

BREACH OF THE PEACE THROUGH DEVIATION? CRIMINOLOGY'S CONTRIBUTION TO THE RHETORICAL JUSTIFICATION OF CRIMINAL OFFENSE

Claudio Brandão¹

Abstract

The functionalists theories of deviance, based on integration and social equilibrium, are ultimately based on the peace that consensus brings. They advocate the existence of a social consensus around values that are antagonistic to deviance. These theories, created within the framework of a central actor of political and economic power in the world, the United States of America, when viewed through the lens of Latin American society, are confronted with a social peace that is evidently non-existent. The investigation into this confrontation is the subject of this research.

Keywords

Deviation. Latin American criminal crises. Anomia.

Summary

1. Introduction: the concept of *deviance* and the construction of a new paradigm in criminology. 2. Deviance and criminal offence. 3. Theories of Integration, Peace and Values. 4. Crisis of functionalism and conflict. 5. Final note. References

¹ Professor. Pontifical Catholic University of Minas Gerais

1. INTRODUCTION: THE CONCEPT OF *DEVIANCE* AND THE CONSTRUCTION OF A NEW PARADIGM IN CRIMINOLOGY

North American sociological studies made it possible to build a new paradigm in criminology, which reconstructed the positivist one, given the evident social changes of the twentieth century in relation to the previous century. According to this new paradigm, crime is the product of a construction, born out of social interactions. Not seen as an ontological fact, crime is seen as a concept created through the functioning of social relations, integrating the very structure of societies.

A re-reading of Émile Durkheim's work by Robert Merton started a "revolution" in criminological thinking, as it offered the first alternative² to the concepts of the born criminal and natural offence, which presented crime as a reality pre-existing to the scientist, of an ontological nature. It should be noted that these sociological studies made it possible to create different - and opposing - theoretical currents about deviance. Thus, Merton inaugurated a rupture that far transcended his positions. Deviance arises from a utopia, unrealisable in human experience: social consensus around values. In this context, crime, as a form of deviance, is ultimately seen as a breach of the peace that would originate in social consensus around values.

This revolution identifies in the concepts of crime and criminal an attribution of meaning (i.e. an imputation) made to certain behaviours. That

²It constitutes the first classic alternative to the concept of the differential biopsychological characteristics of the delinquent and, consequently, to the positivist variant of the principle of good and evil. In this sense, the functionalist theory of anomie is at the origin of a profound critical revision of biologically and characterologically oriented criminology, in other words, at the origin of an alternative direction to it that characterises all the criminological theories that will be discussed below, even though most of them share with positivist criminology the conception of criminology as a search for the causes of crime. BARRATA 2004, 56.

said, crime is defined from the concept of **deviance**. It is not necessarily seen as something negative and reprehensible in society, because some deviations are the driving force behind cultural change and are a useful factor in the development of societies. In this way, **deviance is a normal phenomenon in all societies**.

2. DEVIANCE AND CRIMINAL OFFENSE.

Social relations are governed by latent normative systems, the violation of which provokes a certain reaction (which can have multiple expressions, such as tolerance, approval, disapproval). This conduct, which violates the behaviour expected by the normative systems, is a deviation. In this context, Bergalli summarises:

"deviation does not mean 'exceptionality'; nor does it indicate what is 'out of measure', or 'infrequent', nor does it coincide with the idea of 'inadequate'. In reality, the concept of deviance implies all these ideas, but it also implies something else: a *moral judgement*. Deviation indicates a social undesirability, the opposition of the fact to the moral code and dominant conventions. It follows that the concept of deviance is therefore normative"³

That said, *deviance* is behaviour that is in opposition to expected conduct in the face of social norms. As you can see, the concept of deviance is drawn from an understanding of social relations, so it is a concept that resides in the *world of valuations*. Therefore, it has an axiological nature and is not present in logic, as are some concepts that are the object of explanation. In this context, *deviance is an understood concept*.

North American sociology has different theoretical orientations on deviance, namely the integration or consensus current and its contradiction: the conflict current. These different orientations are motivated by different

³ BERGALLI 1983, 162.

approaches to the mechanisms that ensure stability, equilibrium and the processes of change in the social system.

The integration current is based on **functionalism**, which defines society as a well-integrated structure of relatively stable elements, in which each of the respective elements has a particular function. In functionalism, **consensus** on values is a constitutive element of society, so this theory assumes that there are common norms that generate consensus on values. This consensus brings about integration, the function of which is the perpetuation and persistence of a harmonious combination of roles and social expectations. Conflict theory, on the other hand, is based on the continuous renewal function of **conflicts**, since they are what make it possible for society to adapt to new situations and are therefore seen as an indispensable element for maintaining a social system. Conflict is the fuse for *social change* and is therefore an inherent premise of this theoretical current. There are therefore two opposing poles - consensus and dissent - that will guide the theoretical constructions of *deviance*. Although developed by twentieth-century North American studies, the consensus and conflict currents have their origins in nineteenth-century European thought. In fact, we can identify their remote antecedents in the 19th century, in the works of Durkheim and Marx, since both dealt with the problems of conflict and consensus, introduced them into sociology and turned them into fundamental thematic topics.⁴

3. THEORIES OF INTEGRATION, PEACE AND VALUES

The current that studies deviance based on an integrative conception of society starts from a hypothesis that has never been verified in any human grouping. Its assumption is therefore a utopia. This current dominated North American sociological constructions until the 1960s,

⁴ FURQUIM 2017, 385.

developed and/or driven by studies at the University of Chicago. It assumes that social order is not an order imposed on its members, because society is structured through well-integrated functions, with characteristics of stability, harmony and consensus. Society is a functional association of people who share values and rules of behaviour, which entails the characteristic of consensus among its members. Therefore,

"Affirming that society is consensual means accepting that its members share the same values and interests and that the penal system, especially in the legislative field, contains the declaration of behaviours that everyone wants to extirpate. As a reflection of this identification between citizens and norms, the social order is not and does not need to be imposed. (...) Crime, conduct subject to state interference, is considered to be the negation of the values in force in society, the clear demonstration of a subject's disagreement with the pacified order".⁵

As deviant behaviour is present in any society, its causes should not be sought in anthropological factors, as Lombroso did when he looked for a genetic cause to characterise the criminal, claiming that he had a defect in the evolutionary scale. This changed the positivist paradigm that inaugurated criminology and elevated it to the general science of crime. The historical context for this change was the demographic explosion in the United States, which brought profound social transformations, as well as accelerating the dizzying industrialisation of that society.⁶

The Chicago School produced many functionalist theories based on consensus. However, the development of the integration current reached its culmination with anomie, which is its best constructed theoretical model. Driven by Robert Merton over the course of more than two decades, this current asserted itself concomitantly with the construction of the

⁵ ARAÚJO 2010, 43-44.

⁶ HUERTAS-DIAZ 2010, 368.

functional view of *deviance*.

Merton placed the concept of deviance in a broader theoretical context, namely that of *anomie*, which is the interpretative key to his functionalist conception of society. As Bergalli emphasised⁷, this broader theoretical context provides the empirical investigation of a series of conceptual and theoretical models that have decisively facilitated the understanding of deviance and criminality.

Deviance, as a normal social fact, can be positive for the development of society. However, on the other hand, deviance can also be considered a negative or reprehensible social fact. In fact, deviance can be a factor in social disorganisation, which is called **anomie**, because it has the capacity to make the entire social system of rules of behaviour lose value. Thus, deviance will only be negative for social development if it exceeds the limit of this aforementioned social disorganisation. Anomie is the culmination of functionalist theories of society, which are characterised by the *consensus* on values and rules of behaviour as a structuring element, representing the most conceptually elaborate theoretical construction of this current. In this context,

"as the most finished expression of the functionalist model, the theory of anomie is characterised by its structural nature, its sociological determinism, its acceptance of the normal and functional nature of crime, as well as its adherence to the idea of consensus on the values that govern the social order."⁸

In the thirties of the 20th century, Merton revived Durkheim's ideas with an innovative approach: the functioning of society, which is why his theory was called **functionalist**, based on two postulates, namely the

⁷ BERGALLI, Roberto. Sociology of deviance. **Criminological thought I**. Bogotá: Temis. 1983. P.165.

⁸ ARAÚJO 2010, 57.

normality of crime and its functionality. Crime was not linked to any pathology, either individual or social, but its origin was due to the normal and regular functioning of the social order, which is why there was the postulate of normality. Crime was not something that was necessarily reprehensible and harmful to society, but rather functional, in that it was necessary for social stability and change. Paraphrasing Herta-Díaz, it is clear that functionalism is closely linked to positivism, as its concerns are also about order and progress, solidarity and consensus in society. Through a new theoretical guise, it sought to overcome the shortcomings of positivism, but with the same aim of bringing order to capitalist society. It should also be emphasised that the criterion of utility, which came from the Enlightenment and ran through positivism, found a new dimension in functionalism.⁹

Analysing the North American reality and making an acute appreciation of its contradictions, Merton constructed the concept of deviance, taking two structures as a reference: the cultural and the social. While the cultural structure defines the goals, objectives and interests of society¹⁰, the social structure defines, regulates and controls the acceptable models for achieving these goals¹¹. Merton departs from Durkheim¹² to

⁹ HUERTAS-DIAZ 2010, 69.

¹⁰MERTON 1938, 672.

¹¹MERTON 1938, 672-673.

¹² Sílvia Alves summarises Durkheim's conception of crime: "Durkheim expressly opposes the sociological concept of crime defended by Raffaele Garofalo (1851-1934), who, in his *Criminology*, adopted a (restricted) notion of 'natural crime'. What was at issue, therefore, were not all behaviours that were repressed through punishment, but only those that offended "the average and immutable part of the moral sense". The moral sentiments that disappeared with "evolution" were not, for the Italian criminologist, based on the "nature of things". Now, according to Durkheim, "by virtue of a very personal conception of morality" and, consequently, a (prior) idea of crime, his opponent conditions and transfigures the sociological treatment of crime. This idea, purified, assumes that 'moral evolution' 'carries all kinds of dross and impurities which it then progressively eliminates'.

formulate an original proposition: unlike Durkheim, he claims that the needs of the individual that society is unable to satisfy and which consequently generate deviance and anomie are not *natural* needs, but needs imposed by the *cultural structure*. Anomie is

"the symptom or expression of the void that is produced when the existing socio-structural means do not serve to fulfil the cultural expectations of a society".¹³

Merton states that deviant behaviour is a normal way of adapting to the contradictions of the social structure. According to him, the *cultural structure of* North American society enthrones the goal of accumulating material wealth, which is the symbol of personal success and prestige, as the ultimate goal, binding on all citizens, but the *social structure of* the same society restricts certain groups from effectively accessing this cultural aspiration through institutional and legal channels. A normal reaction to the contradictions arising from this social structure, which generate pressure on the members of society, is deviant behaviour. For him, the contradiction between the cultural structure and the social structure produces a tendency towards anomie, especially in the lower classes.

Merton's theory is well summarised by Hertas-Díaz: Merton initially points out that North American culture exalts the accumulation of wealth as the supreme value, a symbol of success and prestige, as well as social status. He also points to a balance between the two phases of the social structure, which is a characteristic of a well-integrated society. But this balance can be broken in two situations: (1) when an almost exclusive importance is given to achieving cultural goals at all costs without the correlative respect for the institutionalised procedures that delimit legitimate access to them (this is the case in North American society); or (2) when, on

On the other hand, for Durkheim, 'abnormal' crime, which we could also call 'unnatural' or 'artificial', is also crime". ALVES 2017, 10.

¹³ HUERTAS-DIAZ 2010, 375.

the contrary, these are forgotten and strict adherence to institutionally prescribed behaviour is converted into a rite.¹⁴

4. CRISIS OF FUNCTIONALISM AND CONFLICT

Functionalist theories, based on integration and social equilibrium, ultimately based on the peace brought about by consensus, which generates a consensus around values, came into sharp contrast with the North American reality from the 1950s onwards. The intensification of social struggles by different sectors in the US revealed that the model of stability and cohesion around common consensual values, which did not need to be imposed in the face of a structural and functional equilibrium arising from the social system, was just a chimera, a utopia that was impossible to achieve. In this context, Baratta states that the factors that were the dramatic signs of the inadequacy of a model of stability, balance and homogeneity of interests around a society of consensus were: (1) the intensification of racial struggles and (2) the opposition on the part of vast sectors of American society to participation in the Vietnam war.¹⁵

The "utopia" of consensus - which is an ideal and desirable system - is in line with an ideal of justice, but it doesn't exist in the history of any human grouping. For this reason, at the end of the 1950s, Ralf Dahrendorf called on scientific knowledge to promote a radical change in thinking about society. Such a change would be a break with the consensus paradigm and would represent a break with hegemonic thinking, a break similar to the one proposed by Galileo in his time¹⁶. In a text with the suggestive title *Out of Utopia: Towards a Reorientation of Sociological Analysis*, the author proposes that all utopian societies, from Plato to Orwell, have a common element in their

¹⁴ HUERTAS-DIAZ 2010, 371.

¹⁵ BARATTA 2004, 248-249

¹⁶ DAHRENDORF 1958, 126.

construction: they are all societies that are not subject to change¹⁷. So too are the social theories that were formulated on the premise of a consensus of values, because the stability resulting from that consensus is opposed to social change. However, these immutable societies, as proposed by functionalism, are not real, because stability does not stand up to empirical evidence. That's why placing consensus as the main characteristic of society is

"an assertion clearly contradicted by empirical evidence - unless one is concerned not so much with real societies and their problems as with social systems in which anything can be true."¹⁸

In the light of the above, we can conclude that the functional theory of consensus proposes an unrealistic model of the social structure, incapable of explaining its real problems, describing a society that has never existed and never will¹⁹. What underpins society is not consensus, but conflict, *which always implies a certain kind of dissent and lack of agreement on values*²⁰. Because of conflict, it becomes clear that a social organisation is always in the process of change, unless there is a force intervening to obstruct this process²¹. Thus, Dahrendorf concludes that:

"the great creative force that drives change forward in the model I am trying to describe and which is equally omnipresent is social conflict. The notion that wherever there is social life there is conflict can be unpleasant and disturbing. However, it is indispensable to our

¹⁷ DAHRENDORF 1958, 115.

¹⁸ DAHRENDORF 1958, 120.

¹⁹ "Structural-functional theory does not introduce unrealistic assumptions for the purpose of explaining real problems; it introduces many kinds of assumptions, concepts, and models for the sole purpose of describing a social system that has never existed and is not likely ever to come into being." DAHRENDORF 1958, 122.

²⁰ DAHRENDORF 1958, 120.

²¹ "All units of social organisation are continuously changing, unless some force intervenes to arrest this change". DAHRENDORF 1958, 126.

understanding of social problems."²²

5. FINAL NOTE

The change from the consensus model to the conflict model has led to a transformation in social theory, which has moved away from the concept of *integration*. The sociological model of conflict is built around three elements: (1) *change*, (2) *conflict* and (3) *domination*, which are opposed to the balance and consensus of functionalist integration.²³

The conflict model has produced various theoretical orientations in criminology. Let's take, as a borderline case, the so-called interactionist, *labelling* or stigmatisation *approach*, created by Howard Becker, which states that society is the engine that produces deviance, meaning that social groups that hold power create rules and apply them to classify people they choose as deviant. For this reason, deviance cannot be defined as a quality of the act that a person performs; rather, it is a consequence of others applying rules and sanctions to a *transgressor*. In this sense, the deviant is someone who has been successfully labelled²⁴.

The originality of this thought lies in the postulate that it is only possible to understand the social meaning of behaviour from the *social reactions* that result from it, so it is only in the face of the negative responses received from members of society that a conduct will be classified as deviant or not deviant. As the label of deviant is an attribution made by those with political and economic power, it is not produced by the person or their act, but by the selection that has been made of the respective person and their act. It should also be noted that the group of those selected, because it originates from an act of choice, will not necessarily contain all those who

²² DAHRENDORF 1958, 126.

²³ BARATTA 2004, 250.

²⁴ ANIYAR DE CASTRO 1983, 99.

have infringed the rule²⁵. Thus, deviant behaviour presupposes a social relationship, because the rules and processes of imposing labels originate from it: the imposition of labels is therefore a result of the social relationship.

Theories of deviant behaviour have given criminology a new paradigm, which has provided the conditions for its effective autonomy from criminal law and other sectors of knowledge. However, these theories were constructed with a concrete social reality in mind, namely that of the United States, which is at the centre of economic and political power in the West and has very different characteristics from the Latin American *margin*.

Penal power in peripheral modernity has two important elements that are not found in central modernity. These elements affect the centre of deviant behaviour in its sociological investigation and are therefore indispensable filters for understanding the theories produced in the centre of power, i.e. central modernity. These elements are as follows: (1) an extra quota of pain and suffering, which demeans the dignity of the human person and is imposed on the client of the penal system. This is produced by the system's highly deficient infrastructure, which represents a flagrant offence against the infrastructure established in the legal norm. (2) The use of (deadly) violence by the criminal justice system's control agencies, outside

²⁵ "Deviance, according to this, will depend, among other things, on the following situations: 1. The degree to which others react to a deviant act: on some occasions the response may be indulgent, but if at that moment there is what is called a *campaign*, the chances of a strong reaction are greater. 2. The degree to which an act will be considered deviant will in turn depend on who committed the act and who has felt harmed by it. In fact, socio-economic class determines the pursuit and progression of criminal proceedings to two degrees. For example, where there is a racial problem, blacks are more likely to be punished than whites, and this happens even if they have all committed the same offence. The *status of* the victim will also determine the intensity of the reaction. 3) The point of view varies: the lower-class offender who fights for his territory, for the area in which he operates, is doing what he considers necessary and right, although the masters, social workers and the police see it differently." ANIYAR DE CASTRO 1983, 100.

the violence permitted by the normative framework, especially in the face of subjects who, due to their economic and cultural hyposufficiency, do not have - or have little - capacity to react to these criminal justice control agencies.

These elements force a rethinking of the theory of deviance.

It is true that the theories of consensus and conflict have given criminology many possibilities.

Bear in mind that it was the theory of consensus that inaugurated empirical research in criminology and empirical data is the most relevant instrument to enable a real understanding of the penal system. The penal discourse is based on penal-legal logic, because the norm of criminal law is an ideal model, therefore a construction that resides in the *duty to be*, and is susceptible to giving shape and foundation to libertarian discourses that serve to mask acts of barbaric domination and the annihilation of the dignity of the human person. Empirical research is the counterpoint of reality to the ideal discourse of penal logic, with the power to lay bare discourses that may be masked by logical-legal arguments that affront reality.

Conflict theories have developed on the ground that was ploughed by consensus theories. It is true that, in societies, consensus on values is only an unrealisable goal, but without the theoretical constructs first produced, especially the one on *deviance*, conflict theories would not have flourished and come to fruition. The dichotomy of primary criminalisation and secondary criminalisation is a fruit of the conflict current, as are the contributions of "labelling". The programme of conduct declared worthy of a criminal penalty by the legislative and executive agencies (primary criminalisation) is a platform for penalisation so vast and complex that it is unrealisable in its entirety. Thus, the criminal justice system's control agencies select the system's clients through a choice (secondary criminalisation), which tends to be aimed at those who don't have the capacity to react. In this dichotomy, which translates *into acts of power*, secondary criminalisation exerts pressure on the creation of models of criminals and stereotypes of clients of the penal system.

In Latin American reality and especially in the context of Brazilian society, the stigma of the criminal justice system client is associated with a process of *dehumanisation*, which in the social imagination is an instrument used by agencies to affirm a culture of living with a *dehumanised* being: the criminal. The problems are centralised in the criminal, as if he were the catalyst for the whole process of generating social ills, excluding, in the social imaginary, all or part of the responsibility of those with political and economic power. The figure of the *dehumanised* delinquent shifts the focus of censorship, so that the real protagonists of the generation of marginal social reality have the possibility of assuming the position of "victims". Because the deviant catalyses the generation of social ills in the imagination, the publicity of the deadly and infra-structural violence to which he is subjected does not tend to cause shock in the Latin American context, nor does the knowledge of the anti-legal omission of criminal control agencies in the face of the violence not permitted by the Law, which is suffered by the deviant.

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