

Classical Criminology

The literature of criminology often refers to the classical and the neo-classical schools of criminological thought. These terms or labels are used to designate some important ideas in the long history of trying to understand, and trying to do something about, crime. The classical school is usually associated with the name of the Italian scholar Cesare Bonesana, Marchese de Beccaria (1738–1794). Its later modification, the so-called neoclassical school, is very similar as far as basic ideas and conceptions about the human nature are concerned. Both represent a sort of free-will, rationalistic hedonism that is part of a tradition going back many centuries.

THE SOCIAL AND INTELLECTUAL BACKGROUND OF CLASSICAL CRIMINOLOGY

Classical criminology emerged at a time when the naturalistic approach of the social contract thinkers was challenging the spiritualistic approach that had dominated European thinking for over a thousand years. This broad spiritualistic approach included a spiritual explanation of crime that formed the basis for criminal justice policies in most of Europe. Classical criminology was a protest against those criminal justice policies and against the spiritual explanations of crime on which they were based.

One of the most important sources for these spiritual explanations of crime was found in the theology of St. Thomas Aquinas (1225–1274), who lived 500 years before Beccaria.¹ Aquinas argued that there was a God-given “natural law” that was revealed by observing, though the eyes of faith, people’s natural tendency to do good rather than evil. The crim-

1. A brief review of Aquinas’s ideas can be found in Thomas J. Bernard, *The Consensus-Conflict Debate*, Columbia University Press, New York, 1983, ch. 5.

inal law was based on and reflected this “natural law.” People who commit crime (i.e., violate the criminal law) therefore also commit sin (i.e., violate the natural law). Aquinas held that crime not only harmed victims, but it also harmed criminals because it harmed their essential “humanness”—their natural tendency to do good.

This spiritual explanation of crime, and others like it, formed the basis for the criminal justice policies in Europe at the time. Because crime was identified with sin, the state had the moral authority to use many horrible and gruesome tortures on criminals. That was because the state claimed that it was acting in the place of God when it inflicted these horrible punishments on criminals. For example, Beirne quotes from the sentence that was imposed on Jean Calas in 1762, two years before Beccaria published his little book²:

... in a chemise, with head and feet bare, (Calas) will be taken in a cart from the palace prison to the Cathedral. There, kneeling in front of the main door, holding in his hands a torch of yellow wax weighing two pounds, he must ... (ask) pardon of God, of the King, and of justice. Then the executioner should take him in the cart to the Place Saint Georges, where upon a scaffold his arms, legs, thighs, and loins will be broken and crushed. Finally, the prisoner should be placed upon a wheel, with his face turned to the sky, alive and in pain, and repent for his said crimes and misdeeds, all the while imploring God for his life, thereby to serve as an example and to instil terror in the wicked.

The extensive religious symbolism in the manner of execution clearly suggests that crime is intertwined with sin, and that in punishing crime, the state is taking the part of God.

Beginning with Thomas Hobbes (1588–1678), “social contract” thinkers substituted naturalistic arguments for the spiritualistic arguments of people like Aquinas.³ While Aquinas argued that people naturally do good rather than evil, Hobbes argued that people naturally pursue their own interests without caring about whether they hurt anyone else. This leads to a “war of each against all” in which no one is safe because all people only look out for themselves.

Hobbes then argued that people are rational enough to realize that this situation is not in anyone’s interests. So people agree to give up their own selfish behavior as long as everyone else does the same thing

2. Piers Beirne, *Inventing Criminology*, State University of New York Press, Albany, 1993, pp. 11–12. Another widely quoted example from the same time period is the execution of Damens, who had stabbed the king of France in 1757. See Michel Foucault, *Discipline and Punish*, Pantheon, New York, 1977, pp. 3–5.

3. A discussion of Hobbes and his relation to Aquinas can be found in Bernard, op. cit. ch. 4.

at the same time. This is what Hobbes called the “social contract”—something like a peace treaty that everyone signs because they are all exhausted from the war of each against all. But the social contract needs an enforcement mechanism in case some people cheat and begin to pursue their own interests without regard to whether other people get hurt. This is the job of the state. According to Hobbes, everyone who agrees to the social contract also agrees to grant the state the right to use force to maintain the contract.

Other social contract philosophers such as Locke (1632–1704), Montesquieu (1689–1755), Voltaire (1694–1778), and Rousseau (1712–1778) followed Hobbes in constructing philosophies that included a natural and rational basis for explaining crime and the state’s response to it. These theories differed from each other in many ways, but all were rational and naturalistic approaches to explaining crime and punishment, as opposed to the dominant spiritualistic approach. By the middle of the 1700s, just before Beccaria wrote his book, these naturalistic ideas were well known and widely accepted by the intellectuals of the day, but they did not represent the thinking of the politically powerful groups that ruled the various states in Europe. Those ruling groups still held to the spiritual explanations of crime, so that crime was seen as manifesting the work of the devil. Consequently, the criminal justice systems of the time tended to impose excessive and cruel punishments on criminals.

Beccaria was a protest writer who sought to change these excessive and cruel punishments by applying the rationalist, social contract ideas to crime and criminal justice. His book was well received by intellectuals and some reform-minded rulers who had already accepted the general framework of social contract thinking.⁴ Even more important for the book’s acceptance, however, was the fact that the American Revolution of 1776 and the French Revolution of 1789 occurred soon after its publication in 1764.⁵ These two revolutions were both guided by naturalistic ideas of the social contract philosophers. To these revolutionaries, Beccaria’s book represented the latest and best thinking on the subject of crime and criminal justice. They therefore used his ideas as the basis for their new criminal justice systems. From America and France, Beccaria’s ideas spread to the rest of the industrialized world.

4. Graeme Newman and Pietro Marongiu, “Penological Reform and the Myth of Beccaria,” *Criminology* 28:2: 325–46 (May 1990).

5. Beccaria’s work was extensively quoted by Thomas Jefferson, John Adams, and other American revolutionaries. See David A. Jones, *History of Criminology*. Greenwood, New York, 1986, pp. 43–46.

BECCARIA AND THE CLASSICAL SCHOOL

Cesare Bonesana, Marchese de Beccaria, was an indifferent student who had some interest in mathematics.⁶ After completing his formal education, he joined Alessandro Verri, an official of the prison in Milan, and his brother Pietro Verri, an economist, in a group of young men who met regularly to discuss literary and philosophical topics. Beccaria was given an assignment in March 1763 to write an essay on penology, a subject about which he knew nothing. With help from the Verri brothers, the essay was completed in January 1764, and was published under the title *Dei delitti e delle pene* (*On Crimes and Punishments*) in the small town of Livorno in July of that year, when Beccaria was 26 years old.

In common with his contemporary intellectuals, Beccaria protested against the many inconsistencies in government and in the management of public affairs. He therefore proposed various reforms to make criminal justice practice more logical and rational. He objected especially to the capricious and purely personal justice the judges were dispensing and to the severe and barbaric punishments of the time. It is interesting to look at Beccaria's ideas as expressed in his own words in relation to some of the basic principles of his system of justice.

1. On the contractual society and the need for punishments⁷:

Laws are the conditions under which independent and isolated men united to form a society. Weary of living in a continual state of war, and of enjoying a liberty rendered useless by the uncertainty of preserving it, they sacrificed a part so that they might enjoy the rest of it in peace and safety. The sum of all these portions of liberty sacrificed by each for his own good constitutes the sovereignty of a nation, and their legitimate depositary and administrator is the sovereign. But merely to have established this deposit was not enough: it had to be defended against private usurpations by individuals each of whom always tries not only to withdraw his own share but also to usurp for himself that of others. Some tangible motives had to be introduced, therefore, to prevent the despotic spirit, which is in every man, from plunging the laws of society into

6. An account of the life and work of Beccaria may be found in Beirne, op. cit., ch. 2. See also Randy Martin, Robert J. Mutchnick, and W. Timothy Austin, *Criminological Thought: Pioneers Past and Present*, Macmillan, New York, 1990; and Elio D. Monachesi, "Pioneers in Criminology: Cesare Beccaria (1738-94)," *Journal of Criminal Law, Criminology and Police Science* 46(4): 439-49 (Nov.-Dec. 1955), reprinted in Hermann Mannheim, *Pioneers in Criminology*, Patterson Smith, Montclair, N.J., 1972, pp. 36-50.

7. Cesare Beccaria, *On Crimes and Punishments*, translated by Henry Paolucci, Bobbs-Merrill, Indianapolis, 1963, pp. 11-12. This and the following quotations are reprinted with permission of the publisher, Bobbs-Merrill Educational Publishing, Inc., © 1963.

its original chaos. These tangible motives are the punishments established against infractors of the laws.

2. On the function of legislatures⁸:

Only the laws can decree punishments for crimes; authority for this can reside only with the legislator who represents the entire society united by a social contract. . . . But a punishment that exceeds the limit fixed by the laws is just punishment plus another punishment; a magistrate cannot, therefore, under any pretext of zeal or concern for the public good, augment the punishment established for a delinquent citizen.

3. On the function of judges⁹:

Judges in criminal cases cannot have the authority to interpret laws, and the reason, again, is that they are not legislators. . . . For every crime that comes before him, a judge is required to complete a perfect syllogism in which the major premise must be the general law; the minor, the action that conforms or does not conform to the law; and the conclusion, acquittal or punishment. If the judge were not constrained, or if he desired to frame even a single additional syllogism, the door would thereby be opened to uncertainty.

Nothing can be more dangerous than the popular axiom that it is necessary to consult the spirit of the laws. It is a dam that has given way to a torrent of opinions. . . . Each man has his own point of view, and, at each different time, a different one. Thus, the "spirit" of the law would be the product of a judge's good or bad logic, of his good or bad digestion; it would depend on the violence of his passions, on the weakness of the accused, on the judge's connections with him, and on all those minute factors that alter the appearances of an object in the fluctuating mind of man. . . . The disorder that arises from rigorous observance of the letter of a penal law is hardly comparable to the disorders that arise from interpretations.

4. On the seriousness of crimes¹⁰:

The true measure of crimes is . . . the *harm done to society*. . . . They were in error who believed that the true measure of crimes is to be found in the intention of the person who commits them. Intention depends on the impression objects actually make and on the present disposition of the mind; these vary in all men and in each man, according to the swift succession of ideas, of passions, and of circumstances. It would be necessary, therefore, to form not only a particular code for each citizen, but a new law for every crime. Some-

8. *Ibid.*, pp. 13-14.

9. *Ibid.*, pp. 14-15.

10. *Ibid.*, pp. 64-65.

times, with the best intentions, men do the greatest injury to society; at other times, intending the worst for it, they do the greatest good.

5. On proportionate punishments¹¹:

It is to the common interest not only that crimes not be committed, but also that they be less frequent in proportion to the harm they cause society. Therefore, the obstacles that deter man from committing crime should be stronger in proportion as they are contrary to the public good, and as the inducements to commit them are stronger. There must, therefore, be a proper proportion between crimes and punishments.

6. On the severity of punishments¹²:

For punishment to attain its end, the evil which it inflicts has only to exceed the advantage derivable from the crime; in this excess of evil one should include the certainty of punishment and the loss of the good which the crime might have produced. All beyond this is superfluous and for that reason tyrannical. . . .

The severity of punishment of itself emboldens men to commit the very wrongs it is supposed to prevent; they are driven to commit additional crimes to avoid the punishment for a single one. The countries and times most notorious for severity of penalties have always been those in which the bloodiest and most inhumane of deeds were committed, for the same spirit of ferocity that guided the hand of the legislators also ruled that of the parricide and assassin.

7. On the promptness of punishments¹³:

The more promptly and the more closely punishment follows upon the commission of a crime, the more just and useful will it be. I say more just, because the criminal is thereby spared the useless and cruel torments of uncertainty . . . [and] because privation of liberty, being itself a punishment, should not precede the sentence except when necessity requires. . . . I have said that the promptness of punishment is more useful because when the length of time that passes between the punishment and the misdeed is less, so much the stronger and more lasting in the human mind is the association of these two ideas, *crime and punishment*.

8. On the certainty of punishments¹⁴:

11. Ibid., p. 62.

12. Ibid., pp. 43–44.

13. Ibid., pp. 55–56.

14. Ibid., pp. 55–59.

One of the greatest curbs on crime is not the cruelty of punishments, but their infallibility. . . . The certainty of a punishment, even if it be moderate, will always make a stronger impression than the fear of another which is more terrible but combined with the hope of impunity; even the least evils, when they are certain, always terrify men's minds. . . . Let the laws, therefore, be inexorable, and inexorable their executors in particular cases, but let the legislator be tender, indulgent, and humane.

9. On preventing crimes¹⁵:

It is better to prevent crimes than to punish them. That is the ultimate end of every good legislation. . . . Do you want to prevent crimes? See to it that the laws are clear and simple and that the entire force of a nation is united in their defense, and that no part of it is employed to destroy them. See to it that the laws favor not so much classes of men as men themselves. See to it that men fear the laws and fear nothing else. For fear of the laws is salutary, but fatal and fertile for crimes is one man's fear of another.

Beccaria also emphasized that the laws should be published so that the public may know what they are and support their intent and purpose; that torture and secret accusations should be abolished; that capital punishment should be abolished and replaced by imprisonment; that jails be made more humane institutions; that the law should not distinguish between wealthy and poor or between nobles and commoners; and that a person should be tried by a jury of his peers, and that when there were class differences between the offender and the victim, one half of the jury should be from the class of the offender, and the other half from the class of the victim. Beccaria summarized his ideas in a brief conclusion to his book¹⁶:

In order for punishment not to be, in every instance, an act of violence of one or of many against a private citizen, it must be essentially public, prompt, necessary, the least possible in the given circumstances, proportionate to the crimes, dictated by the laws.

Beccaria's ideas were quite radical for his time, so he published his book anonymously and defended himself in the introduction against charges that he was an unbeliever or a revolutionary. The book was condemned by the Catholic Church in 1766 for its rationalistic ideas.¹⁷ But despite Beccaria's fears and some opposition, his book was extremely

15. *Ibid.*, pp. 93–94.

16. *Ibid.*, p. 99.

17. *Ibid.*, p. xi.

well received by his contemporaries. The first French translation appeared in 1766, and Voltaire provided an elaborate commentary. The first English translation appeared in 1767 under the title *An Essay on Crimes and Punishments*. In the preface to that edition, the translator noted that the book had already gone through six editions in Italian and several in French, and commented that “perhaps no book, on any subject, was ever received with more avidity, more generally read, or more universally applauded.”¹⁸

Following the French Revolution of 1789 Beccaria’s principles were used as the basis for the French Code of 1791.¹⁹ The great advantage of this code was that it set up a procedure that was easy to administer. It made the judge only an instrument to apply the law, and the law undertook to prescribe an exact penalty for every crime and every degree thereof. Puzzling questions about the reasons for or causes of behavior, the uncertainties of motive and intent, the unequal consequences of an arbitrary rule, these were all deliberately ignored for the sake of administrative uniformity. This was the classical conception of justice—an exact scale of punishments for equal acts without reference to the individual involved or the circumstances in which the crime was committed.

As a practical matter, however, the Code of 1791 was impossible to enforce in everyday situations, and modifications were introduced. These modifications, all in the interest of greater ease of administration, are the essence of the so-called neoclassical school.

THE NEOCLASSICAL SCHOOL

The greatest practical difficulty in applying the Code of 1791 came from ignoring differences in the circumstances of particular situations. The Code treated everyone exactly alike, in accordance with Beccaria’s argument that only the act, and not the intent, should be considered in determining the punishment. Thus first offenders were treated the same as repeaters, minors were treated the same as adults, insane the same as sane, and so on. No society, of course, will permit its children and other helpless incompetents to be treated in the same manner as its professional criminals. The French were no exception. Modifications in practice began, and soon there were revisions of the Code itself.

The Code of 1810²⁰ tipped the lid just a little in permitting some discretion on the part of the judges. In the Revised French Code of 1819

18. *Ibid.*, p. x.

19. John L. Gillin, *Criminology and Penology*, 3rd ed., Appleton-Century-Crofts, New York, 1945, p. 229.

20. In addition to the Revolutionary Code of 1791, other Napoleonic codes of the period often mentioned are Code de procédure civile, 1806; Code de commerce, 1807; Code d’instruction criminelle, 1808; the Code pénal, 1810; and the revised Code pénal, 1819.

there is definite provision for the exercise of discretion on the part of the judges in view of certain objective circumstances, but still no room for consideration of subjective intent. The set, impersonal features of even this revised *Code Napoléon* then became the point of attack for a new school of reformers whose cry was against the injustice of a rigorous code and for the need for individualization and for discriminating judgment to fit individual circumstances. These efforts at revision and refinement in application of the classical theory of free will and complete responsibility—considerations involving age, mental condition, and extenuating circumstances—constitute what is often called the neo-classical school.

Thus, the neoclassical school represented no particular break with the basic doctrine of human nature that made up the common tradition throughout Europe at the time. The doctrine continued to be that humans are creatures guided by reason, who have free will, and who therefore are responsible for their acts and can be controlled by fear of punishment. Hence the pain from punishment must exceed the pleasure obtained from the criminal act; then free will determines the desirability of noncriminal conduct. The neoclassical school therefore represented primarily the modifications necessary for the administration of the criminal law based on classical theory that resulted from practical experience.

ASSESSING BECCARIA'S THEORY

The neoclassical view is, with minor variations, "the major model of human behavior held to by agencies of social control in all advanced industrial societies (whether in the West or the East). . . ." ²¹ Its widespread acceptance in contemporary legal systems is probably a result of the fact that this view provides support for the most fundamental assumption on which those systems are based. Classical criminology provides a general justification for the use of punishment in the control of crime. Since punishment for that purpose has always been used in the legal system, it should not be surprising that this is the theory to which legal authorities adhere.

In addition, classical theory was attractive to legal authorities for a more general reason. It is based in social contract theory, which holds that all people have a stake in the continued existence of the authority structure, since without it society would degenerate into a "war of each against all." Since crime contributed to this degeneration, it was ulti-

21. Ian Taylor, Paul Walton, and Jock Young, *The New Criminology*. Harper & Row, New York, 1973, pp. 9-10.

mately in the best interests of all people, even criminals, to obey the law. Social contract theorists saw crime as a fundamentally irrational act, committed by people who, because of their shortsighted greed and passion were incapable of recognizing their own long-term best interests.²² The fact that crime was concentrated in the lower classes was taken to be a symptom of the fact that these classes were filled with irrational, dangerous people.²³

The ease with which the classical system of justice could be administered rested largely on this view. It supported the uniform enforcement of laws without questioning whether those laws were fair or just. Specifically, social contract theorists did not take into account the fact that some societies are unfair. For some groups, the costs of adhering to the social contract may be few and the benefits great; for other groups, the costs may be great and the benefits few. The latter group will probably have less allegiance to the social contract, a fact that may be expressed in the form of a higher crime rate.

That is a far different perspective than the view that high-crime groups are filled with irrational and dangerous people. Rather than relying solely on punishments, it would imply that an additional way to reduce crime is to increase the benefits of adhering to the social contract among the high crime groups in society.²⁴ This option was not attractive to the social contract theorists, who were themselves members of the propertied class. Thus they addressed the problem in such a way as to justify the existence of inequalities. Hobbes, for example, argued that lower-class persons could adhere to the social contract if they were taught to believe that the status quo was inevitable.²⁵ Locke maintained that all persons were obligated to obey the laws of society, since all gave their "tacit consent" to the social contract. But he also argued that only persons with property were capable of making the laws, since only they were capable of the fully rational life and only they would defend the "natural right" of the unlimited accumulation of property.²⁶

Beccaria's position on defending the status quo was somewhat confusing. He argued that it was natural for all to seek their own advantage, even at the expense of the common good, and that this was the source of crime. Thus he did not share the view of the social contract

22. *Ibid.*, p. 3.

23. See, for example, the discussion of Locke's view of the irrationality of the lower classes in C. B. MacPherson, *The Political Theory of Possessive Individualism*, Oxford University Press, New York, 1962, pp. 232-35.

24. E.g., James Q. Wilson, *Thinking about Crime*, Vintage, New York, 1983, pp. 117-44.

25. Macpherson, *op. cit.*, p. 95.

26. *Ibid.*, pp. 247-51.

theorists that criminals were essentially irrational. He was fully aware that the laws (which he said "have always favored the few and outraged the many") could impose massive injustices on the poor.²⁷ He went even further by arguing that the laws themselves could create crime.²⁸

To prohibit a multitude of indifferent acts is not to prevent crimes that might arise from them, but is rather to create new ones. . . . For one motive that drives men to commit real crime there are a thousand that drive them to commit those indifferent acts which are called crimes by bad laws. . . . The majority of laws are nothing but privileges, that is, a tribute paid by all to the convenience of some few.

Thus Beccaria was not solely concerned with the establishment of a system of punishment. He recognized the problem of inequality in society, and implied that it was wrong to punish lawbreakers when the laws themselves were unjust. This aspect of Beccaria's writings is sometimes ignored, so that classical criminology is identified with the social contract position that crime is essentially irrational.²⁹ For example, Beccaria argued that the death penalty was ineffective because a thief would reason as follows:³⁰

What are these laws that I am supposed to respect, that place such a great distance between me and the rich man? He refuses me the penny I ask of him and, as an excuse, tells me to sweat at work that he knows nothing about. Who made these laws? Rich and powerful men who have never deigned to visit the squalid huts of the poor, who have never had to share a crust of moldy bread amid the innocent cries of hungry children and the tears of a wife. Let us break these bonds, fatal to the majority and only useful to a few indolent tyrants; let us attack the injustice at its source. I will return to my natural state of independence; I shall at least for a little time live free and happy with the fruits of my courage and industry. The day will perhaps come for my sorrow and repentance, but will be brief, and for a single day of suffering I shall have many years of liberty and of pleasures.

The radical perspective of this passage is clear, as is the reason that Beccaria feared the official reaction to his book. On the other hand, the implication that Beccaria drew from this discussion was that the death penalty should be replaced by extended imprisonment at hard labor. His reasoning was that such a punishment was actually more terrible

27. Beccaria, *op. cit.*, p. 43.

28. *Ibid.*, p. 94.

29. Taylor, Walton, and Young, *op. cit.*, pp. 1-10.

30. Beccaria, *op. cit.*, p. 49.

than the death penalty, since the threat of “a great number of years, or even a whole lifetime to be spent in servitude and pain.” would make a much stronger impression on a potential offender than would the threat of execution.³¹

Thus Beccaria seems to have implied that there are broader social causes behind the crime problem, but he did not make these arguments explicit. One of the effects of the neoclassical adaptation of Beccaria’s theory was to prune carefully all of these radical elements from his work, leaving only the easily administered system of punishment as the response to crime.³²

IMPLICATIONS AND CONCLUSIONS

Beccaria’s theory is sometimes portrayed as an extension of the spiritualistic thinking that was dominant at the time, but this cannot be the case. Beccaria published his book anonymously because he feared the reaction to it, and the Catholic Church placed the book on the Index of Forbidden Books where it remained for 200 years. This was because Beccaria removed all spiritual elements from his explanation of crime, and the Catholic Church considered this to be heretical at the time.

In addition, Beirne argues that Beccaria’s book actually constituted a fundamental break with the concept of free will.³³ Beccaria’s primary argument was that human behavior was predictable and controllable. In particular, he argued that if punishments were public, prompt, minimal, and proportionate, then people would commit less crime. In the view of those who held spiritualistic explanations of crime, this was a highly deterministic argument that flew in the face of the theological assertions about human free will.

Beirne therefore argues that classical theories mark the beginning of the scientific search for the causes of criminal behavior.³⁴ In Beirne’s view, Beccaria’s intent was precisely to move away from that “free will” stance to a deterministic one. But Beccaria did so couched carefully in the language of the time because he feared retribution. Beccaria focused on the causal impact of criminal justice policies on criminal behavior, but also pointed to factors in the larger society that also had a causal impact on crime. These included factors that reduce crime, such

31. *Ibid.*, pp. 49–50.

32. For a radical interpretation of Beccaria’s theory, see Lynn McDonald, *The Sociology of Law and Order*, Faber and Faber, London, 1976, pp. 40–42. McDonald argues that Beccaria’s is a “complete and recognizable conflict theory.”

33. Beirne, *op. cit.*, pp. 227–28.

34. *Ibid.*, pp. 5–6. A similar but more tentative argument is found in Bob Roshier, *Controlling Crime*, Lyceum, Chicago, 1989.

as education, and those that increase it, such as poverty and economic inequality.

In that sense, Beccaria's theory really was the first step away from a pure free-will stance toward a deterministic behaviorism influenced primarily by criminal justice policies. From this point of view, there is no marked opposition between classical theories and the later positivist theories that searched for the causes of criminal behavior. Rather, this transition to positivism marks a continuing development in the direction in which Beccaria pointed.