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The Penal Trap of Incorrect Social Policy

Abstract: The author discusses the researchers' views on the today recorded alarming increase in the number of people put in prisons. The mentioned views show how flawed and shortsighted is the social policy pursued in many Western countries; instead of focusing on long-term, arduous in fact, but more effective programs of activation of social assimilation of the representatives of economically disadvantaged environments, it focuses on ad hoc, mostly populist procedures. In conclusion, the author presents the recently published views of P.K. Enns on the inherent relationships of incarceration rates with the moods of the American public shaped by media.

Key words: Penal policy, rehabilitation, penitentiary exclusion, social policy, the philosophy of punishment.

There are many disturbing phenomena in the today world. Without a doubt, one of them is a significant increase of the number of people put in prisons. This phenomenon may be surprising, because this increase, occurring in the vast majority of countries not hiding their criminal statistics, marks since the end of 60s. of the previous century, which exactly means since the time, when the rapid, and at the same time convincing critics of isolation institutions with a prison at the head appeared.

As it is well known, starting from the 60s. the sometimes shocking theories and very spectacular psychological tests were announced, which clearly proved that the isolation from life in a normal society has a negative influence on the

correct functioning of a human (cf. for example: Jedlewski 1966). These views, as well as the test results, thanks to mass media quickly permeated to the imagination of the society increasingly better oriented in the news, and at least to these communities which are lucky to live in democratic countries.

Symptomatic of the regularity discussed here, in addition seems to emphasize the fact that the USA is the leader in the increase of the number of people put in prisons, therefore the country with the longer, grounded democracy in the modern world, where the mentioned theories and tests appeared for the first time and since then have been gaining the most attention! Poland, in turn, currently occupies the prominent, unfortunately, fourth place in Europe in terms of the number of sentenced people, and even occupied the first place in the years 2005–2007!

It is easy to guess that there were many attempts to explain the reasons of the rapid increase of the number of sentenced people, and the most important of them, I suppose, I will try to discuss below.

The most general theory, being in some way the current model of exercising the philosophy of penitentiary policy, is the so-called new penology, the main idea of which was formulated for the first time in the article of Malcolm Feeley and Jonathan Simon, published in the early 1990s in a prestigious American criminal journal (cf. Feeley, Simon 1992).

The creators of this approach assume that despite of a radical change in the severity, and primarily in the philosophy of punishment, the fact of inevitability of punishment has not been changed – because punishing the criminals has been an integral attribute of power since the dawn of time to this day, because the protection of life and property of people who are subjected to this power has been, and still is, its obligation.

Therefore, the basic reason of this “new penology” is to maximally reduce the severity of the committed crimes for average, normally law-abiding, citizens. And the main mechanism, on which the implementation of this “penology” into life is based, is the actuarial approach applied in insurances – it is about the possibly the most precise estimation of the possibility of occurrence of socially adverse criminal behaviors. These estimations must concern the two basic properties of criminal acts, namely their types and degree of harm.

The new penology belongs to these criminological ideas, which through their purposely highlighted one-sidedness are trying to show in a sharpened light the importance of the most important – from the assumed point of view – problem, which is the welfare of the public, and not of an individual! Only from the such set perspective, the essence and importance of the problem can be presented.

„The new penology does not directly concern the method of punishing, or the rehabilitation, the subject of its interest are groups and units disturbing the social order. It concentrates on the creation of the maximum number of protections against criminal acts – its aim is not only to eliminate the crimes, but make it the

least harmful, thanks to the creation of the systematic protections” – as written by the authors of this concept (Feeley, Simon 1992, p. 455).

Of course, such clearly limited position triggers numerous criticisms, which – generally speaking – focus on the two basic limitations of this concept.

The first trend, the most clearly presented by B. Harcourt – the author of few brilliantly written critical works on the discussed concept, concerns the basic – in his opinion – inconsistency of the new penology. Though the best – as he claims – social protection against the criminal is the change of this criminal into the law-abiding person! The particularly significant in this terms is the first of these critical works, the title of which itself constitutes a significant message: *Illusion of order. The false promise broken windows policing* (Harcourt 2001, cf. also Harcourt 2007a and 2007b).

The second trend of critics of the new penology concerns the fact that the actuarial approach applied in this type of thinking (as I mentioned before) creates not entirely true reflection of the picture of criminal phenomena, and therefore contains serious shortcomings within the scope of the construction of the correct (in the meaning of their effectiveness) protection systems.

Actuarial approach based on statistics directs the attention of politicians, watchmen of law and social order towards the somehow impaired groups: the poor, uneducated people, people of color, emigrants, etc. It is true that in the listed environments the criminals acts occur more often, but the economic crimes, the most dangerous for the social order, mainly concern the representatives of the middle classes and usually the highest strata of these classes, and these in the estimations of the followers of the new penology go by the wayside in the comparison with the more often recorded manifestations of minor crime. M. Welch can be considered as the initiator of these trend of critics of the new penology (cf. 1999, 2003).

This critics was very popular not only in the USA. Its main trend was concentrated on the weakness, shortages and defective profiling of the social policy conducted by the modern developed countries and to this problem the further part of the present article will be devoted.

I think that the most radical opinion in this matter was presented by Magnus Hornquist (professor of criminology at the Stockholm University) who writes about “satisfaction of punishing in the ideology of middle class professionals”. An intellectual message of this author’s considerations is a thesis that “middle class professionals” constituting the main part of the “punishing bureaucracy” adjust the “punishing machine” to their ideology and their model of righteousness of behavior, without going into deeper, and at the same time universal, mechanisms of this “machine”. The author derives the examples of this, superficial – in his opinion – “penal policy of middle class” from practices used in his native country, which means Sweden, where – as he claims – despite of the common opinion that this is the “highly social” country, the social policy raises many reservations. Above

all, this “sociality” is founded, in the author’s opinion, on small, but systematic, raises of benefits (mainly due to the election campaigns) instead of systematic implementation of more effective programs of social activation and assimilation of communities excluded due to the economic impairment as well as cultural barriers (cf. Hornquist 2014, 2015).

A similar message is sent by many renowned criminologists: Alessandro De Gorgi (from San Jose State University), when writing about the place of a prison in the social structure of countries of the late capitalism states, among others, that in the modern countries of the West (called by him the “late-capitalist”) there is a common practice of treating the prison as a remedy to eliminate the areas of lawlessness inhabited by emigrants, low qualified season workers and other representatives of the late-capitalist society margin. At the end of the presented regularities, this author raises a question: “why should the prison take over the effects of the misguided social policy?” In his opinion, in the countries of the late capitalism the extensive social programs have to be created, aimed at faster assimilation of emigrants (or also limitation of the inflow of emigrants) eliminating the areas of poverty and arousing the social activity of the representatives of the poorest social strata (cf. Gorgi 2014).

Emma Bell (from Keele University), speaks in a similar spirit, when talking about the “paradox of a prison in the neoliberal Great Britain”. This paradox consists, in her view, in “penalization of poverty”, and therefore the replacement of the necessary solutions from the scope of social policy by embedding the increasingly greater number of people from the so-called margin in prisons. In conclusion, the author points out the numerous specific omissions within this scope of the current government of Conservative and Liberal Democrats in the United Kingdom, which in her opinion lead directly to the increase of crimes mainly among the migrant and unassimilated people living on the edge of poverty (cf. Bell 2015).

Loic Wacquant (sociologist from California University) tries to show “the malicious deceit of neoliberal country” expressed by forcing of labor for low remuneration under the threat of imprisonment. Consequently – “the modern sociology of the judiciary describes the regularities straight out of classic works of Emile Durkheim, or the Marxist’s criminologist”. In conclusion of his considerations, the author puts forward a serious warning that the regularities described by him (and his colleagues) may constitute a serious risk for democracy (cf. Wacquant 2015).

It is worth to note the Venessa Barker’s opinion (sociologist from Stockholm University), stating about “democratic theory of legal order”. In her opinion, the observed today increase of the number of prisoned persons is a clear evidence of the crisis of democracy in the modern developed countries, it is marked by a disappearance of involvement of wide social masses in politics. It happens due to the feeling of helplessness of the representatives of the poorest social classes. In the conclusion of her considerations, Barker cites the known for a long time truth

that only activation of social classes living in poverty leads also to the increase of their wealth, as well as is the best way to efficiently reduce the crime (cf. Barker 2013). Just like the majority of the today's criminologists, she blames the badly lead social policy for the penalization of poverty, also condemns the very often used practice of buying votes in elections for the promise of small benefits transferred to the poorest groups of people. The solution is to change the attitudes of these people by implementation of assimilation and activation programs, which in other words means the education of the society, and it is a tedious and chronic process, and not practices like this.

But since it comes to the education, it is hard not to cite the Erica Meiners' arguments (from Texas University) that the school is mainly at fault for the increase of crime, and at the same time the increasing number of people excluded and prisoned. The author assumes that, as already mentioned by Sigmund Freud, (theoretically) a human may get rid of destructive features if he obtains proper education. Unfortunately – as proved by the author – a school in its various types is nothing more than only a penitentiary institution, and in the best case educating a serious number of criminals! It divides the students into the better and worse ones, imposes a distance, discipline, does not have a control over informal groups, etc. Therefore, the future school cannot prefer only talented, neat, heterosexual children with a proper skin color, religion, etc. In the author's opinion, only after the school gets rid of the features of penitentiary institutions, the prison may become a relic of the past (cf. Meiners 2014).

The above opinion shows that the process of re-orienting the social policy has to be undertaken, the process which is difficult, and has to be extensive and cover also the education system ingrained for centuries.

The extension, and moreover the deepening of the currently discussed problematics can by a small, but very interesting book by Peter K. Enns, with an outstandingly meaningful title "Incarceration Nation". Its subject matter is described by the subtitle: "How the United States Became the Most Punitive Democracy in the World". However, his book does not deny the thesis that the discussed above shortcomings of the social policy lead to the penalization of poverty, but tries to show it slightly deeper, searching for the sources from which it comes, and reasons which caused that the "oldest and the most established democracy of the modern world" – as the Americans describe their country with a pride – we call "the most punitive democracy in the world"!

The main thesis, and at the same time the philosophy of the entire book flows from the specialty of its author, Peter K. Enns, who is the professor at the Organization and Management Department of the Cornell University, and at the same time the director of the Roper Center affiliated with this university (the institution established in 1947, the statutory responsibility of which is to store and develop the public opinion surveys, both in USA and in other countries). Roper Center prides itself on the most rich archive containing descriptions of the public

opinion surveys, conducted long before its establishment, which is since the beginning the 30s. of the last century.

Taking advantage of the collection of the above mentioned archive, P.K. Enns presents the increase of anti-criminal, and at the same time punitive atmospheres of the American society, starting with the election campaign of Barry Goldwater in 1964 (the Republican counter candidate of the president L.B. Johnson), and then the presidency of Richard Nixon, which increase remained, with little variations, until the first decade of this century and it were the moods of the American society recorded in the public opinion surveys that constituted the basis, from which both badly conducted social policy and its consequence – penalization of poverty, grow.

In conclusion it has to be emphasized that despite the fact that the author presents in the lately discussed book a sad and unfavorable picture of the moods of the American society in the last half-century, as “the most punitive democracy”, it is not a book pervaded by a spirit of pessimism. It rather presents an optimism, resulting from the numerous comments concerning the cited researches, consisting in the conviction that if you know the reasons of the undesirable phenomenon, you necessarily gain the knowledge allowing for its change.

This optimism is contained mainly at the end of the discussed book, in which the author cites three, in his opinion, very significant facts, that might suggest with a large degree of probability, that the incarceration index (i.e. the number of prisoned people per each 100 citizens) will be significantly reduced. Firstly, starting from the end of 80s. of the last century in the public opinion surveys a statistically important discrepancy within the level of punitivity between the elites and the mass society can be seen. Elites systematically, from year to year, become less focused on punishing. Secondly, in the last 50 years of this century this regularity concerns all studies of the moods and opinion of the entire American society. Thirdly and finally, the changing atmosphere of the American society moods led to the situation in which the both largest (usually competitive against each other) political parties of the USA remained in conformity in case of the necessity to limit the number of prisoned people in the last presidential elections. Full of the optimistic spirit of the discussed book I can only believe that the new president of the USA will not change the, such needed, moods of the American society.

In conclusion it has to be emphasized that the vast majority of criminologists, and all of the authors cited in this study, do not present the critics of frailty of the social policy currently conducted by the majority of the countries for the critics itself, but to eliminate the flaws and shortcomings.

None of the previously discussed criminologists talk about the lack of possibility to correct the limitations and one-sidedness of the currently conducted politics. Generally, all of them show the optimism in this regard. A good example of this is David Scott (the senior lecturer of criminology and criminal law of the University of Central Lancashire), the editor of the recently issued, extensive

collective work with a highly provocative title *Why prison*, who believes that the democratic countries has overcome the more serious challenges to democracy, and will also cope with re-profiling the social policy, which in its current form becomes the main reason of overcrowding of prisons (cf. Scott 2015). As the author states “only when one will manage to equalize the life problems of poor people, living in the modern world, the prisons will become empty, and not bursting at the seams, as currently”.

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