

The classical and positivist approaches to criminological theory were both highly influential in their definition of and approach to dealing with crime and criminal punishment. For centuries scholars and theorists have attempted to adopt a new and effective approach to criminal punishment, in the hope that one can understand and thus know how to deal with criminal behaviour in an effective manner. Yet, while the two theories are rather different, they also contain similarities, and both influence the criminal systems of even today around the world. In an attempt to compare and evaluate the two, a brief explanation is necessary, in order to understand exactly how they differ and combine on certain elements.

The classical approach to criminal behaviour was the first to move away from the concept of classifying crime as a sin. It thus brought the shift from unfettered power to punish criminal behaviour on a spiritual level to a reason-based approach, with checks on authority. In contrast, the positivist approach adopts a statistical based approach, under which societal factors are assessed to determine which characteristics are more likely to cause crime. At once, one can see the fundamentally different bases upon which each theory is propped. Where the classical approach is more philosophical in its recognition of the social contract theory as a justification for punishing criminal behaviour, the positivist theory has an intense scientific flavour, based on social data and the study of human affairs. The classical theory does however adopt the balancing of the benefit of a crime against its cost to determine punishment. It promoted the bare minimum intervention of law to respect the freedom of others. Yet it proposed to do exactly this, to protect the freedom of others, only so far as is necessary. In contrast, the positivist theory sought to take the predictive approach – to use data and statistics to determine which social factors are the causes of crime, and to thus eliminate them to reduce criminal behaviour. While the protection of human freedom is a running theme in the positivist theory, it seems to be focused mainly on social reforms, conducted on the predictions resulting

from societal characteristic studies. So, from the start, one can notice that the classical approach sought to limit punishment, and pace punishing authorities within rather tight boundaries, whereas the positivist theory sought to remove or reduce the factors found to be causative of crime.

The emergent response to criminal behaviour and how to deal with it is also notably different between the two approaches. The classical theory saw the function of the law as to 'furnish the requirements of a particular society',¹ and thus focused primarily on limiting the use of punishment. It proposed a clear, concise code, with limited power of judicial discretion and interpretation, with proportionate punishment to deter rather than to 'may the criminal pay'. The positivist theory was much less radical in its approach, despite the difference in period within which it emerged. Primarily, the causes of crime were assessed, and thus the proposals were based on removing the societal characteristics to prevent crime rather than punish it effectively. Regularities in data and crime rates were studied, and human affairs were seen as the key to discovering regularities, to find the causes of crime. Inevitably it led to the prediction of the criminal, based on the certain characteristics and social concepts within which he was immersed. The likelihood of committing crime was explored, and was thought predictable by researchers such as Guerry and Quetelet. This of course led to the removal of the typical characteristics found to be causative of crime – a preventative exercise.

However, this is not to assume that the positivist approach completely disregards the concept of punishment, or even proposes to entirely diminish crime. Indeed, it sees crime as a natural result of societal organisation, which still maintains individual freedom, but has now the ability to predict the

¹ P89, first book.

causes of crime and thus reduce them. Again one can see the preventative essence of the positivist approach in stark contrast to the somewhat retributive approach of the classicists. And one can thus see how the former sought to focus on removing the causes of crime whereas the latter sought ways to punish criminals effectively yet fairly. Yet this is not to say that the classical approach does not seek to prevent or reduce crime. Indeed, punishment was seen as a deterrent; it merely proposed that the intensity of punishment was not necessarily a calculus of the intensity of deterrent effects. Thus, theorists such as Bentham proposed that punishment should outweigh the pleasure deduced from crime, but still on a minimal level; only that which is enough to deter others. Furthermore, concepts such as the speed with which punishment is administered and the publicity of it is seen as more productive of deterrence as the severity.

The differences between the two theories are somewhat reminiscent of the eras in which they emerged. The classical theory occurred at a period of religious dominance, where corporal punishment was widely adopted, and the 'eye for an eye' concept allowed the torture of criminals based on the extent of their sinful behaviour. But this proved to be difficult to monitor, and punishments simply depended on the subjective opinion of the authoritative figure administering sentences. It was inevitable that the compassionate, more civilised traits of humankind would emerge, to recognise that such treatment of even criminals was becoming not only ineffective, but also cruel and inhumane. Indeed, Beccaria promoted the concept of proportionate punishment and the protection of criminals, focusing on prevention rather than vengeful punishment. Bentham's utilitarian approach still also led to reduced severity of punishment, as a minimal amount was recognised as being needed to restore the imbalance between the pleasure of crime and the pain of punishment. Fundamentally, the classical approach was hailed as being 'prepared to apply notions of reason and free will'.² The sheer simplicity of the classical approach does appear to outweigh the optimistic

² First book, p92

promises of the positivist. No retrospective legislation, clear written codes and minimal judicial discretion coupled with minimal punishment, to deter future criminals appears much more realistic than the positivist concept.

Yet the positivist approach has strengths in its use of hard, indisputable societal statistics. It is highly plausible that such an approach could be effective, to simply find the specific characteristics that are causative of crime and then seek to remove them. This also resulted in some degree of limitation on the administration of punishment, and can be interpreted to protect the freedom of individuals as much as is possible. It focuses on the causes of criminal behaviour, thus allowing concentration on those specific areas rather than the generality of the 'eye for an eye' punishment administration.

Each, because of its different propositions, failed to catch on entirely for different reasons. While the classical approach was successful in establishing the adoption of criminal codification and checks on authority, its propositions were too radical for some countries.

Both were rather optimistic in their promises to reduce crime effectively. They sought to reduce criminal behaviour to a simple set of criteria, which could be eliminated or dampened and thus result in the reduction of crime. But each appeared to be rather blinkered in its narrow approach – while the classical approach failed to appreciate the criminal causes of behaviour beyond that of the pleasure gained, the positivist approach appeared to be too blaming of biological and statistical factors. It seems that the most daunting characteristic of crime and punishment is its unpredictable element – it is clear or at least highly suggestible now that there cannot be a perfect catch-all approach, and this is where both theories seem to have failed.

While the classical approach succeeded in reducing punishment and moving away from the spiritualistic permission of God to punish criminals, which was easy to abuse, it set itself up for failure by promising the reduction of crime. The reality appears to be that nothing with such a narrow approach can promise anything with certainty. Similarly, the classical approach could not overcome the years of common law precedent built up in England at the time. It was inevitably impossible that England would be willing or even able to overthrow centuries of custom to adopt a new, unproven concept of complete codification, although it did influence the codification of law in countries such as France and Germany.

The positivist approach was too simplistic also, but on a different plane than that of the classical approach. Lombroso's attempt to classify criminal behaviour into four categories was helpful, but seemed too simplistic and rounded to lead to anything revolutionary. Where the classical approach was arguably too philosophical, the positivist approach appeared to anthropological, thus overlooking factors such as the social contract and concepts of utilitarianism to understand how to administer punishment on a more effective level.

Having compared these two approaches to criminology, one can begin to understand their fundamental differences, yet also their similarities. Of course, one has only scratched the surface on these rather complex theories and the concepts they encapsulate, but the overall basis of their approaches is accurate, and appropriately profound enough to understand. Here we have two seemingly entirely different approaches, with some similarities and basic concepts. It is easy to understand how they differ, yet difficult to envisage why they failed to be slightly more realistic in their propositions and promises. However, only through these errors can one

formulate different aspects of various theories and understand the different problems that emerged in the field of criminology throughout the decades.