QUEER CRIMINOLOGY: A NEW THEORETICAL DIRECTION OR A PART OF CRITICAL CRIMINOLOGY

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Abstract

The academic discourse about the development and establishment of the foundations of Queer criminology as a theoretical path within critical criminology is associated with several factors. First, the expansion of queer theory within gender studies and the involvement of the queer community in public discourse require a special theoretical explanation within other social sciences that deal with issues related to human behaviour, human rights, punishment, protection, etc. However, the tendency to achieve greater visibility of the queer population through a particular theoretical and research approach rather than within other theories dealing with marginalized communities or certain forms of subcultural behaviour has opened a debate in the academic community as to whether a queer criminology should receive a special theoretical direction or the research on queer population should remain within the framework of the critical cultural criminology, or as part of feminist studies.

The stated dilemma, bases and challenges of queer criminology will be the subject of a special elaboration and theoretical discussion within this paper.

Key words: Queer criminology, LGBT, Intersectionality, heteronormatively.

1. INTRODUCTION

The academic discourse about the development and establishment of the foundations of Queer criminology as a theoretical path within critical criminology is related to several factors. First, the expansion of queer theory within gender studies and the involvement of the queer community in public discourse require a special theoretical explanation within other social sciences that deal with issues related to human behaviour, human rights, punishment, protection, etc. Another factor is related to the need for protection of the queer population as perpetrators and as victims, but also as participants in the criminal justice system, considering that they are often the target of discrimination and attack. The tendency to separate Queer criminology stems from the low visibility and marginalization of the queer population in the criminological research which presume that they are not taken as a separate category during research studies of certain phenomenological and etiological characteristics of crimes that are related to queer people (Peterson & Panfil R. Vanessa, 2014). This means that there is a need for their greater visibility and special theoretical and research approach that is basically deconstructionist and gender-driven (Buist and Lenning, 2016: 13; Woods, 2014, cited in Copson & Boukli, 2020). The first implies understanding of how the concepts of sexual orientation and gender identities can be applied in criminological research by applying deconstructionist view of identity. The second implies understanding the
experiences of queer people which arise from their identity features. The special theoretical and research approach at the same time implies being a distinct theoretical direction, and not part of other criminological theories that target marginalized communities or certain forms of sub-cultural behaviour. Finally, and certainly one of the essential factors for the development of queer criminology argued by its proponents is the need for a greater understanding of gender diversity and for breaking the heteronormativity of traditional criminology because dominant positivist criminology starts from the assumption that everything which is out of heterosexuality deviates from the norm and is on the line of deviance (Woods B. Jordan, 2014). Thus, more understanding is required of how sexual orientation and gender identity, combined with race, class, ethnicity, and other differences, shape the causes of crime and can affect the victimization and criminalization of the queer population.

Before elaboration of the basics, the subject of research and the connection of queer perspectives with other theoretical directions in criminology, the first thing to be understood is the meaning of the word queer in the literature and social sciences and which categories of persons are denoted by that word in both public and scientific discourse.

The word queer means something that is unusual, different from normal, strange, alien, unconventional, and eccentric. In terms of sexual orientation and gender identity, the queer population is interpreted differently. The queer person seeks diversity, nurtures diversity and refers to the right of every human being to be an individual. Queering is a constant process of personal creation and transformation. It is, among other things, non-identity, self-creation of individual sexuality and gender. Queerest is not seen in binary relations: black and white, homosexuality - heterosexuality or woman - man. Queer personalities do not accept the imposed social norms, but advocate and live by their own norms and create new visions for self-expression (Ball, 2016).

Regarding which persons are parts of this category, two approaches can be found in the literature. The broader explanation includes all persons who are not heterosexual, i.e. those who deviate from heteronormativity. This means people who are homosexual, bisexual, intersex, asexual, but also those who deviate from the binary division of gender identity into male and female. This group of queer population also accept transgender people (whose gender identity does not match the sex designated at birth), gender fluids, bisexuals (who can be identified with both males and females), and infertile (do not identify with any gender). The sexual orientation of these people is not determined by their biological sex, but by their gender identity. Narrower understanding is associated with people who are referred as queer genders (who have a queer identity). Such identities are identified outside the male-female system established in the society. They consider that they do not belong to any particular group and do not want to be labelled. It is therefore a gender-neutral term (Buist L. Carries & Lenning, 2016).

The word queer, in addition to being a noun (in order to describe sexuality and gender identity) is also explained as an action, i.e., a verb (queering) (in order to describe activities and actions that will provoke or attack the dominant hetero-normative system). It can be found in the criminology literature as queering criminology. This means that when reading and reviewing a text, we always need to keep in mind and interpret it from a perspective that rejects the traditional categories of gender, and to apply the perspectives of queer theory. Queering criminology, in that context, means asking and considering uncomfortable questions that provoke and open up new ways of thinking about the lives of the queer population and the criminal justice process (Dalton, 2016).
2. WHAT ARE THE BASICS OF THE QUEER THEORY?

The queer theory was developed in the 1990s as an essential to understand and recognize the possibility that sexual identity may be out of the norm and fluid, which means that sexuality and gender should be a separate subject of analysis and research, not just as (independent) variables. The second thesis of queer theory is that sexual identities are used as structural mechanisms of social control in the societies. Control is exercised over the human body through the normative, historical, and social construction of sexuality, and thus over the persons and society as a whole. The third thesis is that the categorization of sexual orientation and gender identity, especially binary categories, is wrong. Why? Because categorization and determination affect how we identify others. As a result, we often punish others for behaviours that are out of the norm. Queer theory is against categorizing identities because categories (male, female) offer limited representation of roles and relationships. Such demarcation can marginalize or exclude those whose experience is outside the presumed identities that those categories define. Queer theorists are, in essence, also against the dominant gay and lesbian policies and movements which clearly identify sexual orientation in order to gain more rights, integration and acceptance in society (Dwyer, Ball & Crofts, 2016). This is because those who are not identified with a particular gender identity or sexual orientation continue to be repressed. It is also argued that the binary construction of identities (male and female) actually supports and promotes heterosexuality in order to impose it as natural and stable. It arises from the same categorization because one always tends to be above the other, to be more privileged and accepted by the majority in a society. Binary categorization naturally makes a difference, and those differences necessarily mean more important and less important, more powerful and less powerful. Why? Because there is a natural urge for competition and natural conflict of interests of different categories.

Fourth, queer theorists believe that the understanding of sexuality should be broadened, as there is no definite harmonization of what should be or should represent one gender or sexuality. Queer theory offers analysis, thinking, and understanding of the fundamental (historical) construction of categories: sex, gender, sexuality, how they work, and their effects. It is against heteronormativity and the imposed view of what is a "normal behaviour" (Panfil R. Vanessa & Miller, 2014).

Important representatives of queer theory are Eve Kosofsky Sedgwick and Judith Butler. Judith Butler says that queer has never been an identity. For her, gender is a cultural construct imposed on the body and is an expression of performance (performative behaviour). What does that mean? It means that the imposed roles, processes, relations, acts and gestures, through the processes of socialization are imposed as inherent in the person in order to fulfil the norm. And the norm is historically, socially and culturally constructed. In contrast, gender is a free and flexible trait that is not related to a particular sexuality. She further added that people are constantly restricted and "decentralized" as a result of norms imposed by those with different values and attitudes regarding sexuality and gender identity.

Similarly, Eva Sedgwick (Sedgwick, 1990) says that the individual can identify himself in various (innumerable) ways that do not necessarily coincide with how someone is identified by the public. This means that while identity may be fixed for some, it may be dynamic, even changeable, for others. The same goes for sexual orientation.

Queer theorists have their supporters, but they are also sharply criticized in the scientific and wider community that deal with these issues.

Regardless of the fact that queer theory is the first categorization of identities, when we talk about queer criminology, still under the term *queer population or queer community*
we include all categories of identities and sexual orientations that are different from heterosexuals, i.e., that differ from heteronormativity.

3. QUEER CRIMINOLOGY: WHAT IS THE IDEA?

Queer criminologists want to lay the foundations of queer criminology as a separate theoretical and practical approach within critical (new) criminology. A special approach is required to highlight and pay more attention to the processes of marginalization, stigmatization and criminalization of the queer community (as victims, perpetrators, but also as representatives of the criminal justice system) which are instigated and done by the criminal justice system, as well as by the academic community and civil society. Namely, both the theory (traditional criminological scientific thought) and the practice treat homosexuality for many years (up to 70-80 years) as a deviant phenomenon, and the homosexuals as deviants, with certain mental illnesses or inappropriately socialized. They had fewer rights than heterosexuals and faced discrimination, victimization, harassment, torture within the criminal justice system (Panfil R. Vanessa, 2018).

3.1. Certain characteristics of the queer population in the criminal justice system

Punishing homosexuality. The teaching of homosexuality as a deviant phenomenon, i.e., as a mental illness has a history in biological (Lombrozo, 1876) and psychological theories until the 70s (Woods B. Jordan, 2014). Although Freud (1905, 1911) in his psychoanalytic theory saw homosexuality as a harmless and natural variation of psychosexual development, psychoanalysts have advocated for changing nonconforming sexual behaviour through appropriate education and treatment, which meant that pathological conceptions about the homosexuality were dominant. Even within sociological theories of crime (social learning theory), homosexuality has been treated as a form of sexual deviance that is learned and maintained through interactions in the environment. Or the Social Learning theory of Ronald Ackers (1966), (as well as Social control theory, Albert Rice, 1951) sees homosexual subcultures as mechanisms for empowering homosexuals to express their sexually deviant patterns. Homosexuality is considered as a form of sexual deviance (Woods B. Jordan, 2014). Although after the 70s, in many legislations, sodomy laws were abolished (that decriminalize the homosexuality), however, about 80 countries in the world (most in Asia, the Pacific, Africa) still have laws that prohibit the act of voluntary sex between members of the same sex. Even more, in some countries capital punishment is provided for same-sex relations. It shows a global culture of homophobia and forced value of mandatory heterosexuality. In Africa in particular, more than 40 countries penalize homosexuality, which presupposes that heterosexuality is mandatory. Even suspected "risky" members of the gay community can be arrested. There are examples when certain members of the gay community have to pay for corruption in order not to "parade naked" (as a pillar of shame) or they are raped because they cannot pay a certain amount for police caution. Homosexuality is punishable by death in Iran, Yemen, Saudi Arabia, Mauritania, Sudan, and parts of Nigeria. In Nigeria, membership in an LGBT group is punishable by up to 10 years in prison. Gender nonconformity is also criminalized "as imitating the opposite sex" or is treated as fraud. Additionally, transgender people are blamed for their victimization because of their gender identity. In addition to punishing specific acts and behaviours, in some countries there are laws against the promotion of homosexuality and even the protection of the rights of the gay population is prohibited (Buist L. Carries & Lenning, 2016). In Russia, for example, propaganda for the rights of minors is banned. As a
result, two demonstrators, Alexei Kiselyov and Kirill Nepomnyashy, were charged because of holding banners reading "Gay is normal". In addition, there are condemnations and constant threats to attack those citizens who publicly support the rights of the queer community, and they often face dismissal.

**Hate crime against queer people.** Homophobia, violence (verbal and physical) based on sexual orientation and gender identity is common to these categories of people. Numerous researches show a high rate of these forms of crime. It is estimated that one in six homosexuals or lesbians are victims of hate crimes, most of which are physical assaults. In Ireland, for example, in 2009, 80% of queer individuals reported verbal and 20% physical violence (Stotzer L. Rebecca, 2014). There are also cases of murders. According to LGBT organizations, 23 transgender people were killed in the United States in 2017, most of them members of various minorities from the African-American and Latin American communities. Other figures show that 14 transgender women were killed in 2014, out of which 13 were black. Third figures show that in 2013, 238 homicides were recorded worldwide. Ninety-five transgender people were killed in Brazil and forty in Mexico. Sixteen transgender homicides have occurred in the United States (Buist L. Carries & Lenning, 2016). The 2013 report reveals a total of 1,374 transgender based homicides in sixty countries around the world between early 2008 and late October 2013.

As a result of stigmatization, humiliation and similar acts of violence, the queer population also resorted to suicide. A typical example is the suicide of the 17-year-old Leelah Alcorn in December 2014, a transgender teenager from Ohio. Shortly before her death, she left a letter stating: "The only way I can rest in peace is if one day transgender people are not treated the way I was, to be treated as human beings, with relevant feelings and human rights. My death should mean something."

**Queer persons as perpetrators.** Queer people also appear in the role of perpetrators, but the explanation of their paths is certainly related to their identities. Similarly, as the feminist gender-based approach according to which the abuse and previous victimization of young girls contributes to later deviant and criminal behaviour, the queer perspectives also assume that there are certain queer paths that lead to crime and deviant behaviour of queer people. Namely, the Queer youths are often rejected from home and family and left on the streets without adequate housing. In conditions of further social exclusion, limited access to educational, health and working conditions, they are forced to engage in illegal activities, mostly in drug trafficking and in prostitution (sex work). According to some data (Ucar, 2014), 31% of LGBT people commit drug-related crimes, and 32% property crimes. In fact, young people face stigma and labelling that leads them to secondary deviation. Therefore, most often deviant and even criminal behaviour is the result of defence or attack against the negative reactions in the public. Such explanations are rooted in critical conflict theories, according to which minority communities (based on sexual orientation and gender identity) are subordinated to society and are labelled as immoral, violent, and wicked. Such stigmatization leads to secondary deviation that is complemented by increased prejudice and an increased likelihood of being caught more often in the social control network by the criminal justice system. Additional factors for the increased crime among the queer population are the weak ties with the social institutions, as well as their poor financial situation. In fact, conflicting theories in explaining the criminal behaviour of queer people say that LGBT identities function as racial identities, with visible identities and an increased sense of danger or fear outside the home. Therefore, criminal behaviour begins earlier, with behavioural problems and status offenses in early adolescence as a way of avoiding homophobic harassment. Queer people, especially transgender people, in certain self-
reported research point out that they commit crimes related to their Trans status and the problems and dilemmas it creates. They may need money to undergo gender (sex) reassignment surgery or their deviant behaviours might be associated with lifestyle and social exclusion. As a result, they mostly engage in prostitution and drug-related offenses (Knight, & Wilson, 2016). Queer people also find it easier to engage in criminal subcultures in which they find "shelter" and which they follow as alternative ways to self-express that is usually subversive. On the other hand, because of their visibility and committed street crimes they are easily arrested (Dennis P. Jeffery, 2014).

Prejudice and secondary victimization of queer persons by the criminal justice system. When queer persons encounter the criminal justice system, respectively when they enter the system as suspects, accused or convicted, they again face prejudice, harsher treatment, stigmatization and secondary victimization, now by the police, prosecution, judiciary, and prison staff. Namely, due to the prejudices of the judiciary, queer persons are often convicted more severely for committed crimes, under the excuse that sexual orientation and gender identity is an additional aggravating circumstance for committing the crime. For example, the case of a lesbian woman who committed the murder of a white man is sentenced to death, and the judge has referred to the sexual orientation as an aggravating circumstance. By doing so, he wants to emphasize that sexual orientation itself means hatred towards men and therefore makes murder even more difficult and a more severe. (Buist L. Carries & Lenning, 2016). Despite the stricter treatment by the criminal justice system, queer perpetrators are negatively portrayed and "demonized" in the public discourse by the media. They are described as demons, vampires, monsters etc. For example, Chesney-Lind and Eliason (2006) comment on the famous film Monster (which is based on a true story) that the description of the main actor is full of stereotypes about female masculinity and lesbianism. This, in large part, is done to convince the audience that she is evil and not worthy of compassion and sympathy, despite the fact that her murders are acts in self-defence or related to a post-traumatic personality disorder caused by stress and violence. The same image of a lesbian prostitute who kills certain people who seek sexual pleasures from her confirms popular, heterosexual notions of the relationship between lesbianism, masculinity and female violence. The protagonist, Wuornos, was sentenced to death and executed by lethal injection on October 9, 2002, in Florida State Prison (Buist L. Carries & Lenning, 2016).

Queer convicts in the penitentiary. Transgender inmates in the penitentiary are at high risk of victimization, and because of that, in some prisons, isolation is allowed as a security measure. But because it is often seen as an additional punishment, its justification is under the question. In fact, isolation itself is a "severe" measure that deprives prisoners of many rights and privileges. According to some data in the United States, about 10% of prisoners are queers. For example, in 2013, out of seven million prisoners, 700,000 were queers, and 90% of them were transgender women. They often experience additional victimization in prisons (Buist L. Carries & Lenning, 2016). For example, a transgender woman prisoner, despite undergoing certain medical therapy and having undergone female breast implant surgery, was placed in a maximum security male prison in Indiana, USA. Upon the arrival, she was raped and has filed a lawsuit against the prison director and other officials because they knew she would be sexually assaulted and did nothing to prevent it from happening. This is just one example of rape and sexual assault in prison against transgender people who experience a high number. Some data indicates that the attacks are 10 times greater than those committed against heterosexuals. Due to such and similar
examples, in 2014 the so-called "Gay Wing" in Los Angeles Central Men's Prison was open; it houses approximately 400 gay and transgender people.

The stated findings and data on queer persons and their connection with the criminal justice system are largely marginalized by the academic community and by the criminology as a science. They have been forgotten in criminological research and their experiences have been ignored as a result of sexual orientation and gender identity, which indicates that they did not receive significant focus and attention from criminologists. In the last decade of the 20th century, questions about queer people in the field of criminology gradually began to be raised, and certain papers on this topic began to be publish for the first time. But they get special attention after 2014 when Critical Criminology Journal devotes a special issue called Queer / ing Criminology. In 2016, three publications dealing with queer criminology issues were published: (1) (Ball, M. (2016), Criminology and Queer Theory, Dangerous Bedfellows, Palgrave Macmillan; (2) Buist L. Carries & Lenning, E. (2016), Queer Criminology, Routledge; (3) Eds. Dwyer, A., Ball, M. & Crofts, T. (2016), Queering Criminology, Palgrave Macmillan.

3.2. Basics of queer criminology: subject and method of research

Queer criminology allows the voice of queer people whose experiences as perpetrators and victims have been neglected by the dominant criminology to be heard. Although, with the development of critical criminology, some of those experiences have been the subject of cultural and feminist analysis, queer criminologists are not entirely satisfied with that approach. Why? The queer population as a separate subculture is sometimes the subject of study of cultural criminology, from the aspect of how the media, society, but also the criminal justice system criminalizes certain sub-cultural norms of behaviour that deviate from the dominant values and norms in one society. However, even when this is done, respectively when they gain a certain voice and visibility in criminological research, the analysis and explanation do not take into account sexual orientation and gender identity as key concepts that shape victimization and criminalization. It does not take into account how the experiences that are experienced due to different sexual orientation or transgender identity influence their behaviour.

Also, the feminist criminology that analyzes lesbian feminism includes only one aspect of the fundamentals on which queer criminology is built. Namely, certain feminist perspectives emphasize victimization, especially sexual harassment and hate crime against queer persons (Woods B. Jordan, 2014). In addition, even queer theorists criticize feminists for relying on a rigid but legitimate male-female distinction, which in turn marginalizes those who are out-of-the-norm and who are identifying themselves as gender uncomfortable. That is why queer theorists endeavour queer criminology to become a separate part of criminological scientific thought, rather than to be on the margins of other theories of crime. It seeks to expand knowledge of how sexual orientation and gender identity, in combination with other variables (race, class, ethnicity), affect victimization, delinquency, and conflict with the criminal justice system. In fact, that relational network of powerful factors such as race, class, ethnicity, sex, gender, and sexual orientation (that together exert an oppression of people) is called intersectionality. This intersectional approach that describes how they simultaneously influence is also applied in queer analysis within queer criminology.

For example, white race as a powerful system can cause racism, male gender: sexism and / or misogyny (hatred or prejudice against women), wealthy class: classicism, majority ethnicity: nationalism and / or ethnocentrism, heterosexuality: hetero-sexism. When all of these are intertwined, they cause multiple levels of repression on the target audience. In that
sense, when heterosexuality is intertwined with racism, sexism and/or nationalism, then the consequences are more severe. Also, a transgender man can be victimized not only because of his gender identity, but also because of his race, class or ethnicity. Therefore, in order to understand his victimization, it should be considered as part of a network of all forms of discrimination and repression (racism, sexism, classicism, and homophobia). This means that all possible dimensions of identity need to be recognized and presented, and therefore an intersectional approach is needed.

In addition, part of the queer analysis is the need to analyze and understand the role of the state and social system in criminalizing sexual orientation and/or different gender identity. The norm needs to be understood, as the law discriminates and marginalizes queer people because of their sexual orientation and gender identity. At the same time, the role of the criminal justice system as a mechanism for control and repression of the queer population should be understood. What is also challenging within queer criminology is the debate about the nature of sexual orientation and gender identity. Although the debate revolves around the biological nature and impact of the environment, the idea is to provide room for different assumptions and views. Such diversity will enable struggle of opposing opinions and a critical approach to certain theses about the queer population as sexual deviants. Removing such stigma is a major benefit of queer criminology. So, one of its tasks is to recognize and make visible the humiliation, political helplessness and cultural rejection of queer people, as well as to recognize the ways in which the government directly or indirectly marginalizes and "suppresses" them. Thus, it wants to increase awareness about the impact and the role of the criminal justice system in the treatment of queer persons and to improve their position in the criminal justice system (Copson & Boukli, 2020).

4. CONCLUSION

Despite the slow penetration of the theoretical perspectives of queer theory and queer criminologists within criminology as a separate theory or direction, however, what these criminologists manage to open is criminology to be more inclusive of the needs, concerns and experiences of the queer population. They manage to raise the issue of sexuality on the criminal agenda, although it may take decades for wider acceptance by the criminologist. However, other views and perspectives of queer theory on different gender identities, for their fluidity and variability, should not overshadow and underestimate the biological sex differences. Namely, I agree that we cannot deny the biological gender differences, the male-female gender identities, and heterosexuality that reach the level of a (social) norm. The thesis that they are historically, socially and culturally constructed is also acceptable. Also, although the categorization of identities is not necessarily a condition for their identification, it still arises from the need to explain things, to give them meaning, sense, essence, and not only for their competition or evaluation, but more for their understanding.

Despite certain criticisms and rejections, queer criminology is a criminology that investigates, criticizes and challenges the hetero-normative system of oppression that is most manifested within the criminal justice system. Its greatest benefit is that it seeks to incorporate individual experiences of queer people related to their gender, sex, race, class, and age into criminological studies. The second great benefit is the constant effort and attempt to remove the already imposed stigma of queer persons as deviants, which is a risk factor not only for further deviant and criminal behaviour, but also for further victimization.
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