

Crime and Its Structure. An Evolutionary Analysis

(Summary of the Doctoral Dissertation)

The progress achieved in recent decades in research on the functioning of the brain, the adaptive genesis of its individual structures and functions, as well as the mechanisms by which it generates the sphere of mental and behavioral phenomena, has brought the natural sciences to the boundaries of what has traditionally been understood as the humanities and social sciences. Consequently, cultural phenomena can no longer be treated as autonomous and causally independent from the biological and psychological foundations of human functioning. At the same time, the theory of evolution, which constitutes one of the most powerful explanatory frameworks in contemporary science, is being applied with increasing scope and persuasiveness to the analysis of social phenomena.

To date, however, no systematic attempt has been made within the science of crime to apply the contemporary naturalistic paradigm. A comprehensive concept of the development of crime, consistent with evolutionary theory in its Darwinian foundation, was formulated by J. Makarewicz; by its very nature, however, it reflected the state of the natural sciences at the turn of the nineteenth and twentieth centuries. Meanwhile, a fundamental deepening of our understanding of the biological and psychological bases of human action has occurred only in the second half of the twentieth century.

The aim of the present dissertation is therefore to undertake an attempt to reinterpret the phenomenon of crime and its structure in the light of the contemporary evolutionary paradigm. The work is divided into two parts: the first is devoted to an evolutionary analysis of the phenomenon of crime itself, the second to an evolutionary account of its dogmatic structure.

The point of departure for the analysis is the adoption of the philosophical foundations of a non-reductive naturalization of law, grounded in ontological emergentism. According to this view, normative phenomena are emergent entities – ontologically distinct from, yet dependent upon, the processes on which they supervene. Emergence is not merely epistemic in character, but constitutes a real feature of the world.

On this basis, the fundamental components of contemporary evolutionary theory are discussed: the mechanism of natural selection, its extension in the form of inclusive fitness theory, as well as key mid-level theories relevant for social analysis, above all the theory of reciprocal altruism. Particular importance is attributed to two research perspectives: evolutionary psychology and gene–culture coevolution theory.

According to the assumptions of evolutionary psychology, the human mind consists of built-in psychological mechanisms which – analogously to anatomical structures and physiological functions – constitute biological adaptations shaped by natural selection in ancestral environments. The basis of moral experiences and behaviors, as well as of all social rules, is formed by affective processes. Gene–culture coevolution theory, in turn, posits that cultural variation affects survival and reproductive success at least as significantly as genetically determined phenotypic traits, leading to the emergence of a second evolutionary track alongside the genetic one, namely cultural evolution. These two levels interact in highly complex ways.

Functioning within the human bio-cultural niche consists to a large extent in participating in intertemporal exchange relations based on reciprocal altruism. Such relations require mutual predictability of future behavior, which is enhanced by norms (patterns) of conduct. These norms rest on an evolutionarily early, emotional-intuitive foundation of moral experience, and constitute emergent entities supervening simultaneously on mental states (the internal dimension) and social practices (the external dimension). Law represents a particular normative system which, on the one hand, is a product of the evolution of the sphere of “ought” and on the other, itself undergoes processes of selection as part of the domain of objective cultural contents.

From this perspective, crime may be understood – following J. Makarewicz – as conduct that meets with a punitive reaction from the social group. The essence of this reaction lies in intense, public condemnation, exceeding ordinary disapproval. The mechanisms underlying such reactions have deep evolutionary roots. A central role is played here by the instinct of retaliation, which may be interpreted as an adaptation counteracting the risks associated with cheating in relations of reciprocal altruism. Retaliation – both egocentric and non-egocentric (altruistic) – performs functions corresponding to those commonly attributed to criminal law. Importantly, its affective basis has persisted to the present day: despite processes of rationalization and humanization, modern punishment still largely constitutes a form of social revenge. Criminal law thus appears not only as an instrument for protecting the principle of reciprocity, but also as its specific realization in the form of negative reciprocity.

The second part of the dissertation is devoted to the structure of crime. It advances the hypothesis that not only the phenomenon of crime itself, but also the elements of its dogmatic legal structure, have a pre-theoretical genesis. These elements are not merely conventional constructs, but rather attempts to capture real properties of the phenomenon of social retaliation.

With regard to the act requirement, central importance is attributed to the act of ascription of authorship, understood as the creation of a social fact by attributing to a given subject responsibility for a negatively evaluated state of affairs. Such ascription always comprises an ontic, subjective, and social dimension, which justifies the adoption of a sociological concept of the act and, at the same time, allows both of its forms (action and omission) to be treated as equally real components of the human bio-cultural niche.

Wrongfulness (blameworthiness in the evaluative sense) is interpreted as both the measure and justification of a just punitive reaction, directly rooted in the principle of reciprocity. Its function is to correct the consequences of abstract criminalization decisions in concrete cases, thereby enabling the achievement of genuine – rather than merely formal – objectivization of responsibility, through the alignment of the predicted consequences of conduct with deeply entrenched and highly homogeneous intuitions of justice, as well as with the cultural conditions characteristic of a given society.

Unlawfulness is linked to the violation of a sanctioned norm, which is not exclusively criminal in nature but systemic. It protects a legal good by expressing a requirement to comply with socially recognized rules governing its treatment. In the case of acts of particularly evident moral wrongfulness, such norms derive from internalized and externalized social rules which, prior to the state's monopolization of law-making, formed part of the legal phenomenon. Today, these remnants of primary law are coupled, through the enactment of sanctioning norms, with the latter as sanctioned norms.

Numerous arguments indicate that, contrary to the dominant view, the protective function of criminal law is not evolutionarily subsequent to its retributive function; rather, influencing future behavior is an immanent function of retaliation (negative reciprocity).

Punishability is understood as the plane of formal objectivization of criminal responsibility, likewise possessing deep evolutionary roots. Its development is linked to the need to ensure a minimum predictability of punitive reactions, distinct from the predictability of the prohibition itself. The principle of statutory definiteness of criminal offences, understood in an absolutist manner as a mechanical subsumption of facts under a perfectly precise legal text, remains a utopian and unrealized ideal. In practice, even within continental legal culture, criminal responsibility always rests to some extent on justificatory reasoning, referred to in common law as the “thin ice” doctrine.

The traditional opposition – derived from German idealism – between the causal world of nature and culture as a Kantian indeterministic “kingdom of freedom,” which underlies the main theories of guilt, finds no support in contemporary knowledge. Blameworthiness

constitutes an emergent intersubjective entity rooted in the emotional mechanisms of social condemnation. Punishment, as an attack on the offender's status and dignity, performs a function of social control by lowering their position within the network of reciprocal relations.

The evolution of criminal law proceeds in the direction of its gradual humanization, manifested, *inter alia*, in the reduction of elements of humiliation. Their complete elimination, however, would amount to depriving criminal responsibility of its specific character. Criminal law evolves: its transformations are not random, but consist in transitions from lower to higher levels distinguished by fundamental properties that can be ascribed adaptive significance. The driving force behind this evolution is the expanding network of reciprocal altruism, which, together with other cultural products and corresponding forms of consciousness, leads criminal law to move from a world structured by kin selection to one based on more distant social bonds. The evolution of criminal law is also a process of "searching" for an optimal intensity of punitive reaction, balancing the effectiveness of protecting legal goods against the individual and collective costs of punishment, and includes the gradual refinement of the "technology" of penal response.