

**Development of the concept crime and criminality
in the work of Professor D.A. Shestakov**

Abstract: The controversy surrounding the definitions of “crime” and “criminality” continues to this day. Definition of crime and other related terms from D.A. Shestakov is differed by depth of disclosure, based on humanistic principles, aimed at protecting the most vulnerable members of society.

Keywords: criminology, criminology schools, criminology directions, D.A. Shestakov.

It is a perpetual question “What is the crime?” and “What is the criminality?” had never found its full, universal and precise definition of how much did not think of this the Great Minds of Antiquity, Middle Ages, and modernity. In each of them was a flaw that had to be eliminated or replaced. Scientists took on solution to this problem again and again. In his book “Criminology: New approaches to crime and criminality” D.A. Shestakov quotes definitions of a crime and criminality of many Russian scientists.¹ Here he gives his own definition of crime and criminality, which is based on semantic concepts (Gr. “semantikos”, “semasion” – meaning of a word; a doctrine of meanings of words and expressions and changes of these meanings).² He considers that a criminality should be understood as property of a man, social institution, society of isolated country, the global community to reproduce a lot of dangerous deeds to people, which is manifested in interrelation of crime and its causes, to quantify the interpretation and predetermines of criminal prohibitions. (ibid., p. 136.). Moreover, the life shows us that not always what constitutes a threat to society, for man, the environment finds its reflection in the criminal legislation.

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¹Criminology: New approaches to crime and criminality: criminogenic laws and criminological legislation. Combating crime in a changing world: Textbook. 2-nd edition, revised and updated / Foreword by V.P. Salnikov. – S. Petersburg.: Publisher R. Aslanov “Juridical Center Press”, 2006. – p. 136.

²Ushakov D.N. Big explanatory dictionary of Modern Russian Language. – M., “Alta-Print”, 2005. – p. 946.

Not being afraid of criticism from opponents, he has been for thirty years defends his point of view on this issue and thus came out in other sections of the general science of crime. As to get a cut diamond from a diamond with a minimal number of facets 56, it should be put a lot of efforts and as well as permanent work on the problems of modern criminology which should become at the basis of it theoretical science and common law, allowed to Shestakov D.A. to reach new heights and opened new uncharted horizons.

So, not for nothing he is supported by Professor G. Gorshenkov, who is evaluating the latest monograph of D.A. Shestakov “Introduction to criminology law” with “bewilderment think about author’s definition of criminology law as a final...”³

Developing of an idea of D.A. Shestakov about victims of crime (our citizens and compatriots, neighbors, colleagues, relatives), a number of which is increasing, one can be said that in criminal law, in the process and criminology exists different and far from ambiguous approaches to a well-known concept of a victim of crime. One can (and should) say that in the criminological concept of “victim” (he is also “victim”) is revealed more humane because it implies a much wider range of properties of an individual and its inherent qualities. Here, this is a definition that includes such universal concepts as life, health, honour, dignity, psychological stability and self-esteem of a victim of crime, along with the public evaluation of him as an individual. Here it can be classified such human qualities as honesty, integrity, dedication, fairness, diligence, self-esteem, law-abiding and other positive features. Regardless of its severity to all of these properties of an individual are harmed by a crime. It much also depends on a human psyche. One can be psychologically traumatic, so that this offence (insult, defamation, bullying) can be fatal for him. In this regard, it is useful to recall the Russian proverb: “A word cures, a word can cripples”. For another, who already accustomed to all sorts of violence manifestations against his personality, beginning from verbal and finishing to physical, such acts will be just as petty trouble, which do not leave any residue in the soul and soon will be forgotten...

But society in general and close people can assess negative side a victim (a victim of crime) and to condemn him, for example, an idler, a drunkard, previously convicted; promiscuous woman, scandalous celebrity, etc. And generally, they can tell a lot of negative in a private conversation. Facts which do not fit into their everyday life, it is perhaps, petty-bourgeois “normal understanding of life and vital relationship”. And nevertheless, a criminal law recognizes these individuals as

³ Gorshenkov G.N. Criminology of law as rights-based approach of a scientist (On book of D.A. Shestakov “Introduction to Criminology of Law”)// Criminology: Yesterday, Today and Tomorrow. Journal of S. Petersburg International Criminological Club. – 2012. – No.2 (25). – p. 29.

victims in a case, despite all the negative personality traits and assessment in a society. We can remember discussions among lawyers in the late XIX - early XX century, about problems of recognition or non recognition of the victims of rape women with a “yellow card”. Although ethically point of view fallen women, if committing crimes against them had no received a sympathy and support from people. Conversely, the surrounding people gloated when committed criminal acts in respect of these women. However according to the law and its interpretation the investigators were obliged to accept them victims of rape.

Taking into account great writer's experience of D.A. Shestakov, which appears, including in writing of textbooks, monographs and articles, it is necessary, in our opinion, apply to the sources of classical literature, which gave impetus to a study of the spiritual aspect of man and which he clearly indicates in his textbook⁴.

Great influence on public life in Russia the second half of XIX - early XX century had creativity of Leo Tolstoy, the Great Russian writer. In continuation of his long life and in the most famous novels (“War and Peace”, “Anna Karenina”, “The Cossacks”) L. Tolstoy exhaustively studied and revealed the spiritual and moral principles of his heroes and in his latest novel “Resurrection” no without reason he had pointed out that as all people Nekhlyudov consisted of two men. One is a spiritual man seeking such benefits himself which would be benefits other people also and other one is an animal person seeking benefits himself only and who is ready to sacrifice the whole world for the benefits.⁵ In spite of the passed century after described by Leo Tolstoy events, the essence of man and his deeds, a mixture of black and white in him, good and evil, in general, have remained the same, contradictory and are puzzle no less complicated than the study of origin of life on Earth and search it in distant Galaxies.

The desire for universal human justice, mental anguish for “humiliated and insulted” have led of D.A. Shestakov to the creation of a scientific school of the criminal subsystems in the Russian Criminology. And this is connected to many reasons, one of which is a statement of fact that, despite of large number of law enforcement agencies in a state which according to the law are set out to defend “a little man” these agencies perform its duties with great difficulty. Sometimes some of its officers using their official position and lack of control with impunity become on a path of a crime committing. There are lot examples of such attitude to his duties among officers of law enforcement bodies. A prosecutor “covers-up” a gang of the owners of slot machines, a mayor of a city runs away to the West hiding behind his

⁴ Criminology. p. 18; 22; 84; 86.

⁵ Tolstoy L.N. Sunday. Novel. Introduction and notes by K. Lomunov. M., “Khudozh. literatura”, 1978. – p.62.

political views that contrary to the government policy, a traffic police officer (or his son) knocks down to death a pedestrian on the rolling road on a footpath (“zebra”), they “law enforcement officers” raise a level of crime detection by applying a torture of detainees which could learn even officers from the NKVD...

We can give the following example to illustrate the problems with using a current law. The most common crime in our country and abroad are theft (from 45 to 60% of total registered crimes) personal (“someone” - in the Criminal Code of RF) of the property. If citizen applied to the law enforcement body with statement about a theft and even imagining that police would done everything strictly according to law (the Criminal Code and the Code of Criminal Procedure) a victim (a victim of crime) according to our calculation would suffer five times from consequences of deed. The first time he suffers when it is detected a fact of infringement on his property the fact which is a shock, stress, obnoxious, insulting and humiliating (“obida” (insult) to the ancient Russian law) for any person. The second time he suffers when he forced to adjust and break his plans and schedules, daily schedule, subjecting to calling on the summons, participate in conducting investigative actions with him (interrogations, identification, confrontations) which also do not cause positive emotions. The third time he suffers being questioned in court and asking tricky and sometimes unpleasant questions about repeatedly told unpleasant circumstances surrounding the crime. This all (breach situation in court, interrogation, the presence of defendant's relatives, their pressure, threats, persuasion, etc.) are also negative, depressing effect on the psyche of a victim. The fourth time he suffers when it is announced sentence of a court which on his opinion is unfair, not strict and does not correspond to the severity of harm caused to him. And at last, the fifth time, he suffers when under the most favorable circumstances (his civil claim is satisfied, a convicted person is employed and receives wages, albeit meager) in order to get a remittance on the post (5 - 20 rubles) he must spend the time and money on public transport... Here on legal grounds one can see how a government through its representatives who strictly meet the requirements of the law, essentially, mocks of law-abiding citizens. That is where hidden another infringement of the rights and freedoms of man and citizen which, despite the fact that it comes from competent authorities of the state, its benevolence and good will to man, can safely be called a crime, although it is not available in a special list - the Criminal Code .

Therefore, D.A. Shestakov when speaking in the “Introduction to criminology of law”⁶ about problems of criminological definition of a crime, citing well-known Russian and foreign experts in criminal law, concludes that the operational

⁶ Shestakov D.A. Introduction to Criminology of Law. – S. Petersburg. Publisher “Juridical Center Press”, 2011. – p.16-18; 19.

criminological concept of a crime is needed to clarify a subject of Criminology, for examination of laws and bills. That is why D. A. Shestakov again and again reiterates that a law is not always right, a science of crime is needed (not becoming isolated in the criminal law definition of crimes) to work out its own criminological concept which is more appropriate its essence (ibid. p.14). With this premise one can not disagree for many reasons. Who can now say exactly how many not working norms are contained in Criminal Code of RF? How many norms of the Criminal Code, which by its nature and the public danger that are fraught, can be attributed to a civil legal tort or administrative offenses? We meet in our life many facts which are not simply socially dangerous but just inhumane, however for preparation and committing of which no one bears responsibility (neither criminal nor a moral) and quite possibly will not bear. Moreover, this man (a group of people) considers himself law-abiding citizen that observes the Christian commandments, enjoys prestige and respect among his equals, his company.

The book of Professor D.A. Shestakov "Introduction to criminology of law" provides a huge scope for thinking about crime, criminality, criminal law, that in our opinion, in the coming decades will be comprehended and re-comprehended not only by people who devote themselves to legal science but philosophers, sociologists, politicians also. In this regard we can recall an expression of the leader of Soviet Russia and apply to it an expression that "this little booklet is worth whole volumes". And it will not be an exaggeration. "Introduction to criminology of law" is a basis for new more expanded researches.

Summarize the above, I supporting the views of Professor G.N. Gorshenkov and I want to say the following:

- I do not believe that D.A. Shestakov finishes his scientific activity by the book "Introduction to criminology of law";

- I do not believe that he has no thoughts and theoretical developments on other, unknown to us yet branches of criminology;

- I do not believe that he is not able to continue improving concepts on already known areas of criminology in the Neva-Volga criminological schools;

- I do not believe that he can not astonish (and please) us with his new works in contemporary Russian literature;

- I do not believe that he is not strong enough to grow one or two dozen candidates and doctors;

- I do not believe that he will stop a flight of fancy, fold his wings, will rest on the laurels already won and reap fruits of his labours...

- I do not believe that he has reached a boundary of (apotheosis, peak and summit) research thirst and he has come to a resting state, satiety and satiation with appeasement.

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