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The Rise and Fall of the ‘Social Crime’ in Legal Theory and International Law: The Failure to Create a New Normative Order to Regularize Terrorism, 1880–1930s

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I. Introduction

At the end of the nineteenth century, the concept of the social crime developed in response to the violent deeds of the anarchists and other subversives. Between the 1880s and the early 1930s, anarchist violence, murderously directed not only at powerful symbolic targets such as heads of state but also at ordinary people in cafes, opera houses, and religious processions, appeared to be a universal danger threatening the social and political order of every nation. The definition of the social crime reflected the universalism of the anarchist threat. This essay will examine how and why this idea of the social crime permeated legal theory and international law with increasing frequency prior to and after World War One, but fell out of favor by the mid-1930s. It virtually disappeared from legal and political discourse following 1945, although vestiges of it remain in European penal codes. The decline of the social crime was due to the fact that its definition of terrorism no longer fit the violent deeds at the forefront of terrorist practice and demonstrates how perceptions of terrorism, even in the most fundamental ways, have evolved historically.

II. The Geneva Resolution of 1892 and the Formulation of the Social Crime

The social or, as it was alternatively and more precisely termed, the anti-social crime was neither a common crime nor a political crime, but something in between. In the broadest sense, and reflecting the proliferation of scientific knowledge during this era, it was part of the nineteenth century's positivist desire to categorize and define everything including new forms of international violence and crime. More narrowly, it was a response to the wave of anarchist assassinations and labor disturbances that swept across Europe and America beginning in the

1880s. While the social crime might not possess all the characteristics of a common crime, its proponents hoped that the creation of this legal category would allow for the prosecution of social criminals as if they were burglars or murderers.¹ Those who championed the concept of the social crime often included in this category not only anarchist acts of violence (which were the most characteristic social crimes), but also violent and coercive strike activity, especially strikes with revolutionary intent.

The key event in the creation of the social crime occurred in September 1892 when the Institute of International Law, meeting in Geneva, adopted a resolution virtually excluding all anarchists from the protection of political asylum in extradition cases. This was very significant since the Institute was arguably the world's most important fount of international law theory. Founded in Ghent, Belgium, in 1873 to "develop and implement international law as a codified science responsible for the legal morality and integrity of the civilized world," the Institute was – and is, since it still exists – made up of eminent jurists from throughout the world. In 1904 the Nobel committee awarded it the peace prize for helping in the codification of the laws of war enacted at the Hague Peace Conference of 1899.²

The resolution on extradition adopted by the Institute of International Law declared that "criminal acts directed against the bases of all social organization, and not only against a certain State or a certain form of government, are not considered political offences" for extradition purposes.³ Albéric Rolin, a Belgian professor of international law, cited Professor Luigi Olivi of the University of Modena, who was a member of the Institute, and Heinrich Lammasch, a famous Austrian legal expert, as among "many writers of considerable authority" who had previously sought to exempt social crimes from the protected category of political crimes.⁴ Rolin connected "crimes directed against the bases of all social organization" with "the monstrous attempts [*attentats*] to which the authors of those sort of crimes have had resort in recent times [...] precisely because their system is the negation of law inseparable from the entire social state." The *attentats* of recent times clearly referred to the series of anarchist bombings that had rocked Paris during 1892. Later, when justifying his revised rules for extradition, Rolin specifically mentioned "the exploits of a Ravachol [the famous French anarchist], [which] have nothing in common with politics."⁵ These social crimes, according to Rolin, were "constant and invariable," unlike political crimes which varied with time and place. Rephrasing in paradoxical fashion a celebrated maxim, Rolin asserted that "each nation could in this regard say: nothing that is anti-social and accordingly inhuman, can be

¹ As we shall see the criminologist Cesare Lombroso was an exception to this since in certain circumstances he favored greater leniency for social criminals.

² *Encyclopaedia Britannica*, s.v. International Law, Institute of and Bluntschli, Johann Kaspar. For a brief history of the Institute of International Law, see its website at http://www.idi-iil.org/idiE/navig_history.html, accessed August 6, 2015.

³ "Ne sont point considérés comme délits politiques ceux qui ne sont pas dirigés contre tel État déterminé, ou contre telle forme de gouvernement, mais contre les bases de toute organisation sociale." *Annuaire de l'Institut de Droit International* 12 (1892-1894), p. 167.

⁴ *Annuaire* (n. 3), p. 161.

⁵ *Annuaire* (n. 3), p. 167.

foreign to me.”⁶ In other words, social crimes, being common, did not deserve the protections afforded the rarer, or even unique, political crimes. Among the “great common bases” of organized society deserving eternal protection from these anti-social and inhuman attacks, were “respect for property, for individual liberty, and for human life.”⁷ While all authorities cite the 1892 resolution of the International Institute of Law as crucial in defining the ‘social crime’, it is unclear who first suggested the term.⁸ It may have been the Italian Olivi or the Austrian Lammasch, as Rolin hints, or perhaps even earlier, the Swiss-born German academic, Johann Kaspar Bluntschli, whose works on international law in the 1860s and 70s had gained widespread renown. Indeed, Bluntschli became one of the founders of the Institute of International Law. At the latter organization’s famous 1880 Oxford meeting, which focused on composing a model extradition statute, Bluntschli called for drawing a distinction between political and social crimes, between crimes directed against “the order of a particular State” and those directed against “the public and legal order of all civilized nations.” As examples of the latter he cited not only piracy, but “communist and nihilist conspiracies.”⁹

Whoever first came up with the term, once codified by the Institute of International Law, the concept of the social crime exercised immediate influence on legal thought and judicial decision making. After accepting a broad notion of political crime in the case of Angelo Castioni in 1891, the British courts backpedaled in 1894 with *re Meunier*. In the landmark 1891 decision, the British court denied an extradition request from Switzerland, ruling that Castioni was protected as a political refugee. This was despite the fact that Castioni had been involved in a short-lived insurrection and had killed a Swiss official. The court records do not make clear what were Castioni’s precise political views, other than opposition to the political faction then in power in the canton of Ticino.¹⁰ In *re Meunier*, however, the political views of the defendant Théodule Meunier were specified: he was an anarchist. He was charged with bombing the Café Véry in Paris and an army barracks. Two people sitting in the café were killed. Rejecting Meunier’s claim that he had committed a political offense against a hated government, the English court ruled that

⁶ *Annuaire* (n. 3), p. 161.

⁷ *Annuaire* (n. 3), p. 167.

⁸ For example, Ugo Aloisi, section president of Italy’s highest court, the *corte di cassazione*, wrote in 1938 that the Institute’s resolution “had decisive influence in the evolution of the doctrine of political crimes in the international field.” *Nuovo digesto italiano*, s.v. Estradizione, p. 696. Hereafter, *Nuovo digesto italiano* will be cited as *NDI*.

⁹ *Annuaire de l’Institut de Droit International* 5 (1881-1882), pp. 104-105. Floriana Colao, *Il delitto politico tra ottocento e novecento. Da “delitto fittizio” a “nemico dello Stato,”* Milan 1986, pp. 138, 140n; Giulio Diena, I provvedimenti contro gli anarchici e la prossima conferenza internazionale, in: *Rivista di diritto internazionale e di legislazione comparata* 1:6 (November 1989), pp. 241-262, especially pp. 244-245 and 256-257.

¹⁰ Queen’s Bench, November 10-11, 1890 [1891] 1 *Q.B.*, pp. 149-168. Christine Van den Wijngaert, *The Political Offence Exception to Extradition*, Deventer 1980, pp. 111-112. William Hannay, International Terrorism and the Political Offense Exception to Extradition, in: *Columbia Journal of Transnational Law* 18 (1980), pp. 387-388.

“in order to constitute an offence of a political character, there must be two or more parties in the State, each seeking to impose the Government of their own choice on the other [... but] the party of anarchy, is the enemy of all Governments. Their efforts are directed primarily against the general body of citizens. They may, secondarily and incidentally, commit offences against some particular Government, but anarchist offences are mainly directed against private citizens.”¹¹

This decision, according to one definitive study, was “directly inspired” by the International Institute of Law’s 1892 resolution, and is indeed roughly equivalent to the institute’s definition of the social crime as a crime “against the bases of all social organization.”¹² Despite the fame of the Meunier case, neither the term nor the concept of social crime entered Anglo-American legal thinking, presumably because that school of law focuses on legal precedents, i.e., common law, rather than on theoretical analyses.¹³

III. The Rome Anti-Anarchist Conference of 1898 and the Growing Influence of the Social Crime

The situation was different on the European Continent where renewed anarchist bombings and assassination attempts fueled continuing interest. In 1898 a diplomatic gathering of all the European states was held in Rome to work out a common anti-anarchist strategy after a series of increasingly horrific anarchist bombings and murders of heads of state and government.¹⁴ The Rome Conference adopted a definition of anarchism very similar to the Geneva resolution. In December 1898, every European country, except Britain, signed the Rome Conference’s final protocol, which called for anti-anarchist legislation, and new rules and procedures governing extradition and expulsion. The second proposition of the final protocol defined the “anarchist act” as “having as its goal the destruction, by violent means, of all social organization [or the entire social order].”¹⁵ The secrecy in which the minutes and

¹¹ Hannay, *International Terrorism* (n. 10), p. 390.

¹² Wijngaert also lists *re Bartholomei* (Belgium, 1929) and *re Bressano* (1965) as legal decisions directly inspired by the International Institute’s definition of the social crime. Wijngaert, *The Political Offence* (n. 10), p. 16 n86.

¹³ Anglo-American scholars remain largely oblivious to the lengthy history of the term ‘social crime’ and assume that the historian Eric Hobsbawm coined it in his 1959 book *Primitive Rebels, A Study of Popular Forms of Resistance*, which includes a chapter on the anarchists. Cf John Lea, *Social Crime Revisited*, in: *Theoretical Criminology* 3:3 (August 1999), pp. 307-325.

¹⁴ For a history and analysis of the Rome Conference, see chapter 5 of Richard Bach Jensen, *The Battle against Anarchist Terrorism: An International History, 1878-1934*, Cambridge 2014.

¹⁵ “Est considéré comme acte anarchique, au point de vue de résolutions de la Conférence, tout acte ayant pour but la destruction, par des moyens violents, de toute organisation sociale.” *Conférence internationale de Rome pour la défense sociale contre les anarchistes: 24 Novembre-21 Décembre 1898*, confidential, Rome, Imprimerie du ministère des affaires étrangères 1899, pp. 61-65. The original French text is reproduced in *Early Writings on Terrorism*, ed. Ruth Kinna, 4 volumes, London and New York 2006, vol. 3, pp. 326-329. For an English translation, Jensen, *Battle against Anarchist Terrorism* (n. 14), pp. 366-371.

final actions of the Rome Anti-Anarchist Conference were kept, however, severely limited its potential influence on legal thinking and judicial precedent.

Perhaps its influence can nonetheless be seen in anti-anarchist legislation proposed by the Italian government in 1901. Following the anarchist assassination of King Umberto in July 1900, Justice Minister Gianturco submitted legislation to parliament calling for (art. 1) the punishment of groups or meetings that, for “the purpose of subverting with violence the present social system [*gli attuali ordinamenti sociali*]” prepared or committed crimes against persons, property or public safety.¹⁶ Standard French and Italian legal dictionaries also began to devote substantial space to the “social crime” or “socio-economic crimes.”¹⁷ François Saint Aubin, whose massive, two volume study of extradition published in 1913 devoted eight densely printed pages to *Délit antisociaux*, remarked “that a reaction manifests itself more and more against the idea of the political crime and of the right of exile being extended to crimes called social or against humanity.”¹⁸ While Saint Aubin and other French writers usually limited the social crime to violent anarchist deeds like bomb throwing, influential Italian legal experts extended the concept to violent and coercive strike activity, especially strikes with revolutionary intent.¹⁹ Of course such revolutionary strikes were often initiated by syndicalist unions in which anarchists played a vital role. Spanish authors followed in the Italians’ footsteps. In Catalonia disputes between labor and management led to violent confrontations and endemic terrorism between 1919 and 1923. In response Spanish legal scholars such as Quintiliano Saldaña championed a variant of the social crime, the social *attentat*. This he defined as “any grave offense or crime committed due to social struggles, and for reasons of class, association [*corporación*] or occupation [*profesión*].”²⁰

Perhaps the prewar highpoint of the institutionalization of the social crime came in 1909 when it was incorporated, with a definition very similar to Rome and Geneva’s, into the draft Austrian penal code, both for extradition cases and for preparatory acts in the commission of high treason.²¹ Unsurprisingly, one of the chief authors of the draft Austrian code was Heinrich Lammasch, who, as already mentioned, had been one of the first to develop the concept of the social crime.

¹⁶ Italy, Senate, *Atti parlamentari*, legislature xxi - 1ª sessione - documenti - disegni di legge e relazioni, N. 93-urgenza.

¹⁷ *Répertoire général alphabétique du droit français*, s.v., Extradition, Paris 1901, pp. 40-41; *NDI* (n. 8), s.v. Delitto politico, by Enrico Altavilla, pp. 676-677.

¹⁸ Saint Aubin, *L’extradition et le droit extraditionnel; théorique et appliqué*, 2 volumes, Paris 1913, vol. 1, p. 435.

¹⁹ Eugenio Florian, *Trattato di diritto penale 2: Introduzione ai delitti in specie delitti contro la sicurezza dello Stato*, Milan 1915, pp. 390-391; Giulio Diena, *Principi di diritto internazionale*, 2 volumes, Naples 1914, vol. 1, p. 307.

²⁰ Quintiliano Saldaña, *El atentado social. Doctrina y Legislación*, Madrid 1927, pp. 37-38.

²¹ Paragraph 107 of the Austrian penal code declared that “A crime or offense should be considered anarchist, when the agent, by his action, seeks to provoke or to determine, directly or indirectly, the destruction of the entire political or social order.” Cited by Henri Donnedieu de Vabres, *Les principes modernes de droit penal international*, Paris 1928, p. 114n; Florian, *Trattato di diritto penale* (n. 19), p. 144n.

Yet despite all of its apparent influence, prior to World War One the social crime left relatively little permanent impression on positive law or on extradition treaties. Neither Italy's nor Austria's proposed legislation against social criminals was ever passed and implemented. At most, some countries included specific anti-anarchist clauses in international agreements. For example, in January 1901, the United States and sixteen Latin American countries attending the Second Pan-American Conference in Mexico City signed a *Treaty for the Extradition of Criminals and for Protection against Anarchism*. This treaty authorized the extradition of individuals "guilty of acts of anarchism" when these acts were crimes according to each country's laws. In July 1906 Spain and Cuba signed an extradition accord declaring that anarchist deeds or attentats would not be considered political acts when they constituted crimes specifically mentioned elsewhere in the treaty.²² The problem with penalizing anarchist acts in these treaties and elsewhere was that there was no universally accepted legal definition of anarchism or anarchist acts.

IV. The Social Crime After World War One

The political and social convulsions produced by World War One undermined, in one very important case, the validity of the social crime, but in other instances transformed and strengthened it. After the Bolsheviks came to power in Russia and eventually secured international recognition for the Soviet Union, support in France waned for the concept of the social crime. In the late twenties, the distinguished law professor Henry Donnedieu de Vabres wrote that, in preparing the new French law on extradition enacted in 1927, no attention had been paid to the 1892 International Institute of Law resolution. He asks whether this may not have been due to the fact that "a foreign government, in diplomatic relations with France" – clearly a reference to the Soviet Union – possessed a constitution that repudiated the very principles that had until then been considered the basis of "all social organization." No doubt this referred chiefly to the principle of private property.²³

But if France lost interest in the social crime, this was not true in Italy, where the term retained its prestige in scientific and judicial discourses, although in a somewhat different form, throughout the twenties and the thirties. Of course one wants to know why, and the answer seems to be because of the continuing and evolving influence of criminal anthropology or, as it was known alternatively, positivist criminology, the criminology of Cesare Lombroso and Enrico Ferri. While France rejected criminal anthropology, Mary Gibson shows in her groundbreaking book, *Born to Crime: Cesare Lombroso and the Italian Origins of Biological Criminology*, how Lombroso's ideas, far from expiring with the master's death in

²² International American Conference (2nd: 1901-1902, Mexico), *Actas y documentos. Minutes and documents* (Mexico City, 1902), 749-755; Saint Aubin, *L'extradition* (n. 17), vol. 1, p. 438.

²³ Donnedieu de Vabres, *Les principes modernes* (n. 20), p. 264n.

1909, exercised growing influence in the subsequent decades, particularly under the Fascist Regime. Lombroso's followers carried his ideas into parliament, public administration, and the universities.

Mussolini's government eagerly appropriated the positivist justification for surveillance over individuals or groups based on biological criteria. In their collaboration with the fascist regime, criminal anthropologists abandoned the liberal or 'soft' aspects of their doctrine and emphasized the need to intern individuals exhibiting physical anomalies, in the name of protecting the "Italian race."²⁴

Lombroso had early championed the concept of the social crime. As with the rest of positivism, however, once Mussolini triumphed in Italy, Fascism seized upon the social crime's more repressive aspects and dropped its liberal qualities. But if Fascism attempted to exploit Lombrosianism for its own ends, some criminal anthropologists, such as Enrico Ferri, were eager to adapt their ideas in the hopes of having them adopted by the new regime.²⁵ In his 1890 work *The Political Crime and Revolutions*, Lombroso together with his collaborator Rodolfo Laschi, took a relatively liberal stance toward social criminals, at least from the point of view of international law. In effect, Lombroso, following Enrico Ferri (who had coined the term "socio-political offender" in 1884),²⁶ created a new category of crime, the social-political, since he explicitly subsumed "so-called social crimes" committed by, for example, the Irish Fenians, violent anarchists, and revolutionary strikers, under the bigger umbrella of political crimes.²⁷ Lombroso opposed extradition for all political crimes, including social ones, unless they were "committed by born criminals, or by madmen," for whom extradition might be conceded after due process.²⁸ Since in his book on anarchism, published in 1894, and in other works, Lombroso had asserted that many, if not most, anarchists were "ordinary criminals, lunatics, and insane criminals," it seems doubtful that very many would have been able to avoid extradition.²⁹

Enrico Ferri, Lombroso's most prominent fellow positivist and an indefatigable categorizer of crimes and criminals, relied heavily on the concept of the social-political crime when he was charged with drawing up a new penal code for Italy after World War I. While this project for a positivist penal code was never enacted, its publication after completion in 1921

²⁴ Mary Gibson, *Born to Crime: Cesare Lombroso and the Italian Origins of Biological Criminology*, West Port, Connecticut 2002, pp. 4-5.

²⁵ Emilia Musumeci, The Positivist School of Criminology and Italian Fascist Criminal Law: a Squandered Legacy? in: *Fascism and Criminal Law. History, Theory, Continuity*, ed. by Stephen Skinner, Oxford and Portland, Oregon 2015, pp. 35-58, especially pp. 45-46.

²⁶ In Ferri's book *Criminal Sociology*. Cited by Wijngaert (n. 10), p. 33.

²⁷ Cesare Lombroso and Rodolfo Laschi, *Il delitto politico e le rivoluzioni*, Turin 1890, pp. 200, 432, 465.

²⁸ Lombroso and Laschi, *Il delitto politico* (n. 26), p. 465.

²⁹ The quotation is from Gina Lombroso-Ferrero, *Criminal Man According to the Classification of Cesare Lombroso*, New York 1911; reprinted 1972, p. 305. In his book *Gli anarchici*, Turin 1894, p. 21, 25, Lombroso also claimed that many anarchists were epileptic and hysterical. The famous anarchist Ravachol, wrote Lombroso, was the most complete example of a born criminal with his huge jaw and other atavistic features. Some contemporary legal writers, however, seem to have thought differently, e.g., Giulio Diena criticized Lombroso on this point: *I provvedimenti contro gli anarchici* (n. 9), p. 256.

influenced legal thought, including the Fascist Rocco penal code of 1930, which Professor Gibson describes as “an often illogical mishmash of the classical and positivist schools [of law].”³⁰ Ferri’s 1921 project unified social with political crimes in one category because, it said, the new capitalist, industrialized society needed to penalize new sorts of crime, such as those caused by strike activity and boycotts.³¹ In part, Ferri’s code may be seen as responding to an Italian society that had been suffering from years of economic, social and political chaos and that felt the need for more order and discipline.³² From another angle, the creation of a socio-political crime category was appropriate after the foundation of the Soviet Union had led to the creation of a state in which economic and political structures were intimately linked and where “social economic crime could become a political crime” quite easily.³³

While the final text of the Rocco Code defining “political crime” (article 8), omitted “social motives” as a possible determinant of the crime (although this phrase had appeared in the original project), contemporary Italian and international opinion continued to cite and make use of the social crime concept.³⁴ The Italian courts occasionally ruled that the phrase “*o motivi sociali*” was still implicit in the article’s meaning and therefore legally valid.³⁵ In 1929 a Belgian appeals court ordered the extradition of the Italian Angelo Bartolomei, noting his “opinions of anarchist individualism” and his “crime of a social nature directed, not against the institutions of a particular country, but against the very bases of each established society, without, however, thus conferring a political character upon it.”³⁶ In 1934 the International Conference for the Unification of Penal Law, held in Madrid, sought to define the terrorist crime by adopting the following resolution: “He who with the aim of destroying every social organization employs any means whatsoever to terrorize the population, will be punished [...]”³⁷ This was the same formula as that which had been used by both the International Institute of Law in 1892 and the Rome Conference in 1898 (although in those cases ‘terrorism’ had been implied rather than explicitly stated since the word did not come into general usage to describe intimidating political violence until around the time of the 1905 Russian Revolution).³⁸

³⁰ Gibson, *Born to Crime* (n. 24), p. 210.

³¹ Colao (n. 9), pp. 152-153.

³² Colao (n. 9), p. 154.

³³ *NDI* (n. 8), s.v. Delitto politico by Enrico Altavilla, p. 677.

³⁴ *NDI* (n. 8), s.v. Delitto politico commesso all'estero, by Giuseppe Maggiore, p. 680. Article 8 (3d paragraph) reads: “agli effetti della legge penale è delitto politico ogni delitto che offende un interesse politico dello Stato, ovvero un diritto politico del cittadino. È altresì considerato delitto politico il delitto comune determinate, in tutto o in parte, da motivi politici.”

³⁵ *Enciclopedia del diritto*, s.v. Reato politico by Giovanni de Francesco, Varese 1987, p. 899.

³⁶ Wijngaert cites a variant spelling, Bartholomei, *The Political Offence* (n. 10), p. 155.

³⁷ Bogdan Zlataric, History of International Terrorism and its Legal Control, in: *International Terrorism and Political Crimes*, ed. M. Cherif Bassiouni, Springfield 1975, pp. 474-484; p. 480, omits “toute” in his translation of “toute organization sociale.” Cf. V^e Conférence Internationale pour l’unification du droit penal, (Madrid, 14-20 October 1933), *Actes de la conférence*, Paris 1935, p. 335.

³⁸ For a full discussion of the emergence of the word ‘terrorism’ to describe intimidating political violence and crimes against humanity, which the words ‘outrage’ (in English) and anarchist propaganda or *at-*

V. The Decline of the Social Crime

A series of increasingly dramatic assassinations in 1934, however, revealed the inadequacy of the concept of the social crime, at least as a means of conceptualizing and fighting terrorism. In July 1934 Austrian Nazis shot to death Chancellor Dollfuss. Then, in an even more significant development, the ultra-nationalist Croatian Ustaša organized a plot (with the approval and support of Mussolini) to assassinate King Alexander of Yugoslavia.³⁹ The Ustaša recruited Vlado Chernozemski, a Bulgarian member of the Internal Macedonian Revolutionary Organization (V.M.R.O.), to train a hit squad to kill the king. Chernozemski worked in Ustaša training camps in both Italy and Hungary. In the end Chernozemski himself shot to death the Yugoslav monarch while he was being driven through the streets of Marseille on October 9, 1934. In the melee that followed, the French foreign minister, Louis Barthou, the driver of the car in which the king and Barthou were riding, and two bystanders were also killed.⁴⁰ Up until this point, terrorist acts had been primarily associated with the anarchists; indeed, they were practically synonymous, and even non-anarchist assassinations and bombs were often attributed to the anarchists.⁴¹ But the murderers of the able Yugoslav Monarch and the highly-esteemed French foreign minister, not to mention Chancellor Dollfuss, were clearly not anarchists. Moreover the Italian courts refused to extradite two of the Ustaša masterminds behind the plot, Ante Pavelić and Eugen Kvaternik, ruling that they were protected by the political offence exclusion clause of the extradition treaty between Italy and France.⁴²

In response to the uproar over this ruling and the assassinations, the League of Nations convened an international conference to draw up a convention for the prevention and punishment of terrorism. This accord was completed in November 1937 but never fully ratified, and made no mention of social crimes.⁴³ The League's definition of terrorism was largely political, focusing, not on the social order, but on "criminal acts directed against the state."

tentat had previously signified see my forthcoming article: The 1904 Assassination of Governor General Bobrikov: Tyrannicide, Anarchism, and the Expanding Scope of 'Terrorism', in: *Terrorism and Political Violence*.

³⁹ For Mussolini's involvement, see Denis Mack Smith, *Mussolini: A Biography*, New York 1983, p. 187, and Srdja Trifkovic, *Ustaša: Croatian Separatism and European Politics, 1929-1945*, Chicago, Ottawa, London 1998. Trifkovic, p. 73, claims that the Ustaša leader "Pavelić would not have been able to launch [the plan to kill Alexander] without prior Italian approval."

⁴⁰ Apparently Barthou was killed by a stray bullet from his police escort. Gérard Chaliand and Arnaud Blin, *The History of Terrorism from Antiquity to Al Qaeda*, Berkeley, California, 2007, pp. 191-193. Chernozemski, born Velichko Dimitrov Kerin, shot two bystanders.

⁴¹ As late as 1938, Altavilla declared that terrorist crimes had "most times" been "committed by anarchists." *NDI* (n. 8), s.v. Delitto politico, p. 677. For a discussion of anarchist violence as the terrorism of the age, see Jensen, *The Battle Against Anarchist Terrorism* (n. 14), pp. 1-2, 22-23, 346.

⁴² Wijngaert, *The Political Offence* (n. 10), pp. 137-138.

⁴³ Zlataric, 'History of International Terrorism' (n. 36), p. 483. Ondrej Ditrych 'International Terrorism' as Conspiracy: Debating Terrorism in the League of Nations, in: Historical Social Research Special Issue: *Security and Conspiracy in History, 16th to 21st Century*, ed. Cornel Zwierlein and Beatrice de Graaf, Cologne 2013, pp. 200-210.

Subsequently the violence of World War II and the horrors of the Holocaust dwarfed and pushed aside the memory of the sporadic acts of anarchist violence that had occurred before and after World War One. Moreover, the triumph of General Franco in Spain in 1939 led to the destruction of the last major anarchist social and labor movement in Europe. In a world polarized after 1945 by the ideological divisions of the Cold War, fear of the anarchist bomb or the revolutionary strike was no longer very powerful. Most new terrorists were nationalists, extreme left wing ideologues, or religious fanatics, not apolitical social criminals. An indication of the change can be found in the lengthy article on “political crime” published in 1987 in the authoritative *Italian Encyclopedia of Law*. It makes no explicit mention of social or socio-political crimes in its text, and consigns to the footnotes its few references regarding anarchism.⁴⁴

VI. Conclusion

Today, politicians and jurists still try to de-politicize terrorism in order to render it a common crime and facilitate repression, much as they did in the nineteenth century. Furthermore, with the fall of the Soviet Union one of the impediments to the acceptance of the social crime has disappeared. Despite its general decline, a few remnants of the social crime survive in European law. Article 270-sexies of the Italian penal code includes, in a long definition of terrorism with multiple qualifiers and possible causes, conduct aimed at destroying “the fundamental political, constitutional, economic and social structure of a country.”⁴⁵ This language appears to be a holdover from the Fascist Rocco code.⁴⁶ Like the Italian code, the definition of terrorism adopted on June 13, 2002, by the Council of the European Union refers, among many other things, to the destruction of “fundamental political, constitutional, economic or social structures.”⁴⁷

In recent decades a few acts of violence and terrorism have erupted quite in the mold of the anarchists’ old social crimes. These include the violent actions of Black Bloc members during protest demonstrations in Europe and the United States. Furthermore, given his hatred of government, Timothy McVeigh’s bombing of the Murrah Federal Building in 1996 might also be considered an essentially anarchist act. More problematically, several commentators have compared the acts of Islamist terrorists with those of the anarchists since both

⁴⁴ De Francesco, *Reato politico* (n. 34), pp. 897-915.

⁴⁵ Franco Roberti, *Le nuove fattispecie di delitto in materia di terrorismo*, in: *Le nuove norme di contrasto al terrorismo, Commento al Decreto-legge 27 luglio 2005*, n. 144, ed. Andrea Antonio Dalia, Giuffrè 2006, p. 511.

⁴⁶ Adela Asua Batarritia, *Concepto jurídico de terrorismo y elementos subjetivos de finalidad. Fines políticos últimos y fines de terror instrumental*, in: *Estudios jurídicos en memoria de José María Lidón*, ed. J. Echaño Basaldua, Universidad de Deusto, Bilbao, 2002, pp. 41-85.

⁴⁷ Council Framework Decision, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002F0475>, accessed August 29, 2015.

reject the modern nation state and have had a predilection for selecting highly symbolic targets.⁴⁸ Recently Antifa, which rose to widespread public notice after a violent confrontation between protestors and neo-Nazis in Charlottesville, Virginia, in August 2017, has frequently been labeled an ‘anarchist’ group – a very debatable claim. But if anarchist terrorism of one sort or another may (or may not) be reviving, the concept of the social crime, at least in its classic definition, is presumably dead. It has been replaced by the terrorist crime, which has proven as difficult to define as its formerly famous predecessor, but which has acquired even greater currency. The Anglo-Saxon world never championed the ‘social crime’ as signifying unpardonable crimes against humanity (even if on occasion it implicitly accepted it). ‘Terrorism’ and the terrorist crime, on the other hand, have today acquired a universal popular, and often times legal, authority from New York City to London, Paris, Istanbul, and beyond.

⁴⁸ For a discussion of whether Islamist terrorism, specifically that of al-Qaeda, is similar to or even essentially the same as anarchist terrorism, see the 20:4 (2008) issue of *Terrorism and Political Violence*, which is entirely devoted to the issue. My article argues that the differences significantly outweigh the similarities: Richard Bach Jensen, Nineteenth Century Anarchist Terrorism: How Comparable to the Terrorism of al-Qaeda?, pp. 589-596. James Gelvin, Al-Qaeda and Anarchism: A Historian’s Reply to Terrorology, pp. 563-581, argues the opposite.