**Chapter One: Understanding Criminology**

**Introduction**

The word ‘Criminology’ originated in 1890. The general meaning of the term is “*the scientific study of crime as a social phenomenon; of criminals; and of penal institutions*.” Prof. Kenny analyzed /defined/ described that “*Criminology is a branch of criminal science which deals with crime causation, analysis and prevention of crime*.” Criminology as a branch of knowledge is concerned with those particular conducts of human behavior which are prohibited by society. It is, therefore, a socio-legal study which seeks to discover the causes of criminality and suggests the remedies to reduce crimes. Therefore, it follows that criminology and criminal policy are interdependent and mutually support one another. Thus criminology seeks to study the phenomenon of criminality in its entirety.

The problem of crime control essentially involves the need for a study of the forces operating behind the incidence of crime and a variety of co-related factors influencing the personality of the offender. This has eventually led to development of modern criminology during the preceding two centuries. The purpose of studying this branch of knowledge is to analyze different aspects of crime and device effective measures for treatment of criminals to bring about their re-socialization and rehabilitation in the community. Thus criminology as a branch of knowledge has a practical utility in so far as it aims at bringing about the welfare of the community as a whole.

The principles of criminology serve as effective guidelines for formulation of penal policy. The modern clinical methods and the reformatory measures such as probation, parole, indeterminate sentence, open prisons, and other correctional institutions are essentially an outcome of intensive criminological researches during the twentieth century. These measures have sufficiently demonstrated the futility of dumping offenders inside the prisons and infliction of barbaric punishments. *Prof. Gillin* has rightly observed that *it is not the humanity within the criminal but the criminality within the human being which needs to be curbed through effective administration of criminal justice.* More recently, criminologists and penologists seem to have agreed that “individualization of the offender should be the ultimate object of punishment, while treatment methods, the means to attain this end”.

The study of crime and criminal must proceed on a scientific basis by carefully analyzing various aspects associated therewith and must necessarily suggest measures proposed to suppress criminality. It must be added that with new crimes emerging in the modern complexities of life, we seem increasingly concerned about the problem of crime. Today destructive acts of vandalism, highway, train and bank robberies, looting, bomb blasts, rape, illegitimate terrorist activities, white-collar crimes, cyber crimes, criminalization of politics, hijacking, etc., are constantly increasing which have posed a positive danger to human life, liberty and property. Modern criminologists, therefore, seem to be seriously concerned with the problem of crime to protect the society from such anti-social activities of criminals. It is for this reason that the two sister branches of criminal science, namely, criminology and penology work hand in hand to appreciate the problem of criminality in its proper perspective.

* 1. **Defining Criminology**

Criminology may be defined as **“**t*he scientific study of the causation, correction, and**prevention of crime”.* **Criminology** (from [Latin](http://en.wikipedia.org/wiki/Latin) *crīmen*, "accusation"; and [Greek](http://en.wikipedia.org/wiki/Ancient_Greek) -λογία, [*-logia*](http://en.wikipedia.org/wiki/-logy)) is the social science approach to the study of [crime](http://en.wikipedia.org/wiki/Crime) as an individual and [social phenomenon](http://en.wikipedia.org/wiki/Social_phenomenon). Although contemporary definitions vary in the exact words used, there is considerable consensus that criminology involves the application of the “scientific method” to the study of variation in criminal law, the causes of crime, and reactions to crime (Akers 2000).

Criminological research areas include the incidence and forms of crime as well as its causes and consequences. They also include social and governmental regulations and reactions to crime. Criminology is an interdisciplinary field in the [behavioral sciences](http://en.wikipedia.org/wiki/Behavioral_sciences), drawing especially on the research of [sociologists](http://en.wikipedia.org/wiki/Sociology) and [psychologists](http://en.wikipedia.org/wiki/Psychology), as well as on writings in [law](http://en.wikipedia.org/wiki/Law).

* 1. **Nature and Scope of Criminology**

Criminology is an inter-disciplinary field of study, involving scholars and practitioners representing a wide range of behavioral and social sciences as well as numerous natural sciences. Sociologists played a major role in defining and developing the field of study and criminology emerged as an academic discipline housed in sociology programs.

As a subdivision of the larger field of sociology, criminology draws on psychology, economics, anthropology, psychiatry, biology, statistics, and other disciplines to explain the causes and prevention of criminal behavior. Subdivisions of criminology include ***penology***, the study of prisons and prison systems; ***bio-criminology,*** the study of the biological basis of criminal behavior; ***feminist criminology***, the study of women and crime; and ***criminalistics***, the study of crime detection, which is related to the field of [Forensic Science](http://legal-dictionary.thefreedictionary.com/Forensic%2BScience).

Criminology has historically played a reforming role in relation to [Criminal Law](http://legal-dictionary.thefreedictionary.com/Criminal%2BLaw) and the criminal justice system. As an applied discipline, it has produced findings that have influenced legislators, judges, prosecutors, lawyers, [Probation](http://legal-dictionary.thefreedictionary.com/Probation) officers, and prison officials, prompting them to better understand crime and criminals and to develop better and more human sentences and treatments for criminal behavior.

Criminologists also study a host of other issues related to crime and the law. These include studies of the [Victims of Crime](http://legal-dictionary.thefreedictionary.com/Victims%2Bof%2BCrime), focusing upon their relations to the criminal, and their role as potential causal agents in crime; juvenile delinquency and its correction; and the media and their relation to crime, including the influence of [Pornography](http://legal-dictionary.thefreedictionary.com/Pornography).

**Sociology and Criminology** during the twentieth century, the sociological approach to criminology became the most influential approach. Sociology is the study of social behavior, systems, and structures. In relation to criminology, it may be divided into social-structural and social-process approaches.

* 1. **Definitions of Important Terms**

**Deviance:** Deviance is a violation of social norms defining appropriate or proper behavior under particular set of circumstances. Deviance often includes criminal acts. Deviance is also referred to as deviant behavior. It is behavior that is sharply different from a customary, traditional, or generally accepted standard.

**Delinquency:** Delinquent means one who fails to do that which is required by [law](http://encyclopedia.thefreedictionary.com/law) or by [duty](http://encyclopedia.thefreedictionary.com/duty) when such failure is minor in nature. A delinquent is often used to refer to a [juvenile](http://encyclopedia.thefreedictionary.com/juvenile%2B%28law%29) who commits a minor criminal act—[juvenile delinquents](http://encyclopedia.thefreedictionary.com/juvenile%2Bdelinquent).

**Juvenile Delinquency:** It refers to [criminal](http://encyclopedia.thefreedictionary.com/criminal%2Bact) acts performed by [juvenile](http://encyclopedia.thefreedictionary.com/juvenile%2B%28law%29)s. Most [legal systems](http://encyclopedia.thefreedictionary.com/legal%2Bsystem) prescribe specific procedures for dealing with juveniles, such as juvenile detention centers. Juvenile delinquency may refer to either violent or non-violent crime committed by persons who are (usually) under the age of eighteen and are still considered to be a minor. There is much debate about whether or not such a child should be held criminally responsible for his or her own actions.

**Crime:** Crime is an ‘act’ or ‘omission’ which is prohibited by criminal law. Each State sets out a limited series of acts (crimes) which are prohibited and punishes the commission of these acts by fine, imprisonment or some other form of punishment. In exceptional cases, an omission to act can constitute a crime, such as failing to give assistance to a person in peril or failing to report a case of child abuse.

* 1. **Inter-Relation Between Criminology, Penology and Criminal Law**

It must be reiterated that criminology is one of the branches of criminal science which is concerned with social study of crimes and criminal behavior. It aims at discovering the causes of criminality and effective measures to combat crimes. It also deals with custody, treatment, prevention and control of crimes which could be termed as penology. The criminal policies postulated by these twin sister branches (i.e., criminology and penology) are implemented through the agency of criminal law. Thus for the sake of convenient study the entire subject may be classified under the following heads:



 It is generally said that criminal law is an index of civilization because it is sensitive to the changes in social structure and reflects mental fiber of a given society. This is why *Prof. Friedman* calls it a barometer of moral thinking. According to *Wechsler*, “crime is a formal social condemnation of forbidden conduct buttressed by sanction calculated to prevent it”. Criminologists are thus confronted with three major problems, namely:

1. What conducts should be forbidden and an inquiry into the effect of environment on these conducts ;
2. What condemnation is appropriate in such cases ; and
3. What kinds of sanctions are best to prevent these conducts?

It is thus evident that criminology, penology and criminal law are inter-related and one cannot really function without the other. The formulation of criminal policy essentially depends on crime causation and factors correlated therewith while its implementation is achieved through the instrumentality of criminal law. It has been rightly observed by *Prof. Sellin* that the object of criminology is to study the sequence of law-making, law-breaking and reaction to law-breaking from the point of view of the efficacy of law as the method of control. According to *Donald Taft*, criminology is the scientific analysis and observation of crime and criminals whereas penology is concerned with the punishment and treatment of offenders. In his view, the development of criminology has been much later than that of penology because in early periods the emphasis was on treatment of offenders rather than scientific investigation into the causation of crime.

* 1. **Criminology and Criminal Justice System**

The term ‘Criminal Justice System’ is relatively new. It became popular only in 1967, with the publication of the report of the President’s Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in the Free Society*. The discovery that various ways of dealing with law breaking form ***a system*** was itself the result of criminological research. Research into the functioning of the system and its component parts, as well as into the work of functionaries within the system, has provided many insights over the last few decades.

Scientists who study the criminal justice system are frequently referred to as ‘criminal justice specialists.’ This term suggests a separation between criminology and criminal justice. In fact, the two fields are closely interwoven. Scholars of both disciplines use the same scientific research methods. They have received the same rigorous education, and they pursue the same goals. Both fields rely on the cooperation of many other disciplines, including sociology, psychology, political science, law, economics, management, and education. Their origins, however, do differ. Criminology has its roots in European scholarship, though it has undergone refinements, largely under the influence of American sociology. Criminal justice is a recent American innovation.

The two fields are also distinguished by a difference in focus. Criminology generally focuses on scientific studies of crime and criminality, whereas criminal justice focuses on scientific studies of decision-making processes, operations, and such justice-related concerns as the efficiency of police, courts, and corrective systems; the just treatment of offenders; the needs of victims; and the effects of changes in sentencing philosophy.

* 1. **Historical Development of Criminology**

The history of primitive societies and early medieval period reveals that human thinking in those days was predominated by religious mysticism and all human relations were regulated through myths, superstitious and religious tenets prevailing in a particular society. This in other words, meant that little attention was devoted to the motive, environment and psychology of the offender in the causation of crime. Moreover, in absence of any definite principle for the guidance of those who were concerned with the criminal justice administration, punishments were often haphazard, arbitrary and irrational. This situation prevailed until the end of seventeenth century. Thereafter, with the change in human thinking and evolution of modern society, certain social reformers took up the cause of criminals and devoted their attention to analysis of crime causation. This finally led to the emergence of criminology as a branch of knowledge through development of different schools of criminology.

The theoretical dimension of criminology has a long history and ideas about the causes of crime can be found in philosophical thought over two thousand years ago. For example, in Politics, Plato’s student, Aristotle (384-322 B.C.), stated that “poverty engenders rebellion and crime (Quinney 1970).” Religious scholars focused on causes as diverse as natural human need, deadly sins, and the corrupting influence of Satan and other demons. The validity of such theories was founded in religious authority and they were not viewed as theories, subject to verification through any form of systematic observation, measurement and analysis.

Rational, naturalistic philosophies about people and society grew in prominence during the 18 century. Enlightenment philosophers such as Montesquieu, Voltaire, Cesare Beccaria and Jeremy Bentham criticized political and legal institutions and advocated social reforms based on the assumption that people were rational, deliberative beings. Such ideas constituted the first major school of organized, “naturalistic” thought about criminal law, criminality, and appropriate responses to crime--the Classical School. Such perspectives were called “naturalistic” because they constructed theories locating the causes of crime in natural characteristics of human beings as opposed to “supernatural” theories emphasizing demonic causes. Classical theorists assumed that most people were capable of rational calculation of gains and costs and that criminality was a choice. Laws were to be designed and enforced based on that principle. Contemporary “deterrence theory,” “rational choice theory,” and “social learning theory” in criminology incorporate these same assumptions.

The origins of a more systematic criminology, however, are located in the late-eighteenth-century writings of those who sought to reform criminal justice and penal systems that they perceived as cruel, inhuman, and [arbitrary](http://legal-dictionary.thefreedictionary.com/Arbitrary). These old systems applied the law unequally, were subject to great corruption, and often used torture and the death penalty indiscriminately.

The leading theorist of the classical school of criminology, the Italian CESARE bonesano beccaria (1738–94), argued that the law must apply equally to all, and that punishments for specific crimes should be standardized by legislatures, thus avoiding judicial abuses of power. Both Beccaria and another classical theorist, the Englishman [Jeremy Bentham](http://legal-dictionary.thefreedictionary.com/Jeremy%2BBentham) (1748–1832), argued that people are rational beings who exercise free will in making choices. Beccaria and Bentham understood the dominant motive in making choices to be the seeking of pleasure and the avoidance of pain. Thus, they argued that a punishment should fit the crime in such a way that the pain involved in potential punishment would be greater than any pleasure derived from committing the crime. The writings of these theorists led to greater [codification](http://legal-dictionary.thefreedictionary.com/Codification) and standardization of European and U.S. laws.

Criminologists of the early nineteenth century argued that legal punishments that had been created under the guidance of the classical school did not sufficiently consider the widely varying circumstances of those who found themselves in the gears of the criminal justice system. Accordingly, they proposed that those who could not distinguish right from wrong, particularly children and mentally ill persons, should be exempted from the punishments that were normally meted out to mentally capable adults who had committed the same crimes. Along with the contributions of a later generation of criminologists, known as the positivists, such writers argued that the punishment should fit the criminal, not the crime.

Later in the nineteenth century, the positivist school of criminology brought a scientific approach to criminology, including findings from biology and medicine. The leading figure of this school was the Italian *Cesare Lombroso* (1836–1909). Influenced by Charles R. Darwin's theory of evolution, Lombroso measured the physical features of prison inmates and concluded that criminal behavior correlated with specific bodily characteristics, particularly cranial, skeletal, and neurological malformations. According to Lombroso, biology created a criminal class among the human population. Subsequent generations of criminologists have disagreed harshly with Lombroso's conclusions on this matter. However, Lombroso had a more lasting effect on criminology with other findings that emphasized the multiple causes of crime, including environmental causes that were not biologically determined. He was also a pioneer of the case-study approach to criminology.

Other late-nineteenth-century developments in criminology included the work of statisticians of the cartographic school, who analyzed data on population and crime. These included Lambert Adolphe Quetelet, (1796– 1874) of France and André Michel Guerry, of Belgium. Both of these researchers compiled detailed, statistical information relating to crime and also attempted to identify the circumstances that predisposed people to commit crimes.

The writings of French sociologist *Emile Durkheim* (1858–1917) also exerted a great influence on criminology. Durkheim advanced the hypothesis that criminal behavior is a normal part of all societies. No society, he argued, can ever have complete uniformity of moral consciousness. All societies must permit some deviancy, including criminal deviancy, or they will stagnate. He saw the criminal as an acceptable human being and one of the prices that a society pays for freedom.

Durkheim also theorized about the ways in which modern, industrial societies differ from nonindustrial ones. Industrial societies are not as effective at producing what Durkheim called a collective conscience that effectively controls the behavior of individuals. Individuals in industrial societies are more likely to exhibit what Durkheim called *anomie*—a Greek word meaning "without norms." Consequently, modern societies have had to develop specialized laws and criminal justice systems that were not necessary in early societies to control behavior.

Early efforts to organize criminologists in the United States attracted law enforcement officials and others who were interested in the criminal justice system. In 1941, a group of individuals in California organized for the purpose of improving police training and the standardization of police-training curricula. In 1946, this movement developed into the establishment of the Society for the Advancement of Criminology, which changed its name to the American Society of Criminology in 1957. Initial efforts of this organization focused upon scientific crime detection, investigation, and identification; crime prevention, public safety, and security; law enforcement administration; administration of criminal justice; traffic administration; and probation.

The American Society of Criminology has since attracted thousands of members including academics, practitioners, and students of the criminal justice system. Studies of criminology include both the theoretical and the pragmatic, and some combined elements of both. Although some aspects of criminology as a science are still considered radical, others have developed as standards in the study of crime and criminal justice.

**Chapter Two: Early Explanations of Criminology-Schools of Thought**

It has been generally accepted that a systematic study of criminology was first taken up by the Italian scholar, Ceasare Bonesana Marchese de Becaria (1738-94) who is known as the founder of modern criminology. His greatest contribution to the science of criminology was that he, for the first time, proceeded with the study of criminals on a scientific basis and reached certain conclusions from which definite methods of handling crime and criminals could be worked out. Thus the ‘theories of criminology’ or ‘the schools of criminology’ are of a later origin.

**Meaning of the ‘School of Criminology’**

***Edwin Sutherland*** pointed out that a school of criminology connotes *“the system of thought which consists of an integrated theory of causation of crime and of policies of control implied in the theory of causation”*. Therefore, a school of criminology implies the following three important points:

1. The adherents of each school try to explain the causation of crime and criminal behavior in their own way relying on the theory propounded by the exponent of that particular school.
2. Each school of criminology suggests punishment and preventive measures to suit its ideology.
3. And, each of the school represents the social attitude of people towards crime and criminal in a given time.

In an attempt to find a rational explanation of crime, a large number of theories have been propounded. Various factors such as evil spirit, sin, disease, heredity, economic maladjustment etc. have been put forward either singly or together to explain criminality. With the advance of behavioral sciences, monogenetic explanation of human conduct is no longer valid and the modern trend is to adopt an eclectic view about the genesis of crime. However, some criminologists still tend to lay greater emphasis on physical traits in order to justify exclusive resort to correctional methods for the treatment of offender.

* 1. **Pre-Classical School of Criminology**

The period of seventeenth and eighteenth century in Europe was dominated by the scholasticism of Saint Thomas Aquinas. The dominance of religion in State activities was the chief characteristic of that time. In political sphere, thinkers such as Hobbes and Locke were concentrating on social contract as the basis of social evolution. The concept of Divine right of king, advocating supremacy of monarch was held in great esteem. As scientific knowledge was yet unknown and the concept of crime was rather vague and obscure. There was a general belief that man by nature is simple and his actions are controlled by some super power. It was generally believed that a man commits crime due to the influence of some external spirit called ‘demon’ or ‘devil’. Thus an offender commits a wrongful act not because of his own free will but due to the influence of some external super power. No attempt was, however, made to probe into the real causes of crime. This *demonological theory* of criminality propounded by the exponents of pre-classical school acknowledged the *omnipotence of spirit*, which they regarded as a great power.

The pre-classicals considered crime and criminals as an evidence of the fact that the individual was possessed of devil or demon the only cure for which was testimony of the effectiveness of the spirit. Worships, sacrifices and ordeals by water and fire were usually prescribed to specify the spirit and relieve the victim from its evil influence. An *ordeal* is an ancient manner of trial in criminal cases. When an offender pleaded “not guilty”, he might choose whether he would put himself for trial upon God and the country, by 12 men or upon God only, and then it was called ‘*the judgment of God’*, presuming that God would deliver the innocent. Examples of such ordeals are, throwing into fire, throwing into water after tying a stone to his neck, administration of oath by calling up God’s wrath, trial by battle, etc.

*Trial by battle* was common mode of deciding the fate of criminal. The oaths and ordeals played a very important role in the ancient judicial system in determining the guilt of the offender. The justification advanced for these rituals was the familiar belief that “when the human agency fails, recourse to divine means of proof becomes most inevitable”. Though these practices appear to be most irrational and barbarous to the modern mind, they were universally accepted and were in existence in most Christian countries till thirteenth century. The Roman law completely ignored the system of ordeals and it was forbidden in Quran.

The right of society to punish the offender was, however, well recognized. The offender was regarded as an innately depraved person who could be cured only by torture and pain. The evolution of criminal law was yet at a rudimentary stage. Hobbes suggested that fear of punishment at the hands of monarch was a sufficient deterrent for the members of early society to keep them away from sinful acts which were synonymous to crimes. Thus the theosophists, notably St. Thomas Aquinas and the social contract writers such as Donte Alighieri, Machiavelli, Martin Luther and Jean Bodin provided immediate background for Beccaria’s classical school at a later stage. The pre-classical thinking, however, withered away with the lapse of time and advancement of knowledge.

* 1. **The Classical School**

The **Classical School** in [criminology](http://en.wikipedia.org/wiki/Criminology) is usually a reference to the eighteenth-century work during the [Enlightenment](http://en.wikipedia.org/wiki/Age_of_Enlightenment) by the [utilitarian](http://en.wikipedia.org/wiki/Utilitarianism) and [social contract](http://en.wikipedia.org/wiki/Social_contract) [philosophers](http://en.wikipedia.org/wiki/Social_philosophy) [Jeremy Bentham](http://en.wikipedia.org/wiki/Jeremy_Bentham) and [Cesare Beccaria](http://en.wikipedia.org/wiki/Cesare_Beccaria). Their interests lay in the system of [criminal justice](http://en.wikipedia.org/wiki/Criminal_justice) and [penology](http://en.wikipedia.org/wiki/Penology) and, indirectly through the proposition that "man is a calculating animal", in the causes of criminal behavior. The Classical school of thought was premised on the idea that people have [free will](http://en.wikipedia.org/wiki/Free_will) in making decisions, and that [punishment](http://en.wikipedia.org/wiki/Punishment) can be a deterrent for crime, so long as the punishment is proportional, fits the crime, and is carried out promptly.

 Beccaria, the pioneer of modern criminology expounded his *naturalistic theory of criminality* by rejecting the omnipotence of evil spirit. He laid greater emphasis on mental phenomenon of the individual and attributed crime to ‘free will’ of the individual. Thus he was much influenced by the utilitarian philosophy of his time which placed reliance on hedonism, namely, the “pain and pleasure theory”. As Donald Taft rightly put it, this doctrine implied the notion of causation in terms of free choice to commit crime by rational man seeking pleasure and avoiding pain.

**Main Reforms Advocated by the Classical School**

The system of law, its mechanisms of enforcement and the forms of [punishment](http://en.wikipedia.org/wiki/Punishment) used in the eighteenth century were primitive and inconsistent. [Judges](http://en.wikipedia.org/wiki/Judge) were not professionally trained so many of their decisions were unsatisfactory being the product of incompetence, capriciousness, corruption or political manipulation. The use of [torture](http://en.wikipedia.org/wiki/Torture) to extract confessions and a wide range of cruel punishments such as whipping, mutilation and public executions were commonplace. A need for legal rationality and fairness was identified and found an audience among the emerging middle classes whose economic interests lay in providing better systems for supporting national and international trade.

[**John Locke**](http://en.wikipedia.org/wiki/John_Locke)

[John Locke](http://en.wikipedia.org/wiki/John_Locke)considered the mechanism that had allowed [monarchies](http://en.wikipedia.org/wiki/Monarchy) to become the primary form of [government](http://en.wikipedia.org/wiki/Government). He concluded that monarchs had asserted the right to rule and enforced it either through an exercise in raw power, or through a form of contract, e.g. the [feudal system](http://en.wikipedia.org/wiki/Feudal_system) had depended on the grants of estates in land as a return for services provided to the sovereign. Locke proposed that all [citizens](http://en.wikipedia.org/wiki/Citizen) are equal, and that there is an unwritten but voluntary contract between the [state](http://en.wikipedia.org/wiki/State) and its [citizens](http://en.wikipedia.org/wiki/Citizen), giving power to those in government and defining a framework of mutual rights and duties. In [*Leviathan*](http://en.wikipedia.org/wiki/Leviathan_%28book%29), [Thomas Hobbes](http://en.wikipedia.org/wiki/Thomas_Hobbes) wrote, "the right of all sovereigns is derived from the consent of every one of those who are to be governed." This is a shift from [authoritarianism](http://en.wikipedia.org/wiki/Authoritarianism) to an early model of [European](http://en.wikipedia.org/wiki/Europe) and North American [democracy](http://en.wikipedia.org/wiki/Democracy) where police powers and the system of punishment are means to a more just end.

**Cesare Beccaria (1738-1794)**

In 1764, Beccaria published *Dei Deliti e Delle Pene* ("On Crimes and Punishments") arguing for the need to reform the criminal justice system by referring not to the harm caused to the victim, but to the harm caused to society. In this, he posited that the greatest deterrent was the certainty of detection: the more swift and certain the punishment, the more effective it would be. It would also allow a less serious punishment to be effective if shame and an acknowledgement of wrongdoing was a guaranteed response to society's judgment. Thus, the prevention of crime was achieved through a proportional system that was clear and simple to understand, and if the entire nation united in their own defense. His approach influenced the [codification](http://en.wikipedia.org/wiki/Codification) movement which set [sentencing](http://en.wikipedia.org/wiki/Sentence_%28law%29) [tariffs](http://en.wikipedia.org/wiki/Tariff) to ensure equality of treatment among offenders. Later, it was acknowledged that not all offenders are alike and greater sentencing discretion was allowed to judges. Thus, punishment works at two levels. Because it punishes individuals, it operates as a specific deterrence to those convicted not to reoffend. But the publicity surrounding the trial and the judgment of society represented by the decision of a [jury](http://en.wikipedia.org/wiki/Jury) of peers, offers a general example to the public of the consequences of committing a crime. If they are afraid of similarly swift justice, they will not offend.

 In his book "On Crimes and Punishments" Beccaria presented a coherent, comprehensive design for an enlightened criminal justice system that was to serve the people rather than the monarchy. According to Beccaria, the crime problem could be traced not to bad people but to bad laws. A modern criminal justice system should guarantee all people equal treatment before the law. Beccaria’s book supplied the blue print. That blue print was based on the assumption that people freely choose what they do and are responsible for the consequences of their behavior. Beccaria proposed the following principles:

* **Laws Should Be Used To Maintain Social Contract: “**Laws are the conditions under which men, naturally independent, united themselves in society. Weary of living in a continual state of war, and of enjoying a liberty, which became a little value, from the uncertainty of its duration, they sacrificed one part of it, to enjoy the rest in peace and security.”
* **Only Legislators Should Create Laws: “**The authority of making penal laws can only reside with the legislator, who represents the whole society united by the social compact.”
* **Judges Should Impose Punishment only in Accordance with the Law**: “[No magistrate then, (as he is one of the society), can, with justice inflict on any other member of the same society punishment that is not ordained by the laws.”
* **Judges Should not Interpret the Laws**: “Judges, in criminal cases, have no right to interpret the penal laws, because they are not legislators….Everyman has his own particular point of view and, at different times, sees the same objects in very different lights. The spirit of the laws will then be the result of the good or bad logic of the judge; and this will depend on his good or bad digestion.”
* **Punishment Should be Based on the Pleasure/Pain Principle**: “Pleasure and pain are the only springs of actions in beings endowed with sensibility….If an equal punishment be ordained for two crimes that injure society in different degrees, there is nothing to deter men from committing the greater as often as it is attended with greater advantage.”
* **Punishment Should be Based on the Act, not on the Actor:** “Crimes are only to be measured by the injuries done to the society they err, therefore, who imagine that a crime is greater or less according to the intention of the person by whom it is committed.”
* **The Punishment Should be Determined by the Crime:** “If mathematical calculation could be applied to the obscure and infinite combinations of human actions, there might be a corresponding scale of punishment descending from the greatest to the least.”
* **Punishment Should be Prompt and Effective:** “The more immediate after the commission of a crime a punishment is inflicted the more just and useful it will be….An immediate punishment is more useful; because the smaller the interval of time between the punishment and the crime, the stronger and more lasting will be the association of the two ideas of crime and punishment.”
* **All People Should be Treated Equally:** “I assert that the punishment of a noble man should in no wise differ from that of the lowest member of the society.”
* **Capital Punishment Should be Abolished:** “The punishment of death is not authorized by any right; for….no such right exists….The terrors of death make so slight an impression, that it has not force enough to withstand forgetfulness natural to mankind.”
* **The Use of Torture to Gain Confessions Should be Abolished:** “It is confounding all relations to expect…that pain should be the test of truth, as if truth resided in the muscles and fibers a wretch in torture. By this method the robust will escape, and the feeble be condemned.”
* **It is Better to Prevent Crime than to Punish Them:** “Would you prevent crimes? Let the laws be clear and simple, let the entire force of the nation be united in their defence, let them be intended rather to favour every individual than any particular classes…. Finally, the most certain method of preventing crimes to perfect the system of education.”

Perhaps no other book in the history of criminology has had so great an impact. After the French Revolution, Beccaria’s basic tenets served as a guide for the drafting of the French Penal Code, which was adopted in 1791.

**Jeremy Bentham (1748-1832)**

Legal scholars and reformers throughout Europe proclaimed their indebtedness to Beccaria, but none owed more to him than the English legal philosopher Jeremy Bentham. Bentham had long and productive career. He inspired many of his contemporaries, as well as criminologists of future generations, with his approach to rational crime control.

Bentham devoted his life to developing a scientific approach to the making and breaking of laws. Like Beccaria he was concerned with achieving “the greatest happiness of the greatest number.” His work was governed by utilitarian principles. **Utilitarianism** assumes that all human actions are calculated in accordance with their likelihood of bringing happiness (pleasure) or unhappiness (pain). People weigh the probabilities of present future pleasures against those of present and future pain.

Bentham proposed a precise pseudo-mathematical formula for this process, which he called “felicific calculus.” According to his reasoning individuals are “human calculators” who out all the factors into an equation in order to decide whether or not a particular crime is worth committing. This notion may seem rather whimsical today, but at a time when there were over 200 capital offences, it provided a rationale for reform of the legal system. Bentham reasoned that if prevention was the purpose of punishment, and if punishment became too costly by creating more harm than good, then penalties need to be set just a bit an excess of the pleasure one might derive from committing a crime, and no higher. The law exists in order to create happiness for the community. Since punishment creates unhappiness, it can be justified only if it prevents a greater evil than it produces. Thus, Bentham suggested if a hanging a man’s effigy produced the same preventive effect as hanging the man himself there would be no reason to hang the man.

In this context, the most relevant idea was known as the "felicitation principle", i.e. that whatever is done should aim to give the greatest happiness to the largest possible number of people in society. Bentham argued that there had been "punishment creep", i.e. that the severity of punishments had slowly increased so that the death penalty was then imposed for more than two hundred offences in [England](http://en.wikipedia.org/wiki/England) (Landau, Norma, 2002). For example, if [rape](http://en.wikipedia.org/wiki/Rape) and [homicide](http://en.wikipedia.org/wiki/Homicide) were both punished by death, then a rapist would be more likely to kill the victim (as a witness) to reduce the risk of arrest.

Bentham posited that man is a calculating animal who will weigh potential gains against the pain likely to be imposed. If the pain outweighs the gains, he will be [deterred](http://en.wikipedia.org/wiki/Deterrence_%28psychological%29) and this produces maximal social utility. Therefore, in a rational system, the punishment system must be graduated so that the punishment more closely matches the crime. Punishment is not [retribution](http://en.wikipedia.org/wiki/Retributive_justice) or [revenge](http://en.wikipedia.org/wiki/Revenge) because that is morally deficient: the hangman is paying the murder the compliment of imitation.

But the concept is problematic because it depends on two critical assumptions:

* if deterrence is going to work, the potential offender must always act rationally whereas much crime is a spontaneous reaction to a situation or opportunity; and
* if the system graduates a scale of punishment according to the seriousness of the offence, it is assuming that the more serious the harm likely to be caused, the more the criminal has to gain.

In this context, note Bentham's proposal for a prison design called the "panopticon" which, apart from its surveillance system included the right of the prison manager to use the prisoners as contract labor.

***Spiritualistic understandings of crime*** stem from an understanding of life in general, that finds most things in life are destiny and cannot be controlled, we are born male or female, good or bad and all our actions are decided by a higher being. People have held such beliefs for all of recorded history, “primitive people regarded natural disasters such as famines, floods and plagues as punishments for wrongs they had done to the spiritual powers” (Vold, G. Bernard, T. and Snipes, J. 1998). These spiritual powers gained strength during the middle ages as they bonded with the feudal powers to create the criminal justice systems. Under a spiritualistic criminal justice system, crime was a private affair that was conducted between the offender and the victim’s family. However this method proved to be too revengeful, as the state took control of punishment. Spiritual explanations provided an understanding of crime when there was no other way of explaining crime. However, the problem with this understanding is it cannot be proven true, and so it was never accepted.

The main tenets of classical school of criminology why noted below

1. Man’s emergence from the State’s religious fanaticism involved the application of his reason as a responsible individual.

1. It is the ‘act’ of an individual and ‘not his intent’ which forms the basis for determining criminality within him. In other words, criminologists are concerned with the ‘act’ of the criminal rather than his ‘intent’. Still, they could never think that there could be something like crime causation.
2. The classical writers accepted punishment as a principal method of infliction of pain, humiliation and disgrace to create ‘fear’ in man to control his behavior.
3. The profounders of this school, however, considered prevention of crime more important than the punishment for it. They therefore, stressed on the need for a Criminal Code in France, Germany and Italy to systematize punishment for forbidden acts. Thus the real contribution of classical school of criminology lies in the fact that *it underlined the need for a well defined criminal justice system.*
4. The advocates of classical school supported the right of the State to punish the offenders in the interest of public security. Relying on the hedonistic principle of pain and pleasure, they pointed out that individualization was to be awarded keeping in view the pleasure derived by the criminal from the crime and the pain caused to the victim from it. They, however, pleaded for equalization of justice which meant equal punishment for the same offence.
5. The exponents of classical school further believed that the criminal law primarily rests on positive sanctions. They were against the use of arbitrary powers of Judges. In their opinion the Judges should limit their verdicts strictly within the confines of law. They also abhorred torturous punishments.

Thus classical school propounded by Beccaria came into existence as a result of the influence of writings of Montesquieu, Hume, Bacon and Rousseau. His famous work *‘Essays on Crime and Punishment’* received wide acclamation all over Europe and gave a fillip to a new criminological thinking in the contemporary west. He sought to humanize the criminal law by insisting on natural rights of human beings. He raised his voice against severe punishment, torture and death penalty. Beccaria’s views on crime and punishment were also supported by Voltaire as a result of which a number of European countries redrafted their penal codes mitigating the rigorous barbaric punishments and some of them even went to the extent of abolishing capital punishment from their Penal Codes.

**Major Shortcomings of the Classical School**

The contribution of classical school to the development of rationalized criminological thinking was by no means less important, but it had its own pitfalls.

1. The classical school proceeded on an abstract presumption of free will and relied solely on the act (i.e., the crime) without devoting any attention to the state of mind of the criminal.
2. It erred in prescribing equal punishment for same offence thus making no distinction between first offenders and habitual criminals and varying degrees of gravity of the offence.

However, the greatest achievement of this school of criminology lies in the fact that it suggested a substantial criminal policy which was easy to administer without resort to the imposition of arbitrary punishment. It goes to the credit of Beccaria who denounced the earlier concepts of crime and criminals which were based on religious fallacies and myths and shifted emphasis on the need for concentrating on the personality of an offender in order to determine his guilt and punishment. Beccaria’s views provided a background for the subsequent criminologists to come out with a rationalized theory of crime causation which eventually led the foundation of the modern criminology and penology.

* 1. **. Positivists School/The Italian School**

The Positivist School has attempted to find scientific objectivity for the measurement and quantification of criminal behavior. As the [scientific method](http://en.wikipedia.org/wiki/Scientific_method) became the major paradigm in the search for all knowledge, the [Classical School's](http://en.wikipedia.org/wiki/Classical_school) [social philosophy](http://en.wikipedia.org/wiki/Social_philosophy) was replaced by the quest for scientific laws that would be discovered by experts. It is divided into Biological, Psychological and Social.

* **Biological positivism**

If [Charles Darwin](http://en.wikipedia.org/wiki/Charles_Darwin)'s [Theory of evolution](http://en.wikipedia.org/wiki/Theory_of_evolution) was scientific as applied to animals, the same approach should be applied to "man" as an "animal".

* **Physical Characteristics**

Historically, [medicine](http://en.wikipedia.org/wiki/Medicine) became interested in the problem of crime, producing studies of [*physiognomy*](http://en.wikipedia.org/wiki/Physiognomy)and the science of [*phrenology*](http://en.wikipedia.org/wiki/Phrenology) which linked attributes of the mind to the shape of the [brain](http://en.wikipedia.org/wiki/Brain) as reveal through the [skull](http://en.wikipedia.org/wiki/Skull). These theories were popular because [society](http://en.wikipedia.org/wiki/Society) and any failures of its [government](http://en.wikipedia.org/wiki/Government) were not the causes of crime. The problem lay in the propensities of individual offenders who were biologically distinguishable from law-abiding [citizens](http://en.wikipedia.org/wiki/Citizen). This theme was amplified by the [*Italian School*](http://en.wikipedia.org/wiki/Italian_school_of_criminology)and through the writings of [Cesare Lombroso](http://en.wikipedia.org/wiki/Cesare_Lombroso) (see *L'Uomo Delinquente*, *The Criminal Man* and [Anthropological criminology](http://en.wikipedia.org/wiki/Anthropological_criminology)) which identified physical characteristics associated with [degeneracy](http://en.wikipedia.org/wiki/Degeneracy) demonstrating that criminals were [atavistic](http://en.wikipedia.org/wiki/Atavism) throwbacks to an earlier evolutionary form. Charles Goring (1913) failed to corroborate the characteristics but did find criminals shorter, lighter and less intelligent, i.e. he found criminality to be "normal" rather than "pathological" (of the work of [Hooton](http://en.wikipedia.org/wiki/Earnest_Hooton) found evidence of biological inferiority). [*William Sheldon*](http://en.wikipedia.org/wiki/William_Sheldon) identified three basic body or [somatotypes](http://en.wikipedia.org/wiki/Somatotype) (i.e. [endomorphs](http://en.wikipedia.org/wiki/Endomorph), [mesomorphs](http://en.wikipedia.org/wiki/Mesomorph), and [ectomorphs](http://en.wikipedia.org/wiki/Ectomorph)), and introduced a scale to measure where each individual was placed. He concluded that delinquents tended to mesomorphy. Modern research might link physical size and athleticism and aggression because physically stronger people have the capacity to use violence with less chance of being hurt in any retaliation. Otherwise, such early research is no longer considered valid. The development of [genetics](http://en.wikipedia.org/wiki/Genetics) has produced another potential inherent cause of criminality, with [chromosome](http://en.wikipedia.org/wiki/Chromosome) and other genetic factors variously identified as significant to select heredity rather than environment as the cause of crime (*see:* [*nature versus nurture*](http://en.wikipedia.org/wiki/Nature_versus_nurture)). However, the evidence from family, twin, and adoption studies shows no conclusive [empirical](http://en.wikipedia.org/wiki/Empiricism) evidence to prefer either cause.

With the advance of behavioral sciences, the monogenetic explanation of human conduct lost its validity and a new trend to adopt an eclectic view about the genesis of crime gradually developed. By the nineteenth century, certain French doctors were successful in establishing that it was neither ‘free will’ of the offender nor his innate depravity which actuated him to commit crime but the real cause of criminality lay in anthropological features of the criminal. Some phrenologists also tried to demonstrate the organic functioning of brain and enthusiastically established a co-relationship between criminality and the structure and functioning of brain. This led to the emergence of the positive school of criminology.

The main exponents of this school were three eminent Italian criminologists namely: *Cesare Lombroso, Raffaele Garofalo* and *Enrico Ferri*. It is for this reason that this school is also called the Italian School of Criminology.

* **Cesare Lombroso (1836-1909)**

The first attempt to understand the personality of offenders in physical terms was made by Lombroso of the Italian School of criminological thought, who is regarded as the originator of modern criminology. He was a doctor and a specialist in psychiatry. He worked in military for sometime handling the mentally afflicted soldiers but later he was associated with the University of Turin. His first published work was L’Umo Delequente which meant “the Criminal Man” (1876). He was the first to employ scientific methods in explaining criminal behavior and shifted the emphasis from crime to criminal.

Lombroso adopted an objective and empirical approach to the study of criminals through his anthropological experiments. After an intensive study of physical characteristics of his patients and later on of criminals, he came to a definite conclusion that *criminals were physically inferior in the standard of growth* and therefore, developed a tendency for inferior acts. He further generalized that criminals are *less sensitive to pain* and therefore they have little regard for the sufferings of others. Thus through his biological and anthropological researches on criminals Lombroso justified the involvement of Darwin’s *theory of biological determinism* in criminal behavior. He classified criminals into three main categories:

1. **The Atavists or Hereditary Criminals** Lombroso also termed them as born-criminals. In his opinion born-criminals were of a distinct type who could not refrain from indulging in criminality and environment had no relevance whatsoever to the crimes committed by the Atavists. He, therefore, considered these criminals as incorrigibles, i.e., beyond reformation. In his view, the criminal reflected a reversion to an early and more primitive being that was both mentally and physically inferior. He resembled those of apes and had ape-like characteristics. Lombroso’s theory used physical characteristics as indicators of criminality. He enumerated as many as sixteen physical abnormalities of a criminal some of which were peculiar size and shape of head, eye, enlarged jaw and cheek bones, fleshy lips, abnormal teeth, long or flat chin, retreating forehead, dark skin, twisted nose and so on. Though he moderated his theory of physical anomaly in later years but his emphasis throughout his work was on human physical traits which also included biology, psychology and environment. He revised his theory of atavism in 1906 and held that only one-third of criminals were born criminals and not all the criminals. Finally, he conceded that his theory of atavism was ill-founded and held that they were in fact *occasional criminals*.

*Enrico Ferri* subsequently challenged Lombroso’s theory of atavism and demonstrated that it was erroneous to think that criminals were incorrigibles. He believed that just as non-criminals could commit crimes if placed in conducive circumstances so also the criminals could refrain from criminality in healthy surroundings.

* 1. **Insane Criminals:** The second category of criminals according to Lombroso consisted of insane criminals who resorted to criminality on account of certain mental depravity or disorder.
	2. **Criminoids:** The third category of criminals, according to him, was those of criminoids who were physical criminal type and had a tendency to commit crime in order to overcome their inferiority in order to meet the needs of survival.

Lombroso was the first criminologist who made an attempt to understand the personality of offenders in physical terms. He employed scientific methods in explaining criminal behavior and shifted the emphasis from crime to criminal. His theory was that criminals were physically different from normal persons and possessed few physical characteristics of inferior animal world. The contribution of Lombroso to the development of the science of criminology may briefly be summed up in the following points:

1. Lombroso laid consistent emphasis over the individual personality of the criminal in the incidence of crime. This view gained favour in subsequent years and modern criminological measures are devised to attain the aim of individualization in the treatment of criminals. It has been rightly commented that the sociologists’ emphasis on the external factors, psychologists on the internal factors, while Lombroso held that both had a common denominator\_\_ the “individual”.
2. While analyzing causes of crime, Lombroso laid greater emphasis on the biological nature of human behavior and thus indirectly drew attention of criminologists to the impact of environment on crime causation.
3. At a later stage Lombroso himself was convinced about the futility of his theory of atavism and therefore extended his theory of determinism to social as well as economic situations of criminals. Thus he was positive in method and objective in approach which subsequently paved way to formulation of multiple-causation theory of crime by the propounders of sociological school of criminology.
* **Criticism on Lombroso’s Theory**

Gabriel de Tarde, the eminent French criminologist and social psychologist, criticized Lombroso’s theory of criminal behavior, and offered a social explanation of crime. He asserted that criminal behavior is the result of a learning process, therefore, any speculation regarding direct relationship between physical appearance and criminal propensities of criminals would mean overlooking the real cause of criminality. He also denounced the proposition of phrenologists who tried to establish a correlation between the skull, the brain and the social behavior of a person.

By the time of Lombroso’s demise, in 1909, it became abundantly clear that his theories were over-implication of facts and rather naïve, hence the notion that criminal is physically atavistic-type lost all credence. The assumption that there is some nexus between atavism and criminal behavior had no scientific basis. The modern positivism in criminology has developed its own systematic views in which there is little scope for Lombroso’s atavism. Some modern writers even speak of it as “Lombrosian myth” in criminology.

Criticizing Lombroisian views, Prof. Sutherland observed that by shifting attention from crime as a social phenomenon to crime as an individual phenomenon, Lombroso delayed for fifty years the work which was in progress at the time of its origin and in addition, made no lasting contribution of his own.

Be that as it may, it hardly needs to be reiterated that contribution of Lombroso to the development of criminology is by no means less significant. Commenting on this point Donald Taft observed, “the importance of Lombroso’s work lies in the great influence it had upon criminology and also upon penal practice”. The importance of Lombroso’s work lies in its scientific methodology and his rejection of free-will theory.

* **Enrico Ferri (1856-1928)**

Another chief exponent of the positive school of criminology was Enrico Ferri. He challenged Lombrosian view of criminality. Through his scholarly researches, Ferri proved that mere biological reasons were not enough to account for criminality. He firmly believed that other factors such as emotional reaction, social infirmity or geographical conditions also play a vital role in determining criminal tendencies in men. It is for this reason that he is sometimes called the founder of ‘criminal sociology’.

The major contribution of Ferri to the field of criminology is his “Law of Criminal Saturation”. This theory presupposes that the crime is the synthetic product of three main factors:

1. Physical or geographical;
2. Anthropological; and
3. Psychological or social.

Thus Ferri emphasized that criminal behavior is an outcome of a variety of factors having their combined effect on the individual. According to him social change, which is inevitable in a dynamic society, results in disharmony, conflict and cultural variations. As a result of this, social disorganization takes place and a traditional pattern of social control mechanism totally breaks down. In the wake of such rapid social changes, the incidence of crime is bound to increase tremendously. The heterogeneity of social conditions destroys the congenial social relationship, creating *a social vacuum* which proves to be a fertile ground for criminality.

Many critics, however, opposed Ferri’s law of criminal saturation stating that it is nothing more than a statement that the law of cause and effect equally applies to criminal behavior as well.

Ferri emphasized that a criminal should be treated as a product of the conditions which played his life. Therefore, the basic purpose of crime prevention program should be to remove conditions making for crime.

Ferri worked out a five-fold classification of criminals, namely:

1. Born criminals;
2. Occasional criminals
3. Passionate criminals
4. Insane criminal and
5. Habitual criminals.

He suggested an intensive program of crime prevention and recommended a series of measures for treatment of offenders. He asserted that punishment could be one of the possible methods of reforming the criminal. He favored indeterminate sentence keeping in view the possible chances of inmate’s re-adjustment in the community.

In his ‘Penal Project” Ferri denied moral responsibility and denounced punishment for retribution and moral culpability.

**Raffaele Garofalo (1852-1934)**

Raffaele Garofalo was one of the three main exponents of positive school of criminology. Born in Naples in 1852, Garafalo started his career as a Magistrate in Italian courts and rose to the position of Minister of Justice in 1903. He stressed the need for a closer study of the circumstances and living condition of criminals. He firmly believed that a criminal is a creature of his own environment. He was the only positivist who had varied experience as an eminent jurist, a senator and a professor of criminal law. He, therefore, approached the problem of crime and criminals in an altogether different manner than those of his contemporaries. Rejecting the classical theory of free-will as a cause of crime, Garofalo defined crime as an act which offends the sentiments of pity and probity possessed by an average person and which are injurious to the society. He emphasized that lack of pity generates crimes against person while lack of probity leads to crimes against property. As to the classification of criminals, he rejected Ferri’s classification and placed offenders into four main categories, namely:

1. Murders whom he called “endemic” criminals;
2. Violent criminals who are affected by environmental influences such as prejudices of honor, politics and religion

 3. Criminals lacking in sentiment of probity; and

 4. Lascivious or lustful criminals who commit crimes against sex and chastity.

As a member of the Italian ‘judiciary’ Garofalo was well acquainted with the then existing criminal law and procedure in the administration of criminal justice and recommended death, imprisonment for life or transportation and reparation as three modes of punishment for criminals. Out of his experience as a Judge and having witnessed total failure of correctional measures in France, Garofalo was not very optimistic about reformation of offenders. He therefore, strongly pleaded for elimination of habitual offenders who were incapable of social adaptation as a measure of social defense.

**Major Contributions of Positive School of Criminology**

It would be seen that the positive school of criminology emerged essentially out of the reaction against earlier classical and neo-classical theories. The merits of this school were:

1. The advocates of this school completely discarded the theories of omnipotence of spirit and free will on the ground that they were hypothetical and irrational. Alternatively, they attributed criminality to anthropological, physical and social environment.
2. The greatest contribution of positive school to the development of criminal science lies in the fact that the attention of criminologists was drawn for the first time towards the individual, that is, the personality of criminal rather than his act (crime) or punishment. This certainly paved way for the modern penologists to formulate a criminal policy embodying the principle of individualization as a method and reformation. Thus positivists introduced the methodology and logic of natural science in the field of criminology.
3. With the predominance of positive school, the emphasis was shifted from penology to criminology and the objects of punishment were radically changed in as much as retributory methods were abandoned. Criminals were now to be treated rather than punished. Protection of society from criminals was to be the primary object which could be achieved by utilizing reformatory methods for different classes of criminals in varying degrees. It is in this context that positive school is said to have given birth to modern sociological or clinical school which regards criminal as a by-product of his conditions and experience of life.
4. The positivists suggested elimination of only those criminals who did not respond favorably to extra-institutional methods. The exponents of this school accepted that there could be extenuating circumstances under which an individual might be forced to commit crime. Therefore, besides looking to the crime strictly from the legal standpoint, the judicial authorities should not lose sight of the circumstantial conditions of the accused while determining his guilt and awarding punishment.

**Main Distinctions between Classical School and Positive School**

The positive school differed from the classical school of criminology in the following manner:

1. **Defining Crime**: Classical school defined crime in legal terms. Whereas, the positive school rejected legal definition of crime and preferred sociological definition.
2. **Explanation of Crime:** Classical school placed reliance on free-will theory as an explanation of crime. Positive school explained crime in terms of biological determination.
3. **Nature of Punishment**: Classical school believed in deterrent and definite punishment for each offence and equal punishment for all criminals committing the same offence. Positive school advocated treatment methods for criminals instead of punishment and held that criminal be punished not according to gravity of his crime but according to the circumstances associated with it.
4. **The Focus of the School:** Classical school focused greater attention on crime, namely, the act rather than the criminal. Whereas, the positivists laid greater emphasis on personality of the offender rather than his criminal act.
5. **The Founders of the School:** The main exponents of classical school were Beccaria and Bentham. The main exponents of positive school were Lombroso, Ferri and Garofalo.
6. **Contribution to the Field:** The classical school was an 18th century dogma which attempted to reform the criminal justice system in order to protect criminals against arbitrary discretion of judges. The positive school was a 19th century doctrine which emphasized on scientific method of study and shifted emphasis from crime to criminal and from retribution to corrective methods of treatment.

Chapter Three: Theories of Causation of Crime

**Introduction**

Psychologists argue that in order to do something about the crime problem, we must first understand its “causes”. Their aims are in conformity with that of ‘Criminologists’. The questions are – Why does crime happen? What motivates people to commit illegal acts?

Several theories are advocated to answer these questions For example in case of theft, the biological explanations say that the thief has bad genes and the psychological explanations may maintain that he has a personality defect. Likewise the sociological explanations may argue that he’s got in with a bad crowd. These kind of explanations led to different kinds of theories:

1. Biological theories of crime,
2. Psychological theories of crime,
3. Sociological theories of crime,
4. Social-Psychological theories of crime.

*However, no single theory can possibly be applicable to all illegal acts and actors and therefore, an evaluation of the limitations of each theory is appropriate.*

**1. Biological Theories of Crime**

The use of biological determinants in explaining crime clearly contrasts with the sociological approach. The biological emphasis may seek to discover common physical characteristics among criminals.

 With the development of scientific researches during 19th century certain French doctors were successful in establishing that the real cause of criminality lay in anthropological feature of the criminal. Certain phrenologists also tried to demonstrate the organic functions of brain and enthusiastically established a co relationship between ‘criminality’ and ‘structure and functions of brain’. This led to the emergence of Positive School of criminology. The main exponents of the school were three eminent Italian criminologists, namely, *Ceasare Lombroso (1836-1909), Rafalo Garofalo (1852-1934), Enricho Ferri(1856-1928).* It is for this reason that this school is also called the Italian School of criminology.

 Of the several different biological explanations of criminal behaviors, the following are important.

1. Genetics and Criminality, ( Ceasare Lombroso)
2. Constitutional (Body Type) Determinants, (William Sheldon)
3. Constitutional Interactionist View. (Wilson and Herrnstein)
	1. **Genetics and Criminality: Ceasare Lombroso**

Ceasare Lombroso is often referred to as pioneer of the positive school or Italian school of criminology. He was considered the father of ‘Modern Criminology’ for he emphasized biological causes and correlates of crime and set in motion a view point that remains in more sophisticated versions, prevalent today. He was an Italian psychiatrist who was a physician in the Army. Basing on his observations, he published a book titled “The Criminal Man” first published in 1876 and the recent edition in 1911. He adopted an objective and empirical study of criminals through his anthropological experiments. After an intensive study of physical characteristics of his patients and later on of criminals, he came to a definite conclusion that criminals were physically inferior in the standard of growth and therefore developed a tendency for inferior acts. He further generalized that criminals are less sensitive to pain and therefore they have little regard for the sufferings of others. Lombroso’s early conception included his belief in the similarity of the criminals could be savages, the insane and epileptic persons, and he believed that criminals could be distinguished from other people on the basis of anatomical oddities, such as small craniums, big ears and abnormal secondary sex characteristics. Lombroso also believed women lacked the initiative to break laws, and therefore crime by a woman was a deviation from her basic nature.

* + 1. **Genetic Inheritance**

At a later stage Lombroso himself was convinced of the futility of his theory. The search for obvious physical differences between criminals and non-criminals did not work. In his later edition of his book (The Criminal Man) he gave more credit to environmental influences such as the climate and local laws. He extended his theory of determinism to social as well as economic situations of criminals. His focus shifted to an approach proposing that certain inherited qualities predisposed certain people to act in criminal ways. How such genetic differences would be explained?

* + 1. **Pedigree Analysis**

An analysis of ancestrydone on certain families led many readers to conclude that a propensity for crime was inherited. But such analysis failed to separate the effects of genetics and environment. Remarkable contemporary examples of crime that runs in families do little to resolve the question.

* **All in the Family**

 Effie Ramsey has ten sons. Nine are in prison. The tenth one is in a hale way house for law violators. Most of their crimes were of moderate severity, like robbery and burglary and two of them were charged with first degree murder. They average four criminal convictions each. Authorities don’t know exactly where the family went wrong. The family was poor but always had food. The ten brothers were raised by both parents living together. In fact, one or the other of the parents participated at almost all their sons hearings in juvenile courts; they made sure that the boys attended juvenile courts counseling sessions. Their mother was cooperative with the police and often helped locate her sons when they were wanted by law officers.

 But the authorities said that the parents did not supervise their children and the sons *lacked role models*. Once the older brother turned to crime the others followed. Despite the statistical improbability that ten out of ten siblings would be law breakers, the simplistic explanation--- that they had each inherited criminal tendencies from their parents---is less likely than an explanation using social learning theory.

* + 1. **Genetic Anomalies**

Another explanation given to support the theory of hereditary criminality is genetic anomaly such as an extra chromosome that might lead to mental retardation or pathological behavior.

Some time before, research seemed to implicate one particular genetic abnormality as a possible cause of some cases of anti-social or criminal behavior. Samplings of the genetic characteristics of men in prisons in the United States, Australia, and Great Britain showed that small percentage of these men, but a significantly greater percentage in the general population had an extra ’Y’ chromosome (Court-Brown 1968). The normal person has 46 chromosomes per cell—22pairs of “regular” chromosomes, or autonomies, and two sex chromosomes. In the female both sex chromosomes are ‘X’ chromosomes; in the male they are ‘X’ and ‘Y’. When the sperm fertilizes the ovum, the zygote receives a ‘X’ from the mother and either a ‘X’ or a ‘Y’ from the father. As the zygote begins its cell division, a chromosomal abnormality may occur; instead of producing two rows of 23each, the cell division may leave an extra ‘X’ or ‘Y’ chromosome in one row.

The aberrant XYY pattern, which was first identified in Great Britain in 1961, seems to produce men who are average in height, below average in IQ, and possibly aggressive and ant-social in behavior. Since the ‘Y’ chromosome determines ‘maleness’, the idea developed that the extra ‘Y’ chromosome constituted “super male”, ---a person more aggressive and therefore potentially criminal. If this is true then the incidence of XYY abnormalities should be somewhat higher in prison populations, and this did appear to be the case. The rate has also been found to be slightly higher among institutionalized mentally retarded males. However, as research continued, these findings were largely refuted.

Even if a relationship between XYY chromosome makeup and conviction for crime be clearly demonstrated, both theoretical and practical questions would remain. For example;

* How does heredity interact with the environment to produce anti-social behavior?
* Should a criminal be punished as severely if he has a chromosomal abnormality?

In several murder trials the defendant was acquitted or given a lesser sentence because of an XYY chromosome abnormality.

**1.2. Constitutional (Body Type) Determinants: William Sheldon**

A different approach to crime causation, but one still linked to biological determinants is through ***a typology of body physiques.***  A typology is descriptive system in which all people are classified into limited set of categories. The person’s type supposedly describes a central or overriding characteristic of all aspects of individual’s life.

 William H. Sheldon, a professor in Colombia University tried to establish a relationship between body structure and behavior. He identified three basic dimensions of body build. He developed his ideas from the fact that life begins in the embryo which is made up of three different tissue layers, namely, an inner layer or ***endoderm,*** a middle layer or ***mesoderm***, and an outer layer or ***ectoderm.*** He co-related facts from embryology and the physiology of genetic development. He pointed out that the physiologically, the endoderm gives rise to the development of viscera, the mesoderm to bone, muscle and tendons of the motor organ system, the ectoderm to connecting tissues of nervous system, skin and related appendages. He observed that a person’s physical structure may be dominated by the basic characteristic s of any of these layers in varying degrees. The variations in body build may lead to the following three types of physical structures:

* ***Endomorphic Structure:*** The person high in endomorph is soft, round and overweight. They are persons with fatty or bulky body having short tapering limbs, small bones, soft and smooth skin and usually of a mild temperament and comfortable persons***.***
* **Mesomorphic *Structure:*** Here the physique is hard and muscled, as the athletic. The Mesomorphic body is strong and tough. These persons are strongly built with prominent muscles and bones and connective tissue. Thus, they have hairy chest and large wrists and hands. These persons are ***temperamentally serious, active, dynamic often assertive and behave aggressively.***
* ***Ectomorphic Structure:*** The third variable is characterized by a flat chest, a long thin body and a little in the way of muscular development. These persons are constitutionally lean and fragile with delicate body, small face, sharp nose and fine hair. They are sensitive by temperament and avoid crowds.
1. **3. Constitutional Interactionist View: Wilson & Herrnstein**

Two social scientists at Harvard University, James Wilson and Richard J. Herrnstein, deny the existence of one gene that causes criminal behavior, but they do conclude that some people have a predisposition toward crime “if they don’t go in their directions”. Their book “***Crime and Human Nature***” (1985) proposes three factors that contribute to crime:

* ***Social Environment:*** Broad societal values are often neglected as explanations, but these scholars believe that the shift in the culture of the society valuing restraint and discipline to more recent “me first” orientation has exerted great influence at the level of the individual and contributed to the skyrocketing crime rate.
* ***Family Relationships:*** This is the second factor. Parents who are uncaring, inconsistent in the treatment of their children, or unskilled in dispensing rewards and punishment contribute to the eventual criminal behavior of their children. That a child comes from a broken home or has only a single parent is, they find, not particularly influential; rather, it is the parent’s failing to teach children the consequences of their actions.
* ***Biological Makeup:*** It is the determinant and the most controversial. Among the specific qualities that they see as at least partly hereditary and as influential are gender intelligence, impulsiveness and body type.
* ***Gender,*** as a correlate of criminal behavior, is so obvious that its significance is often disregarded. It is a well known fact that more men than women are repeated law offenders. Throughout all countries where records are kept, men are arrested anywhere from five times to fifty times as often as women. Whether this gender difference in criminal arrests results from hereditary or socialization is impossible to say, because these two factors inextricably mixed.
* ***Intelligence:*** Wilson and Herrnstein’s detailed review of extreme research leads to the conclusion that criminals have an average IQ of 92, about 8 points below the mean for the entire population, and they believe this low IQ means that criminals cannot think past “short-time horizons” or may be cannot understand society’s rules or the consequences of their actions.
* ***Impulsiveness:*** These researchers note that criminals may also be characterized as impulsive; they have a “short fuse”, their criminal acts often show little planning, and they are less able to delay gratification than most people. Such deviant behavior appears early; often it is evident before age eight.
* ***Body Type:*** The last of the biologically determined factors that make men more likely to be offenders is an athletic, mesomorphic body physique. Most of the research on which Wilson and Herrnstein base this conclusion comes from studies done back in the 1940s and 1950s by William Sheldon and others

**2. Psychological Theories of Crime**

A psychological explanation of crime can refer to a variety of approaches and concepts. But as Nietzel (1979) notes, these theories all share the basic belief that “crime is the result of some personality attribute uniquely possessed, or possessed to a special degree, by the potential criminal”. In some variants of this approach, the cause is an extreme one, such as a mental illness or a personality disorder. Some of the psychological approaches even rely on hereditary determinants.

 Psychologists have considered a variety of possibilities to account for individual differences such as defective conscience, emotional immaturity, inadequate childhood socialization, maternal deprivation, poor moral development etc.

 They study how aggression is learned, which situations promote violent or delinquent reactions, how crime is related to personality factors and the association between various mental disorders and criminality. Of the several psychological explanations the following are important ones:

1. Personality Defects,
2. Psychoanalytic Explanations.
	1. **Personality Defects**

Many lay persons explain the cause of crime as some form of personality defect in the offender. Taken to its extreme degree, this explanation forms the basis for theories that attributes a basic anti-social nature of the criminal. This conception of psychopathy has a long history. Generally, it refers to persons who have frequent and repetitive criminal activity. More recently, the focus has been on the underlying unsocialized character, the lack of conscience that brings such persons into repeated conflict with society. They are unable to learn from experience or feel guilt. They lack loyalty to individuals, groups, or society’s values. As Nietzel observes, they are grossly selfish, callous, and irresponsible. Hey tend to blame others or to offer plausible rationalizations for their behavior. All this combines to give them an arrogance that can lead to their down fall and capture.

According to Goleman, about 80% of psychopaths are men. The person characterized by a personality disorder, or psychopathic personality, is relatively easy to identify but very difficult to rehabilitate. Fortunately, psychopaths account for a very small percentage of law violators. However, they commit a disproportionately large percentage of violent crimes, and their acts are such that they attract massive publicity.

For years, researchers have sought some physical or physiological characteristics that distinguish psychopathic personalities from others. A study concluded in 1987, has shown that psychopaths seem to have an unusual and characteristic pattern of brain organization, in that the neurological centre that controls language demonstrates signs of irregular development.

* 1. **Psychoanalytic Explanations**

***Sigmund Freud*** (1856-1939), the founder of psychoanalysis, suggested that criminality may result from either an over active conscience or too weak conscience. In treating his patients, Freud noticed that those who were suffering from unbearable guilt committed crimes in order to be apprehended and punished. Once they had been punished, their feelings of guilt were relieved (a way of punishing themselves).

**Sigmund Freud’s Psychoanalysis: The ‘*id’*, ‘*ego*’, and ‘*superego*’-The WarringComponents of the Personality*:***

 In 1920, when he was nearly 65 years old, Freud proposed a new conception of the personality, one that contained three systems- the ***id, the ego, and the superego.*** These systems do not exist physically; they are only concepts, or ways of looking at personality.

 The ***id*** is the only part of the personality that is present at birth. It is inherited, primitive, inaccessible, and completely unconscious. The ‘id’contains two kinds of ***instincts***:

* ***The life instincts,*** which are sexual instincts and biological urges such as hunger and thirst, and
* ***The death instinct,*** which accounts for our aggressive and destructive impulses. The ‘id’ operates according to ***pleasure principle***; that is, to seek pleasure, avoid pain, and gain immediate gratification of its wishes. The ‘id’ is the source of the ***libido***, the psychic energy that fuels the entire personality; yet the ‘id’ cannot act on its own. It can wish, image fantasize, demand.

 The ***ego*** is the logical, rational, realistic part of the personality. The ‘ego’evolves from the ‘id’ and draws its energy from the ‘id’. One of the ‘ego’s functions is to satisfy the ‘id’s urges. But the ‘ego’, which is mostly conscious, acts according to the ***reality principle***. It must consider the constraints of the real world in determining the appropriate times, places and objects for gratification of the ‘id’s wishes. The art of the possible is its guide, and sometimes compromises must be made, for example, a chicken sandwich instead of fish curry.

 When the child is age 5 or 6, the ***superego***—the moral component of the personality—is formed. The ‘superego’ has two parts:

* The ***conscience*** consists of all the behaviors for which we have been punished and about which we feel guilty;
* The ***ego ideal*** contains the behaviors for which we have been praised and rewarded and about which we feel pride and satisfaction. At first the ‘superego’ reflects only the parent’s expectations of what is good and right, but it expands over time to incorporate teachings from the broader social world. In its quest for moral perfection, the ‘superego’ sets moral guidelines that define and limit the flexibility of the ‘ego’.

The psychoanalytic theory of criminality attributes delinquent and criminal behavior to a conscience so overbearing that it arouses feelings of guilt or so weak that it cannot control the individual’s impulses and to a need for immediate gratification. For example, in ***Richard’s case,*** Richard was six when he committed his first delinquent act: he stole a comic book from the corner drug store. Three months before the incident his father, an alcoholic, had been killed in an automobile accident. After that, his mother became unable to care for the family, and had abandoned the children. For the next ten years the state welfare agency moved Richard in and out of foster homes. During this time, he actively pursued a life of crime, breaking into houses during day light, and stealing cars in the night. By age 20 while serving a ten year prison sentence for armed robbery, he had voluntarily entered psychoanalysis. After two years Richard’s analyst suggested three reasons for his criminality:

* Being caught and punished for stealing made him feel less guilty about hating his father and mother for abandoning him.
* Stealing did not violate his moral and ethical principles.
* Stealing resulted in immediate gratification and pleasure, both which Richard had great difficulty resisting.

Richard’s psychoanalyst suggested that Richard’s anger over his father’s death and his mother’s abandonment created unconscious feelings of guilt which he sought to relieve by committing a crime and being punished for it.

 The psychoanalyst also offered an alternative explanation for Richard’s persistent criminal activities: “his conscience was perhaps not too strong but too week”.

 The ‘***Conscience,*** or ‘***Super ego***” was so weak or defective that the ‘***ego***’(which acts as a moderator between ‘super ego’ and ‘id’) was unable to control the impulses of the ***id*** ( the part of the personality that contains powerful urges and drives for gratification and satisfaction) because the ***super ego***is essentially ***an internalized personal image***, developed when the child assumes the parent’s attitudes and moral values, it follows that the absence of such an image may lead to an ***unrestrained id*** and thus to delinquency.

 Psychoanalytic theory suggests yet another explanation of Richard’s behavior—an insatiable need for immediate reward and gratification. A defect in the character formation of delinquents drives them to satisfy their desire at once, regardless of the consequences. This urge, which psychoanalysts attribute to the ‘id’, is so strong that relationships with people are important only so long as they help to satisfy it. Most analysts view delinquents as children unable to give up their desire for instant pleasure.

 Sigmund Freud’s influential theory about the development of personality provides a different explanation for criminal acts. Freud hypothesized that the three sets of forces:

* The selfish, irrational ones,
* The rational forces, and
* The moralistic ones…

are always struggling for control of behavior. He believed that the criminal suffers from a compulsive need for punishment to alleviate the guilt feelings. Other psychoanalysts, especially ***Franz Alexander*** emphasize the inability to post pone immediate gratification in the criminal, who has never come to internalize the reality principle.

 One of the reasons that psychoanalytic theory has had such an influence is its comprehensiveness as a description of the nature and processes of human personality. In spite of criticism, three basic principles still appeal to the psychologists who study criminality are:

* The actions and behavior of an adult are understood in terms of childhood development.
* Behavior and unconscious motives are intertwined, and their interaction must be unraveled if we are to understand criminality.
* Criminality is essentially a representation of psychological conflict.
* **Limitations to Psychoanalytical Theory:**
	1. Though it is a thorough explanation it is very difficult to test or validate the theory through empirical work.
	2. The actual patterns of criminal conduct usually differ generally from Freud’s explanation. Law breakers go to extremes top avoid detection. This fact makes his hypothesis of that criminal suffers from a compulsive need to be punished and be cleansed from their guilt feelings.

# Sociological Theories of Crime

**Differential Association** A**pproach (learning theory): Edwin Sutherland**

Edwin H. Sutherland (1883–1950), a U.S. sociologist and criminologist who first presented his ideas in the 1920s and 1930s, advanced the theory of differential association to explain criminal behavior. He emphasized that criminal behavior is learned in interaction with others, usually in small groups, and that criminals learn to favor criminal behavior over noncriminal behavior through association with both forms of behavior in different degrees. As Sutherland wrote, "When persons become criminal, they do so because of contacts with criminal patterns and also because of isolation from anti-criminal patterns." Although his theory has been greatly influential, Sutherland himself admitted that it did not satisfactorily explain all criminal behavior. Later theorists have modified his approach in an attempt to correct its shortcomings.

 According to Sutherland’s theory, criminal behavior requires socialization in to a system of values conducive to violating the law; thus the potential criminal learns “definitions” (the actions that define) that is favorable to deviant behavior. If these definitions of the criminal acts as acceptable are stronger than the definitions unfavorable to deviant behavior, then the person is likely to commit a criminal act. Sutherland was suggesting that the difference between those who break the law and those who don’t “lies not in their personal fiber but in the content of what they have learned”. For example, all of us value money, but some of us acquire it legally, others illegally. What is relevant is the values we place on specific behaviors by which to obtain money. But these definitions need group support; crime will not persist in the absence of “sub culture of violence.”

 But it is not necessary to associate with criminals directly. Children might learn pro-criminal definitions from middle-class parents, by watching their father’s pocket too much change or hearing their mother boast about exceeding speed limit.

* **Postulates of the Differential Association Theory:**
	+ 1. Criminal behavior is learned.
		2. Criminal behavior is learned in interaction with other persons in a process of communication.
		3. The influential aspect of the learning of criminal behavior occurs within intimate social groups.
		4. When social behavior is learned, the learning includes:
			- 1. Techniques of committing the crime, which are sometimes very complicated, sometimes very simple, and
				2. The specific direction of motives, drives, rationalizations, and attitudes.
		5. The specific direction of motives and drives is learned from definitions of the legal code as favorable or unfavorable.
		6. A person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of law.
		7. Differential associations may vary in frequency, duration, intensity, and priority.
		8. The process of learning criminal behavior by association with criminal and anti-criminal patterns involves all the mechanisms that are involved in any other learning.
		9. Although criminal behavior is an expression of general needs and values, it is not explained by those general needs and values, since non-criminal behavior is an expression of the same needs and values.
* **Merits of the Theory:**
* This theory has survived because of its broad scope and its ability to organize masses of research findings.
* The theory is admirable with respect to its attempt to explain crime in places where it would not, on first blush, be expected—for example, among law breakers who grew up in affluent environments and who were granted their material wants. Because they commit crime by learning from the peer group etc.
* **Criticism of the theory:**

Many researchers have attempted to validate Sutherland’s differential association theory. Others have criticized it. Much of the criticism stems from errors in interpretation:

* Some critics ask why it is that not everyone in heavy and prolonged contact with criminal behavior patterns becomes a criminal. For example, Correctional Officers in Prisons, Police Officers etc. They come in to contact with more criminal associations than non-criminal ones. How do they escape from learning to be law-violators themselves?

 The answer is, of course, that Sutherland does not tell us that individuals become criminal by associating with criminals or even by association with behavior patterns. He tells us, rather, that a person becomes delinquent because of an “excess of definitions favorable to violation of law.” The key word is “definitions.”

* The theory does not explain all types of criminal behavior. It has difficulty in explaining crimes of passion or impulsive violence.
	+ 1. **Social Learning Theory:**

 This theory emphasizes the interaction between person and environment, in a quest not so much to learn why people violate the law but, rather, to identify the conditions under which they might do so. Development of a particular orientation, criminal or non-criminal, reflects an accumulation of reinforcements in a variety of situations. ***Patterson*** (1980) claims, “children do not out grow extreme anti-social behavior, they remain deviant unless they are punished.”

But other social learning theories are more positive, proposing that child-reasoning practices can be influential, in that the child learns adult behavior patterns, values, and anxieties through observing the experience of the adulthood. However, the interaction between children and their parents can be a two-way street, in which each changes the behavior of the other.

Imitation, or modeling, serves social-learning theory as one useful way to explain the development of certain kinds of behavior***. Bandura*** and ***Walters*** (1963) showed that personality traits such as aggression or dependency can be learned through watching others and seeing what kinds of rewards or punishments they receive for their actions. Responses that lead to valued outcomes (or positive reinforcement) are likely immulated.

But the learning that takes place may be influenced by the situation in which it occurs or by the specificity of reinforcements, or rewards. Individuals learn to discriminate one situation from another. Bandura, in studying the behavior of highly aggressive boys, found that it was often ***stimulus-bound.*** Some of these children had parents who punished the child when he displayed aggression toward them; at the same time, these parents characteristically acted aggressively themselves and encouraged their child to do so with his peers. This pattern of behavior produced boys who are showed little aggression at home but a great deal at school.

In contrast to the differential association type of-psychological approach, some advocates of social-learning theory see children as active participants in their own socialization holding that delinquents are, in fact, capable of establishing behavior patterns to be followed by others. Gerald H. Patterson (1980) concludes from his research:

“Antisocial children train their parents. The antisocial behavior typically has an impact; they are very effective in training adults and peers alike to cease making demands. He child does not have to do chores or to conform to house rules. Similar techniques are used by the child to train teachers and adults in general to believe that it is not necessary for [the child] to go to school or to achieve a reasonable level if he or she does attend.”

* **Criticism:**

The social-learning theory has been criticized for its failure to give an independent definition of reinforcement. And studies of some types of crime---embezzling, for example, researchers have found no indication of positive reinforcement for that act in the criminal’s social background and environment.

**Cultural deviance theory**

* **Meaning of Sub culture**

A sub culture is sub-division within the dominant culture that has its own norms beliefs and values. Sub cultures typically emerge when people in similar circumstances find themselves isolated from the main stream and band together for mutual support. Sub cultures may form among members of racial and ethnic minorities, among prisoners, among occupational groups, among ghetto dwellers. Sub cultures exist within a larger society, not apart from it. They therefore share some of its values. Nevertheless, the life styles of their members are significantly different from those of in the dominant culture.

 According to Albert Cohen, an American Sociologist, deviant behavior is supported by sub culture. A sub culture of criminals has its own norms which stand over against the norms of the larger group (the dominant culture). The deviance does not appear unusual or abnormal from their point of view. Indeed, most sub cultures have a vague notion that the larger society is unjust and corrupt. Important types of deviant behaviors are juvenile delinquency, drug addiction, and crime against persons and property etc. The laxity of norms the anonymous nature of cities and multiple standards of behaviors are often responsible for it.

* **Basis of the Sub cultural Theory**

 Strain theorists (structural explanations) explain criminal behavior as a result of the frustrations suffered by lower class individuals deprived of legitimate means to reach their goals. Cultural deviance theorists assume that:

* Individuals become criminal by learning the criminal values of the groups to which they belong.
* In conforming to their own group standards, these people break the law of the dominant culture.

 These two perspectives are the foundations of the sub cultural theory.

Nietzel (1979) explains that the sub cultural theory is based on the fact that there is a lack of agreement between norms of different groups. He describes as follows:

“The sub cultural perspective holds that the conflict of norms, which engenders criminal behavior, is due to the fact that various ethnic or class groupings of people adhere to cultural patterns of behavior that are inconsistent with the dominant injunctions against certain types of crime. These illegal patterns of behavior are supported by the particular sub cultural norms that actually exert pressure toward deviation from the consensual norms underlying the criminal law.”

Gangs, for example, possess norms about how to behave. For some young people, the gang takes the place of parents as the giver of norms, even when the parents attempt to instill their own values.

* **Walter Miller’s Theory of Focal Concerns**

 This theme of cultural conflict is made salient in **Walter Miller’s Theory of Focal Concerns, *(1958)*** which attributes the criminal activities of lower- class adolescent gangs to their attempt to achieve the ends that are valued in their culture through the behaviors that appear to them to be the most feasible means of obtaining those ends. Thus, adherence to the traditions of the lower class is essential. Miller labels them as trouble, toughness, smartness, excitement, fate and autonomy. For example, lower-class boys pick fights to show their toughness, and they steal to demonstrate their shrewdness and daring.

**MILLER’S “FOCAL CONCERNS” OF LOWER- CLASS CULTURE**

|  |  |  |  |
| --- | --- | --- | --- |
| **S. No** | **AREA** | **DESIRABLE** | **UNDESIRABLE** |
| **1** | **Trouble** | Law-abiding behavior | Law-violating behavior |
| **2** | **Toughness** | Physical prowess; skill; “masculinity” fearlessness; bravery; daring | Weakness; ineptitude; effimacy; timidity; cowardice; caution |
| **3** | **Smartness** | Ability to outsmart, dupe, gaining money by “wits”; shrewdness; | Gullibility, “conabilty”; gaining, money by hard work; slowness; dull-wittedness; verbal maladroitness |
| **4** | **Excitement** | Thrill; risk; danger; change; activity | Boredom; “deadness”; safeness; sameness; passivity |
| **5** |  **Fate**  | Favored by fortune; being “lucky” | Ill-omened; being; “unlucky” |
| **6** | **Autonomy** | Freedom by external constraint; freedom from super ordinate authority; independence | Presence of external constraint; presence of strong authority; dependency; being “cared for” |

* **Limitations to the Focal Concerns Theory**
* The theory of focal concerns applies to a restricted range of crimes. It does not crime buy individuals not socially disadvantaged, such as a business man or stock broker.
* The key concepts are vague as in the case of structural explanations. How do these cultural standards originate? How are they transmitted from generation to generation? And how do these standards control the behavior of any one individual?
* According to Nietzel, the most troublesome concept is the central one that is, the sub culture. Some critics reject the assumption of value differences among groups. For example, some sociologists suggest that American society is really not as culturally diverse as the theory implies.

**Control Theories**

Control theories assume that the motive to deviate is relatively constant across people, and hence people will frequently behave antisocially unless they are trained not to. Some never form attachments or bonds with significant others, so that necessary controls are never internalized. There are two important theories under these explanations.

Control theory, developed in the 1960s and 1970s, attempts to explain ways to train people to engage in law-abiding behavior. Although there are different approaches within control theory, they share the view that humans require nurturing in order to develop attachments or bonds to people and that personal bonds are key in producing internal controls such as conscience and guilt and external controls such as shame. According to this view, crime is the result of insufficient attachment and commitment to others.

* + 1. **Hirschi’s Model (1969):**

 The sociologist Travis Hirschi has developed his own control theory that attempts to explain conforming, or lawful rather than deviant, or unlawful behavior. He stresses the importance of the *individual's bond to society* in determining conforming behavior. His research has found that socioeconomic class has little to do with determining delinquent behavior, and that young people who are not very attached to their parents or to school are more likely to be delinquent than those who are *strongly attached*. He also found that youths who have a *strongly positive view of their own accomplishments* are more likely to view society's laws as valid constraints on their behavior.

 His explanation stresses four *control variables*, each of which represents a major social bond:

**1.** Attachment,

2. Commitment,

3. Involvement, and

4. Belief.

These variables explain the social bondage i.e. attachment to others in the society. Particularly, young people are bonded to the society at several levels. However, the extent and strength of such bondage differ in the following ways:

* The degree to which they are affected by the opinions and expectations by others.
* The payoffs they receive for conventional behavior, and
* The extent to which they subscribe to the prevailing norms.

As represented in the work of Travis Hirschi, the [Social Control Theory](http://en.wikipedia.org/wiki/Social_control_theory) proposes that exploiting the process of [socialization](http://en.wikipedia.org/wiki/Socialisation) and [Social Learning Theory](http://en.wikipedia.org/wiki/Social_learning_theory) builds self-control and reduces the inclination to indulge in behaviour recognized as antisocial. It is based on [Functionalist](http://en.wikipedia.org/wiki/Functionalism_%28sociology%29) theories of crime and proposes that there are three types of control:

* **Direct**: by which punishment is threatened or applied for wrongful behaviour, and compliance is rewarded by [parents](http://en.wikipedia.org/wiki/Parent), [family](http://en.wikipedia.org/wiki/Family), and authority figures.
* **Indirect:** by which a youth refrains from delinquency because his or her delinquent act might cause pain and disappointment to parents and others with whom he or she has close relationships.
* **Internal:** by which a person's conscience or sense of guilt prevents him or her from engaging in delinquent acts.
	+ 1. **Walter Reckless’s Containment Theory (1961):**

Walter C. Reckless developed one version of control theory, called *containment.* He argued that a combination of internal psychological containments and external social containments prevents people from deviating from social norms. In simple communities, social pressure to conform to community standards, usually enforced by social ostracism, was sufficient to control behavior. As societies became more complex, internal containments played a more crucial role in determining whether people behaved according to public laws. Furthermore, containment theorists have found that internal containments require a positive self-image. All too often, a sense of alienation from society and its norms forms in modern individuals, who, as a result, do not develop internal containment mechanisms.

Reckless proposes two types of *containments.* According to him it is largely external or outer containment –that is, ***social pressure***-- that controls crime. If a society is well integrated, with well- defined social role and limits on behavior, effective family discipline and supervision and reinforcement for positive accomplishments, crime will be contained. But if the external controls weaken or disappear, restraint of crime becomes increasingly a matter of internal restraints, or the individual’s superego. Thus a positive self-concept becomes an insulator against delinquency.

The presence of robust inner containment is inferred from the following indicators:

* A good self-concept,
* Self-control,
* Ego strength,
* Ability to tolerate frustration,
* Active goal direction,
* Ability to find substitute satisfactions,
* Tension reducing realizations, and
* Retention of norms.

Reckless suggests that the probability of deviance is directly related to the extent to which ***internal pushes,*** (such as need for immediate gratification, restlessness and hostility) ***external pressures*** (such as poverty, unemployment, and blocked opportunities) ***and external pulls*** are controlled by one’s inner and outer containment.

The primary containment factor is found in self-concept, or the way one views oneself in relation to others and the world as well. A strong self-concept, coupled with some additional inner controls (such as a strong conscience and sense of responsibility) plus, outer controls, make delinquency highly unlikely.

**Strain theory: Merton’s Theory of Social Structure and Anomie**

Robert K. Merton (1938) explains this through his popular explanation of “Social Structure and Anomie”. He explains the collapsing of social conditions brought by severe economic conditions is responsible for criminal behavior. He rejects the notion that crime is an intrinsic and individual behavior. He looks beyond the immediate personal environment of the criminals to the broader context of ‘Social Structure and Anomie’ for explanation of criminal behavior. Merton borrowed the term **anomie** from Emile Durkheim a French sociologist. Durkheim had studied the French and American culture after the Industrial Revolution. In his study he noted that economic crisis and a general breakdown of the normal social conditions created “deregulation” of social and moral rules. This deregulation which he called “anomie”, could lead to all sorts of social deviance including suicide and crime.

 Anomie is a condition which exists when norms no longer control people’s behavior, when people no longer have clear rules. When normlessness exists then controls on behavior and aspirations cease to exist. Merton maintained that anomie is especially likely to exist in a society where there is unequal opportunity and an emphasis on material success; and he claimed that it can explain a broad range of socially deviant behavior. Merton explains that society establishes institutionalized goals – usually understood to be financial success which society emphasizes and reinforces. To achieve these goals there are ‘socially structured methods’ which can be called “means”. When such goals are over emphasized and highly praised but the “means” to achieve them are unavailable to a considerable part of that population then anomie is likely i.e. when success is blocked by the unavailability of “means” individuals experience strain and show two kinds of reactions, either they must adjust their aspirations downward or devise alternative routes to achieve goals. In such an environment deviant behavior is wide spread. According to Merton, five modes are adopted by the people to achieve goals:

1. Conformity,
2. Innovation,
3. Ritualism,
4. Retreatism, and
5. Rebellion.

 **Conformity** is a path taken by most people, even if they realize that the means to achieve their goals are restricted. **Innovation** is where a person accepts a goal but rejects the accepted, legitimate means to achieve the goal. For example, a child wants a Bicycle, the legitimate means are to ask parents or grand-parents or save money by doing a part time job etc. If all these means are not available an alternative, innovative means may be chosen such as ‘theft’. In **Ritualism,** a person continues to follow the institutionalized means such as hard work and thrift but loses sight of the goals or rejected them. This may describe the so called rat- race, in which people work diligently in socially approved ways but have no hope of success in achieving their goals, or no longer identify with long term goals. In **Retreatism,** both goals and means are rejected. The retreatist’s response to an inability to reach goals is to drop out, or to quit trying. This may lead to extreme retreatist behaviour such as alcoholism, drug addiction or vagrancy. **Rebellion** isan option for people who reject the approved goals and means to achieve them for new goals and means. Rebels and revolutionaries are disappointed individuals who view accepted goals as unattainable or undesirable and socially approved means of reaching them as demeaning or unworkable. Therefore, these persons substitute new, socially unacceptable goals and means, such as redistribution of wealth through socialist political structure.

* **Evaluation of Merton’s Theory**

 The strain perspective developed by Merton and his followers has influenced both research and theoretical developments in criminology. Yet, as popular as this theory remains, it has been questioned on a variety of grounds. By concentrating on crime at the lower levels of the socioeconomic hierarchy, for example, it neglects crime committed by middle and upper –class people.

Other critics question whether a heterogeneous society does have goals on which everyone agrees. Some theorists argue that some subcultures have their own value systems. If this is the case, we cannot account for deviant behavior on the basis of Merton’s cultural goals.

 Other important questions raised are, if we have an agreed upon set of goals, is material gain the dominant one? If crime is a means to an end, why is there so much of useless, destructive behavior, especially among teenagers?

No matter how it is structured, each society defines goals for its members. For example, the United States is not only the society in which people strive for wealth and prestige. Yet, while some people in the other cultures have limited means for achieving goals, not all these societies have high crime rates. Two such societies –Japan and Switzerland—are among the most developed and industrialized in the world. Although the United States has quite a bit in common with them, it does not share their very low crime rates.

Despite the many critical assessments, strain theory, as represented by Merton’s formulation of anomie, has had a major impact on the contemporary criminology.

**Chapter Four: The Typologies and Measurement of Crime**

**Introduction**

The general term “crimes” covers a wide variety of types of crimes, with their own distinct features. Murder and arson, for example, both are crimes. They have the same essential elements, including a criminal intent (mens rea) and a harm element. But these elements take different forms in different crimes. In murder the criminal intent takes the form of intending to kill another human being wrongfully, while in arson the intent is that of wrongfully burning the property of another. Lawyers and criminologist have searched for a system of grouping the many types of crimes into coherent, rational categories, for ease of understanding, of learning, and of finding them in the law books, and for purposes of studying them from both a legal and a criminological perspective. Such categorizations are called ***typologies.***

**The Typologies of Crime-A General Overview**

The ancient Romans classified their crimes as, those ‘*against the gods’* and those ‘*against other human beings’*. As late as the eighteenth century, some English lawyers simply listed crimes alphabetically. The French of the early nineteenth century created a typology with three categories:

* Serious crimes ( felonies),
* Medium serious crimes (misdemeanors), and
* Crimes of a petty character (violations)

The more serious crimes were grouped into categories based on the harm those crimes entailed, such as harm against life, against physical integrity, against honor, against property, and so on.

Nowadays the French categorization is generally accepted worldwide, although lawyers and criminologists may differ on the desirability of lumping various crime types together into categories. Lawyers, after all, may be much more interested in the procedural consequences that flow from the categorizations, while criminologists may be much more concerned with criminological implications for studying different types of perpetrators and devising schemes of crime prevention.

There are also political considerations in devising a typology. For example, the criminal codes of the former communist countries had large categories of political crimes, which were given the most prominent place in those codes. They included many crimes that in Western democracies are grouped in other categories, such as property crimes or crimes against the person, or that may have no counterpart at all.

The typology in US law seeks to accommodate both the established legal typology\_\_ for example, which used in the Model Penal Code \_\_ and the criminological objectives that are so important for the study of crime from a sociological and behavioral perspective. These categories are:

* Violent crimes,
* Crimes against property,
* Organizational criminality, and
* Drug-, alcohol-, and sex-related crimes.

Generally speaking, the following types of crimes can be identified:

|  |
| --- |
| **4.1 Blue Collar** **(*crimes in the streets)***In [criminology](http://en.wikipedia.org/wiki/Criminology), *blue-collar crime* is any crime committed by an individual from a lower [social class](http://en.wikipedia.org/wiki/Social_class) as opposed to [white-collar crime](http://en.wikipedia.org/wiki/White-collar_crime) which is associated with crime committed by individuals of a higher social class. These are easier to detect, people are more afraid of these crimes. Blue collar crimes are more sensational crimes and there by put more pressure on police due to fear.**The Opportunity To Commit Crime**Every potential criminal is limited in the opportunity to commit crime by the "situation" in which he or she occupies in society. If the individual is employed in a low or unskilled job and lives in an inner-city environment, stealing [inventory](http://en.wikipedia.org/wiki/Inventory) from the workplace may not produce value and not many neighbors may have valuable property to steal. This has significance both for the type of crimes likely to be committed and for law enforcement. Because there are fewer opportunities to use skill, more blue-collar crime may involve the use of force and, because more people are injured, there is a greater chance that the victim will report the crime. In contrast, in cases of [white-collar crime](http://en.wikipedia.org/wiki/White-collar_crime) it shades into [corporate crime](http://en.wikipedia.org/wiki/Corporate_crime) and there is less chance that any crime will be reported.**Street crime**: The most common forms of predatory crime—rape, robbery, assault, burglary, larceny, and auto theft—occur most frequently on urban streets. Racial minority citizens account for a disproportionately high number of the arrests for street crimes. **Types of Blue Collar Crimes:****Crimes Against Person:** Crimes against the person involve violence or the threat of violence against others, violence including homicide, rape, robbery, causing grave and ordinary injuries and aggravated assaults etc.**Crimes against Property:** Crimes against property involve theft of goods belonging to others, including burglary, theft, motor vehicle theft, and arson etc.**Victimless Crime:** This category involves violation of laws in which there are no readily apparent victims, a misnomer, including prostitution, gambling and drug abuse.**Juvenile Delinquency:** Offences committed by persons under 16 years of age. Juvenile delinquency may be described as a status in a juvenile or a young person characterized by anti-social behavior, waywardness and incorrigibility.**4.2 White-Collar Crimes (*crime in suits*)** These crimes are also known as business/economic and political crimes. These are crimes committed by people of high social position in the course of their occupations. They rarely involve violence, but they involve significant public harm. White collar crime victimizes everyone and no one, economic costs spread over large population; estimate of cost:  200 billion, 14 x cost of street crime. **Types of White Collar Crimes:****Workplace Crime:** These include crimes committed against employers by employees for individual gain; and **Occupational Crime:** an individual or group’s illegal use of their professional position to secure something of value, found at all levels of the labour force, e.g. fraud;**Organizational Crime:** Committed by the decision-makers of a corporation. Or it may involve government engaging in illegal activity for corporate or organizational advantage as opposed to personal gain. Other types of offences falling under this class are terrorism, selling products which are known to be unsafe or defective.**Strategic Bankruptcy:** A company which is successfully sued declares bankruptcy and thus avoids having to pay up and company is then reorganized into new company which is clear of personal/company liabilities.**Patriotic Crime:** These crimes are committed in the name of achieving important national goals, actions taken outside legitimate channels, e.g. violation of international law, "protecting" national security, undeclared warfare, false imprisonment, failure to regulate pollution, tax laws, etc. **4.3 Crimes against International Law:** The international crimes are the major criminal offences so designated by ‘*the community of nations’* for the protection of interests common to all human kind. **4.4 Newest Category of Crimes****Hate Crime: A** criminal act motivated by racial or other bias such as religion, ancestry, sexual orientation or physical disability. **Computer Crimes or Internet or Cyber Crimes:** Just as computers can serve legitimate commerce, governments, and researchers, the global Internet is also accessible for criminal Schemes, exploitation, and use by organized crime. Computer crime generally refers to criminal activity where a [computer](http://en.wikipedia.org/wiki/Computer) or [network](http://en.wikipedia.org/wiki/Computer_networking) is the source, tool, target, or place of a [crime](http://en.wikipedia.org/wiki/Crime).Now we can have a detailed discussion on some of the important types of crimes in the following sections. Since, crimes against person, crimes against property etc., will be covered by the criminal law courses these categories do not need extensive discussions under this course. Due to the enormity of the topic only certain important categories shall be discussed here.**4.5 Victimless-Crimes or Public Order Crimes** **Definition and Nature**Consensual acts (in which people are willing participants) and violations in which only the perpetrator is hurt, such as the personal use of illegal drugs, are called victimless crimes. In [criminology](http://en.wikipedia.org/wiki/Criminology) ***public order crime*** is defined by Siegel (2004) as *"...crime which involves acts that interfere with the operations of society and the ability of people to function efficiently",* i.e. it is behavior that has been labeled criminal because it is contrary to shared [*norms*](http://en.wikipedia.org/wiki/Norm_%28sociology%29)*,* social values, and [*customs*](http://en.wikipedia.org/wiki/Convention_%28norm%29)*.* Robertson (1989:123) maintains that a crime is nothing more than "...an act that contravenes a law." Generally speaking, [*deviancy*](http://en.wikipedia.org/wiki/Deviant_behavior) is [*criminalized*](http://en.wikipedia.org/wiki/Criminalization) when it is too disruptive and has proved uncontrollable through informal sanctions.Public order crime should be distinguished from [political crime](http://en.wikipedia.org/wiki/Political_crime). In the former, although the identity of the "victim" may be indirect and sometimes diffuse, it is cumulatively the [*community*](http://en.wikipedia.org/wiki/Community)that suffers, whereas in a political crime, the [state](http://en.wikipedia.org/wiki/State) perceives itself to be the victim and criminalizes the behaviour it considers threatening. Thus, public order crime includes [consensual crime](http://en.wikipedia.org/wiki/Consensual_crime), victimless vice, and [*victimless crime*](http://en.wikipedia.org/wiki/Victimless_crime)*.* It asserts the need to use the law to maintain order both in the legal and [moral](http://en.wikipedia.org/wiki/Morality) sense. *Public order crime* is now the preferred term as against the use of the word "victimless" based on the idea that there are secondary victims (family, friends, acquaintances, and society at large) that can be identified. **Justification and Limitation for Criminalizing Victimless Crimes****Criminalization** is intended as a pre-emptive, harm-reduction device, using the threat of punishment as a [deterrent](http://en.wikipedia.org/wiki/Deterrent) to those proposing to engage in the behaviour causing harm. The state becomes involved because the costs of not criminalizing (i.e. allowing the harms to continue unabated) outweigh the costs of criminalizing it (i.e. restricting individual liberty and so minimizing harm to others). The process of criminalization should be controlled by the state because:1. Victims or witnesses of crimes might be deterred from taking any action if they fear retaliation. Even in policed societies, fear may inhibit reporting or co-operation in a trial.
2. The victims may only want compensation for the injuries suffered, while being indifferent to the more general need for deterrence: see Polinsky & Shavell (1997) on the fundamental divergence between the private and the social motivation for using the legal system.
3. Even if the victims recognize that they are victims, they may not have the resources to investigate and seek legal redress for the injuries suffered: the enforcers formally appointed by the state have the expertise and the resources.

Victims do not have economies of scale to administer a penal system, let alone collect any fines levied by a court (see Polinsky (1980) on the enforcement of fines). But Garoupa & Klerman (2002) warn that a [rent-seeking](http://en.wikipedia.org/wiki/Rent-seeking) government's primary motivation is to maximize revenue and so, if offenders have sufficient wealth, a rent-seeking government is more aggressive than a [social-welfare](http://en.wikipedia.org/wiki/Social_welfare_function)-maximizing government in enforcing laws against minor crimes (usually with a fixed penalty such as parking and routine traffic violations), but more lax in enforcing laws against major crimes. **The ‘Hidden Crime Factor’ of the Victimless Crimes**Because most of these crimes take place in private or with some degree of secrecy, it is difficult to establish the true extent of the crime. The "victims" are not going to report it and arrest statistics are unreliable indicators of prevalence, often varying in line with local political pressure to "do something" about a local problem rather than reflecting the true incidence of criminal activity. In addition to the issue of police resources and commitment, many aspects of these activities are controlled by [organized crime](http://en.wikipedia.org/wiki/Organized_crime) and are therefore more likely to remain hidden. These factors are used to argue for decriminalization. Low or falling arrest statistics are used to assert that the incidence of the relevant crimes is low or now under control. Alternatively, keeping some of these "vices" as crimes simply keeps organized crime in business.**Decriminalization of Public Order Crimes**Those who favor decriminalization or legalization contend that government should be concerned with matters affecting the common good, and not seek to regulate morality at an individual level. Indeed, the fact that the majority ignore many of the laws, say on drug-taking, in countries founded on [democratic](http://en.wikipedia.org/wiki/Democracy) principles should encourage the governments elected by those majorities to repeal the laws. Failure to do so simply undermines respect for all laws, including those laws that should, and, indeed, must be followed. Indeed, when considering the range of activities prohibited, the practical policing of all these crimes would require the creation of a police state intruding into every aspect of the peoples' lives, no matter how [private](http://en.wikipedia.org/wiki/Privacy). It is unlikely that this application of [power](http://en.wikipedia.org/wiki/Power_%28sociology%29) would be accepted even if history showed such high-profile enforcement to be effective. [Prohibition](http://en.wikipedia.org/wiki/Prohibition) did not prevent the consumption of alcohol, and the present [War on Drugs](http://en.wikipedia.org/wiki/War_on_Drugs) is expensive and ineffective. Those who favor decriminalization also point to experience in those countries which permit activities such as recreational drug use or prostitution. There is clear evidence of lower levels of substance abuse and disruptive behavior.1. The presence of public order crimes encourages a climate of general disrespect for the law. Many individuals choose to violate public order laws, because they are easily violable, and there is no victim to complain. This encourages disrespect for the law, including disrespect for laws involving crimes with victims.
2. To criminalize behavior that harms no other or society violates individual freedom and the human/natural rights of the individual. The right of the individual to do what they will, so long as they harm no other, or society as a whole, is a generally accepted principle within free and democratic societies [[1]](http://en.wikipedia.org/wiki/Public_order_crime#cite_note-0); criminalization of acts that others feel are immoral, but are not clearly proven to be harmful, is generally violative of that principle; although exceptions may--and do--apply. (For example, the simple possession of [child pornography](http://en.wikipedia.org/wiki/Child_pornography) or engaging in [animal cruelty](http://en.wikipedia.org/wiki/Animal_cruelty) is criminal, In most civilized nations; however, there is no direct victim (except the animal, whose rights are not cognizable by law); the reason for its criminalization is the "bad tendency" of these acts; persons who derive pleasure from acts such as these often have depraved desires--it can be inferred that people who abuse animals, rarely stop there--and that people who possess child pornography will seek more than just mere depictions.)
3. The cost of enforcing public order crimes is too high to individual and societal freedom, and will inevitably result in coercion, force, brutality, usurpation of the democratic process, the development of a [carceral state](http://en.wikipedia.org/wiki/Carceral_state), and finally, tyranny. Due to public order crimes not having a victim, someone aside from a victim has to be used to report public order crimes, and someone other than the sovereign people itself has to be delegated to enforce the public order laws. This results in the development of an apparatus of coercion, a class of "law enforcers" within society, but separate from society, in that they are tasked with enforcing laws upon the people, rather than the people enforcing their own law. This inevitably results in violations of individual freedom, as this class of "law enforcers" seeks more and more power, and turns to more and more coercive means.
4. Public order crimes often pertain to behavior engaged in especially by discernible classes of individuals within society (racial minorities, youth, poor people), and result in the criminalization or stigmatization of those classes, as well as resentment from those classes against the laws, against the government, or against society.
5. Public enforcement of morality will inevitably lead to individuals developing no moral compass of their own, instead resulting in external restraint substituting for internal restraint, and, thus, greater immorality, deviance, and societal decadence.
* **Prostitution**

Prostitution is listed among the crimes some refer to as victimless or consensual crimes, because no one present at the crime is unwilling, but research shows that may not be the true picture of prostitution. In most countries, prostitution -- exchanging money for sex among adults -- is legal. It is illegal in only a few countries -- in the United States (except for ten counties in the state of Nevada), India, and Argentina, some Muslim and Communist countries. The reason it is legal is the general attitude that prostitution does no harm, has no victims, and is sex among consenting adults.* **Prostitution Is not a Victimless Crime**

Melissa Farley, PhD of Prostitution Research & Education argues that prostitution is hardly a victimless crime. In her "Prostitution: Fact sheet on Human Rights Violations" Farley says that prostitution is sexual harassment, rape, battering, verbal abuse, domestic violence, a racist practice, a violation of human rights, childhood sexual abuse, a consequence of male domination of women and a means of maintaining male domination of women."All prostitution causes harm to women," Farley writes. "Whether it is being sold by one's family to a brothel, or whether it is being sexually abused in one's family, running away from home, and then being pimped by one's boyfriend, or whether one is in college and needs to pay for next semester's tuition and one works at a strip club behind glass where men never actually touch you – all these forms of prostitution hurt the women in it."**Prostitutes Are Biggest Victims**To believe prostitution has no victims, one must ignore these statistics published in Farley's Fact Sheet:* 78 percent of 55 women who sought help from the Council for Prostitution Alternatives in 1991 reported being raped an average of 16 times a year by pimps, and were raped 33 times a year by johns.
* 62 percent reported having been raped in prostitution.
* 73 percent reported having experienced physical assault in prostitution.
* 72 percent were currently or formerly homeless.
* 92 percent stated that they wanted to escape prostitution immediately.
* 83 percent of prostitutes are victims of assault with a weapon.
* 75 percent of women in escort prostitution had attempted suicide.
* 67 percent meet diagnostic criteria for posttraumatic stress disorder (PTSD).

**Prevalence of Incest**In short, the victims of prostitution are mostly the prostitutes themselves. It just may be that they no longer have the ability left to "consent" to be a willing participant in their so-called victimless crime.Estimates of the prevalence of incest among prostitutes range from 65 percent to 90 percent. The Council for Prostitution Alternatives, Portland, Oregon Annual Report in 1991 found that: 85 percent of their prostitute clients reported history of sexual abuse in childhood while 70 percent reported incest.**Self Determination**As feminist Andrea Dworkin has written "Incest is boot camp. Incest is where you send the girl to learn how to do it. So you don't, obviously, have to send her anywhere, she's already there and she's has nowhere else to go. She trained."But not all feminist back prostitution laws. Some believe prostitution is an act of self-determination. They demand decriminalization and de-stigmatization, because laws against prostitution discriminate against women's ability to make their own choices.* **Drugs**

The use of drugs for religious and recreational purposes is historically verified among a wide range of cultures. In more modern times, Inciardi (1992: 1-17) reports that the use of [opium](http://en.wikipedia.org/wiki/Opium), [cocaine](http://en.wikipedia.org/wiki/Cocaine), and, later, [morphine](http://en.wikipedia.org/wiki/Morphine) were common ingredients of [patent medicines](http://en.wikipedia.org/wiki/Patent_medicine), and "[opium dens](http://en.wikipedia.org/wiki/Opium_den)" were not uncommon in the larger urban areas. Extracts from the coca leaf were included in the original [Coca-Cola](http://en.wikipedia.org/wiki/Coca-Cola) and, in 1900, [heroin](http://en.wikipedia.org/wiki/Heroin) was promoted as a cough medication and a treatment for lung diseases. But problems flowing from addiction led many to perceive the drug element of medications to be morally destructive. In the United States, the [Supreme Court](http://en.wikipedia.org/wiki/SCOTUS) decisions of [*Webb et al v U.S.*](http://en.wikipedia.org/w/index.php?title=Webb_et_al_v_U.S.&action=edit&redlink=1) 249 U.S. 96 (1919) [[1]](http://www.druglibrary.org/SCHAFFER/History/webb.html) and [*U.S. v Behrman*](http://en.wikipedia.org/w/index.php?title=U.S._v_Behrman&action=edit&redlink=1) 258 U.S. 280 (1922) [[2]](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=258&invol=280&friend=nytimes) drove the use of narcotics underground and consolidated their criminal status.In the terms adopted by Schur (1965), drug dealing is now victimless because neither the buyer nor the seller is likely to report it. However, the majority of criminologists argue that there are victims. The consumption of drugs can damage the health of users and, in some cases, cause death through overdose. Some argue that if drugs were available legally, they would be less harmful (see the [drug policy of the Netherlands](http://en.wikipedia.org/wiki/Drug_policy_of_the_Netherlands)). When drugs are illegal, the price is higher, and maintaining the habit takes the money that would otherwise be spent on food, shelter, and clothing. The resultant neglect is a contributory factor to the addict's physical deterioration. In Australia, Walker (1991) finds a strong link between substance abuse and crime. In general, making drugs illegal results in an exponential increase in their price so that addicts must indulge in [theft](http://en.wikipedia.org/wiki/Theft), [robbery](http://en.wikipedia.org/wiki/Robbery), and [burglary](http://en.wikipedia.org/wiki/Burglary) to support their habits. Those people who experience those crimes are indirect victims of the drug taking. The need to fund addiction also drives some into distribution where they are more prone to violent attack and murder. These findings are matched elsewhere. Meier and Geis (1997) confirm that drug dealing is an area where victims are third parties who experience harm only indirectly through, say, losses from [drug-related crime](http://en.wikipedia.org/wiki/Drug-related_crime), and the costs of enforcing drug laws and of treating addiction, and the public health costs for treating illness and disease consequent on the addiction, e.g. [HIV](http://en.wikipedia.org/wiki/HIV) infection through using the same needles. In Australia, for example, the National Campaign against Drug Abuse (see Collins & Lapsley 1991) gives a figure of just over $1.2 billion for total costs of the abuse of illicit drugs in Australia in 1988, including treatment of drug-related illness, accidents resulting from drug use/misuse, loss of productivity due to absenteeism, premature death, property crime and damage, and excluding justice system costs. Conklin (1997: 100) reports the cost of illegal drug use in the U.S. in 1989 at $60 billion a year, a 20% increase over the estimate in 1985. The rise in cost to the state can only be met out of tax revenue, but the burden is not shared equally. Income actually spent on drugs is displaced from purchases that would otherwise have generated sales tax revenue. Similarly, the substantial profits made by the dealers are not taxed. Thus, the citizens who declare income for tax purposes must pay more to offset the cost of drug taking in their societyAs with prostitution, drug dealing also affects the amenity of a neighborhood, destroying property values and causing the flight of the middle class to the "safer" suburbs. If the police do intervene, they may alienate law-abiding community members who are stopped and questioned, and only displace the drug dealing indoors, thus making it more resistant to police interventions. Further, Sampson (2002) comments that because intensive police enforcement is by its very nature temporary, the impact is often only short-term and dependent on the resiliency of the market and the buyers which has been shown to be strong. Some officers have argued that intensive enforcement shows the community that the police care about the problem; however, some of the unintended effects may, in fact, have the opposite result. For a more general exposition, see [arguments for and against drug prohibition](http://en.wikipedia.org/wiki/Arguments_for_and_against_drug_prohibition).  |

**4.6 White-Collar Crime**

White-collar crimes are offenses that persons commit while acting in their legitimate jobs and professions. White-collar criminals behave in unethical ways for self-gain (for example, embezzlement) or for the benefit of a business (for example, corporate price-fixing). Victims of white-collar crime include the economy, employers, consumers, and the environment.

**Defining White Collar Crime**

White collar crime is a term that was first used by a sociologist in 1939 to describe criminal activity by members of the upper classes in connection with their professions. His point was that this type of crime was barely acknowledged by the criminal justice system and rarely prosecuted. Today, the most common definition of white collar crime no longer focuses on the social status of the offender but rather on the type of conduct involved: illegal acts using deceit and concealment to obtain money, property, or services, or to secure a business or professional advantage.

Within the field of [criminology](http://en.wikipedia.org/wiki/Criminology), *white-collar crime* has been defined by [*Edwin Sutherland*](http://en.wikipedia.org/wiki/Edwin_Sutherland) as "a crime committed by a person of respectability and high social status in the course of his occupation" (1949). Sutherland was a proponent of [Symbolic Interactionism](http://en.wikipedia.org/wiki/Symbolic_interactionism), and believed that criminal behavior was learned from interpersonal interaction with others. White-collar crime therefore overlaps with [corporate crime](http://en.wikipedia.org/wiki/Corporate_crime) because the opportunity for [fraud](http://en.wikipedia.org/wiki/Fraud), [bribery](http://en.wikipedia.org/wiki/Bribery), [insider trading](http://en.wikipedia.org/wiki/Insider_trading), [embezzlement](http://en.wikipedia.org/wiki/Embezzlement), [computer crime](http://en.wikipedia.org/wiki/Computer_crime), and [forgery](http://en.wikipedia.org/wiki/Forgery) is more available to [white-collar](http://en.wikipedia.org/wiki/White-collar) employees.

Generally, however, white collar crime is defined as *‘violation of the law committed by a person or group of persons in the course of an otherwise respected and legitimate occupation or business enterprise.’*(See James W. Coleman, 1989)

* **Limitation of the Term “White Collar Crime”**

Modern criminology generally rejects a limitation of the term by reference to type of crime and the topic is now divided:

* By the type of offense, e.g. property crime, economic crime, and other corporate crimes like [environmental](http://en.wikipedia.org/wiki/Environmental_law) and [health and safety](http://en.wikipedia.org/wiki/Health_and_safety) law violations. Some crime is only possible because of the identity of the offender, e.g. transnational money laundering requires the participation of senior officers employed in banks. But the [Federal Bureau of Investigation](http://en.wikipedia.org/wiki/Federal_Bureau_of_Investigation) has adopted the narrow approach, defining white-collar crime as "those illegal acts which are characterized by deceit, concealment, or violation of trust and which are not dependent upon the application or threat of physical force or violence" (1989, 3). Because this approach is relatively pervasive in the [United States](http://en.wikipedia.org/wiki/United_States), the record-keeping does not adequately collect data on the socioeconomic status of offenders which, in turn, makes research and policy evaluation problematic. While the true extent and cost of white-collar crime are unknown, it is estimated to cost the United States more than $300 billion annually, according to the FBI.
* By the type of offender, e.g. by [social class](http://en.wikipedia.org/wiki/Social_class) or high socioeconomic status, the occupation of positions of trust or [profession](http://en.wikipedia.org/wiki/Profession), or academic qualification, researching the motivations for criminal behavior, e.g. [greed](http://en.wikipedia.org/wiki/Greed) or fear of loss of face if economic difficulties become obvious. Shover and Wright (2000) point to the essential neutrality of a crime as enacted in a [statute](http://en.wikipedia.org/wiki/Statute). It almost inevitably describes conduct in the abstract, not by reference to the character of the persons performing it. Thus, the only way that one crime differs from another is in the backgrounds and characteristics of its perpetrators. Most if not all white-collar offenders are distinguished by lives of privilege, much of it with origins in class [inequality](http://en.wikipedia.org/wiki/Social_inequality).
* By organizational culture rather than the offender or offense which overlaps with [organized crime](http://en.wikipedia.org/wiki/Organized_crime). Appelbaum and Chambliss (1997; 117) offer a twofold definition:

*Occupational crime* occurs when crimes are committed to promote personal interests, say, by altering records and overcharging, or by the cheating of clients by professionals. *Organizational or corporate crime* occurs when corporate executives commit criminal acts to benefit their company by overcharging or [price fixing](http://en.wikipedia.org/wiki/Price_fixing), false advertising, etc.

* 1. **Organized/Organizational Crime**

**Definition and Scope**

The term “organized crime” refers to the unlawful activities of members of criminal organizations that supply illegal goods and services. Organized crime or criminal organizations are groups or operations run by [criminals](http://en.wikipedia.org/wiki/Crime), most commonly for the purpose of generating a [monetary](http://en.wikipedia.org/wiki/Money) [profit](http://en.wikipedia.org/wiki/Profit). The [*Organized Crime Control Act*](http://en.wikipedia.org/wiki/Organized_Crime_Control_Act) ([U.S.](http://en.wikipedia.org/wiki/United_States), 1970) defines organized crime as "The unlawful activities of ... a highly organized, disciplined association..."

Some criminal organizations, such as [terrorist organizations](http://en.wikipedia.org/wiki/Terrorism), are [politically](http://en.wikipedia.org/wiki/Politics) [motivated](http://en.wikipedia.org/wiki/Motivation). [Gangs](http://en.wikipedia.org/wiki/Gang) sometimes become "disciplined" enough to be considered "organized". An organized gang or criminal set can also be referred to as a mob. The act of engaging in criminal activity as a structured group is referred to in the [United States](http://en.wikipedia.org/wiki/United_States) as [racketeering](http://en.wikipedia.org/wiki/Racket_%28crime%29).

**Criminal Organizations and Crimes against Humanity**

Another use of the term "criminal organization" exists in [human rights law](http://en.wikipedia.org/wiki/Human_rights_law) and refers to an organization which has been found guilty of crimes against humanity. Once an organization has been determined to be a criminal organization, one must only demonstrate that an individual belonged to that organization to be punished and not that the individual actually individually committed illegal acts.

This concept of the criminal organization came into being during the [Nuremberg Trials](http://en.wikipedia.org/wiki/Nuremberg_Trials). Several [public sector](http://en.wikipedia.org/wiki/Public_sector) organizations of [Nazi Germany](http://en.wikipedia.org/wiki/Nazi_Germany) such as the [SS](http://en.wikipedia.org/wiki/Schutzstaffel) and [Gestapo](http://en.wikipedia.org/wiki/Gestapo) were judged to be criminal organizations, while other organizations such as the [German Army High Command](http://en.wikipedia.org/wiki/German_Army_High_Command) were indicted but acquitted of charges. This conception of criminal organizations was, and continues to be, controversial, and has not been used in human rights law since the trials at Nuremberg.

* 1. **Ideological Crime**

In addition to what is considered traditional organized crime involving direct crimes of fraud swindles, scams, racketeering and other acts motivated for the accumulation of monetary gain, there is also non-traditional organized crime which is engaged in for political or ideological gain or acceptance. Such crime groups are often labeled [terrorist organizations](http://en.wikipedia.org/wiki/Terrorist_organization) and include such groups as [*Al-Qaeda*](http://en.wikipedia.org/wiki/Al-Qaeda)*,* [*Lashkar- e -Toiba*](http://en.wikipedia.org/wiki/Lashkar_e_Toiba) *and* [*Hamas*](http://en.wikipedia.org/wiki/Hamas)*.*

* 1. **Typical Activities of Criminal Organizations**

Organized crime often victimize businesses through the use of [extortion](http://en.wikipedia.org/wiki/Extortion) or theft and fraud activities like [hijacking](http://en.wikipedia.org/wiki/Carjacking) cargo trucks, [robbing](http://en.wikipedia.org/wiki/Robbery) goods, committing [bankruptcy](http://en.wikipedia.org/wiki/Bankruptcy) [fraud](http://en.wikipedia.org/wiki/Fraud) (also known as "bust-out"), [insurance fraud](http://en.wikipedia.org/wiki/Insurance_fraud) or [stock](http://en.wikipedia.org/wiki/Stock) fraud ([inside trading](http://en.wikipedia.org/wiki/Inside_trading)). Organized crime groups also victimize individuals by [car theft](http://en.wikipedia.org/wiki/Car_theft) (either for dismantling at "[Chop shops](http://en.wikipedia.org/wiki/Chop_shop)" or for export), [burglary](http://en.wikipedia.org/wiki/Burglary), [credit card fraud](http://en.wikipedia.org/wiki/Credit_card_fraud), and stock fraud ("[pump and dump](http://en.wikipedia.org/wiki/Pump_and_dump)" scam). Some organized crime groups defraud national, state, or local governments by [bid-rigging](http://en.wikipedia.org/wiki/Bid_rigging) public projects, [counterfeiting](http://en.wikipedia.org/wiki/Counterfeiting) money, [smuggling](http://en.wikipedia.org/wiki/Smuggling) or manufacturing untaxed [alcohol](http://en.wikipedia.org/wiki/Alcoholic_beverage) (boot legging) or [cigarettes](http://en.wikipedia.org/wiki/Cigarettes) (butt legging), and providing immigrant workers to avoid taxes. Organized crime groups seek out corrupt public officials in executive, law enforcement, and judicial roles so that their activities can avoid, or at least receive early warnings about, investigation and prosecution.

Organized crime groups also provide a range of illegal services and goods, such as [loan sharking](http://en.wikipedia.org/wiki/Loansharking) of money at very high interest rates, [bookmaking](http://en.wikipedia.org/wiki/Bookmaking) and [gambling](http://en.wikipedia.org/wiki/Gambling), [prostitution](http://en.wikipedia.org/wiki/Prostitution), [drug trafficking](http://en.wikipedia.org/wiki/Drug_trafficking), [gunrunning](http://en.wikipedia.org/wiki/Gunrunning), providing [murder for hire](http://en.wikipedia.org/wiki/Hitman), illegal dumping of [toxic waste](http://en.wikipedia.org/wiki/Toxic_waste), [people smuggling](http://en.wikipedia.org/wiki/People_smuggling) and [trafficking in human beings](http://en.wikipedia.org/wiki/Trafficking_in_human_beings) . Organized crime groups also do a range of business and labor racketeering activities, such as [casino](http://en.wikipedia.org/wiki/Casino) skimming, [Insider trading](http://en.wikipedia.org/wiki/Insider_trading), setting up monopolies in industries such as garbage collecting, construction and cement pouring, [bid rigging](http://en.wikipedia.org/wiki/Bid_rigging), getting "no-show" and "no-work" jobs, using non-union labor and pocketing the wage difference, [money laundering](http://en.wikipedia.org/wiki/Money_laundering), [political corruption](http://en.wikipedia.org/wiki/Political_corruption), [bullying](http://en.wikipedia.org/wiki/Bullying) and ideological clamping.

* 1. **Organized and International Crime**

Organized crime reaches into communities and ruins lives by driving other crime and instilling fear. It manifests itself most graphically in drug addiction, sexual exploitation and gun crime, but is also strongly linked to:

* Immigration crime
* Fraud
* Money laundering
* Internet-related crime
* Other threats – including armed robbery, kidnap and extortion, vehicle crime, freight crime, cultural property crime, counterfeit currency and environmental crime.

Organized crime groups are essentially businesses that exist to make money. Players at the top often resort to extreme violence, intimidation and corruption to protect their businesses. These groups operate across global frontiers in tight-knit gangs, display in-depth knowledge of law enforcement methods and exploit sophisticated technologies to conceal their activities from the authorities.

The two most profitable and harmful enterprises controlled by organized crime groups are drugs trafficking, and people smuggling.

* 1. **Drug Trafficking**

Trafficking in heroin and cocaine, particularly crack cocaine, poses the greatest single threat to the different parts of the world in terms of the scale of serious organized criminal involvement, the illegal proceeds secured and the overall harm caused. Home Office (The Serious Organized Crime Agency (SOCA UK) estimates put the harm caused by Class A drugs at around £13bn a year. This largely arises from the profits from sales, the crimes addicts commit to fund their habit, and the damage caused to family life and communities, as well as from costs to addicts' health.

* 1. **Fraud-Individual & Private Sector**

Fraud involves the obtaining of other people's money or assets by deception. A lot of fraud is committed directly against the Government “against the tax and the benefits systems. Fraud is also committed against individuals and companies, in a wide variety of ways, and often by organized gangs. Some examples of such frauds include:

* against banks, often involving false or stolen identities;
* investment and advance fee frauds, in which individuals are enticed to pay over money against false promises of returns; and
* forms of e-fraud exploiting the use of the internet by banks and commerce.

Much fraud goes unreported, and despite the fact that frauds can cause companies and individuals significant damage, it is sometimes, mistakenly, seen as victimless. As well as generating money that can be used for future crimes, fraud means that everyone pays for more goods and services. In addition, it can cause significant personal difficulties and distress.

1. **Money Laundering:**

Money laundering is any action taken to conceal, arrange, use or possess the proceeds of any criminal conduct. Criminals try to launder 'dirty money' in an attempt to make it look 'clean' in order to be able to use the proceeds without detection and to put them beyond the reach of law enforcement and taxation agencies.

1. **Internet-Related Crime/Cyber Crime/Hi-tech Crime:**

Internet-related crime is a term used to describe a range of different crime types that are committed or facilitated online, including:

* Paedophilia,
* internet fraud,
* junk email or 'spam',
* viruses, and
* hacking.

This sort of crime is also referred to as cybercrime, e-crime and hi-tech crime. The cost of Internet crime in human and economic terms is high, and it’s still growing. In 2006-07, the vast majority of all credit card fraud cases involved so-called 'card not present' fraud, in which cards were used illegally either online or over the phone. This has been the largest type of card fraud in the UK for more than four years.

* 1. **Corporate Crime**

**Definition and Scope**

 C*orporate crime* refers to crimes committed either by a [corporation](http://en.wikipedia.org/wiki/Corporation) (i.e., a [business entity](http://en.wikipedia.org/wiki/Business_entity) having a separate legal personality from the [natural persons](http://en.wikipedia.org/wiki/Natural_person) that manage its activities), or by individuals that may be identified with a corporation or other business entity. Corporate crime overlaps with:

* [***White-collar crime***](http://en.wikipedia.org/wiki/White-collar_crime)**,** because the majority of individuals who may act as or represent the interests of the corporation are employees or [professionals](http://en.wikipedia.org/wiki/Profession) of a higher [social class](http://en.wikipedia.org/wiki/Social_class);
* [***Organized crime***](http://en.wikipedia.org/wiki/Organized_crime)*,* because criminals can set up corporations either for the purposes of crime or as vehicles for [laundering](http://en.wikipedia.org/wiki/Money_laundering) the proceeds of crime. Organized crime has become a branch of big business and is simply the illegal sector of capital. It has been estimated that, by the middle of the 1990s, the "gross criminal product" of organized crime made it the twentieth richest organization in the world -- richer than 150 sovereign states (Castells 1998: 169). The world’s gross criminal product has been estimated at 20 percent of world trade. (de Brie 2000); and
* [***State-corporate crime***](http://en.wikipedia.org/wiki/State-corporate_crime) because, in many contexts, the opportunity to commit crime emerges from the relationship between the corporation and the [state](http://en.wikipedia.org/wiki/State).

Criminal liability of corporations has become one of the most debated topics of the 20th century. The debate became especially significant following the 1990s, when both the United States and Europe have faced an alarming number of environmental, antitrust, fraud, food and drug, false statements, worker death, bribery, obstruction of justice, and financial crimes involving corporations. The most recent and prominent case in the United Sates has been the Enron scandal in which one of the largest accounting firms in the world, Arthur Andersen LLP, was charged with obstruction of justice (Arthur Andersen LLP v. U.S., 544 U.S. 696 (2005). McWane Inc., one of the world largest manufacturers of cast-iron pipes, has an extensive record of violations causing deaths. (David Barstow & Lowell Bergman, *Deaths on the Job, Slaps on the Wrist*, N.Y. Times, Jan. 10, 2003, at A1.) These corporate crimes resulted in great losses. The consequences that most directly affect our society are the enormous losses of money, jobs, and even lives. At the same time, the long-term effects of these crimes, such as the damaging effects upon the environment or health, which may not severely affect us now, should not be underestimated.

The reaction to this corporate criminal phenomenon has been the creation of juridical regimes that could deter and punish corporate wrongdoing. Corporate misconduct has been addressed by civil, administrative, and criminal laws. At the present, most countries agree that corporations can be sanctioned under civil and administrative laws. However, the criminal liability of corporations has been more controversial. While several jurisdictions have accepted and applied the concept of corporate criminal liability under various models, other law systems have not been able or willing to incorporate it. Critics have voiced strong arguments against its efficiency and consistency with the principles of criminal law. At the same time, a large pool of partisans has vigorously defended corporate criminal liability.

**Goals of Corporate Criminal Liability**

The main goals of criminal liability of corporations are similar to those of criminal law in general as enumerated below:

* The first characteristic of corporate criminal punishment is deterrence—effective prevention of future crimes.
* The second consists in retribution and reflects the society’s duty to punish those who inflict harm in order to “affirm the victim’s real value.”
* The third goal is the rehabilitation of corporate criminals.
* Corporate criminal liability should achieve the goals of clarity, predictability, and consistency with the criminal law principles in general.
* The fifth goal is efficiency, reflected by the first three goals mentioned above, but also by the costs of implementing the concept.
* Finally, it is the goal of general fairness.

**Policy to Enforce the Law against Corporations**

Corporate crime has become politically sensitive in some countries. In the [United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom), for example, following a number of fatal disasters on the rail network and at sea, the term is commonly used in reference to [corporate manslaughter](http://en.wikipedia.org/wiki/Corporate_manslaughter) and to involve a more general discussion about the technological hazards posed by business enterprises (see Wells: 2001). Similar incidents of corporate crime, such as the 1985 [Union Carbide](http://en.wikipedia.org/wiki/Union_Carbide) accident in [Bhopal](http://en.wikipedia.org/wiki/Bhopal), India (Pearce & Tombs: 1993) and the behaviour of the [pharmaceutical](http://en.wikipedia.org/wiki/Pharmaceutical) industry (Braithwaite: 1984).

The Law Reform Commission of New South Wales offers an explanation of such criminal activities:

"Corporate crime poses a significant threat to the welfare of the community. Given the pervasive presence of corporations in a wide range of activities in our society, and the impact of their actions on a much wider group of people than are affected by individual action, the potential for both economic and physical harm caused by a corporation is great."

Similarly, Russell Mokhiber and Robert Weissman (1999) assert:

"At one level, corporations develop new technologies and economies of scale. These may serve the economic interests of mass consumers by introducing new products and more efficient methods of mass production. On another level, given the absence of political control today, corporations serve to destroy the foundations of the civic community and the lives of people who reside in them."

**Type of Corporate Behavior to Be Criminalized**

Behavior can be regulated by the [civil law](http://en.wikipedia.org/wiki/Civil_law_%28common_law%29) (including [administrative law](http://en.wikipedia.org/wiki/Administrative_law)) or the [criminal law](http://en.wikipedia.org/wiki/Criminal_law). In deciding to criminalize particular behavior, the [legislature](http://en.wikipedia.org/wiki/Legislature) is making the political judgment that this behavior is sufficiently [culpable](http://en.wikipedia.org/wiki/Culpable) to deserve the stigma of being labeled as a crime. In law, corporations can commit the same offences as natural persons. Simpson (2002) avers that this process should be straightforward because a state should simply engage in [victimology](http://en.wikipedia.org/wiki/Victimology) to identify which behavior causes the most loss and damage to its [citizens](http://en.wikipedia.org/wiki/Citizen), and then represent the majority view that [justice](http://en.wikipedia.org/wiki/Justice) requires the intervention of the criminal law. But states depend on the business sector to deliver a stable economy, so the politics of regulating the individuals and corporations that supply that stability become more complex.

The majority of crimes are committed because the offender has the 'right opportunity', i.e., where the offender simply sees the chance and thinks that he or she will be able to commit the crime and not be detected. For the most part, [greed](http://en.wikipedia.org/wiki/Greed), rather than [conceit](http://en.wikipedia.org/wiki/Conceit), is the motive, and the rationalization for choosing to break the law usually arises out of a form of contempt for the victim, namely that he, she or it will be powerless to prevent it, and has it coming for some reason. For these purposes, the corporation is the vehicle for the crime. This may be a short-term crime, i.e., the corporation is set up as a shell to open credit trading accounts with manufacturers and wholesalers, trades for a short period of time and then disappears with the revenue and without paying for the [inventory](http://en.wikipedia.org/wiki/Inventory). Alternatively and most commonly, the primary purpose of the corporation is as a legitimate business, but criminal activity is secretly intermixed with legal activity to escape detection. To achieve a suitable level of secrecy, senior managers will usually be involved. The explanations and exculpations may therefore centre on rogue individuals who acted outside the organizational structures, or there may be a serious examination of the occupational and organizational structures (often hinged on the socio-economic system, gender, racism and/or age) that facilitated the criminal conduct of a corporation.

[Bribery](http://en.wikipedia.org/wiki/Bribery) and [corruption](http://en.wikipedia.org/wiki/Political_corruption) are problems in the developed world, and the corruption of public officials is thought to be a primary cause of crime in developing societies, where massive foreign debt often undermines the provision government services. Peèar (1996), in discussing the implications for policing in Eastern Europe as it seeks to adapt its laws to match a capitalist model, points to the difficulty of distinguishing between lack of [morality](http://en.wikipedia.org/wiki/Morality) and criminality in economic crimes that tend to emerge from the structural relationships in modern commerce.

**State-Corporate Crime**

The concept of **state-corporate crime** or **incorporated governance** refers to crimes that result from the relationship between the policies of the [state](http://en.wikipedia.org/wiki/State) and the policies and practices of commercial [corporations](http://en.wikipedia.org/wiki/Corporation). The term was coined by Kramer and Michalowski (1990), and redefined by Aulette and Michalowski (1993). These definitions were intended to include all "socially injurious acts" and not merely those that are defined by the local [criminal jurisdiction](http://en.wikipedia.org/wiki/Criminal_jurisdiction) as crime. This is not universally accepted as a valid definition so a less contentious version has been adopted here. As an academic classification, it is distinguished from:

* [***Corporate crime***](http://en.wikipedia.org/wiki/Corporate_crime), which studies deviance within the context of a corporation and by a corporation;
* [***Political crime***](http://en.wikipedia.org/wiki/Political_crime)***,*** which is crime directed at the state; and
* [***State crime***](http://en.wikipedia.org/wiki/State_crime) ***or "state-organized crime"***, which studies crimes committed by government organizations (Chambliss: 1989).

One of the assertions made by those involved in this work is that a focus on the actual relationship between the state and corporations dependent on the state for their profitability can expose a more complete range of criminal activity than might be provided by independent analyses of corporate or state-organized crimes.

To be able to operate as a commercial [business entity](http://en.wikipedia.org/wiki/Business_entity), the modern corporation requires a legal framework of regulation and oversight within which to exploit the relevant markets profitably. The infrastructure of law and commerce are provided by the [government](http://en.wikipedia.org/wiki/Government) of each state in which the corporation desires to trade, and there is an inevitable linkage between the political and commercial interests. All states rely on businesses to provide an economic base consistent with each government's political policies. Without policies that are supportive of economic activity, businesses will not be profitable and so will not be able to provide the economic support that the state desires. In some cases, this symbiosis may lead to the commission of crimes. The research studies situations where, for various reasons, the oversight of corporate and/or state organizations by independent bodies has been manipulated or excluded, and either existing criminal activity is redefined as lawful, or criminal activity results but is not prosecuted.

Harper and Israel (1999) comment: *“...societies create crime because they construct the rules whose transgression constitutes crime. The state is a major player in this process.”*i.e. the way in which crime is defined is dynamic and reflects each society's immediate needs and changing attitudes towards the local varieties of conduct. The process depends on the values underpinning the society, the mechanisms for resolving political conflict, the control over the discourse, and the exercise of power. Snider (1999) notes that capitalist states are often reluctant to pass laws to regulate large corporations, because this might threaten profitability, and that these states often use considerable sums to attract regional or national inward investment from large corporations. They offer new investors:

* preferential tax concessions not available to the ordinary citizen or local business if foreign investment is sought;
* loans, guarantees and other financial support on preferential terms;
* directly targeted grants and other subsidies; and
* a purpose-built infrastructure to subsidize the set-up costs.

Once the state is committed to this offer, it can be difficult to enforce local laws against [pollution](http://en.wikipedia.org/wiki/Pollution), [health and safety](http://en.wikipedia.org/wiki/Health_and_safety) or monopolies. Green and Ward (2004) examine how the debt repayment schemes in developing countries place such a financial burden on states that they often collude with corporations offering prospects of capital growth. Such collusion frequently entails the softening of environmental and other regulations. The debt service obligation can also exacerbate political instability in countries where the legitimacy of state power is questioned. Such political volatility leads states to adopt clientelistic or patrimonialist patterns of governance, fostering organized crime, corruption, and authoritarianism. In some third world countries, this political atmosphere has encouraged repression and the use of torture. Exceptionally, genocide has occurred. But Sharkansky (1995) is careful to maintain a strict definition of "crime" for these purposes. Many individuals and organizations may disapprove of what governments do or fail to do, but such acts and omissions are not necessarily criminal.

* 1. **Political Crime**

The political-crime category contains both crimes by the government and crimes against the government. Political goals motivate political criminals.

 In [criminology](http://en.wikipedia.org/wiki/Criminology), a political [crime](http://en.wikipedia.org/wiki/Crime) is one involving overt acts or [omissions](http://en.wikipedia.org/wiki/Omission_%28criminal%29) (where there is a duty to act), which prejudice the interests of the [state](http://en.wikipedia.org/wiki/State), its [government](http://en.wikipedia.org/wiki/Government) or the political system. It is to be distinguished from [state crime](http://en.wikipedia.org/wiki/State_crime) when it is the states that break both their own [criminal laws](http://en.wikipedia.org/wiki/Criminal_law) and/or [public international law](http://en.wikipedia.org/wiki/Public_international_law) (Ross, 2000).

At one extreme, crimes such as [treason](http://en.wikipedia.org/wiki/Treason), [sedition](http://en.wikipedia.org/wiki/Sedition), and [terrorism](http://en.wikipedia.org/wiki/Terrorism) are political because they represent a direct challenge to the government in power. But offenders do not have to aim to overthrow the government or to depose its leaders to be acting in a way perceived as "political". A state may perceive it threatening if individuals advocate change to the established order, or argue the need for reform of long-established policies, or engage in acts signifying some degree of disloyalty, e.g. by burning the nation's flag in public. But the scope of such crimes can be rather less direct. Functionalist criminologists recognize that states invest their resources in maintaining order through social conformity, i.e. a particular [culture](http://en.wikipedia.org/wiki/Culture) is encouraged and maintained through the primary social discourses which may include religious, economic, social, or other less formal concerns. Any interference with the media of communication or the sets of meanings embedded in the communications themselves may be perceived as a threat to the political authority of the state. Hence, whether in hard copy or electronically, if individuals distribute material containing uncensored information which undermines the credibility of state-controlled news media, this may be considered threatening. Moreover, even an offence against non-governmental institutions, persons, or practices may be deemed political. Violence or even discrimination against an ethnic or racial group, as well [trade union](http://en.wikipedia.org/wiki/Trade_union) [strikes](http://en.wikipedia.org/wiki/Strike_action) or [picketing](http://en.wikipedia.org/wiki/Picketing) against private [employers](http://en.wikipedia.org/wiki/Employer), can be perceived as a political crime when those in power see such conduct as undermining the political (and economic) stability of the state.

* **Terrorism**

People convicted or suspected of certain crimes classified as *terrorism* by the government of their country (or some foreign countries) reject that classification. They consider that their fight is a legitimate one using legitimate means, and thus their crimes should be more appropriately called political crimes and justify special treatment in the penal system (as if they were soldiers in a war and therefore covered by the [Geneva Convention](http://en.wikipedia.org/wiki/Geneva_Convention). States tend to consider the political nature of the crimes an aggravating factor in the [sentencing](http://en.wikipedia.org/wiki/Sentence_%28law%29) process and make no distinction between the terrorists and "ordinary" offenders, e.g. the convicted murderers of [Action Directed](http://en.wikipedia.org/wiki/Action_Directe_%28gang%29) consider themselves political prisoners

**Measurement of Crime**

**Crime Statistics**

Crime statistics are the indices of intensity of crimes recorded annually in a particular country, region or place. It reflects upon the ascending or descending trends in crime and also gives information as to how new forms of crime are emerging and the old ones are disappearing or assuming new dimensions. Thus crime statistics are indicative of the general moral-tune of a given society and throw light on the general efficacy of police, prosecuting agencies and law courts. Therefore, the role of crime statistics in analyzing causation of crime and devising measures to combat criminality need not be over-emphasized. The statistics of crime help the law enforcement agencies to spot out the preponderance of crime at a particular time, place and region.

 Criminologists, however differ as to their views about the scope of criminal statistics. Some of them assert that the data should mainly concern with offences and offenders, administrative actions and decisions of the Courts, while others maintain that it should only be limited to offenders and convicted persons. But the generally accepted view is that crime statistics should not only be confined to data on offences and offenders but also include numerical figures pertaining to the criminal law administration agencies such as police, prosecution, courts, parole and probation services, juvenile delinquency, prisons, drug law violations and trafficking records etc. The data so presented should be scientifically classified, tabulated and analyzed so as to present a realistic picture of crime situation of a particular region or country. The periodical publication of such statistics is equally important so that the criminal law agencies may utilize it to the best of their advantage for combating crimes.

 Emphasizing the need for statistics in the field of criminology *Donald Taft* observed that, “quantification which includes counting, measuring and collating the phenomena under study is the basic process in modern scientific approach to criminal science. Without this process, investigative efforts would hardly serve any useful purpose. Crime statistics also depict the picture of distribution of crimes in different areas, regions, and locations. It must, however, be stated that mathematical accuracy of crime figures at a given place and time is rather difficult to ascertain. The statistics only present an over-all picture of incidence of crime and make it possible to compare the crime rate at regional, national and international level”.

Speaking about the importance of periodical statistical records of prisons and prisoners *Bentham* observed:

“The ordering of these returns is a measure of excellent use in furnishing data for the legislature to work upon. They will form together a kind of political barometer by which the effect of every legislative operation relative to the subject may be indicated and made palatable. It is not till lately the legislators have thought of providing themselves with necessary documents.

 Thus, it would be seen that crime statistics provide a useful guideline for the legislators and criminal law administrators to fight against criminality and find effective anti-dote of crimes.

Pointing out the significance of statistical data on crime and criminals, *Edwin Sutherland* observed that, “these statistics are sometimes usefully utilized in the formulation of social policies and theories of criminality. Besides, it also provides valuable source-material for crime investigators. The social information contained in them forms the basis of extensive research in the field of criminology. In the absence of statistical record of crime it would become virtually impossible to form any valid opinion about the crime picture in a given place”.

**Sources of Crime Statistics:**

Available statistics of crime may broadly be classified into two major categories, viz., serious crimes and minor crimes. Serious crimes generally cause greater alarm in the society and huge revenue loss to the State such as tax evasion, bank frauds, scams etc. The minor offences, on the other hand, are less alarming and are generally viewed mildly by the society.

Considered from the point of view of different agencies connected with the administration of criminal justice, criminal statistics may be placed under three broad heads, namely:

1. Police statistics;
2. Judicial statistics or Court statistics; and
3. Penal statistics.

*Police statistics* are primarily concerned with the number of crimes reported, the number of persons apprehended and the number of offences cleared or accounted for by the arrests made.

The *judicial or Court statistics* are concerned with the number of offences prosecuted the number convicted and the method of procedure followed in determining guilt, the number not convicted and the stage at which cases were dropped. These statistics also account for the number of convictions and the type of sentences imposed upon guilty persons.

*Penal statistics* comprise the details of different types of custodial measures, the characteristics of inmates, time spent in custody, number of escapes and offence-wise number of recidivists.

It may be stated that equally important is the data of post-correctional criminal behaviour but it is practically not feasible to follow up the post-release conduct of the convicted offenders. But the Government should at least make efforts to collect the statistical data concerning repletion of crimes which may help the administration in suitably dealing with the habitual**.**

**Reasons for Unreliability of Crime Statistics**:

The magnitude of the problem of various forms of crime in a particular country can be ascertained after an analysis of the criminal statistics. But the fact remains that these statistics deal mainly with recorded crimes. It is, therefore, not possible to detect all criminal acts committed by people in a country. It is for this reason that it is generally believed that statistics of crime and criminal are most deceptive of all the statistics and hardly present a true picture of crime position. Some of the reasons generally attributed to unreliability of crime statistics are as follows:

1. The concept of crime being dynamic, it is difficult to determine the quantum of crime with accuracy.
2. Quite a large number of crimes committed remain undetected, there are others which are detected but not reported and many more are reported but not recorded. There are several reasons for not reporting c rimes. The offence may be considered trivial; the police-post might be too far away; one sincerely wants that the culprit should be punished but he may apprehend harassment from him or he may not be willing to go through the cumbersome process of criminal trial or he or she may feel embarrassed, as in case of sex offences. The victim may also not be interested in reporting crime because he may not have confidence in the criminal justice system.

3. At times, there is a deliberate non-registration of crimes because lesser number of crimes projects a better image of police performance.

4. Quite a large number of crimes are lost between arrest and prosecution and many more are lost between prosecution and conviction. Explaining this point further, Leon Radzinowicz observed that crimes fully brought out into the open and punished, “represent not more than fifteen per cent of the great mass actually committed”.

5. The crime statistics at different places do not present a true picture of volume of crimes because of the socio-economic differences and variations in the criminal law. The behavior which may be a crime at one place may not be necessarily so in another place or time. This reduces the significance of crime-index for the purposes of comparison. It is primarily for this reason that comparisons of the crime rates of various countries are seriously limited by wide variations in their national legal systems.

6. The crime figures for the purpose of comparisons are to be stated in proportion to population or some other base and as E.H. Sutherland rightly points out, determination of this base is often difficult. The accuracy of population figures is equally a matter of doubt and suspicion.

7. The judicial statistics or the statistical data given by law courts regarding number of convictions do not generally tally with the statistics of prisoners compiled by prison authorities because all convictions do not necessarily result into imprisonment. Many of the convicted persons are let off after admonition or fine or released on probation or parole or booked to a correctional institution.

8. The prison statistics often give a distorted picture of criminality. They are least reliable to be used for appreciating the magnitude of the real crime problem or the types of crimes committed, or the types of offenders booked for crimes. In fact, they are simply indicative of the persons who are institutionalized rather than having any bearing upon actual number of crimes or criminals. Moreover, these statistics are reflective of why people are caught and prosecuted rather than of why they commit crimes, which is the central concern of criminologist.

It would thus appear that accuracy of crime-statistics depends, by and large, upon the societal reaction towards different crimes and the honesty, efficiency and working of Police Department and other investigating agencies. Crime being concerned with behavioral patterns, accuracy of crime figures is a myth. Statistics, therefore, depict only a general picture of criminality at a given place and time. Commenting on the unreliability of crime statistics, *B. Wehner* observed that, “unreported crimes vary between a minimum of twice and maximum of four-times the number actually shown in criminal statistics”.

**Chapter Five: Juvenile Delinquency**

**Definition**

*Juvenile delinquency* refers to [criminal](http://en.wikipedia.org/wiki/Criminal_act) acts performed by [juveniles](http://en.wikipedia.org/wiki/Juvenile_%28law%29). Most [legal systems](http://en.wikipedia.org/wiki/Legal_system) prescribe specific procedures for dealing with juveniles, such as juvenile detention centers. There are a multitude of different [theories on the causes of crime](http://en.wikipedia.org/wiki/Criminology), most if not all of which can be applied to the causes of youth crime. Youth crime is an aspect of crime which receives great attention from the [news media](http://en.wikipedia.org/wiki/News_media) and [politicians](http://en.wikipedia.org/wiki/Politics). Crime committed by young people has risen since the mid-twentieth century, as have most types of crime. The level and types of youth crime can be used by commentators as an indicator of the general state of [morality](http://en.wikipedia.org/wiki/Morality) and [law and order](http://en.wikipedia.org/wiki/Law_and_order_%28politics%29) in a country, and consequently youth crime can be the source of ‘[moral panics](http://en.wikipedia.org/wiki/Moral_panics)’ Theories on the causes of youth crime can be viewed as particularly important within [criminology](http://en.wikipedia.org/wiki/Criminology). This is firstly because crime is committed disproportionately by those aged between fifteen and twenty-five. Secondly, by definition any theories on the causes of crime will focus on youth crime, as adult criminals will have likely started offending when they were young. A Juvenile Delinquent is one who repeatedly commits crime; however these juvenile delinquents could most likely have mental disorders/behavioral issues such as [schizophrenia](http://en.wikipedia.org/wiki/Schizophrenia), [post traumatic stress disorder](http://en.wikipedia.org/wiki/Post_traumatic_stress_disorder) or bipolar disorder.

**Theories of Juvenile Delinquency**

**Social Disorganization Theory**

Current [positivist approaches](http://en.wikipedia.org/wiki/Positivist_criminology) generally focus on the [cultural](http://en.wikipedia.org/wiki/Culture) and [socio-economic](http://en.wikipedia.org/wiki/Socio-economic) environment to which a young person has been exposed, and how these conditions may be criminogenic. These theories de-emphasize individual agency, and stress criminal behaviour is largely determined by factors outside a young person's control. Social ecology or [social disorganization theory](http://en.wikipedia.org/wiki/Social_disorganisation_theory) says crime is generated by the breakdown of [traditional values](http://en.wikipedia.org/wiki/Traditional_values) and [norms](http://en.wikipedia.org/wiki/Norms). This was most likely to occur in urban areas with [transient](http://en.wikipedia.org/wiki/Transient) populations and high levels of [migration](http://en.wikipedia.org/wiki/Human_migration), which would produce the breakdown of [family](http://en.wikipedia.org/wiki/Family) relationships and [community](http://en.wikipedia.org/wiki/Community), competing values, and increasing [impersonality](http://en.wikipedia.org/wiki/Individualism).

**Strain theory**

[Strain Theory](http://en.wikipedia.org/wiki/Strain_theory_%28sociology%29) is associated mainly with the work of [Robert Merton](http://en.wikipedia.org/wiki/Robert_Merton). He felt that there are [institutionalized](http://en.wikipedia.org/wiki/Institutionalization) paths to [success](http://en.wikipedia.org/wiki/Success) in [society](http://en.wikipedia.org/wiki/Society). Strain theory holds that crime is caused by the difficulty those in [poverty](http://en.wikipedia.org/wiki/Poverty) have in achieving socially valued goals by [legitimate](http://en.wikipedia.org/wiki/Legitimate) means. As those with, for instance, poor educational attainment have difficulty achieving wealth and status by securing well paid employment, they are more likely to use criminal means to obtain these goals. Merton's suggests five adaptations to this dilemma:

1. ***Innovation*:** individuals who accept socially approved goals, but not necessarily the socially approved means.
2. ***Retreatism*:** those who reject socially approved goals and the means for acquiring them.
3. ***Ritualism***: those who buy into a system of socially approved means, but lose sight of the goals. Merton believed that drug users are in this category.
4. ***Conformity*:** those who conform to the system's means and goals.
5. ***Rebellion*:** people who negate socially approved goals and means by creating a new system of acceptable goals and means.

A difficulty with strain theory is that it does not explore why children of low-income families would have poor educational attainment in the first place. More importantly is the fact that much youth crime does not have an economic motivation. Strain theory fails to explain [violent crime](http://en.wikipedia.org/wiki/Violent_crime#Types), the type of youth crime which causes most anxiety to the public.

**Sub-Cultural Theory**

Related to strain theory is [sub cultural theory](http://en.wikipedia.org/wiki/Subcultural_theory). The inability of youths to achieve socially valued [status](http://en.wikipedia.org/wiki/Status) and goals results in groups of young people forming [deviant](http://en.wikipedia.org/wiki/Deviancy) or delinquent [subcultures](http://en.wikipedia.org/wiki/Subculture), which have their own values and norms. (Eadie & Morley: 2003 p.552) Within these groups criminal behavior may actually be valued, and increase a youth’s status. (Walklate: 2003 p.22) The notion of delinquent subcultures is relevant for crimes that are not economically motivated. Male [gang](http://en.wikipedia.org/wiki/Gang) members could be argued to have their own values, such as respect for [fighting](http://en.wikipedia.org/wiki/Fighting) ability and daring. However it is not clear how different this makes them from ‘ordinary’ non-lawbreaking young men. Furthermore there is no explanation of why people unable to achieve socially valued goals should necessarily choose criminal substitutes. Sub cultural theories have been criticized for making too sharp a distinction between what is deviant and what is ‘normal’. (Brown: 1998 p.23) There are also doubts about whether young people consciously reject [mainstream](http://en.wikipedia.org/wiki/Mainstream) values. (Brown, 1998 p.23)

**Differential Association Theory**

The theory of Differential association also deals with young people in a group context, and looks at how peer pressure and the existence of gangs could lead them into crime. It suggests young people are motivated to commit crimes by delinquent peers, and learn criminal skills from them. The diminished influence of peers after men [marry](http://en.wikipedia.org/wiki/Marriage) has also been cited as a factor in desisting from offending. There is strong evidence that young people with criminal friends are more likely to commit crimes themselves. However it may be the case that offenders prefer to associate with one another, rather than delinquent peers causing someone to start offending. Furthermore there is the question of how the delinquent peer group became delinquent initially.

**Labeling Theory**

[Labeling theory](http://en.wikipedia.org/wiki/Labeling_theory) states that once young people have been labeled as criminal they are more likely to offend. The idea is that once labeled as deviant a young person may accept that [role](http://en.wikipedia.org/wiki/Role), and be more likely to associate with others who have been similarly labeled. (Eadie & Morley: 2003 p.552) Labeling theorists say that male children from poor families are more likely to be labeled deviant, and that this may partially explain why there are more [lower-class](http://en.wikipedia.org/wiki/Lower-class) young male offenders. (Walklate: 2003 p. 24)

**Juvenile Delinquency As A Male Phenomenon**

Youth crime is, disproportionately, committed by young [men](http://en.wikipedia.org/wiki/Men). [Feminist](http://en.wikipedia.org/wiki/Feminist) theorists and others have examined why this is the case. One suggestion is that ideas of [masculinity](http://en.wikipedia.org/wiki/Masculinity) may make young men more likely to offend. Being tough, [powerful](http://en.wikipedia.org/wiki/Power), [aggressive](http://en.wikipedia.org/wiki/Aggressive), daring and [competitive](http://en.wikipedia.org/wiki/Competitive) may be a way of young men expressing their masculinity. Acting out these ideals may make young men more likely to engage in antisocial and criminal behavior alternatively, rather than young men acting as they do because of societal pressure to conform to masculine ideals; young men may actually be naturally more aggressive, daring etc. As well as biological or [psychological](http://en.wikipedia.org/wiki/Psychological) factors, the way young men are treated by their parents may make them more susceptible to offending. According to a study led by [Florida State University](http://en.wikipedia.org/wiki/Florida_State_University) criminologist Kevin M. Beaver, adolescent males who possess a certain type of variation in a specific [gene](http://en.wikipedia.org/wiki/Gene) are more likely to flock to delinquent peers. The study, which appears in the September 2008 issue of the Journal of Genetic Psychology, is the first to establish a statistically significant association between an affinity for antisocial peer groups and a particular variation (called the 10-repeat allele) of the [dopamine](http://en.wikipedia.org/wiki/Dopamine) transporter gene (DAT1).

**Risk Factors**

**Individual Risk Factors**

Individual psychological or [behavioral](http://en.wikipedia.org/wiki/Behaviour) risk factors that may make offending more likely include [intelligence](http://en.wikipedia.org/wiki/Intelligence), [impulsiveness](http://en.wikipedia.org/wiki/Impulsiveness) or the inability to delay [gratification](http://en.wikipedia.org/wiki/Gratification), [aggression](http://en.wikipedia.org/wiki/Aggression), [empathy](http://en.wikipedia.org/wiki/Empathy), and [restlessness](http://en.wikipedia.org/wiki/Restlessness). (Farrington, 2002)

[**Low Intelligence**](http://en.wikipedia.org/wiki/Low_intelligence): Children with [low intelligence](http://en.wikipedia.org/wiki/Low_intelligence) are likely to do worse in [school](http://en.wikipedia.org/wiki/School). This may increase the chances of offending because low educational attainment, a low attachment to school, and low educational aspirations are all risk factors for offending in themselves. (Walklate: 2003 p. 2) Children who perform poorly at school are also more likely to [truant](http://en.wikipedia.org/wiki/Truant), which is also linked to offending. (Farrington: 2002 p.682) If strain theory or sub cultural theory are valid poor educational attainment could lead to crime as children were unable to attain wealth and status legally. However, it must be born in mind that defining and measuring intelligence is troublesome.

[**Impulsiveness**](http://en.wikipedia.org/wiki/Impulsiveness): Young males are especially likely to be impulsive which could mean they disregard the long-term consequences of their actions, have a lack of [self-control](http://en.wikipedia.org/wiki/Self-control), and are unable to postpone immediate gratification. This may explain why they disproportionately offend. Impulsiveness is seen by some as the key aspect of a child's [personality](http://en.wikipedia.org/wiki/Personality_psychology) that predicts offending. However is not clear whether these aspects of personality are a result of “deficits in the executive functions of the [brain](http://en.wikipedia.org/wiki/Brain)”, or a result of parental influences or other social factors.

**Family Environment**

Family factors which may have an influence on offending include; the level of [parental supervision](http://en.wikipedia.org/wiki/Parental_supervision), the way parents [discipline](http://en.wikipedia.org/wiki/Discipline) a child, parental conflict or [separation](http://en.wikipedia.org/wiki/Separation), criminal parents or siblings, [parental abuse or neglect](http://en.wikipedia.org/wiki/Child_abuse), and the quality of the parent-child relationship Children brought up by [lone parents](http://en.wikipedia.org/wiki/Single_parent) are more likely to start offending than those who live with two natural parents, however once the attachment a child feels towards their parent(s) and the level of parental supervision are taken into account, children in single parent families are no more likely to offend then others. Conflict between a child's parents is also much more closely linked to offending than being raised by a lone parent. (Walklate: 2003 p. 106) If a child has low parental supervision they are much more likely to offend. (Graham & Bowling: 1995) Many studies have found a strong correlation between a lack of supervision and offending, and it appears to be the most important family influence on offending. When parents commonly do not know where their children are, what their activities are, or who their friends are, children are more likely to truant from school and have delinquent friends, each of which are linked to offending. A lack of supervision is connected to poor relationships between children and parents, as children who are often in conflict with their parents may be less willing to discuss their activities with them. Children with a weak attachment to their parents are more likely to offend.

**Delinquency Prevention**

Delinquency Prevention is the broad term for all efforts aimed at preventing youth from becoming involved in criminal, or other antisocial, activity. Increasingly, governments are recognizing the importance of allocating resources for the prevention of delinquency. Because it is often difficult for states to provide the fiscal resources necessary for good prevention, organizations, communities, and governments are working more in collaboration with each other to prevent juvenile delinquency.

With the development of delinquency in youth being influenced by numerous factors, prevention efforts are comprehensive in scope. Prevention services include activities such as substance abuse education and treatment, family counseling, youth mentoring, parenting education, educational support, and youth sheltering.

**Chapter Six: Victimizations, Victimology and Restorative Justice**

**Introduction**

Thirty years ago, it would have been difficult to have found any criminological agency (official, professional, voluntary or other) or research group working in the field of victims of crime, or which considered crime victims as having any central relevance to the subject apart from being a sad of the activity under study-criminality. To officials the victim was merely a witness in the court case, to researchers either the victim was totally ignored or was used as a source of information about crime and criminals. Until very recently there was a striking lack of information about victims, and even now the knowledge is sketchy, limited to certain crimes and often to certain types of victim. This ignorance is astonishing when one considers that the criminal justice system would collapse if victims were to refuse to cooperate. Some victims have found that their treatment by the officials in the criminal justice system-the police, lawyers, court officials, judges and compensation boards,-to be too stressful, demeaning, unfair, disregarding of their feelings, rights needs and interests. Sometimes they see the system as a second victimization which can be more unpleasant than the original crime. In such cases they may well choose not to report or to cooperate in the future; their experiences may also affect their friends and family, and even the general public, spreading a general reluctance to cooperate. This syndrome is best known in rape cases but also exists in other areas (Katherine s. Williams, 2001).

As a method of countering the problem of [crime](http://www.associatedcontent.com/theme/1558/crime.html) and of dealing with the numerous victims left in their wake, criminologists turn to the study of victims and their relationship to the criminal act. While caring and understanding the pain and anguish of the victim and their circle of social influence is of essential, as is providing [treatment](http://www.associatedcontent.com/theme/1483/treatment.html) and counseling, criminologists now view the role of the victim in the criminal process as imperative to understanding [crime](http://www.associatedcontent.com/theme/1558/crime.html) itself. Studying and researching victimology helps in gaining a better understanding of the victim, as well as the criminal, and how the [crime](http://www.associatedcontent.com/theme/1558/crime.html) may have been precipitated.

**Crime Victims**

A **victim of a crime**, or **crime victim**, is in [criminology](http://en.wikipedia.org/wiki/Criminology) and [criminal law](http://en.wikipedia.org/wiki/Criminal_law), the identifiable person who has been [harmed](http://en.wikipedia.org/wiki/Harm) individually and directly by the [perpetrator](http://en.wikipedia.org/wiki/Perpetrator) or [defendant](http://en.wikipedia.org/wiki/Defendant), rather than merely [society](http://en.wikipedia.org/wiki/Society) as a whole. However, this may not always be the case, as with victims of white collar crime, who may not be clearly identifiable or directly linked to the crime, and are often denied their status as victims by the social construction of the concept. (Croall, 2001).

**Types of Victims:**

The term ‘crime victim’ refers to any person, group or entity who has suffered injury or loss due to illegal activity of someone. The harm can be physical, psychological or economic. Such a person may be called a ***‘primary victim of crime’***. Besides, there are also ‘***secondary crime victims****’* who suffer harm or injury as a result of injury or harm to the primary crime victim. For example, the children of a raped woman or a battered woman suffering from lack of paternity and are secondary victims.

* **Society as Crime Victim:**

There is one strain of thought that society itself is the victim of many crimes, especially such [homicide](http://en.wikipedia.org/wiki/Homicide) [felonies](http://en.wikipedia.org/wiki/Felony) as [murder](http://en.wikipedia.org/wiki/Murder) and [manslaughter](http://en.wikipedia.org/wiki/Manslaughter). This sentiment has been espoused by many lawyers, judges, and academics. Some [district attorneys](http://en.wikipedia.org/wiki/District_attorney) feel they represent all of society, while some feel they are the lawyer for the crime victim. [*John Donne*](http://en.wikipedia.org/wiki/John_Donne) wrote that when one hears a [funeral](http://en.wikipedia.org/wiki/Funeral) bell, one should not wonder "[for whom the bell tolls](http://en.wikipedia.org/wiki/For_whom_the_bell_tolls)," because "it tolls for thee," meaning that a part of everyone dies when one person in society dies. In other words, crime is harm to society.

*Von Hentig* (1948) carried the work of *Mendelson* further and placed victims in *five* main categories as follows:

* The ***innocent*** who fell a victim in crime being in the wrong place at the wrong time.
* The ***depressive*** types who are an easy target, being careless and unsuspecting.
* The ***greedy*** type who are easily duped because of craze for money and easy gain.
* The ***wanton*** type who are particularly vulnerable to stresses of life such as juvenile victims.
* The ***tormentor***type who is the victim of attack from the target of his/her abuse such as battered women.

**Psychological Consequences affecting Crime Victims:**

Emotional [distress](http://en.wikipedia.org/wiki/Suffering) as the result of crime is a recurring theme for all victims of crime. The most common problem, affecting three quarters of victims, were psychological problems, including: fear, anxiety, nervousness, self-blame, anger, shame, and difficulty sleeping.[[2]](http://en.wikipedia.org/wiki/Victimology#cite_note-Sebba-1) These problems often result in the development of chronic PTSD (post-traumatic stress disorder). Post crime distress is also linked to pre-existing emotional problems and socio-demographic variables. This has known to become a leading case of the elderly to be more adversely affected. Victims may experience the following psychological reactions:

* Increase in the belief of personal vulnerability.
* The perception of the world as meaningless and incomprehensible.
* The view of themselves in a negative light.

The experience of victimization may result in an increasing fear of the victim of the crime, and the spread of fear in the community.

**Reluctance of Victims to Report Crimes:**

The reluctance of victims to report cases to the police remains an issue to be probed in by victimologists. Some of the reasons for non-reporting of crimes are:

1. People’s apathy and attitude of indifference;

2. The effect of crime being insignificant or petty;

3. Identity of the offender being unknown;

4. Apprehension of threat or harassment from the culprit;

5. Social and public indignation, particularly in cases of rape, illegal abortion and other sexual offences;

6. Considerable loss of time, money in prolonged criminal litigation;

7. Reluctance of witnesses to testify or possibility of their turning hostile;

8. Lack of faith and confidence in police action.

Needless to say that apathy of victims to report against the offender encourages criminality. Therefore, victimologists should concentrate the problems which hinder victim’s approach to the agencies of criminal justice system for redressal of their woes and sufferings. Since the ultimate end of penal justice is to protect and add to the welfare of the people and society as a whole, victims’ rights should not only be recognized by the State but they should be well protected by the law and victims’ services should be further extended. The emergence of compensatory jurisprudence is indeed a welcome step from the point of view of human rights philosophy.

**Victimization**

**Definition and Nature**

The noun "victimization" has two meanings, "an act that exploits or victimizes someone" and "adversity resulting from being made a victim" (Victimization, N.d). Despite these two descriptions of the same word, both illustrate the problem of victimization. One of the most controversial sub-topics within the broader topic is victimization. The concept of "victim-proneness" is a "highly moralistic way of assigning [guilt](http://en.wikipedia.org/wiki/Guilt)" to the *victim of a crime*, also known as [***victim-blaming***](http://en.wikipedia.org/w/index.php?title=Victim-blaming&action=edit&redlink=1)***.*** Victim blaming is holding the victims of a [crime](http://en.wikipedia.org/wiki/Crime), an [accident](http://en.wikipedia.org/wiki/Accident), or any type of [abusive](http://en.wikipedia.org/wiki/Abusive) maltreatment to be entirely or partially [responsible](http://en.wikipedia.org/wiki/Moral_responsibility) for the unfortunate incident that has occurred in their life, often when the victim had performed no actions to facilitate the incident. It is also about blaming individuals for their personal distress or for social difficulties, rather than the other parties involved or the overarching social system in place.

There have been some studies recently to quantify the real existence of *victim-proneness.* Contrary to the [urban legend](http://en.wikipedia.org/wiki/Urban_legend) that more women are repeat victims, and thus more victim-prone than men actually men in their prime (24 to 34 year old males) are more likely to be victims of repeated crimes. While each study used different [methodology](http://en.wikipedia.org/wiki/Methodology), their results must be taken seriously and further studies are warranted.

The study of victimology may also include the "culture of victimhood," wherein the victim of a crime reveals in his status, proclaiming that self-created victimhood throughout a community by winning the sympathy of professionals and peers. In the case of juvenile offenders, the study results also show that people are more likely to be victimized as a result of a serious offense by someone they know; the most frequent crimes committed by adolescents towards someone they know were sexual assault, common assault, and homicide. Adolescents victimizing people they did not know generally committed common assault, forcible confinement, armed robbery, and robbery.

One particularly well known example of a class at increased risk to varying forms of attacks is the [prostitute](http://en.wikipedia.org/wiki/Prostitute). These people have been known [anecdotally](http://en.wikipedia.org/wiki/Anecdotal_evidence) to have an abnormally high incidence of [violent crime](http://en.wikipedia.org/wiki/Violent_crime), and such crimes go unresolved frequently. Victimological studies of the matter might investigate current societal mores (expectations, roles, social status), legal status of prostitutes, typical working/living conditions, statistical analysis of the actual increased risk and secondary risk factors, and the economic activity of a prostitute. Another example is when the victim actively precipitates or initiates the crime scene, for example, by starting a fight or [baiting](http://en.wikipedia.org/wiki/Baiting) another individual.

**Theories of Victim Blaming:**

These theories explain the universal rejection of victims. There appears to be resistance to believing the innocence of victims. People feel helpless and vulnerable when exposed to senseless violence and need to find rational explanations for the incident. Blaming the victim helps by providing an explanation. People also have an irrational fear of contamination by the victim. Rejection of the victim becomes a defensive maneuver.

**1. Just-World Hypothesis:**

It has been proposed that one cause of victim-blaming is the "[Just World Hypothesis](http://en.wikipedia.org/wiki/Just_World_Hypothesis)". People who believe that the world has to be fair may find it hard or impossible to accept a situation in which a person is unfairly and badly hurt. This leads to a sense that, somehow, the victim must have surely done 'something' to deserve their fate. Another theory entails the need to protect one's own sense of invulnerability. This inspires people to believe that rape only happens to those who deserve or provoke the assault (Schneider et al., 1994). This is a way of feeling safer. If the potential victim avoids the behaviors of the past victims then they themselves will remain safe and feel less vulnerable. A global survey of attitudes toward sexual violence by the Global Forum for Health Research shows that victim-blaming concepts are at least partially accepted in many countries. In some countries, victim-blaming is more common, and women who have been raped are sometimes deemed to have behaved improperly. Often, these are countries where there is a significant social divide between the freedoms and status afforded to men and women.This theory dates from very ancient times: the biblical [Book of Job](http://en.wikipedia.org/wiki/Book_of_Job) offers a canonical exploration of it.

Supporters of this view (once referred to as "[Job's comforters](http://en.wikipedia.org/wiki/Job%27s_comforter)") must perforce accept that to do otherwise would require them to give up their belief in a just world, and require them to believe in a world where bad things – such as [poverty](http://en.wikipedia.org/wiki/Poverty), [rape](http://en.wikipedia.org/wiki/Rape), [starvation](http://en.wikipedia.org/wiki/Starvation), and [murder](http://en.wikipedia.org/wiki/Murder) – can happen to good people for no good reason. The [cognitive dissonance](http://en.wikipedia.org/wiki/Cognitive_dissonance) in doing this becomes too great, and results in victim-blaming.

**2. The** [**Assumptive World Theory (Invulnerability Theory)**](http://www.ibiblio.org/rcip/invuln.html)**:**

This theory refers more particularly to the crime of rape. The invulnerability theory states that rape victims are a glaring reminder of our own vulnerability. No one likes to think they could lose control over their own body or life. By deciding a rape victim did something concrete to deserve the assault the observer creates a false sense of safety. If they can avoid doing that particular thing or action then they create the illusion of invulnerability for themselves.

According to the World Book Encyclopedia 2007 entry for "Rape" only [2%](http://www.gnesa.org/info_for/judges.html) of accused rapists are convicted. In contrast FBI studies indicate that only [2%](http://www.ksu.edu/counseling/csweb/topics/relationships/rape.html#Department%20of%20Social%20Services) of all rape reports are false. "Low conviction rates result from insufficient evidence to prosecute, dismissal of trial due to technicalities and reluctance of victims to testify. For these reasons, [low conviction rates do not imply false reporting](http://www.safefromabuse.com/assault_myths.html)". According to The New Encyclopædia Britannica, rapists also have high acquittal rates due to the fact that there are often no witnesses to the crime. A recent poll found that a third of respondents believe women who flirt are partially responsible for being raped (Rape Crisis Information Pathfinder, 2009).

**Victimization and Its Effects:**

Victimization is a highly complex process encompassing a number of possible elements:

**The first element** (often referred to as ‘primary victimization’) comprises whatever interaction may have taken place between offender and ‘victim’ during the commission of the offence, plus any after effects arising from this interaction or from the offence itself.

The second element encompasses ‘the victim’s’ reaction to the offence, including any change in self-perception that may result from it, plus any formal response that s/he may choose to make to it.

**The third element** consists of any further interactions that may take place between ‘the victim’ and others, including the various criminal justice agencies with whom s/he may come into contact as a result of this response. Where this interaction has a further negative impact on the victim, it is often referred to as ‘secondary victimization’.

* 1. **Primary Victimization and Its Consequences:**

With regard to the ‘primary victimization’ phase of the process, it may be helpful to begin by distinguishing between the ‘effects’ or consequences that are known to result from crimes of different kinds and their ‘impact’ on victims themselves. It is a relatively straightforward task (see e.g. Newburn, 1993) to identify and categorize the different types of *effects* with which various crimes may be associated, even though in practice (and particularly from the victim’s own perspective) it may be much more difficult to compartmentalize them in this way. Certain crimes entail physical effects, which are likely to involve some degree of pain and suffering, and may also entail loss of dexterity, some degree of incapacity and/or possible temporary or permanent disfigurement. Many crimes also have financial effects, which may be either direct – where they are attributable to the theft of or damage to property – or indirect. Very often crime can result in additional costs that might be incurred, for example, in seeking medical treatment or legal advice, or loss of income as a result of attending to the crime and its aftermath, or possible loss of future earning potential.

Certain crimes can also have psychological and emotional effects upon victims including depression, anxiety and fear, all of which can adversely affect their quality of life. Finally, though it is often overlooked, crime can also adversely affect victims’ social relationships with family, work colleagues and friends. In principle, at least, it should be possible to quantify most of these effects reasonably objectively, though in practice it is methodologically very difficult to do this (see Maguire, 1991: 387–402), particularly in the case of those effects that do not have direct financial consequences. The measurement of any emotional effects is particularly problematic, not least because both the emotional experience itself and the extent to which people are willing and able to discuss it are themselves highly subjective and, to some extent, culturally specific (see Wortman, 1983).

One additional general observation is that the effect of crime specifically on victims’ social relationships with family friends and associates has largely been neglected by researchers,or if acknowledged has been treated merely as an aspect of the psychological effect of crime. This is somewhat surprising as crime and its aftermath are known to be a stressful experience for victims, and social relationships are also known to be adversely affected by stress of different kinds.

* + 1. **Victims’ Responses to Victimization:**

Having discussed the effects of crime and its impact on different categories of victims, we will now examine the way victims respond to their initial victimization and its impact. These responses may take a number of different forms including the possibility of changes in the attitudes and behavior of the victim, changes in the victim’s own self-perception and even self-identity, and attempts to elicit support or reactions from others including formal agencies such as the police and the courts. Once again we will consider each of these in turn. It is reasonably well established that being the victim of a crime is frequently associated with attitudinal changes. Victims of violence and victims of burglary are especially likely to be worried about those particular categories of crime, respectively, though they are also significantly more likely than non-victims to be worried about all other conventional categories of crime as well. Victims of motor vehicle crime, on the other hand, tend to be rather more specifically worried than non-victims about these particular crimes, but are only marginally more concerned than non-victims about other types of crime. Victims of crime are also more likely than non-victims to perceive that they are at risk of being victimized in the future, and once again the general pattern for different offence types is broadly comparable to that described above. Moreover, victims of violence and burglary are also far more likely than non-victimsto be afraid of walking alone in the area after dark and to feel insecure when alone at home during the night, whereas victims of motor vehicle crime do not feel any less safe than non-victims in either respect.

In terms of behavioral changes, such evidence as there is mostly relates to the more serious kinds of conventional offences and is mainly based on intensive interview studies involving victims of more serious forms of violence including rape. Shapland et al. (1985), for example, found that 14 per cent of victims experiencing some form of assault responded by going out much less frequently than before the offence. Rape victims appear to be particularly likely to undergo major behavioral changes including moving house or changing jobs. Williams and Holmes (1981), for example, found that one in four victims identified in a sample drawn from police records moved house following the assault, while Burgess and Holmstrom (1976) found that just under half of their small sample of rape victims (19 out of 45) had changed jobs within six weeks of the attack. Other behavioral effects include withdrawal from social contacts and drug or alcohol abuse (Peters et al., 1976; Herman, 1981; Briere, 1984, all cited in Newburn, 1993).

With some types of offences the behavioral consequences can be even more severe. This is particularly true of crimes involving serious physical or sexual abuse that is directed against child victims. In both instancesthere is evidence that a cycle of abuse may be instigated, whereby some of those who have been victimized as children go on to perpetrate the abuse against succeeding generations of victims. Indeed, this is another illustration of the fact that, in reality, victims and offenders often belong to overlapping categories rather than the mutually exclusive camps to which they tend to be assigned by popular stereotypes. More generally, another behavioural response that is not restricted to a particular category of offence types is for the victim to engage in direct retaliatory action against the offender or suspected offender ( Miers, 2000). While such behaviour may be relatively uncommon, it, too, serves as a reminder that we should not rush to dichotomize too rigidly between victims and offenders when considering how each needs to be dealt with.

Quite apart from any direct behavioral consequences it might have, however, one of the most important issues when considering the impact of a specific criminal offence is whether it causes the person(s) against whom it is directed to think differently about themselves. Does it result in them seeing themselves as ‘a victim’ and actively seeking to assume the identity and status of a victim, with all that entails, or not? And, if they do seek such status, will it be conferred on them by those who have the power to authoritatively bestow it?

Becoming a victim, in other words, is a social process that starts with a criminal offence but also requires a cognitive decision by the person(s) against whom it is directed to see themselves as, and assume the status of, victims as part of their strategy for coping with it. Not everyone who has been offended against will necessarily regard themselves as a victim. Some, for example, may not recognize that they have in fact been offended against.This could be because the crime itself might not conventionally be recognized as such, as in the case of ‘corporate manslaughter’. Or it might be that the behaviour in question forms such in intrinsic part of their everyday experience that the person against whom it is directed does not consider it to be criminal or even abnormal. Children who have been sexually abused by a relative, for example, may not appreciate at the time that they have been victimized. Similarly, women who were raped by their husbands or beaten by their partners were not, until relatively recently, encouraged to think of themselves as victims of criminal offences. Others may consciously reject the victim ‘label’, either because they consider it to be pejorative or because they prefer to pursue or promote other ‘coping strategies’. Some of those who work with women who have experienced rape or domestic violence, for example, have deliberately renounced the ‘victim’ label and prefer to use the term ‘survivors’. Still others may consider a potentially victimizing incident too trivial to bother about or would prefer to deal with it themselves. For example, over half (55 per cent) of those who had experienced a potentially victimizing incident over the previous 12 months reported that they did not want any help or support in dealing with it (Maguire and Kynch, 2000).

* 1. **Secondary Victimization**

Assuming that a person who has been offended against does actively seek to be recognized and treated by others as a victim, this will normally set in motion a range of other processes over which the victim has little or no control. These processes may or may not result in victim status being granted but, even where successful, they may inflict additional costs and further hardship on the victim: a consequence that is often referred to as ‘secondary victimization’.

A careful analysis of the victimization process may help us to identify an additional range of criteria by which we may seek to assess the performance of various victim-focused measures (including restorative justice) that are designed to alleviate the harmful consequences of victimization. The most obvious of these concern the extent to which they are capable of addressing the following kinds of harm that may result either directly or indirectly from the commission of a criminal offence:

• Financial loss or additional short or longer term economic hardship;

• Physical harm including pain and suffering plus any longer term incapacity;

• Short and longer term psychological and emotional effects;

• Damage to social relationships, particularly those involving the victim and other family members, colleagues and acquaintances but also including the offender where known to the victim;

• Subjective impact of any of the above from the victim’s own standpoint;

• Any longer term legacy including feelings of insecurity, concern about crime in general or fear of being re-victimized;

• Any negative consequences that might be associated with a person’s self-perception as a victim; and

• The negative consequences associated with any possible ‘secondary victimization’.

**Victimology**

**Definition and Scope**

Victimology in a broader sense describes the study of people who have experienced any of the wide range of victimization experiences from any one of the following perspectives: the victim, the offender, family and society.

*Victimology* is the study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system that is, the police and courts, and corrections officials -- and the connections between victims and other societal groups and institutions, such as the media, businesses, and social movements (Andrew Karman, 2003). A *victim of a crime* ( or *crime victim*) is in [criminology](http://en.wikipedia.org/wiki/Criminology) and [criminal law](http://en.wikipedia.org/wiki/Criminal_law), the identifiable person who has been [harmed](http://en.wikipedia.org/wiki/Harm) individually and directly by the [perpetrator](http://en.wikipedia.org/wiki/Perpetrator) or [defendant](http://en.wikipedia.org/wiki/Defendant), rather than merely [society](http://en.wikipedia.org/wiki/Society) as a whole. However, this may not always be the case, as with victims of white collar crime, who may not be clearly identifiable or directly linked to the crime, and are often denied their status as victims by the social construction of the concept. (Croall, 2001). Not all criminologists even accept the concept of victimization or victimology.

The aim of victimology as a science is to help such sufferers of crime and remove the social confusion by addressing to the problems of victims of crime. It is a relatively new area which is considered as a field of specialization within criminology. In other words, criminology encompasses within it the study of law making, law-breaking and societal reactions to law-breaking whereas victimology forms a part of specialized study in the field of societal reaction to law-breaking. Thus it has been generally accepted that criminology comprises four sub-fields:

1. Penology and the sociology of law;

2. Delinquency;

3. Comparative and historical criminology; and

4. Victimology.

Victimology as a branch of criminology encompasses the study of the following:

1. Victimization;
2. Victim-offender relationships;
3. Victim-criminal justice relationships;
4. Victim and the media relationship;
5. Victims and costs of crime;
6. Victims and societal reactions; and
7. Compensatory remedy for victims.

**Victimology and Its Variants**

Victimology as a field of study is a recently developed sub-discipline of criminology. Whereas the latter is very broadly concerned with the study of crime and criminals, victimology focuses equally broadly on crime and its victims. As within criminology itself, however, individual victimologists have tended to focus on very different sets of issues, as a result of which a number of variants within the sub-discipline may now be differentiated.

The position within victimology is further complicated by the fact that the academic study of victimology is closely intertwined with – and is consequently almost impossible to disentangle from – the equally diverse philosophies and practices that have been adopted by various sets of activists who have championed the cause of victims (Fattah, 1989). In this section, three principal variants within the field of victimology – positivist, radical and critical victimology – are briefly described and linked with the discrete tendencies within the diverse victims’ movement with which they are most closely associated.

* + 1. **Positivist Victimology**

Positivist victimology, like its counterpart in criminology (see Cavadino and Dignan, 2002: 49) is influenced by the view that crime, along with all other natural and social phenomena, is *caused* by factors and processes which can be discovered by scientific investigation. But whereas positivist criminologists attribute the causes of crime to various forces (including environmental and genetic factors) that act upon *offenders* and are beyond their control, early positivist victimologists were interested in the possibility that certain *victims* might in some way contribute to their own victimization. Von Hentig (1941, 1948) and Mendelsohn (1956, 1974), for example, were interested in observing and identifying regularities or non-randomized patterns of victimizing events, and in linking these to particular types of victim who could then be categorized within various typologies.

For instance, victims were classified according to how ‘victim prone’ they were, in von Hentig’s case, or even (and far more controversially) according to the degree of ‘culpability’ exhibited by the victim, in Mendelssohn’s case. The influence of positivist victimology can be discerned at the policymaking level with regard to both the development and deployment of victim survey techniques and also the launch of official campaigns to encourage victims who may be susceptible to various types of victimization to take steps to reduce the risks involved.

A major weakness with positivist victimology, however, is that it assumes that the identity of victims is self-evident, since it is linked to the harm that they have sustained and the fact that their status is defined and recognized by the criminal law. Thus, there is a tendency to concentrate almost exclusively on victims of conventional interpersonal crimes, particularly those involving violence and predatory attitudes towards the property of others.

* + 1. **Radical Victimology**

Radical victimology likewise resembles its criminological counterpart in rejecting the theoretical underpinnings of positivist victimology. Instead of seeing victimization as a product of the personal attributes of individual victims, early radical criminologists such as Quinney (1972) drew attention to structural factors relating to the way society is organized, and also the role of the state itself and the legal system in the social construction of both victims and offenders. Viewed from this perspective, the definition and identity of victims is far from self-evident since it extends to those who are oppressed, and thus victimized, both by ‘the powerful’, and also by those who act on behalf of the state, including the police and correctional agencies. For many radical criminologists (see, for example, Taylor et al., 1973; Platt, 1975; Pearce, 1976), such insights resulted in a tendency to see offenders as the principal victims of state oppression and to downplay or ignore altogether those who were in turn victimized by them. For others, including a group who became known as ‘radical left realists’ (see, for example, Lea and Young, 1984; Young, 1986) the findings of the first British Crime Survey alerted them to the fact that most predatory crime was directed not against the wealthy bourgeoisie but against the poorest members of society who tend to live among those responsible for such crime. Other radical victimologists have been motivated less by empirical findings than their own normative predilections. Robert Elias (1985) for example, sought to place a human rights perspectiveon the victimological agenda. His aim was partly to devise a more objective and less parochial criterion by which victimization might be defined and measured, and partly to mobilize support in favour of measures ‘to relieve human suffering’ on the part of victims.

This realignment within the field of radical victimology is also reflected in certain specific tendencies within the wider victims’ movement. At a political and policymaking level the concerns of new left realism were mirrored in a commitment to improving the lot of ‘ordinary’ victims without necessarily adopting the highly repressive responses towards offenders that are associated with more conservative law and order advocates. At a practitioner level, the quest for a human rights approach was manifested in a search for more constructive ways of dealing with both victims and offenders that sought as far as possible to meet the needs and interests of both. Thus, certain strands within radical victimology are reflected in more liberal approaches with regard to penal policy, such as the promotion of state-funded compensation schemes, support for restitution or compensation for victims by their offenders and even attempts at reconciliation (see also Karmen, 1990: 8). In this respect, some of the early progenitors of the restorative justice movement espoused aims that were certainly consistent with, even if they were not directly inspired by, some of these developments within radical victimology. However, radical victimology has in turn been criticized for its partial and incomplete portrayal of the processes of victimization since it tends to confine its analysis to the impact of social class relationships while neglecting other factors such as gender, race and age (Jefferson et al., 1991; see also Mawby and Walklate, 1994: 16). Attempts to overcome these limitations have drawn on two main perspectives: the first derived from an approach within critical criminology that is known as ‘symbolic interactionism’ (see e.g. Miers, 1989, 1990a); and the second from feminist accounts (see e.g. Mawby and Walklate, 1994). Despite the differences between them, both approaches have appropriated the label ‘critical victimology’, which represents the third main variant within the field of victimology.

* 1. **Critical Victimology**

For David Miers, the key questions for a critical victimology are ‘who has the power to apply the label?’, and ‘what factors are significant in determining whether or not to bestow it?’ While acknowledging that such questions represent an advance on positivist victimology by emphasizing the contingent and culturally specific nature of our assumptions about who victims are Mawby and Walklate do not accept that it takes us far beyond the portrayal provided by radical victimologists. This is mainly because it fails to explain how those labels are constituted and why it is that certain conceptions of who, really, are the victims, come to prevail at different times and in different sets of social and political circumstances. Mawby and Walklate (1994) themselves have been inspired by a feminist perspective rather that one derived from symbolic interactionism as in David Miers’s case. Although not initially directly concerned with criminal victimization per se, feminism did highlight the importance of neglected issues such rape, sexual harassment, domestic violence and child abuse. It also drew attention to an additional pervasive mechanism – patriarchy –which, like social class, helps to shape both the process and pattern of victimization and also our ability or willingness to recognize them for what they are. It is by no means the only one, however. Race, for example, is another factor that, like gender, is implicated in the process of victimization and, through its effect on social attitudes, one that may also obscure these processesunless and until they are revealed by campaigners, social commentators and other opinion formers. Critical victimology has highlighted the importance of historical and cultural contexts in shaping both victimizing practices and our sensitivities towards them. Even more importantly, perhaps, critical victimology should alert us to the fact that concepts such as ‘victim’ and ‘victimization’ are contested and, being historically and culturally specific, are both malleable and far from universal. It is also worth pointing out that, perhaps because of the sympathy that it evokes, the image of ‘the victim’ is capable of being invoked and sometimes even manipulated or exploited, whether to serve the interests of victims per se, particular groups of victims or even other objectives altogether. We will come across examples of all of these tendencies in the two chapters that follow, which examine ‘victim-focused policymaking’.

**Chapter Seven: Restorative Justice**

**Restorative Justice** is a [theory of criminal justice](http://en.wikipedia.org/wiki/Theory_of_criminal_justice) that focuses on crime as an act against the individual or community rather than the state. Dialog between the offender and the victim is crucial to restorative justice. The person who has harmed takes responsibility for his/her wetion and the person who has been harmed may take a central role in the process, in many instances receiving an apology and [reparation](http://en.wikipedia.org/wiki/Reparation_%28legal%29) directly or indirectly from the person who has caused them harm.

* + 1. **Definition of Restorative Justice**

"**Restorative justice** is a broad term which encompasses a growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights. These range from international peacemaking tribunals such as the South Africa [Truth and Reconciliation Commission](http://en.wikipedia.org/wiki/Truth_and_Reconciliation_Commission_%28South_Africa%29) to innovations within the criminal and juvenile justice systems, schools, social services and communities. Rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships. Restorative justice seeks to build partnerships to reestablish mutual responsibility for constructive responses to wrongdoing within our communities. Restorative approaches seek a balanced approach to the needs of the victim, wrongdoer and community through processes that preserve the safety and dignity of all."

Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior. It is best accomplished through cooperative processes that include all stakeholders. Restorative justice is very different from either the [adversarial legal process](http://en.wikipedia.org/wiki/Adversarial_process) or that of [civil litigation](http://en.wikipedia.org/wiki/Civil_law_%28common_law%29). "Court-annexed ADR ([Alternative Dispute Resolution](http://en.wikipedia.org/wiki/Alternative_dispute_resolution)) and restorative justice could not be philosophically further apart" because lawyers seek to reduce issues between offenders and victims to only legally relevant ones and to protect their offending client, whereas restorative justice seeks "expanding the issues beyond those that are legally relevant, especially into underlying relationships."

Citing [Greif](http://en.wikipedia.org/wiki/Eric_Greif), Liebmann has written that

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| --- | --- | --- |
| **“** | a way of looking at restorative justice is to think of it as a balance between a number of different tensions: - a balance between the therapeutic and the retributive models of justice- a balance between the rights of offenders and the needs of victims- a balance between the need to rehabilitate offenders and the duty to protect the public.”**2. Three principles form the foundation for restorative justice**1. Justice requires that we work to restore those who have been injured.
2. Those most directly involved and affected by crime should have the opportunity to participate fully in the response if they wish.
3. Government's role is to preserve a just public order, and the community's is to build and maintain a just peace.
4. **Applications of Restorative Justice**

Restorative justice takes many different forms, but all systems have some aspects in common. In criminal cases, victims have an opportunity to express the full impact of the crime upon their lives, to receive answers to any lingering questions about the incident, and to participate in holding the offender accountable for his or her actions. Offenders can tell their story of why the crime occurred and how it has affected their lives. They are given an opportunity to make things right with the victim—to the degree possible—through some form of compensation. **In social justice cases,** restorative justice is used for problem solving. In these cases, impoverished people such as foster children are given the opportunity to describe what they hope for their futures and make concrete plans for transitioning out of state custody in a group process with their supporters.**In criminal cases,** types of compensation include, but are not limited to: money, community service in general, community service specific to the deed, self-education to prevent recidivism, and/or expression of remorse.**In the courtroom,** a case in relation to *petty or first-time offenses* may be referred to restorative justice as a pretrial diversion, with charges being dismissed after fulfillment of the restitution agreement. *In more serious cases*, restorative justice may be part of a sentence that includes [prison](http://en.wikipedia.org/wiki/Prison) time or other punishments.**In the community,** concerned individuals meet with all affected parties to determine what the experience and impact of the crime were for all. Those called out for offenses listen to others' experiences first, preferably until they are able to reflect and feel what those experiences were for the others. Then they speak to their experience: how it was for them to do what they did. A plan is made for prevention of future occurrences, and for the offender to heal the damage to the injured parties. All agree. Community members hold offender accountable for adherence to the plan.Most academic and government definitions of restorative justice restrict that definition to those programs that involve an encounter between the offender and the victim. Some grassroots organizations, like the Mennonite Central Committee Canada, define restorative justice programs less on who the clientele of the program is, and more on the programs values. This means that programs that only serve victims (or offenders for that matter), but have a restorative framework, are considered a restorative justice program. Restorative justice pioneer [Howard Zehr](http://en.wikipedia.org/wiki/Howard_Zehr) was honored as the recipient of the 2006 [Community of Christ](http://en.wikipedia.org/wiki/Community_of_Christ) [International Peace Award](http://en.wikipedia.org/wiki/Community_of_Christ_International_Peace_Award).Many Libertarians support restorative justice because it is a victim-centric rather than state-centric approach to law enforcement. **Programs to Attain Restorative Justice:**Practices and programs reflecting restorative purposes will respond to crime by: 1. Identifying and taking steps to repair harm,
2. Involving all  stakeholders, and
3. Transforming the traditional relationship between communities and their governments in

responding to crime.The following are some such programs aiming at ensuring restorative justice.* + 1. **Victim-Offender Mediation:**

Victim-offender [mediation](http://en.wikipedia.org/wiki/Mediation), or VOM (also called victim-offender dialogue, victim-offender conferencing, victim-offender reconciliation, or restorative justice dialogue), is usually a face-to-face meeting, in the presence of a trained mediator, between the victim of a crime and the person who committed that crime. This system generally involves a small number of participants, and often is the only option available to incarcerated offenders, due to limits on visitors. VOM originated in Canada where it formed part of an alternative court sanction in a 1974 Kitchener, Ontario case involving two accused vandals who met face-to-face with their many victims.* + 1. **Family Group Conferencing**

Family group conferencing (FGC) has a much wider circle of participants than VOM. In addition to the primary victim and offender, participants may include people connected to the victim, the offender’s family members, and others connected to the offender (for example, friends, and professionals). FGC is often the most appropriate system for juvenile cases, due to the important role of the family in a juvenile offenders’ life. Examples of the use of FGC in a juvenile justice setting can be found in the statutory scheme operating in [New South Wales](http://en.wikipedia.org/wiki/New_South_Wales) ([Australia](http://en.wikipedia.org/wiki/Australia)) under the Young Offenders Act 1997, and in [New Zealand](http://en.wikipedia.org/wiki/New_Zealand) under the Children, Young Persons, and their Families Act, 1989. The New South Wales scheme has been favorably evaluated by the New South Wales Bureau of Crime Statistics and Research.* + 1. **Restorative or Community Conferencing**

Restorative Conferencing has a much wider circle of participants than VOM. Restorative conferences, which have also been called restorative justice conferences, family group conferences and community accountability conferences originated as a response to juvenile crime (Doolan, 1999; O'Connell, 1998).A conference is a structured meeting between offenders, victims and both parties' families and friends, in which they deal with the consequences of the crime and decide how best to repair the harm. Neither a counseling nor a mediation process, conferencing is a victim-sensitive, straightforward problem-solving method that demonstrates how citizens can resolve their own problems when provided with a constructive forum to do so (O’Connell, Wachtel, & Wachtel, 1999).Conferences provide victims and others with an opportunity to confront the offender, express their feelings, ask questions and have a say in the outcome. Offenders hear firsthand how their behavior has affected people. They may begin to repair the harm by apologizing, making amends and agreeing to financial restitution or personal or community service work. Conferences hold offenders accountable while providing them with an opportunity to discard the "offender" label and be reintegrated into their community, school or workplace (Morris and Maxwell, 2001).Participation in conferences is voluntary. After it is determined that a conference is appropriate and offenders and victims have agreed to attend, the conference facilitator invites others affected by the incident–the family and friends of victims and offenders (O’Connell, Wachtel, & Wachtel, 1999). In some cases, if a victim is unwilling to participate in a face-to-face meeting, he may make a written statement to be used in the conference, or a surrogate victim may take his place.The conference facilitator sticks to a simple [script](http://www.realjustice.org/Pages/script.html) and keeps the conference on focus, but is not an active participant. In the conference the facilitator asks the offenders to tell what they did and what they were thinking about when they did it. The facilitator then asks victims and their family members and friends to tell about the incident from their perspective and how it affected them. The offenders' family and friends are asked to do the same (O’Connell, Wachtel, & Wachtel, 1999).In Brazil, a style of restorative conferencing inspired by [Nonviolent Communication](http://en.wikipedia.org/wiki/Nonviolent_Communication) has begun to be used in the youth criminal justice system and in the schools. Like other restorative conferencing practices, the Brazilian "restorative circles" minimize the role of the facilitator, in the interest of empowering circle participants to own the process and feel that in the future they can use the process without an outside facilitator. The approach strives to break free from the retributive model more fully than is in the case in some other restorative practices by emphasizing thinking of participants as human beings, rather than being an "offender," "victim," or other label, and by focusing on each person's choices and the human needs that motivated them. Each person is encouraged to take responsibility for their part in what happened and co-create what will happen next.[The International Institute for Restorative Practices](http://www.iirp.org) provides training in restorative conferencing and other [restorative practices](http://en.wikipedia.org/wiki/Restorative_practices) throughout the world.* + 1. **Community Restorative Boards**

A community restorative board, also referred to by other names internationally such as community justice committees in Canada and referral order panels in England & Wales, is typically composed of a small group of citizens, prepared for this function by intensive training, who conduct public, face-to-face meetings with offenders who have been sentenced by the court to participate in the process or who have been referred by police officers on a pre-charge basis or as part of a peripheral, extra-judicial process. Victims of the offender are invited to participate in the process by meeting with the board and offender, or by submitting a written statement which is shared with the offender and the board. During a meeting, board members discuss with the offender the nature of the offense, impact of the behavior, and negative consequences. Then board members discuss a set of actions with the offender, until they reach agreement on the specific actions the offender will take within a given time period to make reparation for the crime. Subsequently, the offender must document his or her progress in fulfilling the terms of the agreement. After the stipulated period of time has passed, the board submits a report to the court on the offender’s compliance or a written documentation to the referring police officer, with the agreed upon sanctions. At this point, the board’s involvement with the offender is ended.* + 1. **Restorative Circles**

In Hawaii, Restorative Circles are provided for individual imprisoned people who meet with their families and friends in a group process to address their needs for a successful transition back into the community. One of the needs addressed is the need for reconciliation[[11]](http://en.wikipedia.org/wiki/Restorative_justice#cite_note-10) A *Modified* *Restorative Circle* has also been developed and used in Hawaii for individual incarcerated people whose loved ones are unable or unwilling to attend full Restorative Circles. Instead other imprisoned friends sit in the Circle and are supporters in developing a transition plan that includes how the incarcerated individual having the Circle may reconcile with those harmed by the crime and/or imprisonment.* + 1. **Circles of Support and Accountability**

Circles of Support and Accountability (COSA) originated as a project of the "Welcome In," a Mennonite church in Hamilton, Ontario. This thoroughly Canadian innovation is now an internationally regarded, evidence-based practice with a demonstrable capacity to enhance the safe integration of otherwise high-risk sex offenders with their community. In Canada, some sex offenders are released to the community after serving their entire sentence. They have been judged too dangerous to be released on any form of conditional release (e.g. a parole certificate), and have therefore been "detained." Upon further reconviction (and therefore, further victimization), many of these offenders would likely be designated as a "Dangerous Offender," under current Canadian law. Prior to 1994 many of these offenders were released without any form of meaningful community-based support or accountability network apart from police surveillance. Since 1994, COSA has assisted with the integration of well over 120 such offenders by offering them support while holding them accountable. Research now indicates that surrounding a 'core member' with between 5 and 7 carefully selected and trained volunteer circle members significantly reduces sexual re-offence by upwards of 50%. Further, a significant "harm reduction" effect has also been noted in those cases where sexual re-offence has occurred. Offences were less invasive and less brutal in nature than previous offences. COSA projects now exist in every Canadian province and every major urban centre. COSA projects are also operational in several U.S. states.* 1. **Key Values of Restorative Programs**
1. [**Encounter**](http://www.restorativejustice.org/intro/values-1/encounter)**:** Create opportunities for victims, offenders and community members who want

to do so to meet to discuss the crime and its aftermath.1. [**Amends**](http://www.restorativejustice.org/intro/values-1/amends)**:**  Expect offenders to take steps to repair the harm they have caused.
2. [**Reintegration**](http://www.restorativejustice.org/intro/values-1/reintegration)**:**  Seek to restore victims and offenders  to whole, contributing members of

society.1. [**Inclusion**](http://www.restorativejustice.org/intro/values-1/inclusion)**:** Provide opportunities for parties with a stake in a specific crime to participate in

its resolution. |  |

**Chapter Eight:** **Correctional Administration and Treatment of Criminals**

**Introduction**

Corrections in general refer to society's handling of persons after their conviction of a criminal offense. The components of the [criminal justice system](http://en.wikipedia.org/wiki/Criminal_justice) that serve to punish criminal [offenders](http://en.wikipedia.org/wiki/Offender) involve the deprivation of life, liberty or property after due process of law. [Sentences](http://en.wikipedia.org/wiki/Sentence_%28law%29) imposed upon offenders range from [probation](http://en.wikipedia.org/wiki/Probation) to serving time in [prison](http://en.wikipedia.org/wiki/Prison), with intermediate sanctions, including sentences to a [halfway house](http://en.wikipedia.org/wiki/Halfway_house) or community corrections program, home confinement, and electronic monitoring. Financial penalties may include [fines](http://en.wikipedia.org/wiki/Fine_%28penalty%29), [forfeiture](http://en.wikipedia.org/wiki/Forfeiture), and [restitution](http://en.wikipedia.org/wiki/Restitution).

Various correctional approaches developed in the wake of causation theories. The old theological and moralistic theories encouraged punishment as retribution by society for evil. This attitude, indeed, still exists. The 19th-century British jurist and philosopher Jeremy Bentham tried to make the punishment more precisely fit the crime. Bentham believed that pleasure could be measured against pain in all areas of human choice and conduct and that human happiness could be attained through such hedonic calculus. He argued that criminals would be deterred from crime if they knew, specifically, the suffering they would experience if caught. Bentham therefore urged definite, inflexible penalties for each class of crime; the pain of the penalty would outweigh only slightly the pleasure of success in crime; it would exceed it sufficiently to act as a deterrent, but not so much as to amount to wanton cruelty. This so-called calculus of pleasures and pains was based on psychological postulates no longer accepted.

The Bentham approach was in part superseded in the late 19th and early 20th centuries by a movement known as the neoclassical school. This school, rejecting fixed punishments, proposed that sentences vary with the particular circumstances of a crime, such as the age, intellectual level, and emotional state of the offender; the motives and other conditions that may have incited to crime; and the offender's past record and chances of rehabilitation. The influence of the neoclassical school led to the development of such concepts as grades of crime and punishment, indeterminate sentences, and the limited responsibility of young or mentally deficient offenders.

At about the same time, the so-called Italian school stressed measures for preventing crime rather than punishing it. Members of this school argued that individuals are shaped by forces beyond their control and therefore cannot be held fully responsible for their crimes. They urged birth control, censorship of pornographic literature, and other actions designed to mitigate the influences contributing to crime. The Italian school has had a lasting influence on the thinking of present-day criminologists.

The modern approach to the treatment of criminals owes most to psychiatric and case-study methods. Much continues to be learned from offenders who have been placed on probation or parole and whose behavior, both in and out of prison, has been studied intensively. The contemporary scientific attitude is that criminals are individual personalities and that their rehabilitation can be brought about only through individual treatment. Increased juvenile crime has aroused public concern and has stimulated study of the emotional disturbances that foster delinquency. This growing understanding of delinquency has contributed to the understanding of criminals of all ages.

During recent years, crime has been under attack from many directions. The treatment and rehabilitation of criminals has improved in many areas. The emotional problems of convicts have been studied and efforts have been made to help such offenders. Much, however, remains to be done. Parole boards have engaged persons trained in psychology and social work to help convicts on parole or probation adjusts to society. Various states have agencies with programs of reform and rehabilitation for both adult and juvenile offenders.

      Many communities have initiated concerted attacks on the conditions that breed crime. Criminologists recognize that both adult and juvenile crime stem chiefly from the breakdown of traditional social norms and controls, resulting from industrialization, urbanization, increasing physical and social mobility, and the effects of economic crises and wars. Most criminologists believe that effective crime prevention requires community agencies and programs to provide the guidance and control performed, ideally and traditionally, by the family and by the force of social custom. Although the crime rate has not drastically diminished as a result of these efforts, it is hoped that the extension and improvement of all valid approaches to prevention of crime eventually will reduce its incidence.

**Correctional Administration**

* **Meaning and Objectives**

*Punishment* and *rehabilitation* are, generally speaking, two main objectives of correctional administration. However, objectives shift from time to time depending on public opinion and the type of political leadership. In modern times generally rehabilitation seems to gain more attention, though this varies from country to country. From the legal point of view, there are different objectives of punishment. These include revenge or retribution, deterrence (specific and general) and rehabilitation or reformation.

The penal philosophy in Ethiopia gradually shifted from *retribution* and *deterrence* to reformation and rehabilitation. Prior to the seventeenth century, the Ethiopian penal system was mainly based on diverse customary practices. The Fetha Negest or The Law of the Kings was introduced in the seventeenth century. In Ethiopia, though *retribution* and *deterrence* dominated penal philosophy, already, to some extent, the Fetha Negest had gone a little beyond the elements of retribution by partially individualizing punishment to the individual guilt of the offender. But it had retained retribution to a large extent by prescribing rather crude punishments. The provisions of the Penal Code of 1930 further individualized punishment by “relating it to the objective factors of intent, motive and personal status”. Still the elements of reform of the criminal were missing in the code of 1930.

The emphasis on retribution started changing very gradually. Even the 1930 Code had shown concern for the welfare of the injured parties. This could be observed from the provisions of Article 18. The Revised Constitution which was issued in 1955, further de-emphasized retribution. Article 37 of the Constitution stated that “no one shall be denied the equal protection of the laws”. This made it clear that all people are to be treated equally by the law. Article 54 of the Constitution also provided that no one shall be punished without due process of the law. Punishment follows only after a person has been duly proved to have committed an act against the law. Even when one has been proved to have committed an act against the law, the Constitution, under Article 57, provided that “no one shall be subjected to cruel and inhuman punishment” (Andargatchew, 1976a: 411).

The Ethiopian penal philosophy is based on the above constitutional provisions. The objectives of penal law are clearly stated in the first article of the Penal Code of 1957 which article tried to remove the elements of uncertainty as to the objectives of the penal law. It does not leave any doubt as to whether the philosophy behind penal law is punitive or reformative. It clearly indicates that the law has to protect society and also punish and reform those members of society that may fail to respect the provisions. The provisions of the Penal Code are generally inspired by the principle that “reformative justice” is preferable to “punitive justice.” This does not exclude the use of penalties in the general struggle against criminality. In fact, the Codification Commission has strongly expressed that punishment should remain “the pillar of Ethiopian law.” This means that except where the purpose of law cannot be achieved other than by the use of steps such as incarceration, capital punishment, and flogging, the rule that guides the application of the Code should be the general concern for the prevention and suppression of crime without disregard for the welfare and rehabilitation of the individual accused of crime.

Purpose of Criminal Law and objectives of punishment have been redefined by the latest Revised Criminal Code of 2004. The code states that the purpose of Criminal Law is to preserve the peace and security by *preventing* the commission of crimes and a major means of preventing the commission of crime is punishment. Punishment can *deter* wrongdoers from committing other crimes; it can also serve as a warning to prospective wrongdoers. Although imprisonment and death are enforced in respect of certain crimes the main objective is temporarily or permanently to prevent wrongdoers from committing further crimes against society. And in such cases with the exception of the death sentence even criminals sentenced to life imprisonment can be released on parole before serving the whole term. In certain instances convicts can be released on probation without enforcement of the sentence pronounced. This helps wrongdoers to lead a peaceful life and it indicates the major place which the Criminal Law has allocated for their *rehabilitation.* The fact that wrongdoers, instead of being made to suffer while in prison, take vocational training and participate in academic education, which would benefit them upon their release, reaffirms the great concern envisaged by the Criminal Code about the *reform* of criminals. These express provisions in the new Code are included with intention that the Courts should, on passing sentence, take into account the purpose of the CriminalLaw and the different aims of punishment.

Further the new criminal code has done away with flogging as punishment and public hanging of criminals complying with the Constitutional mandate on prohibition of cruel, inhuman degrading penalties and treatment of criminals.

* **Correctional theory**

The basic use of sanctions, which can be either positive (rewarding) or negative (punishment), is the basis of all criminal theory, along with the main goals of social control, and deterrence of deviant behavior.

Many facilities operating in the United States adhere to particular correctional theories. Although often heavily modified, these theories determine the nature of the facilities' design and security operations. The two primary theories used today are the more traditional Remote Supervision and the more contemporary Direct Supervision Models. ***The Remote Supervision Model (RSM)*** consists of an officer(s) observing the inmate population from a remote position, e.g., a tower or secure desk area. ***The Direct Supervision Model (DSM)*** positions the Corrections Officer within the inmate population, creating a more pronounced presence. The following are the important types of correctional administrations:

**Institutional Treatment of fenders**

* 1. **Treatment of Adult Offenders**

Gradually societies resorted to treatment. But the conflict between the punitive and treatment reactions of society, as pointed out by Edwin Sutherland, continued to be unabated. There are those who argue that, despite the shift to the treatment approach, crime is on the increase. Actually since there is no evidence to support this view, one can as well argue that crime rates are high because of the survival of the punitive reaction. Though the arguments against the treatment approach are mere reactions to perpetuate the justifications of punishment prior to the emergence of the treatment, in present day societies both the punitive reactions and treatment reactions are used side by side. Therefore, correctional procedures and programs are neither exclusively punitive nor exclusively treatment. But variations exist from society to society (Sutherland, 1960: 314-17).

**Prisons**

**Meaning and Definition of the Term ‘Prison’** A **prison** **penitentiary**, **correctional facility** is a place in which individuals are physically confined or [interned](http://en.wikipedia.org/wiki/Internment) and usually deprived of a range of personal [freedoms](http://en.wikipedia.org/wiki/Freedom_%28political%29). Prisons are conventionally [institutions](http://en.wikipedia.org/wiki/Institution), which form part of the [criminal justice](http://en.wikipedia.org/wiki/Criminal_justice) system of a country, such that **imprisonment** or **incarceration** is a legal penalty that may be imposed by the [state](http://en.wikipedia.org/wiki/State) for the commission of a [crime](http://en.wikipedia.org/wiki/Crime).

The word *prison* can be traced back to the Latin word *prēnsiō,* “the action or power of making an arrest.” This in turn is derived from the verb *prehendere* or *prēndere,* which meant “to take hold of, take into custody, arrest.” *Prēnsiō* then surfaces in the Old French of the 12th century with the form *prison* and the senses “capture” and “place of imprisonment.” This new sense could have already been developed in Latin and not been recorded, but we have to wait until the 12th century to see it, the sense “captivity” being added in the same century. From Old French as well as the Medieval Latin word *priso,* “prison,” derived from Old French, came our Middle English word *prisoun,* first recorded in a work written before 1121 in the sense “imprisonment.” The sense “place of imprisonment” is recorded shortly afterward in a text copied down before 1225 but perhaps actually written in the Old English period before the Norman Conquest.

In popular parlance of many countries, the term [**jail**](http://en.wikipedia.org/wiki/Jail) (goal) is considered synonymous with prison, although legally these are often distinct institutions: typically jails are intended to hold persons awaiting trials or serving sentences of less than one year, whereas prisons host prisoners serving longer sentences.

A criminal [suspect](http://en.wikipedia.org/wiki/Suspect) who has been charged with or is likely to be charged with a criminal [offense](http://en.wikipedia.org/wiki/Offense_%28law%29) may be held *on* [*remand*](http://en.wikipedia.org/wiki/Remand#Action_at_arrest_or_arraignment) in prison if he or she is denied, refused or unable to meet conditions of [bail](http://en.wikipedia.org/wiki/Bail), or is unable to post bail. This may also occur where the court determines that the suspect is at risk of absconding before the trial, or is otherwise a risk to society. A criminal [defendant](http://en.wikipedia.org/wiki/Defendant) may also be held in prison while awaiting [trial](http://en.wikipedia.org/wiki/Trial_%28law%29) or a trial [verdict](http://en.wikipedia.org/wiki/Verdict). If found guilty a defendant will be [convicted](http://en.wikipedia.org/wiki/Conviction_%28law%29) and may receive a custodial [sentence](http://en.wikipedia.org/wiki/Sentence_%28law%29) requiring imprisonment.

Prisons may also be used as a tool of [political repression](http://en.wikipedia.org/wiki/Political_repression) to detain [political prisoners](http://en.wikipedia.org/wiki/Political_prisoner), [prisoners of conscience](http://en.wikipedia.org/wiki/Prisoner_of_conscience), and "[enemies of the state](http://en.wikipedia.org/wiki/Enemy_of_the_state)", particularly by [authoritarian](http://en.wikipedia.org/wiki/Authoritarianism) regimes. In times of [war](http://en.wikipedia.org/wiki/War) or conflict, [prisoners of war](http://en.wikipedia.org/wiki/Prisoner_of_war) may also be detained in prisons. A **prison system** is the organizational arrangement of the provision and operation of prisons, and depending on their nature, may invoke a [corrections](http://en.wikipedia.org/wiki/Corrections) system. Although people have been imprisoned throughout history, they have also regularly been able to perform [prison escapes](http://en.wikipedia.org/wiki/Prison_escape).

**History of Prisons:** most of history, imprisoning has not been a punishment in itself, but rather a way to confine criminals until [corporal](http://en.wikipedia.org/wiki/Corporal_punishment) or [capital punishment](http://en.wikipedia.org/wiki/Capital_punishment) was administered. There were prisons used for detention in [Jerusalem](http://en.wikipedia.org/wiki/Jerusalem) in [Old Testament](http://en.wikipedia.org/wiki/Old_Testament) times. [Dungeons](http://en.wikipedia.org/wiki/Dungeon) were used to hold prisoners; those who were not killed or left to die there often became [galley slaves](http://en.wikipedia.org/wiki/Galley_slave) or faced [penal transportations](http://en.wikipedia.org/wiki/Penal_transportation). In other cases [debtors](http://en.wikipedia.org/wiki/Debtor) were often thrown into [debtor's prisons](http://en.wikipedia.org/wiki/Debtor%27s_prison), until they paid their jailers enough money in exchange for a limited degree of freedom.

Only in the 19th century, beginning in Britain, did prisons as we know them today become common place. The modern prison system was born in London, as a result of the views of [Jeremy Bentham](http://en.wikipedia.org/wiki/Jeremy_Bentham). The notion of prisoners being incarcerated as part of their punishment, and not simply as a holding state till trial or hanging, was at the time revolutionary.

The first "modern" prisons of the early 19th Century were sometimes known by the term "penitentiary" (a term still used by some prisons in the USA today): as the name suggests, the goal of these facilities was that of [penance](http://en.wikipedia.org/wiki/Penance) by the prisoners, through a regimen of strict disciplines, silent reflections, and perhaps forced and deliberately pointless labor on [tread wheels](http://en.wikipedia.org/wiki/Treadwheel) and the like. This "[Auburn system](http://en.wikipedia.org/wiki/Auburn_system)" of prisoner management was often reinforced by elaborate prison architectures, such as the [separate system](http://en.wikipedia.org/wiki/Separate_system) and the [panopticon](http://en.wikipedia.org/wiki/Panopticon). It was not until the late 19th Century that rehabilitation through education and skilled labor became the standard goal of prisons.

**Types of Prisons:** (Refer to Art. 110 of the Criminal Code of FDRE of 2005)

* **Juvenile Facility:** Prisons for [juveniles](http://en.wikipedia.org/wiki/Juvenile) (people under 18) are known as young offender’s institutes and hold minors who have been convicted, many countries have their own [age of criminal responsibility](http://en.wikipedia.org/wiki/Age_of_criminal_responsibility) in which children are deemed legally responsible for their actions for a crime.
* **Military Prison:** Prisons form part of military systems, and are used variously to house prisoners of war, [unlawful combatants](http://en.wikipedia.org/wiki/Unlawful_combatant), those whose freedom is deemed a national security risk by military or civilian authorities, and members of the [military](http://en.wikipedia.org/wiki/Military) found guilty of a serious crime.
* **Political Prison:** Certain countries maintain or have in the past had a system of political prisons; arguably the [gulags](http://en.wikipedia.org/wiki/Gulag) associated with [Stalinism](http://en.wikipedia.org/wiki/Stalinism) are best known. The definition of what is and is not a political crime and a political prison is, of course, highly controversial.
* **Psychiatric Facility:** Some [psychiatric](http://en.wikipedia.org/wiki/Psychiatry) facilities have characteristics of prisons, especially when confining patients who have committed a crime and are considered dangerous. In addition, many prisons have psychiatric units dedicated to housing offenders diagnosed with a wide variety of [mental disorders](http://en.wikipedia.org/wiki/Mental_disorder).

**Prison Administration in Ethiopia**

After the establishment of the Federal Government in 1995, Proclamation No. 41/1993 that defined the powers and duties of the various ministries was repealed and replaced by Proclamation No. 4/1995. Under the new proclamation, the Ministry of Internal Affairs was abolished and Prisons Administration was placed under the Ministry of Justice. The new Proclamation provided that the Ministry of Justice shall have the following powers and duties. But, how wise and safe is it to lump together all the components of the criminal justice system under one ministry? The Prison Study Committee, in 1976 suggested that having Prisons and the Police under one Ministry may be open to abuses and suggested that Prisons should either be under an autonomous bureau or be placed under the Ministry of Labor and Social Affairs in order to de-emphasize security and emphasize the social and correctional aspect of prison work. The proposal was not considered, particularly because the then Minister of Labor and Social Affairs opposed the proposal, possibly because of the sensitive conditions of prisons in those days. But now, the Police Force and Prison Administration are almost merged. In fact the very fear of the Committee seems to have come to be true. There are strong complaints, in the private news papers and human rights reports, that the police are using the prisons for detaining even people the Court had ordered to be released.

* **Size of Prisoners and the States of Prisons:** Though prisons were re-established, there is hardly any information regarding the number and types of prisons, and how they are administered and what re-educational and rehabilitative programs are provided. The only available information, therefore, are occasional reports on private newspapers and reports of some human rights organizations regarding the number of prisons and the size of inmates. For instance, Sue Pollock, in a paper delivered to a Seminar on the Human Rights Situation in Ethiopia in December 1996 claimed the existence of a large number of secret detention centers in many of the regions in addition to the regular prisons.

Recently it was reported that some additional prisons have been opened, even at *woreda* levels, particularly in North Shoa *(Tobia,* A Weekly Newspaper, No. 47, *Hidar* 11, 1990 E.C.). The practice was to have prisons at regional and *awraja* (zonal) levels (Andargachew, 2004).

**Needed Reforms in Prisons**

Serious problems exist in prisons which need immediate attention and reform. The following are some important ones:

* **The Problem of Overcrowding in Prisons:**

It is a known fact that prisons in most parts of Ethiopia are overcrowded. The overcrowding problem first and foremost leads to lack of sanitation and unhygienic atmosphere. Prison facilities have not been expanding with the increase in crime.

The other baneful effect of overcrowding is that it does not permit segregation among convicts (Art. 110 of the Criminal Code), those punished for serious crimes and for minor crimes. As a result of this, hardened criminals may spread their influence over other inmates. The juvenile offenders, who are kept in jails because of inadequacy of alternative places where they can be confined, come into contact with hardened criminals and are likely to become professional offenders. It is in this backdrop that the problem of overcrowding in prisons needs to be tackled in right earnest.

Some recommendations for easing congestion in prisons include:

* Liberalization of conditions of release on bail, particularly release of certain categories of under trials on bail.
* Other methods of reducing overcrowding in prisons may include extensive use of fine as an alternative punishment for imprisonment, civil commitment and release on probation.
* Overcrowding may also be reduced by release on parole a prisoner after he has served part of the sentence imposed upon him. It is a conditional release of an individual from prison.
* The system of remission, leave and premature release may also be useful in tacking the problem of overcrowding in prison institutions.
* **Classification of Prisoners:**

At the time when reaction to crime was purely punitive, there was no need for classifying prisoners and all of them were flocked together in a single prison. This system of singular treatment of criminals, however, turned the prisons into a living hell on earth with all sorts of vices. The sole object of imprisonment in those days was to subject the inmates to maximum torture and pain and therefore there was no need to classify them. With the evolution of penal science during the late eighteenth and early nineteenth century, the offenders were classified into different categories according to their sex, age and gravity of offence. Even at this time, objective approach to prisoners was not known. It was towards the end of 19th century that the idea of individualization of prisoners drew attention of penologists and this principle has since then been firmly established into practice. Individualization of offender as a method of his rehabilitation has now become the cardinal principle of modern penology. Evidently, in the changed circumstances the earlier classification of criminals on the basis of their physical differences serves no useful purpose. Therefore, modern penologists have worked out an objective classification of prisoners according to differential treatment. In spite of being lodged in maximum security prisons, the modern prisoners are placed in quasi-penal and even non-penal institutions for their reformation. The prisoners are now classified according to the treatment to which they are likely to respond most favorably. In the modern context, social-defense, namely, the protection of society from criminals is the prime object of punishment while classification of prisoners for treatment is the method of it. To achieve this end, the criminals are classified into two broad categories, viz.,

1. Hardened criminals who are fit for treatment in a conventional jail, and

2. Casual criminals, who are fit for treatment in a medium-custody jail or even fit to be sent to a Borstal or Reformatory or released on probation.

Under the present correctional system in United States the task of classifying inmates for their rehabilitation is performed by the following agencies:

* The Central Classification Centre;
* The Classification Committee; and
* The Reception Centre

All the convicted persons are first brought before the Central Classification Centre where their antecedents, past history and mental attitude etc. are thoroughly examined by the expert psychologists and psychiatrists. If in the opinion on these experts the inmate is considered responsive to reformation, he is sent to an appropriate correctional institution as recommended by the Central Classification Center.

There is a Classification Committee associated with each correctional institution which decides the outline of treatment program for individual inmate according to his mental attitude, psychology and possible reaction to the treatment.

The Reception Centre at each correctional institution, on the other hand, receives the new inmate on a trial basis for a month or so and plans to prepare him for his subsequent stay in the institution. Thus the major function of Reception Centre according to Donald Taft is “inmate-orientation through group meetings, pictures, booklets and interviews”.

It may be suggested that if this pattern of classification of prisoners is adopted in Ethiopia, the prison authorities may find it easy to tackle the problems of prison and prisoners and at the same time it may also accelerate the reformation of prisoners.

* **Segregation of Prisoners Under the Criminal Code of 2004:**

Classification of criminals is not just a strategy to handle the problems of prison discipline it is the requirement of the substantive criminal law under Articles 53, 110 and 130.

Art. 110 intends to segregate the following categories of criminals and keep them either in different prisons or where it is not possible to keep them so, at least in “different section” of the same prison. This provision suggests at the following classes of criminals:

* Male and female prisoners,
* Criminals sentenced to rigorous imprisonment or special confinement,
* Adult prisoners who are serving a sentence of simple imprisonment,
* Prisoners under the age of 18 years,
* Prisoners awaiting judgment,
* Persons detained for civil debts,
* Public servants who, by virtue of their official duty, had contact with prisoners, and who are in prison for a crime or detained for civil debts.

This classification basically aims at avoiding sexual deviances, differences in treatment, prison discipline, evil influences on the young criminals etc. Unfortunately, in practice there are no serious steps which are taken to materialize these requirements of the substantive laws. The state should take immediate steps in this direction and ensure segregation of prisoners and thereby fulfillment of objectives of punishment.

* **The Problem of Prisoners’ Health:**

The state of health of prisoners is also an important issue which needs attention of the prison authorities. The term “state of health” includes the description regarding past and present suffering of the disease of the new entrants and its duration and treatment taken etc. Normally, prison administration rules require that prisoners at the time of their entry in prison be asked about their health, particularly relating to Tuberculosis and AIDS etc. and the treatment which they have undergone for the disease, so that such prisoners apart from being given special treatment may be segregated from rest of the inmates. It is the duty of the State to ensure that such type of serious diseases are cured and not allowed to spread, not only to other prisoners but also the other persons living outside the prison.

The following factors account for increase in the number of prisoners exposed to infection of tuberculosis, HIV and other contagious diseases in prisons:

* Delay in diagnosis, neglect of prisoner’s health problems, insufficient health services in prison and inadequate sputum smear microscopy facilities;
* Failure of medical services to refer disease suspects for diagnosis or to initiate timely treatment;
* Transfer of prisoners with infectious tuberculosis between and inside prisons;
* Overcrowding and prolonged confinement inside cells;
* Failure to segregate infectious cases from other prisoners;
* Sub-standard treatment resulting in failure to cure patients and prolonged infectiousness;
* Poor ventilation and poor nutrition may also lead to cause of disease.

In order to tackle the problem of prisoners suffering from serious diseases, volunteers may be trained in prison for nursing so that they effectively help the suffering inmates and develop among them a system of self-help for protection against diseases like T.B. or AIDS etc. They can identify the cases as early as possible and take necessary steps to segregate them and start their treatment.

* **The Problem of Prison Discipline**

The problem of prison discipline has always been engaging the attention of penologists throughout the world. The main object of imprisonment is undoubtedly negative insofar as it aims at generating a feeling of dislike for prison life among the members of society, the object being to dissuade people from doing acts which may lend them into prison. Expressing his view about the prison administration, Donald Taft commented that prisons are deliberately so planned as to provide unpleasant compulsory isolation from general society. A prison, according to him, characterizes rigid discipline, provision of bare necessities, strict security arrangements and monotonous routine life. The prison personnel are usually without any specialized training in their field. Although with the modern facilities available to inmates, the rigors of prison-life are considerably mitigated nevertheless they are likely to become restive if not kept under proper discipline. There is yet another reason to justify the need for strict discipline in prison. One might be imprisoned either for the purpose of custody, control and discipline or from being prevented to escape or being sent to a correctional institution for treatment. Whatever be the object, it is certain that the life inside prison necessarily pre-supposes certain restrictions on the liberty of inmates against their free will. This consciousness of subjection to compulsive forces of the State through the agency of prison often leads to scuffle between prison officials and the inmates. The custody of prisoners should, therefore, ensure their safety and security as also minimize the chances of conflict with prison administrators.

Another problem which is so often faced by the prison authorities is to guard against the possibility of prison-riot which is essentially an outcome of the combined venture of inmates. In early times when prisoners were lodged in separate cells, this possibility was completely ruled out as they had no chance of communicating with each other in the modern sense. Today, the difference between the prison life and free life is reduced to such an extent that even the prisoners have become conscious of their rights and obligations of prison authorities towards them. Their free intermingling with the outside world provides them opportunities to unite and raise a common front against the prison administrators and slightest provocation is sufficient to stimulate unrest. The general causes of such riots and disturbances are political instigations, crude disciplinary incidents, monotonous routine of prison life, separation from members of the family, differences with the prison staff and step-motherly treatment of wardens and guards towards certain inmates.

* **The Problem of Criminality in Prisons**

Yet another problem relating to prison discipline is criminality among inmates inside the prison.

* **Sexual Deviations** The continuous and long absence from normal society and detachment from members of the family deprives the inmates of their sex gratification which is one of the vital biological urges of human life. Not being able to control this sex desire, the prisoners quite often resort to unnatural crimes such as homosexuality, sodomy etc. Therefore, such crimes and personal assaults are common inside prison walls. To suppress this menace, some of the advanced countries have permitted periodical conjugal visits for inmates so as to offer them a legitimate opportunity to pacify their sex urge and thus eliminate crimes of this nature in prisons. Some penologists have, however, opposed the idea of ‘*conjugal visits’* on the ground that sexual deprivation must continue as one of the inevitable suffering of imprisoned life. That apart, conjugal visits seem unnecessary for some obvious reasons, namely, most prisoners are imprisoned for six months or less, quite a large number of them are unmarried or separated from their wives; and the provision of “home leave” and parole offers a much better and more natural solution than conjugal visits in the unfamiliar and embarrassing atmosphere of a prison.That apart, such conjugal visits cannot be appreciated for the reason of morality and ethical considerations. The release of prisoners on furlough and parole better solves the problem so as to maintain unity of their family life.
* **Frequent Fights:** Another cause of criminality among prison inmates is their frequent quarrelling inside the institution. Every inmate tries to establish his superiority over his fellow prisoners. Therefore, prisoners often narrate with exaggeration the tales of their adventure and the dangers overcome by them while committing crime. The conversation on the subject often leads to a heated discussion and eventually results into use of force and intimidation. At times, the situation takes the shape of a group rivalry resulting into clashes between the inmates. There are occasions when inmates quarrel on trifling matters like those of distribution of bread, toilets, etc. or the differences of their opinion about a particular warden, guard or jailor.
* **Petty Offences:** The offences of petty thefts are also common in prisons because the inmates are supplied with only the articles of bare necessities. Obviously, the articles stolen are usually soap, oil, utensils or a few loaves of bread which are supplied to inmates in prisons.
* **Disobedience to Prison Officials:** Last but not the least, the distrust and lack of faith among inmates for the prison authorities is yet another cause of tension in prisons. The tendency of disobedience to prison officials and defiance of prison regulations is common with prisoners. The officials of the prison, namely, the jailors, superintendents, wardens and guards on their part, are generally rough and tough with the inmates. Some of them even resort to corrupt practices and extend undue favors to certain inmates in exchange for petty gains. This obviously causes resentment among other prisoners and thus a kind of cold war ensues between the inmates on one hand and the prison authorities on the other.
* **Strategies to Handle Prison Indiscipline and Criminality:**
	+ 1. **Self-Government in Prisons:**

In order to ensure discipline and obedience among inmates experiments on self-government in prisons have recently been carried out in America and elsewhere. The underlying purpose is to ensure complete freedom to prisoners from external control. Under the system of self-government in prisons, the inmates are to elect some of their colleagues as their representatives and the entire prison management is run by this elected body of inmates. They have complete control over food services and are expected to look after the interests and welfare of their fellow prisoners. The self-government of prisoners in Osborn (U.S.A.) jail indicated that the system proved very successful and the number of escapes was almost negligible. The inmates generally behaved well and never tried to misuse the liberty extended to them.

Other countries like India, instead of introducing complete self-government system, have adopted a system of partial self-government in its prisons. Under this system, the prisoners who have good prison record are attached to work with wardens and guards of the institution and thus they act as a common link between the prison authorities and the fellow inmates. They are extended certain facilities and are even allowed to move out of the prison occasionally during the course of their work. This proves helpful in many ways. Firstly, it develops a sense of duty, honesty, trust and loyalty among the prisoners and secondly, it has a psychological effect on other inmates as they are convinced that a disciplined behaviour in prison would entail them certain facilities including some reduction in their term of sentence like their fellow prisoners.

* + 1. **Prison Labor**

Utilization of prisoners in productive work has been accepted as one of the best methods of bringing about rehabilitation of offenders. The XIIth International Penal and Penitentiary Conference held at Hague in 1950 suggested ‘work’ as the best alternative for channelizing the potential of prisoners for a useful purpose. Keeping the prisoners engaged in for productive work would be helpful for their physical and mental fitness. It would also infuse self-confidence among them and they can think of returning to society as a law abiding citizen. The greatest advantage of putting inmates to work as suggested by the penitentiary Conference is that the wages earned by the prisoners can be utilized for supporting their family and dependents. Thus it would save the entire family of the prisoner from being ruined. In this way the inmates can help and support their family from inside the prison itself. In short, work would be beneficial to inmates and at the same time remunerative to the State. It is further suggested that the working conditions of prisoners should be at par with free workers so that the values of human dignity are respected and they are adequately compensated for the injuries sustained or professional sickness suffered by them during work. The system of parole and probation and other treatment methods have helped considerably in the rehabilitation of prisoners.

* + 1. **The Prison Community:**

Talking about the prison community, Dr. Sutherland observed that an offender entering a prison for the first time is introduced to the culture in much the same way as a child is introduced to the ways of behaving with his elders. According to him, the general process by which a child is taught the behaviors of his group is called ‘socialization’ and the comparable process among inmates is named ‘personalization’. Every new prisoner has to learn the technical rules of the prison in which he is lodged. Gradually he adapts himself to the conditions of prison life. He is expected to be friendly and loyal to his fellow prisoners. He is to be co-operative with the prison officials and one who does not follow these traits is ridiculed by his fellow inmates. It is interesting to note that prisoners classify themselves informally into different groups according to their reaction to prison life and participation in prison activities. A few of them assume the role of ‘leaders’ and pose to look after the interests of other inmates. They often win the confidence of wardens and guards of the prison and enjoy certain privileges unofficially. It is usually said that in matters of food, other essential articles and toilet facilities these so called ‘leaders’ manipulate things and even act as racketeers in collusion with the prison staff and earn huge profits. In return, they secure certain unofficial privileges for their fellow prisoners. Thus an understanding is reached between the prison community and the prison officials through these leaders which helps in maintaining harmony inside the institution. The prisoners who are sentenced for political reasons often assume this role by virtue of their superior status and knowledge. As Sutherland puts it “the administrator assigns powers unofficially to certain inmates who control other inmates and thus he enlists some inmates to aid and control other inmates”.

* **Food Service:**

The quality and quantity of food served in prisons are very low mainly due to the minimal budget allocated per head. In fact most prisoners depend on food brought in by family members and relatives, almost on daily basis. Prisoners who receive their own food usually share with others who do not receive due to varied reasons.

Apart from budget constraints, another reason for poor supply of food is, though not openly said, to be used as a sort of punishment, because there is an attitude, on the part of the prison authorities, that the criminal deserve anything better. Some even argue that the food provided in prisons encouraged recidivism because some ‘jail birds’ purposely returned to prisons because of the free food. There is no evidence to support this assumption. Even the poorest of the poor will not exchange his freedom for prison life for the kind of food offered in Ethiopian prisons.

Another problem connected with food is the method of distribution of the food from the prison kitchen. In some of the prisons the day’s ration is distributed once a day. The amount of food allotted for the day is passed around to each prisoner, at noon. The prisoners have to wait ready with their utensils. They keep part of their food they received, for the next meal, near their individual beds. In most cases prison dormitories are not free from vermin and the likelihood of the food being infested is very high.

* **Need for Recreational Services:**

Recreation was another mostly neglected program in Ethiopian prisons. Recreation is most of the time avoided deliberately due the fear of escapes. Relaxation and bodily movements are basic needs of human body. Therefore, denying prisoners such a need is morally reprehensible. In fact if the prisoners are engaged during their spare time there would be less risk of escape because they will not have to brood about ways and means of escape. Unfortunately the police background of the most of the prison officers and guards proves it rather difficult to instill the concept of rehabilitation in Ethiopian prisons. It is unfortunate that even the visits to other countries by Ethiopian prison officials, to observe how other countries run their prisons, did not bring much reform.

* **Preparation for Release and Aftercare:**

Aftercare of prisoners had not been part of the correctional system in Ethiopia. Once a prisoner completes his terms of imprisonment, he was simply turned out of the prison compound, and it was not uncommon, in some of the prisons, to see some prisoners back, in a few days, for fresh offences because they would not know how to reach their relatives after spending so many years in isolation. They cannot even be certain how their families, relatives, friends and even the community will receive them. Some may not even know how to get their daily meals in the outside world from which they were detached for years. Prisoners may have lost contact with their families or relatives due to along period of separation and they may not have the means of subsistence even for a few days. Prisoners may have been working for a number of years in one of the prison workshop but they were not paid for their labor though legally entitled to get a certain percentage out of the sales of the goods they had produced. Therefore, at the time of release prisoners may not have enough money for their meals and transport to reach their destination. It is for this sort of prisoners that an after care program becomes essential. Prisoners must be prepared, well in advance of their release, by prison officials, about life outside prison. If possible, relatives must be contacted. But all these were never thought about. Therefore, the whole correctional system was a waste of resources (Andargachew, 1976a: 450-60).

Therefore, it follows that well organized after care programs are a necessity for the successful achievement of the purposes of criminal law.

**Prison Conditions and the Concept of Cruel and Unusual Punishment**

Like the rest of us, prisoners have the absolute right to be free from *cruel and unusual punishment* under **Art 18 of the Constitution**, which states that “Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.” Accordingly, Art 87 Para of the Criminal Code of FDRE, 2004 prohibits such treatment by declaring that, “The penalties and measures shall always be with respect due to human dignity.”

But it has been very difficult to persuade the courts to act when faced “with anything less than barbaric prison conditions” (Bronstein, 1980, p.26). At present the courts appear to use *three principal tests* to determine whether there have been violations of prisoners’ rights to be free from cruel and unusual punishment (Rudovsky, 1973):

* 1. Whether the punishment shocks the general conscience of a civilized society,
	2. Whether the punishment is unnecessarily cruel,
	3. Whether the punishment goes beyond legitimate penal aims.

 What conditions, then, amount to “cruel and unusual punishment”? In an Arkansas case, the courts concluded that these conditions exist whenever the prison official cannot provide convicts safety from being seriously injured, sexually assaulted, or killed while in prison. More recently, focus has been on the totality of conditions in the prison. In a Pennsylvania case, the courts ruled that general conditions could be so cumulative in their effect that *they qualify for “cruel and unusual punishment”*\_\_ overcrowded conditions, with wet and rat-infested cells, in sufficient medical treatment, and random beatings by guards. But solitary confinement, in and of itself, is not ruled as ‘cruel and unusual,” nor is the deprivation of opportunities for sexual intercourse. In an Alabama case, the court labeled as cruel and unusual punishment any “***prison conditions [that] are so debilitating that they necessarily deprive inmates of any opportunity to rehabilitate themselves or even maintain skills already possessed***” (quoted in Bronsterin, 1980, p.27).

**Treatment of Young Offenders**

The juvenile justice system in our country is in not conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice adopted by the Seventh UN Congress on the Prevention of Crimes and Treatment of offenders held in 1985. This document owes much to the tireless efforts made at international level with an object and intention to devolve human rights on the children. Article 36 of the FDRE Constitution incorporates The Criminal Code of 2004 has, indeed, made definite provisions by adding a new dimension of human rights of the child to the jurisprudence of juvenile justice in Ethiopia. However, so far implementation aspect is concerned; the things are not in good shape. The Executive has utterly failed to give effect to the intent and objective of this law. The infrastructural requirements which are making the law lame and children sufferers are yet to be met with.

The reality is that even today the prison population is composed of a considerable percentage of juvenile offenders, who stay with the aged and hardened criminals. Juvenile courts and Boards have not been constituted everywhere. Judges in the existing juvenile courts are not properly trained in the correctional methods of treatment. Police Department does not have much regard to this special law. On most of the occasions for police, an offender is an offender and it makes no difference for them that he/she is a child or an adult. It is a reality that the child offender is always is a victim of certain circumstances. He commits an offense only when he gets into difficulties because of some kind of situations in his environment. Hence, the whole approach for treating juvenile offenders including neglected must necessarily be a psychological and correctional one. They must not be punished but treated and rehabilitated" for any offense committed by them has to be strictly handled only according to the special provisions of the law authorized by the Constitution (Art 36), Criminal Code of 2004, other special proclamations like, vagrancy proclamation of 2002, and well within the parameters of the relevant International documents. All aspects of juvenile justice including the approach of the legislature as well as the courts, institutional structure, training of personnel reorganization of arrest and detention processes, defence lawyer and legal aid et cetera assume prime importance and require matching legislative and administrative steps on the part of the government.

**Juvenile Treatment Under the Revised Criminal Code:** The Criminal Code of 2004 makes the objectives, treatments and penalties designed for the young offenders very clear. From Art 165, it is obvious that the measures are intended for the following purposes:

1. Curative,
2. Educational: General, moral as well as vocational (Art.160), and
3. Corrective.

The provisions prescribing these measures (Arts 157-168) emphasize on the reformative and rehabilitative objectives as opposed to the adult penalties which focus more on the deterrent and preventive purposes.

The Constitution prohibited corporal punishment and any organ of Government or individual handling matters pertaining to children should be guided only by the Constitution and thus Art 172 of the 1957 Penal Code which prescribed infliction of physical pain by stokes of cane was rightly eliminated by the Revised Criminal Code of 2004.

Another important observation to be made is, while Arts. 117 and 176 quite rightly prohibit the imposition of death penalty on a young criminal who is below 18 years of age, there is no such prohibition on imposition of solitary confinement on the offenders of this age group. It is possible for a child of 15 to 18 years of age to be sentenced to solitary confinement. Obviously, solitary confinement is a very serious form of imprisonment which can have very serious psychological effects on the prisoner and a young child definitely will be subject to serious psychological and emotional disturbances. It is to be considered seriously and a prohibition should be placed on sentencing the young children under 18 years to solitary confinement should be eliminated for the statute book.

**Lack of Adequate Number of Juvenile Courts:**

Ethiopia did not have a juvenile court per se. The federal court comprised different divisions, including a family division. However, currently every criminal division could handle juvenile cases in order to expedite matters. Regional governments were following the same system. The higher courts handled only a very limited number of more serious cases, such as those involving a life sentence Convention on the Rights of Child, 2001).

**Juvenile Treatment Institutions in Ethiopia:**

The provisions under the Criminal Code of 2004 refer to curative institutions (Art 158), Corrective Institution (Art162) and Observation/supervisory authorities (Art 208, Charitable Organizations, etc) and special detention institution (Art 168/2/b). In addition, there is a prohibition in Art 55 and Art 110/2 of the Criminal Code that young offenders should not be kept in the penitentiaries meant for adult criminals. These special institutions designated for young offenders are supposed to be specially equipped with trained staff and other recreational and training facilities that are helpful in reformation and rehabilitation of these children. Well and good! But the questions are, are there any such homes functioning in the country? If so, how many, in which places, and how efficient are the facilities and the staff functioning there? Though no proper information is available on the point, it is clear that a lot has to be done by the government in this direction. Obviously there are no such institutions in reality except for some in sufficient juvenile facilities in Addis Ababa.

 It is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there are still a large number of children in different jails in the country- it is the atmosphere of the jail which has highly injurious effect on the minds of the child estranging him from the society and breeding in him aversion bordering on hatred against a system which kept him in jail ... On no account should the children be kept in jail and if State Government has not got sufficient accommodation in the remand home the children should be released on bail instead of being subjected to incarceration in jail.

**Juvenile Treatment Institutions Abroad:**

Generally speaking the following types of juvenile facilities are in use in different countries of the world for the treatment of the juvenile offenders:

* **Observation Homes:**

The juveniles who need only a short -term custody during inquiry or trial are kept in an Observation Home. This institution is also used for the custody of under trial children and juveniles in conflict with law about whom inquiry is pending are who awaiting trial or removal to an appropriate home or Borstal.

There are Children’s Homes for the treatment of neglected children for whom a short-term regulatory protective care is necessary but a long term residential training is not necessary. This reform, however, not resolved the contradictory approaches of welfare and punishment which still persist. The emphasis in this institution is on strict discipline rather than constructive training. The system has, however, been subjected to severe criticism in Britain due to enormous increase in juvenile crimes in recent years.

Observation Homes serve as temporary holding facilities for juveniles who were arrested by the police or found to be living in neglect. Juveniles “in conflict with the law” remain there awaiting trial. Children “in need of care and protection” stay there pending the completion of a government investigation aiming to track down their parents and collecting information on their family background. If the parents turn out to be dead, untraceable, unfit, or simply unwilling to take the child back, the Juvenile Welfare Board arranges for the child’s placement in a Juvenile Home, where the government is responsible for providing room, board, education, and vocational training. While it distinguishes juveniles “in conflict with the law” from those “in need of care and protection,” the law effectively criminalizes both by putting them under the jurisdiction of the criminal justice system. The two groups are generally housed together in Observation Home for months on end: adolescents who have committed serious offenses are kept together with children — mostly much younger — whose only crime is that of being neglected. In practice, there is no difference in the nature of their detention. The law simply prescribes the confinement of both as the only means by which they can be rehabilitated. In addition to attending to the children’s primary needs, the observation homes also provide with the materials and the personnel necessary to entertaining the boys and allowing them spend their time in a constructive way.

* **Special Homes:**

The special Homes are established for the custody of the delinquent juveniles. Basic amenities such as accommodation, medical care, educational and vocational training are available to delinquent juveniles in these homes.

* **Certified Schools:**

The certified schools are the modified form of the nineteenth century reformatories are Industrial schools for homeless, destitute and delinquent children. These schools are run with the purpose of catering to the needs of delinquent children of different age, sex and religion. The purpose of this approved School is to provide training to those juveniles who are unfit for release on probation. The Schools are open-institutions’ where young offenders are educated and trained for normal living. The duration of stay and training in a Certified School varies according to inmate’s requirement depending on the discretion of the School Administrator. This normally ranges from a minimum of six months to a maximum of three years. In practice majority of inmates are released much earlier.

Certified Schools are warranted criticism from several quarters. Some people criticize the working of these institutions on the ground that they are far more comfortable than the homes of the delinquents. But it must not be forgotten that the loss of liberty these institutions is in itself a heavy punishment. On the whole, more than two-thirds of the inmates return to normal life after their release from the institutions. These Schools provide training facilities for inmates to make them proficient in different trade so that they can engage themselves in some useful occupation.

* **Correctional Institutions/Reformatories:**

**Reformatory** is a term that has had varied meanings within the penal system, depending on the jurisdiction and the era. It may refer to a [youth detention center](http://en.wikipedia.org/wiki/Youth_detention_center), or an adult [correctional facility](http://en.wikipedia.org/wiki/Corrections). The term is still in popular use for adult facilities throughout the [United States](http://en.wikipedia.org/wiki/United_States), although most reformatories have been renamed *correctional centers* (or similar) in recent years. The term reformatory (or reformatory school) was also commonly used during the 19th century throughout the United Kingdom in reference to penal facilities for children under the age of 14.

* **Borstal Schools:**

A ‘Borstal’ is yet another correctional institution for the long term treatment of juvenile offenders. The term “Borstal” owes its origin to Borstal Village in England where Rochester Prison was first converted into a reformatory for boys in 1902. The prevention of Crime Act, 1908 expressly prohibited the lodging of young delinquents between 16 and 21 years in ordinary prisons and directed that they should instead be sent to the Borstal. It was due to strenuous efforts of *Sir. Alexander Paterson* that a few more Borstals were opened in England in subsequent years.

Borstal training is exclusively meant for adolescents between the age group of 15 and 21. Only such offenders who are found guilty of offences punishable with imprisonment may be sent to Borstal Institution for training. The maximum period is now two years and release is possible only after the expiry of six months. After release the offender remains subject to supervision and recall for next two years form the date of his release. Before recommending a delinquent for Borstal training, his suitability and physical as well as mental fitness is thoroughly examined.

Though booking to a Borstal provides for an effective deterrent to the potential offender, it is certainly not a prison. Borstals are usually open institutions having no walls, no bars and no closed cells. There are, however, a few closed Borstals also which are meant for the treatment and training hardened offenders.

Borstal institutions prepare the offender for normal life in society by providing him facilities for industrial training and disciplined life. It is an institution meant for salvation of young offenders under State tutelage. Adequate facilities for work, education and recreation are available to inmates in every Borstal and possible efforts are made to make the place homely. Borstals provide for a phased training program to inmates. When the inmate reaches the final stage of training he is allowed sufficient liberty to move in the society.

**Ethiopia Bound by Several International Conventions Relating to Juvenile Justice:**

Ethiopia has ratified the most important international treaties on human rights, foremost among which are the International Human Rights Covenants of 1966 (the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child (Supreme Court Juvenile).

In addition to the Convention on the Rights of the Child, Ethiopia had ratified the ILO Minimum Age Convention, 1973 (No. 138) and was in the process of ratifying the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) which demonstrated its commitment to protecting children and improving their well-being. The fact that the Convention had not been published was not due to an absence of commitment on the part of the Government. Ethiopia was a party to various international conventions and they were as binding as any other piece of legislation. The Government was aware that they should be published in order to raise pubic awareness; however, it had not been done, usually due to general technical difficulties (Convention On the Rights of Child, 2001).

A child is a ‘national asset' and , therefore, it is a duty upon the State to look after the child with a view to ensuring - full development of its personality and the government must take necessary steps so as to setting up adequate number of courts. The detention and maltreatment of children in violation of the law is far too serious a matter to be looked at with any complacence and unfortunately, a stage has now been reached where the court cannot be content with the expectation of compliance with its orders in these proceedings but would have to go further and exact it. The State has to be more honest about its obligations to the delinquent children. Children misbehave, perhaps, the society and elders have (may be) behaved worse. Society is becoming increasingly inhospitable to its weak. By ignoring the non-custodial alternative prescribed by law and exposing the delinquent child to the trauma of custodial cruelty, the State and society run the serious risk of sending the child to criminal clan. This is no more matter of concession to the child, but its constitutional and statutory right. Even so unduly hard and coercive measures against the State and the authorities might themselves become counterproductive.

**Punishment**

**Meaning and Definition**

The word is the abstract substanvation of the verb “to punish”, which is recorded in English since 1340, deriving from Old French *puniss-*, an extended form of the stem of *punir* "to punish," from Latin *punire* "inflict a penalty on, cause pain for some offense," earlier *poenire*, from *poena* "penalty, punishment of great loss" .

Colloquial use of “to punish” for "to inflict heavy damage or loss" is first recorded in 1801, originally in boxing; for “punishing” as "hard-hitting" is from 1811.

The [Stanford Encyclopedia of Philosophy](http://en.wikipedia.org/wiki/Stanford_Encyclopedia_of_Philosophy) defines punishment as, *an authorized imposition of deprivations — of freedom or privacy or other goods to which the person otherwise has a right, or the imposition of special burdens — because the person has been found guilty of some criminal violation, typically (though not invariably) involving harm to the innocent."*

The most common applications of the term are in legal and similarly 'regulated' contexts, being the infliction of some kind of *pain* or *loss* upon a person for a misdeed, i.e. for transgressing a law or command (including prohibitions) given by some authority such as the state, an educator, employer or supervisor, public or private official.

**2.2. Essential Elements of ‘Punishment’:**

Punishment is the infliction by the state of consequences normally considered unpleasant, on a person in response to his having been convicted of a crime” (Snarr, 1992: 53). The important elements of punishment, according to Hart, are the following:

1. It must involve pain or other consequences normally considered unpleasant;
2. It must be administered for some offence against legal rules;
3. It must be administered to an actual or supposed offender for his offence;
4. Persons other than the offender must intestinally administer it;
5. It must be imposed and administered by an authority constituted by a legal system against which the offence is committed (as summarized by Dae H. Chang, 1976: 108).

**Philosophies of Punishment**

The history of criminal law shows that what is considered to be the purpose of criminal law has been changing from time to time with the development of human knowledge about the criminal mind i.e. the development of criminology. There are various theories concerning the purpose of punishment ranging from retribution, through prevention, deterrence, reformation and education to rehabilitation. The following have been considered as the specific purposes of punishment in almost all criminal laws.

* + 1. **Retribution**

**Revenge or retribution** is one of the oldest justifications for punishment. The assumption is that since the victim has suffered so much the offender. Revenge may be understandable form the victim’s point of view or his loved ones. However, the determination of the severity of the punishment, or the attempt to make the punishment fit the crime is not easy (Cox and Wade, 1989: 215-17).

The origin of retributive theory lies in the primitive notion of vengeance against the wrong-doer. Punishment satisfies the feeling of revenge. It largely stems from the Biblical saying of “an eye for an eye: a tooth for tooth; and life for life”. Many old forms of punishments have been imposed based on this need to avenge the victim of a crime by punishing the criminal in the same manner as he committed the crime. For example, in olden times, when a man injured another, it was the right of the injured to take revenge on the person causing injury. The Mosaic Law of the Bible has been, in fact, overemphasized, to explain the retributive theory of punishment. Consider the following comment:

***Lex talionis:***

“An eye for an eye… is never in the Old Testament of ***Savagery,*** as it is sometimes portrayed, ***but of equity.*** It is always offered as guidance for the judge in determining appropriate sentence, never as a rule for personal reaction. There is no evidence in the Old Testament that the terms of the law were ever carried out exactly (eyes put out, teeth extracted, etc.). It functions rather as a vivid statement of the principle of exactitude: the equivalence of crime and penalty. This principle was lost in English law when a person could lose his wife for stealing a sheep. It is lost today when judicial ferocity awards a disproportionately harsh sentence (lengthy imprisonment for shoplifting), or when judicial leniency awards a sentence plainly less than a serious offence merits (a short sentence for rape or for causing death driving under the influence of alcohol). It was up to the judge in Old Testament days--as in ours--to determine how the principle should be applied in any given case. (Ref: “The Message of Proverbs”—David Atkinson)

However, in modern times retribution is used in more than one sense. In the first sense, the idea is that of satisfaction by the state of the victim’s desire to be avenged; in the second, it is that of the states marking its disapproval of the breaking of its laws by a punishment proportional to the gravity of the crime. In modern penological thought retribution is not so much considered in the sense of vengeance but in the sense of reprobation.

* + 1. **Deterrence**

Deterrence is defined as “*A justification for punishment based on the idea that crime can be discouraged or prevented by instilling in potential criminals a fear of punishing consequences. Punished offends, it is hoped, will serve as examples to deter potential criminals from antisocial conduct*” *(Vetter and Silverman, 1986: 572).* The idea of deterrence is best illustrated by the words of an eighteenth-century judge who told the defendant at a sentencing, “You are to be hanged not because you have stolen a sheep but in order that others may not steal sheep” (Inciardi, 1987: 452).

The purpose of the punishment is to deter the criminal from committing crime in future and to set as an example to the prospective criminals. It carries the message that those who violate the law will be punished likewise. The idea is that punishment will curb the criminal activities of the potential criminals. In olden times severe punishments and public executions were held mainly with the object to deter others and to set an example that violation of law will be punished. Thus punishment serves as deterrence in two ways:

**A. General Deterrence:**

The punishment of one criminal and the publicity given to it are assumed to discourage other potential law breakers. Advocates of the death penalty, for example, believe that fear of death may serve as a serious threat to people, and thus the death penalty serves the function of general deterrence of serious crimes.

**B. Specific / Individual Deterrence:**

Punishment of the criminal is assumed to keep that specific criminal from committing other crimes in the future. Some theories assume that criminals lack internal inhibitors, and hence unpleasant sanctions must be used to teach them a lesson.

**Prevention**

According to this conception, the purpose of punishment is to prevent the criminal from committing crimes by physically disabling him by separating him and keeping him in seclusion from the society for a certain period of time. This way the society is spared from the disturbance created by the criminal. If a convicted offender is sent to prison, society can feel safe and confident that the criminal will not be committing further crimes.

The difference between the deterrent theory and preventive theory has to be understood clearly. According to deterrent purpose the criminals and the prospective criminals learn a lesson by the fear of severe punishment and voluntarily abstain from committing crimes. In prevention they are physically in capacitated or disabled since they lack self-control and must be restrained. Here the restraint is external by deprivation of their liberty.

Prevention or incapacitation is a more general objective of correctional administration. Prisons are usually viewed as institutions in which prisons are isolated or incapacitated, i.e., prevented from committing further crimes. This is the custodial, as opposed to the rehabilitative function of corrections. Many of the problems that surround prisons today revolve around the contradictions of theses two objectives. Incapacitation has two major problems. One is the failure to consider crimes committed by one inmate against another as further crimes. And thousands of such crimes are committed, around the world, annually. Secondly, incapacitation being temporary, most inmates will be released eventually, whether they are rehabilitated or not (Cox and Wade, 1989: 217).

**Reformation/Rehabilitation**

Punishment the purpose of which is to change the character of the offender is known as reformative punishment. This theory is also known as corrective or rehabilitative theory'. Reformation means “the effort to restore a man to society as a better and wiser man and as a good citizen.” According to this theory, punishment attempts to make the criminal harm less by supplying him the understanding he lacks and cures him of those draw backs which made him to commit crime. If a criminal is morally degenerated his tendencies also become, if not, extinct then at least less sensitive. Punishment has, for that reason, been defined as “a physical measure adopted to excite in the soul of the guilty true repentance, respect for justice, sympathy for their fellow creatures and love of mankind." (Oppenheimer. "Rationale of Punishment," p.244) By reformation of the criminal is meant his moral regeneration, and developing the sense of honesty. A person, who commits a crime and suffers punishment for that, comes back to the society and lives in along with his other fellow beings. Therefore, punishment must aim at making a man worthy of living in the society.

The philosophy behind rehabilitation rests on the assumption that “persons who commit crimes have identifiable reasons for doing so, and that these can be discovered, addressed and altered”. Rehabilitation suggests to the offender that crime does not pay and that there is a better way. The aim of rehabilitation is to modify the behavior of the individual and reintegrate him into the society as a productive member (Inciardi, 1987: 452).

The goals of rehabilitation are widely supported because in contrast to other sentencing philosophies, it takes a positive approach in the attempt to eliminate criminal behavior. Supporters of rehabilitation argue that unlike “the false hope of deterrence or the temporary measure of retribution and isolation” it is the only humanitarian mechanism for altering the criminal behavior of offenders.

However, the effectiveness of rehabilitation has been seriously questioned. Some argue that efforts to modify the behavior of offenders are of questionable value because the causes of crime are not fully understood. Others argue that correction has only little and limited value since rehabilitative services in institution and community based programs are either minimal or nonexistent. Others argue that rehabilitation never demonstrated and will never demonstrate its ability to prevent or reduce crime.

The advocates of reformative theory aim at the rehabilitation of the criminal in the society. This theory admits only such types of punishments which are educative and discipline the criminal, not those which inflict pain on him. Rehabilitative element of the punishment includes restoration of the criminal to effectiveness or normal life by training etc. In modern time’s reformative measures are adopted in cases of juvenile offenders. In prison they are given some education and are subjected to some such prison programs so that they can learn some kind of work which may help them in earning their livelihood after coming out of the prison. The advocates of this theory emphasize that when the prisoner goes to jail he finds himself quite cut off from the rest of the world. The confinement the deprivation of social intercourse and other ways of subjection to rigid discipline never allow him to develop his character. Therefore, what is important is the reformation of the criminal by making him worthy of living in the society.

* **Purposes of Punishment under the Criminal Code of 2004:**

The principles of Criminal law regarding the purpose of punishment we discussed above are clearly incorporated in the provisions of the Criminal Code of 2004. Art.1. Para 2 of the Code sets out the specific objectives of the Code in the following way:

*“It aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, or by providing for their reform and measures to prevent the commission of further crimes.”*

This provision makes a general statement of the aims and objectives of the Criminal Code. Further, the purposes of deterrence, prevention, reformation and rehabilitation are specifically mentioned in the provisions relating to different types of punishments.

**Objectives of Different Types of Punishment**

Punishment is meant to produce some sort of justification for the suffering of the offender in actualizing the correctional objectives such as retribution, deterrence protection, and reformation or rehabilitation. In the course of history, societies, as point out earlier, have used the following as punishment: “(1) financial loss; (2) physical torture; (3) restitution and reparation; (4) imprisonment; (5) banishment and transportation; (6) capital punishment (7) social degradation; (8) removal from the group; (9) reduction to a lower social status; (10) enslavement; (11) deprivation of privileges, i.e., voting or marriage rights; and (12) hard labor”. We shall now see details of some important types of punishments.

1. **Capital Punishment:**

**Capital punishment**, the **death penalty** or **execution**, is the [killing](http://en.wikipedia.org/wiki/Kill) of a person by [judicial process](http://en.wikipedia.org/wiki/Procedural_law) for [retribution](http://en.wikipedia.org/wiki/Punishment#Retribution) and [incapacitation](http://en.wikipedia.org/wiki/Punishment#Incapacitation). Crimes that can result in a death penalty are known as *capital crimes* or *capital offences*. The term *capital* originates from [Latin](http://en.wikipedia.org/wiki/Latin) *capitalis*, literally "regarding the head" (Latin *caput*). Hence, a capital crime was originally one punished by the [severing of the head](http://en.wikipedia.org/wiki/Decapitation).

Execution of [criminals](http://en.wikipedia.org/wiki/Crime) and political opponents has been used by nearly all societies—both to punish crime and to suppress [political dissent](http://en.wikipedia.org/wiki/Political_dissent). In most places that practice capital punishment it is reserved for [murder](http://en.wikipedia.org/wiki/Murder), [espionage](http://en.wikipedia.org/wiki/Espionage), [treason](http://en.wikipedia.org/wiki/Treason), or as part of [military justice](http://en.wikipedia.org/wiki/Military_justice). In some countries sexual crimes, such as [rape](http://en.wikipedia.org/wiki/Rape), [adultery](http://en.wikipedia.org/wiki/Adultery), [incest](http://en.wikipedia.org/wiki/Incest) and [sodomy](http://en.wikipedia.org/wiki/Sodomy), carry the death penalty, as do religious crimes such as [apostasy](http://en.wikipedia.org/wiki/Apostasy) in [Islamic](http://en.wikipedia.org/wiki/Islamic) nations (the formal renunciation of the State religion). In many [countries that use the death penalty](http://en.wikipedia.org/wiki/Use_of_capital_punishment_by_nation), [drug trafficking](http://en.wikipedia.org/wiki/Drug_trafficking) is also a capital offense. In China, [human trafficking](http://en.wikipedia.org/wiki/Trafficking_in_human_beings) and serious cases of [corruption](http://en.wikipedia.org/wiki/Political_corruption) are punished by the death penalty. In militaries around the world [courts-martial](http://en.wikipedia.org/wiki/Courts-martial) have imposed death sentences for offenses such as [cowardice](http://en.wikipedia.org/wiki/Cowardice), [desertion](http://en.wikipedia.org/wiki/Desertion), [insubordination](http://en.wikipedia.org/wiki/Insubordination), and [mutiny](http://en.wikipedia.org/wiki/Mutiny).

Capital punishment has been practiced in virtually every society, excluding those with [state religious](http://en.wikipedia.org/wiki/State_religion) proscriptions against it. It is a matter of active controversy in various states, and positions can vary within a single [political ideology](http://en.wikipedia.org/wiki/Political_ideology) or cultural region. A major exception is in Europe, where Article 2 of the [Charter of Fundamental Rights of the European Union](http://en.wikipedia.org/wiki/Charter_of_Fundamental_Rights_of_the_European_Union) prohibits the practice.

Today, most countries are considered by [Amnesty International](http://en.wikipedia.org/wiki/Amnesty_International) as abolitionists, which allowed a vote on a [resolution to the UN to promote the abolition of the death penalty](http://en.wikipedia.org/wiki/UN_moratorium_on_the_death_penalty). But more than 60% of the worldwide population lives in countries where executions take place in so far as [the four most populous countries in the world](http://en.wikipedia.org/wiki/List_of_countries_by_population) (such as People's Republic of China, India, United States and [Indonesia](http://en.wikipedia.org/wiki/Indonesia)) apply the death penalty.

As a rule punishability, by and large, depends on the degree of culpability of criminal act and the danger posed by it to society as also the depravity of the offender. The risk of penalty is the cost of crime which the offender has to pay. When this cost (suffering) is high enough as compared to the benefit which the crime is expected to yield, it will deter a considerable number of people. This is true with crimes punishable with death sentence as well.

A dispassionate analysis of criminological jurisprudence would reveal that capital punishment is justified only in extreme cases in which a high degree of culpability is involved causing grave danger to society. It must, however, be added that a mere objective consideration of act's dangerousness to society by itself would not be enough to assess perpetrator's culpability but his personal attributes and circumstances and gravity of the offence have also to be taken into consideration to decide whether or not he deserves capital punishment. Thus the punishment should be commensurate among other things, with the gravity of offender's act and societal reaction to it.

Experience has shown that despite fullest consciousness about the desirability of reformative justice, at times unequivocal stand is unavoidable in extreme cases where offender has been fully aware of the fatal consequences of his gruesome and brutal crime and there were no mitigating circumstances. In such aggravating situations, law must take a firm stand and not hesitate even to award the extreme sentence of death to the offender. These situations have found expression in the penal laws of several countries of the world.

1. **Retributive Effect of Death Penalty:**

Death sentence has been used as an effective weapon of retributive justice for centuries. The justification advanced is that it is lawful to forfeit the life of a person who takes away another's life. A person who kills another must be eliminated from the society and, therefore, fully merits his execution. Thus the motive for death penalty may indeed include vengeance which is a compensatory and reparatory satisfaction for an injured party, group or society. When regulated and controlled by law, vengeance is also socially useful. Legal vengeance solidifies social solidarity against law-breakers and probably is the only alternative to the disruptive private revenge of those who feel harmed.

Commenting on the effectiveness of death penalty, *Thorsten Sellin* observed that it has failed as a measure of social protection, so also as an instrument of retributive justice. Citing illustrations from United States to support this contention, he argued that the number of executions is far less than the number of murders committed annually which clearly indicates that death sentence is no longer looked with favour and is falling into disuse rapidly. Another argument which needs attention regarding declining effect of death penalty is that even after the award of this sentence, in most cases, it is either commuted or pardoned in the last resort and its final execution is seldom carried out.

1. **Deterrent Effect of Capital Punishment**

The fear of being condemned to death is perhaps the greatest deterrent which keeps an offender away from criminality. Death penalty in case of murder serves as an effective deterrent to remind the murderer about the severity of law towards this heinous crime and certainly helps in reducing the incidence *of homicide.* The old methods ofpublic execution though abandoned today, were directed to make the sentence as frightening as possible. The present trend, however, is to keep the number of offences punishable by death to a minimum and avoid death penalty as far as possible although its retention in the statute book is favored even to this day.

1. **Modes of Execution**

An appraisal of the administration of criminal justice of ancient times reveals that death penalty was commonly used in cases of heinous crimes. However, there was great divergence as to the mode of its execution. The common modes of inflicting death sentence on the offender were crucifixion, drowning, burning, boiling, beheading, throwing before wild beasts, flaying or skinning off alive, hurling the offender from rock, stoning, strangling, impelling, amputating, shooting by gun or starving him to death. Hanging the offender till death in public places has been a common mode of putting to an end to the life of an offender. These draconian and barbarous methods of punishing criminals to death were justified on the ground that they were the quickest and easiest modes of punishment and at the same time carried with them an element of deterrence and retribution. They have, however, fallen into disuse with the advance of time and .modern humanitarian approach to penology.

Deterrence has been defined by Dr. Johnson as discouraging the offender by terror or naked fear from repeating his crime and at the same time preventing others from following his path. It must, however, be remembered that deterrence is a relative term, its seriousness depending on the category of the offender. Thus the stigma attached to arrest, trial, conviction and sentence may have little effect on habitual offenders or hardened criminals but may act as a powerful deterrent to an average law-abiding citizen. Undoubtedly, of all the punishments, death penalty appears to be the strongest deterrent for there can be nothing for which a man would be willing to give his life.

* **Methods of Execution Currently in Use:**

At present, the common modes of execution of death sentence which are in vogue in different parts of the world are electrocution, guillotine, shooting, gas chamber, hanging, lethal injection etc.

 The method of execution by ***electrocution*** consists in subjecting the condemned prisoner to heavy charge of electric current. The method was first used at Auburn State Prison, New York on August 6, 1890 and is now being extensively used in USA, UK, USSR, Japan, and most of the European countries.

The device of ***Guillotine*** for execution of criminals was introduced in France- in 1792. It was a kind of machine erected for execution of criminals in western countries, particularly in France, Scotland and England.

***Shooting*** as a mode of execution of a condemned person was used for offences tried in Military Courts. In Russia and China and some East European countries death by firing squad is the customary mode of execution.

More recently, ***gas chambers*** are being used in the western world for execution of death sentence. The condemned prisoners are put to death by being stripped in a chair in a sealed gas chamber into which poisonous fumes of cyanide are injected. The method prevailed in USA and was extensively used by Nazi Germany in killing Jews and other unwanted minorities.

The method of ***hanging*** the condemned prisoner till death has been commonly in use in almost all the countries since ages. In India public hanging is now held to be unconstitutional. Death sentence by means of ***lethal injection*** is relatively a later development. It was first adopted in Oklahoma (USA) in 1977. The injection is administered intravenously with delicate skilled operation. It is preferred because it ensures instantaneous death without any suffering. It is in use in USA, UK, Canada and other developed countries.

**Capital Punishment in Ancient Rome and Greece:** In ancient times, the law administrators unflinchingly executed murderers because they believed that "the life of each man should be sacred to each other man"? They realized that it is not enough to proclaim the sacredness and inviolability of human life, it must be secured as well, by threatening with the loss of life of those who violate what has been proclaimed inviolable-the right of innocent to live. Murder, being the worst of crimes, must deserve the highest penalty which is death sentence. This shall also be in accordance of the principle that punishment must be in proportion to the gravity of the crime.

Ancient Romans accepted the deterrent value of death penalty. Under the Roman criminal law, the offender was put to public ridicule and his execution took the form of a ceremony. Death was caused to the condemned person in a most tortuous manner. For example, one who killed his father was sewn in a sack along with a live dog, cat and a cobra and thrown into river. The object was to make him die most painfully. The sentence of death could be awarded even to a debtor who was unable to payoff the debt of his creditor. Thus a creditor, who found that his debtor was unable to payoff the debt, could vent his wrath upon the debtor by marching him up the Tarpeian rock and hurling him from there to death.

The Greek penal system also provided death sentence for many offences. The offenders were stripped, tarred and feathered to death publicly. Execution of death penalty in public places was favored because of its deterrent effect.

**Imprisonment**

Imprisonment presents a most simple penal and common form of sentencing for incapacitating the criminals. It proved to be an efficient method of temporary elimination of criminals apart from being a general deterrent and an individual deterrent. Conditions of imprisonment in civilized countries have undergone radical changes in recent decades. The minimum security institutions such as open air prisons and prison hostels are being increasingly used as modified forms of incarceration of offenders.

Despite being a corrective measure, the most intricate problems involved in imprisonment as a measure of punitive reaction to crime is the ‘prisonization’ of offenders. The prisoner is confronted with the most crucial problem of adjustment to new norms and environment of prison life. He loses his personal identity in the process of adjustment and is converted into a mere impersonal entity.

Yet another set back of imprisonment as a mode of punishment is its damaging effect on family relationship of the offender. The offender loses contact with the members of his family and if he happens to be the sole bread-winner, the result is still worse. The members of his family suffer misery, starvation and financial crisis. Depriving the offender of his family life for a considerably long period creates new problem for prison discipline in form of homosexuality, bribery, corruption, revolt etc.

Prisonization of woman offenders presents many-fold problems before the prison administration. Particularly, the women prisoners who are pregnant or have babies need special care and attention as regards their food, medical treatment, health and nourishment of the child. This acts additional financial burden in the prison administration. This is one reason why the prison authorities are more liberal in granting remissions, furloughs, parole etc. to the women prisoners.

In India, parole and furlough are now being extensively used as a part of penal substitutes for mitigating the rigors of prison inmates. The All India Jail Reforms Committee has further observed that the prisoners should be released on furlough after undergoing a specified period of imprisonment so that they maintain contact with their relatives and friends and may not feel uprooted from society and thus saved from the evil effects of imprisonment.

The social stigma attached to prisoners makes their rehabilitation more difficult. Prisoners quite often feel that the real punishment begins after they leave the prison institution. *Sir Lionel Fox,* the noted prison reformist of Britain introduced Hostel system for inmates to prevent them from stigmatization and ensure them an honorable life in society.

Be that as it may, the fact remains that imprisonment is still one of the most accepted forms of punishment throughout the world. With the modern correctional techniques introduced in prison institutions, it serves as an efficient measure of reforming the criminal and at the same time protecting the society from anti-social elements. Thus it serves the dual purpose of preventive and reformative justice at one and the same time.

**Rehabilitate or punish: How Should Society Treat Criminals?**

Every criminal is a person. Every person is different from every other person. Every criminal is therefore different from every other criminal. There is no single solution to the problem of criminal behavior. Although criminal activity can be easily broken down into neat categories, criminals as people cannot.

Let's look at punishment. In different countries there are different types of punishment. Some are more effective than others. In the Unites States there are very few options when it comes to punishment (prison, probation, house arrest or in rare occasions execution), and due to the pitifully easy punishments there is very little deterrent to avoid crime. In countries where corporal punishment and maiming are implemented, citizens are much more motivated to do the right thing. Punishment does work...sometimes.

What about rehabilitation? Some of those people in prison are people who just make mistakes. They saw an opportunity and took it, or caved in to temptation. People committing property crime and white collar crime can sometimes be in this category. The "one time only mistake" type of criminal usually decides in prison that they will not repeat their mistake. Some of them decide not to break the law again. For them punishment was all the rehabilitation needed. Others will just use the prison time think of new ways to get away with crime. There is no rehabilitation for people without integrity.

People convicted of sexual crimes may actually be easier to rehabilitate than those who do not have any regard for personal property or governmental funds. There have been some great advances in the field of abnormal psychology, and I applaud the efforts of those researchers. This does not mean that we should trust our children with a "cured" child molester, but it does indicate that terribly long prison terms might not be the only solution.

Some prisoners are in complete denial. They refuse to accept that they did anything wrong when they broke the law. They refuse to accept the law of the land as applicable to them. No amount of psychological assistance or legal punishment (by United States standards, anyway) will deter them from future criminal activity.

If you have read this far and are thinking that there must be hundreds of types of criminals that have not been addressed, then you are correct. There are almost as many types of criminals as there criminals. The chance that a convicted prisoner will change is completely up to that particular convicted prisoner. We, unfortunately, do not get to decide.

The institution of prison serves a dual purpose of eliminating criminals from society and reformation and rehabilitation of the offenders under the institutional treatment by blanketing out conditions which in the first place turn them into law-violators. It has now been generally accepted that “After Care” service must form an integral part of penal program. As a part of correctional service it presupposes active help and guidance to the discharged prisoners through counseling and surveillance. The process has, therefore, been called the “released person’s Convalescence”.

The system of parole as a corrective measure a rehabilitative process has now been expanded in the form of open jails and open air camps in recent years. Open air-institutions are essentially a 20th century device for rehabilitating offender’s normal life in the society through an intensive After-Care program.

**Alternatives to Imprisonment**

* **The Prisons and the African Experience:**

The criminal justice system…the police, the courts and prisons, in he formal connotation we know them today were introduced into Sub-Saharan Africa by colonialist or were adopted as a result of European influence over the past one and half century or so. Otherwise prisons were alien to the cultural practices of African as far as the administration of justice was concerned. Elders, in accordance with customary law, dealt with offenders. Traditional sanction such as the payment of compensation or blood money by the offender to the victim was customary in many of the African countries. For instance, as recorded by Jomo Kenyata, on the basis of Kikuyu law “Nine sheep or goats had to be paid for adultery or rape and one hundred sheep or ten cows for homicide, and that this rate did not vary with the wealth or age of the victim, nor with the intention or motive of the killer” (Read, 1969: 104). Similarly in Ethiopia certain tribal groups paid what they called “*gumma”* or blood money to the aggrieved individual or clam without ever referring the offender to the courts, until the government, through the promulgation of the 1957 Penal Code declared all offences to be crimes against the state and the practice was declared illegal. African customary law, according to T.O. Elias, never recognized and even considered prisons as wasteful:

*The payment of compensation, blood- money, by the offender to the offended was customary in many cases, even in the unlawful killing of human being. The reason for this is partly to be found in the social policy of the African peoples, which centers around the land and its produce in the largely agricultural communities on the continent. (Elias, 27:18, 1969)*

Once the prison system was introduced into Africa, its use gradually became widespread and major reliance was placed on it, in the attempt to control and prevent crime. Imprisonment grew steadily in the century as the major method of punishment of hardened criminals. Urbanization and the various aspects of socio-economic change that have been taking place in the continent weakened traditional sanctions. The alien criminal justice system which was never adapted to local conditions was more retaliatory rather than conciliatory. As a result, courts imposed excessively severe sentences, which overcrowded prisons. More and more reliance was made upon imprisonment to fight the increasing rate of crime. This led to the expansion of the police and the judicial system which in turn led to the arrests of more and more offenders making the expansion inevitable (see Clinard and Abbot, 1973: 231-37; Read, 1969: 128).

Though the prison system was a foreign import and to some extent an imposition of colonialism, it still remains to be the major method of handling criminals in Sub-Saharan Africa. After independence many of the African countries had the intention of either a abolishing or, at least, changing the feature of prisons because of their repressive nature which were considered an affront to human dignity. Particularly, those African leaders, who themselves had suffered imprisonment in the process of their fight for independence, were bent on doing something after independences. But realities were different than intentions and prisons still persist even in much more uglier states.

Parole and probation have been tried by different countries and have been proved to serve best alternatives for the imprisonment to bring back the criminal to the society as a law abiding citizen. These strategies seem to appeal to his mind persuasively as he gets a lenient and compassionate treatment from the law enforcement system.

* + - 1. **Parole System:**

**Parole** may have different meanings depending on the field and judiciary system. All of the meanings originated from the [French](http://en.wikipedia.org/wiki/French_language) *parole,* meaning "(spoken) word." Following its use in late-medieval Anglo-French chivalric practice, the term became associated with the release of prisoners based on prisoners giving their word of honor to abide by certain restrictions. Before being granted the privilege of parole, the inmate must first agree to abide by the conditions of parole set by the paroling authority. These conditions usually require the parolee to meet regularly with his or her parole officer or community corrections agent, who assesses the behavior and adjustment of the parolee and determines whether the parolee is violating any of his or her terms of release (typically these include being at home during certain hours, maintaining steady employment, not [absconding](http://en.wiktionary.org/wiki/Appendix%3AGlossary_of_legal_terms#Abscond), refraining from illicit drug use and sometimes, abstaining from [alcohol](http://en.wikipedia.org/wiki/Alcohol)). In some cases, a parolee may be discharged from parole before the time called for in the original sentence if it is determined that the parole restrictions are no longer necessary for the protection of society (this most frequently occurs when elderly parolees are involved).

* **Early History of Parole:**

[Alexander Maconochie](http://en.wikipedia.org/wiki/Alexander_Maconochie), a Scottish geographer and captain in the [British Royal Navy](http://en.wikipedia.org/wiki/British_Royal_Navy), introduced the modern idea of parole when, in 1840, he was appointed superintedent of the English penal colonies in Norfolk Island, Australia. He developed a plan to prepare them for eventual return to society that involved three grades. The first two consisted of promotions earned through good behavior, labor, and study. The third grade in the system involved conditional liberty outside of prison while obeying rules. A violation would return them to prison and starting all over again through the ranks of the three grade process.

* **Modern History of Parole:**

In the [United States](http://en.wikipedia.org/wiki/United_States), courts may specify in a sentence how much time must be served before a prisoner is eligible for parole. This is often done by specifying an indeterminate sentence of, say, "15 to 25 years," or "15 years to life." The latter type is known as an indeterminate life sentence; in contrast, a sentence of "life without the possibility of parole" is known as a determinate life sentence.

In most states, the decision of whether an inmate is paroled is vested in a paroling authority such as a parole board. Mere good conduct while incarcerated in and of itself does not necessarily guarantee that an inmate will be paroled. Other factors may enter into the decision to grant or deny parole, most commonly the establishment of a permanent residence and immediate, gainful employment or some other clearly visible means of self-support upon release (such as [Social Security](http://en.wikipedia.org/wiki/Social_Security_%28United_States%29) if the prisoner is old enough to qualify). Many states now permit sentences of life imprisonment without the possibility of parole (such as for [murder](http://en.wikipedia.org/wiki/Murder) and [espionage](http://en.wikipedia.org/wiki/Espionage)), and any prisoner not sentenced to either this or the [death penalty](http://en.wikipedia.org/wiki/Death_penalty) will eventually have the [right to petition](http://en.wikipedia.org/wiki/Right_to_petition) for release (one state – [Alaska](http://en.wikipedia.org/wiki/Alaska) – maintains neither the death penalty nor life imprisonment without parole as sentencing options). At the same time, most other nations, such as [European](http://en.wikipedia.org/wiki/Europe) nations and [Mexico](http://en.wikipedia.org/wiki/Mexico), have abolished life without the possibility of parole because it is considered cruel.

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* + - 1. **Probation:**

**Probation** is the suspension of all or part of a jail sentence; the [criminal](http://en.wikipedia.org/wiki/Criminal) who is "on probation" has been convicted of a crime, but instead of serving [jail](http://en.wikipedia.org/wiki/Prison) time, has been found by the Court to be amenable to probation and will be returned to the community for a period in which they will have to abide to certain conditions set forth by the Court under the supervision of a [probation officer](http://en.wikipedia.org/wiki/Probation_officer); or has served part of the sentence but has been released before its end. General conditions may include maintaining employment, abiding to a [curfew](http://en.wikipedia.org/wiki/Curfew), living where directed, abstaining from unlawful behavior, following the probation officer's orders, not [absconding](http://en.wikipedia.org/wiki/List_of_legal_terms#Abscond), and refraining from contact with other individuals, who may include victims of the original crime (such as a former partner in a [domestic violence](http://en.wikipedia.org/wiki/Domestic_violence) case), potential victims of similar crimes (such as minors when the crime involves child [sexual abuse](http://en.wikipedia.org/wiki/Sexual_abuse)), potential witnesses, or those who have partnered with the offender in the earlier crime. In some cases the offender on probation is fitted with an [electronic tag](http://en.wikipedia.org/wiki/Electronic_tag) which signals his or her whereabouts to officials.

* **History of Probation:**

The concept of probation, from the Latin word *probatio* - meaning testing period - has historical roots in the practice of *judicial* *reprieve*. In English Common Law the Courts could temporarily suspend the execution of a sentence to allow the defendant to appeal to the Crown for a [pardon](http://en.wikipedia.org/wiki/Pardon). Probation first developed in the United States when [John Augustus](http://en.wikipedia.org/wiki/John_Augustus), a [Boston](http://en.wikipedia.org/wiki/Boston) boot maker, persuaded a judge in the Boston Police Court in 1841 to give him custody of a convicted offender, a "drunkard," for a brief period and then helped the man to appear rehabilitated by the time of sentencing. Even before John Augustus, the practice of suspended sentence was used as early as 1830, in Boston, Massachusetts and became widespread in U.S. Courts, although there was no statutory authorization for such a practice. At first, judges, most notably Peter Oxenbridge Thatcher of Boston, used "release on recognizance" or bail and simply failed to take any further legal action. In 1878 the mayor of Boston hired a former police officer, one "Captain Savage," to become what many recognize as the first official probation officer. By the mid-19th century, however, many Federal Courts were using a judicial reprieve to suspend sentence, and this posed a legal question. In 1916, the [United States Supreme Court](http://en.wikipedia.org/wiki/United_States_Supreme_Court) held that a Federal Judge (Killets) was without power to suspend a sentence indefinitely, which is known as the [Killets Decision](http://en.wikipedia.org/w/index.php?title=Killets_Decision&action=edit&redlink=1). This famous court decision led to the passing of the National Probation Act of 1925, thereby, allowing courts to suspend the imposition of a sentence and place an offender on probation.

[Massachusetts](http://en.wikipedia.org/wiki/Massachusetts) developed the first state wide probation system in 1880, and by 1920, 21 other states had followed suit. With the passage of the National Probation Act on March 5, 1925, signed by President [Calvin Coolidge](http://en.wikipedia.org/wiki/Calvin_Coolidge), the U.S.[Federal Probation](http://en.wikipedia.org/wiki/Federal_Probation%22%20%5Co%20%22Federal%20Probation) Service was established to serve the U.S. Courts. On the state level, pursuant to the Crime Control and Consent Act passed by Congress in 1936, a group of states entered into agreement by which they would supervise probationers and parolees for each other. Known as the Interstate Compact for the Supervision of Parolees and Probationers, the agreement was originally signed by 25 states in 1937. In 1951, all the states in the United States of America had a working probation system and ratified the Interstate Compact Agreement. In 1959, the newly adopted states, [Alaska](http://en.wikipedia.org/wiki/Alaska) and [Hawaii](http://en.wikipedia.org/wiki/Hawaii), in addition the Commonwealth of [Puerto Rico](http://en.wikipedia.org/wiki/Puerto_Rico), [U.S. Virgin Islands](http://en.wikipedia.org/wiki/U.S._Virgin_Islands) and the territories of [Guam](http://en.wikipedia.org/wiki/Guam) and [American Samoa](http://en.wikipedia.org/wiki/American_Samoa) ratified the act as well.

Probation began as a [humanitarian](http://en.wikipedia.org/wiki/Humanitarian) effort to allow first-time and minor offenders a second chance. Early probationers were expected not only to obey the law but also to behave in a morally acceptable fashion. Officers sought to provide moral leadership to help shape probationers' attitudes and behavior with respect to family, [religion](http://en.wikipedia.org/wiki/Religion), employment, and free time. They aimed to ensure that this was enforced as well, and early probationers were given the opportunity to prove themselves and possibly even reduce their sentence.

During the 1920s through the 1950s, the major developments in the field of [psychology](http://en.wikipedia.org/wiki/Psychology) led probation officers to shift their emphasis from moral leadership to therapeutic counseling. This shift brought three important changes. First, the officer no longer primarily acted as a community supervisor charged with enforcing a particular morality. Second, the officer became more of a clinical [social worker](http://en.wikipedia.org/wiki/Social_worker) whose goal was to help the offender solve psychological and social problems. Third, the offender was expected to become actively involved in the treatment. The pursuit of rehabilitation as the primary goal of probation gave the officer extensive discretion in defining and treating the offender's problems. Officers used their judgment to evaluate each offender and develop a treatment approach to the personal problems that presumably had led to crime. Many states offered to dismiss or [expunge](http://en.wikipedia.org/wiki/Expungement) the conviction if the probationer fulfilled the terms of the probation.

During the 1960s, major social changes swept across the United States. These changes also affected the field of community corrections. Rather than counseling offenders, probation officers provided them with concrete social services such as assistance with employment, housing, finances, and education. This emphasis on reintegrating offenders and remedying the social problems they faced was consistent with federal efforts to wage a "[War on Poverty](http://en.wikipedia.org/wiki/War_on_Poverty)." Instead of being a counselor or [therapist](http://en.wikipedia.org/wiki/Therapist), the probation officer served as an advocate, dealing with private and public institutions on the offender's behalf.

In the late 1970s the orientation of probation changed again as the goals of rehabilitation and reintegration gave way to "risk management." This approach, still dominant today, seeks to minimize the probability that an offender will commit a new offense. [Risk management](http://en.wikipedia.org/wiki/Risk_management) reflects two basic goals. First, in accord with the deserved-punishment ideal, the punishment should fit the offense, and correctional intervention should neither raise nor lower the level of punishment. Second, according to the community protection criterion, the amount and type of supervision are determined according to the risk that the probationer will return to a life out of compliance with the law.

Prisoners may be released on parole before the end of their sentence, and are normally on probation until the end of the sentence.

* **Probation Violations:**

A [probation officer](http://en.wikipedia.org/wiki/Probation_officer) may at his discretion issue a probationer a warning, or order him to appear before a court for a probation violation hearing. At the hearing, the probation officer will typically request additional punishment, usually involving incarceration. A prisoner released on parole may have parole revoked, and be recalled to prison. There is no "hard and fast" rule for what type of violation will result in a hearing. One violation that is almost always considered serious is failure to appear for scheduled meetings with the probation officer. Being found in possession of illegal drugs, or being arrested for another crime, is likely to result in a hearing. How seriously the violation is regarded may depend upon the facts of the original offense – for example, if a person has been convicted of a gang-related offense, "association with known criminals" may be viewed as a more serious violation than if the person were on probation for driving a car with a suspended license.

**3.3. Community-Based Rehabilitation:**

**Community-based** corrections are a general term that refers to various types of non-institutional correctional programs for criminal offenders. These include, among others, such options as diversion, pretrial release, probation, restitution and community services, temporary release, halfway houses, furlough, and parole. These are considered useful in dealing with offenders in the community.

Many criminologists argue that courts are too harsh on non-violent offenders, and usually a large majority of offenders that serve time in prisons are non-violent. Haas and Alpert argued:

 There are three factors that are usually cited in favor of **community-based** corrections. Community supervision is considered to be cheaper than incarceration. However, costs vary from country to country. But there is a claim that prison is three to ten times more expensive than community supervision. Secondly, if we are to measure rehabilitation by the rate of recidivism, prison is no more effective than community supervision. Thirdly, incarceration is more harmful to both the individual and the society. Besides, there is the suffering of family members, particularly that of the children of women offenders (Cole, 1986: 578).

**Objectives of Community-Based Rehabilitation**

**1. Reintegration:** The types of correctional options mentioned above try to sanction and control criminals without confining them. This will allow offenders to maintain existing contacts and establish new ones in the community. This objective is known as **reintegration.** The meaning of reintegration was cogently summarized, by the 1967 US President's Commission on Law Enforcement and Administration of Justice.

*Reintegration is based on the assumption that crime and delinquency are the consequences of community disorganization as well as the psychological and behavioral problems of the offenders. The community's failures are considered to have deprived "offenders of contact with the institutions that are, basically responsible for assuring development of law­ abiding contact: sound family life, good schools, employment, recreational opportunities, and desirable companions". The psychological problems that are often manifested by offenders are viewed to be, at least partially, the influence of the environment in which offenders live.*

**Community Protection**

Another objective of community-based corrections is community protection. Even though reintegration is the main feature of community­ based correctional programs, there are other objectives. The control of offenders, while they remain in the community is an important objective aimed at protecting the society from further harm. Various control mechanisms may be applied to impose prescriptive and proscriptive restrictions on the offender's behavior. Conditions like curfews or demands that the offender attend school, secure a job, avoid substance abuse and contact with undesirable characters engaged in illegal activities can be imposed. Sometimes offenders may be required to stay in supervised environment, such as a halfway house or a diversion center where daily movements are structured.

Enforcing such conditions is not simple. It requires daily visits to the offender at his work place and at home. It may require regular contacts with family members, employers and other relevant associates. In this way it is possible to deter the offender sufficiently enough to protect the community from any risk, though it may not be as much an incapacitation, as a prison commitment may provide with all its dehumanizing effects. In fact *''prisons should be repudiated as useless for any purpose other than locking away persons who are too dangerous to be allowed at large in a free society” (*cited by Haas and Alpert, 1991: 373*)*

**Cost-Effectiveness:**

**Cost-Effectiveness** is one of the reasons why community-based corrections are considered to be a better alternative to imprisonment. The problem of prison overcrowding is almost a worldwide problem. Therefore, before ever thinking to build new prisons, it may be wise to consider community-based corrections as an alternative. Increased construction of prisons would inevitably lead to more accelerated rate of incarceration with no recognizable impact (McCarthy and McCarthy, 1991: 6).

There are potential conflicts among community-based correctional programs. Current practices, including probation and parole, particularly if one ignores probation and parole violations, are less costly than intermediate punishments. Reintegration requires genuine efforts to assist offenders, "a carefully calculated strategy that involves much more than control of offenders". The following passage from Cox and Wade (1989) illustrates the conflict, referred to earlier, regarding community-based corrections:

 Despite such criticisms of community-based corrections, efforts have grown, over the years, to develop community-based treatment and correctional programs for offenders, in many of the developed countries like the Scandinavian countries, particularly Denmark, and Japan have opted for alternatives to incarceration.

**Types of Community-Based Corrections:**

There are various types of community-based corrections. But we can have an understanding of a few of the major types.

* + - * 1. **Diversion:**

Vetter and Silverman defined diversion as *"The removal of an offender from the criminal justice system by channeling him/her into a social casework, mental health, or other type of agency. The term has also been used to describe the handling of juveniles in a system separate from the adult criminal justice system and sentencing of offenders to community­ based correctional facilities rather than to prison"* (1986: 572).

Thus, diversion implies the formal removing or suspending of criminal proceedings against criminals who have violated the criminal law, in favor of processing them through non-criminal disposition or means. It is a pre-­adjudication disposition (Inciardi, 1987: 625).

Inciardi claims that diversion is not a new practice. It is believed to have existed, in an informal fashion, for thousands of years. For instance, a police officer removes a public drunk to an institutional shelter; a prosecutor may decide to *nolle prosequi* a petty theft; a magistrate may release after admonishing an individual who assaulted a neighbor; etc. "These are discretionary decisions, undertaken at random and off the record, and they tend to be personalized, standard less, and inconsistent. ... (Besides) they serve only to remove offenders from the application of criminal penalties with no attempt to provide appropriate jurisprudential alternatives".

 The unsystematic approach in the use of diversion continued for some time. However, a system of formalized diversion, imposing social-­therapeutic programs in place of conviction and punishment, in which the offender was placed under the supervision of community agencies, was introduced later on. A Chicago Boy's Court first introduced it, in 1914. This is how one of the judges summarized the advantages of the program:

As arguments in favor of diversion increased, it continued to evolve. It was believed that its use would reduce Court backlog, it would allow early intervention before the development of full-fledged criminal careers, it reduces the costs of criminal processing, and it reinforces the offender's chances for community reintegration. Besides, it had been acknowledged that the criminal justice system was promoting the very opposite of what it was expected to achieve. It had failed to protect society. McBride summarized the failure:

* + - * 1. **Restitution:**

**Restitution** is an ancient principle: "If anyone sins and commits a breach of faith... through robbery... he shall restore it in full, and shall add a fifth to it, and give it to whom it belongs" (Leviticus 6). According to the laws of Hammurabi, 2100 BC, "if a man has stolen an *ox...if* (it belongs) to a god (or) a palace, he shall pay thirty fold; if of a villain...ten fold. If the thief has not the means of payment, he shall be put to death." (McCarthy and McCarthy, 1991: 137).

 Restitution is "compensation for injury one has inflicted, in the form of either a payment of money to the victim or the performance of service to the community" (Cole, 1986: 657). There are various rationales for restitution as Gilbert Geis presented them:

1. While fines go directly to courts or government treasuries, monetary restitution goes to the victims of crime, compensating them for injuries, time lost from the work and other losses.
2. It compels the offender to accept personal responsibility for his/her crime.
3. It is likely to reconcile victims and offenders.
4. It can be carried out along with a probation program without an additional program and expenditure. In fact it is carried out as one of the conditions of probation.
5. It provides a chance for including the victim in the administration of justice. (Inciardi, 1987:637)

 There are also those who claim that restitution might improve crime reporting if victims were convinced that they would be repaid for what they lost. Restitution, by easing public hostility towards the offender, might reduce the isolation of the offender from the society, thus facilitating his/her reintegration. Restitution would minimize the burden on the taxpayer (Conklin, 1995: 432).

Despite the advantages cited above there are criticisms against restitution. It is suggested that restitution can be a punitive sanction rather than a rehabilitative one because it imposes an additional burden on offenders that they might not ordinarily have. Even more seriously, it has the potential for nullifying any deterrent effect of punishment by allowing criminals to "write a check" and "pay a fee" for their offences. In addition, it is argued that restitution serves the interests of those who are financially better of, thus baring the option for those who are indigent. Though the latter argument may have some truth, there are alternatives that make restitution available to offenders at all socio-economic levels. For instance, juvenile vandals can work to repair the damage caused, drunken drivers can work in alcohol detoxification centers, other offenders can work in hospitals, nursing homes etc. (Inciardi, 1987: 637).

Restitution is used in most cases for economic offences. The goods or money taken from victims and the damages done to their property can be restored through financial payment. Restitution can be used in cases of violence, but there is difficulty of putting price tags on physical injury, and psychological trauma, thus, it is difficult putting limits to the use of restitution in such cases. However, community service can be utilized for all types of offences (McCarthy and McCarthy, 1991: 138).

Though restitution is not yet accepted by the criminal justice system, it is being used widely in many of the developed countries. The factors for its wide application are the growing need for the recognition to respond to the losses suffered by victims, the need to make offenders more accountable for their crimes, and the need to provide effective alternatives to the use of overcrowded prisons.

* + 1. **Temporary Release Programs**

**Temporary release programs** are the means of preparing inmates for eventual release from institutions and return them to the community by releasing them for specific period of time. The release may be of different nature depending on what the inmate wants to do during the release. The most common types of contemporary release are work release, study release, and furlough. During the release period the inmates may work, attend school, visit with family or make other preparations for final release (ibid., 166).

**Work Release:** Work release is known under various names. Inciardi described *work release* as follows:

*…work release is an alternative to total incarceration whereby inmates are permitted to work for pay in the free community but must spend their nonworking hours back in the institution.*

Work release is not a recent innovation. It was initiated …in 1913 [in Wisconsin, USA]. However, the idea has been only slowly accepted, and it was not until the early 1970s that work release became a widespread correctional practice for felony (serious offences) offenders (Inciardi, 1987: 661).

 McCarthy and McCarthy also corroborated Inciardi's description and made it a little more specific (1991:166-67):

…Regardless of the specific term employed, any program that provide for the following conditions may be defined as work release:

1. The labor of prison or jail inmates in the community,
2. Under conditions of relaxed supervision, and
3. For which inmates are paid prevailing free-world wages.

While at work, however, they work under conditions similar (and many times identical) to those of free persons. They must meet the same job requirements set for the employees, and they work with and are supervised by civilians.

In most cases inmates are paid directly by their employers, but they are required to turn their paychecks to the institutional administration. The administration will make deductions of 5 to 10 per cent to reimburse the state for room and board. Payment may also be made to cover cost of maintenance of the family of the inmate or any debts he/she may owe etc. Whatever remains is deposited in a savings account in the name of the inmate to be withdrawn at the time of release. However, the inmate can withdraw a certain amount during incarceration.

The types and locations of institutions are likely to have some influence on work release programs. Institutions located in and around urban areas are likely to have wider access to a variety of employment opportunities. A rural setting, apart from restricted job opportunities, may make it difficult for inmates to mix unnoticed into the local labour force of a tightly knit community.

Work release participants have to be carefully selected. They have to be screened and interviewed to make sure that the right types of inmates are selected. The necessary checks are made to determine that they are not disqualified because they are:

* more than six months from release;
* an escape risk;
* charged with other serious offences;

Further, precautions to be taken are to check whether they have other jurisdictional detainer, or have physical or emotional problems making them incapable of performing in the program; or were revoked from the program in the past (Snarr, 1992:237).

Some countries have been using work release for some time now. For instance, in the United States, as of June 30, 1988 out of total inmates of slightly more than 500,000 almost 15,000 state inmates were on work release. This is about three per cent.

However, despite such uses, there is some opposition to the use of work release. One of the grounds for opposition is that prisoners take away jobs from law-abiding citizens. It is also argued that releases have been exploited because some employers believed convicts should not be paid at normal wage levels. Besides, prison-based training has not always been accepted for modem employment markets (Inciardi, 1987: 662).

1. **Furlough:**

**Furlough** is defined by Inciardi as *"an authorized, unescorted absence from prison for work or study, visiting with one's family, or for some other reason deemed rehabilitative by correctional authorities, for a specified period of time".*

Furloughs are usually allowed, at regular intervals, for 24 to 72 hours. However, the duration and frequency for furlough will depend on statutes, administrative regulations, inmate's custody status and the individual's needs. Usually all overnight furloughs are to the inmate's home or to that of a family member (McCarthy and McCarthy, 1991: 170).

The grant of furloughs may be basing on reasons including some or all of the following:

* To maintain or re-establish family ties;
* To solve family problems;
* To prepare for final release, to attend employment interviews, to search for housing, to obtain a driver's license etc.;
* To attend a short-term educational, or vocational program;
* To attend a special event in the community (e.g. to speak to a civic or student group)

There are some problems that make release on furlough difficult, if not impossible. Inmates released on furlough face transportation problems since, in most cases, they have to make their own arrangements. Even more serious is the problem faced by inmates that do not have families to visit on furlough. Occasionally volunteers or charitable organizations are permitted to provide housing for inmates on furlough. Though there are no statistics, furloughs are used in many countries because they are considered to allow inmates to "wet their feet before plunging into the main stream of society" (McCarthy 170-71).

In most cases, furlough release is granted to selected inmates that are not security risks. Although limited, furlough release provides additional avenue for incarcerated individuals to maintain relationships to minimize some of the controversial issues that surround issues regarding conjugal visits (Snarr, 1992: 147).

1. **Study Release**

**Study release** programs are similar to work release programs. The difference is in the type of placement inmates receive. "Study release inmates are students rather than workers and employees. Like work release inmates, however, they fulfill two roles - students by day and inmates by night" (McCarthy and McCarthy, 1991: 169).

Study release is a natural extension of the work release principle. It is offered to minimum security, parole-eligible inmates that have demonstrated motivation for vocational or academic studies. Study release provides inmates opportunities for full-time, on-site participation in vocational or college education (Inciardi, 1987: 662).

The possibility for offering study leave will depend on the location of the institution and the availability of educational programs. Usually urban areas offer better possibilities than rural areas where, usually, maximum security prisons are more common, and needed resources including physical facilities, such as quiet study areas, counseling and support services are difficult to come by. Besides, schools are also far apart in rural areas. In urban areas minimum-security institutions are more likely to provide such resources (McCarthy and McCarthy, 1992: 169).

The major difference between work release and study release is mainly an economic question. Work release programs reduce the cost of incarceration and enable inmates to get funds, while study release programs increase institutional expenses because of the payment of tuition fees for the courses inmates have to take, unless inmate students obtain financial aid or have their own personal financial resources. Because of the limited availability of funds, the use of study release, even in countries where the program is operational, the program is not extensively used. But funds are not the only limiting factors. Most inmates would probably prefer work release than study release, if given the choice. Work release will most readily result in immediate financial return, whereas study release would provide only long-term and uncertain returns. For all these reasons study releases are much fewer than releases for work (ibid.).

1. **Halfway House**

Though the exact origin of **halfway houses** is difficult to establish, its use is said to have begun by the acts of Christian charity. However, during the second half of the 19th century, the Quakers were supposed to have started community corrections in some of the states in Northeastern United States.

But, the development of halfway houses was the outcome of the efforts of some voluntary or non-governmental organizations. During the first half of the 20th century, groups like the Salvation Army, the YMCA, and YWCA etc. in the United States were operating halfway houses. Gradually, with the availability of government funds, the use of halfway houses became widespread. Governmental halfway houses were more exclusively used to deal with some individuals who were under some sentence obligations such as probation, parole, furlough etc. Privately run halfway houses had greater latitude in operation. They admitted both offenders and non-offenders such as drug-addicts and alcoholics (Snarr, 1992: 237).

* **Objectives and Benefits of Halfway Houses:**

Halfway houses have a number of benefits to the individual offender, the community and the justice system. Providing the ex-offender with food, shelter, clothing and other necessities is a very humane act than simply returning the offender to the community without identifying whether he can locate a job or a place to live in on his own. Though it is a prior condition for a parolee to have a place to live in, it is not usually a realistic plan. There may be problems with family members that make such arrangements difficult to maintain for the ex-offender. Stresses of adjustment might also make living with family members untenable. An offender, hoping to gain release on parole may accept any job just to facilitate his release. But once on parole he may not be very happy with the job resulting in early termination. Halfway houses can help such things from happening by providing the ex-offender with basic necessities until he can locate housing and employment suitable enough for his needs (McCarthy and McCarthy, 1991: 209-10).

Halfway houses can also provide the emotional support offenders may need in the management of demands and pressures of readjustment. Informal counseling is provided and staff is always ready to listen to and discuss residents' problems and dilemmas. Besides, the offender is in a setting where he can be sure of being understood and get support. Halfway houses can provide more structured therapeutic programs to those who need intensive intervention. The offender can get such programs as drug, alcohol or family counseling to develop skills and resources to meet community demands while he is still in a semi-protected environment.

Halfway houses can also assist ex-inmates find community services. "The Halfway house staff can act as advocates for ex-offenders, providing them with support, security, and direct assistance while plans for education, training, employment services, financial assistance, and counseling from community agencies are being developed and implemented". Community programs may have large applicants and ex-offenders cannot afford such delays. Halfway house staff can help bridge bureaucratic processes while it meets the individual's most immediate needs.

Halfway houses provide services to the community in two ways. In the first place they provide a secure environment to protect the community from ex-offenders. The activities of residents are properly monitored. In addition, "support services, staff role models, and recreational pursuits are available". Persons supervised under such conditions are less likely to involve themselves in criminal behavior. Secondly, the facilitation of adjustment of the resident inmates to the community, by the staff of halfway houses, will reduce recidivism. ­

Halfway houses, like other community treatment centers and minimum ­security facilities, will provide low-cost alternatives to prison systems for handling non-dangerous offenders. Therefore, halfway houses are considered to be reasonable and cost-effective ways of expanding the capacities of prisons by minimizing over-crowdedness without having to build additional prisons.

Despite the advantages cited above, there are some criticisms against halfway houses centered around public safety and deterrence. Many critics express concern about the potential continued criminal behavior from ex­-offenders living together in halfway houses in residential areas. Other critics consider halfway houses as being "soft" on offenders and unable to provide the same deterrent effect as incarceration in prisons. These are real concerns that have to be seriously considered by administrators of halfway houses (Snarr, 1991: 236).

* **Programs of Halfway Houses**

Though programs of halfway houses vary greatly, some generalization can be made as pointed out by Snarr. Nearly all halfway houses operate with reintegration model. For those halfway house programs that serve offenders who have just been released from incarceration, the notion of decompression applies. The experience of incarceration often conditions the offender to norms, expectations, and behavior patterns that are unacceptable in the "free world". The halfway house operates to ease the transition from incarceration to society.

Hal#fway houses also recognize "**self correction**" as a program. Offenders, given the chance and conducive atmosphere, are less likely to recidivate. In some cases halfway house programs do not go beyond providing temporary shelter and minimal support to assist offenders. In other cases, they "provide or assist residents in obtaining shelter, food, clothing, counseling, education, vocational training, employment, and temporary financial assistance". Halfway house programs tend to be structured as a phased reentry approach as summarized below:

 **Phase I:** This phase provides orientation and maximum supervision, with limited freedoms and a very structured day. Emphasis is placed upon learning the rules and beginning a program (length of time varies from a few days to a few weeks).

**Phase II:** Phase II marks initial entry into halfway house activities. There is a lessening of restrictions; residents enter programs and seek employment. The supervision level is lowered, but attention is given to individual adjustment.

**Phase III:** During this phase, residents experience full participation in halfway house program activities and outside employment. They qualify *for* extended hours, home visits, and additional freedoms.

**Phase IV:** The final phase marks an exit from the halfway house, although a person may remain involved through aftercare (i.e., outpatient and outreach programs)"

The length of stay in each phase will depend on the policy of the halfway house, individual adjustment and the condition of placement. But generally inmates stay from three to four months. In some cases it may range from a few weeks to two years.

The effectiveness of halfway houses varies from country to country and on the effective planning and execution of the programs. The question of qualified and committed staff and the availability of community resources are also crucial. Generally, successes prevail over failures. As a result, more and more countries are trying it out.

**Essentials of an Ideal Penal System**

By way of generalization, it may be stated that efficacy of a penal system is to be assessed in the light of its impact on society in general and the criminal in particular. Punishment of offenders though necessarily arduous, is inevitable in the interest of the community at large; therefore, every civilized nation must have a definite penal program. An ideal penal system must essentially include the following characteristics:

1. A rational penal policy should aim at protecting the society from crimes and reclaim criminals by removing imperfections in the penal law of the country. Greater emphasis should be on prevention rather than cure. Necessary steps should be taken to ensure that people do not get opportunity to commit crime rather than trying to reform criminality. The law must provide according to variations in culpability.

2. Expressing his concern for the efficacy of punishment. *Bentham,* the well known English law reformer commented that penal policy must be in conformity with the principle of hedonism, that is, the utilitarian doctrine of *pain* and *pleasure.* The pleasure derived from criminal act must not outweigh the pain inflicted by way of punishment; otherwise the punishment is bound to lose its significance. That apart, punishment to be effective should be proportionate to the gravity of the offence.

3. It is an accepted fact that delay defeats justice. Inordinate delay in sentencing negatives its deterrent effect. It is, therefore, desired that punishment must follow the crime. Elimination of delay in awarding punishment is perhaps the most fundamental requirement of an ideal penal program. It must be noted that inordinate delay in disposal of cases by courts is causing untold miseries to poor litigants, particularly in India, as a result of which people are losing faith in these institutions of justice.

4. Punishment connotes society's disapprobation for a particular human conduct and penal sanctions act as a threat to the aggressor to refrain from committing such forbidden acts of violence. Thus the ultimate object of punishment is to protect society against law-breakers. As *Beccaria* puts it, the purpose of punishment is 'to make crime an ill-bargain for the offender'.

5. Experience has shown that the principle of equal punishment for similar offences does not prove effective for all types of criminals. The young and the first offenders must be treated differently than the recidivists and habitual offenders. The justification for this differential treatment lies in the fact that the effect of punishment varies from criminal to criminal depending on his age, sex, intellect, mental depravity, responsive attitude and social circumstances. It is for this reason that classification of criminals into different categories is deemed necessary so that they could be reformed through adequate correctional measures.

6. It is significant to note that efficacy of punishment essentially depends on the proper functioning of agencies which administer criminal justice. These agencies must command respect among the public. Everyone including the criminal himself should feel convinced that justice has been done to him. Disproportionate and unduly harsh punishment shall make the members of community feel that their life is unsafe and insecure in the hands of criminal law administrators and their distrust for law and penal institutions shall jeopardize the cause of criminal justice. Unfortunately, the position in India in this regard is far from satisfactory. Particularly, the functioning of the police and prisons needs improvement so that people regain their lost faith in these august institutions of law and justice.

7. Reformation of criminals should be the object of punishment while 'individualization' the method of it. Thus reformation in case of juveniles, first offenders and women offenders and deterrence for hardened criminals and recidivists should be the ultimate object of penal policy. The State has to rehabilitate the offender rather than avenge. The sub-culture that leads to anti-social behavior has to be countered not by undue cruelty but by re-culturalization. The punishment to be efficacious must include the combination ofdeterrence, prevention and reformation so that it prevents a future wrong besides bringing a change in the attitude of the offender through reformative measures during the period of his incarceration.

8. While appreciating the need for reformative approach towards criminals, a word of caution as to the extent to which the principle is to be applied, seems necessary. It is generally observed that in their enthusiasm to reform the criminals, the authorities associated with penal institutions such as prisons and reformatories convert these institutions into an earthly paradise providing all sorts of comforts to inmates. Consequently, inmates often take the institution as an easy resort to spend their life comfortably without shouldering any responsibilities. This obviously defeats the very object of reformation. It is therefore, desired that life in these institutions must involve certain degree of hardship and rigour so that the inmate is always reminded of his bitter experiences of institutional life after his release. This will help in keeping him away from repetition of criminal acts. The penal system should be designed so as to ensure that offenders improve by suffering for their offences. Unfortunately, the trend of judicial sentencing in India is towards excessive reformation with the result punishment is losing all its effect and consequently there is steep rise in crime rate.

9. The authorities concerned with the criminal justice administration should refrain from projecting the image of offenders as "big shot". It must be remembered that punishment fails when it raises the status of the convicted offender in his group.This is particularly true with criminal gangs. The rewards so often announced by the Government on the heads of notorious murderers, dacoits and criminals seem to undermine this aspect of penal policy.

10. Most of the modem penologists are opposed to retention of capital punishment on humanitarian ground. They argue that killing of man is inhumane. That apart, if an innocent person is executed due to erroneous justice that will do irreparable harm. Some argue that putting an offender to death virtually amounts to a cold-blooded murder which serves no useful purpose. The real object of punishment being reformation and not destruction of the criminal, death sentence hardly serves any purpose. Thus enlightened view is averse to the retention of capital punishment since it is grossly unjust and against the principles of humanity.

But it must also be pointed out that despite growing disinclination for awarding death penalty, there is a growing reluctance to abolish it. It is so because of a general feeling that threat of infliction of death sentence itself proves as an effective deterrent. Therefore, the ideal policy is to retain capital punishment in the Statute Book to be used in 'rarest of rare' cases. It is true that the test of 'rarest of rare cases' has not been acceptable to many because of the fact that what may appear to be a rarest of rare case to one Judge may not necessarily appear to be so to another Judge.

11. Punishment should include both compensation as well as imprisonment. As a matter of general policy, it would be ideal to prescribe reparation or payment of compensation for offences relating to property while penal sentence with or without fine may be awarded for crimes against person, particularly for crimes against women and children.

12. The efficacy of punishment, by and large, depends on its impartiality. The penal policy should, therefore, be completely free from considerations as to the caste, creed, religion or status of the offender.

13. As a sound principle of criminal justice, it is for the legislature to prescribe maximum limit of punishment for every offence in the Criminal Code without laying down any minimum limit. This will enable law courts to award punishment according to the requirements of individual offender thus infusing an element of discretion in judicial sentencing which is sine qua non for individualized treatment model.

14. The system of solitary confinement has now become obsolete and outdated. It is discarded because it is tortuous and imposes excessive suffering on the offender. Modern penologists treat solitary confinement as a method of putting offenders to death without bloodshed. Confining convicts in isolated prison-cells without any work makes them idle and aggressive and they return to society as more dangerous and aggressive criminals after their release. The torture of solitude and isolation is so painful that it completely destroys the personality of the offender and he turns hostile and indifference to the community.

15. Punishment should always serve as a measure of social defense. This in other words, means that elimination of incorrigibles and rehabilitation of corrigible should be the ultimate object of penal justice. An ideal penal policy should have enough elasticity so as to mold itself with the changing needs of time and place.

The above verbalizations with regard to punishment amply suggest that no single theory whether deterrent, preventive, retributive, retributive or reformative can help in eliminating crimes and criminals from society. It is only through an effective combination of two or more of these theories that an ideal penal program can be drawn to combat crimes. Some socialist countries have explicitly mentioned in their criminal codes the aims of sentencing the offender. This is indeed a welcome step which other countries should take note of while formulating their penal policy.

More recently, British and American penologists have shown considerable concern for plight of the ‘victims’ by focusing their attention on the diverse aspects of victimology. This relatively new concept covers within its ambit not only the victims of individual criminality, but also those of the abuse of criminal process and administration of justice. For this purpose it is necessary to develop human rights consciousness among the law-enforcement personnel particularly, the police and jail authorities.