УДК 343.9.01
DOI 10.17150/2500-4255.2021.15(1).6-14

НРАВСТВЕННАЯ ИСТИНА И КРИМИНОЛОГИЯ: ВОЗВРАЩЕНИЕ К КЛАССИЧЕСКИМ ОСНОВАМ

А. Шитов
Чиангмайский университет, г. Чиангмай, Таиланд

Информация о статье

Дата поступления
17 июля 2020 г.

Дата принятия в печать
19 февраля 2021 г.

Дата онлайн-размещения
9 марта 2021 г.

Ключевые слова
Классическая криминология; уголовное право; мораль; теория рационального выбора; теория рутинной деятельности

Аннотация. В данной работе представлены доводы в пользу актуальности классической криминологии для решения современных проблем системы уголовного правосудия. Несмотря на многие фундаментальные различия в политическом и культурном контекстах, центральные темы классической криминологии продолжают оставаться актуальными и в наше время. Одна из таких тем — критика уголовного права за назначение очень суровых наказаний. Наказания становятся жестокими, если они порождают страх, а не моральную ответственность. Последняя выступает основополагающим принципом политической и правовой свободы. Уголовное законодательство, основанное на страхе, а не на совести и разуме, является выражением политической тирании. Важность развития моральной ответственности отражена в ряде современных криминологических теорий. Однако они отличаются от классической криминологии одним важным аспектом. Современная криминология, хотя в целом и признает важность морали в предотвращении преступлений, не утверждает первостепенное значение или даже существование нравственной истины в криминологическом аспекте. Напротив, классическая криминология, как она представлена в работах Ч. Беккариа и И. Бентама, основана на вере в нравственную истину, которая служит критерием оценки современных институтов и норм уголовного права. Одна из нравственных истин заключается, в частности, в том, что преступления — это акты свободной воли. Напротив, многие современные криминологические теории не принимают концепцию свободы воли, которая до сих пор остается основополагающим принципом ответственности в уголовном праве. Теория рационального выбора является исключением. Классическая теория криминологии, а также теория рационального выбора имеют несовершенства. В статье выделены некоторые их недостатки с точки зрения теоретика уголовного права. Однако эти недостатки не принижают первостепенной важности единства права, морали и криминологии, отстаиваемой ее классиками. Для достижения большего единства между криминологическими дисциплинами и уголовным правом необходимо возвращение к основным этическим постулатам классической криминологии и их принятие.

MORAL TRUTH AND CRIMINOLOGY: BACK TO ITS CLASSICAL ROOTS

Alexandre Chitov
Chiang Mai University, Chiang Mai, Thailand

Article info

Received
2020 July 17

Accepted
2021 February 19

Available online
2021 March 9

Keywords
Classical criminology; criminal law; morality; rational choice theory; routine activity theory

Abstract. This paper argues for the relevance of classical criminology for addressing contemporary problems of the criminal justice system. Despite many fundamental differences in political and cultural contexts, the central themes of classical criminology continue to be relevant for our time. One such theme is the criticism of criminal law for imposing very harsh penalties. Penalties become cruel if they produce fear rather than moral responsibility. Criminal laws based on fear rather than conscience and reason are the expressions of political tyranny. The importance of developing moral responsibility has been reflected in a number of contemporary criminological theories. They, however, differ from classical criminology in one important aspect. Contemporary criminology, even though accepting the importance of morality in preventing crimes, does not affirm the existence of a moral truth. Classical criminology, as developed by Beccaria and Bentham, is based on a belief in moral truth as the criterion for evaluating contemporary institutions of criminal law. One instance of moral truth is that crimes are acts of free will. In contrast, many contemporary criminological theories do not recognize the concept of free will, which still remains the underly-

ing principle of responsibility in criminal law. Rational choice theory is an exception. The paper highlights some shortcomings of the classical and rational choice theories from the viewpoint of a criminal law theorist. However, these shortcomings do not reduce the overriding importance of the unity of law, morals, and criminology. In order to reach a greater unity between the disciplines of criminology and criminal law, there is a need for the return to, and the acceptance of the main ethical tenets of classical criminology.

Introduction

Classical criminology is generally associated with the names of Beccaria and Bentham who lived in the eighteenth and nineteenth centuries. They laid the foundations on which contemporary criminology is built. Despite many fundamental differences in political and cultural contexts, the central theme of classical criminology continues to be relevant for our time. One such a theme is the criticism of criminal law for imposing very cruel penalties. Some advocates of liberal democracy may entertain a thought that the Western laws concerning penalties are the most humane in the world. On the contrary, those who follow the steps of classical criminology will not be deceived by the Western quality standards of prison cells. Classical criminology offers quite a different standard for cruelty. Penalties become cruel if they produce fear rather than moral responsibility. The latter is perceived to be an essential characteristic of a free citizen. Criminal law which is based on fear rather than conscience and reason are the expressions of a political tyranny. It is particularly expressed by ambiguous, and hardly understandable to the public, criminal laws, as well as by inconsistent judicial practices. More importantly, it is impossible for classical criminology to perceive the work of criminal law divorced from moral reasoning, for it would mean the end of a free citizen and the fundamental goal of criminal law to protect his freedom.

According to classical criminology, both ethics and law derive their binding force and authority from reason. The classical school believes in the power of reason to direct individual behaviour despite irrational feelings threatening the reasonable course of human affairs. This approach is strongly contrasted with other schools of criminology based on the idea of behavioral determinism: social and biological factors may easily override moral convictions of an individual.

Classical criminology remains revolutionary in its approach. It is directed against the persisting failures of existing systems of criminal justice to prevent crime which are often ignored or covered by official theories of criminal law. The classical school rejects the blind adherence to the old legal tradition supported by a theory which obliterates the moral goals of criminal law. It is moral reason which must replace criminal policies dictated by selfish political goals. A constant change of criminal law and its application is required in order to make criminal law increasingly transparent for an ordinary citizen, making its application uniform and rational, not for the sake of uniformity and rationality per se, but pursuing the moral goals of freedom, equality, and fraternity. Such change can be propelled only by a firm belief that a human being by the power of reason can attain to those goals.

The Ideas of Cesare Beccaria

Cesare Beccaria is justly considered to be one of the founders of modern criminology. In the eighteenth century, he undertook a critique of the contemporary criminal justice system from the philosophical positions of the Enlightenment. The Enlightenment appealed to reason as the ultimate criterion of what is right and wrong, good and evil. Accordingly, Becarria criticized the existing legal practices of punishment as cruel and unreasonable [1, p. 234]. He maintained that punishments must comply with the demand of justice, necessity and usefulness. Beccaria believed in the existence of absolute moral truth and the human ability to grasp it. Law must be based on “the ineffaceable sentiments of mankind” [ibid., p. 235]. At the same time, he was rather critical of the abilities of the masses to grasp moral truth adequately. Apart from appealing to reason as the final authority in determining the right morality, Beccaria shared the ideas of social contract as the foundation of political as well as punitive powers of the state. Criminal law is based on liberty of the individuals, and it must guard this liberty. Any punishment which is not directed to that task is wrong.

The need to protect the liberty of people from possible abuses of political powers explains his rather mechanical vision of criminal justice. Beccaria opposed any interpretation of law based on “its spirit” [ibid., p. 237]. All laws must be applied according to the letter. Punishments must be the

same in the same cases. Judges must not interpret the law. In other words, Becarria believed that criminal laws can be formulated in such a way that leaves no place for doubts concerning their meaning if applied to particular situations. The task of judges is to establish the facts foreseen in a relevant legal norm. Such an application of law is possible if all abstract concepts such as intent, harm, public peace and etc., which require judicial interpretation, are thrown out of criminal law statutes. The law, which Beccaria had in mind, was very different from the criminal law of his and our time. Laws, according to him, must be clear and simple. Only such laws can protect human freedom. Efficient application of penalties was one of his major concerns. It is not the harshness of penalties which matters, but their inevitability [1, p. 241]. Punishments must be imposed promptly. Such conclusions, Beccaria made on the basis of psychological observations. That brings him closer to later behaviorist psychologists. A person learns quicker that his act is not acceptable if it is immediately followed by punishment.

Beccaria maintained that judges must strictly apply laws and be severe in doing that. Judges as individuals must have no say in determining the measure of punishment. It belongs solely to the sovereign whose will is expressed through legislation. Indeed, Beccaria also believed that laws must be mild. However, he was not able to perceive law as meeting the demands of mercy and forgiveness. Law for him was about public good. Beccaria advised diminishing the use of clemency and pardon by making punishments milder [ibid., p. 241–242]. In a perfect legal system, according to him, there would not be clemency, because forgiveness encourages the hope of impunity.

Crime for Beccaria and his followers is not an *immoral act*. It is simply a broken contract. The task of punishment is rather technical: to avenge the pacts (broken contracts). They do "not exact vengeance for the intrinsic malice of actions" [ibid., p. 243]. Beccaria divorced crime from its moral blameworthiness. The gravity of sin must not be the scale of punishment [ibid., p. 245–246]. Thus, Beccaria attempted to divorce criminal law from any theology of punishment. The old Christian view of political authority as acting on behalf of God in bringing justice into social relationships was rejected by him. Even though Beccaria did not hold an atheist view, he thought of God's punishment as acting independently from the punishment by the state. Such a secularist view of punishment remains a deeply rooted convention in contemporary criminology and the theory of criminal law.

However, there is also something that makes his theory hardly acceptable nowadays. Judges must not have opinions which Beccaria thought to be equal to caprices [ibid., p. 243]. They are given the tasks which would make them similar to computer machines that operate on the premises provided by the legislator, and they are devoid of any sense of personal responsibility for a fair adjustment of general legal provisions to particular life-situations [2]. Quite contrary to the vision of Beccaria, the substance of contemporary law relating to criminal justice contains necessarily general provisions which require creative judicial interpretation. This is particularly seen in the rules concerning due process in criminal courts. For example, the European Convention on Human Rights, Article 6.1 states that

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."[1]

It is clear that no legislation can give every detail of what would constitute fair, reasonable, strictly necessary, independent, impartial, interests of morals, public order, national security, democratic, etc. Above all, the fundamental cornerstone of contemporary criminal process is proving the guilt of offenders. Guilt is established by looking at the intention of the offender. Beccaria wrote in this respect: "They were in error who believed the true measure of crimes to be the intention of those who commit them" [1, p. 245]. His position was based on the view that assessing guilt brings along a certain degree of subjectivism in the justice system which he tried to combat by all means. Paying attention to individual irrational revelations of the human heart threatened Beccaria's ideal of law as based on general clear and reasonable grounds [ibid., p. 246]. It appears that Beccaria attempted

[1] European Convention on Human Rights. 1950. URL: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

to replace guilt and its proof by a purely behavioristic standard which takes into consideration only the external facts of compliance, regardless inner motives of the offender.

There are, however, certain principles in the thought of Beccaria which are important for criminal justice today. First, Beccaria believed that there must be proportionality of punishment. Punishments are obstacles, discouraging a member of the society from violating social rules. The more important rules are, the more severe penalties must be. Punishments must be aimed at public good. Beccaria held the view that the task of punishment is preventing further offending rather than a simple retribution for one's misdeeds [1, p. 243]. Second, Beccaria well understood that punishments in themselves cannot do away with the causes of crime. He was opposed to the idea of criminal law as the remedy against all deviant behaviour. "To prohibit a multitude of trivial acts is not to prevent the crimes which they may occasion, but to create new ones" [ibid., p. 247]. He saw such causes lying in man's sensibility. Beccaria's view is that it is better to prevent crimes than to punish them.

Further, Beccaria acknowledged that public morality exercises a strong influence on the system of criminal justice. He also acknowledged that a moral sense has a passionate nature [ibid., p. 247]. This sense often contains errors, and morality often fails. The state of morality depends on freedom. Slaves are characterized by cruelty, drunkenness and debauchery [ibid., p. 248]. They need cruel laws to keep them under control. Indeed, rebelling against law and order is natural for them. On the contrary, a free man according to Beccaria is a man directed by his sense of responsibility and reason, rather than by the fear of punishment or the fear of those in the authority. Beccaria eagerly desired all men to be free, and he felt that in his age, there were only few who could be considered as such. However, he was optimistic. A former slave can become a free man. Freedom is achieved through perfection in knowledge and study.

An ideal of a free man for Beccaria is identical to the ancient Greek thought: it is embodied in the figure of a philosopher. Beccaria wanted such people to be the guardians of law. Philosophers are not perceived as separate individuals. Rather, they compose a family of brothers [ibid., p. 250]. Beccaria hoped to increase the number of philosophers in the country by rewarding virtue and improving education. That in itself is the best policy to prevent crime. Dealing with corruption in the justice system is best done by changing the morals of people rather than by inventing superficial institutional safeguards.

The Ideas of Jeremy Bentham

The apparent shortcomings of Beccaria's theory were addressed in the works of Bentham who was a younger contemporary to Beccaria. Both held the view that the main task of the penal system is to control social behaviour and to prevent further offending by deterring the potential offenders. However, he differed significantly from his predecessor, particularly in relation to the importance of determining criminal intent. The philosophical underpinnings of his criminological thought were also better and more consistently presented. These underpinnings constitute a utilitarian approach to punishment. That means that punishment is seen from the perspective of pain and pleasure. The main task of the criminal justice system is to increase the amount of pleasure and reduce the amount of pain among the members of the society. Everything what brings pleasure is considered as good, and what brings pain is correspondingly seen as evil. This basic principle of utility must not be interpreted as advocating selfish immoral pleasures. The pleasures which are followed by pains to oneself or others must be avoided. For example, Bentham would not approve of committing adultery on the ground that it causes suffering of the spouse and the children, and collapse of happiness in family. His view was further developed by J.S. Mill, who would argue that in displaying marital faithfulness there is much more pleasure than in committing adultery [3, p. 10–11].

Punishment for Bentham was a necessary evil. The evil of punishment consists first of all in suffering imposed on the offender. It is also experienced as evil by all those who are deterred by the existence of the penalty. Punishments can also bring about the pain of sympathy experienced by the persons connected to the offender [4, p. 255]. Taking into account its own evil, punishment must not be imposed in the cases where it does not alleviate a greater evil [ibid., p. 252]. Punishment must bring a certain positive effect which justifies the pain and deprivation brought along.

Bentham singled out four grounds on which punishment was judged as unjustifiable. The first is absence of any mischief. Punishment in this case would be groundless. Bentham also held that if a mischief is done with the consent of the victim, "provided it be free, and fairly obtained," there

must be no punishment as well [4, p. 252]. Another example of groundless punishment is when the mischief was overweighed by a benefit brought by the same act, for example to prevent instant calamity. Bentham thought that punishment would be groundless when there is a certainty of an adequate compensation for the damage. The second ground is the case in which punishment would be inefficacious. This is the case when the penal provision is not established until after the act is accomplished, or the provision is not conveyed to the notice of the person, or where the penal provision could produce no effect on the offender, "with respect to the preventing him from engaging in any act of the sort in question" [ibid., p. 253]. The examples of the latter case would be crimes committed by infants, or insane people, or intoxicated people. Punishment would be inefficacious in penalising unintentional acts, unconscious acts, or made by unforeseen mistake [ibid., p. 254]. The same applies to acts in which an offender was under duress making the act involuntary, for example when threatened, or being in a physical danger, or under any physical compulsion or restraint. The third ground is the case where punishment is unprofitable. It is rendered unprofitable particularly when the evil of the punishment will turn out to be greater than that of offence. For example, a great multitude of those who commit the same offence can render punishment unjustified from the principle of utility. Or a person to be punished possesses extraordinary value for the society, and the punishment would deprive the society of the benefit of his services. This calls for an individual approach to every offence and the offender: "The cases, therefore, where punishment is unprofitable on this ground, can by no other means be discovered, than by an examination of each particular offence" [ibid., p. 255]. In this aspect, Bentham differs from Beccaria dramatically. Bentham believed that the measure of punishment must vary from case to case, and that an occasional incident can make the application of a criminal law provision to a case, otherwise identical to other cases, unprofitable. A judge has to take into consideration all possible factors which can render punishment unprofitable, including the displeasure of people, if the penalty required by law has to be imposed, or the displeasure of foreign powers [ibid., p. 256]. The fourth ground is the case where punishment is needless, particularly when mischief can be prevented by instruction or education. This applies largely to minor offences against public administration, religion or morals.

According to Bentham's principle of utility, an offender, who experienced the pain of remorse, must be treated differently from the unrepentant offender. Apart from this largely penological application of his theory, one can draw other important criminological implications. First, unlike Beccaria, Bentham believed that it is possible to pass an adequate judgement concerning the offender's intentions. If a judge can find out whether an offender has decided freely to commit an offence, then it would be not impossible to find out whether the offender would make a free decision not to commit the crime again. Second, it appears that in imposing punishment, the judge must have empathy or at least sympathy for those who are punished and for the public concerned. Without such empathy or sympathy, it would be impossible to weigh the involved pains and benefits. Finally, Bentham believed in the power of education to form right conscience in order to prevent offending.

Rational Choice

In contemporary criminology, the tradition of Beccaria and Bentham is perhaps best reflected in the rational choice theory of crime. Gary Becker [5] is a leading representative of the theory. It is particularly popular among economists who attempt to bring the concept of rational choice in order to explain the phenomena of crime. Similarly to economic behaviour, criminal behaviour is evaluated and explained within the concepts of benefits and costs. Since the theory of rational choice claims to explain general criminal behaviour, and not only economic crimes, the meaning of benefits and costs has been significantly expended far beyond their purely economic meanings by including moral considerations among others. The theory of rational choice is concerned not so much with the needs of an offender, who seeks his satisfaction in a criminal way, as with his choice. Crime is the result of a personal decision. It may not necessarily be a well calculated decision. It is argued that even in a rather spontaneous decision, the offender is still faced with certain costs to reach the desirable goal. The risk of being caught or foreseen shame when being discovered are examples of costs which almost every offender (at least intuitively) takes into account. A person attempting crime also has to face emotional costs of his act.

This particular interest in an offender's expectations in relation to the risks of being caught, and the desire to avoid shame, can logically lead to exploring a whole variety of the beliefs of an offender

which facilitate or make it difficult to proceed with the crime. Criminals are not calculating machines which make their decisions on the basis of neutral data. There are certain beliefs which can play a vital role in deciding to commit a crime. For example, a person who believes that after death, he will face the judgement seat of God with the prospect of eternal retribution in the fire of hell may decide very differently from a person without such beliefs, particularly when the risk of being caught is minimal. Dostoyevsky [6] expressed this idea well in the famous words: "If God does not exist, everything is permitted." Even though the concept of God can hardly be found on the pages of rational choice theorists, there were some attempts to draw on moral theory to connect the rational theory of crime with ethics. For example, Becker [7] insisted that people are not criminals because their motivation is basically different from other (law-abiding) people. Their difference lies in different evaluations of costs and benefits.

The problem with the rational choice theories is that they cannot give a satisfactory account of irrational desisting from crime. In Dostoevsky's novel *Crime and Punishment* [8], the main character, Raskolnikov, made a well calculated rational choice to rob and murder an evil rich old woman in order to use her wealth to do much good for the society. He successfully committed the crime. This part fits well into the rational theory, but the second part does not. Not being able to bear irrational pangs of conscience, Raskolnikov performed a public ritual of penance (which was misunderstood and quite rationally explained by the public as being performed in a drunken state of mind). After that, he confessed his crime to the police, was punished with a rather lenient term of forced labour in a prison camp, and only then, already in the prison, was quite irrationally inspired by the power of the love of a former prostitute to start a new life.

The Routine Activity Theory

The routine activity theory may provide a better alternative to the rational choice theories to describe the irrational forces influencing the decision whether to commit crime or not. It bears some common features with the ideas of Bentham. The first common feature is advocating a situational approach to crime. Emphasis is laid on the interactions between the offence and the offender. Another common feature is a very pragmatic approach to the criminal justice system. Strong emphasis is made on prevention of crime rather then speculating on its causes. Clarke [9], for example, was very much dissatisfied with later criminology which was largely concerned with the issue of how some people are born with, or come to acquire a criminal disposition. According to him, little attention was paid to the phenomenological differences between crimes of different kinds. Instead, many criminologists attempted to make broad generalizations. He distanced himself from what he called dispositional criminology (interested most with criminal dispositions of offenders) which offered ill-performing preventive policies aiming at the change of psychological or social conditions. Instead, Clarke argued for situational criminology wherein crime is understood "as being the outcome of immediate choices and decisions made by the offender" [ibid., p. 278].

Unlike the theory of rational choice, Clarke maintained that choice in his theory does not mean that people are fully aware of all the reasons for their behaviour. When considering how people make choices to commit crimes, one has to look at their motives, mood, individual moral judgements concerning the act in question, the extent of criminal knowledge and individual perception of criminal opportunities, individual assessment of the risks of being caught, and finally such habits like drinking [ibid., p. 278–279]. These are the components of a subjective mental state and thought process which play an important part in the individual decision to commit a crime. These components are "influenced by immediate situational variables and by highly specific features of the individual's history and present life circumstances in ways that are so varied and countervailing as to render unproductive the notion of a generalized behavioural disposition to offend" [ibid., p. 279].

Even though Clarke tried to avoid making generalizations, criminal behaviour, according to him, can be broadly analyzed within the general concepts of the stability of individual environment and past experiences. It appears that he believed that both can be adequately measured and empirically studied. In this respect, his position stands closer to behaviourist psychologists who would surely agree with his saying that "people acquire a repertoire of different responses to meet particular situations; and if the circumstances are right, they are likely to repeat those responses that have previously been rewarding" [ibid.]. Unlike behaviourist psychologists, Clarke paid more attention to the circumstances than to responses. He emphasized the importance of measures which reduce the physical opportunities for offending, or which

ISSN 2500-4255

increase the chances of an offender being caught. A stronger emphasis on reducing physical opportunities of crime is found in the work of Cohen and Felson [10]. Being a potential offender was considered by them as one of the three factors necessary for committing crime along with the presence of a suitable target and absence of capable guardians. These authors did not emphasize the characteristics of offenders, but the circumstances which decrease or increase the opportunity for crime. However, the remedies suggested by the situationalist criminologists can hardly be characterized as situational: more locks, more guards, more dogs — rather universal solutions to prevent crime!

The preoccupation with reducing physical opportunities to commit crime is very well expressed in Newman's theory of "defensible space" [11], although Newman himself did believed that crime problems will be answered through such measures as increased police force. According to him, there is a need to address the breakdown of traditional social mechanisms, a breakdown which is particularly evident in big cities. In those cities, communities are unable to come together in joint action to enforce their moral codes. Many people retreat into indifference when facing crimes committed against others [ibid., p. 304]. Newman suggested that there is an acute need to reconstruct the sense of community in the residential environments in order to inhibit crime. The architectural design must be such that it creates the physical expression of a society that defends itself [ibid., p. 302–303]. The major role in preventing crime must be given to the communities. The same idea was also expressed (but not as clearly articulated) by Clarke [9]. People must take an active part in policing. Newman argued that the dominant architectural design of modern cities prevents such an active role.

An overall solution to crime, however, lies not in new architecture but in classical ideas of public responsibility. The problem, according to Newman, is public indifference to crime. The architectural design can facilitate a rebirth of public responsibility by giving city dwellers an opportunity to exercise control and surveillance. This naturally draws attention to the moral values of each member of the community. One of the vital moral values is the sense of property [12–14]. Newman insisted on the importance of extending proprietary attitudes beyond one's apartment doors [11, p. 306]. Another vital element is a neighbourly relationship [ibid., p. 313]. Caring for one's neighbour is a moral requirement, and if followed, is a powerful tool in preventing crime.

The Value of Morality and the Theory of Criminal Law

One common thread which unites the classical theory of criminology with the rational choice and routine activities theories of the twentieth century is the realization of the value of morality. The contemporary criminologists, however, differ from the classical criminology in one important aspect. The contemporary criminology, even though accepting the importance of morality in preventing crimes, does not believe in the existence of a moral truth [14, p. 5]. Morality is relative [15, p. 4]. Classical criminology, in contrast, is based on the belief that there is moral truth which must be taken into account in criminal law. In fact, there are some propositions of the classical criminology about moral truth which is accepted by the doctrine of criminal law, but which is not accepted by many criminological theories of our time. One such a proposition is the idea of personal responsibility of an offender for the act of crime he committed. Both classical criminology and criminal law are based on the moral belief in free will [16, p. 14]. The principles of legality and proportionality in impositions of penalties are also expressions of certain absolute moral values [17]. Indeed, these principles are included in the contemporary criminal law thanks to the classical criminologists, such as Beccaria, Bentham, and Howard. There are many other moral ideas of classical criminologists that play a significant role in decision making in criminal courts today. These are some of them: criminal penalties must be based on evaluation of their usefulness. Prevention of further offending must be one of the most important considerations in sentencing. Judges and enforcement officers must act strictly according to clearly defined legal provisions. Criminal law itself is considered as an institution which must address harms to the society caused by crime. Thus, classical criminology continues to appeal to the traditional image of criminal law shared by many judges and jury.

The denial of the concept of free will by many modern criminologists may have a paralyzing impact on the work of criminal law. The escape from personal responsibility can be seen in the academic view that the concept of free will has to be reconsidered in the light of evidence provided by criminologists. Among legal theorists, Franz von Listz [18] was one who held such beliefs. Free will was not denied. Yet it was maintained that crime has to be seen as a result of a variety of factors. Classical criminology as developed by Bentham by no means denies the importance of a differentiated approach to offend-

ers by taking into account their particularities when determining a measure of punishment for them. However, a differentiated approach of Bentham is emphasizing the moral state of the offenders as the most important consideration in imposing a penalty [19, p. 590; 20, p. 226]. At one place when describing the principles of penal law, he wrote that punishment "ought to vary according to the nature of the offence, the degree of obstinacy evinced by the offender, and the symptoms of repentance which he exhibits" [21, p. 426]. It is the task of a judge to examine the truthfulness of repentance which Bentham defined as aversion to previous habits [ibid., p. 435]. The prison reform movement associated with the name of John Howard also acknowledged the importance of repentance in reforming previous offenders by means of prisons [22, p. 43]. In other words, the classical criminology emphasizes the importance of certain moral principles as well as the moral state of offenders as essential in the work of criminal justice.

Conclusion

Almost all representatives of the classical school of criminology acknowledged the importance of morality in preventing further offending. Exaltation of virtue and the hope that through moral education many social evils like crime can be treated, are distinct features of classical criminology as a whole. This school believed in the absolute standards of morality which were thought to be contained in reason. Reason itself took the key position in the criticism of contemporary criminal law norms and practices which were perceived to be unreasonable. The unreasonableness of criminal law was seen, for example, in the criminalization of many acts which did not pose a serious threat to the society. In this respect, the contemporary theory of criminal law does not share the moral enthusiasm and optimism of classical criminology. The modern Western legal culture is characterized by moral relativism and pluralism. Neither Beccaria nor Bentham were themselves moral relativists or pluralists. Also the principles of criminal justice, which were actively promoted by them, and which have become the basics of the modern criminal law, are not the products of moral relativism and pluralism. They have their own moral underpinnings without which any talk about legality, proportionality, reasonableness and fairness become empty concepts covering the hypocrisy of those who run the criminal justice process without perceiving its moral nature. In this respect, turning back to classical criminology and attempting a further development of moral categories can assist criminal law theory in cleansing itself from the rust of moral relativism, and in invigorating its pursuit towards a more just system of criminal law.

REFERENCES

1. Beccaria C. Of Crimes and Punishments. In Bean Ph. (ed.). *Crime*. New York, Routledge, 2003, vol. 1, pp. 233–251.
2. Bankowski Z. Law, Love and Computers. *Edinburgh Law Journal*, 1996, vol. 1, iss. 1, pp. 25–42.
3. Mill J.S. *Utilitarianism and On Liberty*. Oxford, Blackwell Publishing, 2003. 528 p.
4. Bentham J. Cases Unmeet for Punishment. In Bean Ph. (ed.). *Crime*. New York, Routledge, 2003, vol. 1, pp. 252–258.
5. Becker G., Landes W. (eds.). *Essays in the Economics of Crime and Punishment.* New York, National Bureau of Economic Research, 1974. 268 p.
6. Dostoevsky F. *The Brothers Karamazov.* New York, Modern Library, 1996. 912 p.
7. Becker G. *The Economic Approach to Human Behavior.* Chicago, University of Chicago Press, 1976. 314 p.
8. Dostoevsky F. *Crime and Punishment*. New York, Vintage Classics, 1993. 874 p.
9. Clarke R.V.G. 'Situational' Crime Prevention: Theory and Practice. In Bean Ph. (ed.). *Crime*. New York, Routledge, 2003, vol. 1, pp. 276–289.
10. Cohen L.E., Felson M. Social Change and Crime Rate Trends. In Bean Ph. (ed.). *Crime*. Abingdon-on-Thames, Routledge, 2003, vol. 1, pp. 316–345.
11. Newman O. Defensible Space. In Bean Ph. (ed.). *Crime*. New York, Routledge, 2003, vol. 1, pp. 302–315.
12. Dagan H., Dorfman A. The Human Right to Private Property. *Theoretical Inquiries in Law*, 2017, vol. 18, iss. 2, pp. 391–416.
13. Jacobs J.A. *The Liberal State and Criminal Sanction: Seeking Justice and Civility.* Oxford University Press, 2020. 278 p.
14. Herman S., Pogarsky G. Morality, Deterrability and Offender Decision Making. *Justice Quarterly*, 2020, vol. 4, pp. 1–25. Available at: https://www.tandfonline.com/doi/pdf/10.1080/07418825.2019.1709884.
15. Boutellier H.A. *Criminology of Moral Order.* Bristol, University Press, 2020. 176 p.
16. Ghatak S. *Threat Perceptions: The Policing of Dangers from Eugenics to the War on Terrorism.* Lanham, Lexington Books, 2010. 127 p.
17. Fish M.J. An Eye for an Eye: Proportionality as a Moral Principle of Punishment. *Oxford Journal of Legal Studies*, 2008, vol. 28, iss. 1, pp. 57–71.
18. Liszt F. von. *Strafrechtliche Aufsätze und Vorträge.* Berlin, Guttentag, 1905. Bd. 2. 519 S.
19. Bentham J. *Rationale of Judicial Evidence: Specially Applied to English Practice.* London, Hunt and Clarke, 1827. 581 p.
20. Bentham J. Panopticon. In Bentham J. *The Works.* Edinburgh, W. Tait, 1843, vol. IV, pp. 37–172.
21. Bentham J. Principles of Penal Law. In Bentham J. *The Works.* Edinburgh, W. Tait, 1838, pt. II, pp. 367–524.
22. Forsythe W. (ed.). *State of Prisons in Britain 1775–1905*. New York, Routledge, 2001. 3896 p.

ISSN 2500-4255

ИНФОРМАЦИЯ ОБ АВТОРЕ

Александр Шитов — доцент юридического факультета Чиангмайского университета, г. Чиангмай, Таиланд; имеет степень доктора юридических наук в Университете Глазго, Великобритания; бывший иностранный эксперт в Академии полиции Юньнани и Тибетском университете, Китай; e-mail: Alexandre.c@cmu.ac.th.

ДЛЯ ЦИТИРОВАНИЯ

Шитов А. Нравственная истина и криминология: возвращение к классическим основам / А. Шитов. — DOI: 10.17150/2500-4255.2021.15(1).6-14 // Всероссийский криминологический журнал. — 2021. — Т. 15, № 1. — С. 6–14.

INFORMATION ABOUT THE AUTHOR

Chitov, Alexandre — Ass. Professor, Faculty of Law, Chiang Mai University, Chiang Mai, Thailand; Ph.D. in Law from Glasgow University, the UK; formerly a foreign expert in the Yunnan Police Academy and Tibet University, China; e-mail: Alexandre.c@cmu.ac.th.

FOR CITATION

Chitov A. Moral truth and criminology: back to its classical roots. *Vserossiiskii kriminologicheskii zhurnal = Russian Journal of Criminology*, 2021, vol. 15, no. 1, pp. 6–14. DOI: 10.17150/2500-4255.2021.15(1).6-14.