

INTRODUCTION

Seeking and violating justice

Delimitation

In current year it comes 10 years since beginning with Christian criminal work in post-war Estonia.

I hereby give a short description of the development of both the idea and activities and give also an overview of the people who have participated in it, of the confessions and organizations. I try to go further from the descriptive level and to answer the questions that have often risen concerning the necessity and comprehensiveness of that work. It can not be excluded that it could bring forth the need to reform the structures.

While preparing to write my Diploma thesis it became evident that unquestionably the subject is too extensive. It could also be disputable if criminal work is part of the cure of souls or the cure of souls the part of criminal work. Analogical question of bounds rises also in case of several other concepts. As we can follow it also in the law that boasts with its accuracy, yet we know at the same time, that narrow limitation in the fields of social sciences and arts on the whole is not always the best method, I discuss them as the dimensions crossing each other. I describe the situations, activities and processes and make conclusions and suggestions. Trying to explain the description I use paradigms. As in current criminal work a lot of unanswered needs have become evident and the contact with persons who need help has been direct, I am not going to narrow the too extensive sphere for delving, but instead make a temerous rush and widen it even more. The aim is to draw the attention of the church and the society to the challenges that living as a human being contains. I also hope to offer some solutions.

Pastoring as theological discipline belongs to the sphere of practical theology. In that sphere is realized also the church's criminal work. The essence of the concept of pastoral care is mainly specified paradigmatically. Through the concepts and activities that converge around fundamental concepts and the choice of what is still more or less

subjective. At least in Estonia no-one yet has credibly determined the concept of criminal work. I try to do it similarly to pastoring, and to some extent to systematize. Pastoring and criminal work has even its own theology, which orientates not at the essence of the proclamation, but rather aims to argue the form of the process of proclamation. Calling itself a little bit pretentiously criminal theology or criminal philosophy, it is barely reflecting, arguing and associating, yet under no circumstances thing-in-itself, but still for something or someone and thus a part of Christian serving. Serving becomes confession by practice.

What is pastoring and is there anything that is not in connection with it? Could there be anything in human being's life that that is not connected with soul? If not, then the cure of souls is the activity keeping the whole, healing and up-building. Of Estonian authors August Arumäe and Tõnu Lehtsaar have discussed pastoring more thoroughly in their books, and Naatan Haamer in his Diploma thesis. Lehtsaar says, that pastoring is a general concept used describing the Christian welfare work and the forms speaking of what it is used are for example sermon, religious rites, home visiting, pastoral conversations etc. (Lehtsaar, 1994, p 226). In church Christian welfare work has been called diaconia. Haamer says, that the pastoral functioning of a congregation has been called diaconie (Haamer, 1997). Is criminal work a part of diaconie or is part of criminal work diaconie? Is *pastoral care of offenders* as the name and activities of the Centre of Criminal Work is translated, pastoral care (diaconie), care or cure of spirit and soul? Is pastoral counseling a part of cure of souls or is it the cure of souls itself? Diaconal textbook says that diaconal work is the practical expression of Christian faith.

Eight qualities that characterize diaconie, of which the first three determine the relationship between the God and man, and the rest the occurrence of diaconie in human relationships.

1. Diaconie is God's merciful love.
2. Diaconie is confession of Christ's evangelization.
3. Diaconie is the praise given to the God.
4. Diaconie is getting in contact.
5. Diaconie is equalizing living conditions.
6. Diaconie is protection of human dignity.

7. Diaconie is confession.
 8. Diaconie is the way of living of a congregation.
- (Diaconal textbook, 1992)

As conclusion, Arumäe uses the words of German theologian Baumgarten: The deepest argument of cure of souls work stands in the discussion of salvation of soul as *soteria*, with the help of which these who are guided among the small amount of the chosen, are thorn out from the vanishing and perishing world and will be saved. Pastoring does not deal with shaping of human soul, so that it would be harmonious in all its manifestations. The task of cure of souls is to save the souls that have retreated from the Christ and therefore face the inevitable loss. That religious absolutism based on the negative evaluation of the world, carries the cure of souls of the Old Testament (Arumäe, p 46). Pastoring is central and essential part in the church criminal work which is done seeking the lost Godlikeness and mending the broken relationships with God. Describing the Social level of criminal work I also bring forth the other aspects.

In case of Arumäe remains the feeling that the pastor does not care for a person as a whole, but preparing a certain part called soul.

Cure of souls appears on all the levels of criminal and social work. Jesus has died for everyone and each of us has a role in that death. Each of us is also given the right to rely upon salvation. It applies equally to the rulers and slaves, the citizens and non-citizens, the prisoners and free men. Yet people are not free and equal compared to each other and oneself, neither in the moment of birth nor during their lives; they are still equal before God himself at the moments they drink of eternity and follow the metaphysical, at the moments they could be taken to God's love, open to experience it and thus free those born in sin of the fear. That puts on the church the special obligation of constant wakefulness so that the open moment would not be closed thus the seeking spirit in despair does not manage to find him in them and will thus remain outside the all-conquering grace.

General cure of souls (*cura animarum generalis*) is all the churchly activities. The church and congregations giving evidence of Christ already by their existence, act

curably and instructively on their members as well as the whole world and community where to for blessing, they have been placed.

The church acts:

1. as a sign or symbol that refers farther from itself;
2. as an organization it values the relationships between the members and thus strengthening its members renewing and improving as a whole;
3. with organization i.e. using both the inner and external structures as means;
4. with sacraments and word: services, sermons, consecrations and intercessions, communion life and common activities.

Personal cure of soul (*cura animarum specialis*) consists of pastoral conversations, confession and absolution. In the third century has been established the position of exorcism belonging to the lower clerus: liberator of demons. That also was a part of pastoral care.

Intellectual cure of souls is apologetics – taking attitudes concerning philosophical, political and public attitudes, laws and their implementation. It means healing the whole society, not only the churchgoers.

In 1215 has been determined the obligation to go to confession at least once a year. Giving absolution or refusing to give it was the grave and responsible decision of the priest. The standpoint was that confession is necessary for blessedness. The priest worked in confession as the regulator of soul. Prior to the confession was testing the soul that was performed by a Christian himself. It was eased by mirror of confession as a methodology; it was a confession scheme with a lot of questions. It was important to handle the commandments in conjunction with one's self. Have I kept the commandment or not.

Testing awakes repentance. The motives of repentance should be pure and originate not of personal gain or formalism, but rather of metaphysical than fear of audience. Fear and shame of the world are not the right motives. They turn the confession imperfect, impure. Hence two different models of repentance were differentiated –

contritio and *atritio*. Comparison of these two models itself would be a subject worth of dissertation.

Testing is followed by direct confession with the list of sins. The priest can ask questions and to help to purify the soul. Follows consolation (*cohortatio*) consisting of reprimands and directions. Guidance. Then solatium is assessed (*satisfactio operis*), in most cases in the form of reading the prayers. The rite is concluded by absolution (Arumäe).

That kind of traditional and old-churchly vision of confession should purify our chatty and incompetent congregation life that quite often degenerates to club life. Unquestionably there are several other forms of purification, but their existence does not diminish the sacramental significance of confession. In my experience the most astonishing conversions have still been connected with confession, no matter was it less traditional or not.

But proclamation of the Word only does not build up a congregation. Even less helps it the lost sheep. In regulating crime sermon only is as much efficacious as in repairing the tire (Russell). Creating and developing methodologies is in the interests of the church as well as in the interests of each church worker. Consecration of life and guidance in it is the direct duty of a priest. The question is not **if** but **how** to do it. I believe that the diversity of the means helps to gain the results. As it is natural to engage secular helpers, it is natural to use the organizations and methodologies as well.

Sin and grace are the poles between which the soul flickers. Useful morality and absolutioning the results one's own will in the problems of blessedness lead to impurity and obscenity, as Paul says. Let us admit our inadequacy and obscenity out of scruples not of self-profit, then we have received our exculpation as free supplement. Quite often a dear gift could be hidden in a cheap wrapper. Thus the salvation of a sinful man comes only of grace.

As the church criminal work is based on the truth revealed in God's Word, attention should be directed to justice as the attribute of truth, to public structures and the powers, that shape that justice and to the church's relation to justice and power. Speaking about justice I think first of all of the European judicial area based on Roman-Christian heritage keeping it open to the enriching experiments on other continents. Biblical justice

restorative approach in civil and criminal law and the proportion of crime and punishment have been discussed separately. The authors I have relied on are Hans Hattenhauer, Artur Weiser, Daniel Van ness, James W. Hilborn, Jaan Sootak, Matti Laine, Eduard Raska etc.

Together I refer to unanswered needs in current society. Discussing social development and its cost, incl. the situation and structure of crime in Estonia I bring forth the most important tendencies that demand attention both on the level of the government and the leadership of the church. I explain the most important concepts as criminal prevention, justice, restorative and retributive approach, socialization, rehabilitation etc. without which it would not be possible to manage in this sphere. Along with the materials of State Police Board and Crime Prevention Council I have used the materials of UNESCO, HEUNI, PRI and other international organizations. A sequence of questions comes up from the social description. I bring forth the most important ones from the point of view of the church criminal work and social work for the rest depends on the answers given to them. Is it considered the church' duty to institute and implicate the processes outside itself and in what scale the continuous direction of these processes is considered self liability? Is evoking and implementing of Christian activity outside the church welcome and how should it be organized? What is the attitude of the church to the power? Does the church distanciate from its members' activeness or does it identify itself with them? Couldn't the doctrine of two regiments in its simplified form become a cover for social degeneration, laziness and cowardice? Does the church perceive the challenge to act as an integrator of the society? What does it mean and how could it be realized? We use again the materials of international conferences, but also the theological repository of Karl Barth, Joseph Ratzinger, Paul Tillich.

As justice also punishment and other forms regulating common life should be approached to theologically and axiologically. Justice is carried by values and must guarantee the aim of justice that is in harmony with the values that carry the justice. Quite often the elements of justice are not in harmony with each other; that expresses inconstancy of will of the regulator and its discord with values. The morality, immorality or amorality of the laws in the situation of absence of unified scale, is undefined,

different background systems and scales offer different solutions, for the solutions are inevitably evaluative.

Legal system itself claims to be a scale of evaluation of human behaviour. Quite often the system forgets the fact that a person and behaviour are not identical and tends to assess and label the person as well. The arrogance of the system is crowned by forgetting the Creator himself, aimless behaviour, negotiation that it owns only the value of usage and approach, being not a thing in itself. As such the system itself goes under prosecution, but cannot be assessed and been acquitted or convicted by its part but needs for healing the evaluation, reaction and prevention - and possibly intervention- from outside. From someone who is not him, who owns and uses the power, wisdom and scale, who relates the system with values and aim, integrates and balances the system and the processes taking place in it.

It could be Church only.

Essentially the church is uniform, general and universal, and individual and concrete in its forms. Here we speak of the Church as of the Christians' community in Christ's body based on three confessions of faith. Here are not discussed the confessional differentiation, the sects that have set themselves outside of the Church and the reasons of it. Neither is discussed multireligiosity or antichristianity. The focus is on the activities of the Church as far as it is related to justice and court. Presumed that the Church is essentially social, which does not mean that sociality is limited by social care; righteous, which does not mean bare judgment; and mighty in holiness but not of itself or the number of its members, but only due to grace.

Claiming that the Church carries a special role in the society does not surprise anyone. It is rather a truism. Hereby I try to give the accepted stamp some content and I do it using the church' criminal work as a model, going over to community work and claiming that the model is applies to the church in general as well.

When we speak about the church as of integrating and balancing power in the community, society and state, we can distinguish the areas wherein the church works. Discussing the church' work in legal system we use the agreed term church criminal work. Yet I find already now that it would be more reasonable to define the borders of the church' community work and thereafter the role of criminal work in it, I still leave the

circuits between the two undefined, at least at the beginning of the undertaking. While discussing criminal policy, criminology and dogmatics, the relativity of the bounds has become evident above already. Too early delimitation might hinder the development of the term and thus inevitably turn out to be erroneous. Work in prisons, victim support, rehabilitation and re-socialization, Magdalena work or mission, special youth work or street work, that define itself either through task, target group or a smaller environment are also discussed as criminal work, but we claim that these, yet not only these, are the rather unsystemized attributes of criminal work.

In order to systemize them we have to distinguish the tasks, mid-tasks, methods and work formats, levels and working areas. As no such analysis has been carried through, the basis presented in the current work is obviously disputable. The absence of the basis does not still turn wrong the current effort. Even in case the course of the experiment would prove that criminal work is but a fiction, the experiment is still successful. At least we have then reached to metalevel and begun to give meaning to ourselves and our being.

The levels of criminal work are theological, legal, social and individual. On theological level criminal work is apologic and apologetic, on legal level norm-critical, rather restorative and relational than retributive, on social level creating structures and regulative, on individual level pastoral and supportive. Each level as well as criminal work on the whole has metalevel on which we have to aspire for greater clearness both in the part of identity as well as relationships with other levels, theories and practices. Social level is also called environmental as for a person all the structures are environments also.

The other possible distribution is division into metaphysical, theoretical and empirical. It is a question of taste where to we place philosophical and criminological dimensions, and whether we handle cultural and individual as separate levels or consider them segments of social and individual. We try to create at least some kind of a system in the discipline which up to now has not been handled. It is important to stress that the principles coming through all the levels are conflict sensing and conflict-solving, healing relationships, generation and canalization of development, minimizing sufferings and damages, reconciliation.

On different levels are used different methods. Several mid-tasks are applied for. But the main task is realization of God's will. From those who consider the argument too

declarative or say that God's will will realize independent of us, I humbly ask for permission to dream and efficiently claim the same, not any other aim, in order of that to correct the world drifting off the course, and to support the human being who's getting lost, is injured and suffers in pluralism. Here I am and I cannot otherwise, someone has said.

Not in order to emphasize myself but something much more important I admit that the whole Post-Fall history is the history of God's criminal work, in the course of what he seeks for the lost. Not in order to annihilate and revenge but rather to raise from dust to the glory of loving heart, to give the lost one a new opportunity, new being identical with the original or even enriched through painful experience.

On theological-philosophical level criminal work argues with sciences and ideologies using their elements as linguistic elements and thus giving evidence of truth and healing and purifying the social consciousness. Before that – or due to the inevitable shortness of life simultaneously – we have to find time for understanding ourselves and each others. That means clear and sensitive realization of dialogue, identity and solidarity, matching and creating the ethics of influencing social processes. Social ethics developed on theological-philosophical level originates from metaphysical or revelation and passes through all the levels of criminal work and community work, applying to all the spheres. Theology and philosophy of criminal work form metalevel for legal-moral and social level on what they are reflected and the output is criminal policy (social policy).

On legal-moral level the work with laws and draft legislations, analysis of the decisions and statements of administrations and officials and evaluation from the aspect of trueness, feasibility and morality takes place keeping in mind the interests and needs of the weakest. Here are formed the system of attributes that is used in concrete sociums and stratums and with the help of which in case of necessity they are changed also. Along with knowledge of domains here also the important assumption of efficiency is mastery of specialized language used by the specialists. One also must be able to translate the evangelical message of salvation and truth and the ethics of love for one's neighbor into present-day practical language in word and act. In addition to the improvement of consciousness and mental health in general the decisions taken affect directly the environments, relationships and physical health. When we for example look at the laws

that regulate traffic safety, alcohol sale or compensation of the damages caused by crimes, the affect on the quality of life and health is clearly evident. Of no less importance are morality and expediency in urban design, envisaging and estimating demographic processes, integrating the aliens and in environmental protection, in the inner structure of the army and in correctional and penal policy. Recommendable is that the activities of that level should develop from arguing into guiding and teaching. Obviously the teacher himself must be able to learn and improve. Jaan Sootak: “Criminal policy that keeps in mind the historical development of justice and the whole society and avoids extremities ensures the social adequacy of justice to common level as well as to the situations in certain state and the tasks that are aimed at with reform /.../ While analyzing legal phenomena and in implementation of them the lawyers need certain spiritual anchors and landmarks” (Sootak, 1997, pp 25, 27). Of course the credibility of church assumes a lot of theoretical preparation and apologetic work on the previous level, in the course of which is found the commonly accepted background system of interests and values, and which in its turn makes the dialogue between theologians and lawyers fruitful and enjoyable.

“Personal cognizant moral responsibility is a special quality of a human being. Hence it is primary to develop and shape that awareness and definitely we must support its implementation. Church doctrine cannot replace part of consciousness, it must enlighten, support or oppose it; but under no circumstances can this doctrine take the place of consciousness. The function of church doctrine is instructive and guiding and it is performed in the church as in an eschatological congregation and through those who believe in Christ” (Edouard Bonè, 1996). I would like to add to the end of quotation two words: also in the world.

On social level the church creates new environments as and through pro-social, enriched of opportunities to learn, humane and Christ-centered human communities. Human environments that have been enforced by communion in sacraments and the Word, through general sacerdotalism and mutual pasturing that have maintained sensitivity are ready to answer people with problems, with learning or behavioral difficulties or difficulties in coping. Instead of exclusive method of counting out of the

congregation works inclusive and integrative method, instead of stressing the disease comes conception of improving and developing one's health.

It is obvious that the attempt of distribution into levels is somewhat artificial. Thus the individual performs inside the social level. The Christ-centered environments that heal the society and radiate good spirituality are in interaction with the world around them. Even what is going on in personal pasturing is essentially a relationship, yet not only a social relationship. Offering possibilities, shaping value judgments, teaching social and coping skills, support and pasturing in the course of common activities is not anything essentially new. In the same way acted the Lord, thus acted the apostles creating congregations, defining the rules of common life and integrating into groups new people who accepted the rules, but they also greeted and blessed those who did not accept the rules.

As in developing the environments or in the work on social level, we have to work in the church criminal and community work on individual level as a pastoral caretaker in a strange and before everything a christian environment. Individual pasturing as such is a strategy of social level. And again I can not but referring to the work done in community outside the church, before I describe the programs and principles performed in prisons. In the parliament and army the chaplain is need as much as in the prison. The deputy's heart might not be cleaner than that of a drug addict's, but in case of them both one has to be professionally sensitive not to support the sin but a sinful human being. We have to begin with those whose situation is more difficult and the damages are greater. Pastoring activities must be aimed and adapted to according to the needs and conditions of the partner. The universality of confession does not automatically make of it something to be used primarily in every situation. Still, we should reach to that.

I claim that the church' greater participation in community life's all levels is necessary and normal. Individual pastoring, the development of community (the example the parish in Otepää) based on congregation, local actions of criminal prevention and initiatives, development of social policy in churchly and teams and in common working groups of the church and the state together form a natural whole, in the centre of which stands the idea of Christ's Church, where the confessions and congregations showing practically their wish for co-operation find themselves. Estonian Evangelical Lutheran

Church (EELC) and Estonian Council of Churches (ECC) must define their relations in the centre around what is the network of parachurchly organizations; that forms the part of society improving and developing in activeness and where local organizations form living bridges into the wider community. In the conclusion of the work are brought out the relevant proposals to the Church and the Council of Churches.

Along with indicating the needs of society and the possibilities of the church I would like by the attempt to describe and systemize criminal work to give a possible model and an impulse to giving meaning for the other spheres of work. Thereat concerning the relation of church' community work and church in general also. The church' role as an integrator deserves more serious approach than a diploma thesis side subject allows, but I'd like at least to begin with the corresponding discussion here. If criminal work that on ground of practical experience gives evidence of the necessity of community work, can do it, I would be glad and grateful.

The stem of the term Criminal work is *crimi*. The Latin word *crimen* means crime. Greek word *krineia* means court. Court is the attribute of the law only, the means to perform it. The truth on its turn must only hold, restore or unite peace, mercy and justice and no more. Hence criminal work in its deep essence is connected with restoration and rehabilitation of the justice and peace, for also the right in itself is nothing. It gets its value from those in whose or what service it stands. Having read Tammsaare we know that the relation of truth and justice in itself is messy and needs regulation. Hence we begin with these terms.

Archaic justice

The etymology of right refers quite uniquely to straightness. As well the Anglo-American *law*, German *recht*, French *drodr* and Italian *dritte* speak all of originally right as of straight. It is quite a matter of itself how that straightness is expressed in the prevarication of the lawyers nowadays. In the I volume of his History of European Law Hans Hattenhauer postulates as the basis of right variability. He says that right evolves in fellowship or in the family – that is close culture -, where people can trust each other.

Families and tribes acted as quite separate legal associations and there was no law connecting them to Germanics, Celts or Slavs. Such is the scene that opens us through the eyes of Romans. No-one else has left us any written sources of European pagan cultures (Hattenhauer, 1995). Therefore we must admit that Europe as a single space could appear only and strictly in Christ through spreading of Christianity.

The basis of tribal law is set by its leader. That right is hereditary and is thus patriarchal. The family and the tribe are the carriers of rights and hence the bearers of responsibility as well. We can follow it in the Old Testament as well as in Nordic Countries, in British and mid-European myths and epics. If Moses still in the second millennium considers it necessary to order “Fathers shall not be put to death for their children, nor children put to death for their fathers” (Deut 24:16) then supposedly there had been a contrary experience or even custom. According to the code of Hammurapi from Babylon the daughter of the man who had killed the daughter of the other man was to be executed too (Van Ness, 1998). The family, its structure and borders of course, have been understood in different ways. Vividly may we follow it in the Greenlanders’ song of Atli from “Elder Edda”, that tells us how in revenge of killing her brothers by Atli and his family members, Gudrun hideously kills Atli’s and her common children. At the same time we know that the same brothers had organized the murder of Gudrun’s beloved first husband. The brothers are closer than the husband and the children. In the later Greenlander’s tale of Atli it is told that Gudrun killed the children against the custom (Elder Edda, 1970, 186-196). And in the later Nibelung’s song we see Gudrun (Kriemhild) trepanning her brothers for the killing of her first husband Sigvödr.

I personally find that the law cannot be anything but the attribute of truth. The task of law is to regulate social relations in order to restore peace and justice. In other words: to restore *shalom*. But I will give the floor to the others.

The Roman Celsus claims quite Christianly: the right is the art of goodness and justice. For Plato justice is an interpersonal relationship that depends on social order. That order must assure justice as harmony of relationships between stratum. On spiritual level justice is a compensating virtue. Justice is morality. There Trasymachos says: power is the law and justice is no more than the favour of the stronger (Politeia). Somewhere in Plato’s dialogues we can find the idea that justice is no more than the will of the ruler.

Thinking of law we inevitably think of the power and governance. Do we think of truth as well? When appears the necessity to fixate the wish of a ruler they began to deal with legislation. The law distances from will and will from the law and the law as a set of norms becomes the form of realization of that wish, the regulator of the rulers will. Thus the justice in great part becomes the appointer of freedom to the ruler as well as to the inferior.

At the same time the law should guarantee the effectuation of truth, but it can do it only in case the will serves the truth. In case of the social order called democracy it is claimed that through freely elected representatives rule the people, who form the legislative body and that on its turn form the following structures.

If the principle of separation of powers has been followed, the governing distributes to three levels: legislative, executive power and judicial power. Their functions are accordingly creation and implementation of rules and conflict resolution. With the laws and their implementing provisions the legislative body delegates part of the power, rights and obligations that form the essence of justice. On what level should the one who knows the truth withhold the facts? On what level isn't hushing up wrong?

As the governments and the rulers change, the essence of truth changes as well. As the materializing of any idea contains in it withdrawal and being under way is at the same time both approach and receding the legislation appears to be a sad affirmation of the imperfection of mankind. Creation of thousands of rules is meant to bridle the sin, yet it has barely managed to it forth and to portrait it. Concerning the truth – it is still divinatory.

Justice is by nature a social order for it regulates people's mutual relationships. At the same justice is not the first social order. There in objective meaning moral and custom are the pre-phases of justice/.../ Both moral and custom respond to social intention and regulate social behavior in the society (Raul Narits, 1995).

The same author brings forth an important matter: "Law historians who have compared the oldest written sources of law have come to the conclusion that for example the Laws of Manu, the law of 12 boards, Russian Truth etc. are amazingly similar." I believe that generally a human being knows what is good, but the temptation of gaining brief and quick profit confuses him.

It seems as if there existed a sense of justice, clear and reachable for all; and which has been forgotten by now and into what some thinkers think back them regretfully. Like to Eden, Kungla or golden era. That sense of justice roots in the values which divine heritage we as Christians recognize. Both goodness and justice are natural features of God.

Lex Christi contains ideal principles for arranging human relationships. Justice has its own policy that determines which socially important tasks by which legal means are meant to achieve in certain legal space. Therefore the law regulates the space of social relations and our liberties in that space. Just law should make it in the interests of balancing common welfare and personal needs. In social space might also collide and debate different understandings of law and justice. A small part of the debate between retributive and restorative justice reach you also in the following sub-item discussing criminal law and practice.

Everything that relates to cruel acts and their direct and indirect consequences has always interested people, intrigued and touched them but has remained vague still. The regulativity of crime by the means of social processes, legal norms, of order and grace, both the preventive and reactive methods and explaining them by researches and theories, also the discussion of the reasons of evil acts are today as actual and not at all depleted subject, just like a thousand and two thousand and probably two thousand years ago. One thing is for sure: since the Fall already the history of the whole world is like a cloth ornamented with crimes where to every generation leaves its traces.

At some moment a law simply is born. The law or acts that will form legal system and in the frames of which the law and justice should realize. Old Testament contains a lot of casuistic pre-laws, that had been formed by well expressed and memorable found its form in apothegms part of which originate from the inner source of Israeli tribes and the other from strangers': from Canaan, Mesopotamian and Egyptian sources. These sayings had to regulate common life or sociality, but undoubtedly they affected the individuality also.

It is important to note that the Israeli sayings and laws authority descended from the God. The instructions read by the priests at national celebrations that set the moral and legal relations as well the verdicts made in case management associated in faith in

sole God and his will. We have to claim that faith constitutes the nation long before the law, borders and national defence order. What about the language?

So Israel borrows from God the law at the same time it is not possible to define clearly on what is based the other pagan tribes legislation. In every case it is connected with the symbiosis of magic, social agreement and revelation. But in some moment somewhere of the Middle-Europe meet Nordic paganism and Christianity that carry along the heritage of Middle East Judaism, and a new quality is born. That also in understanding the law and justice: judging and defining sanctions.

Of course, not always and everywhere have people managed to mark blameful acts with common denominator, neither to see equally evil in these acts. Neither has been spread the identifying of the accused with his deed. The act has also been handled separately and a person separately. As archaic way of thinking was more concrete than abstract the law was also specific and the first codes sooner reminded of fine catalogues. Several authors also name it so. The basis of the concept might be the knowledge that there have always occurred the acts that resulted in damaging something or somebody, and that in its turn has demanded regulation by some specific rite, magic, revenge, sacrifice or compensation (Hattenhauer, 1995). As it has been said the history of the world since the Fall has been the history of criminal work in the course of which people in different periods of time have been looking for different means to prevent and impede cruel acts, and to minimize the damages and sufferings that have been added by these acts; to heal the wounded dignity and honour. It is also a part of God's great criminal work to seek the lost one, to heal the sick one (in the meaning of a single person, a group or the whole creation) and for that he uses his church by giving it to use as attributes the sciences, structures and people.

The church possesses a priceless treasury of wisdom and truth that the world still considers folly, when the church is rejected, but what they worship when the church is visibly mighty. That might, of course can not be a value in itself or the main task, yet it is the direct responsibility of the church to witness truth in under any circumstances, despite of the position or status. If that truth can be tramping or kingmaking, in both cases it might turn into temptation to abandon it or to manipulate it; but who believes in truth knows the risk he takes in either case. The truth is there anyway and directs us more than

we are able to define the truth. The truth directs our daily relations and when things are really bad - through the court. If we are in conflict with the truth, then it is the duty of court to solve it. Punishment itself is not the solving of a conflict.

The following example of archaic justice has been used by Zehr, Van Ness and many others. Herein it has been taken from the book of Van Ness "Crime and Its Victims".

Most of the people are surprised to hear that the first legal systems that form the basis of Western laws consider highly important to restore normal relations between the offender and his family and between the offender and his family. Crime in principle has been viewed as violence against the victim and his family. As the common welfare had been corrupted, the community was interested in and responsible for compensating the evil and punishing the offender, but the crime was not viewed as an act against the state as it is nowadays.

- The dispensation of the Old Testament stressed reimbursement to the victim by compensation.
- For criminal offence against property, Babylonian law the code of Hammurapi (~ 1700 BC) provided compensation.
- The code of Ur-Nammu (~ 2050 BC) contained the regulations for paying compensation even in case crimes of violence.
- In the code of Isini king Lipit-Ishtar (~ 1875BC) demanded compensation in case the house-owner had dilapidated his estate and that allowed burglarizing. From him was claimed the compensation of damages.
- The code of Mesopotamian king Eshunna (~ 1700 BC) prescribed several compensations to the victim in case of losing an ear, eye, tooth or nose.
- In the ninth book of "Iliad" (~ 9th century BC) Homer refers to the custom of paying damages to the victim. Ajax challenges Achilles for the latter denies the compensation Agamemnon offers, noting that even fratricide can by paying compensation remain to live as a free man with his family.
- The Roman Laws also demanded paying compensation to the victim. According to the Law of Twelve Boards (449 BC) the accused convicted

thieves had to pay back the doubly price of the stolen things. In case the stolen property was found hidden in the house of the thief, he had to pay the triple sum. If he had resisted the search of his house or had been violent in the theft, he had to pay the quadruple sum.

- Roman historian Tacitus (~ 55 – 117 BC) wrote that in ancient German tribes even for killing the punishment was fine as cattle or sheep and the family of the murder victim had been content with it, the ongoing feud yet would have affected the community destructively.
- The earliest preserved German tribes Law is “*lex Salica*” given out by king Clovis soon after Christianizing in 496. It contains compensative sanctions for crimes that extend from murder and assault to stealing.
- Anglo-Saxon Law had elaborated a complex system of compensations. About in 600 Kent’s king Ethelbert issued the Code of Law’s of Ethelbert. That law contained remarkably detailed requests of paying compensation, defining for example the cost of the first four teeth from the expense of the eyeteeth and in turn the cost of all the others separately. Each finger and fingernail had its fixed value.

All these special original cultures reacted on “crime”, in contemporary meaning, by making the offender and his family responsible in front of the victim and his family. Crime was understood as an intra-community case that concerned the two parties and their relatives. It reflected the concept that between the victim and offender is a relation and as a reaction to the evil committed it was necessary to normalise that relationship again. On pragmatical reasons the victims were the key characters of the process (they and their families demanded it), yet because it was just righteous also: any adequate reaction on crime can not cut out the victim.

Van Ness’s note gives clear evidence of his wish to prove the argument that in the centre of ancient law was compensation of the crime that had caused the conflict by intermediation of community.

Christian Middle-Ages scattered in time and space

The law must guarantee the realization of truth, but it can do it only in case it serves the truth and justice. The authors discussing Middle-Ages philosophy and law quite often add to these terms prefix “Christian”. Does it mean that Middle-Ages put into practice the ethics of the Sermon on the Mount in legal thinking and practice?

According to the decision of Pope Leo XIII since 1879 the official philosophy of the Catholic Church is based on the work of Thomas of Aquino (1225 – 1274). It is not too much to stress that catholic way of thinking is actually wider than any other philosophy containing in it the other enthralling approaches. Therefore during its development the Catholic Church has managed to regard Thomas negatively as well. According to Thomas justice is divided into divine and human. Both of them in its turn, into two. In the centre of divine justice is *lex aeterna*, contain justice of which comes then the positive *lex divina*. The ideal form of human justice is *lex naturalis* and from it is derived *lex humanis*. For Aquino *lex aeterna* is a divine wisdom that leads the existing through will. As human being cannot immediately perceive the eternal law, *lex naturalis* – the natural law – is needed. On the basis of that are developed, by adjustments, deductions and amendments, the instructions and laws, necessary for people in everyday life. The law must be oriented at common rights, proclaimed in public and implemented by the administrators as a set of norms. *Lex divina* is the yardstick of human positive justice that we can find in the Bible (Salumaa; Luts, 1997).

Contemporary Catholic Church foresees as the elements of Eternal law the laws guiding the spiritual (angels’) world; natural laws functioning in material world; law of instinct ruling the wild-life; and the moral law as natural law, from which are derived the divine, church, and civil laws that guide people. The moral law is characteristic of intellectual human nature. The brief essence of it is the commandment: Do good and beware of evil.

God gave the positive divine law through revelation. Its elements are the main commandment “Love the Lord your God with all your heart and with all your soul and with all your strength and with all your mind” (Ms6.5; Mt 12:30; Mk 12:30; Luke 10:27) and the commandments (2Ms 20:3-17) and the law of love of the Gospel or the

commandment of Christ: A new command I give you: Love one another. As I have loved you, so you must love one another (John 13:34). The command to love does not abrogate previous commandments, it opens their deepest meaning.

We find the positive church law in the Code of Canon Law and positive civil law in the laws implemented by the state. According to the doctrine of the Catholic Church civil law is the ethical minimum. It is important that the laws that do not respect the natural law are not yet laws but superstition and violence. In these cases we have to listen more to the Gods Word than man's word (Havard, 1995).

Looking back in the past and thinking about justice it is important to notice behind the back of Thomas of Aquino Plato and Aristotle, remember in good words William of Ockham and describe shortly the idea of *Lex Aeterna*. *Lex Aeterna* is not the term of Thomas of Aquino, it comes from Cicero (106 – 43 BC) being thus an example of what was good in Romans. Notably could Rome learn from the conquered and without shame take over most of the Greek thought. When Cicero in his masterful speeches spoke not about the laws created by people but about the eternal law that had hold good forever, it must have sounded as the echo of pre-Plato period Greek's cosmic order as uniform law. Also the church fathers Tertullian (160 – 240), Ambrosius (340 – 397) and also Augustinus (354 – 430) had in their own way understood the uniform law and eternal law. They of course, did not forget to remind of the corrupted human nature and that the understanding of the eternal law revealing itself even in the created world needs revelation. Augustinus stressed that the eternal law is divine sense or God's will. Here takes the baton Thomas, who clearly distinguishes will from sense, and the first being subjected to the other. It has been disputed by William of Ockham (1290 – 1349) and before him also by Duns Scotus (1266 – 1308), who lay the foundation for Reformation claiming the contrary to Thomas. Enthralling description of these thinkers and of the conflict with Thomas' concepts of revelation of the truth gives us Umberto Eco (*The Name of the Rose*). At present the numbers and facts are still taken from the abovementioned sources (Luts; Salumaa; Havard).

The most of the Middle-Ages people of course did not discuss the law the way Thomas and William and we with you do. As we have claimed above, the archaic way of thinking was completely different from modern thought in its concreteness and being

oriented at a single case. It is interesting that thus the Middle-Ages becomes quite scattered in room and to space and to speak of some kind of uniformity in the borders of Europe is possible only after Christianization. And even then – and I'd say even now and here in Laimjala or Karilatsi village – the types of thought differ a lot of those in metropolis, both in moral essence and formal form. Although I think that natural law as a modification of the golden rule do not deny even Krasnoyarsk or more intellectual representatives of the Poultry Plant gangs in Estonia. Mostly people just do not think of common rights and truth before them forces pain. To pain and truth return when we discuss prison work.

The space of common ideas in Europe came up along in connection with Romans and Normans. Future allies in the European Union got to know each other through blood and fire. Looting the Romans brought along Christianity that had become state religion in 354. Until the king of Franks Clodovech (Clovis), implicated by his Christian wife prayed for fortune of war from the Christian God (it would be interesting to know was it against the Christians) and after that adopted Christianity, the spread of Christianity on the Continent was slow. As already then ruled the principle that the religion of the ruler becomes also the religion of his people, Clovis's Christianity brought along a great turn. The next turn took place when instead of Romans the Normans who had made changes in the world map had devastated the Continent for 200 years and the Franks were ready to buy their freedom from them. In addition to the money the Normans got from them also the Christianity. In 860 young king Harald Fairhair formed in Norway a unitary state and gave the people the law. In exchange he received all the land, several taxes and centralized power. In 911 was established Norman unified state in South-Frank. The British Isles were not far from here already. Norman duke William invaded in 1066. Pope Alexander II the flag of William's army and along with it the young king carried to the islands his law.

Why do I speak so much about the thinkers and tyrants? Illustrating the dry picture of law and power with blood I want show the passing from archaic law to public law in what we today call Europe. Not as a continent but a relatively unified space of thought and values. Yet there still is a gap between the values and reality in this space, the acceptance of Christian values in the law means something important to the

developing common culture. In preamble and other parts of Clovis' Laws already has been stressed the obedience to the principles of Christianity. In *Lex Carolina* of Emperor Charles the Great and the coronation of his predecessor Pippin and also of Charles the Great himself are perhaps the most grandiose examples, but even the Lübeck Law that regulated also the life in Tallinn was not an exception. The same kind of approach, that allows to understand itself as supporting of secular insecure authority with divine and that is anything else, but the vow given to the pope and that is meant to be broken; we can follow also in the other codes the formation of which lost the patriarchs, elders and tribes, creating the states. Hereafter I will discuss how the centralization of Christian state authority caused withdrawal from the Law of the Bible.

Crime and the theories of crime

Crime in its essence is a heterogeneous phenomenon. There are many different acts that juridical thought classifies as crime for these are in accordance with the elements of criminal offence scheduled in Penal Code. Hereafter I will pay more attention also on the acts that can not be found in Criminal Code. Here I only point out the fact that some cases may appear in the form of ethical dilemmas that make the judge once sympathize the accused, then the victim and perform injustice through justice. Also that the laws call equally criminals the youngster who in fear of being abused has exceeded the limits of self-defence, mayor who has accepted the bribe, tramp who has stolen bread, director of a nursing-home who has contaminated surroundings, serial killer and terrorist. Like the commandment brings forth the sin and violation of the commandment, the criminal law brings out criminality, criminalizing acts and widening or narrowing the limits of crime.

Afore I explained how the law brings out criminality, now I claim that criminality is expressed in behaviour. I will not debate about if criminality is a whole of certain factors or if there exist the so-called criminogenic gene. Crime has quite often been defined as deviate behaviour and hence in the church' criminal work is used the term of legal deviations and legally disabled. Therefore in the case of that explanation the

important category is legal norm. Having been beforehand monitoring the development and change of the law, it is understandable that it always makes the deviation relative. Knowing what is criminalized today, it is not possible to know it tomorrow. The subjectivity of the laws and uncertainty of the norms changes the whole life insecure. Insecurity increases the probability of the occurrence of deviations.

The established norm must be in accordance with inner norms, the written on the tablets with that written in heart. In that case person's control centre is not external, a mechanism regulation behaviour by compulsion, but natural conscience and the values in the centre of it nourish inner culture. One of the aims of the cure for souls is to create the kind of spiritual culture. But in case inner culture is integrated by antisocial values it in most cases leads to conflict between *shalom* and community. Facing the environment or situation that encourages criminal behaviour, in most cases external control, general preventive effect and fear of punishment is not enough.

Conditionally the theories of crime could be divided into four main groups:

1. Theories looking for genetic and biological reasoning.
2. Theories stressing the importance of social processes.
3. Theories approaching the structure of personality, its psychic peculiarities as reasons.
4. Cognitive-behavioural theories that handle crime as the result of deficient social skills and contemplate possible to prevent and restrict it by social learning and teaching.

In analyzing crime are used the terms status and level, structure and dynamics, geography and migration, difficulty and violence.

1. The status of crime is the total number of registered crimes in a unit of time.
2. The level of crime is the proportion of crime per size of population in certain territory.
3. The structure of crime shows the percentage of different types of criminal offence out of total number.

4. The dynamics of crime shows the changing of crime in time, both in the degree of criminal offence as well as in location.
5. Crime geography means crime inspection by regions. Here belongs also the crime migration (drifting, for example on the influence of external pressure, into other areas).

Proceeding from the object of crime as separate types of criminal offence could be approached criminal offence against property, against the person, against the state and crime against public morality and moral. Originating from the subject of the crime there are defined juvenile crime, lumpen crime and white-collar crime. From the point of view of structure and type – organized crime and lifestyle crime. Originating from environment for example street crime and bank fraud, corruption and domestic violence. We can also speak of violent and non-violent crimes, yet in its nature a crime is always a violent, reckless and damaging conflict that needs to be analyzed and solved taking into consideration all the aspects and all the parties involved. These parties are both the victim as well as the offender, the network of their relatives and their closest, also the community and the society on the whole.

American criminologists have been dealing with typologizing of crime more deeply. Raska (Raska; Ahven, 1994) points out that Clinardi-Quinney's typology that is built up on four groups of features qualitatively characterizing the offender and criminal behaviour.

These features characterize:

- a) criminal career of the offender;
- b) attitude of the referent group of the criminal to criminal behaviour;
- c) convergence of criminal and legitimate behaviour in the referent group of the criminal and
- d) reaction of the society on criminal behaviour.

Through the intensity of the occurrence of these features Clinard and Quinney described the eight types of crime:

1. crime of violence against the person;

2. occasional crime against property;
3. criminal official misconduct;
4. political offence;
5. crime against public order;
6. custom i.e. traditional crime;
7. organized crime;
8. professional crime.

Of course there exist more theories and typologies than we could discuss here. With the kind of typologization is engaged criminology.

Criminology

Although crime is as old as mankind, the history of criminology as a science is not notably long. Its language has not formed yet and figuratively speaking in the stage when multidimensional phenomena are explained by one-dimensional terms. In the term “crime” interlaces at least three dimensions: material (act as an existential phenomenon), axiology (estimation, originating from certain values system) and formal judicial (classifying the act as judicially punishable act) (Raska, 1994). Criminology neither does nor research the ideal form (composition of criminal offence or the model created by the law), but certain cases, circumstances and facts and makes its conclusions and generalizations on the ground of it. At the same time they have wanted to see in criminology the basis for creating scientifically reasoned criminal policy (Sootak, 1997). Human behaviour and human nature have turned out to be more complicated than optimists expected and they have not found the universal key to solving all the problems. There is every reason to believe that until the implementation of *lex Christi* in the life of each human being, the crime remains a form of human behaviour.

Criminology that came up from the contact of several sciences remains even today interdisciplinary, reaching in its field of study till medicine, psychology, sociology and legal sciences. Criminology research results are of interest for people, who can and

want to understand something of being a human being investigating its deviances. Thus the sin and sinning are fundamentally bound with being human being and understanding and explaining of human being apart of sin leads to dead-end. Mankind is forever solidarily engaged through sin (Mann, 1985). Crime is one of the forms that emerge from sin.

As the acts specified as evil corrupt the ideal balance and harmony of relations i.e. *shalom* in the society, the reasons, consequences and possibilities of regulation of these acts are related to investigating the society itself. Thus criminology is a meta-science belonging among different social sciences and several criminal sciences (penal power, forensic science, forensic medicine etc), that on its turn should be related to both – theology and philosophy.

The schools

Criminology and developed in contention of two schools. These are normativistic or classic and positivistic or sociological schools. Normativistic concerns crime a violation of certain norms and abnormality. The basis of that approach is in natural law that originates from the beginning human being, created nature and in due to what man knows what is good for him in long perspective. “I will put my law in their minds and write it on their hearts” (Jer 31:33 and Ez 11:19). Natural law is insured by positive justice or commandments, prohibition and agreements. Natural law has been further developed by Jews, Greek and Romans as well as fathers of church and of course, all the nations at last. Some of them believed in divine givenness of natural law, some derived it from the nature of human being, some of objective need to correct relations. Common is the claim of normativistic school to set apart the thesis that if a person violates a norm or law that is him, there must me something wrong with him. Thus the normativists bring to the fore the person of the offender – claiming that their abnormality is the reason of their crime. A criminal is a sick person. On the level of society crime is social pathology.

Central concept of positivistic criminology, that is also called sociology of crime, is deviative behaviour. Deviative behaviour is not handled as pathological but assumed is

that it is a unavoidable part of community life. We will not discuss here, if everything inevitable is normal, as well as we will not define the concept of normality – it would lead as too far away. Those who are interested in that problem may see to the tables presented in annex. It is important to understand that sociological approach relates handling of the results and reasons of crime more to the person's external factors (environment, companions, lifestyle, social processes) and normative to a person itself (presumptions, beliefs, choice). That might also be named psychological and axiological school. In practical criminal work and criminal policy none of these two should be excluded. Cure of souls is interested both, in inner and external processes, solving inner conflicts on individual level and external conflicts on social and organizational level.

The two trends developed by the end of 19th century were not homogenous either. The conservative wing of normative trend considered important to hold the historically developed law; at the same time the liberals emanated from the idea of state based on the rule of law and found that criminal law must guarantee a person's free development and to limit arbitrariness of the state. From the beginning in sociological school had been in debate Franz Litz's (1851 – 1919) opinion of avoiding biologization and Cesare Lombroso's (1835 – 1909) personalcentric view on crime (Sootak, 1994, p 108). As for our century and thought the sociological trend in my mind is more important, I dwell on it a bit longer.

Cesare Lombroso worked in Italy as a prison doctor in the second half of the last century. His main piece of work was "Criminal Man" published in 1876. In the background of the researches of natural sciences and theory of evolution of that time, he developed the principles of biological criminology. He found that in criminals one should see at first certain degeneration to a previous evolutionary stage and that the criminals differ from the other people physiologically as well. According to Lombroso crime is hereditary and only a small amount of the criminals are not criminals by birth. Yet his cranial theory has not lasted the test of time, the fact is still that when the earlier investigators of crime focused on the act, then Lombroso focused on person.

Enrico Ferri (1856 – 1929) is a man who added together with researching crime anthropology, statistics and the effects of punishment, and implemented the concept of criminal sociology. In 1921 he compiled the project of Italian criminal code that on its

turn has implicated the later criminal laws of the other countries. Researching crime has been considered first of all the duty of sociology also Emile Durkheim (1858 – 1917).

In the twentieth' in Chicago University begun researches concerning the formation metropolises and their structure. The researchers noticed the distribution of town into several sections and the stratification of these sections both by position and wealth. The city is formed by commercial quarter around it is the district with chancy and changing settlement, depending from the first one; the next is the district of working class, then middle-class and finally the suburb. Chicago school began to investigate the changing district and they found a lot of cases of deviative behaviour and social problems: people with mental disorders, prostitution, suicides, alcoholism, juvenile crime, mortality of children, disease and poverty (Laine, 1997). The most important term taken into use by the school was social desorganization, social dilapidation. That might also be called decomposition, the cancer of sin or anyway. It associates with the pre- Flood situation, where the God at man and found that all in him is profoundly bad. There was nothing or nobody who would remain untouched by dilapidation begun from the implication of sin. It marks the state where people are estranged from each other, understanding and trust are gone. All of a sudden people are strangers, hostile and often even savaged. The ethics of hospitality and supporting of the fellow man known from the Bible is strange for the anonymous inhabitants of the urbanized city, the firmness and value of home as well.

From the position of the current work it is important that Chicago school brings forth the fact that in the course of desorganization the church and school have lost their influence. Of course here it is the problem of hen and egg, but we should ask still – wouldn't it be possible to prevent social and moral destruction by strengthening the church, by expanding its role both in the school as well as in pre-school education. It's absolutely obvious that systematic development of the realm of values, clear hierarchy and consistency in its observance is the best criminal prevention. Each crown or dollar invested in criminal prevention pays it multiply. Comparing the crime statistics of FBI and the membership of the church has been found that being a member of a church is the most efficacious protection factor of all used in the research. But among them were also the amount of income and unemployment. Therefore I state that investment in the church as an institution preserving values and developing and integrating personality and people,

that for reasoning politicians in long term perspective it should be the priority even in strained budget periods (Üprus, 1999).

Separately should be discussed critical or radical criminology. Right-radical is called Thatcher's and Reagan's criminal policy that wants to restrict crime with severe and immediate punishments, investing in police forces and control measures. Left-radicalism criticizing it sees in the kind of approach danger to civil liberties and finds that exerting force hits mostly the least privileged strata and hence is unfair. They do not believe that punishment is the best solution to the problem of crime.

In case of critical criminology we have to distinguish feminist, Marxist and peacemaking criminology. There exists also post-modern criminology in it on its turn differentiates semiotic school. Hilborn's health criminology is also an interesting and fresh approach to criminal conflict, containing both psychological and social aspects and orientating at lowering recidivism and preventing crime.

In Germany and its spheres of influence research, learning and teaching of criminology has remained more connected to legal sciences, in Anglo-Saxon countries to sociology (Laine, 1997). At the same time it is evident that different approaches enrich understanding of the describable.

Biological models of criminology (biocriminology) move analysis from the classic theory of "being bad" to discussing the "criminal" in the terms of illness or pathologic model. From it has developed the theme of common sense used today in so many discussions about addictions and crime. It means opposing the model of deterministic causality to the classic model, where a rational individual chooses to be a deviant. Deviation is caused by an illness/defect of an individual and that explanation is tempting for many people. The aim of social activities is to control the individual and if possible to cure him. Drift has taken place - from juridical approach to the investigation of individual's behaviour. Fundamental biological arguments that cause the deviance are sought for. Deviation is objective reality like other diseases or illnesses. Many philosophers have used the versions of the theory of evolution to explain the deviations.

Positivism

Crime has always one or several reasons. The positive task of science is to find that reason or the reasons and through them also a positive solution to social problem called crime. That reason is sought for in criminal, in “criminal’s head”, being the starting point biological, psychological or sociological. The positivistic school of criminology seeks the explanations of criminal behaviour through scientific researches and experiments.

Sociological branch of criminology

Crime is the result of rough changes (Emile Durkheim). Here joins the concept of **anomie**: anomie means sensation of certain moral emptiness, the state of lack of norms that appears when person’s hopes (system of values) exceed the real chances of fulfilment. With sociological branches of criminology correlates mostly to control: all the people are potential criminals but unlawful acts perform mainly those who are free of human relations and institutions of conventional society.

From the sociological branch of criminology emerge the **theory of chance** and **labelling theory** (stigmatization).

- According to theory of chance individuals are made social so that they’d seek certain general goals: money, material wellbeing, prestige and power. For the society members who belong among the incapable and minorities and for whom achieving these tasks by legal means is blocked the only way out is criminal activity.
- According to labelling theory people regarded as criminals begin to see them as criminals and hence behave accordingly.

The problem of this kind of models is that they tend to remain static, leaving too little space for the chance to change; individual differences are not noticed.

Psychological branch of criminology

Important is the influence of individual and immediate environment as opposed to investigation of wider social facts like race, gender, class etc. In order to find out the probability of future crime are examined the risk factors (criminogenic needs), that appeared in individual's earlier behaviour, in relations with family, school, friends and job, also spending spare time, using alcohol and drugs. The stress is first of all on individual characteristics of a person (criminal) not on the act or its wider social context. For many psychologists (like Andrews, Ross and Gendreau) the psychological branch of criminology has been starting point for developing an effective, working and humane rehabilitation system of criminal offender that is based on understandings of psychological criminal behaviour.

Health criminology model

(Jim Hilborn)

Health criminology model has three central conceptions. These are the following:

1. **Criminality is a whole of learned behaviour.** All individuals are in constant learning process. That learning increases their social competence and improves general social health or increases their competence of health in problematic behaviours. It is best to discuss criminality in socio-psychological terms of criminal behaviour.
2. **Determination of risk factors and protection factors.** In the centre of public/social health model is understanding the individual in the terms of risk and protection factors. These risk factors function in different social contexts (social circles). Thus crime prevention might be classified on the basis of institutions like community, family, school, office, local crime "focal point". It is important to observe the potential of police, courts and correctional institutions in crime prevention.

3. **Is the target primary, secondary or tertiary?** Public health measures (that contain the activities of crime prevention) are quite often classified on the basis of the primary, secondary or tertiary target population.

The opinion of **clinical criminology** is that criminals are:

- a) the result of criminal pathology
- b) the result of psychological deficiency, or
- c) just do not fulfil their psychic potential.

Conciliation (peacemaking) criminology

On conciliation criminology are based the conciliation and mediation programs initiated by Mennonites. Mediation and conciliation are viewed as opposing to future crime preventing and destroying it. Harold Pepinsky, one of the founders of conciliatory criminology says: "It is obvious that in the society that widely uses punishment occur a lot of great and hardly controllable problems with crime and violence. A society that generates punishments at the same time produces crime, whereas the comparatively more peaceful societies find that they are less forced to punish."

Victimology

Matter of taste is, if to regard victimology as a part of criminology or as a science directly adjoining it. Indisputably both of them act greatly in the same field and that field is criminal conflict, its essence, reasons and consequences. As criminal we understand here any conflict that harm *shalom* and relations, cause sufferings and damage and in one or another way involve human violence.

Unexamined remain the problem, if those who claim that the roots of victimology are in the investigations carried out after World War II of the victims of

concentration camps during, or in criminology that has turned attention to the victim of direct offence.

According to wider approach object of investigation of victimology are all the victims of wars, natural disasters, ship wreckages, plane crashes, car accidents, the narrower approach investigates only the victims of crime (Joutsen, 1987).

UN defines the concept of crime victim since 1985 as follows:

“Crime victim is a person who individually or in a group has suffered damages; who has been injured physically or psychologically; who has suffered emotionally, economically or whose rights have been remarkably limited through the acts or omission and that pursuant to criminal code and laws that forbid misuse of powers.

The aforesaid holds in spite of whether the offender is identified, arrested, brought to justice, penalized or not and despite of the family relations of victim and offender. Neither is of importance the race, gender, age, language, faith, nationality, ethnic and social affiliation” (Joutsen).

In the frames of the sub-program “Supporting the victims of criminal offence” of the national program of Estonian criminal prevention the victim of criminal offence is a person who has fallen a victim of negligent treatment or abuse, of physical, mental or sexual abuse and to whom have been caused damage and harm by another person, a group of persons or organisations despite whether the offender was detected and there if against him have been commenced criminal proceedings.

Criminal law does not know the term victim. Instead of that legal terminology uses the following terms: victim, civil claimant and victim with the right of prosecution. All these narrow the view being applied in procedural meaning in other words: no criminal case, no claimant. Considering his remains in the background in (Estonian) legal system I regard it necessary to stress in elaboration of the abovementioned criminal prevention program, that the notion of victim is considerably wider.

Main attention of criminology has always been focused at the person of a criminal and environments. In case of that approach victim as an object of attack, is yet a motive. Forensics handles the victim only in the frames of investigation tactics, in court the victim is yet a witness of prosecution. In the genesis and analysis of crime, the victim remains barely a side- factor. Frank writes that victimology takes the victim under

observation in the aspects set aside by the other disciplines and connects them (Laos, Tartu 1995). Victimology concentrates on victim, his relations with the damager, on victimization both in the meaning of being victim and victim syndrome. The reactions of the victims of offence we discuss on practical work level of criminal work in the chapter of victim support, here we are limited to the statement that their combination is often expressed in post-traumatic stress syndrome which on its turn might shape continuous neurosis.

Analogically to criminology different trends have been viewed in victimology as well. They speak of scientific and humanitarian (Fattah), of conservative, liberal and radical critical victimology (Karmen). In connection with our legal approach I am interested in the fact that traditional and conservative branch accepts and supports retributive justice and in connection with the level of practical criminal work that the attention is turned to street crime. Thoroughly is developed the idea of personal responsibility and self-trust that for us means first of all the output to the first theological level, but gives also guidelines for a practitioner. Liberal branch takes under survey the so called domestic violence cases, uses the term *whole victim* and regards compensation and conciliation as punishment strategies. Critical victimology, also called radical, takes a full-turn and focuses on damages that people receive in legal system. Karmen creates the term of institutional errors that harm person's rights (Mawby, 1994). Joutsen gives a thorough approach of the rights of victims and especially of the role of UN in defining them, in HEUNI publications (1987).

Hence victimology investigates the role of victim in criminal conflict, the effect of crime on victim, the rights of victims and practical realization of these rights; how the victims are treated by the court, police and other involved organisations and persons.

Help provided the victims of offence could be one of practical outlets of victimology. Joutsen and Laos write that this aspect has been stressed by the founders of victimology (Henting) as well as the victimologists of the former Soviet Union (Frank, Rivman, Minkovski etc.). To certain degree it is so – in the face of situative prevention. When the situations and places of high risk are determined, it is possible to avoid them and thus prevent a crime.

It is still not right to think that victimology has become mainly the strategy of defending victims or a scientific explanation of it. If, with some reservations, radical victimology could be approached like this, the conservative branch leaves quite the opposite impression. As the personality or behaviour of the victim might encourage or even provoke criminal behaviour of persons with criminogenic risk they speak of provocative victims and even of victim's guilt (Wolfgang, Amir). It is obvious that if there are people of high criminogenic risk (which in its turn could mean accumulate of several risks), there are also people of high victimity. From the point of view of pastoring and counselling accusing the victim in falling a victim and causing a secondary trauma, is unacceptable. In turn the concept of guilt has been criticized for the kind of approach might affect criminal policy and lead to the conclusion that the offender has a passive role in committing the act (Joutsen, 1987). As we can see we deal here with freewill and determinism i.e. the topic of conditionality that might be of interest for both criminal-theology and practitioners as well.

Prevention

Preventive means avoiding. Knowing the human tendency to cruel and the ability to violate the most beautiful ideas, to take advantage of or spoil in the course of realization, distort and create an opposite reality to the absolutely ideal one, it is relevant and moral to use the paradigm of thought preventing damage and harm before different spheres, several actions and interventions as a basis in drafting and planning and assessment of them. It means that with every achievement and each activity in the course of the activities leading to that achievement activates more processes than gaining the task directly needs. These processes need not to be in accordance with the basic values of the task or of the means of its achievement and with the interests being contained in the task. Processes are multi-sprout and grasping in widening circles. Each activity follows by-effects.

Preventive planning should be well known to scientists and practitioners working with environments. Yet at first sight considering natural environments seems clear to

everybody – be it looking for a place for chemical works, dumping ground or polygon -, we every day read in the newspapers articles that continuously proving that there are no limits of human greed, negligence and cruelty indeed. It is even worse when we think of human environments and the relations lacing there.

Everything takes place in relations to everything. Everything means something related to something and for somebody. Cruel act also is first of all distortion or violation of relations. Preventing a cruel act we have to work with the way of thinking, imaginations and feelings, with needs and challenges that generate the act. In order to prevent distortion of relations we have to regulate the other distorted relations that at first sight in the eyes of public opinion are not distorted at all.

Three main possibilities to respond the crime are punishing, control and prevention. It is obvious that the selection of means first proceeds from the political decision, that in its turn from beliefs and reasoning, based on the approach of human being and world, on faith and philosophy the decider follows. But always from the task we have set us.

The essence of punishing is retributive its aim is to neutralization, intimidation or correction. The corrector believes that he has the right to do something to the other human in order the other one would not act any more in the way the punisher considers is not right. He feels justified by the belief as if the convict had violated some conceivable principle of justice or committed offence against God, and that an executioner would become a noble knight who must compensate evil through sufferings. What gains from of it the victim?

The people living in the system founded on punishment are in their rights like minors or under guardianship; and the restrictions create handicap and non-coping. The greater in its turn should be contribution of the state in ensuring the coping and guaranteeing security.

It is no secret that crime in the totalitarian states is more controllable than in democratic ones. Yet it should not be a justification for oppressing the rights and liberties of the whole population. Crime control can not also be an aim in itself: more important is anticipation and prevention through the strategies of social development and early intervention. But the last mentioned principles come from another lexis used by health

criminology. The idea of health criminology is improving health and reducing damages and these measures are introduced on possibly local level, the role of the state is rather supporting than restricting local initiative.

In addition to control traditional criminology knows also prevention of crime through reducing the possibilities. As the environmental crime prevention measures belong here the measures that make difficult to commit offence, eases the identification of offender, minimize the profit of crime and make difficult the offender's self-justification.

Committing offence is made more difficult by several means: combination locks, signalization equipments, fences, cameras etc. The labels "Under surveillance", "ESS guards" and "Beware of dog" send a clear signal to a potential offender as well. A step further is the conception of developing secure environment where both physical and psychological security is considered. It is important to consider the principles of crime prevention already in city(district) planning: neighbourhood of a pub and children playground guarantees trouble and risks for children, big dark parks turn into the scenes of gangs and the homeless. Visible presence of traffic police, evening programs of Ain Allas and Erik Boltovski and firearm and alcohol selling rules are prevention means. But creating safe (safer) local private or collective environment always takes place on account of common safety. The safer becomes the district of the newly-rich in Lollidemaa (Foolsland) or Merivälja the more unsafe is it in Kopli or Kalamaja and not only due to uneven distribution of resources. The owner has the right to build a castle of his home, but the contrary tendency – to turn the castles and fortifications into homes through the strategy of direct and humane relations – would be by far pleasanter and not so military. It can be said that it would be nice if a man could protect his home, but I say - it is awful if he had to do it.

For identification of criminals is used formal control as inspectors, guards and police, but also non-formal control as community programs (neighbourhood watch, *Crime Stoppers* etc.). Everyone who wants to contribute in restriction of crime through social control and minimizing the possibilities may participate in these programs. It is obvious that in a settlement where the inhabitants have organized in order to prevent cruel acts, where monitoring of the region is arranged by monitor or guards, the

suspicious strangers have been found quickly and in case of need arrested. I'd still avoid heroizing of such activity for it is fruitful soil for sin and roots for wild justice. There is dividing into own and strangers, considering oneself better than others, hostility to the dissimilar that may cause violence. Name here Ku Klux Klan, brownshirts and the Reds. Any kind of totalitarianism in community life is dangerous, especially total control. Total can be faultless only Jesus Christ, but He does not control, He loves. On His love let us control ourselves. We still remember the heroic tragedy of Pullapää Company. This is an example of distortion of our best intentions.

In order to reduce the profit out of crime the products are specially marked; it makes difficult the resale of stolen products and easier to find them. It is not recommended to leave money in the shops overnight. Larger sums of money is kept in safe or bank. People do not carry along cash but payment cards. In case of selling expensive things the documents of the product and person are required. While planning a crime, the offender knows the abovementioned and considers with it. The proportion of risk and profit must remain in the limits of norm i.e.: no-one will steal, if he knows beforehand that he cannot use or sell the stolen products and will be caught when trying it.

Investigation of several crimes shows that the offender tends to justify himself. The theft of socialist property is not a sin. The rich has everything so much that he will not even notice. Does that little that I carried away on my back bankrupt the owner? Tax evasion is not a crime. Doesn't it sound familiar? Already our folklore gives the algorithm of the kind of thinking in a proverb: manor's rope, let it trail. The justifications of the offenders are as standard since their childhood: he hit me first and then I gave him; he threatened me and I prevented it; I beat him so that he'd remember what he can and what he cannot do. Recur also the common arguments of rapists: the girl wanted it herself; she fought back only for show; and what she then shows off in her short skirt, she'd know how it works on me. There is nothing to say but sigh: oh santa simplicitas, and to admit that a man grows up only when he takes responsibility. Lying to oneself in order to avoid responsibility gives evidence of mental infancy. To general crime prevention belong also condemnation of that infantility and estimation of honesty in upbringing, mass media and as by me, even by advertising and propagation culture.

The prerequisite of success of any kind of crime prevention is the co-operation of different levels. Individuals, non-governmental organizations, congregations, local governments, companies and state offices have to understand that crime is not the problem of the police only and it is not possible to restrict crime by barely repressive measures. Compulsory establishment, the expensive system of prisons and hoses of detention manage to handle only a small amount of people who have committed an offence. From the point of view of rehabilitation the prisons are in addition to the expense, the most negative environments. One has to be most naïve to believe in the educational effect of the prisons positive meaning to the mental health of the society. There is no reason to believe either that the court and penal system that deals with the above-water part of the iceberg, could control crime. We have to work constantly, multi-systematically and concernedly with corrupted nature, with the whole human being and human environment. The best crime prevention is realization of the social policy considering the needs of people and communities. Bishop Einar Soone's speech in the Conference of Prison Chaplains and Rehabilitation Workers of Nordic and Baltic Countries (1998) expresses the position Estonian Council of Churches concerning that field: "The best crime policy is a good social policy i.e. good social policy is the best crime policy." Of the complicated complex of the reasons of crime the bishop emphasized population policy, labour and housing policy, creation of state benefit and compensation system and alcohol and drug policy as important regulators. Every policy has to be moral.

Developing a healthy and safe community is crime prevention in itself. Crime prevention through social development works for elimination of reasons on the levels of school and church, family and community. Analysing the report of the bishop becomes clear that ECC regards as crime prevention first of all social prevention: risk-centred interference and social development as an individual, as a community and as the state.

Social prevention

Crime prevention through social development is focused on elimination of the primary cause. Economical, social and psychological factors can be viewed as beneficial (or restraint) factors of crime and are handled accordingly. Not only the market but first of all love should control the freedom and society. “Crime prevention demands considering the needs of both, its victims and the offenders, dealing with the fears and concerns of the community and protecting the rights and dignity of all the citizens by the state. If we really want a healthy and safe community, it is decisively important that all the parties (victim, offender, community and state) – whereas each of them has its position – were involved to the process of healing and solving the problem” (Jim Hilborn, 1997). And the same author “We need more than barely “war against crime”, we need commitment on conciliation and social justice. For that purpose there are restorative justice and social development.” (ibid).

Through social development crime prevention as a strategy aimed at the future is with the sense of perspective, but a time consuming measure, that reduces risk factors. Different preventive programs are aimed at economical, social and psychological factors that enlarge the risk of an individual turning into a confirmed criminal. These strategies may be aimed at the whole population (primary prevention e.g. preventive work in schools), risk groups (drug addicts) or at individuals (persons who have committed crimes). Attitudes and behaviour are developed by creating the protection factors that block the risk factors. As crime rate differs by regions and sociums (in Kopli higher than in Nõmme, among men higher than among women, higher among Russians and least privileged than Estonian among house owners), it is more practical to act on the second and third level of prevention. In simple way – nationally is possible to state only the main principles and tasks, the programs should be localized and focused according to local needs and specialties. There is no need to carry through programs of prevention of pocket picking in Abja-Paluoja and to organize the police homicide squad in Hiiumaa. Yet it is necessary to consider seriously the labour policy, alcohol policy and education, to consider the regional development. We have to think differentiatedly of the risk groups: these who lost their job when the peat factory was closed, need a different approach and

help than the girls who have become pregnant unwontedly. But both of them need help and leaving them without support increases crime. Stealing of a car, harassment and tax evasion are all crimes, yet prevention strategies and reactions are different.

Minister of Justice Paul Varul expresses the position of the state in his foreword of the publication presenting the principles of Swedish crime prevention:

“We consider it highly important that the activity preventing crime – crime prevention – should turn more effective in every county, commune and town. That is caused by the fact that increase of crime during the transitional period has year by year turned more extensive, the offences have become more brutal, organized crime invades to all spheres of life. Since 1993 in Estonia is active the Crime Prevention Council in the rights of government committee. Main work direction of the council is co-ordinating the activities preventing crime in the whole state, explaining the necessity of crime prevention to the population and involving public in prevention work.”

Publication says that prevention program in Sweden is based on the following principles:

“The Government and officials have to consider more with the implications of general and political development of the society on crime. In order to prevent crimes greater demands are presented them who with their activities create possibilities for committing crimes. All the persons concerned have to monitor more how the crime is influenced by their decisions and the measures implicated by them. While considering the trends of crime policy we have to make more effective the legislation and the activity of the officials concerned. We have to support civic initiative and co-operation of officials, undertakings, organizations and private persons in preventing crimes.”

Although Sweden is held one of the leading states in the field of crime prevention in Europe, the Swedish model contributes to control more than to social prevention and is more centralized and state-centred than for example in Netherlands, Canada and United States. It is obvious that Ministry of Justice has decided to integrate the Estonian legal system into European legal system, but in the field of prevention and civic activity we have a lot to learn from England, Canada and the United States.

Crime prevention and its levels

Crime prevention is preventing of crime. It contains in it all the measures that lower in the future the number of the crimes that would have occurred without these measures. Crime prevention is not only crime control (i.e. control over persons who potentially could commit unlawful act). The aim of crime prevention and control measures is a healthy, safe and righteous society.

Crime prevention operates:

- **through reducing the possibilities and developing the environment** – the aim of it is to make committing a crime more difficult, dangerous and less profitable. That approach sets as an aim rather the crime risky situation than the offender. It is often called also situative prevention.
- **through social development** – it is aimed at preventing criminal behaviour. It deals with social reasons of crime and tries to influence the attitudes and behaviours of the people who most probably could become offenders. It is done through reducing the risk factors that are long known to be connected with crime (like low parental skills and no troubles at school) and through to increasing protective factors (like good parental skills and success at school). That approach is rather aimed at a potential offender than at crime. It is often called social crime prevention or criminality prevention.

Primary crime prevention

Primary crime prevention focuses on physical and social environment and the factors that influence possibilities for crime as developing the environment, natural rate of safety behaviour in a population (crime prevention through reducing the possibilities) or on the level of poverty and absence of benefits of local population (crime prevention through social development). Primary prevention tries to avoid some events, influencing rather the general environmental conditions that generate these events than the individuals influenced by these events (Graham and Bennett, HEUNI, 1995).

Secondary crime prevention

Secondary crime prevention focuses on individuals or groups of individuals that are potentially at risk of becoming offenders. The aim of prevention is the kind of interference to their lives that would avoid breaking of law. It could be done by supporting the families at risk of divorce, helping the children with learning difficulties and teenagers at risk of unemployment and homelessness (Graham and Bennett, HEUNI, 1995). It is crime prevention through social development.

Tertiary crime prevention

The activities of tertiary crime prevention focus on individuals who already have committed crimes and the aim of it is interference to their lives in the way that would stop their further criminality. It is risk-centred crime prevention through developing pro-social skills that reduce criminogenic needs.

Crime prevention strategies work:

1. through the changes in outdoor environments that make the crimes more dangerous, difficult and less profitable; or
2. through changes:
 - a) in individual's attitudes and values that reduce motivation or commitment to crime, and
 - b) that increase person's general social competence.

Criminal law: dogmatics and law

Criminal law is the doctrine of crime and punishment, theoretical approach of criminal law. It is also said that criminal law is penal law. Criminal law consists of criminal laws (positive justice) and dogmatics explaining and reasoning them. Criminal law dogmatics could be defined as a science that deals with the conceptual and structural

essence of criminal law and it regulates and develops the system of correspondent legal material (Sootak, 1997).

The main principles of criminal law are:

1. The principle of democracy that contains in it equality before the law, security of person and right of defence for everybody.
2. The principle of legality that speaks of administration of justice in accordance with the laws which were valid when the crime was committed, of presumption of innocence and validation of the latter mitigating laws.
3. The principle of humanity. Society protection against crimes, general and special prevention, the aim of punishment. Restrictions of the concept of punishment and alternatives till release of criminal liability or of bearing liability.

Special principles relate to liability. These are the inevitability, individualization and personality of liability and the mitigating and aggravating circumstances.

Positive justice contains in it laws, that designate what kind of acts are crimes, provides the punishments and other sanctions and the procedure of application in case of the persons guilty of crimes. It is important that criminal law consisted of only the legislations of general application of justice adjustable for persons whose punishing is adjudicated by competent state bodies. The law that is not directly adjustable to persons is not a criminal law. For example the Constitutional norms of honour and dignity, of prohibition of torture and degrading treatment, are criminal judicial, but for their application is necessary the criminal law or penal code (Nigola, 1997).

Criminal policy

Criminal policy designates which crime control intermediate targets with which measures and which way are planned to achieve. It means that the law should regulate the means of self-regulation and the policy should designate the procedure for their use. At the same time policy is a means of exercising power, a function of realizing the ideas and therefore it also shapes legal provisions. Criminal policy, for example can criminalize

different things depending on the ruling ideology. Imprisonment of homosexuals, registration of their marriages and wedding have taken place within one and the same decade, in judicial areas situated only some hundred kilometres from each other. In cultural space of Christian Europe. Sootak states that some authors regard criminal policy as a part of juridical dogmatics, as if counting on restriction of the chances of policy to become independent (Sootak, 1997). In reality it is not possible to restrict constantly sin and its distribution by coercive measures. The influence of the prohibition being included in the laws and sanctions does not last long.

At this point we could ask a question about the church' criminal policy. Does the church have its criminal policy? Does the church have its viewpoint for restriction of the area of distribution of evil? Does the church see the dimension of dynamic and structural Evil (as Tillich reveals the concept of Satan) in crime and social processes; and if it does then how does the church respond?

The team which has been working at specifying Finnish theology of crime and criminal work gives a common negative answer. They say that the fields of the church and the state are clearly distinguishable. Yet their task is largely the same both of them use the power delegated them from God. The matter of state is to serve people through power and the matter of church through love. According to the decision of the team church cannot claim to be the regulator, mediator, adjudicator or police and the state cannot aspire to be the proclaimer of Gospel. If the church which has the obligation of proclaiming unconditional love, interferes the state affairs, the church does not only injure and disturb the independence of the state but confuses also its essence, loses the authenticity of proclamation of love and the possibility of raising, encouraging and protecting the perishing and self-damaged life. But if the state that has to keep peace and order with the help of law and court, interfered church affairs the state does not only injure the independence of the church but damages its own being and loses the citizens trust that later on would lead to insecurity and panic in the field of preserving life's external preconditions (KDYK, 1978).

Yet thereat the idea church' concept of criminal policy is declared non-Lutheran, this idea actively taken up in the frames of the whole the document. There will be found the spheres where the church has to interfere with the state criminal work: crime

prevention, usage of imprisonment (pp 59 – 61) and other elsewhere. That instigates to present with the current document, based on ten-year practice the contrary statement. The church has to try to integrate the Christendom and the society on the whole. For that purpose the church should have a definite socio-political program. Church' criminal policy is a part of it.