

until the mid-1970's and beyond. The major conservative writings supporting a more punitive orientation to crime by James O. Wilson and Ernest van den Haag were both published in 1975. A more detailed discussion of the conditions (including the general failure of American corrections as symbolized by Attica and rising crime rates) spanning the past two decades that gave rise to and sustained the rejection of rehabilitation as well as the acceptance of just desert determine sentencing reform is presented in Chapter 4.

²⁵ *Ibid.*, p. 4.

²⁶ Rothman, *Conscience and Convenience*, pp. 160-161.

²⁷ Quoted in David J. Rothman, "The state as parent: social policy in the Progressive era," pp. 67-96 in Willard Gaylin, Ira Glasser, Steven Marcus, and David Rothman, *Doing Good: The Limits of Benevolence*. (New York: Pantheon Books, 1978), p. 72.

²⁸ Michael Kannensohn, *A National Survey of Parole-Related Legislation Enacted During the 1979 Legislative Session*. (Washington, D. C.: U. S. Department of Justice, 1979).

²⁹ John Bartlow Martin, *Break Down the Walls: American Prisons — Present, Past, and Future*. (New York: Ballantine Books, 1951), pp. 231-244 ("Rehabilitation — the dangerous myth"); Francis A. Allen, *The Borderland of Criminal Justice*. (Chicago: University of Chicago Press, 1964), pp. 25-41; Marvin E. Frankel, *Criminal Sentences*, pp. 86-102; Norval Morris, *The Future of Imprisonment*. (Chicago: University of Chicago Press, 1974), pp. 1-27.

³⁰ As will be discussed in detail at a later point, the most notable summary of research in this tradition is Robert Martinson's "What works? — questions and answers about prison reform," *Public Interest* (Spring, 1974), pp. 22-54. See, more generally, Douglas Lipton, Robert Martinson, and Judith Wilks, *The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies*. (New York: Praeger Publishers, 1975).

IN, FRANCIS T. CULLEN & KAREN GILBERT (1982)

REAFFIRMING REHABILITATION

(Cincinnati: Anderson)

2

Criminal Justice Theories And Ideologies

The current controversy over the appropriate direction for American criminal justice policy does not exist in an ahistorical or apolitical vacuum. Contemporary debates concerning the causes of crime, the proper purpose of the criminal sanction, and over the pragmatics of criminal justice reform are outgrowths of the prescriptions and policies of past students of criminal justice. Hence, to facilitate our understanding of the issues which surround the current dispute over crime and punishment in America, we will examine two schools of criminology which have dominated thinking about crime and criminal justice for the past two hundred years. The classical and positivist schools are based on distinct sets of underlying ideological assumptions, posit differing rationales for punishment, and suggest unique social policies to deal with crime. Their disparate assumptions, as we shall see throughout these chapters, lie at the heart of the debate between supporters of rehabilitation and supporters of punishment.

In this chapter we will delineate three modern political ideologies which reflect vastly differing assumptions and value stances concerning crime and criminal justice. It should be noted that ideologies are unprovable sets of assumptions about the proper state of things. They are generally "unexamined presumptions" which shape an individual's stance on given issues, and are often highly emotionally charged.¹

It is important to be able to recognize one's own ideological stance as well as those of others with respect to issues of crime and punishment. As Walter Miller has observed, "ideology and its consequences exert a powerful influence on the policies and procedures of those who conduct the enterprise of criminal justice, and...the degree and kinds of influence go largely unrecognized. Ideology is the permanent hidden agenda of criminal justice."² In a similar vein, ideological concerns can have an impact upon social scientists studying crime and social policy. One's ideological stance can affect the type of problems selected for study, the process of theory construction, interpretation of research findings, and recommended social policies. One must thus be on guard against "statements forwarded as established conclusions [which] are based on ideological doctrine rather than empirically supportable evidence."³

Before discussing the conservative, liberal, and radical positions in more detail, however, we will first set out the central features of the classical and positivist schools of criminology.

Schools of Criminological Thought

The Classical School

The classical school, represented most prominently by Cesare Beccaria and Jeremy Bentham, was at its core a movement to bring about the reform of the criminal justice systems of Europe in the eighteenth century. Legal and judicial institutions of that period were characterized by such abuses as trial by torture, secret accusations, presumptions of guilt before trial and arbitrary court procedures. Further, judges possessed virtually unrestrained discretion in setting penalties, and many of the penalties were barbarous indeed (death by burning, by the gibbet or by breaking on the wheel, punishment by such means as branding or amputation.)

The reformers of the classical school were influenced in their own views by such social contract theorists of the Enlightenment as Montesquieu, Rousseau, and Hobbes. Along these lines, Beccaria argued that in order to gain the security and liberty of an organized society, humans freely and willingly gave up part of their liberty to the state. Laws exist to ensure the maintenance of society, and when laws are broken and the state or its citizens thereby endangered, punishment is both necessary and justified. In this regard, "the true measure of crimes is...the harm done to society."⁴ Laws that are not necessary for the welfare of the state and its citizens are unjust restrictions on individual liberty, however.

Equality was another theme central to Enlightenment thinkers which was adopted by the classical school. Since all men were created equal (in the state of nature) and are equally possessed of reason and free will, equality before the law (if not in property or rank) should be a fundamental principle of society.⁵

In light of these social and intellectual influences on Beccaria and Bentham, the central assumptions of the classical school included the following:

1. Only the legislator has the authority to make laws. Only laws, in turn, can set the punishment for crimes. Therefore it is the legislature, not the judge, which should fix the precise punishments for violations of the law. Prohibited acts and their attendant penalties should be matters of public knowledge. The role of the judge should be limited to the determination of guilt or innocence of the accused; thus, the judge is allowed little or no role in the determination of penalties for given offenses/offenders.
2. Human beings are both rational and possessed of free will, and can thus be held responsible for their actions. Humans are governed by the principle of *utility*; that is,

they seek pleasure or happiness and avoid pain or unhappiness.⁷

3. Punishment should be based on the social harm of the act and not on the "intention" of the offender. Therefore, like offenses should receive like punishment, punishment should "fit the crime" and not the criminal.

4. The goal of punishment is primarily the prevention of crime and only secondarily to exact retribution for the harm an offender has caused. To prevent crime, punishments should be just severe enough for the pain or unhappiness created by the punishment to outweigh the pleasure or happiness obtainable from the crime. This is all that is required for an offender to decide that "crime does not pay" and thus to be deterred from violating the law once again in the future ("specific deterrence"). Similarly, if the costs are higher than the benefits that can be derived from illegal behavior, those in the public contemplating criminal acts will also decide against pursuing such activities ("general deterrence"). Notably, Beccaria believed that any punishment beyond the minimum level needed to deter people from breaking the law unjustly restricts individual liberty, is non-utilitarian, and thus must be viewed as illegitimate.

5. Certainty and swiftness of punishment are more crucial to the prevention of crime than is severity; hence, "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."⁸

6. The rights of accused persons should be protected against abuse. In particular, the accused should be presumed innocent until sufficient proof of guilt is introduced. Moreover, court hearings should be governed by clear and fair procedures.

In sum, Beccaria contended that "in order for punish-

ment 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."⁹

The proposals of the classical school met with some success in the years after their introduction. Beccaria's *Essay on Crimes and Punishments*, originally published in 1764, was translated into several languages shortly thereafter, including a French-language edition for which the introduction was written by Voltaire. Classical ideas also became an integral part of the French Code of 1791.¹⁰

Practical problems of implementing "pure" classical principles into the French Code provided the impetus for a modification of these principles. These modifications came to be embodied in a movement called the neo-classical school.

It must be remembered that in his desire to avoid the possibility of capricious and arbitrary punishments by judges, Beccaria argued that penalties should be set ahead of time by the legislatures. Equally "harmful" offenses were to receive equally "painful" penalties without regard to the characteristics of individual offenders. As these tenets were embodied in the French Code of 1791, circumstances of individuals were ignored to the extent that all offenders — whether first offenders or recidivists, children, insane, or incompetent — were dealt with only on the basis of the act committed. Proponents of the neo-classical school, while in the main accepting basic classical assumptions, modified these principles to allow for the consideration of certain individual circumstances as a pragmatic response to the exigencies of criminal sentencing. Thus, mitigated penalties and partial responsibility became possible for youth, the insane, the feebleminded, and for other offenders under certain environmental or mental circumstances.

It has been suggested that this neo-classical model has formed the philosophical underpinnings of the agencies of

social control in modern industrial societies.¹¹ Certainly this is true in that the classical school provided a *rationale* for punishment, although punishment as a feature of criminal justice systems antedated classical pronouncements.¹² A legalistic definition of crime is another characteristic common to the classical school and to modern criminal justice. And clearly, the neo-classical concept that criminals should be held responsible for (i.e., subject to punishment for) their actions, although less so in certain circumstances or for particular categories of individuals, is firmly embedded in our legal system.

Their accommodation of classical principles notwithstanding, the criminal justice and correctional systems of the industrialized Western world have also been influenced by a school of thought that arose to challenge classical assumptions: positivism.

The Positivist School

The guiding concept of the positivist school of criminology has been the application of the scientific method to the study of the criminal. During the period between Beccaria's *Essay* (1764) and the publication of the positivists' first treatise — Lombroso's *The Criminal Man* — in 1876, science rather than reason alone had become the dominant means of understanding the world. Thus, it became the task of the early positivists of the Italian School — Lombroso, Garofalo, and Ferri — to extend the assumptions and methodology of science to the problem of criminal behavior.

Cesare Lombroso, often referred to today as the father of criminology, adopted a largely biological theory of crime causation. His early work emphasized the notion of the "born criminal," an individual more primitive and atavistic than the noncriminal and who could be identified by means of certain visible "stigmata." While never totally abandoning the idea of the born criminal and the biological basis for crime, his later work also cited the importance of social and environmental

factors in the causation of crime. He is remembered today less for the specific content of his theories than for his insistence on the gathering of empirical data, emphasis on objectivity and the use of the scientific method, stress on determinism rather than free will as the primary impetus to human action, and recognition of environmental factors as contributory to criminality.

It is also important to note that positivism can take (and has taken) other forms than the biological variety. For example, psychological positivism, instead of locating the cause of criminal behavior within the biological makeup of an individual, might instead look for the cause in faulty personality development of the offender. Sociological positivism, conversely, might point to aspects of the social structure or the social environment as primary causal factors. Indeed, it has been concluded that "most contemporary scientific criminology is positivistic in method and in basic formulations."¹³

In order to understand more fully the impact of the positivist school on criminology and criminal justice in America, it is important to explicate the central features of this approach. First of all positivists, in seeking the source of criminal behavior, tend to assume that crime is *determined* by factors largely outside the control of the individual. Although they may differ as to whether the factors are primarily biological, psychological, or sociological in nature, they generally accept the idea of multiple factor causation — that is, that crime is caused by the interaction of a number of complex variables. Consequently, free-will explanations of crime are rejected in this model, and the differences between criminals and noncriminals are emphasized.

Second, since criminals did not freely choose their criminal behavior, it is inappropriate to punish them for their crimes. Early positivists argued that the small proportion of offenders whose behavior cannot be altered and who represent a danger to the community should be held in lifelong confinement.¹⁴ For most others, individualized treatment of the offender is appropriate so that the underlying causes of criminal behavior may be

eliminated. In this regard, the "medical model" provides a vocabulary with which positivists can talk about and understand crime:

And 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, 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....¹⁵

Since the individual cannot be cured of his criminal tendencies through his own efforts, it is for the good of society as well as for the offender's own good that the state undertake to *rehabilitate* him. Allen has described the *rehabilitative ideal* as "...the notion that a primary purpose of penal treatment is to effect changes in the characters, attitudes, and behavior of convicted offenders, so as to strengthen the social defense against unwanted behavior, but also to contribute to the welfare and satisfaction of offenders."¹⁶

Third, in the positivist scheme, more emphasis is placed on the offender than on the offense. Penalties are to be tailored to the unique and varied circumstances of each individual rather than to be based on considerations of social harm and deterrence. It is possible and even desirable that two persons committing similar offenses may receive varying dispositions if their individual conditions vary. In order that the goal of individualized treatment may be achieved, judges and correctional officials must be free to fit the type and duration of penalty to offender needs; in other words, punishments should not be immutably pre-set by legislatures. One important means for achieving this goal of particularized treatment is the indeterminate sentence: offenders remain in prison for as long as it takes to effect a "cure."

It is clear that the core assumptions and goals of the classical and positivist schools are frequently in conflict with one another. Table 2.1 points up the major areas of contrast between the two models.

Table 2.1. Early Schools of Criminology

	CLASSICAL	POSITIVIST
1. Central concern of model's founders	reform of criminal justice system	scientific study of criminal
2. View of humans	free-will; utilitarian	deterministic; biological, psychological, sociological
3. Responsibility for actions	yes	no
4. Way to stop crime	insure that the costs of crime outweigh the benefits	eliminate factor causing crime
5. Focus of social control	(a) the law; make penalties severe enough to outweigh the benefits of crime (b) no judicial discretion; to insure that costs outweigh the benefits, punishment must be certain for everyone; punishment fits the crime	(a) the criminal and his/her condition; criminals are fundamentally different from the rest of us (b) judicial discretion; since each criminal & his/her condition may be different, the judge needs the leeway to fit the penalty to the needs of the individual criminal (c) indeterminate sentences
6. Purpose of social control	(c) punishments fixed by law (implies the use of determinate sentences) deterrence — if criminal is shown that the costs of crime outweigh the benefits (that "crime doesn't pay") then the person will not commit any more offenses; punishment of offender can also serve to deter public from crime	rehabilitate the criminal

Ostensibly, the positivist rehabilitative ideal has dominated criminal justice policy throughout the last century. The legacy of the positivists includes the indeterminate sentence, probation and parole, the reformatory, and the juvenile justice system. It is perhaps more correct to say, however, that our criminal justice and correctional apparatus represents a combination of classical and positivist principles. And most recently, as we shall see later in the chapter, positivist assumptions and policies have been giving way to a resurgence of classical thought in the United States.

Political Ideologies and Criminal Justice Policy

We have seen that the unique sets of assumptions of two predominant schools of criminological thought give rise to vastly different explanations of and prescriptions for the problem of crime. Likewise, both "expert" and "public" viewpoints about preferred criminal justice policy are frequently grounded in the political ideologies which are held by individuals. These ideologies tend to rest on sets of unexamined assumptions rather than upon solid empirical data, tend to have an emotional component, and are relatively resistant to change.¹⁷ Thus, an understanding of criminal justice trends cannot rest on an examination of research results alone; the role of political viewpoints in the advocacy of particular policies toward crime also must be assessed.

In the course of this discussion, three varieties of political perspectives will be examined: conservative, liberal, and radical. Each will be defined with respect to its guiding principles and the implications of those principles for the control of crime. Then, current classical and positivist perspectives on crime will be analyzed in relation to their ideological bases.

Conservative Ideology

Conservative thought places primary emphasis on the importance of maintaining social order; thus, the concerns of conservatism are more directed toward protecting society than toward aiding the offender. At the same time, the conservative assumes that existing social arrangements are basically sound and reflect widespread consensus among the members of society. The offender, then, is viewed as one who is "out of step" with the rest of the society.¹⁸

Conservatives tend to eschew rapid social change. They are likely to decry the breakdown of traditional values, and to seek to preserve traditional institutions. From their perspective, the sources of crime are often to be found in the erosion of discipline and respect for authority, coupled with an increase in permissive attitudes and practices throughout society.¹⁹

Individuals are seen as being responsible for their own actions — good or bad — in the conservative view. In this regard, self-reliance and individual achievement are to be encouraged. Conversely, a lack of faith in the ability of the government to solve individual and social problems abides in conservative thought. As a result of the foregoing premises, conservatives focus on punishment rather than rehabilitation as the proper goal of the criminal justice system.

In keeping with their emphasis on social order, system goals which focus on the protection of innocent citizens — i.e., deterrence and incapacitation — are of primary importance. Sympathy is also directed toward the victim of crime. On the other hand, the criminal justice system is seen as being too lenient toward the offender. "Technicalities" which allow the guilty to go free should be minimized, and punishments should become both more certain and more severe in order to help reduce crime.

Liberal Ideology

According to proponents of liberalism, the central goals of society should be individual rights and equal opportunity for all. Liberals see current social arrangements as imperfect in that certain economic and social inequities persist in society. Although the social structure is probably not ultimately perfectible, improvements in the direction of greater equality are possible. Further, the state, through its programs, can provide the means to improve the condition of its citizens.

Moreover, there is a fundamental assumption in liberalism that crime is caused by the structural conditions of society rather than by the individual's calculation that crime pays. The long-term remedy for the crime problem, then, is fundamental social change. Short-term programs, favored by liberals, tend to focus on improving the situation of the offender as well as on reducing crime, and tend to be piecemeal in nature.²⁰

Traditionally, liberals have placed their faith in rehabilitation as a central goal of criminal justice. However, the ebbing belief in the efficacy of rehabilitative programs among a number of liberals has served to divide the liberal camp. On the one hand, there are those who might be called the "traditional liberals" who argue that the goal of treatment of offenders is being prematurely jettisoned. Their contention is that the resources of the criminal justice system have never yet been fully committed to rehabilitation as a *real* goal of corrections. In addition, they argue, there are rehabilitative programs which have been shown to be effective with some offenders, but these successes have been glossed over by critics of treatment goals. On a philosophical level, rehabilitative programs represent a means of "doing good" for offenders; they also embody a rationale for humane treatment which opposes the conservative pressure to "get tough on crime."

Conversely, "justice model liberals" contend that the rehabilitative ideal is bankrupt as a strategy for reducing crime.

Moreover, the structural concomitants of the philosophy of treatment — discretion and the indeterminate sentence — have brought about long penalties as well as real inequities in the penalties for similar offenses, thus undermining the "justice" of the system. As a remedy, liberals should thus abandon rehabilitation and instead embrace the more realistic and limited goal of just deserts, together with reductions in system discretion, short sentences commensurate with offense gravity, and determinate sentencing.

Finally, both liberal camps tend to agree in their support of decriminalization of victimless offenses, and of deinstitutionalization and expanded use of alternatives to incarceration.²¹

Radical Ideology

Radicals assume that their primary goals of true economic, social, and political equality for all cannot be achieved under the present capitalist system. The currently-dominant pattern of relations of production is designed to keep those who own the means of production in power, and to keep those who do not without power. Consequently, crime in capitalist society is due to the efforts of the powerful to maintain their power at all costs, as well as to the brutalization of the working class under capitalism or to their conscious resistance to exploitation by the powerful.²²

Thus, the causes of crime are intimately connected to the fundamental flaws in the capitalist system. Programs of piecemeal reform which leave the relations of production unaltered are unlikely to achieve positive objectives. In fact, criminal justice and correctional reforms may have the effect of actually extending the domination of the powerful over the powerless in that these reforms may deflect attention away from the fundamental problems underlying capitalist systems.²³ That is, improvements that make current conditions more tolerable may, in the long-run, reduce the likelihood that the disadvantaged

will push for revolutionary change in their material position. Notably, in the radical view, true social justice and a fundamental resolution of the problem of crime must await the demise of capitalism and the rise of the socialist state.

In order to further clarify the major points of comparison and contrast among the conservative, liberal, and radical ideologies with respect to crime causation and control, see Table 2.2.

Classicism, Positivism, and Political Ideology

It is important to note that a bifurcation of the liberal camp was brought about by the justice model liberals' rejection of the rehabilitative ideal. For liberal justice model supporters, their defection represents a basic shift away from positivist and toward classical principles. Thus, as in the classical paradigm, punishment and the assumption of criminal responsibility are embraced as the guiding tenets of the criminal justice system. Similarly, in both models punishment is to be based on the social harm of the offense, not the characteristics of the offender. Legislatures are to set penalties, punishment is not to be severe, judicial discretion is to be reduced, and sentences are to be determinate in both plans. Justice model proponents, however, assign a lesser role to deterrence in the determination of penalties than does the classical school.

Interestingly, conservative ideology also shares several common elements with the classical school. Each strongly emphasizes deterrence as a central goal of punishment, and each allows considerations of deterrence to influence the magnitude of penalties. Conservative ideology shares with classicism a view of crime as a willful act against the social order by an essentially rational individual. Conservative thinkers, however, tend to favor escalating criminal penalties to ensure maximum deterrent and incapacitative effects, while classical thinkers

RADICAL	
Principles fundamentally unsound and exploitive; Change to socialism	Capitalist exploitation conditions lead the rich to exploit the poor and the poor to prey on one another
Eliminate the capitalist system; Establish A New Social Order!	On the inherent inhumanity of the system
	The crime of capitalism and the rich
	Total economic and social equality. "No classes and no exploitation"

LIBERAL	
Needs improvement; need greater economic and social equality	Poverty, racism and other social injustices cause people to go into crime: Our society is not meeting the human needs of people and crime is a manifestation of this inadequacy in our system.
Make a better social order through reform	A. Social programs to meet the needs of the disadvantaged and just system of criminal justice (Rehabilitation?)
On the criminal — Help the disadvantaged criminal and prevent future victimization of society	Street and White-collar crime
Protection of individual rights and humane treatment of the less advantaged "Doing justice" and "doing good"	

Table 2.2. Correctional Ideologies: Politics and Punishment

CONSERVATIVE	
Principles fundamentally sound	1. View of capitalism and the American political system
Social Disorder — Lack of Discipline in Society	2. Reason for Crime
A. Traditional Institutions and values have broken down	3. Way to Stop Crime
B. Lenient criminal justice system — "crime pays"	4. Focus of Attention
Re-establish social order and discipline	5. Source of Crime
Make a better social order through reform	6. Prime Values
A. Re-assert traditional values that made America great	
B. Increase costs of crime by stiffer punishments	
On the victim of crime and on innocent citizens — punish criminals in order to protect these groups	
Street-crime	
Social Order — "Law & Order"	

tended to downplay severity in favor of certainty and swiftness of punishment.

Given the close relationship of each to classical doctrine, it appears that the conservative and the liberal justice models share a number of common assumptions about the rationale for punishment. The most important area of disagreement between the two, it would seem, lies in the role of deterrence — which, in turn, is linked to the issue of magnitude of punishment. Given that these liberal justice model advocates now share an ideological base with conservatives, a fundamental problem arises for this group: how will these liberals now be able to effectively oppose the conservatives' call for more severe punishments? How will they avoid having their programs for criminal justice reform co-opted and penalties escalated by conservative interests in the name of "justice," amid cries of "get tough on crime?" What will happen to the needs of offenders now that liberals ask nothing of the correctional systems other than to punish the offenders therein? It is obvious that this liberal ideological shift will have profound effects on the structure and function of the criminal justice system in the years to come. It is this issue that will occupy much of our attention in the chapters to follow.

Conclusion

We have seen in this chapter that the ideologies represented in the classical and positive schools, as well as the political ideologies of conservatism, liberalism, and radicalism, are at the center of the current crisis in criminal justice policy discussed in the last chapter. Classical, conservative, and liberal justice models center around punishment and retribution as dominant criminal justice goals; traditional liberal and positivist models stress rehabilitation; and radical models call for the elimination of capitalism as the only effective means of system reform. Thus,

it is clear that the treatment model is under attack from both the political left and right. But in order to fully understand the nature of the criticisms against rehabilitation, it is essential that we first investigate the rise of the therapeutic state itself.

Notes

- ¹ Walter B. Miller, "Ideology and criminal justice policy: some current issues," Pp. 453-473 in Sheldon L. Messinger et al. (eds.), *The Aldine Crime and Justice Annual 1973*. (Chicago: Aldine Publishing Company, 1974), p. 454.
- ² *Ibid.*, p. 463.
- ³ Miller, "Ideology and criminal justice policy: some current issues," p. 454.
- ⁴ Coleman Phillipson, *Three Criminal Law Reformers: Beccaria/Bentham/Romilly*. (Montclair, New Jersey: Patterson Smith, 1975), pp. 30-32.
- ⁵ Cesare Beccaria, *On Crimes and Punishments*. (Indianapolis: Bobbs-Merrill, 1978), p. 64.
- ⁶ Leon Radzinowicz, *Ideology and Crime*. (New York: Columbia University Press, 1966), p. 5.
- ⁷ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*. Pp. 7-398 in *The Utilitarians*. (Garden City, New York: Doubleday, 1961), p. 18.
- ⁸ Beccaria, *On Crimes and Punishments*, p. 58.
- ⁹ *Ibid.*, p. 99.
- ¹⁰ George B. Vold, *Theoretical Criminology*. Second edition prepared by Thomas J. Bernard. (New York: Oxford University Press, 1979), p. 25.
- ¹¹ Ian Taylor, Paul Walton, and Jock Young, *The New Criminology: For a Social Theory of Deviance*. (Boston: Routledge and Kegan Paul, 1973), pp. 9-10.
- ¹² Vold, *Theoretical Criminology*, p. 29.
- ¹³ *Ibid.*, p. 47.

- ¹⁴ Cesare Lombroso, "Crime and insanity in the twenty-first century," *Journal of Criminal Law and Criminology* 36 (May 1912), p. 60.
- ¹⁵ Enrico Ferri, *Criminal Sociology*. (New York: Agathon Press, 1967), pp. 18-19.
- ¹⁶ Francis A. Allen, *The Decline of the Rehabilitative Ideal*. (New Haven: Yale University Press, 1981), p. 2.
- ¹⁷ Miller, "Ideology and criminal justice policy: some current issues," p. 454.
- ¹⁸ Don C. Gibbons and Peter Garabedian, "Conservative, liberal, and radical criminology: some current issues," Pp. 51-65 in Charles E. Reardon, *The Criminologist: Crime and the Criminal*. (Pacific Palisades, California: Goodyear Publishing Company, 1974), p. 52.
- ¹⁹ Miller, "Ideology and criminal justice policy: some current issues," p. 455.
- ²⁰ Neal Shover, *A Sociology of American Corrections*. (Homewood, Illinois: The Dorsey Press, 1979), p. 42.
- ²¹ Gibbons and Garabedian, "Conservative, liberal, and radical criminology: some current issues," p. 56.
- ²² Richard Quinney, *Class, State, and Crime*. Second Edition. (New York: Longman, 1980), pp. 57-66.
- ²³ Shover, *A Sociology of American Corrections*, p. 48.

3

The Rise Of Rehabilitation

The determinate sentencing movement that emerged and then flourished over the course of the past decade-and-a-half represents a vigorous attack on the popular belief that rehabilitation should be the primary if not exclusive aim of our criminal justice system. These advocates of punitive justice have questioned both the viability of positivist thinking about crime and the wisdom of past reformers who held grand visions of transforming prisoners into hospitals where the criminally "sick" would be benevolently cured. In contrast, the agenda of these critics calls for innovations that will effectively and severely constrain the unfettered discretion that court and correctional personnel have long exercised in the illusory attempt to effect the "individualized treatment" of the lawless. Soon, they hope, we will be rid of the indeterminate prison term and of parole boards that have labored futilely to distinguish which among the wayward have been saved and which remain chronically criminogenic. As disenchantment with the rehabilitative ideal becomes complete, punishing the criminal will replace treating the offender as the dominant purpose of the correctional process. No longer will we find anyone engaged in the well-intentioned but too hardy enterprise of trying to fashion sanctions that "fit the offender"; now punishment will fit the crime — nothing more, nothing less. In their view, a new and promising era of American criminal justice policy will be upon us at last.

Some might imagine that by voicing a bold appeal to cast aside rehabilitation in favor of punitive principles, the propo-