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Explaining criminalization after communism

The Two Faces of Crime in Post-Soviet Ukraine

Peter H. Solomon, Jr., and Todd S. Foglesong

It is common knowledge that the collapse of communism in post-Soviet countries like Ukraine has led to an increase in crime, especially of organized crime and its related violence. Much less well known is that there are two distinct faces to crime in Ukraine, each with its own nuances and peculiarities not easily anticipated or understood by the casual observer. One of these faces shows a sharp rise in ordinary, especially property, crime; the other, a growth of criminal business activity, including corruption of government officials and organized crime. Nevertheless, the reaction of law enforcement officials in Ukraine to both kinds of crime reveals some common threads, including the effort to present the unavoidably modest results of their activities in the most favorable light, using statistics for this purpose.

A criminogenic context

Until the late 1970s, Soviet Ukraine, like the rest of the USSR, experienced unusually low rates of crime for an industrial urbanized country. In 1977, however, crime rates started to increase significantly, reflecting, inter alia, the demise of various crime-suppressing factors and the impact of the growing shadow economy, which had begun to produce and distribute large quantities of consumer goods outside the law.

In post-Soviet Ukraine, the collapse of the official Soviet economy in 1989–90 led inexorably to both the impoverishment of part of the population and extremes of social differentiation. The presence of a new, though small, class of rich entrepreneurs, many engaged in some kind of illegal activity, supplied an attractive model to young males in Ukraine, many of whom aspired to something more than the poverty experienced by most. At the same time, the state had

become so weak that it no longer performed basic functions, such as protection, and was forced to yield a portion of tax revenue to private firms ready to perform these functions. And, to avoid the government's byzantine and confiscatory tax policies, businesspeople kept large parts of their operations away from official scrutiny. As a result, the shadow economy grew to represent as much as 45 percent of economic activity.

A plague of property crime

Between 1988 and 1997, Ukraine experienced a dramatic, two-and-a-half-fold surge in its overall rate of recorded crime. (Unless otherwise stated, all data presented here are drawn from A. G. Kulik and B. I. Bobyr, "Obshchaia tendentsiia prestupnosti v Ukraine v 1972–1993 gg. i prognoz na blizhaishie gody," *Prestupnost v Ukraine: Biulleten zakonodavstva i iuridichnoi praktiki Ukraini* 2 [1994], pp. 5–37, and, "Prilozhenie," *ibid.*, pp. 134–86; see also a sequel, "Osnovnye tendentsii prestupnosti i sudimost v Ukraine v 1994–1998 gg." with attached tables, unpublished [1999].) The essential source for this change was not to be found in violent crimes (which experienced a small rise) but in property crimes (theft, robbery, swindling, and extortion) and in economic crimes (bribe taking, counterfeiting, and trading in narcotics). These two types of crimes grew so much faster than violent crimes (such as murder, assault, and hooliganism) that from 1989 to 1993, the former increased from one-third to two-thirds of all crime and the latter fell from two-thirds to one-third. Theft alone (not including robbery) moved from 29.1 percent of crimes in 1980, to 48.5 percent in 1990, and to between 56 and 58 percent of all crime in 1992–93. Moreover, during the

1990s, the growth in reported crime was even greater than that of crimes registered by the police, and there are reasons to believe that the discrepancy involved mainly crimes against property. (“Reported crime” refers to the number of crimes reported by the public to the police. In most countries, and especially in Russia, a sizable portion of reported offenses do not get registered by the police and do not appear in the statistical data of registered crimes.)

Although a preponderance of crimes with mercenary motives is normal in times of economic decline, the shift in Ukraine (and other post-Soviet states) came especially quickly. This reflected the social strain that resulted from sudden and sharp forms of social differentiation, the general worship of material accumulation, and most of the population’s lack of access to legal ways of obtaining wealth. In addition, factors that had tempered strain in the Soviet period—the welfare state, opportunities for social mobility, and social control—had all but disappeared. Or, to put it another way, Ukraine was creating what Elliott Currie has called a “market society,” one bound to generate high levels of crime. (See Currie, “Market, Crime and Community: Toward a Mid-Range Theory of Post-Industrial Violence,” in *The Crime Conundrum: Essays on Criminal Justice*, ed. Lawrence M. Friedman and George Fisher [Boulder, Colorado, 1997], pp. 17–44.)

But still so much less than in Russia

However dramatic the increase in criminal activity in late and post-Soviet Ukraine, that country did not come close to the levels of recorded crime in the Russian Federation. In 1993, for example, when Ukraine recorded 1,032 crimes per 100,000 population (the crime coefficient), the Russian Federation produced 1,890. The difference in rates per 100,000 for the population aged fourteen and above was even greater: 1,287 versus 2,344. These data reflect long-prevailing differences between the two republics: in 1972 Ukraine’s coefficient stood at 283 and in 1971 Russia’s was 536. (For comparisons with other post-Soviet states, see *Prestupnosti i pravonarusheniia, 1991–1995: Statisticheskii sbornik* [Moscow, 1996], pp. 20–21, and A. I. Dolgova, ed., *Kriminologiya: Uchebnik dlia iuridicheskikh vuzov* [Moscow, 1997], p. 147.)

It is difficult to explain this systematic and long-standing difference. Russia was not more urban than Ukraine (actually the reverse was the case in 1989), and there were no significant differences in the age structure or gender makeup of the two countries. Russia did have a substantial frontier, most notably the Russian Far East, which had the highest crime rates of the former Soviet Union. And Russia had, as well, a larger number of transients moving about the country without fixed addresses and not necessarily included in the population data. These persons included refugees and resettlers from various parts of the former Soviet Union as well as “visitors” from countries of the near abroad. Finally, there is the potential impact on statistics of variations in the number of police per capita and in police practices, including the registration of crimes; but there is no reason to think that these factors would explain such large and long-enduring differences in the levels of recorded crime.

Note that these differences included violent crimes, as well as crimes against property. Thus Ukraine’s coefficient of murder (reports of actual and attempted murder per 100,000 population) reached the level of 9 reported in the United States in 1994, in contrast to the 5 registered by Germany and France. Still Ukraine lagged well behind Russia, at 22, and Estonia, at 24; and six other Soviet successor states all had rates higher than Ukraine. (See the chapter by V. V. Luneev, in *Nasilstvennaia prestupnost*, ed. V. N. Kudriavtsev and A.V. Naumov [Moscow, 1997], p. 19.)

An unusually high latent-crime figure?

There are reasons to suppose that the rate of actual crime in Ukraine exceeds that of registered crimes by more than the usual amount. When we consider reasons for this, the starting point would be the situation of the police. Seriously underfunded and deserted by its best staff for the private sector, the police in Ukraine have lacked the human resources needed to address the growing crime problems. According to Yuri Kravchenko, the minister of interior, 28,000 police resigned during 1999 in response to the elimination of salary supplements in the most recent budget (“28 tysiach militsionerov uvolniaiutsia,” *Golos Ukrainy*, July 14, 1999, p. 3). Putting aside the

question of police corruption (which is a problem—during 1998, 547 criminal investigations were conducted against police, including 20 police chiefs), one still finds a police force that, by and large, lacks the capacity to do what is expected of it. Yet, the police faced constant pressure to produce better statistics for the solution of crimes and the unmasking of offenders. With “registered crimes” used as the basis for calculating indices, such as the percentage of cases opened, suspects identified, charged, and convicted, it was only natural that the percentage of reported crimes registered would decline, especially if the police were unable to handle increased volume of crimes reported. Thus, while in 1990 the police registered 66.2 percent of crimes reported to them, they did so with only 43.7 percent in 1998. This change actually enabled the police to achieve improvements in many of their indices over the period. We should note that the ratio of convictions to reported crime remained stable at 18 percent throughout the period, which, in the absence of new resources to address the growing crime problem, may demonstrate a good effort on the part of the police. At the same time, the police data suggest an improvement in performance that is not real.

The other side of the dark figure (that is, latent crime or *latentnaia prestupnost*) is the crime that is never reported to the police in the first place. Estimates range from half of all crime (based on victimization studies) to 90 percent, with higher shortfalls in the reporting of particular crimes. One example is rape or sexual attack, an offense the reporting of which declined by 50 percent between 1989 and 1998—a decrease that could not possibly reflect reality. It is possible that fewer people report crimes—both thefts and sexual attacks—to the police than before because they perceive the police to be overburdened and unsympathetic (A. G. Kulik, “Mezhdunarodnyi opros zhertv prestuplenii v Kieve,” unpublished paper).

Criminalization of business

Even before Ukraine had become independent, criminal elements were major players in the economy, and the intimate connection prevailing among the new entrepreneurs (many of them former state officials), corrupted officials still in government, and criminals was in full flower. After Stalin’s death, as the economic

effects of World War Two receded, in the USSR a demand for consumer goods developed that was met only by the growth of an unofficial parallel market in the 1960s. Goods for this market came in the main from illegal production undertaken by managers of state enterprises, and this production involved such criminal offenses as misappropriation of state assets, payment of bribes to superior officials, and, eventually, protection money to criminal elements. This was the core of the shadow economy, which grew to at least 15 percent of the Soviet GDP by 1982. The Gorbachev years witnessed the legalization of some of this private activity through the cooperatives, a process that also supplied the legal framework for the privatization of parts of state enterprises. In that context, there emerged the now-familiar partnerships involving entrepreneurs (including Young Turks of the Komsomol), criminal organizations (with former security officials on the payroll), and government officials—forming what one scholar calls the “criminal-political nexus” and most Russians call the “mafia.” In 1990–91, opportunities for criminal activities expanded to include both primary businesses (the trade in arms and narcotics) and preying on the successes of others (extortion and protection rackets). From these activities came the development of new financial institutions, some closely tied to capital with criminal origins (Simon Johnson and Heidi Kroll, “Managerial Strategies for Spontaneous Privatization,” *Soviet Economy* 7, no. 4 [1991], pp. 281–316; Louise Shelley, “The Political-Criminal Nexus: Russian-Ukrainian Case Studies,” a paper delivered at the National Strategy Information Center Conference: Confronting the Challenge of the Political-Criminal Nexus, Mexico, March 1997).

In the post-Soviet context, with a weak state struggling to collect excessive taxes, the shadow economy grew still further, as many firms kept part of their activities secret. At the same time, protection itself became a commodity that required payment to either a private or a public body. Then, too, whole areas of commerce expanded in the hands of criminal business groups, including such traditional domains of organized crime as narcotics and prostitution as well as the kinds of illegality characteristic of the former Soviet Union (extortion, financial-sector activities).

Typically, such activities involved government officials, usually as the recipients of bribes. (See, for example, Andrei Gorshak et al., *Tenevaia ekonomika: Opyt kriminologiceskogo issledovaniia* [Lugansk, 1997]; A. F. Zelinskii, *Kriminologiia: Kurs lektsii* [Kharkov, 1996].)

“Exposing and destroying” organized groups

It has become commonplace to portray these various kinds of criminal businesses as the domain of organized crime or mafia. Not surprisingly, while police and prosecution officials dealt with the particular criminal offenses committed by organized crime (extortion, narcotics offenses, violations of customs and trade laws), they also developed a stake in combating organized-crime groups per se. However, what the police defined as an organized group, in Ukraine as in Russia, often consisted of nothing more than two or three persons who met to plan a crime. In 1996–98, according to official data, the police in Ukraine “exposed and destroyed 3,189 organized criminal groups.” What does this mean? Most of the groups involved were, by all accounts, little more than small gangs of extortionists, thieves, swindlers, narcotics traders, and so on; that is, they were anything but serious criminal cartels with international or interregional ties. Note that a recent study of Russian organized crime concluded that of the more than 5,000 criminal groups identified at the time of the study, only 350 would meet the usual Western understanding of organized crime, and only between 12 and 20 of these deserved classification as “major cartels” (V. V. Lunev, “Organizovannaia prestupnost v Rossii,” *Gosdarstvo i pravo* 4 [1996], pp. 96–109). Not only did Ukrainian police attack mainly the small groups of criminals each responsible for some six or seven ordinary crimes each year, but there is no indication of what is meant by “destruction.” Did this mean that one or more members were prosecuted? Not necessarily. Did groups that lost members simply take on new names and partners? The steady growth in the official counting of “organized groups” suggests that this was the case; the exposure and destruction of over 3,000 groups did not lead to any decline in criminal activity (A. F. Zelinskii, *Kriminologiia: Kurs lektsii* [Kharkov, 1996], pp. 200–208; Glushkov, “Sostoianie borby s organizovannoi prestupnostiu,” unpublished paper [1999]).

It is hard to blame the police for this kind of self-presentation. For it is difficult in the extreme to confront organized crime when it penetrates deeply into the worlds of government and business and is connected by webs of corruption. Arguably, fighting the corruption of government officials represents the first line of attack against organized crime. How have Ukrainian lawmakers and law enforcers responded to this challenge?

The battle against corruption

One way to combat corruption is to expose and prosecute incidents of bribe taking by public officials, but this is far from an easy task. All the same, the number of reported incidents in Ukraine rose two-and-a-half-fold between 1990 and 1998 to 2,449, and these incidents led to 1,641 convictions (a much better rate than in Russia).

Over and beyond criminal prosecution, a classic way to reduce corruption is by introducing regulations on conflicts of interest and disclosure of income. Ukraine’s government succeeded not only in drafting a law introducing such rules but in getting it approved in 1995. The new law established administrative, not criminal, responsibility for violation of the rules, but this still could mean heavy fines and loss of employment. In practice, penalties for violations were imposed mainly on lower-level officials (categories 5–7) and on deputies in rural and village councils. Still, in both 1997 and 1998, nearly 100 higher-level officials were convicted of such offenses as failing to declare income, doing business unrelated to one’s position, and receiving material benefits or other advantages in connection with the performance of one’s functions. In 1997, of the 5,422 cases of administrative misdemeanors relating to corruption sent to trial, only 1,925 convictions were obtained. Too often the evidence was inadequate, and cases ended with being sent back for supplementary investigations. The persons convicted received fines but were rarely fired from their jobs (A. P. Zakaliuk, “Borba s korrupsii v Ukraine,” unpublished paper [1999]; *Visnik Verkhovnogo Sudu* [1998], no. 1; *Zakon Ukrainy ot 5 oktiabria 1995*, “O borbe s korrupsiei”). Still, those who “won” their cases were likely affected by the experience (in Malcolm Feeley’s words, “the process is the punishment”).

Fighting manifestations of corruption is all well and good, but there are reasons to assume that this will prove insufficient. The problem is that individual acts of corruption in postcommunist countries are part and parcel of a powerful and genuine form of social organization, that is, clientelism. As Andras Sajo puts it, corrupt activity by officials and businessmen in Eastern Europe (Ukraine included) does not reflect a moral deficit but rather a structure of opportunity, in which there is no viable alternative to clientelist relations. In fact, Sajo warns us, no confrontation with corruption, including conflict-of-interest rules, can serve more than a public-relations function, as long as clientelist dependencies predominate, private property is not well demarcated and protected, and there are no guaranteed salaries to safeguard personal autonomy. (See Andras Sajo, "Corruption, Clientelism, and the Future of the Constitutional State in Eastern Europe," *East European Constitutional Review* 7, no. 2 [Spring 1998], pp. 37–46.)

The challenges ahead

As we review the dramatic changes that have occurred in Ukraine during the past twelve years in the quantity and quality of crime, we reach mixed conclusions. On the one hand, the growth of ordinary crime, especially property crime, represents both a natural catching up with the countries of the West—a kind of normalization (Ukraine still has a way to go)—and a normal response to social disorganization, increased social differentiation, and social strain. If anything, rates of crime should have risen even more, and it may well be that the dark figure is unusually high, as some Ukrainian criminologists believe. On the other hand, the criminalization of the economy—through the expansion of the shadow economy, the role of organized crime, and the corruption of state officials—represents a more serious condition for the future of the Ukrainian economy and politics. While the high rate of ordinary crime might well level off, should Ukraine develop a prosperous economy and effective government, the domination of both by the political-criminal nexus may prove more difficult to reverse.

While some observers see this as part of "transition," others, in our view correctly, view the business-crime problem as endemic to postcommunism, at least as much as corruption was in late communism.

To be sure, there may be entry points in what seems to be a vicious circle. One is to study and identify effective ways of developing the accountability of governmental officials and helping them to break with the criminal world. This would require positive as well as negative incentives and therefore cost money. Another approach is actually to encourage criminal elements to launder money by investing in legitimate business, extraordinary as this sounds. In fact, it is hard to imagine the development of a prosperous economy in Ukraine without the major reinvestment of dubious profits previously removed from the country. Serious, long-term investment in Ukraine, however, will not take place until a system of private property is fully developed, with appropriate legal protections. Thus far, the elites in Ukraine have benefited more from ambiguity in ownership.

In short, any substantial attempts to remedy either of the two crime problems that we have identified depends upon larger changes—in the economy, polity, and society. The serious study of crime in Ukraine must connect criminality to that larger context in all its complexity.

*This article is based on portions of "Crime, Criminal Justice and Criminology in Post-Soviet Ukraine," a report by Todd S. Foglesong and Peter H. Solomon, Jr. This report was prepared for the International Center of the National Institute of Justice, US Department of Justice. Peter H. Solomon, Jr., is professor of political science and law, director of the Centre for Russian and East European Studies, and a member of the graduate faculty of the Centre of Criminology, at the University of Toronto. He is coauthor, with Todd S. Foglesong, of *Courts and Transition in Russia: The Challenge of Judicial Reform* (Westview Press, 2000). Todd Foglesong is currently in Moscow directing a demonstration project on pretrial detention for the Vera Institute of Justice (New York). In July 2001, he will return to the department of political science at the University of Utah as visiting assistant professor of political science.*