

CRIME AND SOCIAL REACTION: OBSTACLES TO FORMING A GENERAL THEORY OF CRIME

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Abstract: *This paper focus on the most important discussions presented today concerning the construction of the research object in sociology of crime, which puts it in the duality of dimension and generates a double interpretation of the concept of crime and social reaction. At the stage of building the object within the institutional space which imposes restrictions on produce knowledge, interpretation oscillates between process and structural approaches, which are reflected at the cognitive level between two competing interpretive action/reaction paradigms. The attempts to synthesize them are one of the significant problems that affect the possibility of forming a general theory of crime. A new current known as "Zemiology", trying to link the relationship between crime and social harm, and is the only current that can collect the disparity of this field of knowledge and overcome the problem of the general theory of crime, by reviewing the concept that is the object of science itself, bypassing the duality of action and construction.*

Key words: sociology of crime; deviance; criminal law; paradigm; social reaction

1. Introduction

Crime as a social act, and criminality as a vast social movement, considered a phenomenon that mediates the cognitive process of social groups of any characteristics. That process varies and is subject to many factors, including the norms arising from the culture and the humanistic coefficient of cultural data as called by Znaniecki (Janina, 1989). The researcher, convinced in the universality of crime and its anthological nature, place this one in a philosophical sterile dialectic circle. Moreover, those who believed in its normative legal identity place it in a tight field, take a stand in danger of embracing reality for personal normative peace and recognizing it (Langlois, 2007: 39). Thus, how can we study the reality of crime, without researching even the historical, socio-economic and political contexts affecting its emergence?

The controversial duality at the level of the reading scale crime/criminal and criminality, widely discussed in the literature, therefore, this leads us to examine and discuss three specific levels:

A significant amount of research is concerned with the first and second (crime/criminal) reading scale. It finds their reference in clinical work related to the Belgian School of Louvain exploring the causality of crime at the individual stage and the act commitment called objectivist or normative criminology - relative to the explanatory paradigm (Szabo, 1986; Pires, 1992; 1994; Debuyst, 1992). This reference affected even the level of conceptual construction of crime; that model, known for researching causality and too associated with the comparative clinical criminology, attempted to drafting universal preventive and curative procedure through analyzing the main fundamental causes of delinquency. According to De Greeff, what distinguishes the offender at the level of psychological issues from other normal people in society is his offence which we identify contrary to the determinism and classic status of free will in defining criminal accountability, for what it has different and opposed to the biological view¹

¹After De Greeff, Pinatel founded his theory of the central nucleus of the criminal character, attempting to show the relationship between behaviour and personality traits through the central nucleus that includes selfishness, aggression and emotional amazement, and this essence is the one that governs the act commitment

The second and third (criminal/criminality) reading scale are related to the macro theories in the sociological approach, what we recognize in the theoretical classification the theories of social structure. These theories treat crime as a collective phenomenon not at the level of the individual, and expresses the criminality in its wide sense, linked to a complex relational network that reflects the confrontation between the criminal, the forces of social control and the settlement systems.

The fundamental analysis of these theories based on the objective/self-macro-sociological level (Ritzer, 2011: 503) linked to the causal explanatory model still expressed in the sociology of conventional deviance. Second paradigm, recognized as the social reaction paradigm, frames the second level of analysis- objective/subjective micro-sociology- and organizes theories known in classification as control and social reaction theories. This last one is widely reported and explored in the literature by the Chicago American School known as the mentor of symbolic interactionism. It should be noted however that, for this paradigm, crime is a social construction and reaction to a set of behaviors within a value and normative framework in society.

Competitive paradigms² – action/reaction – put the object of a sociology of crime/deviance in binary, one refers us to the pure and raw action and the other to the social reaction that the social construction of the action, affected the cognitive construction of the crime reflected in a problem of a constructivist nature. This can hamper to building a general theory of crime. Moreover, this problematic may be reflecting on several levels, including what it relates to the anthological nature of the concept versus objective structure. As well as, what is epistemologically reflected in the cognitive level of the knowing subject and the knowledge-building of objects.

2. Sociology of crime/deviance toward cognitive debate

By reviewing literature reflected the disciplines presented in sociology of crime/deviance, it was interesting to note that many of them are trying to justify the importance and merit of a designation over another. Certain researcher focuses on deviance as a consequence of the application by others of norms and sanctions to a transgressor, this convention is mostly exposed by Becker 1963. There is a preference from others to considering crime as a defined conception framed by laws which are the objective and official criminal standard of States (Among others Leblanc and Frechette, 1987, Robert, 2005), however, the issue is not a seek of choice, not a question of distinction in the object, It is somewhat limiting the status to the legal norm - crime - which makes it a limited vision, or what reflecting social norms transgression issues which is “deviance”.

This led other researchers to consider that the expansion of deviance may undermine all interpretive attempts (*Op-cit.*: 28), besides the scarcity of historical studies addressing these issues (Copes and Miller, 2015: 69). It expresses the cognitive problem in this field of knowledge both in terms of theory and praxis, as relates in theorizing to the issue of constructing the object and his epistemological and anthological related boundaries. However links the practice to the societal reaction during which the contrast between crime and deviance determined by the same time the problematic social construction knowledge, and scientific fact.

The researcher who starts real research by choosing the object of his inquiry through the institutional space and its requirement limitation on producing science, may overlook one of the important views which is whether the facts are relevant to the reality of the living and the social context of the field of investigation, or pure cognitive aspects that are related to the

² Scientists and researchers differ in the presentation of these paradigms, Wilson 1970 proposes the normative and the interpretive model, while Conrad, Schneider 1980 proposes a positive and interactive model, Pires 1983 revolves around the criminology of act and control, or the sociology of the conventional deviance, see: Pires, A. (1995). A propos des objets en criminologie : quelques réponses, In : *Déviance et société*. Vol. 19 - N°3. pp. 291-303 [online] available at: www.persee.fr/doc/ds_0378-7931_1995_num_19_3_1581

advance theory frameworks, cannot overcome even though It was distortedly aware of the restriction imposed by the knowledge code of scientific nomenclature.

Therefore, it was certain to look at the contexts that control the production of facts and to ask whether knowledge applies to the theoretical frameworks of specialization, or socially constructed and relevant to the intellectual process of the knowing subject. The problematic crystallized through this proposition, relate to the reasons of no possibility to form a general theory of crime because of the conflict of construction and action, and it was necessary to define the social organization of this process and to point out to the social context in which phenomena are produced cognitively.

According to this point of view, wherefrom we put this field of knowledge in the dialectic of crime and deviance and between the institutional reaction of legal rules and customary cultural, reflected in our belief in the earlier explanatory paradigms. These findings reinforce the basis of the controversy over the possibility beyond these models or synthesizing them, and thus to build a general theory.

3. Crime and the dialectic interpretation

Clearly, it is well-recognized association between man and crime since the oldest stage of life, and not possible to imagine a society without harm, because we condemn this one to be utopian and doomed to fade, that is why Durkheim considers crime necessary. It is linked to the basic conditions of social life, but on this very account is useful, for the conditions to which it is bound are themselves indispensable to the normal evolution of morality and law (2013: 63).

Nevertheless, Research has shown that a good knowledge of the laws and a positive attitude towards them are not sufficient to ensure compliance with these rules. The majority of offenders have a very conventional attitude to the law (Picca, 2009: 63), but there violation does not mean the individual confrontation, nor a tendency to challenge normativity or acts intended to justify positions referred to the rejection of part of the social norms that are reflected in these laws; But a several personal and societal factors have to be considered at the same time. Why many theories -psychological, biological and juridical- are enabled to interpret all crimes and harmful behaviours, which required the development of a multidisciplinary approach of criminology to overcome this dilemma at the theoretical and empirical level.

The notion of crime has always interpreted within the legal code, which is subject in its definition to time/ space matrix, and essentially related to the law as a normative science, because he denies its existence only through official rules and in return through the punishment prescribed. Hence, to understand and determine the object of criminology or the sociology of deviance, the following questions have been discussed:

Should we examine all acts prohibited by social norm even if they do not appear in the Penal Code? In positive answer, we have made the latter part of the whole and therefore part of the sociological criminology studies. Or should we examine only the acts prescribed by law? As argued by Robert, so, in this case, the law became the hidden morality of this science (Pires,1995: 71) and we are limiting it to the official social reaction, so-called social control model.

The Italian legislator Carrara enhance the second idea when he states that the crime should not be seen as a material act, but a violation of the criminal law, thus a judicial identity (*ibid*: 08). The earlier view finds its reference since the classical thought of many philosophers such as Beccaria and Bentham, for them the offence is every act prohibited by law for the harm caused and threatens the safety of the group. Further improvements of the legal definition are cited by Durkheim, when he saying, "It is not of course punishment that causes crime, but it is through punishment that crime, in its external aspects, is revealed to us. And it is therefore punishment that must be our starting point if we wish to understand crime" (p.45).

Laws finds there reference in criminalizing acts to what is harmful to society or the social organization, but this supposedly evidence remains relative, because the notion of social order

and anti-social behaviour is difficult to measure precisely, and we faced difficulty to determine criminal conduct through them, why they do not explain all acts, as showed by white-collar crime. Sutherland and modern Marxists such as Chambliss and Pearce spoke about corporate offence, such as defrauding in pharmaceuticals, damage caused by the contamination and leakage of toxic gases from some factories, and financial crimes, especially as Often, despite the prejudice caused by these acts, they are not punishable or at least subject to the civil code of the law. Reiman argues that:

"Many of the ways in which the well-off harm their fellows (deadly pollution, unsafe working conditions, and some of the harmful practices that have led to financial crises) are not even defined as crimes, though they do more damage to life and limb or take more money from people's pockets than the acts that are treated as crimes" (Reiman and Leighton, 2017: 15).

The principle of criminalization is subject to time and space, that's why codes vary from state to state according to the degree of cohesion of societies. Although the proportionality of laws and their transformation as the value system of societies changed, some criminal acts have a common characteristic which are hardly devoid of all the laws of the world, they haunted man since the earliest times and have been criminalized because they are subject to high rejection and aversion.

Those crimes share two characteristics we are trying to present through the proposal developed by Gassin In his theory, called "*le noyau dur du droit pénal*" –The hard core of criminal law- violence and deception, such murder, poisoning, fraud, rape... Etc. Since all acts of individuals resorting to this type of behaviour or intentions in request to reach a particular end disrupted the social stability system, have been subject to a sense of injustice by others and violated the principle of contractual justice (Cusson,1998: 38).

The principle above regulates the conditions of the people, why it requires, with infraction, the direct intervention of State institutions through the law and the retribution to readjust social balance. Classical intellectuals and utilitarian philosophers justified this view, because the punishment should be deterrent and outweigh the pleasure of the criminal act. For Beccaria, as an example of this classical reflection, prisons must be less comfortable than the worst conditions in which the poorest free citizen lives; otherwise, we will encourage people to commit crimes to get better living conditions in prisons (Siegel, 2010: 96).

Acts mentioned previously were carrying two concepts discussed above, deception and violence, because offenders attempted to take something by force or prevarication and misinformation to take what is not due, although man, even in case of nature for Hobbes, resorted to violence and treachery in doing so to survive and continue. However through the formation of societies and people's regularity towards particular interests, there has been a particular awareness of justice and social contract, as enlightenment philosophers call it; this awareness is the true founder of contractual justice, reflected in the laws governing people's conditions. Thus every act goes the opposite, conjure a sense of injustice and therefore punishment not only for deterrence but also and implicitly to recover the stolen thing as violation a strong feeling inherent in the collective sentiments, as explained by Durkheim (p.82).

For ancient societies, retribution consist to inflict on the delinquent the same harm as what he did to the victim through a principle of an eye for an eye and tooth for a tooth in Hammurabi's code and heavenly canons. Societies punished for major infractions violate the strong feelings of piety and righteousness in the notion of Tarde with the most atrocious punishment, specifically physical harm, by inflicting damage on the body instead of the soul. Even, Beccaria in his book "*Traité des délits et des peines1764*" reveals, following that period, a murder, which we consider being one of the most vicious crimes, we see executes without the slightest regret (Foucault, 1975: 14-15).

There have been multiple previous attempts to identify the object of criminology and criticize the aforementioned principle. We find Brodeur, when he presents a realistic theory by studying the Canadian Penal Code and proving the rule of criminalization of behaviors, carried

out through a process of communication between the state and civil society. Cusson (Gassin, 2007) however tried to reinforce Gassin's proposal based on the results of the American study conducted by Wolfgang, Sellin and Coll 1984 through the national survey of crime severity.

4. Objective and subjective structure: the paradox dilemma

Through the above stated, we can raise a problem of another kind, the objective structure of criminal laws is transformed under various social situations, action and interpretation through social actors, who also form an objective identity within this structure, into a subjective system affected by humanistic coefficient and social situations.

Garfinkel and Cicourel in their studies on social order and juvenile delinquency, shows how the evidence of documentary delinquency, influence the police and jurors and how the interpretations of deviation in particular contexts may be completely wrong in that they are subject matter to common sense (Coulon, 2002).

Although the criminalization of behaviors through the codes, their application or the establishment of guilt "*Etablir la culpabilité*" is subject to specialist knowledge, which comprises professional training and field experience, usually between scientific knowledge and common sense, hence the treatment of criminality on two levels: official and informal, so criminal laws gained a real sense by their application through social interaction and interpretation. We overlooked an issue in the legal sciences as the process of how cases are adapted and acts criminalized, in the sense that there is a link between crime as a raw fact outside the criminal proceeding and the act as a legal character after its adaptation as Debuyst noted that the criminal movement is problematic and referring us in two directions as follows:

1- A particular behavior or a type of action.

2- A criminal adjective or a type of expression and reaction through the system (Pires, 1993: 49).

From this we can conclude that, although the criminal Code and official institutions identifications of crimes, the determination of behaviour cannot be separated from the social practices it calls as crime and therefore we cannot study this one **outer** this context and limited it to pure judicial procedures and constitutional rules. Marc LeBlanc and Nguyen Thi, in their study on the social reaction of deviation (1974), have concluded that there is a gap between the official reaction versus the judicial reality, particularly about economic crimes. These details are conforming to the thesis of Wolfgang, Sellin and *coll.*

From what we point earlier, the main conclusion that we can draw from this analysis, there is a link between the formal social reaction and members of society, especially in multicultural societies. So, the criminalization of the act reflects not only violent one attacks the strong feelings of the collective sentiments but also acts hinder the social path, far from ideological discourse, all behaviour that come out of this circle cannot be criminalized and punished. Many acts were one of the most serious crimes and punished by the most heinous one such as sorcery and adultery, today are merely ethical issues which are dealt in some legislation at the individual level, which explains the evolution and change of laws by time and space, accompanied by the development of societies.

In conclude, part of the articles of law reflect what is inherent in the consciousness of individuals and are embedded through the process of socialization derived from religion, customs and traditions and, which explains the existence of double regulation in many worlds that are yet in transition towards modernity. The punitive and religious policies are confused because of the lack of a disconnection between established scientific knowledge and transmitted one based on processes that are unknown and difficult to control. In this sense, there is no possibility to develop a unified model which we can invoke because of epistemological constraints in producing science.

5. Conclusion

As discussed in a previous article (Bouhroum and Imad,2018) on the conflict of the paradigm and the gap between objective and subjective structures, consider the study of crime as limits of science impose itself on the researcher while dealing with the question of crime as an anthological view. We are witnessing today in criminology the emergence of a set of theoretical perspective seeking to overcome this issue by discussing the historical contexts and epistemological frame accompanied the theorizing of crime and deviance.

The critical criminology and new criminology as designed by Walton, Taylor and Young(Walton and Jock, 1998) are regarded as a neo-Marxist currents, and another trend known as "Zemiology", by trying to link the relationship between crime and social harm, and we believe is the only current that can collect the disparity of this field of knowledge and overcome the problem of the general theory of crime, by reviewing the concept that is the object of science itself, bypassing the duality of action and construction.

Reservation remains about the possibility of making this current as an alternative to the criminology or extension for its object, but only a critical and corrective movement within this field.

It has become fashionable to assert that if someone wants to practice criminology; he should have a general theory (Morrison, 1995: 456); this one was the attempt of postmodern criminology, criticized and seen as a set of ideas about social reality rather than a good or understandable theory. Finally, we can ask a series of questions about this period and its conceptions regarding the possibility of forming a general theory of crime:

1. Are we looking at how to build the social system as classical theories have done? Or looking at causality as positivism did?
2. Research into causality requires an individual's place in a particular social context, but why ignored the social processes formed the individual?
3. How can we build a general theory outside a social space and deny the social formation of the self?
4. Was the idea of reshaping the social system in order to determine what is harmful to postmodern society? Or reshaping the censure network according to the requirements of the phase?

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