

CRIME AND PUNISHMENT IN THE CONTEMPORARY SOCIETY OF POSTMODERN

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Abstract. The article is based on the study and generalization of world and Russian criminological literature, as well as some statistical data. In the postmodern society in which humanity has lived since the mid-twentieth century, not only social processes and phenomena change significantly, but also knowledge about them. Postmodern criminology proceeds from the fact that “crime” and “criminality” are social constructs constructed by the authorities in the interests, first of all, of the authorities. There are no properties, characteristics or personality traits inherent only to the “criminal personality”. “Criminogenic factors” are also factors that determine other types of deviant behavior. Punishment is ineffective (not effective enough) in counteraction crime. New views of postmodern criminology are presented in the article.

Keywords: *Crime, punishment, society of postmodern.*

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Preface

Since the middle of the twentieth century, humanity has been living in a new formation - postmodernity. Features of postmodern society (globalization of economics, finance, technology; mass migration; fragmentation of society; uncertainty of the social world and its understanding; etc.) affect all social processes and phenomena - economic, political, technological and others, including crime (Gilinsky, 2017; 2021). It is no coincidence that postmodern criminology began to emerge in the second half of the twentieth century. There are various areas of postmodern criminology (“constitutive criminology”, “cultural criminology”, “peacemaking criminology”, etc.).

What is called “crime”, “criminality” is changing. Their understanding changes too. Ideas about the role of punishment, its effectiveness or ineffectiveness are changing. The author of the article tried to summarize modern ideas about this. Many things will seem surprising. Many Russian criminologists do not share the author’s views. But the author did not “invent” anything. He only summarized the modern ideas of world and domestic postmodern criminology.

A little about postmodern

The change of socio-economic formations is happening faster and faster. The emergence of postmodern in the middle of the 20th century is obviously due to the end of World War II, the emergence of new technologies (Internet), the change of capitalist

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social relations (capitalists - workers) by a new socio-economic differentiation (included - excluded).

One of the features of the postmodern era is *globalization*. Globalization of the economy, finance, technology and - crime. Globalization of drug trafficking, trade of weapons, people, human organs, organized crime is developing.

Postmodern is characterized by *mass migration* and as a result, conflicts between migrants and the indigenous population, often leading to crimes, including terrorism Sellin (1938) wrote about the “conflict of cultures” as a consequence of migration.

“Virtualization” of life.

Since the second half of the twentieth century, we live in two worlds - real and virtual. And the further, the more we immerse ourselves in the virtual world. But criminality is also moving into the virtual world. Several figures from the official statistics of the Ministry of Internal Affairs of the Russian Federation. The growth of crimes using computer and telecommunications equipment in Russia: 2018 by 92.8%, 2019 - by 68.5%, 2020 - by 73.4%, 2023 - by 29.7%. The number of murders decreased from 2001 to 2023 by 4.5 times. The number of frauds (including on the Internet) - increased 5 times. This is with a high latency of fraud. The actual growth is much greater.

Socioeconomic inequality is increasing. The population of the entire world and each country is divided into people *included* in active economic, political, cultural life and the majority *excluded* from active economic, political, cultural life. Zizek (2021) describes the split of society into a “new global class” of successful, rich, all-powerful and - the majority of “excluded” who have no chance to “rise”. And “the confrontation between the excluded and the included is key (main)”. Many studies, analysis of statistics show that it is the “excluded” who are the basis of the social base of crime (as well as drug use, suicide, prostitution and other negative deviations). For example, according to official data from the Ministry of Internal Affairs of the Russian Federation, of all those convicted of crimes, 66-68% are “persons without a permanent source of income” and among murderers, there are 74-76%. But what if these are people with a permanent income, but the income is below the official subsistence minimum or slightly above the official subsistence minimum? It is clear that the majority of those convicted are “excluded”.

Another feature of postmodernism is *the fragmentation of society*. Both the included and excluded are divided into fragments - by age, gender, religion, etc. Each fragment has its own ideas about what is allowed and what is not, what is acceptable and what is not. What is normal, acceptable for the young is unacceptable, “deviant” for adults. What is permitted by one religion is not permitted by another. The fragmentation of society entails the fragmentation of behavior, including “criminal” - non-criminal.

Postmodern society is a consumer society. *Consumerization of life and consciousness* gives rise to conflicts, crimes against property, corruption. In one trading company a young girl committed embezzlement. The company employees began to shame her. - Shame? - the girl exclaimed. - I am ready to sell my mother for money.

A sign and property of postmodernism is also the *ontological and epistemological uncertainty* of the social world (Chestnov, 2014). Characterizing the uncertainty of being and its understanding, Z. Bauman, speaking in 2012 to students of Moscow State University, said: “We are flying in an airplane without a crew to an airport that has not yet been designed”...

The features of postmodernism - globalization, mass migration, fragmentation, virtualization, consumerization, uncertainty and others - can give rise to a change in the

psyche of people, “schizophrenia” of consciousness (F. Jameson), which inevitably leads to offenses. A psychological crisis can give rise to outbreaks of aggression and crime.

The named and other features of postmodern society (relativism, compression of space, acceleration of time, etc.) influence both the structure and dynamics of crime and the understanding of it.

Crime, criminality

Everyone knows well what “crime” and “criminality” are... But in reality, there are no acts that are criminal in their content. Even the most serious act - deliberately causing the death of another person - can be murder, can be a feat (in war), can be a paid professional activity of an executioner in those countries where, unfortunately, the death penalty has been preserved. Or it may not be a crime or a feat - if committed in a state of necessary defense. Intentionally causing the death of another person at that person's request is legal euthanasia in Belgium, the Netherlands, Switzerland and a serious crime in Russia. In Medieval Spain, smoking tobacco was a crime. In today's UAE, appearing in public with a bottle of alcohol is a crime.

In primitive society, people killed each other, maybe raped, took pieces of food from their neighbors. But these were not “crimes” because there was no state, no criminal law. Crimes have been, are and will be as long as states exist. As long as the government needs to prohibit certain acts and punish those guilty of these acts.

Benedict Spinoza (1632-1677) and Pitirim Sorokin (1889-1968) wrote about this. Moreover, even in Ancient Rome it was understood that crimes arise from senatorial and popular decisions (*ex senatusconsultis et plebiscitis crimina exercentur*), that is, the legislator decides what crimes exist. And the modern American criminologist Robinson (2004): “The term crime is a label that we apply to behavior that violates the law. The key point is the creation of crimes by the criminal law, which is created by people. Crime as such does not exist; it is an invention of people”.

Crime, criminality are social constructs, a product of the legislative body at the will of the authorities, the regime. The understanding of crime and criminality as social constructs is substantiated in the Oxford handbook on criminology (Maguire *et al.*, 2007).

Grounds for criminalization

Crime, criminality are social constructs. Designed by the legislator. But what are the grounds for criminalization? Why are completely different acts considered criminal in different states and at different times? Postmodern criminology asserts: there are no objective foundations.

Of course, such acts as murder, rape, robbery, theft are recognized as “crimes” in most states and at different times. But there are not very many such acts. And in the criminal laws of different countries hundreds of acts are recorded as “crimes”. The number of such “crimes” in many countries is so large (Russian Federation, USA, etc.) that almost every adult citizen is a “criminal” (including the author of these lines, living in the Russian Federation).

The only “ground” for the criminalization of one or other acts is the will, the desire of power, of the regime (emperor, president, people in power). Russian scientists Kozachenko and Sergeev (2020) studied the “foundations” of criminalization in many countries over a long period of time. The result of their research: “The main myth of criminalization is about the possibility of building its rational model”. The government decides what acts are “criminal”. For example, in the UAE, appearing in a public place with a bottle of alcohol is considered a crime and carries a long prison sentence.

The Criminal Code of Russia (clause 1, article 14 of the Criminal Code of the Russian Federation) names “social danger of the act” as the basis for criminalization. But what is “social danger”? From whose point of view? Today, many Russian scientists (including the author of this article) do not see “social danger” in many acts included by the legislator in the criminal law. Therefore, we must agree with those legislators of other countries who simply indicate in the criminal law: a crime is an act that is recorded in the criminal law. Indeed, there are no other objective grounds for criminalization of certain acts, except for the will of the authorities, the regime.

“The Personality of a Criminal”

Cesare Lombroso (1835-1909) was the first to try to find properties, characteristics, inherent only to a criminal. Being a prison doctor, he examined more than eleven thousand skulls of prisoners, “found” such features on the skulls of prisoners. C. Lombroso decided that the problem of “criminality” was solved! But Lombroso violated the rule of empirical research: he did not study the skulls of the “control group”. This error was corrected in Great Britain. C. Goring (1870-1919) studied the skulls of prisoners, as well as students of Oxford, Cambridge, officers of Her Majesty's Guard, using Lombroso's method. And the same “irregularities” of the skull were found in prisoners, students and officers...

The search for special properties and characteristics of a “criminal” continues to this day. This is the “twin concept” (Loehlin & Nichols, 1976), the chromosome theory (Jacobs, 1966), the pulse rate (Farrington, 1997), etc. Russian scientists (Yu. Antonyan, V. Burlakov, A. Dolgova, N. Kuznetsova, etc.) are also still looking for special signs of a “criminal”. But already in 1985, A. Yakovlev in his book “Theory of Criminology and Social Practice” demonstrated the groundlessness of searching for a “criminal personality” different from other people, “non-criminals”.

There is no “personality of the criminal”. There are no acts that are criminal in their content. Where do the “personalities” of newly criminalized acts come from? Where do the “personalities” of decriminalized acts go? Not a single supporter of the “personality of the criminal” has named a single feature that is inherent only to the “criminal”. The criminal legislation of many countries is such that all or most of the population are “criminals”. Rybak (2020) is right when he wrote: “In criminology... it is necessary to finally, categorically reject the doctrine of the personality of the criminal”.

The genesis of crime

Criminologists often look for “reasons” for crimes. It seems wrong to talk about “reasons” for crimes. If there is cause A, there must be effect B. This is true for physical processes. Social processes and phenomena are much more complex. There is no single “reason” (Of course, the only “reason” for a crime is the will of the legislator. But if the legislator has called some acts criminal, one can look for the factors that determine them). There are many factors, “criminogenic factors” that influence what the state has declared “crimes”. We already know that there are no acts that are criminal in their content. But if the state has declared certain acts as “crimes”, there must be factors that determine their occurrence.

Statistics and empirical research show that there are many such criminogenic factors. These are economic factors (socioeconomic inequality, poverty), political factors (democratic or authoritarian regime), cultural factors (education level, religious affiliation or atheism) and even cosmic factors (according to A.L. Chizhevsky, an increase in solar activity can increase the number of murders and suicides).

It is interesting that criminogenic factors (economic, political, cultural) are also factors influencing the state and dynamics of suicides, prostitution, drug use and other types of deviance! This is evidenced by empirical studies and statistics of deviant manifestations. Indeed, all named and unnamed factors (circumstances, conditions) influence all types of human behavior, including creativity! Creativity (scientific, artistic, technical) is also “deviant behavior”, but positive, with a “plus” sign (Gilinsky & Isaev, 2015). In my opinion, there is a certain “balance of social activity”. And the more opportunities people have to engage in creative activity (positive deviant behavior), the less negative deviations there will be. Some data confirm this hypothesis. But, of course, more serious research is needed.

Punishment

Criminalization of acts presupposes punishment for them. For many millennia, the state and the population were convinced that punishment prevents other people from committing “crimes” and new crimes by the convicted person. And the more severe the punishment, the stronger its “preventive” significance. True, even in the past there were lonely voices against cruel punishments.

Representatives of postmodern criminology are increasingly asserting that punishment does not fulfill the tasks that are assigned to punishment, it does not achieve the goals that are set before punishment. For example, the criminal law of the Russian Federation sets three goals for punishment (Part 2 of Article 43 of the Criminal Code of the Russian Federation). (1) Restoration of social justice. But what is “social justice”? From whose point of view? And if the punishment itself is unfair? How can we determine that social justice has been restored? (2) Correction of the convicted person. Punishment cannot correct a capricious child, a teenage hooligan or a bad worker. Psychologists and teachers know this well. More complex pedagogical and psychological methods are needed to “correct” a person. (3) Prevention of new crimes. Of course, there are people who do not commit crimes because they are afraid of punishment. But there are not many of them. Usually, if a person decides to commit an act recognized as a “crime”, he commits it without thinking about punishment. The entire history of mankind shows that people have committed and are committing what is recognized as a “crime” in their state, in their time. No punishment, even the most severe (breaking on the wheel, quartering, walling up alive, etc.) has stopped the commission of crimes. Prevention of new crimes by a convicted person is also not very effective. The more severe the penitentiary system, the... higher the relapse rate. The more liberal, the less frequent the relapse. Thus, in the USA, the penitentiary system is severe, the share of relapse is 50-60%. In Norway, the penitentiary system is liberal, the share of relapse is less than 20%.

Postmodern criminologists have long written about the “crisis of punishment” (Mathisen, 1974). Nils Christie wrote about the ineffectiveness of punishment (Christie, 1993; 2004). Zhalinsky (2009) writes about this: “Punishment is an obvious expense and an implicit benefit... It is necessary to take into account the well-known properties of criminal law, which consist in the fact that it is an extremely costly and very dangerous means of influencing social relations”.

If punishment is ineffective and there is “an obvious expense and an implicit benefit”, should it be used? This question was answered by the German professor Jescheck (1988), who proposed to abolish criminal legislation that is incompatible with human and civil rights. But Jescheck understood perfectly well (as we understand) that no state will currently agree to abolish criminal law and punishment. What should be done then? From our point of view, there are two main directions.

The first is to reduce the number of criminalized acts, decriminalize most acts that do not pose a significant danger to people.

The second direction is optimization, liberalization of the punishment system. This is a difficult problem, briefly dwell on some ways to optimize the punishment system.

The *death penalty* should be categorically, once and for all, excluded from the list of punishments. The death penalty is the murder of its citizens by the state, no matter how bad they may be. In the 18th century, Beccaria (1939) wrote: "The death penalty cannot be useful ... It seems ridiculous to me that the laws that prohibit murders themselves prescribe it". According to Bernard Show, the death penalty is "The worst type of murder". In December 1993, the World Congress was held in Brussels for the abolition of the death penalty throughout the world until 2000. Unfortunately, this decision was not implemented in many countries. Gradually, more and more countries are abandoning the death penalty. Today, the death penalty has been abolished or is not used in most countries. In Europe, all countries have abolished the death penalty, except Belarus.

From our point of view, *life imprisonment* should not be applied either. Even a person who has committed a very serious crime should have hope of being released from prison.

It is necessary to apply more often measures of *punishment without imprisonment* (fines, restriction of freedom, compulsory work, etc.). In Japan, 85-90% of punishments are fines. Restriction of freedom with the use of electronic tracking bracelets can be an effective punishment.

Imprisonment, as a rule, can be applied for serious crimes against the person. The terms of imprisonment should not be too long. The average term of imprisonment in European countries is one year and eight months (according to data presented at one of the annual conferences of the European Society of Criminologists).

Perhaps the most important thing is *the conditions of serving a sentence in the form of imprisonment*. These conditions should not be of a repressive nature, but of a restorative nature. The author of these lines, as a researcher, has been to many prisons in Europe, Asia and North America. I will tell you what I saw in some countries of Northern Europe.

Ireland. Before walking through the prison, I ask the head of prison: - How many people are in each cell? The head of prison looked at me in surprise. - One person! Two strangers can't live in the same room (cell). In this same prison, in my presence, they were delivering afternoon snacks (between breakfast and lunch) to the cells for the prisoners: black and white bread, kefir, porridge, an orange.

Finland. Before I walk through the prison, the head of prison tells me: - We recently introduced a new rule so that prisoners maintain a sense of self-worth. We give each prisoner... a key to his cell. So that when he leaves, he can close the door of his cell, and when he returns, he can open it. In this same prison, I was in the stadium, where the prisoners were playing basketball in my presence.

It is important to understand that the minimal use of imprisonment, short terms of this punishment and the rehabilitation regime in places of imprisonment in the Nordic countries contribute to the reduction of the number of crimes and "criminals". Prisons are closed because there is no one to put in prison!

Crime prevention

Crime prevention has long been considered an important element of criminal law policy. The advantages and successes of prevention have been noted in different countries. But crime prevention is becoming an ambiguous problem in postmodern

society, with the advent of the Internet, the “digital world”. One of the main global problems is: *security measures vs human rights and freedoms*. The state has received the opportunity to monitor each person with the help of modern surveillance tools. Orwell's “1984” is becoming a reality. Orwellization of modern life is taking place. This is a “digital concentration camp” in China and a “preventive arrest” in the USA and there are many surveillance cameras in major cities of Russia.

German criminologists have written a lot about this complex and as yet unsolvable problem, and Russian criminologists (primarily N. Shchedrin) are writing about it. The state, for obvious reasons, is not trying to solve this problem. Greater activity of public organizations and scientists is needed.

Conclusion

Postmodern criminology, understanding of crimes as social constructs constructed by the authorities, the absence of a “criminal personality”, understanding of the ineffectiveness (low effectiveness) of punishments, especially cruel ones, should contribute to improving the criminal policy of the state, minimizing the criminalization of acts and minimizing measures to counteraction crime (punishments).

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