

Criminology, a Precursor to Criminal Law

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When Professor Yves Mayaud invited me to create a seminar on “criminology” for his criminal law Master’s program, I immediately accepted. Without any hesitation.

Indeed, his motivation was entirely clear: he considered that upstream of the punishment, there was the crime, and therefore the criminal, and that it was vital that his students understood who this person was.

In plain terms, the criminal, as an enemy of society, is the “client” of criminal law. The future practitioner (whether a judge, lawyer, gendarme, or police officer) cannot ignore this segment of the population whom he/she will have to deal with during his/her career. To put it even more simply, criminal law was only invented because of the existence of deviant individuals, deviant behavior, and transgressions; thus, to protect society.

Everything thus being clear between us, I was given free rein to carry out my task of exposing the criminal law Master’s students to the phenomena of contemporary criminality, and to create opportunities for reflection and reaction. I had also been teaching this as part of the “Judicial Careers” course at our university, in the criminology course, and in a specific university course, “Analyzing Contemporary Criminal Threats,” which I had helped establish in 1998 and which I led.

We were in perfect harmony and this congruence of criminal law and criminology lasted for around ten years, to the benefit of our students. At no moment did Yves Mayaud fall into the trap of making an artificial distinction between these disciplines, something which has resulted in criminology only being taught in a marginal fashion in France. Fundamentally, at the time of our respective retirements, the subject had practically disappeared from our institution altogether. I am thus very grateful to him for allowing me to facilitate the incorporation of criminology into his Master’s program within the corpus of criminal legal technique, and for allowing me to reveal to future practitioners the panorama of turpitude that they will be confronted with. I am, above all, very proud of having been able to teach alongside Professor Mayaud.

Moreover, the lack of interest displayed by many criminal lawyers over the basis for their own existence—the result of disputes that were as futile as they were ridiculous—in no way erases reality. The criminal phenomenon is exponential in

all of its dimensions, and the blindness of certain academics, similar to that of a very large section of the political class (which is even more serious), is not halting its advance. Manuel Valls, then prime minister, stated in relation to terrorism that “[...] explaining is already a little bit like excusing,”¹ showing the low degree of concern he had for understanding the enemy. It is not enough to say that we are at “war,” we must act as a result: we must both know the enemy and be able to clearly identify him if we want to give ourselves the means to defeat him. A number of individuals have written well on this topic before me.

Especially since nowadays, “terrorism” is not our only enemy. It is the entirety of criminal phenomena that, in a sad osmosis, is the true enemy of the society we want to live in. One of the most effective current and prospective means of protecting this society is criminal law. But we must be able to recognize and understand this enemy.

Thus, criminal lawyers who deny criminology the place it deserves, the place it occupies in the majority of universities around the world, are subscribing to a sad logic that undermines the foundation of their science: without an understanding of criminal phenomena, what meaning does criminal law have?

THE THREAT: THE CRIMINAL ENEMY

For millennia, threat (in its non-supernatural form), and the fear that it has always engendered, has been linked to a clearly identifiable enemy. Protecting oneself from it has essentially been associated with military, tribal, clan-based, and subsequently national solutions.

The perception of threat is radically different today: while it is still real, it takes on different forms, vague and complex, in a world that is, itself, confused. The perception of threat is, above all, different because many political powers are no longer capable of, or are no longer interested in, identifying an enemy whose essence is altered by ideologies, by what is *politically correct*, and by media prisms, and whose symbiotic nature makes it part of their electoral imperatives.

Until the end of the Cold War, the notion of threat was linked to tensions between states and the fear of the violent confrontations that could result: threat therefore took on the form of war. War gave rise to a specific kind of law, as well as certain conventions, rules, and codes of conduct.

With its bloody nature, this sphere of brutality was, most of the time, standardized, comprehensible, and familiar. And while the presence of fear was undeniable, it was reasoned and targeted.

The Cold War seems to have reached the extreme limits of these state confrontations. However, throughout its duration, the terms of threat had already been modified. With the heavy weapons, tanks, transcontinental rockets, and “atomic bombs” that conditioned the balance of the blocs under the “umbrella” that had

1 Manuel Valls, January 9, 2016

been created, there was an uninterrupted emergence of low intensity conflicts and polymorphic forms of modern criminality that were becoming less and less identifiable and that were already foreshadowing the disorder of today's world.

During the Cold War, we saw the emergence of guerilla warfare,² military operations that did not respect the laws of war and that would come to be known as *unconventional* warfare, used as much against hostile entities as they were within wars of *liberation*, *revolutionary* wars, or civil wars.

In shifting away from the kinds of confrontations that make use of missiles, tanks, or strategic bombers, let us introduce the concept of *low intensity conflicts*.

These consequently enable us to see how *indirect strategies* were created, sponsored, and financed by the two blocs and used by groups furnished with different liberation, resistance, or revolutionary labels that *innocently*, and more or less everywhere, led guerilla operations.

In the context of this closed world, and as it had not really had need of nor the possibility to develop geographically, profit-based criminality remained geographically stable and relatively limited, despite the fact that organized criminal entities had existed for a long time, with some having benefited from migratory movements in order to settle in new territories.

A WORLD OPENING UP TO CRIME

With the fall of the Berlin Wall, the collapse of the Soviet Union, the end of the Cold War, and the bipolar order of the blocs, the world became more open and the flow of traffic was freed up once again ... for a crucial period of around ten years. The concept of threat was about to change form.

The regained freedom gave rise to globalization! The world changed: people could travel around safely and work freely more or less everywhere. In a very short period of time, we went from the Cold War and atomic anxiety to being part of a *global village*.

States went into decline, companies freed themselves from the previous constraints they faced; criminal groups grew in strength, moved about and developed new markets; the *children* of the indirect strategies of the Cold War became *orphans* What we saw appearing were what some people began to call the *new threats*: a mixture of politics and criminality that made use of all the means that globalization provided it with; vague, hybrid, versatile, effective entities.

These criminal entities, like legitimate enterprises, have benefitted from the same trends, the same technologies, from the process of simplification and, above all, from the acceleration of all the means of exchange that the internet offers in

² The term means "little war," in Spanish, and appeared at the time of Spanish resistance to Napoleon at the beginning of the nineteenth century. Its methods would be refined during the American Civil War.

terms of supporting their activities and objectives, including, of course, sophisticated procedures facilitating the circulation of money.

Just like legitimate enterprises, criminal entities have used globalization to spread themselves out, to delocalize themselves, to optimize and develop their services in a global market that combines the supply and demand of goods, as well as illegal acts and services. They have also used their colossal and immediately available revenue to equip themselves with the latest technologies, thereby making themselves even more successful.

The growth of this threat was such that it seriously worried the major world nations and led them to act, after almost ten years of unlimited freedom.³

But September 11, 2001 created other priorities and the goals that had been set at various international conferences with regard to tackling organized crime were cast aside in favor of the “War on Terror.”

SEPTEMBER 11: A WINDFALL FOR CRIME

The destruction of the Twin Towers in New York marked the end of the euphoria surrounding globalization. At the initiative of the United States, the world closed in on itself once again. It became rigid, as though paralyzed, and devoted itself almost entirely to the fight against “terrorism.” And the fight against criminality was abandoned.

For almost a decade, the criminal threat of mafias, yakuza, and other triads, cartels, and gangs has had an almost free playing field, to the exclusive benefit of a fight against “terrorism” that has mobilized the lion’s share of manpower and resources. This is not to say that terrorists are not criminals, but it remains the case that an entire branch of illicit activities, those that are more specifically geared toward profit-making, has been cast aside.

However, according to the United Nations Office on Drugs and Crime, the total revenue of organized crime in the world today stands at 870 billion dollars⁴ and the “asset” value of such organized crime at 322 billion dollars.⁵ Even though these figures are neither exact nor verifiable in accounting terms, their sheer scale is sufficiently clear to reveal that organized crime is an undeniable reality, of which we will now provide a number of examples.

- *Organizations that have developed:* The 18th Street gang is a street gang that appeared in Los Angeles in the middle of the 1960s. Today it comprises more than fifty thousand members, spread out across the entire territory

3 ... and in spite of certain initiatives with relative impact. . . See Nass, Alexis “Le G8 et la criminalité transnationale,” Centre de documentation Sommets G7-G8, accessed July 26, 2017, <http://g7.sciencespo-lyon.fr/spip.php?article159>.

4 Yury Fedotov, head of the United Nations Office on Drugs and Crime (UNODC), July 24, 2013.

5 A figure dating from 2005, according to UNODC: <http://www.havocscope.com/?s=organized+crime+global+assets>.

of the US. The gang is also present and active in Canada, in Mexico, and in Central America, where it is known as *Mara-18*.

Its closest rival, the *Mara Salvatrucha* or *MS-13*, established at the end of the 1970s also in Los Angeles, is today of equal standing; and is its sworn enemy everywhere. The 18th Street gang's level of aggression and violence are such that in the autumn of 2006, a specific operational group was formed within the FBI, the first break with the "terrorism alone" mission of the bureau since 2001: a few agents for the whole country!

- *Increasing levels of trafficking:* On December 10, 2015 at 6:30 pm, French authorities boarded the cargo ship *Carib Palm* on the high seas. It was sailing under the Moldovan flag, and its twelve crew members were Turkish and Ukrainian. The ship had left Colombia and was en route to Gdansk in Poland. Upon its arrival at the dockside at Boulogne-sur-Mer, the custom officials seized at least 2.4 tons of cocaine hidden behind a metal partition on the ship; a record in metropolitan France.
- *Criminal activities developing in prisons:* One of the most powerful criminal groups in Brazil, involved in the large-scale trafficking of cocaine, the *First Command of the Capital* (Primeiro Comando da Capital, PCC for short), was established from within the country's prison system in 1993, with its successive leaders running it from jail. In February 2001, it triggered a simultaneous riot in around thirty prison establishments and paralyzed the country for forty-eight hours. In May 2006, from their cells, through the use of cell phones, the leaders of the PCC launched around three hundred simultaneous attacks against public buildings and police stations in São Paulo, causing the deaths of 134 people. Over several days, the level of tension in the region was close to that of a civil war. This operation was celebrated in the streets with jubilation, with drugs being handed out for free.

In Italy, it took the unlikely alliance of the authorities and the Camorra to bring an end to the activities of a powerful prison criminal organization, the *Nuova Camorra Organizzata*, which dominated almost all the prisons of the country and which killed its enemies with impunity there.

The muteness of the French prison administration struggles to conceal the reality of prison criminality, whose motivations and mechanics the film *A Prophet*,⁶ which was criticized for failing to present the real facts, nevertheless exposes perfectly.

- *Diminished territories that protect criminals:* Lastly, in the heart of the subtropical forest of South America, there is a gray zone that shelters all of the world's criminal activities—mafias as well as terrorist entities. This is called the *Triple Frontier*, and is a haven that allows criminals, geographically,

6 By Jacques Audiard, 2009.

economically, and politically, to engage with corrupt politicians, engage in symbiotic activities of drugs and weapons trafficking, money laundering, in fact, all forms of criminal activity. And this is not the only territory of this kind in the world.

FRANCE'S CRIMINAL REALITY

France's criminal reality can be observed mainly in territorial criminal gangs of a hybrid nature, which can seem like micro-states. We will try to explain this somewhat shocking allegation, which will however show to what extent the understanding of criminal reality is indispensable to the criminal lawyer.

Here we have an archetype, a laboratory for a criminologist. The trials of the case reported on here have provided significant information for the understanding of the most common criminal entities in France.

In the autumn of 2011, the police put an end to the activities of *Shitland*. This was not a theme park. It was the name that a criminal gang gave to "its" territory, an area transformed into a drugs supermarket and whose population had been exploited. For many years, the inhabitants of a housing estate in the suburbs of Paris⁷ lived in an atmosphere of fear and intimidation, endured the constant presence of aggressive drug addicts facing a shortage, and experienced a simple but effective form of corruption.

A gang had taken possession of the area's four towers and had established a large-scale cannabis trafficking operation there. The ringleaders of this gang were three cousins: two organized the operations in Champigny-sur-Marne, whilst the third lived in the Netherlands, from where he dispatched most of the goods, delivered using the *go fast* method. Buyers came from all over the Paris area, as *Shitland* was reputed for the quality of its goods. There could be up to five hundred "customers" visiting there per day and it was not uncommon to see queues forming at the foot of tower blocks.

Shitland's customers were closely managed and monitored. From the moment of entry, a message reading "Welcome to Shitland" was visible to consumers. Further on, there was another piece of graffiti: "prepare your tickets and unfold them thank you!" Even further ahead, there was a warning: "fake ticket = tied up in the basement with a beating." The customers were then searched before they finally saw the person who would furnish them with the precious product. And that was that for the "business" part.

On the upper floors of the tower blocks, there were the "nannies," that is, the "ordinary" inhabitants of the tower blocks, corrupted by the gang, and paid to store the drugs in their apartments. They were paid around two thousand euro per month, three or four times the cost of their rent Even higher up were squatted apartments, in other words those occupied with the paid complicity of the owners

7 The housing estate of Boullereaux, in Champigny-sur-Marne (Val-de-Marne).

of the tower blocks, intended to act as a fallback in case of police intervention. Very young members of the gang, placed on these floors, were paid around three hundred euro per night to keep watch and prevent a possible police intervention. Some of them were also stationed outside.

As for the rest of the inhabitants of the housing estate, they had to pay ten euro each time they wanted to use an elevator, or had to part with some of their shopping to be allowed back into their home.

And, while violence and intimidation were dominant, all of those who could be of use were bought, starting with the tower blocks' employees.

For this case, the state prosecutor used the phrase "a system of terror" to describe the lives of inhabitants. He described an area "where threats and violence were carried out on a daily basis."

He did not mention the trafficking that generated a "revenue" of around thirty thousand euro per day, almost 12 million euro per year, over many years.

How can certain individuals say that it was not organized crime, when all the elements of a criminal organization were present here: trafficking, intimidation, violence, and corruption!

Beyond the criminal organization, we find ourselves in a micro-state logic, mentioned earlier on: a logic involving territory, population, and organization of power. These are the ingredients that one finds everywhere where these forms of organized criminality hold sway, and which we mistakenly call "lawless zones."

Because, unfortunately, there is a "law" that is imposed on communities living within territories claimed by criminal gangs, but it is not that of the Republic. It is the law induced by the "system of terror" described by the prosecutor in the *Shitland* case. It is an established system of coercive measures that allows a fully developed illegal economy to function. These territories are indeed micro-states outside the control of the legitimate authorities.

We are told over and over again that with gangs, it is a matter of "groups that are not organized," that are "spontaneous and volatile." But the number of homicides—"the settling of scores" according to the media—, a visible sign of territorial struggles and savage competition, is increasing, testifying therefore to the structured and diversified nature of these entities and to the sophistication of their activities.

To justify their ignorance of this *microculture*, we frequently hear deniers of the phenomenon say that these criminal gangs are not organized "like in the United States." This is a falsehood: the organization of these criminal groups is very similar everywhere, in both form and substructure.⁸ Their organization is

⁸ Although in the United States, particularly in Chicago, some criminal groups operate without a clearly defined leadership, and it is possible that this logic may become widespread. It seems this may be a direct consequence of what has been called *cyberbanging*, a virtual form of criminality based on the use of social networks. It is too soon to know whether or not this will become a generalized phenomenon. But, if this is the case, it is likely that France will take this up too, based on a well-known tendency to imitate ... See Heinzmann, David, "Leaderless Chicago street gangs vex

based on personal bonds, man to man, that induce a system whose form resembles that of a galaxy. This organization is based on:

- the fascination with its “success,” which determines the attraction exerted by the ringleader, i.e. the central nucleus, and which explains the gravitation of affiliates toward him;
- the degree of involvement of the affiliate and the time he spends with the group, which will indicate his place with respect to the center, to power and with regard to the others;
- the permanence and the sacred nature of the link between the affiliate and the gang:⁹ entry is obtained through the shedding of blood, and an individual does not leave without blood being shed—his own.

Adherence to and the durability of the model can therefore be explained by the attraction exerted by the seemingly easy life of those who have “succeeded.” People are fascinated by them, though fear them greatly. These successful people become models for what others want to gain possession of, what they believe to be two important keys in life: money and *power*.¹⁰

The logic of the gang—money and *power*—is simple but effective; it is undoubtedly for this reason that it replicates itself over time and in different places.

This gang lifestyle also establishes a specific relationship with prison, which becomes a school for criminals and the obligatory crossing point for all affiliates who wish to progress. This is a long way from what we refer to as a “reoffender” and the logics for combatting this.

All too frequently, the way that the media presents the phenomenon is false, since it is not “young people” who kill each other with Kalashnikovs and who subsequently burn cars in which corpses are found. Rather it is the thugs and gangsters who settle their scores with their usual means of bargaining: weapons.

For years, people have refused to consider this *criminal feudalism*¹¹ because, more than anything else, it calls into question the lenient dogmas and the

police efforts to quell violence,” *Chicago Tribune*, July 29, 2016, <http://www.chicagotribune.com/news/local/breaking/ct-chicago-violence-gangs-20160728-story.html>.

9 Commonly referred to as “Blood in, blood out.”

10 This is clearly a mere façade that relies on the group effect, on *reputation* and *respect*, and which quickly gives way to solitude and adversity. Yet it manages to delude weak minds and the subservient communities of the housing estates.

11 With the recent exception of the national gendarmerie, which, in its preparatory works for the 2015 SIRASCO [Service d’information, de renseignement et d’analyse stratégique sur la criminalité organisée - Information service, intelligences, and strategic analysis of organised crime] report, mentioned: “[. . .] Level 4: permanent presence of highly structured criminal organizations, availing of a hierarchy and of significant means, dominating a territory and/or developing multiple criminal activities, making investments (laundering) in France or abroad and presenting a risk (or an example) of a mafia-style phenomenon.” According to the gendarmerie, the “gangs of deprived housing estates are classed at this level ‘4’ in the majority of cases.”

exculpatory criminal policies; but, also, because it disturbs political leaders owing to how it might affect various communities. It is time that criminal lawyers took stock of the situation and proposed appropriate solutions.

More recently, this criminal phenomenon has started a kind of hybridization. First of all, a rejection of society that manifests itself in the lewd “rap” lyrics spoken by the groups that have almost always been treated leniently.¹² This is the transposition of the mindset of the gangs, which most of the time consists only of hatred, racism, and sexism; an enticing message, widely disseminated and expressed using insulting and vulgar language, which, thanks to specialized media, pervades a very large receptive audience of this sub-culture of violence and hatred

Second, a drift toward radical Islamism could be observed among certain members of these gangs; it is without doubt a simplistic version and ripe for many concessions with religion, under the guise of *takkiya*.¹³ This is an Islamism inspired by “heroes,” psychopathic killers, and by the unrest in the Middle East under the guise of the *Arab Spring*, manipulated by the West.

And it is not pure chance if the individuals involved in the attacks that have taken place over the last few months, or those suspected of plots foiled by the authorities, are all or almost all known to the police, have been assigned a *fiche* “S,”¹⁴ or are already acquainted with the criminal justice system. This osmosis between criminality and “terrorism” develops within the favorable domain of the inaccessible territories of gangs, and in an international context that glorifies the monstrous behavior of individuals believing that they are waging “jihad.” This is yet another reason for us to seek to know and to understand, if we want this to stop.

CONTEMPORARY CRIMINAL THREATS ...

What we have called *contemporary criminal threats* are not an act of fate. These contemporary criminal threats are not the result of accidents, of incidents, of cyclones, or volcanic eruptions; they are all intentional ... or induced by our errors of judgement, by our blindness. And these are always acts that are conceived, provided for and carried out by humans.

12 The following is an extract—one of the less aggressive and vulgar ones—from “Violence/délinquance,” by the Mafia K’1 Fry group. The CRS are a branch of the French National Police.

“I like seeing CRS members getting killed,
I like the sound of gunfire, followed by explosions and the fire crew.
One day I’ll smile at you,
Another day I’ll stab you,
I’m wasting my breath telling myself I’ll end up okay if I fire at them.
Lunatic urges violence.”

13 A concept allowing Muslims, in certain circumstances, to lie to non-believers and to deceive them in the interest of their religion.

14 In France, those considered a serious threat to national security are assigned a *fiche* “S,” the “S” standing for *Surété d’État* (State Security).

Thus, it is the people involved, the entities they have built and their activities, this *criminal enemy*, that modern criminologists must come to know, describe, and analyze. They must reveal this criminal anatomy and pathology to the greatest number of people possible, but especially to the criminal lawyer, who must make use of it on a daily basis for diagnostic and remedial purposes, in order to adapt criminal policy to reality.

This is what, in his wisdom, Professor Mayaud understood and implemented.