

objects for study with models borrowed from the natural sciences and that we can be changed by applied technology came under special attack, with the criminological version a prime target (as numerous studies have subsequently documented). An early work (Matza, 1964) consciously resurrected classical themes as part of this attack. Such themes have subsequently continued to appear – sometimes recognised as such, sometimes not; the classical perspective is no longer the poor relation that it was.

Part One is an outline and assessment of this birth, death and (partial) rebirth of the classical perspective.

1 Foundations: Beccaria and the Basis of Classicism

Some tangible motives had to be introduced, therefore, to prevent the despotic spirit, which is in every man, from plunging the laws of society into its original chaos. These tangible motives are the punishments established against infractors of laws . . . These motives, by dint of repeated presentation to the mind, counterbalance the powerful impressions of the private passions that oppose the common good (Beccaria, 1963, p. 12).

By far the most significant figure responsible for the formulation of the principles of classical criminology was Cesare Beccaria (1738–94). Indeed, classical criminology is almost entirely constituted by the one, short book that he wrote, *Dei Delitti e delle Pene* in 1764 (Beccaria, 1963). It was not particularly its originality that distinguished it – it consisted mainly of ideas borrowed from the Enlightenment and from earlier social contract writers. Nor, evidently, was Beccaria himself a towering figure of his time; in fact, he was unknown when he wrote it, never wrote anything else of note and was an embarrassing failure in personal appearances to evangelise his cause. It has even been darkly insinuated by Paolucci (in Beccaria, 1963) that he may merely have been used as a front by his radical friends, the Verri brothers, who were too much in trouble with the authorities at the time to risk writing it themselves.

Whatever its origins, *Dei Delitti e delle Pene* is a masterpiece of compression, focusing its borrowed ideas into a comprehensive, coherent treatise on the iniquities of the contemporary European criminal justice systems and offering a systematic alternative. The iniquities that Beccaria had in mind were cruelty, arbitrariness and inefficiency (like all reformers he has, of course, been accused of gross exaggeration – see Paolucci in Beccaria, 1963); the alternatives he offered were humanity, consistency and rationality.

Cesare Beccaria: *On Crimes and Punishments*

Beccaria starts by looking at the justification of the right to punish; he concludes that it is to be found in the social contract whose central tenet he declares to be 'the greatest happiness of the greatest number' (it is possible that he is responsible for originating this particular cliché). The social contract involves our sacrificing a portion of our personal liberty to achieve this end, but *not* out of some innate desire for the common good, since 'If it were possible, every one of us would prefer that

the compacts binding others do not bind us'. Rather, it is because, 'Weary of living in a continual state of war, and of enjoying liberty rendered useless by the uncertainty of preserving it, [we] sacrifice a part so that [we] might enjoy the rest of it in peace and safety' (p. 11).¹

So the social contract is selfishly motivated; it comes about through our rational ability to perceive a personal advantage from it. Consequently, it is precarious. Disincentives are also needed (to 'prevent reversion') in the form of punishments for law infractors. We would will this as part of the social contract because our own selfishness would enable us to see its necessity.

Punishments, however, must not exceed the minimum that is necessary to deter – we would not, Beccaria again argues, will it otherwise in the social contract. Thus, the 'humanitarianism' that informs his programme is also derived from selfish, rational motives; it stems from the fact that, since we can imagine ourselves breaking the contract, we can also imagine ourselves being the objects of punishment.

Beccaria's reputation for humanity comes from the famous sections that oppose the use of torture and of capital punishment. While his arguments about capital punishment are still of great relevance, it now seems rather odd that it could have been thought necessary to have to argue against the use of torture for extracting confessions. At the time Beccaria was writing, however, it was assumed that God and righteousness would prevent innocents from breaking under torture and falsely confessing. He points to the irrationality of this assumption and makes the seemingly rather obvious point that 'Torture . . . is an infallible means for absolving robust scoundrels and for condemning innocent persons who happen to be weak' (p. 32).

His opposition to capital punishment is, again, based on utilitarian and social contractual reasons. No rational person, he says, would enter into a social contract that would 'leave to other men the choice of killing him'. His alternative, 'perpetual servitude', is chosen because of its supposed greater effectiveness as a general deterrent rather than its lesser cruelty:

To anyone raising the argument that perpetual servitude is as painful as death and therefore equally cruel, I will reply that, adding up all the moments of unhappiness of servitude, it may well be even more cruel; but these are drawn out over an entire lifetime, while the pain of death exerts its whole force in a moment. And precisely this is the advantage of penal servitude, that it inspires terror in the spectator more than in the sufferer (p. 48).

Beccaria was not, on the other hand, opposed to corporal punishment. This is much less often commented upon, probably because he mentions it in a rather throwaway fashion, losing it in a section almost entirely devoted to the argument that noblemen should receive the same punishments as people of the lower orders. For crimes which are 'attempts against the person' he says, 'the penalties . . . should always be corporal punishments' (p. 68). That is absolutely all he has to say on the matter. I shall return to the question of Beccaria's humanity later.

As the above quotation on 'perpetual servitude' suggests, Beccaria considered the purpose of punishment to be to deter, with the emphasis on general rather than individual deterrence. It is aimed at minds rather than bodies (though it uses bodies) and its *intent* is not to torment (though it may do so). Its overriding concern is with efficient crime control. Although this is quite different from retribution (an aim that Baccaria specifically rejects), he retains the idea, usually associated with retribution, that the punishment should be *proportional* to the crime – but not, he insists, proportional to its *sinfulness* (since only God can gauge that). It should, instead, be proportional to the *harm done to society*. All personal characteristics of offenders, including their subjective intent, should be excluded from consideration; the sole measure of the punishment should be the objective harm done. If we ask who is to gauge that (presumably not God), he gives the unhelpful and not a little pompous reply that it is 'known with clarity and precision only by some few thinking men in every nation and every age' (p. 64).

The reason that Beccaria gives for his requirement of proportionality is that 'If an equal punishment be ordained for two crimes that do not equally injure society, men will not be any more deterred from committing the greater crime, if they find a greater advantage associated with it' (p. 63). It is this feature of Beccaria's programme that has caused more problems than probably anything else, as we shall see later. Briefly, the problems are both practical and moral. On the practical side, Beccaria makes the quite unwarranted assumption that more serious crimes are more attractive and of necessity require more serious punishments to deter them than do lesser ones. The moral problem arises from Beccaria's insistence that all personal characteristics of offenders and circumstances of their offences should be excluded from consideration in determining punishments. This violates such deep-seated feelings of justice that it has proved to be unacceptable under any criminal law jurisdiction.

Two other requirements that Beccaria makes of punishments for them to be effective are that they should be *prompt* and *certain*. These two qualities make 'so much stronger and more lasting in the human mind . . . the association of these two ideas *crime* and *punishment*' (p. 56). He attaches great importance to 'the association of ideas' and sees it as being most powerfully achieved where the punishment symbolises the offence as far as possible. Thus property offences should be dealt with by fines (to be earned by forced labour if the offender cannot pay) and violent offences by corporal punishment. Imprisonment, because of its invisibility (symbolism obviously requires public visibility) seems to be relegated to a relatively minor role, though he is not very clear on this. His opposition to capital punishment, on the other hand, does not seem to fit very well with the principle of symbolic representation – the public execution of murderers appears to satisfy all his requirements.

Beccaria concludes with a section on prevention, which he sees as being very much preferable to punishment – it increases aggregate utility, the happiness of the greatest number (or, rather, decreases their aggregate unhappiness). Prevention

requires laws to be clear, simple and universally supported. It also seems to require a restriction of the scope of the criminal law and a readiness to consider decriminalisation:

For one motive that drives men to commit a real crime there are a thousand that drives them to commit those indifferent acts which are called crimes by bad laws; and if the probability of crimes is proportionate to the number of motives, to enlarge the sphere of crimes is to increase the probability of their being committed (p. 94).

Another important resource for the prevention of crime is the spread of enlightenment via education. 'Knowledge' says Beccaria 'breeds evil in reverse ratio to its diffusion' since 'no enlightened person can fail to approve the clear and useful public compacts of mutual security' which constitute the social contract (p. 95). Beccaria summarises his arguments in a 'general theorem':

In order for punishment not to be, in every instance, an act of violence of one or of many against a private citizen, it must be essentially public, prompt, necessary, the least possible in the given circumstances, proportionate to the crimes, dictated by the laws (p. 99).

Beccaria and Bentham: Utility and Humanity

In Britain, the ideas of Beccaria are probably best known through their influence on Bentham. Certainly, Bentham acknowledged his debt to Beccaria. Almost all of the basic principles of his utilitarian programme in relation to the criminal justice system can be traced back to *Dei Delitti e delle Pene*. The most striking difference between them is in the amount they wrote – Beccaria so little and Bentham so much. If Beccaria's fault was brevity, then Bentham's was immense, often boring, detail (as exhibited, for example, in his celebrated attempt to specify all possible pairs and pleasures).

One important distinction between the two writers is that (Bentham became much more favourably disposed towards the prison as a medium of criminal reformation than Beccaria appeared to be) (a point to which I shall return later). Hart (1983, p. 51) has drawn attention to a second important difference: (Beccaria, he says, has 'a respect for the individual person' that is lacking in Bentham.)

I think that very often where Bentham and Beccaria differ in detail this is traceable to Beccaria's conviction that what may be done in the name of utility should be limited by consideration of what befits the dignity of man.

In that long-noted contradiction between the happiness of the greatest number and the 'natural' rights of the individual, Hart locates the two writers in quite different positions. This is an important distinction, since it relates to a fundamental dilemma in the classical conception of what is legitimate in punishing crime.

Clearly, what humanity there is in Bentham is very much aggregate humanity;

his willingness to sacrifice individual humanity to achieve it is legendary. A good example (and one that affords an interesting comparison with Beccaria) is his attitude towards torture. Bentham was perfectly willing to countenance torture if it would reveal information that would prevent more injury and suffering than was used in obtaining it (Twining and Twining, 1973). Beccaria, as already noted, was famous for his opposition to torture. Tempting as this comparison is, however, it is not quite fair; they were talking about different things. Beccaria was opposing the use of torture for extracting confessions. His opposition was on utilitarian rather than humane grounds: it does not work; it 'absolves robust scoundrels' and condemns weak innocents. Indeed, Beccaria always avoided direct appeals to humanity or individual rights. Even in his opposition to capital punishment, as we have seen, his arguments are in terms of effectiveness and utility. He was not at all put off by the possibility that his alternative 'may well be even more cruel'. Nor was he averse to corporal punishments where the logic of his 'symbolic representation' thesis seemed to require it. (Indeed, the logic seemed to require that such punishment should take place in public.) Since it would have been unlikely that many property offenders would have been able to pay the fines that he advocated, they would mostly have been subjected to the forced labour that he proposed as the alternative. None of these examples suggests a particularly marked concern with the 'dignity of man'.

(Beccaria's appearance of humanity is perhaps to some extent due to the fact that, unlike Bentham, he often glossed over the darker implications of his arguments. This, in turn, suggests that perhaps he found himself in a dilemma – caught between his naturally humane feelings and the logic of his unsentimental, utilitarian theory.) Yet, on the other hand, his particular version of the social contract allows for both. The requirement of effective deterrence is potentially extremely harsh. It is moderated by the fact that since we are all naturally deviant given the chance, we can identify with offenders because we can imagine them being ourselves. This is why only the minimum necessary punishments are prescribed; we would not will it otherwise. The view that the punishments are, potentially, things that may happen to us provides a selfish (and, therefore, suitably utilitarian) basis for a concern with humanity and the rights of the individual offender. Beccaria uses just such an argument against capital punishment (in addition to his rational, effectiveness arguments); we simply would not enter into a social contract that gave someone the right to kill us. What is perhaps surprising, if it is the case that Beccaria was moved by humane sentiments towards the individual offender, is that he did not use this argument more often. Would we, for example, be happy with giving someone the right to administer corporal punishment to us (in public)? It seems that Beccaria did not often err, in his balancing of contradictory requirements, in favour of the rights of the individual against the achievement of effective deterrence via symbolic representation.

Whatever Beccaria's personal position (his vision of a social contract set up by people who can at least imagine themselves as the recipients of its punishments) is in marked contrast to the later, positivist position that tended to see criminals as

different kinds of people altogether) Ferri (1967, p. 7), in his criticisms of classical criminology and its influence, writing in 1917, was particularly concerned with its 'excessive solicitude for delinquents'. The vision of delinquents as a different species of being threatening society provided a potentially much more unfettered entitlement to take action against them than was allowable under Beccaria's version of the social contract that underpinned the classical theory.

Neoclassicism

Beccaria's classical criminology is universally attributed with a powerful influence over subsequent developments in the criminal justice systems of most European countries. Paolucci claims (in Beccaria 1963, p. ix) that *Dei Delitti e delle Pene* has had 'more practical effect than any other treatise ever written in the long campaign against barbarism in criminal law and procedure'. And Monachesi (1960, p. 49) goes as far as to say that 'The reader will find proposed in his essay practically all of the important reforms in the administration of criminal justice and in penology which have been achieved in the civilised world since 1764'.

An abbreviated version of the 'general theorem' with which Beccaria summarised his arguments was incorporated as Article VIII of the 'Declaration of the Rights of Man and of the Citizen', passed by the revolutionary National Assembly of France, on 26 August 1789. However, actual attempts to legislate and operate Beccaria's programme in Europe encountered a serious stumbling block, and the final outcome was invariably something significantly different from what he actually proposed. (The main example was the French Code of 1791, where legislators consciously attempted to put his ideas into practice. The problem that soon emerged was Beccaria's insistence on the strict proportionality between offences and punishments, regardless of the circumstances of the offence or characteristics of the offender. This proved to be quite unacceptable, and the French Code moved progressively over the years towards allowing judges more and more discretion to vary punishments on precisely these grounds.) The resulting system has come to be referred to as 'neoclassicism' – a retention of the assumption of free will, but with an allowance that it is sometimes freer than at other times and that the proportionality of punishments should be adjusted to these varying degrees of freedom. Neoclassicism, in this sense, became the basis of all European and Western criminal law jurisdictions and has remained so, more or less, to this day.)

Even in Britain, with its relative isolation from, and suspicion of, continental legal thinking, Beccaria's ideas made some impression. In 1833 commissioners were appointed to rationalise the criminal law and procedure. Radzinowicz and Hood (1986, p. 726) have noted their obvious (and acknowledged) debt to Beccaria. But these ideas soon became diluted (very much along 'neoclassical' lines), 'Perhaps because of the English Common Law tradition that room should always be left to accommodate the peculiarities of individual cases' (*ibid.*, p. 727). Eventually, however, the whole project came to nothing. Any idea of codification was out of keeping with the English tradition of relatively unfettered judicial discretion and

the elasticity of the common law. But despite this, the English system developed to incorporate 'neoclassical' assumptions very similar to those on the Continent.

(The main individual characteristics that have been incorporated, under neoclassicism, as making a difference to the culpability of offenders have been age, mental capacity and intent (for instance, degree of premeditation). The reason for their inclusion is that they are seen as influencing (or being indicative of) the responsibility of offenders for their actions. They are expressive of the sentiments of retributive justice that Beccaria wished to exclude from consideration of punishments. He was solely concerned with whether punishments were effective as deterrents and not with whether they were 'fair' (though, as we shall see later, his views on deterrence were also problematic). Indeed, his insistence that punishments should only reflect the harm done to society and have nothing to do with subjective intent would seem to imply that the accident-prone should be treated the same as those who cause harm by design! Perhaps not surprisingly, no criminal justice system was able to take on such gross violations of widely-held sentiments of retributive justice.

Interestingly, although neoclassicism allowed individual differences to influence punishments on the grounds of justice, in doing so it paved the way for the later, positivist conception of the causes and treatment of crime. For in accepting that age and, more importantly, insanity could influence the degree of individuals' responsibility for their actions it was also accepting that in some cases, and to some extent at least, human actions could be seen as determined. Thus, it began to incorporate the principles of determinism and the differentiation of offenders from non-offenders that were to be the later hallmarks of positivist criminology.

Classicism and the Prison

Neoclassicism represented, at least in part, a conscious attempt by reformers to put into practice Beccaria's ideas about the administration of criminal justice. On the other hand, (the relationship between classical criminology and the major development in penal practice in the ensuing century – the rising dominance of the prison – is much more problematic.) When I say 'relationship' I mean this in its purely formal sense; there is no attempt here to make any claim about possible causal relationships between ideas and practice.² But the formal relationship between classical criminology and the prison is of considerable importance since, it has been claimed, they embodied quite different ideas about the way to control crime. The most important exponent of this view has been Michel Foucault (1977). He claims that by the latter half of the eighteenth century the fading 'monarchical law' of the *ancien régime* was being confronted by two different alternatives: the programme of the 'reforming jurists' (classical criminology) and that of the advocates of the prison:

Broadly speaking, one might say that, in monarchical law, punishment is a ceremonial of sovereignty; it uses the ritual marks of the vengeance that it applies

to the body of the condemned man; and it deploys before the eyes of the spectators an effect of terror as intense as it is discontinuous, irregular and always above its own laws, the physical presence of the sovereign and of his power. The reforming jurists, on the other hand, saw punishment as a procedure for requalifying individuals as subjects, as juridical subjects; it uses not marks, but signs, coded sets of representations, which would be given the most rapid circulation and the most general acceptance possible by citizens witnessing the scene of punishment. Lastly, in the project for a prison institution that was then developing, punishment was seen as a technique for the coercion of individuals; it operated methods of training the body – not signs – by the traces it leaves, in the form of habits, in behaviour; and it presupposed the setting up of a specific power for the administration of the penalty (*ibid.*, p. 130–1).

It was the prison, of course, which was to come out on top. Indeed, Beccaria's classical model, at least as far as the form and content of actual penal treatments are concerned, has never really been tried – if we are to accept Foucault's version of events.

(There are two elements in Foucault's characterisation of the prison as an alternative model to that of classicism.) First, there is the prison itself, as a physical entity – apparently given only a very minor role in the classical model. Second, there is the *aim* – the prison (according to Foucault), being concerned with transforming individual offenders into non-offenders via disciplinary training, classicism with utilising individual offenders to symbolise the offence and deter others. I think there is evidence to suggest that neither of these distinctions was, in practice, nearly as sharp as Foucault suggests.

To take the second element first, it does seem to be true that there is not much mention in Beccaria's book of reformative effects on the individual offender; he is far more concerned with frightening off potential offenders. Even where he does show an interest in 'education' it is, as we have seen, only as a preventive device aimed at the public at large. However, this does not mean that his position was incompatible with individual reformation; he just did not happen to consider it. Bentham, starting from almost identical premises as Beccaria, gets much nearer to it. Ignatief (1978) suggests that Bentham like the prison reformer John Howard, also arrived at the idea of the corrigibility of man by re-education directed at the mind, albeit it by a different route. Bentham arrived at it via his belief in the universality of reason and hence the possibility of correctly socialising man's instinct for pleasure; Howard by his belief in original sin, guilt and the possibility of awaking man's consciousness of sin.

Anyway, whatever the ideas that inspired the advocates of the prison, it would obviously be very dangerous to assume that their ideas were automatically embodied in the actual operation of the prison system when it came into being. Garland (1985b), in his detailed consideration of the Victorian prison system, concluded that, for Britain at least, Foucault's characterisation is wide of the mark. Individualised reformation as a dominant penal principle did not emerge here until the early part of the twentieth century, when positivist criminology was in the

ascendant (though, again, that is not to suggest a simple causal relation). Garland puts Foucault as being around a century out in his characterisation! His analysis (Garland 1985b, p. 32) concludes that 'the constraints of legal principle and political ideology' produced a system aimed at 'uniformity, equality of treatment and proportionality' in which concerns for individual reformation played only a very minor part. Thus Garland's version of the prison suggests the mixture of Beccarian classicism (proportionality for deterrent purposes) and retributive justice (proportionality according to desert) that, as we have seen, was the hallmark of neoclassicism. Foucault, of course, acknowledged that the reformative ideals that gave rise to the prison were a failure, in practice, from the start. Garland, however, seems to go rather further than this in suggesting that, in Britain at least, the emergent prison system never really embodied a 'reformative' alternative to classicism and neoclassicism at all.

The other distinction that Foucault makes relates to the significance of the institution of the prison itself. Again, at first reading, the evidence appears to be on his side: there is scarcely a mention of the prison in Beccaria's book. However, as we have seen earlier in relation to corporal punishment, it is instructive to look at the 'small print' in his writings. Beccaria's prescribed punishment for property crime was the fine. He recognised, however, that since most property crime was committed by the poor, they would not be able to pay fines. Consequently, they were to be subjected to forced labour to pay the equivalent. Let us examine the implications of this; property crime became by far the most common form of crime during the period in which the prison emerged; therefore forced labour would have become the most common punishment; forced labour requires incarceration (people tend not to turn up for it of their own free will). Would Beccaria's programme have looked much different in practice? The only real difference would have been that since Beccaria required his punishments to be public, his offenders would have laboured in the open air during the day rather than within the confines of their prison (presumably led out in chain-gangs). Even the particular architectural form of the prison, with its emphasis on facilitating supervision, discipline and hygiene, was hardly alien to the spirit of rationality and efficiency that inspired classicism. It was, after all, Bentham's 'panopticon' that provided the inspirational model.

It is true that Beccaria's classical programme has never been given a full trial (the image of his public floggings and toiling chain-gangs rather than his denial of capital punishment may help the liberal-minded to feel this less of a loss). But despite this, the prison does not appear to represent the radically different model that Foucault suggests. Rather, it seems that, in its usage at least, it can best be seen as having been incorporated into the neoclassical compromise which has dominated most Western criminal justice systems.

Conclusions: The Basis of Classicism

Beccaria's classical programme is a mixture of basic assumptions about the nature of human beings and the way they relate to crime and conformity, and empirical conclusions that he draws from these assumptions about how best to control crime.

It is the former that constitute the 'classical perspective' and, in this final section, I want to try and extricate them and look at some of the problems that Beccaria's version of them encountered. In doing so I am not suggesting that I am delineating some objective essence of classicism. What follows is, of course, a personal selection.

I think the classical perspective can be seen as incorporating three fundamental assumptions about the nature of human beings that are crucial to its position on crime and conformity: *freedom*, *rationality* and *manipulability*.

Freedom

Like those who advocate retributive justice, Beccaria sees humans as free-willed and choice-making. It is important, however, to distinguish his use of the conception of human freedom. Under retributive justice punishment is justified because it is 'deserved' by free, choice-making individuals who are held responsible for their actions. As we have seen, Beccaria's justification for punishment was on quite different, purely utilitarian grounds: efficient crime control. His utilitarianism required a practical, socially useful justification for punishment; retribution was totally inadequate. A bonus of rejecting retribution, it seemed, was that he could avoid the particularly tricky problems raised in trying to assess subjective intent, desert and responsibility.

Perhaps Beccaria was also conscious of the incompatibility of retribution and deterrence as penal aims. It is certainly the case that sentencing practice to the present day has manifested an uneasy and uneven relationship between the two. But, as we saw in the discussion of neoclassicism, it was unrealistic to suppose that questions of intent and responsibility could be abandoned. To do so would not only be to abandon deep-seated conceptions of justice and desert, but to abandon the conception of 'guilt' itself. For Beccaria's conception of punishing purely in proportion to harm done failed to distinguish between 'crimes' committed intentionally, under duress or provocation, or even by accident.³ The sense of injustice created by such a system would inevitably work against its deterrent effectiveness (Beccaria always acknowledged the importance of consent in producing compliance; it is difficult to imagine how his version of the social contract would have allowed such a system to operate).

Beccaria's attempt to avoid considerations of responsibility and desert must be regarded as something of a failure. Later on, positivists attempted to do the same by postulating a view of humans as determined in their actions by forces beyond their control. Whatever one may think of such a position, it at least had the merit of being internally consistent. Beccaria's attempt to avoid the issue while retaining the conception of free will was, perhaps, asking for trouble.

Rationality

According to classical criminology we mostly behave in a rational manner. The goal of our rationality is personal satisfaction; rational self-interest is the key motivational characteristic that governs our relationship with crime and con-

formity. Since crime, however it is defined in any particular society, always involves some degree of restraint on individual self-interest, our natural tendency is always towards deviation: we will, it seems, always choose the deviant alternative when it suits us and when we think we can get away with it. We appear to be selfish, cynical creatures; our greatest ambition in relation to rules of behaviour is to get other people to obey them so that our own cheating is even more productive.

It is odd that the holder of such a view of human beings could have appeared in history as a humanitarian and heroic opponent of cruelty and barbarism; it seems more appropriate to Hitler than to Beccaria. I have suggested earlier that part of Beccaria's reputation may have resulted from his glossing over the more unsavoury implications of his views, and the fact that his full programme has never really been put into practice; but this is not to deny that, in so far as he has been an influence, he has been a relatively benign one.

A more complex view of our selfishness emerges if we consider its crucial feature – its rationality – a little further. As we have seen, it is our rationality that enables us also to appreciate the personal advantages we would derive from a social contract that promotes self-denial and individual rights. Thus, we are simultaneously capable of altruism. True, it is an altruism grounded in selfishness, but that need not bother us (it can only lead into the usual teenage casuistry about altruism always being ultimately selfish). More important is the fact that our simultaneous selfish demands make it a precarious, situational altruism. It is this ambiguous, contradictory and fluctuating view of our relationship with deviance and conformity that makes the classical position so much more dynamic and plausible than subsequent versions.

Beccaria also implies that our rationality would enable us to agree on what constitutes social harm. It thus provides the basis for defining objective legal rules. In practice though, as we saw, Beccaria thought that most people had not developed their rational insight sufficiently for this to be the case – full rational insight had only been achieved by 'some few thinking men in every nation in every age'. The source of objective legal rules thus appears to be the fully developed rationality of the intellectual elites of different nations. But the implication is that through education we all have the potential to achieve the rational insight of the 'few thinking men' and that, if we did, we, too, would agree on the legal rules that would prevent social harm. Fully rational reasoning, then, would provide an objective, consensual determination of legal rules (though not, of course, any guarantee that we would not break them!).

Despite the possibility of there being objective legal rules, however, Beccaria was clearly not implying that existing legal systems, including that of his own society, necessarily embody them. His critique was open to the inclusion of the content as well as the administration of the law. There was certainly no implication in classical criminology, as there was to be in positivist, that we can ignore the content and operation of legal rules in addressing ourselves to the question of the causes and treatment of crime. If anything it is more open to criticism for solely addressing itself to these areas.

Manipulability

Although classical criminology clearly portrays humans as being free, responsible and choice-making, this does not preclude their being manipulated. The universally-shared human motive of rational self-interest makes human action predictable, generalisable and controllable. In its concern with manipulation, classical criminology was fully compatible with its successor, positivist criminology; they were both based on the belief that the primary purpose of the penal system was to control crime. However, their views on the way in which this could be achieved were quite different. In the classical version, we are manipulable only through threats or appeals; in the positivist it is through the alteration of mechanistic causal variables.

Beccaria's unwillingness to allow individual differences – whether in terms of personal characteristics or socio-economic position – to enter into considerations of punishment, also distanced him from the positivist version of human manipulability. Strangely enough, as we saw earlier, neoclassicism's inclusion of apparently incompatible retributive concerns provided a more direct link in this respect. Neoclassicism allowed that some offenders were less guilty than others because they were less responsible. When immaturity and, more especially, insanity came to be accepted as making people less responsible, this allowed for the possibility that, for some offenders at least, personal characteristics (or defects) could be seen as both differentiating them from other people and *causing* their criminality. This was to be precisely the starting assumption of positivist criminologists (although they were interested in these differences not because they justified different levels of desert, but because they suggested different types of treatment). (To some extent, positivist criminology can be seen as incorporating both the classical concern with rational crime control, and the neoclassical concern with individual differentiation.)

In general, the classical perspective contained a peculiarly narrow view of what it actually is that controls human behaviour. It was concerned solely with the formal legal apparatus and relied on a very specific mechanism of control (deterrence by making punishments proportional to crimes). I will be considering the empirical evidence on the effectiveness of this particular mechanism in Chapter 9. It has already been noted, however, that there is no particular reason inherent in the classical view of human motivation to assume that this is the only possible means of control. Beccaria just happened to think it was.

There was no consideration at all given to the possibility of disincentives operating in the informal social context, and a total neglect of social and economic incentives of all kinds. Leftist critics have suggested that this is because any consideration of the socio-economic context of crime would have proved an embarrassment to the classical position. Taylor, Walton and Young (1973), for example, argue that it would inevitably have raised unpalatable issues: that there are important socio-economic differences between people, and that these are relevant to crime causation; in other words, issues of *differentiation* and *social determinism*.

(inimical to the classical position) would have demanded attention. They suggest that the particular problem that confronted Beccaria was the observable fact that criminals were in one important respect clearly differentiated: they were mostly poor. This suggested poverty as both a cause and a rational reason for crime. They give (*ibid.*, pp. 5–6) an example of how Beccaria deals with this problem (in a discussion of theft):

He who endeavours to enrich himself with the property of others, should be deprived of part of his own. But this crime, alas! is commonly the effect of misery and despair; the crime of that unhappy part of mankind, to whom the right of exclusive property (a terrible and perhaps unnecessary right) has left but a bare existence. Besides, as pecuniary punishments may increase the number of robbers, by increasing the number of poor, and may deprive an innocent family of subsistence, the most proper punishment will be that kind of slavery, which alone can be called just; that is, which makes society, for a time, absolute master of the person, and labour of the criminal, in order to oblige him to repair, by this dependence, the unjust despotism he usurped over the property of another, and his violation of the social compact.

They interpret this as showing that Beccaria, through his commitment to a social contract that accepted the necessity of the inequities and poverty resulting from private property, was forced to overlook these as much more plausible reasons for crime than his own. Interestingly, Paolucci in his translation of Beccaria (1963, p. 74) (not the one used by Taylor, Walton and Young) adds the following footnote to the above passage:

in a manuscript of Beccaria's own hand as well as in the first edition, Beccaria had written 'a terrible but perhaps necessary right' – that is to say, quite the opposite of 'a terrible and perhaps unnecessary right,' as found here.

The 'original' actually fits Taylor, Walton and Young's argument rather better than the amended version they quote above which implies at least the *possibility* of poverty as a cause of 'rational' crime. Vold and Bernard (1986, p. 29) are critical of Taylor, Walton and Young for not allowing that Beccaria could see crime as being sometimes rational and justified. But they are being rather generous; whatever Beccaria may have privately thought or hinted at, he never developed his position on these matters. At most, it suggests that he lacked the courage of his more radical convictions, rather than being a straightforward conservative. Certainly, his intellectual position would not have been jeopardised by such an extension of his arguments. His version of human freedom and motivation could easily have included poverty as a 'rational' reason for crime; and there was no necessary reason for him to equate his social contract with the status quo as far as property relations were concerned (after all, he did not equate it with the status quo in many other respects).

In general, there was nothing inherent in Beccaria's intellectual position to preclude a consideration of the socio-economic context of crime, any more than there was to necessitate his sole concentration on deterrence that was remarked on earlier. Indeed, it is an oddity that he seemed to see the criminal justice system as being the only aspect of the environment that influences individual decisions about whether it is worthwhile to commit crime or not.

CJS
influence
ind. decision

Conclusion

A recent assessment of Beccaria has portrayed him as a cautious conservative who successfully redirected enlightenment thinking away from a potentially much more radical path: 'His sudden fame can be attributed to the relief of educated society that it was possible to hold rational "enlightened" views on human behaviour without having to accept radical materialism' (Jenkins, 1984, p. 113). Jenkins argues that enlightenment thinking in Beccaria's time was 'advanced': atheistic and deterministic ideas proposing that humans are determined by their social environment, that morality is relative and that the justification for the existing social order was consequently bogus, were being openly espoused. He uses William Godwin and the Marquis de Sade as examples. Beccaria's offer of a less radical alternative, says Jenkins, had the effect of postponing the positivist revolution for over a century.

It is true that Beccaria seems careful not to offend. The introduction to his book contains a strong denial that he is an atheist, revolutionary or opponent of sovereign rulers. But this is hardly surprising; such things could get you into trouble (his 'promoters', the Verri brothers, were already in trouble). It is also true that most people would look fairly conventional, even today, when compared with de Sade. What is rather more strange is that Jenkins should portray the postponement of the positivist revolution as being an anti-radical step. After all, when it did come it initially avoided these political problems by the simple device of locating the determinants of crime in the individual's make-up (and for that reason the early version of positivism has been a firm favourite with rulers and governments ever since).

Certainly, positivism did also produce social determinist critiques of the existing order. But then, as I have argued earlier, there was nothing in the basic assumptions of classicism that necessarily prevented it from being equally critical. In both classical and positivist criminology, it is the particular way their basic assumptions are interpreted and developed that establishes their political and ideological positions.

Despite all the problems that have been discussed in relation to the basic assumptions of classical criminology, I have emphasised that they have stemmed mostly from the way they were interpreted, and from their underdevelopment. The assumptions themselves have remained more or less intact, and in Part Two I will return to them in developing a 'postclassical' perspective.

Notes

- 1 In this section, references where only a page number is given are to Beccaria (1963).
- 2 For a useful summary and critique of arguments about the ideological and material forces behind the emergence of the prison, see Ignatieff (1985).
- 3 For a definitive discussion of these problems in the context of a more recent, positivist, attempt to abandon questions of the responsibility of criminals, see Kneale (1967).

2 Opposition: Positivist Criminology

In the space of approximately the last quarter of the nineteenth century positivist criminology 'developed from the idiosyncratic concerns of a few individuals into a programme of investigation and social action which attracted support throughout the whole of Europe and North America' (Garland, 1985a). If we interpret its principles in their widest sense, they were to dominate academic thinking about crime and its treatment until the 1960s. Indeed, when the academic discipline of 'criminology' is referred to it is almost invariably taken to mean only positivist criminology in this wider sense, with its extensive research and literature and established (though competing) theories.

There is a considerable number of textbooks which provide a run-through of positivist research findings and theories and it is not the intention to attempt yet another one here.¹ Rather, my aim is to look at the kinds of assumption that informed the various strands of positivist criminology, and at the way they differed from classical assumptions in both theory and practice.

In the previous chapter it was pointed out that both classical and neoclassical criminology had already incorporated some principles that were to be fundamental to positivism: classical criminology had insisted on practical crime control rather than retributive desert as the aim of punishment, and neoclassicism had allowed for the principle at least of 'determinants' of crime. But to the positivists these similarities were purely superficial, since in both cases there was an underlying assumption that was totally unacceptable to them: free will. In their view this had hopelessly inhibited the quest for the causes of crime in the case of classical criminology, and diverted attention away from social defence in the case of the neoclassicists (since the latter were only interested in 'determinants' of crime in so far as they reduced the offender's responsibility). Above all, the new positivists portrayed the existing penal process based on such principles as having failed to provide for the proper defence of society against crime – partly through pre-scientific wrongheadedness, and partly through a misplaced concern with the rights of offenders (Ferri, 1967).

The positivists' rejection of free will was fundamental to their position. They did not portray it simply as a change in philosophical stance, but as an outcome of the advance in scientific psychological knowledge. As Ferri (1967, p. 289), one of the founder-members, put it: 'The positivist physio-psychology has completely destroyed the belief in free choice or moral liberty, in which it demonstrates we should recognize a pure illusion of subjective psychological observation.' Garland (1985a) suggests that it was the advancement in the standing of 'scientific' psychiatry (together with developments in government statistical surveys and data and the provision, by the prison system, of a captive 'laboratory' for criminological research) that favoured the emergence of positivist criminology at this particular time. This, in turn, was part of what was seen at the time as the natural extension of scientific and technological principles from their successful application to the material and animal world to apply to human beings themselves. Humans could no longer be allowed any such privileged, mystical feature as free will to distinguish them.

The replacement of free will with scientific determinism was consequently the crucial starting point for the new positivist criminology. Before looking further at the way this assumption was developed, it would be useful to clear up a confusion that may arise in the use of the category 'positivist criminology'. In textbooks on criminology it has often been used to distinguish the specific school of thought of the original founding fathers of criminology: Lombroso, Garofalo and Ferri. But it has also been argued that the basic features of positivism applied to all causal theories of crime, whether biological (as in the case of the founding fathers), psychological or sociological, that were to appear over the next half century or more (Jeffery, 1960; Matza, 1964).

In order to clarify the two uses of 'positivist criminology', it might be helpful to use the term 'biological positivist' to distinguish the founding fathers from the more general category. However, one of the aims of this chapter is to see if there are the significant continuities that have been claimed. To do this, it is first necessary to see if it is possible to agree on what the crucial principles are that characterise both the original biological positivists and the proposed wider category. Fortunately, this does not appear to be too difficult: Garland (1985a), who has provided a pioneer account of the emergence of the biological positivists, would, I think, agree with Jeffery and Matza on the following: *(determinism, differentiation and pathology.)* These three features also appear to distinguish it from classical criminology (although I will reconsider the distinction later).

Determinism, in the more general positivist sense, means that crime is seen as behaviour that is caused by biological, psychological or social factors, depending on the academic origins of the criminologist concerned. On this view crime does not consist of actions, rationally chosen by the 'criminal'.

Differentiation refers to the positivist assumption that there is something (preferably measurable) different about criminals; they may be seen as differing from non-criminals in terms of their biological or psychological make-up, or in terms of their values, again according to the academic origins of the criminologist.

concerned. There may also be sub-categories of criminals committing different types of crime caused by different types of factors.

Pathology means that criminals are not only different from non-criminals, but there is also something 'wrong' with them. Their different make-up or values are not simply variations of the 'normal'.

Before considering how (and how far) these three features are actually manifested in the different positivist theories, there are two other contingent and inter-dependent features that Jeffery (and Matza following him) pick on as of central significance to the positivist programme: the shift of focus from *crime* to the *criminal*, and the quest for a universal, objective category of 'criminal' behaviour.

It was natural that the original biological positivists should focus exclusively on the criminal, since they were committed to the view that the causes of crime were to be found in the individual's biological make-up. But Jeffery (1960, p. 377) goes much further:

The importance of the Positive School is that it focussed attention on motivation and on the individual criminal. It sought an explanation of crime in the criminal, not in the criminal law. This is true of every theory of criminal behaviour which is discussed in the textbooks today, even though the explanation is in terms of social and group factors rather than in terms of biological factors . . . The emphasis is still upon the individual offender, not the crime.

What Jeffery (and Matza, who quotes Jeffery in support of his own position) are pointing to here is that whatever positivists chose as the causes of crime, even when they were 'external' such as 'social and group' factors, they always excluded the nature and operation of the criminal law from consideration; such things were simply not taken to be implicated in the process of causing criminal behaviour.

Because positivists were seeking general theories of behaviour to explain crime, they also required 'crime' to be a universal, objective category of behaviour. As Jeffery points out, this meant that the *legal* category was unacceptable since it was too obviously variable over different time periods and between different societies. Positivists, of all varieties, have consequently been caught up in an endless quest for a universal, objective but non-legal concept of 'crime'. The original biological positivists mostly settled for Garofalo's concept of 'natural crime' – 'an act that offends the moral sentiments of pity and probity in a community'. Needless to say Jeffery, and many others, have had little difficulty in showing how all such attempts have inevitably boiled down to the arbitrary moral predilections of the criminologists concerned.

The positivist attempt to disengage itself from legal conceptions of crime and the operations of legal processes generally, clearly marked it off from classical criminology. Jeffery (1960, pp. 367–8) draws an interesting conclusion from this, which echoes one of our concerns in the last chapter:

the positivistic notion of crime is susceptible to corruption in the hands of corrupt political officials. The fact that Ferri became a member of the Fascist movement

in Italy is of concern to those who regard civil liberties as a fundamental aspect of criminal law. Whereas for Beccaria individual rights are supreme, there are no safeguards against abuse of state power in the work of Garofalo and Ferri.

Garland (1985a, p. 129) has made a similar point: although both classical and positivist criminology incorporated a conception of the relationship between the individual and the state, he sees the positivist version as 'moving from a liberal mode to a more authoritarian, interventionist one', at least in the case of the early, biological school. Such arguments perhaps illustrate the extent of the fall from grace to positivist criminology in recent years. Not only, apparently, was it based on a misguided assumption about the nature of human action, but it also stands accused of paving the way for nefarious political ideologies!

Such a contrast between classicism and positivism seems rather generous to Beccaria. As we saw in the last chapter, he, too, believed in the possibility of an objective category of crime which was not necessarily the same as that defined by the existing criminal law, and its source – the reason of the 'few thinking men in every nation' – seems just as elitist and potentially authoritarian. Indeed, as we also saw in the last chapter, one recent writer (Jenkins, 1984) portrays Beccaria's postponement of the positivist revolution as being anti-radical and supportive of existing authoritarian rulers. Perhaps these contradictory interpretations illustrate the dangers, to which I alluded in the earlier discussion, of assuming an automatic association between classicism and positivism and specific political ideologies.

In general, however, classical and positivist criminology were at almost opposite poles in their views of the significance of the criminal law and its operation; for classicism it was virtually everything, for the positivists it was virtually irrelevant. Garland has argued that the reason why the early, biological positivists had the extraordinary ambition of arriving at a theory of the causes of crime where both the theory and the category of behaviour it was explaining had nothing to do with the criminal law, was that they were also engaged in a struggle to assert themselves as a 'new' profession of penal experts against the 'old', legal profession. But, as Jeffery and Matza rightly point out, this exclusion was to characterise all subsequent positivist criminology. It was also, as we shall see later, to prove to be one of its greatest weaknesses.

The Causes of Crime

Having outlined the key features that have been used to distinguish positivist criminology, in its wider sense, it remains to consider the manner in which they have actually been manifested in the different causal theories that have been proposed. What all the theories have in common is the fundamental assumption that criminals are different from non-criminals in that they have a more or less enduring disposition towards the commission of crime and that this disposition is explicable in terms of 'causes'. However, even in this basic assumption, all had to acknowledge a problem: not all crime is committed by such people; a proportion has

to be attributed to 'ordinary' people acting on a casual or occasional basis, or in response to extraordinary circumstances. Even the 'hardest' determinists, such as the earliest biological positivists had to allow themselves this let-out.

It is in the proposed causal origins of this enduring disposition towards crime that the different theories diverge. Most of them fall into one (or sometimes more) of three categories in this respect: the disposition is seen as being *inherited, acquired* or *invented*. The choice usually (but by no means always) corresponds to whether the theorist concerned was a *physiological psychologist, non-physiological psychologist* or *sociologist*, respectively – which in turn tends to be associated with the causes being located in the *biology, psyche* or *values* of the individual.) In the first two cases, this has also usually meant that criminals are seen as being distinguished by biological or psychic features which are identifiable *separately* from the disposition towards crime (although they are causally implicated in it). That is, they are seen as falling into specific biological or psychological (for example, 'personality') categories which include features other than the criminal disposition. This is not usually the case with the third category: here, criminals are seen as being distinguishable *only* by their (pro-crime) values.

I will not be considering 'control' theories here. This is because although they are usually regarded as an important branch of positivist theorising, they also have much in common with the classical tradition. My aim, later, will be to try to bring them even closer together. For this reason, they will be introduced as part of the 'reassessment' of classicism, in Chapter 3.

Inheritance

If the criminal disposition were inherited then, ideally, we would be able to point to a specific chromosome which was invariably associated with criminal behaviour. Needless to say, this has never been the case, although in the 1960s much excitement was temporarily generated by what appeared to be a relationship between the possession of an extra Y chromosome and persistent crime (see Hall Williams, 1982, Chapter 2). This particular example demonstrated a common pitfall of this kind of positivist criminology: even if all the possessors of the chromosomal anomaly had turned out to be persistent criminals (in the event, they did not) then it would still only have been capable of 'explaining' a fraction of 1 per cent of recorded crime, simply because the condition was so rare. It would indeed have defined a biological category of criminals, but as an explanation of crime in general it would have been virtually irrelevant.

Usually, the supposed relationship between inheritance and crime has been inferred from experimental methods designed to distinguish between the effects of heredity and environment. Until fairly recently the most popular technique was to compare the 'concordance rate' of monozygotic (MZ) twins (who have identical inheritance), with that of dizygotic (DZ) twins (who do not). Perhaps the most celebrated user of this method has been Eysenck (1977) in his theory of crime. The method has always been widely criticised, mainly because of its basic assumption

that the effects of environment are equally similar for both types of twin. For this and other reasons, more recent approaches, even those favourably disposed to the idea of criminal inheritance, have tended to reject the twin method as unsound and to rely instead on adoption studies (Ellis, 1982). The assumption here is that if 'inheritance' is a factor then adopted children should be more similar, in their criminality, to their biological than to their adopting parents. There has been a fairly consistent finding in such studies that this does tend to be the case.

However, as Jencks (1987) has pointed out, intriguing as the adoption studies findings are, they are of no practical interest unless we know why they arise – and at present we do not. More importantly, such findings are entirely compatible with an environmental explanation of crime 'since genes can influence behaviour by influencing the environment' (ibid., p. 34). That is, whatever it is that is inherited may cause crime because it alters the way in which the person who inherits it is treated by others. One of the examples that Jencks uses to make this point is that of IQ. If IQ were entirely inherited (a contentious assumption) and if IQ were related to crime (many studies have found that low IQ is), this would be perfectly compatible with an environmental explanation: it could well be that people with low IQ are treated unfavourably by others and this unfavourable treatment makes them more likely to commit crime.

What Jencks's argument makes clear is that inheritance theories are only of practical value when the inherited characteristic is specified, together with the way in which it actually operates to produce criminal behaviour. Various other studies have, however, attempted to do this; the usual technique has been to suggest that it is a particular psychological characteristic that is inherited and which leads 'naturally' to crime. That is, they tend to be 'crime-prone personality' theories.

This description applies, for example, to the founding fathers of positivist criminology, the biological positivists. Lombroso, the originator of this school, is famous for his theory that criminals can be picked out by inherited physical stigmata (cranial deformities, excessive body hair, and so on). But these features were obviously not the 'causes' of crime, they were merely signs that supposedly enabled us to spot criminals. Their causal theory was in terms of 'atavism': that is, criminals were genetic 'throwbacks' to more primitive human forms. The fact that Lombroso's stigmata turned out to be no more common among criminals than among any other section of the community (see Wolfgang, 1960), although often thought to be a refutation of his theory, is in fact not crucial to it. His causal explanation relied on two factors: that primitive humans were all criminals (even in terms of the definitions of crime operating in nineteenth-century Italy) and that contemporary criminals (or an important section of them) were genetic throwbacks to these primitives. Needless to say, despite Lombroso's commitment to 'science', he did not provide any evidence to support this preposterous assumption, nor could he have done.

But Lombroso laid down the foundations of most of what was to follow in genetic theories of crime. Even the idea that criminals are physically distinguishable has continued to be pursued to the present day (Hartl *et al.*, 1982), although it later took

the form of relating types of body build to personality types. Eysenck, for example, incorporated this idea into his theory and he has probably been the most influential proponent of the genetic strand of positivist criminology in recent years. Eysenck claims that criminals tend to rate highly on two personality characteristics – extroversion and neuroticism – both of which he sees as being predominantly inherited. Various features of these personality characteristics relate to crime, the most important being extroversion's association with a resistance to being 'conditioned' out of various forms of behaviour. A notable feature of Eysenck's theory is his starting assumption that we are all 'naturally' criminal, in line with that of classical criminology. However, in his version we are 'normally' conditioned out of this; his theory still contains the positivist assumption that criminals are different from non-criminals (and 'pathological') – in this case through their abnormal resistance to the conditioning process.

Eysenck's theory depends on a high correlation between criminality and particular personality characteristics identified by personality tests. In this respect, it is part of a very broad category of positivist criminology indeed. The quest for identifiable crime-prone personality types has included learning theorists as well as hereditists, psychoanalysts ('anti-social' or 'affectionless' personality theories), and studies not concerning themselves with the question of how such types come about. A common instrument is the 'personality inventory', of which the Minnesota multi-phasic personality inventory (MMPI) is an example. Various surveys of such studies, over a long period of time (Schuessler and Cressey, 1950; Hood and Sparks, 1970; Hindelang, 1972; Feldman, 1977) and covering various categorisations (including Eysenck's), have not suggested widespread agreement on clear-cut categories covering significant proportions of offenders, although various relationships have been found. Further doubt has been thrown on such findings when validity tests have been included (Rathus and Siegel, 1980).

An additional problem that has dogged personality theories is that of tautology; if the categories are to mean anything, they must not be identified *only* by the fact that the people who fall into them tend to commit crimes. This sometimes occurs in a disguised form. An example might be the psychoanalytic theory that 'anti-social' behaviour is caused by failure to develop the superego, where the superego is defined as the faculty that inhibits anti-social behaviour. Tautology also appears to occur sometimes in personality inventories where the 'characteristics' can be boiled down to 'attitudes favourable to the commission of crime' (or 'anti-social' acts); that is to say, 'criminals are people who hold pro-crime values'. However, this is not as tautological as it seems, since it implies a relationship between values and action that is problematic, as we shall see later.

All these problems seem to have made the criminal personality difficult to track down. Thus Wilson and Herrnstein (1985), in their generally sympathetic analysis, conclude that there is probably no such thing. However, they suggest that two *personality traits* have emerged as consistently associated: impulsiveness (lack of ability or desire to defer gratification); and undersocialisation (lack of regard for feelings of others). But there is perhaps a more fundamental problem here:

- ✓ establishing personality traits or types that are related to crime does not constitute an explanation; it is the way such traits and types come about, and how they lead to crime, that provides that.) And they come about through inheritance, acquisition or invention. Attempting to describe the outcome of these processes in terms of 'traits' or 'types' does not really seem to help the explanation very much.

Acquisition

- If the tendency towards crime is not seen as being already determined at the point of conception through the genes we inherit, then the obvious conclusion is that it must be subsequently acquired in some way. Positivist theories under this latter heading have taken two quite different forms: the acquisition is through the occurrence of some physical damage (or illness); or it is through learning.

The idea that criminality is the outcome of organic disorder or disease goes back at least as far as Lombroso, who associated crime with epilepsy. In his case, of course, such disorders were presumed to be predominantly inherited. Thus mental disorders as causes of crime in fact straddle both acquisition and inheritance, since the origins of such disorders have always been, and continue to be, a subject of intense debate. Either way, however, the issue need not detain us long. Despite popular beliefs and well-publicised particular instances, all serious analysts agree that the association between specific mental disorders (whatever their origin) and crime is extremely limited (see Hall Williams 1982, Chapter 3). Furthermore, if crimes are clearly established as the outcome of mental disorder they are no longer 'crimes'. For unlike other supposed causal determinants of crime, mental disorder has been accepted by most criminal jurisdictions as taking away some of the fundamental elements that constitute an act as a crime. In other words, to the limited extent that mental disorder explains particular crimes, it denies their very status as crimes. (Rather than explaining crime, mental disorder redefines it as something else.)

Learning theories have been much more important in positivist theorising about the acquisition of criminal tendencies. Sometimes, however, there is a problem in distinguishing 'learning' theories because they can easily become all-embracing. In its widest sense, learning has been taken to mean changes in people's behaviour, knowledge, beliefs, motives, and so on, brought about as a result of their experiences. With such a wide definition, it might be more useful to consider what this leaves out, rather than what it includes – which gets us back to the categories I am working with here: it excludes inheritance and invention.

Distinguishing inheritance from learning is, I think, no problem: the definition of learning, even in its widest sense clearly excludes it (some learning theorists allow inheritance to play a part as well as learning but that, of course, is a different point).

Distinguishing invention presents much more of a problem. By invention I mean behaviour, values, beliefs, and so on, that come about through 'internal' processes of thinking and working out rather than through imitating or mechanically responding to external stimuli. The problem is that these internal processes are

bound to be influenced by the person's experiences; it would be unreasonable to think of them as being entirely autonomous. Also, some learning theorists (other than behaviourists) allow learning to be an interactive process, involving these internal events. These considerations tend to blur the distinction somewhat. Consequently, I would like to suggest the following working distinction: learning refers to actions, beliefs, and so on, that come about either through direct imitation of others, or as a conditioned response to punishments and rewards; invention refers to actions, beliefs, and so on, that result from internal processes of thinking and working out solutions to problems (though acknowledging that such processes are influenced by the individual's experience). (The difference is in the degree to which internal, cognitive processes are seen as being involved in producing the response.)

The most famous of criminology's learning theories, differential association, highlights some problems that result from this uneasy relationship between external and internal factors that have been used to distinguish learning from invention. Originated and developed by sociologists (Sutherland and Cressey, 1970) the theory was clearly intended to incorporate interactive and internal, cognitive processes. But because this left it so generalised as to sometimes appear to be saying hardly anything at all, it was open to imperialist take-over by more established, but much more mechanistic learning theories such as behaviourism.

Differential association starts with the observation that we all grow up in environments where we receive, from our associates, definitions both favourable and unfavourable to the acquisition of the motives for and the techniques to commit crime. The theory states that if we receive an excess of definitions favourable over those unfavourable, then we will commit crime. It allows that some definitions will be of greater 'priority and intensity' than others and this has been taken to imply that the definitions will differ in their subjective interpretation by those who receive them (see Taylor, Walton and Young, 1973). But this causes problems from the hard-line positivist point of view: if 'definitions' can vary in terms of such nebulous things as subjective meanings, how can they possibly be counted and measured? In a study attempting to utilise the theory, Cressey (1953) concluded that they probably could not be.

Cressey (1962) himself saw that the lack of specificity on the actual process of learning was a problem with the theory, but pointed out that Sutherland had left it open to clarification in the light of future developments in learning theory. Perhaps inevitably, this left it open to attempted incorporation by behaviourist psychology: Burgess and Akers (1966) provided a translation of differential association into the language of behaviourist 'reinforcement' theory. All this achieved was to take on the even more serious problems of behaviourism itself.² Taylor, Walton and Young (1973) were highly critical of this example of behaviourist imperialism and claimed that the exclusion of all reference to subjective mental events which the take-over bid necessarily entailed was entirely alien to the whole spirit of differential association. Although this is true in relation to the intellectual background from which both Sutherland and Cressey were writing, it is nevertheless the case that Cressey, in particular, was sufficiently part of the positivist tradition to be interested

in a precise, quantifiable theory which did not automatically rule out such mechanistic approaches. The commitment to a *learning theory* which explained all crime clearly required the specification of empirically identifiable learning processes if it was to progress beyond the simple assertion that crime is learned.

In practice, it is difficult to see how learning theories could explain crime without any reference to invention. If crime is learned from others (as differential association proposes) where did it come from in the first place? Presumably, in the distant past, somebody must have invented it (in the sense that I have defined invention earlier). But if someone in the past was capable of inventing it, why cannot other people be inventing it now? In other words, to solve the 'origins' problem of learning theories it is necessary to propose an invention theory which then becomes an equally plausible explanation of all crime. To take a specific example, Lemert's (1958) study of cheque forgers found that they had not, typically, associated with other cheque forgers or people favourably disposed towards it; cheque forgery had not been handed down from some primeval inventor. The inescapable conclusion was that people were continually managing to think it up for themselves.

The idea that we are influenced by our environment, especially our social environment (family, friends and associates) seems unexceptionable. The problems seem to arise when this relationship is couched in terms of a 'learning theory'. The more literally this is interpreted the more it seems to lead into mechanistic, one-way formulations such as behaviourism. The more open it is to cognitive, interactive and voluntaristic elements, the more misleading seems the whole vocabulary of learning theory as a means of describing it. Differential association is a good illustration of these two contradictory tendencies. The positivist learning theory side of it did, despite protestations to the contrary, make possible the intrusion of the likes of Burgess and Akers. Its voluntaristic side, influenced as it was by the ideas of G. H. Mead, had more affinity with the analyses of the acquisition of motives, techniques, and so on, that were to characterise the 'symbolic interactionist revolution' of the 1960s. However, as we shall see, this revolution represented not only a movement away from the strict tenets of learning theory, but away from the assumptions and concerns of positivist criminology itself.

Invention

Some learning theories (differential association was an example) moved away from the idea of criminals being identifiably different kinds of people: their criminal behaviour was seen as being acquired in much the same way as any other behaviour was acquired; it did not require any special, predisposing characteristics for it to happen to particular people. On this view, criminals are still 'differentiated' – but only in terms of values, motives and skills favourable to the commission of crime, and these could be acquired by anyone given the right circumstances. This view characterises most sociological explanations of crime, including those that fall into the third category of causal explanation: invention.

In the previous subsection I distinguished invention from learning by stressing

the extent to which the former involves internal processes of thinking and working out solutions to problems. In this sense invention seems to imply that crime is the outcome of the kind of rational decision-making that is associated with the classical criminological view (and I will suggest later that it is much the same idea). But sociological explanations of this kind have nevertheless been incorporated into the general category of positivist criminology because of their implication that the invention is not freely made but forced: some problem confronted by individuals in their environment pushes them out of convention and into crime. As in the case of learning theories, it is the compelling, determining influence of the individual's environmental experience that provides the link with positivism (though in the case of invention some room is still left for internal, cognitive processes in arriving at the solution).

By far the most important problem that has been selected as providing the push into the invention of crime has been thwarted conventional ambitions – Merton's (1938) 'anomie' theory and the 'delinquent subculture' theories of Cohen (1955) and Cloward and Ohlin (1960) being the most influential examples. In anomie theory the impetus that pushes people into crime is that the ambitions for status and pecuniary success that they share with everyone else are thwarted by the restrictions on the opportunities to achieve them that result from low socio-economic status. They are consequently forced into cheating. Delinquent subculture theory locates the impetus more specifically in the social setting of lower-class adolescent males (who were shown to be the most crime-prone by official statistics): they are disadvantaged in their quest for status and achievement (defined by conventional agencies such as the school) and consequently construct their own, alternative criteria. They use delinquent criteria in order to distance themselves as far as possible from conventional ones, and hence insulate themselves from a sense of failure. In all cases the lower-class 'victims' are pushed from a natural state of conformity into a state of delinquency by the relative lack of availability of conventional means to achieve conventional goals. Delinquent subculture theory, with its emphasis on a collective solution to the problem, also allowed for social learning to augment and expedite the generation of delinquent values.

The basic themes established by these four writers stimulated a truly enormous literature which dominated sociological thinking about crime in the 1950s and 1960s. Again, it is not my intention here to review the variations and criticisms in detail – this has been done many times elsewhere.³ Rather, I would like to consider some of the more fundamental problems that are connected with the general nature of 'sociological positivism' and its relation to classical criminology.

One problem of these theories was, strangely enough, the obverse of the problem with the biological and personality-type theories. The latter, it may be remembered, tended to generate categories (for example, biological or personality types) that could only possibly incorporate small amounts of criminal behaviour; that is, they explained too little crime. The sociological theories, on the other hand worked with categories that explained too much crime (what Matza, 1964, called the 'embarrassment of riches' problem). This is because they relied on features

common to the whole of the lower class (restricted legitimate opportunities); these were very common, crime relatively rare. Even the weaker version – that the theories simply implied a relationship between low social class and crime – came later to be dismissed as an artefact of class-biased law enforcement (however, the argument about the relationship between social class and crime is a complex one to which I shall be returning in Part Two). Actually, the 'embarrassment of riches' problem boils down to the same failing as that of the biological and personality-type theories: they both produced categories that were, apparently, far too weakly related to crime to be worthy of a 'positivist' discipline.

It seems perfectly reasonable to assume that people who frequently commit crime hold 'pro-criminal' values. For delinquent subculture theories this assumption was vital; the term itself defines a different ('sub')culture from the host culture, the difference being that the 'subcultural' values are 'delinquent'. Perhaps because it seems so obvious, the theorists did not bother to try to find out whether delinquents did in fact hold delinquent values, but concentrated more on explaining how these values came about. When Matza (1964) did enquire into the matter (using his attack on subcultural theory as a basis for attacking positivist criminology generally) he found it simply was not the case: on the whole delinquents seemed to hold very conventional values. Oddly enough, given that this was part of an attack on positivism generally, Matza used the traditional tool of positivism (the questionnaire) to make the point. However, he did not use it very well – not bothering with a control group, for example (perhaps this was his concession to anti-positivism). Later, more rigorous studies (Hirschi, 1969; Hindelang, 1974) complicated the picture; delinquents were predominantly conventional in their values, but were less so than non-delinquents. But the problem was still there; even in relation to this seemingly most obvious of variables, the differentiation of criminals from non-criminals, which was so important to positivist criminology, failed to stand out adequately.

The theme of thwarted conventional ambitions that was essential to both anomie and delinquent subculture theories implied that criminals and delinquents suffered from a 'gap' between their aspirations and expectations, and the existence of such a gap came to be taken as the measure of the validity of the theories. Unfortunately it almost invariably failed to materialise; delinquents seemed to be, if anything, even more 'realistic' in their aspirations than non-delinquents (see, for example, Hirschi, 1969). Part of this problem seemed to stem from the fundamental assumption of such theories that everyone is, initially at least, conventional (the opposite of the assumption of classical criminology). This required some disturbance ('strain' as Hirschi calls it) – such as the 'gap' – to push them out of convention and into crime. It was the reversal of the classical position that was causing the problem. Yet in other respects, as was mentioned earlier, anomie-based 'invention' theories seemed to have much in common with classical criminology in their assumptions about human behaviour. In Part Two I will suggest that if they are pushed a little closer to the classical position, via some judicious reinterpretation, the problems dealt with above are eased considerably.

Positivism and Penal Treatment

One of the features by which positivism was characterised earlier was its inclusion of the idea of 'pathology': not only was crime seen as obviously wrong, but there was also something wrong with the people who did it – for example, in their biology or personality. In the sociological theories the pathology was to some extent transferred from the make-up of individual criminals to their social settings, although there was still an individual manifestation of that pathology in their pro-criminal values. For positivist criminology, as with its classical predecessor, crime was clearly a problem that begged a solution. The shift of focus from the crime to the criminal, however, seemed to be accompanied by a diversion of attention away from specific considerations of appropriate penal treatments. For most positivist criminologists such concerns were often left to an appendix to their main causal concerns, or omitted altogether. This was partly because it was felt that a true understanding of the causes of crime was necessary *before* a clear corrective programme could be enunciated and that point, of course, was never quite reached – 'more research' was always needed. Also, deriving cures from causes is not as straightforward as it might seem: sometimes the causes are factors that are not very readily manipulable.

Although the original biological positivists' work was overwhelmingly concerned with the causes of crime, they *were* associated with a particular penal programme as well. Or rather, they laid down specific principles that were to be more or less taken for granted by subsequent positivists. Penal practice was another area that they wanted to make 'scientific'. As we have already seen, this involved the abandonment of the metaphysics of freedom, responsibility and desert in favour of the practical objectives of reformation, prevention and the protection of society. Their specific programme was derived from their conception of the causes of crime. In their later writings they had been forced to acknowledge, in the light of much critical evidence, that their biologically determined criminal was only one of a variety of types: their theory had become eclectic and multi-factorial. Consequently, a variety of reformative treatments were necessary to suit the different requirements of different types of offender. Treatment was to be *individualised*, based on scientific assessment and classification. Ferri (1967, p. 443) proposed three principles:

- (a) An equilibrium of right and protection must be established between the individual to be judged and the society which judges in order to escape the exaggerations . . . introduced by the classical school, which failed to distinguish between dangerous and not dangerous, atavistic and evolutive delinquents.
- (b) The duty of a criminal judge is not to determine the degree of moral responsibility of a delinquent but his material guilt or physical responsibility, and this once proven, to fix the form of social preservation best suited to the defendant according to the anthropological category to which he belongs.
- (c) Continuity and solidarity between the different practical divisions of social defence from the judiciary police to sentence and execution.

The first principle reiterates a point made earlier: although they favoured reform rather than punishment, this was not for humanitarian reasons. They saw the mixture of deterrence and retribution that characterised neoclassical criminology as too soft – favouring criminals' rights at the expense of the protection of society. Garland (1985a) notes three themes in their programme: reform, prevention – and extinction; those who could not be reformed were to be eliminated.

The biological positivists did not, however, involve themselves in the detailed specification of penal treatments. And subsequently, the practical discipline of 'penology' tended to become separated from 'criminology proper'. To some extent this reflected the accepted division between 'science' and 'policy-making' as intellectual activities; policy-making involved value judgements, and these were simply not appropriate to the 'objective' scientist. This was particularly the case with sociological theories where such judgements were, inevitably, politically loaded.

Wilson (1975) has suggested another reason for the division between positivist criminology and penology: the causal variables that were proposed related to areas that were difficult to change – especially with the limited powers and resources available to penal practitioners. Genetic make-up, early childhood socialisation, class divisions and inequalities of opportunity are things which we either do not know how to change, or would involve a degree of social and economic transformation which is very unlikely to be embarked on in the name of reducing crime.

Good examples of intractable causal variables are those that relate to genetic make-up. The biological positivists could only propose indeterminate detention or extinction for such categories of offender. Their forced accommodation to the existence of a wide range of non-genetic categories saved them from being solely associated with such a negative approach. However, since these latter categories were derived from lay 'common-sense' beliefs rather than the scientific rigour they advocated so much (see Wolfgang, 1960; and Garland, 1985a), their specific reformative recommendations tended not to amount to very much either. Interestingly, Eysenck (1977) seems to encounter the same kind of problem. At the end of a book almost entirely devoted to arguing for a strong genetic component in the causes of crime, he turns his attention to the contemporary 'crime wave' and what should be done about it. He concludes that changes in genetic factors obviously cannot explain the crime wave. Rather, it can only be explained in terms of a massive decline in the quality of conditioning of children: 'We live in an era of permissiveness and thus have largely abandoned all attempts to inculcate standards, values and "conscience" into our children' (*ibid.*, p. 209). The cure is a return to the traditional values of discipline in the home, school, and so on. Like the biological positivists before him, after a long treatise devoted to 'scientific rigour' he suddenly turns, at the crucial point, to unrigorous lay belief.

Generally speaking, however, those psychological theories that have located the cause of crime in problems in early childhood 'socialisation' have tended to have closer links with both penological thinking and practice. They also tend to be

associated with more specific therapeutic practices, derived from the tenets of the particular psychological theory; for example, psychoanalytic theories are associated with various forms of psychotherapy, and behaviourist-type theories are associated with different versions of conditioning. And the more general view that the causes of crime are located in problems in early family relationships has, of course, been incorporated into most criminal jurisdictions.

The relationship between sociological theories of the causes of crime and theories about its treatment is much more tenuous. Because these theories stressed social structural features such as inequality of opportunity, proposing cures involved entering into political debate, endangering the theorists' stance as objective scientists 'just giving the facts'. They consequently tended to be rather coy about drawing corrective conclusions from their theories. Merton (1938), for example, does not conclude his exposition of anomie theory by proposing a solution (though he gives enough away elsewhere for Taylor, Walton and Young, 1973, to see him as favouring a 'meritocratic' solution). Cohen (1955) devotes only three pages to the control of delinquent subcultures and states that 'from a diagnosis of a social ill, even a correct one, the "right" solution does not leap to the eye in any obvious way' (*ibid.*, p. 177). The rest of his discussion in these few pages is about how all sorts of possible answers *could* be proposed, involving the 'balancing of social values'. Cloward and Ohlin (1960), in a highly influential work did not themselves draw any treatment conclusions (although their ideas inspired a major treatment programme). The key textbooks of sociological theories did sometimes conclude with a discussion of treatment implications, but often in the form of an analysis of existing provisions with occasional nods of approval or disapproval. A good example would be the many editions of Sutherland and Cressey (1970). In the course of their analysis they state the following:

Thus crime would be prevented by modifying those who can be modified, segregating those who cannot be so modified, correcting in advance of crime those who are proved to be most likely to commit crime, and attacking and eliminating the social situations which are most conducive to crime (*ibid.*, p. 608).

The most striking feature of this is its similarity to the ('reform, prevention and extinction') ascribed to Ferri earlier (except that the 'extinction' is replaced by the more moderate ('segregation')). However, Sutherland and Cressey do go on to include a consideration of poverty, unemployment, bad housing, and the like, under the heading of 'social situations which are most conducive to crime'. But, perhaps Taft: 'It is not the task of the criminologist to determine what is the major social good'.

It would be misleading to suggest that there was anything approaching a complete intellectual segregation between criminology and penology, even in their sociological versions. And where the two overlapped it is possible to discern a general acceptance of the basic positivist principles of individualised rehabilitation,

prevention and societal protection.) But there was a general reluctance on the part of positivist criminologists, especially the later ones, to draw clear-cut corrective conclusions from their causal analyses.

In the case of the sociological positivists, this reluctance applied even when they *did* become involved in the analysis of the operation of penal institutions – when the 'sociology of the prison blossomed in the 1950s and 1960s. In 1958 Clemmer's *The Prison Community* was reissued and, in the same year, Sykes's *The Society of Captives* was published. These two books initiated a substantial body of sociological research into the 'social world' of the prison.⁴ The focus was on the social relationships in the prison (especially the informal ones), prison culture, argot roles and the 'inmate code'. Despite this direct involvement with the penal process, the spirit was decidedly anti-correctionalist: the intention was to provide an appreciative understanding of the prison social world. Sometimes the findings were examined for their implications for the effectiveness of prisons in preventing recidivism (European Committee on Crime Problems, 1967), but this was a side issue: the sociology of the prison was not about devising effective treatment programmes. Anyway, the news was not good: the findings emphasised a resilient, informal inmate code based on anti-prison, anti-therapeutic values acting as a bulwark against the 'pains' and indignities of imprisonment. If anything, these studies had more in common with the avowedly anti-correctionalist 'labelling' theories of the later 1960s.

The basic principles of penal treatment that I have portrayed as running through most positivist criminological theorising, also became incorporated into penal practice. In Britain, this began to happen at about the same time as the emergence of positivist criminology – though, again, this is not to suggest any simple causal relation, in either direction (see Garland, 1985b). Nor must this process be exaggerated: as Bottoms (1983) has pointed out, by far the most significant development in penal practice this century, in sheer quantitative terms, has been the increased use of the fine – and this expresses classical 'deterrence-through-symbolism' rather than positivist principles. Nevertheless, the twentieth century also witnessed a significant movement towards the acceptance of the principles of assessment, diversity of provision, rehabilitation, segregation and prevention, into penal practice. (This had the effect of making the penal system available as a 'laboratory' for testing positivist principles of correction, as well as for providing the bodies for testing their causal theories.) The positivist commitment to the achievement of empirical goals such as causally relevant variables and effective penal treatments (rather than such nebulous things as 'justice' and 'desert') required it to be subjected to such empirical assessment. This proved to be one of the sources of its downfall: there came a point when failure to come up with the goods, rationalised by 'the need for more research', began to sound a little hollow and begged the asking of more fundamental questions. And this was what happened in the 1960s and 1970s – the subject of the next chapter.

Positivism and Classicism

At the beginning of this chapter it was suggested that the main features by which we can characterise the wider category of positivist criminology (and which also serve to distinguish it from classical criminology) are determinism, differentiation, pathology and the diversion of attention away from crime (and the criminal law) to the criminal. To conclude, it would be useful to reconsider these categories in the light of the preceding discussion.

Determinism and differentiation are inextricably linked in the positivist programme: the determinants are identified by the way they make criminals differ from non-criminals. Positivist causal theories stand or fall by the extent to which they are able to establish the existence of 'types' of human beings (whether in terms of biology, personality, or values) who are crime-prone. As we have seen, they had tended to fall – no such clear-cut categories seem to have emerged. The best that we seem to be able to say is that biological and psychological categories have tended to contain only a very small minority of offenders (as well as a significant proportion of non-offenders), while sociological categories have contained a large majority of non-offenders (and by no means all offenders).

Perhaps part of the problem is that far too much has been expected of positivist criminology or, alternatively, positivist criminologists have been responsible for fostering too grandiose expectations. In its most basic sense, determinism is only committed to the view that behaviour is the outcome of antecedent causes. It allows for a multiplicity of different causes acting in different combinations on different people in different situations (it even allows that every particular criminal act may result from a unique constellation of antecedent causes). On this view, we can only realistically expect positivist criminology to produce 'probabilistic' theories – associating variability of cause with variability of outcome; we should expect no more than loose associations between specified causal variables and criminal behaviour.

An interesting consequence of taking this much looser view of determinism is that it brings us much closer to the classical position. Classical criminology clearly allows for a loose association between antecedent variables and outcomes: the probability of crime varies according to the degree of rationality of individuals and the efficiency and consistency of the criminal justice system. The difference between this and the more probabilistic version of determinism is in what it is that is seen as being responsible for the 'looseness' of the association. In classical criminology it is our ability to make free choices and resist so-called causal pressures; in the determinist version it is the fact that there is an unknowable amount of other causal variables in play, pulling in varying directions. But, as Hook has pointed out (see Matza, 1964, pp. 10–11), in practice the two positions are virtually identical: both 'free choice' and 'unknown causes' manifest themselves in unpredictability. The 'free' person and the person who acts from an unknowable constellation of causes are difficult to distinguish; the problem of explaining their behaviour is, for all practical purposes, the same. To the extent that positivist

criminology incorporates a realistic, manageable version of determinism, it becomes compatible with its classical predecessor.

An example of the practical similarity between determinist and indeterminist positions occurred earlier in the difficulty that was encountered in identifying sociological 'invention' theories, such as anomie, as being in the deterministic, positivist tradition (where writers such as Jeffery and Matza have located them). 'Pure' invention is akin to 'pure' free choice. Yet as was noted, inventions, like choices, are always constrained by social experiential factors such as available opportunities and knowledge of alternatives; even the most ardent indeterminist would acknowledge such things (while still holding out for an irreducible residue of free choice). But this seems also to be the stance of anomie theory: the anomie individuals are clearly pushed and constrained yet, within those constraints, they manage to invent rational solutions (in the sense that these solutions come about through internal reasoning processes, rather than as an autonomic response). Admittedly, anomie theory accentuates the constraints rather more than would perhaps be acceptable to indeterminists, but this is simply a matter of emphasis rather than qualitative difference from a 'realistic' indeterminist position.

The important difference between sociological invention theorists and classicists is not so much in their ultimate stances on determinism, but in their assumptions about the nature and consequences of human motives, and in the degree to which they saw criminals as being differentiated from non-criminals. Anomie theorists and their subcultural followers reversed the classical position on these matters, and in doing so encountered serious problems. They assumed that we are all naturally motivated towards convention and require some force ('strain') to push us out of it. In turn, this implied that deviants should exhibit a 'gap' between their conventional aspirations and expectations, and should be clearly differentiated from non-deviants by their adherence to oppositional values (neither of which turned out to be the case).

As we have seen, classicism allows for a much more complex human relationship with deviance and conformity, with a natural, self-interested potentiality for both. Using this as a starting point, we would not expect the kinds of social pressure defined by anomie-type theories to force change from one finite state to the other. Rather, we would simply expect the relative demotion of conformity (in terms of both goals and means) as against deviance, because it offers less. There would be no reason to expect either the 'gap' or the clear commitment to deviant values that have been such persistent stumbling blocks for the traditional versions of these theories.

In Part Two I will suggest a way in which the important contribution that anomie theory makes to understanding crime can be reformulated in classical terms, much to its benefit.

The third defining feature of positivist criminology – pathology – is closely related to differentiation. In fact, as we have seen, it boils down to a moral evaluation of differentiation (rather than a 'scientific' finding): the differences that distinguish criminals are things that are deemed to have 'gone wrong' with their biology, psyche or values. As such, of course, it fails to the extent that the attempt to establish the

✓ differentiation fails. If criminals on the whole are not clearly differentiated from non-criminals, it is difficult to explain their crime in terms of something having gone wrong with them (except in the tautological sense that the commission of the crime itself represents something having gone wrong with them).

As in the case of classical criminology, positivist criminology embodied an assumption that there is some objective category of 'crime' that is obviously wrong and needs something done about it. Classical criminology did not assume that existing legal definitions of crime and the way they are enforced necessarily constitute this objective category. Similarly, as we saw, positivists tended to recognise the need for a category of 'crime' outside of the existing legal one. But in practice positivists almost invariably worked uncritically and unquestioningly with the products of the existing legal definitions; by default, they endowed them with an objective status. This, of course, stemmed from their general lack of interest in the significance of the criminal justice system – the final feature that distinguishes them from classical criminology.

The division seems almost complete: classical criminology focused entirely on the causal-corrective significance of the criminal justice system and ignored individual, social and economic factors; positivist criminology focused almost entirely on the causal significance of individual, social and economic factors and ignored the criminal justice system. The latter is not entirely true, of course: the sociologists of the prison did provide evidence of causal significance in the effects of imprisonment, as we saw (even if it was not, usually, their concern to do so). In neither case was the omission a necessary consequence of the intellectual stance of the two schools. We saw in Chapter 1 that there was no logical reason for classical criminology's omission of individual, social and economic factors. Positivist criminologists' omission of the causal significance of the operations of the criminal justice system is perhaps even more of an oddity: they sought causes of crime in the social world of the criminal, and yet omitted legal processes as being a significant part of that social world!

Although positivist criminologists ignored the causal implications of the criminal justice system, they were fairly uniformly associated with a specific corrective programme, even though this was not their primary concern. As was pointed out at the beginning of this chapter, they shared classical criminology's view that the purpose of penal practice was effective crime control. But their view on how this should be achieved was quite different: correction was to be an applied science whose goal, where feasible, was to be the rehabilitation of individual offenders (where it was not feasible, segregation or elimination, for the protection of society, was to suffice). But they tended not to become involved outside of their support for these very general principles. As we saw, this was partly because their stance of 'scientific detachment' precluded too close an involvement in matters of 'policy' and partly because the causes of crime that they generated tended to involve factors that were beyond the scope of penal practitioners. For these reasons they tended to be much less closely associated with the advocacy of specific legal and penal reforms than classical criminology was.

In Chapter 1 it was suggested that Beccaria may have felt inhibited in including economic and social conditions in his programme because of their dangerous political implications. The positivists seem to have tried to avoid this problem by, once again, adopting the 'scientific' stance. When they considered social and economic factors they saw themselves as detached scientists just 'presenting the facts' and not (as Taft (1942, p. 634) put it) aiming 'to determine what is the major social good'. So although positivist criminology did concern itself with social and economic conditions, in a way that classical criminology did not, it mostly ended up just as timid-looking as far as drawing 'corrective' conclusions was concerned.

It is tempting to conclude that perhaps there could be a complementary relationship between positivist and classical criminology – one providing the focus on individual, social and economic factors, the other on penal and legal ones. This seems particularly the case if we draw them closer together in their positions on determinism, along the lines suggested earlier. But before this could be contemplated, there are some more serious problems with the positivist stance that would have to be resolved – again relating to its neglect of criminal justice processes. For it was the complex machinations of these processes that provided the 'data' on crime and criminals that positivist criminologists used to build their theories. Their assumption that this could be ignored, and the data assumed to be objective representations of crime and criminality, was to prove to be one of their greatest weaknesses, as we shall see in the next chapter.

Notes

- 1 A reasonable cross-section of books assessing the range of positivist criminology would be provided by the following: Taylor, Walton and Young (1973); Downes and Rock (1982); Hall Williams (1982); Rutter and Giller (1983).
- 2 Still probably the best (and wittiest) critique of behaviourism is provided by Koestler (1970, Chapter 1). In relation to behaviourist criminology see Taylor, (1971, Chapter 4); and Halbasch (1979).
- 3 See Clinard (1964); Yablonsky (1962); Short and Strodtbeck (1965); Downes (1966); Patrick (1973) and Matza (1964).
- 4 In addition to Clemmer (1958) and Sykes (1958), see Cressey (1961); Cloward *et al.* (1960); European Committee on Crime Problems (1967); Mathieson (1965); Giallombardo (1966; 1974).