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SOCIOLOGICAL PUBLICISM

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Conversation between a Sociologist and a Lawyer about the Latent Crime and not only about it...[1]

Abstract

The article is written in form of pseudo dialogue between sociologist and lawyer.
The data of interrogation of Kharkiv region inhabitants in few indicators is showed in the article:
1. A part of victimized residents during last 12 months (population's victimization proportion).
2. General quantity of reported crimes during survey.
3. Quantity of police reports.
4. Degree of latency.
The so called "Latency paradox" as a world-view and as a methodological problem is discussed in the article. The author maintains the thought about necessity of developing the domestic sociology of crime in co-operation with other criminal-law disciplines.

The sociologist: I have some news you could be interested in. Within the frameworks of "Introducing Context-Driven Community Policing in Ukraine", Ukrainian-British project, we managed to measure a latent part of criminality. Though it was conducted not at the national level but for two local residential districts in Kharkiv. The latent crime has been discussed by criminologists for a long time but, as far as I know, the dis-

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1 Translated from Ukrainian text "Dialoh sotsioloha ta iurysta pro latentnu zlochynnist i ne tilky pro tse...", *Sotsiolohiia: teoriia, metody, marketynh,* 2001, N° 2, pp.8–12.

cussion is rather abstract, so I believe that such direct sociological measurements would be interesting for lawyers.

The lawyer: The latent crime became a classic subject for criminologists. We can see that practically all the modern textbooks on criminology include the corresponding chapters. So, as to lawyers, the latent crime is not a new subject. But your idea about the abstract approach to such studies is fair enough because most publications on this topic lack the specific data or deal with rather doubtful indices. The data presented by different researchers have little in common. For example, you might have read the following: "the cautious experts think that the ratio of the registered crimes to the latent ones is approximately 1:3 or 1:5. The less cautious experts see it as 1:10 and even more " [1, p. 58]. According to Haidle, if we speak about the crimes comitted by professional criminals, the "dark number" is 1:100, and the average ratio for criminality as a whole is 1:300 [2, p. 60]. A.Konev presents the following numbers: suppose all registered crimes to be 1, then the latency on murders can make up 2, rapes — 6, hard injuries — 4,9, hooliganism — 27,9, armed assaults — 33,8, robberies — 57,7, theftes of personal property — 151,7, theft of communal property — 73,2, thefts of the state-owned property — 925,8, bribery — 2935, extortion — 17500 [3, p. 235]. We can find many other data but their contradictions make us doubt whether their technique is reliable. I hope your methods are less subjective…

The sociologist: Our technique was reduced to the standard representative public poll. This means that the measurement accuracy, reliability of our procedure as a whole are determined by well-known qualities of the polling method. The general aggregates were determined within the borders of selected districts, which, according to the experiment rules, were the territories of two militia department districts. We interviewed 1000 people of each district, they were selected by the method of address sampling and Kish method, this routine provided us with a random sample of respondents. We interviewed the people over 15. Our method made it possible to reveal only those crimes which are against people and their property and to assess the so-called "victim latency". Let me note that most economic crimes and so-called "crimes without victims" could not be studied by applying direct measurements, it means by using the method of interviewing. To be honest, we have not invented anything new. The formula of this research is already known. We conduct the so-called victimology survey and, along with it, sociologists

clarify whether victims reported to the authorities. In most cases respondents are asked to inform about criminal incidents for the last year; we also defined the "depth of our survey" as 12 months. In the USA, the similar surveys (National Crime Survey) are organized by Census of the Population Office twice a year since 1973, and they are conducted with the scope inherent in America. Basing on the national representative sample of addresses, they form the national panel of criminality consisting of 60 thousand families. They interview all family members over 12, so the number of respondents makes up 100 000 [4, p. 71]. In Great Britain, the similar researches (British Crime Survey) are carried out since 1982 in England and Wales; the sample is formed basing on Postcode Address File, they interview over 10 000 respondents once per 2–4 years [5, p. 162–163]. Victimology surveys are conducted in most developed countries in the world. Under aegis of UN Inter-Regional Institute (UNICRI) in 1980–90s, there were carried out the transnational comparative researches in countries of Central and East Europe, including Poland, Russia, Georgia, Estonia, Slovenia [6]. Ukraine did not manage to get into this list.

The lawyer: You are right, I did not hear about surveys of this scale in Ukraine.

The sociologist: Before 1990s, such researches were not possible because of ideological, political reasons; as you know, at that time even the official criminal statistics was kept from the public. Sociologists could not approach the criminal and legal subjects. Today the main problem is financing of the corresponding programs, though there are scientific, methodical and organizational problems too. Nevertheless, we consider our experience to be a real start of this very important direction in the applied sociological studies.

The lawyer: What are the basic outcomes of your research?

The sociologist: I would like to present them as a table (the table introduces the data on both districts). The kinds of crimes are arranged in accordance to the growing latency. The data confirm the hypothesis about considerable distinctions between various kinds of crimes, as to this criterion. While conducting the data analysis, we understood that we dealt with different levels of a latency and the general technique did not work… Take a look at the obviously undervalued figures related to

the widespread phenomena, like family and sex violence. We certainly did not manage to measure their real levels. It is curious enough that the respondents are more ready to talk about corruption than about their personal privacy. It does not mean that sociology is helpless as to this aspect — it is necessary to develop more special, more "delicate" research techniques.

Table

Victimization of the Population and the Latent Crime
(N = 2000)

Kinds of crimes	% of victimization	Number of torts	Number of reports to the authorities	Latence coefficient K = 4/5
Robbery or armed attack on dwelling	1,6	39	39	1,00
Stealing or hijacking of a car (motorcycle)	0,6	13	13	1,00
Family violence	1,1	55	36	1,53
Sexual violence	0,4	13	8	1,63
Mugging or assault in the street	3,8	99	43	1.87
Burglary	3,3	88	44	2,00
Assault, disabling	2,6	64	28	2,29
Stealing of a car (motorcycle) or its parts	3,0	83	35	2,37
Racket, extortion by criminals	0,8	28	11	2,55
Deliberate damage of a car (motorcycle)	1,8	50	9	5,56
Deliberate damage of property (without mercenary motives)	6,0	221	24	9,80
Street hooliganism	8,0	404	40	10,10
Extortion of a bribe by the officials	5,0	262	25	10,50
Theft from a garden plot	19,6	600	57	10,53
Shopping fraud (short weight, cheating)	39,1	1487	25	57,20

The lawyer: Did you compare your findings with the outcomes of international surveys?

The sociologist: The differences are not essential. But the main problem of such surveys is that different researches understand the concept of criminality in different ways, so it is often impossible to compare the final results. Let us try to compare the index of corruption: we have registered the 5% victim level. According to the data of international survey of 1991, which was mentioned above, the level of corruption made up: in Moscow — 11,8 %, Poland — 5,1 %, Georgia — 20,7 %, Ljubljana — 0,6 %. It would be fair enough to consider that corruption deals with the "plural victimization". Take a look at our data: approximately 100 people informed about 262 cases, there are people who regularly suffer from extortion by the officials. For example, 19 people told that they had such cases over 6 times for a year. As a whole, we consider our data to be representative enough and accurate within the limits ensured by the sample kind and size.

The lawyer: I am not as optimistic as you. I have two remarks. First, do not believe that your information will be claimed by those who are logically should use it. Some kinds of truth are better not to be known. In particular, heads of law enforcement bodies are not happy if there is more available information than the official reports contain. As we know, the criminal statistics always were an object of manipulation. And there are many reasons for doing this. One of them is the well-known percent of crimes solved, according to which they judge the work of criminal militia and which is directly connected to the number of registered torts. There are motives of ideological and political character too. And it concerns not only us. "Unfortunately, — the known American politologist Daniel Bell wrote, — statistics on criminality are as unreliable as a woman saying her real age" [cit.: 7]. Our criminal statistics is of exclusively departmental nature and encroachment of strangers in the data on crimes is undesirable in opinion of the officials. Especially, they do not want to expose a large scale of hidden crimes because it casts a shadow over quality of the official statistics, make people doubt about efficiency of law enforcement bodies' work, reveals the tendencies that could differ from the official reports and analyses. Every employee of law enforcement bodies would say to you that militia and the prosecutor's office cannot manage with their current work, how would they find time for the latent crimes? However, there are people who would happily greet

your information, these are the opposition politicians. They could use the data to criticize the government, although it happens only untill they have to take responsibility for militia activity.

The sociologist: I think you are too pessimistic. Today, not only administrative officers of law-enforcement bodies and prosecutor's offices have the higher juridical education, all of them know the concept of latent crime from their textbooks, lectures and examinations. So, their consciousness is ready to perceive such information, furthermore, being practical workers, they understand the latency nature and intuitively feel its range. What is a real problem is that in our country criminology was accepted only as a juridical science. In the USA, it is a branch of sociology, so-called "sociology of crimes". It was not an incident that they started the detailed sociological analysis of latent crime. Certainly, everyone, including lawyers, can use sociological methods. But, in reality, our criminologists-lawyers are hardly aware of how capable the empirical sociology is. In this field, they cannot avoid professional sociologists. Ukrainian sociology should "face crimes". It is extremely important to change the attitude of law enforcement employees towards the latent crimes, its statistics should not threat the practical workers. This information is vital for analysts, headquarters, for those who can influence the policy and tactics operated against crimes. And what is your second remark?

The lawyer: You might be upset but some lawyers doubt that the latent crimes exist at all, because an action can be accepted as a crime by the legal procedure, the crime is a judgement but not an act or action. As to the legal dogmatists, there should be established corpus delicti, wilfulness, guiltliness, sanity of those suspected of committing a crime…

The sociologist: If I have understood correctly, the murder commited by a child or a person who is mentally ill is not considered to be a crime but something like a calamity that led to people's deaths?

The lawyer: Yes, it seems so. In particular, it deals with the fundamental principle of modern criminal law — the formula of deminished responsibility. It firstly appeared in the clause 64 of French (Napoleon) criminal codes of 1810 and stated the following: "…there is no crime nor wrongdoing if, commiting the act, the accused was insane" [8, p. 126]. Of course, a murder is a special example. But a real lawyer would protest

against numerous cases to be considered the latent crimes without any preliminary legal study and judgement by professionals. Especially, it is inadmissible to sensationalize the victimology survays and compare the sociological data to the law and order statistics.

The sociologist: Should I understand that the victimology surveys are senseless? Could it be better to forget about studies on the latent crimes, if it seems not to exist?

The lawyer: I do not deny the existence of the latent crimes. Practical lawyers regularily face this phenomenon, when they investigate the criminal activity of certain people or criminal groups for rather long terms. There always revealed some nonregistered crimes, even murders. But these facts are strictly stated, for example, by the dead body that is found or by pathology study of a corpse. I doubt that sociology could be helpfull in this case, that its outcomes could be of any practical sense, that your data could be compared to the law statistics. For example, there are so-called boundary situations when even a victim cannot surely answer the question: whether he/she was robbed or simply lost their purse, gloves or umbrella… For the victimology surveys, these "boundary cases" mostly would enter the latent crime statistics. Is it possible to trust in such data?

The sociologist: Your doubts could be understood. But there is no need to dramatize the situation. We should see the difference between analysis of individual facts and statistical methods, including the polls. In the first case, the fact is considered to be true if the individual case could be identified with a general class of phenomena (reassured by professionals and science). In the second case, the true is determined as a tendency, regularity, for example, like a percent ratio of two parts: a number of those who suffered from criminal actions and a number of those who were lucky to avoid them. If ten or twenty percents of the interviewed wrongly consider themselves to be victims, and the same number of the real victims deny this fact, the general index will not change and will be true. Basing on such a logical approach, A.Cetle, the founder of sociology of criminality, proved that "the free will" is not essential for "the iron law of criminality". He declared that the free will is a casual reason and "actions of all casual reasons should be paralysed and mutually cancel out each other…" [9, p. 71]. That is why, though there is a big aggregation of various human wills, the criminal statistics is stable as to the main

parameters and often has the same figures year in, year out. This kind of logic thoughts can be applied to our case, that is how people assess facts and cases, which they consider to be crimes or not. Sociologists are afraid of systematic but not accidental errors. And in order to avoid them, we need the professional but not an amateur approach to carrying out polls. It seems, when sociologists enter the traditional territory of lawyers, the latter become jealous…

The lawyer: Nowadays we cannot ignore sociologists, they have proved their usefulness and efficiency if researches deal with politics, economy and social sciences. But might it be the "Icarus's syndrome" or something like the "sociological imperialism" by which they are possessed? We talk about their wish to intrude the fields of knowledge lying outside their competence. The concept of a crime has been developed by lawyers for hundreds years and it would be no exaggeration to say that. And sociologists freely work with the concept and use it in the researches, like yours, quite as a commonplace. By the way, have the sociologists developed their own definition of a crime?

The sociologist: I am afraid not. Though such attempts have been made since Durkheim. Sociologists-theorists wanted to leave the narrow legal formulations and regard a crime in a broad context of social life. But the formulations, like a crime is "an action insulting the known collective feelings of the special energy and distinctness" [10, p. 87], have appeared to be amorphous and hardly operational. Is there any sense of special definitions given by sociologists, philosophers, psychologists? Would it not be easier to follow the rule: while directing towards juridical formulations and classifications, be guided by common sense? Especially, when we talk about the transient criminalization or decriminalization of social phenomena, which cannot be kept up with by the public opinion. The main problem of empirical sociologists is that they should be able to lead their ships between the scientific nature of studies and the commonnes of life, because when you talk to respondents you cannot use the "high legal manner and vocabulary". Sociologists and lawyers solve different tasks, and sociologists could sometimes step aside from the legal dogmatics.

The lawyer: We really assess people's behaviour, determine their destiny. People reproach us with dogmatism, but the civilized law order is based on it. Any attempts to break this tradition and determine a crime

or criminals in accordance with not the law but other basis (though they might seem "social", "fair", "scientific") lead exclusively to outrage, tyrannies and deprivation of rights. In the first post-revolutionary years, there was the following rule: the center issues the basic directives (on who is to be convicted in the court and for what), and the local courts implement the criminal reprisal by taking into account those directions and the class consciousness. For example, this happened to Vipper, the officer of justice who was a prosecutor at Beilis's trial in 1904. After the revolution, Vipper became loyal to the new government and served at soviet institutions, but they did not forgive his participation in the "anti-Semitic process". The prosecutor Krylenko insisted on capital punishment in order to "protect the revolution". The court showed its "humanity", and the sentence included the following words: "Taking into account that after the October Revolution Vipper did not act as an active enemy of the soviet system, but remembering that ignorant prejudices still inherent in him make him harmful for revolution, — the revolutionary tribunal has sentenced the citizen Vipper to concentration camp detention with deprivation of liberty untill the republic will fully strengthen the communist system" [11, p. 180]. I hope this example is enough to understand how beneficent the dogmatics could be sometimes.

The sociologist: Perhaps, you have convinced me that the conservative character of criminal laws and judiciary can work for good. Also I can agree that our tasks are different, though this does not take away prospects of interdisciplinary contacts and looking for common interests and studies. The accent on dogmatism of criminal laws has convinced me (once again) that sociologists should not blindly follow the Criminal Code and be guided by its General and Special Parts in order to select a subject of their researches. For example, decriminalization of drug consumption made it possible to remove safely no less than 500 000 of our citizens from the category of potential criminals. Probably, lawyers feel relieved in such moments. But after decriminilization, social problems do not vanish, especially as the drug consumption is always next to illegal drug trafficking. There is a class of phenomena, which, though they are not determined (according to the strict laws) as crimes because of their latent character or decriminalization, can be regarded as crimes from the public opinion point of view or be assessed as something of the same kind as a crime. In one of his articles about the tribal system society, M.Kovalevskii, the outstanding pre-revolutionary sociologist, uses the concepts of "permissible" and "forbidden actions" [12]. Being an ed-

ucated lawyer, he intentionally (in my opinion) does not use the term "crime" while talking about the pre-state society, where there was no any criminal and law system. Shall we use the same approach to the above-mentioned cases?

The lawyer: That might be a good way out for the sociologists who study the latent crimes. You measured not the actions judicially determined but unlawful acts assessed by people as such, according to their believes, moral norms and levels of legal awareness. I think that judicial researchers would refer to some part of them as crimes. There is no doubt, your work will be interesting to the lawyers who are not completely absorbed by the "spirit of corporation". I agree that the time of professionals is coming. When the Soviet criminology had emerged and made its first steps, A.Gertzenzon, the oldest lawyer-criminologist, criticized it for pseudo-sociological researches, which, at that time, were really conducted by amateurs and their scientific level was extremely low [13, p. 35–36]. Since then, the situation has not got much better, and lack of competent sociological studies prevent from mutual science penetration and cooperation.

The sociologist: I want to thank you for this conversation and critique of my ideas. That can be a good impulse for the further development. I was once again convinced that the sociology of criminality should develop as an applied branch of sociology together with criminal law, criminology and other law sciences. This aspect will make it advantageously different from the theory of deviant behavior that was established more like a theoretical field hardly connected to the above-mentioned sciences.

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