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REVISITING WHITE COLLAR CRIMINALITY FROM A SOCIAL HARM PERSPECTIVE

REVISITANDO LA CRIMINALIDAD DE CUELLO BLANCO
DESDE LA PERSPECTIVA DEL DAÑO SOCIAL

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ABSTRACT

The article seeks to revisit white collar criminality in the era of globalization from a social harm perspective. However, this is not an effort for further theoretical elaboration of the term but an attempt to outline a holistic view of the phenomenon. For that matter, it presents the fundamental alterations connected to production system and to the relations between labor and capital, resulting in strengthening the structural power of capital. What follows is the “disappearance” of white collar crimes through their cultural and structural normalization. Despite their promising declarations, penal law and regulatory initiatives fall short of dealing with post-modern evolutions. The same goes for critical criminology, to the point it remains captive of crime constructions. The alternative provided by the social harm approach dictates the abandonment of crime-schema and thus a structural reversal in the way perceiving reality. The objectives for a bottom-up intervention doesn't simply offers a promise for social relief from suffering, people experience due to systemic harms like white collar crimes. The most important is the resurgence of the progressive perspective aiming at the subversion of power exercise towards social justice. In that view, going beyond criminology means amplifying critical thought.

Key words: White collar crime, globalization, critical criminology, social harm, social justice

RESUMEN

El artículo pretende revisar la criminalidad de cuello blanco en la era de la globalización desde una perspectiva de daño social. Sin embargo, éste no es un esfuerzo para una mayor elaboración teórica del término, sino un intento de delinear una visión integral del fenómeno. Por lo demás, presenta las alteraciones fundamentales conectadas al sistema de producción y de las relaciones entre trabajo y capital, lo que resulta en el fortalecimiento del poder estructural del capital. Lo que sigue es la "desaparición" de los delitos de cuello blanco a través de su normalización cultural y estructural. A pesar de sus declaraciones prometedoras, el derecho penal y las iniciativas de regulación están a la altura de hacer frente a evoluciones post-modernas. Lo mismo ocurre con la criminología crítica, hasta el punto que permanece cautiva de las construcciones del crimen. La alternativa proporcionada por el enfoque de daño social dicta el abandono de la delincuencia-esquema y, por lo tanto, un cambio estructural en la manera de percibir la realidad. Los objetivos para una intervención ascendente no ofrecen simplemente una promesa para el alivio social del sufrimiento, la experiencia de la gente debido a daños sistemáticos como los delitos de cuello blanco. Lo más importante es el resurgimiento de la perspectiva progresiva apuntando a la subversión del ejercicio del poder hacia la justicia social. Bajo ese punto de vista, ir más allá de la criminología significa amplificar el pensamiento crítico.

Palabras clave: crímenes de cuello blanco, globalización, criminología crítica, daño social, justicia social.

1. Introduction

Despite its criminological origins, white collar crime seems rather poetic in its substance considering the polysemy or the amphysemy characterizing the term from the very beginning. The great number of researches, analyses and studies devoted to the phenomenon has favored even more its fluidity either by expanding or fragmentizing or even abandoning the term. In such a context the concept of white collar crime from time to time has been transformed to corporate crime, occupational crime, economic crime, governmental crime, organizational crime, environmental crime, crime of the suites, crime of the elites, crime of the top etc. Nevertheless, at the core of all the aforesaid alternatives is the coupling of the political and economic power, reflecting the phases and the stages of the production system. A repertoire of dirty economies, grey zones, interweaved interests and reciprocal relations endow white collar criminality with "impermeability" against the rule of law and white collar criminals with impunity.

This structural versatility of white collar crime, besides from marking the profound political nature of the phenomenon, is currently amplified by two paradoxes. The first one, being equal to a contradiction, dictates that within the era of globalization, the content of which is assigned by the neoliberal axioms and the market domination, crime and the subsequent

fear of crime still find their exclusive interpretation into common criminality. The social demand for security is raised to a leading slogan for the international crime policy, advancing “arm-kind” measures, allied to zero tolerance models, and producing a closed, autistic ideological system about social harm, living aside the higher-cost crimes that fall under the category of white collar criminality. Even on the present occasion of the financial crisis the only type of crime meeting the dimensions of the “global village” and thus considered as a global threat is not related with the state of the economy but with the prevention of organized crime, frequently identified with terrorism. Oddly enough, no effort is made for a combination which would schematically resulted to the “terrorism of the economy” or to the “organized crime of the international markets”!

The second paradox looks more of a political challenge. The political orthodoxy that nurtured perceptions about the “end of the history” and therefore the dogma that the world comes round objectively and by its own cultivated a fatalistic attitude about things, summed up to phrases similar to: “there is nothing left to do” or the most popular lately “there is no alternative”. Such an attitude favoring technocracy over democracy tends almost to an axiomatic legitimization of any financial activity and economic transaction given that it serves the principle “of doing business”. The same ethics delegitimize any opposite reaction under the pretext of “anti-business” practice. Even now that history seems to come back, technocracy is compelled as the old known effective, efficient and “a-politic” recipe. However, such a recipe despite the lack of any political vision remains always a political choice and thus it is backed by a certain legal armory and promoted by settled interests.

In such a context white collar crimes seem to disappear through their effusion to “masterly” speculative methods and the new science of economic engineering. The same goes for the structural, multi- victimization either it is connected to forms of deprivation of civil rights or even worse to forms of dehumanization of the humans. The victims of white collar criminality lacking power to defend their selves, lacking knowledge to be self-determined as such and being geographically scattered seem to vanish in the haze. Following the principal of *nullum crimen sine lege* it becomes almost evident that the appeal to criminal law has little to offer regarding the confrontation of white collar criminality. Taking also into consideration its individualistic rationale as well as its state-intervening nature we understand that penal guaranteeism falls short of the post-modern evolutions. On the other hand, the regulating alternative is echoing today more than ever before an old Greek maxim saying “put the wolf to watch over the flocks of sheep”! If there is any instructive conclusion from the current economic meltdown is the unrestrained nature of corporations.

The present effort to revisit white collar crime from the optics of social harm approach does not correspond to a further theoretical elaboration of the term but seeks to spot the structural metamorphoses of the phenomenon within the meta-postmodern era serving in a great extent its structural adaptation. The fundamental changes implied by the new economic orthodoxy and related with a complete overturn of the production relations and

an integral deregulation of market constraints compose the major narratives of the current anomic environment where the distance between reality and official rhetoric offers new figures of value and social surplus. This is not another story of cyclical economic change where references to unemployment rates reflect the temporal ups and downs of the economy but a very institutional alteration producing new categories of economic winners and losers and re-introducing crime constructions. What follows is the re-establishment of an old distinction helping white collar criminals evading criminal label not via moral neutralization but through the axiomatic conversion of their acts to a kind of basic norms for the current economic globalization. White collar crime standing traditionally at the side of the powerful-economic winners is at the antipode of “real” common crime traditionally incarcerated by the economic losers-dangerous classes. The excessive much as intensive emphasis put from one hand to the problem of crime and on the other hand to capital accumulation as two incompatible facts foreshadows the procedural levels for the institutional absorption and structural diffusion of white collar crime.

Despite the extensive quantitative and qualitative cost caused by white collar activities any policy to rebuff their harmful results is like tilting at windmills since they lack institutional perspective. The ontological gravity enclosed in social harm as theoretical approach as well as a “real thing” experienced by people with or without the legal cloth of crime comes more than to fill or fix the institutional gaps to introduce structural alternatives. For that reason social harm approach does not represent the *alter ego* of crime neither longs for its replacement. What social harm approach, known also as zemiology, stands for is the foundation of an independent theoretical paradigm. Greatly influenced by radical victimology, social harm approach aspires to conceive social reality from the opposite side of that of criminology by calling attention more on the passive than on the active form that harmful conditions are developed. Regarding white collar crime the emphasis is stressed not merely on the deleterious corporate activities, often taking place in conjunction with state acts or omissions, but on the influence that such activities have for people, being unemployment, pollution, over-taxation or any violation of social and human rights. What is then underlying at the center of zemiology is the abandonment of crime – schema and the analysis of social harm beyond criminology. Without underestimating the contribution critical criminology offered by deconstructing crime, still it is held captive to the point it cannot transcend crime limits. For that matter white collar crime frequently functions as a contradiction in terms. However, going beyond criminology does not mean throwing down the gauntlet to critical criminology due to some theoretical antagonism. The only antagonism social harm approach fosters is toward the system as a progressive effort to advance critical thought and claim social justice.

2. Tracing the current anomic picture

It seems to be almost a common ground that market deregulation, either as capital movement or as labor mobility, and the successive concept of globalization epitomize the current content of political economy and the transition from a Fordist economy to what can be defined as a post – Fordist or neo – Fordist production system. The changes carried along with such a fundamental adjustment do not refer merely to the productive procedures or working conditions but to the entire social apparatus, affecting decisively both ends of the Marxist dipole: the base and superstructure. As A. De Giorgi marks:

“The new sites of production tend to be ‘immaterial’ –small automated and hyper-technological factories –or “invisible”– deregulated sweatshops in which heavy labor is often performed by an immigrant, hyper-exploited and female labor force. The processes of production are thus becoming dispersed, molecular and diffused.” (De Giorgi 2007, p. 245)

The end of Fordism proclaims therefore the end of any rigid organization of labor process, of working stability, of state intervention, of the welfare state, even of the national state as we used to know it. Contemporary capitalism gives priority to flexible ways of production, to labor mobility, to privatization of services, to commercialization of rights and business externality.¹

According to this new rationale, waged work and full time jobs should be gradually, if not forcefully, transformed into part – time jobs, subsidized employment, flexible working hours, low wages, suspension and unemployment. Great numbers of working people are expelled from the “re-borne” production units while the hypertrophy of hidden economies and of those productive circuits where the new excluded concentrate function as alternative sources of income. Great economic sectors are now fully depended on deregulated and un-guaranteed markets. However, unlike their given fluidity, pursuant to a continuum formed among irregular, hidden, semi-legal and overtly illegal economies, the inhabitants of these “urban bazaars” (Ruggiero, 2000) are rigidly entrapped. The re-emergence and the frequent usage of concepts like “under-class” or “nouveaux pauvres” offer a meaningful indicator of violations related to the statutory right of work, as well as to its decline as vehicle for the social integration and cohesion.² The fragmentation of work thus doesn’t simply stands for a synonym to unemployment or to mechanization of “out-of the-market” activities, to precarization and insecurity, but also to the social deprivation and negation of citizenship. While labor mobility for a closed number of economic and financial “cadres” retains big money and social glory, growing fractions of labor force, whose productive activities are

¹ References to the end of the age of Fordism do not aim, following the commentary of J-P.Fitoussi, at praising a quite dubious past but at underlining that “in that past, people have had a future...the autonomy of economics and the constraints that can impose to political decisions reduce the field of “collective assurance” that democracy represents”. (Fitoussi , 2004, pp.101-102)

² According to S. Vidali “the social stratum that was firstly injured by such a transition is identified with the working class and the pertinent working culture, bringing the social question back at the center of the attention”. The writer supports that illegal work, illegal economies and black markets constitute the processes of social decompression from social curtailments, that signal the hyper-accumulation of capital out of state control and thus at the margin of law enforcement objectives. (Vidali, 2007, p.140)

not socially recognized, are meant to live in conditions of permanent “exclusion” from formal economy and from full social integration.³

The anomic picture that seems to be outlined in the post-modern era is not comprised only by the mertonian contrast between social ends and social means but it is escalated to a dramatic abstraction: “the access to income, inclusion and full social citizenship is still based on a model of work that it is disappearing from the landscape of Western economies” (De Giorgi, 2007, p. 247). The social question is not anymore functioning as an abbreviation of the precarious distance that segregates possibilities from aspirations but it is oscillating over a basis that tends to disappear or that it is already gone. Despite the fundamental changes, tipped over the productive process, still the model of social citizenship is founded on the stereotype of the hard and effective worker. Nevertheless, times when working class was symbolizing “industry as a whole” (Hobsbawm, 1995, p.302) and was guarantying the social security because of its vast majority and its proportionate contribution to production have passed for good. Production institutions can no longer operate cohesively through waged work and in extent as a pattern of socialization, integration and social relations. From this standpoint, the crisis of industrial capitalism and of Keynesian economy echoes the old tale of “the emperor’s cloth”, indicating the factitiousness of the polished veil beneath which reality is larking, bearing the true face of the capitalism deprived of any social habiliment. Still, most crucial remains not the infringement of social pretexts itself but the fact that “the dissociation between material constitution of society - its productive forces – and the formal constitution of citizenship – its mode of regulation – becomes structural” (De Giorgi, 2007, p. 247). The hard core of this structural mutation for its most part is entrenched by neoliberal ideals and strict finances, while high technologies provide the means for the consolidation of an advanced technocracy. The new model of social citizenship that tends to gain ground is based on a production system where the labor is completely isolated and defused since the accumulation and reproduction of capital relies utterly on the “invisible hand” of the market. Within this context two different much as parallel processes are set forth, dealt with the politics of control. The first one is in line with practices of massive criminalization of public life, while the second amounts to more “spectacular” strategies resulting to the disappearance of white collar crime.

Criminalizing public life

³ R. Castel claims that these new types of jobs, particular and atypical, form part of a central and underway process of precarisation of work, which is successively dictated by the dynamics of modernization and the techno-economic evolutions of capitalism. Under this prism, all social acquisitions are converted into holdbacks to the extent that they do not serve a broader mobilization, imposed by the goal of the maximum competitiveness. In such a context, the phenomenon of work precarisation may appear less visible than that of unemployment but more important as it decodes the processes that fuel social vulnerability, exalts unemployment and therefore produces social disruption. (Castel, 1995, pp.645-675).

The first process is twofold and involves from one hand the simulation of numerous social groups with the “social surplus” and from the other hand the identification of superfluous “empty hand” (Christie, 1994, p.60) with crime. The modernist model of penal welfarism (Garland, 2001)⁴ is abandoned due to the abstract criterion of a contemporary diffused risk. The methodology used for the location, calculation, categorization and management of risk among population shapes the content of the dominant actuarial justice (Feeley & Simon, 1994) and finds expression in new penology (Feeley & Simon, 1992). More elaborated technocratic features are further activated for the scientific and thus rational perception of population, as well as for the statisticalization of society and its subjects.

The rollback of work as social right and social ethics and the ontology of social deprivation for a geographically augmenting post-fordist labor destabilize any foucaultian perception of normalization (Foucault, 2004) and cancel the utility of the traditional division of labor between economic treats and economic resources (Adamson, 1984). To the same end, the subversion of everything social and the abandonment of anything collective, brought about by the so called cultural revolution,⁵ paved the way to delusions concerning individualism and differentiation added to misperceptions about realism. In such a context, the cultivation and diffusion of fetish terms (Wacquant, 2001, p.20) however vague their meaning or the phenomena they alleged to describe, become semantic commonplaces feeding new moral panics, new political promises about zero tolerance and “law and order” and therefore new agendas related to the war against crime. As J. Young underlines the main concern here is not about justice but about harm minimization:

“The actuarial stance is calculative of risk, it is wary and probabilistic it is not concerned with cause but with probabilities, not with justice but with harm minimization, it does not seek a world free of crime place; not an utopia but a series of gated heavens in a hostile world. The actuarial stance reflects the fact that risk both to individuals and collectivities has increased, crime has become a normalized part of everyday life, offender is seemingly everywhere...” (Young, 2007, p.32)

Equally important is the latent logic inspiring this approach: meaning the idea of the possibility to select some categories of people who – all the rest being equal – should be punished more than others, by appeal to some risk indicators stemming from a “permanent dysfunctionality” (De Giorgi, 2007, p.254).

Within risk society (Beck, 1992) the conflictual variety of risk does not provide evidence only for the relativity of risk itself but also for the selectivity of the criteria used to separate the safe social parts from the risky ones. Whatever the arbitrariness though, it proves to be

⁴ As D. Garland (2001, p.34) defines: “in the penal-welfare framework, the rehabilitative ideal was not just one element among others. Rather it was the hegemonic, organizing principle, the intellectual framework and value system that bound together the whole structure and made sense for the practitioners.”

⁵ According to J. Young the inherent contradiction characterizes “cultural revolution” in the ages of an unrestrained competitiveness suits to the term of a “bulimic society”, where the massive cultural inclusion is accompanied by systematic structural exclusion”.(Young J., 2007, p.32)

easily “cured” by the pseudo-scientific power of technocracy.⁶ The actuarial process of selection and the passage from the safe to the risky social parts is taking place in terms of social opposition. Under these terms, the equitation of social progress prescribes the sacrifice of some at the advance of others, while a revived social fatalism urge in favor of the political apathy and cynicism. The fact that the majority of criminological, political and cultural criteria seem to match principally with the image of the less privileged does not cause any surprise. Hence, the intensification of penal repression is not exercised upon risky classes *stricto sensu* but upon all the marginalized figures of the market (Godefroy, 1998). New penology, providing political counterweight for market’s deregulation, is addressed to those located at the fringes of the market that unable to keep pace with neoliberal developments they turned methodically into social menace for the system. In the same manner the war against crime is turned into the war against the poor, revitalizing old fascist ideals.

As crime nourishes fruitfully public rhetoric by promoting manichaeistic dilemmas about “good or bad”, “us or the others”, it is regularly converted into a skilful way to govern. By displaying the most dreadful of all social problems, it affects vitally the everyday life of citizens and taxpayers and facilitates the assignment of certain social groups to the status of “suitable enemy” (Christie, 1986). Criminal phenomenon doesn’t only fit the size of street criminality but it also portrays the face of the “barbarian – others” (Karydis, 1996, p.136). Thereby, the wide economic insecurity posed by the new unstable working conditions and the economic terrorism produced by the rampant trends of free market instead of fueling social resistance and political criticism grind to a halt due to the social threat of criminality. At the same time social solidarity ceases to exist as the common bond among working people and finds its new base on the commonality of fear. The transition from social state to penal state, which has been firstly announced by the British “iron lady” with her statement that “society does not exist”(Sumner., 2004, p.28) and which has been ironically upgraded by the “third way” of British New Labor with a series of antisocial structural changes, nowadays represents the new *raison d’etat*. The allegation then concerning the social consolidation of a penal mithridatism (Wacquant, 2004) is not only about penal laws’ quantification but it predominately foreshadows the quality of the post-modern state. The recent comeback of the state after made largely redundant by market dynamics is mostly related with the reinstatement of its lost authority; the war against crime, the instrumentalization of penal law, the governance thought crime and the polarization of society are all part and parcel of the same plan.

Disappearing white collar crime

⁶ According to N. Bobbio the social processes that take place within technocratic society do not aim neither at the enslavement nor at the proletarianization but at the dehumanization of humans. In such a context power does not lean on ideas or violence but finds its identification only with “scientific power”, meaning the most inhuman and devastating of any power. (Bobbio , 1998).

The second political process in action seems to be located at the antipode of the social sphere. There, the necessity of a neo-conservative, actuarial and punitive strategy is far from being treated as self-evident. Paradoxically, when it comes to the crimes of powerful penal law usually does not work. “It is expensive, inefficient, ineffective, a club over the head when a whisper in the ear would suffice” (Snider, 2000, p.170). Nevertheless, the inadequacy of penal law for what is called white collar criminality does not simply concern the effectiveness of penal system but most importantly the “reality” of the crime itself. Legal arguments explaining the differences between *mala prohibita* and *mala in se*, detach white collar crimes from any kind of *mens rea*, setting the concept free of any accountability and its subjects free of any penal charge. The complex organizational structures and the daedal technological environment, within which global economic transactions and free trade are taking place, seem to bare the whole responsibility for “accidental” events except those totally owed to bad luck! Alike arguments have been traditionally used for the identification of the primary subject of most criminological work with the “racialized, poor, male youth” (Snider, 2000, p.50). Simultaneously, in academic research, in policy and in law white collar criminal performed mainly by “the high – minded, intelligent corporate executive who breaks laws, if at all, because of the arcane and obtuse organizational systems imposed him by mindless bureaucrats of the state” (Snider, 2000, p.50). While criminological history teaches “collective ignorance” (Box, 1983, p. 16) in terms of white collar crime, further adoption of neo-liberal claims clears the ground for its complete dissolution.

In the era of globalization, the causes that produce fear of crime, amplify moral panics and introduce “arm-kind” security models are same with those that legitimize market fundamentalism, reject public and welfare services in favor of any acquisitive and profit-generating act of corporate sector and attack any control effort under the pretext of “anti-business” practice. Their origins rest on the fundamental alteration of the relationships between capital and labor, generated by the hegemony of neo-liberalism and monetarist beliefs. The pursuit of lucrative resources within global markets, the domination of engineering economics as methods for capital’s re-production in conjunction with the technological development led altogether to the degradation of productive process as intermediate step for capital accumulation and therefore to the defeat of labor’s power to negotiate. Production process takes too long and costs too much compared with the direct and fast profit promised by speculation tactics. Fast-track business shows no interest to invest into production relationships. Markets should be deregulated from any national or international restraint and guided solely by their internal instincts, sprang from the proliferation of profits and magnification of competitiveness.

Similar demands driven from the gradual loss of the separation of the public and private spheres, that is to say between political and economic powers, produce a great degree of confusion of powers and interests, as it is principally postulated by the supremacy of the marketplace over the public sphere. The blurring of the boundaries becomes even stronger under the “magnifying glass” of the global village. Economic forces beyond any national

control and corporate lobbies orchestrated by global institutions, like the World Bank and International Monetary Fund, led already to “the essential redundancy of the state in a new world order of ‘hyperglobalization’” (Lea, 2002, p.117), as it is notably reflected in the contemporary double crisis of the constitutional state (Ferrajoli, 2005).

“The historical process whereby incorporation was a privilege government granted private parties in return for fees and the assumption of certain public responsibilities have been reversed. Employers now are considered to be doing governments a favor merely by setting up shop. Nations and the sub-units compete to offer business the best tax breaks, the highest subsidies, the lowest minimum wage levels and the least regulation.” (Snider, 2000, p.171)

Such a subordination of governmental powers to immense private economic powers and the simultaneous establishment of a close alliance between the powers of politics and the media do not only strengthen “the structural power of capital” (Gill & Law, 1993) but also increase the “social credibility of capital” (Snider, 2000, p.171). As Karl Marx has sarcastically put it long ago: “Money is the supreme good; therefore its possessor is good, Money, besides, saves me the trouble of being dishonest: I am therefore presumed honest” (Pearce, 2007, p.152). Since the accumulation and expansion of capital together with the preservation and extension of its conditions of existence remain the major determinants of domestic and international politics, markets express the most fair and most efficient regulator of economic life. “Homo economicus” apart from being the standard for judging human behaviors and molding social institutions he also represents the most rational choice for shaping public policies, like social policy, criminal policy and education.

In such a context the already misty nature of white collar crime becomes even harder to detect. Despite the fact that white collar criminality was from the very beginning related to law infringements and therefore to illegal acts, it has been always excluded from the field of penal law and it has been traditionally ignored by mainstream criminology. The historical inability to criminalize such behaviors raised endless discourses about legal and real crime, about types of white collar violations, about the status of white collar criminals contributing not only to a long-lasting “war of white collar criminologists” (Friedrichs, 1992) but most importantly to the trivialization of the concept itself. The polysemy or the amphysemy that has been attributed to the definition of white collar crime, for all the “poetic touch”, led to the multiple fragmentations of the term and in extent to its theoretical debilitation. Without any intention to underestimate criminological demands for further scientific precision, the preference to white collar crime - term is not due to some theoretical nostalgia or obsession but by reason of its profound political origins. What is important thus with respect to Sutherland’s legacy is not so much the identity of the offender itself or the place where white collar crime is committed but the power equilibrium that produces it as well as the social structure that permits it. Many of the alternative concepts that have been proposed instead show exactly this route of the power relations within the capitalistic society. The changes into corporate crime, business crime, occupational crime, governmental crime, state-corporate crime, environmental crime, organizational crime, crime of the top, crime of the elites, crime of the suites, reflect

different or successive phases of the capitalistic production system. In other words, white collar crime by changing modus operandi, contexts and patterns functions as a systemic chameleon, well adapted for camouflages and illusive disappearances!

In 1939, when Sutherland was writing, such camouflage was succeeded principally by the administrative procedures which were used in dealing with white collar criminals. According to that argument, the structural power of these offenders, deeply founded in their economic prestige and activities, provided them with penal amnesty despite their engagement in much criminal behavior. The use of civil law or other administrative regulations prevented the labeling of their illegal activities as criminal (Sutherland, 1983). Nowadays, the same structural power commands the cancellation of any regulatory regime addressed to the operation and progress of capital. "As the legitimacy of business organization has increased, so has the legitimacy of arguments for their control declined" (Tombs & Whyte, 2007, p. 126). Everything that may hamper capital's invasion, it is automatically translated into risk for the competitiveness, the effectiveness, even for the society itself. Nevertheless, to the extent that the survival of white collar criminality as an object of study is established within a normative context and through the enforcement of legal provisions, any disruption of this umbilical cord can obviously make it disappeared. Following L. Snider's argument:

"Corporate crime can "disappear" through decriminalization (the repeal of criminal law), through deregulation (the repeal of all state law, criminal, civil and administrative) and through downsizing (the destruction of the state's enforcement. All three has been used". (Snider, 2000, p. 172)

In spite of the growth in the social belief that white collar crimes do occur, elucidated considerably by the current "crisis criminality" (Huisman, 2011), a distorted expansion and re-assessment of the principal *nullum crimen nullum pena sine lege* argue for the opposite, preserving "an age of miracles"! (Pearce, 2007) A repertoire of dirty economies, grey zones and clientalistic networks provides white collar criminality with "impermeability" against the rule of law and white collar criminals with impunity, whereas "those who have the courage to suggest that some imaginative crime has been carried out...will be informed that it is in truth, only a crime of imagination" (Hillyard, 2003, p. 217) Seeing in the view of control balance theory (Tittle, 1995), this structural versatility of white collar crimes is not but an indication of "control surplus", related once again with the structural power of capital and its ability to be more controlling than controlled. Actually from this angle, the "disappearance" of white collar crime does not only amounts to policies of decriminalization, deregulation and downsizing of illegalities but mainly to politics helping capital's autonomization, and transmutation, as well as to political inability to reckon, control and prevent capital's side effects. In this case the disappearance of white collar criminality expires as symbol of the post-modern miracle and turns to be fatal.

The actuarial armory is anew mobilized. This time not for the criminalization of public life, as it happens with common criminality, but exactly for the opposite, meaning the

absolute deregulation and privatization of economic sphere as well as the a priori whitewashing of capital activities. Once again the scientific acclaim of actuarial techniques and pure statistics is less related with the truth or the validity of the arguments and more with the dominant interests they serve. In other words, neo-liberal know-how does not derive necessarily from comparative research or empirical studies neither does it produce a “superior” knowledge, still it is undoubtedly related with the useful results it yields for the agents of the new hegemony. Facts which do not serve dominant interests are harder to hear and thus counter-hegemonic knowledge is less likely to win out. Structural changes benefiting capital provide moreover inspiration to intellectual claims for the legitimation of the white collar crimes “disappearance”, for the cultural adaptation to ceaseless profit hunting and for the consolidation of the new orthodoxy.

It becomes apparent then that if white collar crimes are destined to melt away within unbridled markets, in parallel with statistics a new philosophy has to provide theoretical backing to this venture. The marketization of universities and the commodification of academic knowledge serve explicitly the same end. The retreat of white collar crime from the subjects of criminological research and the difficulties regarding the sponsoring and publication of such researches are directly related with the lack of any entrepreneurial motive or private interest.

“A disturbing aspect of current academic practice is that differing but rigorous interpretations of the nature of the social world and of theories and theorists are often simply ignored, at times crudely parodied, or simply, and contemptuously, dismissed” (Pearce, 2007, p.153)

In the case of criminology, such an acknowledgement means much more than a simple academic ignorance for certain criminological studies. As S. Cohen reminds us:

“the development of social scientific theory and knowledge takes place not just within the heads of individuals but within particular institutional domains...In criminology an understanding of these institutional domains is especially important, for our knowledge is situated not just, or even primarily, in the “pure” academic world but in the applied domain of the state’s crime control apparatus.” (Cohen, 1981, p. 220)

Thus, the increasing fading of white collar crime from academic studies and researches implies not only its historical isolation or the current efforts for its alienation from criminological theory but also from the gulfs of criminal policy. As a “counter-hegemonic” term white collar crime seems difficult to be part of hegemonic interests and even more difficult to interest hegemonic circles. Any academic research therefore on the subject consist almost a contradiction in terms.

Differences in power and control determine likewise the third and last variable of white collar crime disappearance. Attention here is focused not so much on the obscurity of violations but on strategies of negation, concealment or even erasure of harm. As a matter of fact, this is the most “vivid” part of the “disappearing” policy since victims come to the

fore. It has been claimed already that the structural power of capital by being strengthened, it helps capital agents to enjoy a surplus of control and thus to avoid the criminal label. In the same ratio, victims of white collar crime by experiencing an equitable lack of control, they are unable to assert their rights. Lacking power to defend their selves, lacking knowledge to be self-determined as victims and being geographically scattered they seem to vanish in the haze. In extreme circumstances this “magic picture” “involves even the victims of white collar crimes, who may be persuaded that the harm they suffer is preferable when compared to the damage they would suffer if economic initiative were in anyway hampered” (Ruggiero, 2010). Post-modern narratives then concerning market’s “success stories” manage not only to fabricate “miracles” but to produce social consensus about white collar crimes even among their victims. According to this “neo-liberal realism” white collar crimes are not simply victimless. The assimilation of the social harm and of the multi-victimization they cause goes further than the miraculous “disappearance” of victims. It cultivates realistic attitudes about “expendable” populations. Thus the triumph of strong markets finds its match to valueless lives with certain racial, sexual and class characteristics (Hudson, 2001). Fuzzy images about criminals (Ruggiero, 2002) and victims smooth the way to social perceptions about a diffused need for security against “dangerous classes”. On the other side of the coin, as Sutherland first noticed, stands the respectable, high status, legitimate business world.

3. The structural normalization of white collar criminality

Contra any literal interpretation the post-modern polarized social scheme does not follow the imperatives of an antithesis but those of a synthesis. Criminalization, as a tactic for dealing with groups or individuals who constitute risks or obstructions, and decriminalization, as the main strategy for satisfying the risk-taking business culture of markets, mirror the contemporary dual face of Janus. Criminal phenomenon either through techniques of diffusion or of confusion occurs not as an exceptional, unique and distinct incidence but as something familiar and normal. Criminality then functions as a canvas of everyday life, as something increasingly normal to expect or even to be entered into. “Criminality takes its place alongside the proliferations of sexual, ethnic and lifestyle-based identities as part of “postmodern” diversity” (Lea, 2002, p139). Changes in social mentality coupled with the fuzzy images about criminals and victims function furthermore as advocates for the cultural normalization of crime. However, changing mind about criminality includes only the manifest part of the varying nature of criminal behavior. The latent and most fundamental one is associated with the structural normalization of crime. That is the function of criminality more as a mechanism for the reproduction of the social and economic balance than as an agent provocateur that foments social troubles and causes disruption.

Given such fundamental twists, urban bazaars and petty criminality grow into the matrix for the evolving of the so called “social crime”. The existence and the political tolerance towards social crime economies nevertheless are not motivated out of philanthropic sentiments neither do they comply merely with meeting human needs or with providing economic supplement. On the contrary, social crimes are sustained and recycled so far as they are profitable for more organized criminal networks but mainly for providing social foothold to white collar criminality. In other words, political tolerance towards petty criminality offers social complicity in the commission of white collar crimes, granting white collar criminals a social alibi. Beyond that functional scope, petty criminality must be zero tolerated. Populist slogans like “everybody steals” or “we are all corrupted” fade away any qualitative or quantitative difference regarding criminality and weaken the practical criminalization of forms of activity regarded as most harmful. Ideas related to a generalized crime plot or to omnipotent criminals favor perceptions about a vicious circle of crime and attitudes about a “mixed economy of governance” (Lea, 2001), where legitimacy and morality are not characterized simply by great relativity but loose any of their meaning.

Considering the central role that white collar crimes play nowadays for globalized capitalism, both as a mode of capital accumulation and as a way of power maintenance, their structural normalization seem to affirm Sutherland’s old preoccupation about a perverted capitalism. In the current conditions of aggravated and relentless competition, white collar criminality does not respond solely to results from the massive abolition of market restraints or to control surpluses but it becomes an economic activity itself. As J. Lea (2002, p.148) observes “capitalism has reached the stage where the incentive to break the very rules it put in place to stabilize the system as a whole is becoming irresistible.” In other words, the structural normalization of white collar crimes signifies the alteration of their functionality. White collar crimes then loose their identity as a dysfunctional elite deviance and become functionally normal, since they are identified with initiatives taken by capitalist development rather than its disruption.

“Events formerly considered as ‘criminal ways to capitalism’ occurring in peripheral zones and in secondary social spheres have turned into “the criminal ways of capitalism and contemporary society” (Santino, 1988, p.232).

However, such a structural transformation could never be built up but only in an interactive way. Therefore, to the degree white collar crimes become integrative dynamics of capitalism, legitimated capitalism becomes more like white collar criminality. That is not to say that white collar criminality became less harmful but exactly the opposite. Studies about the “infiltration” of organized crime into white collar criminality (Arlacchi, 1983) and the diffusion of phenomena like money laundering besides from underpinning theoretical disputes and spreading suspicions apropos criminological segregations (Ruggiero., 1996), they are showing clearly the brutal face of capitalism.

The recent processes that took place during’90s for the implantation and the rapid development of capitalism within ex-communist countries, and the current processes that

are activated mostly for the economic “salvation” of Southern European countries due to the contemporary economic melt-down share the common experience of an aggressive capitalism: the increasingly violating its own legal norms for a short-rate of profit, the wholesale wrecking of capital economies by any means, legal or illegal, and the justification of these activities by the imperative of the “higher immorality” (Mills, 2000) of economic interests. In the new grey landscape that tends to get the lead, white collar criminality as a form of governance seems to be marked by the transition from “phantom – capitalists”(Levi M., 1981) to a “gangster capitalism” (George, 1999, p.289). As S. Tombs (2013, 308) aptly comments “the problem here, then, is not necessarily the invisibility of the structural violence routinely inflicted – it is in some ways its very visibility through its ceaseless “repetition”. A constant feature of all these historical changes and of all theoretical reflections on white collar criminality is identified always with the high economic cost and the large social harm it produces. Contemporary economic crisis and its multiple portrayals depicted even in the most mainstream media or through official statistics provide the most direct, compact and tangible evidence.

The recorded inefficacy of penal law to deal with white collar crimes, that either contributed to or resulted from the global financial crisis in a domino-like manner, and its great reluctance to prosecute “banksters” (Pontell & Geis, 2014, p.72) bring afresh to the table the question about the functionality of penal system. Together with the political argument brought up by critical criminologists regarding the intrinsic leniency and the ostensible action of penal law every time it comes to white collar crimes, a series of technical issues has also to be added. That is not to argue of course in favor of a simplistic approach, seeing penal law as the crude instrument handed by the capitalist oppressors but to stress the contradictory role penal law plays within capitalistic society. While penal guaranteeism assures the rule of law and legal equality, simultaneously it secures the process of criminalization, related in so many ways with social marginalization and social exclusion.

“While the law and its enforcement can, and do, protect the general population and while many ‘crimes’ that are recorded in the official figures tend disproportionately to victimize vulnerable and/or impoverished individuals, the criminal justice system at the same time plays a decisive role in maintaining structural divisions in society.” (Barton, Corteen, Scott, & Whyte, 2007, p.6)

Such observations tend ironically to be even more solidified by the penal dogma itself coupled with the orthodoxy of the market.

The basic tenets of liberal penal law, namely the protection of legal interests, the individualization of responsibility, the principles of legality, culpability and fairness as well as the function of punishment (deterrence-prevention-repression), even if radically modified, they cannot go beyond their nature. Criminal responsibility of corporations serves probably as the most representative example of the gap separating penal doctrines from market demands. Having “no soul to damn, no body to kick” (Coffee, 1981) any penal

sanction imposed to corporations exposes the pseudepigraphy and the symbolic character of corporate punishment. The situation gets worse if we take into consideration two more paradoxes. The first one is related with the difference in size between national legislation and international corporations, while the second concerns the structural contradiction between state sovereignty, produced by penal law, and “anti-statism” (Tombs & Whyte, 2010, p.106), produced by neo-liberal ideology. As a result comes the establishment of an “imaginary social order” (Pearce, 1976, p. 104) where white collar criminality rarely finds its way to penal justice while most of the times it slips away among other more “spicy” scandals.⁷

Equally “scandalous” sounds in the “times of crisis” any corporate engagement for self-regulation. According to this alternative model, emerged in virtue of the “new regulatory state” (Braithwaite, 2000), private institutions and corporations may regulate themselves and thereby weaken criminalization. State criminal justice and regulatory agencies intervene thus only as a last resort and solely in the cases which become known to them. Most of the times efforts are directed toward international forms of restorative justice, be private dispute settlement or other arbitration forms. Unlike deterrent and prevention derived by penal model, the rationale guiding self-regulation model is akin to cooperation. Heavily influence by what is known as law and economics movement, the imperatives of cooperative models are guided by the free-market and therefore “try to get around the demonstrated pitfalls of criminalization by advocating rational schemes that purportedly are in the interests of both regulated and regulators” (Snider., 1995, p.199). However, this harmonic equilibrium becomes easily tumbled by the structural power of capital which prescribes not only the relations inside corporation between white collar executives and blue collar labor but also its external relations with state administrative agencies or the general public. The declining regulation of business in areas such as pollution, health and safety comparable to the tendency for corporate taxation almost tally with the dimensions of self-fulfilling prophecy for the theoretical opponents of cooperative model. Nobody could have put it more eloquently but one of the contemporary leading economists:

“There is only one social responsibility for corporate executives: they must make much money as possible for their shareholders. This is a moral imperative. Executives who choose moral and environmental goals over profits – executives who try to act morally – are, in fact, immoral.” (Bakan, 2004, p. 34)

⁷ Current financial crisis provide strong evidence that business and financial misbehaviour remain largely unpunished. Some of the most world famous cases lying behind much of the crisis are to be found in the following two recent publications offering rich insights and analysis about finance capital and institutionalized white collar criminality. See: *How They Got Away With It – White Collar Criminals and the Financial Meltdown* (Will, Handelman & Brotherton eds., 2013), *Theft of the a Nation – Wall Street Looting and Federal Regulatory Colluding*. (Barak, 2012). Other interesting examples, still less known worldwide, are coming from Greece, a member country of the infamous PIGS of Europe. See: Greece “For Sale”. Casino Economy and State-Corporate Crime (Vidali, 2013), Crime and Economic Downturn. The Complexity of Crime and Crime Politics in Greece since 2009 (Xenaki & Cheliotis, 2013)

Despite theoretical intentions or policy efforts for the modernization of mechanisms confronting white collar criminality what this model really brings resembles more with the arbitrariness of Middle Ages forcing towards a “perverse abolitionism” (Lea, 2002, p.186).

“In the meantime, the financial sector, through its representatives, is demanding austerity packages for countries on whom they speculated and made billions. In particular, they are demanding privatization enabling the rich to grab even more of the world’s property. Again, the harm caused is and will be considerable” (Hillyard, 2011, p.4).

In the face of a harmful reality, the interventions come up with critical criminology waver between two possibilities. The first one, already implied, dictates the “ghettoization” of critical criminology through its alienation from the rest of the “reputable” academic voices that fit better to the contemporary stereotype of the technocrat expert. In that way, critical criminology seems to perform alone and isolated in an approximately autistic manner, incapable to provide radical commitments or interventions. The second one tends to be more of a self-contradiction. The negation of causation models from critical criminologists and the addition of the state variable within the critical agenda for crime and in particular for the crimes of powerful, brought into view all powerful alienations that lay behind hidden assumptions concerning criminality. The political identity of white collar crimes was demystified, indicating the importance of political interventions and social changes that should accompany any effort for their regulation. However, and despite the numerous critical endeavors mirrored in each and every alternative theoretical concept, white collar criminality is still hanging in the air. The main reasons are related with the historical inability of criminology “to escape the straitjacket of officially defined ‘crime’” (Barton, Corteen, Scott & Whyte, 2007, p.202). That also explains the failure of critical criminology to move beyond theoretical deconstruction of crime, to share possibility of doing things otherwise and proceed further towards a practical deconstruction of crime. Already applied political initiatives to regulate white collar crime result usually in obscuring even more things, since in such cases white collar criminality is deliberately confused with other forms of organizational illegalities, like the traditional organized crime or terrorism, heightening the moral tone of law enforcement agencies and removing focus from the wider reality of universally harmful businesses. In this frame, the only role critical criminology seems to play is to provide white collar crime with epistemological “hospitality” till its typical “integration” within penal code come true.

Bearing all these in mind, social harm hypothesis appears to be the only promising proposal to deal with white collar crimes. The main objectives of this recently formed theoretical proposal are identified with efforts to remember and re-approach the utopia of abolitionism as the only way to resist neo-liberal chimera. By overwhelming the “crime – schema” an end would be straightly put to the “war” of the white-collar crime criminologists arguing, as we saw, since the late of ‘40s whether white collar crime is a crime or not, while the harmful results from white collar activities follow an uncontrollable trajectory. However, a second end is destined for the stalemate that critical criminology is remained locked since

the deconstruction of crime. The critical arguments about the systemic origins of the crimes of powerful loose not only faith but also validity when the proclaiming solutions end up at the same tools and structures with their very cause. Under this prism, social harm perspective is not but a new step beyond.

4. The alternative of social harm approach

Social harm approach is neither the anathema for criminology nor the panacea for white collar crime. Likewise, its arguments do not aim at providing heretical solutions or revolutionary visions but they look to parallel actions. That is, from one hand to defend social achievements, albeit their declining output within neo-liberal context, and from the other hand to stick up for the foundation of an alternative perspective, strong enough to resist the contemporary neo-conservative forces. Since power in accordance to Foucault (1991) interpretations is penetrable, it becomes evident that it infiltrates the structures of every society. To the same direction, L. Hulsman (1986) observed long ago that social conflicts consist of never ending processes, as long as they form part of the social organization itself. However, the ways through which power and social conflicts become objects of administration are divided to less or more progressive. Herein, social harm approach intends to a progressive analysis and confrontation of social problems.

If political conditions during '60s and '70 have favored the emergence of critical criminology and the abandonment of functionalist, positivist and correctionalist predecessors, contemporary political conditions urge for further evolution of critical thought. For that purpose and by bringing to our knowledge older abolitionist ideas, the decision to move forward probably means also to transcend the established limits of critical theory itself (McMahon, 1996). Social harm approach hence challenges critical criminology by pushing to its limits, but mainly offers a chance for revisiting and re-approaching the enduring question of "social", as the only way to understand the harm society suffers and to strive for social justice. The political commitments it carries are designated by the theoretical determination to intervene decisively in the harmful sides of postmodern society. In spite of any academic or theoretical reservations, social harm approach raise substantial political questions which involve the reversal of power exercise and in extent the opposition to systemic harms produced by the current forms of social organization. Moreover, it advocates for more idealism, more utopism and more emancipation:

“if we are to transgress the current baleful and corrosive intellectual and political described by Russel Jacoby as ‘an age of permanent emergencies’ in which “more than ever we have become narrow utilitarians dedicated to fixing, not reinventing here and now” (Coleman, Sim, Tombs & Whyte, 2009, p.16).

The theoretical focus on social harm for the re-examination of social situation is not only indicative of the qualitative tasks set by such a theoretical project but also comparable to

certain methodological choices and implementing procedures. In other words, social harm approach lays great stress to the formation of a political strategic acting both sides, as an antonym to social mechanics and simultaneously as a synonym to social interventions and thus to social responsibility. That is not to argue that legal culture should be neutralized or that the rule of law should be demised. On the contrary, social harm perspective aspires to a dialectical process combining the heritage of critical criminology with full conviction of the need for fundamental social and political changes. Many scholars have commented till now on the “internally defeatist logic of critical criminology” (McMahon, 1996, p.1) grounded in its very constitutive element, meaning the legal notion of crime, and consequently on the common destiny that shares with penal law and criminal justice system. However, any attempt to disregard the social importance of penal guaranteeism it would drawn at least naïf conclusions. The safety valve provided to society with the criminalization of certain acts or omissions either for the benefit of powerless social groups or to the disadvantage of powerful offenders, states included, the wrongful and imputable character of crime, the provision of criminal responsibility or the affirmation of victim’s redress, notwithstanding their major dysfunctionalities or imperfections, compose undeniable parts of progressive social dynamics. Underneath their typical character lies a great effort to defend and consolidate “a variant of the social relations of crime control”. As J. Lea adds:

“The respect in which these relations were a gain for humanity rested, it will be recalled, on their underpinning the rule of law. The handing over of conflicts to the state was a form of guaranteeing this.” (Lea, 2002, p. 189).

The innate individualism that defines both the phenomenon of crime and its treatment and that qualifies evenly criminal law and mainstream criminology could be reformed or even restored by the catalytic contribution of critical criminology, pointing at the social and economic consequences criminality brings along. However, the problem seems to be insolvable by the time that the powerful correlations, sprang from the social conflict, lead to the devastation of the social relations of crime control and thus to the embracement of crime within the social, economic and political reality. The transformation of capitalistic organization into the new hegemony of global markets likens to an incomparable profit hunting, which downgraded society to a multi-mix of individuals and viewed social life as an unhistorical market equitation, following the relative declaration about “the end of history” (Fukuyama, 1989). To the same direction neo-liberal capitalism represents but a pathological degeneration of the principal *laissez-faire* into economic reality with the simultaneous withdrawal of national states from any regulation or control upon speculative business activities (Hobsbawm, 2011). As mentioned already, the passage into postmodern epoch was signaled by an outright ‘disappearance’ of white collar criminality through its absorption into global financial networks and in extent through the erosion of institutional guaranties. What is further need to be stressed is that this restless pursuit results in a non viable profit since the augmentation of global wealth is realized at the expense of human labor and natural resources. Under the same perspective, contemporary politics are identified with a series of official attempts to legitimize various social harms caused by

economic activity. In the rest of cases where such attempts lose interest, actuarial justice, zero tolerance policies and new punitive ideologies seem to gain ground.

Staying a bit more on the ideological level, it could be also claimed that the prevailing ideological “proselytism” in favor of the western, neo-liberal, democratic capitalism combined with by-efforts to censor or to disgrace any different progressive discourse comprise distinct types of social harm. According to E. Hobsbawm (2011), during the last decades western capitalism holding great confidence deemed that armed interventions together with practices of soft violence, always in the name of human rights or global peace, would bring order in a disordered world. At the present juncture, although financial crisis shed light on the intrinsic frustration of neo-liberalism, it didn’t succeed to mitigate “world’s disorders” neither to introduce less harmful policies. On the contrary, contemporary crisis became the perfect vindication for the intensification of neo-conservative theoretical paradigms and policy models causing more social inequalities, more social strains and more social tensions. The independent and autonomous trajectory of capital galvanized social disruption and state corruption while it blended criminality and violence with normalized aspects of everyday life. In the current era of “meta – globalization”, despite the vagueness crossing over the social landscape, it is historically definite that capital “in crisis” will try to survive by any means and at any cost. Thereupon, the first point raised is related with the theoretical adequacy of criminology since crime and mainly white collar crime has been already bound to economic activities and they have been socially accepted as such. The oversight and deactivation of critical criminology by neo-liberal, actuarial ideals in addition with the theoretical hesitation critical criminology shows in challenging mainstream solutions and thus transcending the problem of power hinders any of its efforts to influence and change structures. According D. Friedrichs such an assumption is clearly reflected on the “inverse relationship between the level of harm caused by some human (individual or organizational) activity, and the level of criminological concern.” (Friedrichs, 2007, p.144)

The second point leaves the field of criminology as a scientific domain and moves towards contemporary domains of social structure where, following once again Hobsbawm’s observations, “it has been rediscovered that capitalism is not the answer, but the question” (Hobsbawm, 2011, p.425). From this standpoint, the failure of neo-liberal model is clearly reflected on the market’s incapacity to provide solutions to contemporary social problems. Social challenge then shifts into the articulation of a rational and alternative discourse against the ongoing socio-economic ferocities and prevalent discriminating policies. Keeping this in mind, social harm approach represents much more than the “anti-paradigm” of criminology. Although critiques focus on the need for transition from the legal myth of crime to the reality of social harm and from theoretical interpretations concerning pathological individuals or malfunctioning institutions to more structurally based models of research and analysis, social harm approach does not aim at addressing all flaws of criminology. What it stands for is the formulation of a holistic and compound understanding of social harm through references to various scientific domains as well as to

multiple levels and different facets of policy. In other words, social harm approach aspires to function as a multi spectral lens with view to diversified voices and diverse experiences.

The major advantage of such a theoretical spectrum is to be found in its very roots. By leaving aside the artificial schemas of crime, social harm approach locates its starting point in a more ontological basis. As it seeks the social origins of harms, it reaches primarily for the structures that produce and reproduce social harms refracted through and suffered by humans. That doesn't speak for an all at once rejection of human agency "but it is to accept a view of the world that sees human agency as defined by structures, structures that must be known and of which we must provide accurate account" (Hillyard, Pantazis, Tombs & Gordon, 2007, p.64). It becomes evident then that social harm approach moves in a different direction from that of the criminological prospect; it approximates individuals via structures and not structures via individuals. The difference is further maintained regarding to their distinctive theoretical frameworks: social harm hypothesis tries for a bottom – up approach than an up – to – bottom hierarchy, embedded in the power relations pertained to crime.

Theoretical objections towards this tactics allege that social harm approach is based in an over-generalized concept which contains a non-homogeneous masse of diverted phenomena. The need for deeper and further elaboration of the methodological standards as well as of the theoretical argumentation overall is not only a logical request but a real fact. Nonetheless, a real fact remains also the ontological consequences as well as the ecumenical dimensions of current social harms. Their systematic documentation within international texts, statistical data, personal experiences and collective observations help the continuous update, the ontological crystallization and the social functionality of the term. An emerging danger though traced within the social derivatives and the open character of social harm may indeed provoke the theoretical entrapment of the term within self-evident and superficial situations. All the same such risks are easy to handle and even to avoid completely by the activation of the variant accomplishments reached by social and political sciences. As it is relatively underlined "people's experiences must inform, but cannot constitute, a social harm approach, nor indeed any social science" ((Hillyard, Pantazis, Tombs & Gordon, 2007, p.67). The socially imbued concept of social harm does not imply the substitution of social sciences but exactly the opposite; by the means of social science social harm can be checked and balanced while at the same time it can demonstrate social anxieties and social problems by acting as a nominating criterion of human needs, by handling political power to people and by strengthening democracy.

An additional version against the open nature of social harm is said to escape from "practical" issues and to relate mainly with the philosophical underpinning. More precisely, it concerns the allegation that social harm is simply to reflect moral or political viewpoint, so that it actually consists of a mere moralizing or political facade. Reminding a lot of a past "accusation" on the "moral crusade", entailed theoretical efforts to put an emphasis on white collar criminality (Shapiro, 1983), the present response does not seem to be far from

the old one. Since the definition and the adoption of a certain definition of social harm is partly a moral choice, then it should be fairly accepted that to adopt a definition of crime as a guiding criterion of a field of academic study is likewise a moral choice. If also it is to be agreed that there is no objective knowledge, then a crucial point becomes the everlasting question “whose side are we on?”(Becker, 1967) Equally crucial thought remains the transparency and the openness that should accompany such a moral choice in order to be always liable to critical thought.

As Z. Bauman clarifies, justice as concept and as substance can only be founded in open and developing claims. Indeed, in all cases in which the historical request for a “just society” has not been interpreted as an unsettled need, that it cannot be fully acquired but it is constantly regenerated, the results were equal to absolute and vicious situations. It could be thus declared that social justice is more compatible to an abiding movement than to a final target or to any other tangible outcome. It finds expression to activities that detect, denounce and battle against every form of injustice, while the two most essential of all its principles find way to self-criticism and to unrest with everything already achieved. “Justice means to desire always more justice” (Bauman, 2002, p.137). Therefore, the endless and open nature of justice is based on the constant “refill” and “refreshment” of that desire. Under this prism, social justice is not separated from moral commitment; that is to take up responsibility for any kind of social harm and human pain. “Morality and justice remain consistent with their meaning only as open conditions and imperatives with full consciousness of their openness” (Bauman, 2002, p.139).

Social harm approach more than a moral choice, is an endeavor to assume social responsibility. Be broad and flexible by nature means that social harm proposal is theoretically capable of overstepping any objective barriers or typical limits and thus lying near to social basis and keeping access to social structures. What is also suggested is that social harm’s theoretical end is not simply to bring justice but to provide constantly with more justice following historical opportunities and responding to historical needs. Remembering some words of F. Maspero:

“...that you cannot change the world within few years, that one generation is not suffice, that the past cannot become tabula rasa, neither for the better nor for the worse. The best is never going to be achieved. The worse is never definite. At least, as there are people to resist, even a little, even clumsily, even with the cost of strong defeats among a few victories.” (Maspero, 2005, p.309)

The fact that social harm approach has an important way to run on methodological level does not diminish the great value of the theoretical project itself. On the contrary, the need for further elaboration leaves social harm alternative with an open promise for greater challenge to critical discussions and to social policies.

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