

Criminology is the study of ideas and theory's in the criminal justice system and the actions and processes which are initiated, in correlation with crimes, and the criminals who commit them. The key to understanding the criminal justice system is to have a concise understanding of the theories on how, and why crimes are committed. Once there is an understanding of these factors, there then is ability to pass an educated judgement, on the reasoning behind the factors of crime, and criminality in general. The two main theories, which have been crucial to the thinking, and understanding of criminology, are the Positive School, and Classical School. Both of these schools were developed between the 14th and 17th century and have been instrumental in the construction of our criminal justice system throughout history, and into the present.

The Classical School is based on two main theorists, Jeremy Bentham and Cesare Beccaria, who developed their ideas from the late 1700's, to the early 1800's. Some of the key points, which are addressed, are deterrence, hedonism, and social contract. The Classical School is largely based on Cesare Beccaria's concepts of hedonism, which he described as "The principal that the seeking of pleasure and avoidance of pain are the ultimate aims and motivating forces of human action." (Sacco, Kennedy, 2002), Beccaria assumed that all offenders acted because of these "motivating forces". The Positive School came to the forefront of criminological studies, in the late 1800's. When Cesare Lombroso questioned Beccaria's assumptions. (Sacco, Kennedy, 2002) Other theorists in the Positive School movement were Raffaele Garofalo, and Enrico Ferri who also had major contributions. The key points behind the Positive School are determinism, treatment, and atavism. The Positive School considered the cause and effects of crime, rather than crime being a product of free will.

The Criminal Code of Canada Exemplifies many examples of the Positive School, such as, the dangerous offender clause, found in sections 752 – 761. This clause is a law derived from the Positive School because of a number of rules and principles, which have been used by the Positive School theorists, are eminent. Some views which could only be explained in the Positive sense are things such as “part of a pattern or dangerous behavior or an pattern of aggressive behavior or that the current crime is so brutal as to indicate future dangerous behavior or the offence indicates a future inability to control sexual impulses”. (Criminal Code, sec. 752 – 761). If the court finds the offender to be a “dangerous offender” he or she will be held in a penitentiary for an indeterminate period of time. The offender will only be released when the National parole board has certified that he or she is no longer a threat to society, and no longer a dangerous offender. These rules also revolve around the notion that there is a cause for crime other than hedonism’ like Beccaria had explained. Lomborso believed that there were multiple factors in the causation of crime (Vold, Bernard, 1986) therefore the Positive School view on crime was to find the causes for criminal behavior and intervene before offences could occur. Also to treat offenders, until they were deemed not harmful to society, rather than punish them for making a wrong decision.

The use of indeterminate sentencing is crucial, in the distinction between the Positive and Classical School’s. There can be no use of an indeterminate sentence to fulfill the theory on deterrence, where as “the prevention in which the threat of punishment or retribution is expected to forestall some act from occurring.” (Sacco, Kennedy, 2002). Indeterminate sentencing shows a direct opposition to that of the Classical school theory’s by giving an indeterminate sentence and not acknowledging the

theory of “hedonism”. Therefore the “dangerous offender” clause can only be classified in the Positive School and not the Classical School.

The Positive School’s views are showcased again in several ways, in section 810, of the criminal code “Peace Bond”. Which states: “ a person who fears that another person will cause personal injury to him (or his spouse or children) may ask the justice of the peace or summary conviction court to issue an order requiring the feared person to enter a recognizance which will ensure the peace” (Sacco, Kennedy, 2002). The Peace Bond is an excellent example of the law intervention between two parties that may otherwise lead to an offense being committed. Lombroso’s quest to find the cause of crime is perfectly illustrated with the intervention between the plaintiff and the feared person, which otherwise would have most likely would have resulted in a crime without the use of the “Peace Bond”. The Positive School is also shown in the punishment for the breach of a peace bond. Which state in the criminal code that if the peace bond or any of the conditions set out by the court are broken, it can result in the feared person being jailed for up to a year (Criminal Code, sec. 810). This is another example of an indeterminate sentence, which could not be associated with the Classical Schools’ theories on punishment.

The use of indeterminate sentencing, and quest for intervention by the use of examples, other than deterrence, have shown that the “dangerous offender” clause, and the “ peace bond” are classified as examples of the Positive School theory’s being put use. The certainty of punishment is not prevalent in these examples of the criminal code; therefore neither of these laws can be classified as laws derived mainly from the Classical School theorists. However the two schools’ are not as contradictory and they may seem,

and today's laws are derived from a meshing of both Classical and Positive Schools' to try and find the best ways to intervene, deter, combat against crime as we know it.