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## Thieves in Law: New Facts for the History of Social Control

### PREFACE

In summer of 2003 in a monthly educational amendment to the Tbilisi daily 24 Hours published the letter to the Minister of Justice of Georgia from eight grader of one of the secondary schools of Tbilisi: “How Can I Become a Thief in Law?”

This question indicated not only a general interest of the teenagers but rather reflected the fact that becoming a thief is an option when choosing the life strategy. It also indicated that Thief in Law is respective position in Georgia, at least in Tbilisi, or at least among the school students. So, what is behind this?

The notion itself is a construct of two terms: the THIEF, in public perception clearly indicating the criminal sphere, and the LAW, that refers to notions, such justice, the state, legislation, legitimization, etc. Thus the Thief in Law is a notion, which regardless its inner structural controversy reflects a certain social reality, which is understandable for society and represents a part of a social structure. It needs explanation, which involves both understanding of historical roots and research of contemporary state of affairs.

### HISTORY

Generally, analyzing the literature of XVIII and XIX century Europe and the USA we can draw a conclusion that state officials and institutions were (are) using criminal authorities for providing and maintaining the social control. The famous example would be Votren<sup>1</sup> – protagonist of Onore De Balsak’s series of novels – former thief, transformed in a policeman and *black hero* of XIX century Balsakian Paris.

Literature referring to Russian Empire of pre-revolutionary period is also full of examples of multi-agential society. In the beginning of the XX century Russia was full of people with *parallel biographies*: the best example – Roman Malinowski<sup>2</sup>, who was at the same time member of State Duma<sup>3</sup>, a criminal authority and an agent of Russian intelligence service (“Okhranka”).

The Hollywood movies<sup>4</sup> are full of different kind of illustrations to the relations between police/security services and criminal groups/individuals. In some movies this conjunction/cooperation is even for the sake of a higher value – establishing of the rule of Law, in others – for violation and for searching of the better way to overcome the law.

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<sup>1</sup> Honore de Balzac. *The Human Comedy*. 1822.

<sup>2</sup> see: Rosental I.S. *Provocator. Roman Malinowski. Cydba i Vremia*. (Rosental. I.S. Provocator. Roman Malinowski. *Destiny and Time*) Moscow, 1996. 272 pp. on Russian.

<sup>3</sup> Parliament of Russian Empire

<sup>4</sup> In 2003 - “Gangs of New York” by Martin Scorese

In absence of direct reliable evidences, we however can conclude, that as in the past as well as nowadays the state can produce and use this type of social control mechanisms to ensure, that complicate and multi-layer (stratified) society will not develop towards “un-returnable”, deviant direction, which will negatively affect existing state institutions and possible result in destroying of the state itself.

It means, that connection and close relations between criminal, i.e. *deviant institutions* and state law enforcing bodies is a “normal” social fact, – and have “ordinary” connections with State power/justice institutions.

In general, the mentioned *cooperation* between legal and illegal institutions is only a small element of social control carried out by the state. It can be said that any institution, created and fed by the state, is, in one or another way – a mean of social control. At the same time any institution of social control form another point of view (for example, from the point of view of social integrity) can be interpreted as an institution of social integration.

However, in order to analyse the current forms of social control one should imply the historical approach as far as the social control as a social fact has its own history and value. Below we tried to briefly outline it:

## HISTORY OF SOCIAL CONTROL

The notion of social control in this article is based on Foucaultian approach and vision<sup>5</sup>. In the history of social science it is possible to find different ones, but nowadays the Foucault approach can be consider as cumulative concept of contemporary understanding of this problem.

It is possible to develop classification of forms of social control following different criteria. Classification based on visualization of the social control institutions and method can result in division into two groups: those, visual/declared ones, which can be named as *surface forms* (police, army, security forces, laws, etc) and *hidden forms* (education, church, media, family, etc).

The nature of the state structure can be described through its institutional orientation towards imposing and maintaining of the control over the social institutions. Totalitarian states officially declare their intention/will to extend their direct influence to the all forms of the social control, beginning from the police ended by the family. Democratic state systems are looking for indirect and more non-violent ways to control social structures.

This last assumption can be disputed and one can construct a wonderful leftist theory about power and social control – how the totalitarian states openly controls the society, and thus they are much more honest, versus the democratic ones, with their hidden however not less important forms of social control, like – system of education, system of moral norms, employment rules, etc. However, the aim of this paper is not a virtual discussion between leftist theorists and libertarians and conservators. We are “only” trying to outline the history of development of the forms of social control, produced by the state.

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<sup>5</sup> Foucault Michele, *Discipline and Punish. The Birth of the Prison*. Trans. Alan Sheridan. New York: Vintage, 1977

According to the Ernst Gellner's theory<sup>6</sup> state's development can be described as a history of growing of subordination of different institutions of social life to the State: education institutions development can be perceived as movement from specialized and more private, to general and more state-belonging. According to Gellner, education is a specific tool, which provides citizen with necessary knowledge for surviving and development in the society and which provides the state with tolerant citizens, armed with values and plans, which are not contradicting with the state security and development projects.

Thus, education provides citizens with values that are comfortable for the state. To reverse this assumption, we can come to the conclusion, that state elaborates special system, which provides the citizens with specific values and life-plans.

The logical question, which has to follow this assumption is: is education the only institution, which is involved in performing of this kind of task? The answer is evident and even brief superficial overview of human history shows that there is at least one institution, which historically had the similar task: the Church, the religion.

I do not want to look as a follower of Nietzsche, but "Beside the Good and Evil" can serve as working hypothesis for describing of one aspect of state/society relationships. Thus, the church and later the education system, which usually emerges from the church institutions in medieval ages, are the systems providing citizens with comfortable values. What are these values look like?

As we see, the history of social control can be a history of the values, transferring through church and education to society. The next question, which can arise, is "Who is the object of this kind of control?" The first answer regarding the education is "the youth". But why "the youth"? The answer we can find in wide number of sociological studies, e.g. in Talkot Parsons's books<sup>7</sup>, where the youth is regarded as the main source of deviant behavior in society. The concept of deviant behavior itself can be understand differently, but here we use the wide meaning of the notion – the behavior of society members directed against the existing political, social and ethical systems.

It would be logical to say that the aim of social control institutions is to prevent deviant behavior. This is quite a formal definition: more exactly we can describe history of social institutions as a struggle between institutionalizing of deviant behavior<sup>8</sup> and institutionalizing of social control<sup>9</sup>. The best example is development of the universities from church Sunday schools and then transforming of some universities in the weapon for state/church order (Oxford University in medieval ages mostly served as a place for church courts)<sup>10</sup>.

Another important place and institution for social control/deviant behavior was Church Orders. They emerge as a deviant institution, protest against existing political and religious environment (esp. order of friars Minor of St. Francis), but during development transformed in strong tool of social control – with three vows of obedience, chastity and poverty.

These orders transformed into the official places for expressions of protest quite soon after being established (1209). The huge role in this change was played by political leadership of that time – Catholic Church of Rome. The indirect evidence is the fact, that first rule of the

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<sup>6</sup> Gellner Ernst, *Nations and Nationalism*. Ithaca, NY: Cornell University Press, 1983

<sup>7</sup> Talkott Parsons *The Structure of Social Action* McGraw Hill, 1937.

<sup>8</sup> From the side of deviant behavior subjects

<sup>9</sup> From the side of State Institutions.

<sup>10</sup> Rashdall, *Universities in Politics*...Oxford. ...

Order of St. Francis was based only on some passages from Gospel (Matt., XIX,21; Matt., XVI, 24; Luke, IX,3. occurring in the second – 1221 rule, are considered as a part of original one from 1209) and had only verbal, not written consent from the Pope. Other rules were approved by church officials and were much more sophisticated in the sense of prohibition and control.

Thus, Church in medieval Europe along with ideology, transferring through congregations and schools, had also one important tool for social control – orders, which were used in catching social protests and putting them in formed and productive channels. Later on the orders transformed into military and partially-military organizations, but all of them, regardless the visual wealth and power, maintained the three vows of obedience, chastity and poverty. These provided the political elite with a possibility to control orders and not to give them the chance to have high political pretensions<sup>11</sup>.

However, as we described above, in any institution of social control the struggle between *deviant behavior* and *institutionalizing of control* is ongoing process. In medieval European history there were plenty of facts, when orders began to control political situation, and started to indicate/define the ways of development to that bodies, which in official hierarchy were much above of orders' administration.

## SOVIET REALITY – THIEVES IN LAW

Among other forms of social control we want to draw a special attention to the phenomenon of Thieves in Law. We consider it to be an artificial creation of the Soviet period, which represents certain unity of legal and illegal institutions, which has not only history of establishment and operation, but also history of perception and reflection in public mind. This social institution is an attribute of the Soviet state and Soviet mentality and its mythology and mode of operation continues to affect the society.

There are almost no literary evidences, how and why the institution of Thieves in Law emerged. Currently I have a paper, from one of the ministries of Georgia's, which is prepared, as it is declared in the preface of the document, based on the experience of places of detention: colonies and prisons.

The paper contains so-called *Code of Thieves in Law*, which comprises of list of rules ("does" and "don'ts"). Thus, according to the document:

### **The Thief in Law should never:**

1. Be the member of a party or be otherwise socially active (including giving interviews to media);
2. Work;
3. Collaborate with state, interfere in state politics;
4. Violation;
5. Serve in army;
6. Giving evidence to prosecutor or investigator;
7. Ask for revision of court decisions;
8. Kill another Thief in Law without decision of so called Council of Thieves in Law;

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<sup>11</sup> As it happens in oriental bureaucracy, Chinese or others, where bureaucrats refuse to have property and in some cases they were slaves: i.e. beside of their visual wealth and influence, the nobles controlled them and can terminate their activities, or even punish in critical (for nobles) situations.

9. Have property or family;
10. Trust women or “touch” woman of the colleague (wife, sister, friend, etc.)

**The Thieve in Law should:**

1. Propagate living style of Thieves in Law, especially among youth;
2. Thieving (even small things);
3. Acting according to the hierarchy of Thieves in Law;
4. Judge and arbitrate among prisoners in jails and colonies;
5. Officially leave somebody (successor) as an observer in the jail or colony after the release;
6. Carry signs of belonging to the hierarchy of Thieves in Law;
7. Have good knowledge of the card and other games with stakes;
8. Respect hierarchy of Thieves in Law despite nationality or ethnicity;
9. Be responsible for the candidates in Thieves in Law he recommended personally;
10. Subordinate to the decision of Thieves in Law Council or Court;

All these 20 rules, collected contingently from above mentioned paper, indicate the rationally designed nature of this social institution: we can argue, that the origin of Thieve in Law institution neither was nor so called historical processes, neither was it created as imitation to existed social or political institutions.

The role of imitation in the creation of deviant social institutions is important: the underground thieves’ community in Paris and other European or non-European cities were pure imitation, or “*reputatio*”(Lat). They had their own kings, nobles and servants; their hierarchy was repeating the hierarchy of social “central” institutions.

In case of institution of Thieves in Law, which emerged in lagers and prisons of the USSR in the 30s, it was entirely different: thieves and criminals had not created anything that imitated the public institutions - nor government, neither church hierarchy. Regardless the similarities with the medieval orders the institute of Thieve in Law certainly was not replication of them – monasteries and monks in Orthodox Church of Russia (or Georgia) had not the structure of medieval Catholic orders. Moreover, the whole social environment of the Soviet Union and even Russian Empire in the end of XIX beginning of XX century was essentially different from European medieval times and in public consciousness there was no presence of complicate hierarchy and regulated life style of medieval European orders.

All these indicate that institution of Thieves in Law is more artificial, rather than “natural” and significantly differs from other thieves’ communities we know from the history. As there was nothing for “natural” imitation, someone had to invent it and implement in Soviet reality. Who can be the creator of this institution – the attempt of anti-utopia in the best style of George Orwell – is the next question of this historical-sociological detective.

Let’s look briefly on the history of Soviet Union’s state institutions and their relations with criminal groups before the World War II:

The first years of Soviet Union were characterized by mass repressions, arrests and significant number of citizens placed behind the jail bars. As soon as the power was obtained by the Bolsheviks with help of armed troops, the necessity of having a big number of controllers in the prisons and lagers became evident. At the same time the number of arrested people, the geography of lagers (in the far north and other “cold” peripheries of the USSR) and number of soldiers and policemen who had to control the prisoners was absolutely not corresponding to each other. The new forms of the control in the jails have to be introduced.

One of the forms, which the Soviet government inherited from the Russian Empire, was using criminals as police force: SU officials applied this method to the prisons and started to use criminals for repressing of political prisoners. That times, usually the political prisoners were elderly people, Mensheviks or other (including Bolshevik) party members, professors of universities and other not state supportive or not reliable *elements*: the Soviet government was afraid of their anti-Soviet propaganda at the detention places<sup>12</sup>. It was relatively easy for the criminals to exercise the power over the political prisoners as far as they were mostly old people in deteriorated physical condition. This scheme worked till the end of the 30s, when the population of political prisoners became younger, and it became more and more complicated for the criminals to control politically active youth: the fights between criminals and political prisoners became total. As a result the government decided to split political and other prisoners in different lagers.

This was the turning point in the history of Thieves in Law. We argue that this is a real moment of origin<sup>13</sup> of the institution of “Thieves in Law”. As a result of the diversification of the prisoners a huge system of criminals – prisons/lagers controllers, which was developed by the state, tended to become useless. The government successfully used criminals as spies in their own criminal communities, but they faced the problem what to do with the criminal communities they cultivated in jails and lagers. Release of the criminals would negatively affect the criminal situation outside the prison (“volia” in Russian).

Unless we have clear evidences, which can be accessible only after the KGB archives are open, we can assume that approximately in that time somebody in the government<sup>14</sup>, began to think how to use criminals not only for controlling of *politically differently thinking* citizens (specific word “dissident” appeared later) in jails and lagers, but also, outside them (“*na vole*”- Rus.). One of the important issues was maintenance of control over the huge community of thieves and criminals, which was growing everyday due to bad social and economic conditions.

We shall admit that invention of special social control structure should be based on quite a substantial knowledge of medieval history and religious life. The invention of Thief in Law institute itself is a brilliant construct and should be based on intuitive knowledge of power and its forms as far as in the beginning of XX century the role of hidden forms of social control was not under discussion even between sociologists and historians. However, this invention has not resulted from a “divine inspiration”: the general idea, that religion is the social form that controls the lives and minds of ordinary citizens and in some cases, restricts their behavior by the use of force – is the core idea of Marxism, in a way it was presented by radical Marxists to the population of Russian Empire.

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<sup>12</sup> The special terminology appeared to differ political prisoners from others: SB (socialno blijni – Rus.) – Socially Close – that was “ordinary” criminals, CV (socialny vrag – Rus.) – Socially Enemy – that were political prisoners.

<sup>13</sup> Most Russian and non-Russian researchers are little bit nationalistic in the investigation of the origin of Thieves in Law institution and tries to built the concept on development of this institution from thieves and criminals communities from early Russia (Chalidze, *Criminal Russia*...). I am arguing here that the origin of this concrete institution is more artificial, then “naturally” development from previous forms of criminal communities.

<sup>14</sup> Some of former communist party bosses, esp. Mr. Temur Shanshiashvili, now the governor of Imereti Region of Georgia, said, that this person was Dzerzinski, founder of security forces of USSR (TV interview, Rustavi 2, ...).

Thus, we can assume that idea of creation of semi-religious groups for control of population should not be alien for Marxist activists. However, the use of order rules for institutionalizing it as a form of social control really needs sophisticated minds of fathers of Russian revolution.

Nobody knows now who that person, who invented Thieves in Law was. It could be more practical thinkers – like Stalin or Dzerzhinsky. The only thing that we can definitely assume about the inventor is that he/she has to be Marxist, with good knowledge about repression forms in the feudal and capitalistic states, implying knowledge of position of the Church and general educational background not less than gymnasium (or, equivalent to it Seminaria – clergy high school in Russian empire).

## **HOW THE INSTITUTION OF THIEVES IN LAW OPERATES IN GEORGIA**

Thieves in Law in Georgian society are respected. The origin of this respect roots in Soviet times, where Thieves in Law were presented to the society as heroes, the men, who are against regime and the Communist Party, and who absolutely do not want to have any connection with the state institutions. There were (and still are) many legends and stories concerning honest and fair behavior of Thieves in Law and un-honest and unfair behavior of state justice institutions or their representatives. The institution of Thieves in law itself was perceived in public perception as counter force to the government structure.

This kind of nimbus, of course, unified the young people around even the idea of Thieves in Law, people, who tend to be the most active part of soviet population and the status of Thieves in Law was a protests against the regime. We can argue that if not the existence of institution of Thieves in Law, they will find other forms of expression. In the absence of these alternatives the Thieves in Law establishment was the most available and attractive. This was also a part of the idea of social control: to push protesting youngsters towards the criminal behavior, not towards human right protection or dissident movement.

The indirect indication of this kind of policy is the fact, that the percentage of Thieves in Law in Soviet Union is not distributed equally according to the number of inhabitants of Soviet republics: Russians among thieves are 33,6 %, Georgians 31,1, Armenians and Azeri are accordingly – 8,2 and 5,2 %. All other nations (Ukrainian, Middle Asian republics, Abkhazians – 21,8 %).

Georgian former political prisoners say<sup>15</sup>, that in Georgia it was quite difficult to be charged and prosecuted as a political prisoner. While in Russia and in other Slavic or Baltic republics that was much easier. In countries of the Caucasus region the courts and police always tried to “award” the verdict of “criminal” or “schizophrenic” to human rights defenders or to the nationalistic activists, thus pushing them in the world of criminals. These can explain the fact, why Georgia, the state with population not more than 5 millions, produced the same number of Thieves in Law, Russia.

Other factors, explaining the differences between the numbers of Thieves from other Soviet republics can be more traditionalistic environment of the communities of origin and lower possibility of initiation of protesting movements (the cases of Middle Asia, Armenia and Azerbaijan)<sup>16</sup>.

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<sup>15</sup> Interview with Mr. David Berdzenishvili, former political prisoner, now – member of oppositional Georgia's Republican Party.

<sup>16</sup> Georgia was the unique republic of Soviet Union, where the all courses in higher education institutions were proceeding on Georgian language.

This was a good way to reach obedience of general public, especially in the periphery states, where the government was constituted from national representatives.

The nowadays situation is slightly different then in Soviet times. Thieves in Law step by step are transforming and becoming mafia – they obtain attributes, which classical Thieves in Law would never have: they possess property, families, interfere in public life, influence the politics, sometimes themselves become politicians, etc. The new concepts appeared in Russia recently and currently there exist two terms: Thieve in Law (*vor v zakone*, Rus) and thief from law (*vor ot zakona*, Rus). The later has produced according the fact, that business people, to get the influence in the criminal worlds, were buying the titles of Thieves in Law.

However the nimbus and mythology around Thieves in Laws still exists. And still, I hope only by inertia, without “consciousness” support from the community/government side, this institution pushes the young people towards criminal world and terminates their civic protesting attempts<sup>17</sup>.

Of course, sooner or later the nimbus will disappear and the myth collapse, but meanwhile the Georgian society can fall in un-returnable tradition of communicating with state - obedience and absence of civic protest for the protection of their rights. It means that the country has not time to wait until legend on honest and fair Thieves in Law disappears from the public awareness. Certain steps should be undertaken in order to improve the situation and the only tool we have to react on fatal civic values – is to make a research and accumulate knowledge for the informed wide public discussion.

## OUTLINE OF A POSSIBLE RESEARCH

The study on the institution of Thieves in Law shall contain three consequent stages:

Stage 1. Information collection and processing: collection of relevant statistical data, research in libraries and especially in archives (those of Ministry of State Security, Ministry of Interior, etc);

Stage 2. Working out of tools for quantitative and qualitative researches based on the analysis of the materials collected on the first stage;

Stage 3. Final analysis and preparation of the article “Real story of Thieves in Law”, which will be available for wide audience. Separate efforts shall be undertaken in order to include the “Real story ...” in the history textbooks.

Inclusion of the “Real story of Thieves in Law” in the textbooks and public discussion of the issue along with educational effect shall serve also as a prevention mechanism. Considering the fact that criminalized type of viewpoint is being formed during socialization at elementary school level and the school itself is one of the main sources of mythology about thieves and “street” life, provision of alternative reliable information will counterbalance the effect of criminal legends.

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<sup>17</sup> There exist funny stories illustrate, how this institution step by step substituted by liberal civil forms: In schools of Soviet Union there exists the title of “Viewer”: a student, who was close to the Thieves in Law, appointed by Thieves in Law for caring “fair” situation in the school and then, continuing his career in criminal world. In one of the schools of Tbilisi in the last year the “Viewer” was elected by school students.

## CONCLUSION

In the end of medieval ages and in the beginning of the new time the slogan “Knowledge of the thing is the knowledge of its origin” emerged. It appeared soon after the phrase that “The Knowledge in the power”.

In medieval magic discourse for killing or neutralizing/prevent an action, it is sufficient to know its’ origin or real name of the actor.

Both approaches are true according to the social environment. Correspondingly, our research aims at two major results:

1. Purely academic interest: creation of accurate and analytical model of interesting phenomenon;
2. Preparation of argument for public discussion: attempt to “clean” the institution from the layers of mythology and historical past and identify its current form and place in society.

We here are in front of unique situation: the problem is interesting for sociology as a first research of this institution, and at the same time, researches can results as a tool for important social re-orientation.

One can say, that both approaches and aims are utopist, Marxist, voluntary, that they violating rights and etc. This institution/value, as I argue in this article, was invention, artifact. Then, what moral argument can pose against invention of prevention instrument of the institution/value, hidden under the mask of “natural” And “natural justice”?