

Organized Crime: A Flawed American Concept

BY STEFAN POPOV

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The concept

There are many different concepts of organized crime. Nowadays they are continuing to multiply and to produce theoretical paradigms around themselves. Despite all differences, what most of those definitions agree upon is that, first, organized crime is about illegal activity; second, this activity is aimed at making profit; third, it is systematic in character and sustained over time; and finally, it is based on a conspiracy of a group of people.

This definition has been produced as a result of a conceptual move from crime to unconventional crime; then to an idea of the organization of crime; further on, to organized crime; and finally, to the organized criminal group. At the first level, we have a vague understanding of what is inadmissible and criminal. At the second level, we make a distinction between conventional and unconventional crime. At the third level, unconventional crime is qualified as organized crime, which refers to processes and phenomena in social contexts, but does not yet indicate a bearer, an agent. And at the fourth level, organized crime is rendered more concrete through the figure of the organized criminal group. This fourth step is unavoidable at the moment when the concept of organized crime is to be codified in a penal code.

This move presents a monstrous reduction. The phenomenon of the organization of crime relates to a very broad and complex societal process. Substituting the subject of the criminal group for this process is a brutal simplification made for the purpose of meeting requirements of the penal code. To become subject to the penal code, a perpetrator, an agent is needed. Hence the move from the phenomenon of the organization of crime to the collective agent, i.e. the criminal group. This group-agent raises many questions and also creates difficulties, confusions, and contradictions, and we need to ask ourselves how this has happened and what has actually happened.

An American story

'Organized crime' is an American concept that was subsequently exported outside America (see Woodiwiss, 2003) and, eventually, became a global metaphor of criminal justice policy. Its story was an American story almost until 1990,



A frame from "The Enforcer", a film by Breтайne Windust (1951), with Humphrey Bogart and Roy Roberts

PHOTO: IWM

when it began to expand exponentially and acquired global dimensions.

The concept of organized crime appeared in the US for the first time around 1895–1896, above all in the sermons of the social moralists. Later, in 1919, the wave of moral reformism led to the prohibition of alcohol. This epochal event, the Eighteenth Amendment to the US Constitution, is one of the most paradoxical acts known in the history of democratic governance.

After World War II, in 1950, the Senate established a committee, chaired by Senator Estes Kefauver of Tennessee, to investigate crime in the US. In its report it claimed that a national crime syndicate had come into existence. It was big enough to cover the whole territory of the Union.

The next committee, operating in 1957–1963, and chaired by Senator John McClellan, managed to convince Joe Valachi, a minor mafioso, to testify about organized crime. The Valachi hearings were published in unprecedented numbers. They were also the first to provide empirical evidence and offer a picture of how the 'national crime syndicate' operated.

In 1967 President Johnson established the next crime commission. It was politically very ambitious and quickly put together a rather amusing report. The commission claimed that not only did the crime syndicate exist, it also consisted of exactly 24 groups dispersed evenly across

the territory of the US. The hysteria over organized crime reached its peak at that time.

It is this report that led, in 1969–1971, to the adoption of the first ever legislation against organized crime, the so-called RICO laws (from the Racketeer Influenced and Corrupt Organizations Act). To persuade Congress to pass RICO, President Nixon introduced an emotional resolution insisting that without this legal instrument the Americans and their country were doomed. In this resolution Nixon declared that to prevent the death of the US, the 24 core groups of La Cosa Nostra had to be liquidated.

In 1983–1986, the Reagan administration established yet another commission chaired by Judge Irving R. Kaufman. It developed the view that organized crime was not just a specific American phenomenon. It involved international tendencies, even though the latter might be structurally identical to the American ones. In fact, the American view was extrapolated to the outside world for the first time in this phase. This turn happened in the context of the war on drugs declared by Reagan.

Consequences

The consequences of this American story of the concept are hard to underestimate. The possibility of the organization of crime has been re-

duced to a constructed agent which can be introduced into the penal codes but which is sociologically flawed.

The very idea of an "organization of crime" is a non-trivial idea. And limiting the possibility expressed through it to a rather ordinary objective structure such as organized criminal groups is a giant reduction. As a result, significant sectors of the organized crime process remain outside the visual field of the policy sphere. For example, sectors of politics and of public administration that are largely infiltrated by crime remain beyond the scope of this concept.

Let us look more closely at the structure of the concept itself.

At the first level, we have a criminal act which lawyers call a predicate crime. This is crime per se—for example, smuggling, forced prostitution or money laundering. These actions constitute conventional felonies as covered by the standard penal code.

At the second level, the concept of the organized criminal group comes into play. It performs the acts defined at the first level. The very participation in an organized crime group is criminalized; it is also a crime. A given individual may not be laundering money on his or her own, but if he/she is a member of a money-laundering group, he/she may be charged with participating in it.

Still, in the context of democratic

penal codes, the organized criminal group remains a loose metaphor. In constitutional states, group guilt is inadmissible and the penal code follows the requirement that guilt must be individual. Hence the third level: individualizing guilt and applying it to individuals, to the individual members of the group.

This three-layered concept and the relations within the structure create many uncertainties and difficulties.

The main flaw of the image of the criminal group is the transformation of a social process that is quite complex into an external threat on which one can wage war. The militarization of the policy process is sometimes present in a highly perspicuous way in political discourse: President Reagan waged his famous "war on drugs" and, twenty years later, President George W. Bush declared his infamous "war on terror". The application of such policy metaphors can result in excesses where by the expression "war" is taken in a literal way and, as was the case with the Iraq War, leads to a full-fledged war on the ground. This risk also holds for organized crime groups.

Contrary to the initial objectives, the reduction of organized crime as a societal process to an organized criminal group as a collective subject has created a problematic concept that gradually took root in penal codes. The three-layered concept proves difficult to understand and apply, especially in new democracies. I would not blame prosecutors, investigators, and courts for failing to easily and quickly secure effective convictions for organized crime.

Further, unconventional crime has been perceived and conceptualized as an external threat to society. This harmful and misleading presumption has been widely and aggressively promoted in public. The fact, however, is that unconventional crime has never been an external threat. One can safely say that virtually in all countries it has been a complex risk process originating and unfolding within societies.

The concept of the organized criminal group inevitably creates a militarized context for criminal justice policies. They are conducted as warfare, hence the popular war metaphors mentioned above. Of course, since this is a false image, such policies turn out ineffective and develop rather on a symbolic level. The policy direction, which involves either symbolic or real warfare, or even both, seems unavoidable, however:

external threats necessitate military operations and they have to be undertaken. In countries like Bulgaria, Special Forces undertake massive and very aggressive campaigns against criminal networks, police in balaclava helmets attack alleged criminal headquarters, make tens or hundreds of arrests, and this leads to nothing except spectacular images for media consumption.

And finally, this logic asks for an inevitable empowerment of the police and, generally, of the institutions of criminal justice policy at the expense of ignoring crime prevention based on a careful study of the relevant factors. The unification performed by the concept of an "organized crime group" directly leads to a strengthening of the role of the police, which, under civilian conditions, becomes an equivalent of the army.

The most unconventional aspect of this concept is the transformation of a social form into a criminal one. According to the classical principles of modern rule of law, only individuals can be bearers of guilt. Guilt is individual by definition, absolutely; even etymologically, insofar as 'individual' means 'indivisible'. In this sense, guilt must be reduced to a perpetrator who cannot be 'divided' further. The presumption of European modernity is that the human individual is the final instance that can bear guilt. By introducing the concept of 'organized crime', however, the individual has been replaced with a social relationship. And it is this social relationship that becomes the bearer of criminal acts, the perpetrator. This move creates a serious problem for the criminal justice process.

The introduction of a social relationship poses a peculiar problem, namely, the need to construct the identity of a group. This of course is a hermeneutically interesting problem, but it is beyond the powers of the traditional investigating magistrate, prosecutor, and judge. They must somehow imagine this agent, but unlike the identical individual, that agent is different and specific in each case, not identical and not indivisible. And it is only after the identity—that is to say, the agency—of the group has been constructed that the prosecution and, ultimately, the courts can take action and determine the individual guilt of each member. Establishing the identity of the group implies depicting the internal command mechanisms, dynamics, arrangements, and all other factors and conditions that integrate the criminal conduct of the group. The very life of the group needs to be depicted. But this is a task that has to be performed on a case-by-case basis. And it is a very difficult task.

A policy bubble?

If we look at the twentieth century, we will notice a distinct tendency towards an accumulation of international legal instruments, of international juridification. The expansion of legal instruments at the international level is liberal-democratic in character. It is related to the presumption that entire categories of problems, which used to be solved in a political way, on an

ad-hoc basis, by means of concrete negotiations, skillful diplomacy or brute force, can be regulated and given statutory solutions by inscribing them into some legal framework. The expansion of the concept of organized crime groups must also be reviewed in this broad context, focusing less on the local formation of the concept than on its global role.

This also holds for the expansion of criminal justice instruments, and generally, for the expansion of international criminal law.

In the initial stages of developing an international criminal law, the latter was associated with a rather narrow purpose. The aim was to extend prosecution and bring to justice the top command, which was not directly involved in wartime crimes but was responsible for them. The general idea of the Nuremberg trial was to trace the chain of command up to the highest levels that do not include direct perpetrators. That is why at the main trial at Nuremberg, the defendants were 22 'major war criminals', who were tried for being at the top of the Nazi chain of command.

This standard—tracing the chain of command of political crimes—was later applied also to the phenomenon of the organization of crime. It was introduced in a wholly pragmatic way, with the aim to charge those who—like Al Capone, for instance—cannot be caught because they are not direct perpetrators. The purpose was to reach up to the highest command of a criminal organization.

At present, however, there are serious disputes and divisions over this transformation of unconventional crime into a collective subject of the criminal group. In certain contexts, notably at some stages of our criminal justice policy after WWI, it achieved a relative success. At present, however, scientific and policy communities are becoming increasingly critical of this concept, regarding it as another public-policy bubble.

The main reason for this is that the price seems to be too high. Even from the point of view of criminal justice policies, the paradigm carries serious flaws. For it limits the phenomenon of the organization of crime to the point of excluding various other criminal processes, such as massive bank accounting frauds, state institution capture in new democracies, high-level political corruption, etc. Unconventional crime is in fact much broader, more interesting, diverse, and complex.

In the epochal and epic story of the policy concept discussed here, there are also big winners: the Hollywood movie industry in the first place. The idea of organized crime has inspired some of the most popular stories in movie history. Not the least, the genre has endowed us gangsters with a sense of heroic identity and made quite some of them addicted moviegoers. <

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eine gewisse Übergangszeit noch für ein Schutzprogramm von religiösen Weltverständnissen plädierte. Der Bedarf für Religion bzw. für religiöse Sprache ist einer bis auf Weiteres: Sie wird benötigt, bis die säkulare Sprache einer diskursierten Vernunft ihr Ausdruckspotential vollumfänglich entfaltet hat und so sämtliche Lebensvollzüge und Weltverhältnisse vollständig und transkulturell verständlich zu explizieren vermag.

Ausgrenzender Humanismus?

Die im Kern fundamentale Differenz zwischen Habermas und Taylor liegt in der Ausdeutung des Anpassungsdrucks des westlichen Modernitätstypus durch kulturelle Pluralisierungsprozesse: Für Taylor scheint er auf eine Aufforderung zu erweiterter religiöser Sensibilität hinauszulaufen, für Habermas dagegen Anlass zur Forcierung einer Übersetzung in säkular-diskursive Sprachspiele zu sein. Der Annahme nicht substituierbarer Relevanz religiöser Weltzugangs bei Taylor steht somit bei Habermas eine Relevanzannahme „bis-auf-Weiteres“ gegenüber.

Taylor's Kritik am Säkularisierungstheorem setzt im Unterschied zu Habermas nicht intern, sondern extern an. Taylor votiert „gegen [die] Verstümmelung“ menschlicher Resonanzfähigkeit unter der Herrschaft des „ausgrenzenden Humanismus“. Eines Humanismus, der den modernen Menschen der Fähigkeit zur Transzendenz zu berauben scheint. In der Privilegierung menschlichen Vernunftvermögens liegt für Taylor der Aufstieg der Letztend dieses „ausgrenzenden Humanismus“ begründet, dessen Verdrängung des Religiösen dann als Selbstbestimmung, Selbstbeherrschung und Selbststeuerung des neuzeitlichen Subjekts gefeiert wird. Für Taylor, der sich in seinem gesamten Werk der hermeneutisch sensiblen Erhellung menschlicher Lebensformen widmet, kann eine Analyse, die sich der Selbstbeschreibung unserer Gegenwart als einer säkularisierten zuwendet, die damit be-

haupteten Konturen weder einfach differenzierungsanalytisch verbuchen (also als Geschichte der institutionellen Trennung von Staat und Kirche mit der Etablierung der weltanschaulichen Neutralität des neuzeitlichen westlichen Staates), noch kann sie diese in seinen Augen einfach verfallsgeschichtlich als Erosion gläubiger Welthaltungen und (institutionell geformter) gläubiger Praxis („des Glaubens“) deuten. Vielmehr muss eine phänomenal adäquate, hermeneutisch sensible Beschreibung Taylor zufolge den abendländischen Säkularisierungsprozess – wenn er sich denn als historisch vollzogener nachweisen lässt – als Prozess der Veränderung des menschlichen Welt-, Sozial- und Selbstverhältnisses aufzeigen können. Taylors Verständnis von Säkularität zielt nicht wie dasjenige von Habermas auf die analytischen Konturen einer Diskursform, sondern auf einen Modus des Weltzugangs.

In zeitdiagnostischer Absicht haben wir es Taylor zufolge deshalb auch nicht im Kern mit der Frage der Legitimationsgrundlagen zu tun, sondern mit einer Veränderung der Formen menschlichen Erlebens. Die Verlustanzeige gilt einem „Gefühl der Fülle [fullness]“, einem „Zustand des Erlebens“ in „unmittelbarer Gewißheit“, den wir – so Taylor – im Zuge der westlichen Zivilisationsgeschichte „größtenteils verschlissen haben“. Es geht Taylor damit um eine im Vergleich zu Habermas ganz anders gelagerte Ebene der Untersuchung und des Blickes auf Prozesse der Säkularisierung. Die systematische These hat zumindest den Vorzug, dass sie aufgrund ihrer Sensibilität für Erfahrungskonstellationen beides erklären kann: sowohl den Niedergang etablierter, traditioneller Formen des Religiösen wie auch die Karriere neuer Formen religiöser Weltbezüge – eine Gleichzeitigkeit des vermeintlich Ungleichzeitigen gerade in denselben Regionen der Welt wie etwa in Europa. Es geht Taylor um eine Schicht menschlicher Existenz, die von den Prozessen, die gewöhnlich unter dem Etikett „Säkularisierung“ verbucht werden, im Kern betroffen ist und deren Veränderungen sei-

ner Auffassung zufolge damit zugleich den zentralen Aspekt dieses irrigerweise zumeist ausschließlich auf gesellschaftlicher Ebene verorteten Wandels ausmachen.

Erweiterung der Vernunft vs. Sehnsucht nach Transzendenz

Ein Vergleich der Auffassungen von Taylor und Habermas hinsichtlich der Frage der (Post-)Säkularität führt damit auf sechs Differenzpunkte. Ihre Positionen unterscheiden sich hinsichtlich 1) ihrer Reflexionsebenen, 2) des jeweiligen analytischen Fokus, 3) der jeweils leitenden Modernitätsperspektive, 4) der eingenommenen Perspektive zu einer Kritik der Aufklärung, 5) der Einschätzung der Relevanz von Religionen sowie 6) des die Argumentationen anleitenden Verständnisses von Säkularität. Und insgesamt kommt sicherlich die grundsätzlich eingenommene Perspektive als Differenzmarkierung zwischen beiden hinzu: Während Habermas mit dem Blick einer als lernbegierig begriffenen diskursiven Vernunft analysiert, die ihren Artikulationsrahmen extensiv erweitern möchte, beobachtet Taylor aus dem Horizont einer Motivlage menschlichen Lebens, die sich aus den Quellen einer „Sehnsucht“ für eine „über das Immanente hinausgehende“ Perspektive, aus einem originären Gemeinschaftsbedürfnis und dem Ringen um eine „bedeutungsvolle Sprache“ speist. Das eine wie das andere lässt sich nicht gegeneinander ‚verrechnen‘, und beide lassen die scheinbar gegenläufigen Diagnosen von Habermas und Taylor als unterschiedlichen Phänomenorientierungen geschuldet erkennen. Den konstitutiven Bedingungen der Möglichkeit von Religiosität geht jedoch nur Taylor nach. <

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