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Crime and Survival: Some Basic Reflections

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Sociological statistics indicate high crime rates in our society. The assertion that they are high is, of course, not merely a question of numbers. There is an acute awareness of crime which surfaces in the explicit inclusion of security measures in housing and urban developments, reminiscent of the walled cities and fortified castles of the Middle Ages, in the flight of people to "safe" areas, in the establishment of pre-delinquency programs whose detailed record-keeping methods at least equal those dreamed up in the better-known futuristic novels, in psychological theories and educational practices such as "Behavior Modification," and also in the innumerable police and detective shows on television. Even if one allows for a certain ingrained societal pessimism, the proportions of this awareness and the seriousness of its practical consequences alone suggest an abnormal presence of crime.

The presence of crime in any given society, however, is, by itself, not an abnormal phenomenon. In other words: as long as crime in a society occurs in more or less clearly identifiable individual forms and isolated incidents, the search for an explanation can confine itself to individual circumstances and rationale — although not reasonable choices. Such a form of crime is neither an indication of social disease nor does it represent a substantial threat. When, however, criminal activity appears as a widespread phenomenon, when there is what can be called a climate of criminal activity, which cannot be reduced to a simple addition of individual criminal actions, the quest for an explanation can-

not end with the individual. Indeed, the frequency, the almost indeliberate ease with which crimes are committed even for minimal gains somehow suggest the existence of a social context within which criminal actions constitute meaningful phenomena, or what is the same, a meaningful mode of social action. But how can actions which are apparently against society be socially meaningful? The question points to society and to an inter-wovenness of individual and social existence. What is the nature of this interrelatedness?

In accordance with the theories proposed by Hobbes and Locke, society is the result of a social contract. Taking this terminology seriously, this means that:

- a. **the parties to the contract must exist before the contract is entered and, therefore, also before society which comes into being by it. The "before" does not necessarily mean "before in time." Rather it indicates that the parties exist, first and above all, as individuals independently of any society and that human existence does not eo ipso imply social existence;**
- b. **the parties enter into the social contract freely, i.e., by choice. Thus, society does not arise from necessity. It appears to be simply one of the means available to humans to obtain their individual goals. The fact that one means, namely society, appears to be better, than the other — force — does not make the first necessary.**

It is already commonplace knowledge that the social contract theory was prompted by historical circumstances and by special group interests: in the case of Hobbes, to safeguard absolute authority by pointing out that there must be an impartial, stable and powerful enforcer of such a contract, or, as in the case of Locke, to promote the political potentialization of the bourgeoisie. But precisely because this theory, which in the meantime has become an important element of our own socio-political awareness, arises from particular interests, it is a highly unreliable source of socio-political intelligence. If we let the social phenomenon speak for itself, the

following elements appear:

1. **The process of humanization:** Human beings can only come into the fruition of their human potentialities in relation with other human beings who have already developed these characteristics, as well as in relation with a human environment that promotes their realization. Thus, social relations are a necessary condition of human existence *qua* human.
2. **The process of socialization:** Human goals and aspirations or, in other words, the realization of human existence as survival and as the "better" life, exceed the powers of the individual. This excess is not simply the result of utopian dreams. Hume, in comparing humans with the endowment of animals, finds the first at a disadvantage: "Of all the animals with which the globe is populated there is none towards which nature seems, at first sight, to have exercised more cruelty than towards man, in the numberless wants and necessities with which she has loaded him, and in the slender means which she affords to the relieving of these necessities...
*(Hume, *Political Essays*) However, there is, in accordance with Hume, a remedy to this situation: "It is by society alone that he is capable of supplying his defects...By society all his infirmities are compensated...When every individual labors apart and only for himself, his force is too small to execute any considerable work...Society provides a remedy for the following three inconveniences: by the conjunction of forces our power is augmented, by the partition of employment, our ability increases, and by mutual succour we are less exposed to fortunes and accidents." (Hume, *Political Essays*) If we radicalize Hume's statement in view of the fact that the very possibility of human existence is rooted in this conjunction of forces, abilities and concerns and in view of the probability that the survival of the human

species itself is due to social interaction, social relations are not only advantageous but a necessary condition of human existence qua existence.

Social relations, or as we can also say, society, reveal itself in these two elements as a necessary condition of human existence. Insofar as these social relations received their structure from the actual interaction of human beings among themselves and with their environment, the concrete historical form, the intrinsic quality and the external structural support (customs, habits, laws) of these relations is determined by interests as well as material possibilities.

Thus, although society is a necessary condition of human existence from the point of view of human existence, society can deny being this condition to individuals and groups that exist within its confines, who then are de-humanized into tools, living tools as Aristotle calls them, or to useless surplus. From this a contradiction results: on the one hand these groups or individuals are members of the same social habitat whose meaning to them, as necessitated by their human condition, is their humanization and socialization. On the other hand, however, this very social habitat denies them this meaning and, therefore, its reality. In consequence of this contradiction, actions which appear to be anti-social from the point of view of this established social habitat can be socially meaningful to the perpetrator of these actions, precisely because it is an attempted realization of what society necessarily means, but to them is not yet.

It must be pointed out here that this does not indicate that the perpetrator of such actions must be reflexively aware of this contradiction. Where this reflexive awareness is lacking, he is simply acting out an existential situation in a necessarily egocentric manner. The criminal phenomenon, which formed the basis of our question, has already steered us away from those trends that would seek its explanation in genes, chromosomes or in a feeling of inadequacy based on corporeal differences. Certain sociologists have begun to point at the social environment as a possible source

of crime. Two factors are usually mentioned:

1. *The Family.* The theory that the breakdown of the family is responsible for the rise in crime implies correctly the absence of a supportive social habitat. But it fails to mention that in our advanced industrial society the family is radically incapable of providing this type of social habitat because many basic social relations have become "public." For that very reason, the focus on the present-day family and its restoration as a fundamental solution to crime and other socially disturbing phenomena, is totally anachronistic. It uses that family as a model which was at the same time a center of production, or, in other words, a socio-economic unit. In pre-industrial societies, the family, whether feudal or otherwise, was an almost independent and to a large degree self-sufficient social body. In fact, meeting head-on with such family-based societies, the industrial evolution, which destroyed at the same time a democratically more hopeful but never fully respected socio-economic family unit based on home-industry, had to cause havoc. When it occurred, society was totally unprepared and, because of prevailing interests, totally uninterested in providing an extra-familial social habitat. In fact, it considered the rising proletariat as "panderers of vice," "mobs" and "social sores" (Jefferson, *on Democracy*) as it had considered those who had been unattached hirelings as rootless scum. Even the to some extent softening, albeit self-interested, oppressive paternalism which had existed between rulers and ruled in the feudal family, was now gone, replaced by totally impersonalized and de-humanized relations between owners and workers, although the social reformers of the Victorian Age, witness Charles Dickens, attempted to transfer this paternalism to the factories and offices. Slavery is, of course, the most radical expression of the absence of a meaningful social habitat since it does not even fall under the category of feudal family-relations.

2. *Poverty.* Some sociologists have come to the conclusion, again correctly in its over-all meaning, that poverty is the

primary source of crime. This theory has to be qualified, since there are several types of poverty, quite distinct from one another: there is, first, poverty due to a general scarcity of resources even if these are justly distributed. Second, there is poverty by choice (mendicant friars in their early stages, buddhist monks, as well as financially highly unrewarding activities such as art can be, or the practice of medicine in economically extremely depressed areas), and third, poverty due to a socioeconomic system whose very reason of existence is the accumulation of wealth which, against the background of the private ownership of the sources of production translates into an accumulation of wealth by some and the deprivation of others as its necessary correlative. In view of these three types of poverty, poverty as such does not yet constitute a condition of criminal activity. It seems reasonable to suggest that the insufficiency of means to survive, or to survive humanly and within the standards made possible by the general social productivity as one of the experienced forms of frustrated rightful social expectation may make actions meaningful, if not necessary, which result in the appropriation of the survival means outside the established forms of acquisition or the established rules of the market-place.

3. *Moral Depravity.* Widespread popular opinion maintains that the rise in crime results from the materialistic outlook of our age. It is, of course, true that the experienced frustration of rightful social expectations can be sublimated by means of various ideologies. It is also true that some of these ideologies may acquire survival-functions. Undoubtedly, the doctrine of "blessed be the poor" lent dignity to the oppressed. But the farmers' uprising in Central Europe in the XVIth Century, for example, is a good indication of the fact that an ideology of "blessed be the poor" and "slaves, be obedient to your masters" cannot assuage the conflict between social expectation and social reality, even if this conflict is proposed as an expression of God's will. Thus, in fact, the materialistic outlook of our age, especially when it appears among oppressed

groups, does not constitute a perversion at all, but rather a realistic appraisal of a situation which hitherto had been hidden under a "non-materialistic" ideology.

With the waning influence of religion as a sublimating force, another ideology seems to take hold, which found its early expression in the doctrine of "Social Darwinism" of which Hitler is the most radical representative: in accordance with it, the degree of socio-economic participation, or social standing as Herenstein of Harvard University puts it, is said to be determined by nature and its laws of the "survival of the fittest" (or today the "genes") and genetically determined behavior). Who, this theory seems to imply, could possibly quarrel with nature (or the genes)?

Hobbes, one of the proposers of the social contract theory, conceived the establishment of society as a remedy of the natural situation of man, referred to as the "bellum omnium contra omnes": the war of everyone against every-one: the lone animal, defending its turf. Since this pre-social existence lies beyond human experience, post-Hobbesian theoreticians maintained that Hobbes had simply taken recourse to a kind of philosophical fiction à la Socrates, in order to delineate in all clarity the significance and the essence of the social contract.

However, if we take the Hobbesian description of pre-societal existence as a description of asocial existence, namely human existence as deprived of a humanizing and socializing habitat that his existence demands, it ceases to be fiction and becomes fact. Indeed, Hobbes himself, in order to refer to an experience of this war-like condition, mentions examples that are taken out of British society. Let us examine some details of this description: After having stated that the condition of perpetual war does not lie so much in the various overt acts of war but rather in a continuous presence of those conditions that give rise to these acts, Hobbes continues: "Whatsoever is consequent to a time of war where every man is enemy to every man, the same is consequent to the time wherein men live without other

security that what their own strength and their own invention shall furnish them withal." (Hobbes, *Leviathan*) What is this security? It consists in an unobstructed access to the means of survival. Survival itself is not a definite quantum. Rather, it is determined by the general productivity and the forms of progress. It implies, therefore, the standards of decent existence which vary from age to age. Generally, this access to the means of survival occurs through a participation in their production. Where this participation is basically frustrated, human survival security is threatened and the individual is left to its own devices. The resulting survival-solitude has obvious de-humanizing consequences which result in these characteristics, put forth by Hobbes: "In such condition, there is no place for industry...and, which is worst of all, continual fear of danger and violent death; and the life of man or woman solitary, brutish, poor, nasty and short." (Hobbes, *Leviathan*)

Furthermore: "To this war of everyone against everyone, this also is consequent: that nothing can be unjust. The notions of right and wrong, justice and injustice, have there no place. Where there is no common power, there is no law, no injustice." (Hobbes, *Leviathan*) The common power refers to the agreed institutionalized form of protecting the established social relations and the benefits derived therefrom. This common power, as well as the laws that constitute the *modus vivendi* of the societal establishment, has lost its meaning to those who live at the fringes of society and who are alienated from these benefits. To them, then, this common power is nothing else but the power of the *hostile other* whose exercise of power is experienced simply as force and fraud and must be fought with the same, as Hobbes says, "cardinal virtues in war." (*Leviathan*)

Precisely because this common power and these common laws are common only in appearance but not in reality and meaning, the medicine of more law-enforcement and a more radical use of power addresses itself only to symptoms. And finally, Hobbes concludes with words that need no com-

mentary: "It is consequent also that the same condition that there be no property, no dominion, no mine and thine distinct; but only to be every man's that he can get, and for long as he can keep it. And thus much for the ill condition which man by nature is actually placed in." (*Leviathan*) It is, as we may alter Hobbes' statement, not an ill condition by nature, but a humanly produced denial of society to humans.

Of course, the lines of societal deprivation cannot be drawn with mathematical or statistical accuracy. In fact, a society that engenders oppression is in itself questionable and fraught with internal contradictions that affect every member. But it is one of the forms of self-protection that society will forego any radical self-reflection and rather point to the asocial element as being its own source of its asocial behavior. The down-playing of white-collar crime, the lack of understanding in view of the rise of juvenile delinquency everywhere, the continuous attempts to reduce crimes in the very power-structure to personal failure and ambition are but some of the consequences of this lack of self-reflection. In fact, history is filled with testimonies to this self-interested unwillingness to pay attention to its own condition as well as to its apocalyptic consequences. And when it is done, it is most likely written off as disgruntled dissent, pessimism of the intellectuals, sour-grapes attitude, or, in our post Freudian age, a result of wrong potty-training.

This brief phenomenology of the asocial condition would not be complete without a look at its self-expression. Although there are many examples of it, in fact, popular culture is filled with them, I venture to choose "Martín Fierro," an Argentinian gaucho poem because of its directness, simplicity and non-romanticizing quality.

After killing the protege of the military commander of the region where Martín Fierro had worked for some time, he reflects on the condition of the gaucho, providing thereby an explanation of his behavior. The following verses are taken from Song VIII: (Jose Hernandez, *Martín Fierro*)

Since I could not expect justice here,
I left quietly the inn
so as not to be noticed
when I saw him die and
the innkeeper started to raise his
voice.

Oppressed people know very well the
difference between true justice and the
appearance of justice. Plato, in a dispute
on justice with Thrasymachus brings
forth the same distinction. Perhaps op-
pressed people cannot formulate it as
well, but they know. Thus, Martin Fier-
ro's flight is simply an act of self-
conservation in the face of tyranny.

I climbed the horse and prayed to God
and left for a different territory.
Since the gaucho is called a bum
He cannot have a home.
From place to place he must move
Never finding peace.

He is always in flight,
Always poor and persecuted;
He has no resting-place, no cave
as if he were damned;
Indeed, to be a gaucho, damn-it,
To be a gaucho is a crime.

The external rootlessness is only an
expression of societal deprivation or
societal rootlessness. Furthermore, the
respectless image of the gaucho, the
criminal, the oppressed is their aliena-
tion: they must live the imposed image
which, in turn, becomes their fate: iden-
tification with the ideology of oppression
where each attempt to break away from
it results in a necessarily hostile action
against the oppressor.

He has no children, no wife,
no friends, and no protectors.
All are his masters,
but no one will shield him.
He suffers the fate of the ox:
what happens to it if he does not pull
the plow?

His condition is solitary. Exploited by
everyone, everyone becomes his
enemy: the war of everyone against
everyone is, in fact, the war of the iso-
lated one for survival against the societal
other which excludes him as an equal
participant. Only to appease his masters
does he accept his designated position,
but even so this only serves to per-
petuate his suffering.

His house is the hay-stack,
his den the desert;
And if, half-dead with hunger,
he catches a piglet,
they run after him
because he is a gaucho thief.

Indeed, no mine and thine, as Hobbes
says, because the thine holds power
over everything, even over the basic
means of survival of the oppressed.

He gains nothing when there is peace,
And when there is war, he is the first to
go;
They do not forgive him when he is
mistaken,
because they do not know how to for-
give.

The gaucho in this world is only useful
at the polls.

In fact, the condition of society means
nothing to him since it does not affect
him. War or peace, the fate of the op-
pressed is the same. Nor does he profit
from political freedom, the right to vote,
since the interests that determine the
exercise of political power have already
been determined. His disinterest in soci-
ety is a sign of his societal deprivation. In
fact, it reminds him of his utter power-
lessness, as the next verse indicates:

For him are the stockades
the hard prisons.
In his mouth there are no reasons
Although he might have reason
enough to speak.
But, the reasons of the poor.
Are like wooden bells.

Let's go, fate, let's go together!
Together we were borne
and together we must live,
unable to separate.
So, I will open with my knife
the path I have to follow.

Every exit to a meaningful existence
within a meaningful social habitat
blocked, he must resort to the raw and
naked weapons of survival, "force" a
cardinal virtue in the war of everyone
against everyone. The fact that Martin
Fierro refers to his condition as fate, as
an unfortunate but unalterable fact, indi-
cates that he simply acts out his oppres-
sed condition which turns this reflection
into a lamentation rather than a reflec-
tion. It is a lamentation, however, which

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expresses the components of asocial existence: historical rootlessness, lack of respect, self-alienation, material alienation, self-affirmation through physical violence, survival by force and fraud, and despair. How did Hobbes express it? "In such condition, there is no place for industry...and which is the worst of all, continual fear of danger and violent death; and the life of humans solitary, brutish, poor, nasty and short." (*Leviathan*)

The purpose of these reflections was to expose the relationship between criminal actions as perpetrated by individuals and society. In fact, every action is an action of an individual. However, the individual exists from its very beginning as a social individual. Thus, the absence or presence of a habitat where this dimension can be lived out is of vital importance to the way in which human existence realizes itself.

A Brief History of the University of Baltimore

by James F. Schneider

For as many years as there has been a University of Baltimore, there has been a University of Baltimore School of Law. The law school and a business school were founded together in the summer of 1925 to fill a widespread public demand for a quality professional education.

The establishment of the University came in response to actions taken by already-existing institutions of higher education in the Baltimore area. In the middle 1920's, the University of Maryland lengthened its evening law program to four years and began to require two

years of college as a prerequisite to law school; Johns Hopkins added two years to its Commerce School course. Rising standards of admission meant that many competent people would be prevented from obtaining a legal or business education.

These changes seemed entirely unnecessary at a time when the only requirements for admission to the bar were a high school diploma and a law degree; many practical members of the legal and business communities refused to accept the changes.

A meeting of indignant citizens was called in June 1925 at the University Club at Charles and Madison Streets by Dr. Maynard A. Clemens (1879-1961), an innovative leader of higher education in Maryland who had already found the Baltimore College of Commerce, and the College of Commerce at the University of Maryland, and who would in the future found Eastern College (1928) and the Mount Vernon School of Law (1935), to decide what should be done. Among others at the meeting were Eugene A. Edgett, Assistant State's Attorney for Baltimore City; Clarence W. Miles, Peoples Counsel; and Howell A. King, then associated with the School of Business Administration at the University of Maryland. A decision was reached to found the University of Baltimore to satisfy the need for a downtown law and business school where young men and women could receive a practical education without frills and their resultant expense. In August 1925, the University was granted its corporate charter by the State of Maryland.

Charles W. Heusler, a seventy-years old Judge who had retired from the Supreme Bench of Baltimore City the previous November, agreed to serve as the first Dean of the law school. A law faculty of competent career lawyers who could teach in the evenings was constructed.

The first location chosen for the school was on the southeast corner of St. Paul Street and Mount Vernon Place. The first classes of the University of Baltimore began there on October 1, 1925, for sixty-two law students and one hundred and fourteen business students.

The first class of thirty-eight law stu-

dents was graduated from the three-year evening program in 1928, just in time for the school to be accredited by Maryland State Department of Education. Even though a college degree was not then required by the school, some of its first law graduates were holders of a Bachelor's Degree. An annex was opened at St. Paul and Centre Streets, and in 1929, the former site of the Baltimore College of Dental Surgery at 847 N. Howard Street, now known to us as "Howard Hall," was purchased and became the first permanent site of the University of Baltimore.

State Senator William Milnes Maloy (1874-1949) became the second Dean of the Law school upon the death of Dean Heusler in February 1929. An honor society named in memory of the late Dean, to comprise the top ten percent of each graduating law class was established in March 1932, and continues to this day.

During the first ten years of its existence, the University of Baltimore had three Presidents: Dr. Maynard A. Clemens served as Acting Chancellor until his resignation in 1926; he was succeeded by Dr. Wilbur F. Smith, elected first President serving until 1933; and finally, Howell A. King, serving as Acting President for about two years. On its tenth anniversary in 1925, the University of Baltimore boasted nearly one thousand graduates of its law and business schools.

In the fall of 1937, a two-year junior college program was begun under the supervision of Dr. Theodore Halbert Wilson (1885-), the University's education advisor, Dr. Wilson was to serve nearly three years in this capacity until the Board of Trustees announced his election as President in July 1940.

In 1940, the law school began offering a two-year course toward a Master of Laws Degree, graduating its first class of LL. M's in 1942. The program continued until 1960, when it was discontinued. In 1946, Dean Maloy retired; Assistant Dean John H. Hesse (1890-) became the third Dean of the Law School. Post-war growth of the University prompted the purchase of the former site of the Baltimore Athletic Club in