

Development of Scientific Thought on Social Reaction to Crime

Miodrag N. Simović

Constitutional Court of Bosnia and Herzegovina, Sarajevo, Bosnia and Herzegovina

University of Banja Luka, Banja Luka, Bosnia and Herzegovina

Academy of Sciences and Arts of Bosnia and Herzegovina, Sarajevo, Bosnia and Herzegovina

Russian Academy of Natural Sciences, Moscow, Russia

Dragan Jovašević

Niš University, Niš, Serbia

Although criminal law as a positive branch of law has been established at the early stage of founding the first states, scientific analysis of basic terms and institutes of criminal law began only in the 18th and the 19th century. At the same time more natural and social sciences have been developed looking for the answers to the following questions: (1) what are the causes of crime? (2) what is the baseline of criminal responsibility? and (3) what are the measures that state should implement towards the criminal offences' perpetrators? In answering these questions series of scientific trends and understandings are developed in order to analyse forms of social reactions to crime in different ways, and this paper elaborates that.

Keywords: criminal offence, perpetrator, sentence, social reaction, science

Introduction

Although criminal law (Jovašević, 2010, pp. 78-83) belongs to the earliest branches of law that emerged very early, immediately after the foundation of state, a more serious study of the punishment system and its impact on the combatting crime happened much later. Scientific treatment of the system of execution of sentence, within the framework of criminal law, began to develop only with the establishment of the first universities in Italy at the beginning of the 12th century. The first papers from that period were composed of the interpretation of Roman law that began to revitalize. It is the period of the reception of the Roman law, which comes to the interpretation of the norms of ancient Roman law and their adaptation to concrete cases in practice. These first scientific workers, who, by interpreting the Roman law tend to adapt it to the needs of their time, are known as the glossators and post-Glossators.

Classical School

The first serious scientific studies of the criminal offence and sentences against its perpetrator had begun in the second half of the 18th century with the appearance of the Classical School (Jovašević & Ikanović, 2012, pp.

Miodrag N. Simović, DSc., Professor, judge of the Constitutional Court of Bosnia and Herzegovina, Sarajevo, Bosnia and Herzegovina; full professor, Faculty of Law of Banja Luka, University of Banja Luka, Banja Luka, Bosnia and Herzegovina; corresponding member of the Academy of Sciences and Arts of Bosnia and Herzegovina, Sarajevo, Bosnia and Herzegovina; foreign member of the Russian Academy of Natural Sciences, Moscow, Russia.

Dragan Jovašević, DSc., Professor, Faculty of Law of Niš University, Niš, Serbia.

88-94). Based on new concepts, this School has created a new system of criminal law that became the basis for a range of criminal codes that have been brought under its influence: the French revolutionary Criminal Code from 1791, the Bavarian Criminal Code from 1813 and others. The most important representatives of this School are Cesare Beccaria, Anselm Feuerbach, and Jeremy Bentham.

In his work *On Crimes and Punishments* (Milan, 1764; Beccaria, 1984, pp. 45-49), Beccaria went through a strong criticism of the arbitrariness and autocracy of medieval feudal criminal law, and, at the same time presented a range of proposals for its fundamental reform. These proposals included the following: (1) instead of autocracy, arbitrariness, and misuse, a principle of legality of the criminal offence and sentence should be introduced, (2) the aim of sentence is not retribution and the infliction of evil on the perpetrator but rather preventing him from committing criminal offenses in the future—therefor a special prevention. Accordingly, the sentence is a mean of preventing the commission of criminal offenses, which ensures effective protection of society, (3) instead of cruel, inhumane, physical punishment, and death penalty, sentence of deprivation of liberty with forced labor should be introduced. Because of this consideration, he is considered to be the founder of an abolitionist movement that ultimately led to the abolition of the death penalty in the criminal system of the most of the modern countries, and (4) the principle of proportionality of sentence according to the gravity of the crime committed should be introduced. He advocates the introduction of a system of absolutely determined sentences in the criminal law so that the court does not have autonomy in pronouncing the type and measure of a sentence, but it declares the sentence prescribed for that offense to the perpetrator, regardless of the specific circumstances under which it was committed (Petrović & Jovašević, 2005, pp. 45-52).

Anselm Feuerbach is the greatest law theorist of the Classical School. He is the author of the first serious criminal papers from the criminal code field “Revision of the Basic Assumption and Terms of Positive Criminal Law” (1800) and *Textbook of Criminal Law Generally Applied in Germany* (1801). In the Textbook, in a scientifically systematized manner, using the appropriate instrumentary, he dealt with the material criminal law, giving a new system of science for the general part of the criminal law—the bipartisan system. He processed all basic and general terms and institutes of criminal law, emphasizing that the sentence should achieve a general preventative effect, thus becoming the creator of the theory of general prevention of sentence, and this is “the theory of psychological coercion”.

In his work *The Rationale of Punishment* and *The Theory of Legislation*, Jeremy Bentham developed a theory on the social utility of sentence or utilitarianism theory. He was the first to point out that the sentence aims at preventing crime. His special contribution to the reform of criminal institutions and the penitentiary system in general, led to the humanization of criminal treatment against convicted persons. These are the first papers from the field of executive criminal law (Bentham, 1789).

The basic concepts of the Classical School are the following: (1) Freedom of person and citizen is a fundamental value in a society. It should, inter alia, ensure the principle of legality of the criminal offence and sentence. Criminal offence and sentence can only be prescribed by a legislator, even before the offences have been committed in the first place; (2) Criminal responsibility arises from the moral responsibility of the criminal offence perpetrator. Freedom of will of the perpetrator of the offense is based in the core of that responsibility. Namely, the will of a man is completely free from external and internal influences; (3) The criminal offence and sentence are only legal phenomena, the legal instances which existence is determined by the law. Sentence is the only measure by which society seeks to prevent and combat crime. Among the sentences, the most important one

is the penalty of deprivation of liberty. The death penalty should be deleted from the criminal system as illogical and useless; (4) The perpetrator of the criminal offence is an impersonalized being, therefore, a logical-astrakhan term. Everyone is equal before the law so that for each of them the same sentence follows. The sentence is adjusted to the perpetrated crime, and not to the perpetrator or circumstances of the commission of the offense. There is only an objective, but not a subjective individualization of the sentence; (5) The court is authorized only to apply the law, and not to interpret it in a specific case. Therefore, the law prescribes for each criminal offence a certain type and measure of the sentence which the court is obliged to pronounce to the perpetrator of that crime—a system of absolutely determined sentence.

Anthropological School

At the end of the 19th century, with the strong development of natural and social sciences, Anthropological School emerged. Gabriel Tarde was one of the first to point out that this period was a time of huge increase of crime, in his paper “Comparative Crime”, for which, among other things, Classical School was also accused for. The main representative of the Anthropological School is Cesare Lombroso. In his works *Criminal Man* (1876), *Criminal Anthropology*, and *Crime—Its Causes and Remedies* (Lombroso, 1918; Lombroso & Guglielmo, 1895; Boston, 1918) he exposed the basic concept of this study (Josipović, 1969, pp. 38-41).

According to Lombroso (1918), crime is a natural and necessary phenomenon. According to him, the causes of criminal behavior are found in the man himself. Namely, a man is born as a criminal. There are certain people who, according to their physiological and anatomical constitution, are destined for the commission of criminal offences (Živanović, 1937, pp. 428-430). Such people can be recognized by certain biological characteristics that may be of anatomically or physiologically functional nature. These characteristics are called degeneration stigmata. Therefore, the criminal offence results from the organic constitution of a man that manifests itself to his psychological life as well. Lombroso classified the perpetrators of criminal offences, which he calls the culprits, into five categories: born culprits, mentally ill culprits, culprits from habits, culprits of passion, and accidental culprits (Davidović, 1983, p. 56).

Unlike the Classical School that did not pay any attention to the causes of crime, the Anthropological School finds these causes in the endogenous, internal factors that exist in man. This means that the will of man is not free, but on the contrary it is necessarily conditioned by endogenous, internal factors. Since there is no free will, the man is not free in choosing behavior, and hence there is no moral responsibility as the basis of criminal responsibility. The purpose cannot be realized by the sentence as a type of measure for social reactions to crime, it cannot remove or neutralize the internal cause for commission of criminal offences. Therefore, criminal sanctions are unnecessary and, instead of them, a wide range of medical treatment measures, aimed at neutralizing and eliminating the endogenous causes of crime, should be introduced as a measure for the prevention and combatting crime.

Positive School

Based on the study of the Anthropological School of criminal law, a Positive School emerged. Due to the close proximity of these two Schools, in theory, they are often referred to as the Italian Anthropological-Positive School. Otherwise, this School got its name by the appliance of a positive method (method of observation and experimentation) in the study of crime. Its main representatives are Enriko Ferri and Raffael Garofalo. In his

work *Criminal Sociology*, Ferri (1881) exposed the basic concepts of this School that stepped away from the study of the crime as a logical-legal construction, but only observed it through the prism of the subject—perpetrator of the crime. According to Ferri (1968), there are three groups of factors that lead to the commission of criminal offence: anthropological or endogenous factors (taken from Anthropological School), physical or cosmoteluric factors (climate, seasons, atmospheric conditions, etc.), and social factors.

Depending on these factors or the causes of crime, there are two types of criminal offences. These are natural and legal criminal offences. The natural ones are those offenses which hurt the general feelings of people. These are real, general, or atavistic criminal offences that are known in all states and at all times. Besides them, legal criminal offences are those that vary from state to state and even in the same state in different periods of time. They consist of general security violations. By accepting the typology of culprits from the study of the Anthropological School, representatives of the Positive School consider that a crime is caused by two types of factors. These are: endogenous (internal) and exogenous (external). Given these two groups of factors, there are two groups of perpetrators of criminal offences—those who commit crimes under the influence of internal factors and those who commit crimes under the influence of external factors¹ (Bačić, 1980, pp. 63-64).

Since the behaviour of a man is not free, but is more or less conditioned by internal or external factors, the will of man is also not free, but necessarily conditioned. Since the will is not free, therefore it cannot be the base of moral or criminal responsibility of such perpetrator of the criminal offence. Therefore, instead of criminal responsibility, a new term should be introduced—legal or social responsibility. It is based on causing the consequences of a criminal offence determined in the law. The basis of social responsibility arises from the existence of a state of danger or of a temibility. The danger lies with the perpetrator of the criminal offence himself. Such study was further elaborated by Garofalo (1905) in his work *Criminology*.

Since there is no criminal responsibility, the positivists consider that the sentence cannot achieve the purpose of protecting the society, since it does not act in the trend of neutralizing the causes of crime or the state of danger. Therefore, they proposed abandoning the concept of retribution and introducing social protection measures or social security measures (Živanović, Ferri, & Lanca, 1929, pp. 337-351). There are several types: preventive measures or substitution of penalties, compensation measures, repressive measures, and eliminatory measures. The application of these measures depends on the category of perpetrator of the criminal offence. Such measures applied should not be based on the idea of abstract justice and the moral responsibility of the perpetrator of the criminal offence, but they must fully correspond to his personality in order to neutralize internal and external factors (causes) that lead to criminal behavior. In this way, the application of social measures towards the perpetrators leads to the emergence of the principle of individualization.

Sociological School

With the foundation of the International Union for Criminal Law (1889), a Sociological School emerged. Its main representatives are Franz von Liszt (Mladen, 1970; Živanović & Liszt, 1991, pp. 241-246), Van Hamel, and Adolphe Prins. According to the studies of this School, there are three groups of factors or the causes of the commission of criminal offences. These are: (1) individual or endogenous factors that can be inherited or acquired, (2) physical or cosmoteluric, and (3) social factors. Depending on these causes, there are also different types of

¹ Social factors of criminality were especially elaborated by Bačić (1980, pp. 63-64).

criminal offences: acute and chronic criminal offences. Acute crime arises as a result of external causes—physical and social. The causes of chronic crime are internal or endogenous.

Given these causes of crime, all perpetrators of criminal offences or culprits are classified into two groups: (1) accidental culprits (who commit acute crimes) and (2) chronic culprits and culprits of habit (who commit chronic criminal offences under the influence of individual preferences that are activated in suitable external or internal conditions). The authors of the Sociological School did not discuss the issue of freedom of the will of the criminal offence perpetrator, considering it to be a philosophical or gnoseological issue, rather than an issue of criminal law. According to them, criminal responsibility does not exist. Its basis is in the existence of the consciousness or will of the perpetrator of the criminal offence. But there are also such perpetrators who commit the offense due to the state of danger, its dangerous condition (called “temibility” or “periculosity”) that led to the commission of the criminal offence, and threatened repeated commission of the criminal offence of the same or other kind. The degree of this danger is determined by the level of fear from repeated commission of criminal offence that the perpetrator provokes by his presence in a society, or in a particular social environment.

Therefore, according to these authors, there are two types of responsibilities and two types of responsible perpetrators of criminal offences. The first are those who have the consciousness and the will in relation to the performed offence. These are criminally responsible perpetrators of criminal offences. They are subject to sentence. The Sociological School specifically advocated the wide application of the sentence of deprivation of liberty, since it is adequate to conduct the resocialization of the criminally responsible perpetrator of the criminal offence. This School actually insisted on special prevention as the goal of the sentence. However, in addition to those who are criminally responsible, there are also criminally irresponsible perpetrators of criminal offences who commit criminal offences due to the existence of a bio-social state of danger. Special types of criminal sanctions are applied to such perpetrators, including security measures. Thus, the supporters of the Sociological School introduced into the criminal law the duality of criminal sanctions: sentence (until then the only known and applied types of criminal sanctions) and security measures.

However, in order to make this fight against crime more effective, they proposed, in addition to sentence and safety measures, to introduce the special preventive hygiene measures. These are different measures of a socio-political character which should eliminate the conditions and possibilities that would lead to the appearance or spreading of crime in general or in some of its forms (Tahović, 1961, p. 71).

Neoclassical School

The Neoclassical School appeared at the end of the 19th century with a series of different studies and settings whose common tendency was to adapt and harmonize the basic concepts of the Classical School with the concepts of a Positive and Sociological School—with the goal to effectively protect the society from crime. Due to this tendency to create a symbiosis of the acceptable concepts of all previous Schools, to find the path of reconciliation and compromise—it is also known as an Eclectic School. The studies of this School was most strongly expressed in the first decades of the last century in the framework of French, Belgian, and German criminal law theory. The main representatives of this School are Garro, Garçon, Mayer, and Birkenmayer.

Their studies can be brought down to the following concepts: (1) the causes of crime are by their origin: individual, social, and physical. The culprits are divided on accidental and chronic, i.e. delinquents from habits; (2) criminal responsibility is a moral category that consists of consciousness (intellectual element) and will (voluntaristic element). It is based on sanity and guilt. Will is neither free nor determined, it is relatively determined.

By accepting relative determinism, they adopt an indifferent standpoint that the problem of free will is not relevant to the existence of criminal responsibility; (3) apart from responsibility, as a moral category, there is a danger as an objective category which forms the basis for the application of a criminal sanction. Danger can exist without guilt, but also along with it, i.e. among insane but also among sane perpetrators of an offense and it can be expressed in a greater or lesser degree; (4) between sanity as a capacity for guilt and insanity as an incapacity for its existence—there is a whole range of interim states of reduced sanity. Decreased sanity is the basis for sentence, but also the circumstance for reducing the sentence, i.e. the basis for pronouncing the security measure; (5) there are three types of sanctions: penalties, security measures, and educational measures. They are, however, talking about the duality of criminal sanctions, i.e. on penalties and security measures, but as a special type of security measures, i.e. within their framework they foresee educational measures. Basically, the application of a sentence is the principle of legality and the retributive character of sentence. The sentences apply to criminally responsible perpetrators of criminal offences. Security measures are applied to perpetrators who are not criminally responsible, but dangerous for their environment (for society, social values). Soon after that, educational measures were separated from security measures in an independent sanction, and thus a triality of criminal sanctions appeared. In order to achieve special prevention, the sentence was adjusted according to the subjective characteristics of the personality of the perpetrator; (6) safety measures are applied to perpetrators carrying a state of danger with themselves that cannot be neutralized by sentence. These include insanity and persons with reduced sanity and repeat offenders. Their goal is to neutralize the state of danger. Educational measures apply to minors whose delinquency arises from upbringing neglect. The basis of their application is, therefore, inadaptability due to insufficient or incomplete upbringing.

Social Defence Movement

The Social Defence Movement was created after the World War II in Italy. The initiator of this movement is Filippo Gramatica, who founded in 1945 the Center for Studying the Ideas of Social Defence in Genova. This Center for studying the ideas of a new social defence was transformed in 1949 into the International Society of Social Defence. The main representatives of the Social Defence are Filippo Gramatica and Mark Ansel. The basic concepts of the Social Defence Movement are exposed in the works of Gramatica's (1963) *Principles of Social Defence* and Ansel's (1963, p. 9) *New Social Defence*. There are two trends present among the supporters of Social Defence: an extreme and moderate trend.

The extreme trend considers that traditional criminal law, as ineffective in the fight against crime, should be abolished and replaced by a social defence system. There are no terms in this system: criminal offence, criminal responsibility, and criminal sanction. Instead, new concepts are introduced: antisocial, subjectivism, and treatment and prevention measures. In addition to changes to the criminal law, the system of criminal justice and the execution of criminal sanctions is also changing. There is actually no sanction, and instead of them, it is proposed to apply: medical, socio-political, economic, pedagogical, psychological, and similar measures.

The moderate trend, represented by Mark Ansel, advocates a thorough, radical, and comprehensive reform, and not the abolition of criminal law and all of its institutes. The principle of legality is the basic principle of this reformed criminal justice system. Criminal law and criminal policy must be based on scientific and interdisciplinary observation and study of the criminal offence and perpetrator with all subjective and objective circumstances—in each particular case.

Ansel systemized the ideas of the moderate trend of the new Social Defence School in the following way: (1) the idea of protecting a society from criminal offences is outside the traditional system of sentence based on evil, retribution, and suffering; (2) the idea of danger of the perpetrator of the criminal offence and the necessity to react with new means and in a new way against complex forms of anti-social behavior is admitted; (3) the criminal law of the future and contemporary criminal policy must be based on the scientific knowledge of the criminal offence, but also the personality of its perpetrator; (4) a new criminal policy tends to organize systematic, patient, and sensible, but also decisive action of the resocialization of the perpetrator of the criminal offence; (5) contemporary criminal policy is based on two principles: (a) social protection; and (b) individual prevention that receives a special value through the development and consolidation of the humanization of criminal law, which derives from the personal characteristics of the criminal offence perpetrator (Jovanović, 1958, p. 352).

Representatives of this trend tend to execute the deuridization of criminal law and to purify it from all redundant, unnecessary, and metaphysical concepts, and to fulfil them with social content. The existing system of repressive, retributive measures should be replaced with a system of general and specific prevention measures. The sentence, although it remains in the system of sanctions, should lose its repressive, compulsive character and through the humanization of the treatment it will achieve the goal, which is the re-socialization of the perpetrator of the criminal offence, his correction, and re-education. The application of individualization of the sentence should contribute to that, not only in the procedure of its pronouncement, but also in the process of its execution. Under the influence of these ideas, there is a widespread application of juvenile criminal law and its reform (Perić, 1992), the construction of a special treatment for young adults, as well as the application of suspended sentence, conditional release, court notice, paraphernal measures, etc.

Historical Development of the Criminal Law System

From the historical point of view, the phenomenon of sentence is related to the appearance of criminal law in general, that is, to the appearance of a state. Different forms of social reactions in the original social community towards persons who violated the rules of discipline and behavior were sanctioned by various measures, but which did not have the character of a criminal sanction i.e. sentence, nor did there exist a special authority to challenge or execute them, and similar. These initial forms of reactions from society towards “troublemakers” came down to the private reaction of individuals or a community (lineage, tribe), such as: exile, revenge, and composition. With the appearance of the state, some of the forms of original social reactions have grown into sentences: death penalty, physical punishment, and fines.

Until the 19th century, the system of criminal sanctions practically was about a system of different sentences (Subotić, 1909, pp. 37-42; Pihler, 1995, pp. 262-271). Thus, the history of criminal law can be called a history of sentences that have changed, developed, or improved, certain sentences have been abolished, or acquired special forms and modalities of execution, that is, new and more diverse forms of sentences have been introduced. Only with the emergence of Positive, and especially Sociological Schools and their studies, certain criminal legislation in the system of criminal sanctions, in addition to sentences, introduced other types of criminal sanctions—various security measures, thus creating a duality of criminal sanctions. These measures have the widest possible ability for application towards perpetrators of criminal offences. Although the basis of their application is the dangerous state of the perpetrator (i.e. the danger that he will repeat the criminal offence), they can be pronounced both to criminally responsible (countable and guilty) and criminally irresponsible, juvenile, and adult perpetrators.

A bit later, by the end of the 19th century, the system of criminal sanctions became enriched by a new type of measure applied to juvenile perpetrators of criminal offences, and in certain cases under certain conditions to adult persons (young adults)—which establishes triality of criminal sanctions. Only in the 20th century, different admissible criminal sanctions have been introduced in the form of warning measures: conditioned sentences and court notice. Finally, at the end of the 20th century, this system of sanctions has become even more divergent by the introduction of a wide range of paraphernal measures or the substitution of sentences, primarily the sentence of deprivation of liberty.

The Appearance of Crime

In the original community, as a classless society, there was no crime as a social phenomenon. There are only cases of violation of social rules of life and social discipline (Sržentić, Stajić, & Lazarević, 1994, p. 16). Those were accidental and individual incidents to which the community reacts with measures such as: expulsion or exile from a community (which is the same to the death penalty), blood revenge, thallium (eye for an eye, tooth for a tooth), and composition (ransom).

Community exile presents the exclusive reaction to the violation of the rules of social discipline in that first period of history of criminal sanctions development. By applying this measure, the perpetrator is expelled from the community (brotherhood, lineage, tribe) for the committed offense, injustice, at the time when the offense was considered a delict administered against an individual (that is, the injured person or the victim), but also against the community as a whole, or against the deity. Therefore, this measure was undertaken not only as a private satisfaction, but at the same time as sacrificing to the deity for the sake of tranquillity (Živanović, 1953, p. 43). Practically, the exile meant condemnation to the death of the exiled person, because his survival outside the community was impossible.

A blood revenge implies the return of blood from the family of an injured or killed person to the perpetrator of such a delict and his family. Such inflicted evil represents an equivalent, proportionate reaction to previously inflicted injury or harm to an injured person. To make harm represent a retribution for the previously inflicted evil, revenge is actually a form of collective rather than individual reaction—"right, but also a duty of revenge", because it could have been taken by any member of the family to which the injured person belongs (Jelić, 1928, p. 7).

The composition consists of the obligation of the family to which the perpetrator of a delict belongs to, to pay a certain proportionate amount of the agreed compensation (in kind, money, etc.) to the family to which the injured person belongs by the delict. The form and amount of the compensation and the period of its payment are determined by customary law or by agreement (with the consent of the family of the injured person and the family of the delinquent). In the later period of strengthening of the state, the state authority, that is, the special bodies designated for this purpose, assume the role of determining the height of the composition, with one part given to the family of the injured person and the other remaining to the state.

Crime appeared as the revolt of certain people and groups of people towards certain socio-economic conditions of life (Milutinović, 1957, pp. 19-21; Tahović, 1961, pp. 18-21). As these conditions in history have changed from one formation to the other, the perception of crime and relation to some of its forms also changed. But no matter how the forms and types of expression of crime and its understanding changed, the crime itself did not change its essence, as neither criminal law did not change its task of preserving the ruling political, economic, social, and legal system and relations arising from the foundations of the society from offenses that endanger

them. It is clear that all people did not equally refer to these socio-economic relations, not even in one class formation. The appearance of the criminal law was caused by the appearance of crime, but it is also closely related to the appearance of the state as a government mechanism. The causes of the commission of criminal offences lie in the material conditions of life in one society. By changing these conditions, crime itself changes both in terms of its nature and in terms of its scope, which leads to changes in sentence (Vouin & Leaute, 1956, pp. 45-46). In this mechanism, the criminal law represents one of the most important means for combating crime—in order to protect and secure social goods and values.

Criminal Law in Slave States

With the appearance of the first state (slave state), a period of public reaction to the appearance of crime begins. As a form of society, the state takes over the role of regulating all social relations, thus combatting criminal behavior of individuals and groups. The state gradually transforms the measures of the original social defence into the criminal justice system with sentence. Instead of blood revenge, death penalty and physical punishment are introduced, and instead of composition—a fine is introduced, whereas deportation from the state is introduced instead of expulsion from a community (lineage or tribe) (Radovanović, 1975, p. 18). Criminal law was also created undertaking the prosecution and sentence for criminal offences. Namely, the state began to forbid certain behaviors that from the ruling class point of view were dangerous and to proscribe sanctions for them. At the same time, special bodies for the prosecution and sentence of those who are violating and endangering the newly formed order were formed in the state mechanism. The criminal law of slave states (Egypt, Babylon, Persia, Greece, Rome, and other slave states) (Margotić, 1997, pp. 168-173; Avramović, 1991, p. 1061; Jaramaz Reskušić, 1998, pp. 545-575; 2001, pp. 56-72) differs from one to another, which corresponds to the characteristics of these states, but common characteristics can be found.

The first basic characteristic of the slavery criminal law is the existence of a difference between slave owners and slaves in terms of the criminal protection of their personality and criminal responsibility. Namely, personality protection exists only for slave owners, but not for slaves. A slave was not considered as a person but as a thing, so he personally did not enjoy any protection. The murder of a slave is a delict against property, because property on slave was injured, and not a slave himself (Srzentić & Stajić, 1961, p. 23).

Secondly, this period is characterized by a wide range of different criminal offences. Slaves and slave owners were punished differently for the same criminal offences. The slaves were mostly punished with death penalty or physical punishment, as well as with heavy exhausting labor, with the deprivation of food and water, while slave owners were punished with property sentences, deprivation of political rights, and expulsion, and very rarely in the most serious offenses with death penalty or some physical punishment.

Thirdly, even when it comes to the same sentence, a special way of execution of sentence was applied towards slaves which was cruel, drastic, and special for the free people, members of the slave owners' class.

Fourthly, the following appeared as objects for protection: the ruler, the state and its bodies, church and private property, and in particular ownership of slaves.

The reaction to the committed criminal offence also in this period has the character of a collective reaction, since sentence is not performed on behalf of the injured person's family, but on behalf of the whole state. The purpose of the sentence is to prevent the commission of criminal offences by public intimidation of citizens, future potential offenders, what kind of inhumane, draconian and cruel sentences are waiting for them and in what way they would be executed—if they find themselves in the role of a perpetrator of the criminal offence.

Finally, this right is characterized by cruel and inhumane physical punishment, as well as the inhuman way of their execution.

Criminal Law of Feudal States

The era of feudalism ranges from the 5th to the end of the 18th century. There are several periods in the development of criminal law here.

The criminal law of early feudalism (5th-11th century) relies on the custom law and regulations adopted by the kings of the invading Germanic tribes of Burgundy, Ostrogoth, Visigoth, Langobard, and Franks. Initially, the elements of the blood revenge, thallium, and ransom reactions prevail, which are gradually suppressed by the regulations of the kings, and sanctions of the criminal law of slave states, and in the first place the physical punishments were increasingly introduced. There is a strong breakthrough of the Catholic Church influence on criminal law, and even a canonical criminal law was created.

The criminal law of the middle, developed feudalism (9th-15th century) is distinguished by the fragmentation and reception of Roman law. The most important criminal code of that time is *The General German Criminal Code* (Constitutio Criminalis Carolina), known as “Carolina” from 1532. That was a complete code for that period, but its provisions were applied subsidiary, as local regulations of feudalists had primacy. The second significant law of the time was the Dušan Code from 1349 and 1354. It represents the code of the entire law in feudal Serbia.

The age of dissolution of feudalism (15th to 18th century) is characterized by the adoption of criminal laws with the cruellest sentences in the history of criminal law. This was the time of the original accumulation, inquisition, and absolutism.

The general characteristics of the feudal criminal law were reflected in the following: the first characteristic was the open protection of the interests of the feudal lords against dependent peasants, resulting in a difference in their sentence. The second characteristics determines the primary protection of the feudal property, religion, and personality of the feudal lords. Thirdly, this right is characterized by arbitrariness, which is based on the indefinable nature of criminal offences and sentences and the lack of legislation on the protection of persons accused in criminal proceedings. Finally, the foreseen sentences were cruel, and among them especially the death penalty and physical punishment of mutilation, torture and ill-treatment. This cruelty was especially developed by the Inquisition.

Criminal Law of Capitalist States

The era of capitalism begins with the great French bourgeois revolution (1789), which destroyed the feudal order. Starting from the idea of humanity, fraternity, and equality of all people before the law, the bourgeoisie wanted to portray capitalist society as ideal. The principles of bourgeois criminal law were pointed out even before the revolution in the works of Hobbes, Locke, Montesquieu, Voltaire, Rousseau, and Beccaria. Their ideas and suggestions were given a confirmation in the “Declaration of the Rights of Man and Citizen” of 1789. The first code built on these principles was the French Revolutionary Criminal Code of 1791. This was the first bourgeois criminal code based on the following principles: (1) the legality according to which criminal offences and sentences must be legally determined; (2) equality of citizens before the law, i.e. citizens to be equally punished for equal criminal offences; (3) humanity according to which sentence must not constitute torture, but must have a humane character; (4) the principle of proportionality between the gravity of the offense and the sentence; and (5) the introduction of the penalty of deprivation of liberty in the criminal system instead of cruel, useless, and inhumane sentences, the death penalty in the first place.

For the first time, this code divides the criminal law on a general and special part, whereby the general part contains the principles of penal policy, basis, and conditions for sentences, and a special part of individual criminal offences and sentences. A criminal offence is understood as a material consequence that makes a damage on a protected object. The second important codex is the Bavarian Criminal Code of 1813, which was made under the influence of Anselm Feuerbach. This was a systematized code with precisely defined concepts and institutions. These two codes served as a model for later European codes in this field.

Conclusion

When it comes to contemporary concepts in the criminal law of the last decades, one should first of all say that there is not one generally accepted, strictly ruling concept. Namely, there are simultaneously more or less similar concepts that have reached a basic consent in terms of resolving the basic problems of criminal law. In this way, in fact, mixed Schools are formed, such as Neoclassical, Neopositive, and others. The characteristic of these Schools is that they take the concept of one School as the basis, and then further modify these basic concepts with knowledge and values of other Schools, thus creating new trends.

A review of contemporary concepts in the science of criminal law can be reduced to several of the following characteristics:

- It is generally accepted that sentence should serve for the resocialization of culprits. Today, the idea of punishing a perpetrator of a criminal offence as a sign of retribution and suffering is completely abandoned. This is especially important from the aspect of protecting society and guaranteeing the freedom and rights of man and citizen, preserving his human dignity, as well as the possibility of returning to the social community without a stamp of condemnation—in order to be more useful member of the community;
- The widely accepted view is that sentence is the last resort in the fight against crime. The sentence is a mean for repairing and re-educating a perpetrator of a criminal offence who needs to achieve the goal of special prevention. But, in any case, it also has a general preventative effect;
- The increasing primacy of preventive measures, the widespread application of general and specific prevention measures, which should become the basic and most important measures for the prevention of crime and combatting crime, is pointed out. In this way, the concern of society for its members is expressed in which the humanity and the democratic nature of the measures of criminal law are reflected;
- Finally, the attitude of the need for questioning and the full investigation of the personality of the criminal offence perpetrator became the right of citizens. This represents a major historical step forward. In addition to the criminal offence, as material change in the outside world, the task of criminal law is also the investigation of the personality of the perpetrator of the offense with all his characteristics;
- Criminal law should be an expression of a particular policy of the so-called a criminal policy that allows every social community to apply the most adequate measures to combat illicit, socially dangerous behavior, in line with specific conditions and level of development, as well as perspectives. It is an entire system of measures that that can meet the needs of a particular community at a time, the tasks of combating crime, the prevailing understanding and concepts, the cultural level, the tradition, and the contemporary achievements of criminal law science.

Contemporary concepts in the criminal law science today fully meet the present conditions and enable the development of positive criminal law on a wide platform of different ideas and perceptions, where the need to protect the society but also to protect the personality has a special importance.

References

- Ansel, M. (1963). *New social defence*. Belgrade: University of Belgrade.
- Bačić, F. (1980). *Criminal law, general part*. Zagreb: Informator.
- Beccaria, C. (1984). *On crimes and punishments*. Split: Cambridge University Press.
- Bentham, J. (1789). *Introduction to the principles of morals and legislation*. London: Dover Publications.
- Davidović, D. (1983). *The basis of penology*. Belgrade: University of Belgrade.
- Ferri, E. (1968). *The positive school of criminology: Three lectures by E. Ferri*. Pittsburgh: University of Pittsburgh Press.
- Garofalo, R. (1905). *La criminology*. Paris: University of Michigan Library.
- Gramatica, P. (1963). *Principles de defence sociale*. Paris: Cambridge University Press.
- Jaramaz Reskušić, I. (2003). *The system of criminal justice in the ancient Rome*. Zagreb: University of Zagreb Publishing.
- Jelić, I. (1928). *The blood revenge and death among old cultural people*. Belgrade: University of Belgrade.
- Jovašević, D. (2010). *Criminal law, general part*. Belgrade: University of Belgrade.
- Jovašević, D., & Ikanović, V. (2012). *Criminal law of Republika Srpska, general part*. Banja Luka: Univerzitet Apeiron.
- Lombroso, C. (1918). *Crime: Its causes and remedies*. Boston: Forgotten Books.
- Lombroso, C., & Guglielmo, F. R. (1895). *The female offender*. London: Fisher Publishing.
- Margotić, L. (1997). *General history of law and state*. Rijeka: Wydawnictwo Uniwersytetu Gdarskiego.
- Milutinović, M. (1957). *Crime as social phenomena*. Belgrade: University of Belgrade.
- Mladen, S. (1970). The science of criminal law of Franz Liszt, in the Yugoslavian. *Journal for Criminology and Criminal Law*, 61(2), 219-225.
- Petrović, B., & Jovašević, D. (2005). *Criminal law of Bosnia and Herzegovina, general part*. Sarajevo.
- Petrović, B., & Jovašević, D. (2006). *Criminal-executive (penal) law*. Sarajevo.
- Radovanović, M. (1975). *Criminal law, general part*. Belgrade: University of Belgrade.
- Srzić, N., & Stajić, A. (1961). *Criminal law FPRY, general part*. Belgrade: University of Belgrade.
- Srzić, N., Stajić, A., & Lazarević, L. (1994). *Criminal law of SFRY, general part*. Belgrade: University of Belgrade.
- Subotić, D. (1909). *Sentence and its goal*. Jagodina: Štamparija Đorđevića i Gilića.
- Tahović, J. (1961). *Criminal law, general part*. Belgrade: University of Belgrade.
- Vouin, R., & Leaute, J. (1956). *Droit penal et criminology*. Paris: Presses Universitaires de France.
- Živanović, T. (1937). *The basis of criminal law in the Kingdom of Yugoslavia* (2nd ed.). Belgrade: University of Belgrade.
- Živanović, T. (1953). *The basis of criminal law in the Kingdom of Yugoslavia, general part* (1st ed.). Belgrade: University of Belgrade.