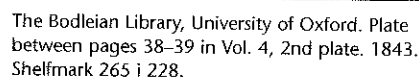


4



OBJECTIVES

- 122

This chapter examines the long, slow process whereby demonic-supernatural theories of deviance were pushed aside by powerful new ideas about the nature of man and of reality, and about the effect on **jurisprudence**—the law and the principles that govern court decisions. By the late seventeenth and early eighteenth centuries, the sacred canopies of Catholicism and Protestantism were no longer sufficient to explain everything that happened in the world. Travel, science, and newer philosophies challenged these religious perspectives with knowledge that simply would not fit religiously bounded cosmologies.

The new “enlightened” classical view of deviance saw it as behaviour that detracted from the overall happiness or well-being of members of society. No longer was the deviant seen as a person in league with the forces of evil or as a purveyor of heretical thoughts. Heretics might still be deviant in the courts of the churches, but not in the civil courts. The deviant was one whose self-interest was not sufficiently constrained by his or her expectation of cost, so that he or she was willing to commit acts detrimental to the community as a whole. The infliction of excruciating pain and violent death was no longer viewed as a means to salvation but rather as a futile expression of the impotence and erratic rage of the system being displaced. Since deviance was a rational calculation, the way to reduce it was to increase the swiftness, certainty, and severity of punishment precisely to the point at which the potential deviant would be deterred; that is, to the point at which the individual would decide that the risk of deviance was not worth it and that conformity was the better choice.

The new thinkers devoted much of their attention to devising controlled systems of punishment that would warn would-be deviants that the cost of their offences would be higher than the pleasure they might gain. These thinkers argued that punishments beyond this were criminal in themselves, since they reduced happiness without contributing to the overall good. Classical theorists worked toward making the system of social control more reliable and accountable. Judges were no longer permitted to devise their own laws and sentences and were restrained by legislation. As well, accused individuals no longer stood alone against the system. Measures of due process were instituted to ensure they had the right to a fair trial and, if convicted, to punishment that would not be cruel and unusual.

RATIONAL CALCULATION IN AN IMPERFECT WORLD: THE ENLIGHTENMENT, 1680–1800

The **Enlightenment** was characterized by a new, strictly empirical view of the world. Hell was no longer a physical place into which an unlucky sailor might accidentally fall (Jenkins, 1984, p. 126), and it was no longer “common to feed a consecrated Host to a sick cow in order to drive out a demon” (Raulston Saul, 1992, p. 38). In this

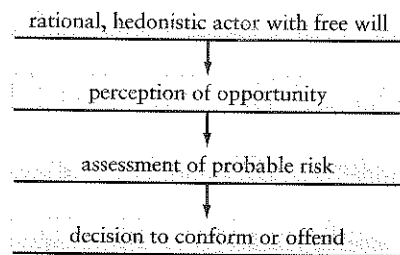
disenchanted world, the deviant was no longer seen as a creature possessed by devils, tormented by sorcerer's spells, or tempted by Satan. The deviant was a rational person who made self-serving choices. Interest in deviance turned from the outrages of heresy and witchcraft to the disruptions of crime. The five central tenets of the classical view were as follows:

1. People are *hedonistic*. They seek pleasure (gain) and avoid pain (harm).
2. People have **free will**. They choose whether to commit offences or conform to rules when solving their problems and meeting their needs.
3. Society represents a form of **social contract** whereby each individual gives up some of his or her right to hedonistic pleasure to partake of the greater good provided by social order.
4. *Punishment* is justified as a means of transforming the hedonistic calculation so that the performance of duty is more rewarding than following the criminal path. In classical utilitarian terms, the solution for all kinds of crime is to make the punishments sufficiently severe and predictable that the calculation is changed and conformity is preferred over crime.
5. Reform of the secular world is worthwhile and appropriate since the chief goal in life is not to achieve salvation but rather to reach the utilitarian goal, which is *the greatest good for the greatest number*. Armageddon is not imminent: abuses, injustice, and oppression are the chief evils to be fought against, not the armies of the antichrist.

With crime as the focus, other forms of deviance tended to be neglected, but the **paradigm** of the classical school can readily be extended to include the explanation of noncriminal forms of deviance. Just as we may weigh the likelihood of a fine or jail, we may also weigh the likelihood that our actions will cause our families to disown us, our best friends to shun us, or some nasty disease to shorten our lives. Although the classical view is sometimes described as "noncausal" because of its emphasis on free choice (Henry & Milovanovic, 1996, p. 127), it does implicitly invoke pain and pleasure as causal factors (Beirne, 1991, p. 807) and so overlaps considerably with modern psychological theories.

The classical view became dominant only after several centuries of transition, during which the ideas of religion, rationality, and science overlapped and competed with one another in a violent, disruptive way. Those who first espoused these new ideas needed powerful friends if they were to avoid the fires of the Inquisition. Giordano Bruno (executed in 1600) and Galileo (sentenced to penance, first imprisoned in a dungeon and then released into house arrest in 1633) argued that the earth moved around the sun, a position that was inconsistent with Church dogma at the time. To accept these scholars' heretical ideas would have forced a rapid and unsettling change at every level of the medieval Church. Galileo's *Dialogue Concerning the Two Chief World Systems* (1632) uses three characters to argue the issue of the nature of the universe. The first is

Figure 4.1 The Classical Paradigm



Salviati, who, like Galileo, is mathematically and empirically correct. The second is Sagredo, who, like the reader, is an intelligent layman. And the third is Simplicius (Simpleton), who is an Aristotelian philosopher who uses big words and is played for a fool (Sobel, 1999, p. 144). As the Church's position at the time was Aristotelian, Galileo's belief that he was being careful may have been delusional. He survived only because he recanted on the position that he firmly believed to be true (Lerner & Gosselin, 1986; Peters, 1989; Redondi, 1987).

The Enlightenment was rooted in the rediscovery of early Greek and Roman pre-scientific writing (which had been preserved in monastic libraries) and in the work of the emerging geological, astronomical, and medical sciences, which were being aided by new technology—the telescope and microscope—and by improvements in transportation and communication. Many of the discoveries were incompatible with established medieval cosmology. If the world was older than 6000 years and was not the centre of the universe, many other aspects of dogma might be questioned as well (Russell, 1988, pp. 212–213).

The strongest champions of the changing world view, the *philosophes*, often used material provided by scientists. These thinkers were advocates of a new faith in reason, toleration, materialism, and empiricism (Russell, 1988, p. 208). They were activists, not just philosophers. Nor were scientists the empiricists they have since become. In this period, the natural and supernatural worlds were not so clearly

Table 4.1 Demonic and Classical Perspectives Compared

	Demonic	Classical
Time of dominance	1400–1700	1700–1800
Conception of deviance	Evil	Violation of social contract
Explanation	Moral weakness, temptation	Free will and hedonism
Remedies	Exorcism, execution	Imprisonment

divorced. Paracelsus, a founder of clinical medical science, was, for example, a firm believer in some aspects of sorcery and demonology. His credulous description of the witch has been described as a "folklore classic" (Webster, 1996, p. 77). Newton's science was profoundly theological and mystical (Dobbs, 1975; Figala, 1977). The work of astronomers and astrologists overlapped, as did chemistry and alchemy, medicine and curative incantations, and mathematics and number mysticism. As the philosopher Immanuel Kant observed of the late eighteenth century, this was an age that aspired to enlightenment but was not actually an enlightened age (Kant, 1784/1977). "It was an age whose literary spokesmen preached the virtues of reason and good sense and humane regard for one's fellow man. But it was not an age that had achieved these virtues" (Gay, 1966, p. 53).

Only gradually did Hume's idea that the universe was governed by immutable natural laws become the dominant assumption in science and philosophy. In the meantime, the classical thinkers discussed in this chapter occupied a middle ground. They rejected what they regarded as the superstitious, misguided oppression of the Church, but at the same time were disturbed by what they saw as the displacement of humanism by the forces of science. The scientific attempt to study humanity as one would any other phenomenon (rocks, trees, insects) seemed to downgrade humanity in that it left no room for people's essential qualities of morality, dignity, and faith (E. Becker, 1968, p. 7). The anguished, heartfelt writings of Jean-Jacques Rousseau, which are often interpreted as "anti-science," reflect the clashing and incompatible world views that characterized the period (E. Becker, 1968, p. 16; Dent, 1988).

SOCIAL JUSTICE IN THE EIGHTEENTH CENTURY

The ideas of the Enlightenment arrived on a scene that was anything but enlightened. The practice of the courts was demonstrably irrational, corrupt, unjust, cruel, harsh, and arbitrary. Holy terror was the law of the times. Most forms of misbehaviour went totally unpunished, so that life for most people was unpredictable and hard. Although few became entangled in the justice systems of government or Church, those who did were treated as terrible examples for everyone else. The process of accusation was capricious at best and biased against the powerless at worst. Court officials were often unpaid and all too willing to be bought. Throughout Europe, courts accepted anonymous denunciations. Those accused were imprisoned until tried, and investigation of the case often required that they be put to judicial (investigative, not punitive) torture. These painful investigations produced surprisingly few confessions, although it was not uncommon for a person's health to be irreparably damaged. In typical cases, judges answered to no higher authority, apart from the rich and powerful whom they feared to antagonize. They made up the law as they went along and decided punishments

according to their own interpretations of appropriate standards. Particularly when the accused was of low status, punishments were deliberately made as horrifying as possible and often took the form of public rituals of pain, which attracted large crowds, as a circus might do. The safeguards of due process, which we now take for granted, were completely absent.

Despite the terror, social control was not well maintained. The system was so unpredictable that the guilty might well escape punishment, while the innocent were tortured into confessions and executed. In this period, there was growing fear of the "dangerous classes," a category that included all those who were not under the control of a master and who were thus free to commit crimes and engage in the actions of the urban mob.

Several factors contributed to the growing crime and disorder. Disastrous wars meant increases in taxation and the periodic return of disaffected soldiers hardened by war and unsuited to peacetime employment. Typhus and cholera epidemics brought on by urban conditions affected the social balance. In England, gin became a staple "food" for the poor, because it was cheaper and more filling than nonalcoholic alternatives. *Gin Lane*, a painting by Hogarth, dramatically presents the depravity of people who were undernourished, drunken, and living in squalor. The response to all this social chaos was greater punishment. In England, law reforms in 1722 and 1758 added more than 350 crimes to the list of those punishable by death. Most of these crimes were crimes against property, such as putting graffiti on London Bridge, or stealing food. Executions came to be scenes of drunken revelry or rioting. Ignatieff (1978) explains:

In theory, the procession to the gallows and the execution itself were supposed to be a carefully stage-managed theater of guilt in which the offender and the parson acted out a drama of exhortation, confession and repentance before an awed and approving crowd. The parson's sermons were set pieces on social obligation, delivered at the gallows and subsequently hawked in the streets with an account of the offender's life and descent into crime.

The trouble was that if the spectators did not approve of the execution, the parson would find his worthy sentiments drowned in the abuse welling up from the crowd. Moreover, the crowd had a highly developed sense of the rights due the condemned, and if any of these rights were abridged, they were quick to vent their wrath on the authorities, especially if the condemned also happened to contest the justice of the execution itself. (pp. 21-22)

The crowd sometimes rescued prisoners, and the executioner (especially one who bungled the job) was sometimes killed. A legal system as disorderly as this one could not last long.

THE PHILOSOPHES AND THE CLASSICAL SCHOOL

The *philosophes* expressed anger and scorn over the inconsistencies, stupidities, and abuses of the social order; at the same time, they developed a new vision of how society could be if it were based on rational principles that would ensure the greatest happiness for the greatest number.

One of these courageous crusaders against the tyranny, bigotry, and cruelty of his time was François-Marie Arouet (1694–1778), who is usually known by his pen name, Voltaire. As a youth, he had experienced some of the inequities of the French justice system firsthand when an anonymous accusation (a *lettre de cachet*) landed him (for 11 months) in the Bastille, an infamous prison later to figure as a symbol of tyranny. Prisoners in the Bastille were “guests of the King,” sent there without trial and held as long as the King wished to keep them (Herold, 1960, p. 85). In his first book, *The Philosophical Letters* (1734), Voltaire took issue with the religious philosopher and mathematician Pascal, arguing that the purpose of life was not to reach heaven through suffering, but rather to assure the greatest amount of happiness through material progress in the sciences and the arts. In *Candide* (1759), he satirized almost every aspect of eighteenth-century life. At one point in his travels, *Candide* is shipwrecked off Lisbon on the eve of the great earthquake of 1755. Voltaire goes on to describe the event and, in the following passage, its aftermath:

After the earthquake had wiped out three-quarters of Lisbon, the learned men of the land could find no more effective way of averting total destruction than to give the people a fine auto-da-fé [burning of heretics]. The University of Coimbra had established that the spectacle of several persons being roasted over a slow fire with full ceremonial rites is an infallible remedy against earthquakes. (Quoted in Peters, 1989, p. 179)

Here Voltaire attacks the blind stupidity of those who regard natural disasters like earthquakes as religious phenomena and then proceed to punish and torture innocent people for them. In 1762, Voltaire led the successful lobby for “rehabilitation” (a post mortem declaration of innocence) on behalf of Jean Calas, a Protestant (Huguenot) merchant of Toulouse. Calas’s son had been mentally unstable and had committed suicide. The prosecutor maintained that the son had been about to convert to Catholicism. Although he continued to deny the charges, Calas was convicted for the murder of his son and executed by being broken on the wheel on March 10, 1762. His family was arrested and his property was confiscated by the state (Brown, Esbensen & Geis, 1991, pp. 215–216; Pfohl, 1985, pp. 59–60).

Some of the *philosophes* maintained that the greatest good is served when each of us give up some of our freedom to do as we please in order to preserve the safety and well-being of all—a kind of social contract that each member of society enters into as a condition of membership. Further, any law that goes beyond what is necessary to uphold the social order is oppressive and wrong. One of these social-contract writers,

Thomas Hobbes (1588–1679), argued in his best-known work, *Leviathan*, that moral rules should have a purely secular basis. Hobbes (1881) describes human beings in their natural state as being engaged in a “war of all against all,” a war fuelled by their desires for gain, safety, and reputation. In such a society, there could be no industry or agriculture, no importation or building, no arts or letters because “the fruit thereof is uncertain.” To escape this unpleasant condition, men make a social contract with one another to give up their freedom to the sovereign, whose sole obligation is to protect the people. Without this contract, neither justice nor injustice exists.

To this warre of everyman against every man, this also is consequent; that nothing can be Unjust. The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power, there is no Law: where no Law, no Injustice. (Hobbes, 1881, p. 96)

The *Leviathan* (state), a huge, artificial monster made for our protection, establishes what is right and wrong and punishes to protect the common good (Hobbes, 1881, p. 91).

The two main representatives of the classical school—Cesare Beccaria (1738–1794) and Jeremy Bentham (1748–1832)—drew on the work of many writers, particularly the *philosophes* and the social-contract writers.

CESARE BECCARIA

Born of a noble Italian family, Cesare Beccaria was an indifferent student who often objected to the accepted notions taught in his day. He graduated with a degree in law from the University of Padua at the age of 20, was a professor of political economy for a brief period, and later enjoyed a reputation as a brilliant mathematician who found new applications for quantitative methods in social and political affairs. His famous essay “*Dei delitti e delle pene*” (“On Crimes and Punishments”) was first published in 1765 (Beccaria, 1765/1995), having circulated anonymously in the summer of 1764. It was written as his contribution to the Society of Fists, a socially conscious literary club started by his friend Pietro Verri. Verri’s brother, Alessandro, held the position of “protector of prisoners” in Milan, and gave Beccaria firsthand access to local penal institutions.

Beccaria was deeply disturbed by what he saw and heard in these prisons. Although his essay did not express new ideas but rather those whose time had come, it did so with such eloquent logic that it was widely read and became a focal point for action against barbaric practices in criminal law and procedure in Europe, England, and the colonial settlements. Indeed, it may have had more practical effect than any other treatise ever written on the subject. It was highly praised by intellectuals of the time, including Voltaire, Diderot, Rousseau, and Hume, and it was an instant success. By 1800, there had been 23 Italian and 14 French editions, and the book was well known in England and America (Beirne, 1991, p. 778). This despite the fact that the book itself is just slightly over a hundred pages long, may have been virtually ghostwritten by Pietro Verri,

and contains many irresolvable contradictions (Newman & Marongiu, 1990, p. 326). Although Beccaria himself was no campaigner—he is described as “lazy, timid and reclusive,” others such as Voltaire used his work in order to campaign fearlessly for change (Newman & Marongiu, 1990, p. 328). The main six points of the book are summarized in the following list:

1. All people are motivated by pain and pleasure. They are rational pain/pleasure machines. Crime is reasonable behaviour and represents neither the devil nor illness. To reduce crime, it is necessary to make it less rational by changing social conditions.
2. The basis of all social action must be the utilitarian concept of the greatest happiness for the greatest number, not the salvation of the soul or preparation for Armageddon (the end of the world).
3. The greatest happiness is ensured by the social contract whereby each individual gives up some of his or her right to hedonistic pleasure for the benefit of the whole. This is represented in the ruler (sovereign), who is thereby entitled, through the legislature, to make laws for the society.
4. The social contract is supported when the laws are openly made by the legislature, clearly written, widely known, and uniformly enforced.
5. Crime must be considered an injury to society, and the only rational measure of crime is the extent of this injury. Any act of authority of one person over another that is not justified by absolute necessity is tyrannical. The act, not the intent, is the measure of the crime. The most serious crimes are those that “immediately tend to the dissolution of society” (e.g., treason). Just below this are crimes that injure people and property. Least serious are crimes that disrupt public peace, such as being drunk in public. Punishment should be in proportion to the seriousness of the crime (hence banishment for treason, fines for property damage, and humane imprisonment for other crimes). Execution is not justifiable, especially since it cannot be reversed should an error later be found.
6. Punishment is justified only on the grounds that it helps prevent further criminal conduct. It does this by increasing the costs of unlawful conduct through such mechanisms as the law and a system of punishment that results in the minimum occurrence of crime. Imprisonment is one way of meting out just enough punishment to prevent further crime.

Beccaria did not put his name on the work at first, fearing repression by the Inquisition (Paolucci, 1963, pp. ix–xi). The inquisitors did commission an investigation of the book, and Beccaria was charged with sedition, sacrilege, and impiety. The provincial governor, however, interceded on his behalf (Brown et al., 1991; Maestro, 1972, p. 64). The Vatican denounced the book, and it remained on the index of proscribed books until that list was abolished in 1962 (Maestro, 1973). As is often the case with censorship, however, while it was banned, the book only became more popular.

JEREMY BENTHAM

Like Beccaria, the English gentleman-of-means Jeremy Bentham found the law of his time an appalling mass of incongruities, absurdities, and barbarities. Justice went to those who could pay for it. Men were given the death penalty for stealing food to feed their starving children, and the majority of executions were for crimes against property.

Bentham spent most of his life obsessed with a vision of social reform based on utilitarianism, the principle that all things should be organized in such a way as to ensure the maximum happiness for the greatest number. He planned to be the founder of the sect of philosophers called utilitarians, and, as part of this, arranged to have his body, when he died, made into an "auto-icon" or representation of itself, so that it could serve as a representation of the founder of the sect. Bentham emphasized hedonism (the pleasure principle), and his works discuss the issue of effective punishment more than they do Beccaria's ideas about social contract and an accountable, predictable judicial system. Bentham began with the premise that "Nature has placed mankind under the governance of two sovereign masters, pain and pleasure." From there he developed the idea of a *felicific calculus* whereby actions are evaluated based on their tendency to produce either pain or pleasure. The calculus would include the pains and pleasures of wealth, benevolence, desire, hunger, and even piety (Rennie, 1978, p. 22). The use of the calculus was complicated if not impossible. There were six elements to be considered for each person involved in an interaction (intensity, duration, certainty, propinquity or remoteness, "fecundity," the likeliness of its being followed by more sensations of the same kind, and "purity," the likelihood of its not being followed by more sensations of the opposite kind. A seventh point considers the number of people affected by the action (Bentham, 1789).

According to Bentham's *Principles of Morals and Legislation* (1789, Ch. 4), the law in particular needed to be totally reformed to meet utilitarian standards. The utility of any law could be measured by the extent to which it promoted the pleasure, good, and happiness of the people. The actions of individuals could be judged according to whether, on balance, they contributed to or detracted from the happiness and benefit of all. Criminal acts detracted from the collective happiness and, therefore, should be prevented. Acts that did not detract from the collective happiness should not be the subject of criminal law, even if many people thought they should be regulated. Theft should be illegal, even though it involved only a transfer of the pleasure of ownership, but because it undermined the pleasure that came from the security citizens felt under the social contract. Crimes without victims, such as sexual variations between consenting adults, should not be the subject of criminal law, since they increased the overall happiness.

This issue opened up, for Bentham, the opportunity to write in great detail on whether certain practices that he called "offences against one's self," or "offences of impurity" should be treated as crimes. In an unpublished 60-page essay, he considers

whether homosexual activities are harmful beyond harm to the consenting participants. He considers, for example, that such practices might disturb a marriage or cheat women (Bentham, 1978/1785). In Bentham's time, such ideas were unusual. Sodomy was punished by hanging.

For utilitarians, such as Bentham, laws and punishments that were unnecessary were themselves evil. "All punishment is mischief: all punishment is in itself evil . . . it ought only to be admitted in as far as it promises to exclude some greater evil" (Bentham, 1830/1988, p. 170). Thus, in Bentham's system, people could do as they pleased, as long as it was not harming the overall happiness of the people around them.

Since humans were hedonistic, crime (harm to happiness) could be prevented if all citizens were made to understand that the punishment would be swift, certain, and slightly greater than the pleasure of the crime. Like Beccaria, Bentham argued that deviance could be controlled not by changing deviants but by changing the rules, not by terrorizing people but by showing them that conformity was the best way to find happiness. His *felicific calculus* would assign definite values to pleasure and pain. If a thief gained X units of pleasure from a crime, it would be up to the court to assign $X + 1$ units of pain (Jenkins, 1984, p. 128). For each offence, it was appropriate to adjust the punishment (adapted from Rennie, 1978, p. 22):

- The value of the punishment should not be less than what is sufficient to outweigh that of the profit gained by the offence.
- The more serious the offence, the more time and money should be invested to make sure that it is punished enough.
- The punishment for the various offences should be set in such a way that, if a person decided to commit an offence, he or she would be induced to choose the less serious one.
- If an offence has several aspects, the punishment should be set to discourage all parts of it, not just the most serious part.
- The punishment should never be more than what is necessary to outweigh the value of the offence to the offender. Since punishment involves pain and is, therefore, intrinsically evil, it should be used only to exclude some greater evil.
- The punishment should be generally consistent across similar offences but should take into account the differences between offenders that influence their sensitivity.

These ideas led to the invention of various kinds of punishment that could be meted out in measured doses. Typical of these were the treadmill on which offenders would be forced to keep walking uphill, as if going up a down escalator, and various gadgets that would count how many turns of a crank had been made (the prison governor could determine how many turns had to be made before earning a meal). The point of these boring, repetitive, and useless tasks was to make sure that the convict got no intrinsic pleasure out of the work. Bentham also attempted to develop a beating machine, which he felt would be preferable to the inconsistencies of the usual practice

of flogging. A revival of this kind of thought can be found in Graeme Newman's *Just and Painful: A Case for the Corporal Punishment of Criminals* (1983), in which Newman argues for the use of electric shock as an alternative to imprisonment or fine. Newman's 1983 argument is the same as Bentham's: the use of punishment can be scientifically controlled and precisely calibrated to fit the offence. In a later publication, however, written after reading Michel Foucault's 1979 *Discipline and Punish*, Newman retreats from this position. Having questioned why we persist in punishment when research leaves us in uncertainty and doubt about its efficacy, Newman says, "I have given historical and cultural answers to this question. Perhaps the more obvious answer is that we are simply all sadists" (Newman, 1985, p. 249).

NEOCLASSICAL THEORY

Classical ideas were quickly tested in the aftermath of the French Revolution. Beccaria's recommendations were used—almost word for word—in the drafting of the French Declaration of the Rights of Man in 1791 (Bellamy, 1997, p. 24). They also became an important part of the Constitution of the United States (1787) and were enshrined in the English Reform Act of 1832. Jeremy Bentham was honoured with citizenship in the French Republic in 1792. The classical approach, when tested by practical experience, however, proved too rigid and was gradually modified by neoclassical thinkers.

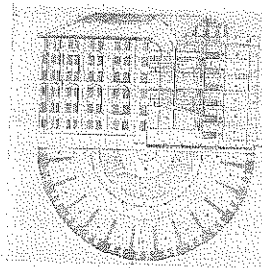
The classical school of thought had maintained that all crimes were to be judged only in terms of their harm to the social fabric and punished only according to the pain necessary to deter further offences. As formulated in codes of law, such as the French Code of 1791, classical thought meant that each offence had the same penalty regardless of the circumstances under which it occurred. The theft of a loaf of bread would be treated in the same way whether the thief was a starving adult, a mischievous child, or a vandal. The person who killed in anger would receive the same penalty as the person who killed in a state of insanity. Dissatisfaction with this arrangement led to the French Declaration of Rights being modified in 1810 and 1819 to provide more discretionary power to the judge, although this discretion was still nothing like the unbridled power held by judges in the seventeenth century (Brown et al., 1991, p. 229).

The neoclassicists introduced three new concepts:

1. *Mitigating factors.* In the classical system, all assaults of a particular degree of seriousness were treated in the same way; under the neoclassical system, the judge could take into account, for example, whether the attack was perpetrated by a vicious bully, by someone engaged in self-defence, or by a person suffering delusions of persecution.
2. *Past record.* In the classical system, every offence was treated in the same way, whether it was a first-time, repeat, or a multiple-repeat offence. The neoclassical system would punish the repeat offender more severely.

Box 4.1 The Panopticon Prison

In Bentham's time, prison was rarely a punishment in itself. People were held in prisons until trial, and then subjected to execution, a fine, the pillory, transportation (banishment), or short-term confinement in old ships moored just off the coast called prison hulks (Geis, 1973, p. 63; Radzinowicz, 1948). Bentham felt that imprisonment was an ideal form of punishment since it would give the felon the opportunity to adjust his *felicific calculus* toward a belief in the value of conformity. Punishments could be meted out in measured days and years exactly proportionate to the need for reform. The **Panopticon** (all-seeing place) was to be a different sort of prison, one aimed at returning the offender to the society as a productive, disciplined person.



Source: The Bodleian Library, University of Oxford. Plate between pages 38–39 in Vol. 4, 2nd plate. 1843. Shelfmark 265 i 228.

Bentham envisioned it as a circular or polygonal building with a tower in the centre. The tower would be designed for observation, with wide windows opening onto the inner side of the building, which would contain the cells. Each cell would have two windows, one permitting light from outside the prison to backlight the cell (thus revealing any activity on the part of its occupant), and the other permitting constant surveillance from the tower. In this arrangement, an omniscient prison inspector, protected from view, could observe any particular prisoner or prison employee (Semple, 1993). Visible to the supervisor and guards, the prisoner would be isolated by thick walls from his fellow inmates. "He is seen, but he does not see; he is the object of information; never the subject of communication" (Foucault, 1979, p. 200).

The panopticon manager would derive income from the money earned by convict contract labour (which would enable convicts to develop useful work skills) but at the same time would be held financially liable to the government for failing to reform the convict or for an unusually high number of deaths among inmates over a given period. The panopticon was also to be placed close to a dense population centre, where it would be a visible reminder to those tempted to go astray (Geis, 1973, p. 64). Bentham campaigned vigorously for such a prison and even imagined himself as its omniscient manager (Bentham, 1830/1988). Other than the small-scale version that still exists as Cellhouse F at Stateville Correctional Center (in Joliet, Illinois), the panopticon has remained an idea on paper. Its principles, however, have had widespread influence.

An example of panoptical principles is seen in the Special Handling Unit (SHU) at the Regional Reception Centre for the Correctional Service of Canada (Quebec Region), in operation since 1997:

Inside the SHU, the greyness of the day beyond the walls blends with the artificial light of the Unit, leaving the central area clearly lit but with few shadows.

The SHU has five cellblocks, each including a small, triangular exercise yard. These cellblocks fan out around a central control post equipped with tinted windows. Inside this control post, correctional officers monitor all inmate activity and control all cell doors and the barriers that mark the range. (Chartier, 2000, p. 4)

As we shall discuss in Chapter 12, Foucault (1979) turned Bentham's panopticon idea into a kind of symbolic representation—a powerful metaphor—of the omnipresent and omniscient forces of control in modern society, extending beyond the prison and into the workplace, the school, the barrack, the clinic, and everyday life. The panoptic model produces a self-monitoring subject with a minimum of actual force and surveillance.

3. *Differences in free will.* It was increasingly recognized that the classical assumptions of free will and rational capability were not always corroborated by reality. Some classes of offenders—minors, people with mental disabilities, and the insane—were clearly not as capable as the average person of choosing between right and wrong. Neoclassical systems put into effect procedures for measuring the degree of responsibility possessed by the offender, as seen in the separation of adult and juvenile courts, the provision of legal defences such as insanity, and distinctions in the degree of premeditation required for conviction, such as the distinction between accidental and premeditated homicide.

To put **neoclassical theory** into perspective, it is useful to compare its approach to a specific offence with the way in which the demonic and classical systems would respond. In the demonic system, the treatment an offender receives depends on social status and degree of influence over the judge. If a rich, powerful man murders a peasant, there will likely be no arrest, much less confinement and trial. Should the roles be reversed, however, the murderer will in all probability be arrested, treated very roughly before trial, subjected to judicial torture, and condemned to an extremely painful and public execution.

In the classical system, the offender's treatment depends solely on the nature of the murder and the harm done as a result of it. It makes no difference whether the person who committed the murder was sane or whether the killing was an unintended result of some other action. The execution itself will be swift (if not painless), "a medical operation performed in an antiseptic environment by dispassionate experts" (Bowers, 1974, p. 29).

Box 4.2 Classical Thought Without Social Contract: The Unbridled Pursuit of Pleasure

A contemporary of Bentham's was the infamous Donatien Alphonse François, Comte de Sade (1740–1814). De Sade's life and his writings illustrate what happens to classical thought when the social-contract element is rejected. De Sade regarded most laws as wrong—laws against theft, for example, are unjust because they force the man who has nothing to respect another who has everything (Hood & Crowley, 1995, p. 129). De Sade went further than other thinkers in rejecting the moral force of God or the laws of nature. For him, no absolute standards of right and wrong existed, nothing except the pursuit of the maximum self-gratification, even if this caused great pain to others or ultimately ruined one's own body. In de Sade's view, the maximum pleasure was the maximum good, while virtue, kindness, and love were perversions because they restricted indulgence in pleasure (Russell, 1988, pp. 211–212). Although many others (called *libertines* at the time) shared de Sade's personal excesses, de Sade's writings attracted official attention. Approximately one-fourth of de Sade's writings were destroyed by the authorities, and his last effort, a 10-volume work (called *The Days of Florabelle*), which he wrote secretly while in prison and banned from writing, was burned by his son (Hood & Crowley, 1995, p. 156; Gray 1998, Ch. 31). De Sade's challenge to the forces of law and order, and the repression it engendered (represented by the sinister Dr. Royer-Collard) are dramatized Hollywood-style in the Fox Searchlight film *Quills* (2000, directed by Philip Kaufman).

In the neoclassical system, the rich and powerful offender will receive greater punishment than the poor one if it can be determined that the offender had more choices in the situation or was motivated more by greed than by fear or rage. The accused is permitted to argue that he had no free will because of mental illness, duress, “mistake of fact,” or any of the other mitigating circumstances specified in the law books.

TESTING CLASSICAL THOUGHT: THE MODERN LEGACY

Classical theory has continued into the present in several different ways. The principal theoretical forms of this continuation are deterrence theory, routine activities/rational choice theory (both discussed below), and social control theory (discussed in Chapter 11).

DETERRENCE THEORY

Cesare Beccaria enumerated the three principles of punishment that became the hallmark of classical **deterrence theory**. He argued that crime control is a function of *certainty*, *celerity* (speed), and *severity* of punishment. Taken together, these amount to a fourth

criterion, *exemplarity* (general deterrence)—that is, the example set for would-be offenders. Research has been directed toward finer analysis of what deterrence is and of the circumstances under which deterrence succeeds or fails (Schneider & Laurie, 1990; Tonry, 2000). This research has made use of experiments such as measuring the effects of police crackdowns on particular kinds of crime; observing the effects of extra policing during terrorist alerts; survey and self-report studies (Tonry, 2000). The following sections introduce several types of deterrence: absolute, relative, general, specific, and restrictive.

Absolute Deterrence

Penalties are so sure, so soon in coming, and so terrible that no crime is committed. We might create near-absolute deterrence for parking offences by raising the penalty to some amount greater than the value of the car—and enforcing it. This action would violate other principles of classical thought.

Relative Deterrence

Penalties are frequent enough, and serious enough, to encourage other choices. Raising the price of alcohol and reducing liquor store hours may have a general effect of reducing (though not eliminating) alcohol-related problems. Increasing the visibility of police (e.g., by using more marked cars or by making public announcements through the media) may reduce the number of drivers willing to risk speeding. Increasing penalties without increasing surveillance is not successful in reducing the offence rate, despite the commonsense belief that it should (Broadhurst & Loh, 1993, p. 251; Campbell & Ross, 1988).

General Deterrence

The demonstration effect: we see others caught and decide that we will not do what they have done. For instance, the number of airplane skyjackings dropped noticeably following several highly publicized disastrous attempts (Chauncey, 1975, pp. 447–473). The criminal court demonstrates how particular kinds of crime are treated, and parallels can be found in the “courts” of everyday life. Consider, for instance, your own reaction when someone is caught saying something stupid in class or on a date.

General deterrence is a controversial concept. Not only does it sometimes seem unjust to punish an offender so that others will not offend, but it is also not clear that general deterrence really works that way. Journalist Walter Lippmann pointed out many years ago that the arrest of a drug dealer simply made the price of the drugs go up, thus encouraging new sellers into the drug market. He called this a “protective tariff,” and it is now generally referred to as the “crime tariff” for things that people want badly enough to commit crime to obtain (Lippman, 1931, pp. 65–66; Barlow, 1995). Fattah (1976) reports on some historical cases in which general deterrence apparently failed. Charlie “Choo Choo” Justice, who devised the clamps used to hold condemned persons

in the electric chair, was himself convicted of murder and electrocuted. Alfred Wills, a convict who helped install a prison gas chamber, later killed three people and was gassed. Similarly, making the law against duelling did not prevent Alexander Hamilton from participating in one when he was challenged (see Chapter 1).

Specific Deterrence

The direct personal effect: The actual personal experience of punishment encourages different choices. This effect is not as clear-cut as we think. While rewards generally make repetition of the rewarded behaviour more likely, punishments are not predictably effective. Some punishments actually increase the likelihood of further offences. Punishment gives an offender attention, (negative) recognition, and often a reason for resentment; it can confirm a negative identity and cut off access to legitimate places, people, and jobs. People who have been caught once may recalculate their chances of being caught, feeling that only a really unlucky person would be caught twice. This is known as the “resetting effect” (Pogarsky & Piquero, 2003, p. 95).

Restrictive Deterrence

The individual avoids punishable acts selectively (a selective reduction of offending). The concept of restrictive deterrence is a relatively recent entry in the deterrence arena (Gibbs, 1975, p. 33). Jacobs (1996, pp. 409–410) provides the example of drug dealers who stay in business but who will not sell to people they perceive to be possible “narcs” (narcotics officers), or who sell drugs that are not targeted by police (Katyal, 1995). Fear causes them to redirect their activities but does not make them stop.

Box 4.3 Justice or Deterrence?

Judges find themselves faced with a dilemma when the crime is serious but severe punishment would be unjust, as in a murder trial that took place on Canada’s East Coast. In what at first appeared to be a clear-cut case of murder, Jane Stafford admitted to killing her husband while he slept. The evidence showed, however, that Billy Stafford had been an appallingly abusive father and husband—a violent man who made serious death threats against his wife and her children and who blocked all avenues of escape. He was so violent that police were afraid to intervene, even on occasions when Jane Stafford begged for help. Although convicted (of manslaughter, not murder), she served only two months in jail before being paroled. The case attracted a great deal of attention, including one documentary, one feature film, one trial drama (Jonas, 1986), and at least two books (Vallée, 1986, 1995). Although some observers feared that Stafford’s light sentence would create an open season on imperfect spouses, no such effect has been observed.

WHEN DOES DETERRENCE WORK?

Between actual penalties and offence rates is an actor who (1) perceives, or fails to perceive, the penalties; (2) calculates, or does not calculate, the risks and benefits that are involved; and (3) acts or does not act. The main findings from the studies that test deterrence ideas are treated in the following sections.

Certainty

Beccaria argued that the certainty of punishment is much more important than its severity, and later research seems to confirm this. There is a very high correlation between the number of police on duty and the amount of recorded crime, according to the annual Uniform Crime Reports for both Canada and the United States. In both countries, the rates of street crimes have been going down, overall as certainty of detection has improved. In Japan, which has a very high ratio of police and other surveillance, there is a very low crime rate. Certainty can be measured in three main ways: (1) by actual rate of detection and punishment, (2) by the beliefs about the rate of punishment held by the population, and (3) by the beliefs of individuals about their own vulnerability to detection and punishment (Green, 1989, pp. 799–800). When proactive policing (increased patrols and targeting of particular groups of offenders) increases the likelihood of apprehension and punishment, the offences will probably decline or become less observable, at least temporarily. A displacement effect may well be observed: offenders move to new locations or engage in less visible deviance.

People who believe they are not vulnerable to the penalties associated with a particular offence are less likely to take them seriously. For example, Claster's (1967) study of juvenile delinquents found that, although the delinquents in the sample assessed the likelihood of *anyone* getting caught in a hypothetical criminal act in about

Box 4.4 Faculty Parking and Deterrence

Chambliss (1966) describes a “natural experiment” he observed at a Midwestern American university in which parking regulations underwent a sudden and dramatic change. Before the changes were introduced, professors were among the most flagrant offenders. If caught, they seldom paid the one dollar, which was the penalty for violation. The new policy involved stiffer fines, towing, and rigid enforcement—in other words, a dramatic increase in certainty and severity. Thirteen professors in the sample were “frequent violators” before the new policy was introduced. After it went into effect, six of the professors stopped offending altogether, another six reduced their violations, and one began parking in an alley beside his office where he was less likely to be tagged (Chambliss, 1966). In this case, increasing severity and certainty was effective. It is debatable, however, whether such a policy would work as well with offences motivated more by passion than by reason or those strongly supported by a subculture.

the same way as the nondelinquents did, they assessed their *personal chances* of getting caught as much less. Claster attributed this to a “magical immunity belief” (pp. 80–86). People who feel they are lucky or invulnerable are more likely to offend. In the highly publicized case involving the murder of JoAnn Wilson by (or on behalf of) her husband, Colin Thatcher, Thatcher was frequently depicted in the media as a man who believed—and based on previous experiences had some reason to believe—that he was above the law and invulnerable to its penalties (Bird, 1985).

Severity

Fear of pregnancy or incurable disease probably deters a great deal of sexual deviance but not all. Increasing the severity of punishment may reduce the offence rate, as long as belief in certainty is maintained. For example, a road traffic act introduced in Germany in 1962 provided very stiff penalties for drunk driving. The new regulations were widely publicized, and the number of reported offences immediately declined. However, as drivers became aware that police were not rigorously enforcing the law, violation numbers crept back up to former levels (Middendorf, 1968).

Similar down-then-up findings have been reported in other settings (Green, 1989, pp. 785, 799; Potter, 2000). A study by Phillips (1980) on the effects of well-publicized executions over the 63 years from 1858 to 1921 showed the same pattern: a decline in homicides for about two weeks, followed by an increase in the homicide rate over the next three weeks.

In 1978 a delinquency prevention program called Scared Straight! was introduced by the Juvenile Awareness Project at Rahway State Prison in New Jersey. Fuelling the treatment program was the classical notion of deterrence. Youths were to visit prisons and be shown by convicts just how bad the consequences of delinquency would be, with the expectation that at least some of them would be shocked into abandoning their criminal lifestyles to avoid such a fate. The program, and those modelled after it, provided youths with a no-nonsense view of the humiliations and abuses typical of prison life. The programs were popular because they seemed to provide an inexpensive form of education. However, evaluation has failed to confirm their deterrent effects. In fact, Finckenauer (1982; Finckenauer & Gavin, 1999; Petrosino, Turpin-Petrosino & Finckenauer, 2000) found that youths who were exposed to the Scared Straight! program had higher rates of offending in the six months that followed than did control group members who were not exposed to it. Whether they took the program as a challenge (we’re not scared) or saw the criminals as heroes, or were encouraged to see themselves as fulfilling a criminal prophecy, or something else, isn’t clear. What is clear is that the deterrence effects of severity are overrated.

Celerity (Speed)

A punishment or penalty that is immediate is expected to be more effective than one received long after the offence. In many European countries, traffic fines are levied on

the spot. Classical theory would predict this to be a more effective deterrent than receiving notification of an offence in the mail. If, as in most cases, bank robbers are caught only after they have had time to enjoy some of the fruits of their offence, this pattern would tend to reinforce the offence rather than correct it. The clearest support for the importance of celerity has come from laboratory research on animals. Studies of human beings have been quite inconclusive. Human behaviour is most predictably influenced by rewards rather than punishments.

■ UNANTICIPATED CONSEQUENCES: WHEN DOES DETERRENCE INCREASE OFFENDING?

Making an offence such as kidnapping punishable by death may actually contribute to more serious crime, since the kidnapper has even more to lose should the kidnap victim be allowed to live and end up providing useful evidence to the police.

When newer cars were produced with antitheft devices, such as locking steering wheels, the rate of cars being forcefully taken away from their owners increased. Similarly, the number of nighttime safecracking raids on banks decreased as security systems evolved and less money was kept overnight, but the number of holdups increased.

If the penalty is just as heavy for a small offence as for a larger one, the offender may decide that it is "as good to be hanged for a sheep as a lamb" and commit the greater offence (Friedmann & Sjostrom, 1993). In addition, heavy penalties may make juries reluctant to convict, reducing the certainty of punishment (Foucault, 1979, p. 14). Heavy penalties can also lead to a brutalization effect, increasing overall levels of violence in the society (Bowers & Pierce, 1980). Parents who try to teach their children not to hit other children but do so by spanking or hitting provide a role model of violence as a means of solving problems. Finally, the process of punishment may have unintended effects on the offender's future ability to find legitimate work and avoid deviant companions. Thus, whenever policymakers offer increased deterrence, as with "tough on crime" policies, it is important to examine the possibility of unanticipated consequences.

On the whole, deviant behaviours that are engaged in for rational (instrumental) reasons (e.g., cheating, stealing, lying, and deceiving for economic gain) are more likely to be affected by changes in the likelihood of detection and punishment than are behaviours with less rationally controlled components (e.g., compulsions and addictions) (Brown et al., 1991, p. 443). Deterrent sanctions also work best on individuals who have low commitment to crime as a way of life (they may have a job and family and be unwilling to risk losing them) and who are older, future-oriented, nonimpulsive, and pessimistic about their chances of criminal success (Brown et al., 1991, p. 451).

THE CLASSICAL INHERITANCE: MODERN RATIONAL CHOICE THEORIES

Many modern theories incorporate the utilitarian ideas of Bentham and Beccaria. Here we will look at just two: the utilitarian economic theory of deviance and rational choice theory. Like classical theory, the theorists who have worked the most in this area have been mainly interested in crime rather than noncriminal deviance.

ECONOMIC THEORY

In the late 1960s, a paper on the "economy of deviance" by Gary S. Becker (1968) inspired a flood of articles that depicted criminals as being just like everyone else with respect to rationally maximizing "their own self-interest (utility) subject to constraints (prices, incomes) that they face in the marketplace and elsewhere" (Rubin, 1980, p. 13). This version of utilitarianism points to the fact that a "market" for offence opportunities exists, just as a market for legitimate ones does (Ehrlich, 1996). The cost-benefit ratios of various crimes and infractions show that deviants often act *as if* they were the rational actors of the classical model, affected not just by penalties but also by other kinds of costs and rewards.

The notion of the criminal as a rational calculator will strike many readers as highly unrealistic, especially when applied to criminals having little education or to crimes not committed for pecuniary gain. But . . . the test of a theory is not the realism of its assumptions but its predictive power. A growing empirical literature on crime shows that criminals respond to changes in opportunity costs, in the probability of apprehension, in the severity of punishment, and in other relevant variables, as if they were indeed the rational calculators of the economic model—and this regardless of whether the crime is committed for pecuniary gain or out of passion, or by well or by poorly educated people. (Posner, 1977, pp. 164–165)

In this view, it is possible to work out the cost-benefit ratios for particular acts (Lo, 1994). On one side of the ledger, we can put the potential costs: risks (whether from other deviants, from victims, from the act itself, or from legal authorities); difficulty (distance, skills needed); lost opportunities (the deviant lifestyle may preclude certain legitimate activities); expenses (supporting a particular lifestyle or obtaining weapons, a getaway car, a stash of drugs); and time (planning and executing a plan, recruiting others for group activities). On the other side of the ledger are the benefits, which may be material (property or money) or emotional (revenge, power, respect, excitement, acceptance). Any increase in the likelihood of detection (arrest and exposure) and punishment (imprisonment, societal rejection, job loss) changes the balance of the ledger. One economist has seriously argued that we should raise the costs for possession of pornography. Recognizing that the demand for pornography is relatively inelastic (people still try to

get it, even when it is harder to get), Katyal argues that the pornography users will commit fewer crimes (such as rape) if getting the pornography causes them to have less free time. This would, of course, be true if they were in prison for pornography offences (Kahan, 1997, pp. 9–11; Katyal, 1995).

RATIONAL CHOICE THEORY

Classical theory has remained dominant in the courts since the 1800s, but, for a long period of time other notions of criminal rehabilitation were the staple of the management of offenders in prisons and other institutions. By the 1970s, programs that attempted to heal the wounds of poverty, unemployment, and poor upbringing appeared to have failed (Martinson, 1974). Classical theory in the form of punishment-oriented programs based on the assumed rationality of offenders enjoyed a new popularity in the form of **rational choice theory**.

Rational choice theory focuses primarily on the way an offender makes the decision to offend (Cornish & Clarke, 1986, 1998). It takes into account the possibility that offenders may not be using the same calculation of costs and benefits that a typical conformist would use in the same situation. Most of us, upon entering a store, do not calculate how many clerks are on duty or where the cash register is in relation to the exit. The robber will likely do this automatically. Rational choice theory was developed mainly by Ronald V. Clarke in the 1980s, partly in response to criticisms of Becker's fairly narrow economic model (Clarke, 1997b, p. 9). Rather than modelling the crime decision in complex mathematical formulas, rational choice models tend to take the form of decision diagrams, tracing the path of the offender's reasoning in each situation or context. Deviance (whether theft or suicide or something else) occurs when, after considering such situational factors as how easy the task will be and how rewarding it will be, the individual decides that the expected cost of violating the rules is outweighed by the expected gain (Clarke & Lester, 1988). Clarke sees crime, for example, as "purposive behavior designed to meet the offender's commonplace needs for such things as money, status, sex, excitement," and argues that "meeting these needs involves the making of (sometimes quite rudimentary) decisions and choices, constrained as they are by the limits of time and ability and the availability of relevant information" (Clarke, 1997b, pp. 9–10).

Rational choice theory includes, however, the possibility that the offender will weigh other elements. Parents, deciding whether to abide by the rules for safe car-seat use, may weigh not only the likelihood of a fine but also the likelihood of a humiliating lecture by the police officer, their personal commitment to good parenting, the possibility of an accident, and the amount of time and energy it will take to install the seats in the approved manner (Carlin & Sandy, 1990). Factors such as group spirit and loyalty, situational ethics, fear, and subcultural norms may compromise the effectiveness of many deterrence programs. People who are furious with one another may not weigh the consequences of their actions (Brown et al., 1991, p. 443), although even in cases apparently characterized by blind rage, deterrence is not completely irrelevant (Katz, 1988).

Rational choice theory is often associated with the policies of situational crime prevention, whereby architecture, social structure, and social meanings are manipulated to reduce the presence of deviance opportunities. Situational crime prevention has been credited with the reduction of shoplifting, cigarette sales to minors (O'Grady, Asbridge & Abernathy, 2000), and obscene phone calls (Clarke, 1997a), as well as making a dent in hardcore crimes such as bank robbery. An example of situational crime control is Walt Disney World (see Box 4.5). Rational choice research has often taken the form of ethnography and the field interview, whereby the researcher becomes well acquainted with active burglars, thieves, or robbers and elicits the way they see their world (e.g., Pogrebin, 2004; Ferrell & Hamm, 1998).

Box 4.5 Social Control in the Theme Park

Social control in theme parks is often hidden behind other functions so that it takes the form of help and elicits grateful cooperation rather than resistance. Shearing and Stenning (1985) have written a perceptive account of how the use of special vehicles and strategically placed photographic opportunities at Walt Disney World not only keeps visitors in their designated places but also controls the kinds of images they take away from their experience.

It will be apparent . . . that Disney Productions is able to handle large crowds of visitors in a most orderly fashion. Potential trouble is anticipated and prevented. Opportunities for disorder are minimized by constant instruction, by physical barriers which severely limit the choice of action available, and by the surveillance of omnipresent employees who detect and rectify the slightest deviation. . . . The coercive edge of Disney's control system is seldom far from the surface, however, and becomes visible the moment the Disney-visitor consensus breaks down, that is, when the visitor attempts to exercise a choice that is incompatible with the Disney order. This can be illustrated by an incident that occurred during a visit to Disney World by Shearing and his daughter, during the course of which she developed a blister on her heel. To avoid further irritation she removed her shoes and began to walk barefooted. They had not progressed ten yards before they were approached by a very personable security guard dressed as a Bahamian police officer with white pith helmet and white gloves that perfectly suited the theme of the area they were moving through (so that he, at first, appeared more like a scenic prop than a security person), who informed them that walking barefoot was, "for the safety of the visitors," not permitted. When informed that, given the blister, the safety of this visitor was likely to be better served by remaining barefooted, at least on the walkways, they were informed that their safety and how best to protect it was a matter for Disney Productions to determine while they were on Disney property, and that unless they complied he would be compelled to escort them out of Disney World. [She put her shoes back on.]

. . . It is thus, paradoxically, not to Orwell's socialist inspired Utopia that we must look for a picture of contemporary control, but to the capitalist-inspired disciplinary model conceived of by Huxley, who, in his *Brave New World*, painted a picture of consensually based control that bears a striking resemblance to the disciplinary control of Disney World and other corporate control systems. Within Huxley's imaginary world people are seduced into conformity by the pleasures offered by the drug "soma" rather than coerced into compliance by threat of Big Brother, just as people today are seduced to conform by the pleasures of consuming the goods that corporate power has to offer. (pp. 301-304)

The solutions proposed by rational choice theorists and economic theorists reflect classical thinking in their call for increased speed and certainty of penalties (but not brutalizing penalties) to deter crime. They focus on the ways in which rational choice is bounded: the decisions of deviants are not made in a vacuum. In recent work, an emphasis is placed on the reduction of deviant opportunities, largely through "target-hardening," which makes the unwanted behaviour harder to accomplish (Cohen, Felson & Land, 1980; Posner, 1977, p. 164), and incapacitation (by imprisonment or banishment), which removes the offender from the target area. Parents, for example, may accomplish both target-hardening and incapacitation by keeping their children in supervised settings and banishing troublesome playmates. Workplaces increasingly use surveillance to deter poor work habits and eliminate employees who are found wanting. Airports use security screening to identify potential terrorists and resort to the courts to produce incapacitation of offenders. Target-hardening may be physical (the use of electronic merchandise tagging, hidden cameras, and architectural improvements) or educational (warning elderly people about the bank inspector scam and similar ripoffs directed at them by con artists). As the proponents of these rational approaches expand their attention to include issues of opportunity and the analysis of situational elements, their work overlaps with that of control theorists (especially routine activities theorists), which we will discuss in Chapter 11.

Women and Rational Choice Theory

Classical theorists and their rational followers have normally spoken of the deviant as male. They have rarely discussed, much less studied, the question of whether these general theories can account for both men's and women's deviance (Daly & Chesney-Lind, 1988; Gelsthorpe & Morris, 1994). On the whole, theorists have tended to accept the folk prejudice that men are instrumental (rational) and women are expressive (emotional), or dominated by their gender in irrational ways, such as committing deviant acts because of sexual frustration or menopausal disorder (Klein, 1996). And yet, it seems clear that, when we eliminate women's deviance that is identified simply because it varies from a male standard, most women's deviance seems to be economic—that is, women tend to write bad cheques, shoplift, and engage in welfare fraud or prostitution more than they tend to involve themselves in irrational assaults, vandalism, or extreme risk taking. If women have been less active in enterprise crime (such as organized crime cartels), this may be "less a result of single-mindedness in the rational pursuit of crime than because they lack access to organizations and social contacts that would enable them to pursue criminal enterprise more safely and profitably" (Steffensmeier, 1983, p. 1025). Even with respect to sex-trade work, it is only in the past few decades that a substantial literature has emerged suggesting that the choice to engage in this occupation may be a rational rather than a pathological one (Scrambler & Scrambler, 1997, p. xv). There have been many studies recently that show women as successful independent entrepreneurs in the illegal drug trade (e.g. Baskin & Sommers, 1998).

SUMMARY

Classical theory introduced a radically new view of the deviant as a person who rationally chooses to increase pleasure by acting in a way that violates the rules of society. Classical theorists criticized the existing justice system for providing a social milieu that encouraged crime. Although punishments were severe to the point of being crimes in themselves, their erratic application precluded any deterrent effect.

The classical theorists devoted themselves to elaborate schemes to make punishment more predictable and consistent and to calibrate it at a level severe enough—no more, no less—to counterbalance the rewards of crime. They argued for greater swiftness and certainty of punishment. As a consequence of their work, horrifying public executions began to give way to punishments that could be administered in precisely measured doses.

Classical theorists focused more on crime than on other forms of deviance, more on the criminal justice system than on informal social controls. Modern economic criminologists and rational choice theorists have revitalized the classical view of crime as a rational choice, but they have expanded the rational view to include consideration of the ways in which society structures the opportunities for rule violation. Although classical theory (especially as adjusted by the neoclassical thinkers) has enjoyed considerable support when applied to the actions of apparently rational predators and cheaters, it seems much less able to deal with deviance in which rationality seems absent or diminished. The theory's fundamental assumption of human rationality and free choice came under increasing attack as biological science and the emerging fields of psychology and sociology began to provide alternative assumptions and explanations.

KEY TERMS

classical theory (p. 136)
deterrence theory (p. 136)
Enlightenment,
the (p. 123)
felicific calculus (p. 131)

free will (p. 124)
jurisprudence (p. 123)
neoclassical
theory (p. 135)
Panopticon (p. 134)

paradigm (p. 124)
philosophes (p. 125)
rational choice
theory (p. 143)
social contract (p. 124)

STUDY QUESTIONS

1. How does the image of the deviant change when viewed from classical theory instead of religiously based theory?
2. Was it safe to be a rational thinker in the early eighteenth century? What were the dangers?
3. Why did rational thought become more accepted in the eighteenth century than it had been since the fall of Rome in C.E. 476?

4. Who were the *philosophes*? Were they scientists?
5. Why were demonic punishments so dramatic, compared with those favoured by the classical theorists?
6. Who was Jeremy Bentham? What were his inventions like?
7. One of Bentham's proposals, put forward in a manuscript entitled "Indirect Legislation" (1782), was the tattooing of all citizens. The tattoo would be in a place, most likely the wrist, where it would be visible and legible by others. He felt that this would *increase* liberty, since there would be less need to detain or restrain accused persons, and it would reduce fraud and other kinds of abuse such as attacks by strangers (cited from UCL Bentham archives in Engelmann, 2003). How is this proposal similar to the panopticon idea?
7. Why is the panopticon idea often treated as a dangerous one?
8. What is a social contract? How does it justify the use of punishment in society?
9. Canada's criminal justice system still reflects classical and neoclassical thought more than any other influence. Examine a particular case, such as that of Robert Latimer, convicted for the murder of his daughter, who had severe physical disabilities, highlighting how we try to hold individual citizens responsible for their choices (free will) and how we use the courts to send a message (deterrence) to the public.
10. Who were the leaders responsible for bringing in the classical system? Why were these people able to take on the might of the Church when previous critics had been silenced?
11. Is the idea of free will better grounded in empirical reality than the idea of demonic possession? How does one set of beliefs win out over another?
12. It is ironic that much of the strength behind the *philosophes* came from writings that had been preserved by monasteries and that many of the leaders of the classical school were initially educated in religious institutions. To what extent did the Church, while trying to serve its own interests, actually contribute to its own loss of dominance?
13. As we move through this textbook, you will notice that, although all the theories claim to explain deviance, each focuses mainly on a particular kind of deviance. Why was *crime* central to classical thought, while *heresy* was central to demonic thought?
14. Why were executions moved indoors, away from public scrutiny? Why did sanitized, isolated death fit the classical theory better than the demonic theory?

15. No convincing evidence exists that the death penalty is an effective deterrent (compared with long prison sentences) for committing murder. How does classical theory evaluate the death penalty?
16. What kind of injustice was corrected by neoclassical theory? Is there a danger that mitigating and aggravating circumstances can become an excuse for inequality in the court?
17. When does deterrence work? Does our system reflect the classical emphasis on certainty and speed?
18. How is it possible that programs meant to deter crime and deviance can actually increase these problems?
19. How is rational choice theory similar to the theory proposed by Beccaria? In what way(s) is it different?
20. Burglary, robbery, theft and many kinds of deviance may be carried out rationally in the sense that the offender will take steps to avoid detection and often do well at this. But such offenders rarely do well in the long run. Is this behaviour actually rational? Discuss.

REFERENCES

- Barlow, H. (1995). *Crime and Public Policy: Putting Theory to Work*. Boulder, CO: Westview Press.
- Barton, B. F. & M. S. Barton. (1993). Modes of Power in Technical and Professional Visuals, *Journal of Business and Technical Communication*, 7(1), 139.
- Baskin, D. R. & I. B. Sommers. (1998). *Casualties of Community Disorder: Women's Careers in Violent Crime*. Boulder, CO: Westview Press.
- Beccaria, C. (1995). On Crimes and Punishments. In R. Bellamy (Ed.), *On Crimes and Punishments and Other Essays*. Cambridge, UK: Cambridge University Press. (Original work published 1765).
- Becker, E. (1968). *The Structure of Evil: An Essay on the Unification of the Science of Man*. New York: Free Press.
- Becker, G. S. (1968). Crime and Punishment: An Economic Approach. *Journal of Political Economy*, 76, 169–217.
- Beirne, P. (1991). Inventing Criminology: The “Science of Man.” In Cesare Beccaria’s *Dei delitti della Pene* (1764). *Criminology*, 29(4), 777–820.
- Bellamy, R. (1997). Crime and Punishment. *History Review*, 28, 24–26.
- Bentham, J. (1978). Offences Against One’s Self. *Journal of Homosexuality*, 3/4(4/1), 389–405. (Original work published 1785).
- . (1789). *An Introduction to the Principles of Morals and Legislation*. London. Accessed October 28, 2005, from <http://www.econlib.org/library/Bentham/bnthPML.html>.

- . (1988). Panopticon [Chapter 3]. In J. Bentham (Ed.), *The Rationale of Punishment: Book 5 of Complex Punishments*. (Original work published 1830).
- Bird, H. (1985). *Not Above the Law: The Tragic Story of JoAnn Wilson and Colin Thatcher*. Toronto: Key Porter.
- Bowers, W. J. (1974). *Executions in America*. Lexington, MA: Heath.
- Bowers, W. J., & G. L. Pierce. (1980). Deterrence or Brutalization: What Is the Effect of Executions? *Crime and Delinquency*, 26(October), 453–484.
- Broadhurst, R., & N. Loh. (1993). The Phantom of Deterrence: The Crime (Serious and Repeat Offenders) Sentencing Act. *Australia and New Zealand Journal of Criminology*, 26(3), 251–271.
- Brown, S. E., E.-A. Esbensen & G. Geis. (1991). *Criminology: Explaining Crime and Its Context*. Cincinnati, OH: Anderson.
- Campbell, D. T., & H. L. Ross. (1988). The Connecticut Crackdown on Speeding. In E. S. Overman (Ed.), *Methodology and Epistemology of Social Science: Selected Papers*. Chicago: University of Chicago Press.
- Carlin, P., & R. Sandy. (1990). The Value of Time and the Effect of Fines on Child Car Safety Seat Usage. *Applied Economics*, 22, 463–476.
- Chambliss, W. J. (1966). The Deterrent Effect of Punishment. *Crime and Delinquency*, 12, 70–75.
- Chartier, G. (2000). Inside the SHU. *Let's Talk (Correctional Service of Canada)*, 25(3), 2–5.
- Chauncey, R. (1975). Deterrence, Certainty, Severity and Skyjacking. *Criminology*, 12(February), 447–473.
- Clarke, R. V. (1997a). Deterring Obscene Phone Callers: The New Jersey Experience. In R. V. Clarke (Ed.), *Situational Crime Prevention: Successful Case Studies* (2nd ed.). Guilderland, NY: Harrow and Heston.
- . (1997b). Introduction. In R. V. Clarke (Ed.), *Situational Crime Prevention: Successful Case Studies* (2nd ed.). Guilderland, NY: Harrow and Heston.
- Clarke, R. V., & D. Lester. (1988). *Suicide: Closing the Exits*. New York: Springer Verlag.
- Claster, D. S. (1967). Comparison of Risk Perception Between Delinquents and Nondelinquents. *Journal of Criminal Law, Criminology and Political Science*, 58(March), 80–86.
- Cohen, L. E., M. Felson & K. C. Land. (1980). Property Crime Rates in the United States: A Macrodynamic Analysis, 1947–1977, with Ex-Ante Forecasts for the Mid-1980s. *American Journal of Sociology*, 86(July), 90–118.
- Cornish, D. B., & R. V. Clarke. (1986). *The Reasoning Criminal: Rational Choice Perspectives on Offending*. New York: Springer.
- Cornish, D. & R. V. Clarke. (1998). *Understanding Crime Displacement: An Application of Rational Choice Theory*. In S. Henry & W. Einstadter, *Criminology Theory Reader*. New York: New York University Press.
- Daly, K., & M. Chesney-Lind. (1988). Feminism and Criminology. *Justice Quarterly*, 5(4), 497–538.
- Dent, N.J.H. (1988). *Rousseau: An Introduction to His Psychological, Social and Political Theory*. Oxford, UK: Basil Blackwell.
- Dobbs, B.J.T. (1975). *The Foundations of Newton's Alchemy*. Cambridge, NY: Cambridge University Press.

- Ehrlich, I. (1996). Crime, Punishment and the Market for Offenses. *Journal of Economic Perspectives*, 10, 43–67.
- Engelmann, S. G. (2003). "Indirect Government": Bentham's Liberal Government. *Polity*, 35(3), 369–390.
- Fattah, E. A. (1976). *Deterrence: A Review of the Literature, Fear of Punishment*. Ottawa: Law Reform Commission of Canada.
- Ferrell, J., & M. Hamm. (Eds.). (1998). *Ethnography at the Edge: Crime, Deviance and Fieldwork*. Boston: Northeastern University Press.
- Figala, K. (1977). Newton as Alchemist. *History of Science*, 15, 102–137.
- Finckenauer, J. (1982). *Scared Straight! and the Panacea Phenomenon*. Englewood Cliffs, NJ: Prentice-Hall.
- Finckenauer, J., & P. W. Gavin. (1999) *Scared Straight: The Panacea Phenomenon Revisited*. Englewood Cliffs, NJ: Prentice Hall.
- Foucault, M. (1979). *Discipline and Punish*. New York: Vintage.
- Friedmann, D., & W. Sjostrom. (1993). Hanged for a Sheep: The Economics of Marginal Deterrence. *Journal of Legal Studies*, 12(June), 345–366.
- Gay, P. (1966). *Age of Enlightenment*. New York: Time Inc.
- Geis, G. (1973). Jeremy Bentham. In H. Mannheim (Ed.), *Pioneers in Criminology* (2nd ed.). Montclair, NJ: Patterson Smith.
- Gelsthorpe, L., & A. Morris. (Eds.). (1994). *Feminist Perspectives in Criminology*. Milton Keynes, UK: Open University Press.
- Gibbs, J. P. (1975). *Crime, Punishment and Deterrence*. New York: Elsevier.
- Gray, F. Du P. (1998). *At Home with the Marquis de Sade: A Life*. New York: Penguin Putnam.
- Green, D. E. (1989). Past Behavior as a Measure of Actual Future Behavior: An Unresolved Issue in Perceptual Deterrence Research. *Journal of Criminal Law and Criminology*, 80(3), 781–804.
- Henry, S., & D. Milovanovic. (1996). *Constitutive Criminology: Beyond Postmodernism*. Thousand Oaks, CA: Sage.
- Herold, J. C. (1960). The Pleasures of the Bastille. *Horizon*, 11, 84–88, 128.
- Hobbes, T. (1881). *Leviathan*. Oxford, UK: James Thornton.
- Hood, S., & G. Crowley. (1995). *Marquis de Sade for Beginners*. Cambridge, UK: Icon Books (Penguin).
- Ignatieff, M. (1978). *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750–1850*. New York: Columbia University Press.
- Jacobs, B. A. (1996). Crack Dealers and Restrictive Deterrence: Identifying Narcs. *Criminology*, 4(3), 409–431.
- Jenkins, P. (1984). *Crime and Justice: Issues and Ideas*. Monterey, CA: Brooks/Cole.
- Jonas, G. (Ed.). (1986). *The Scales of Justice: Ten Famous Criminal Cases Recreated* (Vol. 2). Toronto: Lester & Orpen Dennys/CBC Enterprises.
- Kahan, D. M. (1997). Response: Between Economics and Sociology: The New Path of Deterrence. *Michigan Law Review*, 95(8), 2477–2497.
- Kant, I. (1977). What Is Enlightenment? In H. Reiss (Ed.), *Kant's Political Writings*. Cambridge, UK: Cambridge University Press. (Original work published 1784).

- Katyal, N. (1995). Deterrence's Difficulty. *Michigan Law Review*, 95(8), 2385.
- Katz, J. (1988). *Seductions of Crime: Moral and Sensual Attractions in Doing Evil*. New York: Basic Books.
- Klein, D. (1996). The Etiology of Female Crime. In J. Muncie, E. McLaughlin & M. Langan (Eds.), *Criminological Perspectives: A Reader*. London, UK: Sage.
- Lerner, L. S., & E. A. Gosselin. (1986). Galileo and the Specter of Bruno. *Scientific American*, 255(5), 126-133.
- Lippmann, W. (1931). The Underworld as Servant. In Gus Tyler (Ed.), *Organized Crime in America*. Ann Arbor: University of Michigan Press.
- Lo, L. (1994). Exploring Teenage Shoplifting Behavior: A Choice and Constraint Approach. *Environment and Behavior*, 26(5), 613-639.
- Maestro, M. (1972). *Voltaire and Beccaria*. New York: Octagon.
- . (1973). *Cesare Beccaria and the Origins of Penal Reform*. Philadelphia, PA: Temple University Press.
- Martinson, R. (1974). What Works? Questions and Answers About Prison Reform. *Public Interest*, 35, 22-54.
- Middendorf, W. (1968). *The Effectiveness of Punishment Especially in Relation to Traffic Offences*. South Hackensack, NJ: Fred E. Rothman.
- Newman, G. (1983). *Just and Painful: A Case for the Corporal Punishment of Criminals*. New York: Free Press.
- . (1985). *The Punishment Response* (2nd ed.). Albany, NY: Harrow and Heston.
- Newman, G., & P. Marongiu. (1990). Penological Reform and the Myth of Beccaria. *Criminology*, 28(2), 325-346.
- O'Grady, W., M. Asbridge & T. Abernathy. (2000). Illegal Tobacco Sales to Youth: A View from Rational Choice Theory. *Canadian Journal of Criminology*, 42(1), 1-20.
- Paolucci, H. (1963). Translator's Introduction to *Cesare Beccaria: On Crimes and Punishments*. New York: Bobbs Merrill.
- Peters, E. (1989). *Inquisition*. Berkeley, CA: University of California.
- Petrosino, A., C. Turpin-Petrosino, & J. O. Finckenauer. (2000). Well-Meaning Programs Can Have Harmful Effects! Lessons from Experiments Such as Scared Straight. *Crime and Delinquency*, 46(3), 355-371.
- Pfohl, S. (1985). *Images of Deviance and Social Control: A Sociological History*. New York: McGraw-Hill.
- Phillips, D. P. (1980). The Deterrent Effect of Capital Punishment: New Evidence on an Old Controversy. *American Journal of Sociology*, 86, 139-148.
- Pogrebin, M. (2004). *About Criminals: A View of the Offender's World*. Thousand Oaks, CA: Sage Publications.
- Posner, R. (1977). *Economic Analysis of Law* (2nd ed.). Boston: Little, Brown.
- Potter, G. W. (2000). Cost, Deterrence, Incapacitation, Brutalization and the Death Penalty: The Scientific Evidence: Statement Before the Joint Interim Health and Welfare Committee. *The Advocate*, 22(1), 24-29.
- Pogarsky, G., & A. R. Piquero. (2003). Can Punishment Encourage Offending? Investigating the "Resetting" Effect. *Journal of Research in Crime and Delinquency*, 40(1)(February), 95-120.

- Radzinowicz, L. (1948). *The Movement for Reform* (Vol. 1). London, UK: Stevens.
- Raulston Saul, J. (1992). *Voltaire's Bastards: The Dictatorship of Reason in the West*. New York: Vintage Books.
- Redondi, P. (1987). *Galileo: Heretic*. Princeton, NJ: Princeton University Press.
- Rennie, Y. (1978). *The Search for Criminal Man*. Lexington, MA: Lexington Books.
- Rubin, P. H. (1980). The Economics of Crime. In R. Andreano & J. J. Siegfried (Eds.), *The Economics of Crime*. New York: John Wiley.
- Russell, J. B. (1988). *The Prince of Darkness: Radical Evil and the Power of Good in History*. Ithaca, NY: Cornell University Press.
- Schneider, A. L., & Laurie, E. (1990). Specific Deterrence, Rational Choice, and Decision Heuristics: Applications in Juvenile Justice. *Social Science Quarterly*, 71(3), 585–601.
- Scrambler, G., & A. Scrambler. (Eds.). (1997). *Rethinking Prostitution: Purchasing Sex in the 1990s*. London, UK: Routledge.
- Sample, J. (1993). *Bentham's Prison: A Study of the Panopticon Prison*. Oxford, UK: Oxford University Press.
- Shearing, C. D., & P. C. Stenning. (1985). From the Panopticon to Disney World: The Development of Discipline. In A. Doob & E. L. Greenspan (Eds.), *Perspectives in Criminal Law: Essays in Honor of John L.L.J. Edwards* (pp. 336–347). Aurora, ON: Canada Law Book.
- Sobel, D. (1999). *Galileo's Daughter: A Historical Memoir of Science, Faith and Love*. Toronto: Penguin, Viking.
- Steffensmeier, D. (1983). Organization Properties and Sex-Segregation in the Underworld: Building a Sociological Theory of Sex Differences in Crime. *Social Forces*, 61(4), 1010–1032.
- Tonry, M. (2000). *The Handbook of Crime and Punishment*. New York: Oxford University Press.
- Vallée, B. (1986). *Life with Billy*. Toronto: McClelland Bantam-Seal Books.
- . (1995). *Life After Billy*. Toronto: McClelland Bantam-Seal Books.
- Webster, C. (1996). *From Paracelsus to Newton: Magic and the Making of Modern Science*. New York: Barnes and Noble.

FILMS

Philip Kaufman. (Director). *Quills*. Fox Searchlight.