The Philosophy of Punishment: A Study to the History of Classical and Positive Schools of Penology

Abstract

The present study tries to explain the origin of punishment and its early philosophy, to explore the penal philosophy under classical, neo classical school and the positive school and to highlight the major achievements in developing the system of penology by the pioneers of those schools. It evaluates the philosophy of penal sanctions from the very deep history until the 19th century, by focusing on the major achievements of classical, neo classical and positive schools that contributed vitally to the development of the system of punishment on the global level. Finally, the study concludes that every philosophical school has had its own principles, which they are different in nature, but still some point here and there can be bridge in order to have the legacy of those schools applicable on the new trends of penology.

Keywords: Penology; History; Schools of penology; Philosophy of punishment; Pioneers of classical; Neo classical; Positive school

Introduction

Philosophy of punishment is as old as man himself; when Adam and Eve violated God’s commandment, they had been descended to Earth, and when ancient peoples shed blood, God created humans. Therefore, the idea of punishment may be considered as older than the human existence and consecrated in religious teachings and holy books and applied by peoples of different stages of human evolution, and even to this day. The current paper highlights the history of penal development, and the origin and philosophy of punishment. The classical school was founded in the 18th century and its birth was as the result of prior barbarous systems of penology. Before the advent of this school, criminal were facing several types of barbaric penalties, such as isolation, keeping him in snake pits...etc. Other methods of punishment like squeezing, strangulating, burning and cutting the limbs of criminals were widely applied. The classical school’s thought was against barbaric and cruel techniques of criminal sanctions, and it was developed by philosophies of Rousseau, Beccaria, Bentham, Feurbach, such thoughts will addressed in the present study.

The positive school of penology as a reaction to the views of classical school also played a vital role in developing the system of punishment. The major focus of this school was that understanding the problems of criminal penalties should be achieved by giving greater emphasis to criminal than to crimes. All the founders of this school namely Cesare Lombroso, Enrico Ferrie and Garofalo emphasized on one idea making the criminal as the focus of penal codes rather than to crime. The different trends of punishment’s philosophy developed by the pioneers of both classical, neo classical and positive schools, as well as the historical development of penology will be discussed deeply in the present study. The importance of the present study emanates from the notion that the temporary efforts for advancing new trends of the system of punishment could be achieved without reviewing the classical and positive systems of punishment.

The Philosophy and History of Punishment

Origin and history of punishment

The impulse of vengeance is recognized as the major doctrine for historical development of punishment. It is a punishment or retribution that reflects both the instincts and positive self-feelings inflicted for an injury or wrong. However, still there is deference between vengeance and anger, as the first occurs deliberately and remains for long time, while the second happens suddenly and for short time. The essential elements of human psychology behind vengeance are both the positive self-feeling and pugnacity by which the actual action of revenge is reproduced and taking place. Retaliation is considered also as other impulse supplying the lust of vengeance for human and animal [1].

Despite most of legal systems adopting modernized penal codes, but still it is claimed that the applied sanctions in those codes are derived from the emotion of revenge and moral indignation of primitive mankind. Most of the well-known scholars of criminal law, including Tonnisen, Tissault, Du-Bois, Loiseller and others, held that vengeance was the sole parent of punishment [2].

In primitive society, the criminal justice management was absent on the light of brutal and retributive system of savage justice, as justice used to be achieved by the various means of instinct of savage of self-redress and cruelties merely by retaliating to any sort of threat to life or property [3]. The primordial mankind lived with perpetual vendettas, as the revenge itself reproduces a counter revenge again, which provides “no satisfactory method of bringing a quarrel to an end” [4].

With the emergence of tribal system, another doctrine of retributive justice had appeared and the notion of collective responsibility was devoted in practice, where an aggression against any member of the tribe encountered with the same degree of encroachment on the aggressor’s tribe [5,6]. Retributive
punishment were designed inside the tribal system of justice not only for external encroachments, but also against internal violations of tribal unit’s disciplines and customs, as many actions were considered crimes against the whole community and punishable with sanctions of killing, expulsion, forfeiture or ruination, those crimes including poisoning and like offenses, sacrilege, witch-craft, breaches of the hunting rules, sexual taboos of incest or other sex offenses ...etc [7].

From the above discussion, it can be emphasized that the vengeance was a basic building block for the historical development of criminal punishment. The primitive ancient societies resorted to the practices of self-retribution for the administration of criminal justice, and created a system to curb all types of external and internal encroachments that threaten its security and stability. Practices of vengeance included a strong desire to revenge, self-dress, retaliate in a collective form against actions were considered offences in those days. Thus, retaliation itself was deemed as a moral justification for punishment, and as a sort of repayment for wrongful actions during the life of primitive societies in east and west.

Systems for vengeance’s avoidance

In primitive societies, the scope of vengeance was so wide and the lust for blood was unrestricted, as people were very fear about their life and property. This position has been changes due to desire of people to subdue unlimited impulses of vengeance, revenge, vendetta and retaliation to some types of restrictions. Among other factors, the development of social leadership in those societies contributed to the mitigation of vengeance and blood lust because the retaliated offensive actions conducted byived party people were a real threat to tribes and families, particularly with potential revenge made by invaded party.

The crucial role of religion and morality in curbing instincts of vengeance in ancient communities is considered as a vital factor [8]. All religions deal with vengeance as a sin and prohibit exercising revenge and therefore seeking it is bad [9]. Moreover, the doctrine of “lex talionis” or the law of talion played a significant role in avoiding unregulated vengeance and supporting the family of injured party with a virtual compensation [10]. The approach of lex talionis or “law of retaliation” that originated from Roman root word for “talionis” was known as a rule of “an eye for an eye, a tooth for a tooth”, it means to “pay back or return in kind, including good will” [11]. In contrary the customs adopted prior to the lex talionis, the practices of this rule aimed to impose the “talionic punishment” in a system of regulated retaliation, and despite the criticism made against the lex talionis due to its inefficeness and failure to achieve justice, but still it contributed to ending “the system of retaliatory justice and the emergence of a system based on victim’s compensation” [12].

A group of peaceful measures were developed with the purpose of controlling and restricting vengeance and blood-feuds, these measures tried to preserve “communal peace” and peace of tribal warfare [13]. The system of arbitration was one of peaceful measures, by which the vengeance was replaced by the rule of compensation for an injury to the victim or his kinship in case of death and the compensation’ quantum was decided on the basis of negotiation between both parties at dispute [14]. For instance, a system of Panchayat’s arbitration proved to be used in India for resolving desipates, including criminal cases related to murder and theft, and the same was applicable in Meddle East to solve conflicts between kings and it was part of the Brehon legal system that used for early Celtic dispute’s settlements in ancient Ireland [15]. This system has been criticized because of its incapability of ending the method of self-redress, as the implementation of the results of negotiation and judgments of arbitration depended entirely upon the approval or rejection of an injured party at dispute.

In the context of the historical development of the limitations on vengeance, a system of “elder’s council” was established as impartial body for settlement of disputes [16]. At early stage of history, this body aims to maintain peace and not to adjudicate conflicts, but such function has changed later especially with advent of kingship, as well as the result of changing in penal policy towards the concept of punishment and crime, which were turned from being private affair of parties at dispute into public affair concerning the whole society [17].

The efforts of the “elder’s councils” led to new area of punishment’s specification and codification of king’s edicts, such as the Code of Hammurabi in 18th Century B.C., Mosaic law about 1250 B.C., and Roman Twelve Tables about 450 B.C. [18]. Most of codified laws contained some types of classified offences and penalties, for example Anglo-Saxon laws classified the punishment of compensation into three categories, and those include ‘wergålds”, “bot” and “wite” or “frides bot”, which were classified as compensation and first one is paid to the next ken in case of victim’s death, the second is paid for an injured victims other than death or their agents, while the last is paid to the state [19-22].

Ancient philosophical trends of punishment

Penal sanctions were characterized with severity and harshness in different legal systems. The corporal punishment of death was established in the Code of Hummaurabi about 18th century B.C for more than 25 different offences, and it was part of Hittite Code 14th century B.C, Draconian Code 7th century B.C., and Twelve Tables in 5th century B.C. [23]. The death system was terrifying during Roman Empire, as it is executed by barbaric means of scourging or beheading to death, torture, exposure, deception, crucifixion, exposing to wild animals, vivisection or burnt alive and penalty of the sack. However, decapitation was a common method of execution and standard for all members of lower classes of the society, while sack penalty was imposed on persons found guilty of “parricide” and Vivisection was applied in arson, state-enemy and slaves related cases, and later the rule of free decision of death was applied only for offenders from upper classes during the regime of “Claudius” emperor, such sentence was considered as ordering someone to commit suicide [24].

At one time the death penalty was a common form of punishment in England and there were about three hindered capital crimes [25]. The extensive application of death penalty has been introduced with the spread of the Empire to other countries that adopted common law as basic source of its legal systems. At present, there are some countries in Middle East use the decapitation as major method of execution for specific crimes, and other common forms of the death punishment adopted by many legal systems include hanging, gas, lethal injection, electrocution and firing squad [26].
In ancient India, the criminal punishments “Danda” under ancient Hindu penal law were based on the principle of retaliation, the capital punishment imposed on poor offenders of lower classes, while wealthy defendants of Brahman cast were immune from execution of death penalty [27]. On this context it has been rightly stated by Prejean & Sister Helen [28] that “rich people never go to death row” [28]. Varidhamana, a great Hindu penologist classified penalties under Hindu penal law into three categories pain, mutilation of limbs and capital punishment [29]. The punishments were imposed with severer nature, such as mutilation of limbs “Angacheda” (e.g., cutting off fingers or hand of a thief, a tongue of a defamer), the punishment of pain or afflicting “pidana” was executed by whipping, flogging, imprisonment, chaining or fetters, and the same punishment can be made through exposing to humiliation by shoving the offender's head, rid on an ass or making him patrol in front of public in villages and cities [30,31].

Death penalty “Pramapana” was a traditional practice in ancient India, and its execution during the regimes of Mauryas Dynasty 4th century B.C. and after drawing Dharmasahtra code by Menu 2nd and 3rd century A.D. was more heinous for even trivial offences or sins “pataka” than in other nations through trampling under the foot of elephants, keeping the offender alive under the wheel, or burning him alive ...etc [32,33].

The situation under Islamic law was not that much deferent, as the retaliation assumed to be the basic justification for most of penal sanctions. Retaliation under Islamic Shari’ah law (Islamic law) refers to as “Qisas”, and other known types of punishment recognized by this law, including prescribed punishment “Hudoud”, discretionary penalty “Taazir” and blood money penalty “Diyaat” are based on the principle of retaliation and vengeance [34]. The principle of “lex talionis” or law of retaliation is equivalent to the Islamic concept of “Qisas”, which applies to crimes of murdering and bodily assaulting upon the final approval of the injured party or victim's family, they have the right to stop the death execution and replacing it with material compensation or demand the death penalty’s execution or forgive the offender without demanding any compensation [35].

Development of Penology Systems: Classical Schools and Theories

Classical school of criminology

The classical approach of penology emerged in 18th century as a reaction against the arbitrary state of law and order of middle ages. It is well known that during the feudal system in 10th century people witnessed the absence of peace, security, justice and order, as the result of emergence new waves of criminality, offence, primitive revenge and several types of social conflicts between traders, labors and other sections of the society.

The collapse of justice, religious senses and increasing the religious crime world was the result of the avalanche of ecclesiastical law in middle ages. The birth of Protestantism in that era was catalyzed by the need for solving the problems of increasing criminality, as severe penalties were designed for offenders guilty with religious offences such as adultery, witches and libertinism. For this reason, all efforts made during Middle Ages by Roman, Germanic and Church laws resulted in stabilization of barbaric penalties of torture, arbitrary measures, discriminatory rules, as well as the secret accusation system. Hence, the system of penalty became harsher than before; as the whole system of criminal justice of that era was subjected to the tyranny law and failed in protecting the society from the evil of crimes.

The middle ages phenomena of injustice came to the end by the advent of approaching the era of reformation in 18th century, where lot of formidable efforts of classical school of penology were taken a place for the purpose of purging the criminal justice system. The ultimate goal of this school was the creation of balance between rights of individuals in dignity, freedom and liberty against the arbitrary actions of public authorities and the right of society as whole in security.

The classical approach on penology was influenced by the Rousseau’s theory of social contract, which it main notion assumes that “an individual surrendered as much of his freedom to the state as was necessary for its maintenance”. The social contract interpretation within criminal jurisprudence indicates that there is a real need for protection the right of contracting parties, state and individuals. On the same stream, the principles of Beccaria on “freedom of will” determined the classical approach to the issues related to deciding criminal labiality of individuals, and the social and collective nature of punishment. Montesquieu’s doctrine of anti- savagery of laws has had a vital impact on the classical approach towards adoption of the principle of proportion between crimes and its punishment.

On the same context, the review of classical approach on penology showed its great contribution for accreditation of new principles of criminal justice system, including social system of penalty, legitimacy and legality of crimes “nulla poena sine lege” no punishment without law, individualization of punishments, legislative criminalization of acts, and fixed punishments graded in proportion to the gravity of crimes. In this sense, it is advocated that the classical approach supported the notion of deterrent effect that penalty may create in the mind of potential criminal.

Cesare Beccaria (1738-1798): Cesare Marquis Beccaria-Bonesana, an Italian criminologist, was one of the most important pioneers of classical approach of criminology, as he contributed significantly to the development of penal science through his essay ‘On Crimes and Punishments’ various arguments were made concerning prohibition of torture, abolition of death penalty and reforms for rational and fair administration of law [36]. Beccaria was a jurist who adopted the utilitarian school of criminology, as did Bentham in England, which is presently known as the classical school? Accordingly, the classicists and utilitarians interpreted criminal behaviors as the production of a rational choice that reflects some type of balancing between anticipated pleasures and potential suffering, and the society is authorized to punish criminal for such behaviors with imposing pain beyond possible gains [37]. In fine, Beccaria advocates that the commission of crime becomes irrevocable when the penalty is greatly cruel and certain [38].

Beccaria perspective was based on the realer philosophical paradigms, as the idea of fixed and appropriation of punishment to crime was based on Montesquieu approach, and the power of state and society to punish offenders was based on the Rousseau social contract theory [39]. He believed that torture and capital punishment should be eliminated, punishments should prescribed.
and fixed in advance, law should be drafted and codified with clear and unambiguous language in order to prevent its subjective interpretation by judges, penalties and sentences should be deterrent rather than retributive, and secret accusations violate the right of defense and they must be condemned and eliminated [40].

He espoused that the public-trial principle to reduce the maltreatments of under trials, applying less harsher- penalties merely that essential for purposes of deterrence, elimination of capital punishment, effectiveness of indirect preventive measures to reduce crime’s rates, such as illumination and stationing of guards. Finally he advocated that severe, certain, and swift justice system would be more effective to prevent crimes [41].

Beccaria inspired the British criminologist and philosopher Jeremy Bentham, by whom the classical perspective of criminology was founded. The classical approach of Beccaria was unique for the most significant aspirations made for the development of penal science and criminal justice system, including “punishment proportionate to the severity of the crime and the development of a system of published laws and legal procedures applied equally to all without interference by the particular interests of rulers, judges, or clerics and without providing favorable treatment of individuals of higher social, political, or economic status” [42]. It is argued that Beccaria’s perspective has continued implicit in the contemporary thinking that guides legislations and management of criminal justice system. Beccaria dealt with criminal acts as production of a free choice, and believed in the individualization of punishment [39].

Jeremy Bentham (1784-1832): Bentham’s perceptive focused on developing the legal system by which the penalty could proportionate the offence, Bentham built his theory on a common set of assumption that “Men are possessed of free will. They are calculating animals and based their action on pleasure and pain. Men will be discouraged from criminal activity if threatened with punishments that outweigh any gain resulting from their actions. The individual is responsible for his actions and punishment must be proportional to the interest violated by the crime” [43]. He believed that punishment can be justified only because of its usefulness in preventing re-offending [44].

On of the major principles of Bentham approach was the justification of punishment upon its effectiveness of deterrence which makes crime more costly by increasing penalty [45], as the same was claimed earlier by Plato. According to Bentham human-beings could be deterred from criminal activity by properly designed punishments, as there are three elements of deterrence: severity, celerity, and certainty, for this reason Bentham and Beccaria perspective on explanation of crimes is described as deterrence approach, and form with work the foundation for most contemporary legal justice systems [46]. In fact, the central debate of Jeremy Bentham’s theory were that the human activities are subjected to the choice of human beings, as rational actors, and rational calculations or hedonistic calculus to the pleasure and pain as the result of committing an offense [47]. In contrary to the classical approach of Bentham and Beccaria, the modern rational choice theorists claim other factors such as fear, inaccurate information and morality that might deform the classical point of hedonism [48].

Like Beccaria in Italy, Bentham adopted the principle of “gradation of punishment” as a reformatory measure, in sense penalty must exceed the possible advantages gained from the criminal activity, and it was also similar to Montesquieu perspective [49]. The punishment itself in the thought of Bentham reflects both deterrent and reformatory interests; therefore punishment can be imposed to achieve one of these interests. In the context of Bentham’ reformatory efforts, he demanded the introduction of both the procedural and substantive reformations to criminal justice system and recognized the power of state in punishing and rewarding, as a necessary step for the elimination of brutal practices of justice and promotion of morality and the happiness of the society [50,51].

In fine, Bentham believed in hedonism, rational behavior, hedonistic calculus, free will, panoptic on, and he emphasized that laws should maximize pleasure and minimizes pain, as the pain of punishment must always outweigh pleasures of an offence. He estimated pleasure and pain through various factors, including severity, duration, certainty, and propinquity.

Paul Feuerbach (1775-1833): Feuerbach is a great German criminologist and the founder of the doctrine “Nulla poena sine lege,” “nulla poena sine crimine” and “nullam crimen sine poena legali”, which mean that no person can punished without a prior and precise legal norms. This doctrine reflected that Feuerbach was unsatisfied with the criminal sanction system of the courts of his days, where penalties were decided arbitrarily. Presently, Feuerbach’s major principles are globally applied, for instance the doctrine of ex post facto law, which are “forbidden almost everywhere, countries in the codification tradition are, generally speaking, much stricter on this subject than are common law countries” [52].

Neo-classical school of penology

The neoclassical school thought on penology was based on major notions concerning human nature, namely the ideas of free-will and hedonism, and tried to explain considerations of realities of life and their impacts on imposition penalties, as well as various efforts were made by 18th century’s neoclassical approach pioneers, namely Rossi (1787-1848), Garreau (1849-1930) and Joly (1839-1925) to avoid the scientific weakness and unreasonableness of the classical approach on penology [53]. In fact, the impact of this approach led to the development of many concepts, including indeterminate penalties, the limited responsibility of offenders, responsibility of offenders with mental deflections, and grades of crime and sentence [54].

The classical school and its theoretical approach applied the theory of “free will” and failed to prove the individual differences, as persons have different freedom of actions and inner impulses under similar circumstances [55]. The advent of neoclassical school made distinguishable efforts known as rational choice theory focused on rationality and choice [56] to cope with deficiency of classical approach as regard to the issue of criminal responsibility which realized that each offenders have different responsibilities even in case of similar offences [57].

The neoclassical theory admitted the principle of mitigating conditions, by which the offenders are committed under some circumstances including self-defense, duress, or under the equation of ‘actus reus and mens rea’ elements of criminal responsibility. The ‘actus reus’ is well known as the criminal conduct explicitly, criminal intention or negligence or inaction that causes injury, thus also there is no crime without the existence of ‘actus reus’, and a physical element or guilty act are required to be proved, while the ‘mens rea’ means the quality state of mind or criminal intent, which is known as the mental aspect of an offence [58].

The neoclassical school of penology made significant contributions to the issue of assessment of penalty, as it laid down the equation for quantum of punishment in accordance to the degree of responsibility for the committed offence. Little children and minors, insane, and imbeciles could, for example, be benefited from the exceptions of applying principles of ‘free will’, as their crimes are committed under extenuating circumstances [58]. The neoclassical school of criminology admits variations in criminal conditions and assumes that some persons, such as minors, insanes, and the intellectually imbeciles, cannot reason. Thus, this category of people must be specially treated and the criminal justice system must look after its needs by deciding appropriate sentences [59].

Despite the assessment of criminal responsibility depends on the old approach of the representatives of classical theory, Cesare Lombroso at the University of Turin. He wrote a dissertation under the title of Criminal Sociology that emphasized on the relationship between criminal anthropology and founded criminal anthropology with his book on Criminal Man. The most important point of Lombroso researches was swing against the degenerations. The clear-cut answer may is found his book of Criminal Man [65], still it can be said that Lombroso was greatly impacted by phrenology that he found it difficult to let go (so to speak) of the cranium [66]. Lombroso presumed that “the process of recapitulation usually produced normal individuals. Someone who became criminal, therefore, must constitute a throwback to an earlier stage of biological development—atavistic degeneration”. For him, the biological degenerations are displayed in the some sorts of physical attributes carried by offenders—sloping foreheads, receding chins, excessively long arms, unusual ear size, etc., resulting in the view of the ‘born criminal’ [67].

The keystone of Lombroso’s theory was that specific types of criminals had “physical evidence of an ‘atavistic’ or hereditary sort, reminiscent of earlier, more primitive stages of human evolution, such anomalies, named as stigmata of abnormal forms or dimensions of the skull and jaw, asymmetries in the face, etc, but also of other parts of the body” [68].

Enrico Ferri (1856-1929): Enrico Ferri, an Italian scholar, was born in San Benedetto Po, February 25, 1856 and student of Lombroso at the University of Turin. He wrote a dissertation under the title of Criminal Sociology that emphasized on the relationship between criminal anthropology and criminal law was emphasized [69].

i. Classification of Criminals: In the light of his studies Ferri advocated the following classification of criminals [56]:
   a. The born or instinctive criminals, those who from their birth, through defective heredity, possessed a reduced resistance to criminal stimuli and also an evident and valuable tendency.
   b. The insane criminals, those who suffered identified mental diseases or neuropsychopathic problems that make them clinically metal ailments.
   c. The passionate criminals, those who, through passion, chronic mental disease or emotion, may commit an offence when excited.
iv. The occasional criminals, those who considered as production of social, family environment rather than abnormal personal physical or mental causes, such type of criminal constitute the majority of offenders.

v. The habitual criminals, those who are the production of social conditions in which they acquired habits due to lack of education, family neglect, poverty and bad companionship in the prisons.

vi. The involuntary criminals, those who suffered from lack in the foresight, or imprudence, neglects and moral sensibility [70].

Despite the disciples of Lombroso were followed by Enrico Ferri, but still the later scholar has modified some of these approaches by emphasizing on social or environmental causations of criminality, by which Ferri shifted from philosophical thinking about criminality to an analytic approach of studying criminals [71]. The classification of criminal types made by Ferri helped in understanding the problem of crime and punishment, and was visualized as the cornerstone of the modern penal process, as it enabled prosecutors to establish “a causal link between the defendant and the criminal act, the chief matter of dispute at trial should become, “To what anthropological category does the accused belong?” [70].

b. Views on punishment: Enrico Ferri began as an apprentice of Lombroso, but later recognized a sociological basis for his approach [72]. In general, the Positive School refused the principle of “nulla poena sine lege” no punishment without a law. In contrary to classical approach, the positive approach advocated that the punishment must fit the criminal rather than the crime, as the treatment of criminals must be individualized and the society to be protected from those criminals. Ferri emphasized that each criminal would receive different types of treatments on individual basis because the penalty itself aims to satisfy psychological and sociological needs, and therefore the purpose of punishment is the criminal, not the crime. For this reason, he believed in the efficacy of penal sanctions rather than force, simply because penalty should combat physical, social and psychological factors of crime” [64]. Ferri advocated that the penal sanction should strike the roots of human criminality, and emphasized on social welfare and social defense because the ultimate goal of criminal justice to protect the society against criminals. On this context, he necessitated applying of penal colonies, indeterminate sentences, hospitals, scientifically trained judges and the abolition of juries and individualized treatment by limiting it to the five classes of criminals” [64].

Raffaele Garofalo (1851–1934): Garofalo is an Italian criminologist and jurist and one of the founders of the positive school of criminology. Garofalo’s key achievement to contemporary criminology was the conception of natural crime, and such notion was later the major concern of criminologists. Garofalo believed that the “natural or true crime” is behavior that, when estimated against the normal ethical and moral sentiments of the society, affronts the main altruistic (selfless) feelings of human-beings [56].

According to Garofalo the natural criminal is a person who misses the essential altruistic sense of sympathy and honesty. He supposed that the natural offender is a distinguished psychic or biological kind and that the altruistic defects were natural or hereditary. At rest, Garofalo recognized that specific types of criminal conduct might be heartened by communal and environmental conditions [73].

It can be observed here that the main focus of Ferri and Garofalo was the: the non-physical considerations of criminality including physical, anthropological and social factors, they also paid more attention to “the state of intervention in each area incl. better housing, birth control …etc., to prevent crime”. It is worthy to mention that both of Ferri and Garofalo preferred measure of “social defense” against further offending [73,74].

Conclusion

The philosophy of punishment was based on a religious or spiritual nature, but this basis had changed by the classical school in the 18th century and the positivist school in the 19th century. The classical school is founded by Cesare Beccaria, who came, in his book Crimes and Punishment, with the idea says that laws should be designed to preserve public safety and order, not to avenge crime. On the same context, Jeremy Bentham advocated the principle of utility and hedonism. The Legacy of this school is that all global legal systems adopted the principles of classical school, such as freedom from cruel and unusual punishment, the right to a speedy trial, as freedom from cruel and unusual punishment, the right to a speedy trial, the prohibition of ex post facto laws, the right to confront one’s accusers, and equality under law, contained in the Bill of Rights and other documents at the heart of Western legal systems today.

The Positive school of the 19th century aimed to apply the scientific methods to social life. The philosophy of this school is based on an assumption says that the biological, psychological, or social determinants are behind criminal behavior. It is found that there are some strong points of relationship between the Classical and Positivist School, especially in the thought of Bentham, who advocated the internal and external constraints on free will, and rationality by which he appears as classical and positivist criminologist. The legacy of the positive school was the shift from the armchair philosophizing about human behavior to utilizing the concepts and methods of science and from crime and penology to the criminal.

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