The Birth of Modern Criminology and Gendered Constructions of Homosexual Criminal Identity

Jordan Woods, University of Arkansas, Fayetteville

Available at: https://works.bepress.com/jordan-woods/13/
The Birth of Modern Criminology and Gendered Constructions of Homosexual Criminal Identity

Jordan Blair Woods JD, MPhil, PhD (cand.)

a Institute of Criminology and Faculty of Law, University of Cambridge, Cambridge, UK
b Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy, UCLA School of Law, Los Angeles, California, USA

Accepted author version posted online: 29 Sep 2014. Published online: 03 Nov 2014.

To cite this article: Jordan Blair Woods JD, MPhil, PhD (cand.) (2015) The Birth of Modern Criminology and Gendered Constructions of Homosexual Criminal Identity, Journal of Homosexuality, 62:2, 131-166, DOI: 10.1080/00918369.2014.969053

To link to this article: http://dx.doi.org/10.1080/00918369.2014.969053

PLEASE SCROLL DOWN FOR ARTICLE

Taylor & Francis makes every effort to ensure the accuracy of all the information (the “Content”) contained in the publications on our platform. However, Taylor & Francis, our agents, and our licensors make no representations or warranties whatsoever as to the accuracy, completeness, or suitability for any purpose of the Content. Any opinions and views expressed in this publication are the opinions and views of the authors, and are not the views of or endorsed by Taylor & Francis. The accuracy of the Content should not be relied upon and should be independently verified with primary sources of information. Taylor and Francis shall not be liable for any losses, actions, claims, proceedings, demands, costs, expenses, damages, and other liabilities whatsoever or howsoever caused arising directly or indirectly in connection with, in relation to or arising out of the use of the Content.

This article may be used for research, teaching, and private study purposes. Any substantial or systematic reproduction, redistribution, reselling, loan, sub-licensing, systematic supply, or distribution in any form to anyone is expressly forbidden. Terms &
The Birth of Modern Criminology and Gendered Constructions of Homosexual Criminal Identity

JORDAN BLAIR WOODS, JD, MPhil, PhD (cand.)
Institute of Criminology and Faculty of Law, University of Cambridge, Cambridge, UK;
Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy, UCLA
School of Law, Los Angeles, California, USA

There is a dearth of engagement with LGBTQ populations, and sexual orientation and gender identity more broadly, in the field of criminology. This article analyzes the treatment of sexual orientation and gender identity at the birth of the discipline around the 1870s. Through an analysis of Cesare Lombroso’s writings, the article argues that a multifaceted stigma of deviance attached to homosexuality and gender nonconformity in early criminological theory. The article explains this multifaceted stigma in terms of broader political, social, cultural, and legal developments before and during the late nineteenth century that shaped modern Western conceptions of sexual orientation and gender identity.

KEYWORDS criminology, crime, homosexuality, history, sodomy, biology, medicine

The birth of modern criminology is typically traced to the 1870s, when a group of Italian physicians—including Cesare Lombroso (1876), Raffaele Garofalo (1882), and Enrico Ferri (1884)—started to apply the scientific method to investigate crime and criminals (Walters, 2003). These early modern criminologists applied principles of biological determinism to locate the causes of crime in the biological constitutions of individuals (Brown, 1990; Vold, Bernard, & Snipes, 2002). Although many of these early theories were discredited in the early 20th century, criminology continued to grow into an independent and diverse field (Lanier & Henry, 2009). Today, criminologists...
use the scientific method to study and to explain crime in terms of biological, psychological, and sociological factors—or a combination thereof. Many criminologists also apply more critical paradigms to study and to explain crime.

In the 1990s, some criminologists stressed a need to incorporate lesbian, gay, bisexual, transgender, and queer (LGBTQ) perspectives and queer theories into criminological theories and research (see, e.g., Ferrell & Sanders, 1995; Groombridge, 1999; Tomsen, 1997). Nevertheless, there remains a dearth of criminological engagement with LGBTQ populations, and sexual orientation and gender identity issues more broadly (Peterson & Panfil, 2014; Woods, 2014). Most contemporary treatment of LGBTQ populations and crime has taken the form of research on bias crimes (Meyer, 2010; Herek, 1989, 2009; Stotzer, 2008, 2009; Moran & Sharpe, 2001, 2004; Carragher, 2002; Herek et al., 1997, 1999, 2002; D’Augelli & Grossman, 2001; Herek & Berrill, 1992; Berrill, 1990; Berrill & Herek, 1990), intimate partner violence (Greenwood et al., 2002; McClennen et al., 2002; Cruz, 2003; McClennen, 2005; Hester & Donovan, 2009; Murray & Mobley, 2009; Messinger, 2010; Ard & Makadon, 2011; Oriel, 2012), and anti-LGBTQ bullying (Darwich, Shelley, & Terry, 2012; Hong & Garbarino, 2012; Russell et al., 2011; Berlan et al., 2010; Birkett, Espelage, & Koenig, 2009). Although these studies have made important contributions, their scope is limited because they focus on specific areas of victimology.

Prior to the 1970s, LGBTQ people in Western countries were commonly labeled as criminals, psychopaths, sinners, and perverts (Sarbin, 1996). Through a concept that I label the **homosexual deviancy thesis**, I argue that the field of criminology has historically facilitated, reinforced, or left these deviant misconceptions of LGBTQ people intact (Woods, 2014). Broadly, the homosexual deviancy thesis argues that intersecting formal and informal legal, societal, and political mechanisms of social control in the status quo (criminal anti-sodomy laws, for example), which explicitly defined homosexuality and gender nonconformity as forms of sexual deviance, have shaped the overwhelming treatment of LGBTQ populations in mainstream theories of crime and delinquency since the discipline’s birth. This historical trend exposes a pattern of criminological complacency within broader structures of inequality that have constructed LGBTQ people over time as deviants in different ways. Accordingly, the homosexual deviancy thesis opens avenues for reconceptualizing sexual orientation and gender identity in the discipline to better account for the criminal justice needs and experiences of LGBTQ populations both as victims and as offenders.

The homosexual deviancy thesis has two elements, which I label the **deviance-centered element** and the **invisibility element**. The **deviance-centered element** applies to discussions of sexual orientation, gender identity, and LGBTQ populations in mainstream criminological theories roughly until
The Birth of Criminology and Homosexual Criminal Identity

The invisibility element applies to discussions of sexual orientation, gender identity, and LGBTQ populations in mainstream criminological theories after the 1970s until today. It argues that after the 1970s, discussions of sexual orientation, gender identity, and LGBTQ populations largely disappear from mainstream theories of crime and delinquency. This erasure coincided with the declining popularity of the formal and informal mechanisms of social control described above that defined gays and lesbians as sexual deviants per se. The declining popularity of criminal anti-sodomy laws especially had a role in this shifting criminological engagement. As explained, the historical distortion and more recent omission of LGBTQ populations from mainstream theories of crime and delinquency has facilitated a lack of knowledge about how sexual orientation and gender identity might relate to the causes of crime and to LGBTQ people’s experiences in Western criminal justice systems.

The purpose of this article is to set the stage for the homosexual deviancy thesis. It focuses on a specific, but significant, moment of modern criminological history: the discipline’s birth around the 1870s. To provide this analysis, the article pays specific attention to the writings of Cesare Lombroso, who many criminologists credit with developing the first modern scientific theory of crime (Vold et al., 2002). Although Lombroso’s theory of crime was discredited in the early 20th century (Fishbein, 1990), reflecting on Lombroso’s treatment of sexual orientation and gender nonconformity is a meaningful venture. As argued, Lombroso’s writings illustrate the ways in which political, social, and medical norms worked in tandem to stigmatize LGBTQ subgroups as sexual deviants in early modern criminological theories. The differential treatment of LGBTQ subgroups in Lombroso’s early modern criminological theory (specifically, homosexual men and women) illustrates how baseless stereotypes and social biases shaped definitions of “criminal behavior” and “criminal populations.” As argued, it further shows how the multifaceted stigmatization of sexual and gender minorities was part of broader Western enterprises to regulate, control, and “civilize” minority
populations whose differences (race, sexuality, sex, or gender, for example) were viewed as threatening to societal norms and social stability.

Focusing on Lombroso’s work warrants explanation because he was not the only Italian physician of the late 19th century to apply principles of biological determinism to study and to explain crime. Further, his theory did not have immediate influence in many countries outside of Italy due to language barriers and translation obstacles (Gibson & Rafter, 2006; Lilly, Cullen, & Ball, 2011). The analysis focuses on Lombroso’s writings for three reasons. First, Lombroso’s theory of crime became influential in the field and inspired the development of future criminological theories in Europe and the United States (Morrison, 2004). Second, the evolving treatment of sexuality and gender nonconformity in Lombroso’s writings offers insight into the broader intellectual and social currents of his time. In support of this point, Rafter and Gibson (2004, p. 20) stated that “Lombroso should be recognized as a transitional figure between Victorian prudery and the celebrations of sexual freedom characterizing sexology from its foundation in the early twentieth century on.” Third, Lombroso’s name appears in the titles of works that made the first calls to “queer” criminology (Groombridge, 1999; Tomsen, 1997). Those writings viewed Lombroso as a major figure because his early theories included discussions of sexuality.

To demonstrate how Lombroso’s differential treatment of LGBTQ subgroups was a product of different mechanisms of social control at the time, the analysis builds on three prior critiques of Lombroso’s writings. First, the analysis explains Lombroso’s treatment of sexual orientation and gender nonconformity as part of broader political agendas in the late 19th century in which medical science emerged as a tool to construct racial, sexual, and gender hierarchies and to rationalize controlling minority groups perceived as threats to political order and civil stability (Gibson & Rafter, 2006; Beccalossi, 2012). Second, Brown (1986, 1990) has critiqued interpretations of Lombroso’s writings that oversimplify the role of biological sex differences in his theory. Building on this critique, the analysis considers the nuanced role that stereotypes about biological sex differences had in Lombroso’s differential treatment of LGBTQ subgroups. Third, the analysis considers broader late 19th-century Western currents involving sexual identity, during which medical experts assumed a greater role in defining sexual norms. Underscoring the significance of this consideration, in a recent analysis of Lombroso’s treatment of female-female intimacy and lesbian identity, Valverde (2013, p. 211) stressed a need to include “the history of sexuality within the purview of criminological research” because that history “will change the way we understand discourses of crime and deviance.”

It is also important to acknowledge at the onset that criminological theories and research are often products of broader political historical, cultural, and societal assumptions and circumstances (Pick, 1986; Einstadter & Henry, 2006). Tosh and Lang (2006, p. 9) argued that the reconstruction of historical
awareness entails a responsibility “to take measure of the difference of the past” and warn that “one of the worst sins is . . . the unthinking assumption that people in the past behaved as and thought as we do.” For this reason, it would be misleading, and perhaps deceptive, to criticize decades-old criminological theories for making assumptions about LGBTQ people that are considered outdated or misguided today, without recognizing how those assumptions were rooted in dominant conceptions of sexual orientation and gender identity that have changed over time (McIntosh, 1968; Weeks, 1979; Greenberg, 1988). Taking this warning seriously, the analysis should not be interpreted as criticizing criminological discussions of sexual orientation and gender identity at different historical moments on the simple basis that those discussions fail to conform to current conceptions of LGBTQ concepts. Rather, the purpose of the analysis is to make sense of those differences and to evaluate whether they give insight into the treatment of LGBTQ people in criminological theories and research.

**LOMBROSO’S GENDERED CONSTRUCTIONS OF HOMOSEXUAL CRIMINALITY**

The section provides a descriptive evaluation of Lombroso’s treatment of homosexuality and criminality along the lines of biological sex. In 1876, Lombroso released his most popular work, *Criminal Man*, which he revised in four subsequent editions ([1876, 1878, 1884, 1889, 1896–1897] 2006). Lombroso used principles of biological determinism to argue that crime was a natural phenomenon rooted in the physical constitutions of individuals, and he assumed that external physical features mirrored internal moral states (Gibson & Rafter, 2006). Using methods of anthropology and physiognomy, he distinguished criminal offenders from law-abiding citizens based on measurements of skulls, brains, facial features, and other body parts (Gibson & Rafter, 2006). He initially argued that most offenders were “born criminals” (*delinquente nato*) and that those offenders possessed certain physical anomalies that made them resemble more primitive humans. Influenced by Darwin’s theory of evolution, he used Darwin’s concept of “atavism” to describe criminals as biological throwbacks to a lesser evolved, more primitive human (Lombroso, [1878] 2006). In using the concept of atavism to locate the causes of crime in the biological constitutions of individuals, Lombroso is credited with shifting the focus of criminological inquiry from criminal “acts”
to types of criminal “offenders” (Gibson & Rafter, 2006; Mutchnick et al., 2009).

As demonstrated below, in Lombroso’s writings homosexual men (“pederasts”) emerged as a distinct class of criminals marked by biological inferiority and perversion. Lombroso discussed female-female intimacy (“tribadismo”) much less frequently. Unlike homosexual men, he did not characterize lesbians as a distinct class of criminals, which was arguably rooted in the complexities of how his theory of crime conceptualized biological sex differences and criminal involvement. When discussed, gender-nonconforming people were characterized as an extreme type of homosexual, which reflected the conflation of sexual orientation and gender identity concepts at the time (King, 1981).

Male “Pederasts” as Insane Criminals

Lombroso’s discussion of male homosexuality illustrates the ways in which mechanisms of social control at times worked in conjunction with concepts of criminality to stigmatize particular sexual and gender minorities. In the first edition of *Criminal Man*, Lombroso ([1876] 2006) distinguished “pederasts” (his term for male homosexuals) from other types of criminals based on physical attributes that failed to conform to gender stereotypes (Beccalossi, 2013). Lombroso stated, “pederasts are often distinguished by a feminine elegance of hair and feminine clothing, which they insist on wearing even under their prison uniforms” ([1876] 2006, p. 51). At a later point of the edition, Lombroso again relied on gender stereotypes to label pederasts as a type of “specialist in crime” (72):

Pederasts, who are often very cultured and intelligent (office workers, teachers), have a strange need to associate with their own kind. They form a sort of fraternity in which they recognize each other at a mere glance, even in foreign lands. Without the evidence revealed by Casper and Tardieu, I would not be able to understand, or even believe, that such unmentionable love could be mixed with romanticism or mysticism. Yet despite this, pederasts rarely focus on one individual but rather go after many, almost simultaneously. Less strange is the way these offenders, if from higher social classes, love women’s work and clothes. They go out in public laden with jewels, their necks exposed and their hair curled. Combining wicked habits with exquisite taste in the arts, they collect paintings, flowers, statues, and perfumes, thus atavistically reverting to both the vices and the aesthetic refinement of ancient Greece. (p. 73)

As the passage above shows, Lombroso was not merely censuring homosexual “acts” but rather invoking gender stereotypes to identify and to classify male homosexuals as a type of “criminal person” defined by sexual deviancy.
Lombroso’s typology assumed that deviant sexuality in men was a defining feature of (male) criminal agency, which as explained later reflected emerging late 19th-century conceptions of homosexuality as a distinguishing feature of (male) personal identity.

Two other noteworthy points concerning Lombroso’s treatment of male homosexuality arise from the passage above. First, Lombroso’s perception of pederasts was colored with a sense of strangeness, which he acknowledged in the passage stemmed from his lack of understanding of homosexuality. Lombroso found it strange that homosexuals had a strong desire to associate with one another and to engage in promiscuous sexual activity. He explained these perceived strange activities in terms of pederasts’ alleged atavistic nature, and thus did not appear to consider the role of environmental factors in shaping those behaviors. For instance, Lombroso did not consider that homosexuals might have had a “need to associate with their own kind” (p. 73) to obtain emotional support from others who shared common experiences of discrimination. Whether societal prejudice and the threat of criminal prosecution posed obstacles to maintaining homosexual relationships, and thus pressured homosexual men to seek non-monogamous and fleeting sexual encounters, did not enter into Lombroso’s analysis. Significantly, sodomy was not decriminalized in Italy until the nation-state passed its first penal code in 1890, after Lombroso had released the fourth edition of *Criminal Man* (Vassalli, 1974; Hildebrandt, 2014). Lombroso himself described same-sex intimacy as “unmentionable love” in the passage, which demonstrated the stigma attached to homosexual intimate relationships.

Second, Lombroso’s statement that pederasts “atavistically revert[ed] to both the vices and the aesthetic refinement of ancient Greece” (p. 73) illustrates that degeneracy theory provided a conceptual framework to denigrate ancient societies that tolerated or accepted homosexual practices. In the third edition of *Criminal Man*, Lombroso more forcefully relied on degeneracy theory to conceptualize ancient cultures as atavistic for accepting homosexual practices:

> The concept of atavism is particularly useful in explaining the nature and recurrence of certain crimes. It explains pederasty and infanticide, which are holdovers from past epochs and peoples—such as the Romans, Greeks, Chinese, and Tahitians—who regarded these acts as national customs rather than crimes. Atavism also accounts for the aestheticism of contemporary pederasts, who in this respect, resemble the ancient Greeks. (Lombroso, [1884] 2006, p. 222)

In discussing pederasty and prostitution among “savages” he wrote:

> There is worse. In some lands, men practice sodomy without the slightest sign of embarrassment. According to Bourgarel (*Des races de l’Oceanie*,...
In New Caledonia, men gather together for lustful purposes. Ancient Mexicans held gatherings where male prostitutes dressed as women (Díaz, *Histoire de la conquête de la Nouvelle Espagne*, II, 594). The Normans, according to a complaint made in 1117 by the Abbot of Clairvaux, replicated biblical Sodom by practicing pederasty wherever they went. ([1884] 2006, p. 176)

Lombroso’s attitudes toward these ancient societies contrasted from the prior classical views of Bentham, who, as discussed later, interpreted the acceptance of homosexuality during times of ancient prosperity as evidence that homosexual practices did not threaten the moral fabric of society (Bentham & Crompton, 1978b). Thus, degeneracy theory and the concept of atavism enabled Lombroso to justify attitudes of cultural supremacy and to characterize societies that did not adhere to dominant sexual ideologies as savage and primitive, and therefore, threatening to civil order.

As noted previously, Lombroso is credited with shifting the focus of criminological inquiry from criminal “acts” to classifying criminal “offenders” (Gibson & Rafter, 2006; Mutchnick et al., 2009). One of the most important ways in which he influenced this shift was in his attempt to create a scheme that identified and categorized types of criminal offenders. In the second edition of *Criminal Man*, he began to develop and to refine this scheme (Lombroso, [1878] 2006). As Lombroso expanded the scheme in later editions, he increasingly supplemented his theory of atavism with pathological concepts to explain crime (Wetzell, 2000; Beccalossi, 2013). By the last edition, he differentiated five types of criminals: (1) the born criminal, (2) the epileptic criminal, (3) the criminal of irresistible passion, (4) the insane criminal, and (5) the occasional criminal. The first four categories of criminals were psycho-pathologically characterized (Hurwitz & Christiansen, 1983).

Lombroso’s increasing reliance on pathological concepts appeared to shape his views about the causes of pederasty and his criminal descriptions of pederasts (Beccalossi, 2013). Lombroso viewed pederasty as a sign of atavism in the first edition of *Criminal Man*. In the second edition, he ([1876] 2006) referenced existing psychiatric research on homosexuality to acknowledge the possibility that mental illness, as opposed to atavism, might cause pederasty:

Casper found complete hypospadias and crookedness of the member in a habitual pederast; Hoffman identified the latter characteristic in another pederast. According to Tardieu, hermaphrodites and those without testicles frequently commit crimes against nature. For them, this is a physiological phenomenon. According to Westphal, men with an appetite for crimes against nature display a moral, if not physical, femininity and experience inverted sexual impulses. In such cases, who can say where guilt begins? Perhaps hermaphroditism and hypospadias, just like microcephaly, are the results of partially arrested development of the central
nervous system and thus indication of a lack of moral sense. This may explain why such individuals commit many sexual crimes. ([1878] 2006, p. 132)

There is some ambiguity regarding how Lombroso ([1884] 2006) conceptualized pederasty in the third edition, in which he modified his theory to include mental illness as a separate cause of crime. In a short summary of this edition, he dedicated separate sections to discussions of mental illness and atavism, which he identified as the two main causes of crime. He mentioned pederasty in the section on atavism only, referencing the acceptance of homosexuality in ancient societies as indicative of the atavistic origins of pederasty.

Despite this ambiguity, Lombroso’s conceptualization of pederasts shifted in the fourth edition of *Criminal Man*, in which he classifies pederasts as a type of “insane criminal” (Beccalossi, 2013). In 1886, two years after the release of the third edition of *Criminal Man*, the Austrian psychiatrist Richard von Krafft-Ebing ([1886] 1965) published the first edition of his influential work *Psychopathia Sexualis*. In the fourth edition of *Criminal Man*, Lombroso ([1889] 2006) explicitly referenced Krafft-Ebing’s pathological conception of homosexuality as a sexual inversion to classify pederasts as a type of insane criminal:

> The crimes of rape and pederasty may be caused by sexual inversion (Conträre Sexualempfindung, to use Krafft-Ebing’s term). When the erotic impulses of an individual do not correspond to his physical constitution, he seeks sexual satisfaction among his own kind. Sexual inversion leads not only to perverted lust (pederasty and lesbianism) but also to a morbid propensity for platonic love and idealisation of individuals of the same sex. This strange anomaly often shapes the person’s entire psychology. ([1889] 2006, p. 273)

Lombroso’s new categorization of pederasts as insane criminals suggests that his views evolved to perceive pederasty primarily as a manifestation of mental illness, not atavism.

At the same time, another passage in the fourth edition suggests that Lombroso did not completely discount the role of atavism as a cause of pederasty. He stated, “degeneration causes these psychological disorders, which are symptoms of defective sentiments and instincts that obstruct the development of a resolute character and weaken the subject’s resistance to impulse” (p. 272). Therefore, both mental illness and atavism seem to have a role in Lombroso’s evolving views on the etiology of homosexuality. Nevertheless, his statement that “sexual inversion . . . often shapes the person’s entire psychology” (p. 273) demonstrates how Lombroso’s position tracked broader currents that defined homosexuality as a person’s sense of
identity and psychology, as opposed to isolated acts of sexual deviance. These newly emerging conceptions of late 19th-century homosexual identity will be discussed in greater detail later.

Pederasty is not mentioned in the translated excerpts of the last edition of *Criminal Man*. Despite this omission, Lombroso’s broad discussions of penal policies in the edition shed insight into his views on punishing homosexuality. He argued that punishment should “vary according to the type of offender” ([1896–1897] 2006, p. 341). For “insane criminals,” he advocated permanent confinement into insane asylums:

> Criminal insane asylums are the only solution for insane criminals and for those numerous born criminals in whom epilepsy and moral insanity causes violent fits. Permanent internment in asylums will prevent insane criminals from transmitting their disease through heredity, from associating with ordinary criminals, and from forming criminal gangs. (p. 347)

Lombroso’s recommendation of permanent confinement sought to prevent insane criminals from spreading their “disease.” It was not an attempt to advocate for the social tolerance or acceptance of mentally insane criminals. Although not explicit, his categorization of pederasts as insane criminals implies that he would have advocated the indefinite commitment of pederasts into insane asylums, as opposed to incarcerating them in prisons (Bayer, 1981). Lombroso’s (1906) later commentary at the Sixth International Congress of Criminal Anthropology in Turin, Italy, substantiates this view. At the Congress, he drew a parallel between born homosexuals and innate criminals, arguing that both have similar, if not identical, etiologies. He asserted that it was legitimate to punish born homosexuals less severely than born criminals because the crimes of homosexuals were more limited and preventable. Even though Lombroso’s later writings suggest that he disfavored criminally punishing pederasts, this population still bore a criminal stigma because they were categorized as a type of “insane criminal.” This characterization reflects the complex ways that the convergence of medical and criminal paradigms in Lombroso’s theory of crime functioned to stigmatize sexual and gender minorities, especially homosexual men, as sexual deviants.

The Denial of Lesbian “Criminal” Identity

Unlike Lombroso’s discussions of male homosexuality, his discussions of eroticism between women illustrate the ways in which mechanisms of social control at times worked in disjunction with concepts of criminality to stigmatize particular sexual and gender minorities. Lombroso ([1893] 2004) argued that lesbians were biologically inferior to “normal women.” But unlike male
“pederasts,” he did not categorize lesbians as a distinct type of insane criminal. The contextual analysis later in the article will explain this difference in terms of the patriarchal sexual ideology of the late Victorian era, which historians have argued shaped Lombroso’s conceptions of lesbian identity and his perspectives on the criminological implications of eroticism between women (Hart, 1994).

Before evaluating Lombroso’s treatment of eroticism between women, it is important to discuss two issues for context. The first issue involves terminology. The analysis below uses the specific term *lesbian* at several points. Lombroso, however, generally used the terms *tribadismo* and, less frequently, *saffismo* to describe eroticism between women (Rafter & Gibson, 2004). Historians interpret these terms to capture only sexual practices between or among women, as opposed to a female sexual identity or personality trait. Valverde (2013) argued that the rare use of the term *lesbian* (or another term to describe lesbians as a group) in Lombroso’s writings is evidence of the uneven development of modern lesbian identity in the late 19th century compared to male homosexual identity.

The second issue involves Lombroso’s general attitudes toward women. Feminist criminologists have critiqued the field of modern criminology for neglecting and mischaracterizing women (Gelsthorpe & Morris, 1990). Lombroso was one of the few early modern criminologists to explore female criminality, but as feminist criminologists have argued, he did so in ways that perpetuated baseless stereotypes against women (Smart, 1977; Brown, 1986; Rafter & Gibson, 2004). He ([1876] 2006) included data on female offenders in the first edition of *Criminal Man*, and later separated and developed these data in a separate volume co-authored with his son-in-law, Guglielmo Ferrero, titled *Criminal Woman, the Prostitute, and the Normal Woman* (“La Donna Delinquente, la Prostituta e la Donna Normale”; Lombroso and Ferrero, [1893] 2004).

Lombroso employed the concept of atavism to characterize women as the “weaker sex” ([1878] 2006, p. 128). At the time, society assumed that women committed less crime than men (Rafter & Gibson, 2004). His characterization of women as the “weaker sex” was potentially inconsistent with this assumption. If women were biologically inferior to men, then they should commit more, not less crime. To resolve this potential contradiction, Lombroso and Ferrero ([1893] 2004, p. 125) distinguished between two categories of women: “normal women” and “female criminals.” In their view, women were lower on the evolutionary scale than men, but “normal women” desisted from crime because their “evil tendencies” usually remained “latent” as a result of their biology (p. 183). This position rationalized why women committed less crime, despite being biologically inferior to men. Although smaller in number to male “born criminals,” Lombroso and Ferrero (p. 185) believed that female criminals were atavistic to such a strong degree that they embodied “true monsters.” Reflective of late Victorian values...
and rigid gender roles, they stated that “honest women are kept in line by factors such as maternity, piety, and weakness; when a woman commits a crime despite these restraints, this is a sign that her power of evil is immense” (p. 185).

There is some ambiguity regarding the extent to which Lombroso and Ferrero explain female criminal involvement in terms of biology or environmental factors. In one critique, Brown (1990) challenged feminist criminologists for oversimplifying Lombroso and Ferrero’s writings as merely explaining female criminal involvement in terms of women’s alleged biological inferiority. To develop this critique, Brown stressed the distinction between “crime” (defined as criminal acts) and “criminality” (defined as predisposing factors that lead to crime). According to Brown, judgments about crime do not assume that women are biologically predisposed to commit certain criminal acts and merely assert that the crimes that women commit are more or less likely to fall into a particular category (sexual or property crimes, for example). Conversely, female criminality assumes that women are biologically predisposed to commit certain types of crime.

Brown (1990) argued that the crime/criminality distinction has two implications for positivism: “first, that the way to control the problem of crime was to find the ‘real’ criminals, that is, those with a fixed predisposition towards lawbreaking” and second “that not all lawbreakers were real criminals” (p. 49). Based on the crime/criminality distinction, Brown offered a more sophisticated account of Lombroso and Ferrero’s position on female criminal involvement. She summarized Lombroso and Ferrero’s position as follows: “women’s biological nature gives them a fundamentally different orientation to criminality from men. Women as a group are predisposed to non-criminality. They are nature’s conformists” (p. 50). Accordingly, Brown argued that the implication of Lombroso and Ferrero’s position is that “the bulk of women’s crime is not and cannot be caused by any biologically based criminality but, on the contrary, must be due to external environmental factors precisely because women are inherently biologically oriented to conformity” (pp. 50–51).

Brown’s critique offers an avenue to conduct a more specific analysis of Lombroso and Ferrero’s treatment of female sexuality and its criminal dimensions. The researchers characterized “normal women” as feminine and modest, describing their sexualities as “weak and delayed” (p. 171). They connected a woman’s natural sexuality to her role in marriage, stating that a “woman is naturally and organically monogamous and frigid” (pp. 60–61). In their view, “modesty and matrimony” were “late product[s] of evolution” (p. 171). Degeneracy theory thus enabled Lombroso and Ferrero to put forth a normative conception of female sexuality that prioritized the patriarchal sexual values of the Victorian period. They explicitly characterized sexual freedom as a degenerative quality of female offenders, stating that “the criminal is above all a reversion to a primitive evolutionary type, the female
The Birth of Criminology and Homosexual Criminal Identity

criminal naturally presents the two most salient characteristics of primitive woman: [sexual precocity and similarity to male” (p. 150). In essence, the “female criminal” was a woman who defied the gendered expectations of Victorian ideology (Hart, 1994).

Although Lombroso and Ferrero ([1893] 2004, p. 176), described lesbianism as a form of “sexual perversion,” they did not describe lesbians as a distinct type of criminal. One possible explanation for this characterization is that lesbian acts were generally omitted from the bulk of European sodomy laws during Lombroso’s lifetime. It therefore would not have made much sense for Lombroso and Ferrero to discuss lesbians as distinct criminal subjects. As explained later, this difference in the criminal law was rooted in dominant societal assumptions that men were the exclusive objects of female sexual desire.

Another possibility is informed by Brown’s (1990) critique. Lombroso and Ferrero invoked principles of biological determinism to argue that women’s biology prevented them from having a pronounced sense of eroticism, which caused lesbianism to be uncommon. They stated that women’s “cortical centre ha[d] much less influence on eroticism, giving them few opportunities for becoming excited and thus perverted” (p. 191). Building on Brown’s critique, Lombroso and Ferrero not only described women as a group that was predisposed to non-criminality but also conceptualized their sexuality in relation to men to diminish the idea that women could be predisposed to commit sex crimes with other women. This view denied the concept of a lesbian identity and rendered lesbian identity and intimacy irrelevant topics for criminological inquiry. For instance, Lombroso and Ferrero’s conception of female sex crime was largely shaped by societal expectations of women to uphold marriage contracts to men. The main female sex crime that they discussed among “savage and primitive women” was female adultery, which was then defined as a married woman having sexual relations with a man who was not her husband (Warnke, 1999). Lombroso (1903) did not focus on the relationship between female-female intimacy and other forms of criminality until the turn of the 20th century, when he published an article on “the psychology of a tribade wife-murder” inspired by a woman who violently killed her husband. The alleged motive for the crime was the wife’s love for another woman.

Another significant area where the minimization of lesbian agency emerges in Lombroso and Ferrero’s work is in their discussions of prostitution. Prostitution was not criminalized during the late 19th century in Italy (Gibson, 1986). Prostitutes were commonly arrested for vagrancy and disorderly conduct, however, and prostitution was considered a great vice associated with crime (Gibson, 1986; Emsley, 1996). A few scholars before Lombroso, including Parent-Duchatelet (1836) and Moll (1891), argued that lesbians were almost exclusively prostitutes (Miller, 2000). Lombroso and Ferrero ([1893] 2004) argued that prostitution encouraged lesbianism among
women, but they challenged the notion that lesbianism was strictly associated with prostitution. This position raised another potential contradiction for the researchers: if lesbianism was associated with prostitution, then how could prostitutes engage in work that involved sexual intercourse with men?

To resolve this potential paradox, Lombroso and Ferrero drew a distinction between the “born lesbian,” who was the product of her inferior biology, and the “occasional lesbian,” who was the product of her environment. The researchers believed that most lesbians were “occasional lesbians” because they could tolerate engaging in sexual acts with men:

The majority of lesbians are not born lesbians but rather occasional lesbians who borrow the virile traits of the criminal and the prostitute. This explains why the occasional lesbian is able to put up with, simulate, and inspire the love of men, even making that her exclusive possession. It would be impossible for the true born lesbian to do this, for she is disgusted by men, just as the pederast is disgusted by women. (p. 181)

Building on Brown’s critique, Lombroso and Ferrero’s framing of most lesbians as “occasional lesbians” illustrates that one significant consequence of the positivist framing of women as being predisposed to non-criminality was that it provided a framework to deny the concept of a “true” lesbian. This critique offers one plausible explanation for why the researchers stressed environmental over inborn factors as causes of lesbianism. The five factors that they identified were (1) excessive lustfulness; (2) the influence of surroundings, especially women-only settings (schools, asylums); (3) imitation; (4) sexual inversion from maturity or old age; and (5) revulsion to men from prior abuse (Lombroso & Ferrero, [1893] 2004).

From today’s vantage point, it is apparent that Lombroso and Ferrero’s distinction between “born lesbians” and “occasional lesbians” conflated sexual identity with sexual practice. In their view, a woman could not be a “true” lesbian if she was able to engage in sexual acts with men. This conception of lesbian identity is rooted in very rigid assumptions about the nature of sexuality and ignores the complex ways that patriarchy shaped female sexual identity at the time and pressured women to enter and maintain marriages with men (Rich, 1980). The contextual analysis provided next explores this point in greater detail.

**CONTEXTUALIZING LOMBROSO’S POINT OF VIEW**

This section explains the multifaceted stigma attached to LGBTQ subgroups in Lombroso’s writings by analyzing two interconnected factors that speak to the broader context in which Lombroso developed his theory. First, Lombroso developed his theory during a time of dramatic political change
after the unification of Italy in 1861. In this politically fragile climate, principles of biological positivism emerged as an instrument of nationalism to identify, control, and “civilize” specific populations—including sexual, gender, and racial minorities—that were perceived as threatening to civil stability in a new unified Italy (Pick, 1986; D’Agostino, 2002; Rafter & Gibson, 2004; Wong, 2006). Second, Lombroso developed his theory during a critical period in the history of sexuality when Western conceptions of sexual identity were drastically changing. As explained, these changes were connected to the growing prestige of science, which enabled medical physicians such as Lombroso to have greater authority in defining sexual and gender norms (Hamowy, 1977).

Italian Unification and the Desire to Control “Threatening” Populations

Lombroso developed his theory of crime in the politically fragile environment of post-unification Italy. This period was marked with challenges that stemmed from the search for a national identity after integrating the vastly different regions of the northern and southern Italian peninsula (Stewart-Steinberg, 2007). Some scholars have criticized criminological accounts of Lombroso’s work that ignore the influence of his political surroundings as reductionist (Pick, 1986; Morrison, 2004).

Criminologists who have studied Lombroso’s work in detail, especially Rafter and Gibson (2004), have connected the political undertones of his writings to his upbringing and maturation during the Italian unification movement. Lombroso was an active supporter of Italian unification beginning in his youth (Gibson, 2006). After completing his medical degree, he volunteered as a physician in southern Italy for the revolutionary forces during the war that led to the formation of the Italian nation-state (Rafter, 2008). Rafter (2008) asserted that, faced with cultural, political, and social images of southern difference, Lombroso’s experience as a military physician in southern Italy “confirmed for him the northern Italian stereotype of southerners as savage and criminalistic” (p. 65). In his later career, Lombroso was not only an accomplished professor and medical expert, but he also remained a dedicated patriot to the new unified Italian state (Rafter, 2008).

A brief summary of the circumstances before Italian unification is useful to offer deeper insight into the cultural, political, and social functions of Lombroso’s theory of crime. Historians have traced the idea of Italian unification to the French Revolution (1789–1799), which resulted in the standardization of economic, political, and social institutions throughout France (Graziano, 2010). In one historical analysis, Cinel (1991) argued that during the first half of the 19th century, the architects of unification from northern Italy viewed integration as a way of creating a strong national
economy through removing trade barriers, eliminating inefficient regional economies, and consolidating military power. These architects from the north had assumed that the south was rich in resources and that southerners would welcome integration (Cinel, 1991).

Southern representatives soon revealed that economic conditions in the south were dismal. According to Cinel (1991), lack of industrialization and modernization resulted in the south having fewer resources and participating less in international markets (Koff & Koff, 2000). Moreover, its population consisted mostly of villagers from isolated agricultural areas (Cinel, 1991). Many of these villagers had visible racial differences from northern populations because of their closer positioning to Africa and the Middle East than to northern Europe (Riall, 1998). Tensions between the north and south soon heightened as northerners began to question whether integrating the south was consistent with its national aspirations, and southerners began to question whether unification was a pretext for a military and economic coup (Cinel, 1991).

Thus, the development of biological positivism in Italy occurred against the backdrop of a growing awareness of cultural, demographic, economic, political, and social differences between the north and south. Historians argue that awareness of these differences only grew during the second half of the 19th century immediately after unification in 1861. During this period, rapid migration and industrialization spurred growth in both urban and rural regions of the Italian peninsula (Gibson, 2002). In the politically fragile context of post-unification Italy, these economic and population changes fueled concerns about crime and “dangerous groups” that might threaten the stability of the new unified state (Rafter & Gibson, 2004; Wong, 2006). As Stewart-Steinberg (2006) summarized, “[a]nxiety does in fact describe the post-1860s moment” in Italy (p. 2).

Scholars who have evaluated the political dimensions of biological positivism view the emergence of this scientific mode of thought in Italy as a response to manage the spectrum of difference between the north and south to build a single national identity (Rafter & Gibson, 2004; Wong, 2006). Biological positivism rationalized northern and southern difference by linking the economic, cultural, and political failures of the south to the biological characteristics of the southern people (Wong, 2006). The methods of this scientific paradigm required meticulous study of individual physical features, which motivated the creation of hierarchies based on classifications of those features. This methodological emphasis on physical difference helps to explain the resulting radicalization, sexualization, and denigration of southern populations in the developing theories informed by biological positivism (Wong, 2006). For instance, Lombroso’s writings described the White race as civilized and non-White populations as “primitive” or “savage” (Gibson & Rafter, 2006, p. 17). Wong (2006) has further described how the
denigration of southern populations based on the intersection of race and sex was cast through medical discourse:

Descriptions of the south as the “infection” or the “bacteria” of Italy, as well as the fear of contamination of the north by the south, helped to create an idea of the foreign, the Other. It is this pathologicization, in which northern Italy became characterized as the moral, responsible doctor to the ailing, weak, helpless patient of the south, that helped in many ways to “ease” meridionalist discourse from a more cultural, social context into the arena of biology and race of the physiognomical sciences. (p. 8)

As the next section will discuss, the growing “pathologicization” of difference stemmed from changes during the late 19th century that enabled medical experts such as Lombroso to have a greater role in solving societal problems and defining societal norms.

The Rise of Medical Science and Modern Western Conceptions of Homosexual Identity

Lombroso’s theory of crime was a reflection of the rise of medical scientific authority and the use of medical paradigms in defining Western social morality in the late 19th century (Gibson & Rafter, 2006). As argued, the growth of medical science during this period coincided with changes in Western conceptions of sexual identity, which are apparent in Lombroso’s study of sexually deviant “persons” as opposed to “acts.” To provide a deeper understanding of these wider currents, the analysis below begins with a discussion of how sexual identity was conceptualized before Lombroso advanced his theory in the late 19th century. It then turns to explain the circumstances that led to the rise of scientific experts in defining acceptable sexual and gender norms in late 19th century Western societies and the corresponding changes to conceptions of sexual identity that appear in Lombroso’s writings.

The Condemnation of Homosexual “Acts” in Pre- and Early-Modern Western Societies

In premodern societies, religious institutions were primarily responsible for regulating individual conduct and enforcing social norms (Garland, 1990). Crime was explained in theological terms and viewed as a sin and a rebellion against God (Henry & Milovanovic, 1996). For centuries, religious institutions referenced the story of Sodom in the biblical book of Genesis (19:1–26) to condemn homosexual practices. The dominant interpretation of the story portrayed homosexuality as a sin, which spawned a long tradition of homosexual condemnation in the religious sphere (Weeks, 1981).
In medieval England, the Church and ecclesiastical courts enforced prohibitions against sodomy, including homosexual acts (Bartee & Bartee, 1992; Finkelman, 2006). During this period, the Church viewed homosexual acts as a sin punishable by torture or death (Birke, 1982). The power of the Church to enforce sexual norms declined during the English Reformation of the 16th century, when King Henry VIII transferred the powers of the ecclesiastical courts to the crown courts (Finkelman, 2006). In 1533, the Reformation Parliament temporarily enacted the 1533 Act of Henry VIII, which broadly criminalized “the detestable and abominable vice of buggery committed with mankind or beast” (25 Hen. VIII, ch. 6 1533). The 1533 Act was the first secular law to criminalize sexual offenses in England (Moran, 1996; Eskridge, 1999), and it served as a model for U.S. colonies to enact anti-sodomy laws during the 17th and 18th centuries (Bartee & Bartee, 1992).

William Blackstone (1769, p. 215), the distinguished commentator on the laws of England, later described sodomy as “that horrible sin not to be mentioned among Christians” [peccatum illud horribile, inter christianos non nominandum]. Blackstone’s reference to sin and Christianity illustrates the continuing influence of religious perspectives within the legal sphere even after ecclesiastical courts had lost their power.

Similarly, during the Italian Renaissance between the 14th and 16th centuries, the infiltration of religious perspectives into the secular sphere motivated the first enactment of criminal laws against sodomy in Italy—Lombroso’s country of origin. The reputation of Florence and Venice as independent city-states where practices of sodomy flourished during this period is well documented (Rocke, 1996; Crompton, 2003). Historians, however, have challenged the assumption that these reputations reflected a growing tolerance of homosexuality during the Italian Renaissance (Rocke, 1996; Crompton, 2003). Historical records indicate that religious factions in independent city-states undertook campaigns to impute Christian morality into new secular laws prohibiting several vices, including sodomy (Crompton, 2003). These efforts succeeded, with Bologna becoming the first independent city-state to adopt the death penalty for sodomy in 1259. Laws against sodomy spread to other independent Italian city-states in the 14th and 15th centuries, most of which punished sodomy by death. As Rocke (1996, p. 4) summarized, “many people, following the teachings of the Church, continued to regard sodomy as a serious and potentially destructive sin, and everywhere it remained a crime punishable by severe penalties, including death by burning.”

The role of religious perspectives within the political and legal spheres declined during the 18th century with the rise of Enlightenment rationalism (Blomberg & Lucken, 2001). Enlightenment thinkers sought to free humanity from bias and error by discovering truth through science (Eckman, 2008). The new rationalism of the Enlightenment inspired many thinkers
to challenge the excessively harsh and cruel punishments in Europe before and during the 18th century (Bohm, 2001).

Two thinkers stand out from this group, which is known as the classical school of criminologists: Cesare Beccaria (1738–1794) and Jeremy Bentham (1748–1832). Beccaria and Bentham both presumed that individual behavior, including criminal behavior, was motivated by free will (Siegel, 2011). Based on Enlightenment principles, they advocated proportionate punishments, meaning that punishments were just harsh enough to outweigh the perceived benefits of crime. Sodomy was a capital crime in many European societies during the Enlightenment. The penalty for sodomy in England was hanging, and in France and Latin Europe it was burning (Crompton, 1978). Beccaria and Bentham challenged these severe punishments, although criminal laws against sodomy remained on the books in many European countries and the United States (Eskridge, 2008).

Lombroso’s theory of crime moved the direction of criminological thought away from the classical school and toward scientific positivism (Gibson & Rafter, 2006). A brief description of Bentham’s treatment of homosexuality provides additional insight into how the rise of degeneracy theory inspired this shift. Unlike Lombroso, Bentham challenged the notion that homosexual practices posed a grave threat to the fabric of society by citing evidence of widespread homosexual practices during periods of prosperity in ancient cities. He further argued that consensual homosexual acts did not produce a grave enough harm to participants or to society. For this reason, he viewed the harsh penalties then applied to homosexual acts as disproportionate, and thus unjust. Bentham, however, still described homosexuality as a “perverted taste” (Bentham & Crompton, 1978b, p. 390). At other points of his writing, he referred to homosexual practices as “disgusting,” “preposterous,” and “abominable” (p. 385). Thus, his call for more humane penal responses to sodomy was not a call for society to view homosexuality as normal or acceptable. At the same time, his writings rejected the idea that homosexuality threatened civil stability. As discussed previously, Lombroso employed concepts of atavism and mental illness to communicate the opposite idea, particularly with respect to ancient societies that accepted homosexual practices.

Historians argue that after the Enlightenment, a number of developments occurred in England and other Western countries that changed societal attitudes toward the government having a strong role in regulating private sexual behavior. The Victorian era (1837–1901) was characterized by rapid industrialization and urbanization due to the rise of capitalism (Weeks, 1981; Madanipour, 2003). The organization of the family unit shifted as nuclear families came to replace extended families as the predominant family structure (Madanipour, 2003). Capitalist social relations also disrupted prior mercantilist class patterns, inspiring the growth of a new working class and class conflicts (Weeks, 1981). Strict separation of the public and the private
spheres emerged as a means to protect bourgeois ideology from the forces of the marketplace (O’Donovan, 1985). In this environment, the home became a private space in which values of chastity, domesticity, and moral purity could thrive free from market and government interference (O’Donovan, 1985).

Historians have further explained how these new structural and ideological divisions shaped attitudes toward sexuality in Western societies (Weeks, 1981). Katz (1995) asserted that “the early nineteenth century prescribed particular ideals of manhood and womanhood, founding a cult of the true man and true woman” (pp. 43–44). Society viewed sexual promiscuity and sexual pleasure as signs of social decay, weakening of the family structure, and deterioration of bourgeois values (Haller & Haller, 1974). Sexuality became confined to the domestic sphere, and sex became a taboo subject in public discourse (Foucault, 1979). As individuals repressed sensuality and preserved sexual purity through self-discipline (Walters, 1974), sexual organs became viewed as means of reproduction as opposed to pleasure (Katz, 1995). These sexually repressive ideals had gendered consequences. Women were perceived as asexual beings who regarded “sensuality with disgust and reproduction as a necessary evil” (Walters, 1974, p. 65). Victorian sexual ideology prioritized sexual reproduction and repressed sexual pleasure, but this ideology was not framed in homosexual/heterosexual terms (Katz, 1995). Being homosexual was arguably not yet conceived as a form of identity, and homosexuality remained a series of deplorable acts that people committed (Katz, 1995).

Although anti-sodomy laws remained on the books in Western Europe and the United States, scholars have found that these laws were not heavily enforced in many Western jurisdictions prior to 1880 (Hamowy, 1977; Greenberg, 1988; Eskridge, 2008). This lack of enforcement could be interpreted as a manifestation of the state’s limited role in regulating private conduct during the early and mid-Victorian era. For instance, legal rules of evidence shielded adults who engaged in private consensual acts of sodomy from prosecution by forbidding the testimony of a willing sexual partner from being included as evidence to support a sodomy conviction (Bullough, 1976; Eskridge, 2008). In the eyes of the law, each willing partner was an equally responsible accomplice. The testimony of a sexual partner was admissible only if the partner was coerced or a minor.18

Therefore, until the mid-19th century homosexuality was viewed in Western societies as a series of abominable acts, not a feature or an identity that distinguished particular groups of people (Weeks, 1986). Anti-sodomy laws did not target homosexuals as a group of persons but rather prohibited homosexual acts among a series of sexual behaviors that were viewed as not furthering procreation. This perception changed during the late 19th century, as discussed next.
The Rise of Sexology and the Condemnation of Homosexual "Persons"

The second half of the 19th century was a critical stage in the history of Western sexuality. Lombroso’s writings on homosexuality reflect these wider currents. During this period, Western societies became intensely mobile as a result of dramatic industrialization and urbanization (Fellman & Fellman, 1981). The growth of a capitalist consumer economy generated a new ethic that prioritized consumption and pleasure (Katz, 1995). Historians have explained that in this new ethic, people began to view the human body as a means of consumption and pleasure as opposed to a strict source of production. As a result, a greater diversity of sexual preferences and behaviors, including male prostitution and homosexuality, became more visible within the public sphere (Bullough, 1979; Weeks, 1979).

The enforcement mechanisms of Victorian sexual norms increasingly dissolved as self-restraint within the private sphere could no longer preserve sexual purity. Since Victorian ideology had restricted the state from maintaining a large role in regulating private sexual conduct, middle-class society turned to medical experts to resolve moral dilemmas and to generate new definitions of sexual normalcy (Hamowy, 1977; Fellman & Fellman, 1981; Greenberg, 1988). As Victorian sexual repression lost force, medical practitioners assumed the responsibility of prescribing “a healthy new sexuality” that included “an essential, necessary, normal eroticism” (Katz, 2006, p. 71). In redefining sexual norms, medical experts introduced new theories of sexual morality that were appropriate in a scientific age, yet drew on their middle-class moral standards (Greenberg, 1988).

A science of sexology emerged in this social environment, and homosexuality became the subject of scientific inquiry as medical practitioners put forth contending definitions of sexual normalcy (Bayer, 1981).19 Valier (1997) described how a host of sexual activities—including sadomasochism—drew the attention of medical practitioners in this environment. One notable feature of this new medical discourse with regard to homosexuality specifically was that it shifted societal conceptions of homosexuality from a series of notorious acts to a feature that shaped individual personality (Birke, 1982; Hernn, 1995). Foucault (1979) explained that the homosexual “became a personage, a past, a case-history, and a childhood, in addition to being a type of life, a life-form, and a morphology, with a discrete anatomy and possibly a mysterious physiology... The sodomite had been a temporary aberration; the homosexual was now a species” (p. 43).

Westphal (1869), a professor of psychiatry in Berlin, is heralded as the first medical practitioner to study homosexuality from a clinical perspective (Bullough, 1979; Bayer, 1981). Westphal’s first case study on lesbian sexuality focused on a young woman who as a child preferred to dress as a boy and play games that were traditionally intended for boys, illustrating the medical
practitioners’ reliance on gender-stereotypical behavior to identify homosexuals. Following Westphal, other prominent physicians such as Benkert, Ellis, Carpenter, and Hirschfeld advanced the view that homosexuality was biologically innate and a “natural” feature of human sexuality (Greenberg, 1988). Many of these researchers characterized homosexuality as an innate feature of individuals with the intention of improving the social and legal status of homosexuals (Greenberg, 1988).

Other physicians, however, used medical science to define homosexuality as an unnatural sexual inversion, which opened the door for physicians to advance medical “cures” for homosexuality (Bullough, 1979). As explained previously, historians have asserted that social vices became more visible in modern Western societies during the early 19th century as a result of increasing urbanization and industrialization (Greenberg, 1988; Olson, 2008). Degeneracy theory, which gained popularity in Europe and the United States during the late 19th century (Olson, 2008), provided a new framework to minimize social responsibility for these vices by explaining them through individual causes. During this period, several physicians began to invoke degeneracy theory to situate homosexuality outside the realm of sexual normalcy (Charcot & Magnan, 1882; Krafft-Ebing, [1886] 1965; Tarnowsky, 1886; Moreau, 1887; Moll, 1891; Féré, 1899; Forel, 1905).

Krafft-Ebing ([1886] 1965) put forth the most influential of these positions in his popular work *Psychopathia Sexualis* (Bullough, 1979; Bayer, 1981). He later changed his position to argue that homosexuality was a harmless and natural variant of human sexuality (Makari, 2008). His early positions, however, warrant discussion because they illustrate how Victorian sexual ideology and scientific advancements merged in the post–Victorian era to ostracize homosexuals as a specific class of persons. The relationship between Krafft-Ebing and Lombroso is supported by the fact that Lombroso wrote the introduction to the Italian translation of Krafft-Ebing’s *Psychopathia Sexualis* in 1886 (Hauser, 1994). In addition, in his own writings Lombroso relied on case histories taken directly from *Psychopathia Sexualis* (Valverde, 2013).

Krafft-Ebing ([1886] 1965) viewed sexuality as a feature of individual personality, as opposed to a series of transient acts. He defined and labeled heterosexuality as the biological norm. Based on this view, he classified sexual behaviors that did not further procreation, such as sadism, masochism, assorted fetishes, and “antipathic sexual instinct” (his term for homosexuality) as pathological (Miller, 2006, p. 16). The central role of reproductive sexuality in his definition of sexual normalcy demonstrates how the Victorian sexual ideology underlying degeneracy theory shaped his assumptions about the nature of sexuality (Zilney & Zilney, 2009). He invoked degeneracy theory to conceptualize homosexuality as a form of biological degeneracy, stating that “anti-pathic sexual instinct as an anomaly of sexual life is only found in individuals who are tainted, as a rule, hereditarily”
(1886] 1965, p. 295). He further relied on gender stereotypes in classifying pronounced cases of homosexuality, which treated sexual orientation and gender identity concepts as one:

In the well-pronounced cases of antipathic sexual instinct . . . the physical and psychical characteristics of inverted sexuality are so plentiful that a mistake cannot occur. They are simply men in women's garb, and women in men's attire, especially if they have full freedom of action. Psychically they consider themselves to belong to the opposite sex. (1886] 1965, p. 297)

Based on his view that homosexuality (which also included gender nonconformity) was a manifestation of biological inferiority, Krafft-Ebing argued that criminal punishment was neither effective nor appropriate. Moran (1996, p. 7) elaborates that Krafft-Ebing did not consider the homosexual as an appropriate subject for legal regulation but viewed homosexual as "a term by means of which this male genital body might become a new object within a different field of regulation." In this regard, Krafft-Ebing recommended several non-punitive interventions to contain the "problem" of homosexuality, including masturbation prevention activities, the promotion of good sexual mores and hygiene, and hypnosis in some cases.

Therefore, similar to the 17th- and 18th-century penal reformers, Krafft-Ebing's call for non-punitive responses to homosexuality was not a call for society to view homosexuality as natural or acceptable. His mapping of sexual pathologies onto distinct categories of people, however, caused the stigma attached to homosexuality to take a different form. As physicians defined homosexuality as a defining feature of personality, society no longer perceived homosexuality as a series of notorious acts that people did: rather, it was something notorious that people were. This paradigm shift appears in Lombroso's writings on homosexuality, which connect homosexual and gender-nonconforming practices to a person's biology and individual psychology.

The trust that society placed in physicians to define socially appropriate behavior during the second half of the 19th century resulted in the inevitable intersection between the medical and legal spheres (Hamowy, 1977). Criminal laws in Western countries outside of Italy began to address homosexuality, and male homosexuality specifically, as the medical and legal spheres intersected (Tamagne, 2006). For instance, Germany enacted Paragraph 175 of the Reich Criminal Code in 1871, which criminalized all homosexual acts between men other than mutual masturbation (Weeks, 1979). In 1879, Pennsylvania became the first U.S. state to amend its anti-sodomy law to ban male-male oral sex specifically (Eskridge, 2008). By the 1920s, almost every U.S. state had legislation that prohibited male-male oral sex. In 1885, the British Parliament passed the Labouchère Amendment,
which criminalized all public and private homosexual male activity as acts of “gross indecency” (Criminal Law Amendment Act, 1885, 48 and 49 Vict., c. 69, sec. 11). In 1898, the Vagrancy Act in England revised the law relating to importuning for “immoral purposes,” which resulted in the law being applied exclusively against homosexual men (Weeks, 1981).

These new anti-sodomy laws targeting male homosexuals may have had different effects based on locality. Some scholars argue that the Labouchère Amendment in England had little practical effect on the number of sodomy prosecutions against homosexual males (Greenberg, 1988; Cocks, 2003). Other scholars contend that the expansion of anti-sodomy laws to include male-male oral sex within the United States resulted in a considerable increase in the number of sodomy arrests within major U.S. cities after 1900 (Eskridge, 2008). In spite of these differing perspectives, the criminal law began to formally concern itself with the specific problem of male homosexuality during the late 19th century, when conceptions of homosexual identity and medical discourse concerning homosexual deviancy gained popularity.

In this regard, the gendered skew of Western conceptions of “homosexual identity” that emerged in the 19th century helps to explain Lombroso’s different treatment of homosexuality in men and women. These emerging conceptions focused on men and largely omitted women (Weeks, 1981). Mainstream Western societies did not acknowledge lesbian identity prior to the 20th century, which historians have argued caused lesbians and queer women to lead unacknowledged lives (Rosenzweig, 1999; Faderman, 2011). The exclusion of sexual acts between women from various Western anti-sodomy laws was a direct reflection of the public invisibility of lesbian identity and intimacy (Castle, 1995). This legal exclusion was rooted in patriarchal assumptions about the nature of female sexuality that are present in Lombroso’s writings on female-female intimacy (Weeks, 1981). Simply put, it was socially inconceivable that women would seek sexual pleasure or intimate relationships outside the presence of men (Castle, 1995).

Evidence of lesbian disbelief is present in the legislative history of the Labouchère Amendment of 1885, which criminalized sexual conduct between men in England. Recorded statements suggest that legislators could not think of a way to explain to Queen Victoria that lesbianism existed (Pearsall, 1969). In a discussion over the Amendment, Queen Victoria allegedly refused to believe that sexual intimacy between women was possible (Manthorpe & Price, 2006). Even in 1921, two decades after the turn of the 20th century, the House of Lords rejected an attempt to extend the Amendment to same-sex acts between women. Lord Desart warned, “You are going to tell the whole world that there is such an offence, to bring it to the notice of women who have never heard of it, never thought of it, never dreamt of it” (Weeks, 1981, p. 105). Lord Birkenhead, the Lord Chancellor, agreed: “I would be bold enough to say that of every 1,000 women, taken as
a whole, 999 have never even heard a whisper of these practices. Among all these, in the homes of this country . . . the taint of this noxious and horrible suspicion is to be imparted" (Weeks, 1981, p. 105). The presumed ignorance of women over their sexualities, and the denial of lesbian agency, was a reflection of patriarchal sexual ideologies that still applied in post-Victorian society.

In sum, by the end of the 19th century there was a recognizable conception of "modern homosexual identity" in Western Europe and the United States that was male-centered and that bore the stigma of criminal sexual deviancy. The concept of lesbianism was rejected through other mechanisms of social control—namely, patriarchal norms that defined female sexuality in relation to men. These wider currents involving the reorganization of sexual identities and the rise of scientific authority in defining sexual norms help to contextualize Lombroso’s differential treatment of homosexual men and women.

CONCLUSION

Through a close reading of Lombroso’s writings, this article has illustrated that a multifaceted stigma of deviance attached to homosexuality, gender nonconformity, and LGBTQ individuals at the beginning of modern criminology in the late 19th century. As conceptions of modern homosexual identity gained popularity, homosexual men emerged within the discipline as a distinct class of criminals marked by biological inferiority. Lesbians were considered biologically inferior to heterosexual women, but patriarchal Victorian sexual ideologies created and perpetuated conditions that rendered lesbians and queer women irrelevant to the criminological enterprise.

Placing this multifaceted stigma in its historical context shows that the stigma against LGBTQ people in criminological perspectives has not been static throughout history, but rather has shifted in response to existing societal assumptions about sexuality, gender, and personal identity. Although Lombroso’s theory of crime is now discredited for its methodological shortcomings (Fishbein, 1990), the provided analysis of his writings is historically meaningful because they set the tone for discussions of sexual orientation and gender identity in future criminological theories and research.

NOTES

1. Some scholars have challenged the assumption that modern criminology originated in the late 19th century with the work of Cesare Lombroso. See Lindesmith and Levin (1937). Most of these critics date the origin of modern criminology to the mid-18th century, when Beccaria ([1767] 1995) released his influential treatise on penal reform (Beirne, 1993). Although legal thinkers of the late 18th and early 19th centuries, including Beccaria, made influential contributions to reform the penal system, these thinkers were not concerned with investigating the causes of crime from a scientific perspective. Since criminology
is typically defined as the scientific study of crime and criminals, most scholars do not date the birth of modern criminology to the late 18th and early 19th century (Wetzell, 2000).

2. The Journal of School Violence (Volume 12, Issue 1, 2013) also recently released a special issue on the topic of anti-LGBTQ bullying in schools titled “Creating and Maintaining Safe and Responsive Schools for Lesbian, Gay, Bisexual, Transgender, and Queer Youths.”

3. Although this paragraph identifies an important trend involving LGBTQ-inclusive criminological research, it by no means argues that all criminology and criminal justice scholars have failed to conduct empirical investigations involving LGBTQ populations. Since 2000, criminological studies have investigated topics relevant to LGBTQ communities, including fear of crime among LGBTQ populations (Laing & Davies, 2011), criminal behavior of gay men (Kurtz, 2008), sexual victimization and homicides of LGBTQ people (Tyler, 2008; Bartlett, 2007), and attitudes toward LGBTQ individuals within law enforcement institutions and criminal justice education (Fradella et al., 2009; Colvin, 2009; Cannon & Dirks-Linhorst, 2006; Cannon, 2005; Burnstein & Kostelac, 2002). In addition to these studies, a handbook on LGBTQ communities and crime, which is the first of its kind, organizes and presents other criminological research on LGBTQ populations (Peterson & Panfil, 2014).

4. Scholars have advanced different definitions of social control (Martin, 2003). Buckner (1971) explained formal social control as including institutionalized forms of social control, such as “the ‘official’ laws, regulations, and understandings that are supposed to encompass all members of a group or society” (p. 14). Advancing a broader conception of social control, Conrad and Schneider (1992) described that “sociologists usually think of formal social control in terms of institutions and agents of social control. They may be depicted as social control apparatuses that operate, explicitly and implicitly, to ensure adherence to a particular set of values and norms, and in this work, to sanction deviance” (p. 8). In more concrete terms, the investigators described that “we usually think of the criminal justice system, with its police, courts, correctional facilities, and auxiliary personnel, as the major institutions of social control. Other institutions such as education, welfare, the mass media, and medicine are also frequently depicted as having social control functions” (Conrad & Schneider, 1992, p. 8). The article adopts this broader conception of social control.

5. It is important to discuss a caveat concerning the available English translations of Lombroso’s scholarship. In 1876, Lombroso released the first edition of Criminal Man, which he revised in four subsequent editions. Despite being considered a foundational text, no complete English translation of any edition of Criminal Man has been published (Gibson & Rafter, 2006). One incomplete and one distorted English translations of the text, both released in 1911, shaped 20th-century interpretations of Lombroso’s positions (Gibson & Rafter, 2006). Lombroso’s daughter produced the first translation shortly after Lombroso’s death, the content of which scholars now interpret as being mostly written by Lombroso’s daughter and not Lombroso himself. Horton released the second translation, which was based only on the third and fifth editions of the text. In 2006, historians Gibson and Rafter (2006) released the first abridged English translation of all five editions. This article uses excerpts from Gibson and Rafter’s translation because this translation is the most accurate and comprehensive translation to date. In 2004, Gibson and Rafter also released a comprehensive translation of Lombroso’s work concerning female criminality, titled Criminal Woman, the Prostitute, and the Natural Woman (Lombroso & Ferrero, 2004 [1893]). The article uses excerpts from that translation in providing a critical analysis of Lombroso’s treatment of female sexual criminality.

6. A version of Lombroso’s theory became popular in those regions in the early 20th century when future criminologists—such as Hooton, Goodard, Sheldon, and Sheldon and Glueck—conducted research on the biological constitutions of criminals inspired by Lombroso’s ideas (Gibson & Rafter, 2004; Lilly, Cullen, & Ball, 2011). Scholars have ascribed the growing popularity of Lombroso’s theory of crime to discussions of his work in Ellis’s (1880) The Criminal.

7. Degeneracy theory drew on Darwin’s (1859, 1871) theory of evolution to explain social vices as manifestations of defective and heritable biological characteristics (Greenberg, 1988; Miller, 2006).

8. Darwinian principles and degeneracy theory were not yet developed when Bentham made this argument. This is not to imply that Bentham would have relied on degeneracy theory to denigrate ancient societies where homosexual practices were widespread if it had been available.

9. Lombroso (1906) stated:

The social and legal measures against the latter [born homosexuals] may not be as severe as against the first [born criminals], because their crimes are much more limited, and you can be assured that
they will cease with the loss of sexual activity—that cannot be said of man thug, dangerous to the last day of his life, and against which preventative measures are not enough. (p. 381)

10. The strong influence of the story of Sodom is substantiated by the fact that the term sodomy derives from the ecclesiastical Latin terms pecatum Sodomiticum, meaning “sin of Sodom” (Bayer, 1981).

11. Henry VIII re-enacted the 1533 Act in 1536, 1539, and 1541 (Bhaskaran, 2004). After inheriting the throne in 1547, Edward VI repealed the Act along with other legislation passed during Henry VIII’s reign. Queen Elizabeth later reinstated the Act in 1562.

12. The 1533 Act did not distinguish acts of buggery between people based on gender, or between people and animals (Weeks, 1981). As felonies, the penalty for these “abominable” acts was death. Scholars assert that there were relatively few prosecutions under the 1533 Act prior to 1880 (Benemann, 2006; Eskridge, 2008). Despite this lack of enforcement, society viewed acts of buggery as deplorable (Eskridge, 2008).

13. The Italian Renaissance diffused widely and influenced art and intellectual thought in other European nations (Kristeller, 1990).

14. Prominent Enlightenment thinkers, including Montesquieu, Voltaire, Rousseau, Diderot, and Hume applied scientific principles to explain the order and rationality of social institutions (Eckman, 2008). These thinkers criticized religion as “a fraud or at least an illusion” (Bohm, 2001, p. 12) and as “irrational and inappropriate in a scientific age” (Eckman, 2008, p. 73).

15. Bentham stated:

In Athens and in ancient Rome in the most flourishing periods of the history of those capitals, regular intercourse between the sexes was scarcely much more common. It was upon the same footing throughout Greece: everybody practised it; nobody was ashamed of it. (Bentham & Crompton, 1978b: 392)

16. Bentham stated:

As to any primary mischief, it is evident that it produces no pain in anyone. On the contrary it produces pleasure, and that a pleasure which, by their perverted taste, is by this supposition preferred to that pleasure which is in general reputed the greatest. The partners are both willing. If either of them be unwilling, the act is not that which we have here in view: it is an offence totally different in its nature of effects: it is a personal injury; it is a kind of rape. (Bentham & Crompton, 1978b, p. 390)

As to any secondary mischief, it produces not any pain of apprehension. For what is there in it for any body to be afraid of? By the supposition, those only are the objects of it who choose to be so. (p. 390)

17. Bentham further argued that excessively harsh punishments for sodomy increased risks of extortion (Bentham & Crompton, 1978a). Bentham also offered traditional arguments based on principles of proportionality to criticize these harsh punishments.

18. Evidence of the government’s limited role in regulating sexual morality is further substantiated by the ways in which other statutes involving sexual conduct were interpreted and applied. In many U.S. states, courts required an act of adultery to be “open and habitual” in nature to qualify as a crime (Hamowy, 1977, pp. 230–231). Many U.S. courts interpreted criminal laws against fornication similarly (Hamowy, 1977). The state’s role in regulating sexuality focused on protecting the sanctity of the public realm from “the public flaunting of sexual activities,” not on regulating socially disapproved sexual behaviors within the privacy of the home (Hamowy, 1977, p. 231).

19. German and French doctors Casper (1852) and Tardieu (1857) put forth the first suggestions that homosexuality was congenital. Less than a decade later, German jurist Ulrichs articulated the first comprehensive medical conception of homosexuality (Hernn, 1995; Kennedy, 1997). In a series of booklets written between 1862 and 1879, Ulrichs (1898, 1899) coined the term anrieng to describe homosexuals, arguing that homosexuality was a natural, innate, and immutable individual characteristic. He described male homosexuals as anima muliebris virili corpore inculsa (a female psyche confined in a male body).
and conceptualized homosexuals as a distinct “third sex.” Ulrichs’ categorization of homosexuals as a distinct class of persons differed from past conceptions of homosexuality as a series of acquired sinful acts (Kennedy, 1997; Miller, 2006). Based on his view that homosexuality was a natural variant of human nature, Ulrich advocated societal, medical, and legal acceptance of homosexuality (Kennedy, 1997; Fernbach, 1998). Ulrichs’ call for the decriminalization of homosexuality demonstrates that concepts of biological “naturalness” began to infiltrate broader discussions of crime and punishment. Ulrichs’ ideas inspired a wave of clinical research on homosexuality (Hernn, 1995).

20. On this point, Krafft-Ebing (1886; 1965) stated:

It cannot be doubted that, under these circumstances, states of stress and compulsion may be created by an unfortunate natural disposition and constitution. Society and the law should understand and appreciate these facts. The former should pity, and not despise, these unfortunates; the latter must cease to punish them. (p. 383)

21. For instance, medical practitioners regularly provided expert testimony in legal cases, which enabled those practitioners to instill their definitions of sexual normalcy into the legal sphere. For example, Casper and Tardieu, two prominent European medico-legal experts of the 19th century, assisted in identifying “sexual inverts” and determining culpability for sex crimes in specific cases (Weeks, 1981; Lehring, 2003). In addition, Krafft-Ebing acted as a medical examiner for the courts (Tamagne, 2006), and he intended for Psychopathia Sexualis to serve a reference guide for doctors and judges to determine whether particular defendants were “sexual inverts.”

22. It is important to note that historians did not begin to trace the development of modern lesbian identity until the end of the 20th century (Vicinus, 1992). This delay raises complications since contemporary assumptions about lesbian identity arguably differ from those made in the past (Kenney, 1998).

REFERENCES


