit 140 on the Interstate!

> Then we pulled into a rest stop and made love in the back seat.

> But that's when we got arrested.

> The cops surrounded the car, guns drawn and all that s***.

> We didn't even hear them coming.

A police car like the one stolen in this story. What kinds of crimes hold the most excitement for offenders?
Carolina K. Smith MD/Shutterstock

Think about it

1. Why did Kittaro steal the car? Do you think he knew, before he stole it, that the theft would lead to so much excitement?

2. Can the desire for excitement explain crimes like Kittaro's? Can the same desire explain other kinds of crimes? If so, what might they be?

3. If excitement explains crime commission, then why doesn't everyone commit crime for the excitement it brings?

4. What kinds of crime-prevention programs might be based on

Situational Crime-Control Policy

Audio

Listen to the Audio

Listen to audio

Building on the work of rational and situational choice theorists, Israeli criminologist David Weisburd described the advantages of a situational approach to crime prevention. "Crime prevention research and policy have traditionally been concerned with offenders or potential offenders. Researchers have looked to define strategies that would deter individuals from involvement in crime or rehabilitate them so they would no longer want to commit criminal acts. In recent years, crime prevention efforts have often focused on the incapacitation of high-rate or dangerous offenders so they are not free to victimize law-abiding citizens. In the public debate over crime prevention policies, these strategies are usually defined as competing approaches."[174] However, Weisburd said that "they have in common a central assumption about crime prevention research and policy: that efforts to understand and control crime must begin with the offender. In all of these approaches, the focus of crime prevention is on people and their involvement in criminality."

A new approach developed in large part as a response to the failures of traditional theories and programs. "Although this assumption [the focus on people] continues to dominate crime prevention research and policy," said Weisburd, "it has begun to be challenged by a very different approach that seeks to shift the focus of crime prevention efforts." For many scholars and policy makers, this meant having to rethink assumptions about criminality and the ways offenders might be prevented from participating in crime, with some suggesting that a more radical reorientation of crime-prevention efforts was warranted. They argued that the shift must come not in terms of the specific strategies or theories that were used but in terms of the unit of analysis that formed the basis of crime-prevention efforts and called for a focus not on people who commit crime but on the context in which crime occurs.

This approach, which is called situational crime prevention, looks to develop greater understanding of crime and more effective crime-prevention strategies through concern with the physical, organizational, and social environments that make crime possible.[175] The situational approach does not ignore offenders; it merely sees them as one part of a broader crime-prevention equation centered on the context of crime. It demands a shift in the approach to crime prevention from one concerned primarily with why people commit crime to one looking primarily at why crime occurs in specific settings. It moves the context of crime into central focus and sees the offender as only one of a number of factors that affect it. Situational crime prevention is closely associated with the idea of a "criminology of place," which is discussed in more detail in **Chapter 7**.

Weisburd suggested that a "reorientation of crime prevention research and policy from the causes of criminality to the context of crime provides much promise. At the core of situational prevention is the concept of opportunity."[176] In contrast to offender-based approaches to crime prevention, which usually focus on the dispositions of criminals, situational crime prevention begins with the opportunity structure of the crime situation, meaning the immediate situational and environmental components of the context of crime. This approach to crime prevention tries to reduce the opportunities for crime in specific situations, which involves efforts as simple and straightforward as target hardening or access control.

The value of a situational approach lies in the fact that criminologists have found it difficult to identify who is likely to become a serious offender and to predict the timing and types of future offenses that repeat offenders are likely to commit. Weisburd explained that "legal and ethical dilemmas make it difficult to base criminal justice policies on models that still include a substantial degree of statistical error." Weisburd added that "if traditional approaches worked well, of course, there would be little pressure to find new forms of crime prevention. If traditional approaches worked well, few people would possess criminal motivation and fewer still would actually commit crimes."

Situational prevention advocates argue that the context of crime

Situational prevention advocates argue that the context of crime provides a promising alternative to traditional offender-based crime-prevention policies.[177] They assume that situations provide a more stable and predictable focus for crime-prevention efforts than do people, based on commonsense notions of the relationship between opportunities and crime. Shoplifting, for example, is by definition clustered in stores and not residences, and family disputes are unlikely to be a problem outside the home. High-crime places, in contrast to high-crime people, cannot flee to avoid criminal justice intervention, and crime that develops from the specific characteristics of certain places cannot be easily transferred to other contexts.

In short, situational crime control works by removing or reducing criminal opportunity. If we accept that opportunity is a cause of crime equal in importance to the personal and social characteristics that other researchers point to as causes, then, much of the crime-prevention work that is already being done by police agencies, private security, and businesses aimed at reducing criminal opportunity directly affects the basic causes of crime.

Learn more about situational crime prevention and target hardening via **https://www.newark.rutgers.edu/news/crime-prevention-numbers.**

Critique of Rational Choice Theory

Audio

Listen to the Audio

Listen to audio

Rational and situational choice theories can be criticized for overemphasizing the importance of individual choice with relative disregard for the role of social factors in crime causation, such as poverty, poor home environment, and inadequate socialization.

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According to one study, RCT does not adequately consider the impact of emotional states on cognitive ability and the role of psychopharmacological agents in decision making.[178] The study examined the effects of alcohol and anger on aggression and found that "alcohol diminishes individuals' perceptions of the costs associated with aggression and, in some instances, actually increases the perceived benefits." Similarly, high arousal levels, such as those associated with anger and other emotions, appear to impair judgment. So, when acting under the influence of alcohol or when experiencing strong emotions, "the individual's capacity to anticipate gratification and aversion, success and failure, and cost is diminished."[179] The authors note that other studies show that approximately 40% of offenders are under the influence of alcohol when committing the crimes for which they are arrested, and suggest that future research involving the rational choice perspective should include the role of emotions and the potential impact of psychopharmacological agents such as drugs or alcohol on the decisions made by people who commit crimes.

One 2005 study that explored the deterrent effect of punishment offers insight into the potential that rational choice theory holds for social policy. In that study, David Lee and Justin McCrary, both at the University of California–Berkeley, examined how juvenile offenders respond to the likelihood of significantly higher sanctions associated with criminality when they reach adulthood.[180] They found that a 230% increase in expected sentence length was associated with only a 1.8% reduction in the likelihood of arrest, so they reasoned that even enormous increases in sentence length seem to do little to reduce the probability of repeat offending: "The small behavioral responses that we estimate suggest that potential offenders are extremely impatient, myopic, or both."[181]

A 2009 study conduc~~ted by Italian researchers fo~~cused on the large

A 2009 study conducted by Italian researchers focused on the large number of Italian inmates who were released in 2006 as efforts were made to reduce the prison population in that country.[182] A condition of release was that anyone who reoffended would face new sanctions *and* have to finish the term they were serving at the time of their release. The possibility of added time was found to have a "substantial effect" on the average prisoner, but the most serious offenders (those whose original sentences were 69 months or longer) appeared not to be deterred by the threat of enhanced sentences. The researchers concluded that career offenders were far less likely to be affected by penalty enhancements than offenders who were not as far down the path of criminality.

Rational choice theory assumes that everyone is equally capable of making rational decisions, which is probably not the case. Some individuals are more logical than others by virtue of temperament, personality, or socialization; some are emotional, hotheaded, and unthinking. Empirical studies of RCT have added scant support for the perspective's underlying assumptions, tending to show instead that criminal offenders are often unrealistic in their appraisals of the relative risks and rewards facing them.[183] Similarly, rational and situational choice theories seem to disregard individual psychology and morality, with their emphasis on external situations. Moral individuals, say critics, when faced with easy criminal opportunities, may rein in their desires and turn their backs on temptation.

Some contemporary researchers have pointed to the fact that offenders do not merely assess the risk of getting caught and rationally compare it with potential criminal gains, but instead face the fear brought on by the apprehension of being caught. Fear, those critics say, is separate from risk. Risk is a non-emotional assessment that can be judged by offenders prior to crime commission, but fear is an emotion that is not easy to quantify. The fear of arrest, say these critics, takes criminal decision largely out of the realm of clear thinking and rational choice and into an emotional gray area not appreciated by deterrence theorists.[184]

Also, in recent years, studies in neuroscience suggest that human

Also, in recent years, studies in neuroscience suggest that human decisions are made in some unconscious part of the human brain and that we begin to act on them before we even become aware of what we've decided. In short, a number of recent neuroscientific studies have found that we feel as though we are free to choose among behavioral possibilities when, in fact, we aren't.[185] If true, traditional notions of free will, including rational choice, as well as legal concepts of responsibility are called into question. Learn more about the neuroscience of free will at https://www.ncbi.nlm.nih.gov/pmc/articles/ PMC4887467/pdf/fnhum-10-00262.pdf.

Finally, the emphasis of rational and situational choice theories on changing aspects of the immediate situation to reduce crime has been criticized for resulting in the displacement of crime from one area to another.[186] Target hardening,[187] a key crime-prevention strategy among such theorists, has sometimes caused criminals to find new targets of opportunity in other areas.[188]

Theory in Perspective

The Classical School and Neoclassical Thinkers

The Classical School is a criminological perspective developed in the late 1700s and early 1800s. It had its roots in the Enlightenment and held that men and women are rational beings and that crime is the result of the exercise of free will and personal choices based on calculations of perceived costs and benefits. Hence, punishment can be effective in reducing the incidence of crime when it negates the rewards to be derived from crime commission.

Classical Criminology

Approach: Application of Classical School principles to problems of crime and justice

Period: 1700s–1880s

Theorists: Cesare Beccaria, Jeremy Bentham, others

Concepts: Free will, deterrence through punishment, social contract, natural law, natural rights, due process, Panopticon

Neoclassical Criminology

Approach: Modern-day application of classical principles to problems of crime and crime control in contemporary society, often in the guise of "get tough" social policies

Period: 1970s to the present

Theorists: Ronald V. Clarke, Derek B. Cornish, Jack Katz, many others

Concepts: Rational choice, situational crime prevention, target hardening, just deserts, determinate sentencing, specific deterrence, general deterrence

Point/Counterpoint: Rational Choice Theory

The following videos provide a pro- or con- stance on a controversial issue. Listen to the speaker's opinion on the issues and then decide which point of view is best supported by the evidence.

Watch

Point/Counterpoint: Rational Choice Theory Overview

Martha Stewart, born Martha Kostrya, was born in 1941 in New Jersey. She was the second of six children. At age 13, she began working as a model for television and print advertisements. She attended Barnard College, where she earned her degree in European and architectural history in 1962. She also met her husband, Andy Stewart, at Barnard and the two married in 1961. Daughter Alexis was born six years later. She worked on Wall Street until 1972, then began pursuing her dream of catering in the late 1970s.

Stewart trained herself to cook by reading cookbooks by Julia Child, the famed French chef. Within 10 years, her famous cooking style and creative presentations had developed into Martha Stewart, Inc. (a $1 million business). Her marriage to Andy Stewart ended in 1990, but her professional success continued to flourish. Her catering business expanded into cookbooks, magazines, a television show, an Internet site, and more, making Stewart currently worth over $1 billion.

In June 2002 Stewart was investigated for participating in insider trading. She sold hundreds of shares of ImClone Systems just before the Food and Drug Administration refused to approve its new cancer drug. She resigned from the board of directors of the New York Stock Exchange, and was indicted in June 2003 with charges of securities fraud, obstruction of justice, conspiracy, and making false statements to the FBI. In February 2004 a jury found her guilty of conspiracy, obstruction of justice, and making false statements. She served five months in prison and paid a $30,000 fine.

Alamy

Punishment and Neoclassical Thought

3.5 What is the role of punishment in neoclassical criminology?

Audio

Listen to the Audio

Listen to audio

Punishment is a central feature of both classical and neoclassical thought. Whereas punishment served the ends of deterrence in classical thought, its role in neoclassical thinking has been expanded to support the ancient concept of retribution, with those advocating retribution seeing the primary utility of punishment as revenge.

Modern neoclassical thinkers argue that, if a person is attracted to crime and chooses to violate the law, then he or she *deserves* to be punished because the consequences of crime were known to the offender before the crime was committed. The criminal *must* be punished so that future criminal behavior can be curtailed.

Notions of revenge and retribution are morally based, built on a sense of indignation at criminal behavior and on the righteousness inherent in Judeo-Christian notions of morality and propriety. Both philosophies of punishment turn a blind eye to the mundane and practical consequences of any particular form of punishment. Hence, advocates of retributive philosophies of punishment easily dismiss critics of the death penalty, who frequently challenge the efficacy of court-ordered capital punishment on the basis that such sentences do little to deter others. Wider issues, including general deterrence, become irrelevant when a person focuses narrowly on the emotions that crime and victimization engender in a given instance. From the neoclassical perspective, some crimes cry out for vengeance while others demand little more than a slap on the wrist or an apology from the offender.

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Just Deserts

Audio

Listen to the Audio

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The old adage "He got what was coming to him" well summarizes the thinking behind the just deserts model of criminal sentencing, which refers to the concept that criminal offenders deserve the punishment they receive at the hands of the law and that any punishment imposed should be appropriate to the type and severity of the crime committed. The idea of just deserts has long been part of Western thought, dating back at least to Old Testament times. The Old Testament dictum of "an eye for an eye, and a tooth for a tooth" has been cited by many as divine justification for strict punishments, although some scholars believe that "an eye for an eye" was intended to *reduce* the barbarism of existing penalties, whereby an aggrieved party might exact the severest of punishments for only minor offenses (even petty offenses were often punished by whipping, torture, and sometimes death).

One famous modern-day advocate of the just deserts philosophy was Christian thinker C. S. Lewis. Lewis said that we could ask many questions about punishment, such as whether or not it is an effective deterrent. But, he wrote, the only important question is whether it is deserved:

> The concept of desert is the only connecting link between punishment and justice. It is only as deserved or undeserved that a sentence can be just or unjust.... Thus when we cease to consider what the criminal deserves and consider only what will cure him or deter others, we have tacitly removed him from the sphere of justice altogether.[189]

According to the neoclassical perspective, doing justice ultimately comes down to an official meting out of what is deserved. Justice for an individual is nothing more or less than what that individual deserves when all the circumstances surrounding that person's

deserves when all the circumstances surrounding that person's situation and behavior are taken into account.

Deterrence

Audio

Listen to the Audio

Listen to audio

True to its historical roots, deterrence is a hallmark of modern neoclassical thought. In contrast to early thinkers, however, today's neoclassical writers distinguish between general and specific deterrence: Specific deterrence is a goal of criminal sentencing seeking to prevent a particular offender from engaging in repeat criminality. General deterrence works by way of example, seeking to prevent others from committing crimes similar to the one for which a particular offender is being sentenced.

Following their classical counterparts, modern-day advocates of general deterrence frequently stress that, for punishment to be an effective impediment to crime, it must be swift, certain, and severe enough to outweigh the rewards flowing from criminal activity. Unfortunately, those who advocate punishment as a deterrent are often frustrated by the complexity of today's criminal justice system and by the slow and circuitous manner in which cases are handled and punishments are meted out. Punishments today, even when imposed by a court, are rarely swift in their imposition; the wheels of modern criminal justice are relatively slow to grind to a conclusion, given the many delays inherent in judicial proceedings and the numerous opportunities for delay and appeal available to defense counsel. Certainty of punishment is also anything but a reality. Certain punishments are those that cannot be easily avoided, but today even when punishments are ordered, they are frequently not carried out—at least not fully. In contemporary America, offenders sentenced to death, for example, are unlikely to have their sentences finalized; for those who do, an average of nearly 12 years passes

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If the neoclassicists are correct, criminal punishments should ideally prevent a repetition of crime, but punishments in the United States rarely accomplish that goal, as high rates of contemporary recidivism (repetition of criminal behavior by those already involved in crime) indicate. Recidivism, when used to measure the success of a given approach to the problem of crime, is referred to as a recidivism rate, expressed as the percentage of convicted offenders who have been released from prison and who are later rearrested for a new crime, generally within five years following release. Studies show that recidivism rates are high indeed, reaching levels of 80 to 90% in some instances, meaning that eight or nine of every 10 criminal offenders released from confinement are rearrested for new law-breaking activity within five years of being set free. Such studies do not measure the numbers of released offenders who return to crime but who are not caught and ignore those who return to crime more than five years after release from prison; if such numbers were available, recidivism rates would likely be even higher.

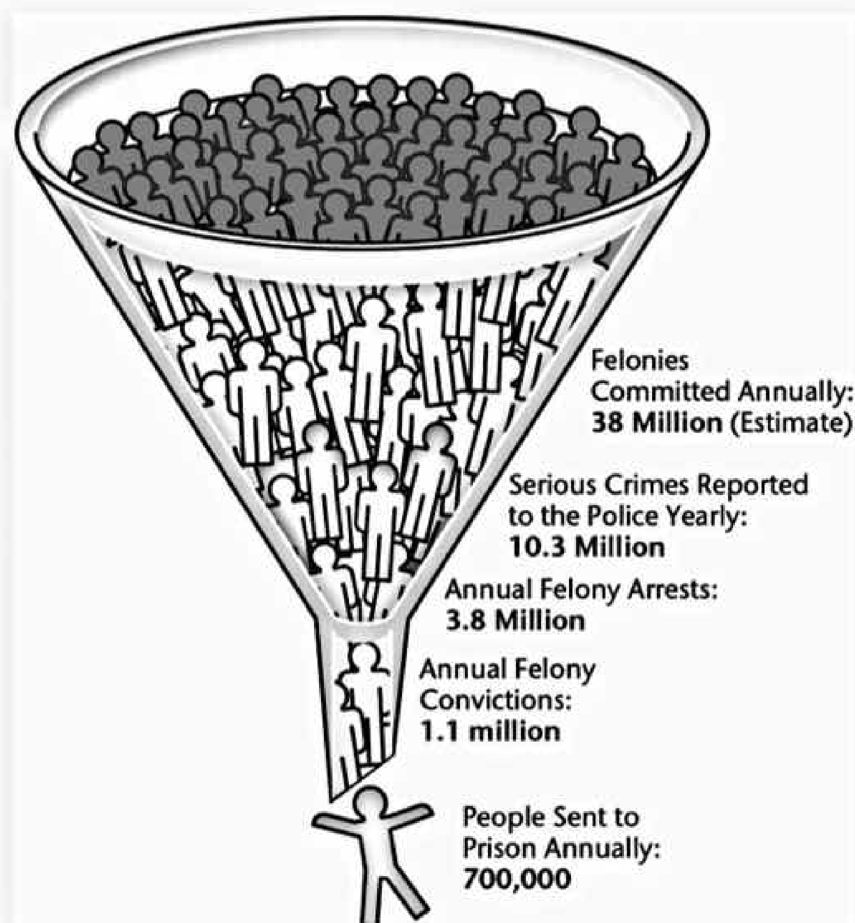
Map

Recidivism and Incarceration Rates by State

One reason U.S. criminal justice seems so ineffectual at preventing crime and reducing recidivism may be that punishments that contemporary criminal law provides are rarely applied to the majority of offenders. Statistics show that few lawbreakers are ever arrested and that, of those who are, fewer still are convicted of the crimes with which they have been charged. After a lengthy court process, most offenders processed by the justice system are released, fined, or placed on probation. Relatively few are sent to prison, although short of capital punishment, prison is the most severe form of punishment available to authorities today. To represent this situation, criminal justice experts often use a diagram known as a "crime funnel." See **Figure 3-5** for the latest crime funnel, which shows that less than 1% of criminal law violators in the United States can be expected to spend time in prison as punishment for their crimes.

Figure 3-5

The Crime Funnel



Note: Includes drug crimes. **Source:** Data derived from the University at Albany, Hindelang Criminal Justice Research Center, *Sourcebook of Criminal Justice Statistics*, http://www.albany.edu /sourcebook.

Exacerbating the situation is the fact that few people sent to prison ever serve anything close to the sentences that have been imposed on them. Many inmates serve only a small fraction of their sentences

Exacerbating the situation is the fact that few people sent to prison ever serve anything close to the sentences that have been imposed on them. Many inmates serve only a small fraction of their sentences due to early release made possible by time off for good behavior, mandated reentry training, and practical considerations necessitated by prison overcrowding.

Capital Punishment

Audio

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Notions of deterrence, retribution, and just deserts all come together in capital punishment, the legal imposition of a death sentence. The many different understandings of crime and crime control, along with arguments over free will and social determinism, combine with varying philosophies of punishment to produce considerable disagreement over the efficacy of death as a form of criminal sanction.

Opponents of capital punishment make ten claims:

1. Capital punishment does not deter crime.

2. The death penalty has been imposed on innocent people, and no workable system is currently in place to prevent the accidental execution of innocents.

3. Human life, even the life of a murderer, is sacred.

4. State-imposed death lowers society to the same moral (or amoral) level as the murderer.

5. The death penalty has been (and may still be) imposed in haphazard and seemingly random fashion.

5. The death penalty has been (and may still be) imposed in haphazard and seemingly random fashion.

6. The death penalty is imposed disproportionately upon ethnic minorities.

7. Capital punishment goes against the most fundamental precepts of almost every organized religion.

8. The death penalty is more expensive than imprisonment.

9. Capital punishment is widely viewed as inhumane and barbaric internationally.

10. There is a better alternative (usually said to be life in prison without possibility of parole). Read more about arguments against the death penalty at https://papers.ssrn.com/sol3/papers. cfm?abstract_id=914162.

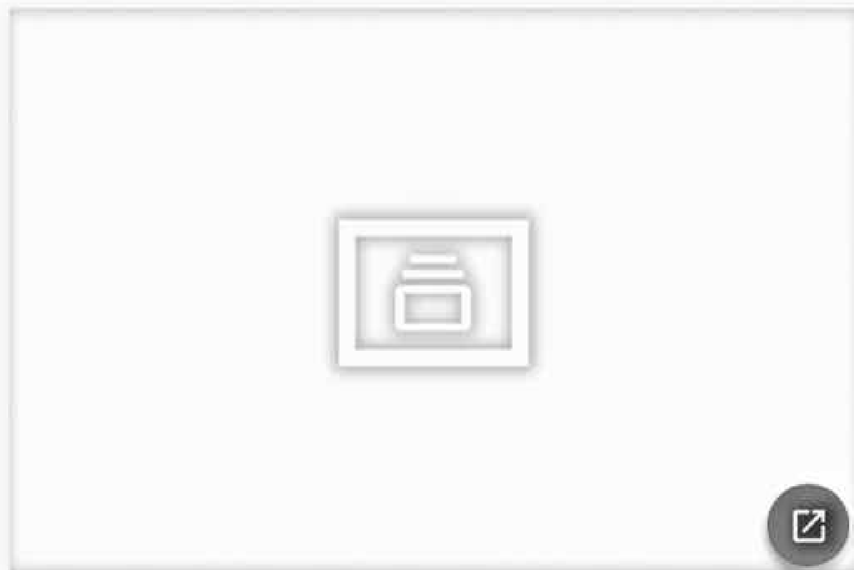
Advocates of capital punishment generally discount each of these claims, countering abolitionist arguments with the proposition that death is *deserved* by those who commit especially heinous acts and that anything short of capital punishment under certain circumstances is an injustice in itself; some people deserve to die for what they have done. Such arguments have evolved from a natural law perspective, are sometimes supported on religious grounds, and are based on the notion of just deserts (discussed earlier).

Strong feelings on both sides of the issue have generated a plethora of studies of the efficacy and fairness of capital punishment as a criminal sanction. The extent to which the death penalty acts as a general deterrent has been widely examined. Some researchers have compared murder rates between states that have eliminated the death penalty and those that retain it, finding little variation in the rate at which murders are committed.[191] Others have looked at variations in murder rates over time in jurisdictions that have eliminated capital punishment, with similar results.[192] A now-classic 1988 Texas study provided a comprehensive review of capital punishment by correlating homicide rates with the rate of executions within the state between 1930 and 1986;[193] the study, which was especially important because Texas has been quite active in the

within the state between 1930 and 1986;[193] the study, which was especially important because Texas has been quite active in the capital punishment arena, failed to find any support for the use of death as a deterrent.

Map

Executions by State Since 1976 and Capital Punishment and Crime Rate by State



Similarly, in an important recent study of the deterrent effect of capital punishment, Tomislav V. Kovandzic and colleagues found "no empirical support for the argument that the existence or application of the death penalty deters offenders from committing homicide."[194] Kovandzic's study made use of homicide data from all 50 states and the District of Columbia between the years 1977 and 2006, and the study's design allowed researchers both to assess the impact of changes in capital punishment laws and to compare murder rates in death-penalty jurisdictions with those without capital punishment laws.

Regardless of studies to the contrary, many deathpenalty advocates remain unconvinced that the sanction cannot be an effective deterrent, saying that a death penalty that is swift and certain is likely to deter others. In a succinct summary of studies on the deterrent effect of the death penalty, the Committee on Law and Justice of the National Academies of Sciences released *Deterrence and the Death Penalty*—a publication that included a detailed analysis of previous death penalty research.[195] The committee found that "research to

death penalty research.[795] The committee found that "research to date is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates." It concluded that "claims that research demonstrates that capital punishment decreases or increases the homicide rate or has no effect on it should not influence policy judgments about capital punishment."

Learn more about how capital punishment is seen in contemporary America from the Death Penalty Information Center at **https://www.deathpenaltyinfo.org**. Read about the current state of the death penalty at **https://www.iep. utm.edu/punishme**. A balanced approach to the subject can be read at **https://www.mass.gov/courts/docs/lawlib/ docs/5-3-04governorsreportcapitalpunishment.pdf.**

Check Your Understanding: Death Penalty Facts

Select each of the rows below to learn more about the use of the death penalty in the United States.

How many people have been executed in the U.S.?

Reveal Answer:

Where is the death penalty most commonly used?

Reveal Answer:

How many people are on death row?

Reveal Answer:

Post-conviction DNA exonerations extend back at least to 1993, when Kirk Bloodsworth was exonerated for the 1984 rape and murder of a 9-year-old girl. Bloodsworth had been linked to the crime by the testimony of five eyewitnesses, but DNA analysis of biological evidence from the crime scene showed that he could not have been the person who committed the crime.

Since Bloodsworth's time, DNA evidence has torn a hole in the U.S. criminal justice system. The 321 prisoners granted DNA exonerations so far served a total of 4,337 years in prison. The Innocence Project says that the leading cause of their wrongful convictions is false eyewitness identification, a factor in 72% of cases, followed by improper forensic procedures in 50% of cases, false confessions in 27% of cases, and false information from informants in 18%.

False eyewitness identifications come up again and again. Witnesses have only fleeting recollections of the crime, which can get blurred when they are asked to pick the perpetrator from many photos at once. David Lee Wiggins was convicted and sentenced to life in prison in 1989 for rape, based on his identification by a rape victim who had just a few glimpses of her assailant. In August 2012, a Texas judge released Wiggins based on DNA evidence.

The Innocence Project reports that it pursues just 1% of the 6,000 to 10,000 cases it reviews at any given time. While DNA has freed many prisoners, advocates say thousands more have persuasive evidence of wrongful prosecution but may never be freed due to lack of DNA evidence. Samples were degraded, thrown out, or never collected.

All states now allow a prisoner access to DNA testing, but many of them still put up substantial legal barriers to obtaining tests, place time limits on DNA access, and have no consistent guidelines for evidence retention. Only about half the states require automatic preservation of DNA evidence after conviction.

Kirk Noble Bloodsworth (born October 31, 1960) holds a picture of himself as a young man. Bloodsworth is the first American sentenced to death row who was exonerated by DNA evidence. How can innocent people be wrongly convicted of serious crimes?
Newscom

There are signs of progress, though. The National Institute of Justice, the research arm of the Justice Department, is funding the development of guidelines for evidence retention. Eleven states have created commissions to study wrongful convictions and recommend changes in the system. And some states have considered improvements in witness identification, such as requiring investigators to show one photo at a time.

Discussion Questions

1. What are your feelings about capital punishment? Provide reasons to support the way you feel.

2. What do you think are the most significant arguments against the death penalty? What do you consider to be the most convincing arguments in favor of it?

3. How do cases of exoneration, like the ones described in this box, affect public opinion about capital punishment?

Sources: The Innocence Project, "DNA Exonerations Nationwide," http://www.innocenceproject.org/Content/DNA_Exonerations_Nationwide.php (accessed May 15, 2019); The Innocence Project, "Access to Post-Conviction DNA Testing," https://www.innocenceproject.org/causes/access-post-conviction-dna-testing (accessedSeptember 20, 2019); Kevin Johnson, "Storage of DNA Evidence Crucial to Exonerations," *USA Today*, March 28, 2011,http://usatoday30.usatoday.com/news/nation/2011-03-28-crimelab28_ST_N.htm; Jason Morris, "From Convicted Sex Offender to Millionaire, Man Gets New Life," *CNN*, July 31, 2014, http://www.cnn.com/2014/07/31/us/texas-rape-exoneration/index.html.

Capital Punishment and Race

Audio

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According to the Washington-based Death Penalty Information Center, the death penalty has been imposed disproportionately on racial minorities throughout most of U.S. history.[196] Statistics maintained by the center show that "since 1930 nearly 90% of those executed for the crime of rape in this country were African Americans. Currently, about 50% of those on the nation's death rows are from minority populations representing 20% of the country's population." The center, a fervent anti–capital punishment organization, claims that "evidence of racial discrimination in the application of capital punishment continues." Thirty-four percent of those executed since 1976 have been black, even though blacks constitute only 12% of the population. And in almost every death-penalty case, the race of the victim is white. Of the 1,505 executions that have occurred since the death penalty was reinstated [in 1976], the center says, that "only one has involved a white defendant for the murder of a black person." **Figures 3-6** and **3-7** show the ethnicity of defendants executed in the United States, as well as the ethnicity of murder victims, over the past 43 years.

Figure 3-6

Ethnicity of Defendants Executed in the United States, 1976–Late 2019

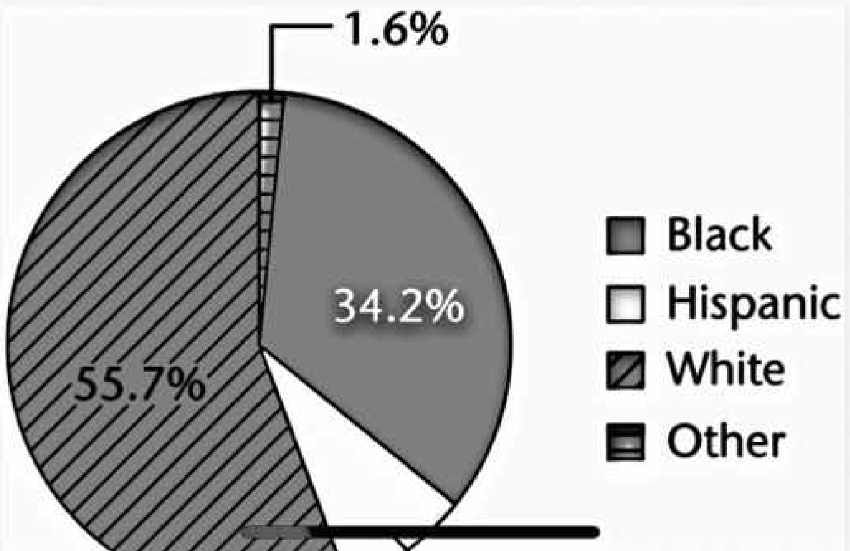
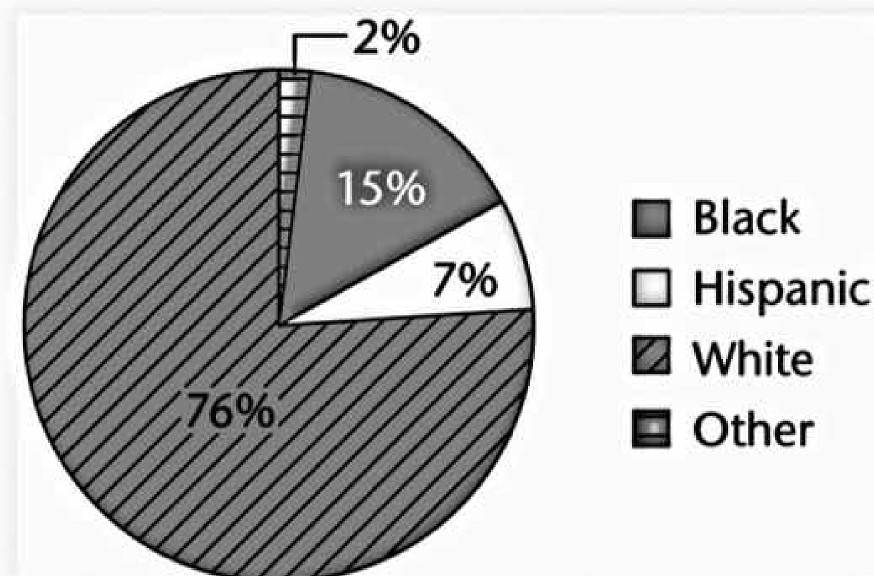


Figure 3-7

Ethnicity of Victims in Death Penalty Cases in the United States, 1976–Late 2019



Source: Death Penalty Information Center, Facts about the Death Penalty, September 11, 2019; http://www.deathpenaltyinfo.org/documents/FactSheet.pdf

On the other hand, capital punishment advocates say that the real question is not whether ethnic differences exist in the rate of imposition of the death penalty but whether the penalty is *fairly* imposed. They argue that if 50% of all capital punishment–eligible crimes were committed by members of a particular (relatively small) ethnic group, then anyone anticipating fairness in imposition of the death penalty would expect to see 50% of death-row populations composed of members of that group (no matter how small the group). In like manner, one would also expect to see the same relative ethnicity among those executed. In short, if fairness is to be a guide, those committing capital crimes should be the ones sentenced to death regardless of race, ethnicity, gender, or other social characteristics.

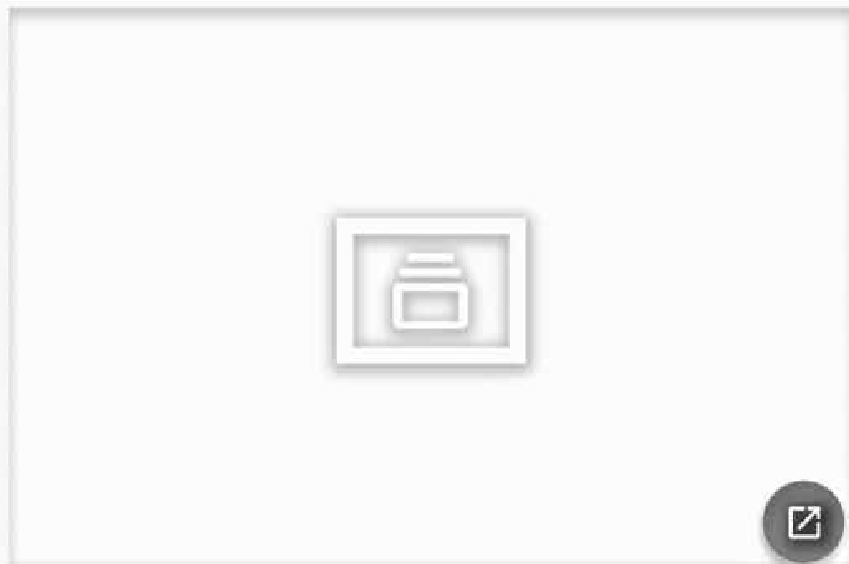
Although evidence may suggest that African Americans and other minorities in the United States have in the past been unfairly sentenced to die,[197] the present evidence is not so clear. For an accurate appraisal to be made, any claims of disproportionality must go beyond simple comparisons with racial representation in the larger population and must somehow measure both the frequency and the seriousness of capital crimes between and within racial groups. Following that line of reasoning, the Supreme Court, in the

and the seriousness of capital crimes between and within racial groups. Following that line of reasoning, the Supreme Court, in the 1987 case of *McCleskey v. Kemp*,[198] held that a simple showing of racial discrepancies in the application of the death penalty does not amount to a constitutional violation.

To reduce the likelihood that capital punishment decisions will be influenced by a defendant's race, the Washington-based Constitution Project[199] recommended that "all jurisdictions that impose the death penalty should create mechanisms to help ensure that the death penalty is not imposed in a racially discriminatory manner."[200] The project said that two approaches are especially appropriate in building such mechanisms: (1) the gathering of statistical data on the role of race in the operation of a jurisdiction's capital punishment system and (2) the active involvement of members of all races in every level of the capital punishment decision-making process. Read the entire report of the Constitution Project at **https:// www.deathpenaltyinfo.org/ node/1634.**

Survey

The Death Penalty



Policy Implications of Classical and Neoclassical Thought

3.6 What are the policy implications of the Classical School and of neoclassical thought?

Audio

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During the past 40 years or so, American justice philosophy has been strongly influenced by the punishment practices of determinate sentencing and truth in sentencing. Because both determinate sentencing and truth in sentencing are rational forms of justice, most criminologists see them as natural consequences of a classical view of crime and punishment.

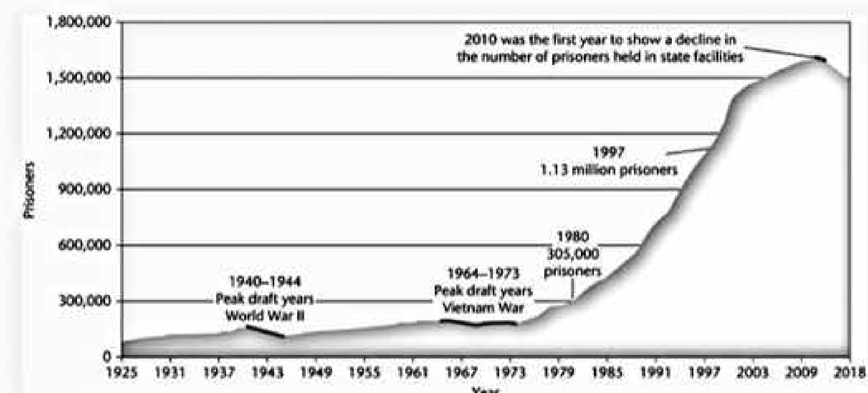
Determinate sentencing is a strategy that mandates a specified and fixed amount of time to be served for every offense category. Under determinate sentencing schemes, for example, judges might be required to impose seven-year sentences on armed robbers, but only one-year sentences on strong-armed robbers (who use no weapon). Determinate sentencing schemes build on twin notions of classical thought: (1) The pleasure of a given crime can be somewhat accurately assessed, and (2) a fixed amount of punishment necessary for deterrence can be calculated and specified. Truth in sentencing requires judges to assess and make public the actual time an offender is likely to serve, once sentenced to prison, and many recently enacted truth-in-sentencing laws require that offenders serve a large portion of their sentence (often 80%) before they can be released.

Because of the widespread implementation of determinate sentencing strategies and the passage of truth-in-sentencing laws during the last quarter century, prison populations today are larger than ever before. By early 2019, the nation's state and federal prison population (excluding jails) stood at just under 1.5 million inmates,

population (excluding jails) stood at just under 1.5 million inmates, representing an increase of over 700% since 1970.[201] **Figure 3-8** shows the U.S. prison population growth rate from 1924 to 2018. Today, for the first time in nearly a century, prison populations appear to have peaked and started to decline, largely as a result of the huge financial burden associated with such numbers.

Figure 3-8

U.S. Prison Populations, 1924–2018



Source: Bureau of Justice Statistics.

Imprisonment is one component of a strategy of incapacitation (the use of imprisonment or other means to reduce the likelihood that an offender will be capable of committing future offenses). Proponents of modern-day incapacitation often distinguish between the terms *selective incapacitation*, in which crime is controlled via the imprisonment of specific individuals, and *collective incapacitation*, whereby changes in legislation and/or sentencing patterns lead to the removal from society of entire groups of individuals judged to be dangerous. Advocates of selective incapacitation as a crime-control strategy point to studies that show the majority of crimes are perpetrated by a small number of hard-core repeat offenders. The most famous of those studies, conducted by University of Pennsylvania Professor Marvin Wolfgang, focused on 9,000 men born in Philadelphia in 1945.[202] By the time this cohort of men had reached age 18, Wolfgang was able to determine that 627 "chronic recidivists" were responsible for the large majority of all serious violent crimes committed by the group. Other, more recent studies have similarly shown that a small core of criminal perpetrators is probably responsible for most criminal activity in the United States.

Such thinking has led to the development of incapacitation as a modern-day treatment philosophy and to the creation of innovative forms of incapacitation that do not require imprisonment—such as home confinement, use of halfway houses or career training centers for convicted felons, and psychological and/or other treatments designed to reduce the likelihood of future crime commission.

In one example of recent policy changes, Washington state built upon the neoclassical principles of swift-and-certain (SAC) punishments and enacted a SAC deterrence-based sanctioning model to deal with probation supervision violators. The model calls for the use of immediate short-term jail confinement (about three days) after *every* violation of probation conditions. It also gives community corrections officers (CCOs) the ability to deliver sanctions immediately upon discovering a second low-level violation, rather than after a violation hearing. A three-year evaluation that followed the 2012 implementation of Washington's SAC sanctioning policy found support for the SAC model.[203] Findings showed SAC participants were significantly less likely to be reconvicted of any felony than were members of a control group.

Putting Criminology to Work—Implementing Evidence-Based Policy

Audio

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Sexual Assault Resistance Program

To make a difference in the real world, criminological theories must first be tested and evaluated. Once evidence has been developed that theory-based practices work, then programs based on them can be implemented to reduce or prevent crime, or to help make victims' lives better. One federal initiative, CrimeSolutions.Gov, strives to evaluate the effectiveness of theory-based practices, and then communicates its findings via the Web. Some of the most effective and promising programs are highlighted in boxes such as this one that appear throughout the text.

Program: Focused Deterrence Strategies

Evidence Ratings For Outcomes: Promising

Profile

Focused deterrence strategies (also referred to as "pulling levers" policing) are problem-oriented policing strategies that follow the core principles of deterrence theory. The strategies target specific criminal behavior committed by a small number of chronic offenders who are vulnerable to sanctions and punishment (i.e., youth gang members or repeat violent offenders). Offenders are directly confronted and informed that continued criminal behavior will not be tolerated. Targeted offenders are also told how the criminal justice system (such as the police and prosecutors) will respond to continued criminal behavior; mainly that all potential sanctions, or levers, will be applied. The deterrence-based message is reinforced through crackdowns on offenders, or groups of offenders (such as gangs), who continue to commit crimes despite the warning. In addition to deterring violent behavior, the strategies also reward compliance and nonviolent behavior among targeted offenders by providing positive incentives, such as access to social services and job opportunities.

Relevant Theory: Neoclassical Deterrence

Deterrence theory suggests that crime can be prevented if potential offenders believe the costs of committing a crime outweigh the benefits. Three key concepts play an important role in deterrence theory: the certainty, severity, and swiftness of punishment. The deterrent effects of crime prevention programs and policies are a function of a potential offender's perceptions of the certainty, severity, and swiftness of punishment. Focused deterrence strategies combine elements of classic deterrence with additional elements thought to prevent crime. First, focused deterrence strategies typically begin with an intense focus on particular types of crime and the chronic offenders most responsible for carrying out those crimes. Second, focused deterrence strategies are often referred to as "pulling levers" strategies because they seek to apply every lever available, whether for[illegible]nders. Third, focused

deterrence strategies work to directly influence *perceived* sanction risks among offenders by communicating directly with them about the consequences of their actions. An important part of altering perceived risks among offenders is administering sanctions swiftly so potential offenders can observe the immediate consequences of their actions on others who have already broken the law.

Evidence-Based Review

These sources were used in the development of this profile:

Meta-Analysis 1

Anthony A. Braga and David L. Weisburd, "The Effects of 'Pulling Levers' Focused Deterrence Strategies on Crime," *Campbell Systematic Reviews*, Vol. 6.

Source: Adapted from https://www.crimesolutions.gov/PracticeDetails.aspx?ID=11

Note: Putting Criminology to Work features are based on information published online by the National Institute of Justice's (NIJ) Crime Solutions Website. The program ratings shown are those provided by NIJ.

Survey

Truth in Sentencing