

**LL.M. III SEMESTER**  
**Criminal Law Group**  
**Criminology and Privilege Class Deviance**

**Paper Code L-3011**

**Schools of Criminology**

**Classical School of Criminology**

Not so very long ago, the social organization of the European mainland, from the legal standpoint, was characterized by, the predominance of acquired status as the basis for enjoying rights and privileges; scant differentiation between what is moral and what is legal and wide fragmentation of the legal order leading to difficulty in ascertaining the law.<sup>1</sup> Cesare Beccaria's *Dei Delitti e Delle Penne* (An Essay on Crimes and Punishment) as leading manifesto for the ideology of penal Classicism. It was published in 1764.

It was a closely reasoned and devastating attack upon the arbitrary, corrupt and inhumane practices of criminal law administration at the time. This eloquent plea set the foundations for a new penal, procedural and penitentiary system based on the principles which led to the French revolution, and the Declaration of the Rights of Man and 'of the Citizen contains the cornerstones of the system.<sup>2</sup> The fundamental equality of all men was the basic major premise. This meant that men would be equally treated under law and that similar conduct, whenever punishable by prior legal provision, must be subject to similar punishment. Men had to know, then, what .categories of conduct were punish able; thus, the necessity for criminal provisions to be set down in writing and with sufficient clarity to be comprehensible to anyone. Punishable conduct could only be that which encroached upon someone else's freedom in violation of the terms of the social contract. Furthermore, judicial discretion had to be stifled altogether by providing for

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<sup>1</sup>JoLowicz, Political Implications of Roman Law, 22 TuxLaNE L. REv. 62 (1947), p. 64

<sup>2</sup> Article VI states that the aim of the State is "to preserve the natural and inalienable rights of man"; Article 8, contains the formula Nullumcrimen, nullapoena sine lege

the strict application of the laws as promulgated by the legislator.<sup>3</sup> Nevertheless, not even the legislator could provide for punishments which would infringe upon the inherent dignity of Man.

Eighteenth century criminal law was repressive, uncertain, and barbaric. It also permitted, as well as encouraged, abusive and arbitrary practices. The law gave public officials unlimited power to deprive people of their freedom, property, and life with no regard to principles embodied in the concept “due process of law”. Secret accusations were in vogue and persons were imprisoned on the flimsiest of evidence. Torture, ingenious and horrible, was employed to wrench confessions from the recalcitrant. Judges were permitted to exercise unlimited discretion in punishing those convicted of crime. The sentences imposed were arbitrary, inconsistent, and depended upon the status and power of the convicted. In practice no distinction was made between the accused and the convicted. Both were detained in the same institution and subjected to the same horrors of incarceration. This same practice prevailed in regard to the convicted young and old, the murderer and the bankrupt, first offenders and hardened criminals, men and women. All such categories of persons were promiscuously thrown together, free to intermingle and interact.<sup>4</sup>

### **Social contract theory and Classical School**

Beccaria’s expositions had its roots in social contract theory, which stresses the idea that people were originally without government. People then created the state through a “social contract,” by which they surrendered many of their “natural liberties.” In return, people received the security that government could provide “against antisocial acts.” Beccaria wrote, “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.<sup>5</sup> The sum of all these portions of liberty sacrificed by each for his own good constitutes the sovereignty of a nation, and their legitimate depository and administrator is the sovereign.”<sup>6</sup>

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<sup>3</sup>Beccaria wisely avoids discussion by failing to describe what he means by "legislator." Chapter III of his Essay, Canals J. M., *Classicism, Positivism and Social Defense*, 50 *J. Crim. L. & Criminology*, (1959-1960), p 542.

<sup>4</sup>Beccaria C. First English edition 1767 .*On Crimes and Punishment*, translated by H. Paolucci. Indianapolis, IN: Bobbs -Merrill Educational, 1963 .

<sup>5</sup>Hobbes T. originally 1651 .*Leviathan*, edited by C.B. Macpherson.Harmondsworth: Penguin, 1968 .

<sup>6</sup>Hobbes T. originally 1651 .*Leviathan*, edited by C.B. Macpherson.Harmondsworth: Penguin, 1968 .

## **Pleasure, pain, and punishment**

Beccaria expounded the principle of ‘Pleasure and Pain’ for punishment. For him, pleasure and pain were the only “springs of action” in people who are in possession of their senses: “If an equal punishment be ordained for two crimes that injure society in different degrees, there is nothing to deter men from committing the greater [crime] as often as it is attended with greater advantage.”<sup>7</sup> He believed that the punishment and penalties should be imposed on the guilty according to a scale determined by the degree of danger that the given crime poses for the community: “If mathematical calculation could be applied to the obscure and infinite combinations of human actions, there might be a corresponding scale of punishments descending from the greatest to the least.”<sup>8</sup>

## **Critiques of Classical School**

1. The philosophy of the Classical theorists was reflected in the Declaration of the Rights of Man in 1789 and the French Penal Code of 1791, the body of criminal law introduced in the aftermath of the French Revolution. The authors of these documents had themselves been inspired by the writings of the major Enlightenment philosophers, notably Rousseau. It was nevertheless attempts such as these to put these ideas of the Classical School into practice that exposed the inherent problems of its philosophy of criminal justice.<sup>9</sup>

2. The Classical theorists had deliberately and completely ignored differences between individuals.

3. First offenders and recidivists were treated exactly alike and solely on the basis of the particular act that had been committed. Children, the ‘feeble-minded’ and the insane were all treated as if they were fully rational and competent.<sup>10</sup>

4. The new French post revolutionary criminal code was revised in 1810, and again in 1819, to allow judges some latitude in deciding sentences. It was thus in this way that the strict, formal, philosophical elegance of the Classical model was to be breached. 5. It was to become

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<sup>7</sup> *ibid.*

<sup>8</sup> Vold GB, Bernard TJ . *Theoretical Criminology*, New York, Oxford University, 3rd ed., 1986, p. 30 -34

<sup>9</sup> Dr.NirvaanSantLal, Goel Nikita, A comprehensive study of the classical school of criminology, *International Journal of Academic Research and Development*, Volume 3; Issue 1; January 2018; p. 01-06.

<sup>10</sup>*Ibid.*

increasingly recognised that people are not equally responsible for their actions and as a result a whole range of experts gradually came to be invited into the courts to pass opinion on the degree of reason that could be expected of the accused. Judges were now able to vary sentences in accordance with the degree of individual culpability argued by these expert witnesses and it was this theoretical compromise that was to lead to the emergence of a modified criminological perspective that came to be termed the neo-Classical School.<sup>11</sup>

### **Geographical School**

The phenomenon of crime is closely related with the geography, climate, and attitude of the place where crime takes place. It attempts to show the influence upon behaviour of such factors as climate, topography, natural resources and geographical locations. The chief proponents of this school are Quetlet, Guerry and Montesque and Lombroso. As propounded by Quetlet and Guerry the law is known as Thermic law, according to which certain crimes are so linked with geographical conditions that these occur in a particular climate at a particular area. According to Montesque, the rate of crime is high in areas near the equator. Lombroso's investigation on this phenomenon of crime discovered that the incidence of crime is less in plains, as compared with rocky lands, plateaus and valleys.<sup>12</sup>

### **Socialistic School**

This school is the extension of the general theory of economic factors contributing to the criminal behaviour. The chief proponents of this school are Karl Marx, Engels, and Bonger. According to them all human activities are strictly influenced and determined by the economic causes. Marx and Engles believed that economic inequalities are the true causes of crime. Due to this economic inequalities, the society is divided into different classes and there is constant tension between these classes. Bonger also believed that economic conditions are the root cause of the criminal activities. The philosophy of capitalism is an attempt to legitimize the self seeking acquisitiveness and aggressive pursuit of money and power. These tendencies lead to criminal activity. Though the socialist theory of crime has the definite merit of pinpointing an

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<sup>11</sup> Burke Roger Hopkins .An Introduction to Criminological Theory, Willan Publishing Culmcott House Mill Street, UK Third Edition.

<sup>12</sup> Taft Donald R. and England Ralph W., Jr. Criminology, The Macmillan & Co., New York 4<sup>th</sup> ed., 1964, pp. 277-279

important factor in the production of crime, it is false to assign exclusive responsibility for the crime either to economics or geography or pleasure or culture. Actually all factors have their relevance to an adequate and comprehensive theory of crime.

### **Sociological School**

This school offers a sociological explanation of crime. An attempt is made to establish various social factors correlative of various types of crimes. The sociological approach is concerned with effects of group patterns of behaviour, as well as the social status, the role the individual plays in the society, and the individual's conceptions of it, and of various other types of social situations and relationships.<sup>13</sup> Sutherland held the view that crime is basically a learned activity. It is only by association with criminals that one learns the nature of crimes and its modus operandi. No one invents crime it has to be learnt and its techniques mastered. This learning and training one receives by associating with the group of criminals.<sup>14</sup> According to D.R.Taft social disorganisation is at the root of all crimes. By disorganisation it is meant that there is a breakdown of the traditional social structure, rejection of old values and loosening of social control upon human behaviour.<sup>15</sup>

### **Biological School**

This is one of the earliest positivist schools of thinking.

With the advance of time and the development of scientific research during the nineteenth century certain doctors in Europe were successful in establishing that it was neither the "free-will" Classical of the offender nor his innate depravity nor evil spirits that actuated the offender to commit crime. The real cause of crime lay in the anthropological features of the criminal. Some proponents of this theory tried to demonstrate the organic functioning of the brain and established a co-relationship between criminality and the structure and functioning of brain.

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<sup>13</sup> Oslen Marvin E, "Darkheim's Two concepts of Anomie", *Sociological Quarterly*, 6, Winter 1965, pp. 37-44.

<sup>14</sup> Durkheim Emile, *The Rules of Sociological Method*, ed. George E.G.Catlin, Chicago: University of Chicago Press, 1938, pp. 65-75;

<sup>15</sup> Haralambos Michael with Heald Rabin, *Sociology: Themes and Perspectives*, Oxford University Press, New Delhi 1980, p. 411

The main proponents of this theory are three Italian criminologists:

- Cesare Lombroso
- Raffaele Garofolo
- Enrico Ferri

### ***Cesare Lombroso***

He is referred to as the father of the Italian school of criminology. He was an Italian psychiatrist who was a physician in the army. Lombroso turned attention from crime to criminals. During his period of service in the army he was able to observe those army personnel who were trouble-makers. From his experience he concluded that the criminals were a distinct anthropological type possessing definite physical characteristics.<sup>16</sup>

According to him, the criminal was a biological throw-back to an earlier evolutionary stage a man more primitive and savage than his non-criminal counterparts. His theory was based on the view that the physical characteristics of the criminal were an important causation for his criminal behavior. The theory was largely based on degeneracy.<sup>17</sup> This degeneracy was atavistic i.e. the criminal was inferior in his development to normal man and resembled lower or ape-like animals. Lombroso was therefore, of the view that criminals were born criminal.<sup>18</sup>

In further research, he classified criminals as follows:

#### 1. The Born Criminal

In his opinion, these were criminals who could not refrain from engaging in criminality. The environment had no relevance whatsoever to the crimes committed by these offenders. He therefore, considered these criminals to be beyond reformation;<sup>19</sup>

#### 2. Insane Criminals

The second category of criminals were insane criminals who resorted to criminality on account of certain mental disorders or insanity.<sup>20</sup>

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<sup>16</sup> Davis Kingsley, *Human Society*, New York: The Macmillan & Co. , 1949, pp. 392-429.

<sup>17</sup> Lindesmith Alfred and Levin Yale, "The Lombrosain Myth in Criminology," *American Journal of Sociology*, 42, March 1937, pp 653-71.

<sup>18</sup>Burgess Ernest W., " The Individual Delinquent as a Person ", *American Journal of Sociology*, 28 ,May 1923, pp. 657-680.

<sup>19</sup> Richard Quinney, *Critique of Legal Order*, Little, Brown and Co Boston, 1974, p.16.

### 3. Crimes of Passion

The third category are those who commit crime in a state of passion or due to inferiority complex;

### 4. Atavistic Criminals

The atavistic category are those who commit crime due to alcohol or when they get the opportunity.<sup>21</sup>

## **Critique of Lombroso's theory;**

### **Charles Goring**

He was an English criminologist who carried out research on the psychology of criminals. He agreed with Lombroso's statistical and inductive method and supported the latter's view that criminals were often mentally depraved. He also commended Lombroso for his assertion that the centre point of penology was neither crime nor punishment but the individual.

He critiqued Lombroso's worked based on the following issues;

- ❖ There is no such thing as a physical criminal type. In his opinion, the whole of Lombroso's enterprise was conducted with the intention of stamping a pre-conceived idea with the hallmark of science;
- ❖ One cannot declare people criminal merely by their physical characteristics. The use of the word criminal should be restricted to a legal framework which prohibits certain conduct and which finds those guilty of such conduct criminal and punishes them as such;
- ❖ Even if specific differences did exist between the criminal and the non-criminal, this does not mean that the criminal is abnormal but rather the differences evidence a selected class of normal men whose qualities may present extreme degrees from the normal average.<sup>22</sup>

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<sup>20</sup> Ernest A. Hooton, *Crime and the Man*, Cambridge: Harvard University Press, 1939 , p. 130

<sup>21</sup> Kenny, *Outlines of Criminal Law*, Cambridge University Press, Edition 1902, pp. 5 - 6.

<sup>22</sup> Sutherland Edwin H. and Cressey Donald R., *Principles of Criminology*. Philadelphia: J.B. Lippincott Co., 9th ed. 1974, p. 51

Thus Goring concluded that there is no such thing as a physical criminal.

***E.A. Hooton***

He studied 17,000 individuals of whom 14,000 were criminals drawn from across 10 states of the United States of America. His conclusions were quite similar to Lombroso's.

According to him crime is the result of the impact of the environment upon low grade human organisms. It therefore follows that the elimination of crime can only be effected the expiation of the physically, mentally and morally unfit or their complete segregation.

The study concluded that big tended to be murderers and robbers. Tall heavy men are killers and also commit forgery and fraud. Undersized men are thieves and burglars; short heavy persons commit assault, rape and other sex crimes. Men of mediocre physique have no specialty and commit several offences.<sup>23</sup>

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<sup>23</sup> Ernest A. Hooton, *Crime and the Man*, Cambridge: Harvard University Press, 1939 , p. 130