
CRIMINOLOGY THEORY

Selected Classic Readings

Frank P. Williams III
Marilyn D. McShane



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To Alexis Leigh Williams, with love

Preface

This anthology is a set of readings in major criminological perspectives. Except for two articles in the final section, all readings represent the staples of criminological theory. There is no attempt to include “interesting” readings, or excerpts from major works not directly associated with those theories commonly covered in textbooks and in courses in criminology. In part, this approach is derived from our own frustration, and that of several of our colleagues, with existing anthologies. The common approach seems to be for editors to excerpt from the major articles and then include a series of each editor’s own “favorite” articles. We generally found that the excerpted materials left enough out of the originals that we had to add pages and materials so that students could gain a fuller appreciation of the theorists’ work. Where the “favorite” articles are concerned, we often found ourselves telling students that these would not be used (in effect, informing students that half of the money they spent for the book was wasted). Thus, we decided that there should be a reader with only the core materials in criminological theory. This is that product.

The readings in this anthology are all from the original sources. We made every attempt to insure their accuracy. We did, in some cases, correct misspellings and grammatical errors. In the case of the Beccaria reading for instance, we used the earliest English-language version of the text we could find. The reader may be surprised by the difference in passion and intensity between our 1814 source and the Bobbs-Merrill/Paolucci translation commonly used in courses; and the text is, after all, a protest piece. In two other cases (Lombroso and Reckless), we used sources other than the “usual” ones because we felt they better reflected the “average” position of the theoretical perspective and would be more comprehensible for a first-time reader.

The two final selections were chosen for reasons other than the fact that they might be favorite pieces. The Cohen and Felson routine-activities article presaged the current emphasis on rationalistic theory and is fast becoming a classic. In order to make it more intelligible to undergraduate readers, we excerpted the theoretical thrust of the article and eliminated the empirical materials and the statistical analysis and discussion. The Klein article is also a classic representing the first of the feminist critiques of male-dominated theorizing. In addition, it serves to help students appreciate the shortcomings of classic theories. While it is true that gen-

der-based critiques and theories have come a long way since the Klein article was published, none have yet been ascribed the status of a "classic."

We offer the usual solution to those who feel the need to include their own versions of "classic" theoretical pieces for students to read. This anthology purposefully serves only as a core for a course in criminological theory. Instructors can easily place other articles on reserve in the library or use one of the many photocopying services to add a package of supplementary materials for their specific course objectives.

One other point should be made in regard to instructor preferences. "Classification" of the theories into the various sections is a rather arbitrary process. Different texts and instructors classify the theories differently depending upon their assumptions, chronological order, relationship with other theories, and so forth. We used two criteria for categorizing theories: first, we used a logical order of similarity in presenting theoretical materials to students and, second, we used chronological order where appropriate. Thus, we placed Aker's learning theory after its intellectual father, differential association, in order to continue the logical threads. Similarly, Miller's focal concern theory, even though it was a conflict theory, was included with subculture theories because it was an important part of the subcultural delinquency literature of the 1950s. Instructors with other preferences should mix the readings in whatever fashion matches their teaching style. *And to the students of those instructors—we want you to know that your instructor is just as correct in his or her categorization of theories as the scheme we used in this book.* There is simply no correct way to classify theories.

Finally, we wish to express our appreciation to our many students and colleagues who have assisted through the years in identifying the core set of readings we include here. Many of you are teaching your own criminological theory courses and, in one sense, this anthology was constructed especially for you. And, last but not least, we wish to express thanks to Mickey Braswell of Anderson Publishing Co., who had the amazing foresight to see some value in what we wanted to do.

Frank Williams and Marilyn McShane

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Section I

THE FOUNDATIONS OF MODERN CRIMINOLOGY

Introduction

This section contains two major writings. Both are excerpted from longer sources and are representative of schools of criminological thought originating in the eighteenth and nineteenth centuries, respectively. More than just being “theories” of crime or criminality, these two writings helped to change the criminal justice system and the study of criminals into what they are today.

The Classical School

The first selection, from *An Essay on Crimes and Punishment*, written in 1764 by an Italian, Cesare Beccaria, was one of the most powerful documents of its day. Until the time of Beccaria’s essay, European criminal justice systems bore little resemblance to ours today. Laws were made by the aristocracy, often at whim. Law could be retroactive, it did not have to be written, it rarely applied to members of the aristocracy, and no one even had to know about the law until it was applied. There was no “due process” as we think of it today, evidence was not particularly reliable (confessions under torture were considered excellent evidence of guilt), and an accused could be kept imprisoned for as long as the magistrate required. Punishment was determined on a case-by-case basis with no thought to fairness or equity and large numbers of “offenses” were punishable by death. In short, the European criminal justice system prior to 1750 was an arbitrary and capricious one run largely for the benefit of the aristocracy and the church.

A new era was already at hand by the time Beccaria wrote his essay. Merchants (the soon-to-be new middle class) were seeking power, science was challenging the church as a source of knowledge, the new protestant reformation was under way, and philosophies of human nature were changing to characterize all humans as rational, capable persons with *free will* (not just the aristocracy and clergy). Equally as important, a philosophy of government called the *social contract* was growing in popularity. Under social contract philosophy, governments existed to serve the people, not the other way around. All people had certain rights and the primary function of a government was to insure that those rights were protected. Thus, a government existed as a result of a social contract with its citizens, whereby it was agreed that individual citizens would give up only the minimal amount of their freedom and rights required for government to protect the majority of society. The *utilitarian* phrase “the greatest good for the greatest number” became the essence of social contract governments. These, and many more thoughts and ideas, were generally referred to as the “Classical School.”

Beccaria’s essay expressed all of these thoughts and applied them to criminal justice, and did it passionately. The essay itself is really a protest piece written anonymously at first and only acknowledged by its author three years after its first publication. Seemingly, Beccaria was concerned that there would be retaliation by the rulers of his day.

The essay begins with an acknowledgment of the importance of humanist and rationalistic philosophies of human nature and goes on to argue against the “excesses” of the criminal justice system. Beccaria takes the reader on a tour through that criminal justice system, from legislation and law-making through arrest and trial to punishment. In each case, Beccaria argues against what is, presents an alternative form of criminal justice system, and argues for it. These alternative forms of doing justice laid the foundation for today’s system. In fact, our founding fathers constructed the United States Constitution and Bill of Rights on the basic concepts of the Classical School. Some of the ideas put into place were a right to a speedy trial, jury of one’s peers, separation of executive and judicial functions (law-making and law-judging), the use of standards of evidence, written laws, no retroactive laws, and punishment fitting the crime. In short, most of the content of procedural law, or due process, is directly related to legal reforms attributable to the Classical School.

One other idea also was important to the Classical School: a concept of humans as rational individuals who were governed by *hedonism*. In other words, people were thought to behave according to rational calculations of pleasure and pain they expected to receive as a product of their actions. Jeremy Bentham, another major writer in the Classical School, had perhaps the most to say here. Applied to the criminal justice context,

the hedonistic principle meant that punishment could be used to *deter* individuals from committing crimes and transgressing on the rights of others.

Thus, a carefully calculated punishment was to be designed for each crime so that the gain from the crime would be offset by the punishment. Since punishment was viewed as a scarce resource, however, only the amount of pain necessary to cancel the gain from the crime should be used. Bentham spent a good deal of effort in attempting to devise a *hedonistic calculus* of the exact amount of pain to be applied to each offense. If no pleasure were to be gained from a crime, Classical theorists assumed that an individual would rationally consider that fact and therefore not commit the crime. If a crime was committed, the offender had to be punished in order to make an example for, and thereby deter, others. The *speed* and *certainly* of punishment were both more important than the *severity* because they created the greatest efficiency in punishment resources.

In sum, Beccaria and the other writers of the Classical School emphasized not so much the criminal, but crime and legal structure. They focused on law-making and the way the criminal justice system should process accused persons, the rights of those persons, justice and fairness. They also strongly believed that the only justification for punishing criminals was deterrence, which served to correct a wrong to the social contract.

The Positive School

After most of the ideas of the Classical School had been implemented, the need for concern about the creation of law and political structures diminished. A little over 100 years after Beccaria wrote about his theory, people had put aside discussions of the political nature of crime and justice and another Italian, Cesare Lombroso, began to study and advance new ideas about criminals. His was a world of *science*, where systematic study and new discoveries had created amazing advances in industry, medicine, and engineering. Most people felt that a scientific approach to the study of human societies could be used to solve social ills. In fact, there was a good deal of optimism that almost any social problem could be treated and corrected through the positive application of science (thus the name “positivism”).

Lombroso was a medical doctor, used to looking for symptoms and diagnosing diseases. When he looked at prisoners, he saw symptoms—characteristics and features that suggested criminals were different from “normal” people. He also had the assistance of a new social science called anthropology, through which people studying primitive tribes and other non-Western cultures were making interesting observations. It seemed that the primitives they described were more like the criminals he knew than

“civilized” European folks. Moreover, the popularity of Darwin’s work in evolution had some people looking for connections between different cultures and highly evolved species. Therefore, Lombroso reasoned, criminals must represent a more primitive form of human. He began to make systematic measurements of the physical features of prisoners and criminals and came to the conclusion that criminals were indeed different from normal, civilized people.

Lombroso was not the first writer and theorist to systematically study criminals; he was not even the first to conclude that there were physical differences. Others had already examined criminal physiognomy (della Porte in the 1500s) and phrenology (the examination of skull shapes, contours and “bumps” on the head) was popular some 50 years before Lombroso began to write (Gall and Spurzheim in the 1820s and 1830s). Lombroso, however, had the advantage of the new tools of science and the mood of treatment and prevention of his day.

His theory was that criminals had a criminal personality and were largely a more primitive form of human than were noncriminals. He talked of sloping foreheads, heavy brow ridges, jutting jaws and the like. He also described criminals as lacking in moral development and having sensory impairment. He found enough physical anomalies in criminals, and enough similarities to primitive human types, to characterize them as *atavistic* types, or throwbacks to an earlier species of human. He also believed that there were similarities between criminals and epileptics. Where there were no marked physical anomalies, Lombroso determined that criminals had begun life normally but, for some reason, had *degenerated* internally into a primitive state. When criminals exhibited only a few of the characteristics he expected to see, they were “criminaloids”—or pseudo-criminals. Thus, he saw two basic forms of criminality—the atavist and the degenerate.

After much examination of criminals and after others had criticized his work, Lombroso added other categories of criminality. One was the criminally insane. A second was the “occasional criminal”—a class of criminals with few of the characteristics of common criminals. Other offenders, such as members of the nobility who engaged in (illegal) duels, really had nothing wrong with them and were “criminals by passion.” Finally, in his later work Lombroso acknowledged the contributions of social and psychological factors, but always indicated that they were less important in causing criminality than the biological ones.

Other writers followed Lombroso. In Italy, Raffaele Garofalo and Enrico Ferri elaborated on his ideas and the three became known as the “Italian Triumvirate.” Others wrote on all manner of causes of crime, and the Positivist School became the foundation of modern criminology. The essence of this school of criminology is not so much an emphasis on bio-

logical causes as it is an emphasis on the study of criminal *behavior*, the use of *scientific methodology*, the assumption of *pathology*, *classification* of criminal types, *prediction* of criminality, and *treatment* of criminals (or the problem factors, whatever they may be). From this perspective, most of today's sociological, psychological, economic, and biological theories of criminality are positivistic.

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On Crimes and Punishments*

Cesare Beccaria

INTRODUCTION

IN every human society, there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the other to the extreme of weakness and misery. The intent of good laws is to oppose this effort, and to diffuse their influence universally and equally. But men generally abandoned the care of their most important concerns to the uncertain prudence and discretion of those whose interest it is to reject the best and wisest institutions; and it is not till they have been led into a thousand mistakes in matters the most essential to their lives and liberties, and are weary of suffering, that they can be induced to apply a remedy to the evils with which they are oppressed. It is then they begin to conceive and acknowledge the most palpable truths, which, from their very simplicity, commonly escape vulgar minds, incapable of analysing objects, accustomed to receive impressions without distinction, and to be determined rather by the opinions of others than by the result of their own examination.

If we look into history we shall find that laws, which are, or ought to be, conventions between men in a state of freedom, have been, for the most part the work of the passions of a few, or the consequences of a fortuitous or temporary necessity; not dictated by a cool examiner of human nature, who knew how to collect in one point the actions of a multitude,

*Source: Cesare Bonesana, Marquis Beccaria, 1819. *An Essay on Crimes and Punishments*, trans. from the Italian by M.D. Voltaire, trans. from the French by Edward D. Ingraham. 2nd American ed. Philadelphia: Philip H. Nicklin. (Original published 1764)

and had this only end in view, *the greatest happiness of the greatest number*. Happy are those few nations that have not waited till the slow succession of human vicissitudes should, from the extremity of evil, produce a transition to good; but by prudent laws have facilitated the progress from one to the other! And how great are the obligations due from mankind to that philosopher, who, from the obscurity of his closet, had the courage to scatter among the multitude the seeds of useful truths, so long unfruitful!

The art of printing has diffused the knowledge of those philosophical truths, by which the relations between sovereigns and their subjects, and between nations are discovered. By this knowledge commerce is animated, and there has sprung up a spirit of emulation and industry, worthy of rational beings. These are the products of this enlightened age; but the cruelty of punishments, and the irregularity of proceedings in criminal cases, such principal parts of the legislation, and so much neglected throughout Europe, have hardly ever been called in question. Errors, accumulated through many centuries, have never yet been exposed by ascending to general principles; nor has the force of acknowledged truths been ever opposed to the unbounded licentiousness of ill-directed power, which has continually produced so many authorized examples of the most unfeeling barbarity. Surely, the groans of the weak, sacrificed to the cruel ignorance and indolence of the powerful, the barbarous torments lavished, and multiplied with useless severity, for crimes either not proved, or in their nature impossible, the filth and horrors of a prison, increased by the most cruel tormentor of the miserable, uncertainty, ought to have roused the attention of those whose business is to direct the opinions of mankind.

The immortal Montesquieu has but slightly touched on this subject. Truth, which is eternally the same, has obliged me to follow the steps of that great man; but the studious part of mankind, for whom I write, will easily distinguish the superstructure from the foundation. I shall be happy if, with him, I can obtain the secret thanks of the obscure and peaceful disciples of reason and philosophy, and excite that tender emotion in which sensible minds sympathize with him who pleads the cause of humanity.

CHAP. I.

Of the Origin of Punishments

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 of little value, from the uncertainty of its duration, they sacrificed one part of it, to enjoy the rest in peace and security. The sum of all these portions of the liberty of each