CLASSICAL SCHOOL OF CRIMINOLOGY

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INTRODUCTION

• The classical school of criminology was developed by the philosophers Cesare Beccaria, an Italian and Jeremy Bentham, an Englishman in the 18th century,

• They were motivated by the harsh climate of crime and punishment prevalent in 18th Century Europe. The punishments were barbarous, arbitrary and harsh. There were secret trials, use of torture and the capital punishment for most offences

• They were interested in reforming the legal system to protect accused persons against harsh and arbitrary punishments by the state
INTRODUCTION

• Manheim’s book ‘Pioneers in Criminology describes the period as “The existent criminal law of eighteenth-century Europe was, in general, repressive, uncertain and barbaric. Its administration permitted and encouraged incredibly arbitrary and abusive practices. The agents of the criminal law, prosecutors and judges, were allowed tremendous latitude in dealing with persons accused and convicted of crime, and corruption was rampant throughout continental Europe”
THEORIES ON WHICH THE CLASSICAL SCHOOL WAS BASED

• Two main theories can be identified behind this school
• 1. the social contract theory
• 2. The free will or rational theory
SOCIAL CONTRACT THEORY

• Beccaria based his ideas on a variant of the social contract theory. Other social contract theorists include Locke, Rousseau, Hobbes etc.

• According to Beccaria, laws are the condition, under which men, naturally independent, united themselves in society. Men give up part of their liberties so as to enjoy the rest in peace and security. The sovereignty of a nation consisted of the sum of all the portions of the liberty of the individuals sacrificed to the common good. This sovereignty was placed in the hands of the sovereign or government to be lawfully administered by it.

• This deposit of sovereignty must also be defended from being usurped by the individuals which comprise the community who if they were left to themselves would take back their sacrificed portions of liberty and also encroach on that of others. Punishments are therefore the motives devised by the law to prevent the despotism of individuals from plunging society into chaos.
SOCIAL CONTRACT THEORY

- Under the social contract the individual can only be bound by his own consent by his willingly giving up a portion of his liberty to become a member of the society. Under the social contract the individual sacrifices his liberty for the benefit of the social contract and the community would then become responsible for him to protect him. Laws are made to protect the social contract and avoid any individual usurping the social contract.

- Beccaria insists that part of the social contract is that the individual should not commit crimes which is against the norm of the social contract.
SOCIAL CONTRACT THEORY

• Where the individual breaches the norm of the social contact by committing crime, he should be punished which will deter him from committing further crimes specifically and also generally deter other individuals with the intention of committing crime.

• Again, any punishment inflicted on any individual must be proportionate to the nature of his crime. The punishment is not to harm the individual or kill him but to deter him.

• The underlying idea of Beccaria is “let the punishment fit the crime” and this should guide legal reform.
FREE-WILL THEORY

• Defined as the power to direct one’s action without physical or divine forces (Lexicon Webster Dictionary)

• It’s the belief that humans are rational and take purposive decisions to act or not to act. It presupposes that human beings can understand the difference between right and wrong and choose to commit crimes or obey the law in a quest to maximize pleasure and minimize pain.

• It posits that the main instrument for control of human behavior is fear of pain and as such punishment creates fear of pain and helps to control human behaviour
FREE-WILL THEORY

• However, According to Beccaria, punishment should be proportionate to the nature of the crime and should inflict more pain than the pleasure derived from committing the crime.

• Where the legal system is vague, it would be difficult to determine such a punishment and as such to avoid arbitrary and impulsive infliction of pain, it is necessary that penal laws are clearly written and the nature of sanctions specifically prescribed therein

• It should be the duty of the judges to interpret the laws and not the state to determine who violated the law and what punishment to mete out. This is the rule of law which was favoured by Beccaria
FREE-WILL THEORY

• Furthermore the main purpose of the criminal justice system and punishment is to prevent crime by deterring persons from crime and not vengeance.

• Excessively severe punishments are not necessarily deterrent but appropriate, prompt and inevitable punishments are and as such the punishment should fit the crime. The appropriate punishment should just be severe enough to overcome the gain from the crime.

• According to Beccaria in order for punishment “not to be, in every instance, an act of violence of one or many against a private citizen, it must be necessarily public, prompt or immediate, the least possible in the given circumstances, proportionate to the crime, dictated or determined by laws”
FREE-WILL THEORY

• Beccaria was against the capital punishment which he felt was a waste of resources and an act of brutality and violence
• He believed death penalty was against the social contract and disagreeable to the sentiments of the people. The terms of the social contract did not vest in the government the right of life and death to justify capital punishment in the criminal justice system
FREE-WILL THEORY

• Beccaria also advanced the principle of utilitarianism which was later popularized by Jeremy Bentham. This is the philosophy of the greatest good for the greatest number. As such the law should provide the greatest happiness for the greatest number.

• Beccaria wrote his seminal treatise Essay on crimes and punishment in 1764.
FREE-WILL THEORY

• Bentham in his Principles of Morals and legislation harped on the principle of utilitarianism that the aim of the legislator should be to achieve the greatest happiness for the greatest number. Based on his felicific/hedonistic calculus, he believed punishment should just be in excess of the pleasures derived from an act. Since law exists to provide happiness for all and punishment creates unhappiness, punishments can only be justified if it prevents greater evils than it produces.
FREE-WILL THEORY

- For Bentham the criminal law and punishment should not be used as a weapon of vengeance and should not be used to regulate morality. Criminal punishment should be used only against conduct which is harmful to society. Acts which produce no real evil, but which prejudice, mistake or the ascetic influence have caused to be regarded as offences should not be punished by penal sanctions. Some of these offences include those which originate from the sexual appetite where there is no violence, fraud nor interference with the rights of others and also offences against the self.
CRITICISM OF THE CLASSICAL SCHOOL

• The main criticism of the classical school was that its main focus was trying to devise universal penal measures while ignoring the determinants of human action like environment, psychology, physiology etc. Human nature and motivation seems to have been turned upside down by the classical school. People do not methodically add and subtract pain and pleasure differentials to determine their conduct. Other factors are also at work in determining human conduct.
CRITICISM OF THE CLASSICAL SCHOOL

• In its formulation, it did not recognize the distinction between the first offender and the recidivist or hardened criminal, the accidental and the habitual criminal.

• It was merely concerned with the injury inflicted by the criminal and not the state of mind of the criminal.
CONCLUSION

• The classical school was responsible for sparking off great legal reform in many countries and has been held to be the basis on which the American legal system was based as well as the French Legal System. Beccaria is acknowledged as a great reformer who brought about great reforms in penal laws.

• The ideas of the classical school was a reaction to the prevailing climate of harsh criminal laws and punishments in the 18th century.

• It did not necessarily study criminals but was rather interested in lawmaking and legal processing.