CHAPTER TWO

PRECLASSICAL AND CLASSICAL THEORIES OF CRIME

Learning Objectives

Explain each of the three elements of punishment in deterrence theory.

Summarize the main arguments and assumptions of the classical school.

Identify the key elements of the neoclassical school of criminology.

Review the main policy implications underling the classical school.

This chapter examines the earliest logical theories of rule breaking—namely, explanations of criminal conduct that emphasize free will and the ability of individuals to make rational decisions regarding the consequences of their behavior. The natural capabilities of human beings to make decisions based on expected costs and benefits were acknowledged during the **Age of Enlightenment** in the 17th and 18th centuries. This understanding of human capabilities led to what is considered the first rational theory of criminal activity, **deterrence theory**. This theory has had a more profound impact on justice systems in the United States than any other perspective. Furthermore, virtually all criminal justice systems (e.g., policing, courts, corrections) are based on this theoretical model even today.

Such theories of human rationality were in stark contrast to the theories focusing on religious or supernatural causes of crime, which had prevailed through most of human civilization up to the Age of Enlightenment. In addition, the classical school theories of crime are distinguished from theories in subsequent chapters of this book by their emphasis on the free will and rational decision-making of individuals, which modern theories of crime tend to either ignore entirely or downplay the importance thereof. The theoretical perspectives discussed in this chapter all focus on the ability of human beings to choose their own behavior and destinies, whereas paradigms that existed before and after this period tend to emphasize the inability of individuals to control their behavior due to external factors. Therefore, the classical school is perhaps the paradigm best suited for analysis of what types of calculations are going on in someone's head before they commit a crime.

The different classical school theories presented in this chapter vary in many ways, most notably in what they propose as

the primary constructs and processes individuals use to determine whether they are going to commit a crime. For example, some classical school theories emphasize the potential negative consequences of their actions, whereas others focus on the possible benefits of such activity. Still others concentrate on the opportunities and situations that predispose people to engage in criminal activity. Regardless of their differences, all of the theories examined in this chapter emphasize a common theme: Individuals commit crime because they identify certain situations and acts as beneficial due to the perceived lack of punishment and the perceived likelihood of profits, such as money or peer status. In other words, the potential offender weighs out the possible costs and pleasures of committing a given act and then behaves in a rational way based on this analysis.

The most important distinction of these classical school theories, as opposed to those discussed in future chapters, is that they emphasize individuals making their own decisions regardless of extraneous influences, such as the economy or bonding with society. Although many extraneous factors may influence the ability of an individual to rationally consider offending situations, the classical school assumes that the individual takes all these influences into account when making the decision about whether to engage in criminal behavior. Given the focus placed on individual responsibility, it is not surprising that classical school theories are used as the basis for U.S. policies on punishment for criminal activity. The classical school theories are highly compatible and consistent with the conservative, get-tough movement that has existed since the mid-1970s. Thus, the classical school still retains the highest importance in terms of policy and pragmatic punishment in the United States as well as all countries in the Western world because it presumes that individuals will be deterred from crime for fear of detection and punishment. But will they?

As you will see, the classical school theoretical paradigm was presented as early as the mid-1700s, and its prominence as a model of offending behavior—and the system's subsequent response—in juvenile and criminal justice systems is still dominant. Some in the criminological community, however, have dismissed many of the claims of this perspective or at least minimized their importance. For reasons we explore in this chapter, the assumptions and primary propositions of classical school theories have been neglected by several recent criminological theories. This dismissal is likely premature, given the impact that this perspective has had on understanding human nature, as well as the profound influence it has had on most criminal justice systems, especially in the United States.

PRECLASSICAL PERSPECTIVES OF CRIME AND PUNISHMENT

Over the long course of human civilization, people have mostly believed that criminal activity is caused by supernatural causes or religious factors. Some primitive societies believed that crime increased during major thunderstorms or major droughts.

Most primitive cultures believed that when a person engaged in behavior that violated the tribe's or clan's rules, the devil or evil spirits were making them do it.[1] For example, in many societies, if someone committed criminal activity, it was common to perform exorcisms or primitive surgery, such as breaking open the skull of the perpetrator to allow the demons to leave his or her head. Of course, this almost always resulted in the death of the accused person, but it was seen as a liberating experience for the offender.

This was just one form of dealing with criminal behavior, but it epitomizes how primitive cultures understood the causes of crime. As the movie *The Exorcist* revealed, exorcisms were still being performed on offenders by representatives of a number of religions, including Catholicism, in the 21st century to get the devil out of them. In June 2005, a Romanian monk and four nuns acknowledged engaging in an exorcism that led to the death of the victim, who was crucified, a towel stuffed in her mouth, and left without food for many days.[2] When the monk and nuns were asked to explain why they did this, they defiantly said they were trying to take the devils out of the 23-year-old woman. Although they were prosecuted by Romanian authorities, many governments might not have done so because many societies around the world still believe in and condone such practices.

Readers may be surprised to learn that the Roman Catholic Church still authorizes college-level courses on how to perform exorcisms. Specifically, news reports revealed that a Vatican-recognized university was offering a course in exorcism and demonic possession for a second year because of its concern about the "devil's lure."[3] In fact, Pope Benedict XVI welcomed a large group of Italian exorcists who visited the Vatican in September 2005 and encouraged them to carry on their work for the Catholic Church.[4] Furthermore, in 1999, the Roman Catholic Church issued revised guidelines for conducting exorcisms, which recommend consulting physicians when exorcisms are performed; it also provides an 84-page description of the language (in Latin) to be used in such rituals. It should be noted that the use of such exorcisms is rare, especially in more developed nations. However, U.S. Catholic bishops (in November 2010) cited the need for more trained exorcists and even held a conference in Baltimore, Maryland, on how to conduct exorcisms. This 2-day training session instructed clergy on evaluating evil possession as well as reviewing the rituals that comprise an exorcism. More than 50 bishops and 60 priests attended this training session, despite the tendency for exorcists in U.S. dioceses to keep a low profile.[5]

One of the most common supernatural beliefs in primitive cultures was that the full moon caused criminal activity. Then, as now, there was much truth to the full-moon theory. In primitive times, people believed that crime was related to the influence of higher powers, including the destructive influence of the moon itself. Modern studies have shown, however, that the increase in crime is primarily due to a classical school theoretical model: There are simply more opportunities to commit crime when the moon is full because there is more light at night, which results in more people being out on the streets. In any case, nighttime is well established as a high-risk period for adult crimes, such as sexual assault.

Although some primitive theories had some validity in determining when crime would be more common, virtually none of them accurately predicted who would commit the offenses. During the Middle Ages, just about everyone was from the lower

Source: © Sean Gallup / Staff / Getty Images

▸ **Photo 2.1** A woman protesting the frequent use of stoning to punish individuals, in this case a woman in Iran convicted of adultery. Public stoning and caning are still used as punishment by certain societies around the world.

classes, and only a minority of that group engaged in offending against the normative society. So, for most of human civilization, there was virtually no rational theoretical understanding of why individuals violate the laws of society; instead, people believed crime was caused by supernatural or religious factors of the devil-made-me-do-it variety.

Consistent with these views, the punishments related to offending during this period were harsh by modern standards. Given the assumption that evil spirits drove the motivations for criminal activity, the punishments for criminal acts—especially those deemed particularly offensive to the norms of a given society—were often inhumane. Common punishments at that time were being beheaded; being tortured; being burned alive at the stake; and being drowned, stoned, or quartered. Good discussions of such harsh examples of punishment, such as quartering, can be found in Brown et al.'s discussion of punishment.[6]

Although many would find the primitive forms of punishment and execution to be barbaric, some modern societies still practice them. For example, Islamic court systems, as well as other religious and ethnic cultures, are often allowed to carry out executions and other forms of corporal punishment. Fifteen individuals were whipped with a cane for gambling in Aceh, Indonesia, a highly conservative Muslim region. The caning was held in public and outside a mosque.[7] In the United States, gambling is a relatively minor crime—when it is not legal, as in many places in the United States. It is interesting to note, however, that a Gallup poll regarding the use of caning (i.e., public whipping) of convicted individuals was supported by most of the American public.[8]

Compared to U.S. standards, the more extreme forms of corporal punishment, particularly public executions carried out by many religious courts and countries, are drawn out and painful. An example is stoning, in which people are buried up to the waist and local citizens throw small stones at them until they die (large stones are not allowed because they would lead to death too quickly). In most of the Western world, such brutal forms of punishment and execution were done away with in the 1700s due to the impact of the Age of Enlightenment.

THE AGE OF ENLIGHTENMENT

In the midst of the extremely draconian times of the mid-1600s, Thomas Hobbes, in his book *Leviathan* (1651), proposed a rational theory of why people are motivated to form democratic states of governance.[9] Hobbes started with the basic framework that

all individuals are in a constant state of warfare with all other individuals. He used the extreme examples of primitive tribes and sects. He argued that the primitive state of man is selfish and greedy, so people live in a constant state of fear of everyone else. However, Hobbes also proclaimed that people are also rational, so they will rationally organize sound forms of governance, which can create rules to avoid this constant state of fear. Interestingly, once a government is created, the state of warfare mutates from one waged among individuals or families to one waged between nations. This can be seen in modern times; after all, it is rare that a person or family declares war against another (although gangs may be an exception), but we often hear of governments declaring war.

Hobbes stated that the primitive state of fear—of constant warfare of everyone against everyone else—was the motivation for entering into a contract with others to create a common authority. At the same time, Hobbes specified that it was this exact emotion—fear—that was needed to make citizens conform to the given rules or laws in society. Strangely, it appears that the very emotion that inspires people to enter into an agreement to form a government is the same emotion that inspires them to follow the rules of the government created. Ironic but true.

Given the social conditions during the 1600s, this model appears somewhat accurate; there was little sense of community in terms of working toward progress as a group. It had not been that long since the Middle Ages, when one third of the world's population had died from sickness, and many cultures were severely deprived or in an extreme state of poverty. Prior to the 1600s, the feudal system had been the dominant model of governance in most of the Western world. During this feudal era, a small group of aristocrats (less than 1% of the population) owned and operated the largely agricultural economy that existed. Virtually no rights were afforded to individuals in the Middle Ages or at the time Hobbes wrote his book. Most people had no individual rights in terms of criminal justice, let alone a say in the existing governments of the time. Hobbes's book clearly took issue with this lack of say in the government, which had profound implications for the justice systems of that time.

Hobbes clearly stated that until the citizens were entitled to a certain degree of respect from their governing bodies as well as their justice systems they would never fully buy into the authority of government or the system of justice. Hobbes proposed a number of extraordinary ideas that came to define the Age of Enlightenment. He presented a drastic paradigm shift for social structure, which had extreme implications for justice systems throughout the world.

Hobbes explicitly declared that people are rational beings who choose their destinies by creating societies. Hobbes further proposed that individuals in such societies democratically create rules of conduct that all members of that society must follow. These rules, which all citizens decide on, become laws, and the result of not following the laws is punishment determined by the democratically instituted government. It is clear from Hobbes's statements that the government, as instructed by the citizens, not only has the authority to punish individuals who violate the rules of the society but, more important, has a duty to punish them. When such an authority fails to fulfill this duty, breakdown in the social order can quickly result.

The arrangement of citizens promising to abide by the rules or laws set forth by a given society in return for protection is commonly referred to as the **social contract**.

Hobbes introduced this idea, but it was also emphasized by all other Enlightenment theorists after him, such as Jean-Jacques Rousseau, John Locke, Voltaire, and Baron Charles Montesquieu. The idea of the social contract is an extraordinarily important part of Enlightenment philosophy. Although Enlightenment philosophers had significant differences in what they believed, the one thing they had in common was the belief in the social contract: the idea that people invest in the laws of their society with the guarantee that they will be protected from others who violate such rules.

Another shared belief among Enlightenment philosophers was that the people should be given a say in the government, especially the justice system. All of them emphasized fairness in determining who was guilty as well as appropriate punishments or sentences. During the time in which Enlightenment philosophers wrote, individuals who stole a loaf of bread to feed their families were sentenced to death, whereas upper-class individuals who stole large sums of money or committed murder were pardoned. Not only does this go against common sense, but it also violates the social contract. If citizens observe people being excused for violating the law, then their belief in the social contract breaks down. This same feeling can be applied to modern times. When the Los Angeles police officers who were filmed beating suspect Rodney King were acquitted of criminal charges in 1992, a massive riot erupted among the citizens of the community. This is a good example of the social contract breaking down when people realize that the government is failing to punish members of the community (in this case, ironically, and significantly, police officers) who have violated its rules.[10] And it also helps us understand the social and racial justice marches and demonstrations, mostly peaceful, that arose in the wake of the killing of George Floyd.

The concept of the social contract was likely the most important contribution of Enlightenment philosophers, but there were others. Another key concept of these philosophers focused on democracy, emphasizing that every person in society should have a say via the government; specifically, they promoted the ideal of "one person, one vote." Granted, at the time they wrote, this meant one vote for each white, landowning male, and not for women, minorities, or the poor. Until then, no individuals outside of the aristocracy had had any say in government or the justice system.

The Enlightenment philosophers also talked about each individual's right to life, liberty, and the pursuit of happiness. This probably sounds familiar because it is contained in the U.S. Declaration of Independence. Until the Enlightenment, individuals were not considered to have these rights; rather, they were seen as instruments for serving totalitarian governments. Although most citizens of the Western world take these rights for granted, they did not exist prior to the Age of Enlightenment—and in some places throughout the world they are yet to exist.

Perhaps the most relevant concept that Enlightenment philosophers emphasized, as mentioned previously, was the idea that human beings are rational and therefore have free will. The philosophers of this age focused on the ability of individuals to consider the consequences of their actions, and they assumed that people freely choose their behavior (or lack thereof), especially in regard to criminal activity. Cesare Beccaria, the father of criminal justice, made this assumption in his formulation of what is considered to be the first bona fide theory of why people commit crime and what could be done to prevent it, described next.

THE CLASSICAL SCHOOL OF CRIMINOLOGY

The foundation of the classical school of criminological theorizing is typically traced to the Enlightenment philosophers, but the specific origin of the classical school is considered to be the 1764 publication of *On Crimes and Punishments* by Italian scholar Cesare Bonesana, Marchese Beccaria (1738–1794), commonly known as Cesare Beccaria. Amazingly, he wrote this book at age 26 and published it anonymously, but its almost instant popularity persuaded him to come forward as the author. Due to this significant work, most experts consider Beccaria the father of criminal justice, the father of the classical school of criminology, and perhaps most importantly, the father of deterrence theory. This chapter provides a comprehensive survey of the ideas and impact of Cesare Beccaria and the classical school.

Influences on Beccaria and His Writings

The Enlightenment philosophers had a profound impact on the social and political climate of the late 1600s and 1700s. Growing up in this period, Beccaria was a child of the Enlightenment, and as such, he was highly influenced by the concepts and propositions that these great thinkers proposed. The Enlightenment philosophy is readily evident in Beccaria's essay, and he incorporates many of its assumptions into his work. As a student of law, Beccaria had a good background for determining what was and was not rational in legal policy. But his loyalty to the Enlightenment ideal was ever present throughout his work.

Beccaria emphasized the concept of the social contract and incorporated the idea that citizens give up certain rights in exchange for the state's or government's protection. He also asserted that acts or punishments by the government that violate the overall sense of unity will not be accepted by the populace, largely due to the need for the social contract to be a fair deal. Beccaria explicitly stated that laws are compacts of free individuals in a society. In addition, he specifically noted his appeal to the ideal of the greatest happiness shared by the greatest number, which is otherwise known as **utilitarianism**. This, too, was a focus of Enlightenment philosophers. Finally, the emphasis on free will and individual choice is key to his propositions and theorizing. Indeed, as we shall see, Enlightenment philosophy is present in virtually all of his propositions; he directly cited Hobbes, Montesquieu, and other Enlightenment thinkers in his work.[11]

Beccaria's Proposed Reforms and Ideas of Justice

When Beccaria wrote, authoritarian governments ruled the justice systems, which were unjust during that time. For example, it was not uncommon for a person who stole a loaf of bread in order to feed his or her family to be imprisoned for life or executed. A good example of this is seen in the story of Victor Hugo's *Les Misérables*: The protagonist, Jean Valjean, gets a lengthy prison sentence for stealing food for his starving loved ones. On the other hand, a judge might excuse a person who had committed several murders because the confessed killer was from a prominent family.

Source: Giuseppe Benaglia, via Wikimedia Commons

Photo 2.2 Cesare Beccaria (1738–1794).

Beccaria sought to rid the justice system of such arbitrary acts on the part of individual judges. Specifically, Beccaria claimed in his essay that "only laws can decree punishments for crimes . . . judges in criminal cases cannot have the authority to interpret laws."[12] Rather, he believed that legislatures, elected by the citizens, must define crimes and the specific punishment for each criminal offense. One of his main goals was to prevent a single person from assigning an overly harsh sentence to a defendant and allowing another defendant in a similar case to walk free for the same criminal act, which was common at that time. Thus, Beccaria's writings call for a set punishment for a given offense without consideration of the presiding judge's personal attitudes or the defendant's background.

Beccaria believed that "the true measure of crimes is namely the harm done to society."[13] Thus, anyone who committed a given act against society should face the same consequence. He was clear that the law should impose a specific punishment for a given act, regardless of the circumstances. One aspect of this principle was that it ignored the intent the offender had in committing the crime. Obviously, this principle is not followed in most modern justice systems; intent often plays a key role in the charges and sentencing of defendants in many types of crimes. Most notably, the different degrees of homicide in most U.S. jurisdictions include first-degree murder, which requires proof of planning or *malice aforethought*; second-degree murder, which typically involves no evidence of planning but rather a spontaneous act of killing; and various degrees of manslaughter, which generally include some level of provocation on the part of the victim. This is just one example of the importance of intent, legally known as **mens rea** (literally, guilty mind), in most modern justice systems. Many types of offending are graded by degree of intent as opposed to being categorized based only on the act itself, known legally as **actus reus** (literally, guilty act). Beccaria's propositions focus on only the actus reus because he claimed that an act against society was just as harmful, regardless of the intent, or mens rea. Despite his recommendations, most societies factor in the intent of the offender in criminal activity. Still, his proposal that *a given act should always receive the same punishment* certainly seemed to represent a significant improvement over the arbitrary punishments handed out by the regimes and justice systems of the 1700s.

Another important reform Beccaria proposed was to do away with practices common in "justice" systems of the time (the word *justice* is in quotation marks because they were largely systems of injustice). Specifically, Beccaria claimed that secret accusations should not be permitted; rather, defendants should be able to confront and cross-examine witnesses. Writing about secret accusations, he said, "Their customary use makes men false and deceptive"; he asked, "Who can defend himself against calumny when it comes armed with tyranny's strongest shield, *secrecy*?"[14] Although some modern

countries still accept and use secret accusations and disallow the cross-examination of witnesses, Beccaria set the standard in guaranteeing such rights to defendants in the United States and most Western societies.

In addition, Beccaria argued that torture should not be used against defendants:

> A cruelty consecrated by the practice of most nations is torture of the accused . . . either to make him confess the crime or to clear up contradictory statements, or to discover accomplices . . . to discover other crimes of which he might be guilty but of which he is not accused.[15]

Although some countries, such as Israel and Mexico, currently allow the use of torture for eliciting information or confessions, most abstain from the practice. There has been wide discussion about a memo, written by former U.S. attorney general Alberto Gonzales when he was President George W. Bush's lead counsel at the White House, claiming that the U.S. military could use torture against terrorist suspects. However, at least in terms of domestic criminal defendants, the United States has traditionally agreed with Beccaria, who believed that any information or oaths obtained under torture are relatively worthless. Beccaria's belief in the worthlessness of torture is further seen in his statement that "it is useless to reveal the author of a crime that lies deeply buried in darkness."[16]

It is likely that Beccaria believed the use of torture was one of the worst aspects of the criminal justice systems of his time and a horrible manifestation of the barbarousness common in the Middle Ages. This is seen in his further elaboration of torture:

> This infamous crucible of truth is a still-standing memorial of the ancient and barbarous legislation of a time when trials by fire and by boiling water, as well as the uncertain outcomes of duels, were called "judgments of God."[17]

Beccaria also expressed his doubt of the relevance of any information received via torture:

> Thus the impression of pain may become so great that, filling the entire sensory capacity of the tortured person, it leaves him free only to choose what for the moment is the shortest way of escape from pain.[18]

As Beccaria saw it, the policy implications from such use of torture are that "of two men, equally innocent or equally guilty, the strong and courageous will be acquitted, the weak and timid condemned."[19]

Beccaria also claimed that defendants should be tried by fellow citizens or peers, not by judges:

> I consider an excellent law that which assigns popular jurors, taken by lot, to assist the chief judge . . . each man ought to be judged by his peers.[20]

It is clear Beccaria felt that the responsibility of determining the facts of a case should be placed in the hands of more than one person, a view driven by his Enlightenment

beliefs about democratic philosophy—namely, that citizens of the society should have a voice in judging the facts and deciding the verdicts of criminal cases. This proposition is representative of Beccaria's overall leaning toward fairness and democratic processes, which Enlightenment philosophers shared.

Today, U.S. citizens often take for granted the right to have a trial by a jury of their peers. It may surprise some readers to know that some modern, developed countries have not provided this right. For example, in the 1990s, Russia held jury trials for the first time in 85 years. When Vladimir Lenin was in charge of Russia, he had banished jury trials. Over the course of several decades, the bench trials in Russia produced a 99.6% rate of conviction. This means that virtually every person in Russia who was accused of a crime was found guilty. Given the relatively high percentage of defendants found to be innocent of crimes in the United States—not to mention the numerous people who have been released from death row after DNA analysis showed they were not guilty—it is rather frightening to think of how many falsely accused individuals have been convicted and unjustly sentenced in Russia over the past century.

Another important aspect of Beccaria's reforms involved making the justice system, particularly its laws and decisions, more public and better understood. This fits the Enlightenment assumption that individuals are rational: If people know the consequences of their actions, they will act accordingly. Beccaria stated that "when the number of those who can understand the sacred code of laws and hold it in their hands increases, the frequency of crimes will be found to decrease."[21] At the time, the laws were often unknown to the populace, in part because of widespread illiteracy but perhaps more as a result of the failure to publicly declare what the laws were. Even when laws were posted, they were often in languages the citizens did not read or speak (e.g., Latin). Thus, Beccaria stressed the need for society to ensure that its citizens be educated about what the laws are; he believed that this alone would lead to a significant decrease in law violations.

Furthermore, Beccaria believed that the important stages and decision-making processes of any justice system should be made public knowledge rather than being held in secret or carried out behind closed doors. He stated, "Punishment . . . must be essentially public."[22] This has a highly democratic and Enlightenment-like ring to it, in the sense that citizens of a society are assumed to have the right to know what vital judgments are being made. After all, in a democratic society, citizens give the government the profound responsibility of distributing punishment for crimes against society. Citizens are entitled to know what decisions their government officials are making, particularly regarding justice. Besides providing knowledge and understanding of what is going on, this sets in place a form of checks and balances on what is happening. Furthermore, the public nature of trials and punishments inherently produces a form of deterrence for those individuals who may be considering criminal activity.

One of Beccaria's most profound and important proposed reforms is one of the least noted. Beccaria said, "The surest but most difficult way to prevent crimes is by perfecting education."[23] We know of no other review of his work that notes this hypothesis, which is amazing because most of the reviews are done for an educational audience. Furthermore, this emphasis on education makes sense, given Beccaria's focus on knowledge of laws and consequences of criminal activity as well as his focus on deterrence.

Beccaria's Ideas Regarding the Death Penalty

Another primary area of Beccaria's reforms dealt with the use—and, in his day, the abuse—of the death penalty. First, let it be said that Beccaria was against the use of capital punishment. (Interestingly, he was not against corporal punishment, which he explicitly stated was appropriate for violent offenders.) Perhaps this was due to the times in which he wrote, in which a large number of people were put to death, often by harsh methods. Still, Beccaria had several rational reasons for why he felt the death penalty was not an efficient and effective punishment.

First, Beccaria argued that the use of capital punishment inherently violated the social contract:

> Is it conceivable that the least sacrifice of each person's liberty should include sacrifice of the greatest of all goods, life? . . . The punishment of death, therefore, is not a right, for I have demonstrated that it cannot be such; but it is the war of a nation against a citizen whose destruction it judges to be necessary or useful.[24]

The second reason Beccaria felt that the death penalty was an inappropriate form of punishment was along the same lines: If the government endorsed the death of a citizen, it would provide a negative example to the rest of society. He said, "The death penalty cannot be useful, because of the example of barbarity it gives men."[25] Although some studies report evidence that use of the death penalty in the United States deters crime,[26] most studies show no effect or that it even serves to increase homicides.[27] Researchers have called this increase in homicides after executions the **brutalization effect**, and a similar phenomenon can be seen at numerous sporting events (e.g., boxing matches, hockey games, soccer or football games) when violence breaks out among spectators. There have even been incidents in recent years at youth sporting events.

To further complicate the possibly contradictory effects of capital punishment, some analyses show that both deterrence and brutalization occur at the same time for different types of murder or crime, depending on the level of planning or spontaneity of a given act. For example, a sophisticated analysis of homicide data from California examined the effects of a high-profile execution in 1992, largely because it was the first one in the state in 25 years.[28] As predicted, the authors found that nonstranger felony murders, which typically involve some planning, significantly decreased after the high-profile execution, whereas the level of argument-based, stranger murders, which are typically more spontaneous, significantly increased during the same period. Thus, both deterrence and brutalization effects were observed at the same time and location following a given execution.

Another primary reason Beccaria did not support the use of capital punishment was that he believed it was an ineffective deterrent. Specifically, he thought a punishment that was quick, such as the death penalty, could not be as effective a deterrent as a drawn-out penalty. He stated, "It is not the intensity of punishment that has the greatest effect on the human spirit, but its duration."[29] It is likely that many readers can relate to this type of argument, not that they necessarily agree with it; the idea of spending the rest

of one's life in a cell is a scary concept to most people. To many people, such a concept is more frightening than death, which supports Beccaria's idea that the duration of the punishment may be more of a deterrent than the short, albeit extremely intense, punishment of execution.

Beccaria's Concept of Deterrence and the Three Key Elements of Punishment

Beccaria is generally considered the father of deterrence theory for good reason. He was the first known scholar to write a work that summarized such extravagant ideas regarding the direction of human behavior toward choice as opposed to fate or destiny. Prior to his work, the common wisdom on the issue of human destiny was that it was chosen by the gods or God. At that time, governments and societies generally believed that people are born either good or bad. Beccaria, as a child of the Enlightenment, defied this belief in proclaiming that people freely choose their destinies and thus their decisions to commit or not commit criminal behavior.

Beccaria suggested three characteristics of punishment that make a significant difference in whether an individual decides to commit a criminal act: celerity (swiftness), certainty, and severity.

Swiftness

The first of these characteristics was celerity, which we refer to as **swiftness of punishment**. Beccaria saw two reasons why swift punishment are important. At the time Beccaria wrote, some defendants were spending many years awaiting trial. Often, this was a longer time than they would have been locked up as punishment for their alleged offenses, even if the maximum penalty had been imposed. As Beccaria stated, "The more promptly and the more closely punishment follows upon the commission of a crime, the more just and useful will it be."[30] Thus, the first reason that Beccaria recommended swiftness of punishment was to reform a system that was slow to respond to offenders.

The second reason Beccaria emphasized swift sentencing was related to the deterrence aspect of punishment. A swift trial and swift punishment were important, Beccaria said, "because of privation of liberty, being itself a punishment, should not precede the sentence."[31] He felt that this "privation of liberty" was not only unjust, in the sense that some of these defendants would not have been incarcerated for such a long period even if they had been convicted and sentenced to the maximum for the charges they were accused of committing, but also detrimental because the individual would not link the sanction with the violation committed. Specifically, Beccaria believed that people build an association between the pain of punishment and their criminal acts. He asserted the following:

> Promptness of punishments is more useful because when the length of time that passes between the punishment and the misdeed is less, so much the stronger and more lasting in the human mind is the association of these two ideas, crime and punishment; they then come insensibly to be considered,

> one as the cause, the other as the necessary inevitable effect. It has been demonstrated that the association of ideas is the cement that forms the entire fabric of the human intellect.[32]

An analogy can be made to training animals or children; you have to catch them in the act, or soon after, or the punishment doesn't matter because the offender doesn't know why he or she is being punished. Beccaria argued that, for both reform and deterrence reasons, punishment should occur quickly after the act. Despite the commonsense aspects of making punishments swift, this has not been examined by modern empirical research and therefore is the most neglected of the three elements of punishment Beccaria emphasized.

CASE STUDY

Deborah Jeane Palfrey

Deborah Jeane Palfrey, known as the "DC Madam," was brought up on charges of racketeering and money laundering related to running a prostitution ring in Washington, DC, and surrounding suburbs in Maryland and Virginia. The clientele of this prostitution ring included some notable politicians, such as state senators and other elected officials. Palfrey faced a maximum of 55 years in prison but likely would have received far less time had she not committed suicide before her sentencing. Her body was found in a storage facility at her mother's home in Tarpon Springs, Florida.

News reports revealed that she had served time before (for prostitution). Author Dan Moldea told *Time* magazine that she had contacted him for a book he was working on and told him "she had done time once before . . . and it damned near killed her. She said there was enormous stress—it made her sick, she couldn't take it, and she wasn't going to let that happen again."[33] The situation could have been worsened by the heightened media attention this case received; while most prostitution cases are handled by local or state courts, this one was handled by federal courts because it concerned Washington, DC.

It is likely that the impending maximum prison sentence led her to take her own life, given what she had said to Moldea. This shows the type of deterrent effect that jail or prison can have on an individual—in this case, possibly leading her to choose death over serving time. Ironically, Palfrey had commented to the press, after the suicide of a former employee in her prostitution network—Brandy Britton, who hanged herself before going to trial—"I guess I'm made of something that Brandy Britton wasn't made of."[34] It seems that Palfrey had the same concerns as Britton, and she ended up contradicting her bold statement when she ended her own life.

This case study provides an example of the profound effects legal sanctions can have on individuals. Legal sanctions are not meant to inspire offenders to end their lives, but this case does illustrate the potential deterrent effect of facing punishment from the legal system. We

(Continued)

(Continued)

can see this on a smaller scale when a speeding driver's heart rate increases at the sight of a highway patrol or other police vehicle (which studies show happens to most drivers). Even though this offense would result in only a fine, it is a good example of deterrence in our everyday lives. We revisit the Palfrey case at the conclusion of this chapter, after you have had a chance to review some of the theoretical propositions and concepts that make up deterrence theory.

On a related note, a special report from the U.S. Department of Justice (DOJ), Bureau of Justice Statistics (BJS), concludes that the suicide rate has been far higher among jail inmates than among prison inmates.[35] Specifically, suicides in jails have tended over the past few decades to occur 300% (or 3 times) more often than among prison inmates.

A likely reason for this phenomenon is that many persons arrested and/or awaiting trial (which is generally the status of those in jail) have more to lose, such as their relationships with family, friends, and employers, than do the typical chronic offenders that end up in prison. Specifically, many of the individuals picked up for prostitution and other relatively minor, albeit embarrassing, offenses are of the middle- and upper-class mentality and, thus, are ill equipped to face the real-world consequences of their arrest. The good news is, this same DOJ report showed that suicides in both jails and prisons have decreased during the past few decades, likely due to better policies in correctional settings regarding persons considered at "high risk" for suicide.

Think About It

1. Do you think some of the clientele (e.g., notable politicians) should have also been charged for a criminal offense?
2. Do you think it made a difference that this case was handled by federal courts rather than local or state courts?
3. Do you think prostitution should be legal?

Certainty

The second characteristic Beccaria felt was vital to the effectiveness of deterrence was **certainty of punishment**. Beccaria considered this the most important quality of punishment: "Even the least of evils, when they are certain, always terrify men's minds."[36] He also said, "The certainty of punishment, even if it be moderate, will always make a stronger impression than the fear of another which is more terrible but combined with the hope of impunity."[37] As scientific studies later showed, Beccaria was accurate in his assumption that perceived certainty or risk of punishment was the most important aspect of deterrence.[38]

It is interesting to note that certainty is the least likely characteristic of punishment to be enhanced in modern criminal justice policy. Over the past few decades, the likelihood that criminals will be caught and arrested—especially at the moment an act is committed—has not increased. Law enforcement officials have been able to clear only about 21% of known felonies. Such clearance rates are based on the rate at which known suspects are apprehended for crimes reported to police. Law enforcement officials are no better at solving serious crimes known to police (CKP) than they were in past decades, despite increased knowledge and resources put toward solving such crimes.

Severity

The third characteristic Beccaria emphasized was **severity of punishment**. Specifically, Beccaria claimed that, for a punishment to be effective, the possible penalty must outweigh the potential benefits (e.g., financial payoff) of a given crime. However, this criterion came with a caveat. This aspect of punishment was perhaps the most complicated part of Beccaria's philosophy, primarily because he thought that too much severity would lead to more crime—and could actually backfire by leading to defiance.[39] But the punishment must exceed any benefits expected from the crime . Beccaria said the following:

> For a punishment to attain its end, the evil which it inflicts has only to exceed the advantage derivable from the crime; in this excess of evil one should include the . . . loss of the good which the crime might have produced. All beyond this is superfluous and for that reason tyrannical.[40]

Beccaria made clear in this statement that punishments should equal or outweigh any benefits of a crime to deter individuals from engaging in such acts. However, he also explicitly stated that any punishments that largely exceed the reasonable punishment for a given crime are inhumane and may lead to further criminality.

A modern example of how punishment can be taken to an extreme and thereby cause more crime rather than deter it is the current three-strikes-you're-out approach to sentencing. Such laws have become common in many states, such as California. In such jurisdictions, individuals who have committed two prior felonies can be sentenced to life imprisonment for committing a crime, even a nonviolent crime, that the state statutes consider a *serious felony*. Such laws have been known to drive some relatively minor property offenders to become violent when they know they will be incarcerated for life when caught. A number of offenders have even wounded or killed people to avoid apprehension, knowing they would face life imprisonment even for a relatively minor property offense. In one study, the authors analyzed the impact of three-strikes laws in 188 large cities in the 25 states that have such laws and concluded that there was no significant reduction in crime rates as a result. Furthermore, the areas with three-strikes laws typically had higher rates of homicide.[41]

Ultimately, Beccaria's philosophy on the three characteristics of good punishment in terms of deterrence—swiftness, certainty, and severity—is still highly respected and followed in most Western criminal justice systems. Despite its contemporary flaws and caveats, perhaps no other traditional framework is so widely adopted. With only one exception—namely, his proposal that a given act should always be punished in exactly the same way (see the next chapter)—Beccaria's concepts and propositions are still considered the ideal in virtually all Western criminal justice systems.

Beccaria's Conceptualization of Specific and General Deterrence

Beccaria also defined two identifiable forms of deterrence: specific and general. Although these two forms of deterrence tend to overlap in most sentences given by judges, they

can be distinguished in terms of the intended target of the punishment. Sometimes the emphasis is clearly on one or the other, as Beccaria noted in his work.

Although Beccaria did not coin the terms **specific deterrence** and **general deterrence**, he clearly made the case that both are important. Regarding punishment, he said, "The purpose can only be to prevent the criminal from inflicting new injuries on its citizens and to deter others from similar acts."[42] The first portion of this statement—preventing the criminal from reoffending—focuses on the defendant and the defendant alone, regardless of any possible offending by others. Punishments that focus primarily on the individual are considered specific deterrence, also referred to as special or individual deterrence. This concept is appropriately labeled because the emphasis is on the specific individual who offended. On the other hand, the latter portion of Beccaria's quotation emphasizes the deterrence of others, regardless of whether the individual criminal is deterred. Punishments that focus primarily on other potential criminals and not on the actual criminal are referred to as general deterrence.

Readers may wonder how a punishment would not be inherently both a specific and general deterrent. After all, in today's society, virtually all criminal punishments given to individuals (i.e., specific deterrence) are prescribed in court, a public venue, so people are somewhat aware of the sanctions (i.e., general deterrence). However, when Beccaria wrote in the 18th century, much if not most sentencing was done behind closed doors and was not known to the public and had no way to deter other potential offenders. Therefore, Beccaria saw much utility in letting the public know what punishments were handed out for given crimes. This fulfilled the goal of general deterrence, which was essentially scaring others into not committing such criminal acts, while it also furthered his reforms by letting the public know whether fair and balanced justice was being administered.

Despite the obvious overlap, there are identifiable distinctions between specific and general deterrence seen in modern sentencing strategy. For example, some judges have chosen to hand out punishments to defendants in which they are obligated, as a condition of their probation or parole, to walk along their towns' main streets while wearing signs that say "Convicted Child Molester" or "Convicted Shoplifter." Other cities have implemented policies in which pictures and identifying information of those individuals who are arrested, such as prostitutes or men who solicit them, are put in newspapers or placed on billboards.

These punishment strategies are not likely to be much of a specific deterrent. Having now been labeled, these individuals may actually be psychologically encouraged to engage in doing what the public expects them to do, a common expectation derived from labeling theory. The specific deterrent effect may not be particularly strong. However, authorities are hoping for a strong general deterrent effect in most of these cases. They expect that many of the people who see these sign-laden individuals on the streets or in public pictures are going to be frightened away from engaging in similar activity.

There are also numerous diversion programs, particularly for juvenile, first-time, and minor offenders, which seek to punish offenders without engaging them in public hearings or trials. The goal of such programs is to hold the individuals accountable and have them fulfill certain obligations without having them dragged through the system, which is often public. Thus, the goal is obviously to instill specific deterrence without

using the person as a poster child for the public, which obviously negates any aspects of general deterrence.

Although most judges invoke both specific and general deterrence in many of the criminal sentences they hand out, there are notable cases in which either specific or general deterrence is emphasized, sometimes exclusively. Beccaria seemed to emphasize general deterrence and overall crime prevention, as suggested by his statement that "it is better to prevent crimes than to punish them. This is the ultimate end of every good legislation."[43] This claim implies that it is better to deter potential offenders before they offend rather than imposing sanctions on already convicted criminals. Beccaria's emphasis on prevention (over reaction) and general deterrence is also evident in his claim that education is likely the best way to reduce crime. After all, the more educated an individual is regarding the law and potential punishments, as well as public cases in which offenders have been punished, the less likely they will be to engage in such activity. Beccaria's identification of the differential emphases in terms of punishment was a key element in his work that continues to be important in modern times.

Scholars continue to work on expanding how general and specific deterrence operate. In particular, Mark Stafford and Mark Warr laid out a reconceptualization of general and specific deterrence to include personal experiences as well as vicarious experiences—or the experiences you see from other people.[44] They also argue that these two types of experiences entail both punishment and punishment avoidance, contending that personal and vicarious experiences with punishment should serve to increase the perceived risk of punishment and lower the likelihood of subsequent crime, while personal and vicarious experiences with punishment avoidance should lower the perceived risk of punishment and do little to deter subsequent crime. Although the empirical work is slowly emerging, evidence finds good support for Stafford and Warr's reconceptualization.[45]

A Summary of Beccaria's Ideas, and His Influence on Policy

Beccaria summarized his ideas on reforms and deterrence with this statement:

> In order 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, dictated by the laws.[46]

In this statement, Beccaria is saying that the processing and punishment administered by justice systems must be known to the public, which delegates to the state the authority to make such decisions. Furthermore, he asserted that the punishment must be appropriately swift, certain (i.e., necessary), and appropriately severe, which fits his concept of deterrence. Finally, he reiterated the need to administer the same punishment every time for a given criminal act, as opposed to having arbitrary punishments imposed by one judge. These are just some of the many ideas Beccaria proposed, but he apparently saw these points as being the most important.

Although many in Western, democratic societies take for granted the rights proposed by Beccaria, they were unique concepts during the 18th century. In fact, the

ideas proposed by Beccaria were so unusual and revolutionary then that he published his book anonymously. It is obvious that Beccaria was considerably worried about being accused of blasphemy by the Church and of being persecuted by governments for his views.

Regarding the first claim, Beccaria was right; the Roman Catholic Church excommunicated Beccaria when it became known that he wrote the book. In fact, his book remained on the list of condemned works until the 1960s. On the other hand, government officials of the time surprisingly embraced his work. The Italian government and most European and other world officials, particularly dictators, embraced his work as well. Beccaria was invited to visit many other country capitals, even those of the most authoritarian states at that time, to help reform their criminal justice systems. For example, Beccaria was invited to meet with Catherine the Great, the czarina of Russia, during the late 1700s, to help revise and improve Russia's justice system. Most historical records suggest that Beccaria was not a great diplomat or representative of his ideas, largely because he was not physically or socially adequate for such endeavors. However, his ideas were strong and stood on their own merit.

Dictators and authoritarian governments may have liked Beccaria's reform framework so much because it explicitly stated that treason was the most serious crime. He said this:

> The first class of crime, which are the gravest because most injurious, are those known as crimes of *lese majesty* [high treason]. . . . Every crime . . . injures society, but it is not every crime that aims at its immediate destruction.[47]

According to Enlightenment philosophy, violations of law are criminal acts not only against the direct victims but also against the entire society because they break the social contract. As Beccaria stated, the most heinous criminal acts are those that directly violate the social contract, which would be treason and espionage. In Beccaria's reform proposals, dictators may have seen a chance to pacify revolutionary citizens who might be aiming to overthrow their governments. In many cases, reforms were only a temporary solution. After all, the American Revolution occurred in the 1770s, the French Revolution occurred in the 1780s, and other revolutions occurred soon after this period.

Governments that tried to apply Beccaria's ideas to the letter experienced problems, but generally, most European (and American) societies that incorporated his ideas had fairer and more democratic justice systems than they'd had before Beccaria. This is why, to this day, he is considered the father of criminal justice.

The Impact of Beccaria's Work on Other Theorists

Beccaria's work had an immediate impact on the political and philosophical state of affairs in the late 18th century. He was invited to many other countries to reform their justice systems, and his propositions and theoretical model of deterrence were incorporated into many of the new constitutions of countries, most of them formed after major revolutions. The most notable of these was the Constitution and Bill of Rights of the United States.

It is obvious that the many founding documents constructed before and during the American Revolution in the late 1700s were heavily influenced by Beccaria and other Enlightenment philosophers. Specifically, the concept that the U.S. government is "of the people, by the people, and for the people" makes it clear that the Enlightenment idea of democracy and voice in government is of utmost importance. Another clear example is the emphasis on due process and individual rights in the U.S. Bill of Rights. Among the important concepts derived from Beccaria's work are the right to trial by jury, the right to confront and cross-examine witnesses, the right to a speedy trial, and the right to be informed about decisions of the justice system (e.g., charges, pleas, trials, verdicts, sentences).

The impact of Beccaria's ideas on the working ideology of our system of justice cannot be overstated. The public nature of our justice system comes from Beccaria, as does the emphasis on deterrence. The United States, as well as virtually all Western countries, incorporates in its justice system the certainty and severity of punishment to reduce crime. This system of deterrence remains the dominant model in criminal justice. The goal is to deter previous and potential offenders from committing crime by enforcing punishments that will make them reconsider the next time they think about engaging in such activity. This model assumes a rationally thinking human being, as described by Enlightenment philosophy, who can learn from past experiences or from seeing others punished for offenses they are rationally thinking about committing. Thus, Beccaria's work has had a profound impact on the existing philosophy and workings of most justice systems throughout the world.

Source: © Hulton Deutsch / Corbis Historical / Getty Images

Photo 2.3 Jeremy Bentham, often credited as the founder of University College London, insisted that his body be put on display there after his death. You can visit a replica of it today.

Beyond this, Beccaria also had a large impact on further theorizing about human decision-making related to committing criminal behavior. One of the more notable theorists inspired by Beccaria's ideas was Jeremy Bentham (1748–1832) of England, who became a well-known classical theorist in his own right, perhaps because he helped spread the Enlightenment/Beccarian philosophy to Britain. His influence in the development of classical theorizing is debated, and a number of major texts do not cover his writings.[48] Although he did not add a significant amount of theorizing beyond Beccaria's propositions regarding reform and deterrence, Bentham did further refine the ideas presented by previous theorists, and his legacy is well known.

One of the more important contributions of Bentham was the concept of *hedonistic calculus*, which is essentially the weighing of pleasure versus pain. This, of course, is strongly based on the Enlightenment/Beccarian concept of rational choice and utility. After all, if the expected pain outweighs the expected benefit of doing a given act, the rational individual is far less likely to do it. On the other hand, if the expected pleasure

outweighs the expected pain, a rational person will engage in the act. Bentham listed a set of criteria he thought would go into the decision-making of a rational individual. An analogy would be an imagined two-sided balance scale on which the pros and cons of crimes are considered, and then the individual makes a rational decision about whether to commit the crime.

Beyond the idea of hedonistic calculus, Bentham's contributions to the overall assumptions of classical theorizing did not significantly revise the theoretical model. Perhaps the most important contribution he made to the classical school was helping to popularize the framework in Britain. In fact, Bentham became better known for his design of a prison structure, known as the *panopticon*, which was used in several countries and in early Pennsylvania penitentiaries. This model of prisons used a type of wagon wheel design, in which a post at the center allowed 360-degree visual observation of the various "spokes"—that is, hallways that contained the inmate cells.

THE NEOCLASSICAL SCHOOL OF CRIMINOLOGY

A number of governments, including the newly formed United States, incorporated Beccaria's concepts and propositions in the development of their justice systems. The government that most strictly applied Beccaria's ideas—France after the French Revolution of the late 1780s—found that it worked pretty well except for one concept. Beccaria believed that every individual who committed a certain act against the law should be punished the same way. Although equality in punishment sounds like a good philosophy, the French realized quickly that not every person should be punished equally for a certain act.

The French system found that giving a first-time offender the same sentence as a repeat offender did not make much sense, especially when the first-time offender was a juvenile. Furthermore, there were many circumstances in which a defendant appeared to be unmalicious in doing an act, such as when they had limited mental capacity or acted out of necessity. Perhaps most important, Beccaria's framework specifically dismissed the intent (i.e., mens rea) of criminal offenders while focusing only on the harm done to society by a given act (i.e., actus reus). French society, as well as most modern societies such as the United States, deviated from Beccaria's framework in taking the intent of offenders into account, often in an important way, such as in determining what type of charges should be filed against those accused of homicide. Therefore, a new school of thought regarding the classical or deterrence model developed, which became known as the **neoclassical school** of criminology.

The only significant difference between the neoclassical school and the classical school of criminology is that the neoclassical (*neo* means "new") school takes into account contextual circumstances of the individual or situation, allowing for punishment to be adjusted up (aggravating circumstance) or down (mitigating circumstance). For example, would a society want to punish a 12-year-old first-time offender the same way it would punish a 35-year-old who shoplifted the same item a second time? Does a society want to punish a mentally challenged person for stealing a car once as much as it would punish a person without disabilities who has been convicted of stealing more than

a dozen cars? The answer is probably not—or at least, that is what most modern criminal justice authorities have decided, including those in the United States.

This was also the conclusion of French society, which quickly realized that, in this respect, Beccaria's system was neither fair nor effective in terms of deterrence. It came to acknowledge that circumstantial factors play an important part in how malicious or guilty a certain defendant is in committing a given crime. The French revised their laws to take into account both mitigating and aggravating circumstances. This neoclassical concept became the standard in all Western justice systems.

The United States also followed this model and considers contextual factors in virtually all of its charges and sentencing decisions. For example, juvenile defendants are processed in different courts. Furthermore, defendants who are first-time offenders are generally given options for diversion programs or probation as long as their offenses are not serious.

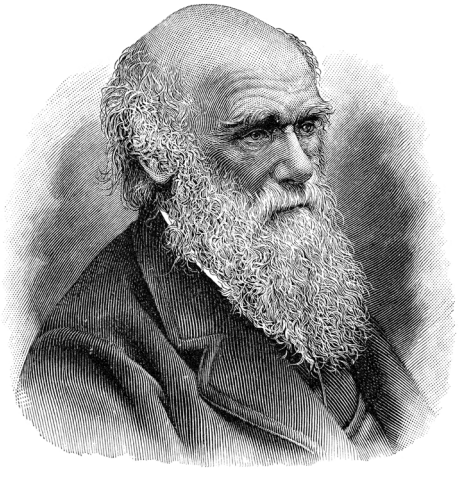
While the neoclassical school added an important caveat to the previously important classical school, it assumes virtually all other concepts and propositions of the classical school: the social contract; due process rights; and the idea that rational beings will be deterred by the certainty, swiftness, and severity of punishment. This neoclassical framework had, and continues to have, an extremely important impact on the world.

LOSS OF DOMINANCE OF CLASSICAL AND NEOCLASSICAL THEORY

For about 100 years after Beccaria wrote his book, the classical and neoclassical schools were dominant in criminological theorizing. During this time, most governments—especially those in the Western world—shifted their justice frameworks toward the neoclassical model. This has not changed even in modern times. For example, when officials attempt to reduce certain illegal behaviors, they increase the punishment or put more effort into catching relevant offenders.

However, the classical and neoclassical frameworks lost dominance among academics and scientists in the 19th century and especially after Darwin's publication in 1859 of *The Origin of Species*, which introduced the concept of evolution and natural selection. This perspective shed new light on other influences on human behavior beyond free will and rational choice (e.g., genetics, psychological deficits). Despite this shift in emphasis among academic and scientific circles, the actual workings of the justice systems of most Western societies still retain the framework of classical and neoclassical models as their model of justice.

Three-strikes laws are an example; others include police department gang units and injunctions that condemn any observed loitering by or gathering among



Source: © iStockPhotos.com / Grafissimo

Photo 2.4 Charles Darwin (1809–1882), author of evolutionary theory.

gang members in a specified region. Furthermore, some jurisdictions, such as California, have created gang enhancements for sentencing; after the jury decides whether the defendant is guilty of a given crime, it then considers whether the person is a gang member. If a jury in California decides that the defendant is a gang member, which is usually determined by evidence provided by local police gang units, it automatically adds more time to any sentence the judge gives. These are just some examples of how Western justice systems still rely primarily on deterrence of criminal activity through increased enforcement and enhanced sentencing. The bottom line is that modern justice systems still base most of their policies on classical or neoclassical theoretical frameworks that fell out of favor among scientists and philosophers in the late 1800s.

POLICY IMPLICATIONS

Many policies are based on deterrence theory: the premise that increasing the certainty and/or severity of sanctions will deter crime.[49] This is seen throughout our system of law enforcement, courts, and corrections. This is rather interesting, given the fact that classical deterrence theory has not been the dominant explanatory model among criminologists for decades. In fact, a recent poll of close to 400 criminologists in the nation ranked classical theory 22nd out of 24 theories in terms of being the most valid explanation of serious and persistent offending.[50] Still, given the dominance of classical deterrence theory in most criminal justice policies, it is important to discuss the most common strategies, as well as those that do not appear to be effective or in some cases are detrimental.

First, the death penalty is used as a general deterrent for committing crime in most U.S. state jurisdictions. As the father of deterrence theory predicted, most studies show that capital punishment has a negligible effect on criminality. One review of the extant literature concluded that "the death penalty does not deter crime."[51] In fact, some studies show evidence for a brutalization effect, an increase in homicides after a high-profile execution.[52] Although the evidence is somewhat mixed, it is safe to say that the death penalty is not a consistent deterrent, and it is not surprising that more and more states are removing the death penalty as a form of criminal punishment, especially for individuals who commit crime as a juvenile.

Another policy flowing from classical and neoclassical models is adding more police officers to deter crime in a given area. A recent review of the existing literature concluded that simply "adding more police officers will not reduce crime."[53] Rather, not only is it more important to focus on what the police do and how they do it, it is generally up to communities to police themselves via informal factors of control (e.g., family, church, community ties). However, this same review did find that police engagement in problem-solving activities at a specific location can sometimes reduce crime, but at that point the strategy is not based on deterrence.[54] Furthermore, a recent report concluded that proactive arrests for drunk driving have consistently been found to reduce such behavior, as does arresting offenders for domestic violence, but only if these measures are employed consistently.[55]

One example of court and correctional strategies is the "scared straight" approach that became popular several decades ago.[56] These programs essentially sought to scare or deter juvenile offenders into going "straight" by showing them the harshness and realities of prison life. However, nearly all evaluations of these programs showed that they were ineffective, and some evaluations indicated that these programs led to higher rates of recidivism.[57] There seem to be few successful deterrent policies in the court and corrections components of the criminal justice system. One recent review found that one of the court-mandated policies that seems promising is the provision of protection orders for battered women.[58] Another review in 2017 by David Weisburd, David Farrington, and Charlotte Gill of the systematic reviews and meta-analyses in the extant literature on the effects of court-imposed sanctions concluded that some of the programs showing effectiveness included mental health courts, as well as noncustodial sentences or interventions (such as ignition interlock devices for preventing drunk driving). However, this review concluded that interventions relating to the severity of the sentence and general deterrence had no evidence of effectiveness and that studies have consistently shown that scared-straight programs for juvenile offenders "did more harm than good."[59]

The policies, programs, and strategies based on classical deterrence theory are examined more thoroughly in the final chapter of this book. To sum up, however, most of these strategies don't seem to work consistently to deter. This is because such a model assumes that people are rational and think carefully before choosing their behavior, whereas most research findings suggest that people often carry out behaviors they know are irrational or without engaging in rational decision-making,[60] which criminologists often refer to as *bounded rationality*.[61] Therefore, it is not surprising that many attempts by police and other criminal justice authorities to deter potential offenders do not seem to have much effect in preventing crime. This explanation is more fully discussed in the final chapter of the book.

Before we summarize the main points of this chapter, it is important to highlight a recent development in thinking about free will and rationality in human (especially criminal) decision-making. According to Nagin, this concept, referred to as **human agency**, refers to a "decision-making process, however crude or faulty, that reflects the benefits, costs, and risk of alternative course of action."[62] Soon thereafter, Paternoster and Pogarsky laid out thoughtfully reflective decision-making (or TRDM) as "an important part of what it means to act rationally and with agency is the process of thoughtfully reflective decision making."[63] These authors linked both rational choice and human agency to TRDM, which has four key components: (1) collecting information pertaining to a problem that requires a decision, (2) thinking of alternative solutions to the problem, (3) systematically deliberating over how to determine which alternative might be best, and (4) retrospectively analyzing how good a problem solver one was in the situation. Most recently, Paternoster argues that "human agency is understood to be action—deliberate and intended or willed conduct. When persons act as agents, they direct their behavior toward some goal and is preceded by processes of deliberation, decision-making, intention formation, volition or activation of the will, and guidance."[64] As can be seen, criminologists continue to refine concepts of free will, rationality, choice, and agency in attempting to better understand why some people decide to commit a crime in a particular situation.

CONCLUSION

This chapter examined the earliest period of theorizing about criminological theory. The classical school of criminology evolved out of ideas from the Enlightenment era in the mid- to late 18th century. This school of thought emphasized free will and rational choices individuals make, from the perspective that people make choices regarding criminal behavior based on the potential costs and benefits that could result from such behavior. This chapter also explored the concepts and propositions of the father of the classical school, which built the framework on which deterrence theory is based. We also discussed the various reforms Beccaria proposed, many of which were adopted in the formation of the U.S. Constitution and Bill of Rights. The significance of the classical school in both theorizing about crime and the actual administration of justice in the United States cannot be overestimated. The classical and neoclassical schools of criminology remain to this day the primary framework within which justice is administered, despite the fact that scientific researchers and academics have, for the most part, moved past this perspective to consider social and economic factors. The chapter concluded by discussing the role of human agency, a more expansive view of free will and rational choice in decision-making.

CHAPTER SUMMARY

- The dominant theory of criminal behavior for most of the history of human civilization used demonic, supernatural, or other metaphysical explanations of behavior.
- The Age of Enlightenment was important because it brought a new logic and rationality to understanding human behavior, especially regarding the ability of human beings to think for themselves. Hobbes and Rousseau were two of the more important Enlightenment philosophers, and both stressed the importance of the social contract.
- Cesare Beccaria, who is generally considered the father of criminal justice, laid out a series of recommendations for reforming the brutal justice systems that existed throughout the world in the 1700s.
- Beccaria is also widely considered the father of the classical school or deterrence theory; he based virtually all of his theoretical framework on the work of Enlightenment philosophers, especially their emphasis on humans as rational beings who consider perceived risks and benefits before committing criminal behavior. This is the fundamental assumption of deterrence models of crime reduction.
- Beccaria discussed three key elements that punishments should have to be effective deterrents: celerity (swiftness), certainty, and severity.
- Specific deterrence involves sanctioning an individual to deter that particular individual from offending in the future. General deterrence involves sanctioning an individual

to deter other potential offenders by making an example out of the individual being punished.

- The neoclassical school was formed because societies found it nearly impossible to punish offenders equally for a given offense. The significant difference between the classical and neoclassical schools is that the neoclassical model takes aggravating and mitigating circumstances into account when an individual is sentenced.
- Jeremy Bentham helped reinforce and popularize Beccaria's ideas in the English-speaking world, and he further developed the theory by proposing the hedonistic calculus, a formula for understanding criminal behavior.
- Despite falling out of favor among most criminologists in the late 1800s, the classical and neoclassical frameworks still constitute the dominant models and philosophies of all modern Western justice systems.

KEY TERMS

actus reus 42
Age of Enlightenment 35
brutalization effect 45
certainty of punishment 48
deterrence theory 35
general deterrence 50
human agency 57
mens rea 42
neoclassical school 54
severity of punishment 49
social contract 39
specific deterrence 50
swiftness of punishment 46
utilitarianism 41

DISCUSSION QUESTIONS

1. Do you see any validity to the supernatural or religious explanations of criminal behavior? Provide examples of why you feel the way you do. Is your position supported by scientific research?
2. Which portions of Enlightenment thought do you believe are most valid in modern times? Which portions do you find least valid?
3. Of all Beccaria's reforms, which do you think made the most significant improvement to modern criminal justice systems and why? Which do you think had the least impact and why?
4. Of the three elements of deterrence Beccaria described, which do you think has the most important impact on deterring individuals from committing crime? Which of the three do you think has the least impact on deterring potential criminals? Back up your selections with personal experience.
5. Between general and specific deterrence, which do you think is more important for a judge to consider when sentencing a convicted individual? Why do you feel that way?
6. Provide examples of general and specific deterrence in your local community or state. Use the Internet if you can't find examples from your local community. Do you think such deterrence is effective?
7. Given the modern interpretation by the U.S. government of the definition of torture in context with what Beccaria thought about this issue, do you think the father of criminal justice and deterrence would agree with the interrogation policies of the Bush administration during the Iraq War, which indisputably violated the guidelines set by the Geneva Conventions? Explain your position.

8. Regarding the use of the death penalty, list and explain at least three reasons why the father of criminal justice and deterrence theory felt the way he did. Which of these arguments do you agree with most? Which argument do you disagree with most? Are you more strongly for or against the death penalty after reading the arguments of Beccaria?
9. Regarding the neoclassical school, which mitigating factors do you think should reduce the punishment of a criminal defendant the most? Which aggravating circumstances do you think should increase the sentence of a criminal defendant the most? Do you believe all persons who commit the same act should be punished exactly the same, regardless of age, experience, or gender?
10. What types of policy strategies based on classical and deterrence theory do you support? Which don't you support? Why?