

Encyclopedia of Criminological Theory

Garofalo, Raffaele: Positivist School

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Raffaele Garofalo was born November 18, 1851, in Naples into a noble family of Catalan origin and is considered one of the main exponents of the Positivist School of Criminology. He enjoyed a rich and successful career as a lawyer, with prestigious Bench and Ministry of Justice assignments and was active until his death on April 18, 1934. Garofalo was Cesare Lombroso's disciple with whom he collaborated on the *Archives of Psychiatry, Anthropology and Penal Sciences* together with the third representative of the "glorious triad" (as Grispigni wrote of the three founders of the new school in the *Dictionary of Criminology* in 1943, p. 398), the lawyer Enrico Ferri. In his work, Garofalo systemized the theories of his teacher and tried to give a juridical position to the new criminal theories.

One of the characteristics of Garofalo's work, which stemmed from his professional background, was the strong attention given to the practical aspects of the reform. According to Mary Gibson, it was probably Garofalo who coined the term *criminology*, shifting away from Lombroso's term *criminal anthropology*. The new term also marked the autonomy of this new discipline, characterized by the application of the scientific method and a [p. 353 ↓] broadened approach to include medicine, psychiatry, and law.

Criminology

Garofalo's ideas were incorporated into the debate concerned with the formulation of a new code for post-unified Italy, in which the relationship between free will and juridical responsibility was set against a deterministic vision of humans. While the Classical School placed emphasis on criminal offense and based imputability on the concept of moral responsibility and philosophical free will, the Positivist School emphasized the subject of the crime, the "criminal man," and his (or her) organic and psychological nature, strongly embracing determinism and basing the juridical concept of imputability on that of social responsibility. In *Criminology* and in *On Recidivists and Recidivism*, Garofalo outlined his theory, placing emphasis on the criminal rather than on the crime. He criticized the extreme abstractness with which the Classical School dealt with recidivism and proposed that attention should shift to the "recidivists." He believed that a criminal's tendency to repeat crime constituted one of the scales on which to measure each criminal's social dangerousness and inadaptability to the penal environment.

Criminology is Garofalo's main work. It was published in 1885 and a second Italian edition came out 6 years later. It was translated into Spanish and Portuguese and into French directly by Garofalo. The English translation was carried out by Robert W. Millar of the Northwestern University School of Law and was published in 1914 in the *Modern Criminal Science Series*. The complete title, *Criminology: Essay on Crime, Its Causes and Means of Repression*, indicates the nature of the project and the field that Garofalo intended to explore. His research on the etiology of crime is based on a psychological understanding of the criminal within a rigidly deterministic and hereditarian perspective. This meant applying to the study of criminology, following the positivist approach, the scientific method and viewpoints of anthropology, biology, and psychology—the experimental sciences that could help explain the physical and social influences that induce man to crime.

Garofalo was close to Lombroso in reading physical anomalies as a “sign” of the criminal. On the other hand, his search for a uniform, coherent, and constant criterion led Garofalo to propose a classification system more accurately laid out than Lombroso's and based on predisposition to crime. According to Gibson, Garofalo is to be credited for “making the measurement of ‘dangerousness’ central to the positivist program of penal reform” (2002, p. 35).

The starting point of his classification is the concept of “natural crime,” which set the framework for the definition of the “true criminal.” “Natural” is that “which is not conventional ... which exists in human society independently of the circumstances and exigencies of a given epoch or the particular views of the law-maker” (Garofalo, 1914, p. 4). In this distinction between “natural” and “conventional,” Garofalo presupposed the existence of an unchangeable basis of society, made up of some basic human sentiments and shared through a moral sense by all those who belong. These altruistic sentiments are, according to Garofalo, pity (respect for people) and probity (respect for property). Such a “sociologic notion of crime” (Allen, 1960, p. 257) would imply that a given society's public opinion of that which is acceptable or not depends on its level of civilization and, therefore, that these criteria could vary according to context or other factors. Nonetheless, the underlying axiom that allows for theoretic formulation is that this nucleus of sentiments exists in every society and is shared. A person without a moral sense, thus presenting a form of “permanent psychological anomaly” (Gillin,

1945, p. 341), is therefore a true criminal who threatens healthy co-existence, and society must defend itself from such individuals as a priority.

Garofalo singled out different physiognomic types: the murderer, the violent criminal, the thief and, somewhat less clearly defined, the lascivious criminal. The murderer shows a lack of altruism, of pity, and of probity and therefore presents a higher level of social dangerousness. Violent criminals (including, in a way, lascivious offenders) carry out crimes against the sentiment of pity, whereas a thief lacks the sentiment of probity. Garofalo is more ready to admit the influence of social factors for this last category, although he is not prepared to abandon his belief in a sort of congenital criminality, inherited or acquired in infancy. This inherent “absence or weakness of the moral sense” always [p. 354 ↓] carries with it “the possibility of new crimes” (p. 239). For Garofalo, therefore, rehabilitation of the criminal is unimaginable except in rare cases. In his analysis of recidivism, he presents a large amount of statistical data and a comparative study of the situation in other European countries.

Policy Implications

Drawing from Charles Darwin's theory of natural selection, one of the main paradigms of the second half of the 19th century, Garofalo identified the main characteristic of the true criminal as “lack of adaptation to his social environment” (Allen, 1960, p. 265). It followed, therefore, that the necessary consequence was the elimination of criminals. “Dangerousness” was considered the criterion for commensuration of the punishment, and the punishment itself functioned to eliminate the criminals from the social and penal environment.

For less dangerous criminals, that is, younger criminals and those more influenced by environmental factors, Garofalo believed in internment in penal agricultural colonies or transportation, whereas in the case of mental insanity, he proposed fines, community labor, or internment in appropriate hospitals, according to the seriousness and nature of the disease.

On the other hand, due to his total mistrust in the possibility of rehabilitation, Garofalo felt that the most dangerous criminals should suffer the death penalty, which he saw as the only instrument capable of guaranteeing the defense of society.

This conviction is rooted in social Darwinism, which applied the theory of natural selection to society. Social Darwinists thought that a person's place in society owed to their heritable, transmissible nature; hence, Garofalo believed that by killing criminals the state would be following the example of nature, selecting against a criminal "breed" of humans. Garofalo justified theoretically the need for the death penalty with the moral anomaly of true criminals, since this lack of the human sentiments of pity and probity alienates the sympathy of society from them.

Due to his belief in the hereditary component of recidivism, he did not consider that punishment could function as a mechanism for producing regret and therefore moral regeneration. Similarly, he did not believe that the death penalty could work as a deterrent. According to Francis Allen, Garofalo articulated an accurate criticism of the classical theory of deterrence, maintaining that its main defect lay in its inability to provide precise criteria that could be used to calculate the extent of the punishment to be carried out.

He was, nevertheless, willing to recognize that the death penalty had an intimidating quality, believing that punishments could, in a certain sense, "regulate" behavior by guaranteeing social sanction against certain kinds of conduct. By attaching punishment to a behavior, a corresponding societal taboo would be created which would ensure effective extra-legal sanctions on top of the punishment meted out by law. As Garofalo (1914, p. 266) wrote, "no doubt for many persons, the consciousness of the evil involved would destroy any pleasure which the criminal act might afford and is therefore sufficient to cause abstention from crime."

As far as the debate on the death penalty was concerned, Garofalo's conviction was not shared by the majority of his contemporaries. He maintained his stand participating in the works of the commission for reform of penal code chaired by Enrico Ferri (expressing his position in the pamphlet *Against the Stream!*) and again when the Rocco code, which re-established the death penalty, was approved in 1930.

Garofalo's uncompromising position was coherent with his political views. He was a convinced conservative, supporting fascism right from its onset, and for many years he expounded his argument against socialism, which he retained to be non-scientific. Garofalo's support of the death penalty and his political stance led to a gradually increasing fracture with the "group" of the Positivist School and, in particular, with Ferri, an exponent of the Socialist Party.

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See also

- [Beccaria, Cesare: Classical School](#)
- [Ferri, Enrico: Positivist School](#)
- [General Deterrence Theory](#)
- [Lombroso, Cesare: The Criminal Man](#)

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