Anna-Maria Getoš Kalac*

Guilt, Dangerousness and Liability in the Era of Pre-Crime – the Role of Criminology? To Adapt, or to Die, that is the Question!

Schuld, Gefährlichkeit und Verantwortlichkeit in der Pre-Crime-Ära – die Rolle der Kriminologie?

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Abstract: There is no doubt that, in terms of criminal policy, we have been living in an era of pre-crime for quite some time now. Whether we like it or not, times have changed and so has the general position on concepts of (criminal) guilt, dangerousness and liability. Whereas once there was a broad consensus that penal repression, at least in principle, should be executed in a strictly post-crime fashion, nowadays the same consensus has been reached on trading freedom (from penal repression) for (promised) security, long before an »actual crime« might even be committed. In this regard, the criminalisation of endangerment and risks only nomotechnically solves the issue of »actual« vs. »potential« crimes – in essence it merely creates a normative fiction of pre-crime crimes, whereas in reality actual crimes do not exist at all. The starting point of criminalisation has clearly shifted away from the guilt of having committed a crime, to the mere dangerousness of potentially committing a crime, which potential as such is purely hypothetical and beyond the grasp of empirical proof. Such shift raises fundamental criminological and sociological questions, just as it highlights our obligation to process and shape this shift. The change of paradigm from post- to pre-crime also makes one wonder about the current and future role of criminology. It makes one wonder about criminology's capacity to adapt and its willingness to take on a transdisciplinary lead role in scientising or even criminologising the pre-crime era. In the end it also makes one wonder whether such an engagement would be scientifically justified.

Keywords: Concept of guilt, dangerousness, liability, pre-crime, transdisciplinarity

Zusammenfassung: Kriminalpolitisch gesehen leben wir zweifelsohne bereits seit geraumer Zeit in einer Ära, die von Pre-Crime gekennzeichnet ist. Ob uns das nun recht ist oder nicht, die Zeiten haben sich gewandelt und ebenso die generelle Einstellung zu den Konzepten von (krimineller) Schuld, Gefährlichkeit und Verantwortlichkeit. Während einst noch ein breiter Konsens bestand, dass strafrechtliche Repression – zumindest vom Prinzip her – in einer ausschließlichen Post-crime-Manier durchgesetzt werden soll, besteht heutzutage ein vergleichbarer Konsens über das Eintauschen von Freiheit (vor strafrechtlicher Repression) für (versprochene) Sicherheit, weit im Vorfeld der potenziellen Begehung einer »tatsächlichen Straftat«. Diesbezüglich löst die Kriminalisierung von Gefährdungen und Risiken das Problem »tatsächlicher« vs. »potenzieller« Straftaten nur rein nomotechnisch – im Grunde erschafft sie lediglich eine normative Fiktion von Pre-Crimes, während in der Realität gar keine tatsächlichen Straftaten existieren. Der Anknüpfungspunkt für Kriminalisierung hat sich eindeutig weg von der Schuld für eine begangene Straftat hin zur bloßen Gefährlichkeit einer potenziellen Straftatbegehung verschoben, wobei dieses Potenzial als solches natürlich rein hypothetisch und außerhalb der Reichweite empirischer Beweise bleibt. Solch eine Verschiebung eröffnet grundlegende kriminologische und soziologische Fragen. Gleichermaßen betont sie unsere Verpflichtung, diese Verschiebung zu bearbeiten und zu formen. Der Paradigmenwechsel von Post- zu Pre-Crime macht einen zudem nachdenklich im Hinblick auf die aktuelle und zukünftige Rolle der Kriminologie. Man macht sich Gedanken über die Anpassungskapazitä-

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***Corresponding author: Dr. iur. Anna-Maria Getoš Kalac, LL.M.,** Associate Professor, University of Zagreb, Faculty of Law (Balkan Criminology; Violence Research Lab), Trg Republike Hrvatske 14, 10000 Zagreb, Croatia, E-Mail: agetos@pravo.hr

ten der Kriminologie und ihre Bereitschaft, eine transdisziplinäre Vorreiterrolle in der Verwissenschaftlichung oder gar Kriminologisierung der Pre-Crime-Ära zu übernehmen. Schließlich fragt man sich, ob solch ein Engagement wissenschaftlich gerechtfertigt wäre.

Schlüsselwörter: Schuldprinzip, Gefährlichkeit, Verantwortlichkeit, Pre-Crime, Transdisziplinarität

1 Introduction

Reflecting on the conference motto *»Say, What's Your Take on Criminology?« – Criminology in Dialogue with its Neighbouring Disciplines*, and on the topic of *Guilt, Dangerousness and Liability from a Criminological and Sociological Perspective*,[1] one quickly finds oneself contemplating about the discipline of criminology itself. And due to still considering oneself a »young researcher« in need of double-checking everything, the next moment one finds oneself reaching for the shelf with the »big books«. Surely, in one of them there is a commonly accepted concept or definition of the terms »guilt«, »dangerousness« and »liability«, which might mark a solid scholarly starting point for further explorations into the topic. After having reread a dozen of the »big books« in search for exact answers, one finds oneself questioning even the most basic stuff one thought to know, while seriously wondering about the meaning of life and one's own purpose. At some point, one is finally rescued from remaining in this contemplating limbo indefinitely by the threat of an approaching deadline, and luckily, the deadline also makes one recall words of wisdom from the »small books«: »A good researcher must be able to set himself limitations and produce something definitive within these limitations.«[2] Following Eco's words of wisdom, one eventually focuses on several »small questions« instead of relapsing into grand contemplations about the diversity or even substantiality of criminology, its questionable disciplinary autonomy or purpose,[3] its interdependent relationship to/within sociology,[4] or its »unholy alliance with criminal policy«[5]. In that sense, the paper at hand, just as the plenary speech, after briefly discussing the shift from criminal policy to risk and security management, from guilt-focused criminal law to security-focused (criminal and public) law, focuses on four small questions:

1. How do we conceptually and practically handle guilt, dangerousness and liability?
2. What is our role in the pre-crime era?
3. Is the principle of guilt nowadays still convincing?
4. Should we, besides asking our neighbouring disciplines »say, what's your take on criminology?«, perhaps more frequently ask ourselves »say, what's our take on our neighbouring disciplines?«, and move more vigorously towards transdisciplinarity?

The discussion of these four questions will clearly not solve any of the grand mysteries of criminology. However,

1 This paper is based on the plenary speech titled »*Schuld, Gefährlichkeit und Verantwortlichkeit: Zum Umgang mit Post- und Pre-Crime … Adapt or Die!?*«, presented at the 2019 biannual conference of the Scientific Association of German, Austrian and Swiss Criminologists (KrimG) in Vienna. Being literally as well as academically speaking raised in Germany, while ending up teaching and researching mainly in Croatia, which still lacks a criminological community or society, the KrimG conference participation has proven to be far more than »just« a tremendous honour – it has provided me with a lasting sense of home and warm welcome in the German speaking criminological community. For this, as well as the many invigorating discussions we had, I thank my colleagues from the KrimG and the conference participants. I would also like to thank the Board of the KrimG for kindly inviting me and in particular Prof. Dr. Christian Grafl for our insightful discussions and his kind encouragement, just as I would like to thank Prof. Dr. Dr. h.c. mult. Hans-Jörg Albrecht for pointing out helpful readings and sharing his thoughts on some of the questions I kept struggling with.

2 Eco 2005, p. 28.

3 Reflecting on the current state of art in criminology by analysing experimental vs. critical avenues of research and theory, Kunz skillfully brings it down to one observation: the discourse is still focused on either following or questioning a program rooted in Lombroso's perspective of countering individual dangerousness with means of criminal law. See Kunz 2017, p. 369, or Kunz 2015.

4 This is not to say that these are not fundamentally important or highly intriguing questions, but simply acknowledges the fact that their processing and answering would go far beyond the constrains of a plenary speech or this paper. When it comes to »sociology's take on criminology«, one quickly realizes that much on the topic has already been written quite some time ago in a far more skillful manner than oneself might hope to achieve. See, for example, Akers (1992) or Krasmann (2007b, p. 156), who notes that the »delinquent« is in fact a scientific artefact, appropriated by criminology, which around the end of the 19th century managed to establish itself by elevating a policing matter to a scientific task and by providing a social problem with a catchy name. Much of Akers' discussion on »sociology's take on criminology« comes extremely close to »criminal law's take on criminology«, as well as the relationship between criminology and victimology. See, for example, Fattah 2008. Finally, one is reassured that there is no such thing as a unified sociological or criminal law perspective on criminology, as striking differences mark the path of criminological development and institutionalisation across the globe, just as different schools of thought within these disciplines take differing viewpoints on the issue. Getoš 2009.

5 Fattah 2008.

if it manages to raise at least some good questions, then the goal of the paper at hand will have been reached.[6]

Clearly, our demand for security has dramatically increased in recent decades, as has the field of security research (and its public funding).[7] On the supply side, this demand for security is being met by the idea of being able to forecast and manage risks.[8] Or is it the other way around? Are we perhaps demanding more forecast and management of risks, because we have been supplied with (the promise of) more and more security? Does it even matter which came first: the chicken or the egg? Be it as it may, we are living in much safer times and in many parts of the world face far less existential risks than some hundred years ago.[9] It appears as if the less risks and concrete dangers we actually face, the less our ability to tolerate any notion of insecurity or threat or even the risk of it.[10] Or, to put it differently, just as alcohol tolerance is increased by regular drinking, security tolerance seems to be increased by regularly being safe.[11] We have gotten used to, perhaps even addicted to security and can't help ourselves to crave for more of it.

Criminology has, since its very beginnings, played an active role in shaping (the idea of) security. It has been searching for causal chains in criminal behaviour and thus continues feeding the hope about the predictability of crime.[12] Risk-focused concepts of criminal and (public) security policy,[13] predictive policing and crime forecasting,[14] pre-crime (crimes) and pre-emption of »would-be-criminals«,[15] or enemy penology (*Feindstrafrecht*)[16] reflect a well-known shift of paradigm that has long entered into practice, with a clear tendency of further evolution. In the face of unrealistic security and risk expectations, when demanding »absolute« security (despite the practical impossibility of its occurrence), while refusing to accept any risk of crime (or recidivism), such practices inevitably result in harsh punishment and influx in imprisonment.[17] Eventually, such practices also produce »more crime« and »more criminals« in the sense that they criminalise the fiction of pre-crime.[18] Neither is the briefly sketched development essentially new, nor has it gone undetected by criminological or sociological research and reflection or well-founded criticism. However, it appears as if both disciplines are somehow reluctant to take on their social responsibility not only to investigate, understand and criticise, but also contribute to this development. In this sense the paper at hand hopes to contribute to, rather than criticise, this change of paradigm.

6 It should be noted that at least the plenary speech, or to be more exact the discussion that followed some of the questions it managed to raise, provided ample food for thought. This should be attributed primarily to the conference organisers' excellent choice of plenary topic and the brilliantly presented differing perspectives in the preceding plenary speeches by Henning Radtke, Krzysztof Krajewski, Niels Birbaumer and Daniela Hosser, covering criminal law, neurosciences and psychology.

7 Within the European Union (EU) civil security research was first acknowledged as a separate field of inquiry in the 7th Framework Programme for Research and Technological Development (FP7). This does not mean that prior to FP7 civil security research did not take place (see e.g. the HUMSEC project funded within FP6: www.humsec.eu), but highlights how swiftly and vigorously it has grown from a multi- and interdisciplinary coordinated research action into an independent and full-fledged transdisciplinary research priority. Between 2007 and 2013 the EU provided a total of 1.4 billion Euro of research funds for the thematic focus on »security«, followed by 1.7 billion Euro as of 2014 within Horizon 2020 for the challenge »secure societies«. Source: https://www.sifo.de/de/europaeische-sicherheitsforschung-1720.html.

8 On security and risk and their apparent incompatibility see for example Grafl 2013.

9 Grafl 2013, p. 5.

10 In contrast to a concrete or actual danger, risks are an »artificial entity of calculation«. Marking crimes and criminals as risks »entails detecting them through probabilistic operations. The basis for these is a statistical collectivity, a subpopulation. In contrast to dangers, risks can therefore be identified independently of the presence of a prospective perpetrator.« Cit. Krasmann 2007a, p. 306.

11 On the matter of *being* vs. *feeling* safe and the fictivity of »fear of crime« as a stand-alone phenomenon outside the framework of general fears and feelings of insecurity, see e.g. Getoš & Giebel 2013 and 2012. On the generalisation thesis see esp. Hirtenlehner 2006.

12 See Kunz 2015, p. 183.

13 An excellent example of how this new paradigm of security policy also shapes the research landscape is the rather recent inclusion of public security law under the same roof with criminology and criminal law at the former Max Planck Institute for Foreign and International Criminal Law in Freiburg – now called Max Planck Institute for the Study of Crime, Security and Law, with the proclaimed goal of its research now being to »provide national and supranational criminal policy solutions for the fundamental challenges of our time«. Cit. https://csl.mpg.de/en/.

14 One can distinguish the two by arguing that *forecasting* is objective, scientific, and reproducible, while *predicting* is subjective, intuitive, and nonreproducible. Perry, McInnis, Price, Smith & Hollywood 2013, p. xiii.

15 McCulloch & Wilson 2015.

16 See Krasmann (2007a) for a »Foucauldian perspective« on »criminal law for enemies« (*Feindstrafrecht*) and alike tendencies in security policies »as a renaissance of sovereign power in the name of population management«, and Jakobs (2004) on enemy vs. citizen criminal law.

17 Grafl 2013, p. 10.

18 On the social and cultural construction of crime and its effects on incarceration, see foremost Christie 2004.

2 On Conceptually and Practically Handling Guilt, Dangerousness and Liability

In determining the topic *Guilt, Dangerousness and Liability* for the KrimG 2019 conference, a certain criminal law perspective must have been behind it. Such a perspective is also well reflected on the conference webpage, where an increase in punitive criminal law developments and the challenge of emotional and polarised debates around it is problematised, before calling upon criminology, as well as other disciplines engaged in the study of security and crime or deviant behaviour, to provide for rationality and knowledge on the matter.[19] I had the same criminal law perspective in mind[20] while reflecting on the matters of »guilt«, »dangerousness« and »liability« and looking into their »criminological« conceptual framing and practical handling. Obviously, all three concepts are normative transplants into empirical reality and have proven to be quite difficult to grasp conceptually outside the framework of (criminal) law. As such they pretty much escape the possibility of empirical detection or study. Hence, criminology has thus far provided for no systematic body of research on such concepts or the dogmatical components of the general part of criminal law.[21] Particular conceptual perspectives might at best be extracted from different theoretical criminological approaches (e.g. rational choice or neutralisation),[22] but none of these approaches provides for a coherent conceptual framework that might transpose normative constructs such as guilt, dangerousness or liability into empirical and therefore criminological reality. Fundamental criminological core issues are still predefined by normative constructs.

Criminology's dependence and reliance on normative concepts is self-evident. Thus far criminology was not able to successfully tackle the pitfalls of simply translating »normative language« into »empirical language«, of trying to teach criminology to speak »normativish«, instead of teaching criminal law to speak »empirish«.[23] The lack of an overarching conceptual framework on normative concepts such as guilt, dangerousness and liability, as well as intent or negligence, commission or omission, but also personhood or victim status,[24] to name but a few, typically results in pragmatic practical solutions, which are far from wrong, but surely not essentially correct. In practice, criminological research, instead of authentically determining its subject of inquiry, obsesses over stretching and squeezing its subject matter into normative concepts. We, for example, exclude or include certain offences/offenders/victims, we train our (once perhaps even authentic) criminological subject to speak »normativish« and by doing so (un)consciously bastardise our focus of inquiry. Be it crime statistics or court file analysis, health statistics or forensic reports, self-reports or victimisation surveys, all of them are deeply rooted in their own perception of reality.

So, for example, in criminal law, we commonly perceive poisoning, even if perhaps causing no suffering to the victim, as an aggravating circumstance to basically killing another person. It is an »insidious murder« (*Mord*), even if it is a woman poisoning her physically far superior husband against whom she would never stand a chance in a bare-knuckled life and death fight. Choking the life out of someone that could last for agonising 5 minutes, however, might well be perceived as a »normal killing«, a manslaughter (*Totschlag*). But if the killer was provoked by the victim into a state of extreme rage, then even the most brutal massacre might be perceived as a »less severe case of manslaughter« (*minder schwerer Fall des Totschlags*). And as if such teleological normative constructions were not enough, all »cruelty-killings« are considered, just as painless poisonings, cases of »insidious murder« (*Mord*), whereas »justified killings« or those lacking

19 https://krimg19.univie.ac.at/home/.

20 Admittedly, such criminal law perspective is not a matter of choice, but deeply rooted in a legal and criminalistic background, thus daily reinforced due to allocation at a law faculty.

21 Eisenberg & Kölbel 2017, p. 314.

22 Eisenberg & Kölbel 2017, pp. 306–308.

23 Getoš Kalac & Šprem (forthcoming 2020).

24 We have even managed to successfully avoid such basic questions as who or what should be considered a victim by simply adopting the relevant normative constructs. These are however all but scientific or empirically grounded and sometimes even highly inconsistent. A great example demonstrating the inconsistency of normative victim constructs and consequently their right to protection is the prohibition of slaughtering pregnant mammals in the last third of their pregnancy in Germany. The official reasoning for the 2017 ban literary reads: the unborn animal shall be protected from suffering and pain (Deutscher Bundestag 2017). Now, if unborn mammals are normatively constructed as potential victims of violence, and as such protected from suffering and pain, then a consistent application of such a construct would imply its application to unborn human mammals as well. This is however not the case in Germany, where abortion is generally prohibited, but not in order to protect the unborn human from suffering and pain, but to protect the becoming life as an abstraction (*Rechtsgut: das werdende Leben*). Since the unborn human is normatively not constructed as a person (prior to the start of the birth process), it normatively cannot be considered a victim that would be entitled to protection from suffering and pain. Generally speaking, criminology has not systematically dealt with, let alone conceptually solved such basic issues.

»criminal liability« or »culpability« are normatively not even perceived as violence. Ultimately, none of these normative perceptions sufficiently consider the empirical realities of violence, nor the victims' suffering, but mainly focus on everything else around it. If we were to rank the above cases by their (criminological) realities, the ranking might very well be exactly the other way around. Now, using such social and normative constructs and their classifications as the foundation for criminological research is surely very practical, but does not appear very meaningful, at least not if one aims to study empirical realities, rather than their normative perception.[25]

Traditionally, and much in line with the criminal law perspective on the criminal, criminology approaches issues of guilt, dangerousness and liability from an offender-centred perspective. By broadening the focus of criminological research towards the functioning of criminal justice systems, people's attitudes and feelings about crime, or the process of public opinion building, the traditionally offender-centred medical and psychological perspective is disregarded to the advantage of a stronger sociological and politological viewpoint on crime.[26] The evolving nature of criminology's subject of study inevitably determines the research methods it applies. Just as our study subject shifts away from the criminals and their crimes towards processes of criminalisation and their agents, fearful social attitudes and nexuses with other social downgrading, our research methods shift from medical and individual psychological ones towards sociological, sociopsychological and politological ones.[27] Whether such continuous growth and shifting in subject and further methodological evolution outside a coherent criminological conceptual framework of the very core issues such as guilt, dangerousness and liability, as well as intent or negligence, commission or omission, but also personhood or victim status is scientifically meaningful remains dubious at best. It has however proven to be practically possible and pretty much reflects criminology's predominantly problem-defined nature, rather than a perspective-defined grasp of its subject of inquiry. One wonders whether criminology ought to catch-up on these issues, or whether they are indeed irrelevant.

3 On Criminology in the Era of Pre-Crime and the Obsolescence of the Principle of Guilt

Criminology seems to be still struggling with fully grasping the criminal policy shift from criminal law repression towards preventive security keeping. The traditional post-crime criminology meets an evolving pre-crime criminology.[28] Further insisting on a strictly post-crime perspective in criminology appears to be out of touch with reality and in harsh denial of evident social realities. Though located in a completely different field of interest, the example of *sabermetrics*[29] (baseball analytics or baseball science) comes into my mind. Not that I am a big baseball fan or even understand the basic rules of this highly confusing sport, but I repeatedly watched a great baseball movie and

25 The very beginnings of victimology are a great example for how criminology struggled with the concept of »guilt« and by doing so essentially was forced to take a closer look at the victims of crime. Although we do not attribute »guilt« to victims of crime, probably mainly out of political correctness, not due to scientific reasoning, we do however occasionally (and arbitrarily) mitigate the »guilt« on the side of offenders instead (e.g. *minder schwerer Fall des Totschlags*). Self-report studies and victimisation surveys looking at the dark figure of crime (*Dunkelfeldforschung*) commonly use the denotation of »deliberately« (*absichtlich*) for capturing culpable forms of behaviour and the concept of guilt, although quite clearly this is much closer related to the concepts of intent and negligence, than guilt. One might never have intentionally physically hurt another person, but yet deliberately operated a vehicle and culpably, although undeliberately, killed another human being. Various conceptual criminal law scenarios pop into mind on how to handle »guilt«, but purely criminologically speaking, conceptions of guilt are missing. When reflecting on matters of prognosis, crime trends or assessments of the crime situation, a key indicator commonly is the »dangerousness« of the crime or the criminals, both understood as a normatively predefined severity of the crime (*Schweregrad*) and likelihood of reoffending. In its very essence criminology does not define dangerousness as such, nor the dangerousness of certain types of crimes or criminals, independently of normatively constructed severity. Finally, looking at liability and focusing on the example of children as »criminals«, criminology again provides for no conceptual framework that might deal with liability outside the general discussion of normative concepts of criminal liability. Although comparatively there are tremendous variations in how criminal law handles liability of children in case of »criminal« behaviour, criminology has not provided for its own standpoint on the matter.

26 Kunz 2016, p. 362. According to Akers »Sociological perspectives on crime and other problems are characterized by emphasis on structural or societal conditions that produce lower or higher rates of crime, or on social psychological and group variables in individual criminal behavior. In comparison, the biological theories of crime or other behavior focus on neurological, genetic, and physiological variables, and psychological approaches emphasize emotional disturbance and personality traits.« Cit. Akers 1992, p. 14.

27 Kunz 2016, p. 362.

28 Kunz 2016, p. 364.

29 Bill James in 1980 coined the phrase sabermetrics in part to honor the Society for American Baseball Research and defined it as »the search for objective knowledge about baseball«. See https://sabr.org/sabermetrics.

have been particularly fond of one of its scenes[30] that pretty much reflects the ongoing discussion on pre-crime and post-crime criminology (at least in my mind). Basically, in the movie a baseball club manager realises that the world of baseball has fundamentally changed and regardless of what he does, his club will remain irrelevant, unless he fundamentally changes the way he looks at the game. He hires a young analyst with a background in economics and by relying on statistical analysis in managing his team causes resentment and fury among colleagues, fans and players. He counters with »adapt or die«. Eventually, his approach, although going against »everything baseball is about« and discarding »what scouts have done for 150 years«, proves right and in turn not only earns his team unprecedented success, but also changes the world of baseball completely. In the movie the main protagonist simply realises that the game has fundamentally changed and decides to adapt to it, rather than to remain irrelevant. Criminology might also do well by acknowledging that the »game« has fundamentally changed, with the consequence of having to adapt, or die, or to use Zedner's words, »risk irrelevance«, or »being rendered marginal«, or »even obsolete«. Since »the very subject matter of criminological attention is changing beyond recognition, either criminology must also change or risk irrelevance«.[31] In line with Zedner I would argue that »as the intellectual offspring of the post-crime society, criminology must adapt to meet the challenges of pre-crime and security«.[32]

The principle of guilt, as a social and normative construction/fiction, is basically aimed at limiting the state's monopole of power to punish,[33] it is a protective mechanism of freedom, intended to keep the state constrained in its ability to exercise (penal) repression against its subjects. While this might have been the case »back then«, when the concept of guilt as such had been constructed, nowadays and in light of the pre-crime debate the precept that the law provides for temperance of power seems finally obsolete.[34] Well-aware of all the critiques and quite in favour of an adverse viewpoint on the whole pre-crime development, I however wonder why in criminology we clinch so obsessively onto something that is clearly not only a construct/fiction, but has meanwhile become obsolete as well. Could it be that we uncritically defend certain traditional disciplinary »truths«? And in the case of the principle of guilt even go so far as to defend disciplinary paradigms that are not even criminological as such, but obvious transplants from criminal law and philosophy, and thus teleological in their very essence? In many ways I find myself clinging onto »what scouts have done for 150 years« and demanding for continuance with »business as usual«, instead of adapting to reality or perhaps even questioning whether »business as usual« was meaningful in the first place. Obviously, for criminology this »adapting« would not entail a shift away from post-crime towards pre-crime as its core business, but rather a change in perspective that embraces the idea of actively shaping pre-crime based on facts, rather than (normative) fiction. In this regard we indeed do need to »articulate a fresh ›ethics of security‹ with which to govern its provision«[35].

The challenge with clinging on to the principle of guilt arises out of the normative construction of pre-crimes. If we were to acknowledge that in fact pre-crimes are no substantive crimes at all (since they obviously are not), that their normative construction within the framework of criminal law is simply wrong, then the principle of guilt applies to substantive crimes, and as such is still intact. Clearly, the principle of guilt realistically cannot work with pre-crime constructs. Instead a »precautionary principle«[36] might work quite well, but then such a principle is not to be forced into criminal law that builds on the very idea of guilt. The problem with pre-crime seems to be less the »pre« in it, but actually the »crime« of it, and its teleological construction as a matter of criminal law, rather than security management. Whether and how this problem might be solved seems to be out of reach for (criminal) law (so far), but appears to be a fundamental criminological question.

In essence, criminology deals with harmful human behaviour. Now, if in reality the world around us has changed in a way that no longer only actual harm or the

30 The actual movie is »Moneyball« from 2017, whereas the particular scene in question goes by »adapt or die«. See https://www.youtube.com/watch?v=runhZw_5xjo&t=1s.

31 Zedner 2007, p. 261.

32 Zedner 2007, p. 261.

33 See in more detail Braum 2003.

34 See Krasmann 2007 b.

35 Cit. Zedner 2007, p. 266. After having briefly mapped the conceptual contours of the security society Zedner asks: »If the logic of security is only connected to crime at one remove, what becomes of criminology? In what ways does prudentialism distort or pre-empt the traditional criminal justice functions of pursuing, prosecuting and punishing crime that have historically engaged criminological attention? Do criminologists need a new vocabulary and new disciplinary resources with which to describe and to tackle the problems posed by the pursuit of security? To what extent do the values and principles of the criminal law, process and trial, and the aims and justification of punishment speak to the concerns it throws up? If not, do we need to develop a new normative framework or to articulate a fresh ›ethics of security‹ with which to govern its provision?«. Cit. Zedner 2007, p. 266.

36 See in more detail McCulloch & Wilson 2015.

concrete and abstract threat of harm, but also the mere risk of harm are being considered as harmful, and thus as in need of suppression, then in principle criminology would have failed its very own subject of study if it were not to embrace the pre-crime reality of harmfulness. While criminal law has to be limited to substantive crime (actual harm as well as concrete threat of harm) and stick to the principle of guilt, criminology should broaden its scope and focus on security management that deals with pre-crime (risk of as well as abstract threat of harm) and operates under the precautionary principle. In many ways, criminology might (want to) operate as an epidemiology of harmful human behaviour, and provided that it looks at such an approach outside the dogma of criminal law with its principle of guilt, explore new avenues of research and transdisciplinary engagements thus far neglected.

Though the world of criminology has clearly become more and more complex, more difficult to grasp and partially contradictory, making the discipline reflective of the complexity and contradictoriness of society itself,[37] there seems to be ample capacity for criminological engagement in untangling some of these complexities by rethinking and reshaping their potentially faulty underlying assumptions. Our take on pre-crime for instance is a perfect example:

> «The gap between the real and hypothetical is bridged by countermeasures that produce crime and criminals through performances that give substance to threats. Pre-crime, by widening the gap between acts that are criminalized or targeted for coercive intervention and substantive crime, narrows the gap among suspicion, guilt and punishment, eschewing or hollowing out the presumption of innocence and the beyond reasonable doubt standard of proof in favor of categorizing people as presumptive enemies.«[38]

This very accurate brief depiction makes perfect sense from a normative and criminal law standpoint that builds upon incontrovertibly true principles (such as the principle of guilt) and its applicability to the fiction of pre-crime, not because it makes much sense, but because it is the very fundament the whole standpoint builds upon.[39] Conceptually as well as morally, there is nothing dubious or fundamentally wrong about managing risks and pre-empting the risk of harm. This becomes a problem only when trying to fit or even force it into the realm of criminal justice. It is criminology's task to come up with a more meaningful solution on the matter of allocating and shaping pre-crime conceptually in a much more sensible manner.

4 Criminology's Take on its »Neighbouring« Disciplines: A Case for Transdisciplinarity

Reflecting on the sociology-criminology relationship, it becomes clear that sociology's take on criminology is mainly that of a »mother-discipline« towards one of its specialised fields of study, a speciality, or a sociology of deviance.[40] Whereas sociology is perspective-defined, and thus a discipline, criminology appears to be problem-defined, and thus a field of study, rather than a discipline. While in North America criminology has been and still is closely related to sociology, in Europe and many other parts of the world, criminology has had a similar relationship to medicine, psychiatry, and criminal law, many would argue as an ancillary science, a *Hilfswissenschaft*. Yet, in both instances, criminology has somehow managed to develop its own path, a distinctive identity and considerable autonomy. One wonders whether it was criminology that somehow miraculously emancipated itself, or whether it was the »criminologists« who gradually turned from multidisciplinarity to interdisciplinarity and finally to transdisciplinarity (see Figure 1[41]), perhaps even without making a (conscious) strategic decision on the matter.

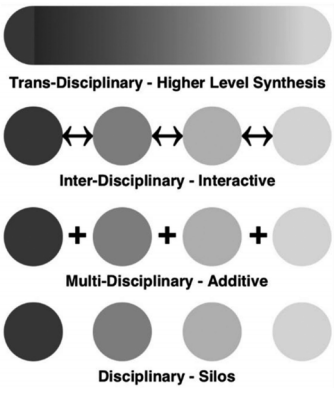

Figure 1: Transdisciplinarity

It seems that criminology's problem-defined nature, in contrast to a perspective-defined quality, has provided it with a distinctively transdisciplinary way of thinking about and engaging with its study subject, long before transdisciplinarity as such has even been discussed. Now, while this might not be very flattering for those among us criminologists

37 Kunz 2016, p. 364.

38 McCulloch & Wilson 2015, p. 134.

39 Clearly, »not everything that looks like a legally protected interest (*Rechtsgut*) can and may be a subject matter of criminal law«. Braum 2003, p. 29.

40 Akers 1992.

41 Put simple, transdisciplinary denotes a holistic approach, while interdisciplinary denotes interactive, multidisciplinary additive, and disciplinary a single perspective approach. Source of graphic: https://www.uts.edu.au/about/uts-business-school/our-research/hub-sustainable-enterprise/anthropocene-transition-project.

who insist on criminology's disciplinary autonomy, such problem-defined nature provides criminology with a unique advantage compared to the rest of our »neighbouring disciplines«, such as sociology, psychology, economics, anthropology, political sciences, or even (criminal) law. While these disciplines (like many others) are predetermined by their very own perspectives on the subject of their study, criminology, by being problem-defined, has in its very nature been set up from the start in a truly transdisciplinary manner.[42]

Now, criminology's failure to successfully operate fully transdisciplinary arises not out of its own disciplinary perspective and the self-limiting effects such perspective produces, or a »blind« reliance on own disciplinary paradigms. This failure has to do with our own disciplinary backgrounds as legal scientists, sociologists, psychologists, political scientists, anthropologists etc. and our apparent lack of struggle to find the best solutions, instead of (unconsciously) »defending« traditional disciplinary »truths«. This becomes clear when for example looking at actual research projects, that are nowadays commonly set up interdisciplinary, but nevertheless still follow a single main disciplinary perspective. Study subjects are discussed from various disciplinary angles and perspectives, yet a higher-level synthesis or holistic solutions are still the exception. Crossing one's own disciplinary boundaries and questioning essential disciplinary paradigms is a tricky task for which most of us have not been trained or even been made aware of.[43] Commonly we still limit ourselves to what Zedner advocates as »raiding neighbouring disciplines« or »plundering of neighbouring social science disciplines« (at best).[44] Criminology's take on its neighbouring disciplines has to transcend such thieving ideas and practices if it wants to fully adapt to the complexity and contradictoriness of today's society and solve such »wicked problems« as crime.[45] While criminology's lack of being perspective-defined might render it deficient in terms of disciplinary autonomy, at the same time its very nature of being problem-defined predestines it for transdisciplinarity, providing it with a unique, yet underutilized competitive advantage. Who knows, perhaps »transdisciplinarity« as such will prove to be criminology's essential and unique disciplinary perspective and, by fully embracing it, criminology might eventually even end up being regarded as a full-fledged autonomous discipline.

42 For a basic overview on transdisciplinarity, its origins, development and current issues see Bernstein (2015), who nicely summarises: »Transdisciplinarity emerged in the latter part of the twentieth century in response to a host of concerns about the pitfalls of specialization and the compartmentalization of knowledge, a globalized economy, shifts in the centre of gravity in knowledge production, the ethics of research, and environmental crisis. It has grown into more than a critique of disciplinarity and has gained recognition as a mode of research applied to real world problems that need not only to be understood in new ways but also demand practical solutions. For transdisciplinarians concerned with justice, sustainability, and ending poverty, war, genocide, hunger, or other such wicked problems, theoretical solutions do not suffice, even though they realize that wicked problems by definition may be impossible to solve. Yet transdisciplinarity is not necessarily applied or practical. [...] What sets transdisciplinarity apart from other approaches and what assures its role in twentyfirst-century education is its acceptance of, and its focus on, the inherent complexity of reality that is seen when one examines a problem or phenomenon from multiple angles and dimensions with a view toward ›discovering hidden connections between different disciplines‹ (Madni, 2007, p. 3).«.

43 Through my Violence Research Lab (www.violence-lab.eu) I initially planned to study »delinquent« violence in Croatia. With the notion of »delinquent« I ensured that in terms of study subject not all and any violence gets studied, but only the criminalised one (criminal offences and misdemeanours). Well into the project implementation and after having struggled for almost a full year with the exhausting task of defining »delinquent violence« for the purpose of our study, it was only by accident that we discovered the true meaning of transdisciplinarity and its implementation in research practice. Due to my criminal law background all the concepts and definitions of violence we kept developing and reshaping always ended up including numerous normative concepts, basically defining which cases to include or exclude from our sample (e.g. justified killings, traffic offences, negligence, attempts etc.). Although I had assembled a truly interdisciplinary team, including researchers from social sciences (criminology, criminal law, sociology, social work, pedagogy, criminalistics, psychology, economy), biomedical sciences (forensic medicine and psychiatry) and interdisciplinary sciences (geography), and thus consider myself rather open-minded, I was simply neither equipped for, nor fully aware of the need to transcend the boundaries of my own »mother« discipline's perspective. It was at one of our countless project meetings, while discussing issues of »negligence« and »intent« and »motive« in our violence definition, when one of our doctors of forensic medicine slightly agitated verbalised his tediousness with our discussion of »normative fiction« as he called it. And I realised he was completely right – instead of defining the reality of the phenomenon we were interested in, we got stuck in defining the normative perception of reality. Obviously, in terms of the subject of our study, we lost the notion of »delinquent« and were able to come up not only with a criminological violence definition, but also with a coherent overarching conceptual framework on the matter. See in more detail Getoš Kalac 2021, pp. 5–11.

44 Zedner 2007, p. 275.

45 A great example in this regard is the advancement of »epidemiological criminology«, which transcends the disciplinary boundaries of both criminology and epidemiology in an attempt to tackle crime as part of a wide range of issues, »essentially, anything that affects the health and well-being of a society«. See Akers & Lanier 2009.

5 Résumé

Coming back to the four small questions posed at the very beginning of the paper at hand, it may be concluded that we have well managed to operate outside a coherent criminological conceptual framework of the very core issues such as guilt, dangerousness and liability, as well as intent or negligence, commission or omission, but also personhood or victim status, to name but a few. This pretty much reflects criminology's predominantly problem-defined nature, rather than a perspective-defined grasp of its subject of inquiry. One wonders whether criminology ought to catch-up on these issues, or whether they are indeed irrelevant? At least, for the sake of terminological clarity one might consider it prudent for criminology to develop its own basic vocabulary, instead of trying to teach criminology to speak »normativish«. Furthermore, I believe criminology's role in the pre-crime era is to criminologise the ongoing developments in security and risk management, rather than to keep ascertaining the faultiness of normatively, thus fictionally, criminalising pre-crime. Conceptually as well as morally, there is nothing dubious or fundamentally wrong about managing risks and pre-empting the risk of harm. This becomes a problem only when trying to fit or even force it into the realm of criminal justice. It is criminology's task to come up with a more meaningful solution on the matter of allocating and shaping »pre-crime« towards »harm reduction«[46]. This is not only a matter of conceptual and theoretical framing, or scientific discussions in academic circles, but likewise a matter of »active information policy«[47] and »science activism«[48]. The problem with pre-crime seems to be less the »pre« in it, but actually the »crime« of it, with its consequent teleological construction as a matter of criminal law, rather than risk management. Whether and how this problem might be solved seems to be out of reach for (criminal) law, but appears to be a fundamental criminological question. By acknowledging that pre-crime is in fact harm reduction and has no place in criminal law, it becomes clear that the principle of guilt is nowadays still convincing and fully intact. While criminal law has to be limited to substantive crime (actual harm as well as concrete threat of harm) and stick to the principle of guilt, criminology should broaden its scope and focus on security management that deals with harm reduction (risk of as well as abstract threat of harm) and operates under the precautionary principle. In order to achieve all this (and much more), criminology ought to adapt to the »game« that has fundamentally changed, and take on a transdisciplinary lead role in criminologising the pre-crime era. This not only includes more frequently asking ourselves »say, what's our take on our neighbouring disciplines?«, while raiding and plundering them. Criminology's take on its neighbouring disciplines has to transcend such thieving ideas and practices if it wants to fully adapt to the complexity and contradictoriness of today's society and solve such »wicked problems« as crime. The 2019 KrimG conference title *Criminology in Dialogue with its Neighbouring Disciplines* proves we are on the right track and will hopefully be only one of many further steps towards fulfilling criminology's transdisciplinary destiny, thereby potentially also earning it the right to be regarded as a full-fledged autonomous discipline.

46 As noted earlier, »harm« in this context acknowledges that the general societal position on what harmful behaviour is has clearly changed and now evidently also includes the mere »risk of harm«, in addition to »actual harm«, as well as the »concrete and abstract threat of harm«.

47 Grafl brings it to the point by calling on criminology to engage itself as an active partner in political decision making and continuously highlighting the necessity of empirically founded knowledge as the starting point of evidence-based decisions. It is useless to bemoan the deficient perception of scientific findings by political decisionmakers, while not engaging in active information policy. See Grafl 2013, p. 11.

48 For a rather successful example of science activism see for example Getoš Kalac 2021.

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