

## Lecture 6

### **Guest speaker Dan Donovan Ottawa Life Magazine**

- Social contract with the police – serve the public, enforces the moral and legal values of society, adhere to the oath which they take to the Queen (which represent our government, and our people)
- In the police world, if an individual has two phones, it usually means that he's dealing drugs
- Police are given more power because they can detain and arrest you
  - You should be polite when stopped by the police
- Area in Toronto known for drug activity:
  - Guy pulled over and asked the police man why am I being pulled over?
  - He questions the police man and then the police man squeezes his testicles
  - The officer denied the assaults, police suspected the victim of being involved in drug activity because he had 2 cell phones. [he was a cell phone sales rep]

### **Constable Bubbles: Toronto Police: The G20**

- “Constable Bubbles” arrested a woman at the G20 in Toronto because she blew bubbles in the officer's direction. He told her that if she blew the bubbles his way that he would arrest her for assault.
- People have the right to protest, and at the G20 they ordered people to stay away, they brought in 12000 policeman and they beat the crap out of everyone, and arrested thousands
- Police didn't wear their nametags for the G20 when they are supposed to wear them in public
- Girl arrested for blowing bubbles

### **Bill C-30**

- Bill C – 30: protecting children from internet predator's act
  - Passing a law that allows police without a warrant to monitor which IP addresses are being used on the internet. If they have a warrant they are allowed to monitor everything going on
- Police need to be able to adjust to each situation; but there is a lack of ability to do this. Police just want to let you know who is in charge. All comes down to training and judgement and there is no oversight (because no one wants to hold the police accountable); is the issue competence?

### Classical theory assumptions

- Human beings are rational, and most behavior is the result of free will coupled with rational choice
- Pain and pleasure are the two central determinants of human behavior
- Punishment, a necessary evil, is sometimes required to deter law violators and to serve as an example to others who would also violate the law
- Root principles of right and wrong are inherent in the nature of things and cannot be denied
- Society exists in order to provide benefits to people that they wouldn't get if they were isolated
- Certain rights are inherent in nature, and governments that breach these rights should be broken up
- Crime disparages the quality of the bond that exists between people and society and makes it an immoral form of behavior

### Origins of criminal law

- Crystallization of the mores – values and customs over time that have become accepted as part of our society and that breaking them is a crime
- Classical theory – criminal behavior finds its origins in torts (wrongs to individuals). Embraces the notion that criminal law evolved because of harms against individuals.
  - The transitions from a society that had no criminal law to a society that had criminal law
    - i. The avenger (person who had been injured) must make clear their intentions for seeking revenge.
    - ii. Permission had to be sought out from members of the society/group before you could seek out your revenge.
    - iii. There was a rule to which how much injury you could cause the other person (had to be regulated
    - iv. An investigation to ensure that everything was done in accordance with the rules
    - v. Members of the group could also participate

### Early Sources of the Criminal Law

- The Code of Hammurabi
  - Emphasis on retribution (act of taking revenge upon a criminal perpetrator) to keep cruelty within bounds
- Early Roman law (Justinian Code)
  - The Justinian Code set 2 law categories: public and private
- Common law

- Based on shared traditions and standards. Help guide the judicial decision making
- Magna Carta
  - Was meant to stop the king from being able to prosecute barons without just cause
  - Guaranteed basic liberties. Basis for “due-process”. Some of the Charter provisions were based on this

### Two approaches to criminology

- **18<sup>th</sup> Century**
  - **Bentham:** He came up with the notion of the pleasure/pain principle. He believed it guided human behavior. It means that people govern their behavior by avoiding pain and seeking pleasure.
    - Said punishment should be sufficiently distasteful to the offender that the discomfort experienced would outweigh the pleasure to be derived from criminal activity
    - For punishment to be effective, it must be swift and certain
  - Beccaria discussed that people govern their behavior by free will. Rationalism was key
    - Criminals should be punished based on the degree of injury they cause. Purpose of punishment should be deterrence rather than retribution. Torture is unjust
    - Responsible for contemporary belief that people governed their behaviour by freewill, crime is a choice, you are a person who guided your behaviour rationally
- **19<sup>th</sup> Century**
  - Largely focused on the fact that the criminal system was archaic. There were eight offences if which an individual committed, they could be executed. The police in France were highly corrupt and violent. Police forces were thrown together; there were no separate divisions, no detective division, DNA, fingerprinting, etc.

### Classical school

- Guidelines of crime and punishment (according to the classical school of criminology):
  1. The law should restrict the individual as little as possible.
  2. It should clear and precise knowledge of what was forbidden, and the sanction attached to this obedience.
  3. It should guarantee the rights of the accused at all stages of criminal justice.
  4. It should take the form of a complete written social contract.
  5. Punishment was justified only so far as the offender had infringed the rights of others.
  6. Its severity should be drastically curtailed; it should be no more than proportionate to the crime committed, and it should not go beyond what was necessary to deter the criminal and others from committing crimes.

7. The nature of the penalty should correspond with that of the crime.
8. Punishments must be inflicted with speed and certainty in order to create closest possible association in people's mind between the crime and the penalty.
9. Exemplary punishments (taking a student who is noisy in class and throwing them out the first week – expelled, etc.) must be ruled as unjust.
10. The criminal must be treated as a rational and responsible being.
11. The prevention of crime was to be achieved as a clear code of offences and punishments.

### **Positivist school**

- Lombroso advocated the study of phrenology – the study of the human skull, including the bumps and lines on the skull.
- The indentations of the skull (stigmata) were any cranial abnormalities/facial abnormalities were signs that the individual was a criminal.
- The positive school was mainly concerned with scientific work – rehabilitation, transformation of individuals.
- The contrast between the two schools can be summed up: The classical school exhorts men (and women today) to study justice. The positivist school exhorts justice to study men.

<b>Classical</b>	<b>Positivist</b>
Offender is rational and responsible; free to choose whether or not to break the law	Offender's behavior is strongly influenced, if not completely determined by his/her innate constitution and immediate environment
Concentrated on the crime	Concentrated on the criminal
The sentence is primarily proportional to the crime committed	The sentence is a measure for the prevention of crime
Rejected adaptation of the penalty to the individual personality of the criminal	Insisted in the adaptation of the penalty to the individual personality of the criminal
Ruled out attempts to reform the lawbreaker	Advocated attempts to reform the lawbreaker
Prohibited consideration of whether an offender threatened future danger	Consideration of whether an offender threatens future danger should be central to the decision

### **Rational choice theory**

- Rational choice theory: holds that criminality is the result of conscious choice and that predicts that people choose to commit crime when the benefits outweigh the cost of disobeying the law
- Routine activity theory (Cohen): suggests that lifestyles contribute significantly to both the volume and type of crime found in any society
  - Felson pointed out that “individuals vary greatly in their behavior from one situation to another” and said that criminality might flow from temptation, bad company, idleness, or provocation.
  - Convenience stores, for example, create temptations towards theft when they display their merchandise within easy reach of customers.
- Situational choice theory: views criminal behavior “as a function of choices and decisions made within a context of situational constraints and opportunities”.
  - It suggests that the probability of criminal activity can be reduced by changing the features of a given social situation or of the surrounding environment.
  - Focus of the effort to prevent crime from broad programs to target hardening, environmental design or any impediment that would [dissuade] a motivated offender from offending

**EXAM:**

1. Where the Classicists concentrated on the crime (act); the positivist concentrated upon the criminal (offender)
2. Where the Classicists saw the offender as Rational and Responsible, free to choose whether or not to break the law; the P's saw his behaviour as strongly influenced, if not completely determined, by his or her innate constitution and immediate environment
3. Where the Classicists insisted that the punishment must be strictly related to the crime; the P's insisted that it be strictly related to the offender
4. Where the Classicists saw the sentence as primarily proportional to the crime already committed; the P's saw it as a measure for the prevention of crime
5. Where the C's rejected adaptation of the penalty to the individual personality of the criminal]; the P's insisted upon it
  - a. [not accept mandatory minimums
6. Where the C's ruled out attempts to reform the law breaker; the P's advocated them\*

7. Where the Classicists prohibited consideration of whether an offender threatened future danger; the positivists said it should be central to decide sentencing for protection of the public \* [used it as a factor in deciding sentencing]