

The ideas of the classical school



In order to appropriately address the topic of discussion, it's important to consider the criminological perspectives related to the debate and the principles associated with each perspective. Two schools which will be drawn upon are the Classical school, which was established towards the end of the 18th century and the Positivist school which developed towards the end of the 19th century. The Classical school was based on a utilitarian philosophy and demonstrated the idea that, for the sake of consistency, every offender must be treated equally. The Positivist school, however, opposed Classical principles, using the scientific method to study human behaviour, expressing individuality and stressing the need for the criminal to be treated with appropriate discretion.

One contentious area within criminology is the idea that the criminal is 'normal'. Jeremy Bentham, a Classical thinker, argues that this is indeed the case. Criminals are 'normal' in that they are rational, calculated decision-makers just like everybody else. Individuals have free-will and they are guided by a hedonistic calculus - the maximisation of pleasure and the minimisation of pain (Bentham cited by Walklate 2007: 18). Such idea suggests that before engaging in criminal activity, the criminal calculates whether the reward outweighs the risk. i. e., is the potential pleasure worth the potential punishment? However, what this assumption fails to consider is that criminality can sometimes be a spontaneous reaction; it's not always a pre-meditated one. People may act out of pure desperation; giving little thought to the consequences should he/she be caught. An ideal to support this would be the clichéd scenario in which an individual steals a loaf of bread to feed his/her starving family. Such action involves no particular

thought process; they do what they do simply because they wish to survive. However, that's not to say that rational choice is not apparent. It does have relevance to certain crimes, especially crimes such as burglary in which a planning process is undergone before hand to avoid detection and significantly increase the chances of a successful sweep, such as observations of home security and patterns in daily comings and goings.

Arguably the main principle of the Classical approach can be said to be reflective of the idea that the criminal is 'normal' - this principle being that offenders should receive equal punishments, providing the offences are of the same or a similar nature. The principle revolves around the idea that everybody is equal - and thus to treat everybody as equals disregards the conception that there's an abnormality in the behaviour of the criminal (Hopkins Burke 2009: 31). Their philosophy expresses that there is no place in the categorisation and labelling of individuals into specific groups based on conditions which they may or may not have; in order for there to be a truly just justice system, everybody must be treated the same. This principle has, unsurprisingly, come under a lot of criticism, a general criticism of which would argue that society is in fact unequal (in terms of the divisions in social class) and so for an offender to be punished in the same way as an affluent offender is seen to be ludicrous. Take the example mentioned previously: an individual who is forced to engage in the theft of a loaf of bread to feed their starving family should not be punished in the same way as a president of a large corporation, for example, who dips his hand into the wages of his employees to give himself a larger bonus. In one scenario the crime is very much committed out of necessity, whereas the other is a crime of greed and

thus it would be unfair, morally, to treat the cases equally as they are clearly unequal in nature.

On the flip side to the ‘normality of the criminal’ debate, comes the idea that the criminal is sick. Where in the 18th and early 19th century, we have discussed that crime was believed to be a deliberately chosen behaviour of rational actors; the second half of the 19th century saw the emergence of individual positivism which sought to dispel the Classical approach to explanations of crime and the ways in which criminals should be punished (Sapsford 1981: 310). Such perspective doubted the ability of a criminal to choose to engage in crime and that criminality, they argued, is a form of mental illness which removes their capacity to act freely. Therefore, straight away the disparity between Individual Positivism and Classical criminology become visible.

Cesare Lombroso (1876) was a key contributor to Positivist criminology. His research focused on idea that the criminal is born a criminal and they have very little choice in the matter. He studied the physical differences between the criminal and the non-criminal, whilst also taking into account the similarities and differences of the criminal and the mentally ill. Most notably, he drew the observation that criminals possess similar traits to an atavistic being – which of course refers to an earlier stage in human development. Such observations included irregularity in skull size, ear size, irregularities in both height and weight and many other traits. However, he was also prepared to accept that not all criminals are born into the role and that some in fact do achieve it either through mental disorders or the environments in which they live (Lombroso 1876 cited by Sapsford 1981: 310-311).

The views regarding the normality or the abnormality of the criminal have a substantial effect on the ways in which the Classicists and the Positivists believe punishment should be distributed. The history of the use of punishment is an interesting one. Michel Foucault (1979) in his book 'Discipline and Punish' provides a great context into how the problem of crime was treated pre-enlightenment. The purpose of Foucault's research was to establish how it was that we got to the stage where incarceration became the main kind of punishment. It was 1757 Paris in which Foucault researched a man who was convicted of murder and sentenced to death by the court. By order of the court, the man was publicly taken through the streets of Paris in horse-drawn cart until he arrived at the point of execution. He was stripped to the waist, flesh was torn from him with pincers, sulphur was poured onto his hands and he was then quartered by four horses. Four hours passed before his torso was pierced onto a spike. The following day, the torso was burned and the execution process was complete (Foucault 1976: 3). What Foucault found was that the punishment was very much made into a public spectacle and these public displays were boisterous affairs - people found great pleasure in seeing people condemned for their transgressions. 80 years later, a similar thing happened. A man was found guilty of murder, but instead of receiving the same brutal punishment; he was incarcerated, isolated from the outside world. High walls kept the criminal confined on the inside; the public were kept on the outside - public emotions were taken out of punishment.

Although Foucault was not associated with the Classical school, his observations were regarded highly by Classicist thinkers, particularly Cesare

Beccaria. Beccaria was an enlightened thinker who sought great need in replacing irrational thinking with a rational one. He stated that pre-1750; punishments were barbaric and localised – meaning that punishments varied from place to place (Beccaria 1764 cited by McLaughlin et al 2003: 11). Punishments were vengeful with public participation permitted through the throwing of projectiles and the hurling of abuse. Beccaria claimed that such a criminal justice system is weak and as a result, he set out to reform the way in which we punish offenders, in which Foucault insisted that his intentions were “ not to punish less, but to punish better” (Foucault 1976: 82).

For Beccaria, one of the main issues that needed to be addressed was the complex nature of the law and the written legislature. The law needed to be made clear and simple so that people can understand what is deemed acceptable and unacceptable behaviour. Law should not just be a doctrine which can only be understood by lawyers and other legal experts, but should be understood by the individual “ when the number of those who can understand the sacred code of laws and hold it in their hands increases, the frequency of crimes will be found to decrease” (Beccaria 1963: 18).

Classicist thinking requires that the punishment must be proportionate to the offence (Newburn 2007: 116). ‘ Proportionality’ has in itself caused confusion, with some taking it literally to be reflective of the notion: ‘ eye for an eye’. However, what is truly meant by the term is that punishment should not be too excessive as it doesn’t have any real impact on preventing crimes from occurring. In order for punishment to be justified, it must have a use and the use that punishment provides is its deterrence effect on the rest of society – it must prevent others from committing the same crimes (Newburn <https://assignbuster.com/the-ideas-of-the-classical-school/>

2007: 116). The most important aspect of punishment, for Classical criminology, is that the general public are discouraged from committing crimes because of the fear of suffering a similar fate to the offender who has been caught and publicly punished.

Also, this punishment must be made certain. That is, that people must be made aware that crime will not be tolerated and punishment will follow. Again, this relates to the general deterrence of punishment. A significantly effective way of deterring the public is through the participation of the media in the reporting of crimes. Rarely, crimes are reported to have gone without punishment. Yet it must be said that the certainty of punishment doesn't necessarily reduce crime in all cases. There are of course instances where people are aware of the consequences of a crime but continue to carry out the crime nonetheless. Ideally, the more promptly the punishment follows the crime; the more just a justice system will be - a concept which makes a whole lot of sense. The modern day criminal justice system is a rather weak one in terms of how quickly they are able to process trials through a court and decide on whether the accused is guilty or not guilty. Such lack of urgency is deemed a "cruel torment of uncertainty" as the criminal is forced to wait an indeterminate length of time to hear the verdict and the punishments that may follow should the verdict be one of guilt (Beccaria 1963: 19). The promptness of punishment would thus spare the criminal of this torment. However, not only does the promptness of punishment serve in the interests of the accused, it also serves in the interests of the criminal justice system. If a system is seen to be tough on crime in that they can

swiftly and appropriately punish an offender, people will recognise that the chances of them evading detection are slim.

Whilst the Classicist justification for punishment resembles that of a retributivist nature, the Positivist approach looks more to rehabilitate the offender and provide treatment for the 'sick' criminal. Sentences must consider the psychological conditions behind why it is that somebody engages in crime. It would simply be unfair to give somebody suffering from some degree of mental deficiency the same punishment as a person who is of sound mind. The criminal justice system needs therefore to encompass mitigating circumstances which can decrease the culpability of the accused as they are not controllably committing unlawful behaviours. Mitigating circumstances can be seen in the English Criminal Justice System, evident with the offence of manslaughter which is an offence of less culpability than murder. One partial defence for murder, written under s. 2(1) of the Homicide Act 1957, is 'diminished responsibility' which states that a person will not be found guilty of murder if they suffered from an abnormality of mind which substantially impaired their mental responsibility for the action (Padfield 2000: 153). Such mitigating circumstances are necessary because people are not the same and thus to punish them as equals would be inappropriate and completely unjust. Some people don't act out of their own free-will, they have little to no control over their behaviours and it would be wrong to give them the same punishments as those who are fully in control of their behaviour - i. e. the rational, calculated offenders.

In drawing a conclusion, it's clear to see that there's been a progressive development in theories regarding the debate of the normality or the

abnormality of the criminal. Classical thinking preceded Positivist thinking and their principles did not take into consideration that scientific explanations for the behaviour of the criminal could be influential to the formation of a 'just' criminal justice system. The emergence of the scientific approach saw improvements into how we perceive the criminal. In most cases, the criminal is sick and it's thus necessary to at least attempt to try and treat them rather than punish them. This saw a shift from a retributivist approach to a reductionist one which saw to rehabilitate the offender. But although the two perspectives are the contrast of one another, that's not to say that one of them, have had little impact on the criminal justice system that we see today. Today's system encompasses principles from both perspectives - from the Classical school, it takes the idea that punishment must fit the crime - that the serious offences must be met with a more severe punishment and subsequently, the lesser offences should receive a lesser sentence. We can see that with the sentencing tariffs in which each offence requires a minimum and a maximum sentence for the offence. From the Positivist school, the system adopts the idea that the punishment must also fit the criminal - the culpability of the offender must be considered in order to ensure that the best possible sentence is imposed on the offender. The influence of Positivism has also encouraged a variety of punishments/treatments including community sentences which serves as both a retributive punishment and a rehabilitative treatment.

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