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Classical and Positivist

Some delinquent acts involve careful planning and calculated decision making. Potential benefits are weighed against possible costs—the chance of getting caught and punished, of damaging valued relationships, or of experiencing feelings of guilt. Do juveniles make a conscious, rational choice to get involved in delinquent acts, or is delinquent behavior a product of their backgrounds and experiences, over which they have little control? This fundamental question has long puzzled criminologists. The two sides of this question represent two primary schools of thought in criminology: *classical criminology* and *positivist criminology*. Each advances very different perspectives on the causes and control of juvenile delinquency. This chapter describes the central ideas that define each of these perspectives. We will also consider a contemporary version of classical thought, rational choice theory. In addition, we will examine the underlying debate that sharply divides classical and positivist thought: *Is delinquent behavior chosen or determined?*

Classical Criminology

Cesare Beccaria: On Crimes and Punishments

In 1764, at the age of twenty-six, Cesare Beccaria (1738–1794) published anonymously a short book entitled *On Crimes and Punishments*.¹ While its proposals about crime and justice were new and revolutionary, they clearly reflected ideas at the core of Enlightenment philosophy.² Beccaria's work was read widely and captured the attention of philosophers and “a large cross section of educated society,” including religious, political, and governmental leaders.³ In colonial America, for example, Thomas Jefferson and John Adams were well acquainted with Beccaria's work.⁴ His ideas enthralled some people and appalled others. By 1800 the treatise had been published in twenty-three Italian editions, fourteen French editions, and eleven English editions—three of which were printed in the United States.⁵

On Crimes and Punishments proved to be tremendously influential both philosophically and politically, and it has been identified as the driving force behind a variety of reforms in criminal law and justice in the nineteenth-century Western world. One hundred years after the publication of this work, one of the founders of the sociology of law, Emile Durkheim, proclaimed that “it is incontestably the case that it was . . . *On Crimes and Punishments* which delivered the mortal blow to the old and hateful routines of the criminal law.”⁶

Beccaria’s work is an excursion into social thought of **the Enlightenment**, a period of active thought and action from the mid-seventeenth century to the last quarter of the eighteenth century. The Enlightenment was characterized by the prolific expression of ideas that were “enlightened” by reason, science, and a respect for humanity. Enlightenment thought dug deep into religion, science, politics, government, and economics—few areas of life were outside its purview.⁷ Existing institutional arrangements were questioned, especially the concentration of wealth and power, and it was argued that improvement in the human condition was only possible through the application of new and diverse ideas, gained through experience and observation and guided by reason. Thus, the Enlightenment was reform-minded.

Beccaria was influenced greatly by the humanism of French Enlightenment thinkers and the scientific rationalism of English and Scottish Enlightenment writers.⁸ Consequently, *On Crimes and Punishments* is most often seen as an essay that argued for the development of humane and rational legal systems at a time when these systems were incredibly brutal, repressive, and arbitrary. In fact, the tremendous influence of this work is often stated in terms of its practical application for legal reform.⁹ The reforms that Beccaria advocated, however, did not deal with technical legal procedures—of which he apparently knew little—but with broader social and philosophic views toward crimes and punishments.¹⁰

Since *On Crimes and Punishments* is foundational to classical criminology, we will use passages from this work to identify four key components: will, utilitarianism, humanitarianism, and legal rationality. These elements cannot be derived with absolute certainty, since the essay is broad and sweeping, making it difficult to characterize and summarize. Also, Beccaria’s work is not noted for its logical development, consistency, or clarity of expression.¹¹ In fact, the translator of the first French edition actually rearranged sentences, paragraphs, even entire sections, in order to make the argument develop more logically—an action of which Beccaria apparently did not disapprove (though he never adopted these revisions in subsequent editions for which he was responsible).¹²

Will

Drawing from Enlightenment thought, Beccaria emphasized that individuals naturally pursue their own interests. In fact, Beccaria’s views on crimes and punishments build on the assumption that humans have a natural tendency for self-interest. Early in the essay he states: “No man ever freely gives up a part of his own liberty for the sake of the public good; such an illusion exists only in romances. If it were possible, each one of us would wish that the agreements binding on others were not binding on himself. Every man thinks of himself as the center of all the world’s affairs.”¹³

The classical notion of self-interest is usually referred to as **free will** and **hedonism**, in which individuals freely choose action based on a rational consideration of gains and losses, pleasure and pain, benefits and costs. However, Piers Beirne has argued that Beccaria’s concept of **will** is not composed of freedom of choice and hedonism alone. Rather, will also involves forces that directly influence human thought, motivation, and action, including passion, sensations, individual temperament, ignorance, and characteristics of the situation.¹⁴ Thus, the will to act includes both calculated choice (“free will”) and nonrational, deterministic influences (“determined will”).¹⁵ Upon a close reading of Beccaria’s work,

Beirne contends that the interpretations of classical thought that are usually offered overemphasize the role of rational thought and fail to acknowledge these deterministic forces that are woven more subtly through *On Crimes and Punishments*. Nonetheless, the classical notion of will points to a volitional element in human action, in which action is taken based on the consideration of self-interest. Rarely is this judgment perfectly logical and rational; rather, the decision to act is influenced by a person's perceptions, feelings, and surroundings, including opportunity and peer pressure.

Utilitarianism

Beccaria's views on crime and justice are founded on a concept central to much Enlightenment thought: the **social contract**.¹⁶ In fact, some philosophers of this era, including Hobbes, Locke, Montesquieu, Voltaire, and Rousseau, are sometimes referred to as "social contract thinkers."¹⁷ "Social contract" refers to the mutual agreement among individuals in a community to relinquish a portion of their individual freedom and self-interest in order to promote interpersonal peace, order, and stability. It is a "peace treaty" of sorts in response to the natural inclination of individuals to pursue self-interest (will)—a condition that Thomas Hobbes called the "war of all against all."¹⁸ Near the beginning of his treatise, Beccaria provides a summary of the social contract, which is foundational to many ideas that follow.

The Origin of Punishments and The Right to Punish. *Laws are the conditions by which independent and isolated men, tired of living in a constant state of war and enjoying a freedom made useless by the uncertainty of keeping it, unite in society. . . .*

*It was necessity, then, that constrained men to give up part of their personal liberty; hence, it is certain that each man wanted to put only the least possible portion into the public deposit, only as much as necessary to induce others to defend it. The aggregate of these smallest possible portions of individual liberty constitutes the right to punish; everything beyond that is an abuse and not justice, a fact but scarcely a right.*¹⁹

The goal of the social contract is to promote "the greatest happiness shared by the greatest number" of people, or what is referred to as **utilitarianism**.²⁰ With this utilitarian goal, Beccaria argued that crimes can be defined and classified in terms of the harm done to society.

The Measure of Crimes. *We have seen what the true measure of crimes is—namely, the harm done to society. This is one of those palpable truths which, though requiring neither quadrants nor telescopes for their discovery, and lying well within the capacity of any ordinary intellect, are, nevertheless, because of a marvelous combination of circumstances, known with clarity and precision only by some few thinking men in every nation and in every age.*²¹

Because people have a natural inclination to pursue self-interest and are unwilling to participate in the collective good (utilitarianism), society must have a mechanism by which the social contract can be enforced.²² Following the ideas of Enlightenment philosopher Thomas Hobbes, Beccaria believed that the proper role of government was to promote "the greatest happiness," but to do so in a way that poses the least possible limits on individual freedom and self-interest. Given this utilitarian goal of the social contract, the state has the obligation, responsibility, and authority to define crime and respond to it in a humane and rational manner. Most of the legal reforms offered in *On Crimes and Punishments* follow

from this logic and provide Beccaria's thoughts about how crimes should be classified in terms of seriousness and harm, and how systems of justice should respond to crime, especially the "utility" of punishment to deter crime.

Humanitarianism

On Crimes and Punishments deals mainly with what law and justice ought to be, instead of what law is—it is an "impassioned plea" for legal reform.²³ This emphasis on legal reform is often cited as the book's primary purpose.²⁴ Even critics who disagree with Beccaria's specific proposals for reform endorse his **humanitarian** mission.²⁵ Beccaria's arguments for legal reform are extremely wide-ranging, covering the need for codified and public laws, prohibition on the use of judicial torture to illicit confessions, the need for public trials, the use of witnesses and evidence, the role of jurors, and sentencing practices including imprisonment and the death penalty.²⁶

In tune with Enlightenment thought, especially that of French humanists, Beccaria addressed the cruelty and brutality of European systems of justice. In this regard, his observations were directed primarily at the practices of judicial torture (involving coercive interrogation of the accused to induce confession) and the use of capital punishment.²⁷ The treatise also speaks generally of the need for humane punishment and the need to pursue the ultimate goal of preventing crime. This humanitarian theme runs throughout the book. As David Young summarizes: "Beccaria maintained that a mild legal system is both useful, in that it is likely to win widespread approval, and just, in that it is most in accord with basic human rights."²⁸ Beccaria states this most directly in a chapter entitled: "Mildness of Punishment."

Mildness of Punishment. . . . *For a punishment to attain its end, the evil which it inflicts has only to exceed the advantage derived from the crime; in this excess of evil one should include the certainty of punishment and the loss of the good which the crime might have produced. . . .*

*The severity of punishment of itself emboldens men to commit the very wrongs it is suppose to prevent; they are driven to commit additional crimes to avoid the punishments for a single one.*²⁹

This humanitarian theme is also addressed near the very end of the book, where Beccaria argues that it is better to prevent crimes than to punish them.

How to Prevent Crimes. *It is better to prevent crimes than to punish them. . . . Do you want to prevent crimes? See to it that the laws are clear and simple, that the entire strength of the nation is concentrated in their defense, and that no portion of that strength is employed in their destruction. See to it that the laws favor classes of men less than it favors men themselves. See to it that men fear the laws and only the laws. The fear of the laws is salutary, but the fear of one man for another is a fertile source of crimes.*³⁰

Legal Rationality

Piers Beirne contends that there are two major themes in *On Crimes and Punishments*: the "right to punishment," that draws from utilitarianism and the social contract, and "how to punish."³¹ Beccaria devoted much attention to "how to punish" not only in an attempt to encourage more humane legal procedures and outcomes, but also to promote greater **legal rationality**. By this he meant legal systems that are founded on **statutory law**, in which law is produced from a legislative process and is codified—written down in a systematic manner. Statutory law should define crime, specify an impartial and efficient judicial

process, and stipulate punishment that is “measured” so that it deters future criminal acts. In this way, legal rationality fulfills the goal of utilitarianism: “the true foundation of the happiness I mentioned are security and freedom limited only by law.”³² This “rule of law” forces governments to operate in a rational and reasonable manner, especially when limiting individual freedoms in an effort to bring about the collective good.

According to Beccaria, law must be codified, public, and predictable. In his words, the law must be a “fixed legal code” that is clear and understandable.

*Interpretation of the Law. . . . When a fixed legal code that must be observed to the letter leaves the judge no other task than to examine a citizen’s actions and to determine whether or not they conform to the written law, when the standard of justice and injustice that must guide the actions of the ignorant as well as the philosophic citizen is not a matter of controversy but of fact, then subjects are not exposed to the petty tyrannies of many men. . . . With fixed immutable laws, then, citizens acquire personal security. This is just because it is the goal of society, and it is useful because it enables them to calculate precisely the ill consequences of a misdeed.*³³

*Obscurity of Laws. If the interpretation of laws is an evil, their obscurity, which necessarily entails interpretation, is obviously another evil, one that will be all the greater if the laws are written in a language that is foreign to the common people. This places them at the mercy of a handful of men, for they cannot judge for themselves the prospect of their own liberty. . . . The greater the number of people who understand the sacred law code and who have it in their hands, the less frequent crimes will be, for there is no doubt that ignorance and uncertainty concerning punishments aid the eloquence of the passions.*³⁴

The government’s “right to punish,” derived from the social contract and utilitarianism, requires that punishments be specified in the law. Beccaria points to this authority when discussing legal consequences.

*Consequences. The first consequence of these principles is that only the law may decree punishments for crimes, and this authority can rest only with the legislator, who represents all of society united by a social contract.*³⁵

The state’s authority to punish, established in law, must be carried out thoughtfully, with reason and purpose. The primary purpose of punishment is to deter individuals and the general public from committing crime.

*Purpose of Punishments. The purpose of punishment, then, is nothing other than to dissuade the criminal from doing fresh harm to his compatriots and to keep other people from doing the same. Therefore, punishments and the method of inflicting them should be chosen that, mindful of the proportion between crime and punishment, will make the most effective and lasting impression on men’s minds and inflict the least torment on the body of the criminal.*³⁶

Legal rationality also encompasses Beccaria's most famous ideas: in order to deter crime, punishment must be prompt, certain, and proportionate to the crime. In fact, much of the contemporary appeal of classical thought is derived from its emphasis on punishment. At the same time, Beccaria believed strongly that punishment must be humane. Just punishment requires only the minimum amount necessary to be proportionate to the crime and to deter future criminal acts.

Promptness of Punishment. The more prompt the punishment is and the sooner it follows the crime, the more just and useful it be. . . .

I have said that the promptness of punishment is more useful, for the less time that passes between the misdeed and its chastisement, the stronger and more permanent is the human mind's association of the two ideas of crime and punishment, so that imperceptibly the one will come to be considered as the cause and the other as the necessary and inevitable result. It is well established that the association of ideas is the cement that shapes the whole structure of the human intellect; without it, pleasure and pain would be isolated feelings with no consequences. . . .

The temporal proximity of crime and punishment, then, is of the utmost importance if one desires to arouse in crude and uneducated minds the idea of punishment in association with the seductive image of a certain advantageous crime.³⁷

The Certainty of Punishment. Mercy. One of the greatest curbs on crimes is not the cruelty of punishments, but their infallibility, and, consequently, the vigilance of magistrates, and the severity of an inexorable judge which, to be a useful virtue, must be accompanied by a mild legislation. The certainty of a punishment, even if it be moderate, will always make a stronger impression than the fear of another which is more terrible but combined with the hope of impunity. . . .³⁸

Proportion between Crimes and Punishments. Not merely is it in the common interest that crimes not be committed, but that they be more infrequent in proportion to the harm they cause society. Therefore, the obstacles that restrain men from committing crimes should be stronger according to the degree that such misdeeds are contrary to the public good and according to the motives which lead people to crimes. Thus, there must be a proportion between crimes and punishments.³⁹

Beccaria provides a short and to-the-point summary of the extended argument contained in *On Crimes and Punishments*. A single sentence, although lengthy, picks up the major themes of the book and casts them as goals to be pursued in order to bring about a just and rational legal system.

Conclusion. From all that has been seen hitherto, one can deduce a very useful theorem, but one that scarcely conforms to custom, the usual lawgiver of nations. It is this: In order that any punishment should not be an act of violence committed by one person or many against a private citizen; it is essential that it should be public, prompt, necessary, the minimum possible under the given circumstances, proportionate to the crimes, and established by law.⁴⁰

Jeremy Bentham: The Utility of Punishment

Jeremy Bentham (1748–1832), a British contemporary of Beccaria, was apparently enthralled with Beccaria's single important work, *On Crimes and Punishments*. He wrote: "Oh, my master, first evangelist of Reason . . . you who have made so many useful excursions into the path of utility, what is there left for us to do?—Never to turn aside from that path."⁴¹ Ironically, Bentham was a stark contrast to Beccaria. Criminologist Gilbert Geis described Bentham as an eccentric personality, an incredibly prolific writer, and a bold thinker who had the audacity to attempt to catalogue and label all varieties of human behavior and their motivations.⁴² Captivated by Beccaria's efforts at legal reform, Bentham produced an huge collection of published and unpublished writings suggesting reform of English criminal law.⁴³

Coleman Phillipson characterized the criminal codes of Bentham's time as "a mass of incongruities, absurdities, contradictions, and barbarities."⁴⁴ In response to these problems, Bentham emphasized and popularized Beccaria's basic tenets of utilitarianism and legal rationality. However, Bentham went further than Beccaria in trying to provide a moral and philosophical basis to legal reform, turning extensively to the work of Scottish philosopher David Hume (1711–1776).⁴⁵ According to Bentham, the "*utility of actions*" can be evaluated on the basis of whether they "produce benefit, advantage, pleasure, good, or happiness" or to the degree they "prevent the happening of mischief, pain, evil, or unhappiness."⁴⁶ Ultimately, the "goodness" or "badness" of an act must be judged in terms of the best interests of society as a whole—its utilitarian value.⁴⁷ This ethical principle of utilitarianism is the cornerstone of Bentham's writings.⁴⁸

Bentham believed that the pleasure–pain ratio for different acts could be measured precisely through mathematical formulas that he called "*felicity calculus*." However, felicity calculus was mathematical in name only. Gilbert Geis observes that Bentham's presentation of felicity calculus almost always deteriorated into "long-winded attempts" to explain verbally the pleasure–pain ratio for various offenses. Bentham never did calculate the felicity calculus for different offenses, nor did he consider the implications for such quantification.⁴⁹

As Beccaria did, Bentham contended that people have a natural tendency to pursue self-interest, after deliberate and rational consideration of potential gains and losses.⁵⁰ "Men calculate," he stated, "some with less exactness, indeed, some with more; but all men calculate."⁵¹ As a result, criminal law should set penalties that deter crime, but do so in the least punitive manner possible. Bentham, like Beccaria, saw the primary purpose of punishment as deterrence, not vengeance.⁵²

The *utility of punishment*, according to Bentham, is to deter crime. It is the responsibility of the legislature to establish punishments that are specified in law. These legal sanctions must be considered carefully: sufficient to deter crime, but never excessive or unnecessary. Punishment should be just enough so that the pain outweighs the pleasure derived from committing crime, and the "evil of the punishment" should never exceed the evil of the offense.⁵³ In addition, punishment should never be used when deterrence can be achieved through less painful means, such as education.⁵⁴

Application of Classical Criminology

Both Beccaria and Bentham provided wide-ranging and far-reaching arguments for rational and humane systems of law and justice.⁵⁵ As we have seen, their arguments for legal reform included the need for codified laws that are produced from a legislative process and then made public, the need for changes in judicial procedures, and the utility of "measured" punishment as a deterrent to crime.⁵⁶ The influence of classical thought was swift, extensive,

and widespread, providing a philosophical basis for a variety of legal reforms in England, Western Europe, and the United States.⁵⁷ However, the arguments for legal reforms offered by classical thought were more philosophical than specific or practical.⁵⁸ Beccaria, for example, had little to say about the substance of law or the procedures to be followed in enforcing it.

Nonetheless, probably no area of legal reform was more influenced by classical criminology than was the development of statutory law in the form of legal codes. It is commonly noted that the writers of the US Constitution, as well as those of the French Code of 1791, paid close attention to the ideas that Beccaria expressed in *On Crimes and Punishments*.⁵⁹ A number of countries in Western Europe and each of the United States developed legal codes through legislative procedures. These statutory laws were codified—written down in a systematic fashion—and, as Beccaria advocated, they were made public. The substance of these statutory laws included definitions of crimes, legal procedures to be followed in determining whether the law had been violated, and sanctions that could be imposed for particular crimes. Thus, the widespread development of statutory law was derived from classical criminology’s emphasis on legal rationality—the rationalization of law and the administration of justice.

Classical criminology also provides philosophical justification for the use of punishment to control crime.⁶⁰ Holding firmly to the basic tenets of classical thought, the deterrent effect of legal punishment became one of the cornerstones of modern systems of justice. The classical notion of utilitarianism provided justification for the state’s “right to punish” under the pretense that the “greatest happiness” is the primary concern of government.⁶¹ In addition, while classical humanitarianism contends that punishment should be “mild” (the “least possible”), legal rationality adds that in order for punishment to deter crime, it must be prompt, certain and proportionate to the crime.⁶²

The deterrent effect of legal punishment dominates both the contemporary juvenile and adult systems of justice in the United States. Legal statutes and sanctions promote punishment as their primary, sometimes solitary, purpose. Classical criminology’s stipulation that punishment be mild and proportionate to the crime seems lost in contemporary applications. As described in Chapter 2, the contemporary transformation of the juvenile justice system has made punishment a major goal of a system that was founded on the rehabilitative ideal.⁶³

Punishment Deters Crime: Deterrence Theory

The resurrection of classical thought, with its emphasis on the deterrent effect of punishment, has been the subject of much debate in contemporary criminology. Classical criminology holds that in order to prevent crime, punishment must be prompt, certain, and proportionate to the crime.⁶⁴ The contemporary consideration of this classical notion is referred to as *deterrence theory*. Put simply, deterrence theory claims that punishment prevents crime when the cost of legal punishment outweighs the benefit of committing crime. This **deterrent effect** of punishment assumes that “human beings are both rational and self-interested beings.”⁶⁵

In the late 1960s and throughout the 1970s, deterrence research attempted to develop measures of the properties of legal penalties that have a deterrent effect on crime.⁶⁶ Certainty and severity of punishment were given extensive attention because of their central role in classical thought. Using aggregate data (characteristics of groups of people, not individuals), *certainty of punishment* was measured by state arrest and imprisonment rates for specific offenses. Similarly, *severity of punishment* was measured by the average length

of incarceration served for the same offenses. These measures of certainty and severity were then compared (correlated) with officially recorded crime rates, obtained from the Uniform Crime Reporting System (UCR). Deterrence theory predicts an inverse relationship between these measures of legal punishment and crime rates: when levels of punishment certainty and severity are high, official crime rates are low. Research using this approach indicates that the deterrent effect of punishment generally holds true for certainty of punishment but that the relationship is modest at best. The findings regarding severity of punishment are far less supportive of deterrence theory, indicating consistently that level of severity was unrelated to crime rates, except in the case of homicide.⁶⁷

Findings that punishment has little or no deterrent effect did not daunt researchers. Only a few years after deterrence research began, a new school of thought emerged, which claimed that the deterrent effect of punishment is not the result of actual levels of punishment, as most people are unaware of the real possibilities of punishment. Rather, punishment deters crime to the degree that individuals *think* that it is certain and severe. The deterrence logic here is consistent with Beccaria's observations that crime is prevented to the degree that individuals fear punishment and that fear comes from their belief about the risk of being punished.⁶⁸ One of the originators of this point of view, Jack Gibbs, states: "The decisive factor in creating the deterrent effect is, of course, not the objective risk of detection but the risk as it is calculated by the potential criminal."⁶⁹ This approach to deterrence is referred to as the *perceptual theory of deterrence*.⁷⁰

Since the first study of perceptual deterrence was published in 1972, a large number of studies have followed.⁷¹ These studies attempted to test the deterrent effect of perceived certainty (likelihood) and severity (amount) of punishment.⁷² Consistent with deterrence theory, research findings showed that perceived certainty of punishment was related inversely to various forms of self-reported misconduct: the greater the perceived risk of punishment, the less likely individuals are to report involvement in misconduct. However, the statistical association between perceived risk and involvement in crime found in these studies was only moderately strong, indicating that perceived certainty has only a modest deterrent effect on crime.

Perceived severity of punishment has received far less attention than certainty of punishment. The research that was conducted failed to provide consistent findings, and those few studies that found some deterrent effect of perceived severity found the relationship to be weak. Criminologist Raymond Paternoster, who thoroughly reviewed this research, concluded that "perceived severity plays virtually no role in explaining deviant/criminal conduct."⁷³

Research on the deterrent effect of perceived certainty and severity of punishment is also plagued with significant methodological problems. The data and research methods employed in much of this research failed to allow temporal order to be established. When perceptions of risk (certainty and severity) and self-reported misconduct are measured at the same point in time, there is no way to establish which occurs first: perceptions or misconduct.⁷⁴ In addition, these studies did not consider other factors that might provide alternative explanations for involvement in crime.⁷⁵ When researchers studied perception of punishment with research methods that allowed for the consideration of additional causal variables, they found that perceptions of risk had only a weak deterrent effect. Relative to other variables, certainty of punishment did not have a consistent or strong deterrent effect on involvement in deviance.⁷⁶ These limitations make it difficult to establish the degree to which perceptions of risk influence involvement in crime and delinquency relative to other causal factors.

Deterrence theory and research has concentrated on the restraining effect of legal punishments either in terms of perceived risk or actual experience.⁷⁷ Some deterrence

scholars have argued for a broader consideration of the deterrent effect of punishment to include not only legal costs, but also self-imposed shame and the social costs associated with embarrassment, disapproval from significant others, and social ostracism.⁷⁸ Additionally, some have argued that the classical notion of self-interest and hedonism involves consideration of not just costs, but also benefits, and that costs and benefits are both legal and social.⁷⁹ This expanded view of classical thought in contemporary criminology is taken up in *rational choice theory*.

Choosing Delinquency: Rational Choice Theory

Classical criminology holds that delinquent youth act deliberately and are motivated by self-interest. Delinquent acts result when the potential for personal gain is greater than the probable cost. However, few contemporary criminologists argue that teenagers carefully consider *all* the benefits and costs of delinquency—teenagers simply are not that rational and thoughtful, nor do they have full and accurate information.⁸⁰ Nonetheless, delinquent behavior involves at least some “measure of rationality.”⁸¹ In contemporary criminology, the rational element in delinquent behavior is referred to as **rational choice**.

Rational Choice Theory

Developed in the 1980s, rational choice theory draws on the economic principle of “expected utility:” people choose to engage in crime because *expected* benefits outweigh *expected* costs.⁸² In advancing rational choice theory, Derek Cornish and Ronald Clarke argue that criminological theories have failed to acknowledge a rational component to crime—what they call a “measure of rationality.”⁸³ They are careful, however, to point out that rationality is limited in that decisions to engage in crime are rarely based on full and accurate information, nor do decision makers have sufficient time, ability, and reason for judgment and choice to be completely logical.⁸⁴ Their theory, then, is an attempt to explain the influences and processes of criminal decisions.

Clarke and Cornish advance six basic propositions that summarize rational choice theory.

1. Crimes are purposive and deliberate acts, committed with the intention of benefitting the offender.
2. In seeking to benefit themselves, offenders do not always succeed in making the best decisions because of the risks and uncertainty involved.
3. Offender decision making varies considerably with the nature of crimes.
4. Decisions about becoming involved in particular kinds of crime (involvement decisions) are quite different from those relating to the commission of a specific criminal act (event decisions).
5. Involvement decisions can be divided into three stages—becoming involved for the first time (initiation), continued involvement (habituation), and ceasing to offend (desistance)—that must be separately studied because they are influenced by quite different sets of variables.
6. Event decisions include a sequence of choices made at each stage of the criminal act (e.g., preparation, target selection, commission of the act, escape, and aftermath).⁸⁵

Following from these propositions, rational choice theory is composed of four models: initial involvement, the actual crime event, continuing involvement, and desistance. These models isolate different types of criminal decisions and the factors that influence each

decision. Each of the four decision models is depicted in a separate “flow diagram” that summarizes the decision-making process.⁸⁶

The *initial involvement model* depicts the individual’s willingness or “readiness” to become involved in crime to satisfy individual needs. Needs launch the involvement decision and include desires such as money, sex, leadership, status, and excitement. The consideration of whether to engaging in crime to satisfy these needs is influenced by a variety of factors, especially the individual’s background, including individual temperament, upbringing, and social and demographic characteristics (e.g., gender, social class, and neighborhood). Figure 7-1 shows the decision sequence for initial involvement in residential burglary, beginning with background factors and moving to previous experience and current circumstances. Most factors said to influence initiation into crime were drawn from existing criminological theories, leading one criminologist to state that rational choice theory is really not all that different from these other theories.⁸⁷

Decisions that are part of committing crime make up a second model: the *event model*. These decisions are specific to a particular crime, place, and time. Accordingly, the decision to engage in a particular crime is influenced heavily by the immediate situation—availability of goods, level of opportunity, ease of committing the crime, amount of controls, and chance of detection. The event model suggests that the offender must be ready and willing (initial involvement model); then, if the situation is conducive to crime, the decision to commit crime follows. The implication of the event model is that crime can be prevented by limiting situations that are conducive to crime, such as controlling ease of access, increasing neighbor watch programs, and increasing police patrol.

Continuation and desistance from crime are considered in two additional models. The *continuing involvement model* includes the degree to which skills, knowledge, lifestyle, values, and peer groups either support or discourage criminal involvement. For example, becoming financially dependent on crime encourages continued involvement, as does the development of a criminal peer group. In contrast, the *desistance model* presents a series of “re-evaluations” that relate to life events such as getting married or getting a job, as well as factors more directly related to the crime event that might discourage continued involvement in crime, such as realizing that crime does not pay enough or that the income from crime is too irregular.⁸⁸

Cornish and Clarke contend that an understanding of the rational elements of crime has far-reaching application for crime control efforts.⁸⁹ Three basic approaches to crime prevention using rational choice theory are identified in *Theory into Practice*, “Crime Prevention Using Rational Choice.”

Rational choice theory has been most extensively applied to adult criminality. Delinquent behavior also has a rational component; however, it may be that rational choice operates differently within the adolescent population—a group not known for sophisticated decision making.⁹⁰ Drawing from the theoretical work of Cornish and Clarke, research into rational choice in delinquent behavior has focused most extensively on the considerations that enter into decisions to offend.

Choosing to Participate in Delinquent Acts

Criminologist Raymond Paternoster conducted an important study on the role of rational choice in delinquent behavior. He examined the degree to which different factors influence delinquent offending decisions.⁹¹ Beginning with the premise that delinquent behavior is a product of “imperfectly informed choice,” he argued that even if delinquency is only minimally rational, offending decisions involve far more than the simple consideration of potential costs of punishment (deterrence theory). Instead, offending decisions involve a

variety of considerations including material gain, consistency with moral beliefs, and impact on social relationships.⁹²

Paternoster's rational choice model includes six basic considerations ("controls") that enter into offending decisions: formal sanctions (certainty and severity of punishment), affective ties, material considerations, opportunities, informal sanctions, and moral beliefs.⁹³ Measures of these elements of rational choice are listed in Research in Action, "Measures of Rational Choice." The model also includes background factors of gender, household employment, and family structure. Paternoster analyzed whether these background factors influenced offending decisions directly or indirectly through the six basic considerations of rational choice.⁹⁴

Four different types of delinquency were studied: marijuana use, drinking, petty theft, and vandalism. Drawing from rational choice theory, Paternoster speculated that the factors that influence offending decisions may vary depending on the type of offense being considered. Decisions regarding these types of offenses were also distinguished in terms of whether involvement was for the first time (initiation) or whether the decision was to continue or to desist involvement. Paternoster summarized his analytic approach as follows: "Looking at delinquency as involving a series of offending decisions provides an image of a much more active decision maker than presumed by most pure deterrence models. The informed decision maker of the rational choice perspective repeatedly evaluates information and makes behavior decisions on the basis of such information, re-evaluates that information, and makes new offending decisions that sometimes differ from ones previously made."⁹⁵

The study's research findings showed that certainty of punishment is considered in relatively few offending decisions and that severity of punishment has virtually no effect on offending decisions.⁹⁶ For example, during the sophomore and junior years, involvement in marijuana use and vandalism was influenced only modestly by perceived certainty of punishment, whereas perceived severity had no effect on the decision to participate in these acts. When considering the decision to drink and to engage in petty theft, neither perceived certainty nor severity of punishment influenced the decision to offend.⁹⁷ In general, the various kinds of offending decisions and offenses that Paternoster studied showed that the deterrent effect of formal sanction was relatively unimportant to delinquent behavior and that other considerations were far more influential in offending decisions.⁹⁸

Various social factors (unrelated to the law) were found to influence offending decisions in significant ways. Gender consistently played an important role in delinquent offending decisions; males and females make different offending decisions. Opportunities to engage in delinquency, measured by level of parental supervision and peer involvement, affected several offending decisions, especially decisions to get involved in delinquent activity.⁹⁹ Additionally, attachment to parents (affective ties) influenced some offending decisions when youths were not previously involved in delinquent behavior.¹⁰⁰ Across different types of offenses, moral beliefs had the strongest and most consistent influence on offending decisions. Taken together, these findings indicate that the decisions to offend, to continue offending, and to stop offending (desist) involve social considerations to a far greater degree than they do formal, legal considerations of certainty and severity of punishment.¹⁰¹

The study of rational choice in delinquent offending is complex and controversial.¹⁰² Clearly, the decision to engage in delinquency is not a simple, "once and for all" choice. Rather, youths make a series of offending decisions over time that involve a variety of non-legal, social factors that are sometimes specific to particular types of crime. Furthermore, the deliberation that results in rational choice includes possible rewards as well as risks. These perceptions of risk and reward appear to change over time and vary according to the situation.¹⁰³ For example, an active social life, in which peers support and encourage

delinquent involvement, provides opportunity to engage in delinquent acts and encouragement to do so. One group of researchers concluded that assessments of risk and reward are “to some extent situationally-induced, transitory, and unstable.”¹⁰⁴ Past experience, too, influences perceptions of risk and reward. Surprisingly, past involvement in crime and experience with formal sanctions have been found to actually reduce perceptions of risk and thereby increase the possibility of future crime and delinquency.¹⁰⁵ This finding directly opposes the deterrence hypothesis, which states that punishment reduces future involvement in crime and delinquency. Finally, research shows that social costs in terms of impacted social relationships play a significant role in offending decisions.¹⁰⁶ These social costs include loss of respect and friendship, shame, and embarrassment.

Crime and Human Nature: Criminal Propensity

In a provocative and controversial book, boldly titled *Crime and Human Nature: The Definitive Study of the Causes of Crime*, James Q. Wilson and Richard Herrnstein focus on the choices people make to engage in crime. They advance a point of view that on the surface sounds very much like the concept of expected utility from the rational choice perspective: they contend that individuals choose to engage in crime when rewards outweigh costs. Wilson and Herrnstein’s idea of choice, however, draws from behaviorism and social learning theory in psychology.¹⁰⁷

Wilson and Herrnstein contend that the choice to engage in crime “cannot be understood without taking into account individual predispositions and their biological roots.”¹⁰⁸ It is this biological and psychological emphasis that makes their work both innovative and controversial, especially among sociological criminologists. **Criminal propensity** refers to certain constitutional characteristics, which are present at birth, that are expressed in a variety of personality traits. “The average offender tends to be constitutionally distinctive though not extremely or abnormally so. The biological factors whose traces we see in faces, physiques, and correlations with the behavior of parents and siblings are predispositions toward crime that are expressed as psychological traits and activated by circumstances. It is likely that the psychological traits involve *intelligence* and *personality* and that the activating events include certain experiences within the family, in school, and in the community.”¹⁰⁹

Connecting choice with criminal propensity, Wilson and Herrnstein contend that “individuals differ in the degree to which they discount the future.”¹¹⁰ Because the rewards of crime tend to be immediate, whereas the rewards of “noncrime” are in the future, psychological traits that result in a desire for immediate gain and a tendency to “discount the future” create criminal propensity. Singled out in this regard are low intelligence and a number of personality traits, including impulsiveness, sensation seeking, the inability to learn from punishment, and low anxiety.¹¹¹ These psychological characteristics influence perceptions of rewards related to crime and noncrime and result in limited conscience, both of which predispose people to commit crime.¹¹²

Family life can restrain or magnify criminal propensity.¹¹³ Socialization processes involving interaction between parent and child influence criminal propensity in three important ways: (1) by instilling, or failing to instill, a desire for the approval of others (attachment); (2) by cultivating internalized constraint—conscience—or the lack of it; and (3) by establishing time horizon—a present or future orientation. Each of these socialization outcomes bears on the individual’s calculation of the rewards of crime relative to the rewards of noncrime.

Wilson and Herrnstein also discuss how other institutional contexts influence criminal propensity. Schools may affect criminal involvement by bringing youth together into groups that reinforce the value of crime and by generating a sense of inequality when school experiences fail to provide opportunity or when they are perceived as unfair. Communities also influence the expression of criminal propensity. The presence of criminal or delinquent subcultures in neighborhoods, especially in the form of street corner gangs, have strong influence on crime and noncrime values, thereby encouraging the expression of individual criminal propensity through criminal acts. The economy too has an indirect effect on involvement in crime. The condition of the economy affects both work aspirations and opportunity. The level of employment opportunity leads to adjustment in aspirations, and together these factors affect whether criminal propensity is displayed through involvement in crime. Thus, the institutional contexts of school, community, and economy provide either “activating” or inhibiting experiences that affect whether or not criminal propensity is exhibited through criminal acts.

Wilson and Herrnstein conclude that “there *is* a human nature that develops in intimate settings out of a complex interaction of constitutional and social factors, and that this nature affects how people choose between the consequences of crime and its alternatives.”¹¹⁴ Critics, however, have not been convinced: they view this “definitive study” as overly discursive—long-winded and meandering—and lacking in logical rigor. In addition, critics contend that the evidence cited provides only weak support, is selective, and is sometimes misinterpreted by the authors.¹¹⁵ Nonetheless, Wilson and Herrnstein’s point of view is consistent with contemporary considerations of rational choice that emphasize choice much more than rationality. According to Wilson and Herrnstein, rather than being entirely rational, the choice of crime involves a variety of influences, some biological, others psychological, and still others social.

Does the Perceived Risk of Punishment Deter Individuals Predisposed to Crime?

Wilson and Herrnstein’s criminal propensity theory has a logical extension to the question of whether punishment deters crime. Their theory suggests that “impulsive, risk-taking, and present-oriented individuals”—those with criminal propensity—are less likely to be deterred by the prospect of punishment, because these individuals focus on immediate benefits rather than on long-term consequences.¹¹⁶ In a 2004 study, Bradley Wright, Avshalom Caspi, Terrie Moffitt, and Ray Paternoster addressed the varying deterrent effect of perceived punishment on individuals, depending on their level of criminal propensity.¹¹⁷ Their analysis of longitudinal data allowed for the measurement of criminal propensity in childhood, adolescence, and early adulthood; deterrence perceptions in late adolescence and early adulthood; and self-reported criminal behavior in early adulthood. The researchers found that (in contrast to the predictions of criminal propensity theory) individuals who were most prone to crime because of their impulsive, risk taking, and present-oriented natures were most deterred from crime by perceptions that crime was costly and risky. When criminal propensity was low, however, the deterrent effect of possible punishment was virtually nonexistent. The researchers interpreted this to mean that the deterrent effect of punishment was irrelevant when other inhibitions (such as moral beliefs) are strong. They concluded that criminal propensity theories “are incorrect in assuming that criminally prone individuals do not respond to the perceived risk of criminal sanctions; in fact, they should respond most strongly.”¹¹⁸

Positivist Criminology

Contemporary versions of classical thought did not evolve from a continuous tradition within criminology. Rather, the dominance of classical criminology in the late 1700s and throughout much of the 1800s came to a relatively abrupt stop in the late 1800s. Only in the last quarter of the 1900s did classical thought reemerge in the form of deterrence and rational choice theory.

Positivist criminology is usually portrayed as a sharp departure from classical criminology.¹¹⁹ Therefore, the shift from classical to positivist thought in the late nineteenth century is seen as a major change in theory and practice. In fact, criminologists customarily divide their field of study into two primary schools of thought: classical and positivist, each with a strikingly different approach to crime and justice.¹²⁰ In 1911, Gina Lombroso-Ferrero, the daughter of Cesare Lombroso, one of the founders of positivist criminology, contrasted classical and positivist thought in the following way.

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

The Modern or Positive School of penal Jurisprudence, on the contrary, maintains that the antisocial tendencies of criminals are the result of their physical and psychic organization, which differs essentially from that of normal individuals; and it aims at studying the morphology and various functional phenomena of the criminal with the object of curing, instead of punishing him.¹²¹

Foundations of Positivist Criminology

Positivist criminology emerged through the ideas and writings of various European scholars in the nineteenth century.¹²² There is disagreement over who founded positivist criminology.¹²³ Some credit the Italian physician Cesare Lombroso and his students, who argued that criminals can be distinguished from noncriminals by physical abnormalities that typify a more primitive person. Others contend that the physician Frans Joseph Gall was the first scientific criminologist. He systematically measured the skull, based on the premise that different parts of the brain control different mental functions and those parts that are most developed will be physically larger, influencing the shape of the skull. Still others argue that French lawyer and statistician André-Michel Guerry and Belgian astronomer and mathematician Adolphe Quetelet, working some forty years before the work of Lombroso, were first to provide systematic measurement of crime and the social characteristics of criminals. Regardless of who founded positivist criminology, the school of thought is characterized by at least four key components: positivism, determinism, differentiation and pathology, and treatment and rehabilitation.¹²⁴

Positivism

The rapid rise of positivist criminology in the last half of the nineteenth century was in direct proportion to the level of criticism directed at classical thought. Most of this criticism centered on the belief that classical criminology was unscientific.¹²⁵ “**Positivism** represents the scientific approach to the study of crime, in which ‘science’ is characterized by methods, techniques, or rules of procedure rather than by substantive theory or perspective.”¹²⁶

As developed by August Comte (1798–1857), positivism is a method for observing and drawing conclusions about social behavior. Comte argued that the scientific methods and logic used in the natural sciences could be applied to the study of social relations and society. Scientific methods, including observation, measurement, description, and analysis, became the foundation for a new discipline that he called “sociology.”¹²⁷

The application of positivism to “scientific criminology” involved an “enduring commitment to measurement” that still characterizes criminology today.¹²⁸ The first efforts to collect national crime data were part of a broader movement in several European countries to develop and gather official records enumerating various aspects of living conditions and social well-being. Systematic recording of births and deaths, for example, was developed in the 1500s. Then, beginning in the 1600s, these records were compared to economic conditions, leading to a number of studies that numerically analyzed social life. In England, these studies were called “political arithmetic,” while in Germany they were called “moral Statistik,” and in France “statistique morale.”¹²⁹ This empirical approach to “social matters” is generally referred to as “moral statistics.”¹³⁰ National crime data were first collected in France beginning in 1825; these data were published two years later as the *Compte*.¹³¹

The collection of these criminological data was begun in order to justify and study a growing network of institutions of confinement that developed in France in the early 1800s. The inventory of institutions included “hospitals, workhouses, asylums, reformatories, houses of corrections, and prisons. Their official aim was moral reformation through the deprivation of liberty and prevention of crime through deterrence. Their ‘delinquent’ and ‘pathological’ inmates included syphilitics, alcoholics, idiots and eccentrics, vagabonds, immigrants, prostitutes, and petty and professional criminals.”¹³² The crime data that were gathered demonstrated that these institutions failed to “normalize” the behavior of these “dangerous classes” of people.¹³³

The French Ministry of Justice, the agency responsible for gathering crime data in the *Compte*, hoped that the “hard facts” of crime could be used to understand the causes of crime and to alleviate them.¹³⁴ Among the social statisticians who studied these data was a young, but well-known Belgian astronomer and mathematician Adolphe Quetelet. In a visit to France in 1823, he was introduced to the growing use of statistics to study social conditions. Advocates of this scientific approach hoped that statistical findings could be used to bring about social reform through legislation and innovation in social welfare practice and commerce. For example, Quetelet’s “first statistical work (1826) utilized Belgian birth and mortality tables as a basis for the construction of insurance rates.” Later, in analyzing French crime data from 1826 to 1829, Quetelet observed great regularity in crime rates over this period of time, including the number and rate of people accused of crime and the number and rate of people convicted of crime.¹³⁵ While he acknowledged that this regularity did not allow for the prediction of individual criminal involvement, he argued that patterns of crime over time follow “the same law-like regularities as did physical phenomena.”¹³⁶ He referred to these regularities as “social mechanics.”¹³⁷

Quetelet went on to study the social mechanics of crime more closely by systematically observing the number and rate of crimes across certain social categories, the most important

of which, he said, were age and sex. Using data from the *Compte* between 1826 and 1829, he noted that the number and rate of crimes were highest among those who were young, male, poor, uneducated, and unemployed or employed in low-status jobs. Quetelet was cautious, however, in drawing conclusions about causation from these regularities. Instead, he went on to offer a theoretical, rather than empirical, explanation of the apparent relationship between various social characteristics and criminal involvement.¹³⁸

Quetelet concluded that these social characteristics establish a propensity for crime but that few individuals actually translate propensity into criminal acts. According to Quetelet, the extent to which propensity is expressed in criminal acts is determined by level of moral temperance. For example, young males who are poor, uneducated, and unemployed are likely to commit crime when they lack moral character—they have little desire or option for “rational and temperate habits.”¹³⁹ Though Quetelet pointed to the importance of these social characteristics in determining criminal propensity, his later work gave greater emphasis to the view that lack of moral temperance was a manifestation of biological defects.¹⁴⁰

Quetelet’s work provided foundation for positivist criminology by applying scientific methods to the study of crime. Not only did he provide empirical analysis of crime rates and trends, but he also systematically observed how those rates and trends vary across social categories such as age and sex. Beirne and Messerschmidt state that “Quetelet’s placement of criminal behavior in a formal structure of causality was a remarkable advance over the unsystematic speculations of his contemporaries.”¹⁴¹

The positivism of positivist criminology represents an attempt to incorporate scientific methods into the study of crime. Systematic observation, measurement, description, and analysis have allowed researchers to look for regularities and patterns of crime and delinquency. Beginning in the first half of the nineteenth century, the application of scientific methods to the study of crime gave positivist criminology a very different orientation from that of classical criminology, which was dominant at that time. Classical criminology soon fell out of favor because it was viewed as unscientific.

Determinism

The scientific approach advanced by positivist criminology adopts the central working assumption that crime and delinquency are *caused* or *determined* by identifiable factors that may be biological, psychological, or social.¹⁴² This cause–effect relationship is called **determinism**.¹⁴³ Determinism holds that given the presence or occurrence of causal factors, crime and delinquency invariably follow. In contrast to the classical notion of will, determinism holds that the factors and forces that cause crime are usually beyond the control of the individual.

According to the scientific method, causal factors can be systematically observed and measured, and causal processes can be analyzed and described with the goal of predicting crime and delinquency. The causes of crime and delinquency, however, are multiple, not singular, and the task of scientific criminology is to identify these multiple causes through scientific methods. The scope of causal factors considered in positivist criminology is tremendously broad, ranging from genetic abnormalities to economic inequality. The chapters that follow examine this wide range of causal factors.

While the scientific exploration of causal factors is at the very heart of positivism, positivist criminology can also include factors that are part of classical thought. Michael Gottfredson and Travis Hirschi point this out when they say: “No deterministic explanation of crime can reasonably exclude the variables of the classical model on deterministic grounds. These variables may account for some of the variation in crime. If so, they have as much claim to inclusion in a ‘positivistic’ model as any other set of variables accounting for the same amount of variation.”¹⁴⁴ Thus, scientific efforts to uncover the causes of crime and

delinquency must consider classical elements, such as the deterrent effect of punishment and factors influencing offending decisions.

Differentiation and Pathology

The patterns and regularity of crime that Quetelet called the “social mechanics” of crime led him to conclude that certain categories of people were more likely to be involved in crime: young men, those with less education, and those who were unemployed or in low-status occupations. These empirical patterns of criminal propensity led Quetelet to compare and contrast the “average man,” who did not commit crime, with people who did commit crime.¹⁴⁵

Quetelet’s speculation that criminals lacked moral character and were distinct from the average person was consistent with an emerging view in France in the early 1800s. Rising from growing public fear of crime, this view held that criminals constituted a large and expanding “dangerous class.” Piers Beirne reports that classical criminology began to lose much of its influence during this time because the penal institutions and strategies were based on the classical idea that criminals were normal individuals who could be morally rehabilitated by depriving them of their freedom (the deterrent effect of incarceration).¹⁴⁶ Even before the development of crime data, it was reported that these penal strategies had failed: “In 1820 it was already understood that the prisons, far from transforming criminals into citizens, serve only to manufacture new criminals and drive existing criminals ever deeper into criminality.”¹⁴⁷ Outside of penal institutions, the ever-present poor, unemployed thieves in urban areas generated much fear among law-abiding citizens, who concluded that crime was increasing and that it was committed by this “dangerous class.”¹⁴⁸

The view that criminals and delinquents are fundamentally different from the average person is a persistent theme within positivist criminology.¹⁴⁹ The study of these differences—**differentiation**—rapidly became the focus of attention in positivist criminology. For example, Cesare Lombroso’s version of biological positivism, advanced in his 1876 book *The Criminal Man*, argued that criminals were physiologically less evolved than their noncriminal counterparts.

Early versions of positivist thought emphasized biological and psychological differences between criminals and noncriminals, claiming that criminals suffered from **individual pathologies** such as physiological defects, mental inferiority, insanity, and a tendency to give in to passion. These individual pathologies were usually thought to have biological roots. Theories of individual pathology will be discussed more fully in the next chapter.

The rise of sociology as a discipline in the late 1800s is associated with differentiation that emphasized **social pathologies** related to rapid urbanization and industrialization. Rapid social change was thought to break down social organization, resulting in lack of social control. The resulting social pathologies experienced by offenders include problematic social conditions such as divorce and family disruption, lack of parental supervision, poverty, cultural heterogeneity, and residential mobility. These social pathologies formed the basis for the various sociological theories of delinquency described in Chapter 12, all of which take a positivist approach to the study of crime and delinquency.

Rehabilitation and Individualized Treatment

The task of criminology, according to positivists, is to use scientific methods to uncover the causes of crime and delinquency and thereby understand what makes offenders different from non-offenders. In contrast to classical criminology, the focus in positivist criminology is on the criminal offender, rather than on the criminal law, and the implications concern offender rehabilitation rather than legal reform.

Armed with an understanding of the causes of crime and a belief that offenders do not freely choose criminal behavior, positivist criminology contends that it is inappropriate to punish them for their crimes.¹⁵⁰ Rather, the logical extension of positivist criminology is **individualized treatment**.¹⁵¹ Since the causes of crime are many and varied, involving biological, psychological, and social factors, rehabilitation must be founded on a scientific understanding of those causes, and it must be individualized. Enrico Ferri, an early positivist, argued that positivist criminology could learn from science and the practice of medicine: “As medicine teaches us that to discover the remedies for a disease we must first seek and discover the causes, so criminal science in the new form which it is beginning to assume [positivist criminology], seeks the natural causes of the phenomenon of social pathology which we call crime: it thus puts itself in the way to discover effective remedies.”¹⁵²

Thus, positivist criminology seeks a scientific understanding of the causes of crime and delinquency so that rehabilitative treatment can be effective and individualized. As described in Chapter 2, the early juvenile court was established on this *rehabilitative ideal* of positivist criminology.¹⁵³

Is Delinquent Behavior Chosen or Determined?

The sharp and fundamental differences between classical and positivist criminology have long been framed in terms of the relative merits of *choice* and *determinism*.¹⁵⁴ Classical thought depicts a rational and self-serving offender who chooses crime, whereas positivist thought contends that factors beyond an individual’s control cause criminal involvement.

Neoclassical Criminology

In his 1890 book, *Penal Philosophy*, French sociologist Gabriel Tarde (1843– 1904), took issue with this debate between classical and positivist criminologists, arguing that neither perspective could be justified on theoretical or practical grounds.¹⁵⁵ The choice-or-free-will argument, he reasoned, is obviously inaccurate given the positivist findings that crime varied according to social factors such as age, gender, and social class. Tarde went on to describe how the ways that people think, feel, and act—including criminal behavior—are learned within groups through association and imitation.¹⁵⁶ He reasoned that the hard-nosed determinism of positivist criminology was also inaccurate because it grossly diminishes offender responsibility and accountability. Under determinism, criminal acts are beyond the control of offenders, thereby making individual treatment impossible, especially in the case of “born criminals.”

Based on his critique, Tarde concluded that both classical and positivist criminology are inadequate as a basis for penal philosophy and practice. His solution to this unproductive debate was a compromise of sorts, taking the “partial truths” of classical and positivist thought, without accepting the extremes of either perspective.¹⁵⁷ The compromise is referred to as *neoclassical criminology*, a point of view that emerged in the late 1800s and early 1900s and sought “the best of both worlds,” especially in terms of practical application. Four general points characterize the neoclassical perspective.¹⁵⁸ First, “the concept of *character* replaced the extremes of free will and determinism as the source of criminality. An offender’s character was open to analysis by experts from the fields of law, medicine, psychiatry, probation, criminology, and social work. Because the links between character and crime can be influenced by an infinite variety of factors, crime should be understood through multi-causal (multifactorial) analysis.”¹⁵⁹ Second, legal responses to crime and

delinquency should be individualized and directed toward reducing or eliminating causal factors. Prior record, mental capacity, and social environment all must be considered in legal sanctioning. Third, certain groups of people (such as children, the insane, and the disabled) are not fully responsible for their actions and therefore should not be held legally accountable. Instead, these vulnerable groups must be given special treatment by legal systems. Fourth, deterrence is the goal of punishment, but punishment should be proportionate to the seriousness of the crime and should set an example not only for the offender but for others also.

Hard Determinism, Soft Determinism, and Drift

While neoclassical thought represents a blending of classical and positivist thought, this compromise has never been fully realized, nor has it been widely adopted in contemporary criminology. The distinction persists between classical and positivist criminology, and this distinction is framed largely in terms of the choice–determinism debate.

To resolve the conflict, some criminologists have proposed that exclusive attention to either choice or determinism fails to adequately capture delinquent behavior. Rather, a more thorough explanation must include elements of both choice *and* determinism. Delinquent behavior involves some choice, but that choice is influenced by both legal and social restraints, as well as by social and economic pressures and incentives. In addition, delinquent behavior is motivated and determined by individual characteristics, many of which are beyond the individual's control. Offenders choose crime, but choice is not the only factor to influence criminal involvement.

In an important book, *Delinquency and Drift*, David Matza challenged the overly deterministic view of delinquent behavior offered by positivist criminologist.¹⁶⁰ Such **hard determinism** portrays delinquent behavior as an inevitable outcome of biological, psychological, and sociological forces. In its quest for scientific status, positivist criminology rejected the classical emphasis on choice and replaced it with scientific determinism and differentiation.¹⁶¹ Matza, however, contends that positivist criminology predicts “far more delinquency than actually occurs” and provides a “distorted and misleading picture” of delinquent youth and their patterns of behavior.¹⁶² He reasons that if delinquent behavior is a product of deterministic forces, then delinquency should be “more permanent and less transient, more pervasive and less intermittent than is apparently the case.”¹⁶³ He also argues that the heavy emphasis on determinism and differentiation in positivist criminology has failed to incorporate new perspectives in the social sciences that concede that human behavior involves at least some element of freedom of choice and reason—what he refers to as a “voluntaristic conception” of human behavior.¹⁶⁴

Matza offers a view of delinquent behavior that is far less deterministic—a view he calls **soft determinism**. Soft determinism acknowledges that delinquent behavior involves an element of choice, but contends that youth are not entirely free in choosing their behavior nor are they compelled to commit delinquency by their biological and psychological makeup or their social background and experiences.¹⁶⁵

The logical extension of soft determinism is an image of delinquent youth and delinquent acts that Matza calls **drift**: “The image of the delinquent I wish to convey is one of drift, an actor neither compelled nor committed to deeds nor freely choosing them; neither different in any simple fundamental sense from the law abiding, nor the same; conforming to certain traditions in American life while partially unreceptive to other more conventional traditions. . . .”¹⁶⁶ In other words, delinquent youth are not all that different from other youth, and their choices and actions are neither totally free nor totally determined—they live in a state of drift. As a result, delinquent behavior is far less predictable than the deterministic models of positivist criminology would contend.

Summary and Conclusions

Is delinquency chosen or determined? The answer to this fundamental question is not easy or straightforward. Delinquent behavior certainly involves elements of self-interest, choice, and rationality. The classical ideas of will and hedonism contend that people choose their actions based on a rational consideration of gains and losses, of pleasure and pain. Few criminologists, however, would argue that delinquent behavior is purely rational.

A contemporary version of classical thought, *deterrence theory*, is primarily concerned with the restraining effect of legal punishment. Focusing on the likelihood and amount of punishment, deterrence theory holds that certainty and severity of punishment deters crime. Research support for this notion is modest at best, with certainty of punishment having some deterrent effect, but severity having virtually no deterrent effect. Much research reports that this deterrent effect is only a small part of rational choice.¹⁶⁷

The study of rational choice in delinquent offending considers a broad range of factors relating to material gain, legal costs, the normative controls of relationships, moral beliefs, and guilt and shame. *Rational choice theory* contends that a series of offending decisions are made over time, involving a variety of individual, social, and legal factors that are sometimes specific to particular types of crime. Furthermore, these perceptions of risk and reward appear to change over time and vary according to the situation.¹⁶⁸ Thus, the study of rational choice is complex and controversial.¹⁶⁹

Positivist criminology is usually depicted as a sharp departure from classical criminology. In fact, criminologists customarily divide their field of study into two schools of thought: classical and positivist, each with a strikingly different approach to crime and justice. Positivist criminology seeks to apply the scientific methods of observation, measurement, description, and analysis to the study of delinquency (positivism) in an attempt to understand cause and effect (determinism).

Early crime data provided important insight into how crime and delinquency were distributed socially. After analyzing these data, positivist criminologists contended that criminals and delinquents were fundamentally different from the average person (differentiation and pathology). A scientific understanding of the causes of delinquency was also used to individualize correctional treatment and became the basis of the rehabilitative ideal in positivist criminology.

The sharp differences between classical and positivist criminology have long been expressed in terms of the choice versus determinism debate. However, the difference between choice and determinism may not be as great as normally depicted, especially when these concepts are considered in the context of their respective schools of thought: classical and positivist. Piers Beirne has argued that Beccaria's classical notion of will is not based solely on freedom of choice and hedonism.¹⁷⁰ Rather, criminal involvement is influenced by nonrational, deterministic forces such as passion, temperament, ignorance, and characteristics of the situation. Similarly, framing their work in terms of positivist criminology, Michael Gottfredson and Travis Hirschi have pointed out that the causes of crime necessarily include both social and legal restraints.¹⁷¹ As a result, deterministic explanations may include classical elements of deterrence. Perhaps the transformation from classical to positivist criminology was not as drastic as scholars typically portray.

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End Notes

1. Beccaria, *On Crimes and Punishments* (Paolucci and Young translations).
2. Beirne, "Science of Man;" Newman and Marongiu, "Penological Reforms;" and Young, "Introduction," xv.
3. Beirne, "Science of Man," 780; see also 781–782.
4. *Ibid.*, 780–781.
5. *Ibid.*, 780.
6. Durkheim, "Two Laws," 113, quoted in Beirne, "Science of Man," 779. See also Newman and Marongiu, "Penological Reforms," 329.
7. Beirne, "Science of Man," 784.
8. *Ibid.*
9. A number of sociologists and historians of penology have contended that Beccaria's work is neither revolutionary in content or in application (Foucault, *Discipline & Punish*; Jenkins, "Varieties of Enlightenment Criminology;" Newman and Marongiu, "Penological Reforms;" and Roshier, *Controlling Crime*). Newman and Marongiu, for example, argue that Beccaria's ideas for legal reform reflect fairly specific convictions already advanced by Enlightenment philosophers (333).
10. Young, "Introduction," xi.
11. Beirne, "Science of Man;" Newman and Marongiu, "Penological Reforms;" and Young, "Introduction," xv.
12. Beirne, "Science of Man," 780, footnote 5; Paolucci, "Translator's Introduction," xvii; and Young, "Introduction," xvii–xviii.
13. Beccaria, *On Crimes and Punishments* (Young), 8.
14. Beirne, "Science of Man," 801, 802, 806, 807.
15. *Ibid.*, 807, 812.
16. Monachesi, "Cesare Beccaria," 40.
17. Vold, Bernard, and Snipes, *Theoretical Criminology*, 14.
18. Beccaria, *On Crimes and Punishments* (Paolucci), 6, footnote 7; Beirne and Messerschmidt, *Criminology*, 63; and Vold, Bernard, and Snipes, *Theoretical Criminology*, 16.
19. Beccaria, *On Crimes and Punishments* (Young), 7, 8–9.
20. Beccaria, *On Crimes and Punishments* (Paolucci), 8 (*italics in translation*).
21. *Ibid.*, 64–65 (*italics in translation*).
22. Vold, Bernard, and Snipes, *Theoretical Criminology*, 16.
23. Paolucci, "Translator's Introduction," xviii; see also xx.
24. Beccaria, *On Crimes and Punishments* (Paolucci), 9. Beirne, in "Science of Man" (782, 812) acknowledges this humanitarian reform aspect of the book; however, he argues that a number of other themes go largely unexamined.
25. Beirne, "Science of Man," 781.
26. Coleman Phillipson's *Three Criminal Law Reformers* review of *On Crimes and Punishments* (56) uses six topical themes to summarize its content: (1) measures of crimes and punishments; (2) certainty of punishment, and the right of pardon; (3) nature and division of crimes, and relative punishments; (4) consideration of certain punishments; (5) procedures including secret accusations and torture; and (6) prevention of crimes.
27. Beirne, "Science of Man," 788.
28. Young, "Introduction," xv.
29. Beccaria, *On Crimes and Punishments* (Paolucci), 43.
30. Beccaria, *On Crimes and Punishments* (Young), 74–75.
31. Beirne, "Science of Man," 812. See also Monachesi, "Cesare Beccaria," 43.
32. Beccaria, *On Crimes and Punishments* (Young), 62; and Beirne, "Science of Man," 812.
33. Beccaria, *On Crimes and Punishments* (Young), 12.
34. *Ibid.*, 12–13.
35. *Ibid.*, 9.
36. *Ibid.*, 23.
37. *Ibid.*, 36–37, *italics in translation*.
38. Beccaria, *On Crimes and Punishments* (Paolucci), 58.
39. Beccaria, *On Crimes and Punishments* (Young), 14.
40. *Ibid.*, 81, *emphasis in original*.
41. Paolucci, "Translator's Introduction," x–xi.
42. Geis, "Jeremy Bentham," 51.
43. Binder, Geis, and Bruce, *Juvenile Delinquency*, 81.
44. Phillipson, *Three Criminal Law Reformers*, 166.
45. Beirne and Messerschmidt, *Criminology*, 67–68.

46. Bentham, Introduction, 2.
47. Geis, "Jeremy Bentham," 55, 58–59.
48. Beirne and Messerschmidt, Criminology, 68.
49. Geis, "Jeremy Bentham," 55.
51. Cited in Binder, Geis, and Bruce, Juvenile Delinquency, 82.
52. Geis, "Jeremy Bentham," 59, 61–62.
53. Geis, "Jeremy Bentham," 62; and Curran and Renzetti, Theories of Crime, 9.
54. Bentham, Introduction, 170–178; and Geis, "Jeremy Bentham," 62.
55. Beirne and Messerschmidt, Criminology, 67.
56. Newman and Marongiu, in "Penological Reforms" (326–329) note that Beccaria failed to campaign for the reforms he advocated; therefore, his image as a "great reformer" is overplayed.
57. Newman and Marongiu, "Penological Reforms," 329.
58. Young, "Introduction," xi.
59. Beirne, "Science of Man."
60. Vold, Bernard, and Snipes, Theoretical Criminology, 18–20.
61. Beccaria, On Crimes and Punishments (Paolucci), 11–13.
62. Beccaria, On Crimes and Punishments (Paolucci), 43, 55–58, 62. Graeme Newman and Pietro Marongiu, in "Penological Reforms" (331), argued that the notion that punishment should be reasonable and proportionate was expressed by various Enlightenment thinkers before the published work of Beccaria and Bentham.
63. Feld, Bad Kids.
64. Beccaria, On Crimes and Punishments (Paolucci), 55–62.
65. Paternoster and Bachman, "Introduction," 14.
66. Ibid., 16.
67. Chiricos and Waldo, "Punishment and Crime;" Gibbs, "Crime, Punishment, and Deterrence," and Crime, Punishment, and Deterrence; and Tittle, "Crime Rates," and Sanctions and Social Deviance. See also Grasmick and Bursik, "Conscience;" Paternoster, "Deterrent Effect," and "Decisions;" and Piliavin et al., "Crime Deterrence and Choice."
68. Beccaria, On Crimes and Punishments (Paolucci), 58–59, 94–95.
69. Gibbs, Crime, Punishment, and Deterrence, 115.
70. Paternoster, "Decisions," 8.
71. Chiricos and Waldo, "Punishment and Crime." See Paternoster, "Deterrent Effect," 175–179.
72. Grasmick and Bursik, "Conscience," 839.
73. Paternoster, "Deterrent Effect," 191.
74. Paternoster, "Deterrent Effect," 179–181; and Piliavin et al., "Crime Deterrence and Choice," 103.
75. See Paternoster, "Deterrent Effect," for a thorough review of this research.
76. Paternoster, "Deterrent Effect," 184–186. Grasmick and Bursik, "Conscience," 838–839.
77. Gibbs, Crime, Punishment, and Deterrence.
78. Grasmick and Bursik, "Conscience;" Meier, Burkett, and Hickman, "Sanctions;" Piliavin et al., "Crime Deterrence and Choice;" and Williams and Hawkins, "Perceptual Research."
79. Paternoster and Bachman, "Introduction," 18.
80. Agnew, Juvenile Delinquency, 204. See also Akers and Sellers, Criminological Theories, 26–29; and Paternoster, "Decisions," 7, 10.
81. Cornish and Clarke, "Introduction," 1.
82. The idea of "expected utility" was first advanced by Gary Becker in a 1968 article titled "Crime and Punishment: An Economic Approach." Mary Tuck and David Riley provide a more psychologically oriented approach by referring to "subjective expected utility." This approach emphasizes individual perception of expected benefits and costs of crime. We will focus on the perceptual literature rather than that which presents economic models. See also Clarke and Cornish, "Modeling," and Paternoster, "Decisions," 8.
83. Cornish and Clarke, "Introduction," 1.
84. Ibid.
85. Clarke and Cornish, "Rational Choice," 24.
86. Cornish and Clarke, "Introduction," 2.
87. Akers, "Rational Choice."
88. Cornish and Clarke, "Introduction," 7.
89. Ibid., 1.
90. Paternoster, "Decisions," 10.
91. Ibid.
92. Ibid., 7, 37.
93. By including social costs in his rational choice model, Paternoster draws on social control theory. Social control theory will be discussed more fully in Chapter 10, but in terms of rational choice, it is argued that one of the main reasons that people conform is because of commitments they develop in social relationships

(Hirschi, "Compatibility"). The factors that are assumed to influence the decision to participate in an offense are often referred to as the "choice-structuring properties of offenses" (Cornish and Clarke, "Understanding Crime Displacement," 935; Miethe and Meier, "Opportunity," 245; and Paternoster, "Decisions," 12).

94. Paternoster, "Decisions;" see also Cornish and Clarke, "Introduction," 167.
95. Paternoster, "Decisions," 37.
96. *Ibid.*, 7, 37.
97. *Ibid.*, 23.
98. Williams and Hawkins, in "Perceptual Research" (568), suggest incorporating social and material considerations into deterrence theory, thereby making the approach more useful for crime prevention. However, Paternoster ("Deterrent Effect," 211–212) argues that rational choice theory already includes both legal and non-legal factors. Thus, rational choice theory incorporates the deterrent effect of legal or formal sanctions together with non-legal factors, including informal sanctions, affective ties, and material costs.
99. Paternoster, "Decisions," 22–23, 26–28.
100. Paternoster, "Decisions," 33–34.
101. Paternoster, "Decisions," 38.
102. Akers, "Rational Choice;" Akers and Sellers, *Criminological Theory*, 24–27; Paternoster, "Deterrent Effect;" and Williams and Hawkins, "Perceptual Research."
103. Piliavin et al., "Crime Deterrence and Choice," 115. Change in perception of risk has been studied by Paternoster ("Deterrent Effect," 194–205, and "Decisions," 31–37), Piliavin et al. ("Crime Deterrence and Choice," 115), and Williams and Hawkins ("Perceptual Research," 552–554).
104. Piliavin et al., "Crime Deterrence and Choice," 116.
105. Paternoster, "Deterrent Effect," 179–181; and Piliavin et al., "Crime Deterrence and Choice," 103.
106. Grasmick and Bursik, "Conscience;" McCarthy, "Instrumentalist Elaboration;" and Piquero and Tibbetts, "Specifying."
107. Wilson and Herrnstein, in *Crime and Human Nature*, state that their assumptions about choice are "commonplace in philosophy and social sciences. Philosophers speak of hedonism or utilitarianism, economists of value or utility, and psychologists of reinforcement or reward" (34).
108. Wilson and Herrnstein, *Crime and Human Nature*, 103.
109. *Ibid.*, 102–103, emphasis added.
110. *Ibid.*, 54, 61.
111. *Ibid.*, 199–207.
112. *Ibid.*, 207.
113. *Ibid.*, 217.
114. *Ibid.*, 508.
115. Gibbons, *Society*, 147–148.
116. Wright, Caspi, Moffitt, and Paternoster, "Perceived Risk," 182.
117. *Ibid.*
118. Wright, Caspi, Moffitt, and Paternoster, "Perceived Risk," 208. See also Nagin and Paternoster, "Enduring Individual Differences;" Piquero and Pogarsky, "Beyond;" and Pogarsky, "Identifying Deterrable Offenders."
119. As discussed later, Beirne, in "Science of Man" and *Homo Criminalis*, has argued that there are elements of positivist criminology in Beccaria's writings.
120. Akers and Sellers, *Criminological Theory*, 45–46; Beirne and Messerschmidt, *Criminology*, 73; Cullen and Agnew, *Criminological Theory*, 7; Curran and Renzetti, *Theories of Crime*, 6–15; and Gottfredson and Hirschi, "Positive Tradition," 9–14.
121. Lombroso-Ferrero, *Criminal Man*, 75.
122. Beirne and Messerschmidt, *Criminology*, 72.
123. Curran and Renzetti, *Theories of Crime*, 15–16.
124. Roshier, *Controlling Crime*, 21–22.
125. Gottfredson and Hirschi, "Positive Tradition," 14.
126. *Ibid.*, 10, emphasis added.
127. Winfree and Abadinski, *Understanding Crime*, 28; and Bohm, *Primer*, 22.
128. Hagan, "Assumption," 78.
129. Beirne, "Adolphe Quetelet," 1150. See also Vold, Bernard, and Snipes, *Theoretical Criminology*, 22.
130. Beirne, "Adolphe Quetelet," 1150.
131. *Ibid.*, 1148.
132. Beirne and Messerschmidt, *Criminology*, 73; see also Beirne, "Adolphe Quetelet," 1143–1144. Foucault (*Power/Knowledge*, 47–49) is referenced in Beirne, "Adolphe Quetelet."
133. Beirne, "Adolphe Quetelet," 1144–1147; and Beirne and Messerschmidt, *Criminology*, 74–75.
134. Beirne and Messerschmidt, *Criminology*, 75.
135. Beirne, "Adolphe Quetelet," 1153–1154; and Beirne and Messerschmidt, *Criminology*, 75–76.
136. Beirne and Messerschmidt, *Criminology*, 75; see also Beirne, "Adolphe Quetelet," 1150.

137. Quetelet, *Research*, 69, quoted in Beirne, "Adolphe Quetelet," 1153.
138. Beirne, "Adolphe Quetelet," 1155.
139. *Ibid.*, 1159.
140. *Ibid.*, 1160.
141. Beirne and Messerschmidt, *Criminology*, 76.
142. Gottfredson and Hirschi, "Positive Tradition," 12.
143. Michalowski, "Perspectives and Paradigms," 28.
144. Gottfredson and Hirschi, "Positive Tradition," 12.
145. Beirne, "Adolphe Quetelet," 1159–1160.
146. Beirne, "Adolphe Quetelet," 1144–1145.
147. Foucault, *Power/Knowledge*, 40.
148. Beirne, "Adolphe Quetelet," 1145–1146.
149. Cullen and Gilbert, *Reaffirming Rehabilitation*, 33; Matza, *Delinquency and Drift*, 11; and Roshier, *Controlling Crime*, 21–22.
150. Cullen and Gilbert, *Reaffirming Rehabilitation*, 33.
151. Whitehead and Lab, *Juvenile Justice*, 51.
152. Ferri, *Criminal Sociology*, 18–19.
153. Feld, *Bad Kids*, Chapter 2.
154. Beirne and Messerschmidt, *Criminology*, 93; and Gottfredson and Hirschi, "Positive Tradition," 11.
155. The discussion of Gabriel Tarde's work draws heavily from Beirne and Messerschmidt, *Criminology*, 83–84.
156. Tarde, *Penal Philosophy*, 322, 340; and Tarde, *Laws of Imitation*.
157. Beirne and Messerschmidt, "Criminology," 84.
158. Beirne and Messerschmidt, *Criminology*, 84; and Curran and Renzetti, *Theories of Crime*, 9–10.
159. Beirne and Messerschmidt, *Criminology*, 84.
160. Matza, *Delinquency and Drift*.
161. *Ibid.*, 5, 11.
162. *Ibid.*, 2, 21.
163. *Ibid.*, 22.
164. *Ibid.*, 11, see 7–11.
165. See also Agnew, "Determinism."
166. Matza, *Delinquency and Drift*, 28.
167. Paternoster, "Deterrent Effect," 175–194, and "Decisions," 28; and Piliavin et al., "Crime Deterrence and Choice," 104.
168. Paternoster, "Deterrent Effect," 194–205, and "Decisions," 31–37; Piliavin et al., "Crime Deterrence and Choice," 115; and Williams and Hawkins, "Perceptual Research," 552–554.
169. Akers, "Rational Choice;" Akers and Sellers, *Criminological Theories*, 26–29; Paternoster, "Deterrent Effect;" and Williams and Hawkins, "Perceptual Research."
170. Beirne, "Science of Man," 801–802, 806–807, and *Homo Criminalis*, Epilogue.
171. Gottfredson and Hirschi, "Positive Tradition," 12–13.