

judges), clearly stated, proportionate to the crime, swift, and certain.

Beccaria's theory is reflected in modern deterrence theories, which focus on the impact of official punishments on crime. Such theories and the evidence on their validity are discussed in Part VII. Briefly, some evidence shows that the certainty of punishment influences the likelihood of crime, but it is probably not among the most important causes of crime. Little research has been done on the other characteristics of punishment listed by Beccaria, primarily because they are difficult to measure with existing data.

Of the Origin of Punishment

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 individual constituted the sovereignty of a nation; and was deposited in the hands of the sovereign, as the lawful administrator. But it was not sufficient only to establish this deposit; it was also necessary to defend it from the usurpation of each individual, who will always endeavour to take away from the mass, not only his own portion, but to encroach on that of others. Some motives, therefore, that strike the senses, were necessary to prevent the despotism of each individual from plunging society into its former chaos. Such motives are the punishments established against the infractors of the laws. I say, that motives of this kind are necessary; because, experience shows, that the multitude adopt no established principle of conduct; and because, society is prevented from approaching to that dissolution, (to which, as well as all other parts of the physical, and moral world, it naturally tends) only by motives, that are the immediate objects of sense, and which being continually presented to the mind, are sufficient to counterbalance the effects of the

passions of the individual, which oppose the general good. Neither the power of eloquence, nor the sublimest truths, are sufficient to restrain, for any length of time, those passions, which are excited by the lively impressions of present objects. . . .

Of the Interpretation of Laws

Judges, in criminal cases, have no right to interpret the penal laws, because they are not legislators. . . . The laws receive their force and authority from an oath of fidelity, either tacit, or expressed, which living subjects have sworn to their sovereign, in order to restrain the intestine fermentation of the private interests of individuals. From hence springs their true and natural authority. Who then is their lawful interpreter? The sovereign, that is, the representative of society, and not the judge, whose office is only to examine, if a man have, or have not committed an action contrary to the laws. . . .

Of the Obscurity of Laws

If the power of interpreting laws be an evil, obscurity in them must be another. . . . Crimes will be less frequent, in proportion as the code of laws is more universally read and understood: for there is no doubt, but that the eloquence of the passions is greatly assisted by ignorance, and uncertainty of punishments. . . .

Of the Proportion Between Crimes and Punishments

. . . It is not only the common interest of mankind, that crimes should not be committed, but that crimes of every kind should be less frequent, in proportion to the evil they produce to society. Therefore, the means made use of by the legislature to prevent crimes, should be more powerful, in proportion as they are destructive of the public safety and happiness, and as the inducements to commit them are stronger. Therefore there ought to be a fixed proportion between crimes and punishments.

It is impossible to prevent entirely all the disorders which the passions of mankind cause in society. These disorders increase in proportion to the number of people, and the opposition of private interests. . . . That force, which continually impels us to our private interest, like gravity, acts incessantly, unless it meets with an obstacle to oppose it. . . . Punishments, which I would call political obstacles prevent the fatal effects of private interests. . . .

Of the Intent of Punishments

The end of punishment . . . is no other, than to prevent the criminal from doing further injury to society, and to prevent others from committing the like offence. Such punishments, therefore, and such a mode of inflicting them, ought to be chosen, as will make the strongest and most lasting impressions on the minds of others, with the least torment to the body of the criminal. . . .

Of the Advantage of Immediate Punishment

The more immediately after the commission of a crime a punishment is inflicted, the more just and useful it will be. . . . *The degree of the punishment, and the consequences of a crime, ought to be so contrived, as to have the greatest possible effect on others, with the least possible pain to the delinquent.* If there be any society in which this is not a fundamental principle, it is an unlawful society; for mankind, by their union, originally intended to subject themselves to the least evils possible.

An immediate punishment is more useful; because the smaller the interval of time between the punishment and the crime, the stronger and more lasting will be the association of the two ideas of *Crime and Punishment*; so that they may be considered, one as the cause, and other as the unavoidable and necessary effect. It is demonstrated, that the association of ideas is the cement which unites the fabric of the human intellect; without which, pleasure and pain would be simple and ineffectual sensations. . . .

1 An Essay on Crimes and Punishments

Cesare Beccaria

Beccaria's book, *An Essay on Crimes and Punishments*, presents the first of the modern or scientific theories of crime. The book, first published in 1764, became the foundation for the classical theory of criminology, which dominated explanations of crime for close to 100 years. According to classical theory, people are rational and concerned with minimizing their pain and maximizing their pleasure. Their efforts to do so often lead them to engage in crime, unless they are deterred by the threat of punishment.

Beccaria's book is primarily concerned with criticizing the legal system in the 1700s and offering proposals for its reform, but he presents the classical theory of crime in the process. Beccaria draws heavily on Thomas Hobbes' theory of society in critiquing the legal system, and his book opens with a brief summary of that theory, reprinted in the opening paragraph here. Hobbes noted that the pursuit of self-interest often leads people to harm one another and that individuals must give up some of their liberty for the sake of "peace and security." In particular, they form nations and such nations establish laws and administer punishments to deter people from harming one another in their pursuit of their interests or "passions." However, to be effective, punishments must meet certain conditions. Beccaria describes the characteristics of effective punishments in the remainder of this selection, noting that such punishments should be set by the "sovereign" or representative of the state (not decided by

It is, then, of the greatest importance, that the punishment should succeed the crime as immediately as possible, if we intend, that in the rude minds of the multitude, the seducing picture of the advantage arising from the crime, should instantly awake the attendant idea of punishment. Delaying the punishment serves only to separate these two ideas. . . .

Of the Mildness of Punishments

Crimes are more effectually prevented by the certainty, than the severity of punishment. . . . The certainty of a small punishment will make a stronger impression, than the fear of one more severe, if attended with the hopes of escaping; for it is the nature of mankind to be terrified at the approach of the smallest inevitable evil, whilst hope, the best gift of heaven, hath the power of dispelling the apprehension of a greater; especially if supported by examples of impunity, which weakness or avarice too frequently afford. . . .

That a punishment may produce the effect required, it is sufficient that the evil it occasions should exceed the good expected from the crime; including in the calculation the certainty of the punishment, and the privation of the expected advantage. All severity beyond this is superfluous, and therefore tyrannical. . . .

Conclusion

From what I have written results the following general theorem. . . .

That a punishment may not be an act of violence, of one, or of many against a private member of society, it should be public, immediate and necessary; the least possible in the case given; proportioned to the crime, and determined by the laws.

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Discussion Questions

1. According to Beccaria, why is it necessary for the state to sometimes punish people?
2. Beccaria assumes that offenders are rational individuals pursuing their self-interest. Do you think this is an accurate view of all or most offenders?
3. Do you think Beccaria would favor the death penalty? Why or why not? (He discusses this issue in some detail in his *Essay on Crimes and Punishments*.)
4. Evaluate our current system of punishing offenders using the criteria for effective punishments listed by Beccaria. In particular, do we satisfy the criteria listed by Beccaria?
5. Beccaria states that the "end of punishment is no other than to prevent the criminal from doing further injury to society." Do you agree or do you feel that there are other purposes for punishment? Defend your answer. ★

ferent types of criminals. "Born criminals," or the genetic throwbacks he first described made up only about one-third of all criminals, but the savagery of their crimes made them an especially important class of criminals. Subsequent research discredited Lombroso's arguments regarding biology, as most of the traits he listed failed to distinguish criminals from carefully matched samples of non-criminals (see Vold et al., 1998).

Lombroso's research is important, however, because it helped establish what is known as the "positive school" of criminology. The positive school is distinguished by its search for the causes of crime, whether biological, psychological, or sociological. Positivism is also distinguished by its reliance on the scientific method: Theories must be tested against observations of the world. So even though Lombroso's theory was discredited in the early to middle part of the 1900s, his influence on criminology lives on.

References

Martin, Randy, Robert J. Mutchnick, and W. Timothy Austin. 1990. *Criminological Theory: Pioneers Past and Present*. New York: Macmillan.

Vold, George B., Thomas J. Bernard, and Jeffrey B. Snipes. 1998. *Theoretical Criminology*. New York: Oxford.

The Classical School based its doctrines on the assumption that all criminals, except in a few extreme cases, are endowed with intelligence and feelings like normal individuals, and that they commit misdeeds consciously, being prompted thereto by their unrestrained desire for evil. The offense alone was considered, and on it the whole existing penal system has been founded. The severity of the sentence meted

2 The Criminal Man

Cesare Lombroso

As Summarized by
Gina Lombroso Ferrero

Lombroso's theory is the most prominent of the early biological theories of crime; it replaced classical theory as the dominant explanation of crime in the late 1800s. Lombroso first presented his ideas in 1876 and then revised and expanded on them several times over the next three and a half decades. The selection that follows describes the key features of his theory, as summarized by his daughter.

Lombroso argued that crime is the result of biological differences between criminals and "normal individuals." Drawing on Darwin's evolutionary theory, he claimed that criminals are not as evolved as other individuals: they are savages in the midst of modern society (he described such people as "atavistic"). It is their savage or primitive state that causes their criminal behavior. As indicated in the following selection, Lombroso came to this conclusion while working as a physician in the army and at an asylum. His examinations of criminals convinced him of their biological inferiority, and through such examinations he developed a list of traits that could be used to distinguish "born criminals" from others. Many of these traits are listed in the

ual or normal individuals; and it aims at studying the morphology and various functional phenomena of the criminal with the object of curing, instead of punishing him. . . .

If we examine a number of criminals, we shall find that they exhibit numerous anomalies in the face, skeleton, and various psychic and sensitive functions, so that they strongly resemble primitive races. It was these anomalies that first drew my father's attention to the close relationship between the criminal and the savage and made him suspect that criminal tendencies are of atavistic origin.

When a young doctor at the Asylum in Pavia, he was requested to make a post-mortem examination on a criminal named Vilella, an Italian Jack the Ripper, who by atrocious crimes had spread terror in the Province of Lombardy. . . . "At the sight of that skull," says my father, "I seemed to see all at once, standing out clearly illumined as in a vast plain under a flaming sky, the problem of the nature of the criminal, who reproduces in civilised times characteristics, not only of primitive savages, but of still lower types as far back as the carnivora."

Thus was explained the origin of the enormous jaws, strong canines, prominent zygomae, and strongly developed orbital arches which he had so frequently remarked in criminals, for these peculiarities are common to carnivores and savages, who tear and devour raw flesh. Thus also it was easy to understand why the span of the arms in criminals so often exceeds the height, for this is a characteristic of apes, whose fore-limbs are used in walking and climbing. The other anomalies exhibited by criminals—the scanty beard as opposed to the general hairiness of the body, prehensile foot, diminished number of lines in the palm of the hand, cheek-pouches, enormous development of the middle incisors and frequent absence of the lateral ones, flattened nose and angular or sugar-loaf form of the skull, common to criminals and apes; the excessive size of the orbits, which, combined with hooked nose, so often impart to criminals the aspect of birds of prey, the projection of the lower part of the face

and jaws (prognathism) found in negroes and animals, and supernumerary teeth (amounting in some cases to a double row as in snakes) and cranial bones (epactal bone as in the Peruvian Indians): all these characteristics pointed to one conclusion, the atavistic origin of the criminal, who reproduces physical, psychic, and functional qualities of remote ancestors.

Subsequent research on the part of my father and his disciples showed that other factors besides atavism come into play in determining the criminal type. These are: disease and environment. Later on, the study of innumerable offenders led them to the conclusion that all law-breakers cannot be classed in a single species, for their ranks include very diversified types, who differ not only in their bent towards a particular form of crime, but also in the degree of tenacity and intensity displayed by them in their perverse propensities, so that, in reality, they form a graduated scale leading from the born criminal to the normal individual.

Born criminals form about one third of the mass of offenders, but, though inferior in numbers, they constitute the most important part of the whole criminal army, partly because they are constantly appearing before the public and also because the crimes committed by them are of a peculiarly monstrous character; the other two thirds are composed of criminaloids (minor offenders), occasional and habitual criminals, etc., who do not show such a marked degree of diversity from normal persons. . . .

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Discussion Questions

1. The positive school of criminology, which Lombroso helped found, argues that crime is not the result of free will; rather, it is due to factors over which the individual often has little or no control. As such, this school focuses less on the punishment of the offender and more

on "curing" the offending. To what extent do you think crime is an act of free will or one caused by forces beyond the individual's control?

2. What policy recommendations might an adherent of Lombroso's theory make for controlling crime? (A consideration

of these recommendations will help you understand one of the reasons why the theory was later attacked.)

3. List those factors said to distinguish "born criminals" from others. How would one go about providing a good test of Lombroso's theory? *