

**CRITIQUE, CRIMINALIZATION AND THE ONTOLOGICAL STATUS OF CRIME**

by

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A thesis submitted in partial fulfillment of the requirements for the degree of

Master of Arts

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## ABSTRACT

By exploring the content of the journal *Criminology* through a critical content analysis, one notices a tendency to approach the concept “crime” as if it were an ontological reality. Many articles reflect an essentialist perspective that takes “crime” for granted, and assumes that it has an intrinsic and relatively stable essence. Here, crime appears as a governable phenomenon, a social problem to be managed by the State. In effect, this criminological approach serves to legitimize crime control policies that are premised on repressing crime, punishing criminals, and excluding them from ordinary social interaction.

The assumption that crime has a stable essence, however, can be critically analyzed as a metaphysical construction that posits its object as a fixed “being”. According to this approach, concepts appear to have a transcendental essence, unaffected by social contingencies or transformations in society. Through a genealogical examination, however, we notice ruptures within and changes to the concept “crime”, exposing the fragility of this ahistorical understanding. That examination also reveals that crime is inserted in a specific power-knowledge relation, which grants it a certain conceptual stability. This perspective is supported by authors who have approached crime critically and explored its contingency and conditions of emergence in modernity—for example, Robert Reiner (2016), Lindsay Farmer (2016), and Louk Hulsman (1993).

Abstracted visions of crime as a stable being are contested by the contingencies of criminal accusation. Crime is constructed by social rituals that interpret an event as criminal and attribute blame to an individual (or individualized group). There is an emerging body of literature (e.g. Antaki, 2017; Martel, 2017; Pavlich, 2007, 2019) that explores accusation as the triggering

apparatus of criminalization, an entryway to the criminal justice realm. It consists of a process that operates by categorizing individuals, assigning them a fixed identity, and established responsibility in individual terms.

However, based on the critique of crime's assumed stability, we can rethink criminalization and its elements. A genealogical approach to crime allows us to recognize that criminalization is not the necessary response to situations that disrupt social order. There are other possible approaches, other strategies to interpret and respond to these episodes. One example is to reconsider individual responsibility. By admitting collective and social forms of responsibility, we can imagine new strategies to address such events. This thesis invites us, thus, to ponder our ordinary responses to and reevaluate, the ways we as a society deal with situations deemed to be problematic.

## ACKNOWLEDGMENTS

First, I thank my supervisor, Dr. George Pavlich, for his guidance and support through my academic experience at the University of Alberta. Special thanks are owed for his patient and thoughtful supervision of the research that resulted in this thesis. I also thank the members of the defense committee for accepting my invitation to examine my work. Your comments and feedback are greatly appreciated.

I want to acknowledge the support of the university staff, especially from the Department of Sociology. Thank you to all for assisting me with my arrival in Canada and at the University, as well as with other issues during my master's study. I also thank the professors in the department, who contributed immensely to my intellectual and professional capacitation, along with my socialization at the department. A special thanks to my colleagues and friends in Edmonton, who welcomed me and made me feel at home in the city.

I include in my acknowledgments the people in Brazil who were involved in my academic trajectory. I thank professors Dr. Antonio Carlos Wolkmer and Dr. Vera Regina Pereira de Andrade, who encouraged my curiosity and supported my decision to continue my education. Appreciation is also due to the friends met at the Federal University of Santa Catarina for the personal and academic relationship that persists to this day. Last but not least, I would like to express the deepest appreciation to my family and close friends. I am forever grateful for the (emotional, intellectual, and material) assistance in these intense academic years.

This thesis is the product of work and research, but also of a personal journey that would not have been possible without the support of the people here mentioned. I would like to express my sincere gratitude to everyone who, directly or indirectly, contributed to this project.

## TABLE OF CONTENTS

<b>INTRODUCTION</b>	<b>1</b>
<b>CHAPTER 1 – CONCEPTIONS OF CRIME IN THE DOMINANT CRIMINOLOGICAL DISCOURSE</b>	<b>10</b>
CONCEPTS OF “CRIME” IN <i>CRIMINOLOGY</i>	13
24	
31	
<b>CHAPTER 2 – CRIMINALIZATION AND CRIME AS A “BEING”</b>	<b>34</b>
“BECOMING”, GENEALOGY AND POWER-KNOWLEDGE	39
THEORIES ABOUT CRIME AS A “BECOMING”: THREE EXAMPLES	46
CRITIQUE OF CRIME’S “BEING”	55
<b>CHAPTER 3 – CRIME AND ACCUSATION</b>	<b>58</b>
CONSTRUCTING INTERPRETATIONS AROUND C	60
CRIMINALIZATION AND ACCUSATION	63
DIFFERENT PRACTICES OF ACCUSATION	72
RETHINKING CRIME	77
<b>CONCLUSION</b>	<b>80</b>
<b>REFERENCES</b>	<b>84</b>

## INTRODUCTION

At first glance, crime seems to be a fact of social life. Its definition is rarely problematized. Common ideas portray crime as wrongdoing, as a violation of criminal law, or as a disruption of the public order. Behind that apparent consensus, however, lies ambiguity and dispute regarding its meaning (Reiner, 2016, pp. 18–19). The idea of a public wrong, for example, involves a vague understanding, lacking a substantial definition (Duff, 2010, p. 18). Most often though, we encounter legalistic views that conceived of crime as a violation of criminal law (e.g. murder, theft, corruption, and terrorism as a violation of the Canadian Criminal Code or drug possession and trafficking as an offense against the Controlled Drugs and Substance Acts). Such definitions beg this basic question: how do we choose what to criminalize? By avoiding this question, we tend to assume that crime has intrinsic characteristics, something common to all criminal acts making them worthy of prohibition and punishment.

When analyzed critically, however, crime emerge as a contested concept that accommodates different definitions. The way it is portrayed in the news, for example, is different from how it is depicted in the movies, in the presidential debate, in law textbooks, and in everyday conversations (see Garland, 1992; Novek, 2009; Gregoriou, 2012). Despite the differences, crime is frequently understood as a problem in society that must be controlled by the state (Hulsman, 1993, p. 86; see also Christie, 1977, pp. 7–8).

There are multiple ways to approach this common conception of crime in order to understand where it comes from. One possible course of analysis is to look at how crime is described in academic criminological discourses. For Garland (1992, p. 420), criminology is one of several discursive instruments that inform our modern understandings of crime and deviance.

Our conception about crime is informed and influenced by definitions offered by scholars and professionals in the area.

This thesis aims to investigate the concept of crime disseminated by the criminology. Specifically, it explores how criminology defines crime, how it characterizes the concept, and the consequences of this conceptualization. For this purpose, I examined the approach disseminated by an important vehicle in the field, a popular periodical publication that serves as a source of knowledge and information for many criminologists.

It is necessary, first, to acknowledge the diversity of discourses that criminology comprises. Criminological studies aim to develop its objects of study, such as crime, criminals, criminal policies, and correlated institutions. It includes different schools of thought, each with different theoretical influences, approaches, and ideologies (Baratta, 2002, pp. 150–152; Garland, 1992, pp. 408–410). Despite the plurality and heterogeneity of criminology, there is one approach that enjoys a pride of place in terms of repercussion and referencing among peers. Due to its dissemination and impact in criminology, the theories and arguments it conveys influence not only a general academic account but also reaches outside specialized circles.

In order to apprehend how criminology's most influential perspective approaches crime, in Chapter One, I examined the content of the articles found in its main periodical publication, the American Society of Criminology's journal *Criminology*. Journals constitute an important media through which scholars communicate and exchange ideas (Christenson & Sigelman, 1985, p. 964). Due to the difference in influence and reputation, journals can be ranked hierarchically within a given field of knowledge (Garand & Giles, 2003, p. 293). There are different criteria to rank journals; among them, impact factor—that is, the frequency of citation and references to the content of a journal—is considered a popular and well-established parameter for academic

evaluation (Alonso, Cabrerizo, Herrera-Viedma, & Herrera, 2009, p. 22; Rousseau, 2002, p. 419). Based on different measurements of impact—such as the journal impact factor (Clarivate Analytics, 2018), the *h*-index (Scimago Lab, 2018) and the *h5*-median (Google Scholar, 2018)—one can notice that articles in *Criminology* are frequently mentioned in other electronic periodicals. For this reason, the journal is regularly ranked among the top-ranked journals in its field (Clarivate Analytics, 2018; Google Scholar, 2018). The popularity of a journal is also an indicator of its credibility because scholars tend to allude to works that they consider relevant and valuable for their arguments (Christenson & Sigelman, 1985, p. 966). Thus, given its influence and effects in the area, one can conclude that the approach sustained by the journal represent an important discourse in criminology.

To apprehend the approach to crime manifested in *Criminology*, I developed a critical content analysis of its articles. Content analysis is a method for examining the meaning of statements—often used for written media, but also adaptable for verbal or visual data—in order to extract knowledge and understanding about specific phenomena (Downe-Wamboldt, 1992, p. 314; Hsieh & Shannon, 2005, pp. 1277–1278). It is a methodology of inquiry based on analyzing and interpreting selected materials, drawing conclusions from this analysis (Short, 2016, pp. 12–13). This meaning can be either latent and clearly expressed in the text or implicit and hidden—the latter situation demands a more careful and attentive reading of the material (Downe-Wamboldt, 1992, pp. 316–318). Information is extracted from texts through a process of interpreting, coding, and categorizing the data. Accessing meaning is not a straightforward process that results in a consensual conclusion; texts are processed through the cultural and social perspectives of the reader, which allows multiples interpretations. “Multiple meanings are always present in data—there is no right meaning, only the most accurate meaning from a



particular perspective” (Downe-Wamboldt, 1992, p. 319). The verification and validation of the analysts’ inferences are done by returning to the text and scrutinizing the process, taking into consideration their context and frames of interpretation proposed (see Krippendorff, 2004, pp. 19–25, 81–85).

More specifically, a critical content analysis consists of interpreting the material through critical lenses, questioning the assumptions and arguments sustained by the authors. “What makes a study ‘critical’ is the theoretical framework used to think within, through, and beyond the text, and involves a particular critical theory” (Short, 2016, p. 14). It draws on critical approaches to identify issues of power relations and conditions of inequity expressed by the text. This process of problematization allows a political engagement with the content analyzed, offering thus possibilities for different perspectives, moving beyond the “what is” to the “what could be possible” (Johnson, Mathis, & Short, 2016, pp. 216–217). In other words, critical content analysis enables the creation of knowledge beyond the meaning delivered by the text.

Based on this methodology, I analyzed the content of the last five years of *Criminology*. I read carefully the articles, questioning how the authors conceptualize and explain crime. I observed different descriptions and approaches, some explicit other implicit. My analysis indicated that the articles adhere to an essentialist and ontological conceptualization of crime. They characterize crime as a phenomenon with an intrinsic “criminal” substance. Through this perspective, certain behaviors are taken as essentially criminals. Crime is assumed as an a priori reality, existing independently of observations and analyses. It is presumed to have an inherent negative value, being unequivocally perceived by society as an absolute “wrong”. Furthermore, that condition is deemed to be fixed, not influenced by contingencies and interpretations—a position of transcendence that Nils Christie (2000, pp. 21–22) referred to as the “Eye of God”.

Most articles also argue that crime has discoverable causes, reinforcing the notion of an ontological reality—a given activity is deemed criminal regardless of whether someone calls it a crime or not. From this vantage, the ontology of crime is characterized by its stable and fixed essence. Thus, the dominant discourse in *Criminology* rejects the notion that crime is the product of social rituals that attribute specific meanings according to the frames of interpretation (see Hulsman, 1986, 1991)—an approach that will be described in chapters two and three.

Assuming crime as an a priori concept implies in legitimizing policies of crime control and the operation of the criminal justice system. If crime derives from the essence of a behavior, criminalization—the process of redirecting the cases to the institutions of crime control (Millie, 2011, pp. 278–279)—is taken as a logical outcome (see Hulsman, 1991; Hillyard & Tombs, 2008). Since crime is not perceived to be a product of social processes, the choice for a repressive approach is not problematized. In consequence, this approach does not acknowledge the influence of complex and contingent social structures in the process of criminalization—unequal power relations or social hierarchies that make some groups more vulnerable to the repressive effects of crime control than others, for example. Crime repression, thus, is considered an automatic response determined by law (see Pavlich, 2007). In effect, it takes away society's responsibility for injustices and social problems aggravated by our reliance on criminalization (Husak, 2009, p. 14).

As I will discuss below, when criminology accepts a taken-for-granted ontology of crime, it serves as an auxiliary and subservient science that endorses repressive policies of crime control (see Garland, 1992; Hillyard & Tombs, 2008). It provides studies and experiments that inform effective crime control strategies, assisting states in governing these events (Reiner, 2000, p. 72). It reinforces, thus, a repressive approach to managing deviance and disciplining

populations (Garland, 1992, p. 418). Since more opportunities for criminalization leads to more people being captured by crime control institutions, the non-problematized conception of crime has the effect of inflating the criminal justice system (Husak, 2009, p. 17).

The intensification in the distribution of punishment affects disproportionately groups already marginalized in society, aggravating social disparities (Fassin, 2018, pp. 115–118). Wacquant (2009, pp. 197–208) speaks, for instance, of how more strict crime control and imprisonment policies targeted with more intensity the black “subproletarians” in the United States. This policy against crime had the intention of controlling insurrections and to facilitate the implementation of a neoliberal agenda—that consisted of eliminating the welfare programs and intensifying the exploitation of labor. The phenomenon that developed in the late 20<sup>th</sup> century resulted in the overrepresentation of black population in carceral institutions on the one hand; and, its economical impoverishment on the other.

This uncritical understanding of criminalization had the effect, therefore, of deepening injustices and inequality between social groups. The political process that aggravated the social condition of black groups described in the example was hindered by the assumption of crime’s absolute and ontological essence. If certain activities are intrinsically criminal, then crime repression is hardly a problematized response. Crime, thus, becomes a naturalized concept and criminalization becomes a reflex approach, legitimizing the expansion of crime control policies (Hillyard & Tombs, 2008, p. 17). Through this logic, social issues proliferated by the criminal justice system tend to intensify.

Considering the problems caused by an uncritical approach, this thesis aims to criticize this essentialist conception of crime. It intends to debunk the myth of crime a stable concept or as the uncontested response for events deemed to be problematic. By drawing from critical

approaches and theories, I will explore the premises inferred by this ontological notion; how it operates to “create” crime and criminals; and why it is possible to approach these situations differently. In summary, my approach echoes Hulsman’s (1986, pp. 66–67, 1991, p. 690) argument that crime is not an essential reality, a phenomenon that is not subjected to social frames of interpretation.

To achieve that goal, I approach crime through a genealogical analysis. Genealogy proposes an investigation of concepts in order to understand their historical emergence and their influence in our contemporary practices (Koopman, 2013, pp. 17–19). It brings into focus the ruptures and continuities in postulates of thought, exposing thus their contingencies (see Foucault, 1999). In effect, genealogy proposes a critique of transcendental conceptualizations by problematizing unchallenged formulations deemed to be as self-evident (Foucault, 1990, pp. 154–156).

This thesis does not propose an extensive genealogy of the concept “crime”; it offers, however, genealogical approaches to it by drawing on authors who have explored its contingent and historically situated characteristics. The implication of my argument, therefore, is the destabilization of crime. By questioning the foundations that sustain its absolute status, I encourage a discussion about its use to respond to social problems and situations of conflict.

My argument proceeds as follows. In Chapter One, as stated above, I present the findings of a critical content analysis of articles published in *Criminology*. The tendency observed in the journal is to take the question of crime’s essence for granted, assuming it as an absolute reality.

In Chapter Two, I derive from a Nietzschean perspective to argue that the tendency of assuming crime’s ontological status derives from a metaphysical approach. Based on the illusions of unity and permanence of things, society formulated abstract concepts constituted by a

fixed and stable essence, a “being”. This assumed stability of “beings”, however, is contradicted by the constant transformative aspect of the world. Nietzsche supports, therefore, the discontinuation of a philosophical tradition based on “being” in favor of an approach based on “becoming” (Cox, 1999; Nietzsche, 1998). Seeing crime as a “becoming”, thus, implies rejecting the idea of an absolute truth or stable essence; it implies accepting its transformation, its dependence on external factors. Ultimately, it implies a denaturalization of this concept, seeing it not as a universal and ahistorical truth but rather as a process conditioned to contingencies and practices that attribute its meaning. Crime, thus, would no longer be approached as an ontological reality, but an unstable social construction.

Based on this critique of a stable conception of crime, Chapter Three looks at processes that transform everyday situations in crimes. I explore the idea of an emerging body of authors that examined accusation as the triggering apparatus of criminalization (e.g. Antaki, 2017; Martel, 2017; Pavlich, 2000, 2017, 2019). According to this perspective, crime does not exist a priori; rather, it is produced by social rituals that attribute meaning to an event. In other words, it only comes to existence when someone accuses a situation of being a crime. Criminal accusation, thus, consists of a contingent process of calling someone to respond for a crime (see Martel, 2017; Pavlich, 2019). The analysis of criminal accusation, thus, reinforces the critique of crime that constitutes the main argument of this thesis. By exposing crime’s dependence on social construction, it argues that criminalization is not an absolute or necessary outcome of social dysfunctions. It allows, thus, one to rethink crime and its unquestioned postulates. I propose, then, a problematization of individual responsibility as an example of a possible transformation in the way we approach and respond to social conflicts.

This thesis does not intend to offer definitive answers; it does not assert the best way to

deal with harms or wrongdoings; rather, it raises questions and uncertainties about unproblematized postulates. By rejecting assumptions of absoluteness and stability, it proposes new ways to look at and interpret the concept “crime”. It does not imply (at least not directly) a call for resistance to the effects of criminalization; instead, it invites us to approach crime critically, to acknowledge its contingency and the issues occasioned by its taken-for-granted assumptions (see Foucault, 2007, pp. 75–76). My approach, that draws on genealogy, does not argue necessarily in favor or against a postulate but brings complex problems to attention (Koopman, 2013, pp. 94–97). This form of critique, thus, serves as a starting point for possibilities of political action and transformation of injustices (Short, 2016, pp. 15–16). Therefore, based on the problematization of crime’s assumed stability, we can rethink criminalization and consider changes to the way we approach situations of conflict or distress.

## CHAPTER 1 – CONCEPTIONS OF CRIME IN THE DOMINANT CRIMINOLOGICAL DISCOURSE

These are sickening scenes - scenes of people looting, vandalising, thieving, robbing, scenes of people attacking police officers and even attacking fire crews as they're trying to put out fires. This is criminality, pure and simple, and it has to be confronted and defeated.

—United Kingdom's Prime Minister David Cameron, *Downing Street statement on the riots in London and other cities, 2011*

Crime is a concept of great significance to contemporary societies. To characterize something as a crime means to express disapproval, to censure its effects and who is responsible for it (Reiner, 2016, p. 12). Accordingly, crime conveys behaviors and events censured by someone or a group, activities that ought not to happen. This censorship often call for some sort of public response, which is often expressed in ideas of crime and punishment (Simon, 2009, p. 75). It is not surprising that politicians run their campaigns appealing to this collective condemnation of crime (see Simon, 2009, pp. 34–35).

By this logic, crime is portrayed as an object of public concern, a social issue that must be dealt with. It is described as an individualized element that can be discovered and addressed by legal authorities. This construction of crime as a simplified concept draws from discourses disseminated by multiple sources, including mass media (Maratea & Monahan, 2013; Reiner, 2016, pp. 100–103) and politicians (Simon, 2009, pp. 34–35). Academic criminology also plays

a role in this process. It lends a scientific quality to crime, an extent of intellectual rigor and trustworthiness that can not be found in more popular approaches.

Criminology, of course, embraces a variety of theories, ideologies, and opinions (Baratta, 2002; Reiner, 2016, pp. 116–120). It is a plural field of knowledge with multiple interpretations for concepts such as crime and criminality. Like other fields, however, some narratives become more prominent in terms of scholar dissemination and repercussion outside the academic domain (see Garand & Giles, 2003; Rousseau, 2002). This perspective is reproduced in different formats and media. One important vehicle is periodic scholar publications. To identify the concept of crime propagated by an influential discourse among these vehicles, I developed a critical content analysis of an important publication in the area, the journal *Criminology*.

The articles in *Criminology* rely on different approaches to study the phenomenon of crime. For example, Frith, Johnson, and Fry's article "Role of the Street Network in Burglars' Spatial Decision-Making" (2017) defends the idea that crime—burglary in particular—can be described through a confluence of factors such as space and opportunity. To sustain that argument, they conducted quantitative research comparing the data of all residential burglaries recorded by the Thames Valley Police in a ten-year period (from 2004 to 2014) with the road network map for the towns of High Wycombe and nearby Beaconsfield and Marlow in Buckinghamshire, United Kingdom. They analyzed burglars' behavior through a rational choice perspective, arguing that individuals act on a nonarbitrary process of decision-making (2017, p. 345). This perspective suggested that burglars do consider the benefits, costs, and risks of the situation before committing an offensive action. Their hypothesis predicted that offenders would choose their targets based on the ease of access, familiarity with the area, and the potential for encountering passers-by. The goal, therefore, was to "estimate independently how the road



network influences offender awareness of crime opportunities, on the one hand, and guardian potential at particular locations, on the other” (2017, p. 345).

Frith, Johnson, and Fry found evidence in support of their hypothesis, and were able to demonstrate, statistically, that the distance from the offender’s home and travel time predicted the crime location choice significantly; a second influential factor was the presence of passersby that do not reside in the locality (2017, pp. 368–369). In other words, the data led the authors to two conclusions: first, that burglars would tend to choose their crime destination in areas based on easy road access and familiarity; and second, that the presence of local people in the streets have a deterrence effect, while the predominance of nonlocals boosted the chances of targeting. In effect, the results supported theoretical constructs such as the crime pattern theory, the concept of defensible space, and the theory of social disorganization (2017, pp. 368–371).

Although they acknowledge the limitation of using data filtered through police records, Frith and his collaborators make clear statements about burglary: what it is, how it occurs, and what factors may be seen as stimulating or restraining. Waking from this assumption, they traced hypotheses, chose appropriate methods, collected data, analyzed its patterns and trends, presented the findings, and contextualized it within a theoretical framework. The authors offered statistical and theoretical explanations of a “crime” that they observed empirically, thus claiming to reveal the “truth”—or some truths—about this assumed phenomenon.

Implicit in their work, then, Frith et al. examined crime as a fixed and pre-conceived object. From this perspective, specialists could find stable theories based on empirical observation, thereby reflecting a wider trend in the recent issues of *Criminology*. By analyzing these articles, one can observe the dominance of similar approaches and goals. In them, scholars also explore their topics—crime in general, delinquency, anti-social behavior, recidivism,

victimization, or one particular type of crime, for example—with the intention of finding causal relations and categorical explanations, sometimes even suggesting strategies to control them. Most authors rely on empirical data, obtained from State institutions such as police departments, courts, and prisons, and base their argument on a pre-filtered conception of what a crime is (see Reiner, 2000, pp. 75-77; 2016, pp. 84-88).

To understand the approaches that conceptualize crime as a fixed concept, I conducted a critical content analysis of the articles published in the last five editions of *Criminology* (from 2014 to 2018). The methodological approach, as described in the introduction, consisted of examining the meanings expressed in the texts and problematizing them in the light of a critical perspective (Short, 2016). My goal was to examine how the authors approached—implicitly or explicitly—the concept of crime. The findings revealed how criminologists who published in the journal approach crime as a researchable object, with a stable essence, and often with discoverable causes. Thus, through their articles, they claim to present definitive explanations and truths about crime and criminality.

### **Concepts of “Crime” in *Criminology***

*Criminology* is an academic periodic journal published quarterly by Wiley-Blackwell publishing company on behalf of the American Society of Criminology (ASC). Its first edition dates from May 1963 (e.g. Kay, 1963; Newwan, 1963). As described in the journal’s website, “*Criminology* is devoted to the study of crime and deviant behavior. Interdisciplinary in scope, the journal publishes articles that advance the theoretical and research agenda of criminology and criminal justice” (Wiley-Blackwell & American Society of Criminology, 2019). It places emphasis on empirical research, accepting also literature reviews, theoretical works, and

suggestion of further studies.

The journal enjoys a prestigious reputation among the publications in its field. One can measure its influence using metrics of impacts and reach of scholarly journals. One measure is the journal impact factor (JIF), that represents the frequency of articles citations (Faeth, 2019). It quantifies that metric by measuring the total number of citations of material published in the two previous years and dividing it by the number of citable articles. In 2018, according to Web of Science's Journal Citation Report (Clarivate Analytics, 2018), *Criminology* was ranked fourth among journals in the category of criminology and penology, with a JIF of 3.842. Since 2014, the time-frame analyzed in this thesis, *Criminology* has always been in the top four positions in the rank, reaching first place in 2016 and second place in 2015 and 2014. In comparison to other well-positioned publications within the same time-frame, *Criminology* has the highest five-year impact factor: 6.643, while *Trauma Violence and Abuse* has 6.094 and the *Journal of Quantitative Criminology* has 4.497.

Another popular measurement of a journal's performance is the *h*-index. This indicator has the advantage of weighing the number of documents publicized and their impact, which provide a basis for evaluating the relevance a journal has in its field (Alonso et al., 2009, pp. 5–6). It takes into account the amount of articles published, the frequency of citation of the most popular articles, and the number of articles that were not so often cited (Hirsch, 2005). In the Scimago Journal Rank (Scimago Lab, 2018), that considers the three previous years of publication, *Criminology* is ranked fourth among other journals in the category "Law", with an *h*-index score of 122. Because the subject area of the top three journals in this rank relate to other fields of law, *Criminology* is the best-ranked journal concerning crime and criminal law.

In another approach, namely Google Scholar Metrics (Google Scholar, 2018),

*Criminology* occupies the fifth position in the rank of impact in the category “Criminology, criminal law, and policing”, having the highest *h5*-median—median of *h*-index for articles published in the last five complete years—of the journals listed. This means that, despite not being the head of the list, *Criminology* had the best metric in the last five years, keeping a steady position among the top-ranked journals while the other journals fluctuated. For Rousseau (2002, pp. 423–424), a metric that considers the long-term impact provides a better measurement to evaluate the journal’s importance in comparison to others.

Based on these metrics, one can see that the journal is among the most important publications in its area, attracting the attention of reputed scholars and researchers. Its articles tend to have a significant impact on the field and are widely referenced by academic peers. According to Christenson and Sigelman (1985, p. 965), a given journal has a prestigious reputation when it is referred by others and when the articles published are cited by peers, criteria certainly met by *Criminology*. Comparatively, the articles published in *Criminology* are cited more often than the ones in other periodicals, indicating that the journal is considered to be a reliable source of knowledge. For this reason, one might even say that the views and perspectives published by *Criminology* reflect the most disseminated approach in current criminological debates.

Aiming to uncover elements of the conception of crime manifested by the articles in *Criminology*, I critically analyzed the content of the last five years of publications. One hundred and twenty-three articles were published between issues 52 (2014) and 56 (2018). My analysis consisted of the following steps: first, I filtered the articles that did not have “crime” as their object of study; second, I searched for explicit definitions of “crime” in the text; finally, I identified the background factors the authors attributed to “crime” as causes, trends, influence

factors or explanations, coding and sorting them under certain categories.

Starting with the first filter, my analysis found 29 articles that did not approach, directly or indirectly, the topic “crime”. Although not central to my discussion here, they provide some interesting insights about state institutions, media, society, and individual perception about crime-related phenomenon. Koehler (2015), for instance, described the birth, development, fractures, and current legacy of the Berkeley School of Criminology. The author mapped three distinct intellectual strands: “administrative criminology”, “law and society”, and “radical criminology”, each one drawing from different epistemic premises and with different normative contributions to American criminology. Nivette (2016), otherwise, examined the validity of criminological theories that explained the support of vigilantism as a reaction to the weakness or absence of formal justice institutions in “stateless location”. Her geographical delimitation of analysis encompassed the Spanish and Portuguese speaking countries in Latin America. Although referring to a type of crime, Nivette did not theorize the occurrences, distribution or causes; on the contrary, she investigated the conditions through which extralegal punitive violence became, in the public opinion, a legitimate response to wrongdoing. In other words, she does not discuss crime *per se*, as an independent object; rather, she examines the social perceptions surrounding ideas of crime. Her findings suggest that the most significant indicator is institutional illegitimacy, followed by institutional inefficiency, low social status, lack of generalized trust, and an individual’s broader attitudes toward punishment or punitiveness.

Among the remaining 94 articles, only nine explicitly defined the notions of crime that informed the research. Curiously, in all nine articles, the authors considered crime under legal frameworks, as a direct breach of criminal law. For instance, Hureau and Braga’s research (2018) correlated gun violence and gun crime with networks of firearm traffic. For them, the crime of

illegal acquisition of guns is framed through legal parameters, namely, the trading of weapons through unofficial and unrecorded ways, in violation of the law. Similarly, Wells et al. (2017) sought to explain the relationship between a gene called MAOA-uVNTR and tendencies to delinquency. They developed a survey to measure criminal behavior by inquiring about violent and non-violent actions in which the participants had previously engaged in. These actions consisted of violent and non-violent criminalized activities such as exceeding the speed limit, damage to property, and personal injury. In other words, they tested a propensity to criminal behavior based on actions defined as a crime by law. Perhaps the most unequivocal example of this legal conceptualization of crime can be found in Brehm et al.'s article (2016). By examining the topic of genocide in Rwanda, the authors referenced the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. This legal document establishes genocide as a crime of international law under the jurisdiction of several international courts. Genocide is thus defined as an activity that violates the Convention and that evokes international reprisals.

The remaining 85 articles do not clearly divulge their implicit conceptions of crime. Most embrace either legalistic definitions, harm-based ideas, or notions of deviance from social norms or morality. Even so, the authors of these articles hold onto a taken-for-granted conception of crime as basic to their ensuing explanations. In other words, they adopt a predefined definition of crime, an a priori notion that characterizes it as a phenomenon with a fixed essence.

In the last part of my analysis, as explained before, I inquired about the background elements that were seen to shape or determine the notion of crime for each author. Among the texts analyzed, I noticed a tendency to state background causes for crime—either crime in general or one specific type of crime. These articles sought to find external factors that induce the occurrence of crime. From this perspective, the authors argue that crime is affected by

exterior conditions, often supporting that crime control policies should give priority to these root causes. This approach reinforces the notion of a stable essence of crime, considering it an object with a preconceived meaning, independent of society's construction. It means, therefore, that the scholars reject the notion that crime is phenomenon generated by an accusation—when someone calls an event a crime; rather, they approach it as a concept with a self-reliant essence, influenced by determinant factors, not by one's interpretation about the event.

Within the articles examined, the most common causation of crime, presented in 68 of the 94 texts, was a socio-structural one. They specified causes arising from society, interpersonal relationships, economy, the State and its institutions, among others. One example is LaFree et al.'s work (2018), that sought to explain why people are drawn into extreme political violence. Their hypotheses included factors such as education, employment, mental health, previous criminal records, and competition with other groups. From their perspective, political extremism differs from ordinary crimes because of its political purpose; they share, nonetheless, important similarities in terms of the social profile of its perpetrators and their sociocultural characteristics. In contrast, Hoeben and Weerman (2016) tried to explain how unstructured socializing—activities with “a lack of structure, in the presence of peers, and in the absence of authority figures” (2016, p. 243)—relates to a high risk of involvement in delinquency. They suggested, thus, that exposure to opportunities for delinquency, exposure to group pressure, increased tolerance for delinquency, and exposure to delinquent peers are possible explanations to the phenomenon investigated. Their analysis, therefore, relied on peer influence and on socialization processes. In spite of sociocultural or interpersonal reasons, Groff et al. (2015) defended the institutional causation for crime deterrence. They argue that hot spot policing—that is, concentrating police patrols in small high-crime areas—is a promising strategy for reducing the

occurrence of crimes. In support of that idea, they conducted a researcher-practitioner investigation comparing the effectiveness of three different hot spot policing: foot patrol, problem-oriented policing, and offender-focused policing. These examples illustrate a tendency among authors of attributing crime to conditioning elements present in society and its social structures. This approach, therefore, suggest that it is possible to identify causes in our social organization that stimulate behaviors deemed a priori to be criminal.

The second most common factor considered as a trigger to crime is that of the environment, with 15 cases. In these articles, the authors examined the effects of space and its characteristics on the offender's decision-making. Additionally, many of them integrated the environmental with socioeconomic aspects of the surroundings, such as the deterrent effect of guardians or social inequalities between territories. Sampson and Winter (2018), for example, investigated the link between early childhood lead poisoning and adolescent delinquent behavior, measured in terms of parent-reported surveys and official criminal history in Chicago. This study drew upon medical reports to support the connection between lead exposure and cognitive ability, hyperactivity, impulsive behavior, and mental health problems. Lead poisoning is, therefore, offered as a predictor of delinquency and crime. Furthermore, lead has a demographical and ecological component in its circulation: it is concentrated in poor neighborhoods, often in racialized urban areas. The authors suggested thus that lead may contribute to the skewed distribution of the marginalized population in crime. Their findings showed an association between lead exposure and parent-reported adolescent delinquency, but not with official police arrest. Frith et. al. (2017), as referenced before, is an example of authors who tried to show the connection between crime, streets, and people. Likewise, Hipp (2016) proposed a mathematical prediction model of crime events in urban spaces. Inspired by the



general theory of special crime patterns, he provides an equation to predict the amount of crime in a given location, based on estimates of the sorts of encounters of motivated offenders, suitable targets, and the lack of capable guardians.

Thirteen other texts pointed to the offender's emotional and psychological states as relevant causes of crime. Self-control, peer pressure, risk assessment, and rational choice were portrayed as important elements mediating offenders' decision to commit a crime. For Burt et al. (2014), for instance, self-control is the main determinant of individual differences in criminal-propensity. Using self-report measures, they evaluated the changes in self-control patterns based on age among African American youth. Impulsivity and sensation seeking were used as two trait variables to quantify individual self-control. In their interpretation of the findings, the authors suggest that self-control is a dynamic feature that changes throughout life, affecting crime and delinquent behavior. Agnew and Messner (2015), in opposition, argued that the decision to commit a crime is not an automatic response to a cumulative sum of variables; instead, it depends on the offenders' subjective assessment of their bonds to conventional society and social roles. In other words, they suggest that individuals are driven to crime because of their negative judgments of society and their emotional perception of unfairness. When these assessments reach a threshold—that is, when a person adopts a negative impression of the world—crime becomes more likely. Concerning deterrence, Pickett et al. (2018) assert that fear is often underestimated by criminologists, but it holds strong potential to constrain “criminogenic tendencies”. They argue, therefore, that the perceived risk and fear of apprehension are important emotional variables that influence criminal decision-making by ascribing feelings of anxiety and dread of negative outcomes. In summary, these emotions would act as an inhibitor of one's openness to crime and situational offending intentions.

With also nine occurrences, some authors who published in the journal regarded power relations as a plausible cause of crime. Despite overlaps with socio-structural perspectives, the power relations approach offers a more critical stance towards social oppression and power inequalities, especially regarding racism. Some articles focused on institutional discrimination and biased repression. One example is Skeem and Lowenkamp's article (2016), which examined the alleged racial bias of risk assessment instruments in sentencing and corrections. Risk assessment instruments are presented as evidence-based mechanisms that aim to predict the offender's risk of reoffending, serving as an estimation to inform court decisions in the United States. Although risk assessment tools have demonstrated promising results in reducing recidivism, some scholars warn that they disproportionately target race minorities and poor populations. Following the controversy, Skeem and Lowenkamp tested the hypothesis of biased targeting with empirical data. Their interpretation of findings suggests that concerns for racial discrimination in risk assessment instruments are exaggerated, that they can be free of predictive bias if routinely reexamined to avoid predictive bias. Savolainen et al. (2017) approached the matter differently by undertaking a cross-national research about the relationship between levels of patriarchy and gender gap in delinquency. Drawing from theories concerning gender differentiation and social learning, the authors hypothesized that the gender gap can be explained by two correlated processes: on the one hand, patriarchy stimulates offender behavior among young men; on the other, it reinforces gender roles that inhibit offending for women. Therefore, in countries where patriarchy is comparatively weaker, one could expect a narrower gap in gender and delinquency. The data of gender in delinquency and patriarchy was obtained from an international self-reported survey and from a structural measure of gender inequality from the United Nations. The authors concluded that the data are consistent with their hypotheses, either

by less involvement of men or by more involvement of women in delinquency.

Finally, individual characteristics were the least cited factor influencing crime, with six articles endorsing in this approach. Each refers to inherent or somatic conditions capable of affecting one's choice in favor of antisocial behavior. One example is Portnoy et al.'s article (2014), where the authors inspected the relationship between delinquency and resting heart rates. The authors retrieved data from the Pittsburgh Youth Study—a survey undertaken in public schools in 1987 that aimed to document the development young men's antisocial delinquent behavior and risk factors associated to it—and selected the youngest cohort and inviting them to take part of this new study. The participants, now with an average age of 16 years, were examined in psychological and cardiovascular tests. The findings suggest that there is a strong correlation between low heart rate and higher levels of aggression and nonviolent delinquency, mediated by impulsive sensation seeking. Barnes et al. (2014) defend a similar idea in their article. Their text was, in fact, a reaction to an article by Burt and Simons (2014), also published in *Criminology*, in which the authors argued against heritability research. Aiming to disqualify Burt and Simons' argument, Barnes and his collaborators referenced examples of compelling genetic studies that have led to important discoveries in criminology, especially regarding antisocial behavior. They claimed that Burt and Simons' perspective was inspired by politically motivated criticism against biological research in criminology, popular in the 1970s; a decade later, however, genetic sciences became more robust, and behavioral genetic modeling obtained the general trust. Contemporary heritability studies, accordingly, are a reliable source of information about the etiology of criminal behavior. In a similar fashion, Wells et al. (2017), already mentioned before, explains crime via individual characteristics. Inspired by precedent research, they tested the hypothesis that the presence of the genetic component MAOA,

cumulated with external stressors, increases the risk of criminal behavior. Using primary and secondary sources, genetic samples were collected from the participants and tested for the occurrence of MAOA. A self-reported survey was used to test the participants' response to stress and their previous criminal behavior. The results showed a strong correlation between MAOA genotype compounds and stress responsivity, suggesting an increased risk for criminality. For Wells et al.'s, therefore, someone's specific genetic characteristic can influence its tendency towards criminal behavior, especially when in confluence with social or environmental stressors.

Despite the relative heterogeneity of approaches and explanations, it is still possible to identify some patterns in the discourses presented in *Criminology*. First, even though relatively few authors offer an explicit definition of crime, most articles simply take the concept for granted. They assume it to be an obvious and undisputed object. In like manner, many authors do not have crime as their main object, but have similar categories, such as delinquency, antisocial behavior, aggressive behavior, and the like; but they do not offer a clear definition for these concepts. Furthermore, they do not distinguish them from crime or from other more formalized forms of offenses. A second characteristic of the discourse, present in most of the articles, lies in the way that crime is treated as a relatively stable object. Scholars see crime as an independent object, a phenomenon that exists before any person frame it and classify it as such (Hillyard & Tombs, 2008, p. 11). Here, then, crime is understood as something that can be discovered and its causes explained by empirical investigation. Moreover, the pursuit of causes for crime aims to assist governments in delineating policies of crime control and reduction (Reiner, 2000, p. 79). Ultimately, the discourse reflected by the articles examined in *Criminology* renders crime as a problem that must be governed and suppressed.

### **Crime as a Relatively Stable “Being”**

In the philosophical essay “On Truth and Lie in a Nonmoral Sense”, Friedrich Nietzsche (2010) provided a critique of the epistemological paradigm of his time. He denounced the fictitious feature of human knowledge and the arbitrariness of its assumed concepts. Nietzsche (2010, pp. 22–23) argues that a particular intellect and language were necessary developments to the creation of society. The invention of a fixed “truth” settled individual and social conflicts—the “war of all against all” (*belum omnium contra omnes*)—through dissimulation. In consequence, this fixed truth served a pragmatic function in society, establishing what could be known and experienced. Nonetheless, it hindered the “inconvenient truth” because of its detrimental risk for the social group: “So, too, only to a limited extent does man want truth. He desires the pleasant, life-preserving consequences of truth; to pure knowledge without consequences he is indifferent, to potentially harmful and destructive truths he is even hostile” (2010, p. 24). The creation of concepts followed that same rationale, establishing discretionary demarcations as a fixed truth. Human knowledge consists, then, of approximate metaphors of things that appear as fixed and binding ideas. The untamed aspect of truth is, thus, not only rejected but also unreachable.

Nietzsche’s essay proposed that our conception of knowledge and truth rests on arbitrary bases, dictated by convenience and self-preservation. His work highlights the pragmatic effect of holding onto stable notions of truth, distinguishing concepts of “being” from “becoming” (see Nietzsche, 1998, 2008, pp. 264–265). In spite of being written in the context of the 19<sup>th</sup> century Europe, his criticism is pertinent and applicable to some contemporary sciences as well. Thus, as seen above, discourses such as the one carried out by *Criminology* convey an assumption of crime as a stable “being”—not perhaps as rigid as the sciences of Nietzsche’s time, but still a

relatively stable concept.

The first aspect noted in the content analysis was the overall absence of an explicit definition of crime. Although the latter plays a central role in most of the articles, authors rarely expound what they conceive of the concept “crime”. They portray crime as a widespread and consensual idea, exempting any categorical definition. Nonetheless, crime is not such a unanimous concept as presented in the journal. Crime is a contested and conflict-ridden concept but rarely treated as such (Reiner, 2016, pp. 11–13). Behind its apparent unity, there is a continuous debate regarding the normative parameters of punishable behaviors. Different moral and political conceptions, conflict interests, and the practice of social groups tension the dispute of defining what behavior ought to be labeled and treated as a crime. Calling something a crime is a statement of disapproval, of moral rejection. Therefore, the decision to criminalize an action embodies a moral dimension that is not always acknowledged.

Despite that normative irresolution, crime acquires a deep-level agreement on a basic concept, which refers to its legal definition. It prevails, both in popular belief and in dictionaries, that crime is an action that directly violates the criminal law and is, thus, punishable by the state (Farmer, 2008; Horder, 2014; Reiner, 2016, pp. 12–13). This dominant procedural-based interpretation of law, which Reiner (1988, p. 138) names “legal absolutism”, acts as an anchor for the plurality of moral perspectives it can encompass. It pacifies the dispute, forging an appearance of stability and certainty.

Through this illusion, criminal law operates similarly to what Motha (2018) describes as an “archive” of sovereignty. According to him, sovereign power depends on a narrative to validate its violence. Under this premise, law serves as a justification and alibi for sovereignty. Its operation refers to an archival past—past juridical decisions or laws formerly enacted—to

operate in the present and to shape the future. In this perspective, laws constitute an “as if”, a consciously fictional artifice that performs the role of an ideal command based on universal principles of justice. Based on that idea, Motha characterizes law as an artificial categorical imperative, intentionally constructed by societies and directed at practical purposes. Law, for Motha, aims at concluding moral disputes—what he calls the search for a sense (2018, pp. 15–16). In other words, law does not settle definitively the conflicts under its jurisdiction but offers instead an apparent consensus. Nonetheless, it is still a void anchored in a fictional narrative:

The “as if” introduces narrative and fiction to the “core of legal thought. (...) But nothing is presented in this appearance—we cannot experience the appearance of the law as such, we have no “proof or experience of it”. There is no history, genesis, or derivation of categorical authority. What is concealed and invisible in law is the “being-law” of law. (Motha, 2018, pp. 12–13)

Different from Motha’s argument about law, however, the authors of my study of *Criminology* did not acknowledge crime and criminal law as a pragmatic fiction. Rather, the legal perspective—which is present, explicitly or implicitly, in most of the articles—lies in a tendency that sees crime as a reality. It presupposes a concept of crime that takes the aims and means of law for granted, ignoring its irresolute and contested way of operating. Accordingly, crime is assigned a status of an incontestable fact, a phenomenon objectively constituted by the breach of that law (see Reiner, 2016; Hillyard & Tombs, 2008, p. 14) and discoverable through investigative methods (Pavlich, 2000, p. 140).

An influential, even predominant, discourse in *Criminology*, therefore, characterizes crime as a social phenomenon that is not affected by the disputes concerning the law. Most

articles describe crime as an unchallenged fact, that it exists independent of normative discussion regarding its definition. According to these authors, there is some fundamental element in crime (an ontological “crimeness”) that makes these activities essentially criminal. This constitutive element would not allow different readings of that situation—a crime is a crime and nothing else. External factors that could suggest different interpretations— notions such as social perception of harm and wrongdoing, moral standards, and notions of normativity—are overlooked or even disregarded. In effect, crime is granted a relative conceptual stability. It is depicted as something that can be discerned from “lawful” behaviors and studied through empirical methods.

The explanatory hypotheses suggested by the articles—the social-structural, environmental, psychological, power relations, and intrinsic hypothesis mentioned in the last part of the analysis—are examples of the authors’ attempts to discover the causal factors of crime. This etiological endeavor presupposes the plausibility of exploring crime as a predefined phenomenon with a stable essence. In line with the prevailing legal definition, that essence involves any infringement of the criminal law.

Nonetheless, it is important to recognize nuances in the way the authors characterize crime. Not all of them describe it as a fixed and pre-constructed phenomenon, defined solely by law. Some openly recognize, for example, the influence of social processes that define crime and criminals. They admit that there is a contingent dimension of crime, dependent on values shared in each social group and on the social interaction of its members (see, for example, Becker, 1997; Lemert, 1967). Notably, most authors who defend a socio-structural, environmental, and power-related explanation for crime also recognize the influence of social perception. These approaches tend to accept social theories that define crime not an impartial and infallible prosecution of prohibited behaviors, but an outcome of complex processes of social reaction and label



attribution (Reiner, 2016, pp. 13, 31).

One would assume, thus, that these articles would question absolute concepts of crime. However, that is not entirely true. Despite recognizing contingent social aspects, most authors rely on the assumption that there is an objective reality that can be identified as “crime”. They attempt to explore and uncover the “core” of that concept; they treat crime as a fixed and enduring “being”, not as a fluid “becoming” (see Cox, 1999, pp. 169–213; Nietzsche, 1998, pp. 16–19, 2010). By doing so, crime appears to researchers as an object that can be experienced and conjectured through scientific methodology, its “truth” exposed through valid theorems. The proposition of its social construction does not, therefore, run counter to those that present crime as a relatively stable concept, or at least stable enough to be considered as empirically discoverable.

One important consequence of seeing a concept as a stable truth lies in its pragmatic utility. As noted before, Nietzsche criticized the epistemology of his time because of its deceptive effect of elevating the pleasant and feasible face of truth as being the whole truth, while suppressing the truth hostile to a given society. He alludes to the allegory of a complex cathedral of concepts on shifting foundations and flowing water; to avoid crumbling, it must be made of an element similar to a spider web, “delicate enough to be carried away by the waves, firm enough not to be blown apart by the wind” (Nietzsche, 2010, p. 33). In contrast to bees, who build structures with material obtained from nature, humans build their intellectual structures with concepts, a fragile substance fabricated out of their intellect. In this regard, Nietzsche argues that, aiming to keep the cathedral standing, societies are only capable of knowing what is useful and in the interest of the human species (Nietzsche, 2008, pp. 212–214). Partial knowledge, therefore, serves the purpose of instructing our practice and the way we interact with the world.

Transposing that logic to the topic of crime, one might look at influential ideas in criminology and question how these concepts affect people and institutions. We have seen how prominent criminological discourses depict crime as a relatively stable being, with discoverable causes, and defined (implicitly or explicitly) in legal terms. This knowledge informs how people and institutions handle crime.

In recent years, public institutions, especially those directly involved in crime control, have relied on crime as an instrument to manage society and to shape its relationship with the government (Simon, 2009). They frame crime as a social problem that must be confronted repressively, its causes eradicated. Some examples of this tendency are the rise of imprisonment rates experienced in Europe, North, and South America in the last decades of the 20<sup>st</sup> century (see Christie, 2000, pp. 26–38; Davis, 2003, pp. 17–18) and the replacement of welfare programs for even more social management of poverty through punitive methods (see Wacquant, 2009). Ultimately, relying excessively on crime not only had the effect of expanding the forms and intensity of institutional control over society; it also affected how individuals make use of the criminal categories: “When we govern through crime, we make crime (...) available outside their limited original subject domains as powerful tools with which to interpret and frame all forms of social action as a problem for governance” (Simon, 2009, p. 17). In effect, civil society also becomes more dependent on crime and will resort to it more often to respond to their everyday situation.

This growing importance of crime as a regulatory instrument in society derives from the conceptualization disseminated by many academic discourse, including the tendency observed in *Criminology*. To see crime as a stable reality means to assume that all activities seen as a crime are criminal in its essence. In other words, crime is assumed to exist regardless of social

processes of meaning construction. This notion enables crime to stand out as the main narrative in the face of conflicts and dissent. In effect, other forms of interpretation are thus discredited and often not even considered as a possibility. When scholars portray crime in these terms, they reinforce the idea of an intrinsic criminal feature in criminalizable event.

Foucault had already anticipated the effects that uncritical criminology could have in terms of supporting the enlargement of the criminal justice system. He described criminology as one among other sciences born within the scope of the disciplinary apparatus, submissive to the function of rectifying it (Foucault, 1995, pp. 255–256; see also Garland, 1992; Hillyard & Tombs, 2008). For him, thus, criminology is an auxiliary discourse that legitimizes the violence of the crime repression institutions and allows states to establish modern forms of normalizing practices (Garland, 1992, p. 410). To some extent, it has a similar function to the law's archiving function in Motha's theory (2018), as discussed before. Equally, for Foucault, criminology is a form of knowledge that is purely subservient and instrumental to other goals:

One has the impression that it is of such utility, is needed so urgently and rendered so vital for the working of the system, that it does not even need to seek a theoretical justification for itself, or even simply a coherent framework. It is entirely utilitarian. (Foucault, 1980, p. 47)

Thus, when scholars portray crime as a relatively stable concept, they provide to the criminal justice system a powerful instrument to control deviance, administer disturbances of the social order, and, thus, govern society (Reiner, 2000, p. 72). The criminological rhetoric of portraying crime in such terms consists of a meta-theory. It assumes that crime is an uncontested object that can be managed by the state (Hillyard & Tombs, 2008). In consequence, that construction of crime feeds the uncontrolled expansion of the criminal justice system (see Husak,

2009), making way to more invasive ways of surveillance and new mechanisms of social control (Christie, 2000).

Criminology, however, is not entirely limited to the role of an auxiliary and complicit science to the crime control agenda. Critical criminology, for instance, has stood in opposition to “establishment criminology” while presenting a fierce critique of the state’s repressive apparatuses; following it, a myriad of strands of post-Marxist criminology currents have emerged, integrating new radical dimensions to the debate (Reiner, 1988, pp. 147–153). These perspectives have incorporated a critical reflexivity to their theories, inviting researchers to transpose the limits of the most disseminated debates. In doing so, they open new “horizons of possibility beyond the hegemonic present” (Hogeveen & Woolford, 2006, p. 686). In this regard, as we shall see ahead in the thesis, Louk Hulsman (1986, 1991) offered an alternative view to understand this phenomenon. He argued that crime does not exist before the process of “framing” an event as such (1986, p. 71). Crime is thus defined not by law or by macrosocial causes (aprioristic explanations); rather, it is generated by the interpretation of people involved in the situation. Hulsman dismisses with the dominant criminological current and offers an innovative insight to crime, allowing thus different ways to understand and respond to it.

### **Hints of instability**

As one of the main publications in the field, *Criminology* offers articles with different explanations to crime to academic and non-academic audiences. Due to its reputation, many readers tend to see the ideas circulated in the journal as scientifically validated and thus credible. For this reason, many see *Criminology* as a reliable source of “truths” about crime, its causes, and its reality.

Through the content analysis, I have demonstrated that most of the articles published in the last five years assume that crime is a relatively stable truth. They describe crime as a concept that exists independently of social rituals of meaning construction. In other words, crime, as something intrinsic to some actions, does not depend on the social reading of events. Crime is a crime and nothing else.

This perspective produces consequences concerning the way we see and respond to disruptions of normal social relations. When crime is established as a reality, it tends to monopolize the mechanisms of meaning construction (Christie, 1977, p. 7). It appears then as the only valid way to approach and interpret such events. Accordingly, it also establishes criminalization as the proper way to react in this regard, supporting the translation of the facts into legal and judicial terms (see Pavlich, 2007, p. 85, 2019). It displaces the resolution of conflicts to the judicial arena, where the legal reading of the happening is reinforced. This process makes crime available to state appropriation as a political instrument to manage society.

Crime, however, is not the absolute concept that the influential articles in criminology portray. In this chapter, we have alluded to the ideas of authors who criticized this understanding. Nietzsche (2008, 2010), for example, explored how socially contingent concepts are depicted as absolute “beings” by metaphysical discourse (see also Cox, 1999). Reiner (2016) and Motha (2018) indicated that crime was socially and politically constructed to be a stable concept. In doing so, these authors provided an argument against the taken-for-granted approach to crime present in *Criminology*, demonstrating the symbolical processes that allowed this understanding.

Like Nietzsche, Reiner, and Motha, other authors have explored critically the construction of crime as a stable concept and an instrument of social governance. In the next chapter, I will draw upon the work of these theorists to examine the historical and political

processes that contributed to our contemporary conceptualization of crime. Before crime could be portrayed in the terms described in this chapter, it had to be first constituted as a metaphysical concept, granting it the status of “truth”. By investigating the genealogy of crime, that is, the contingent transformations of this idea, we can observe the articulations of power and knowledge that lies behind its formulation. In other words, it implies questioning the idealization of crime as an uncontested abstraction and looking critically at the power relations that support it.

This critical approach to crime exposes the contingency of its conceptual frames. It aims at denaturalizing assumed ontologies and fixed convictions by outlining crime as a historically created concept endorsed by a specific system of power-knowledge. In doing so, it reveals that what is assumed as a relatively stable reality is, in fact, an unstable conceptualization that holds no universal substance. Therefore, we can see that crime does not exist as a “truth” that can be discovered, but rather as the result of contingent rituals that attribute meaning to complex social events.

## CHAPTER 2 – CRIMINALIZATION AND CRIME AS A “BEING”

There is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations.

—Michel Foucault, *Discipline and Punish: The Birth of the Prison*

Thus the construction of reality as it is pursued in criminal justice will practically never coincide with the dynamics of the construction of reality of the direct involved. In criminal justice one is generally deciding on a reality which exists only within the system and finds seldom a counterpart in the outside world.

—Louk Hulsman, *Critical Criminology and the Concept of Crime*

Despite the tendency observed in the previous chapter, one can (as noted) find articles in *Criminology* that take a different approach to the concept of crime. Against the journal’s primary style, these texts do not treat crime as an absolute and ontological concept, that is, as having a fixed essence or discoverable causes. Instead, they offer a more nuanced and contingent analysis, one that does not present crime as an independent object, detached from social dynamics. They do not depict crime as a phenomenon that can be identified in society regardless of the observer’s judgment. Their aim is not to provide a definitive explanation to crime or to investigate its causes.

These articles, as noted before, did not have crime as their central object of study.

Instead, they focused on correlated questions and issues regarding the criminal justice system. Some explored the relation between contextual factors and the way crime is perceived—such as media representation (Baranauskas & Drakulich, 2018), economic stigma (Lara-Millán & Cleve, 2017), conservative ideology (Silver & Pickett, 2015) and racism (Berg, Stewart, Intravia, Warren, & Simons, 2016). According to them, contingent social circumstances affect individuals' impression of a criminal event, influencing whether or how they identify a crime. In any case, these articles do not simply assume a conceptual stability to crime.

For example, Ramey and Steidley's article (2018) embraces the notion of crime as an unstable phenomenon and dependent on social interpretations. The authors develop an interactionist and constructionist research to explore the issue of police responses to crime (2018, p. 820). They examine background social factors that affected police agencies' decision to acquire military equipment. Their goal was to investigate how the phenomenon of police militarization in the United States related to race discrimination. For this purpose, they drew upon two sociological hypotheses regarding social labeling and risk perception. First, they used rational public choice theory to investigate how the acquisition of military gear was influenced by the demands of involvement in armed combat. According to this hypothesis, police agencies that experience more episodes of direct combat are expected to require more equipment (2018, p. 816). Secondly, they referred to racial (or minority) threat theory to investigate how the tension between different racial populations within a community increases the perception of risk for police officers. From this vantage, the existence of two or more racial groups in the same territory would constitute a significant predictor of whether a given police department would request military equipment or not (2018, pp. 817–818).

To test these hypotheses, Ramey and Steidley examined the police agencies' participation



in the United States Department of Defense 1033 Program—a federal program that provided military gear and technology free of cost to law enforcement departments (2018, p. 814). First, they mapped these institutions; then, they examined reports of direct armed confrontation and the racial and ethnic composition of associated jurisdictions. With the results obtained from a statistical analysis, they compared the two hypotheses to model the best predictor of the militarization of police departments across the United States.

The data indicate that both rational choice and racial threat factors could be associated with the departments' request for participating in the 1033 Program. Interestingly, however, the racial threat perspective seemed to apply exclusively to the acquisition of combat equipment, while the rational choice model better explained requests for both combat and non-combat gear (2018, pp. 827–833). Based on that finding, the authors speculated that the phenomenon of police militarization is rooted in symbolic forms of discrimination, especially against the Black population. As such, when racial minorities are perceived as potentially dangerous, more repressive response by the criminal justice system seems likely (2018, pp. 839–842).

In sum, Ramey and Steidley suggest that the way law and order institutions' respond to crime is not impartial and unbiased, as presumed by law; on the contrary, it is influenced by racist perceptions about violence. Behind that explicit assessment, however, the article discloses an approach to “crime” that diverges from many other articles in *Criminology*, as described in the previous chapter of this thesis.

That is, their research is premised on a different conception of crime, criminals and the U.S. criminal policy. Ramey and Steidley diverge from a criminological tradition based on investigative postulates that positions the criminal subject and criminal behavior as its objects. Their research relies on a macro-sociological approach to criminology that looks to social rituals

that define what crime is and to whom it is attributed. For this reason, their work differs from etiological criminology and studies that pursue intrinsic explanations about crime and criminals (see Andrade, 1995, pp. 28–29; Baratta, 2002, pp. 148–149); rather, they draw their conclusions from a sociological interpretation of the data. The analysis presented in Ramey and Steidley’s article rejected the fixed concept of “crime”, looking instead to the dynamic process of “criminalization”.

This change of perspective is not simply a change of language. It has practical effects on the goals and methods of the research. Ramey and Steidley neither explore crime as a rigid and a priori concept, nor search for fixed explanations and trends, nor view crime as an object *per se*. Their interpretation, by contrast, does not characterize crime as an autonomous phenomenon perceived equally by every member of society. Rather, they suggest that different people have different impressions about crime, which affects their responses. For them, crime is not uniformly conceived. It requires that someone perceives a situation as a crime and attributes the corresponding labels to it. Based on that idea, Ramey and Steidley’s article supports a constructivist understanding of crime (see Reiner, 2016, p. 13).

Ramey and Steidley also indicated that racism and violence are elements that affect the mindset of law enforcement agents regarding crime. The officers’ sense of risk influences the request for military equipment. The authors argued, thus, that the way police approach crime is not solely determined by the occurrence of these events, but also by their perception. Thus, they argue that contextual social elements can affect individual and institutional mindset regarding crime control. So, the demand for military gear in law and order agencies may be conditioned by racial discrimination and, to a lesser extent, by tactical responses to armed conflicts. Based on their statistical analysis, the authors argued that these factors influence law and order officers in

their professional routine: a more hostile approach is expected in neighborhoods with a higher percentage of racial minorities. In effect, they presented support for the influence of symbolic and interactionist elements in the common perception regarding crime.

In other words, to refuse the ontological stability of crime is to approach its emergence as a process of social construction, a contingent phenomenon of meaning attribution—expressed in the criminal justice realm through labels such as “criminal”, “victim”, “guilt” and others (see Hulsman, 1993, pp. 80–81). As seen in Ramey and Steidley’s example, internalized social mechanisms play a decisive role in the way police agencies respond to situations deemed as a crime. Other articles in *Criminology* that approach criminalization as a dynamic and socially influenced object (Mears et al., 2014; Silver & Pickett, 2015; Berg et al., 2016; Clair & Winter, 2016; Nivette, 2016; Lara-Millán & Cleve, 2017; Kutateladze, 2018; and Baranauskas & Drakulich, 2018, for instance) endorse a similar implication: that what is commonly seen as crime is influenced by taken-for-granted structuring factors.

Notwithstanding the importance of that accomplishment, Ramey and Steidley’s contribution to criminology is still constrained by an inquiry for a “truth” about crime. Even though crime is not the central object of their research, they rely on the premise of something that drives police approaches and motivates their actions. The interactionist approach adopted by the authors indicates that people—police officers, in this case—base their perception of crime on their social and cultural impressions upon a given episode; however, these impressions are not problematized or understood as contingent themselves—influenced by a framework of power-knowledge, as we shall explore ahead. For this reason, crime is an implicit element in Ramey and Steidley’s research and its essence is not contested.

In order to have a more critical understanding of crime, it may be useful to understand the

dynamics behind its conceptualization as a stable object. The latter relies on notions of essence and permanence; that is, on the notion that putative objects such as crime have an enduring essence. This approach underplays the importance of social rituals and power structures that assign meanings to things, as I will discuss ahead. Given that understanding, though, it is important to investigate how critical philosophers and scholars problematized the emergence of crime as a “being”, supporting instead a genealogical approach to this concept (e.g. Nietzsche, 1998; Foucault, 1999; Koopman, 2013). First, I will draw ideas from authors who questioned the essentialist idea of the object. By rejecting that discourse, they offered a radical contingent analysis of the power-knowledge relations that created the modern idea of crime. Then, I will analyze how three authors have critically questioned the very idea of a stable perception of “crime”, devoid of underlying power-knowledge frames. Their works thus expose the fragility of seeing crime as a relatively stable and independent object.

### **“Becoming”, Genealogy and Power-Knowledge**

As noted in the previous chapter, Nietzsche’s philosophy disavows any notions of fixed being with an enduring essence. For Nietzsche, this pursuit of a conceptual “core” is based on a fundamentally false perception that leads to a misguided understanding of the world.

Language, according to Nietzsche, is the precondition for human knowledge based on assumptions of “being”. Language allows humanity to conceive an idea of a stable and conscious self, that is, an “I as substance” or an “I as being”. This self-reflected subject, then, projects its faith in “beings” onto the world, a fetishism of consciousness that Nietzsche (1998, pp. 17–19) called reason. In this process, moved by an illusion of unity and constancy, societies create a concept of “things”. However, the contradiction between reason (fixed concepts) and the

empirical world (constant transformation) leads to the impression that what we apprehend through our sensorial experience of the world does not correspond to the truth (reality).

Consequently, this logic gives support to a dualistic view of reality: the “real world”, of perfect concepts and unattainable by men; and the “world of appearances”, deceptive and mediated by senses (Cox, 1999, pp. 174–176; see also Nietzsche, 1998).

Nietzsche stood in opposition to this dualistic view of reality, supported by philosophers such as Plato and Kant (Cox, 1999, pp. 178–179). Nietzsche regarded the idea of a “perceived” world, that stands in opposition to an “unattainable” world, as a “moral-optical illusion” (Nietzsche, 1998, p. 19). Skeptical of knowledge based on abstract reason, he argued in favor of senses as mediators of human perceptions of things. Therefore, rather than reaffirming the distinction between two worlds, Nietzsche endorsed their wholeness, claiming that that the idea of anything other than the world of “appearances” is ultimately indemonstrable (Cox, 1999, p. 180; Nietzsche, 1998). In other words, Nietzsche rejected the metaphysical knowledge that explores a world unmediated by human senses and experiences. In the same logic, he discredited the possibility of knowing objects as singularities and permanency, as “*things* in themselves” (Cox, 1999, pp. 183–184).

In contrast to the metaphysics of knowledge and reason, Nietzsche advocates for a knowledge based on “becoming”. Nietzsche draws upon the ideas of Heraclitus, a Greek philosopher that saw the world as a constant becoming: “the whole nature of reality [*Wirklichkeit*] lies simply in its acts [*Wirken*] and that for it there exists no other sort of being.” (Nietzsche, 1996, p. 53, see also 1998, pp. 16–17). Both Nietzsche and Heraclitus dismiss the pursuit for certainty and permanence that characterizes metaphysics. On the contrary, their philosophy supports an empirical approach that embraces the constant transformation of the

objects. In other words, “Every ‘thing’ is but a tension of forces and materials that soon enough alter, becoming other” (Cox, 1999, p. 194). This perspective, therefore, implies rejecting the notion of “pure facts” or absolute truth (see Nietzsche, 2008).

Although the philosophy of “becoming” renounces the rigidity of metaphysics and entails an open stance to nature, it encompasses a disconcerting aspect. The recognition of uncertainty and unpredictability about the world has an overwhelming effect, that engenders a disconcerting attitude of inertia towards the world:

The everlasting and exclusive coming-to-be, the impermanence of everything actual, which constantly acts and comes-to-be but never is, as Heraclitus teaches it, is a terrible, paralyzing thought. Its impact on men can most nearly be likened to the sensation during an earthquake when one loses one's familiar confidence in a firmly grounded earth (Nietzsche, 1996, p. 54).

This feeling, caused by the loss of stability of concepts, corresponds to what Nietzsche called “the death of God” (Nietzsche, 2008, p. 109). It implies in the rejection of being, in the fragmentation of unity, and in the embracement of knowledge based on appearance. Ultimately, the death of God represents the refusal of a transcendent grounding principle, an epistemological judgment that determines what the truth is. “Cast adrift from these anchors, the world *becomes*” (Cox, 1999, p. 200).

Nietzsche’s argument reminds us that every known concept is immersed in and influenced by a correspondent historical background. In his view, concepts do not exist abstractly, in a pure or transcendental form of “truth”. Every knowledge is situated, thus, within historical frames (see Pavlich, 2010, p. 139).

Conventional studies tend to examine complex phenomena by dislocating them from their historical context and reducing them to a narrative based on origins and causes. They claim, thus, to discover ahistorical truths, forging a suprahistorical explanation (Foucault, 1999, p. 385). Arguing against that approach, Nietzsche supported genealogy as a more complex and context-oriented approach to apprehend the world. Genealogy embraces the multiplicity of meanings, the discontinuities in history, the complexity and the constant transformation of the objects; it grasps ideas as they emerge through different interpretations; it rejects the settled feature of a knowledge based on “beings”, renouncing to see history—and other disciplines—as a linear and progressive succession of events (Sembou, 2016, pp. 31–33). As Foucault puts it,

Genealogy does not pretend to go back in time to restore an unbroken continuity that operates beyond the dispersion of oblivion; its task is not to demonstrate that the past actively exists in the present, that it continues secretly to animate the present, having imposed a predetermined form of vicissitudes. (...) On the contrary, to follow the complex course of descent is to maintain passing events in their proper dispersion; it is to identify accidents, the minute deviations—or conversely, the complete reversals—the errors, the false appraisals, the faulty calculations that gave birth to those things that continue to exist and have value for us; it is to discover that truth or being lies not at the roof of what we know and what we are but the exteriority of accidents (Foucault, 1999, p. 374).

In summary, genealogy embodies the instability of knowledge. It recognizes the contingency of the concepts, always locating them within given historical and social frames. Furthermore, it examines the ramification of ideas, observing the fractures occasioned by

intellectual ruptures. Consequentially, it denaturalizes conceptions that were assumed to be innate and unproblematic.

Michel Foucault, who drew upon Nietzsche's critique, adopted a genealogical approach to analyze the intersection of power and knowledge and how the combination of these two elements shape societies' knowledge about a given field (see Foucault, 1995, pp. 27–28). Foucault referred to the intersection between power, knowledge, and subjects as “power-knowledge relations”; when put into practice, power-knowledge forms “regimes of truth”, an intellectual framework that informs, for example, what statements are taken as true or false and who has the authority to express such claims (Pavlich, 2010, pp. 140–142; see also Sembou, 2016, pp. 35, 61). Power-knowledge, in this logic, does not exclusively reflect of a restrictive force, exercised from top to bottom and aiming to constrain individuals' freedom; on the contrary, it also encompasses a creative feature by producing different forms of subjectivity, relationships, and ways of living. Therefore, as Foucault puts it, power and knowledge are intrinsically connected and operate in conjunction to determine what is knowledgeable within a given context:

The important thing here, I believe, is that truth isn't outside power, or lacking in power: [...] Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power. Each society has its regime of truth, its 'general politics' of truth: that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of



those who are charged with saying what counts as true (Foucault, 1980, p. 131).

Foucault's works explored the genealogy of topics often taken for granted by mainstream society, such as madness, sexuality, and criminality (Koopman, 2013, p. 93). The latter, of most relevance here, was explored in the book "Discipline and Punish" (1995), in which Foucault analyzed the power-knowledge relations concerning prisons, punishment, and the criminal justice system in western modernity. In other words, he examined the discontinuities between practices of public punishment and the discourses that supported them. The discussion revealed that the penal system operated on the basis of practices and knowledge that allowed it to appear as self-evident (Foucault, 2001, p. 225). Therefore, Foucault's "Discipline and Punish" disclosed the power apparatus that constructed popular conceptions of crime, criminals, and prison institutions—a conception that faced ramification and ruptures according to the power-knowledge configuration of a given time (see Drolet, 2015, pp. 92–93; Sembou, 2016, p. 35). For instance, as mentioned in the previous chapter, Foucault demonstrated how the premodern style of corporal punishment—*supplice*—conducted as a public spectacle (Foucault, 1995, pp. 32–36), made way for imprisonment as the main form of punishment for crimes. This shift in state policy followed claims made by enlightenment penal reformist of the eighteenth century, who advocated for a new "economy" of the punitive power (Ibid. 1995, pp. 81–82). Furthermore, all these transformations happened with the emergence of liberalism as a ruling rationality of governance. Based on the liberal demand for limiting state governance, states transitioned from models of governance based mostly on sovereignty—in which a centralized authority exerting its power on individual bodies—to a combination of direct and indirect forms of control, namely the disciplinary state apparatus and governmentality based on biopolitics (Pavlich, 2010, pp. 143–

146, see also 2017).

By presenting evidence that states adopt different penal rationalities according to changes in the power-knowledge configurations of a given time, Foucault demonstrated that power dynamics regarding crime control are in constant transformation. According to his view (see 1995, pp. 16–19), crime policies are not static or stable, nor are they based on a crystalized set of practices. Its history does not represent a linear and progressive narrative—for example, the liberal narrative that the modern criminal justice system transitioned from a past marked by constant state oppression to a present with less intervention. Every element present in state action against crime must be read within its respective contextual framework, especially considering the settings of a given regime of truth (Foucault, 1980, pp. 131–132). In view of this notion, Foucault concludes that crime is a contingent and historically produced concept.

Although Foucault’s work provides a critical understanding of the overall exercise of power in the penal system, it does not say enough about the specific elements that compose it. For instance, he did not offer more than hints about his comprehension of law and its function in modern society, even though it plays a significant role in his analysis (Wickham, 2006, pp. 596–597). For that reason, Pavlich (2010, pp. 147–148) traced the contribution of authors who drew upon Foucault’s ideas to come up with a Foucauldian definition of law: law as a “becoming”; not an ontological concept that exists outside historical contexts; influenced by power-knowledge arrangements that yield “truths” about it; and, finally, capable of influencing legal and juridical forms.

Foucault’s contribution in portraying concepts as a becoming certainly influenced other authors who aimed to present crime as a non-absolute fact, that is, as a contingent matter. These authors offered a critical analysis of crime, depicting it as a mutable concept and reliant by socio-

political conditions. In their respective works, crime appears, to a certain extent, as an empty concept, filled with meaning determined by external sources. For this reason, these authors reject the narratives that explore crime as a relatively stable being, with a steady essence, and with predictable causes.

### **Theories about crime as a “becoming”: three examples**

Despite the tendency of approaching crime as a being, it is possible to identify in *Criminology* authors who, like Ramey and Steidley (2018), hint at crime’s instability. They defend the view that one’s impression of crime is affected by contingent factors. For this reason, they argue that the analysis of crime should not be dislocated from the political and social context that surrounds it. Their argument, however, does not go far enough in challenging crime’s ontology or debunking the dominant discourse that supports this perspective. They still assume that crime exists as a fact and that it has a fixed substance.

Thus, to find a more radical critique of crime, it is necessary to look at other sources. Some authors have engaged with the concept with more depth and critical accuracy. In contrast to the perspectives that see crime as a stable being, these theorists aim to expose the lack of one meaning for crime. In effect, they reveal crime’s contingent and adaptable emergence, often serving political purposes of governmentality. Three authors were seminal to the purpose of this chapter (Reiner, 2016; Farmer, 2016; Hulsman, 1986, 1991, 1993). Their work exemplifies attempts to conceptualize crime not as a being but as a becoming, contingent and in incessant transformation. Furthermore, they explicitly reject the idea of crime as an absolute reality, set apart from power-knowledge relations. In other words, each analyses crime as a naturalized idea that conceals contingent dynamics such as the social construction of this concept (Reiner, 2016),

the historical institutions that made criminalization possible (Farmer, 2016), and social mechanisms that reconstruct reality (Hulsman, 1991, 1993). Drawing on these authors, one can grasp the lessons a genealogy of crime, that is, how to see the ruptures and discontinuities in the narrative concerning this concept.

### **Reiner: crime as a disputed concept**

In his book “Crime: the mystery of the common-sense concept” (2016), the British criminologist Robert Reiner explored explicit and implicit notions of crime in common-sense, academic, and technical conceptions. His starting point is the legal definition of crime, that is, the idea that crime is an infraction of criminal law, which follows a criminal procedure and results in punishment (2016, pp. 11–12, 18). According to him, that is the usual definition found in the dictionaries and in popular discourses. However, beneath this apparent consensus, lies a moral and technical dispute over the practical implication of defining what is and what is not a crime. For this reason, Reiner argues that the legal definition settles the diversity of explanations, acting as an anchor for the plurality (2016, pp. 18–19). That illusion of unity, however, is fragile and can be deconstructed by a critical analysis.

The legal conception of crime emerged when medieval and modern states claimed the authority and jurisdiction to legislate, judge, and prosecute its citizens for wrongdoings (2016, p. 23). With that goal in mind, these states created public institutions that gradually assumed the responsibility for investigating offenses against the rule of law. That process resulted in the birth of criminal law, a body of state norms that defined outlawed behaviors and instructed the operation of the pertaining agencies. With that institutional apparatus, states were able to usurp the power of decision over conflicts that before belonged to multiple informal social spheres (see

also Christie, 1977). In contrast to less formal modalities of norms (sin and social deviance, for example), criminal law depended on the advent of modern society—with its specific conditions of social complexity, advanced division of labor, social inequity, and structural hierarchy—to exist. Additionally, criminal law differs from other forms of state justice for its punitive feature, that is, its aim of inflicting a retributive penalty on convicted criminals (Reiner, 2016, pp. 24–26).

For him, the identification of crime in terms of what is proscribed in criminal law reached its peak under the influence of legal positivism. By attempting to distinguish facts and values, legal positivism identified law as what is legally enacted and allowed by the state, regardless of ethical, political, or legitimacy evaluations (2016, p. 28). In other words, according to legal positivism, law is the only parameter to define what is legal and everything outside its scope is, in consequence, not legally enforceable.

Despite the prevalence of the legalistic definition in common-sense and professional realms, the disagreement about the definition of crime is not limited to legal framings. The moral definition of crime is also an arena in dispute (2016, p. 35). Opposed to the prevalence of legal positivism, some authors have offered a substantive definition of criminal law, that is, a principled core that pre-exists law and decides which behaviors should be treated as a crime. In recent years, for instance, the idea of harm as the essential element that characterizes a crime has gained notoriety in legal debates and prevailed over the argument of an ethical or moral core (2016, pp. 43–46).

Reiner notes that a popular, ambiguous perception of crime grants to this context a false consensus. There is a general connivance with certain behaviors not commonly perceived as harmful or socially deviant, even though they are formally criminalized.

Clearly, some of these behaviours are against criminal law in ‘the books’. However, the enforcement of the ‘law in action’ against these varies, as a result of ambiguities of definition, formal policy and, above all, who commits the offences, and how visibly and egregiously (Reiner, 2016, p. 53).

This contradiction between the law and the social perception of crime exposes the fallacy of consensus theory; that is, the perception that criminal law is the formalization of a collective demand to prohibit behaviors seen unanimously as undesired (Reiner, 2016, pp. 53–54, 59). A more accurate view, therefore, is to see criminal law as a “complex dialectic between structural requirements of social order (both in general and in particular social contexts) and the largely autonomous interpretations and interactions of the actors and agencies concerned about specific issues” (Reiner, 2016, p. 63). This comprehension highlights the conflict of interests and forces that hold powers to define what crime is.

Contradictory conceptions of crime are not, however, restricted to the popular discourse, but also extends to other fields. The operation of criminal justice agencies, for example, generate official statistics on patterns of crime and criminals. This data, in turn, integrates official discourse about crime, announced by the state and used as a source of information for its institutions (2016, p. 82). However, these data reproduce mismeasurements because of two important problems: not taking into consideration the “dark figures”—that is, situations that could be approached criminally but pass unnoted by police agencies (2016, pp. 84–85)—and problems of record and accounting crimes (2016, pp. 86–89). It offers, therefore, a notion based only on the number of apprehended crimes, a misrepresentation of the totality of crimes in society it assumes to portray.

In summary, Reiner's book (2016) exposes the multiplicity of meanings and definitions included in broad public, criminological, and legal conceptions of crime. Far from being a homogenous idea, crime consists of an amalgam of different perspectives and opinions. There are significant contradictions in the way crime is seen by different social fields—sometimes even within the same field, as is the case with the popular discourse. With this argument, Reiner exposes the fragility of assumptions about the unequivocal and consensual stability to crime, often supported by authors that envisage an “essence” to that category.

### **Farmer: the historical construction of crime and the criminal justice system**

Complementing Reiner's contribution, Lindsay Farmer proposes a historically contextualized analysis of crime. He focuses on the historical conditions that allowed crime to be framed as an object to be regulated by the state. In his book “Making the modern criminal law: criminalization and civil order” (2016), Farmer starts by problematizing how liberal conceptions of politics enforced an ahistorical and naturalized view of the state's power, especially the power of criminalization. He argues, then, that “the concept of criminalization is itself linked to the emergence of a certain modern understanding of the criminal law, and for this reason, it cannot properly be understood except in this kind of historical perspective” (2016, p. 4). According to the author, to properly understand crime and criminalization in modern society, it is necessary to have in mind the historical relationship between criminal law and civil order (2016, p. 7).

With that historical approach in mind, Farmer supports what he calls an institutional theory of law. This perspective conceives of law as an institutional normative order, with its specific social functions (2016, pp. 19–22). It questions normative theory that sees law as the crystallization of societies' moral code in an institutional framing—with a corresponding

punishment applied by the state for its disobedience. By attempting to find a moral common ground in society to justify criminalization and punishment, normative theory portrays crime as independent from criminal law and criminalization dynamics, undermining a sociological understanding about this concept (2016, pp. 31, 34–35). Contrary to this view, institutional theory challenges the idealism of seeing criminal law as an inherently rightful of socially justified apparatus, suggesting instead a critical understanding that frames it as an arrangement of needs and norms of particular agencies.

By this logic, every element that permeates the legal order—persons, acts, or events—constitutes an “institutional fact” and “can only be understood in terms of the interpretation and application of the relevant legal norms” (Farmer, 2016, p. 23). Private property, for example, can only be critically comprehended when one takes into account the context and ends of private law, such as securing individuals’ right of ownership. By analogy, crime must also be approached having in mind the context of the goals aimed by criminal law.

Thus, Farmer disavows the reduction of criminal law to the function of retributive punishment, because such a narrow understanding underestimates the importance of more complex aims (2016, p. 27). According to the author, the creation of legal systems did not aim only at punishing lawbreakers; rather, it involved a far wider project of governance and social control. States envisaged the management of society through the use of a penal apparatus. Therefore, a more appropriate view is to see the security of civil order as the overarching objective of criminal law (2016, pp. 28–29, 37, 115).

Civil order, in Farmer’s argument, represents a form of state regulation of individuals that enforces a given standard of conduct and an expectation of appropriate behavior in public and private life (2016, pp. 38–40). It appeared in modern political theory to counter the notion of



*anomia*, the absence of order. According to philosophers of the modern state— especially for theorists of the social contract, such as Thomas Hobbes (2005) and John Locke (2016)—in an anomic society, insecurity prevails, and social relations are marked with uncertainty. To respond to this situation, societies formed a collective body overseen by sovereign power to guarantee stability for social relations, which was achieved mostly through law (2016, pp. 40–41). From this perspective, the security of civil order through criminal law was connected to the establishment of state sovereignty and an institutional apparatus that enforces its own norms.

For Farmer, civil order is not the only viable political arrangement to secure some sort of social harmony; rather, it is one particular kind of order, one with its own functions and interests (2016, pp. 42, 117). Before the institution of law and the consolidation of modern states, premodern European societies, for example, developed complex social orderings that mediated every sphere of life. The formalization of legal and juridical power in the hands of the state did not eliminate this plural net of normativity but was effective in claiming for itself the responsibility of governing civil order (2016, pp. 44–45). Furthermore, in Western societies, the legal system—especially criminal law—has long been a central element for this project (2016, pp. 28, 81–82).

Farmer's support for institutional theory, thus, supports the argument that crime has no stable and enduring core, an essence that transcends the contingency of its time. Since its emergence alongside with modern legislative states, criminal law has been used as an instrument to govern society and to influence the conduct of individuals, having as a broad aim of securing an idealized civil order (2016, pp. 298–300). Searching for a stable core of crime, set apart from criminal law's agenda or the criminalization dynamics is, in Farmer's theory, a misapprehension of this concept.

### **Hulsman: the denial of an ontological reality of crime**

Finally, extending Reiner and Farmer's contribution, Louk Hulsman's approach to crime offers new insights that highlight the lack of an enduring essence to the concept. In contrast to the two authors referenced before, Hulsman is even more explicit in his critique of crime. His work depicts crime not as an ontologically stable entity with intrinsic characteristics; instead, he describes it as an artificial construction imposed by criminal law. He challenges, thus, the notion that crime can be discovered apart from society, that it exists independently of one's perception. Critical to this approach, Hulsman calls for a change in the power dynamics that govern events deemed to be criminal. For that matter, he supports the deflation of criminalization in favor of a new set of decentralized practices that respond to local demands (see Folter, 1986, pp. 41–44).

Hulsman puts crime in perspective by problematizing the notion of a defining essence. For him, crime is not ontologically "real" because there is no essential property to a behavior that is criminalized—its nature, its effect to the perpetrator, its motivation, a question of moral wrongness or the consequences to the victim, for example (Hulsman, 1986, p. 65, 1991, p. 709, 1993, pp. 63–64). There is no stable essence to vast behaviors that are defined as crime. There is no common denominator, no common structure or any essentially distinctive feature that embodies the "crimeness" of crimes. Rather, crime is an imprecise label that encompasses a variety of behaviors, some very distinct from others. The only common ground between them is the artificial label of crime determined by criminal law, which puts them under the jurisdiction of the criminal justice system.

Based on this critique, Hulsman interprets crime and criminalization as the process through which a legal system constructs reality within a given cultural organization (1991, pp.

683–685). That is, for him, “Crime has no ontological reality. Crime is not the object but the product of criminal policy. Criminalization is one of the many ways to construct social reality” (1986, p. 71). In other words, what distinguishes a crime from other events is not something inherent to a situation; rather, it is the way people perceive and understand that event. Culture plays a significant role, as people perceive events differently according to their cultural backgrounds (1986, pp. 69–70). Constructing a reality around crime means to fix the incident within a specific set of labels, to institutionalize it, and to attribute blame for the individuals deemed as responsible. Therefore, Hulsman rejects the notion of crime as a fixed fact, suggesting instead an understanding based on a process of selective definition (1991, pp. 688, 708).

To recognize the inexistence of an ontological reality of crime means, for Hulsman, to break with the reliance on criminalization to deal with situations perceived as problematic (1993, pp. 91–92). It implies in rejecting the logic of state punishment as the standardized and mechanical reaction to events aprioristically determined as a crime (1993, pp. 102–104). In response, Hulsman advocates for the advent of non-institutionalized approaches to disruptions in social relations, practices that are currently suffocated by the criminal justice system (1991, p. 696, 1993, pp. 139–140). Ultimately, it represents a shift in language and in the way of experiencing social relations. Hulsman does not suggest that we extinguish trouble situations; instead, he proposes that we use different interpretational frames to understand these situations and new tools to respond to them. As he says,

When we take that view [of criminalization], we do not take into account that every legal approach is firstly a way of constructing (or, if you want, re-constructing) an event. Looking for alternatives to criminal justice, is in the first place looking for alternative definitions of events which can

trigger criminalisation processes. The alternative answer given in an alternative to criminal justice is therefore an answer to a situation which has a different "shape" and different "dynamics" from the events as they appear in a criminal justice context (Hulsman, 1991, p. 695).

Hulsman's work is deeply critical of crime's assumed ontology. According to him, what we understand as crime is a social construction that reads a situation through criminalizing lenses. Crime is nothing more than an interpretation, not an absolute essence that defines certain activities. From this perspective, criminalization is not the necessary outcome of these events. It shows, therefore, that our urge to hold offenders criminally responsible is the result of structures rooted in our culture rather than an intrinsic element of the behaviors that demand criminalization. By denaturalizing crime as an ontological concept, Hulsman invites us to consider alternative approaches to situations of social tension, such as practices that do not reproduce exclusion and isolation. He contributes, thus, to a critical understanding of crime that exposes its instability and contingency.

### **Critique of crime's "being"**

No article in *Criminology* went far enough in presenting a critical analysis of crime and portraying it as an essentially unstable concept. Although some recognized that contextual factors affect individuals' experiences, crime is still portrayed as a "truth", as an intrinsic feature of certain behaviors. Even for these authors, crime exists independently of social practices of meaning construction.

Drawing upon a Nietzschean and Foucauldian analysis, I argued that the articles analyzed in *Criminology*, as representative of an influential criminological discourse, tend to assume crime

as a stable being. Their interpretation mostly relies on a metaphysical construction that portrays the concept as independent of responses that criminalize. For them, crime is a crystalized idea, with a fixed meaning, and not conditioned by society's transformation.

By contrast, this chapter has referred to three authors that offer a contingent sense of crime as a product of criminalizing processes. Their work reveals that the assumed ontological status present in influential discourses in criminology—such as the one observed in *Criminology*—is fragile and unstable. They show that the concept “crime” hides external processes that establish, construct, and institutionalize a criminal interpretation. In other words, they argue that crime does not exist a priori; it depends on historical and cultural factors that construct its meaning (see also Christie, 2000, pp. 21–23).

The authors within this critical perspective reveal a rather different approach than the articles examined in *Criminology*. They offer analyses of crime that emphasize its historical emergence, gesturing towards a genealogical comprehension. In doing so, they constantly expose the power-knowledge relations that support the idea of crime's relatively stable core. They support thus alternative approaches to attribute meaning to harms, wrongdoing, and situations of social tension.

Aiming to understand more about the way crime is constructed, the next chapter examines criminal justice, defines crimes to an assigned order and a criminal subject to attribute blame. I will analyze the pivotal role of a key starting point that creates the “categories” of criminalization. Through this process, this entryway apparatus establishes the legal arena as the legitimate approach, consolidating thus the dominance of “crime” as the appropriate frame of interpretation.



### CHAPTER 3 – CRIME AND ACCUSATION

We reject the blame game and accusations so common in efficient groups. With each person accepting full responsibility for their actions, no one can have any more of the blame than anyone else. Let's all be accountable to ourselves, so we can grow and learn from our mistakes and be buoyed by our successes.

—The Curious George Brigade, *Anarchy in the Age of Dinosaurs*

In May and June 2013, a wave of protests erupted throughout Brazil. In different cities countrywide, demonstrators took the streets to express their dissatisfaction with many aspects of federal and state governments. General dissatisfaction with institutional politics, demands for improvements in public services, revolt against the high cost of international “megaevents”—such as the 2014 FIFA World Cup and the 2016 Summer Olympics—and anger with police brutality, among other causes, surfaced (Ellwanger, 2018; Jourdan, 2018). In the midst of this movement, the protest in Rio de Janeiro on June 20<sup>th</sup> was marked by the controversial arrest of a man. The events took place in the city's commercial centre and ended with a confrontation between demonstrators and police. The officers dispersed the crowd with tear gas and rubber bullets. Many participants escaped to the Lapa neighborhood, followed by police agents, moving to the where Rafael Braga Vieira was spending the night (Amnesty International, 2014, p. 15).

Braga was a homeless man, illiterate, of black ethnicity, who made money as a waste picker in Rio. He was also an ex-convict, arrested in 2006 and 2008 for theft (Corrêa, 2018, p. 217). On the night of June 20<sup>th</sup>, Braga was approached by police as he left an abandoned

building. According to the arrest warrant, Braga was carrying two bottles of what appeared to the officers to be flammable liquid, capable of being used as an explosive weapon in the form of Molotov cocktail. Braga was detained, taken to the police station, and charged for the crime of carrying incendiary material without authorization—a criminal violation of the Statute of Disarmament (*Ministério Público v. Rafael Braga Vieira*, 2015, p. 2). The court investigation later discovered that Braga was, in fact, carrying two plastic bottles of cleaning product—materials with “minimum explosive capacity” and certainly not enough for Molotov cocktail, as indicated in the bomb squad’s forensic report (Ibid. 2015, pp. 70–72). For the judge presiding over the trial, however, these reasons were considered insufficient to declare the defendant innocent. Rafael Braga was convicted and sentenced to five years in prison (Garcia, 2017).

Although Rafael Braga did not participate in the rally, the prosecution portrayed him as a violent demonstrator who intended to use the opportunity to commit acts of vandalism. He was accused of “disguising himself as a demonstrating citizen” and using the context of legitimate protest and national commotion to “cowardly spread terror in the city, intending to set fire to commercial buildings” (*Ministério Público v. Rafael Braga Vieira*, 2015, p. 40). In this allegation, the prosecutors assigned to Braga the identity of a criminal agitator, an extremist who exceeded the definition of legal of protest. He was associated with radical anarchist groups that used black bloc tactics to confront the police forces. In doing so, the prosecution implicitly delineated a symbolic division between proper demonstrators—law-abiding individuals exercising their right to protest peacefully—and a violent minority of fanatics (Corrêa, 2018, pp. 225–226). Rafael Braga was, then, said to be an unruly demonstrator, assuming the imposed category of a criminal, a delinquent “other” who needed to be contained.

Braga’s story draws attention to a shocking aspect of the dynamics of criminalization



present in the Brazilian context. In his case, the accusation issued by the authorized agents—the police officers that approached him and the prosecutors that conducted his case—was enough to sustain a criminal conviction for carrying inflammable cleaning material, even though that material could not cause any serious damage. Under other circumstances, Braga’s behavior would certainly pass as an everyday situation and would not be considered a matter for police intervention; however, put in the context, it was interpreted as criminal.

It is impossible to know precisely what material or symbolic elements influenced the accusers’ decision to call the episode a crime—we can only speculate here. For example, did the tension of controlling a street protest, the clash with demonstrators, and the fear of damages caused by incendiary weapon prompt them to halt people in the streets? What was the impact of policing bias against homeless, poor, and black individuals in Brazil? What made Braga more susceptible to approach than other individuals? Did the officers use him as a scapegoat to send a message to other demonstrators? Regardless of the reasons, Rafael Braga Vieira was charged criminally and later sentenced based on the accusation presented by police officers.

### **Constructing interpretations around crime**

For Herzog (2002, pp. 34–35), the creation of narratives around crime is an important way of making sense of situations that disrupt social order. They help us to cope with the distressful experiences by distinguishing criminals and noncriminals. In Braga’s example, when the law enforcement agents noticed the bottles he carried, they created an elaborate narrative to give a reason for that situation. Their story had to explain why someone would walk out an abandoned building bearing containers of chemical products a few hours after a turbulent rally. Of all the possible interpretations, they chose to see it through the lenses of crime: a radical

agitator would use the bottles as Molotov cocktail to intimidate the police. In light of this narrative, Rafael Braga was ascribed the identity of a dangerous criminal and the simple action of carrying bottles of cleaning product read as a crime.

Braga's case brings to light the rituals and practices that are used to define a given situation as a crime. Accusation, not only for Rafael Braga, is a basic way to start a process of criminalization, serving as the entryway to other stages of criminal justice (Pavlich, 2019). It is the accusation of authorized agents that qualifies an event as a crime and its author as a criminal (see Pavlich, 2007, p. 94). Based on that idea, this chapter explores criminal accusation as an instrument that constructs narratives, imprints a certain meaning to an occurrence, and categorizes the actors through fixed (criminal) identities. By calling subjects to respond for criminal charges, it establishes the object in dispute as a crime and categorizes the subjects involved as accusers and criminally accused. The dynamics of accusation, as I will argue, is indispensable for the criminal justice system's operation. I draw upon an emerging body of literature to approach to crime critically, supporting the argument of its contingency by focusing on initiating moments of accusation (see Pavlich, 2000, 2019). This literature helps me show that the assumed ontological status of crime is founded on collective responses that categorize situations as "crime" through accusatory processes. In other words, rather than seeing these episodes as inherently criminal, the approaches that I will reference argue criminal accusation are crucial to narratives based on crime.

Of course, this perspective reinforces the argument supported in the previous chapter, that crime does not exist a priori but is socially constructed through specific rituals and social practices. To understand criminal accusation, I will refer to an emerging body of literature that helps me to think through the contingency and historical aspects of criminalization (Antaki,

2017; Martel, 2017; Pavlich, 2007). I will analyze the effects of accusation in creating a narrative that attributes meaning to a given situation and its participants, thereby constructing “criminal” frames of interpretation. From this perspective, criminal accusation appears as the apparatus that situates an event within the power-knowledge relations based on crime. This research shows that criminal accusation reads specific happenings through crime-related categories and establishes the dominance of this crime-based interpretation over the others. It also relies on an individualistic understanding of blame and responsibility, necessitating an individual subject to serve as the target of its gaze. As a result of this process, accusation renders crime governable to the authorized agencies.

Criminal accusation, however, is not the only possible response to such circumstances. There are other frames of interpretation available, other ways of approaching them that do not rely on criminalization. Criminal accusation enjoys a privileged status in the constitution of events due to the assumption of crime’s ontology. The various critiques of this ontology, therefore, demystifies its status, enabling us to consider alternative approaches. It allows us to adopt different principles of accusation and, thus, obtain different outcomes (see Fassin, 2018, pp. 122–123; Lagasnerie, 2018, p. 70). I suggest, as an example, that changing the focus of individual responsibility—by incorporating, for instance, extra-individual expressions of responsibility—can reduce the exclusionary effect that criminal accusation entails. Finally, by integrating new narratives of accusation, we can divert some cases from criminalization (Antaki, 2017; Pavlich, 2000). As a result, we can expect to lessen our reliance on crime to administer conflicts and problems, also diminishing its negative consequences to society.

Thus, the analysis of criminal accusation supports my argument that crime is not a preconceived and fixed idea, with an ontological essence, as supported by the tendency observed

in *Criminology*. Instead, when we look critically at the processes that give meaning to a situation, we notice that crime necessitates an accusation to operate its effects. It depends on the articulation of powers and social rituals to frame the issue as a crime. Therefore, this critical approach challenges the centrality of crime in the repertory of responses to conflicts and disturbances of social relations. It questions criminalization as an automatic response, enabling us to consider other modes of response. Thus, when we accept that crime has no ontological meaning outside the power-knowledge frames put forward by accusation, we see that these events do not have a fixed frame of interpretation and that they can be reconstructed through other narratives.

### **Criminalization and accusation**

That night in June 2013, officers of the Rio de Janeiro state police accused Rafael Braga Vieira of committing a crime. With that allegation, Braga was called to respond for the charges, to make statements concerning the condition attributed to him. The police report states that Braga remained silent during the interrogation in the police station, abstaining from making any declaration before the trial. He did not deny or confirm the claims at that moment, disclosing only his personal information to the police (Corrêa, 2018, pp. 218–219; *Ministério Público v. Rafael Braga Vieira*, 2015, p. 25). Later in the trial, as mentioned, he was assigned the identity of a radicalized vandal with destructive goals in mind—a label that was based on the police testimonies and on the prosecution’s examination of the case.

Braga’s example exposes the intricate and often overlooked dynamics that render a situation as involving the execution of a crime and the author as a criminal. This process, according to Pavlich (2000, p. 142, 2007, p. 85), happens at moments of accusation. Accusation

consists of responses that blame or call people to account for an activity (Antaki, 2017, pp. 45–46; Pavlich, 2017, p. 39). It has the power of ascribing certain meanings to events and individuals (Lagasnerie, 2018, p. 15). When people accuse an actor of committing a crime, they are framing that situation under terms that evoke the criminal justice apparatus. Such processes activate a set of fixed roles and relations—such as criminal offender, victim, witness, accuser, guilt, criminal intent, criminal responsibility, among others—that belong to that universe. In effect, they delegate the task of addressing the event to the criminal justice institutions (see Pavlich, 2000, p. 140), reaffirming their power to govern “crimes”.

A critical analysis of the rituals that guide accusation challenges an assumed ontological status of crime. It indicates that a behavior is not criminal in itself, but becomes designated as such through thought processes like accusation: “(...) *crimem*, as *accusation*, signifies the prior judgment by which an act, a being, even becomes knowable or identifiable as a fit subject for judicial decision and for criminal justice much more broadly” (Antaki, 2017, pp. 48–49). Accusation, from this perspective, consists of social rituals that define and, thus, produce “crime” and “criminals” (Pavlich, 2007, p. 80). In other words, through accusation, one discerns when an everyday incident is or is not a crime, making it governable for judicial institutions. For this reason, accusation does not discover crimes but constructs them.

Besides helping to define crime, criminal accusation also has the effect of forming subjectivities (Antaki, 2017, p. 49). It operates through the interpellation of accused individuals, which implies their summoning to the legal arena. In the criminal justice instances, these individuals are required to respond to the accusatory allegations and, through this response, confront the predefined identity correlated with the offense in question. According to Pavlich (2007, p. 87), the accused subject is required to define itself in its response to the criminal

charges—whether it pleads guilty or rejects the claims attributed to it, for instance. In this spectacle of call and answer, both opponents—accusers and defendants—engage in a dynamic of reciprocal constitution of identity (2007, p. 96). For this reason, one can see this process as a co-appearance of subjects, as a practice of mutual self-formation that renders these subjects visible to the gaze of the law. That is,

The call requires a response, and in responding as an accused person, an accused identity unfolds through complex processes of allegation and counter-allegation. Both accuser and accused become by responding: their co-appearance betrays the fundamental—nay, constitutive—responsibility they bear for each other. As reciprocally created identities, they co-appear by participating in the displacement that is the effective work of criminal accusation (Pavlich, 2007, p. 97).

Mark Antaki (2017, pp. 54–59), drawing on existential philosophers Jean-Luc Nancy and Emmanuel Levinas, argues that accusation exposes the subject to the eyes of the public. Metaphorically, through the use of an accusatory language, it demands that the accused person appear naked. It opens possibilities for a being—the object of accusation, the “what” or “who” in question—to reveal itself, to become cognizable. Moreover, the being does not present itself apart from its surrounding, as it can only manifest itself as a being-with, that is, in reference to other beings and the world (see Antaki, 2017, pp. 53–54). Accordingly, accusation supports not the appearance of the being, individually conceived, but its co-appearance, inseparable of its surroundings. This process is not, in essence, problematic, as it consists of a necessary way of addressing objects other than the self. For this reason, this primordial accusation is inevitable.

The criminal justice system, however, puts in operation a specific kind of accusation, one

based on the pursuit of ontology. From this perspective, the accuser does not allow the subject to present itself but compels its compearance and its conformity with predefined categories. It places its indeclinable assignation to a logos, that is, to fixed grammars and identities (Antaki, 2017, pp. 58–59; Martel, 2017, pp. 139–140). Differently from the accusation previously described, ontological accusation denies the mutual aspect of co-appearance; instead, it consists of a one-way process in which the burden of exposure is placed only on the accused side. This mode of addressing accused individuals reveals an obsession for with categorization of the objects, a desire of omniscience and hegemony (see Martel, 2017, pp. 132, 141). In effect, this obsession results in a forced apprehension of the subject under rigid forms dictated by criminal justice, in an effort to hinder alternative expressions of subjectivity: “In obsession the accusation effected by categories turns into an absolute accusative in which the ego proper to free consciousness is caught up” (Levinas, 1991, p. 110). According to Antaki, this pursuit for ontology is the *modus operandi* that orients the accusation in criminal justice:

One might even say that, if we follow Levinas (who is perhaps close to Nietzsche on this point), the ontological status we tend to accord to crime is tied to the status we mistakenly accord to ontology and to its manner of accusing. Rather than dispense with accusation altogether, Levinas declines what he takes to be ontology’s accusation in favor of the accusation of ethics (Antaki, 2017, p. 56).

By way of accusation in ethics, Antaki refers to a way of addressing that does not rely on categories, on ontology, nor on the logos preset by structures such as the criminal justice system. He proposes to decline this unidirectional accusation that constrains the accused being and sets it apart from its being-with (see Antaki, 2017, p. 50). It consists of an accusation that allows the

being to speak for itself, not to be ruled by the accuser. In Levinas' terms (1991, pp. 86–88), it implies in rejecting the obsession for ontology in favor of proximity: “Humanity, to which proximity is properly so called refers, must then not be first understood as consciousness, that is, as the identity of an ego endowed with knowledge or (what amounts to the same thing) with powers” (Levinas, 1991, p. 83).

In its obsession for categorization, ontological accusation determines the boundaries between an ideal of order—what is “normal”, acceptable, lawful—and the disruption of this same order. “By ordering, regulating, displacing, and naming excess, the verb ‘accuse’ appears as an ethical reckoning whose effect is to generate the co-appearance of disorder and order” (Pavlich, 2007, p. 95). In this process, otherness is displaced as criminal. Accordingly, accusation reinforces the notion of a presumed social order by confronting its violations. By imposing the limits between order versus disorder or law-abiding citizens versus criminal offenders, accusation exerts a politics of exclusion (Pavlich, 2000, p. 144).

Moreover, according to James Martel (2017), the imposition of taxonomies centered around the logos “crime” does not happen only at the instant when constituted authorities heckle the subject—the moment when a police officer hails someone, for example (see Althusser, 2001, p. 174; Martel, 2017, p. 133). Rather, accusation affects individuals at every instant, permanently and incessantly. The fundamental belief that grants law its legitimacy, for Martel (2017, pp. 131–132) is this: guilty criminals will face criminal accusation more often than innocent individuals. When law “gets it wrong”, that is, when it accuses someone improperly, it incurs in misrecognition. As long as misrecognition is perceived as an exception to the overall operation, law is deemed as fair, as working properly. However, according to Martel (2017, p. 134), the effects of law on subjectivity is not a matter of right or wrong recognition, but of



misinterpellation. More precisely, law dispenses the element of guilt to halt people and exert influence upon them (see Butler, 1997, pp. 112–113). Misinterpellation concerns law's arbitrariness of accusation, its urge to accuse regardless of guilt or innocence: "the law is indifferent to who is called and only cares that someone (anyone) be called to its power" (Martel, 2017, p. 143). In other words, law is constantly exerting influence on society (see Lagasnerie, 2018, p. 40), subjecting its persons to surveillance and control. Accusation is, in this regard, an opportunity to know and govern individuals through categorization, even if it consists of a misrecognition.

Through legal judgment based on criminal accusation, law transposes reality into legal frames, constituting what is knowledgeable, what is true or false, and, thus, governable. As indicated previously, this procedure involves a reduction of reality that aims to meet predetermined forms and norms, to "follow a script" (Martel, 2017, pp. 141–142); it "arrests" a moment of everyday life and ascribes to it a criminal reading, excluding thus other possibilities of interpretation (see Pavlich, 2007, p. 80). In doing so, accusation evokes law to reinforce its domain over the object "crime", establishing it as the uncontested instance with legitimacy to control such circumstances (Martel, 2017, p. 149). Consequentially, the standard practices of crime control and sanction appear as the logic, even inevitable response (Pavlich, 2000, p. 140). As accusation enforces the legal perspective as the prevalent interpretation over the events, it prevents other mechanisms of understanding them through their lenses. This control over the narrative has the effect of curbing alternative strategies to address social problems that were possible before criminal accusation. In other words, criminal accusation enforces the legitimacy of crime control institutions to exert control over that conflict (see Christie, 1977).

Although every person is constantly subjected to the possibility of accusation, some

groups are notably more vulnerable to it. For instance, social structures such as racism and its entrenched historical relation with crime control policies in the United States make the black population an easier target for criminal accusation, regardless of their guilt or innocence (see Davis, 2003, pp. 33–38; Wacquant, 2009, p. 196; Wang, 2018, pp. 264–266). By way of example, Martel (2017, p. 145) brings attention to the cases of Michael Brown and Eric Garner, two African Americans that were assassinated by police officers in 2014. Their cases gained national notoriety due to the evident racism and excessive use of force in the police approach. These episodes exposed how race stereotypes regarding crime influence the agent’s reading of the facts. They also reveal that accusation and its consequences are unequally distributed through different members of society, according to social privileges (see also Fassin, 2018, pp. 97, 103).

Rafael Braga’s story follows a similar pattern. It did not result in his death, but Braga’s imprisonment raised questions about institutional racism and biased selection of targets for accusation. The singularities of his case support the claim of racial profiling in his accusation (see Corrêa, 2018, p. 228; Souza, Campos, Prando, Silva, & Resende, 2017, pp. 35–36). Rafael Braga meets the most common profile in Brazilian prison population: young black men, economically poor and with low education level (Ministério da Justiça e Segurança Pública, 2017, pp. 30–35). These characteristics, according to Corrêa (2018, p. 219), are read by police and judicial institution as a symbolic profile that makes Braga and many other men like him a suitable target for accusation. We can assume, thus, that Rafael’s personal attributes may have influenced the officers’ decision to see him as suspect and approach him in the first place. Besides, among all the people arrested that day, he was the only individual sentenced to prison: “several other people—most of them white and middle-class—were arrested for similar offenses, but they were quickly released, in most cases on the same day” (Garcia, 2017). Additionally,

analyzed in the context of police authoritarianism (Delgado, 2009) and repressive social control based on race (see, for example, Góes, 2017; Santo, 2017; Duarte & Freitas, 2019; Morais, 2019) that exists in Brazil, the accusation of Rafael Braga seem to follow the same discriminatory logic present in the episodes of Michael Brown and Eric Garner.

Accusation, as this process of shaping governable categories, is not merely a collateral effect of law, a secondary outcome of its operation. It is, in fact, the core of the legal system, a fundamental element indispensable for judicial functions:

For neither guilt (which, in ancient law, is not necessary) nor punishment define the trial, but rather, the accusation. Indeed, the accusation is, perhaps, the juridical ‘category’ par excellence (*kategoria*, in Greek, means accusation), that without which the entire edifice of the law would crumble: the implication of being in the law. The law is, that is to say, in its essence, accusation, ‘category’. And the being – implicated, ‘accused’ in the law – loses its innocence, becomes a *cosa*, that is, a cause, an object of dispute (Agamben, 2008, p. 15).

Accusation is, therefore, intrinsically embedded in the standard operation of the contemporary criminal justice system. In order to preside over crime and to regulate its outcomes, the legal system requires accusatory instances that summon individuals to its analysis. Law depends on the pursuit of an accused and guilty offender; without that, it has no object to dwell on. This dependence is the outcome of an individualized construction of events, which demands an individualized subject to attribute responsibility (Lagasnerie, 2018, p. 77). Criminal justice compels the creation of a fictional subject, a legal person fabricated through its individualizing narratives. To accomplish that, it detaches the subjects of its social and

environmental context—from its being-with, as mentioned previously. During the trial, they are held solely accountable for the crime they are accused of. Fault and blame are appointed, by the same token, on individual and personal terms (Fassin, 2018, pp. 109–110). Behind this ritual of judgment, law presupposes that the individual is completely conscious of his actions and thoughts and have chosen them intentionally and voluntarily. That notion is the basis for the concept of individual responsibility (Lagasnerie, 2018, p. 71). In this perspective, any reference of responsibility shared collectively is dismissed, while the accused person bears the culpability exclusively. In effect, individual accusation rejects the influence of social factors that contributed to that activity: “By confronting the individual with his act under the exclusive principle of liability, society absolves itself of its responsibility in the social production and construction of illegalisms” (Fassin, 2018, p. 111).

This structure of accusation is based on the legal person’s individual responsibility is so deeply rooted in modern legal culture that it seems difficult to imagine how it could be otherwise. The apparatus that construct narratives of personal guilt is so entangled with the contemporary power apparatus that it appears as obvious, self-evident even (Lagasnerie, 2018, pp. 86–87). It is internalized in our interpretation of the world, especially concerning narratives of blame, damages, and obligation to repair the victims. As Agamben has argued (2008), without these accusatory entrances that trigger the crime-control institutions, criminal law—or at least criminal law as we know today—would collapse. Declining accusation in these terms signifies, therefore, a major rupture with the established legal structure, one that calls its whole mode of operation into question (Antaki, 2017).

## **Different practices of accusation**

In the first and second chapter of this thesis, I argued that an influential discourse in academic criminology provides a metaphysical interpretation of crime, presenting the latter as a concept that exists *per se*. By depicting crime as a relatively stable concept, this discourse confers upon it a prevalent ontological status and allows it to be regarded as the “logical” response to certain situations. When a situation is framed as a crime, it mobilizes the legal institutions in charge of governing this category. The framework of criminal law ascribes responsibility to persons individually, ignoring factors of extra-individual nature that may have influenced the sequence of events.

If we accept, however, the argument defended in the second chapter—that crime has no ontological essence—we can observe that criminal law depends on an essentially fragile concept (Pavlich, 2017, p. 22). It shows that crime does not exist before accusation; for a situation to be considered a crime, it requires that people interpret and categorize it as such. This logic challenges the need for criminalization as a basic, even reflex, response to social dysfunctions (Davis, 2005, p. 40). It questions crime’s centrality in accusatory narratives and rituals that define which power-knowledge categories will be applied (Pavlich, 2000). Consequentially, the critical analysis of crime and its ontology reveals that criminalization is neither the necessary nor ontologically fixed outcome of these events (Pavlich, 2007, p. 80, 2017, p. 22).

Based on such notions, we might see criminalization as not “the answer”, but “an answer” to everyday problems, one among other possibilities of acting in response to them. It proposes, thus, an ethical question about our society, about how to be with others (Pavlich, 2007, p. 85). Maintaining criminalizing practices of exclusion is indeed a possibility in some situations; but it must be faced as an ethical decision, a conscious choice for that approach rather than

others—not as an automatic reaction prescribed by law. Accordingly, society would have to come to terms with the consequences of this decision, to find justifications for the ethical dilemmas that unfold from them. That means to answer for problems like mass incarceration and the overrepresentation of vulnerable groups in prison, among other socially negative outcomes of criminalization.

Conversely, the denaturalization of crime opens the possibility for alternative kinds of response to the same events, some of which have never been put into practice. Once we reject the monopoly of criminal law over conflicts, we allow for the possibility of exploring other methods of response (Hulsman, 1993, pp. 159–160). As suggested so far, these practices need not be immediately administered by a centralized authority in a universal and mechanical form, as in a cause-and-consequence relation. Since there is no stable truth to hold on to, there is neither a fixed or necessary way to respond. It requires, therefore that the people involved deliberate an appropriate frame of interpretation to apprehend the happenings and give meaning to them. In this process, they can adopt a multitude of power-knowledge frames, allowing them in certain instances to abandon the criminalization paradigm.

These new approaches also imply different processes of accusation. They have the effect of diverting cases away from the criminal justice realm. For this reason, they enable diverse ways of constructing narratives. We can then contest the dominance of individual accusation and its obsession for transforming reality into fixed categories. In this logic, the rejection of crime as the predominant category that regulates social conflicts make other forms of governmentality possible, inviting us to consider, among a diversity of options, other modes of address (Antaki, 2017, p. 45; Pavlich, 2000, p. 143).

Nevertheless, this perspective does not provide a definitive answer to the question of

what to do or how to respond to a problematic situation. It does not assert what the best practices are, nor it promises an idealized future in which violence and conflicts no longer exist.

Criticizing the ontological status given to crime does not imply advocating for one approach over the others. Rather, it implies renouncing transcendental or universal value judgments (Cadman, 2010, p. 553), especially by rejecting pre-established resolutions enforced by legal authorities (Foucault, 2007, p. 46). It embraces new frames of interpretation, instead of narrowing or merely replacing them. It denies the stability of any practice, conceiving them as contingent processes. In effect, this perspective allows us to evaluate critically the established methods of governmentality over crime and reconsider this paradigm. “It focuses neither on judging the realities of a present, nor on enunciating *how to govern*; rather it is concerned with naming and problematizing dangerous governmental limits by exploring *how not to be governed thus*” (Pavlich, 2000, p. 142; see also Foucault, 2007, pp. 43–44). In summary, it offers the possibility of understanding and responding to these disruptive situations without calling upon the gaze of criminalization as always necessary.

One way to look differently at crime is to decline accusation based on individual responsibility. As stated before, the accusation of chargeable individuals is the foundation of the criminalization framework. That, however, is not the only possible accusatory method available for responding to a problematic situation. We can adopt, for example, the concept of collective responsibility. Different from individual responsibility, the collective frame consists of attributing the accountability of a situation to a group, to a collective entity or even to socio-cultural and political auspices (Fassin, 2018, p. 39). It involves other targets of accusation, not being restricted to the individual person. In this perspective, one look further for expiations to a problematic situation that go beyond the notion of individual consciousness, intention, and guilt.

This idea may be an opposed approach for many criminal justice systems built on a liberal basis, that defend the person's self-discipline and responsibility for its own life and actions (Ryan, 2012, pp. 35–38). However, in other societies and in different moments of history, other forms of liability in disputes were adopted. To illustrate this idea, drawing upon Nietzschean account of morals (Nietzsche, 2014), Fassin (2018, pp. 45–59) explains that the modern idea of guilt was once based on a perception of balance, as in a contractual relationship between creditor and debtor. When one caused damage or harm to others, it created a relationship of debt between these people. In this logic, restitution or compensation for harms was more relevant than state prescribed vengeance and retribution. This debt also transcended the individuality of the author, integrating the social group to which it belonged: “The violation of the moral norm or of the social order created a debt that the group had to repay—and not a fault that the individual had to expiate” (Fassin, 2018, p. 48). The notion of responsibility, then, was understood very differently; it implied a group obligation over the behavior of its members and could even attribute culpability for non-human factors. Nonetheless, in western societies, this logic of response was reconstructed over time and demanded punishment and moral redemption. This marked a shift from “an affective economy of debt (...) to a moral economy of punishment” (Fassin, 2018, p. 56). Accordingly, narratives of collective responsibility were put aside, and the person became the target of retribution. This process allowed the social construction of events based on criminal terms and on individual accusation. Fassin's argument reveals that other ways of approaching events deemed as offensive are not only a theoretical possibility but were also the dominant narrative in past eras of western history.

Assimilating a different frame of responsibility represents, therefore, a reformulation of the legal category of personhood. By enabling the use of other narratives that assign meaning to



a situation, this critical perspective destabilizes the fixed category of the legal person. In this logic, law can no longer take the criminalizing construction for granted. It stimulates, thus, in an open stance to the multiple possibilities of interpretation, renouncing to predetermined forms of judgment. This means,

In other words, it's possible to construct multiple narratives of events and actions, of who caused them, and who or what is responsible. These narratives are all legitimate. And no fact of responsibility is more rational than another, since any attribution of responsibility constructs the very causality (between an agent or entity and an act) it claims to observe (Lagasnerie, 2018, p. 87).

It also has consequences for the possible outcomes of these events. Our responses are no longer restricted to the criminal approach and individual liability, which enables responses that tackle problems that could not be properly addressed by criminalization. Stahl (2017) remarks, for example, the inefficiency of addressing systemic oppression through individual responsibility. Systemic oppression—which includes situations such as slavery, sexism, racism, political dictatorship, and economic class exploitation, among others—can not be fully comprehended by attributing them to individual agents or an individualized group acting consciously and motivated to reach a specific effect. Rather, they are the product of a collective structure that reproduces patterns of injustice towards less privileged social groups. Individual responsibility, therefore, is not capable of engaging with the core of the problem. In contrast, looking at oppression as an issue that transcends individual behavior allows us to see these implicit patterns of injustice and to assign, through a collective narrative, a shared responsibility among members of society.

Systemic oppression is only one among diverse examples of society's issues that could be better addressed through a collective accusation of events. The critique of crime's ontology allows us to explore new ideas and methods, which in turn implies in integrating creative projects to approach social problems. It does not consider crime a stable or fixed concept, but one among a variety of possibilities of readings to these situations. Consequently, it compels us to reconsider the rationale and consequences behind exclusionary practices such as criminalization. In doing so, it also motivates society to rethink its interpersonal relationships, giving emphasis to ways of being-with-others that do not reproduce the exclusionary practices of the criminal accusation.

### **Rethinking crime**

In western societies, the ontological status attributed to crime has become so rooted in its culture that it may seem impossible to conceptualize it differently (see Lagasnerie, 2018, p. 80; Gregoriou, 2012). For most situations that disturb some sense of social order, criminalization is taken as the reflex response. This scenario reinforces the preeminence of criminal accusation—and individual responsibility, in consequence—as the main frame of interpretation for these events. In effect, the centrality of crime hinders the possibility of addressing them differently, through other approaches.

The narrative enforced by police and prosecution to the case of Rafael Braga in 2013 framed the episode through the lenses of crime. The bottles of cleaning product he carried were assumed to be explosives that he would use to burn buildings or against the police. In the light of this interpretation, Braga was assumed to be an extremist demonstrator whose intention was to radicalize the rally. He was assigned the fixed identity of a criminal, who held the individual

responsibility for the crime of carrying incendiary material. The accusation set by the police officers who approached him was the trigger to the criminalization of Rafael Braga, which resulted in his imprisonment.

Nonetheless, the situation that led to Braga's criminalization could be interpreted otherwise. If the officers were worried about the damages that Braga could cause, there were other approaches that they could have used to prevent them. The fact that his harmless behavior was framed as a crime caused the public's commotion and motivated the campaign Freedom for Rafael Braga in late 2013 (Souza et al., 2017, pp. 32–33). The campaign denounced the absurdity of considering bottles of bleach and disinfectant as explosives and Braga, who was not even present in the manifestation, as a criminal.

The critical analysis of criminal accusation developed in this chapter allows us to comprehend how criminalization operates. Accusation provides an object (a crime) and a fixed subject (a criminal) to the narrative it constructs. It established the categories that typically appear in the legal system. When we recognize that criminal accusation is a process dependent on social rituals and norms, we observe that it has no universal or absolute meaning. It is one way of making sense out of a situation, but not the only option. This critical perspective contributes to the argument that crime is a contingent social construction, that it has no stable essence. This conclusion opens the possibility for other approaches, different ways to respond to situations that are currently taken as a crime because of its assumed ontology.

It is reasonable to expect that embracing new responses to disruption in social relations can bring about changes in the effects that the criminal justice system has within western societies. The new forms of accusation that become possible with the denaturalization of crime can divert many cases from criminalization and, consequentially, imprisonment. Other frames of

interpretation imply in also in other approaches and other outcomes.

Being the entryway to criminal justice arenas, criminal accusation has the power to regulate the flow of subjects into crime control agencies (Pavlich, 2017, pp. 21–22, 2019, p. 24). The practices of accusation are the instruments that determine the nature and number of cases to be admitted in the formal criminal system, as well as the profile of who gets accused. In this perspective, they can channel the flow of accused subjects. A policy of crime repression that selectively emphasizes certain types of crime or certain population, for example, will reproduce social disparities against these groups (Fassin, 2018, p. 103). The inclusion of other forms of accusation would bring about, thus, important social changes in the way we respond to events that tension social relations.

## CONCLUSION

By criticizing the assumption that crime has a stable essence, I have argued in this thesis that criminalization is not the necessary response for situations perceived as problematic. In other words, there are other possibilities to address them that do not rely on crime.

By analyzing how the concept is portrayed by an influential discourse in criminology, I identified a tendency among the authors in *Criminology* to describe crime as an ontological reality. Either implicitly or explicitly, their representation of crime presupposes that it has a predefined meaning and that it does not depend on processes of social construction. This essentialist account informs governments about certain causes and consequences of crime, as well as efficient crime control strategies, serving as an auxiliary knowledge for governmental purposes.

Drawing on critical theories, I analyzed the formulation of crime's "being" from a genealogical perspective. I argued that the concept involves a metaphysical construction that, from a Nietzschean approach, does not take account of transformative, unstable, and dynamic feature of social worlds. It relies, therefore, on an assumption of stability and transcendence that overlooks the influence of contingent factors. Criminology dislocates crime from its context, defending an ahistorical narrative about its formation. In opposition to that process, genealogy recovers the contextual elements that allowed certain interpretations, analyzing their continuities and ruptures. It also exposes the instability of the concepts by exploring its transformations over time.

Inspired by genealogy, I referenced three authors that theorized crime through contingent approaches. Robert Reiner (2016) discussed how crime is an ambiguous concept that accommodates a multiplicity of meanings in dispute; Lindsay Farmer (2016) explored the

historical process that conditioned the emergence of modern criminal law and how that instrument was used in the endeavor of securing civil order; finally, Louk Hulsman (1986, 1991, 1993) contributed by directly criticizing the assumptions of an ontological reality of crime. These three authors were cited as examples of critical approaches that analyzed crime through a contextual and historically situated frame, highlighting its transformation and conceptual instability. For this reason, their theories describe crime as a “becoming”.

Finally, since I questioned the assumption of a stable criminal essence, I focused on the processes that “create” crime to understand how this concept comes to life. I explored accusation as the process of establishing a narrative that gives meaning to a situation. It is through criminal accusation that crime is constructed, and an individual becomes a criminal (Pavlich, 2007). Criminal accusation operates by categorizing individuals (Antaki, 2017) and attributing them individual responsibility for the events. That, however, is not the only way to accuse. We can explore different approaches of accusation, including rethinking individual responsibility and considering, for example, an idea of collective responsibility. Since criminalization is not absolute or static, there are multiple approaches available to be used as responses to situations of social dysfunction.

This thesis offered, therefore, a critical analysis of crime and its depiction in key discourses of criminology. It aimed to denaturalize crime and to expose the contingencies present in its conception. It also sought to show that there are other viable ways to approach conflicts and scenes perceived to be problematic.

The argument defended here aligns with what Hogeveen and Woolford (2006) described as a “criminology of possibility”. This approach encourages the refusal to succumb to the neoliberal ethos of a criminology submissive to the maintenance oppressive social structures, but

at the same time rejecting the nihilism and political inaction. Instead, the criminology of possibility acts by denouncing unjust intellectual structures, creating thus new horizons for a democracy to come. Based on Angela Davis' argument (2005, pp. 73–76), the critique of crime is not about a negative process of tearing down but also about building up, reimagining institutions and ideas. My contribution to this perspective consisted in destabilize the concept “crime” by exposing its fragility and suggesting ways of approaching it otherwise.

The research here conducted calls for new ways of seeing crime and criminology. The main goals of this thesis—the denaturalization of crime and the critique of its assumed ontological reality—remain open to further investigations. One can pursue, for example, a genealogical study of this ontological perspective in different societies around the world; conduct a comparative analysis between *Criminology* and other periodical publications; question the concept of crime in other medias, even in non-specialized ones like in the culture industry (movies, music, television, literature, and so on); or possibly look in more depth to other practices and rituals of accusation. The critique of crime's assumed reality is only an initial approach to a field of multiple possibilities of researches.

The ideas here proposed affect the way we approach criminalization. They support the destabilization of the concept “crime”, bringing to light the fragility of its assumed ontological reality. Consequentially, they expose criminalization as a contingent process based on social construction (accusation) of meaning. The argument in this thesis problematizes our reliance on criminalization to address complex social problems (see Husak, 2009, pp. 13–14; Simon, 2009). It challenges crime as a reflex response; for this reason, it invites us to consider critically our responsibility in the decision to criminalize behaviors and people. This reflection helps us to acknowledge and think through the social problems aggravated by repressive crime control

policies. Ultimately, it makes us confront the social and political arrangements that endorse uncritical criminalization. This debate is urgent and necessary, since people like Rafael Braga, Michael Brown, and Eric Garner are caught up by the criminal justice system and face the brutality of its institutions. Alternatives to the processes of criminal justice and strategies for curtailing criminalization imply, thus, a transformation of this reality (Hulsman, 1991, pp. 694–695), allowing us to see possibilities beyond existing exclusionary practices.



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