



**Old and New Discourses:  
the role of Positivist Criminology in the criminalization of anarchism**

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## Old and New Discourses: the role of Positivist Criminology in the criminalization of anarchism<sup>1</sup>

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### Abstract

*This work focuses on the criminological construction of the anarchist as a different kind of being, and on the political and historical denial of anarchist thought. It will be explained how early criminological assumptions of the anarchist as 'the other' engaged with a broader discourse which legitimated evolutionist social and economic inequities. Theories which eliminated any 'political' components of anarchism were initially used by legislators to form exceptional laws aimed at combating this ideological 'enemy', and latterly became a bedrock of anti-terror legislation. The article ends with specific reference to Spain where current repression of certain social movements has similarly been based more on ideas than actions.*

*Este trabajo se centra en la construcción criminológica del anarquista como un sujeto diferente y de la negación científica e histórica del pensamiento anarquista. Se explicará cómo dicha argumentación recorre un discurso más*

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<sup>1</sup> This text is an update of the paper *Criminology and the demonization of Anarchism* presented in the 42th Conference of the European Group for the Study of Deviance and Social Control held in Liverpool in September 2014. I want to thank the reviewers and especially Vickie Cooper for their in-depth reading and revision of the text. I want to also especially thank Chris Powell for his important contributions to this article. Not only he has improved it with very significant background contributions, but his help with the English translation (with great dedication) has been decisive to have an easier text to read. Thanks also to Elizabeth for helping Chris with some Spanish expressions.

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*amplio sobre las diferencias sociales y económicas que legitiman, sobre postulados evolucionistas, la existencia de pobres y ricos. Argumentaré que la deslegitimación del anarquismo se dio por parte de un discurso que defendía cierta interpretación del socialismo más que por una construcción conservadora. Aquellas teorías que eliminaron el componente “político” del anarquismo traspasaron la academia para desarrollar la primera legislación excepcional de lucha contra al enemigo y del posterior nacimiento del anti-terrorismo. El artículo finaliza con una referencia a España y a cómo en los últimos años se ha producido una represión de ciertos movimientos sociales por medio de una criminalización del anarquismo que recupera aquella construcción del anarquismo como terrorismo y donde las personas son detenidas y acusadas más por ser identificadas con unas ideas políticas que con actos concretos.*

### **Old Criminological Discourse**

It is recognized that criminological speech legitimated the colonial enterprise, based as it was on strong social scientific racism and social Darwinism. The enterprise process took place not only in the external *uncivilised space* but also in the internal *civilised space* via the construction of the *other*: wild, demon, uncivilised and finally anarchist.<sup>3</sup>

This process which we can characterize as ‘inward colonization’, arrived in part, when criminology adopted positivism as its dominant epistemological framework. It was not simply a Comtian positivism, but one especially etiological, influenced by Darwinian discourse in which a ‘philosophy of development’ turns into a ‘science of evolution’.<sup>4</sup> The Darwinist discourse, with its further emphasis on the Spencerian sense of the ‘survival of the fittest’, translated evolutionism from biological into social and political terms. This social Darwinist speech came to influence great parts of the scientific and political discourse of the 19th Century, joining a political fight regarding hygienism and

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<sup>3</sup> For a complete analysis on the role of criminology in the construction of the ‘civilised’ and ‘uncivilised’ space see Morrison, W. (2006) *Criminology, Civilisation and the New World Order* London: Routledge-Cavendish

<sup>4</sup> Auguste Comte, in his *Cours de Philosophie Positive* (1830 – 1842, English translation by Harriet Martineau in *The Positive Philosophy of Auguste Comte*, 1853) develops a theory of progress through his “Law of Three Stages” in which the positivist stage is the last (and final) stage. This theory was really an epistemology that influences various disciplines focusing knowledge in the discovery of natural laws and its application to individuals and societies. This theory however was pre-Darwinist, pre-evolutionist.

eugenics and the ways in which it was thought society could evolve, change or collapse. For conservative authors, but especially for what concerns us most here, certain socialists, there were some individuals considered to be an impediment to the development of society, who stymied progress and civilisation. Both criminals and anarchists were, it was assumed, such obstacles. With Cesare Lombroso, criminology was founded in anthropological terms whereby 'criminality' is viewed as an inborn characteristic recognizable through particular anatomical features. According to Lombroso, '[T]he congenital criminal is an anomaly, partly pathological and partly atavistic, a revival of the primitive savage' (Lombroso, 1911: xii).<sup>5</sup> Researching the causes of criminality and differences with madness, Lombroso 'discovered' the 'median occipital fossa'. After conducting the post-mortem of the brigand Vilella in 1871, he maintained that this fossa was situated "precisely in the middle of the occiput as in inferior animals, especially rodents. This depression, as in the case of animals, was correlated with the hypertrophy of the *vermis*, known in birds as the middle cerebellum" (ibid: xv). What was most important of all for Lombroso was that this:

Was not merely an idea, but a revelation. At the sight of that skull, I seemed to see all of a sudden, lighted up as a vast plain under a flaming sky, the problem of the nature of the criminal-an atavistic being who reproduces in his person the ferocious instincts of primitive humanity and the inferior animals. (ibid)

The conclusion, in evolutionary terms was established: the criminal man was not only different, but inferior to humans in the evolutionary chain. Criminals came to be seen as far distant from the average man.

Criminal anthropology was therefore based entirely on evolutionary theory, but not only on Darwin's and Spencer's ideas, but on Haeckel's theory of recapitulation. This theory points out that ontogeny recapitulates phylogeny, which means that the process of evolution of individuals - from the fetus to maturity - is a summary of the evolutionary process of the species.<sup>6</sup> For Lombroso, the fossa not only resembled that of rodents, but also by recapitulation, of three-month old ultra-uterine existence (Gould, 2010: 155). Thus, the concept of recapitulation builds the white man as a superior being to

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<sup>5</sup> All references are the author's translations from the Spanish original.

<sup>6</sup> Haeckel, *Welträthsel*, 94. Cit Landecho, 2004: 152

savages, children, criminals and women.<sup>7</sup> Hence the birth of criminology emerged in openly racist texts, which advocated an active role for the State in artificial selection via policies of eugenics.<sup>8</sup> Garofalo, in what we might call a process which goes from natural to artificial selection, states that:

The typical criminal is a monster in the moral order who has characters in common with the savages and other characters that make him descend below humanity. Why do the majority of humanity have to worry about changing the social conditions of existence in the exclusive interest of a handful of people who have no value? Why don't we just remove the individuals who don't fit? (Garofalo, 1890: 138-139).

In our times we should not punish the children of offenders, but we should prevent them from being born; through the death of offenders, or the perpetual isolation of their sex artificial selection should occur, which would result in the improvement of the race (Garofalo, 1890: 227).

In this way, criminology not only supports scientific racism but naturalizes social divisions. Such a eugenic evolutionary background was also present in Lombroso's various analyses of crime:

Suppressed the basis of divine Law, the only reason remaining for the human justice is the social defence; and if this social defence cannot be achieved only with the kidnapping of the harmful individual, then it is fair to appeal to the elimination of the most harmful beings, that was the origin of improvement, according to the laws of the selection in the struggle for life, made by Darwin (cited in Peset and Peset, 1975: 373)

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<sup>7</sup> The influence of Haeckel's theory on Lombroso can be seen when, in his *Criminal Man* of 1887 "presents his reasoning in a strictly phyletic way. In part 1, on 'Embryology of Crime', he devotes three chapters to demonstrate that what we call crime among civilised adults is normal behavior in animals (and even plants), wild adults and children of civilised cultures. These are triple parallelism of theories of classical recapitulation" (Gould, 2010: 154)

<sup>8</sup> Vid Garofalo (1885), *Criminology*, a book with explicit eugenic and racist characteristics.

### Inward colonization, urban bad life and crime refinement

The *median occipital fossa* revealed by Lombroso resolved an important question, in that the stated indisputable difference between civilised man and uncivilised savage legitimated the colonial domination of the former over the latter. Even though this hypothesis bolstered the white man's superiority, it did not explain the existence of criminals, madmen and other degenerate beings within that race.<sup>9</sup> What is important is that the offender (within the civilised space) was built as a degenerate being. To be able to explain this relationship between degeneration and criminality, the field of criminology found it necessary to refer to the so called 'Italian southern question', which refers to the social, political, economic and cultural differences existing between north and south in the reunified Italy (1859). During this period, the process termed '*Risorgimento*' (resurgence) was the promise that social differences and peace would arrive to the united Italy after the expulsion of invaders and outsiders. In fact, the profound differences between north and south caused major rebellions in the south against the northern Italian army. This process has been studied brilliantly by Gramsci, for whom the nationalist metanarrative on the unification of Italy was a myth. Actually it implied a *revolution without revolution*, since the subaltern classes were not included. The unification of Italy was in fact the colonization by the north of the south in which the racist discourse adopted by positivist criminology played an important role.<sup>10</sup>

The Resurgence inherited the need to explain the 'southern question'. After Italian unification the south remained violent, indomitable, bloodthirsty and presented high crime rates; and scientists such as Lombroso had to concentrate on, and offer solutions for, this state of affairs. It was in this context that the theory of a 'damned race' (*razza maledetta*) appears. Alfredo Niceforo was commissioned to visit Sardinia in order to study their high rates of banditry and delinquency.<sup>11</sup> Niceforo was convinced that "almost all this region is more or

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<sup>9</sup> At the time, especially by the influence of the French theories of authors like Bénédict Morel or Valentin Magnan, doctors, anthropologists and especially alienists, debated on whether the degeneration was a hereditary process, congenital, or if on the contrary was acquired, produced by the environment. They discussed also in a variety of theories which mixed both interpretations. All this, as can be deduced, gave rise to innumerable theories on hygienism and eugenics.

<sup>10</sup> vid Gramsci (1966) [1949] and the references done by Green (2013).

<sup>11</sup> Niceforo published *La delinquenza in Sardegna* (preface by Enrico Ferri) (1897) and, after continuing traveling in the south of Italy, published *L'Italia barbara*

less, in comparison to the northern Italy, a barbaric and primitive state" (Bernaldo de Quirós, 1903: 7). Racist assumptions were categorical. Niceforo explained that differences between north and south were due to the influence of different races. For instance, Arab influence in the south of Italy explained the emergence of organisations for evil and banditry such as the mafia and camorra. The north, on the other hand (as Ferri also recognized) was more civilised and experienced less crime because of its descendants came from superior races such as Germanic or Celtic ones.<sup>12</sup> The 'damned race' justified the fight through the promulgation of the *Legge Pica* law against brigand and southern insurrections.<sup>13</sup> This law legitimized the colonization of Piedmont in the south of Italy at the time when Lombroso was developing his campaign as a doctor within the army. The discovery of the famous *fossa* by the northern doctor Lombroso in the skull of the southern brigand Vilella works as an explanatory paradigm.

Criminology was therefore adapted to develop other racist and classist theories, which addressed the issues of crime in cities and within more powerful classes. Through the theory of the 'bad life',<sup>14</sup> under a strong influence of French degenerationism, it was possible to explain criminality in northern cities as being due to the existence of poorer classes who, because of bad habits, such as alcoholism, were degenerated. What is more, they produced degenerate descendants with malformed brains, liable to engage in bad behaviour and crime. Along with the proletariat were the poor, the vagabonds, the degenerates and the alcoholics. This explanation provided a strong message for the hygienist theory: the 'good', 'obedient' and 'healthy' worker would be more likely to climb the social ladder (Sighele, 1892?; Niceforo and Sighele, 1897; De Blasio, 1905; Niceforo, 1908).<sup>15</sup>

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*contemporanea* (1898). To see a contemporary critic to this theory read Colajanni, 1898.

<sup>12</sup> See Antón Hurtado, 2012; Pick, 1989: 114-15 cit in Morrison, 2012: 73.

<sup>13</sup> Law of 15 August of 1863 of Procedure for the repression of brigandage and the Camorra in infected provinces

<sup>14</sup> See, e. g. Niceforo and Sighele (1897) *La mala vita à Roma*, Bernaldo de Quirós y Llanas Aguilaniedo (1901), *La mala vida en Madrid. Estudio psicossociológico con dibujos y fotograbados del natural*

<sup>15</sup> This theorizing had antecedents to the criminal anthropology that already characterized the criminal as wild and that showed similarity with the dangerous populations of the big cities. This is the case of Mayhew when he indicates that 'It has been observed that in our cities dangerous classes, which are vagabonds and savages, present the same anthropological characteristics as the nomadic tribes,

Niceforo, who was a great defender of the natural differences between rich and poor, felt it necessary to address 'crimes of the powerful'. For him civilisation produces a 'refinement' effect on criminal conduct.

The degree of violent and fraudulent crime in a population group measures their degree of civilization. [...] we would say that a person who lacked the notion of a given society and its culture could be formed by consulting crime statistics. When they showed an abundance of violent crimes and a shortage of fraudulent ones, I could say that it corresponded to a barbarian civilization. Inverted the terms, he would see that it was a nation of modern and evolutionary civilization (Niceforo, 1902: 24).

This putative difference between northern and southern criminality found support in Quetelet's 'thermal law of delinquency', which maintained that whilst blood crimes were more typical across the south, those in the north were more liable to involve property (Bernaldo de Quirós, 1908: 22).

### **The anarchist as the other**

Anarchism and the anarchists also constituted a social problem and thus an object of study for positivist criminologists, keen to ally themselves with forces intent on repression and criminalization. The best known text in this sense is Lombroso's *Gli Anarchici* (1894).<sup>16</sup>

Here, the construction of anarchists as 'other' was facilitated in terms of physical, mental and ideological characteristics. Lombroso referred to physical factors and other features that identify anarchists as other, such as particular forms of slang, lyricism and tattoos etc. Lombroso mentions some different ethical senses as well as 'criminal/mental conditions such as epilepsy' and that

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Cafres, Fellahs, etc., and particularly that on their face there is a great development of jaws' (Mayhew, "London Labour and London Poor", 1847, cit Ferri, 1907?: 53, T. I)

<sup>16</sup> The text was partly translated in English as "Anarchy and Its Heroes", 1897. Other texts of Lombroso on anarchism in English are: "anarchistic crimes and their causes" *The Independent*, 50, 1898 pp. 1670-74; "A study of Luigi Lucheni (assassin of the Empress of Austria)" *Appleton's Popular Science Monthly* 55 (June) 1899, 199-207; "A paradoxical anarchist." *Popular Science Monthly* 56, 1900, pp. 312-315; "The Status of Anarchism Today in Europe and the United States" in *Everybody's Magazine*, 6, 1902, pp. 165-167; Illustrative Studies in Criminal Anthropology: III. The Physiognomy of the Anarchists. *Monist*, vol. 1 (1891), pp. 336-343



anarchist forms of attack display political hysteria and indirect suicidal tendencies.<sup>17</sup> What is more significant is the ideological discrediting of anarchism. Lombroso begins *Gli Anarchici* (1894) by stating that “[I]n these times when the machinery of government is becoming more complex, the anarchist theory, that represents a return to prehistoric man before the paterfamilias, can only be considered as a huge step backwards” (Lombroso, 1894). To exemplify this point Lombroso referred to the case of Joan Oliva I Moncusi, a Spanish anarchist who “placed among the political prisoners by passion, by his not few degenerative characters, attacked the life of King Alfonso XII without any fact explaining such a crime, and less with revolutionary sense’ (ibid: 88). However, the ideological denial of anarchism had political motives which went beyond the simple construction of the anarchist as a criminal and mad being. With such characteristics, Lombroso is able to distinguish between ‘revolution’ and ‘rebellion’ defending – as will be explained later - only social function of crime for the first kind of political actions.

### **Anarchism - the scientific and historical denial**

In 1894 Lombroso, referring to violent anarchist acts, wrote that revolutions and rebellions were two different kinds of actions:

And it is here that the distinction appears between revolutions properly speaking, which are a slow, prepared, necessary effect, even when they come from the most neurotic genius, [...] and rebellions, which are the precipitous, artificial incubation at exaggerated temperatures of embryos that due to this fact are doomed to a certain death. Revolution is the historical expression of evolution. [...] rebellions respond to causes of little importance [...] they are frequent among the least advanced peoples [...] Criminals participate in them much more than do honest people. (1894: 44)

In order to understand the meaning of Lombroso’s words, it is necessary to place them within the context of Ferri and a general socialist discourse amongst contemporary criminologists and politicians.

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<sup>17</sup> Vid Lombroso 1894, caps II, III, V and VI.

Ferri's personal history is significant in this respect. Originally a socialist, he later proclaimed himself a Marxist before ending up a defender of Mussolini's fascist version of socialism which eventually acquired power.<sup>18</sup>

At the end of the 19<sup>th</sup> Century, Ferri was very intrigued by the series of rebellions and anarchist actions in Sicily, which drew forth a repressive response including states of siege and use of military tribunals. He devoted himself to studying Marxist theory and sociological doctrine, publishing a book entitled *Socialism and positivist science (Socialismo and scienza positiva*, Rome, 1894). Ferri came to two important conclusions: first, "that scientific socialism is the logical and inevitable conclusion of sociology, otherwise condemned to remain sterile and impotent" (1907?: 59, T.II); and second, that there are two types of criminality:

There is, in fact, an atavistic criminality and an evolutionary criminality. The first is 'common' criminality, which occurs in the muscular and atavistic form itself, or in the fraudulent, more modern and modified by evolution. The second is socio-political criminality under which, one or other of the two forms tends (in a more or less illusory way) to accelerate the future phases of political-social life (ibid.)

Ferri argues that these two types of criminality in turn determine two types of reaction: "against atavistic crime, there is a universal interest in defence, while, with respect to evolutionary criminality, interest is reduced to the minority of the ruling classes" (Ibid). The latter is what leads Ferri to conclude that the positivist school has the duty to complete the formula of social defence: criminologists should not merely seek to protect society against atavistic crime, but more importantly the positivist school should encourage the ruling class to avoid excessive repression against evolutionary challenges, whether the means might otherwise be exceptional laws or ordinary codes. Ferri's position suggests that criminal repression should not be directed against a 'certain' evolutionary criminality, upon those actions which have an evolutionary meaning and direction. Immunity should be given for instance to the heroes of the

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<sup>18</sup> Ferri and Mussolini were both directors of the Italian Socialist Party journal *Avanti!*. Jiménez de Asúa speaks of Ferri's praises to Mussolini 'considering him "guide and force' that should be conserved by long for the good of Italy'. Ferri, at the end of his life, 'inclined his septuagenarian knee to fascism, eager to reach the banks of the Senate' (1962: 53 and 72).

Resurgence and to those 'scientific' critics of the existing order, most apparently those from his own Italian Socialist Party (PSI).

At that time Ferri convinced Lombroso to join the PSI, and although Lombroso was not especially active in the party, he was clearly influenced by some (scientific) socialist thought, as can be seen in some of his texts. Lombroso's own distinction between 'Revolution' and 'Rebellion' denotes the influence in his thought of the type of Marxism that believed that only workers organisation under a strong and unified political party could bring positive social change. This type of thinking reveals the great contemporary gulf between moderate Marxism and libertarianism, concerning the role of the State. For Marxism, the takeover of the State was seen as the fundamental step for social change towards communist society. Libertarian thought, on the contrary, was clear that the structures of the State, fundamentally repressive, could not constitute an emancipatory mechanism. For the anarchists, the State had to be abolished, not modified or taken over.

The idea whereby some criminality could be 'positive' for the evolution of society was already engrained in Lombroso's thinking about crime. For example, in 'The Man of Genius' (1891) Lombroso and Lashi (1890) explained that degeneration could not only produce degraded individuals but also intelligences above normal. In this sense, the criminal would be below humanity, the genius above. In 'the Social Function of Crime' (*La funzione sociale del delitto*, 1896) Lombroso accepts the role which crime can play in assisting society to evolve.

The title of this work, clearly shows the influence of Durkheim, leading Ferri to say:

When Lombroso speaks of the benefits of crime and when Durkheim, with so much scientific value (who has greatly scandalized the 'normal' sociologists), considers crime as a condition of social health, he makes a statement that, to be true must be based only in the distinction between atavistic or involutive crime (which is always unhealthy and pathological), and evolutionary crime, which is not so unhealthy, although it is always the product of an abnormal personality (1899: 53)

As we have seen in *Gli Anarchici* (1894), Lombroso goes so far as to say that 'revolution is the historical expression of evolution' (p. 44). By defining anarchist criminality as mere rebellion, he puts it at the level of atavistic and involuntary criminality, hence denying any positive social functions whilst simultaneously depoliticizing it. What we can observe here is a re-legitimation of 'political' crime. While it is true that positivistic criminology individualized the causes of

crime, the sociological (and criminological) positivists, whilst generally somewhat critical of the enlightened bourgeois order, essentially justified the social changes which could be implied by them. Also, at a time of strong social conflict and numerous versions of 'socialism', these authors had to distinguish between what was legitimate and what was not. As a defender of a socialism, which excused the bourgeoisie from its power, Lombroso stated the following: "Socialism is considered by foolish politicians (and not few) as a loyal ally of anarchy, being that it is precisely its greatest enemy and it's best preventive" (1894: 196). Finally, the political denial of anarchism was also historical:

We see, beyond the republican and the socialist, who have a just historical and economic reason to exist, the communist and the anarchist, who are and declare themselves the most absolute negation of the state; Even renounce the duties of the citizen, and want to destroy at once the ties that make the human being relatively happy (Lombroso and Laschi, 1890, cited in Ruggiero, 2009: 45).

### **Demonization and repression – the historical fight against anarchist terrorism**

The ideas described above are not merely (pseudo) scientific discourses. The denial of anarchism and the demonization of its defenders also helped support policies and measures for the repression of anarchism. Criminological discourses served as a justification for laws and illegal measures against the anarchist movement (and against workers opposition in general) especially through the construction of one specific figure: the anarchist terrorist. In the late 19<sup>th</sup> Century, during a time of revolt in Spain, anarchists (armed with dynamite and daggers) were demonised as they organised a number of attacks against social elites and political leaders.<sup>19</sup>

In response, the repression of anarchist-terrorism was attempted initially at the *International Conference for the Social Defence against Anarchists* in Rome

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<sup>19</sup> Anarchists succeeded in attacking important leaders in Spain such as the King Alfonso XII (1878), the President Canovas del Castillo (1897), Antonio Maura (1904), the King Alfonso XIII and Queen Victoria Eugenia (1906), again against King Alfonso XIII in 1905 and 1913, and other two presidents: Canalejas (1912) and Eduardo Dato (1921). In other countries they succeeded in attacking the Emperor of Germany, William I (1878), President of France Sadi Carnot (1894), Empress Isabella of Austria (1898), King Humberto I of Italy (1900) EE.UU's President William McKinley (1901), and King Charles I of Portugal (1908).

in 1898, followed by one in St Petersburg in 1904. The latter sought to pass a secret protocol for an international war on Anarchism and although consensus on a firm programme was difficult to accomplish for states involved in major territorial and political disputes, some lines of international co-operation were established. For example, states agreed to improve their exchanges of information (effectively the origins of Interpol) to counter anarchist ideas via censorship of their publications, to curtail public demonstrations and to control information flow describing anarchist actions.

Internationally, the issue was not only debated in political circles but also in the scientific field, especially in criminological forums. Political crime had been addressed in 1885 at the first congress of criminal anthropology in Rome, and at the fourth congress eleven years later in Geneva there was an explicit debate about anarchism. Van Hamel's lecture on 'Anarchism and the fight against anarchism from the perspective of criminal anthropology' instigated a discussion on how society could defend itself against this ideology.<sup>20</sup> Difficulties in reaching international agreements gave way to a wide range of special legislation at the national level to combat anarchism from the 1890's onwards. Most of these laws focused on harsh punishment for bomb attacks, on restricting rights of assembly and expression (including censorship of publications) and the sanctioning of apologists for anarchist actions and beliefs.<sup>21</sup> Alongside such legal means of repression, states built an illegal one based on measures such as anti-escape laws,<sup>22</sup> firing squads, extrajudicial executions, disappearances and torture and general ill treatment. It is important

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<sup>20</sup> And although Lombroso's anthropological theories were widely criticized, it was openly debated by other influential social scientists as Ferri, Garofalo, Lacassagne, Tarde, Dallemagne, Benedikt, Näcke, Galton and Bertillon (Del Olmo 1999)

<sup>21</sup> Law of repression of anarchism of 28 of July of 1894 (France); Law of April 21, 1892, establishing special penalties for terrorist attacks (Portugal); Federal law of April 12, 1894 (Switzerland); Law of August 23, 1887, punishing the provocation to commit crimes (Belgium); Law of 10 April 1883, amending the legislation on explosive charges (England); Law of 9 June 1884 on the dangerous and criminal use of explosive substances (Germany); Laws of 19 July 1894 in Italy: (1) on crimes committed by means of explosives, (2) on apology of crimes and provocation by means of printed matter, and (3) on police measures against anarchists; Spanish laws of 10 July 1894 and 2<sup>nd</sup> September 1896 on attacks on persons or damage to things committed by means of explosive devices or substances; and Law enacted on April 3, 1902 in the State of New York, USA

<sup>22</sup> These laws allowed shooting prisoners that were escaping and in practice permitted the killing of inmates (normally political opponents) by simulating that they were escaping.

to bear in mind when regarding this new wave of repression and persecution of anarchists, the birth of what might be considered 'criminal exceptionalism', where certain repressive strategies are legitimated and targeted not only at specific terrorist 'acts', but at anarchism itself. This is the way in which a double criminal justice system is created: the first, directed to the "normal" criminals. The second, targeted to specific groups of people, the "other". In contemporary criminal theory the "other" is generally called the "enemy".

### **Demonization and repression - the present-day fight against anarchist terrorism**

Political violence, both from and against the State, has been ratcheted up in recent years whereby, in Spain, we are witnessing a re-emergence of the historical attacks on anarchism - one that is based mainly on police constructions and media inventions that have generated moral panics that could be termed as 'Anarchophobia'. While present day conflict differs from the political and social context described above, these social conflicts and systems of repression have been accentuated and crystalized in recent years, characterized by increasing austerity and dispossession.

In recent years the ghost of anarchism has been reborn in the media, in Spain. A renaissance which links anarchism to terrorism within a language of dangerousness. This is how since 2013 we witnessed the rise of police operations with titles such as 'Spider 1', 'Spider 2', 'Pandora', 'Pinata' and 'Ice'. These are macro operations, with high media impact, led by special courts such as the 'National Court' (*Audiencia Nacional de Madrid*): Part of Spain's criminal exceptionalism rests on the fact that the conduct of terrorist investigations is carried out centrally from the National Court of Madrid, a special court heir to the former Franco's Public Order Court. What is more striking is the language used in police and court reports and by the media.

On October 2, 2013 a small bomb exploded inside the basilica of Zaragoza where a person was injured. The investigations resulted in the arrest of two people identified as anarchists. The charge maintained that "from the rich material obtained from the accused individuals, one can deduce an anarchist ideology, hardly compatible with the beliefs of the Catholic faith or an interest in sacred art" (Garcia, 2015). The two detainees, of Chilean nationality, provided the pretext for *El Pais* (probably the most influential newspaper in the country) to carry the headline 'Anarchist violence back and forth between Chile and Spain'. The article reads that "The police say that the relationship between

anarchists in both countries is more than intense” and displayed a photograph of ‘the ninth Barcelona Sample of the anarchist book’, which was found in the home of the detainees. The photograph, selected by the author of the article, Jorge A Rodríguez as an indicator of criminality or dangerousness, was taken from the police report, used as ‘evidence’ in the case (Rodríguez, 2013a). The article, an example of colonial journalism, concludes that “Chile, more than 200 bombs later, has not internalized this as terrorism, according to journalists of that country and sources of intelligence” (ibid).

The identification of ‘anarchist-terrorist’ was established in Spain and the mass media began to promote the notion that anarchism was threatening the security of the country: “Anarchist terrorism has been installed in our country, and there is a risk that attacks such as that one in the Basilica [of Zaragoza] can be repeated. This is a priority for the police” (I. Cosidó, General Director of Police). This message was generally established and reproduced within the national media: “Police fear another spike of anarco-terrorist violence” (*El Mundo*: 07/27/2014); “Arrested 15 anarco-terrorists who prepared the attacks in Almudena and El Pilar” (*Efe Agency*: 30/03/2015); “Radiography of anarco-terrorist” (*El País*: 04/11/2015). And also, relating them with financing tactics like those of ETA: “Anarco-terrorist detainees were financed like ETA in herrikos” (ABC: 03/31/2015).<sup>23</sup>

Part of the process of criminalizing the anarchist movement involved claims that there was an ‘organisation’, ‘cells’ which operated at the national level and had links to terrorist groups in other countries. In the immediate aftermath of the events in Zaragoza, the two detainees were accused of belonging to mysterious and hence highly suspicious group at the national level called ‘Co-ordinated Anarchist Groups’ (GAC). That denomination was not accidental. In December 2014 the Pandora operation occurred where the police operated in several cities (especially Barcelona) against the self-managed movement. They entered many places, requisitioning items and arresting 11 people. The arrests were made on the grounds of membership in GAC, identified as a platform ‘with terrorist purposes of a violent anarchist character’. (Garcia, 2015). Three months later, the Pinata operation, also conducted by the National Court of Madrid and directed against the libertarian movement, accused the detainees

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<sup>23</sup> See Jiménez (2016: 5). The herriko taberns (taverns of the people) are meeting points for people mostly sympathetic with the Basque Pro-independence Left. The deployment of the criminal exceptionalism and the persecution of Spanish justice to the so-called “environment” of ETA, declared the herrikos as instruments for the funding of ETA.

of belonging to a terrorist organisation. The first day of the operation concluded with 28 people arrested, half of them being accused of ‘belonging to a criminal organisation for terrorist purposes’. The other half were detained for resistance to searches of 17 places in 4 different cities, most of them squats and/or self-managed social centres (Diagonal, 2015).

The construction of this ‘new’ internal enemy happened to have international links with countries such as Chile,<sup>24</sup> Italy and Greece (the so-called Mediterranean Triangle). According to a statement from the Catalan police (Mossos d’Esquadra), the GAC was ‘committed’ to the postulates of the terrorist organisation FAI/FRI, an international anarchist organisation. Europol also produced a report highlighting these connections. According to European police, the groups operated systematically through the internet ‘to make appeals, publish demands, organize campaigns and extend the principles of their ideology.’ Anarchist movements have denied the existence of any triangle and blame Europol for using terrorism and the notion of outsider collusion as a pretext for imprisoning activists (Terradillos, 2013).

From the case of Zaragoza, accusations based on some sense of peoples assumed adherence to anarchist ideology, were consistently repeated. The Pandora operation of 2014 spoke of the use of a secure mail server, a few meeting records, and possession of the book *‘Against Democracy’* as evidence of belonging to a platform that constitutes a “meeting point for violent groups with terrorist ends” (Garcia, 2015).

In the context of social protests over austerity measures, the struggle against and repression of the enemy within went a step further in linking anarchist groups with other protest groups. As early as April 2013, a report from the National Police pointed out that anarchist groups would be influencing others, rendering them more violent: “Police forces are on alert for the increase of anarchist groups in our country. They have infiltrated social movements such as 15-M [indignados], the protests of the miners or social platforms against labour reform or education and health cuts” (Jiménez, 2016: 3). A major national radio

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<sup>24</sup> A day before the Pandora operation (15.12.2014), the Home Offices from Spain and Chile signed a ‘reinforced cooperation commitment to combat anarchist terrorism’ through ‘an active exchange of information’ between the police forces in both countries (Jiménez, 2016: 4)



station stated that “Social movements such as the 15-M are the ideal breeding ground to consider that we are in an expansive period of the anarchist activities” (*ibid*). As Jiménez observes:

The news, [...] adds that “one of the last meetings organized in our country is a series of conferences held between January 16 and February 4 with Greek activists. Meetings were held in Ciudad Real, Sevilla, Cáceres, Burgos and Barcelona”. These are five of the cities that hosted the two Greek activists who were invited by the Platform against the Privatisation of the Public Health System in Madrid (2016: 3).

The construction of the anarchist-terrorist/anarchy-terror configuration constitutes a new moral panic (but based on old positivist discourses of anarchists and criminality), where the criminalization of social protest against austerity and government cuts is reinforced by the connection to anarchist terror.

Similar to the State’s response to anarchist attacks of the last century, present day political discourses against anarchist-terror also led to key amendments of the law. Spain is now characterized as a country with one of the toughest anti-terrorism legislation in the whole of Europe. It maintains a two-way criminal law: one ‘common’ law and one for anti-terrorism, which is typical of criminal law designed to repress enemies of the State. And these enemies can change. It is striking that at the end of the armed confrontation by ETA in the Basque Country, the structure of exceptionalism did not disappear but rather ‘turned’ its actions towards a new enemy within. The construction of the criminal exceptionalism was made step by step under a political discourse of the need to fight ETA (and other terrorist groups such as GRAPO). This is the way in which legal amendments were made, for example amplifying the length the police could have a detainee incommunicado (from maximum 72 hours to 11 days), or not letting a detainee have a lawyer of his/her choice. These measures were always defended saying they were “exceptionally” introduced only to fight terrorism and that will disappear with its end. But, with the end of the armed confrontation by ETA these laws were not revoked. Nowadays we can see how these laws are easily applied to ‘anarchist’ by just linking it with ‘terrorism’.

Another example of how “exceptionalism” can be targeted to different enemies can be seen after the attack against Charlie Hebdo. Whilst all operations against ‘anarchist terrorism’ were being deployed, the attack against Charlie Hebdo took place. After this event, in January 2015 the Spanish

government decided to push through a new 'National Security Law' to (also) fight against jihadist terrorism. The law carries a name that echoes those of the harshest laws of the dictatorship under Franco; and especially those derived from the 'doctrine of national security' of the dictatorships of Latin America during the latter half of the last century. This National Security Law includes new concepts amidst the catalogue of terrorist crimes and reduces the range of criteria by which an action might be considered terrorism. Additionally, it includes a new type of state of crisis termed 'Situation of Interest for National Security' (Garcia, 2015). For example, visits to Jihadist websites are perceived as related to terrorism and hence criminalized. More generally, the very definition of terrorism has been shifted to 'one who commits a terrorist crime', regardless of whether one belongs to an actual terrorist organisation (Garcia, 2015). So, for an act to be legally recognized as one of terror, it is not necessary that it be produced under an organisation seeking to subvert the constitutional order. For the terrorist label to be invoked, no organisational connection needs to be demonstrated. The outcome, and probably the purpose, is to generate ambiguity and uncertainty in order to permit more straightforward application of the term to the 'individual terrorist' or the so-called 'lone wolf'.

The cocktail of internal and external terrorist enemies provided the authorities with a good opportunity to make connections. For the Catalan police, anarchist action could be made to resemble that of Jihadism, as the cells and members of both were fictitiously constructed as related (Garcia, 2015). For example, by December 2013, a time of alert against the 'return' of anarchist terrorism, *El País* ran an article eloquently entitled: "The anarchist terrorism copies Al Qaeda" (Rodríguez, 2013b). Using such techniques, the State constructs a discourse that targets anarchists as the 'other' and uses labels interchangeably to describe a wide range of different groups, e.g. anarchist, eta-terrorist, Jihadist, immigrant, black young people and so forth. Not only does this ensure that anarchists are excluded from normality and 'othered', but further allows the State to use same repressive forces to criminalise them.

## **Criminology on Trial**

Criminology's adoption of positivistic philosophy led to the establishment of crime as a natural and social fact, linked to certain inferior or degenerate individuals. This reasoning, in explaining crime as something determined, had as a clear consequence the justification of social inequalities. The bourgeois revolution responded to the existence of social inequalities by the overthrow of divine and monarchical powers and the classicist criminal justice model. Positivism represented a response to the bourgeois position. Its explanation of social differences justified continuing differences as a product of nature, thereby legitimating the domination of the powerful, and the prophylactic control of the poor.

In terms of political violence, criminological theory served to give scientific support to the police and sustained a judicial construction of an anarchist enemy whose danger rested in the simple fact of being anarchist. In an era of amplified social conflict and where the labour movement had been organized into different groups of resistance (more or less radical, or violent, or institutionalized), the defence of bourgeois social order was somewhat of a challenge. Beyond the construction of the criminal as an inferior being, the scientific discourse led to de-legitimizing ideologies. In such a sense, anarchism and anarchists represented the barbaric past - the wild and the untamed - compared to the civilised. Theirs was a 'crazy ideal' with no political sense and indeed one carrying great danger. Once the diagnosis was made, criminology, as an evolutionary discourse provided preventative measures to avert this threat.

This is how criminology was born as a selective science, as a form of scientific (or scientific) apartheid rendering visible some particular types of crime and thereby justifying the means of repression upon their perpetrators. Conversely many other socially damaging acts, (generally those performed by more dominant groups) avoided the criminal label altogether and those which did not were typically treated as relatively trivial.

In this respect, positivist criminology was not only measuring sub-human bodies while the worst colonial massacres occurred, but was also politically constructing the other as different. Even more important, is that criminology bordering (scientific) socialism targeted anarchism and attempted to repress it. Beyond the attacks that the anarchist movement experienced from all areas of the political spectrum, the connection of both founders Ferri and Lombroso to the Italian Socialist Party demonstrates the role criminology has played and

continues to play in its repression of new struggles. Criminology's denial of anarchism as a principled political discourse tended to lead to its broader denial as a serious alternative to the existing social order. At this point, the trial of criminology is not just a historical recording revealing constructions and legitimations of repression, but a contemporary project identifying its continuance of these traits. It is essential that, rather than maintaining a somewhat undignified silence, criminology should address both the harmful acts of the powerful and the State; and should reflect seriously on its own role in justifying those acts. Criminology assisted in 'othering' an ideology and then turned a blind eye to those subsequently damaged by judicial and non-judicial means.

## Conclusion

The criminalization of today's anarchism differs substantially from the form it took in the 19<sup>th</sup> and 20<sup>th</sup> centuries, but this paper argues that comparisons can be made. We see similarities for example, in reemerging discourses that conflate anarchism with terrorism, which further places great emphasis on the anarchist as an anti-social and dangerous individual. The present day wave of anti-anarchist criminalization has to be placed within the broader context of the contemporary political and economic situations. On the one hand, the so-called peace process of the Basque country leaves a legal, police, judicial and penitentiary structure of exceptionalism 'without use'. Although terrorist violence came to an end, the legal structure of counter-terrorism remained intact.<sup>25</sup> A large, bureaucratic specialized structure with numerous employees and vast resources could easily be converted to repress other opponents and resisters. Indeed there was an institutional imperative that such would be the case. They could not have been expected to abolish themselves. It happened that the economic crisis in Spain led to high levels of discontent and large numbers of people engaging in practices such as demonstrating in the squares, picketing corporate offices and resisting evictions. Local protest, general strikes and the threat of Arab springs meant that the anti-terrorist structures, emboldened by the new penal reforms, shifted easily onto different targets.

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<sup>25</sup> The antiterrorist structure had also more evident elements of State terrorism under the so-called GAL (Antiterrorist Liberation Groups) that acted in France and Spain financed by reserved funds of the Spanish State in the years of 1980

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