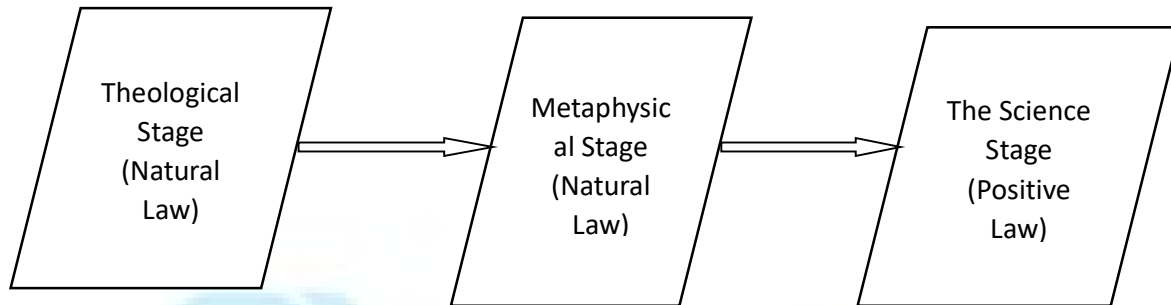


TOPIC 1: THEORIES OF CRIME AND PUNISHMENT

A: THEORIES OF CRIME

1. CLASSICAL AND POSITIVIST TRADITIONS



A summary on history of civilization and development of theories of crime

1.1 The classical

1.1.1 Pre-Enlightenment Europe

- The Excesses of the French society of the 18th C: the power of the sovereign – ‘the divine right of kings’ – church and aristocracy was so overwhelming that individual rights as perceived nowadays were virtually non existence: crimes against religion-atheism; and against the state including merely criticizing its actions: no court rules and procedures – arbitrary trials: confessions through torture: unequal application of hideous punishments: burning alive, mutilation and branding
- Crime was seen as a consequence of evil. Humans were seen as both being controlled by external forces and creators of their own destiny – a dichotomy, which has remained central to explanation of crime to present day.
- Simulation of writers such as Charles Montesquieu, Jean Jacques Rousseau and Francoise Marie Voltaire
- The French revolution

1.1.2 Classical school/ The Age of Enlightenment

- This period is mostly traced back to the death of Louis XIV in 1715
- This was the age of reason- intellectual philosophical development
- Crime was perceived to be a free will – the criminal’s decision to commit a crime by choice
- The emergence of natural law in the quest for fundamental reforms:
- St. Thomas Aquinas, St. Augustine – power of punishment given to an absolute monarch ruling under the divine right – the direct inheritance of power from God
- Plato, Aristotle, Cicero – reason and common sense to replace superstition and arbitrariness: people’s actions were not guided by supernatural powers but a rational calculation which balanced the benefits and the cost

Jeremy Bentham (1748-1832)

- Opponent of death penalty

Dr. Evelyne Owiye Asaala

Senior Lecturer, University of Nairobi

Criminal Law, International Criminal Law, Transitional Justice and International Human Rights Law

- Utilitarian ‘The greatest happiness of the greatest numbers’
- ‘Nature has placed mankind under the governance of two sovereign masters, pain and pleasure...[They] govern us in all we do, in all we say, in all we think: every effort we can make to throw off their subjection will serve but to demonstrate and confirm it.’
- Utility thus justifies punishment as follows - to deter crime was therefore to ensure that the amount of pain derived from the forbidden activity was greater than the amount of pleasure

1.1.3 The neoclassical school

- This period places crime outside the framework of society
- Crime perceived to be a result of individual circumstances and rational choice
- A new Penal Code of 1810 issued under Napoleon:
 - i. It did not include religious crimes as did the 1791 i.e incest, homosexuality etc
 - ii. Replaced fixed punishment by stated maximum and minimum sentences – an element of judicial discretion
 - iii. Prerogative of mercy re-established
 - iv. Death penalty introduced to offences considered most serious
 - v. Consideration of age, mental state and mitigating circumstances
- Napoleonic principles provide for the basis of criminal justice system in most countries
- Like classism, neoclassism still considered human being as being guided by reason, having free will and freedom of choice, and therefore able to be considered both morally and legally responsible for their actions.
- Classical theory – more attractive to rulers as its social contract emphasized that as everyone had a stake in society, it was everyone’s interest to obey the law. Crime was therefore irrational – concentrated mainly among the poor.
- What social contract failed to do was to question whether particular laws were just

1.2 The Positivist school

- Augustine Comte 1826 ‘*The law of three states*’
- He claimed that the history of civilization has developed through three stages: ‘the theological, the metaphysical and positive’
- In the theological, people ascribed to goodness, evil divine or demonological interventions
- In the metaphysical, abstract notions such as ‘ideas’ and ‘forces’ replaced the supernatural as the explanation of causation
- The positive dispenses with the two explanations and turns to scientific explanations of causation. The question why was replaced by ‘how’ and the answer, according to Comte, should be sought by use of a mathematical calculation – sociology/ social science

Adolphe Quetelet and Andre Guerry

- Views crime as a social and environmental phenomenon: different from the classical ‘free will’ and ‘rationality’ principles

Dr. Evelyne Owiye Asaala

Senior Lecturer, University of Nairobi

Criminal Law, International Criminal Law, Transitional Justice and International Human Rights Law

- Guerry ‘Time has gone by when we could claim to regulate society by laws established solely on metaphysical theories and a sort of ideal type which was thought to conform to absolute justice. Laws are not made for men in the abstract, for humanity in general, but for real men placed in precisely determined conditions.’
- ‘Society prepares the crime and the guilty [person] is only the instrument by which it is accomplished’: poverty

Cesare Lombroso (1835-1909) The criminal man

- Study on physical characteristics of criminals
- Criminals are biological reversions to an earlier stage of evolution and are thus more primitive than law abiding individuals.
- He called them ‘atavistic’ and claimed that research showed them to possess physical anomalies such as unusually shaped jaws, ears and noses; excessively long arms; and an abundance of wrinkles – an ape-like appearance
- Revision of book, before his death, to include environmental factors

Enrico Ferri (1856-1928)

- A pupil of Lombroso who placed more emphasis of social, economic and political factors
- According to Ferri, the following are the factors causing of crime:
 - i. Physical, including race, geographical, location and climate
 - ii. Anthropological, such as sex, age, biological and psychological conditions
 - iii. Social, by which he meant nature of government, economic conditions, religion and general customs
- Prevention of crime better than punishment and the state could reduce crime by: birth control, inexpensive houses, better street lighting provisions for public recreations and freedom of marriage and divorce

Summary

Both classical and positivist traditions in criminology view the main purpose of the criminal justice system as being to control crime. The ways of achieving these are however fundamentally different. Main distinctions between the two:

- a) *Determinism*: crime is viewed as a behavior, which is caused by biological, psychological or social factors. As opposed to rational decisions made by offenders
- b) *Differentiation*: an essential requirement by positivists’ theories of causation to establish the existence of ‘types’ of people likely to commit crime. These types can be based on biology, personality, or values.
- c) *Pathology*: not only are criminals different from non-criminals but there is something wrong with them

2. ENVIRONMENTAL CRIMINOLOGY

- Manifested in three different schools
 1. Social disorganization
 2. Ecological theory
 3. Differential association

Dr. Evelyne Owiye Asaala

Senior Lecturer, University of Nairobi

Criminal Law, International Criminal Law, Transitional Justice and International Human Rights Law

2.1 Social Disorganization

- Criminology began to develop as a separate discipline at the beginning of the twentieth century from two separate strands: one from clinical medicine, heavily influenced by the theories of Lombroso, and the other development of sociology, in the university of Chicago USA.
- In 1860, the population of the city of Chicago was 110,000; 1880 – 500,000; 1890 – 1 000 000; 1910 – 2 000 000. Much of the increase was as a result of mass immigration mainly from Europe
- Having been poor from their native homes, these families were destined to start a new life; characterized by low wages for long working hours
- Chicago school empirical study on how families from various backgrounds managed to co-exist. Development of the writings of Emile Durkheim

Emile Durkheim (1858-1917)

- Devoted significant amount of space to crime and deviance

Durkheim's sociology

- Durkheim sought to study human beings and their societies from a fundamentally sociological perspective. By so doing he sought to repudiate those who reduced human behavior to individual psychological or biological impulses. This is not to say that he rejected the psychological states of mind as deriving from the nature of society itself. Indeed, he was centrally concerned with the effects that social forces had on the individual member of society and sometimes the distinction between the two dimensions is not clear-cut
- His study of suicide (1900) best exemplifies the importance of social dimension. He locates the source of suicide not in the psyche of an individual but a social reality external to the individual. In other words, there are suicidogenic forces at work that are external to the individual.

Durkheim's social order

- He depicted crime as a social product and the level of criminality as representing the extent of social integration
- 'Order' a central problem to sociology
- His concern with order led him to consider issues of crime, deviance and difference
- At the time of his writing, industrialization and urbanization had profoundly altered the nature of European societies – social upheavals were rampant
- Durkheim also counterposed the past – in the shape of traditional, primitive societies – with the present, though he took the view that while there was a real danger of sliding into irretrievable disorganization, those with power could actively intervene to prevent this happening

Mechanical and organic solidarity

- Durkheim argued that in pre-industrial, traditional societies, social order was based upon a certain kind of social solidarity that he called 'mechanical solidarity'. These societies lacked the complex web of mutually dependent institutions characterizing modern societies. They were composed of fragmented, small, tribal or clan-based segments. Solidarity was achieved through an all-encompassing set of norms and

Dr. Evelyn Owiye Asaala

Senior Lecturer, University of Nairobi

Criminal Law, International Criminal Law, Transitional Justice and

International Human Rights Law

values referred to as 'collective conscience'. Although this constraining moral was external to the individual – in the form of social facts – through a process of socialization, it became internalized by society members

- In this society, social order was fundamentally rooted in moral regulation
- Unlike modern societies, there was no place for individualism: the individual was subsumed in the 'tribe' or 'clan'. Reactions to non conformity would be harsh, retributive in character
- According to Durkheim, freeing an individual from (as is with individualism that reign in modern societies), from the constraints of mechanical solidarity brought with it its own dangers in terms of social order
- In his view, human nature was composed of two selves: the social self (socialized and integrated), and the egoistic self (unsocialised and unitergrated).
- The egoistic self freed from constraining social forces and left to its own devices naturally posed desires that knew no bounds. If modern societies were to emphasize on individualism – to have a central value to right of individuals to realize their own potential – then some restraining mechanisms had to operate, otherwise disorder would reign – for example in the form of crime and deviance.

Fredrick Engels (*The condition of the working class in England-1845*)

- Expressing his views on the working class-life in Machester, he concluded that blame for the deprivation and crime he saw all around him lay at the feet of the middle and upper classes in their ruthless exploitation of the workers within capitalism.
- Violence of conflictual crime could be explained as a form of retaliation against the 'bourgeoisie and their henchmen'. Such crimes could also be committed against members of the working class
- Engel attributed the sexual immorality and drunkenness among the workers to a lack of moral training and being the only pleasures that were left of them. These was prevalent among the unemployed and casual workers-what Marx called the 'lumpenproletariat'.

2.2 Ecological theory

- Defined as the relationship which exist between people who share a common habitat, or local territory, and which are distinctly related to the character of the territory itself
- At the core of human ecology is the 'zonal hypothesis' as illustrated in Burgess's analysis of Chicago (1925)
- Burgess divided the city of Chicago into five concentric zones, which resemble the rings formed on the surface of still water after a stone has been thrown in. the innermost zone was the central business district, known as 'The Loop'. The next zone outwards was the 'zone of transition', a deteriorating area where factories, poorer residences and the 'red-light district' could be found. Beyond, was zone three, which contained the homes of ordinary working people (many of whom had escaped from zone two) and zone four and five, with increasingly affluent homes reaching out into suburbia. If the city was growing considerably, areas which had been in zone three or four could find themselves becoming part of the 'zone of transition' with a corresponding deterioration.
- The concentric growth of the city occurred through what has been termed 'invasion, dominance and succession.'

Dr. Evelyne Owiye Asaala

Senior Lecturer, University of Nairobi

Criminal Law, International Criminal Law, Transitional Justice and

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- The Chicago researchers considered that, in the longer term, once the different ethnic groups settled and became established in a suitable area, their crime rate would start to diminish
- The 'zone of transition' was therefore a highly volatile area – an area lacking in social integration

2.3 Social differentiation

- While the work of earlier Chicago socialist writers concentrated on the effects of competition and succession in socially disorganized areas, the later Chicago writers shifted the emphasis from culture and conflict to consideration of the wider social structure

Clifford Shaw (*Brothers in crime*, 1938)

- Because parents and neighbors tend to show approval of unlawful behavior, many delinquents grow up in a world where delinquency is considered an accepted form of conduct

Edwin Sutherland (*Principles of criminology*, 1939)

- A part from his Chicago background, Sutherland was greatly influenced by Gabriel Tarde's book, *The laws of imitation* of 1890
- Tarde argued that criminal behavior is learnt from environmental influences rather than being inherited. He formulated three laws of imitation: human beings imitate each other in proportion to the extent in which they live in close contact; generally, the inferior person imitates the superior person; and when two mutually exclusive 'fashions' occur simultaneously, one will come to replace the other e.g. the replacement of knives for firearms in violent crime
- Differential association claims to show how delinquent practices came to be 'culturally transmitted' from one individual to another, and that coming into contact with delinquents is a necessary but not a sufficient condition of oneself becoming delinquent.
- The differential association theory was an essential bridge between positivistic Chicago school and writers from interactionist and subcultural perspectives.
- Criminal behavior is learnt in interaction with others especially in 'intimate personal settings' (that is, not through reading or watching films; television was not available when the theory was first expounded)
- At the heart of differential association is that a person who is exposed to 'an excess of definitions favourable to violation of the law over definitions unfavourable to violation of the law' is likely to become a criminal. The likelihood is determined by variations in the frequency, duration, priority and intensity of the associations
- 'Priority' suggests that associations made in early childhood are likely to have a greater impact than those created later in life
- Even though Sutherland accepted that there are differences in individual disposition to criminality, he maintained that these were only relevant in that they might affect the chances of a person's exposure to different associations. An individual cannot inherit a propensity to criminal behavior, in accordance to symbolic interactionism, as human behavior only has meaning in a particular cultural setting.

Dr. Evelyne Owiye Asaala

Senior Lecturer, University of Nairobi

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- The theory also claims that while crime is an expression of needs and values, it cannot be explained by those needs and values. The desire for high income is widespread: some people work hard to try and attain it others steal.
- Sutherland also applied this theory to his own notion of white-collar crimes and professional crimes. He argued that individuals become white-collar criminals because of their absorption in a business process, which considers illegal practices as acceptable.
- The strength of this theory, unlike earlier theorists, was that as at the time of its exposition, it showed that crime was not just a product of poverty, but could occur in the most routine settings, ranging from Chicago slum to the largest business operation.
- Culture conflict captured in earlier versions of this theory as the underlying cause of differential association and therefore criminal behavior. Cultural conflict was the clearest indicator of social disorganization within the society. This was dropped in later versions

6. POVERTY, ANOMIE AND STRAIN

3.1 Poverty and crime

- In 1827 Guerry conducted a study in France on the co-relation between crime and poverty. He concluded that the richest parts of France had the higher rate of offences against property, but only about half the amount of violent crime. Nevertheless, there were poor people living in the wealthy areas; Guerry concluded that poverty in itself did not cause property crime but the greater wealth simply provided more opportunity to steal
- Adolphe Quetelet also considered that opportunity could be relevant in explaining the higher crime levels in wealthy cities, and pointed out that the considerable inequalities between rich and poor in the same area could serve to increase temptation

3.2 Functionalism and anomie

- The essence of functionalism is that there is a consensus of core values within a society which corresponds to the needs of its members, and it is the task of institutions such as the family and the school to socialize individuals to conform to those values
- Society is viewed as a functioning entity comprising many parts, each of which interrelates with and supports each other
- As crime is a part of society, it therefore becomes conceivable that crime and deviance could also serve a function

Emile Durkheim

- The focus of his studies was on how the organization of society can drive people towards breaking its rules
- He considered the fundamental problem facing the western - modern society - was the cult of the individual.
- This was exacerbated by the declining power of religion, industrial capitalism
- The collective sentiment of society was thus becoming secular and individualistic and the values that were now necessary for a stable society were at odds with the values of capitalism.

Dr. Evelyne Owiye Asaala

Senior Lecturer, University of Nairobi

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- Although many of Durkheim's views on crime can be found in his works on suicide, they have subsequently been adopted by criminologists as being of more general application
- Durkheim thought that some crime is normal in society and that it would be impossible to imagine a society without crime. What makes a society, as opposed to group of individuals, is a sharing of basic values, which in turn necessitates rules to encourage compliance with these values.
- It is inconceivable that everyone ascribes to these rules. Thus rule breaking necessitates criminal law – imagine a society of saint where crime is a utopian fantasy
- *Anomie* – derived from a Greek word *a-nomos* meaning 'lawlessness' was used by Durkheim in two different senses:
- Durkheim stated that anomie resulted in the transition from early mechanical or pre-industrial societies to industrial 'organic' societies. Mechanical societies were groupings where the members followed same customs and religion and tended to their own needs. There was little division of labour outside the family unit and the similarity among the members encouraged group cohesion.
- In contrast, industrialized 'organic' societies are more heterogeneous in terms of wealth, religious beliefs and ethnicity, and have a highly developed division of labour involving more elaborate and specialised forms of work.
- Each type of society is characterized by a particular form of collective consciousness. This refers to the set of beliefs, which is common to the whole society and acts as a powerful force in shaping the way it behaves. In a society largely based on mechanical solidarity, this takes the form of strict conformity and uniformity of culture. On the other hand in an organic society, the members are associated through structural interdependence rather than shared life experiences. Durkheim considered that all societies are at some stage between being mechanical or organic; no society is entirely one or the other.
- Crime in a mechanical state is functional to the society in 3 distinct ways:
 1. Since deviant behavior can lead to exclusion from group, individual members are obliged to abandon their own interests to maintain group solidarity. This also makes the identification of offenders relatively simple
 2. Crime reaffirms the groups' collectivity through punishment of criminals. Punishment not only sets societies moral boundaries but also strengthens allegiance to them.
 3. Crime is the constant testing of the boundaries of tolerance. Crime can therefore play a positive role in social change. For example, Jesus Christ, Mahatma Gandhi, Martin Luther King
- Durkheim's second usage of the term *anomie* was in his book: *Suicide* (1897).
- Durkheim distinguished four different types of suicide: related to social integration and social regulation in a society.
 1. '*Altruistic*' suicide: where an individual is over inter-grated into the group and thus lacks a separate entity. For example, Muslims prepared to sacrifice themselves in 'holy war'
 2. '*Fatalistic*' suicide: occurs where there is excessive social regulation. For example, slavery
 3. '*Egoistic*' suicide: suicide results from excessive individualism, where individuals lack the support of family, workmates or the community

Dr. Evelyne Owiye Asaala

Senior Lecturer, University of Nairobi

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International Human Rights Law

4. 'Anomic' suicide: result from disturbances caused by major changes in economic conditions resulting in a weakening of the forces of regulation in everyday life (an inevitable consequence of an organic society): he found out that there was low suicide rates in poor areas, high suicide rates during war and revolutions.
- Unlike Marxist theories, Durkheim did not believe that societal problems were simply a matter of class or reducing the wealth of some in order to redistribute it to others. What was necessary is to recreate what Durkheim calls the 'moral constitution' of society.

Merton anomie and strain

- Robert Merton, an American sociologist, adopted Durkheim's theory on anomie to develop a new theory
- These are features that create strains for some people leading eventually to delinquent behavior. Thus, criminogenic pressures are inherent in society itself
- Both Merton and Albert Cohen believe that the bulk of delinquency is found within the lower working class
- For Durkheim, the condition of anomie only arose exceptionally when weak social regulation was unable to restrain people's aspirations during economic turmoil, for Merton, it was an ever present feature in American society. He considered that it resulted from the lack of a structured and legitimate means for most people to attain what was indiscriminately held out to all as the ultimate goal – material wealth. Not everyone will attain such wealth, but everyone is expected to try lest you risk being called 'lazy' or 'unambitious'.
- Durkheim has described anomie as the society's inability to regulate the natural appetites for its members. Merton, however thought that these appetites were not necessarily 'natural' but were 'culturally induced'.
- Merton's anomie theory is sometimes called 'strain theory' to indicate the strain which drives people into committing deviant acts

7. CONFLICT, MARXIST AND RADICAL THEORIES OF CRIME

- Since human history, two contrasting views have been put forward
 1. A consensus view: which believes that society is based on a general consensus of values and that the state is operated in such away as to protect it. If various groups hold differing views, then the state will arbitrate in such away as to represent the general interest. This is strongly represented in the functionalism of Emile Durkheim
 2. A contrasting, conflict view of society was however raised by labeling theorists like Howard Becker: who makes the rules and why? These theorists acknowledge that society includes groups with competing values and interests. This goes back in history to Plato and Aristotle. Unlike a consensus view, conflict approach claims that the state does not uphold the interest of society as a whole, but only those of the groups which are powerful enough to control it

Conflict theorists

Thorsten Sellin (1938) book *Culture conflict and crime*

Dr. Evelyne Owiye Asaala

Senior Lecturer, University of Nairobi

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- According to Sellin, every group and cultures have got 'conduct norms' which are a product of social life. As the society grows bigger, there is a great likelihood that these different norms will come into conflict
- Primary culture conflicts will occur for example in boarder areas between two different cultures or as a result of colonization, immigration into a new territory
- Secondary culture conflicts occur when a single culture fragments into different subcultures, each with its norms and values. The law will still reflect the norms of the dominant culture rather than any consensus among the individual members of the society
- In Sellins view, subcultural norms do not signify class based frustration, but simply represent fundamentally different values held by particular groups

George Vold

- Whereas Sellin's analysis was based on the conflict of behavioral norms among different subcultures, Vold's theory was centered on a conflict of interests.
- Vold started from the assumption that most people are group oriented and that their lives are essentially tied up with group affiliation. Groups emerge when people have common interests or needs, which can best be advanced through collective action.
- Unlike Sellin's cultures, Vold's groups are fluid, forming and then disappearing when there is no longer a particular interest to serve. Ultimately, individual members come to have a psychological rather than rational attachment to particular groups and will be prepared to devote a great deal of effort to them. Groups come into conflict with each other and these serves to strengthen the loyalty of their own members.
- Vold considered that politics is inevitably based on compromise: 'the principle of compromise from positions of strength operates at every stage of this conflict process.' There is a constant shifting of position, with individual groups changing the balance in the power equation.
- If the 'criminals' were successful in overthrowing the government, the former national leaders themselves would become the 'criminals'. Volds analysis was purely based on logic and avoided questions of which group was right and which was wrong.
- The conflict between these groups, with each struggling constantly to maintain or improve its position in the hierarchy, is essential in the normal running of society. It is especially visible in the legislative process, where some groups manage to have their interests enshrined in the law at the expense of other groups. The winning groups are not only more likely to obey the law than the losers, but will be particularly active in urging the police to enforce it. Crime can therefore be seen as the activity of minority power groups. Individual crime must be viewed as activity which is carried out for the ultimate benefit of the group
- According to Vold, much crime is committed by groups. Individuals come together for strength and support, and to protect themselves against the police who are seen as the agents of the dominant group

Ralf Dahrendorf

- Dahrendorf considered a consensus view of society to be utopian. He claimed that in any given relationship members of a society had to be in one of two positions: a position of dominance or a position of subjection

Dr. Evelyn Owiye Asaala

Senior Lecturer, University of Nairobi

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International Human Rights Law

- It is inevitable that members of society evaluate each other differently and conflict is bound to occur
- Dahrendorf rejected Marxist approach of a simple bifurcation between the bourgeoisie and proletariat as being old-fashioned and inapplicable to today's age. For example, the needs of unskilled and semi-skilled labourers may conflict with those of skilled laborers just as they conflict with their managers and the owners.
- Those who are in positions of domination will use sanctions wherever necessary to enforce the norms. The norms themselves can only be altered by the efforts of others to bring about change
- There will, therefore, be a permanent readjustment because the inequality in society will provide the incentive to the disadvantaged to try to obtain power themselves
- The permanent readjustment will by definition ensure a constant state of conflict

Marxist criminology

- Marx's references to crime could be viewed as justifying its functionalist value in a capitalist society
- Marxist criminology claims that the power resulting from exercise of capitalism is basically responsible for crime
- Marx wrote in the period following immediately following the turmoil of industrial revolution. He was trying to explain why the feudal system that had existed in Europe for hundreds of years had collapsed and to predict what would happen next
- Marx identified conflict between the forces of production, meaning society's ability to produce material goods, and the social relations of production, which refers to the relationship between people, and includes the question of how what is produced is distributed

Dr. Evelyne Asaala

Dr. Evelyne Owiye Asaala

Senior Lecturer, University of Nairobi

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