



## CRIME, CRIMINALITY, AND THE PROSPECTS FOR FIGHTING EVIL<sup>1</sup>

ALEKSANDRAS DOBRYNINAS  
VILNIUS UNIVERSITY

### **Dear Colleagues and Distinguished Guests,**

On behalf of our organizing committee and myself, I would like to welcome you to the 11th ESC conference in Vilnius. This is the first time in the history of ESC conferences that this event travels so deeply into the East. Our Rector explained to you what Vilnius University is, and what it means for Lithuanian culture. The Minister of Justice informed you of Lithuania's criminal justice profile. The President of the ESC provided us with his vision of future criminology as a science, and the challenges that face us as criminologists. For my part I want to provide you with some suggestions of why we are here, and more specifically why it is time to "rethink crime and punishment", and what that implies.

Of course, I understand that many of you have just arrived and may be a bit tired. As a result, I will attempt to be brief and to the point.

We are currently in one of the oldest Universities in the region which was also formed within the European academic tradition of the order of St. Johns'. This blending of academic and religious rigor is the origin of the medieval expression of "reasonable faith"; according to which, reason, without belief is weak, and belief without reason is blind. Out of respect for this tradition, in my address, I will rely on both academic tradition (tribute to the University), and its religious roots (tribute to the Church).

Let me start with a short excursion into Lithuanian history. The annals of an old German town, Quedlinburg, report on an incident that happened about one thousand years ago, more precisely in 1009: „Sanctus Bruno, qui cognominatur Bonifacius, archiepiscopus et monachus, XI suae conversionis anno in confinio Rusciae et Lituae a paganis capite plexus, cum suis XVIII, VII. Id. Martii petiit coelos“ („St. Bruno, an archbishop and monk, who was called Boniface, was beheaded

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by Pagans during the 11th year of this conversion at the Rus and Lithuanian border, and, along with 18 of his followers, entered heaven on March 9th “, cf. Edvardas Gudavičius. “Šventojo Brunono mikrohagiografijos klausimas” Lietuvos istorijos studijos. 2009 23, p.20).

For us it is very important recording, not because it is proper object of criminological studies, but because in this document Lithuania as place is mentioned for the first time in the history of Western civilization. Perhaps, for Lithuanian criminology it, probably, is symbolic that Lithuania first become known to the rest of civilized world in a criminal context.

More than 1000 later, Lithuania now an independent, democratic country, a member of the European Union, and other European and international organizations, a country with vast historic and cultural tradition, a country with great respect for the Christian religion, especially in its catholic confessional form, (ins spite of the St Bruno episode). In fact, one can say that St. Bruno’s mission was successfully implemented six hundred years after his death.

Unfortunately, Lithuania is still mentioned in contemporary media chronics in the same criminal context as from St Bruno’s time.

However, I am not going to concentrate here on the criminogenic problems of contemporary Lithuania. These issues will be discussed later during the panel sessions, Moreover, the Lithuanian case is not unique in the context of Europe (although we have some specific problems, such as like homicide rates, and relatively large prison populations), and the nature of criminogenic problems cannot be limited by national borders, or jurisdiction. But if we are going to cross the borders and generalize the problems of crime, we inevitably enter into a philosophical realm, where critical reflection (and re-thinking) of the basic criminological postulate is a must.

Usually crime is described as “an act or omission that leads to penal sanction in accordance with the constitutionally valid procedures of that nation state” (Wayne Morrison. „What is crime? Contrasting definitions and perspectives”. Criminology (eds. Chris Hale, Keith Hayward, Azrini Wahidin, and Emma Wincup). 2009, p.16). To put it simply, the notion of crime presupposes the act of violation of the law with resulting sanctions such as imprisonment or fine. However, if we look carefully at the history of Western civilization, we easily observe, that such understanding of crime is very close (if not a direct extrapolation) to the religious definition of sin. In the middle ages the term “crime” had a very strong relation to the notion of “sinfulness”.

In Christian tradition, one can find expression such as: “Sin is the transgression of the law.” (1John 3:4). Of course the law here is not a “constitutionally valid construct of a nation state”, but rather

God's will, His words, His commands. But, according to the middle age theologians, sin is not only specific voluntary act that is opposite to virtue, but namely an *evil* act (St. Thomas Aquinas; The Summa Theologica, q. 74, a.1). However, as wrote *Doctor Angelicus*, "But nothing can be essentially bad. For it was shown above that every being, as such, is good); and that evil can exist only in good as in its subject (ibid, q.49, a.3)", and due to this fact "Good can exist without evil; whereas evil cannot exist without good" (ibid, q.109, a.1). From this point of view, a human being as the Devine creature cannot be absolutely bad. Instead, his or her will can be corrupted, sinful, and inclined to bad or evil.

Ancient and medieval thinkers perfectly understood that the being is good, and what is bad is not being, but rather an absence of being. Substantialization of the bad is not only an incorrect and false proposition. In its turn, it is also a kind of sin, heresy, or deviation. As philosophers say, the bad, as the negation of good (being) does not have a ontological status, and from this point of view, "fighting evil" has no more sense than Don Quixote fighting against windmills. However, there is one aspect, where negation of being, make great sense for understanding being. I am speaking of the teaching of Dionisius Aeropagit on the two ways of understanding God: positive and negative: cataphatic (description through superlative terms), and apophatic (description through negative attributes). To put it simply we can describe it in such terms as supergrace, extreme reason, and so on, but it is not wrong to say, that He is not reason, or grace, because He oversees them. The Apophatic way to speak about what it is via what it does not mean may appear unattractive, but, it is also heuristic, and productive. Sometimes it is hard to find a proper attribute for a positive description, but much easier and convenient to point out the attribute that cannot refer to a described object.

In fact, criminology was born as a apophatic project. Of course, from the beginning it tries to keep solid distance from religion. It clearly stems from the Enlightenment epoch, with its appeal toward reason, freedom, and negation of absolutism, dogmatism, and crude habits. The classical work "On Crime and Punishment" is not only the keystone of criminology and criminal law, but also a symbol of the philosophy and ideology of Enlightenment. For Beccaria, as well as, for their colleagues, the light is no longer associated with faith. The light is primarily associated with reason. Faith rather refers to dogmatism, and reason with rational knowledge and science. There is no balance between them, but rather, a deep conflict, and thus the need to liberate reason from authoritarian dogmatism.

Cezare Beccaria was the first, who actually rethought "crime and punishment", to better say, "punishment and crime", since punishment for him played a much bigger role, than crime. It is

understandable, it is very close to the Enlightenment project to rebuild authoritarian society with its arbitrary execution of power, in a manner which makes the power game more predictable and better structured for the majority of the players. The key term for the rationalization of power in Beccarias' model of penal justice is "proportion" (in latin – "ratio"). Punishment should not only be proportional to the committed crime, but it should also be proportional to the level of civilization (i.e., the level of intelligence) of society. Cezare Beccaria rethought punishment in a political manner. This kind of rethinking very soon became an act of revolt. Thus, Sir Leon Radzinovic called Beccaria an architect of Great French revolution.

Rethinking punishment inevitably leads to the rethinking of crime. In the middle-ages, to be a criminal (sinful) meant a deviation of human will from God's will. However, in the Becarian scheme, god's will (divine law) has been transformed into social contract, and bad inclinations into a decision making process for maximizing pleasure and minimizing pain.

Although free will is still postulated, those who possess it rather remind us of a Holbachian "Human machine", than creatures made in Gods image. Crime in this model is a transgression of formal, human law expressed in a social contract. And in that frame, there is no punishment without crime, and no crime, without deeds that transgress the law. Within this schema, citizens must be educated about existing laws and the prohibition expressed within them, and be intelligent enough to weigh the value of obeying or not obeying those laws.

If we introduce the notion of paradigm in accordance with Thomas Kuhn's perspective, as a way of raising questions and getting proper answers, then both the religious notion of crime as well as notion of crime developed in the classical school, (despite their differences) belong to the same paradigm. The both share the same way of raising the question about the nature of crime — about "what crime is?"

This paradigm can be named "semantic", having in mind that from the semiotics point of view, "semantics" is matter of the relationship between sign and object (reference). Indeed, in this paradigm crime - either as a theologian, or as a legal notion - refers to the free individual act as the primary source for possible transgression of law. Of course, legal reasoning differs from religious one, but, the way of rising questions and seeking for answers is similar for both.

Frank Tannenbaum noted: "The controversies which these new additions to social theory have aroused have dealt, in criminology, mainly with how the good were to be distinguished from the evil. "Possession" and "seduction" had given way to the "rational" choice to do evil. This in turn

was to give way to a series of other explanations. The Positive School of Criminology, so called as distinguished from the Classical (which is the name given to the theories that arose out of the French Revolution), found the evidence of the distinction between the good and the evil in the physical characteristics of the criminal.” (Crime and the Community. 1938, p. 4)

When in the mid of 19 century, students of crime and criminal behavior decided in accordance with new intellectual fashion to get rid of the metaphysical way of thinking of the previous “enlightened” ages, and to switch to the principle of positive science, they also got rid of the abstract principle of natural law, with its ideas of “social contract” and freely deliberating “rational human beings”. The semantic or “normative paradigm” with its central question “What?” was changed into a “Positivistic paradigm” where the dominant question was “How?”: “How biological factors can influence criminal behavior?”, “How the social environment can strengthen or weaken the diffusion of criminal incidents?”. In criminological discourse, the language switch from “political reforms didactics” to “medical treatment rhetoric”—that is “biology” or “social pathology” – become proper terms in the description of abnormal, dangerous for the society behavior.

It should be noted that ages of rationality and enlightenment produced not only notion of crime, but also “criminality” (at least this term is already presented in text of 17 century). Today “crime” and “criminality” are used as synonyms. When people speak about dangerous criminality, growing criminality, fighting criminality, they usually have in their mind the notion of crime. However in the classic school, as well as in criminal law, “crime” has very strict connotation: no crime without law, and it is only proper authorities are able to established, what kind of deeds should be criminalized or decriminalized.

The term “criminality” is very suitable for usage in the positivistic paradigm. Linguistically, it is made through the process of double abstraction: in simple proposition “subject – predicate” subject “crime” move to the predicate position “criminal”, and after return to the subject position as “criminality”. In other terms, one speaks about “criminality” that is connected not to the legal notion of “crime”, but rather to the feature “to be criminal”. And “to be criminal” in positivistic discourse could have up to three connotations: psychological, medical, and sociological. In the first case criminologist are eager to speak about individual characteristics which are criminally disposed. In the second, they speak about the societal act of “producing crime”. This latter connotation of “criminality” is especially popular among criminologists from Central and Eastern Europe including Lithuania.

The linguistic irony of this usage consists in the fact that “criminality”, as all terms with the suffix “ity” are abstract singular terms. In other word these terms usually point to single, nonexistent referent features. In our case – to the feature “to be criminal”. However, “to be criminal” and “crime” are not the same. The latter is legally defined, while the former is open to various interpretations. When Edwin Sutherland used the notion of “crime” in his bestseller “White collar crime”, he intentionally contradicted the legal definition of crime as it related to our sociological understanding of “being criminal”. The wrong business practices he referred to had not been criminalized, but they were obviously socially destructive.

From this point of view, an analysis of the criminal aspect of social interactions, biological and psychological aspects of asocial behavior, its “criminality”, is much more suitable terms than abstract, metaphysical descriptions of “crime”. At the same time, quasi empirical, “factual” features of “criminality” provokes us to use it in the context that was not possible in the semantic paradigms: “criminality” becomes a subject that can be controlled, measured, treated, manipulated, etc. In other words, it can be used for purposes of so called “social engineering” (Roscoe Pound).

However syntactic or engineering paradigm in criminology is not the last one. Let me shortly introduce the pragmatic paradigm that produces a great numbers of contemporary theories and practice about crime. The roots of that kind of paradigm can be found in classical labeling and constructionists theories of previous century. These theories let us to speak about new way of rising questions about the crime: not “what?” or “how”, but “whom?”

This is the pragmatic paradigm, where the main concern is the relation between sign and person. Howard Becker put this new vision of crime or deviance in a very clear form: “... deviance is *not* a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an “offender”. The deviant is one to whom that label has been successfully applied; deviant behavior is behavior that people so label” (Outsiders, 1966, p.9).

If in the semantic, metaphysical paradigm, crime was natural issue; in the pragmatic paradigm it has become too human. The application of crime is rather a constructivist process, were various discourses on crime and punishment build an objective networks supported by the various fragments of power of social groups and institutions, and were crime inevitably becomes a political issue. The issue that helped mobilized, and governed large groups of population in the society. In other terms, crime becomes a core category of governing (see: David Garland. “The Culture of Control” 2002) and it goes far away from the initial idea of Beccaria and his followers: that reform in criminal justice can radically improve politics.

In contemporary word the crime policy is used as an effective mean for political *status quo* legitimization. Slogans and expressions like “fighting crime”, “war on drugs”, “suitable enemies”, “moral panic”, etc. become symbols of new “synoptical” (Thomas Mathisen) way of controlling society. There is no noble crusade for defining the Lord and fighting Evil. Rather there is just the consuming virtualization of Evil and those that fight it.

I am going to the end of my speech, as I began it. We are in a Christian Church, but I am not a priest. I am not going to praise its glorious past, nor am I going to try to convert you. I do remember what happened to St. Bruno as a result of his noble attempts to baptize the Balts. I just want to say that I am very skeptical about all fighting rhetoric, especially in its contemporary managerial form.

It is a wrong strategy, when “Fighting Evil” becomes a center point of our public discourse, and it is equally wrong when “Building Good” is resultantly put into the shadow. Let me remind you as had been said by Tannenbaum 80 years ago: “The harder they work to reform the evil, the greater the evil grows under their hands ... The way out is through a refusal to dramatize the evil. The less said about it the better. The more said about something else, still better.” (Crime and the Community, p. 19). Does that mean that we have to stop fighting crime and criminality? Yes. Does it mean that we have to stop speaking about crime and evil? No. Analyzing the shadow of the being, we do not have to make the old mistake of proclaiming that the shadow is a being. We had been warned many centuries ago by Thomas Aquinas of this error. Crime does not exist, it is not a substantial issue, but it subsists in our thinking, our projects, and our strategies.

In that context let me remind you of Jean Baudrillard words: “In a society which seeks – by prophylactic measures, by annihilating its own natural references, by performing cosmetic surgery on the negative – to concern itself solely with quantified managements and with the discourse of the Good, in a society where it is no longer possible to speak Evil, Evil has metamorphosed into all the virtual and terroristic forms that obsess us” (Jean Baudrillard. The Transparency of Evil. Essays on Extreme Phenomena, p. 81) I see no positive prospects of fighting crime or criminality. But I do see a bright future for criminology as an apophatic way to speak about the wellbeing and better organization society. Reflecting and rethinking our attitude to crime makes us ready to address new challenging and new forms of crime, new shapes of evil.

That is an excellent reason to stop here, and express my gratitude to you all for your patient and kind attention. On behalf of our organizational committee and myself I am pleased to invite you to a fruitful discussion on crime and related issue during the next days of the conference.

Thank you very much again.