

Handbook of Research on Trends and Issues in Crime Prevention, Rehabilitation, and Victim Support

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From stealing identities, to domestic abuse, to serial murder, crime and victimization continue to remain an unfortunate staple of society. With the rapid expansion and availability of technology, as well as the inability to effectively monitor and regulate such emerging tools as the deep web, criminals have continually advanced and altered their methods to avoid detection and locate new victims. As officials work to predict and prevent crimes, as well as apprehend offenders, they will need to devise new tools and strategies to preserve the safety of society and ensure proper justice is served.

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From an initial analysis relative to the spread of crime, some theories on the causes of criminal behavior are reviewed. After having underlined that many theoretical hypotheses on criminal conduct are not fully satisfactory because they do not offer data and elements useful to concretely evaluate behavior in criminology, the proposal is, especially for prevention, to refer to the theories in the field of psychology linked to the research by K. Lewin and his followers, through action-research. An attempt has been made to re-propose the approach proposed by K. Lewin, believing that this perspective can open up new horizons regarding both scientific research and practical applications, especially in relation to programming a more attentive interpretation and prevention of the crime. This proposal is based on personal experiences in the psychiatric-criminological field, applying research-action.

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In the field of criminology, biographies or life stories should increasingly become the central moment of research aimed at that historical reconstruction which helps, for example, unravelling the tangle of responsibility at the time of a criminal offence. The life story orients and provides elements for the psychic examination and contributes, with the psycho-diagnostic tests, to the discussion on the case and the assertions that precede the conclusions of the expert's report. Placing value on the biographical approach in criminology effectively means abstracting as a guiding hypothesis the identification of the development of personality for the purposes of ascertaining the responsibility of an author and the prediction of future behaviour: reference is, therefore, to the life story understood not only as narration, but also as communication.

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Using data from official statistics and surveys on victimization, this chapter aims to estimate the extent of domestic violence against men and examine the contraposition between female aggressors and male victims. More detailed knowledge both of women perpetrators and their male victims is believed to be useful for preparing appropriate programs of rehabilitation for the former as well as effective methods of intervention and help for the victims. The chapter reflects on the fact that, from the point of view of victimology, one of the risks to avoid is that of considering men as “second-class victims,” and from the criminological point of view, it is necessary to gain greater knowledge of the figure of the abusive woman, as well as focusing attention on the social representations of domestic violence.

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Maria Gabriella Cairo, Italian Society of Victimology, Italy

This chapter deals with psychological violence in its most recurrent forms. The author uses the general definition of psychological violence as a starting point to then analyze its manifestations in two different contexts: the professional and private environment. This way, the author wishes to demonstrate that psychological violence is associated with the establishment of a hold, a conditioning, which makes the individual who is subjected to it incapable of recognizing it. It is a process which is developed through typical schemes and which follows a similar pattern in different contexts. The consequences for the victims are numerous. The author analyzes them through a psychosomatic approach which explains why certain diseases develop when individuals are subjected to such pressures. The author also shares the results obtained in her practise of accompanying victims.

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Children and adolescents have the enjoyment of sexual and reproductive human rights, and when they have reached the minimum legal age for sexual consent, they acquire the right to exercise it. In the world this age, although supported by laws, is fixed by several factors, among which the cultural one stands out. Mexican criminal legislation punishes adults who have sexual relations with minors who are not of that age with the offence of rape because of the serious effects it has on their dignity and sexual health. On average, 76% of the penal codes of the country’s federal states stipulate the age between 12 and 14 years. It is argued that this age, and in particular the first, lacks effectiveness in protecting as a legal asset the free development of the personality in its aspect of sexual health, so it is argued based on the theory guaranteeing human rights, the need to establish it at least 15 years. It analyzes the state of legislation in Mexico based on the failure trees.

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The term “impulsive crime” is usually defined as a type of violent crime that arises suddenly under the pressure of intense emotional-affective involvement, against victims with whom an interpersonal relationship. The heterogeneity of the psycho(patho)logical frameworks underlying violent and sudden behavioral outbreaks has always represented one of the most controversial and complex topics in forensic psychopathology. For this reason the author emphasizes importance of a approach characterized by a psychopathological and psychodiagnostics analysis, through the use in particular of the Rorschach Test, to understand the enigmatic nature of this type of offence that represents the “breaking point” the a particular and dramatic individual dimension, which develops and articulates within the context of the subject’s life history, the analysis of which cannot be omitted if we wish to reach a position of “comprehension” of the criminogenesis and criminodynamics of the act itself, to implement even on appropriate therapeutic and preventive measures.

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Homophobic violence can be considered as an expressive act. Violent behavior can be considered as anti-homosexual when victims are chosen because they are considered or perceived as homosexual. Following this reasoning, hate crimes as homophobic crimes have a communicative value, since they represent a range of “masculinization” practices within the processes of gender socialization, both in conventional and illegitimate social worlds. Every homophobic act aims to intimidate not just the victim, but the whole group associated with the, whether concretely or merely in the perception of the perpetrator. This chapter will take into account the main research on victimization from an international perspective; it will highlight how both the gender of the perpetrator and the cultural constructions of masculinity(ies), in a heterosexist and hegemonic system, seem to play a fundamental role in producing homophobic and anti-homosexual behaviour.

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<i>Giovanna Palermo, Università degli Studi della Campania Luigi Vanvitelli, Italy</i>	

Criminal organizations have opened up to profound global transformations, putting themselves on the financial markets and creating a network in Mafia style. The present contribution intends to offer a framework of transnational criminal organizations, starting from defining aspects, normative forecasts and peculiarities, and then describing the Italian mafias and those of Eastern Europe, China, and Nigeria. Through these analyses the author intends to demonstrate how although Italy is the only country to have introduced “the Mafia Criminal Association” ex Art. 416 bis of the Penal Code, other countries also know this phenomenon. China, Russia, sub-Saharan Africa have given rise to mafia-style criminal organizations, even though they have not legally defined them. Today the branching of these associations at transnational level brings out their mafia values and the need to intervene with the legal and investigative methodology that was first experimented in Italy.

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Giulio Vasaturo, "Sapienza" University of Rome, Italy

In this chapter, the subject of mafia violence will be investigated from the victims' perspective. It will also focus on best practices and the national regulations by which government authorities and the civil society at large attempt to assist, support, and offer rehabilitation and resilience to the victims of mafias in Latin America, Central America, Asia, Russia, Africa, and Europe.

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Ranieri Razzante, University of Bologna, Italy

Corruption, generally speaking, can be defined as "abuse of power for private gain" that can be classified as grand, petty, and political, depending on the amounts of money lost and the sector where it occurs. Therefore, it is a phenomenon that compromises rule of law, weakens public institutions and democracy, impacting negatively on productivity and economy. Indeed, because of all these implications, it can be analyzed stressing social, economic, politic, or legal perspectives. These features have allowed experts from different fields to investigate the phenomenon, which does not exclusively concern conduct punishable by criminal law, but also conduct that can be considered just an "expression of maladministration" in both the public and private sectors. This chapter seeks to address the legal aspect of corruption. In particular, it overviews the main anti-corruption measures international community has adopted in recent years. By showing the evolution and steps that led to the actual treaty situation, the Authors offer a hint on the goals achieved and those to be achieved.

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SNA as an Integrative Framework: A Holistic Approach to the Study of Organized Crime 187
Alice Airola, Simon Fraser University, Canada

Since the second half of the year 1900, when the concept of organized crime became a matter of scientific interest, the inherent complex nature of this social phenomenon has been reflected in a multitude of definitions, methods, and analytical tools. Today, the time of integrating the huge body of knowledge, accumulated over time, has come. This chapter identifies a new and promising integrative tool in the social network analysis (SNA). In this regard, three main themes will be discussed: Why is an integrated approach to the study of organized crime necessary? How could SNA assist the researcher in structuring and implementing an effective integrative approach? and, In which ways could SNA resolve issues linked to the integrative approach, and, vice versa, to what extent a systematic integrative approach could improve the quality of SNA applied to organized crime?

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This chapter has the aim to present an analysis of narrative in youths in the context of systematic violence as a product of organized crime, an expression that constitutes a negative indicator of their personal development, starting from the experiences of whom have lived through that violence in their

environment. This is an exploratory analysis, accomplished through a discussion group made up of five youths from three states (Tamaulipas, Coahuila, and Estado de México), between ages of 21 and 23 years old, all social sciences university students. The results identified the explicit recognition of violence as a phenomenon distinct from relational or socio-political violence. Discussion emphasizes that through the application of community interventions that consider the citizen, especially youth, participation is necessary to reclaim peace and social equilibrium to aspire for a better regional and national development.

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Online Child Pornography: Conceptual Issues and Law Enforcement Challenges 226

Giorgia Macilotti, IDETCOM, Université Toulouse 1 Capitole, France

This chapter presents some challenges faced by the police in identifying child pornography images. In particular, three main problems will be discussed throughout this chapter. The first lies in deciding whether an image is explicit enough to be considered pornographic. The second issue lies in determining whether the victim is a child or someone who appears to be a child. A final challenge concerns how to deal with sexually explicit images produced by someone who is a child themselves. It will be argued that despite emerging investigative and forensic methods, the decision-making process engaged in by police officers still presents some specific challenges. These aspects will be discussed through an analysis of semi-structured interviews with 23 French police officers and forensic analysts working in departments specialising in policing cybercrime and online child sexual abuse.

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Maurizio Tonello, University of Bologna, Italy

The development of information technologies in recent years has transformed our society into a “hyper-connected space” in which the pitfalls, the risks, as well as the damages to the victims have grown exponentially. Identity theft, hacking, information piracy, threats to data integrity, on-line scams, or CEO fraud are the commonplace keywords that are part of the internet of things. Cybercrime can cause serious harm and long-term effects, whether the victims are individuals or companies. It is important to address the definition of “cybercrime,” since the term itself refers to a harmful behavior that is in some way related to a single computer or to a computer network and examine the main types of computer crimes in order to understand which countermeasures can be implemented to counteract these phenomena where the human factor is the fundamental component to promote the concept of “conscious attention” as a necessary resource to limit the risks of “cyber victimization.”

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Elena Bianchini, University of Bologna, Italy

Issues of bullying and cyberbullying among schoolchildren are nowadays a matter of international concern, with school bullies, cyberbullies, and victims having become a topic of public concern and research in various countries around the world. This chapter, besides a definition of bullying and cyberbullying, explains the characteristics, types, causes, and consequences of these acts based on findings from various studies. In addition, the chapter presents some school-based intervention programs, implemented in different school settings, with the aim of effectively reducing levels of bullying and cyberbullying in schools. Finally, the chapter aims to provide guidelines and propose best practices in order to fight acts of violence and aggression.

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<i>Laurent Mucchielli, LAMES, CNRS, France & Aix-Marseille Université, France</i>	

Drawing inspiration from researches on environmental crime and corporate crime, this chapter examines the case of air pollution caused by road transport and industry in France. The purpose of the author is first to document the nature and extent of these health threats to populations and second to highlight the existence of delinquent practices (defined as deliberate violations of legal norms) that sometimes play a major role in perpetuating these threats. The author first examines the issue of pollution caused by automobile engines and returns to “Dieselgate.” It then details the pollution problems observed in the Fos-sur-Mer industrial area in the south of France and its consequences on the health of local populations.

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Natacha Brunelle, Université du Québec à Trois-Rivières, Canada

Julie Carpentier, Université du Québec à Trois-Rivières, Canada

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The purpose of this chapter is to show the importance of intersectorality in partnerships to successfully understand and influence the processes of crime desistance and of social and community (re)integration of people subject to judicial control. It begins with an outline of the “what works” and “how it works” movements and provides tools to help understand such notions as crime desistance, (re)integration, trajectories, and intersectorality. After describing the objectives of the (RÉ)SO 16-35 partnered research project, the authors present various intersectoral collaborative initiatives in the United Kingdom, the United States, and Canada and indicate what, according to the literature, contributed to their development. The chapter concludes with the identification of two central principles in the development of intersectoral partnerships aiming to favor crime desistance and social and community (re)integration trajectories: a culture of dialogue must be instilled, and the initial objective of the project must be kept in mind.

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Anjali Tiwari, Management Development Institute, Gurgaon, India

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Guido Travaini, University Vita e Salute San Raffale Milan, Italy
Palmina Caruso, University of Milan, Italy
Enrica Beringheli, University of Milan, Italy
Isabella Merzagora, University of Milan, Italy

Criminological rehabilitative treatments of abusive partners have always been considered of key importance from a preventive point of view. Criminological research, and our experience as criminologists, has proved that even the most abusive partners—including uxoricides—after their convictions repeat the same violent relationship pattern. That said, the Chair of Criminology (University of Milan) set up the first action and research program in Italy offering treatment for perpetrators of domestic violence, called S.A.Vi.D. (Stop Alla Violenza Domestica – an Italian acronym meaning: Stopping Domestic Violence) in 2010. Information about all the subjects treated will also be described and discussed: age, legal status motives, offender behavior prior to treatment, whether and how behavior changed after treatment.

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Hai Thanh Luong, Royal Melbourne Institute of Technology (RMIT) University, Australia

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Preface

Crime has always attracted attention and aroused interest: strange, picturesque and terrifying facts are sought in criminality to create interest and try and open up the darkest corners of the human soul.

All this is not the main focus of this book, because due to its interdisciplinary nature, the collaboration of all the social sciences must be stimulated, therefore the image of the crime does not look to the past as is often the case but, being linked to the difficulties of the present, has to look towards the future. It is actually the global image of criminality that contributes to throwing a particular light on the needs for specific in-depth study and attentive reflection.

The book thus suggests analyses and keys to interpret the social phenomenon of crime, starting off from theoretical aspects which even today take on particularly topical connotations.

The aim is to reflect on the object of criminology and victimology, on their nature, on their situation and on relations with similar disciplines. Criminology and victimology are disciplines which are necessary in the face of the spread of criminality, the variety of its manifestations and the considerable presence of unknown authors of crimes. In particular, the task of these disciplines, although from different perspectives, is to improve the quality of life of citizens and it is clear that, from this point of view, the major topics of ethical-social importance can be linked to risks of victimization. Therefore, the need for an accurate analysis of the tendencies of criminality and the need for expert answers to a growing demand for security by citizens require the development of specialist knowledge. In the study of crime and processes of victimization, a need is felt to connect all the time with the demands of a community and society at grips with new forms of criminality or old forms which reappear in society in new ways.

As criminality is a very heterogeneous category of different types of behavior, held together by socio-legal and cultural constructions, in order to study criminal behavior it is essential to take into consideration the dynamics of definition and control as well. In this sense, it is the study of social processes that becomes important as, never as today, social change implies new forms of problematic situations, criminalization, victimization, relations between formal and informal, not to mention the effects that technology can have on the strategies adopted by the operators of social control.

These are some of the questions that are closely connected with the knowledge, prevention and repression of crime: they are situations which require not only becoming aware of the evolution and the characteristics of criminality, but which impose the ability to develop an operability between conceptual effort and constructive effort, to be able to mobilize competences and particular experiences.

In this sense, the work of the criminologist and of the victimologist is fundamental and deals with tasks that touch on the nature and dynamics of social and cultural life, human interactions, technological and political changes, the transformation of society and relations caused by technology and globalization, the preparation of new models and paradigms of living and acting.

Preface

Therefore, on the basis of these introductory remarks, the book is for scholars of criminology and victimology and all those who work in the field of crime prevention, rehabilitation of offenders and social control.

The reader will thus be accompanied along a path which has been conceived in the first place to pay special attention to the examination of the individual, environmental or, more widely, social factors of the individual crime without overlooking the ways and the codes of criminal subcultures and those typical of organized crime. The book includes analyses relative to the phenomenology of some criminal manifestations in order to provide useful instruments to all those who, in various capacities, want to deal with the issues relative to the spread of crime, the processes of victimization and social control. Lastly, we dwell on the study of the multiple facets of the prevention of crime and the rehabilitation of offenders understood as public activities closely connected with other aspects of the political and social life of an area, bearing in mind that the complex and vulnerable society of the present day sets increasingly new challenges in terms of social conflict.

The book aims to help clarify that the criminologist has to be able to understand the usefulness of research and has to be aware that in the study of crime an interdisciplinary approach is necessary in which the contribution of criminology, as a science which aims to understand criminal action through a procedure of interpretation and therefore explain it in its course and in its effects, must be prevalent, in the sense of the organization of the coordination.

To fulfil this hypothesis, criminological research becomes the nodal point, because it transcends the problem of security and order to highlight the question of quality of life which, in periods when violence is on the increase and an increasingly brutal and organized criminality is spreading, cannot rely solely on increasing the contingents of the police force, or places in prison, but on that research which can make a contribution to the knowledge of the current state of affairs and planning changes.

From this perspective, there is therefore a commitment that involves the most intimate feelings, but also a scientific commitment that involves being a researcher. Therefore, if it is true that science is nothing but organized common sense, in the field of solving social problems, research, as has been attempted in this book, becomes a scientific undertaking in which social ethics and common sense have to be the guiding principles. With this aim, the reference to social ethics is almost obvious and is linked to the principle of responsibility, understood here as a function both of power and of knowledge: ethics and responsibility are not in a simple relationship although they are closely related due to the fact that the good of individuals coincides with the pragmatic good of those who control power, the public good and the institution, so that good therefore becomes not purely utilitarian but clearly moral.

These observations authorize insisting that studies on deviance and criminality can be used instrumentally, especially when they are planned in relation to operative aspects of social policies as a support in favor of legislative initiatives: in this case, moral or immoral entrepreneurs could try to influence the guardians of the legislative mechanism to have laws passed in the area of social control. In this sector, criminologists-researchers, in good or bad faith, can sell their studies to those who then, in their turn, will sell their version of public morality or social and/or individual security to those in charge of the local institutions or even to the guardians of the mechanism of legislation.

The awareness of the ethical aim implicit in all forms of research must lead to the formulation of codes of professional conduct for the researcher, including in the area of criminology. This can be associated with the need to form committees made up of experts in different disciplines including the so-called ethicist.

These observations are made for reflection by the contributors to this book and its readers.

It is above all in the sector of what are known as new crimes that the greatest need is felt for interpretations that can provide possibilities for greater prevention and above all control. In organized crime, for example, with its international ramifications and with the use of brutal (taking hostages) or sophisticated means (use of Information Technology), the traditional criminological models clearly do not provide interpretations that can be adequately used in studies for social control, in a democratic state. All the analyses made in this field underline the need for a new type of research which, in a certain sense, this book aims to satisfy. It is necessary to fill in the inadequacy of the systemic data on organized crime and on illegal markets to answer a number of questions that cannot be overlooked in a perspective of social control.

In relation to these research requirements, it has to be underlined that there is also the problem of prison treatment. Therefore, we have to reflect on the fact that in various situations, as well as the lack of freedom and “forced labor”, there is another type of suffering in prison life, almost worse than any other painful aspect, which is the obligation of living in contact with others who in turn are extraneous to one’s own life environment.

As a consequence, it is worth recalling that in the field of social sciences, the study of some prison-related issues have often been neglected, because economics, politics, sociology, anthropology and the other social sciences study above all the behavior of the largest human groups and when they deal with the individual they tend to deal only with some segments of his behavior; man in relation to the economy, the politician and so on. Therefore we have to begin to take the social man into consideration: that is, we have to deal with the behavior of the individual in society and therefore also in prisons, because the *homo sapiens* who produces culture is the same *homo faber* who produces work, even in prison. Consequently, we are convinced that criminology with social and legal psychology and with scientific sociology, based on a close combination of empirical research and theories, can benefit the best use of work in prison and therefore, in the end, the resocialization of the author of a crime.

For the criminologist, who is given the task of interpreting, understanding and explaining events which are often considered perverse, strange, primitive and violent and which have their background in the biological structure, in the psychological traits, in the peculiarity of the environment or in all those aspects connected in various and multiple ways, every interpretation can be complicated by numerous theories, therefore there is the need to transmit as much knowledge as possible on processes which have a constant characteristic.

In conclusion, we specify that all the activities linked to criminology necessarily take place between judgement and values, therefore it could also be hypothesized that more competence and more ethics, in the long term, will give good results, or, to put it in professional terms, excellent outputs.

The goals of the book are therefore to:

- Identify and reflect on good practices and innovative experiences in crime prevention and victim support;
- Encourage effective cooperation between scholars and professionals who, in various ways, develop methodologies to improve the understanding of crime dynamics and support the implementation of crime victims’ rights;
- Setting guidelines, which could also be used as teaching aids when training scholars and professionals who deal with security, crime prevention and the rehabilitation of offenders.

ORGANIZATION OF THE BOOK

The volume is structured in three sections:

1. Criminology and Victimology From a Theoretical and Historical-Evolutionary Point of View;
2. The Phenomenology of Some Crimes and of the Most Frequently Occurring Victimization Processes;
3. Crime and Victimization Prevention and the Rehabilitation of Offenders.

The book is organized into 27 chapters. A brief description of each of the chapters follows.

The first section is made up of two chapters which dwell on the problems linked to crime in relation to the theories, prevention and evolution of criminological studies.

In Chapter 1, after a first analysis of the spread of crime, theories on the causes of criminal behavior are reviewed. It is then underlined that many theoretical hypotheses are not fully satisfactory because they do not offer data and elements that are useful for concretely evaluating behavior in criminology, therefore, referring to the field theory in psychology linked to the research by K. Lewin is proposed. This suggestion is based on personal experience in the psychiatric-criminological field.

Chapter 2 focuses on the fact that, in the field of criminological studies, biographies or life stories should increasingly become the central moment of research for the purpose of that historic reconstruction which helps, for example, unravelling the tangle of responsibility at the time of a crime. Criminology and victimology are therefore required to measure up to a surrounding reality with differentiated tensions of different origins and motives, which are contradictory and not always traceable to a linear type of pattern, going through it. In order to arrive at an effective action of protecting and safeguarding the victim, strictly legal answers are perhaps indispensable but also, and possibly above all, an awareness, calling upon the heart and mind of men, of the responsibility and duties is required.

The second section, which has fifteen chapters, concentrates on the analysis of numerous forms of criminality, starting from those that take place in the domestic environment, then going on to the sexual abuse of minors, psychological violence and those forms linked to discrimination for sexual reasons. Subsequent chapters are devoted to the phenomena of organized crime, terrorism, environmental crime and their victims. Lastly, special attention is paid to crime in cyberspace.

Chapter 3 highlights the phenomenon of domestic violence perpetrated by a woman against her male partner and includes data and accounts of research, mainly with reference to North America, Australia and Europe.

Chapter 4 deals with psychological violence in its most recurrent form which can take place both in the private sphere and in the work environment (i.e. repeated verbal or non-verbal humiliation, denigration and disqualification, verbal threats, emotional blackmail, moral harassment, mobbing). Particular attention is also paid to the fact that the consequences for the victims are numerous and their degree of importance is linked to the history and the physical and intellectual abilities of each one.

Chapter 5 explores the construction of fault trees to legislate a minimum legal age for sexual consent in the case of Mexico. The fault tree technique shows a multifactorial proposal for establishing laws through scenario setting and their respective analysis, in order to determine possible legal gaps that are susceptible to creation and/or improvement.

Chapter 6, on impulsive crime, emphasizes the importance of a approach characterized by a psychopathological and psychodiagnostic analysis in order to understand the enigmatic nature of this type of offence.

The topic of homophobic violence is discussed in Chapter 7 which takes into account the main research on victimization from an international perspective and highlights how both the gender of the perpetrator and the cultural constructions of masculinity(ies), in a heterosexist and hegemonic system, seem to play a fundamental role in producing homophobic and anti-homosexual behavior.

Some aspects of organized crime are discussed in Chapters 8 to 12.

Chapter 8 initially outlines a framework of transnational criminal organizations, starting from defining aspects, normative forecasts and peculiarities, to then dwell on the description of some peculiar aspects of the Italian, East European, Chinese and Nigerian mafias.

In Chapter 9, mafia violence is investigated from the victims' perspective thanks also to the analysis of best practices and national regulations through which government authorities and the civil society at large attempt to assist, support, and offer rehabilitation and resilience to the victims of mafias in Latin America, Central America, Asia, Russia, Africa, and Europe.

Chapter 10 is on the fight against corruption.

Chapter 11 aims at paving way for the creation of a coherent and systematic integrative approach to the analysis of organized crime identifying a new and promising integrative tool in the Social Network Analysis (SNA).

In Chapter 12, some narratives by young Mexicans who live in climates of systematic violence of organized crime, are analyzed. In this regard, the authors of the chapter question the role of those community interventions which believe that the participation of citizens, especially young ones, is necessary to reclaim peace and social equilibrium to aspire to a better regional and national development.

Chapters 13 to 15 analyze, from different points of view, crime in cyberspace.

Chapter 13 presents some challenges faced by the police in evaluating child pornography images.

Chapter 14 examines crime in cyberspace from a socio-criminological point of view, studying in greater depth those aspects of computer crime which are connected to routine activities and rational choice theories.

Chapter 15 explains the characteristics, types, causes and consequences of bullying and cyberbullying and presents some school-based intervention programs with the aim of providing guidelines and proposing best practices in order to fight acts of violence and aggression.

Chapter 16 examines the case of air pollution caused by road transport and industry in France and its consequences on the health of the local populations.

Chapter 17 traces a brief history of terrorism in order to better understand a phenomenon that has proven to be extremely dynamic and complex.

The third section is made up of ten chapters on multiple aspects of crime prevention and rehabilitation of offenders.

Chapter 18 aims to analyze the profound changes that are affecting the Italian health system through the study of ministerial guidelines in the area of procedures relative to cases of medical malpractice.

Chapter 19, starting from a theoretical overview of delinquency desistance and social and community (re)integration (DDSCRI) with reference to young people, illustrates examples of projects in the world intended to provide enhanced and integrated services to youth subject to judicial control.

The role of the collective approach is also given special attention in the study presented in Chapter 20, which focuses on the three main approaches which are essentially based on justice and dignity, where again the main focus was on understanding the core strength of the offender and to develop a rehabilitation program which can positively impact their lives.

Preface

Chapters 21, 22, and 23 dwell on rehabilitation inside prisons with particular reference to the legislative aspects in Europe and some specific programmes.

Chapter 24 illustrates a path for the criminological treatment of abusive partners paying special attention to the identification of good practices.

The last three chapters (25, 26, and 27) are on the study of urban crime prevention, through community-based programs and focus on the very widespread processes of victimization linked to thefts and robberies.

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Section 1

Criminology and Victimology From a Preventive Point of View

Chapter 1

Criminality: Theories, Prevention, and Life Space

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ABSTRACT

From an initial analysis relative to the spread of crime, some theories on the causes of criminal behavior are reviewed. After having underlined that many theoretical hypotheses on criminal conduct are not fully satisfactory because they do not offer data and elements useful to concretely evaluate behavior in criminology, the proposal is, especially for prevention, to refer to the theories in the field of psychology linked to the research by K. Lewin and his followers, through action-research. An attempt has been made to re-propose the approach proposed by K. Lewin, believing that this perspective can open up new horizons regarding both scientific research and practical applications, especially in relation to programming a more attentive interpretation and prevention of the crime. This proposal is based on personal experiences in the psychiatric-criminological field, applying research-action.

INTRODUCTION

Through its different manifestations, crime at a planetary level now seems to have spread and become established in urban areas. On the other hand, the control of the various forms of criminal and violent behavior which are winning over increasing spaces in cities, appears to be hindered by a large number of problems which concern the efficiency of the agencies for the control and the sense of civil responsibility. This situation is particularly evident in our societies and appears mainly in periods of growth and of recession. The various aspects of social change are reflected and will be reflected on values which determine the way people, and especially young people, think, therefore trying to observe how the change of values is imposed can also be helpful for trying to interpret the phenomena defined as deviance, criminality and violence, especially in urban areas.

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With reference to the social change that is also characterized by technological innovations, it is worth recalling that there is one type of criminality that is also connected to the evolution of technology, the crimes that are committed using computers which however coexist with various sectors of traditional crime. Computer criminality and traditional crimes against property (theft and robbery) take place at the same time, for example, as crimes related to the traffic and sale of drugs. Therefore, reference can be made to conventional and non-conventional crimes which take on a different perspective concerning prevention, fear of criminality and some questions related to victimology.

It is effectively necessary to develop the analysis and study of conventional crimes, and above all, of non-conventional ones. As far as the first aspect is concerned, reference is made essentially to crimes against natural persons, property, morality and various types of harassment and other forms of offence (robbery, theft, personal injury and sexual violence). The expression 'non-conventional crimes' refers to offences committed under the cover of public offices, crimes against international laws and those deriving from political activities, including political violence and terrorism and crimes caused by ideological and religious fanaticism, corruption, exploitation of workers, racial discrimination, genocide, fraudulent advertising, pollution and all those crimes connected with organized criminality. In this perspective, the problem of prevention is very complex because the phenomenon of criminality and delinquency, especially in recent years, has been taking on very alarming characteristics, both for its general trend and for the appearance of specific increases of certain types of offence with the considerable persistence of the number of unknown authors of crimes. Present-day crime looks different from that of yesterday, at least in its expressive qualities, to the extent that there is increasing talk of new criminality. Examples of this are industrial espionage implemented with sophisticated technologies, the phenomenon of commercial counterfeiting with the counterfeiting of branded products, insurance frauds, adulteration of food and pharmaceuticals, the colossal levels of economic crime and the irreversible damage of the so-called ecological crime.

Conventional crimes are more frequently present in criminal statistics, whilst non-conventional crimes do not appear clearly in criminal statistics, either because they are not identified or because in some countries they are recorded in special archives. Public opinion seems to ignore non-conventional crime because it is conventional crimes that cause concern and that underlie the fear of criminality, generating insecurity and fear for the safety of people or things.

As a consequence, increasing attention has to be paid to the prevention of crime, repeating once again that in this field an adequate connection between the central state structures and peripheral institutions is absent. The difficulties in providing solutions for complex and recurring problems makes it problematic to foresee and plan the needs linked to crime prevention. In a situation such as the present one, it is likely that repression, which is closely linked to better known and more easily implementable means and procedures, is called for more than prevention. The contrast prevention ↔ repression therefore emerges: the former is a more recent notion, with blurred outlines, the practical usefulness of which does not appear immediately. The latter appears more defined concerning the aims set, even though, in a democracy, its notion can necessarily appear ambivalent: demanded by people who want order and security, it is however criticized when it can damage the freedom and rights of an individual and of the community. In this perspective, the problem of criminality becomes complex and here we aim to analyze the possibilities of extending the area of prevention through a brief review of the theories and some operative suggestions on the possibility of integrating theory and operability in the specific sector of the prevention of crime.

CLASSICAL SCHOOL AND POSITIVE SCHOOL

When starting to deal with problems regarding criminality, its prevention and social control, in a historical-evolutionary perspective, it is useful to offer an analysis of the first two schools of criminology: the classic school and the positive school, which have influenced and continue to influence criminal theory and policy, especially in much of the West.

Until the 17th century, criminal law and justice were linked to the absolutist conception of the state and the monarchy. Throughout Europe, criminal law was based on the principles of intimidation, vengeance, corruption and privileges, and it was against this background that those humanitarian and social principles oriented at dealing with the fundamental natural rights of men, which go under the name of *Enlightenment* (Casini, 1994), gushed forth. Modern criminal ideology has its origins in the Enlightenment concepts of Voltaire, Diderot, Montesquieu and Rousseau who were the first to criticize the arbitrary authority of the monarchy and the aristocracy in the field of law and justice, in a period when the economic organization of Western societies was changing, with the feudal privileges being replaced by the concept of social authority. The liberal concept of the state is based on the theory of the social contract, according to which men would gladly have placed in the hands of the authorities the power to have laws respected, in the interest of the whole community, so that individuals had to be considered equal in front of the law, as it was precisely the impartiality of justice that should have guaranteed the elimination of social injustices.

It was in this context that the Classical School came into being, which developed in the 18th and 19th centuries, drawing its origins from the Enlightenment in an effort to reform the criminal system and protect offenders from the arbitrary action of the State. The Classical School focused its attention on the crime as a juridical entity and highlighted free will and theorized the deterrent effect of the punishment which became important in a perspective of prevention. Cesare Bonesana Marquis of Beccaria (1738-1794), known as Beccaria, deserves a particular place, in particular for his book “*Dei Delitti e Delle Pene*” (“On Crimes and Punishments”), published anonymously in 1764 (Beccaria, 1964).

Beccaria took on the task to implement, in the second half of the 18th century, the most concise and effective petition in favor of the reform of criminal law. The theory of the state as social contract is the most significant presupposition of the criminal syllogism of Beccaria, for whom the assumption of the punishment lies in the need to keep men from damaging the freedom of others, according to the clauses of the social contract. Beccaria clearly states that the punishment for crime is established only by the law and that the power to pass laws can be conferred only on the legislator who represents all the members of the community. As a consequence, for Beccaria, the essential aim of the punishment is not to affect the guilty party or annul a crime that has already been committed, but rather to prevent offenders from committing further damage to society and the other members of society from committing crimes. The punishment therefore takes on an educational value. In this perspective, it is clear how justice, including through punishment, can have an action of prevention. According to Beccaria, the sovereign, who represents all the members of society, is the legislator, while the task of the judges consists of ascertaining whether a person has acted against the law or not. The form of the syllogism could be attributed to the judge’s decisions, in which the legislative rule forms the main statement, the action of the individual, against the law or not is the minor one; the conclusion ought to be punishment or freedom. In order to avoid ambiguities and uncertainties in the criminal trial, the judges should not be allowed to interpret the laws, their task should be exclusively that of applying them.

In conclusion, the essential points of Beccaria's criminal philosophy highlight how the Classical School, as far as prevention is concerned, puts to the fore justice, freedom and the fact that citizens have free will.

In opposition to the Classical School, which dealt above all with the problems relative to the reform of general legislation, is the Positive School which, taking the crime into consideration, studied the criminal's personality.

The Positive School of criminology emerged in the 19th century, in opposition to the Classical School and the Enlightenment, and had as its object of study the criminal rather than the crime and as its purpose the reduction of crimes without taking into consideration the punishment in the perspective of prevention. Positive scientists started from the presupposition that social reality could be studied in the same way as the physical world: man's behavior, which can be observed and measured by the scientist who, by definition, should be neutral and objective, is guided by the law of causality. As a consequence, criminal behavior also had to have its cause which, to prevent the crime, had to be sought out and eliminated. In the positivist perspective, men are not considered responsible for criminal actions, as they are driven by forces of which they are unconscious. From this point of view, free will is negated and therefore so is the theory of the social contract: the positivists interpret conformism by postulating the existence of a wide mass consent of the laws therefore they deemed valid the use of statistics in the study of criminality, as the offences under the Criminal Code and therefore represented in the statistics would have been expressions, at least in representative parliamentary democracies, of the real feelings of the community. Two schools of thought developed from positivism: the first considered the crime as the product of social factors, the second deemed the crime the product of the individual constitution, so that the aim of criminology was to discover why some individuals become criminals. The social determinism school then had to give way to the constitutionalist school: the positive theory that was to be supported by Cesare Lombroso freed consciences from the burden of responsibility with respect to the criminal actions of the individuals, paying less attention to the social causes in the genesis of the crime and highlighting the constitutional and innate ones.

Social determinism had as its representatives Adolphe Quetelet (1796-1874) (Quetelet, 1931) and André Michel Guerry (1802-1886) (Guerry, 1864) who were the first to study, separately and independently, French criminal statistics from 1827 onwards to collect the data on the variation of criminality in space, according to the climate or the rate of crime in relation to age, gender, profession, education, economic conditions and race. During their studies, they found a certain degree of regularity in criminality so they started the search for the social causes of the crime, observing that the causes of the crime could not be simple and unique and that the prevalence of social values could not be denied. Their thought can be summarized through the expressions of Quetelet who observed that man as an individual shows having the greatest freedom of action and there do not seem to be any limits to his will. However, the greater the number of individuals observed, the more individual free will seems to decrease, allowing a series of general acts which depend on the causes by virtue of which society exists and stays alive to predominate. Therefore man's free will is neutralized in the social state, so that free will does not have an appreciable effect on the social corpus and therefore man's freedom is suffocated by social relations which force the individual to act in a certain way.

In 1876, a few years after the publication of Quetelet's "*Physique Sociale*" and the "*Essai de Statistique Morale*" by Guerry, there appeared a book which was destined to become far more famous very quickly: "*L'uomo delinquente*" ("The Criminal Man") (Lombroso, 1884) by the Italian doctor Cesare Lombroso (1836-1909). His theories quickly superseded the sociological approach attempted by the moral statistics.

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The story is well known: Lombroso, practicing an autopsy on the skull of the brigand Vilella, found an occipital fossette typical of anthropoid apes. This discovery was a revelation for him and made him continue his research on other criminals, reaching the conclusion that, in these individuals, anomalies of an anthropological, functional and degenerative type are often found and he believed that there was a close relationship between degeneration and criminality. This approach by Lombroso was greatly criticized so that, in the fifth edition of his book "*L'uomo delinquente*" ("The Criminal Man"), he reduced the proportion of delinquents in the category of born criminals, identifiable by the presence of physical anomalies, from 70 to 40%, admitting the existence of epileptic criminals, mad criminals and increasing the number of occasional criminals, whose motivation to commit crimes was to be looked for in multiple causes, including environmental ones.

Whilst the positivism of Quetelet and Guerry influenced criminal sociology (especially in France and the United States), that of Lombroso started, in particular in Italy and in Germany, the Positive School (still existing) which, although not overlooking the factors of a social nature in the study of deviance, believes that these have to be integrated with constitutional factors and personality traits.

One of the most authoritative representatives of the Positive School was without a doubt Enrico Ferri (1856-1929) (Ferri, 1900), also known as a "juridical Socialist" as he believed that to reduce the crime rate it was necessary to act directly on the social environment, identifying and fighting the causes of crime with reforms tending to improve the moral and material conditions of life. The most famous of positive laws, the law of criminal saturation, according to which, as in a given volume of water, at a given temperature, a given quantity of chemicals is dissolved, not an atom more and not one less, in a given social environment, with given individual and physical conditions, a given number of crimes, not one more and not one less, is committed, is due to Ferri.

In contrast with the classical principles, the positivists maintained that the punishments should be unspecified and the quality and measure of rehabilitation, defined specifically for each criminal, should be assigned to specialists. The positivist principles have influenced the systems of law in many countries by not making prevention clear in operative terms and making, for example in Italy, the so-called *double track*, according to which alongside the punishments there are security measures which have as their presupposition the social dangerousness of the criminal and significantly reflect the patterns of constitutional positivism.

The unjustified generalization of bioanthropological positivism in the interpretation of criminal behavior improperly suggests that the individual acts according to innate or conditioned behavior therefore it is difficult to develop targeted projects of prevention. Human conduct is also carried out somewhere between the need to feel similar to others, to distinguish oneself from others and one's sense of identity; the bioanthropological theories suggest hypotheses of a curative type and therefore overlook, for example, that organized crime and more sophisticated criminality are not run by men who are ill or hereditarily degenerate.

In the early positivism of Lombroso, emphasis was given, including unconsciously, to the expressive qualities of the perceptive field, so that criminals were identified in relation to the greatest importance given to the expressive structures, that is to say which lie mainly in the human face and which form the physiognomic qualities. The born criminal was considered such in relation to the possible modifications of perception which he produced rather than the effective and proven incapacity to control his drives: it was mainly the face of the criminal that was perceived as full of those signs which contributed to defining him as different. This is an attitude to be dismantled, because the criminologist must not be attracted and imprisoned by the expressive or physiognomic qualities, but must be aware that perceiving is an

attitude through which the individual comes into contact with the world and then seen in his actual and different aspects. Perception is a short space of time in the behavioral system of each individual and the behavioral system has three fundamental characteristics; it is teleological, it strives towards a goal to reach, it is integrative, it strives towards completion from a qualitative and quantitative point of view, it is inventive, it strives to implement usefully and opportunely when it appears as the result of reflection. It is therefore a non-scientific and even crude attitude to want to try and identify a criminal from their physical or physiognomic traits or from their character or even from their chromosomic map: adopting a similar conduct excludes perception and judgement, i.e. two different aspects of mental activity indispensable for those who evaluate and interpret human behavior. Perception and judgement are imposed on complete forms of knowing: in one there is the effective presence of individuals and concrete objects of experienced life, in the other individuals, objects and their value make their presence explicit due to the reference that the intellect operates in it. For the criminologist and therefore for the operator working in social control and security, perception and judgement, which are transitive attitudes of relationship of the individual with the environment in which an activity of the subject is implicit, become essential.

THE CRIMINAL IN HIS PSYCHO-SOCIAL ASPECTS

After reference has been made to the fallacious attempts to recognize the criminal from his aspect and his character, the bioanthropological theories were followed by psychodynamic theories, which find their starting point in the psychoanalytical doctrine of Sigmund Freud (Freud, 1978; Dollard, 1957), in the early 20th century, These psychodynamic theories consider the sources of drive and control in the biography or in the contemporary situation, rather than in the biological constitution. In the psychoanalytic tradition, deviant behavior also understood as a pathology of behavior, is considered the product of the deformation, the interruption or the inhibition of normal growth. Against this background, the hypothesis made by Freud of the criminal through guilt feelings, who suffers due to a feeling of guilt pre-existing to the crime, becomes primary and committing the crime is paradoxically accompanied by mental relief. The guilt feeling comes from unsolved conflicts therefore through criminal behavior a subject would placate his unconscious guilt and reach equilibrium. Other psychodynamic interpretations are linked to the stimulus-response theories, which are based on learning, like the hypothesis linked to “frustration and aggressiveness” in relation to criminality, according to which aggressive behavior presupposes a state of frustration: in particular, aggressiveness is put into relation with the frustration and the expectation of punishment.

The psychodynamic theories, whilst promoting the individual in their interactions with the environment, do not give the importance due to the place that the actual individual occupies in a concrete situation, therefore they are removed from the notion of field understood as a totality of the coexisting facts, conceived as mutually interdependent. For example, in the light of the contributions of psychoanalysts and with reference to “crime due to guilt feelings”, it is necessary to recall that the feeling of guilt takes part both in forming the moral conscience and structuring neuroses and psychoses, but it also takes part in the genesis of criminal behavior, therefore it is opportune to recall that it is possible to speak of psychopathology of the guilt feeling both in relation to neuroses and psychoses and in relation to criminality, whilst having to take into account, in a perspective of prevention, the social, cultural and family conditions, i.e. given moments in life and particular environmental situations.

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Finally, limits can also be placed on the psychodynamic theories which concern above all the fact that not all people with psychic conflicts or who are intolerant of frustrations adopt criminal behavior.

Therefore, in the perspective of organizing programs of prevention, the characteristics and the functioning of the social systems cannot be overlooked and consequently criminality has to be examined in relation to society. The sociological theories in the study of criminality start from the assumption that the criminal is not an isolated individual, but rather a product of the environment in which he lives, therefore the causes of the crime are not to be looked for only in the individual, but also and above all in his social influences.

In the 19th century, the first studies on comparative criminal statistics began at the same time as studies on the face, skull and mind of authors of crimes. Even then, it could be seen that crimes could be foreseen as far as their number and nature were concerned, therefore social determinism, according to which the effect of free will remained compressed between very narrow limits, as the tendency to commit crimes was determined by social factors. At the end of the 19th century, Emile Durkheim specified that a crime is a “normal” social fact which can have abnormal forms, in particular when it reaches an exaggerated rate. In addition to these concepts, Durkheim (Durkheim, 1960; Durkheim, 1969) introduced that of anomia, understood as a lack or deficiency of social rules. The idea of anomia is the opposite of the idea of social solidarity, in the latter there is a notion of maximum integration of social relations and collective representations, which in the former are almost completely disintegrated. R. K. Merton (Merton, 1971) subsequently picked up the concept of anomia in his essay “Social structure and anomie”; according to him, alongside the cultural goals, there are the rules that lay down the means men can legitimately use to reach these goals.

In this regard, American society, according to Merton, prescribes, as now occurs in many societies, almost universally for men of all classes and conditions, the aspiration to success, which frequently, but not always, means economic and material success. R.K. Merton saw his society with the almost uniform goals of success as an example of a society that was exceptionally productive of efforts to achieve success, but also of frustrations and tensions, especially in the lower classes, who have fewer accesses to institutional means. In this context, the fracture between goals and means and the tension which derives from this lead to a weakening of the commitment of men towards culturally approved goals and towards the institutionalized means, i.e. states of anomie. R.K. Merton dwells on the possible ways in which the individual can adapt to these fractures: the social goals can be accepted or rejected, the institutionalized means can be accepted or rejected, therefore going from conformity as the main type of individual adaptation to innovation, typical of those who try to reach the goals through illegitimate ways. He then dwells on ritualism with reference to the bureaucrat who slavishly observes the rules and underlines the type of rejection attitude with reference to the tramp, the alcoholic or the drug addict who withdraw from the race abandoning both goals and norms, and, in the last place, he arrives at the rebel, also with reference to members of revolutionary movements who do not believe in the cultural and social system considered unjust and who try to rebuild society with new goals and new means.

This theory which, although considered incomplete, started a lively debate, because it is based on the fact that an imperfect coordination of the cultural goals and institutionalized means leads to anomia. One of the criticisms made of this theoretical interpretation of the genesis of crime is contained in a significant expression, according to which he who deviates or adopts criminal conduct may look like a frustrated social climber, an aspect which cannot be generalized and which does not facilitate programs of prevention.

Other sociological theories stress the cultural process of learning and the theory of differential association, worked out by H.E. Sutherland and corrected by D.R. Cressey (Sutherland, 1949; Sutherland & Cressey, 1960), is situated in this perspective: the weak point of this theory concerns the insufficient consideration for man's capacity to choose, so that the resulting behavior could appear totally determined.

In the context of these theories and in opposition to the previous ones, it is necessary to remember the functions of conflict, which is considered a means to relieve tension before it reaches a level that is dangerous for the stability of the system, therefore crime and deviance are not always dysfunctional to the system, but their occurrence may lead to a greater moral and ethical cohesion around the norm that has been violated and to it being redefined.

At that point, it is worth remembering that in criminology countless theories are available, even though in the brief review of sociological theories, reference has been made to the theory of anomia, to the fact that criminal behavior is the result of processes of cultural learning and the functions of conflict.

Outside the classic theories quoted, very often in different studies, the causal mechanisms are not always clear; in other words, while the number of theories grows, a convincing explanatory force is not contextually obtained that can clarify why man commits crimes. In the long term, criminology appeared fragmented so that negative effects appeared due to the fact that criminologists appeared to be divided into a multiplicity of theoretical and methodological schools therefore there is no shared perspective concerning methodology and research.

This brief critical review has been written to highlight that the theoretical hypotheses recalled above are not fully satisfactory, especially because they do not provide all the data and elements useful for concretely evaluating behavior in criminology, i.e. the behavior of a person in social situations, therefore above all it is necessary, especially in the perspective of prevention, to define for example the close stimuli that solicit and identify the immediate influences of the person on the environment.

FOR A FIELD THEORY: ANALYSIS AND PROSPECTS

Therefore, in the prospect of training operators in social control and in the formation of prevention plans, the proposal is to refer to the field theory in psychology, an expression linked with the name of Kurt Lewin¹ and his followers. In this dimension, all behavior – action, thought, desire, effort, evaluation and achievement – is conceived as a change of field in a given unit of time and in a similar context the facts that concern some aspects of the crime, of the criminogenesis and the criminodynamics, are examined, using the formula $C = F(P, E)$, according to which the behavior is a function of the person at that given time in relation to that particular environment. As a consequence, the problem could be posed in these terms, for example at the level of criminogenesis: what were considered the causes, the sources of the criminal behavior, taking into account the influence attributed to the person and/or to the environment?

For these reasons, only the simultaneous and joint consideration of the sociological and psychological facts are believed to allow constructing explanations that cannot easily be falsified for understanding the crime and not to fall into the limited choice of the born criminal or the insane criminal or the one with unsolved conflicts, overlooking the man who lives and operates in a given environment, at a given time. Therefore the formula $C = F(P, E)$ i.e. conduct C as a function F of the person P and of his environment E, already quoted and worked out by K. Lewin, appears applicable to that ample complex of facts which concern criminal behavior, even though using the above formula may bring out the suspicion that an attempt is being made to photograph an event and therefore to comment on it without interpreting it. For

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the criminologist who is assigned the task of interpreting, understanding and explaining events which are often perverse, strange, primitive and violent, which have their background in the biological structure, in the psychological traits or in the peculiarities of the environment, or in all these aspects connected in various and multiple ways, each interpretation can be complicated by numerous theories, therefore there is a necessity to pass on as much knowledge on psychosocial processes that have a constant characteristic. Criminology does try to understand the reasons why some individuals, in different ways but traceable to common causes or to a plurality of connected or linked causes, wander off the main path to take an illegal one and try to reach a pre-set goal which very often is the satisfaction of a need. Therefore, in criminology as well, for the study of the behavior and for the identification of the criminal and above all to define valid programs of prevention, the dynamic of the processes on behavior ought to derive from the relationship between the actual individual and the concrete situation, bearing in mind that the general validity of a behavioral norm and the concreteness of the individual case do not form an antithesis but an attempt at providing a constructive method that is essentially practical in order to describe dynamics and facts that took place.

From such a point of view, the concept of security, an expression the management of which in a perspective of prevention must be considered polycentric, in the sense that each nation, group of people or associations have different problems and issues to subject to security, must be put in the spotlight. Therefore, prevention and security, a closely linked pair, bring us back to the need to go back to the theory of K. Lewin which can be called predominance of the field and mainly concerns the inextricable unity existing between behavior and the environmental contexts in which it occurs. This game of factors is valid both for the so-called observational sciences and for the interpretative ones, for natural sciences and for cultural sciences. Regarding the observation-theory relationship, Lewin's model $C = f(P.E.)$ is perhaps the most enlightening one: science, having overcome the purely speculative stage, on the one hand, and the purely observational one on the other, moves in the direction of a constructive stage where a well-structured theoretical system produces guiding hypotheses for observation and grapples with the data that come from the observation and on the consequential operating prospects. The problems of prevention could therefore be schematized according to this formula: $Pr = f(P.E.)$, where Pr stands for prevention, P for persons, in the plural understood as groups of people up to state organizations and E for environment, in the widest sense of the term (city, region, state), therefore prevention (Pr) is a function of P in relation to E. Therefore, it is underlined how useful it is for the educational institutions to foster forming groups of action-research (Trombetta & Rosiello, 2000) that is distinguished from the psychological group as it has as its specific purpose that of affecting the transformation of society. Being able to connect research with action is a good perspective but the problem is how and where to start. The action-research formula is fascinating because it offers the possibility of transforming behaviors, habits and the attitudes of the subject, improving social relations and also modifying the institutional rules. The term action-research was coined several decades ago by Kurt Lewin during the last World War between 1940-1945 when, on the request of the American services, it was necessary to try and change the dietary habits of the population to remedy the shortage of particular foodstuffs. This aspect was new, because researchers were not to carry out surveys and make analyses useful for those who would have decided the measures to adopt, but because the researches had to become actors of the change, as their purpose was to transform behavior and habits and improve social relations, as far as trying to change the institutional rules of a population.

All this is done in conditions that can be either positive or negative. The former are represented by a democratic social climate in the institutions aimed at fostering direct participation by citizens in the problems requiring a solution: for example, security and repairing the damage from victimization. The negative conditions, on the other hand, are linked to the presence of a highly hierarchized climate which fosters increased tension and anxiety and the need to find immediately and in any case a solution to the problem without having completely understood it: this situation can induce a person to delegate the solution of the problems which are connected with prevention. In this regard, studies on action-research highlight how it tends to make a close connection between basic research and applied research. Consequently, the methodology of action-research requires an in-depth reconsideration of the role of the researcher who goes out of the scientific laboratory and investigates the aspects of real life, dealing with, for example in the field of criminology, the questions linked to prevention and security.

These possibilities of analysis are now also current in the criminological field because, as well as training, intelligence, common sense and promptness, the capacity to be able to use a highly specialized technical skill is also necessary.

It is therefore in the sector of the so-called new crimes that there is the greatest need for interpretations such as to provide possibilities of greater prevention and above all more efficient control. In organized crime, with its international ramifications and with the use of ruthless (taking hostages) or sophisticated (use of Information Technology) means, the traditional criminological models clearly do not provide interpretations that can be used in studies for social control in a democratic state.

All the analyses made in this field underline how necessary a new type of research is, above all for those criminal phenomena which go under the name of terrorism, one of the commonest forms of violence, in the East as in the West, in the North and in the South. Terrorism is current and worrying, rising or decreasing, but constantly present. Therefore, in the light of the studies of Kurt Lewin, an attempt at an interpretation of terrorism outside obsolete or anachronistic formulas appears possible.

CONCLUSION

I have tried to propose once again and develop for criminology the approach proposed by K. Lewin because I believe that this perspective can open up new horizons concerning both scientific research and practical applications, that can be useful for planning a more attentive interpretation and prevention of crime.

This proposal is based on personal experiences over the course of many years and taking into account that in criminology, although numerous theories exist, at a practical-professional level they are hardly used. In the field of psychiatric criminology, for example, the professional researcher, without any reference to theoretical models, explores reality with the help of a series of variables that consider the multidimensional aspect of the problem.

The application of Kurt Lewin's theory has effectively been linked to questions on criminal responsibility. In this perspective, the variables relative to the personality in its bio-psycho-social facets, environmental and legal variables have been taken into consideration.

Applying action-research, without having to resort to untested theoretical assumptions, has been carried out on the basis of the relations established between the judge, the expert, technical witnesses of the parties, and attorneys.

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The goals of the action-research, inserted in a well circumscribed professional field, are those of contributing, with the involvement of various actors, to the solution of problems concerning responsibility, punishment, prospects of rehabilitation and prognosis on future behavior (social dangerousness). Taking into consideration the behaviors, environment and subjects concerned, there was no need to refer to theories but results were reached with the operators, obtaining productive methods from the operative point of view (Balloni, 1966; Balloni & Palmonari, 1967; Balloni & Lorenzi, 1971; Balloni, 1990; Balloni, 2014).

In another context, that of assistance, through Lewin's method, courageous and innovative interpretations have been obtained of the legislation on the protection of minors to try and avoid prolonged institutionalization with consequences of unsuspected gravity concerning personality development (Balloni & Fadiga, 1976). The results of these studies can be accepted or rejected, however it is believed that the methodology set forth, linked to a clearly defined professional activity (psychiatric criminologist) provides interpretations of the norms which influence the activity of prevention of maladjustment and foster the promotion of minors' rights.

Another applicative aspect of action-research can concern the area of drug addiction when there is an attempt to deal with the moral problem of behavior control. In this sector of research, professional criminologists, psychiatrists, educationalists, jurists, social workers and guests in a community have carried out their activity where the research concerned evaluating the treatment of the drug addicts (Andreucci, Balloni & Sapio, 1985). The objective, in correlation with the action-research, was not to produce results relative to a given problem, but to obtain data useful for those who were directly involved in their role of social workers. In conformity with the principles of action-research, in the aforementioned study they did not restrict themselves to trying to explain the operating methods which were the subject of investigation, but they had to commit themselves for a real involvement of all the parties concerned in view of a possible and hoped-for change.

Action-research was proposed in criminology as a method which uses knowledge of problems to help solve them, change them or even innovate them. This orientation leads to numerous theories in criminology which have developed in the past two centuries becoming obsolete. They strived in vain to discover causality in criminology, not taking into adequate consideration that the object of research in criminology varies in time and in space and is subjected to the changes of the laws, therefore it is difficult or even impossible to support the diversity of criminals with respect to the "normal" population.

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KEY TERMS AND DEFINITIONS

Action-Research: Epistemological sequence composed of action planning and verification of its possible effects. **Anomie:** The absence or the lack of norms.

Crime: In legal terms, the violation of a law.

Crime Prevention: Any strategy or measure that seeks to fight criminality and delinquent behavior at their root.

Psychological Life Space: The combination of all the factors that influence a person's behavior at any time.

Theory: strict and systematic formulation based on scientific principles.

Topological Psychology: According to Lewin this is a term which conceives the life space as a total field including the person and the environment.

ENDNOTE

- ¹ Reference cannot be made to topological psychology without making some considerations on the scientific activity of Kurt Lewin and on the influence that he had on social scientists. Kurt Lewin, born in Mogilno in Prussia in 1890 and who died in Newtonville (USA) in 1947, developed his scientific activity in two periods which can easily be distinguished. The first period in Germany is characterized by being close to and following the most fertile currents of German psychology: the Würzburg school, which had promoted experimental investigations into thought processes, the psychoanalytic school and above all the Berlin school, represented by Wertheimer, Köhler and Koffka. The period he spent in the United States, where he emigrated in 1933 when the rise of Nazism forced him into exile, is characterized by the fact that he worked above all on questions of individual psychology and epistemology. The fundamental topics of research K. Lewin developed in this period also include the study in which systems of mental tension are formed in an individual that drive him to act in certain directions. Precisely this topic can be related to the fact that some aspects of criminal behaviour take on a problematic character considering the responsibility of the criminal and his presumed social dangerousness. These are questions which concern every act the person carries out. These acts are determined by certain conditions which have to be discovered and which are to be looked for in part in the state of the person and in part in the characteristics of the psychological environment he is in. These concise biographical notes have been taken from: Petter, G. (presentation of) (1965). I motivi conduttori dell'opera di Lewin. In Lewin K., *Teoria dinamica della personalità* (pp. V-XXXVI). Firenze, IT: Editrice Universitaria.

Chapter 2

The Evolution of Criminology and the Social Sharing of Emotion

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ABSTRACT

In the field of criminology, biographies or life stories should increasingly become the central moment of research aimed at that historical reconstruction which helps, for example, unravelling the tangle of responsibility at the time of a criminal offence. The life story orients and provides elements for the psychic examination and contributes, with the psycho-diagnostic tests, to the discussion on the case and the assertions that precede the conclusions of the expert's report. Placing value on the biographical approach in criminology effectively means abstracting as a guiding hypothesis the identification of the development of personality for the purposes of ascertaining the responsibility of an author and the prediction of future behaviour: reference is, therefore, to the life story understood not only as narration, but also as communication.

EMOTIONAL SPACE AND THE JUSTICE SYSTEM

The evolution of criminology deserves attentive reflection, above all at a time when attention to crime and its dynamics is highly topical.

The study of crime concerns the physical space in which it is carried out. Today, in a context that tends to unify spaces and multiply relations, the sense of fragmentation is on the increase. This sense is also reflected in the urban space where modern built-up areas at times astound by their unfinished and aggressive nature vis-à-vis the city and the landscapes in which they are inserted with damaging consequences not only on the level of the urban morphology and structure, but also on the social and human level.

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In the galaxy of ideas developed on these topics, there are those who have coined the term ‘urban suffering’ to highlight the entwining that exists, at a very deep and embedded level, between private stories, such as the suffering of households in conditions of poverty and vulnerability, and the stories of the city, those that can be found in the rundown areas of city outskirts, youth gangs or groups of immigrants excluded from all access to the opportunities offered by the city: this entwining has to be revealed, recognized and thematized as it is not possible to deal with the public dimension without considering the personal-affective implication and, on the other hand, it is not possible to deal with the personal-affective dimension without understanding their political implications (Saraceno, 2012).

In this sense, in criminology, biographies or life stories should increasingly become the central moment of research aimed at that historical reconstruction which helps, for example, to unravel the tangle of responsibility at the time of a crime. In the perspective of the prognosis of future behavior, i.e. of social dangerousness, the starting point is the indisputable assumption that crime is interaction, conflict or exchange so that when reference is made to the methods of biography, it is essential to dwell, as K. Jaspers suggested, on the following questions: collection of material, putting it in order and presenting it (Jaspers, 1914). The life story orients and provides elements for the psychic examination and contributes, with the psychodiagnostic tests, to the discussion of the case and the declarations that precede the conclusions of the expert witness’s report. Developing the biographical approach in criminology actually means abstracting as a guiding hypothesis the identification of the development of personality for the purposes of ascertaining the responsibility of an author and the prediction of future behavior: the reference is therefore of the life story understood not only as narration but also as communication.

The possibility of predicting criminal behavior pervades criminological studies and is connected with the decisions concerning people to place under security measures or to release. All this presents once again the concept of prediction and the reason why the judiciary places so much trust in prediction is not difficult to understand: it lies in the fact that we are led to believe that as far as criminal behavior can be predicted, it can also be prevented.

To reach these opinions, the instruments of investigation are the typical ones of psychiatry, sociology and psychology. The interview, as a method of investigation, appears fundamental, while finding important complements in the psychometric and projective methods for the exploration of the personality. The reference is clearly to article 133 of the Italian Criminal Code which concerns: “gravity of the offence: evaluations for the effects of the penalty” and which in the criminological evaluation can again single out, although in a broad and modified sense, the formula of K. Lewin, according to whom behavior, including criminal (Cb) depends on the person (P) and the environment (E) at a given time $Cb = f(P,E)$, involving in the environment and in the criminal dynamic the injury or the danger caused to the aggrieved person, i.e. the victim (Lewin, 1961; Lewin, 1972).

In this perspective, it becomes clear that all the observations coming from the different procedures of personality evaluations into relation with one another such as, for example, the interviews, the life story, the psychometric methods, the projective/reactive tests, through a process aimed at identifying the models, the general systems of action and the development of the personality have to be put into relation with one another.

The possibility of change can be outlined starting from the observation that the action or reaction always has to be considered as the product of an encounter, or a co-acting of two factors, the situation that acts as a stimulus, on the one hand, and the personality that acts as the matrix of the reaction, on the other. The former can take on an outstanding emotional and dynamic value precisely in reaction to the structure of the personality that is stimulated by it: the latter, even though intrinsically abnormal, is

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not always destined to trigger off abnormal reactions in the face of any stimulus, but can keep a certain selectivity and react only in the face of stimuli which are adequate for it.

These considerations are also perfectly suitable for the relations between crime, emotions and law as an instrument of social control: where the crime can be interpreted as an expression of an emotion, the latter is annulled by the intervention of the law.

This line of argumentation was to be developed by Nietzsche who maintained that a certain form of harshness in the face of life events is the only way to be released from the desire for revenge. In the words of Zarathustra: *The spirit of revenge: my friends, that hath hitherto been man's best consolation, and where there was suffering, it was claimed there was always penalty* (Nietzsche, 1984, p. 171).

The influence of the emotional space in the justice system has attracted the attention of many sociologists and is a preeminent aspect in the work of Elias. He wonders whether it is possible to put into relation the change in the affective and control structures of men, a change which has carried on for a whole series of generations in the direction of a growing tightening and an equally growing differentiation of controls, with structural changes which also go in the direction of a greater level of social differentiation and integration (Elias, 1988).

Far from preventing rational actions, the emotions can facilitate a rational response, for example in the face of a clear injustice. "Emotional management" in the justice system is not a priori rational as far as its procedural provisions or even the final consequences are concerned: the offenders and the victims react initially in ways which are profoundly distinguished by the weight of the emotion, but they reach rational decisions when they face the justice system: the former try to implement all the expedients to have the better of the system, while the latter weigh up the costs and the benefits of starting legal action.

RECONCILIATION AND HEALING THE FRACTURE

We have deemed it opportune here to present a case, the "Cogne" case¹, which in Italy aroused vast interest because it concerned the trial of a mother who was sentenced to 16 years' imprisonment for the murder of her three-year-old son. In parallel with the trial there was a genuine trial in the media.

Through several investigations, it was ascertained that the perpetrator of the crime was the mother, who always declared her innocence. During her detention, she requested being admitted to the alternative measure of special home detention, introduced into the Italian prison system by article 3 of Law no. 40/2001. This is an institution which has the aim, when certain presuppositions and circumstances are present, both of the social reintegration of the offender and of allowing the offender, when a mother of children under the age of ten, to look after them. The attitude of negating the charge by the offender, as in the case under examination, cannot lead, according to what the Italian Supreme Court established – division I, no. 33287/2013, Court of final instance in the Italian jurisdictional system, to an unfavorable prognosis regarding committing other offences because the absence of confession can be due to a very wide variety of reasons without, only for this one, it being symptomatic of an absence of repentance or social dangerousness.

AMF (the author of the crime) always appeared at the various meetings with a correct demeanor, tidy and neatly dressed, and willingly accepted the subjects dealt with in the various interviews. Explaining the characteristics of her family, AMF highlighted her relationship with her mother in these terms:

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I have always breathed in from my mother a very strong sense of motherhood, which is what I also have, because I feel, as a woman, that the family is a priority. AMF declared never having thought of herself and a career because it really does not interest me, what gives me the greatest gratification and makes me feel good is looking after the house, being with my children, being with my husband, making him feel that maternal and family warmth that I breathed in as a little girl and which in me is infinite, it is something that makes me feel good, it is something that I think is the purpose of my life. What I breathed in at home is this, the normality of children, then you choose to have one, many, but in any case that sense of the family, that dedication to making your own life that has been given to you and allowing the beauty of everything that is free to be breathed in.

In this regard, we have to highlight that the direct and indirect factors capable of influencing the parent in their duties of parenting will also have repercussions on the precocious adult-child relationship and on the evolution of the latter. In Belsky's description, three areas are identified: the psychological resources of the parents, the characteristics of the child and the environmental elements which can act as a factor of stress or help (Belsky, 1984). These areas are then crossed, in turn, by other factors such as the developmental history of the parent, the personality characteristics and the type of conjugal relationship. Belsky then highlighted that the psychological resources of the parent and their individual psychological well-being represent the most important factor of protection with regard to the stress deriving from the adult-child relationship, even greater than the sources of social support and the characteristics of the child.

In AMF's story, the fact of having grown up in a large family greatly helped her to acquire those traits that are commonly attributed to the sense of community, and specifically: belonging, i.e. the perception of being part of a group of people, of a community, of a system of symbols; the influence and therefore the sensation of being able to influence the processes of functioning of the community with your actions; the satisfaction of cognitive and value needs; the emotive connection that represents the spiritual bond and the intangible capital: this is the dimension that connects the subject with the other members of the community.

Effectively, she did not hesitate to state that:

I have always been very independent, also because at home with my mother I was also something of a little mother for my younger brothers and sisters ... all the activities as well, participation, including social, in the village, the village fete, the hub of everything was our house because it was big, because my mother wrote poetry or plays, she did the treasure hunts for parties, comedies were rehearsed and so there was always a great turnover, then sitting at the table for two or three hours because in any case those who went to school, but then went back late to work and sat there chatting about what you did at school, what you did today, it was always a very important environment.

The family environment of AMF is also characterized by the presence of a very strict paternal figure:

My father is someone who likes to be the one who decides, the one who organizes, the one who does things, keeping control over all the children. I am always the one who is not part of this, I need to be free, independent....

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AMF's need, despite her continuous and repeated references to her desire to be autonomous and independent even from the family context, is to refer to her original family to maintain her self-esteem and self-cohesion.

It is effectively very difficult to separate in the subject her being from her having, as the bond between these two aspects is so strong that every presentation mobilizes, often indistinctly, both these aspects of herself so that, by questioning one of these aspects, there is the risk of questioning the other one as well (Bisi, 2006).

In this regard, the school of Palo Alto has, as is known, emphasized that the definition that the subject gives of themselves can be the object of three different attitudes by the other (Watzlawick, Helmick Beavin, & Jackson, 1972; Kaddouri, 2005): an attitude of confirmation that is equivalent to the acceptance, by the other, of the definition given of the self. This confirmation that the subject obtains from the other is very important because it is capable of guaranteeing mental maturity and stability. However surprising it may seem, if this power of confirming an individual in their identity did not exist, human communication would not have passed the very limited and circumscribed frontiers of exchanges that are indispensable for the protection and survival of human beings. Independently of the pure and simple exchange of information, man needs to communicate with others to reach self-awareness.

Studies on sensory deprivation, which show the inability of man to keep affective stability if forced, for prolonged periods of time, to communicate only with himself, provide an experimental verification for this hypothesis. Even if the deprivations takes place in a limited span of time, its effects can be felt in the future with consequences that are significant to varying degrees; an attitude of rejection which means that the other refuses to share the content of the definition that we give of ourselves. In this case, the rejection, however painful it may be, assumes that what is being rejected is at least in part recognized; an attitude of negation which does not concern the falsity or the truthfulness of the self-definition, but denies the reality of the very person as the source of this definition.

If the rejection is equivalent to the message: "You are wrong", the message of negation is: "You do not exist".

In this sense, the words of W. James are enlightening when he states that no more diabolic punishment could be imagined with respect to that of not being perceived by the members of the society one belongs to (James, 1998). It is true that the interaction of man with the environment can determine his behavior and his development and when the individual changes, the environment also changes, reacting to our actions, setting limits or soliciting us with other stimuli.

During her interviews, AMF insisted on the almost idyllic presentation of her family:

Ours was a very beautiful family, we were tranquil and happy, because we were happy, because if I wasn't happy up there in my mountains, I wouldn't have stayed there. I was free to pick up and go anywhere, nobody kept me there. I designed that house, I furnished it with my husband, but I was the one that dedicated everything about it, because I loved it, because he had his job and thought about that and left me free for this, because we are like that, husband and wife, each of us looks after something. I loved it, I can't wait to go back, and I'm going to go back there, because that's my home, it's not here.

The effort that she made to pursue self-gratification involved and used up a great deal of energy, making her live in a state of permanent alert and probably making her waste incalculable energy out of fear, insecurity, anger and suspicion.

Anxiety, as a condition of permanent alarm, supports and reinforces the defensive state of the defenses and continually distorts the internal and external messages (Craia & Craia, 2008, p. 220).

Through the many interviews it was possible to collect countless indications on the subject's personality traits, on the most pressing issues, on her ways of relating to others, on the image she had of herself and many other elements which, in the criminological context, were essential to define the subject's state of mind at the time of the investigations because the presence of mental disorders, which can represent in some cases an infirmity such as to influence the full possession of mental faculties, can be the element on which a judgement of future behavior is based and therefore on the possible social dangerousness (Bisi, 2002).

Ultimately, these investigations demand being able to prove the state of mind at the time an individual became the author of a criminal act, at times even in the not so recent past, to specify the state of mind and, if the individual is recognized as suffering from a mental infirmity, an opinion, i.e. a prognosis on future behavior, is made.

To reach these opinions, the instruments of investigation are the typical ones of psychiatry, psychology and, for some aspects, of sociology as well, having to reach a bio-psycho-social knowledge of the subject. The fundamental points that have to be dealt with, in the biographical exploration, will be those deemed useful

to describe and understand, in a properly hermeneutic meaning, the complex and very intricate set of relations between the biography of an individual, their basic personality traits – admitted that it is possible to distinguish between cause and necessity – and the family group, the other primary groups with which one can, more or less stably, be linked, and lastly the global picture of the wider society, with its world of rules and its institutional structures (Ferrarotti, 1981, pp. 3-4).

The usefulness of being able to have life stories is also linked with art. 236 of the Italian Code of Criminal Procedure concerning “Documents relative to the opinion on the personality” which specifies:

Acquiring criminal records, documentation from the social services, public bodies and offices of surveillance as well as irrevocable decisions of any Italian judge and recognized foreign decisions is allowed, for the purposes of the opinion on the personality of the accused or the aggrieved party, if the fact for which proceedings have been started is to be evaluated in relation to their behavior or moral qualities.

The problem of ascertaining what the future behavior of the author of a crime will be, i.e. if the measure adopted for them contributes to their rehabilitation and assures preventing the danger that they commit other crimes, is a long-standing question and concerns scientific research on the personality. If this research had had a positive outcome, the final result would consist of the ability to accurately predict the irregularities of human conduct, exercising a control on behavior. In actual fact, similar decisions cannot be easily taken considering that they require the analysis of the alternatives which are realistically possible in the situation in which the subject acts, identifying the external variables that can influence the results of the action and the consequences of the different alternatives in different fields, both in the short and the long term. It also has to be specified that these decisions become particularly difficult when using little information, ambiguous criteria and models and when they entail very serious consequences (Bisi & Stefanelli, 1990).

The joint presence of these factors considerably reduces the possibility of reaching a reasonable decision, with this term meaning a decision matured after a meticulous process of research aimed at collecting data and information useful for establishing principles and operating procedures suitable for

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the context of the action, in view of the organization of all the elements available in order to implement what has been decided earlier.

In the case of AMF, the interviews no doubt contributed to outlining her personality concerning relations, choices and ability to go beyond the experiences matured, getting to know her personal and relational resources.

The treatments, in the sense of support for the person, mainly concerned allowing her to carry out useful work. In rotation she was a writer for the division, then she was assigned, under the same conditions, to the kitchen in the role of cook/food delivery and “factotum”. According to the rules that discipline the internal working activities, she worked about once every two months in distributing goods from the prison canteen, carrying out this job with competence (she has a certificate in accountancy) and diligence. She took part in the sewing course held weekly by volunteers. She then applied to take part in a vocational course on “Dressmaking and Embroidery” which allowed her, during her work outside the prison, to work in a dressmaking workshop run by a social cooperative.

Her relations with the other inmates in the wing were narrated by AMF and also by the prison personnel as being without particular problems. At first, some difficulties arose on impact with the reality of prison and the personal stories of other inmates, but these were subsequently overcome also thanks to the appreciable effort she made.

The path that led, in June 2014, AMF to be admitted to the alternative measure of special house arrest (pursuant to article 47-quinquies of the Italian prison regulations) is an example of the importance given to relations, to the processes and ways of constructing actions, open to a communication circularity which becomes an occasion for new creative and productive combinations of meaning in which the interactive and therefore dynamic value leaves wide spaces open to the relationship between the subject and their context.

In this perspective, the life story of AMF, who has been free since the beginning of 2019, has been read and interpreted in the medical-legal and psychiatric experts’ reports as an interweaving of social relations as it is obvious that a mature and efficient integration of the personality is not reached only by feeding innate potential, but requires suitable direction in an adequate interpersonal environment.

CRIMINOLOGY AND VICTIMOLOGY BETWEEN CHANGE AND THE UNPREDICTABILITY OF A PATH

The presentation of this case allows making some general reflections on the precarious situation which often occurs when the members of the *Tribunale di Sorveglianza* (Italian Court responsible for the enforcement of sentences) have to state whether the subject is eligible or not to enjoy an alternative measure to detention. On these occasions, the information is often insufficient or inadequate; the concept of “rehabilitation” is extremely ambiguous and certainly does not provide a valid guiding-criterion of conduct, proposing once again, on the contrary, the debate between doctrines of prevention and of retribution of the punishment depending whether the mere respect of criminal law is meant by rehabilitation, the subject’s amends, the acquisition of a “new morality” or good exterior conduct (Dolcini, 1981).

Lastly, the consequences of the decision are unquestionably very serious as accepting the application or not often means, for the subject presenting it, undertaking a path towards freedom or prolonging the period of detention, while for those who have the task of judging, the adoption of a measure may allow

reintegrating a responsible citizen into the community or a person who will once again cause damage to society by committing crimes.

Recalling the need for increasing security, new Italian prison regulations have limited the applicability of alternative measures to the punishment. Prison has seen an increase of presences and a parallel worsening of the situation of detention to the point that the European Court for Human Rights has condemned Italy and ordered it to adopt structural measures to restore conditions of legality in executing the detention².

The legislative changes adopted following the European sentences have contributed to removing some of the obstacles that prevented access to alternative measures to detention: the number of prisoners has thus gone from 68,258 in June 2010 to 54,072 in June 2016³. However, it is true that those who remain in prison remain there despite the new ways of being able to benefit from the alternative measures to detention and the opportunities created by the process of legislative reform, following the rebuke by the European Court of Human Rights.

Therefore, those who had the personal and social resources to access alternative measures could be released, while all the others remain in prison until they have served the whole of their sentence, in the impossibility of benefiting from alternative routes due to lack of personal, social and economic resources. In these situations, the same difficulty that is found in the areas of juvenile deviance is found, where there often co-exist two groups of users: a first more fortunate group, made up of subjects who, having committed episodic and not particularly serious offences, enjoys indulgent treatments such as “irrelevance of the specific offence” and “probation” and a second group, made up of members from the marginal and culturally deprived classes for whom the only response is prison.

As far as precautionary measures are concerned, the minors belonging to the latter group are almost never deemed deserving of experiences other than detention and it is not infrequent that they are subjected to pre-trial detention for periods that at times are longer than those to which adults guilty of similar offences are subjected. This practice is supported in article 19, section two, of Italian Presidential Decree 448/1988 where it says that in ordering pre-trial measures, the judge, as well as the criteria shown in art. 275 of the Italian Code of Criminal Procedure for adults, must take into account *the need not to interrupt the educational processes under way*. In other words, if the family and social context were to prove unsuitable, favorable measures for the juvenile could not be adopted, as there is no educational process under way (Bisi, 1993).

It is therefore difficult and perhaps even paradoxical to make suggestions on making minors feel responsible, but also adults who have committed offences, who do not have adequate personal and social resources, if no consideration is taken of the different environmental situations in which these people are forced to live, and at times these conditions cause serious prejudice to the freedom of choice of these subjects.

The social work institutions inside and outside prisons must face up to the need to get closer to the users. In this perspective, social work cannot be limited to placing its addressee in a class of beneficiaries, but has to aim to undertake with him a shared and personalized action. In other words, it is consequently in the privileged field of interpersonal relations, more than the universal application of a law that social intervention is determined, including in favor of those who can benefit from alternative measures to detention.

In this regard, also concerning other prison situations such as, for example, the one in the United States, from several sides the need for interventions that allow qualitatively significant vocational training is repeated as this, together with work, which should be available for all the prisoners, would definitely represent a costly system, but it could turn out to be advantageous as it would have great probabilities of

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bringing down repeat offenders. It is also underlined how other countries as well, the USA for example, have less a problem of imprisonment than a problem of criminality, the only answer to which is found in the possibility of appealing to the family, offering valid supports to those who are in difficult situations, in particular in the black population (Mac Donald, 2016).

It is clear that the possibility of succeeding in creating an integrated system of work and training, characterized by adequate services for individuals, such as to allow them to be active, adaptable and employable (Garofalo, 2004), also has to concern the prison population, in order to reduce their committing repeat offences, through integration into external society and the labor market. The Italian Constitutional Court has deemed absolutely prevalent the aims to be reached through work, i.e. *redeeming and re-adapting the offender to social life; gaining or developing the habit of work and professional qualification which can help reintegration into social life*. Therefore, there is the absolute need for a substantial reform of the legislative system of reference, on the work of prisoners and detainees which should aim at overcoming the following criticalities:

a) ambiguity of the juridical and functional qualification of the case in hand, especially with reference to work in the employment of the Prison Administration; b) rationalization of the discipline of prison work, including in the employment of an external employer, after the legislative modifications of the Italian Correction Law, including those coming from international law; c) the underestimated centrality of work as an essential element of the treatment of rehabilitation [...], such as to induce the Constitutional Court to state that work “is one of the means of recovery of the person, a central value for our prison system not only from the point of view of individual dignity but also from that of developing the attitudes and specific working capacities of the individual” (Lamonaca, 2015, p. 8).

Criminology and victimology are therefore required to measure up to a surrounding reality with differentiated tensions of different origins and motives, which are contradictory and not always traceable to a linear type of pattern, going through it.

In particular, the evolution of victimology has had the effect of reaching greater understanding of the complexity of the process of victimization together with an improvement in the services offered to victims. However, despite all this undoubted progress, the tendency to make victims feel guilty is a fairly widespread response which is also found inside bodies and institutions which have as their main aim that of helping the victims, as in the case of violence against women.

In order to arrive at an effective action of protecting and safeguarding the victim, strictly legal answers are perhaps indispensable but also, and possibly above all, an awareness, calling upon the heart and mind of men, of the responsibility and duties is required.

The idea here, with reference to Margalit (1998), is that of a decent society, a society which has not lost its sense of shame and the members of which are ashamed of acts of humiliation and abuse.

It is only through the desire to solve something and to work out the various expectations that action can be taken to try and find solutions for a given problem. In this sense, other components are to be included, such as the participation with others to reach objectives, awareness of one's resources together with the courage to explore new possibilities.

This leads to criminology and victimology needing studies and research that are capable of grasping the change and with it the unpredictability of the path. This implies that criminological and victimological knowledge acquire the awareness that their duty is not to procure salvation, but “only” to help healing, in the same way as the psychotherapist who *is not given or allowed to point out a way which, from here*

leads beyond; the patient from this post of observation to which he has been taken, can however have a way of seeing a path that is just and possible for him to take, which the doctor is not allowed to see. In this high place, everything becomes personal in the strictest sense (Buber, 2008, p. 15).

Reflecting on criminological and victimological knowledge means considering that the temporal aspect of the crime consists of taking into attentive examination the causes which represented the background for the criminal action, the moral context that allowed its stigmatization, the discovery of the crime, the reaction to the offender and, lastly, the response given to the victim. The evolution of a subject's criminal career also depends on contact with the other which means incorporating experiences, models of object relations, figures and functions, systems of values which allow him to build up his interiority and way of appearing (Balloni, Bisi & Sette, 2019).

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KEY TERMS AND DEFINITIONS

Ability to Take Action: The attitude of the subject to decide autonomously in view of a goal.

Ability to Understand: This is the disposition that a subject possesses to know not only external reality, but also to realize the social, positive or negative value of the events that take place outside of him and the acts he commits.

Attitudes: How a person acts and behaves in the face of situations and/or problems.

Emotion: An intense affective reaction with an acute onset and brief duration, caused by an environmental stimulus. Its appearance causes a modification at somatic, vegetative and psychic level.

Interview: A technique or method of psychological enquiry characterized by a verbal exchange in a dynamic situation of psychic interactions which allows the development of a process of knowledge.

Life Story: This is a methodology of investigation of the social sciences which takes on the value of a complex social interaction. It represents a system of roles, of expectations, of orders, of implicit orders and, in this way, becomes a social relationship, moving on several registers: affective, ethical and referential.

Personality: How the psychological characteristics which form the irreducible nucleus of an individual are expressed and which last in time even with the variation of the contingencies of reinforcement.

ENDNOTES

- ¹ Cogne, the place where the facts took place (30 January 2002), is a village in Val d'Aosta, an Italian region with a special status in north-western Italy, having as its capital Aosta, from which it takes its name.
- ² Sulejmanovic vs Italy no. 22635/03 of 16th July 2009 - Sentence of the European Court of Human Rights of 8th January 2013 – Petitions nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 e 37818/10 - Torreggiani and others vs. Italy.
- ³ Italian Department of Prison Administration – Office for the development and management of the automated statistical information system and automation of departmental support - Statistics Division.


Section 2

The Phenomenology of Some Crimes and of the Most Frequently Occurring Victimization Processes

Chapter 3

Family Violence: Not Only Women

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ABSTRACT

Using data from official statistics and surveys on victimization, this chapter aims to estimate the extent of domestic violence against men and examine the contraposition between female aggressors and male victims. More detailed knowledge both of women perpetrators and their male victims is believed to be useful for preparing appropriate programs of rehabilitation for the former as well as effective methods of intervention and help for the victims. The chapter reflects on the fact that, from the point of view of victimology, one of the risks to avoid is that of considering men as “second-class victims,” and from the criminological point of view, it is necessary to gain greater knowledge of the figure of the abusive woman, as well as focusing attention on the social representations of domestic violence.

INTRODUCTION

In the collective imagination, when the expression ‘domestic violence’ or ‘family violence’ is mentioned, thoughts go almost automatically to those situations where a woman is abused by a man. This may be due to the fact that this phenomenon is usually reported from a point of view exclusively focused on gender, setting forth a traditional and patriarchal image of aggressive masculinity and pacific or even passive femininity. In extreme synthesis, this outlines a scenario in which a man ill-treats a woman to control her, while the woman acts violently to defend herself only when she reaches exasperation (Storey, Strand, 2012, p. 637).

However, as the family is a social group made up of two or more individuals who live in the same home and who may be linked by relations of kinship, affinity and consanguinity (Barbagli, Bianca, 1993, pp. 29-30), it is clear that all the members of this group can unfortunately become victims of crimes committed against them by other members. Therefore, there may be cases not only of violence

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by the man against the woman, but also by the women against the man, by parents against the children, by children against the parents and by adult members against the older ones.

This chapter will concentrate on the phenomenon of domestic violence perpetrated by a woman against her male partner and will include data and accounts of research referring mainly to the North American, Australian and European contexts (with particular reference to Great Britain, France and Italy) as they are the ones the author knows best.

Regarding domestic violence, it is obviously undeniable and now universally known, also acknowledged by the Istanbul Convention¹ in the preamble that “violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women”. In this regard, there are also those who maintain that “women do not and would not use IPV” [Intimate Partner Violence] “against men because IPV is an issue of power and control of which only men in a system of patriarchy are capable” (Hines, Douglas, 2009, p. 576). On the other hand, however, numerous definitions both of a scientific and juridical type of this phenomenon, as well as of IPV, also known as, IPA (Intimate Partner Abuse), are usually gender-neutral.

For example, the Australian Guide of the 2011 Social Security Act, when illustrating the behavior that gives rise to domestic violence or to family violence, refers to “someone”, “partner”, “family member” and to “person” as follows: “Domestic and family violence occurs when someone tries to control their partner or other family members in ways that intimidate or oppress them. Controlling behaviours can include threats, humiliation (‘put downs’), emotional abuse, physical assault, sexual abuse, financial exploitation and social isolations, such as not allowing contact with family or friends. Family violence means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person’s family that causes that or any other member of the person’s family to fear for, or to be apprehensive about, his or her personal wellbeing or safety” (Australian Government – Australian Law Reform Commission, 2019).

A further example is that of the USA where in the criminal laws of 42 States, as well as in those of American Samoa, Guam, and Porto Rico, the definition of domestic violence is gender-neutral: domestic violence is “any criminal offense involving violence or physical harm or threat of violence or physical harm committed by one family or household member against another” (Child Welfare Information Gateway, 2014).

Regarding Italy, the 2001 law on “Measures against violence in family relationships” refers, here again in a gender-neutral way, to: “injured person”, “spouse”, “people living together”, “member of the household”.

Lastly, in criminological literature, IPV is defined as “the actual, attempted, or threatened physical harm of a current or former intimate partner” (Storey, Strand, 2012, p. 636). In this last definition as well, reference is made, in a gender-neutral way, to the “partner”.

It is important to observe that the Istanbul Convention itself, again in the preamble, recognizes that men may also be victims of domestic violence, although this type of violence affects women disproportionately, but nevertheless domestic violence is defined in a gender-neutral way, in art. 3, section b, as follows: “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.

Therefore, if it is true that, on the one hand, thanks to the social movements that developed from the 1960s and 1970s, more and more ill-treated women have been able to emerge from their silence, report their suffering and turn to support and aid services which in the meantime have been set up for them, on the other hand it is equally true that these movements in favor of women have left in the shadows the words and needs of men who are victims of domestic violence.

However, it is interesting to note that the phenomenon of domestic violence against men is not new at all. In this regard, a study (Vanneau, 2006, p. 700) highlights that the figure of the ill-treated man recurs throughout history from the 14th century, even though at times in a caricatural and derisive way as shown, for example by a popular French song of 1865 “*J’ai battu mon homme*” (“I beat my man”) which also comically accentuates the reversal of conjugal roles².

An episode which was recently reported by an Italian newspaper fits into this trail of ridiculisation of the ill-treated man. The journalist defines as “singular” the man’s filing a complaint against his wife who hit and ill-treated him (Co, 2019) and hastens to highlight that, in this episode, the “victim” – written in inverted commas in the published article, probably to exalt the ironic meaning – is him, the husband. The article refers the man’s reasons, i.e. that his wife threatened him and their son, punched and kicked him when he did not give her the money she asked for and concludes observing that these complaints are similar to those reported many times by women in countless other cases of violence. The journalist, however, emphasizes the difference between this situation and the others, specifying that in this case, the man is the victim, but room is left for the doubt with the specification, “at least for the time being”.

This episode describes some types of violence suffered by the husband in question: physical violence (kicks and punches), economic violence (requests for money) and psychological violence (threats). These are some types of behavior that come fully within the definitions of violence against women according to the Istanbul Convention in article 3, section a: “all acts of violence [...] that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.

Can this mean that the type of violent actions committed by a woman on her male partner can be exactly the same as those which we now know of in relation to cases of IPV by a man against a woman? According to the data which have emerged from studies and from information published by governmental bodies and associations which deal with the question in several parts of the world³, the answer can only be affirmative. The ways of aggression have no limits in the physical appearance or in muscular development and therefore, even a person who is apparently more “fragile” than their victim can use weapons, their bare hands, and kick and punch in ways that can be classified as exclusively masculine only if based on preconceptions (Macrì et al., 2012). However, some studies highlight that it is more probable that men are attacked with a weapon (One in Three Campaign, 2016), that “men are less likely to be murdered by female abusers” (Domestic Violence London - NHS, 2019) and that particular types of violence by women against men have to be reported such as those of false reports of abuse against children or stalking in order to obtain the main or exclusive custody of the children in the case of separations which are particularly difficult (Merzagora Betsos, De’ Micheli & Caruso, 2010).

It is therefore considered that what differentiates the two phenomena (that of violence by men against women and that of violence by women against men) is represented, as well as by the extent, above all by the different level of knowledge about the figures of the attackers and the victims in the two cases.

VIOLENCE AGAINST MEN: A PHENOMENON ON THE RISE

In the first place, it is opportune to start from the quantification of the extent of domestic violence against men. To this end, it can be highlighted that, as it is a criminological phenomenon with a high dark figure of crime, the figures reported by the official statistics have to be considered as a mere under-estimation, with the exception of those for murders which, in view of the nature of the crime, can be considered to have a very low dark figure of crime.

Subsequently, it has to be remembered that official statistics do not always show distributions of frequency constructed ad hoc on domestic violence and, in these cases, it is difficult, or even unfeasible, to discern, within the offences taken into consideration by the statistics (i.e. assault, battery, sexual assault, harassment, stalking, trespassing, animal cruelty, burglary, robbery, kidnapping, homicide), the context in which the crime took place and the author-victim relationship.

To start this brief examination of the figures, the Australian Crime Statistics, relative to statistics published most recently, which are for the period 2013-2014, offers figures which take into account the author-victim bond only in relation to the percentages of homicide victims (Australian Government – Australian Institute of Criminology, 2014). These figures highlight that, out of 238 homicides committed, 100 were within the family and out of these, 62 were cases of IPV which ended in tragedy. The victims of these specific domestic homicides were women in 77% of the cases and men in 23%.

Going now to the North American continent and, in particular, with reference to Canada, the most recent official data available on crimes reported to the police and committed in contexts of IPV are those published by StatisticsCanada for the period 2007-2017 (Burczycka, 2017). The figures show that 30% of all the violent crimes reported in 2017 concerned family contexts, with almost 96,000 victims, of whom 80% were female and 20% male. In addition, the rate of IPV dropped by 14% from 2009 to 2017 and this reduction is more pronounced in women (-16%) than in men (-7%).

As for homicides, the information obtained from the reports show that these offences take place in contexts where interpersonal relations are complex and are often the epilogue of earlier situations of domestic violence. These cases represent 62% of all the murders committed between 2007 and 2017. In particular, 933 murders were committed in contexts of IPV in the decade between 2007 and 2017 and, in 79% of the cases, the victim was female and in 21% male.

Lastly, coming to Europe, it is interesting to dwell first of all on a survey which, in 2016, analyzed the perception of 27,818 European citizens, of over 14 years of age, asking them to express their opinion on the spread of domestic violence both against women and against men (Statista, 2016) and, therefore, dwelling on the representations that people have built up of this situation on the basis of what is usually known as common sense (Gallino, 2014).

With reference to domestic violence against men, in total, 29% of those surveyed believed that domestic violence against men was very or fairly common in their European country, while 57% of respondents thought it was not very common and 14% not at all common. By contrast, 74% of those surveyed believed that domestic violence against women was common in their country and only 2% of respondents thought it was not at all common.

These data can be linked with the evidence taken from a video written and made in 2018 by Jonathan Lambinet, as part of a project called “Would you React?”⁴, in which a woman in the street verbally and physically aggresses her partner. At first, the actor playing the role of the ill-treated partner encourages the passers-by to intervene in his defense with his eyes, but he does not obtain very much, although the reactions are eloquent: indifference, some half-smiles and words such as “do what you like!”. Nobody

stops, even though one woman, interviewed afterwards by the director, who had not intervened making banal excuses such as “I was with my children, I couldn’t...”, filmed the scene with her mobile phone, maintaining having done so to show the video to the police and her family because “otherwise nobody would have believed me!”. As the time passed and the scene continued, two passers-by intervene, telling the woman to stop and they block her, while another young man goes up to the man who has been hit, offers to buy him a drink and suggests he leaves that woman, trying to tell him the simple truth, i.e. that “violence, by a man or a woman, is the same thing!”. It is interesting to note that, while the two young men were trying to keep the woman still, a passer-by even encouraged the actress to keep on hitting the man.

The same experiment done a few years earlier, again as part of the project “Would you React?”, on a man hitting his wife in the street, ended with an attempt to lynch the actor who was playing the husband by the enraged crowd who saw and reacted to the attack.

Even though generalizations cannot be drawn from these experiments, there is a clear need to study the phenomenon in further depth with scientific data. However, no statistics on domestic violence against men in Europe have been found, whereas, at the level of the individual Member-States, although the type of official data and the periods of reference are not standardized, we can nevertheless dwell on some figures relative to England and Wales, France and Italy.

With reference to England and Wales, the most recent data taken from the Home Office Homicide Index, for the period from 2014 to 2017 (Office for National Statistics, March 2018), highlight that, in the 400 cases of domestic homicides reported (where the author-victim relationship is not only that of partner-partner, but may also be children, parents, siblings and other relatives), 73% of the victims are women and the remaining 27% are men. Half of the male victims were killed by their partner or ex-partner, whilst this percentage increases to 82% for women.

Other data on domestic abuse in England and Wales can be found in the Statistical Bulletin published by the Office for National Statistics (Office for National Statistics, March 2018). In 2017, relative to all the reported cases of domestic abuse-related offences (criminal damage and arson, public order offences, miscellaneous crimes against society, sexual offences, violence against the person, other offences), the proportion between female and male victims is of 75-25. This ratio increases to 95-5 with reference to sexual offences alone.

Concerning France, in February 2018 the French Ministry of Justice published the bulletin “InfoStat Justice” (Löwenbrück, Viard-Guillot, 2018) on the criminal proceedings concluded in 2015 against 78,400 defendants for crimes committed in contexts of domestic violence (threats and blackmail, homicides, sexual violence, other violence). If, on the one hand, 32% of the cases were dismissed, in the remainder, 9 accused out of 10 were sentenced both to imprisonment and sanctions of non-imprisonment. In particular, 26,200 authors victimized 31,500 people. In summary, only 5% of the victims are men; however, with reference to the homicides, the percentage of men killed reaches 19%.

For Italy, a publication from ISTAT (Istituto Nazionale di Statistica) exclusively on the victims of homicides committed in 2017 is available (ISTAT, 2017) in which classifications are made according to the relationship between the perpetrator of the crime and their victim. This classification allows understanding the differences of gender existing between the homicides committed.

In 2017, 357 people were killed, 123 of whom were women and 234 men. The latter include 24.8% (against 80.5% of women) who died at the hands of people they knew. Dwelling specifically on the men who were killed by people they knew, it is to be noted that 3% were killed by a current partner and 0.4% by an ex-partner (against 43.9% of women) while 12.4% by a relative (28.5% as far as women are concerned).

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After having mentioned these data from official statistics, it is now important to integrate this information with that from some victimization surveys in order to analyze in greater detail the phenomenon of domestic violence against men, in particular with reference to that part of events (and therefore, of victims) which elude the knowledge of the agencies of formal social control as they are not reported. It is worthwhile specifying that the data obtained from the victimization surveys are particularly significant not only because they help bring out part of the criminality that is concealed, but also because, often summarized in diagrams and sensational figures, they appear simple to understand, are easily diffused through the media and can therefore have an important impact on the social representations of what constitutes violence in a domestic context (Damant, Guant, 2005, p. 140).

However, it has to be emphasized that, as was specified for the official statistics, the figures found in the reference surveys are not standardized by type or by periods of reference by the various countries taken into consideration.

Similarly, to what was shown above with the official statistics, we begin the examination starting from Australia, where a victimization survey, called “Personal Safety Survey”, was carried out in 2016 by the Australian Bureau of Statistics and by the Australian Institute of Criminology (One in Three Campaign, 2016).

Multiple significant data emerge and, in general, highlight that, of all those who have declared being a victim of IPV, over one interviewee in three (35.3%) is a man.

With reference, in particular, to sexual harassment, 34% of the victims are men and the greatest increase in cases of this type, which took place between 2012 and 2016, took place in events where the victim is a man (increase of 67.5%). Once again, more than one person in three who declared having been stalked is a man, as are 28.4% of the victims of sexual assault.

Going on to the North American continent, there is the “National Intimate Partner and Sexual Violence Survey”, carried out by the CDC’s National Center for Injury Prevention and Control. The most recent results are relative to 2015 and concern, in particular, data on the national prevalence of IPV, sexual violence, and stalking among women and men in the United States (Smith, Zhang, et al., 2018).

This report shows that, in general, in the U.S.A., the proportions of those who undergo contact violence, physical violence, and/or stalking by an intimate partner during their lifetime are not greatly different between women and men: it is just over one woman out of three (36.4% or 43.5 million) and 1 in 3 men (33.6% or 37.3 million). Including psychological aggression, there is not a particularly marked imbalance between women and men (36.4% or 43.5 million women against 34.2% or 38.1 million men). What differentiates the two groups of victims (women and men) more greatly concerns the age when they suffered violence of the IPV type for the first time. The data infer that women undergo the first process of victimization earlier than men and, in particular, one female victim out of four (25.8%) is under 18, whilst for men this percentage drops significantly to 14.6%.

No specific victimization surveys on domestic violence against men concerning Europe as a whole have been found but there is the recent publication of a detailed study carried out by the FRA (European Union Agency for Fundamental Rights, 2014) on violence against women.

We can therefore dwell on some data relative to Great Britain and France, underlining that, as far as Italy is concerned only research on domestic violence against women has been carried out by ISTAT.

Figures on the number of victims of stalking for the United Kingdom are available thanks to the activity by the National Stalking Helpline which, in 2017, answered 4,569 calls, 727 of which concerned actions committed by an ex-partner or a member of the family of the caller (Office for National Statistics, March 2018). In these last cases, 80% of the victims are women and 20% are men and 78% and 22%

of their stalkers are respectively men and women. The commonest stalking behavior reported to this helpline are: unwanted texts (48%), phone calls (41%) and visits to the caller's house or workplace (37%).

The bulletin of the Office for National Statistics from which this information has been taken also has a section on the services available to victims of domestic abuse. The fact that reference is made only to data and to services for women and children is noteworthy.

Going on to France, since 2007, the ONDRP (Observatoire National de la Délinquance et des Réponses Pénales) has published a victimization survey each year called « Cadre de vie et sécurité » (Quality of life and security) in which, in the section on crimes against the person, one chapter is dedicated to IPV. The last report (ONDRP, 2018) refers to the study published in 2018 which includes a historical record for the years from 2011 to 2017. In this period, on average 0.7% of the people were victims of their partner or ex-partner and this represents 302,000 people each year. Women account for 72% and men for 28%. Most of the victims were the object of physical violence alone (77%), but it is highlighted that sexual violence is also combined with the physical type.

This survey also shows the data on the recourse of victims to healthcare and social workers, Operators in victim support centers, relatives and friends, but unfortunately these percentages are not divided by gender.

FEMALE AGGRESSORS AND MALE VICTIMS: A CONTRAPOSITION CALLING FOR FURTHER STUDY

Despite the evidence of the existence of IPV committed by women and suffered by men, the level of knowledge of these perpetrators and of the cases in which they use violence is less than for their male counterparts, even though interesting information in this sense can still be obtained from some victimization surveys mentioned in the previous section.

The Australian "Personal Safety Survey" of 2016 highlights that, in relation to the different types of violence suffered by the interviewees, emotional violence was suffered by just under half of the male interviewees (45.8%) in the twelve months prior to the survey. It is interesting to note how the proportions are inverted when this type of process of victimization is analyzed more specifically. For example, 13.8% of men (against 6.4% of women) reveal that they have been deprived of some basic needs such as food, shelter, sleep, or assistive needs and 8.9% (against 4.6% of the female interviewees interviewed) declare having been threatened with having their child/ren taken away from them.

From the point of view of reaction to the processes of victimization suffered, the survey highlights that men relate their experience to others much less than women (54.2% against 25.6%), that 68.1% of men (against 46.1% of women) have never asked for help and that they are less inclined than women (97.2% against 82.1%) to contact the police. Lastly, a presumed inequality of treatment by the justice system is shown, as only 10.3% of men (against 24% of women) obtained a restricting order against the perpetrator.

Again, with reference to the relationship that is established between male victims and the system of justice, the French 2018 victimization survey also underlines that gender has an impact on the willingness to report the offence suffered to the authorities, but this time inversely. If, on the one hand, only 17% of women file a complaint, on the other hand this percentage is further reduced for men (4%).

With reference to the repercussions that these types of violence have on the victims' lives, 23% of men (against 53% of women) reveal having problems in their everyday lives due to what they undergo (or have undergone) in their private lives.

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It is deemed interesting to enrich this examination with further details, although without the claim of generalizing, by summarizing the results of two recent studies which have analyzed the characteristics of women arrested for IPV and the nature of the violence they committed in order to highlight any differences of gender relative to the nature of the events, the typologies of victimization and their consequences.

The first study concerns 96 cases which took place in North East England between April 2001 and June 2007 (Hester, 2013). They are events which involved 128 people (64 men and 64 women) reported by the police as domestic violence offenders.

In the second, a sample of 106 cases was built up in which only women are the perpetrators of IPV, except in 4 in which the male partner was also arrested together with his partner (Storey, Strand, 2012). These events were reported by the Swedish police of some counties (Kalmar, Vaxjo, Blekinge, Sodertorn) in the period from 2000 to 2007 and in which all the perpetrators were arrested and charged.

In both geographical contexts (North East England and Sweden), the episodes in which the women were reported as perpetrators are characterized mainly by verbal aggressions, in a lesser number for physical violence and, in a few cases, threats or harassment were reported. In the Swedish sample, 19% of the female offenders had a criminal record, but not linked to episodes of IPV.

Issues of substance abuse and mental health are reported in both surveys and, with reference specifically to Sweden, concern about 25% of the perpetrators. Furthermore, in the Swedish counties, in the reports, the police also indicate, regarding the female perpetrator, problems of work (21%), such as lack of an employment contract, precariousness and financial difficulties.

In the cases relative to North East England, a distinction was made between the episodes in which there is only one aggressor and those in which a single criminal event recorded by the police involved both parties in both the roles of author of the crime and victim. In the latter cases, a greater probability of the use of weapons by women was found, probably to protect themselves from the male offender. These facts reveal the complexity of their genesis and their dynamics and perhaps it can be understood how in these situations there can be no clear definition of the roles of victim and torturer. Therefore, the reference that appears clear is that to the figure of the criminal-victim of Von Hentig (1948, pp. 431-432) which is outlined in those situations in which the relationship and the interaction between the acting social players is most intense: some episodes recorded by the English police in this sense refer to complex post-separation dynamics and somewhat chaotic circumstances.

The surveys mentioned show that, in most cases, the male victims seem capable of containing and managing the violence of their partner by adopting an active approach (for example, by disarming them or leaving the common home) without fearing that the woman will intensify the violence. On the contrary, the female victims, in order to negotiate their safety, comply with the requests of the men, thus running the risk of entering a vicious circle.

In relation to some information on victimized men, in 54% of the reports, the Swedish police reported that they minimized or partially justified the woman's behavior or even denied the gravity of what had happened to them, maintaining that the situation was normal.

Only in 4% of the cases did the Swedish police inform the victims of the need to request legal advice in order to help them understand the functioning of the criminal proceedings and to find their way around in this world which until then had been unknown to them. All the victims were given information about shelters, but only one of them made direct contact with one of them.

These results, although circumscribed, indicate that the cases of intimate domestic violence recorded by the police in two different European countries present some differences of gender that are known to varying degrees, between male and female perpetrators.

The number of male victims is proportionally on the increase compared to those of victimized women, even though men are in the role of offender in a higher number of cases.

The violence used by men against women is more severe than that used by women against their male partners and, in addition, the violence by men is to a greater extent associated with the climate of fear that is established in the daily life of the couple and the control of the victimized women. However, it is more probable for women to use weapons, often to protect themselves.

Meanwhile, what violence by men against women and violence by women against men have in common is the existence of profound issues relative to the inability to manage the conflict in intimate relations which can derive both from a poor knowledge, which does not discriminate between the genders, of the basics of the “emotional alphabet” (Bisi, Sette, 2010), i.e. that tool which guides the fundamental abilities of the heart, and from incomplete acquisition until then of all the skills relative to the sphere of impulsiveness and aggressiveness.

Another element that the situations of violence have in common is that relative to the difficulties found in people of both sexes in becoming aware of their status as a victim, even assuming responsibility for the facts, minimizing the event and labelling it as “an ordinary and normal quarrel typical in all couples.”

On the other hand, the common strategies of reducing the risk used to help women who are the victim of IPV (for example, those related to the services offered by anti-violence centers) in the surveys analyzed have rarely been activated for victimized men. This is probably due to the fact that many of the services which look after women are not as available when it is men who are victims of IPV or they are poorly known by the operators of the formal social control at the time when they intervene in the place where the events took place. This situation may also involve other components such as the professional training of the operators and the social perception of the phenomena of female-to-male IPV.

Concerning this last aspect, it is important to recall that there are those who maintain that the victimization by IPV of the man is a taboo subject and, precisely for this reason, it is a situation which is little known or which even does not want to be known (Vanneau, 2006, p. 701). In this sense, the male victim would suffer from the common social perception of masculinity and this would be the origin of the difficulties found in making public the status of victim or, further upstream, in recognizing themselves in this role.

CONCLUSION

In conclusion, the data shown here, even though incomplete and partial also because of the difficulties stated in the previous paragraphs, nevertheless show the need to get to know better both the women perpetrators and their male victims in order to prepare appropriate rehabilitation programs for the former as well as effective methods of intervention and help for the latter.

In Europe and in other parts of the world, some victim support centers initially for women have expanded their horizons and also accept ill-treated men and, in addition, the number of services offered to help men only is on the increase⁵.

The fact that the objectives of the victim support centers for men are the same as those for women is worthy of note: to emerge from their condition of isolation, to record their suffering, to provide information and counselling, to find safe accommodation, to increase society’s awareness of the existence of the phenomenon and the needs of those who have undergone ill-treatment and abuse, and to reduce the rate of domestic violence and its impact on families.

Family Violence

For some time now, the studies on victimization processes have highlighted that violence is a dynamic phenomenon which includes various forms of ill-treatment and consequently produces a plurality of victims. We agree with those who believe (including Grauwiler, Mills, 2004) that keeping the phenomena of violence by men separate from those by women, although with the objective of protecting ill-treated women for all the reasons now known and also included in the Istanbul Convention, does not help fully understanding the phenomenon or its prevention or even help for the victims.

Without a doubt, from the point of view of victimology, one of the risks to avoid is that of considering male victims of IPV as “second-class victims”, just as women were for a long time. In this regard, the following questions which were published on the homepage of the “Ankyra” Anti-Violence Centre for men and women (Milan, Italy) can be endorsed: can an anti-violence center welcome a person in distress, discriminating against them based on gender or because they belong to a social group that is more or less numerically important? Or is it the distress that must take priority?

Lastly, from the criminological point of view, there is an absolute need to study the figure of the abusive woman in greater depth, especially in relation to the continuous evolution of the criminal phenomena that are taking place in connection with rapidly changing cultural conditions and social roles, and the urgency to focus attention on the social representations of violence is also observed.

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KEY TERMS AND DEFINITIONS

Victim Support Services: Services that provide free and confidential help to victims of crime, witnesses, and their family. Usually, the support services that are offered are tailored to the needs of each person. In general, however, they consist of information and advice, counselling, advocacy, peer support and group work, compensation, restorative justice, personal safety services, help in navigating the criminal justice system, court support. At European level, the first victim support service was started in 1974 in Bristol (England).

Victimization Surveys: Surveys, usually carried out nationally, by interviewing representative samples of the population with the objective of collecting data on the dark figure of crime and other specific aspects, such as self-reported victimization experiences for various offences, characteristics and consequences of victimization, contacts with law enforcement, fear of criminal victimization, perceived risk of criminal victimization, subjective wellbeing.

ENDNOTES

¹ Council of Europe (12 April, 2011). *Convention on preventing and combating violence against women and domestic violence*. Istanbul.

² Mirapeu, A. J'ai battu mon homme. *Anthologie de la chanson française – chansons de femmes, condition féminine*. Retrieved from https://www.youtube.com/watch?v=XvSZa-8ceaQ&list=PL7MsSuWSU5bLZEYKjRUG_3vwZ3QaZisw8

Below the French text and its English version (translation is mine).

« Dieu, les hommes quelle engeance ! Le mien est paresseux, têtù, mais j'ai su trouver ma vengeance. Et, dam ! il vient d'être battu. La lune de miel fut bien douce, V'là que sans rime ni raison La coquine qui devient rousse Et met le feu à la maison. Fallait qu'ça finisse: j'ai battu mon homme ! Ah ! mais l'ai battu comme plâtre ! [...]

Quand je pleurais il chantait en jouant du mirliton, c'est ça qui me faisait rager. [...] Monsieur s'en va à la guinguette et se remplit comme un tonneau [...] Nicolas bat sa femme, Bouvier trompe la sienne avec une fille... [...] mais quand mon mari a bu, il ronfle comme un soufflet de forge [...] je me suis dit que c'est pas naturel, j'ai cherché et j'ai trouvé ! [...] Hier j'ai lui dit je vais en ville [...] il promet d'être bien tranquille [...] mais pour voir je reviens sur mes pas. [...] et je vois à table au café-concert avec mon chien et mon homme la Jeanne [...] c'est elle qui l'apprenait à chanter [...] et à danser. Je suis tombée sur la Jeanne, elle est tombée sur le chien, mon mari est tombé sur eux et j'ai cogné dans le tas. On a crié « à la porte ! » Ils se sont sauvés... Mais ... il est rentré l'oreille basse, oui mon mari pas mon chien. Maintenant je sais le moyen de l'empêcher de me tromper... [...] Maintenant la paix est bien faite [...] qu'il prend bien garde pour sa tête, je lui arracherai les yeux ! Oui, je serais sans indulgence [...] que si jamais ils recommencent [...] il sera plus que battu ! »

Family Violence

“Oh, God, men are the worst ! Mine is lazy, stubborn, but I found my revenge. And, I did it! He has got beaten. The honeymoon was very sweet, and then? without rhyme or reason the little rascal that gets her hair red And burns down the house. It needed to be ended: I’ve beaten my man ! Ah ! But beaten him black and blue ! [...]

When I was crying, he was singing and playing the mirliton, that’s what set me off. [...] And then Sir just goes to the guinguette (“bar”) and gets boozed-up [...] Nicolas beats his wife, Bouvier cheats on his other with a girl [...] but when my husband drinks, he snores like a trooper [...] I told myself, it just can’t be right, searched and I found what I had been looking for! [...] Yesterday I told him I’m going into town [...] he promises to be good [...] but I went back to check [...] and I see my dog and my man at the concert café with Jeanne [...] it’s her who taught him to sing [...] and dance. I fell onto Jeanne who then fell onto the dog, my husband fell onto both of them and I hit. Someone screamed “Get out of here” ! They run out ... but ... he came home with his tail between his legs, yes my husband not my dog. Now I know how to stop him from cheating on me... [...] Now things seem quiet [...] he’d better take care of his head, or I’ll scratch his eyes out! And I won’t ask a permission for it [...] in case it started again [...] he would be more than just beaten!”

3 Examples shall include but not be limited to: <http://www.domesticviolencelondon.nhs.uk/1-what-is-domestic-violence-/25-domestic-abuse-against-men.html>; <https://www.justice.gc.ca/fra/jp-cj/vf-fv/apropos-about.html>; <https://stop-hommes-battus-france-association.blog4ever.com/>; <http://www.oneinthree.com.au/malevictims/>

4 “Would You React?” (<https://www.wouldyoureact.com/le-projet/>) is a civic initiative aimed at raising the social awareness of the general public via social experiments. By using undercover cameras we capture simulated everyday events which elicit genuine context-dependent reactions to the specific scenario. The aim of this project is social and aims to increase solidarity.

The staff of “Would you react?” makes every effort to create actions which gather and reach the broadest spectrum of people. We also appeal to our public to collectively produce the future of “Would You React?”.

The main objective of this project is to produce material representing realistic issues filmed using a hidden camera. With the support of actors, we recreate some scenes from everyday life (e.g. a theft, a seizure, an act of discrimination, etc.). Specialists then analyze the reactions of bystanders and interpret or suggest additional sources of information to assist in the interpretation of these facts. The female-to-male IPV video was retrieved from: <https://www.youtube.com/watch?v=yRcPurOuowM>. The male-to-female IPV video was retrieved from: <https://www.youtube.com/watch?v=ZKFnISG3zD8>

5. For example: Ankyra – Centro antiviolenza per uomini e donne (Milan, Italy) ; SOS Hommes Battus (Paris, France) ; Entraide pour Hommes (Québec, Canada) ; Men’s Advice Line (UK) ; One in Three (Australia).

Chapter 4

Psychological Violence

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ABSTRACT

This chapter deals with psychological violence in its most recurrent forms. The author uses the general definition of psychological violence as a starting point to then analyze its manifestations in two different contexts: the professional and private environment. This way, the author wishes to demonstrate that psychological violence is associated with the establishment of a hold, a conditioning, which makes the individual who is subjected to it incapable of recognizing it. It is a process which is developed through typical schemes and which follows a similar pattern in different contexts. The consequences for the victims are numerous. The author analyzes them through a psychosomatic approach which explains why certain diseases develop when individuals are subjected to such pressures. The author also shares the results obtained in her practise of accompanying victims.

INTRODUCTION

General Definition of Psychological Violence

Psychological violence, also known as moral violence, mental violence or emotional violence, is a form of violence or abuse against others where no direct physical violence is being deployed.

Psychological ill-treatment, therefore, corresponds to acts committed or omitted that are psychologically harmful. These acts are committed by one or more individuals, alone or together, which result in placing the victim in a position of vulnerability. The consequences can cause both immediate and long-term damage on a behavioral, cognitive, emotional, psychosomatic or physical level.

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BACKGROUND: THE PHENOMENA OF PSYCHOLOGICAL VIOLENCE

Legal Definition and Judicial Framework in Europe and the USA

In France the debate about psychological violence as a crime resulted in a law (No. 2010-769 of July 9, 2010) which defines psychological violence as *repeated acts, which may consist in words and/or other behavior or in a deterioration of the quality of life, resulting in an alteration of physical or mental health*. As a result of the measures covered by the law on harassment in the workplace, the legislator gave the same importance to psychological violence within couples. It is at this level that the law of 2010 has been positioned in order to mark a change in the protection of victims.

Other European countries had a different approach. The laws of the European countries deal with the subject of psychological violence in two areas, the professional and family environment (being especially attentive to violence within the couple and more precisely violence against women).

The Member States of the European Union have been working for two decades now on the enactment of a legislation aiming at the prevention of violence in the workplace. The Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers in the workplace, lies at the origin of this legislative production. Based on the assumption that *Member States' legislative systems covering safety and health at the work place differ widely and need to be improved*, article 5, General provision, stipulates that *The employer shall have a duty to ensure the safety and health of workers in every aspect related to the work*.

When including the concept of health, the Legislator has focused on the compulsory protection of workers. According to the definition of the WHO, *Health is a state of complete physical, mental and social well-being and not merely the absence of the disease or infirmity [...]*.

Most Member States regulate violence under general criminal, civil and administrative laws, but the general obligation of the employer to ensure health and safety in all aspects related to work is less developed. In Belgium, Germany and Italy, national legislation includes provisions for specific protection against third-party violence.

The picture is more differentiated when it comes to harassment.

Most countries adopted the definition of harassment set by the 2000 Equal Treatment Directive as *an unwanted conduct related to racial or ethnic origin which takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment*.

In several countries, definitions of harassment in general legislation differ from the one proposed by the Equal Treatment Directive. In Denmark, France, Hungary, the Netherlands, Slovakia and Sweden, the definition does not include the unwanted aspect of the behavior, while in Spain, 'hostile' and 'degrading' are not included in the national definition, which refers to the creation of an intimidating, humiliating or offensive environment only. The Swedish general legislation requires simply that the incident violates the dignity of a person. The Finnish definition covers the violation of physical integrity in addition to the violation of dignity and includes groups as well as individuals. These countries have thus adopted a more extensive definition of harassment.

Only a few countries provide a definition of abusive behaviors; this can be seen in labor law (Estonia, France, Latvia and Slovenia) or in occupational health and safety (OHS) legislation (for example, Belgium).

Belgian legislation, that came into force in 2014, broadens the previous definition of violence and harassment at work by using the more generic term of ‘psychosocial risks’. Therefore, it encompasses other situations such as stress, burnout and interpersonal conflicts that might have been caused by aggressive behavior. The Slovenian 2013 Act distinguishes between harassment and bullying: harassment being defined as ‘any undesired behavior associated with any personal circumstance’, while bullying at the workplace is defined as ‘any repetitive or systematic, reprehensible or clearly negative and insulting action or behavior aimed at individual workers in the workplace or in connection with work’. In the Irish 2012 order revising the 1998 Employment Equality Act, bullying is considered as an incident not linked to discrimination, which is why it is not covered by the Employment Equality Act.

The French legal definition of ‘moral harassment’ at work focuses on *a behavior of any person abusing the authority conferred on him/her or him/her position*, undermining the physical and mental health of the target or compromising their professional future. Similarly, ‘the abuse or misuse of power’ is part of the UK definition of bullying as part of general law. Legislation in Italy and Poland defines only ‘mobbing’, which is considered to be a persistent action and behavior that damages the worker’s productivity. While in Italian legislation, the minimum period for the duration of mobbing is specified (six months), in Poland the negative impact on perceived professional abilities and the purpose of perpetrator(s) in *humiliating or ridiculing the employee, isolating or eliminating him or her from the group of co-workers* (EU-OSHA, 2010) is highlighted. Spanish legislation defines harassment, viewing it as intended to *humiliate the victim, imposing situations that greatly offend human dignity*. It provides a definition that is very close to that of mobbing in Italy and Poland, thus narrowing the scope of the definition of harassment defined in general legislation. Finally, Cyprus and Malta define only sexual harassment at work.

In general, national legal definitions include descending top-down harassment (or bossing), horizontal harassment (among colleagues) and ascending bottom-up harassment (towards the superior). This is also true for the French, Italian and Polish definitions, although they focus on descending forms. The French definition also includes violence and harassment from third parties.

Less than half the Member States provide work-related specific definitions of violence and/or harassment at work in their legislation. In some, only guidelines or social partner agreements provide definitions. The focus of the definition varies from country to country, while some countries share the concept of the repetitive or systematic nature of the occurrences.

In 2012 the European Union manifested its desire to render the legislation regarding psychological violence within the family similar in all the Member States by promulgating the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime.

In point 18 of this Directive, psychological violence is mentioned and it stipulates: where violence is committed in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss.

For the first time, the European legislator has taken the impact of psychological violence into account, raising it to the rank of violence having a serious impact and requiring a specific accompaniment of the victims.

Psychological Violence

The particularity of this directive lies in the fact that it proposes arrangements for compulsory training of professionals who are likely to have to deal with victims, whether they work in the field of justice, the medical world or any other field. The European legislator wished to underline the importance of specific competences with regards to the accompaniment of victims, which professionals in different fields must acquire. This also applies in the case of psychological violence.

In article 25 of the Directive, the Member States are expressly requested to ensure that any professional likely to come in contact with victims receives *general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.*

Despite its innovative nature and the indisputable necessity of the awareness of the seriousness of the impact of psychological violence, the directive did not have the expected success. In its report of 14.05.2018, the European Parliament deplores that, two years after the deadline for transposition of the directive, only 23 of the 27 Member States have formally transposed the directive regarding the victims' rights in September 2017 and that, among them, several only partially respect the directive and have only adopted certain measures. The States of the European Union are working autonomously on the legislation on victims of violence and the violation of the law within the family circle. They remain attached to the idea that, in this context, violence against women requires specific and more important handling.

The same way of analyzing psychological violence can be found in the USA.

It is therefore referred to as domestic abuse, hostile work environment and, more generally, emotional abuse, an expression that describes particularly well the phenomenon subject of this analysis.

Emotional abuse is a type of abuse which plays a role in numerous family law cases. There is no set, standard definition of emotional abuse. However, emotional abuse often contains certain components, such as verbal aggression (often including false statements or lies), dominating or repressive behavior, implanting ideas of jealousy or slander of another person, forcing the person to view disturbing or negative images or behavior.

Where domestic abuse is concerned, cases often involve a number of criminal charges, including assault, battery, sexual assault and rape. If criminal charges are brought against the offender, they can result in criminal penalties such as a jail or prison sentence, as well as monetary fines.

Many family law cases involve emotional abuse. In some jurisdictions, a person cannot recover damages for emotional distress unless they also manifest some sort of physical symptoms, such as stomach illnesses or nerve-related illnesses. However, emotional abuse can often lead to increased penalties for physical abuse cases.

Also, emotional abuse can be a factor when the court is determining whether or not to issue a restraining order. Courts generally look at the totality of the circumstances when determining legal remedies for emotional abuse cases.

Where psychological violence in the professional environment is concerned, in the USA many terms are used to describe the typical actions, such as age discrimination, disabilities discrimination, employment discrimination, gender and sex discrimination, sexual harassment, race or nationality discrimination. The expression "hostile work environment" is the one nearest to the psychological violence which is the subject of this chapter. In those cases, from a legal point of view, a hostile workplace is created when someone in the workplace engages in conduct or communications that are severe, offensive and unwanted and generally pervasive and ongoing. This type of behavior rises above petty insults, annoyances, and ill-timed horseplay. The behavior must be such that it interferes with the victim's ability to work.

The key word is “hostile,” and this will typically include behavior targeting a person based on some legally protected characteristics under Title VII of the Civil Rights Act of 1964, which prohibits employers from discriminating against employees and potential employees on the basis of race, color, religion, sex or national origin. This act is a federal anti-discrimination law and applies to employers in private sectors as well as local, state and federal governments.

Some examples of common workplace harassment involve the use of racial slurs and sexually charged comments as well as the demonstration of other workplace bullying behavior.

The facts can be difficult to establish because the offensive incident(s) typically just involve the plaintiff and the defendant. Courts are prepared to find a business liable for the creation a hostile work environment based on the behavior of an employee. The court will look at whether the supervisor had actual knowledge of the employee’s harassing behavior, could reasonably have learned about the harassing behavior, failed to take action or address the complaints of a hostile work environment and adversely acted against the employee who complained about the harassing behavior.

MAIN FOCUS OF THE CHAPTER

Acts of Psychological Violence: The Construction of the Hold and its Major Manifestations in Professional Surroundings and in the Heart of the Family

The most common manifestations are: repeated verbal or non-verbal humiliation, behavior/words aimed at systematic devaluation, denigration and disqualification, willingness to isolate or stigmatize the victim because of a real or imagined peculiarity, mockery, ridicule, cynicism, systematic bullying, verbal threats, emotional blackmail, creating systematic failure through requirements which are difficult or impossible to meet, contradictory or incomprehensible instructions or injunctions, abusive or aberrant punishment, prolonged sulking, indifference, ignoring the other, neglecting him/her, depriving him/her of emotional care or sexual attention, destabilizing the person.

All of these behaviors, and the list is far from exhaustive, represent violent acts which, as they are not physically aimed at the person, constitute acts of psychological violence.

Furthermore psychological violence is not the mere loss of self-control, it is a willingness to control the other.

It consists of a series of malicious actions, a rise in power, a process aiming to create a psychological hold.

While major psychological problems, a general state of social distress or cultural conditioning can sometimes be the origin of the acts characterizing psychological violence, it is, in many cases, the implementation of an intentional process of victimization which aims at creating a relationship of domination.

Where one single behavior can be sufficient to characterize an act as psychological violence, in order to explain the harmful consequences on the victims, be they psychological or physical, it is necessary to change perspective. It is the repetition of these acts which generates the state of victim and the hold, a cyclical process too often underestimated.

Described for the first time in 1979 by Lenore Walker (Walker, 1979), the pattern of the cycle of violence gives interesting clues to the analysis of the process of setting up the psychological hold. Originally described as part of a study on violence against women, this scheme is now used to explain any situation of violence.

Psychological Violence

The relationships that later become relationships of hold are characterized by a powerful initial phase, varying in duration, which we will call “seduction”.

Whether it is a relationship in the private or professional sphere, the emotional anchorage generated in this phase lays the foundations of the relationship of hold. Contrary to what one might believe, it is not aggression itself, but the seduction that is at the origin of psychological conditioning and submission.

In this phase of seduction, the relationship generally presents itself as reassuring, giving a sense of security, satisfying the needs of the victim. Emotions are strong, there is a fast succession of events. In this phase the “narcissistic flaw” is filled, the ancestral fear of being potentially inadequate disappears. It is also the phase during which the aggressor collects a lot of information about the future victim of his/her assaults and his/her hold, through targeted questioning. The aggressor questions the victim about his/her needs, his/her desires, his/her flaws, his/her successes, his/her history, his/her deepest thoughts if possible. He/she positions him/herself as a confidant, a person to turn to, he/she valorizes the victim; he/she will take on any disguise that will serve the cause of domination and, in some cases, the destruction of the other.

Then comes the first of the phases, the phase of “tension”, which acts as a trigger to the process. During this phase, in which the aggressor seems to feel a compulsive need to assault the victim, thus creating a favorable climate, impulse and acts of tension form the role of the aggressor, misunderstanding, stress and fear are the victim’s part.

When everything collapses, the victim is completely unable to understand what is wrong. The more time passes and the more the actions intensify and repeat themselves, the more the inability to understand gives way to a state of stress resulting in a state of fear. The fear we are talking about is that of not being considered positively, first by others and then by oneself, it is the ‘ feeling of guilt ‘ that begins to manifest itself, which is the most powerful obstacle to reflection, to rationality. It is the discomfort of considering oneself inadequate, and it materializes itself in the conscious or unconscious accusation directed at oneself of being erroneous, of being inadequate in life and of being the one to blame for this.

This situation of tension makes the victim helpless and positions him/her in a situation of weakness. Once the tension has been created, the next phase is that of the real “Aggression”. It is in this phase that actions of psychological violence manifest themselves, evolving into various degrees with time. Verbal assaults, denigration, inappropriate comments, threats and even a smile, a glance, a gesture; any behavior that the victim’s brain is likely to perceive as an aggression.

One is confused, there is consternation, the victim has difficulty breathing, suffers from tachycardia, dizziness. This is commonly called anxiety, when it is a reaction to an identified object, or anguish when the object is not identified. The two words come from the Latin “*angustia*”, i.e. choke point, referring to the difficulty of getting air into the lungs. As an example, in the XVIII century, both was considered a disease in itself, not one of the symptoms of a unique concept called anxiety.

Today it is possible to formulate new hypotheses, thanks to discoveries in neuroscience which have revealed, among other things, the existence of an “autonomous memory” of the amygdala, the brain structure that develops the information regarding danger to preserve the integrity of the organism. If one considers anxiety or anguish not as a cause of neurovegetative warning but rather as the effect of alterations of unknown or ignored origin, observations may prove interesting.

Somatizations, all bodily alterations that accompany anxiety or anguish, are always and invariably the same alterations which are detected in the human body when confronted with a threat to its survival. The associated neurovegetative reactions are undoubtedly those of the ancestral body defense mechanism against physical hazards.

Automatic responses to the body being in danger are usually followed by a voluntary action such as fighting, fleeing or hiding. Automatic response and defensive actions become a single survival tool. But if the response is not followed by action, if the great amount of energy accumulated to fight is not used, the perceived somatic variations arrive in the consciousness in the shape of an incomprehensible neurovegetative storm. This generates fear, anxiety, anguish, panic. On the contrary, when the automatic response is followed by action, no emotional disturbance is felt.

When the responses are 'idly' triggered, i.e. in the absence of physical danger, the emotional reacts in the same way and anxiety and fear are triggered. The absence of physical danger means that these mechanisms are activated even if the danger is only 'perceived, 'imagined' or if it is the souvenir of an aggression.

Over time, due to the repetition of aggression, fear, anxiety and anguish will already begin to manifest themselves in the phase of tension. As the violence of the words intensifies steadily, the victim adapts to the different degrees of intensity by means of the mental manipulation undergone in the following phases. It is as if the connections between the emotional brain (limbic) and the rational brain (cortex) have been interrupted due to a barrage, like a hacker who intervenes in the network and stops the passage of information.

The third phase is the one called "excuses". Finding pretexts, a reason which could excuse or explain the aggression and reactivate the victim's sense of being inadequate. In general, in this phase, victims relate having been confronted with the denial on the part of the aggressor, the projection, the transfer of responsibilities. Aggression would be justified because it is a reaction to what the victim "is". The rational brain receives a response that might seem logical and will quickly transform into a "feeling of guilt". What might seem a logical explanation of a responsibility is actually an illogical way to trigger guilt. Responsibility and guilt are two very distinct concepts. Responsibility is rational, it is a sequence of actions that can be named, it is a logic of cause - effect (I am responsible for a car accident because I did not stop at a red light). Guilt, on the contrary, is not rational, it is not logical. The link cause - effect is based on interpretations and not on facts. It builds on beliefs (I am guilty and I deserve aggression because I am as I am). When the feeling of guilt established, the hold is established.

But what are the consequences of guilt? What does an individual need when he is persuaded that he/she is at fault?

Victims state that, after the tension, the aggression and the excuses phase, the situation calms down. Leonor Walker (1979) calls this phase "honeymoon". Not only do the assaults cease, but the victims experience them as a distant memory. Everything seems to be like it was at the beginning, during the seduction phase. The emotional anchorage is awoken, the victim feels re-valued, accepted for what he/she is (and for what he/she has probably done in the meantime). Tension, aggression and guilt are perceived as a bad period and hope becomes the power that enables the victim to accept to undergo the hold.

The real reason why a victim of psychological violence remains in a position of hold is this repetition of tension – aggression - guilt – hope in a cyclical process, slow at first and accelerating over time.

Psychological Violence in Professional Surroundings: Moral Harassment, Mobbing

Today, more than ever, a person's professional position is the pivot of his or her existence. At least as far as Western countries are concerned, where the social role of the family has lost a lot of its importance. The individual finds a place in society through his professional activity. It is the latter which provides the means of existence, which in turn determines access to society.

Given this observation, we can measure the importance of the phenomenon of harassment in professional surroundings: a person facing suffering in a professional environment is an individual facing the destruction of his own person. In a professional environment, where aggressive acts of physical violence rarely have their place, psychological violence is at the heart of the crime of moral harassment.

It is evident that the mechanism of the cyclical process is also present in situations of psychological harassment in a professional environment.

The legal definition of this phenomenon, given by the French labor code, accurately describes the situations of harassment. *No employee should undergo repeated acts of psychological harassment which have, as object or as effect, a deterioration of his/her working conditions which may impair his/her rights and dignity, impair his/her physical or mental health or compromise his/her professional future.*

This article focuses on the notion of repetition and clarifies that these actions are harmful independently of the aggressor intention. Beyond the intention of the author, the effects on the victim determine a situation of harassment.

The deterioration of working conditions is an objective, factual consequence found in any harassment situation. The legislator emphasizes an aspect that is often overlooked. These actions undermine the dignity of the person, they are attacks that target the person in the person's concept of what he or she 'is'. We are not facing a conflict but an assault. This degradation "may" also result in an infringement of the victim's rights and health. What is being challenged is, above all, the behavior of the author. The deeds are likely to harm. The victim, if he/she is a strong enough person, might not fall under the hold. Although this is rarely the case, it is objectively possible.

These actions can be perpetrated by one or more people. The first phase, which we will continue to call "seduction" is a phase in which the victim does not perceive any malicious intent towards him/herself. Quite the contrary, he/she experiences this first period with enthusiasm and often profound serenity. He/she is confident until the tension settles in. Sometimes it all starts with a quarrel with a colleague, a supervisor or a subordinate. It may concern an unexpressed disagreement. Then come some derogatory remarks, cutting remarks, unpleasant words, unkind allusions, knowing smiles. Very quickly, the designated victim is isolated, cornered in a defensive position. At times, everyone pretends to ignore his/her presence, his/her existence is denied. People stop addressing him/her. He/she is made to feel that he/she no longer has his/her place in the group, that one doesn't want him/her any longer. Prejudices arise, take shape, develop. Soon everyone agrees: the victim is impossible to get on with, a little 'disturbed'. He/she is being mistreated, and more and more so. So much so that, in the end, the arbitration of the department of human resources or of a business delegate is required. Then, in most cases, the referees take sides against the troublemaker. He/she disturbs, it is a pathological case. He/she must be got rid of. And they do get rid of him/her. This is mobbing, the effect of the pack, psycho-terror at work. It is the succession, over a longer or shorter period, of hostile remarks and actions, expressed or manifested by one or more people towards a third person. An individual is chosen from among all, taken as a target, marked with the red iron of exclusion. He/she will be constantly assaulted, persecuted

by the group. A process is triggered which will not cease to strengthen, to perpetuate itself and which will have a harmful effect on the victim.

So by victim we mean here the person who undergoes the 'cycle of violence' and who is gradually cornered into a position of total helplessness from which reintegration into professional life is more than problematic. His professional future is therefore compromised.

People who have been subjected to mobbing for some time frequently present symptoms such as stomachache, insomnia, nervousness or depression. With the continuation of mobbing and the repetition of aggression over a fairly long period, these symptoms tend to settle chronically. For many victims, obsessed with what happens to them, another problem arises. Shocked, furious, they are so affected by the way they are being treated that they are no longer able to think of anything else, they are as if they were 'possessed'. This persistence of the same concern imposes new tensions on the body which result in new symptoms: the victim then enters an infernal circle. The state of stress caused by mobbing tends to perpetuate, the harassment of the first days quickly becomes a constant subject of concern, which, considering the multiplication and hardening of assaults in the first period of mobbing, will quickly turn into an obsession. The victims therefore relate symptoms such as: re-experiencing the trauma through intrusive distressing recollections of the event, flashbacks, and nightmares. Emotional numbness and avoidance of places, people, and activities that are reminders of the trauma. Increased wakefulness such as difficulty sleeping and concentrating, feeling jumpy, and being easily irritated and angered.

These are the symptoms of Post-Traumatic Stress Disorder, the severe anxiety disorder that appears as a result of a traumatic event which may have exposed an individual to death.

Isolation, the ultimate phase of the process, compromises the mental balance of the person concerned because persecution by the group and exclusion awaken in the human being an ancestral fear.

The human species has been able to develop and survive thanks to the herd instinct, the belonging to a group. Certain death awaits the one who is separated from the pack.

The employer, whether he wants to or not, also suffers considerable losses: decline in production as a result of repeated absences for illness but also due to the decrease in productivity of the person targeted by the mobbing while he/she continues to be remunerated for providing the employer with quality work. Then there is the time spent by the human resources department and the trade union representatives in problematic attempts to resolve these situations, the severance pay, the cost of judicial proceedings. Society also bears the costs. Upkeep of hundreds of thousands of employees prematurely worn out or reduced to disability by mobbing, medical treatments, hospitalizations, attempts of rehabilitation.

For aggressors and for uncommitted, but tacitly complicit, spectators, the consequences are lighter; most often, they are even at peace with their conscience, perhaps because the suffering inflicted on the victim is not immediately noticeable. When it does become visible, the victim has already left the scene. Members of a group are often terrified when they are told about what has become of the person who once worked with them. So, to feel remorse, one has to know what damage one has caused.

Psychological Violence in the Family Environment. A Major Consequence: Parental Alienation Syndrome

Practice of family assessment reveals the recent multiplication of cases where parents, be it mothers or fathers, lost all contact with their child(ren) as a result of their separation or divorce. More and more children reject one of their parents for no apparent reason, or at least without being able to express their rejection, while expressing feelings of hatred towards this parent.

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Is it a new pathology or has it, until now, not been recognized in Europe as an autonomous entity? In the United States it has been identified under the term Parental Alienation Syndrome (PAS). The reference book in this field has been written by Richard A. Gardner (1998), professor in pediatric psychiatry and psychoanalyst at Columbia University of New York.

Family discord, especially when involving children, is a significantly higher morbidity factor than divorce. *The main factor of long-term disorder is not the separation itself, but rather the familial discord so often associated with separation* (Rutter, 1980).

Parental alienation syndrome is generated by a parent through actions of manipulation. It is a state of uncompromising fusion of the child with one of his parents, with the one who is “the good and beloved” and with whom he/she lives. Simultaneously there is a hostile abandonment, without compromise, of the other parent, of the so-called “bad and hated” with whom the child no longer lives. This state appears in the conflictual situation between the parents and polarizes around the right of visitation and the right of exercising parental authority. There is a sharp division between “good” and “bad” parent.

The instruments used are the rupture of contact with, and the devaluation of the parent who lives outside the home. The psychological process on which the disaffection rests, is similar to that which becomes manifest within the system of sects or even in case of hostage-taking (Stockholm syndrome): anxiety and dependence make the victim identify with the aggressor in such a radical way that he/she sometimes comes to refuse any external aid. In the case of parental alienation syndrome, the parent who implements the disaffection, submits the child – knowingly or unintentionally – to indoctrination. For this purpose, he/she abuses the almost limitless power he/she has to influence and control his/her child. This indoctrination creates a false, negative image with distorted reality and a loss of consideration. Such influence clearly has the characteristics of abuse and causes serious psychological consequences for the child and for the alienated parent.

The loss of one parent profoundly disrupts the child’s self, structure and substance. The child feels broken. He/she has the impression that the loss of one of the parents is directed against him/her: ‘it’s my fault’, or ‘I didn’t deserve for Mom (or Dad) to stay’. When one of the parents is actively manipulating the relational loss – which is the case of the parental alienation syndrome – the child inflicts a negative charge on a part of him/herself; a part of his/her personality suffers a real psychological amputation. Often, the people associated with the child do not perceive these signals, or do not understand them correctly, which means help does not come. To support his/her situation somehow, the child represses his/her pain, he/she dissociates it. From the outside, we can no longer notice anything. It is this severance between a suffering and repressed part of the personality and the “normative” image shown to others (we talk about façade) which is responsible for subsequent psychiatric problems.

As their capacity to differentiate is not yet fully developed, children only have extremes to orient themselves. Thus, the attitude accompanying the negative image he/she has of the other parent (the opponent) triggers a psycho-dynamic process which, without any further impulse, unfolds itself. All things considered, the child him/herself contributes to this process by developing such a repulsion against the opponent parent that he/she refuses any contact with him/her, even without any external intervention. He/she rejects the parent who lives apart because of what he/she has heard, based on gossip, without taking into account his/her own experiences. These families easily refer to the will of the child, highlighting what he/she wants, not what he/she needs. Often a child of three or four years is left to decide whether he/she wants to visit his or her father or mother, or not. This choice is impossible, involving a serious conflict of loyalty, except by extreme use of the defense mechanism, which is the division, with its heavy subsequent consequences.

The partly conscious, partly unconscious manipulation of the child by the parent with whom he/she lives, aims at destroying the child's love for the other parent and keeping that other parent out of the child's life. This negative description results in an often substantial distortion of reality, devaluing the parent who does not live with the child. The latter then adopts the negative representations and feelings of the parent he/she lives with. He/she appropriates them and sometimes even turns them into his/her own history with scenarios going far beyond the descriptions of the author of the manipulation. Thus, the child often claims things that have never happened.

At first, the visits of the other parent after the separation go relatively well. Suddenly, intense signs occur. The child is often sick on the Sundays of the visits or, for some reason, the child cannot keep the appointments which, more and more often, do not take place and are never caught up. The arguments put forward are: "The child must be left alone", "the child can go there when he/she wants, but he/she does not want to – and, after all, we cannot make him/her".

Sometimes the parent does not even hesitate to – unduly – reproach the other parent of sexual abuse of the child, to make sure he/she can completely cut the contact. Almost 90% of the suspicions of sexual abuse expressed in the context of litigation, relating to the right to exercise parental authority and the right of visitation, are not confirmed. Thus, the considerable damage that such a reproach can cause to the child – not to mention the person who is being calumniously slandered – is not taken into account.

In any case, the disaffection between the child and the parent who does not live with him progresses, endangering the relationship which ends up being cut off.

Professor Gardner (1998) describes eight main manifestations revealing parental alienation syndrome.

1. **Campaign of rejection, defamation.** The beautiful times experienced with the rejected parent are almost completely repressed. He/she is denigrated without any embarrassment nor feeling of guilt. He/she is described as someone who is wicked, dangerous even: he/she is often called a 'brute'. The description triggers important internal tensions in the child. When asked for examples, the child is often unable to concretize his presentation and replies: "I know that's how it is".
2. **Absurd rationalization.** To legitimize his/her hostile attitude, the child produces irrational and absurd proofs that have no real relation to the actual experiences. Daily events serve as explanations: 'often he/she spoke too loudly' or 'he/she did not dress me warmly enough', or 'he/she always wants us to say what we want to do'... etc.
3. **Absence of normal ambivalence.** All relationships between human beings are ambivalent: I like some aspects of a person while I dislike other aspects. In these cases, one parent is only good, the other is only bad. This is characteristic of the borderline personality disorder; one can wonder if it is not a possible future development (due to the massive and exclusive use of severance as a defense mechanism).
4. **The manipulating parent's reflex of taking position.** If one sees the child with both his/her parents, he/she will, without any hesitation, take a position in favor of the parent he/she lives with, often before the latter has expressed him/herself. In such situations, he/she is incapable of concretizing his/her reproaches when he/she is invited to do so.
5. **Extension of the hostilities to the whole family and to the people associated with the rejected parent.** Without plausible motive, the grandparents, friends, relatives of the rejected parent, with whom the child once had warm and cordial relations, are brutally rejected with the same hostility as the rejected the parent him/herself. The explanations invoked to justify this behavior are all just as absurd and distorted.

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6. **The phenomena of his “own opinion”.** The parent with whom the child lives, particularly emphasizes the child’s “own will” and “own opinion”. From the age of three or four, the children know for a fact that all that is said is their own opinion. Every manipulative parent is proud of the independence of his/her children and their courage to say what they think. Children are often asked to tell ‘the truth’. It is certain that they will give the expected answer, because no child can risk disappointing the parent who takes care of him/her and on whom he/she depends. At this precise point, the consequences of manipulation become manifest. Children unlearn to trust their own perception and to express it. They are incapable of deciphering and recognizing as such, the contradictory messages that come to them: ‘go with your father/your mother’ (verbal message) ‘but do not dare to go with him/her’ (non-verbal message). This kind of “double link” message makes the child crazy.
7. **Lack of guilt as a result of the alleged cruelty of the opposed parent.** These children have no sense of guilt, because they presume that the rejected parent is cold and insensitive, that the loss of his/her child does not hurt him/her and that he/she deserves what happens to him/her... At the same time, they express financial claims and demands without any scruple. Convinced they are demanded justly, they show no gratitude.
8. **Adoption of “contrived scenarios”.** Often, the child relates grotesque scenarios and reproaches that the adult person he or she lives with has expressed and which he/she takes over on his/her own behalf without ever having observed or experienced them with the other parent. You just need to ask, ‘what do you mean by that?’ to find that the child does not know what he/she is talking about.

The intensity and expression of symptoms may vary. Especially in the low form where all the symptoms listed are not evident in all children. Three clinical forms are distinguished: low, medium and severe. This distinction is important when it comes to applying the required type of legal and psychological interventions. In case of low intensity all symptoms are not necessarily manifest. When they are present, their degree is low, and the parent-child relationship is still functional. In case of medium intensity all symptoms are found and there are already considerable problems with visiting the “other parent”. However, as soon as the child is with this other parent, he/she soon calms down and enjoys the visiting time he/she spends with him/her. In case of severe intensity, the manipulative parent shows a total lack of understanding: the relationship has been definitively and radically broken or is at risk of this.

Generating a parental alienation syndrome should be considered an ‘emotional abuse’. Destructive effects, which can have lifelong impacts on the child’s personality, should be assessed as being as serious as those committed by sexual abuse.

Parental alienation syndrome produces a systematic confusion in the child’s perception of him/herself and of others. The affected child learns to be wary of his/her own feelings and perceptions. He/she depends, for better or worse, on the goodwill of the parent who programs and manipulates him/her. He/she loses the sense of reality of his/her own limits. His/her identity is deeply shaken. It becomes indecisive and fragile. The consequences are a negative estimate of oneself, a lack of self-confidence and a profound insecurity. When confronted with such a person, one has the impression of being in front of a chameleon who says “yes” and thinks “no”.

Subjected to a strong conflict of loyalty, the child learns to adapt to the expectations of others: he/she is incapable of clearly developing his/her individuality, his/her autonomy. Serious, often almost insoluble personality disorders occur: the phenomenon of “false self” develops. This phenomenon is found in eating disorders, in drug addiction. In “his/her affective behavior”, the child acquires extreme models

of submission and domination. As he/she has experienced that love and emotional contact can also be abused and can be used to control and manipulate, later it will be difficult for him/her to allow intimacy and closeness, lest he/she would again become the victim of manipulations destructive to his/her identity.

Depending on the intensity of the syndrome, the child's personality will be at least aggrieved and, at worst, ruined. In the most serious cases, psychiatric illnesses may develop: addictions, psychosomatic diseases, borderline conditions, depressions, anxiety disorders and sexual deviances. In less serious cases, the apparent consequences are not very spectacular, but they are nonetheless detrimental to the quality of life of the persons concerned.

The reason why psychological or narcissistic abuse is often hard to identify, is that it does not seem to occur with the intention of doing harm, but it takes on the appearance of love. Due to its serious and lengthy consequences, however, it is as intolerable as the other forms of abuse from which children need to be protected.

Parental alienation on one side, systematic isolation of the victim on the other, each universe presents these specific characteristics. Nevertheless, what is always present at the heart of psychological violence, is the cycle of violence. Difficult to grasp, it evolves through the complexity of relations and takes advantage of an unapprised public to undermine relationships. It is the malicious heart of psychological violence. It is time it is known by the law, recognized by judges, investigated by doctors, and that it becomes a common term of reference for all, so that it can quickly be countered. Strategies of salvation in the face of psychological violence exist, but they are based on knowledge of the cycle of violence and on techniques that allow it to be halted.

THE AUTHORS

“I wasn't always like that. My father was violent, never physically, but bad-tempered and often verbally violent”.

It is often the reproduction of a family pattern which underlies the behavior of perpetrators of psychological violence. The authors generally relate patterns experienced during childhood, violence suffered, and also deep suffering induced by the premature death of one of the parents, abandonment, or exclusion. The few authors who agreed to be interviewed admit to feeling strong jealousy towards their victims, as well as the need to be their focus.

The violence is described as pure impulses but, at the same time, as the culmination of a mental process of self-excitement, “I was building up the idea”. It is a deep and unstoppable impulse, which the author admits often being conscious of. He/she is able to recognize that another mode of operation is possible, but he/she chooses to follow his/her impulse. This “decision” to pursue its violent purposes is a conscious one.

The few authors (men and women) who agreed to talk about the subject, all relate having put the other on a pedestal at the beginning of the relationship. But very quickly the kindness, the availability of the other, his/her goodwill disturbed them, as if these feelings frightened them. Frightened to commit and to be obliged to do the same. ‘If someone is nice to me, I will be obliged to do the same, which will then oblige me to see how small I am. I do not accept myself and therefore I cannot accept others’, relates one of the interviewees.

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Among the authors interviewed, half of them had agreed to consult a professional. They confessed it had taken them time to take this decision, but that they weren't 'ashamed' of having sought and obtained assistance so that a real change could occur. In general, they regard this violence as a problem 'internal' to the relationship, that is, only linked to the relationship with the victim.

No author is able to remember what happens at the moment violence bursts out, nor at what point it stops. A kind of relief gets hold of them and they let go. They admit that, immediately after the fact, they are unable to realize the harm that has been caused.

Narcissistic Perversion

Narcissistic perversion is a behavioral disorder recognized and listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM).

Through dominant/dominated relationships, which they excel in creating through mental manipulation and thus psychological violence, narcissistic perverts are at the forefront of the perpetrators of psychological violence. They use the family, professional or amorous bond to subvert the other. They need this closeness to exert their grip and will not allow their victims to distance themselves from them.

The narcissistic perverse disorder is an organized way of defending oneself from all internal pain or contradiction and of expelling them to be hatched elsewhere, while at the same time overvaluing oneself, at the expense of others, and this, not only without difficulty, but with enjoyment. The object of narcissistic perversion is interchangeable: nothing more and nothing less than a puppet. These beings, men and women, are cold internally, they do not know guilt, assume no responsibility and do not hesitate to blame others. Their values, feelings and behavior change, depending on the people and the context around them. Outwardly they are amiable and can feign compassion and sympathy. They are seducers and, if necessary, can be punctually very helpful, especially if it allows them to achieve their goals, often to the expense of others. They conceive the relationship only under the dominant/dominated register and do not take into account the needs, desires or feelings of others. Except to use them in order to manipulate their victims, isolate them and get them to do what they want.

They are egocentric and liars. Generally skillful with speech, they widely use the double sense of words to manipulate the other, position themselves as victims to get sympathy or voluntarily make the other feel uncomfortable. Even if they have no values of their own, they use the morals and values of others to satisfy their needs and achieve their aims. They do not endure criticism, yet they constantly criticize. They question the qualities of others, denigrating and judging them. To valorize themselves, they feed on the image of their victims: the more they denigrate them, the stronger they feel. They may put forward seemingly logical reasons to justify their acting out, they can be jealous and unfaithful.

Often misinterpreted, the word "pervert" comes from the Latin *perverto*, which means inverting, turning around, turning upside down. This notion of reversal, of upheaval explains that the basis of the psychological grip passes through a constant wish to confuse, to confound by using all the acts of psychological violence described above.

As soon as they feel anxiety, this anxiety quickly inhabits the other. Through mechanisms which are their own, they make others bear what should be their own rage, their own fears, their own guilt.

The cyclical process, previously described, is regularly found in the behavior of narcissistic perverts. All phases are present and come out reinforced by the manipulation which they are capable of.

In particular the phase of excuses (pretext), where guilt takes shape through “paradoxical communication”. Paradoxical communication leads the victim into a maze of contradictory information that will prevent him/her from distancing themselves, thinking and reacting healthily. “Paradoxicality” leads to a blockage of acts, thought, feelings and the perception of reality. Paradoxical injunctions prevent correct mental processing, and the subject, who is the victim of this if he adheres to it, gradually loses sense of reality.

This builds and strengthens the victim’s sense of inadequacy, encloses him/her in his guilt and thus in the hold.

SOLUTIONS AND RECOMMENDATIONS

The Consequences for the Victims. Recovering from the Hold

The consequences for the victims are numerous and their degree of importance is linked to the history and the physical and intellectual abilities of each one. Violent assaults and denigration followed by seduction do not allow any human being to react healthily. Sometimes confusion is such that any logic becomes null and void. One quickly finds oneself in a state of constant vigilance, one feels danger without being able to identify it.

In a context that was considered safe, the individual’s markers, his/her ability to control events, are seriously at risk of being challenged. Someone who is a victim of psychological violence is a psycho-traumatized person who may be in a state of profound vulnerability.

The psychosomatic approach provides an interesting interpretation for the analysis of these phenomena. The psychosomatic view is an approach to medical theory and practice in which the structure and functioning of the psyche are considered to be fundamental co-factors in health or disease.

At the center of the psychosomatic function is excitement, i.e. the physiological process. This excitement of instinctual and somatic nature is at the origin of biological functions, behaviors, and psychic functioning. Within the psyche it produces affects (cingulate cortex) that link to mental representations (frontal cortex). This transformation of somatic instinctual excitement into psychic productions is called mentalization process. Thus, any variation in the rate of excitement associated with disturbances of the individual’s security system can only be discharged in three ways: via the psychic path, the behavioral path and the somatic path.

If the process of information development (psychic path) is compromised in the presence of emotions such as fear or guilt, and if, in the face of a real or imagined danger, the instinctual action fight or flight is blocked (behavioral path), the excitement has only one option: the somatic path.

From a biological standpoint, two types of adaptive responses are possible: the specific response of a functional response (horripilation is a reaction against external cold) and a non-specific response, the General Adaptation Syndrome (GAS).

Psychological Violence

The GAS is the set of physiological, programmed, phylogenetic, mechanisms, designed to provide the individual with the necessary abilities to cope with potentially traumatic new situations. Biochemical changes, which have been induced but are not being used for this purpose, lead to pathological manifestations. The disturbances appear either through excessive response or through failure of the physiological adaptation systems. Between stimuli and somatic physiological reactions, intervenes the action of complex brain structures and functions, among which the limbic system occupies a central place.

The GAS has been described in three phases: alarm response, adaptation phase, exhaustion phase; phases which are assumed to be distinct and successive.

Others studies have established a relationship of greater synchronicity between the elements “alarm” and “adaptation”. It seems there are two systems: the alarm system (essentially nervous) and the defense system (essentially hormonal), which corresponds to the adaptation phase.

Verbal assaults, humiliations, threats and any psychological violence, are potentially traumatic, depending on the state of the defensive system of the subject who undergoes them. They are characterized by exposure to a destabilizing situation which persists. In this case the duration is a determining factor. The victims regularly complain about lower back pain, problems with the digestive system and sleeping disorders.

The list is far from exhaustive when one considers that fear induces a mobilization of the energy resources needed to escape or attack, due to an increase in the heart rate, and a defensive postural withdrawal.

This deteriorating state of health reinforces the loss of self-esteem, the image that the person had of him- or herself has changed. The consequences, both physical and psychological, are destined to worsen if there is no adequate accompaniment and care.

To build an identity, each individual must form strong internal markers and possess effective defensive mechanisms, to protect themselves from the outside world. When a person is a victim of violence, he/she is reduced to helplessness. The individual's markers, in a world that was considered safe, his/her ability to control events, are seriously challenged.

With no tools to cope with it, many victims deny and trivialize what they are experiencing. By hiding in silence, the victims suffer, sometimes for many years, from psychosomatic disorders.

In order to reconstruct him/herself, the hurt individual must once again take his/her life in his/her own hands and be the instigator of his own change. He/she must also be able to make sense of the events he/she endured to overcome them as quickly as possible.

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KEY TERMS AND DEFINITIONS

Cycle of Violence: Framework described by Lenore Walker in her book that explains the construction of psychological hold.

Directive: EU legislative text establishing goals to be attained by the European Member States.

Emotional Anchorage: Establishment of an association between an emotional and external stimulus.

Guilt (Feeling of): Feeling of fault experienced by a person, whether it's real or imaginary.

Manipulation: Obtaining from someone, by a misleading statements, a behavior that it would not have been spontaneous.

Neurovegetative: Nervous system that regulates functions of the viscera and maintains vitals fell: respiration, circulation, digestion, excretion.

Psychosomatic Medicine: Branch of medicine that investigates the links between physical disorder and psychological factors.

Phylogenetic: From phylogenesis that means evolution of the species, this term describes diseases progression.

Chapter 5

Applying Fault Trees to the Analysis at the Minimum Age for Sexual Consent in the Criminal Law of México

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ABSTRACT

Children and adolescents have the enjoyment of sexual and reproductive human rights, and when they have reached the minimum legal age for sexual consent, they acquire the right to exercise it. In the world this age, although supported by laws, is fixed by several factors, among which the cultural one stands out. Mexican criminal legislation punishes adults who have sexual relations with minors who are not of that age with the offence of rape because of the serious effects it has on their dignity and sexual health. On average, 76% of the penal codes of the country's federal states stipulate the age between 12 and 14 years. It is argued that this age, and in particular the first, lacks effectiveness in protecting as a legal asset the free development of the personality in its aspect of sexual health, so it is argued based on the theory guaranteeing human rights, the need to establish it at least 15 years. It analyzes the state of legislation in Mexico based on the failure trees.

INTRODUCTION

The vulnerable condition of children and adolescents makes them subject to various types of violence, such as sexual violence, which has serious effects on sexual and reproductive health. The criminal law, through the offence of equal rape, is responsible for preventing, dealing with and punishing conduct that

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threatens the sexual health of minors and jeopardizes their human dignity. This crime protects as legal property the normal development of the personality in its aspect of sexual health. The passive subject of the crime is common and indifferent, so the victim can be of any gender. The conduct can be carried out by any person, because the active subject is common and indifferent. When committed by minors, Mexican criminal legislation establishes that persons between the ages of twelve and less than eighteen are unimputable and must be tried in accordance with the National Law on the Comprehensive Criminal Justice System for Adolescents (*Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes*). Persons over the age of 18 are imputable and are tried in accordance with common criminal legislation. This article analyzes the crime of equal violation established in the common criminal legislation, therefore, focuses on adults, without ignoring that when the crime is committed by minors, an issue arises that in itself contains a different problem.

European countries set the minimum legal age for sexual consent between 15 and 16 years, in Latin American countries it is 14 years, and in Mexico the average is between 12 and 14 years. The low age of sexual consent that exists in Mexico's criminal legislation is one of the factors that has contributed to the increase in sexual health problems and sexual violence, which affect the human rights of the vulnerable group of children and adolescents.

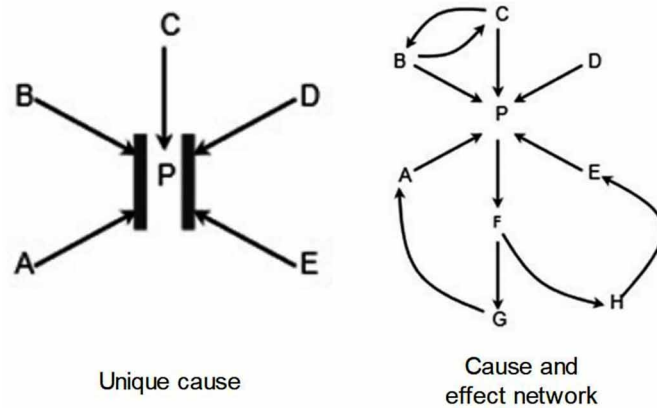
Taking as a reference the age of 12 years, the foregoing means that, if adolescents do not have the minimum legal age for sexual consent, even if they give their consent to a person to have sexual relations, the criminal law, through the offence of *equal rape*¹, punishes it in order to protect the normal psychosexual development of the minor as a legal asset. When adolescents have reached the minimum legal age for sexual consent, criminal law recognizes their right to sexual consent, and therefore, to an active sexuality in order to have free and healthy sexual relations with the person of their choice, without sexual relations constituting any crime.

This study analyzes the minimum legal age for sexual consent established in the crime of equal rape against minors, through the approach of the theory of criminal law and the theory guaranteeing human rights. The purpose is to argue the need to raise this age to one that is adequate to protect the dignity of this vulnerable group. It is stated that the biological criterion that fixes this age at 12 years lacks due efficacy, so it should be abandoned to adopt a criterion that considers the physical, psychological and social capacity of adolescents. The characteristics of the sexual life of adolescents in Mexico are studied, and based on the fundamental right of the best interests of the child, it is proposed that the age of 15 provided for in the Federal Criminal Code is the ideal age for the country's states to reform their substantive criminal code in a homogeneous manner, in order to effectively guarantee the human right to the free development of the personality of adolescents. The penal reform in the sense indicated, would have a national impact by contributing significantly to eradicate the problem of sexual health and sexual violence that afflicts the vulnerable group of adolescents.

This study explores the construction of fault trees to legislate a minimum legal age for sexual consent in the case of Mexico. The fault tree technique shows a multifactorial proposal for establishing laws through scenario setting and their respective analysis, in order to determine possible legal gaps that are susceptible to creation and/or improvement. This type of technique is a systematic and systemic model for acquiring information about a crime, seen as a system. The information obtained can be used in comprehensive legislation. Fault trees is a technique used mainly in risk analysis of socio-technical systems (enter references), however, there is no evidence in the literature review of the application of the technique to the case of a "legislative system", i.e. risk analysis in systems that have a substantial content of human activity, i.e. crime, public disorder, etc.

Figure 1. The difference between fault trees and other methods of risk analysis

Source: Prepared by the authors.



BACKGROUND





Fault Trees

Traditionally, systems failure diagnostic approaches focus on the immediate causes of an undesired event. These types of events are known as active failures and can be considered as human errors or violations that have an immediate impact on the integrity of the system (Bevilacqua and Ciarapica, 2018; Bandeira, Correia and Martins, 2018; Shappell, et al., 2007; Uğurlu, Yıldırım and Başar 2015). Researchers have found that the human factor is one of the key factors contributing to the occurrence of major crimes and accidents. However, in recent years the understanding of the nature and importance of organizational errors caused the latter to also be considered in an attempt to reduce the frequency of accidents and crimes. Thus, the mistakes of the organizations themselves are named as latent failures

Frequently, these failures are made during the design, administration and communication stages. They may also be deficiencies in the structure of the organization (Williams et al., 2017; Martin and Siehl, 1990). It is clear that studying and addressing organizational failures is as important as focusing on the human or technical causes of errors. In this sense, the recognition that all events have multiple causes is fundamental to the study of social systems failures. This means that each event is the result of a set of causal factors, that is, each event has multiple origins. The undesirable event (an injury, fatality, or other) is not a unique cause-effect relationship.

As shown in Figure 3, event P has causal factors A, B, C, D and E. According to the approach of traditional methods (“hard” systems) A, B, D and E must be kept constant in order to find the effect of factor C. On the other hand, the failure tree takes into account the fact that the phenomenon is explained by the action of several causes. A failure tree is an analytical procedure that allows to determine causes and factors that contribute to generate an undesired event. This tree focuses on the central event and provides a method for determining the causes of an event. This unwanted condition constitutes the upper event in a fault tree diagram, built for a given system, and generally consists of a total or catastrophic fault. Careful selection of the main event is important to the success of the analysis. If it is too general,

Table 1. Basic Symbolology of a Fault Tree

Symbol	Description
	Main or intermediate event: an event that occurs due to one or more causes acting through the "and" and "or" gates.
	Basic event: the circle refers to that event that has been researched at its most elementary level.
	Gate and: the generic (intermediate) events within the tree are broken down into causal elements, using a hierarchical logic that unites causes with logical gates, "and" and "O". In this case, all immediate lower events must be met.
	Gate or (O): Generic (intermediate) events within a tree are broken down into causal elements using a hierarchical logic that unites causes with logical gates, "Y" (and) and "O" (or). In this case, at least one of the immediate lower events must be met.

Source: adapted from Vasely et al (1981) y DOE (2008)

the analysis becomes unmanageable. If it is too specific, the analysis does not offer a sufficiently broad view for the study of the system.

Fault Tree Conventions

For the scope of this research, this section introduces the reader to the conventions and symbology (table 1) used in the analysis of fault trees in a basic way and without delving into aspects of the mathematical description of events through probabilistic methods, jointly describing the steps of construction and analysis (see table 1).

To understand the application according to the above symbolism, an example of an unwanted event called "fire" is presented below (see figure 2).

In the fault tree, the events follow a hierarchical system that reflects the structure of the graph. For this reason, the construction of the graph requires the participation of experts in the scenarios that need to be proposed (DOE, 2008; Johnson, 1980). Likewise, the analysis is carried out from the top/bottom and from the left/right. In the failure tree analysis the causal components are known as input events and their effect is called the output of the (main) event. For example, the three input events: "Ignition Source", "Fuel" and "Oxygen" produce "Fire" as an output event. Where all inputs are necessary to produce the results, as is the case with fires, the input events are added through gate "and" to generate an output event. If only one input event is sufficient to produce the result, the gate "or" is used. To keep a specific control of the location in an event, these can be numbered or coded to facilitate their analysis.

This method, explained in previous paragraphs, will help to make the diagnosis of the problem addressed in the following sections of this chapter.

Human Rights to Sexual and Reproductive Health

The modern democratic rule of law is characterized by the fact that the political constitution has human rights as its substantive content, understood as all those rights that are naturally inherent to human dignity. Since these rights are essential to ensure the full development of the person, they accompany him or her throughout his or her existence, so that they remain, are enjoyed and enjoyed in an absolute and unavailable manner. In the modern State, human rights are recognized and guaranteed through the positive legal order, that is, they are positivized as fundamental rights in constitutions and international treaties (Ferrajoli, 2011). Ferrajoli (2004) defines fundamental rights as all those subjective rights that belong

Figure 2. Example of hierarchical logic of the fault tree
 Source: adapted from DOE (2008)

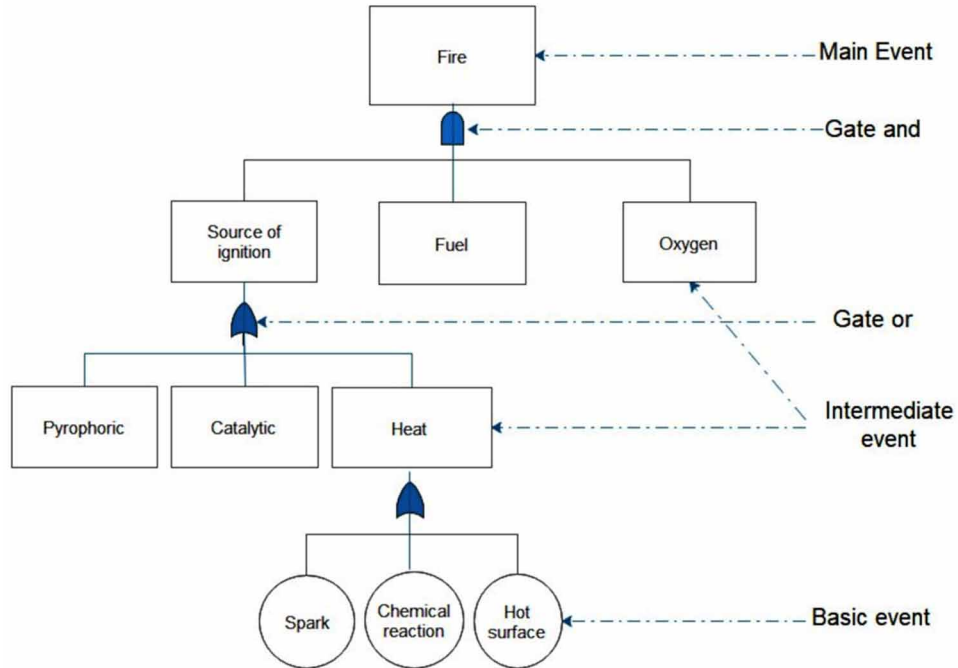


Table 2. Proposed Steps for Conducting a Failure and Potential Risk Assessment

Step	Description
I.- Understanding of the problem	The knowledge of the possible scenarios of failures of the systems on the part of experts is carried out in this step. Together, relevant information is collected to properly structure the failures.
II.- Select main event (fault).	When using barrier analysis, you must select an event, a scenario, and define the main event. This is an event that occurs due to poor risk management, for this case defined as child pornography. The approach should be made with minimal words and provide a clear understanding of the problem. The type of gates linked to the event (“and” or “or”) must be defined.
III.- Build the intermediate events until the basic events arrive.	To define with the help of experts and through scenarios the intermediate events inside the tree, decomposing them in their causal elements using a hierarchical logic and joining the causes with logical floodgates, this until arriving at the basic events. In construction, the type of gate that requires the result must always be taken into account.
IV.- Evaluate risk factors.	The last step in qualitative analysis is to explain the possible failures that led to the unwanted event. This allows conclusions to be drawn and actions to be taken in the face of possible scenarios. The form of presentation of the results varies depending on the objective of the application of the failure tree, it can be from a risk management manual to the creation of laws for this case.

Source: Prepared by the authors

universally to “all” human beings insofar as they are endowed with the status of persons; “subjective right” being understood as any positive expectation (of benefits) or negative expectation (of not suffering injuries) ascribed to a subject by a legal norm; and “status” as the condition of a subject established by a positive legal norm, as holder of legal situations and/or author of the acts that are the exercise of these.

Mexico recognizes human rights in Article 1 of the Political Constitution of the United Mexican States. This article, in connection with the ninth paragraph of article 4 of the Constitution, is the foundation of the human rights of children. It establishes that in all decisions and actions of the State, the principle of the best interests of the child shall be observed and complied with, fully guaranteeing children’s rights to healthy physical and psychosocial development. The law regulating this paragraph is the General Law on the Rights of Children and Adolescents (hereinafter LGDNNA).

Minors have legal incapacity as a restriction on legal personality, so they exercise their rights or incur obligations through their parents or guardians. The age of majority is reached at the age of 18, which gives the individual the right to freely dispose of his or her person and property.

The Convention on the Rights of the Child (hereinafter CRC) in article 1 defines children as every human being below the age of 18 years. It is necessary to mention that these minors, regardless of their marital, family, legal status, etc., preserve the human rights of children (García, 2010). Children are protected by human rights that universally belong to all people. But due to lack of maturity in their physical, psychological and social capacities, they find themselves in a situation of vulnerability that also requires special legal protection (Beloff, 2006), which is what gives legitimacy to the legal system of children’s human rights (González, 2008).

The CRC recognizes children as subjects of international law, with the obligation of States Parties to take the necessary measures to provide social and legal protection for children (Liebel, 2011). Children’s human rights include the best interests of the child, progressive autonomy and the principle of priority (Gonzalez, 2009); and guiding principles for their interpretation include the best interests of the child; the right to life, survival and development; non-discrimination; and the right of the child to be heard and taken into account.

Legally, there is a distinction between children and adolescents; the former are those under 12 years of age, and the latter are those between 12 and under 18 years of age (LGDNNA, art. 5). The World Health Organization (hereafter WHO, 2016) points out that adolescents develop in two stages: a) early adolescence from 10 to 14 years, in which they need a safe environment and the support of adults in the family, school and community, as well as not to perform functions reserved for adults; and b) late adolescence from 15 to 19 years, in which they obtain greater confidence and clarity in their identity and their own opinions. In the opinion of Issler (2011), it is between the ages of 14 and 16 that the somatic growth and development of adolescents has virtually come to an end.

Adolescence is a stage of transition to adulthood, which is marked by biological, cognitive and psychosocial changes, reflected, among others, in transformations of sexuality (Committee on the Rights of the Child. General Comment No. 4 (2003), para. 2.) The WHO (2002) defines it as a vital function of the human being that includes sex, sexual and gender identity, affective bonding and love, eroticism, pleasure, reproduction, thoughts, desires, beliefs, values, behaviors, practices, and interpersonal relationships.

There are two fundamental aspects of adolescent sexuality: sexual maturation and reproductive maturation. The first occurs naturally at puberty, which is accompanied by psychosexual development, which generally occurs due to family, social, cultural, educational, and economic factors. In a complementary manner, reproductive maturation arises, which is when the adolescent reaches the nubile age or procreative age, which naturally implies the human right to marry and found a family (Universal

Declaration of Human Rights, art. 16.1). In any case, legal regulation cannot suppress the natural right to join a couple and procreate (Fornagueira, 2012).

The sexual and reproductive health of people is conceived as a state of physical, mental and social well-being (WHO, 2006), while the former includes well-being and personal relationships, the latter has to do with the reproductive system (Fourth World Conference on Women, 1995, paragraph 94). People universally have the human right to sexual health and reproductive health (Rodríguez, 2014), since sexuality is proper to human nature, and reproduction is a manifestation of freedom, will and responsibility (Pérez, 2002).

Legally, minors have the capacity to enjoy sexual and reproductive rights, and at a certain age they acquire the capacity to exercise them. The sexual and reproductive rights of minors are passive and active rights: through the former they receive protection from the State; and through the latter they obtain recognition of the ownership of these rights (González, 2011). In relation to passive rights, children and adolescents have the right to receive benefits from the State, because due to their vulnerability they need special protection measures that guarantee their sexual and reproductive health (LGDNNA, art. 50).

Regarding the positive sexual and reproductive rights of children and adolescents, they are conceived as subjective rights of action and decision (Liebel, 2011), which implies that minors have the right to decide matters related to sexuality and reproduction (Isler, 2010). For the enjoyment and exercise of these rights, they are legally recognized as having the right to promote their sexual and reproductive health, with the capacity of reason and conscience to access ideas of all kinds, create their own judgement, express themselves freely and be responsible (Mesa, 2006).

Sexual Violence Against Children and Adolescents

The vulnerable condition of children and adolescents makes them the object of child violence, understood as any conduct generated in the family environment, in the community, or that is tolerated by the State, which results from superiority and/or abusive exercise of power, with the purpose of producing physical, psychological or sexual harm, which affects the normal growth of the minor (Pérez, 1999).

Sexual violence against minors is of various types, such as sexual abuse, prostitution, sexual exploitation, pressure to have sexual relations, premature sexual relations, among others. The aforementioned factors have effects on the sexual and reproductive health of adolescents (Juárez and Gayet, 2005), for example, contracting HIV/AIDS and sexually transmitted diseases, psychosocial and emotional disturbances, unwanted pregnancies, illegal abortion, premature births, infant and maternal mortality, suspension of studies, lack of job qualification, problems of insertion into the labour market.

In Mexico, the seriousness of this problem has been recognized by the government and international organizations (National Strategy for the Prevention of Teenage Pregnancy, 2015; Committee on the Rights of the Child. CRC/C/MEX/CO/4-5, 2015, paras. 49 and 50). The problem of sexual violence against children must be addressed from different disciplines (Valenzuela, 2013), one aspect of which is criminal law. The criminal law is responsible for preventing, dealing with and punishing conduct that violates the sexual health of minors and jeopardizes their human dignity..

Criminal law protects people's sexual freedom through the crime of generic rape. The Federal Criminal Code defines this offence in article 265, which reads as follows: "A person who, by means of physical or moral violence, makes intercourse with a person of either sex commits the offence of rape; he or she shall be imprisoned for a term of eight to twenty years. This crime is characterized by the absence of will of the passive subject, and the overcoming of this absence through the use of physical or moral violence

by the active subject (Caro, 2002). Sexual freedom is understood as the legal power to consent or not to sexual acts with the person determined by the will. This crime threatens not only sexual freedom and security, but also, due to the psychological affectation it produces, damages the normal psychosexual development of people (Amuchategui, 2015)

Minimum Legal Age for Sexual Consent

In order to protect adolescents from sexual abuse, criminal law establishes the minimum legal age for sexual consent, understood as the age below which, in accordance with the law of each country, it is prohibited to perform acts of a sexual nature with a minor (European Parliament and Council Directive 2011/92/EU, 2.b.). The minimum age of sexual consent is aimed at *protecting adolescents from abuse and the consequences of not being fully aware of their rights and development at the time of initiating early sexual activity* (UNICEF. Minimum age for sexual consent). Criminal law establishes this age through the offence of equal rape, in order to safeguard as a legal asset the normal development of the personality in its aspect of sexual health. The purpose of this crime is to prevent, address and punish conduct that threatens the sexual health of minors and jeopardizes their human dignity. In this crime the question of consent is irrelevant, if adolescents do not have the minimum legal age for sexual consent, sexual intercourse is part of rape.

Taking into account that sexuality is not only about reproduction (Costa de Oliveira, 2009), but also about having pleasurable and safe sexual relations, without coercion or violence, when adolescents have reached the minimum legal age for sexual consent, criminal legislation recognises their capacity to create their own judgement and to be responsible for deciding and exercising their sexual and reproductive rights (Isler, 2010). In this sense, they have the right to an active sexuality to have free and healthy sexual relations with the person of their choice, with the freedom to act sexually without obligation (Pavón and Vargas, 2000), that is, without the sexual relation constituting a crime for the person of their choice.

In the crime of equal rape against minors, the conduct can be performed by any person, that is, the active subject is common and indifferent. In relation to age, this crime can be committed by minors or by adults. In the first case, Mexican criminal legislation establishes that persons between the ages of twelve and less than eighteen years of age are unimputable and must be tried in accordance with the National Law on the Comprehensive Criminal Justice System for Adolescents (*Ley Nacional del Sistema Integral de Justicia Penal para Adolescentes*). Persons over the age of 18 are imputable and are tried in accordance with common criminal legislation. This article analyzes the crime of equal violation established in the common criminal legislation, therefore, focuses on adults, also considering that the study of this crime when committed by minors, is a subject that in itself contains a problem with its own characteristics.

International bodies do not propose a specific age for States parties to set the minimum age for sexual consent, but they do refuse to do so at a very low age. They recommend an age that is appropriate to the physical, mental and social capacities of adolescents. Criminal legislation in European countries provides for the minimum legal age for sexual consent between the ages of 15 and 16, while Latin American countries set the average age at 14.

In Mexico, the different states regulate this age through the crime of equal rape, which protects as a legal asset the normal psychosexual development, a legal asset unavailable due to the damage it causes to the sexual health of children and adolescents (López, 2008). For example, article 154 of the Criminal Code for the State of Morelos provides as follows: *The penalty provided for in article 153 shall be ap-*

plied when the agent makes intercourse with a person under twelve years of age or who does not have the capacity to understand, or for any reason is unable to resist the criminal conduct.

If the active subject lives with the passive subject because of his family, his teaching activity, as an authority or administrative employee in an educational institution, he shall be sentenced to thirty to thirty-five years in prison and shall also be removed, if applicable, from office.

As of November 2018, criminal codes had the following ages set as the minimum age for sexual consent: older than 12 years: 8 states and the Mexico City Criminal Code; older than 13 years: 1 state; older than 14 years: 15 states; older than 15 years: 6 states and the CPF; older than 16 years: 1 state.

The total number of penal codes in the country, 27% have the age of 12, occupying the second place. It is underlined that for the purposes of this article, this last age, being the lowest, will be taken as a reference to analyze the effectiveness of this penal guarantee, in order to protect the normal psychosocial development of children and adolescents in their sexual health aspect.

The protection of psychosexual development is due to the scarce physiological, psychic and socio-cultural development of children under 12 years of age, whom the law considers not yet suitable for the sexual life of relationship and for reproduction, as well as for understanding their meaning and transcendence (Thesis: Judicial Weekly of the Federation, Eighth Epoch). The criminal law considers that because of qualitative aspects, these minors lack free discernment about the convenience or not of carnal concubitus, so they are not able to conduct themselves voluntarily in their sexual relations. Since they do not possess the necessary maturity to choose consciously and responsibly between sexual intercourse and abstinence, adults are prohibited from copulating with these minors in order to protect their normal psychosexual development in their sexual health.

Equivalent rape generally contains the following elements. It is a crime that is prosecuted *ex officio* because of the public interest in protecting the sexual health of children as a legal good. In the passive subject, the quality required is “minority age”, which indicates the lack of a minimum legal age of 12 years for sexual consent (González, 2003). Injury to the legal good occurs at the moment when the active subject carries out the copulation, and precisely because of the immediate damage it causes, sexual activity itself is sanctioned. No specific means of commission is required for the active subject to dominate the minor’s will, whether physical or moral violence, seduction or deception, or even certain circumstances or consent, because it does not protect sexual freedom as a legal good (Thesis: XXVII.1o. (VIII Region) 19 P).

Even if these minors give their consent, it has no legal validity, so the active subject’s conduct is equated with rape. The lack of age makes it legally presumed that copulation was carried out through the use of physical or moral violence on the will of the minor, since it is considered that at that age it is impossible to resist psychically and physically lubricious claims of which it rationally ignores their meaning and transcendence. Therefore, it is considered that the antijuridicity of the conduct does not accept causes for justification. Likewise, the intention of the agent to take advantage of the sexual inexperience of the passive subject, can only be with malice, that is, he knows and wants the conduct (Reynoso, 2010), being the only cause of inculpability that the active subject is in an invincible error on the age of the minor.

When the minors reach the minimum legal age for sexual consent, the criminal legislation considers that they are mature enough to understand for themselves the convenience or not of the carnal concubitus. It is then that criminal law recognizes their capacity for the free exercise of their sexuality, that is, the freedom to act sexually without obligation (Pavón and Vargas, 2000). The sexual relationship of an adult with the consent of a person over 12 years of age is legally permitted and therefore does not constitute a crime, unless taking advantage of his inexperience and necessary judgment (Thesis: 1a. CCXII/2015),

he commits crimes against the free development of the personality of persons under eighteen years of age, such as corruption of persons, pornography, sexual tourism, among others more than those provided for in the Federal Criminal Code.

SOLUTIONS AND RECOMMENDATIONS

Fault Tree for Construction and Analysis

Today's world offers opportunities for criminals to commit crimes, all the more so in the absence of legislation that effectively regulates and punishes wrongdoing. From the perspective of this research, this ineffectiveness is due in large part to the fact that the criminal definition of the minimum age for sexual consent is already obsolete for this new reality in which this crime emerges. In order to protect the free development of the personality of children and the best interests of the child, it is essential to adapt the legal framework, taking as a guide the advances made by international criminal law as embodied in the aforementioned treaties.

Figure 3 shows an approximation of the failure tree of how the legislation in Mexico currently works in the minimum age for sexual consent², coding in red those events that the current legislation does not address or does so in a deficient manner. It is observed that reference is made to laws and their implementation in a deficient manner, because the tree and the research show that the deficiencies in addressing the minimum age of sexual consent. It also does not take into account other factors shown in the figure above. The following paragraphs document the limitations and deficiencies found in the legislation.

International Recommendation to Raise the Minimum Legal age for Sexual Consent

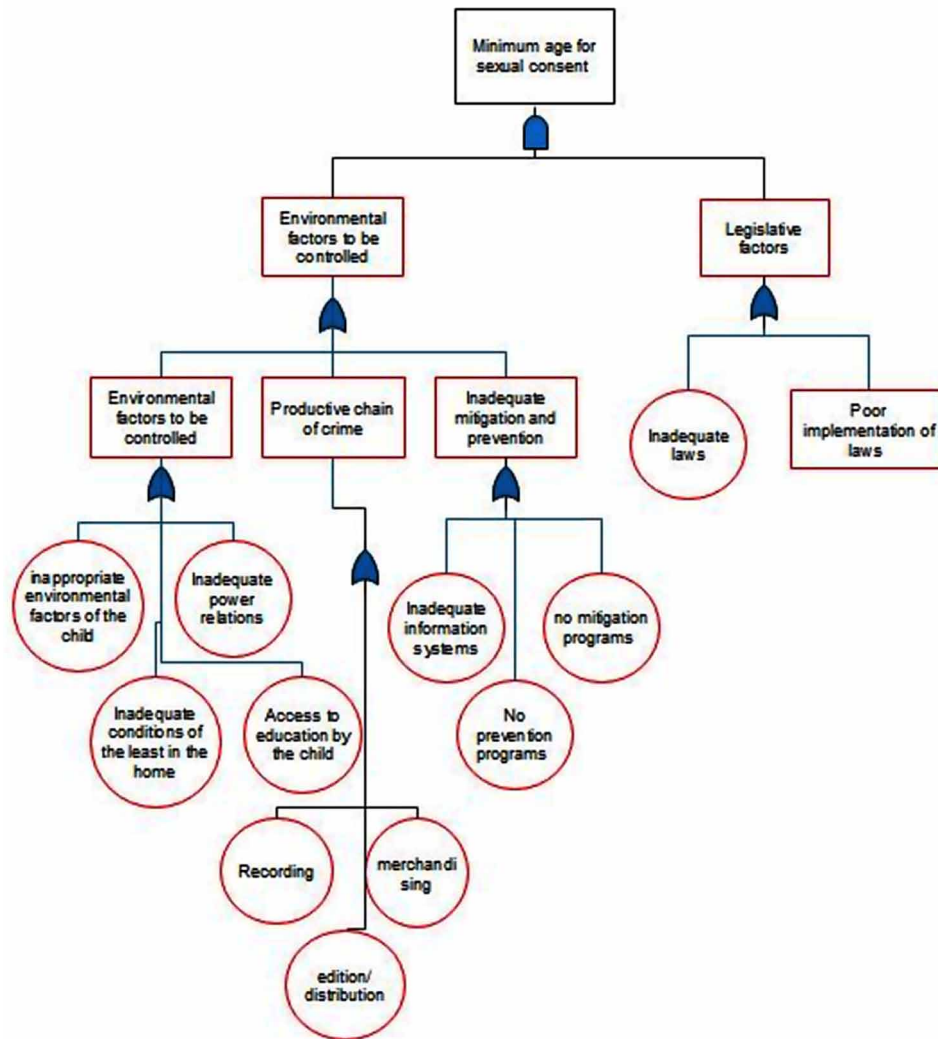
In penal codes that state at 12 years the minimum legal age for sexual consent, the criterion for recognizing people's right to exercise sexual freedom is the biological initiation of sexuality. Various specialists on adolescent sexuality hold the opposite view, arguing that at that age one has the biological capacity for reproduction, but that physical, psychological and emotional maturity has not yet fully developed (García-Piña, 2016), as well as the ability to make responsible decisions about sexuality. Likewise, the sexual knowledge that these minors have is insufficient to assume preventive behaviors in their sexual relations (Caricote, 2009).

When the sexuality of minors is stimulated in a treacherous and advantageous way by adults, it generates feelings of guilt, states of anxiety and even emotional disorders that affect their sexual, physical and mental health. These disorders in the health of children and adolescents indicate that the age of 12 years is too low to make them legally responsible for the free exercise of their sexuality. Therefore, the existing legal framework is incapable of guaranteeing the sexual health, dignity and integrity of children and adolescents (CPF Reforms. Reason Exposition, 2010). Currently, the National Strategy for the Prevention of Teenage Pregnancy indicates that sexual abuse committed against minors has intensified, particularly among the 10-14 age group of women, in whom there is even the probability that the conception is linked to sexual violence (National Strategy for the Prevention of Teenage Pregnancy, 2015).

Applying Fault Trees to the Analysis at the Minimum Age for Sexual Consent in the Criminal Law of México

Figure 3. Approximation to the failure tree for minimum age of sexual consent

Source: Prepared by the authors



Mexico ranks first in adolescent pregnancy among the countries that make up the Organization for Economic Cooperation and Development (OECD), with a figure of 64 pregnancies per thousand adolescents (United Nations Children’s Fund, Mexico). One of the measures that the State has taken to counter this problem is to prohibit marriage and concubinage for minors under 18 years of age. In March 2019, the Federal Civil Code was amended to establish, as in the civil legislation of Mexico’s federal states, the age of majority as a requirement for marriage. This prohibition seeks to avoid the serious effects on dignity and the free development of the personality, the fact that teenagers are mothers at such an early age, have unwanted pregnancies, abortions, family violence, sexual violence, abandonment of studies, lack of employment, etcetera.

However, when adolescents do not meet the age requirement for marriage, they come as an alternative to form a family in a de facto union, the most common form among minors with scarce resources and a higher incidence of pregnancies (National Institute for Women, 2017). The problem described has been addressed by the Committee on the Rights of the Child in the Observations made to Mexico in June 2015 (Committee on the Rights of the Child. CRC/C/MEX/CO/4-5, 2015, paras. 49, 69 and 70), in which the Committee expresses concern at the extent of sexual violence against minors, particularly girls. It is also alarmed by the increase in the number of pregnancies from the age of 12, often as a result of sexual violence. It urges the Mexican State to comply fully with its previous observations and recommendations (CRC/C/OPSC/MEX/CO/1, para. 30 (a-e)), in which it has indicated that it should review and make appropriate adjustments to federal criminal and state legislation.

The Committee on the Rights of the Child directs Mexico (CRC/C/MEX/CO/4-5, 2015, para. 50) to consider General Comments No. 4 on adolescent health and No. 15 on the right of the child to the enjoyment of the highest attainable standard of health. In the first (Committee on the Rights of the Child, General Comment No. 4 (2003), paragraph 9; CRC/C/OPSC/ESP/CO/1, 2007, paragraphs 23 and 24) of these recommends that States parties, when legislating to raise the minimum age for sexual consent, establish one that is suitable for the sexual, physical, mental and maturation development of children and adolescents, taking into account environmental factors that increase their risks and vulnerability. General Comment No. 5 (Committee on the Rights of the Child, paragraph 19) states that article 34 of the CRC obliges States parties to protect children from all forms of sexual exploitation and abuse by undertaking a general and continuous review of their domestic legislation in order to bring it into line with its provisions. In the same vein, the Committee on Economic, Social and Cultural Rights (E/C.12/MEX/CO/4, 2006, paras. 21 and 40) has made Mexico aware of its concern that the legal age of sexual consent of 12 years is very low, and has issued a recommendation to increase this age in federal criminal legislation, as well as in state criminal legislation.

The observations and recommendations made by international organizations to the Mexican State to raise the minimum legal age for sexual consent based on the best interests of the child (Committee on the Rights of the Child CRC/C/MEX/CO/4-5, 2015, paras. 19 and 20) have the character of a binding obligation that seeks to guarantee the effectiveness of the human right of children and adolescents to sexual health (Committee on the Rights of the Child. General Comment No. 3 (2003), paragraph C.11).

It should be noted that the best interests of the child is a threefold concept: (I) a substantive right; (II) a fundamental interpretative legal principle; and (III) a procedural rule (Thesis: 2a. CXLI/2016). Jurisprudence has defined the best interests of the child as follows:

The best interest of the child is understood to be the catalogue of values, principles, interpretations, actions and processes aimed at forging integral human development and a dignified life, as well as generating the material conditions that allow children to live fully and achieve the maximum possible personal, family and social well-being, whose protection must be promoted and guaranteed by the State in the exercise of its legislative, executive and judicial functions, since it is a matter of public order and social interest (Thesis: I.5o.C. J/16, Semanario Judicial de la Federación y su Gaceta, Novena Época).

The best interests of the child imply that the development of the child and the full exercise of his or her rights are fundamental criteria for the elaboration of norms and their application in all orders relating to the life of children and adolescents (Thesis: 1a./J. 25/2012 (9a.)). In view of this principle, the age established by the legislator must be one that is suitable for the stage in which adolescents have

obtained sufficient capacity to exercise their sexuality (Pérez, 2005). While the Committee on the Rights of the Child (CRC/C/OPSC/ESP/CO/1, 2007, paras. 23 and 24) does not recommend a specific age, it rejects the low age of 13, when children are more vulnerable to sexual exploitation. On the other hand, the progressive autonomy of children must be respected and not adjusted to a very high age.

In order to establish a minimum age for sexual consent that does not affect the free development of the personality in its aspect of sexual health, it is necessary to abandon the biological criterion of sexuality in order to adopt a criterion that includes the physical and psychosocial sexuality of adolescents (Martínez, 2000). Adolescents progressively strengthen their cognitive and emotional abilities, as well as a certain conception of morality (Ibero-American Protocol for Judicial Action to Improve Access to Justice for Persons with Disabilities, Migrants, Girls, Boys, Adolescents, Communities and Indigenous Peoples, 2014), which increases their level of autonomy to make responsible, free and informed decisions in the exercise of their sexuality (Thesis: 2a. CXXXVIII/2016). Such progressivity acts as an effective principle in the protection of the sexual and reproductive rights of adolescents (Montevideo Consensus on Population and Development, 2013, paragraphs 12-15).

Criminal Guarantee of the Human Right of Adolescents to the Free Development of the Personality in their Sexual Health Aspect

In Latin America, adolescents exercise their sexuality at an average age of 15 to 19 years (Shutt-Aine, 2003), and contrary to this social reality, most of the penal codes establish the minimum age for sexual consent at 14 years of age. In Mexico, the average age at which adolescents begin sexual relations is 15.5 years at the national level (National Strategy for the Prevention of Teenage Pregnancy, 2015), but unlike most Latin American countries, which, on average, establish in their criminal legislation the ages of 14 and 15 for sexual consent, in Mexico, as in three other countries, the minimum age for sexual consent is still 12 years.

According to the foregoing, there is no correspondence between the age of 15 when adolescents in Mexico have their first sexual intercourse and the age of 12 to 14 established in most of the country's penal codes as the minimum age for sexual consent. Since these codes are far removed from social and legal reality, they lack the necessary effectiveness to guarantee the human right to sexual health of these adolescents (Palacios, 2008). In particular, 12-year-old adolescents are exposed to free and consensual sexual relations with adults, which at this materially age violates their integrity and self-esteem, affecting their dignity, a human right essential for the development of their person (Carbonell, 2015). The human right to dignity is the one that gives rise to all the other rights of persons (López, 2016), since it is of vital importance for the free development of the personality. This right is defined as *the inherent interest of every person, by the mere fact of being one, to be treated as such and not as an object, not to be humiliated, degraded, degraded or reified* (Thesis: 1a. CCCLIV/2014).

The principle of progressivity in the effectiveness of human rights (Cilia, 2015), provided for in article 1 of the Constitution, establishes that the State must do everything possible to achieve continuous improvement (Bolaños, 2015) in people's living conditions. In this sense, the State must strive to ensure that adolescents are protected in their dignity against all kinds of physical and mental violence, neglect, maltreatment or exploitation, including sexual abuse (Thesis: 1a. CCXXXVII/2016). In accordance with the principle of progressivity, the State must legislate to adopt the norm that is more favorable or that grants greater protection to the sexual rights of adolescents.

In observance of the best interests of the child, the State has a positive obligation to guarantee the fundamental right to sexual health of adolescents and its full realization (Thesis: XXVII.3o. J/14), establishing the minimum age for sexual consent at an age corresponding to their physical, psychological and social capacity. To this end, it is necessary to expressly stipulate this guarantee in the norms of positive criminal law.

In accordance with national and international human rights standards, legislators in the various states of a country would have the duty to reform the quality of the passive subject in the crime of equal rape, so that the legal wellbeing of the normal psychosexual development of adolescents is guaranteed (Malo, 2005) at least until the age of 15. The aim would thus be to bring the domestic legal system into line with the norms of international law on the minimum age for sexual consent, as well as to eliminate any norm that is contrary to or that may hinder its full realization (Carbonell, 2014).

Criminal legislation would provide that adolescents from the age of 15 years legally have the degree of physical, psychological and social maturity to understand and freely and informedly exercise their right to sexual consent. In compliance with this criminal guarantee, the organs of law enforcement and administration of justice would be obliged to prevent, investigate and punish the conduct of adults who harm the free development of the personality in its sexual health aspect of children and adolescents under 15 years of age.

The penal reform in the sense indicated, would have a national impact by contributing significantly to eradicate the problem of sexual health and human rights, which the Mexican State has recognized in the National Strategy for the Prevention of Teenage Pregnancy.

FUTURE RESEARCH DIRECTIONS

In general terms, it can be argued that further research is needed on the application of fault trees for different cases of crimes or failures in certain legislation. It is hoped that by conducting such analyses gaps in legislation can be detected and corrected so that crimes such as the minimum age of sexual consent can be prevented.

Similarly, for the minimum age of sexual consent, future work should include: research on the different moments in the process of the analysed failure, from the responsibility of guardians to the appropriate treatment of victims; other directly related “failures” can be identified and investigated (e.g. identity theft); and other approaches to failure analysis could be adopted for more detailed analysis.

This failure needs to be analysed through use as a production chain, where minors are misled and induced, illicit material is recorded and produced, formatted for marketing, for profit, and dividends are obtained.

On the other hand, the diagnosis addressed here only covers the major event concerning *Legislative factors* and specifically, the *Inadequate laws* sub-event . It is necessary to analyze, first of all, the *Poor implementation of laws* (which belongs to the top event; *Legislative factors*) and the events related to *Environmental factors to be controlled* and how all they interrelate with the existing legislation.

CONCLUSION

Under Mexican law, the age at which adolescents can exercise their sexual and reproductive rights is very low. Civil laws allowed minors to marry with parental consent or with judicial dispensation: women at 14 and men at 16. Mexico ranks first in teenage pregnancy among the countries that make up the Organization for Economic Cooperation and Development, and one of the world's top countries. Because of the serious effects that marriage and concubinage have on the dignity and free development of the personality of adolescents, they have recently been banned for children under 18 years of age. In March 2019, the Federal Civil Code was amended to establish, as in the civil legislation of Mexico's federal states, the age of majority as a requirement for marriage. Currently, *de facto* union to form a family is the most common among low-income minors.

The prohibition of child marriage should not be an isolated action of the State; it should be complemented with other measures that guarantee the sexual and reproductive rights of adolescents, such as modifying the minimum legal age for sexual consent. Currently, 76% of the penal codes of the country's federal states establish this age between 12 and 14 years. It is more worrying that 27% of all codes establish the age of 12 years, the age at which adolescents are most vulnerable to violence and sexual abuse by adults.

It is concluded that the biological criteria of the penal codes that set the age of 12 years as the minimum legal age for sexual consent lack the necessary effectiveness to guarantee, through the crime of equal rape, the human right to the free development of the personality in its aspect of sexual health. This criterion should be abandoned in order to adopt the recommendation of the international organizations that propose, as the minimum legal age for sexual consent, that which is adequate to the physical, psychological and social capacity of adolescents.

Based on this biopsychosocial criterion, it can be observed that in Mexico adolescents begin their sexual relations at the average age of 15, when they have reached the physical and psychological maturity to exercise sexual freedom without harming their health. This age is provided for in the equivalent offence of rape punishable under the Federal Criminal Code and in six other states of the country. For the foregoing reasons, it is concluded that this age is the ideal age for state legislatures to reform their substantive penal codification in order to effectively guarantee the human right to the free development of the personality of adolescents.

This reform would add to the prohibition of marriage and concubinage for minors, which would contribute in a comprehensive manner to combating the problem of violence and sexual abuse, family violence, teenage pregnancy, early motherhood, among others, which affect the sexual health and human rights of teenagers.

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KEY TERMS AND DEFINITIONS

Children and Adolescents: The Convention on the Rights of the Child defines children as anyone under the age of 18; in Mexico, the General Law on the Rights of Children and Adolescents distinguishes between adolescents who are persons under the age of 18 and up to the age of 12; and children who are persons under the age of 12.

Fault Tree: Systematic and systemic method that seeks to investigate the different factors involved in an unwanted event.

Federative Entities: Mexico is a federal Republic formed by 31 Federative Entities, and Mexico City. There is a penal code for the entire federation, and 32 penal codes issued by each of the entities, each of which provides for the minimum age for sexual consent according to its social context.

Generic Violation Against Minors of Age: There is a distinction between the crime of simple rape and the crime of equal rape. The first of these is the imposition of the coital relationship through physical or moral violence, being the active subject of the conduct and the passive subject common and indifferent, that is to say, it can be any person. Equivalent violation is when the active subject of the conduct, performs without violence the coital relationship with a person who does not have the minimum legal age for sexual consent. In this crime the active subject is common and indifferent, therefore, can be any person.

Human Rights and Fundamental Rights: Human rights are all those rights which, being inherent to human nature, belong to all persons universally and without distinction of any kind. When these rights are positivized in the constitutions, they acquire the distinctive name of fundamental rights, with the obligation of the State to monitor their fulfillment.

Theory of Criminal Guarantee: This is the theory developed by Luigi Ferrajoli, in which he maintains that criminal law is a guarantee of the fundamental rights of the governed against the *ius puniendi* or right to punish of the State.

ENDNOTES

- ¹ For this case equal rape is when, without physical or moral violence, someone has sexual relations with a child under twelve years of age or with whom one does not have the capacity to understand the meaning of the fact.
- ² This fault tree is only an approximation to exemplify the application of the technique in the analysis of the problem. The real analysis of the crime that would cover up to 100 events and by extension of the chapter is not possible to present it. In this sense, the diagnosis addressed here only covers the major event concerning *Legislative factors* and specifically, the *Inadequate laws* sub-event.

Chapter 6

The Impulsive Crime: Aspects of Psychopathology and Psychodiagnosis

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ABSTRACT

The term “impulsive crime” is usually defined as a type of violent crime that arises suddenly under the pressure of intense emotional-affective involvement, against victims with whom an interpersonal relationship. The heterogeneity of the psycho(patho)logical frameworks underlying violent and sudden behavioral outbreaks has always represented one the most controversial and complex topics in forensic psychopathology. For this reason the author emphasizes importance of a approach characterized by a psychopathological and psychodiagnostics analysis, through the use in particular of the Rorschach Test, to understand the enigmatic nature of this type of offence that represents the “breaking point” the a particular and dramatic individual dimension, which develops and articulates within the context of the subject’s life history, the analysis of which cannot be omitted if we wish to reach a position of “comprehension” of the criminogenesis and criminodynamics of the act itself, to implement even on appropriate therapeutic and preventive measures.

INTRODUCTION

The sudden and unexpected transition to homicidal acts by individuals considered completely normal up to that moment, as they lacked psychopathological precedents and had a stable and well-defined socio-relational role, has always represented one the most disturbing, controversial and complex topics in forensic psychopathology. It has generated a thorny debate involving psychiatrists and legal scholars over the centuries in an attempt to decode the mysterious incomprehensibility and unpredictability of this behavior (Crawford, 1946; Meredith, 1947; Fornari, 2014).

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The effort to identify psychopathological frameworks that can explain such an act, considered particularly atrocious because the destructive violence is expressed within the family, or, in any case, towards others who are emotionally significant for the perpetrator, is not merely a response to the need to stem atavistic fears through the removal of those who are alien, “other” or monstrous, who, according to common sentiment, cannot share the psychological/human characteristics of those who belong to the community that is considered normal. There is also the need to place this particular type of crime in the appropriate legal context, which, with the purported certainty of the law, aims towards a “just” judgment of the crime. The “magmatic nature” (Surace, 2005) of the definition of the crime of passion can be seen starting from Pinel (1801) up to the current classifications of mental disorders contained in the Classification of Mental and Behavioural Disorders, Tenth edition (ICD-10) (World Health Organization, 1992) and Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) (American Psychiatric Association, 2013). The condition has been defined at various times as follows: monomania, madness or transitory madness, moral madness, raptus, short circuit reaction, episodic dyscontrol, acting out, marginal syndrome, bouffée délirante, transient acute psychosis, short reactive psychosis, etc. This testifies to the difficulty of categorizing a psychopathological condition that begins with the crime and ends with it. Therefore, this aspect limits a synchronic approach to the problem, with respect to a criminal behavioral event that represents the “point of coagulation”, the “breaking point” of an existential and psychopathological dynamic. Although making itself evident in the event of acting-out, this develops and articulates within the context of the subject’s life history, the analysis of which cannot be omitted if we wish to reach a position of “comprehension” of the criminogenesis and criminodynamics of the act itself (Balloni, 2004; Bisi, 2004; Fornari, 2014).

HISTORICAL EVOLUTION: FROM “PARTIAL MADNESS” TO “BORDERLINE PERSONALITY DISORDER”

The attempt to classify sudden homicidal acting-out has been characterized by a long evolutionary path through different time periods. During the 18th and 19th century in particular, the debate on this topic was a focus of attention in the medical-psychiatric and legal world. Starting from Pinel’s concept (1745-1826) of “partial madness”, “mania without delirium” or “reasoning mania”, his pupil Esquirol (1772-1840) outlined the term “monomania” in 1805. This was later defined by Georget (1795-1828), a pupil of Esquirol, as “instinctive homicidal monomania”. “Diseases of the will” have had numerous definitions over time by various authors, who highlighted some of their characteristics over others: among these, we recall the so-called “transitory or transient madness” described by Marc (1897-1999). This was defined as “a psychic disorder which, after manifesting suddenly, disappears in a short time”. This highlighted the medical-legal implications of a disorder that “*manifests within a short time or even at the same time as the occurrence of the act and ceases immediately afterwards, especially if the causes that determined it are not easy to identify*” (Marc, 1840). However, the foundations for the progressive abandonment of the concept of monomania and the movement towards the doctrine of “mental degeneration” were first laid by Prichard (1786-1848), with the notion of “moral insanity”, and, subsequently, by Maudsley (1835-1918), with the concept of “affective madness”, supporting the organic origin of the disorder. Following these authors, Morel (1809-1973) in France and Griesinger (1817-1868) and Krafft-Ebing (1840-1902) in Germany buttressed the theory of moral madness through the notion of degeneration and heredity, a theory that saw strong development in Italy, where psychiatry was characterized by a markedly

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organicist orientation, and where it was eventually merged by Lombroso (1835-1909) into the theory of “epileptic madness.” In this conception, epilepsy became responsible both for the psychic retardation of delinquents (the so-called “atavism theory”) and for the manifestations pertaining to moral insanity. Thus, the absence of ethical and moral sentiment was increasingly linked to a constitutional anomaly. At the end of the nineteenth century, the terms “neuropathic” and “psychopathic” did not yet present a clear definitional separation (Fornari, 1997). Following the systematization work of Kraepeling (1856-1926), beginning in the early 1900s, we witness a turning point with respect to the nineteenth-century nomenclature concerning the concepts of monomania, moral madness and degeneration, which are replaced by a medical-organicist framework. As a result, after Kraepeling, the notion of monomania is progressively abandoned. In its various intellectual, affective and instinctive manifestations, this phenomenon ends up classified not only among psychopathies, but also under paranoia, or atypical forms of schizophrenia or manic-depressive psychosis, epileptic organic psychoses, traumatic psychoses, psychoses of toxic or infectious origin, etc.

In 1956, Menninger and Mayman introduced the term “episodic dyscontrol disorder” to classify sudden violent behavior by non-psychotic individuals.

With the advent of the ICD and DSM nosographic classification systems, currently in the Tenth edition (1992) and the Fifth edition (2013) respectively, the concept of psychopathy ended up being subsumed under personality disorders, and particularly under antisocial personality disorder. In this respect, we would point out that antisocial personality disorder has been – wrongly, in our opinion – equated with the construct of the psychopathic personality, often called “psychopathy” or “sociopathy”. In this context, therefore, the category of borderline personality disorder has come to represent the most modern (but not, on that account, definitive) attempt at classifying the instances of “acting-out” or “irresistible impulse” in the case of those subjects who, not being classifiable in the known categories of major psychiatric pathologies (endogenous psychoses, organic psychoses, mental insufficiencies), had until then been classified in the indefinite area pertaining to the so-called “borderline cases” (Webermann & Brand, 2017).

PSYCHOPATHOLOGICAL CHARACTERISTICS

The term “impulsive crime” is usually defined as a type of violent crime that arises suddenly, without premeditation, under the pressure of intense emotional-affective involvement, perpetrated against victims with whom an interpersonal relationship of some kind had previously existed (marriage or emotional relationship, friendship, kinship, etc.) (Ponti & Merzagora Betsos, 2008). At the basis of these behavioral modalities, one might find very diverse psychopathological conditions, which might be revealed for the first time precisely through a sudden and serious acting-out following an event that leads to an intense emotional involvement. Among the various authors who have dealt with this topic, Fornari (2015) essentially identifies three major psychopathological areas that can underlie such violent behaviors:

1. The acting-out occurs in situations involving sudden breaks from reality, with the appearance of polymorphic and fragmented delusions, illusions and/or hallucinations, often in the presence of a deconstruction of consciousness of an oniric or oniroid type, or intense emotional involvement with a state of pan-anxiety. In these cases, the acting-out is representative of either acute psychotic conditions or schizophrenic disorders that suddenly manifest in subjects who are in stressful emotional situations;
2. Acting-out as a manifestation of abnormal psychogenic stress reactions within neurotic disorders, in which, alongside the thymic component, patterns of confusion, and often amnesiac ones, predominate (acute anxiety syndromes, dissociative syndromes, hysterical psychoses, etc.);
3. Personality disorders, in which the crime of passion becomes an expression of the dysphoric and impulsive dimension that defines these clinical conditions, characterized by a habitual, stable mode of inner experience (cognitive and affective) and pervasive and inflexible behavior with impaired social and workplace functioning.

Alongside these psychopathological conditions, the impulsive crime can also occur within an emotional and passionate state, without it being possible to identify any Axis I or II psychiatric disorders in the offender, but only “styles” or “traits” of personality that are completely non-specific. It should be emphasized, however, that the emergence of a particular emotion or passionate state, as well as their specific degree of intensity, is linked to the individual’s personality as a sum of a whole series of factors (sexual, cultural, environmental, etc.) which have determined their structuring over time. Therefore, emotions and passions appear to be different kinds of drivers in generating murderous behaviors, belonging to psychopathological constructs which are often divergent, and are also able to influence different criminogenic and criminodynamic modalities (Cimino & Iesurum, 2005). In most cases, the authors of crimes of passion are individuals who are anxious-depressed, introverted, uncommunicative, susceptible, tending towards a choleric disposition, extremely demanding of themselves and others. They have personality traits mainly attributable to a narcissistic and obsessive-compulsive dimension, in which rigidity, a lack of empathy towards others and a state of immaturity linked to the fixation at a particular stage of personality development condition a relationship with the future victim which is characterized by a possessive bond and a high degree of dependence. This lack of stability and coherence of the Self, with the need to compensate for an underlying sense of inferiority, is the basis for the creation of a “parasitic” type of connection between the subject and his or her partner, a bond which is often profoundly ambivalent, easily transmuted from love to hate, but which must, however, be maintained at any cost (Meloy, 2016). In this context, the threat of a breakdown of this narcissistic relationship can give rise to pathological jealousy, resentment, anger, and hatred, capable of setting in motion the passionate process that can lead to murder as a revenge for the offense suffered, with the emotional conviction of acting according to a criterion of justice. Killing the object of love in a crime of passion and preventing this person from belonging to someone else binds the object of love to the killer forever, preserving it indefinitely, as death crystallizes the bond and makes it unchangeable, thus forming a new, full and eternal fusion. For this reason, around a third of those who commit crimes of passion commit suicide immediately after killing their partners, often turning the weapon used for the murder on themselves (Bénézech, 1994; Cimino & Iesurum, 2005).

In contrast, the crimes related to a sudden and intense emotional state consist of violent acts perpetrated, for the most part, in a state of intense anger, as a manifestation of reactions to existential emotional situations that can no longer be sustained by a subject generally lacking a significant psychopathological

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history. For this person, the crisis context is the main genetic factor for the acting-out of the criminal act itself. The existential crisis is generally represented by family situations (separation, divorce, etc.), professional situations (failure to obtain an expected promotion, loss of employment, etc.), by situations of serious illness, financial hardship, etc., as a consequence of which the subject reconsiders their social and personal values, with the possibility of committing various kinds of violations in impulsive and irrational ways. On the psychopathological level, these crimes differ from the passionate crimes due to the lack of the threat of the rupture of an affective relationship characterized by egocentric and ambivalent fusion, thus lacking that type of “pre-genital” attachment that typically characterizes the latter type of crime. In this situation, the acting-out comes to represent the individual’s need to compensate for his or her feelings of frustration and anger, in order to claim, in that manner, an independent existence and identity (Bénézech, 2000; Meloy, 2016).

While there are common elements among the perpetrators of murders committed during an emotional or passionate state (for example, the subject appears mostly “hyper-controlled”, timid, taciturn, solitary, rarely reacting aggressively; they normally do not show a judicial history, but often one can detect depressive tendencies, feelings of inferiority, a rigid and immature personality, egocentrism, etc.; the criminal act is generally of short duration, conducted in the absence of accomplices, often with inappropriate weapons, which are left at the scene of the crime), when comparing the behavioral characteristics of perpetrators of violent crimes committed during a state of emotional-affective alteration, one finds significant differences according to whether the subject committed the crime in a passionate or emotional state. The criminal in the grip of a passionate state dating from before the moment of the crime may form thoughts and fantasies about the event, which in turn assumes a critical connotation that becomes increasingly unsustainable, finally unleashing a sudden episode of violence. In contrast, the individual in the grip of an emotional state does not present this mental processing, as the acting-out immediately follows the appearance of the emotional-affective disturbance, so that the criminal action is perpetrated without premeditation, with an explosive and intense violence, but of short duration, in the absence of accomplices, often with inappropriate weapons, which are left at the scene of the crime. The behavior after the homicide is also different between the two groups. The passionate murderer shows a greater frequency of suicide or of turning oneself in to the investigative authorities compared to the one who acted in the grip of the sudden appearance of an intense emotional state (Cimino & Iesurum 2005; Douglas, Burgess, Burgess & Resler, 2006). Therefore, the heterogeneity of the psycho(patho)logical frameworks underlying violent and sudden behavioral outbreaks, which can also arise in the absence of an identifiable clinical history, highlights the difficulty of giving a unambiguous psychopathological definition for a homicidal behavior that suddenly appears in the absence of predictive elements, and in which individual variability represents the decisive element in the “coloring” of different vital meanings assigned to an event which is also unique in the life of the subject, accompanied by an intense emotional burden as the cause of the triggering of the reaction. Despite the multiplicity of forms of the underlying psycho(patho)logical dimensions, however, a common denominator that characterizes this particular type of crime can be identified, in the form of a “perverse” dimension of the interpersonal relationship that characterizes the connection between the murderer and the victim. In this, it is possible to identify a distortion of the functioning of the “object relationships”, i.e. of the I-Other relationship, with consequent problems in the process of separation/individuation and in the formation of the Self, and with the buildup of pathological forms of attachment, which, by preventing the development of abandonment and detachment, can also translate into acts of extreme and sudden violence (Fornari, 2014; Meloy, 2016).

The definition of a crime of passion is exclusively descriptive in nature, meaning only “a sudden and accidental disturbance that results in a violent action driven by a sort of imperious and irrepressible need (the “irresistible impulse”) generated by highly emotional circumstances” (Ponti & Merzagora Betsos, 2008). Although not referring to any precise psychopathological condition, this nevertheless appears the most suitable to describe a phenomenon of an extremely heterogeneous nature. However, in our opinion, this should be limited exclusively to indicating those sudden and serious instances of acting-out which are hetero-directed, unforeseen and unpredictable (hence the term *raptus*), which occur in a manner apparently independent from a clinical history and are followed by complete recovery of all psychic functions. Understanding these events can therefore be accomplished only by recourse to a psychopathological analysis at a level of deeper investigation with respect to the clinical and nosographic one. This means analyzing the event within the individual’s life story, his or her “being-in-the-world”, the story of how that individual became realized in that act, as an extreme possibility of human expression (Semerari & Citterio, 1975; Scudellari, Bologna, Spigonardo & Muscatello, 2006; Ponti & Merzagora Betsos, 2008). In fact, in this regard, we believe it is useful to underline that the “understanding” of the criminal act is based on the ability to trace the acts committed within the individual’s history, in continuum with their “lifestyle”. Therefore, the cases that are most difficult to interpret are precisely those in which the crime is unexpected and unpredictable as it is *in-ruptio*, in rupture towards their own “in-sistence”, in a radical inversion of *motus* (Callieri, 1993). Therefore, in these cases, the actions can only be made comprehensible through the longitudinal reconstruction of the offender’s life history, not in a merely biographical sense, but in a metapsychological sense, i.e. one aimed at assessing intrapsychic experiences in relation to the life events and the decisions made (Luberto & Zavatti, 2000).

IMPULSIVE CRIME AND PSYCHODIAGNOSIS

The attempt to find an explanation for homicidal behavior, in particular when unexplained and unpredictable, has led psychiatry and psychology to use the tools of these disciplines to seek the personal motivations acting within the individuals who committed the crime (Cimino, 2010, 2018).

Test tools have also been used in an attempt to identify personality characteristics, coping strategies, prevailing cognitive patterns and/or recurrent psychopathological elements in perpetrators of violent crime. These include the Rorschach test, which, due to being the projective test par excellence, represents an irreplaceable aid. Due to the wealth of quantitative and qualitative data that it makes available, it allows a broad and detailed description of an individual’s personality (Cicioni, Caravelli, Loggia & Maiolo, 2012; Zizolfi, 2016), since it represents something more than a simple perceptive task, more similar to a complex representational-symbolic task (Blatt, Tuber & Auerbach; 1990; Leichtman, 1996), in which a strong aspect of communicative intentionality is present. Although research in the field shows great variety in the choice of tests commonly used in different medico-legal contexts, due to an extreme subjectivity of choice caused by the lack of unambiguous indications in the literature (Borum & Grisso, 1995), Heilbrun (1992) has provided an important contribution by drafting a sort of guideline for the selection of tests to be used in the forensic field.

Using these evaluative parameters, the number of tests effectively usable in the forensic field seems to be essentially reduced to just the MMPI-2 (Minnesota Multiphasic Personality Inventory-2) and the Rorschach test for the personality evaluation and the WAIS-R (Wechsler Adult Intelligent Scale- Revised) for the intellectual level. The indications that emerge from the literature in the field, although not

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unanimous, seem to favor, among the psychometric tests, the MMPI-2 and the MCMI-III (Millon Clinical Multiaxial Inventory-III), and, among the intelligence level tests, the WAIS-R and WAIS-III scales, which are considered “recommended” or “acceptable”. There is greater disagreement present regarding the projective techniques, as the Rorschach test is considered by some authors to be “equivocal” or even “unacceptable” (Garb, Florio & Growe, 1998; Garb, 1999), while by others it is “recommended”, provided that the Exner Comprehensive System (CS) (1978, 2003) is used to limit the interpretations to the few indices supported empirically, while always indicating the limits of these techniques in the reports (Mihura, Meyer, Dumitrascu & Bombel, 2013). Among the other widespread projective techniques, the TAT (Thematic Apperception Test) and the Human Figure test or the other drawing tests are generally considered “not acceptable” in forensics (Lally, 2001). Regarding the prediction of violent behavior, the only recommended instrument is the PCL-R (Psychopathy Checklist-Revised) (Hart & Hare, 1989, 1997). If we focus on the forensic use of the Rorschach test, the opinions that have emerged on the subject appear to be divergent. On one hand, some authors declare it inadequate for use in a judicial setting, to the point of questioning its scientific status altogether (Grove, Barden, Garb & Lilienfeld, 2002; Lilienfeld, Wood & Garb, 2000; Garb, Wood, Lilienfeld & Nezworski, 2005). On the other hand, most authors (Acklin, McDowell, Verschell & Chan, 2000; Carpi, 2003; Bernardi, 2007; Cicioni et al., 2012; Mihura et al., 2013; Zizolfi, 2016) support the test’s usefulness and usability in the forensic field, while underlining the limitations and the possible bias, first and foremost in the test administrator’s preparation and training. It is necessary to briefly recall that since the publication of the *Psychodiagnostik* (1921), the Rorschach test has experienced alternating phases of popularity, with enthusiastic supporters (dating primarily to the 1930s and 1950s, with authors such as Klopfer (1958), Rapaport (1975), Schafer (1978), etc., who were responsible for the fundamental works on the subject) and harsh criticism, in particular brought by the research group of James Wood starting in the second half of the 1990s (Leichtman, 2009). As the specifics of the debate are outside the scope of this work, we will limit ourselves to recalling that the criticisms brought by Wood’s group (Wood, Nezworski & Stejskal, 1996; Wood, Nezworski, & Stejskal, 1999; Wood & Lilienfeld, 1999) essentially maintain that projective tests in general, and the Rorschach test in particular, have no reliability or validity. They claim that the tests’ results are to a large extent influenced by subjectivity, prejudice and impressionism. With regard to this question, it is important to emphasize that the Rorschach is by nature a multi-trait instrument. The value of a single variable (Cicioni, 2016) can never be interpreted as evidence of a construct (psychopathological syndrome, personality disorder, etc.), but must be evaluated in an “individualistic” manner. However, a great deal of research (Porcelli, 2011; Zizolfi, 2016) has shown substantial validity in terms of both construct and criterion for many test variables, as well as valid inter-observer reliability (Mihura et al., 2013; Wood, Garb, Nezworski, Lilienfeld & Duke, 2015). In this regard, the results of Gacono and Meloy (2000) are particularly interesting. These show how the Rorschach test’s variables, differentiating the various aspects of the antisocial personality in a more subtle manner, have been demonstrated to be more useful for diagnostic purposes than hetero-administered questionnaires in the analysis of violent behavior disorders. To sum up, the data emerging from the literature allows us to conclude that the Rorschach test is equipped with the fundamental psychometric characteristics that can legitimize it among the scientifically valid personality tests, provided that its application methods and limitations are well known (Passi, 1990; Zizolfi, 2016). The problem in using psycho-diagnostic tests is essentially methodological. That is, it concerns the proper placement of these tools within the diagnostic and evaluation process. In fact, the administration of a test must never represent a cognitive “shortcut”; instead, the data obtained from it must necessarily be placed within the decision-making process, if one wants to avoid the very high

probability of achieving unreliable results. Indiscriminate use of tests (so-called “laboratory prescription testing”) must always give rise to doubts about the congruity of their use and the results obtained. The application of these tools, particularly in the forensic field, must be carried out only by an expert who has been adequately trained and is familiar with the theoretical underpinning, the degree of validity and the overall accuracy of the instruments that he or she is about to use, and, not least, who regularly works in this particular sector (Catanesi & Martino, 2006).

In conclusion, the psycho-diagnostic examination conducted through the Rorschach test represents an important step in the patient’s evaluation process. However, this, just like any other phase of the clinical and expert procedures, can never be considered as the sole priority and in an exclusive manner, but must necessarily be integrated with all the other steps of the diagnostic/ evaluation process.

In one of the first studies that sought to establish a correlation between Rorschach indices and criminal personalities, Zullinger (1938) found (mentioned in Oberle & Fagherazzi, 1964, p. 169), for those who had committed murders, a prevalence of confabulatory and combinatorial responses, scarce human contents, a stereotyped form of thought, a high number of intramacular responses, an extratensive Inner Life Type (ILT) and a certain lability in impulse control. These are elements indicative of personality traits characterized by difficulties in the relational and affective sphere, with undeveloped object relations and a tendency towards acting out.

Henn (1975), in a study involving 1195 patients of the Forensic Psychiatric unit at the Malcom Bliss Mental Health Center in St. Louis, Missouri, highlighted a close correlation between homicide perpetrators and Rorschach indices suggesting an antisocial personality disorder, such as extratensive ILT, increased intramacular responses, increased impulsivity indices, lack of empathy, increased CF and C responses, M values lower than standard, etc.

Similar results were found by Lester, Kendra, Thisted and Perdue (1975), who, using the Exner method to examine the protocols for a sample of 30 perpetrators of homicides, highlighted the reduced M number for the criminal population compared to the control group. Bubowski and Gerhke (1979) surveyed perpetrators of homicides, analyzing 20 subjects in a case-control study and finding a predominance of extra-intensive ILT and strong feelings of insecurity and frustration as an expression of a primary deficit in object relations.

Gacono (1990), analyzing 42 Rorschach protocols (Exner method) for subjects meeting the criteria for the diagnosis of antisocial personality disorder according to the DSM III-R, showed a significantly higher average of “doubling” and “reflection” responses in the subpopulation of PCL-R positive psychopaths, as an expression of a narcissistic personality dimension in this group of subjects, with a prevalence of “impressionistic” responses indicating a histrionic dimension, confirming that the narcissistic and histrionic dimension represent fundamental psychopathological nuclei in the functioning of such individuals.

Gacono and Meloy (1991), analyzing 41 inmates diagnosed according to DSM III-R criteria as suffering from an antisocial personality disorder, showed that psychopaths, although included within this diagnosis, presented an almost total absence of texture responses (diffuse shading responses) indicative of experiences of anxiety. Accordingly, they noted that the Rorschach can be a useful tool to differentiate between different subpopulations sharing the diagnosis of antisocial personality disorder.

An interesting study conducted by Meloy (1992) concerned an analysis conducted using the Exner criteria on the protocols of the Rorschach test administered to Sirhan Bishara Sirhan, a 24-year-old Palestinian immigrant who, on June 5, 1968, assassinated the Democratic presidential candidate Robert F. Kennedy. The aim of the study was to generate and test clinical hypotheses starting from the first Rorschach test administered to a killer, through the use of reliable interpretative systems that were not

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yet available in 1968. The study in question is thus particularly interesting, as it highlights the manner in which the study of a killer's Rorschach protocol, analyzed through the use of valid and reliable interpretative systems, allows the obtaining of structural and psychodynamic information about the offender's personality. Integrated with the subject's life history, this helps not only to clarify the psychopathological dimension of the perpetrator of the crime, but also to understand the criminogenetic dimension.

Kaiser-Boyd (1993) conducted an interesting study evaluating the Rorschach indices for 28 women killers according to Exner's Comprehensive System method for the Rorschach test (CSR). Correlating the data obtained with the average values for the American population, the researcher highlighted the low global number of responses, a Reality Index significantly lower than average, a low number of Movement Responses, tendentially rigid and inflexible cognitive styles, and a tendentially extraflexive ILT with an increase in Impulsiveness indices as an expression of poorly-controlled emotionality.

Munnich (1993), based on the results that emerged from the psycho-diagnostic examination, he identified three main types of criminals who had committed murder: a first group, defined as "uninhibited-amoral", was characterized by structural ego weakness, low tolerance to frustration, difficulties in managing affections, and lack of empathy with a tendency towards acting-out. A second group was defined as "depressed-inhibited", in which rigid and conformist defense mechanisms prevailed. Finally, a third group was defined as "inhibited-aggressive". Their protocols showed apparently good social and relational adaptation, which in reality indicated a pseudo-adaptation linked to rigid impulse control with the possibility, given the presence of particular conditions, of intense acting-out. The results of this study suggest that the fundamental problematic nucleus in the murderers examined was located in the field of disturbed object relations, i.e. in a disharmonious separation-individuation process, responsible for maladaptive and even criminal behavior, in the presence of defense mechanisms structured around a narcissistic nucleus incapable of tolerating and processing frustrations in a mature manner.

In contrast with the data collected by most authors, Meloy and Gacono (1994), in a study conducted in Californian penal institutions, again with the use of the CSR, found, by comparison with the control group, a greater number of responses in killers, together with an increase in responses to human content and movement, indicating a strong desire for attachment and interpersonal relationships. This data, which thus appears to be contrary to the data from most studies on the subject, is probably affected by the particular kind of homicidal conduct of the examined sample, i.e. sex-related homicide, which presents a different phenomenology compared to other homicidal typologies in terms of phantasmatic activity and personological characteristics. However, even in these subjects, the authors highlighted a Reality Index lower than the average values for the normal population, as well as the presence of a personality characterized by a narcissistic component structured around a grandiose Self.

Piotrowski (1997), analyzing the studies that emerged from the use of the Rorschach on murderers, emphasized that the most frequent elements emerging from the use of the test, such as impulsiveness, low tolerance to stress, difficulty in emotional control and difficulty in managing anger, offered empirical confirmation for the results found in the psychodynamic literature.

Gacono, Meloy and Bridges (2000) compared, via the Rorschach test according to the Exner method, a population of 32 non-sex-offender psychopaths with 38 perpetrators of sexual homicides and 39 non-violent pedophiles. While noting elements in common between these groups, such as pathological narcissism and borderline emotional reactivity, they pointed out that, while psychopaths were distinguished by the lack of interest in and attachment towards others experienced in an egosyntonic way, on the other hand, both of the sexually deviant groups, when examining their Rorschach indices, showed greater interest

for others and intense dysphoric experiences, high levels of obsessive thought and an inability to break away from environmental stimuli.

Schlesinger (2002), analyzing the case of a homicidal stalker, found a Rorschach protocol characterized by an average qualitative-quantitative intellectual level and an adequate reality check, even in the presence of difficulties in interpersonal relationships, seen as an expression of a problematic nucleus in the separation-individuation processes.

Jumes, Oropeza, Gray and Gacono (2002) highlighted, through a review of the literature, the importance of the use of the Rorschach test as a tool for the in-depth study of the personality of psychiatric patients who had perpetrated crimes, not only in order to better understand criminogenesis and criminodynamics, but also in order to plan better treatments.

Huprich, Gacono, Schneider and Bridges (2004), based on the aforementioned work by Gacono and Meloy (1994), comparing a population of 32 psychopathic offenders, 38 perpetrator of sexual homicides and 39 non-violent pedophiles, using the Rorschach test according to the Exner method, highlighted higher values in the Rorschach Oral Dependency Scale (ROD) in homicidal sexual offenders compared to non-violent psychopaths and pedophiles, stressing the usefulness of the test to understand the psychodynamic criminogenesis of violent sexual behavior compared to other violent crimes.

Cunliffe and Gacono (2005) reported on a study conducted on a population of 45 female inmates diagnosed as psychopaths using the PCL-R, in which the use of the Rorschach test according to the Exner method, in addition to confirming the PCL-R results, showed that in the female population, by contrast with the male population, histrionic personalities prevailed, in comparison with the predominant narcissistic and antisocial dimension in men.

Nørbech, Grønnerød and Hartmann (2016) evaluated the use of the Rorschach test to identify specific psychopathic dimensions in criminals who had committed sadistic crimes, by comparing the results with the administration of the PCR-L. They highlighted the usefulness of using the projective test in differentiating dimensional variants in psychopathy which condition specific criminal behaviors.

In our opinion, the most relevant element that emerges from the examination of the literature on the subject – as is apparent by comparing the results of the studies that have analyzed specific types of homicides (Meloy & Gacono 1994; Schlesinger, 2002) with the others, constituting a majority of the studies, which did not distinguish between the differences in the manifestation of the murderous behavior – is, in any case, attributable to the fact that the individuals who carried out violent hetero-aggressive behavior, based on the Rorschach indices, present a problematic nucleus attributable to the primary object relations determining a non-physiological identification-separation process. This difficulty in the attachment process produced a gap in the structuring of the Self, a harbinger of difficulties in interpersonal relationships, poorly modulated affective tendencies, a poor introspective capacity and a lack of empathy. These elements, together with a disproportion between aspirations and real potential capacities (the “ego ideal-real ego” relationship), and immature, essentially manipulative and instrumentalized social and object relations, characterized by a scarce interest for the relational Object, suggest a level of personality organization typical of narcissistic pathology, or of personological structures supported by a false, grandiose Self (Kohut, 1971), insufficiently stable and pseudo-integrated, and therefore at risk, in certain circumstances which are harbingers of significant narcissistic wounds, of having poor capacity in modulating the affective impulse, with the consequent possibility of a transition to a hetero-directed acting-out.

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In Italy, Gambineri (2009) conducted a study on 20 male killers compared with a control group, in order to identify characteristics peculiar to the personalities of these subjects through the observation of their Rorschach protocols. The results that emerged from the study tended to confirm the data published in the literature, highlighting personality characteristics in the examined subjects such as low tolerance to frustration, the presence of a sense of emptiness, poor empathy and a tendency to impulsiveness up to the point of aggressive reactions in the face of experiences of defeat and/or humiliation, attributable to a personality organization with obvious narcissistic components. The peculiarity of this study lay, however, in the fact that the collection, scoring and processing of the protocols took place using the method of the Roman Rorschach School, thus integrating a statistical-formal analysis with the analysis of the symbolic content.

In this regard, an aspect which needs to be taken into due consideration is the fact that most of the studies in the literature appear to be decidedly oriented towards an empirical-statistical direction, due to the use of the method developed by Exner (1978, 2003), the so-called Comprehensive System, together with its subsequent evolutions (Rorschach Performance Assessment System, R-PAS) (Mayer, Viglione, Mihura, Erard & Erdlberg, 2011), which, however, in addition to excluding protocols with a lower number of responses than 14, has overall shown a certain poverty in terms of interpretative hypotheses, with results that are sometimes not very significant, especially in the forensic field, as the small number of responses may lead to an apparent triviality of the results if an exclusively empirical-statistical approach is used (Nielsen & Zizolfi, 2006).

Starting from these basic premises, in a recent article (Cimino, 2018), the author has tried to find out whether, if one employs the psychometric analysis of the Rorschach test conducted according to the “Roman School Method” (SRR) (Rizzo, 1972; Parisi & Pes, 1990; Parisi, Pes, Faraglia, Lanotte & Spaccia, 1992; Giambelluca, Parisi & Pes, 1995; Cicioni, 2016; Zizolfi, 2016), in which the rich nature of the scoring used is able to provide numerous indices on which one can base a psychodiagnosis as complete and objective as possible (Cicioni, 2016; Zizolfi, 2016) – referring back to the specific reference texts regarding the in-depth study of the particular aspects of this method (Giambelluca et al., 1995; Cicioni, 2016) – administered to a population of perpetrators of crimes of passion, there are any elements that might emerge indicating the presence of psychopathological factors common to the authors of this type of crime, which, in some way, might shed light on the criminogenesis and criminodynamics of these crimes. The data emerging through the comparative case-control statistical analysis and the comparison with the average values of the normal adult population led to excluding, for the examined subjects, the existence of a state of mental alienation or significant psychopathological conditions, detecting only “disharmonies” caused by personality structures mainly in the affective-emotional field, with some difficulties in deep human contacts, but not such as to establish the presence of nosographically identifiable personality disorders. This result is in line with the published literature in the field, as examined above, in which no significant differences emerge between authors of homicides and control samples with regard to the Rorschach cognitive indices, unlike for the affective part of the test results, which is characterized instead by a certain emotional lability and immature object relations, as an expression of a problematic nucleus arising from the separation-individuation processes (Meloy, Gacono & Heaven, 1990; Meloy & Gacono 1992; Meloy, Gacono & Berg, 1992; Meloy, 1998; Meloy, David & Lovette, 2001). On the other hand, as regards the lack of interest in the Object and the presence of a detached and cold interpersonal emotionality, in contrast with most of the authors who have researched this topic, our research has not highlighted this element as a trait characteristic of perpetrators of a crime of passion. This aligns with what has already been highlighted by Meloy and Gacono (1994), confirming the

importance of particular personological traits and homicidal phenomenology, which, in our case, finds its “detonating” element precisely in the dynamics of significant affective relationships, triggering the acting-out of sudden and hetero-directed violent behavior. However, the most significant datum that emerged from the psychometric analysis of the protocols, as a common feature between all the subjects examined, one which has not been highlighted so far in the literature in the field, is the finding of a disproportion in the G/M ratio as a peculiarity present in the subjects who have committed a crime of passion, and which, in our opinion, has the significance of a psycho(patho)logical organizing criterion of undeniable value in helping to clarify the criminogenesis of this type of homicidal conduct. The G/M ratio, expressing the relationship between the number of global responses and the number of primary synesthesias, should be taken as an expression of whether or not the subject shows a balance between abstract desires and dream-like fantasies regarding one’s own expectations, and the presence of specific creative attitudes and attitudes of intellectual productivity, or of dynamic potentialities of the personality that would allow for the realization of such desires; a disproportion in the form of an excess of G with respect to M, therefore, indicates an important nucleus of personological vulnerability. In particular, when interpreting this datum in the context of Binswanger’s concept of “anthropological proportion” (1956, 1970), indicating the proportion between the height of the experience and the breadth of the personological base, it should be seen as a paradigm of that anthropological “vulnerability” representing the originating nucleus of a possible sliding towards a psychopathological dimension of existence. In fact, according to this author, the human existence which projects itself not only in the sense of breadth, in a horizontal dimension, but which also “rises toward the top”, is constantly under threat of losing itself in its ascent, and therefore burdened by the possibility of becoming shipwrecked in that failed form of existence called “*Verstiegenheit*”, or “becoming rigid in one’s ascent” (Semerari, 1981, p.215). This “becoming rigid in the ascent” represents, therefore, a “dis-graceful” relationship between the breadth of the world project and its height, or between the “discourse”, the “dialogue” “*with the world and with the other beings-in-manifestation, in the fullest sense of “ex-sistere” and of co-existing*” (Semerari, 1981, p.215), in an authentic articulation with the “You”, and the need to rise above the contingency of the “I-here-now,” to overcome one’s “finite” nature, to overcome one’s particular contingency. In the context of the anthropological disproportion manifested as becoming rigid in the ascent, we thus witness the absolute prevalence “*of the height of the decision over the breadth of the experience*” (Semerari, 1981, p.215), closing oneself off towards the flow of becoming and communicating with the object dimension, resulting in a misunderstanding of the other points of view. A correct proportion between verticality and horizontality, between height and the base that should support it, essentially points towards the category of self-realization; on the other hand, a disproportion echoes the specter of a failure, of an existential setback. It is precisely this dissonance between antithetical but complementary instances that, in our opinion, can be detected by the G/M ratio as an indicator of a tragic “consciousness” of a subject that does not “coincide with themselves”, i.e. who is able to bridge this gap between the “base and height” of existence only with self-deception, with a fictitious strategy. The latter, however, when it is forcefully revealed to the conscience following narcissistic blows of such severity as to determine a sudden crumbling of this deceptive scaffolding, i.e. the collapse of the height onto the base, can express itself only in action, or in a gesture that is also violent and hetero-destructive, and which the subject is unable to control (Stanghellini, 1997).

CONCLUSION

The impulsive crime seems to be the most dramatic and obvious manifestation of an area of vulnerability of the personality which, from an encounter with specific and actualized situational factors, determines an event of acting-out. The unpredictability of this serious hetero-directed acting-out, apparently isolated from a clinical and psychopathological history, has represented, due to its undeniable medical-legal relevance, one of the most difficult puzzles for clinical and forensic psychiatry, engaging both psychiatrists and jurists in a debate which has continued from the beginning of the 19th century to the present day, without reaching a satisfactory resolution (Scudellari et al., 2006; Ponti & Merzagora Betsos 2008; Fornari 2015).

Among the various definitions attempting to capture the phenomenal essence of this extreme behavior (acting-out, passage to action, episodic dyscontrol, short circuit reaction, explosive disturbance, etc.), the term “raptus” is one of the most widespread and widely used. However, it tells us nothing about the psychopathological implications underlying this particular conduct. In fact, the term “raptus” (from the Latin “*rapere*”, or “to abduct”) usually indicates the onset of a sudden and uncontrollable impulse, mostly violent, which the author is unable to control. This definition, even as it points us towards the phenomenal typology of the crime, tells us nothing about the psychopathological characteristics connected to such behavior. In this regard, in fact, Fornari (2008) highlights how this term can underlie different psychopathological categories (anxious raptus typical of acute neurotic reactions; raptus melancholicus and schizophrenic raptus as an expression of a psychotic automatism; dysphoric raptus in personality disorders, etc.), whose differentiation comes to view as very important in order to arrive at a criminogenic and criminodynamic understanding of the act itself. There is a fundamental difference between an instance of sudden, violent, hetero-directed acting-out as an expression of a psychotic break or a psychic abnormality understood generally, and an acting-out that occurs in a substratum apparently devoid of relevant psychopathological connotations, and in which the emotions and passions have nothing to do with a pathological experience (Fornari, 1997). In the greatest part of the cases, the crime of passion finds its genesis not so much in a strictly clinical or psychopathological context as in a dimension of anthropological vulnerability, or a sub-clinical condition in which the personological attitude can represent a predisposing factor, which, under certain conditions, can evolve into a psychopathological state, modulating its expression and course (pathoplastic factor) (Stanghellini, 1997), and which can also translate into acting-out. In fact, as also pointed out by the various authors who have researched the topic, when using the Rorschach test in subjects who have carried out a crime of passion, it is not possible to generally detect a specific morbid, nosographically definable condition afflicting the psychic sphere and to which the criminogenesis of the act can be traced. However, there is a “psychic vulnerability” that finds its origin in unsatisfactory and disconfirming primary object relations, which have led to an organization of a “grandiose Self” which is also fragile, a structure is so unstable that a particular contingent event, which occurs at a specific moment of the subject’s existential path (a “situation”), capable of revealing their own crippling vulnerability, can lead to such a collapse of the vertical ascent so as to generate an acting-out, a violent automatism against an object that is taken up as the representation of the existential setback that is experienced as intolerable. In fact, “*it is on the vertical axis of existence that the axis of tragic expression is located: the tragic movement is always present in the order of ascent and fall* (Foucault, 1984, p. 150), and the impulsive crime, as an enigmatic existential gap, comes to represent a mode, albeit extreme, of that *imperceptible balance of the ascent that stops and oscillates before falling* (Foucault, 1984, p.150). It is a point of arrival without a way out, as one cannot

escape from what one cannot even reach. For this reason, in our opinion, any attempt at a nosographic framing of this phenomenon comes to view as forced and misleading, and does not seem to be able to provide us with a key to understanding it. Instead, only a psychopathological analysis, attentive to the individual's life history, in search of a relationship of motivational and situational derivability between event, personality and behavior, can allow us to understand them well enough to implement appropriate therapeutic and preventive measures.

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KEY TERMS AND DEFINITIONS

Acting Out: Sudden violent behavior as a manifestation of abnormal psychogenic stress reactions.

Anthropological Vulnerability: A sub-clinical condition in which the personological attitude can represent a predisposing factor, which, under certain conditions, can evolve into a psychopathological state, modulating its expression and course (pathoplastic factor).

Empathy: The ability to place oneself immediately in the mood or situation of another person.

Pathological Narcissism: A personality disorder with a long-term pattern of abnormal behavior characterized by exaggerated feelings of self-importance, excessive need for admiration, and a lack of empathy.

Personality Disorders: A habitual, stable mode of inner experience (cognitive and affective) and pervasive and inflexible behavior in a variety of personal and social situations, with impaired social and workplace functioning.

Projective Test: Psychological instrument consisting of intentionally ambiguous visual stimuli.

Psychodiagnosis: Discipline dealing with psychological assessment and diagnosis through the use of tests.

Chapter 7

Homophobic Conduct as Normative Masculinity Test: Victimization, Male Hierarchies, and Heterosexualizing Violence in Hate Crimes

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ABSTRACT

Homophobic violence can be considered as an expressive act. Violent behavior can be considered as anti-homosexual when victims are chosen because they are considered or perceived as homosexual. Following this reasoning, hate crimes as homophobic crimes have a communicative value, since they represent a range of “masculinization” practices within the processes of gender socialization, both in conventional and illegitimate social worlds. Every homophobic act aims to intimidate not just the victim, but the whole group associated with the, whether concretely or merely in the perception of the perpetrator. This chapter will take into account the main research on victimization from an international perspective; it will highlight how both the gender of the perpetrator and the cultural constructions of masculinity(ies), in a heterosexist and hegemonic system, seem to play a fundamental role in producing homophobic and anti-homosexual behaviour.

INTRODUCTION

Violent behavior against homosexuals can be grouped under the category of hate crimes (McPhail, 2002). A “hate crime” is usually not directed at an individual, or person; rather, it is directed at a group, or category of people, where a specific group is seen to embody each one of its members’ (dis)identification on the grounds of religion, ethnicity, physical appearance, gender, and sexual orientation. Hate crimes therefore entail a symbolic-communicative function, in that they target both the victim and the whole group to whom they belong, or to whom aggressors think they belong. Victims of hate crimes

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are not exclusively gays or lesbians, but also heterosexuals who are “perceived” as homosexuals, that is, who do not adhere to dominant normative gender and sexual scripts. We therefore are led to assume that there are as many kinds of violence against non-heterosexual subjects as hegemonic models and variations of gender – both inside and outside homosexual communities. Socio-criminological research and studies on victimization need to consider the cultural environments in which crimes are committed (Mason, 1993); above all, they need to analyze the ways in which the socially constructed hegemonic gender models and normative sexual configurations imply the subordination of (other) gendered and sexualized positions, based on a common sense distinction. This chapter aims to define the concept of homophobic conduct by disentangling it from its origins in psychoanalysis; it attempts to outline the main socio-cultural aspects of violent behavior/conduct that target specifically homosexual males. First, the chapter will briefly look at key statistics documenting the victimization of LGBT population; it will then use the gender of the perpetrators of violence as lens through which to read anti-homosexual conduct. In particular, by addressing “masculinity” in the context of homophobic behavior, the chapter will frame this specific type of hate crime within a broader discussion about the cultural construction of hegemonic genders, of normative sexualities, and of “masculinity”. As will be shown, key research on the characteristic features and dynamics of homophobic violence and the perpetrators’ profile agree on a number of aspects, including: young or young adult males are the typical would-be aggressors; these acts of violence are usually performed by a group of people and are inflicted on individuals; the attacker and the victim usually do not know each other; the violence is particularly brutal, and it occurs in public or semi-public places. One element that emerges with clarity, however, is that the aggressor’s gender and the situated cultural constructions of masculinity seem to play a fundamental role for generating anti-homosexual violence. Indeed, the violence performed is used to cement the bond among members of a group and its values; it also entails a predominantly communicative function, in that it is directed against a specific target, namely, those subjects who do not align themselves with hegemonic masculinity, and are perceived culturally either as “homosexuals”, or “not males”. For the aggressors, the recourse to violence is a way to distance themselves from victims, while also re-establishing the norm, whenever they sense that a transgression has taken place with regards to the natural relationship between genders. This also extends to gender boundaries, as in the case of trans-phobic attacks. Here, violence is a punishment to those individuals who are seen to betray heteronormative masculinity and cis-normativity (Rinaldi 2018). Violence against “other(ed)” males who are perceived as “not males” and “non-heterosexuals” can be seen as a series of instrumental moments in strengthening (homo)social bonds between males, and in celebrating male power. This takes the form of a public display of and claim for heterosexual masculinity: the enactment of male violence is a collective performance, where the very act of identifying the object of the violence has the strengthening of the aggressor(s)’ (hegemonic) masculinity as both its objective and performative effect (Franklin 2004; Tomsen 2009; Rinaldi 2012, 2013, 2018). The final part of the chapter concerns itself with increasing awareness within the field of socio-criminological research about gender identity, non-conforming/non-normative genders, and sexualities.

BACKGROUND

The concept of homophobia has become an integral part of the vocabulary of social science: it indicates any negative attitude (from simple discomfort, to hate, to total hostility and extreme violent conduct) of an individual or group towards homosexual individuals or relationships. “Homophobic” behavior, like any other conduct, depends on historical and cultural contexts, and homophobic attitudes manifest themselves in many forms, depending on the context and the social groups at stake. The term “homophobia” has been used since the 1970s; more specifically, it was the American psychotherapist G. Weinberg who first defined it as *the dread of being in close quarters with homosexuals* (Weinberg, 1972, p. 4). However, the concept at times has been criticized, depending on the discipline in which it is used: sociologists and social psychologists dealing with violence towards homosexual individuals usually criticize its psychological connotations, and recognize not only the individual component of the concept (the “phobia”), but above all, the ensemble of cognitive behaviors towards homosexuality at a social, moral, and legal level (Hutchinson, 2002). The suffix “phobia” suggests that individuals characterized by negative attitudes towards homosexuals are “afraid”, whereas most of their behavior is rooted instead in social prejudice.

Some scholars therefore use terms like “anti-homosexual sentiment” (Cherney, 1998), “anti-gay sentiments” (Adams et al., 1996), “homo-hatred” (Ames, 1996), “antihomosexuality” (Hacker, 1971) and “homosexual bias” (Morin, 1977; Fyfe, 1983). Scholars of deviant behavior who rely on socio-cultural analyses identify cognitive and social, as well as psychological, individual, and emotional aspects. Some use the concept of heterosexism to refer to a system that provides the basis for a given society to develop a form of segregation based on sexual orientation. This concept refers to structures, institutions, and social relationships which generate, maintain, and perpetuate feelings of disdain for homosexuals (Herek, 1990). Usually, cultural studies and post-structuralist research employ the concepts of “heteronormativity” (Warner, 1991) and “heterosexual matrix”. The latter was introduced by queer scholar Judith Butler to refer to the existence of two categories in a gender binary, which are organized hierarchically: subjects are attached a static and culturally prescribed gender and a corresponding (hetero)sexual orientation. The heterosexual matrix prescribes the existence of (heterosexual) males and (heterosexual) females – where any other variation is deemed illegitimate (Butler, 1990).

Within a socio-criminological perspective, a distinction between “homophobia” and “heterosexism” is necessary, since whereas the former designates a personal and individual disposition, the latter implies the institutional subordination of homosexuals. In the field of sociology, Ken Plummer was one of the first to put forward a timely criticism of the concept of “homophobia”. For the English scholar, it has a number of limits: a) it strengthens the belief that sexual identities must be understood in terms of illness and mental health; b) it seems to be of little use for theorizing anti-lesbian violence; c) its focus remains on the individual, and lastly, d) it prioritizes the oppression of gay men as opposed to other sexual minorities (Plummer, 1981). As a result, an analysis of anti-homosexual violence as a product of heterosexism seems more compelling. Plummer defines heterosexism as *a diverse set of social practices – from the linguistic to the physical, in the public sphere and the private sphere, covert and overt – in an array of social arenas (e.g. work, home, school, media, church, courts, streets, etc.), in which the homo/hetero binary distinction is at work whereby heterosexuality is privileged* (Plummer, 1992, p. 9).

In addition to issues of the definition of homophobic conduct, questions arise with regards to methodology, including: a) how to reach victimized subjects and how to build representative samples; b) how to avoid furthering victimization, for instance, in interviews with victims of homophobic violence; c) how to assess the credibility (or lack thereof) of accounts and prejudice of, for instance, self-proclaimed

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gay-friendly participant institutions during the phase of data collection; d) how to deal with potential prejudice on the part of researchers; e) and, how to manage risks that may arise from the presence of victims who do not identify as homosexuals. Finally, further issues involving data collection can be discussed; among them, official data may not be available, or they may be incomplete, due to the absence of standardized criteria of collection. Similarly, distorted samples may originate from gay and lesbian associations “building” results; in addition, the data gathered may include secondary sources, for example, newspapers and autobiographies.

Another question relates to the exclusive focus on men’s crimes in the research on male-centric homosexual victimization. This is particularly cogent since, as Ellen Faulkner argues, research on violence against homosexuals does not take into account the specific violence inflicted on women as women and/or lesbians, and it also neglects the role of ethnicity in the victims’ experiences of violence (Faulkner, 2003)¹.

The study of anti-homosexual violence is greatly influenced by the perspectives, theories, and variables employed by the researcher. Some of the researchers in this field posit that anti-homosexual violence results from tensions experienced by young males in acquiring their social status (in terms of gender); others see it as a reaction to the discrediting of gay and lesbian individuals in a heterosexist culture; still others view it as a psychological reaction based on latent homosexual desires. Discrimination is, however, a complex phenomenon common to numerous disciplines, and it relates to different aspects and variables, from legal discrimination based on sexual orientation to violence against homosexual individuals (hate crimes), to families, school, and the workplace (European Union Agency for Fundamental Rights). Studies on deviance and crime have difficulty assessing the phenomenon as a whole. It is hard to assess the victimization of the homosexual population and to compare the different studies about homosexuals, as there are differences in the categorization of the type of crimes, the systemization of data (in terms of distribution of gender, sexual orientation and gender identity), and the limits imposed on sampling and defining samples (convenience samples are often used, as the total size of the homosexual population cannot be determined).

HOMOPHOBIC VIOLENCE AS HETEROSEXUALIZING PRACTICE: A SHORT ACCOUNT OF THE STUDY ON VICTIMISATION

It has been argued that the study of violent anti-homosexual behavior is strongly influenced by the perspectives, theoretical frameworks, and variables employed by the researcher. Some theorists have argued that anti-homosexual violence can be considered a response mechanism to the tension young males experience in the process of social (gender) acquisition. Others believe that violence is a mere response to the undervalued status of gays and lesbians in a heterosexist society. Still others view it as a psychological reaction to latent homosexual desire.

This paragraph highlights the ways in which homophobic conduct/behavior should be read alongside the shaping of masculinity, by taking into consideration a series of key international surveys of victimization. By doing so, the enactment of violence entails both a communicative and an expressive function, whereby visible, open homophobic conducts unquestionably *demonstrate* the heterosexual orientation of the perpetrators of violence. In other words, homophobic conducts are cast as the denial and rejection of homosexuality; as such, they have a double function: on one hand, they are focused on victims as a

specific target of people; on the other, they are a “masculinization” practice that takes place within the process of gender socialization².

Findings from a survey carried out by the New York State Governor’s Task Force on Bias-Related Violence show that young people are particularly hostile towards gays and lesbians as opposed to other minorities. The research found that young people tend to use violent and abusive language and to adopt a very negative behavior as a consequence of socialization processes inside the family, among peers, at school, and on the media (State of New York. Governor’s Task Force on Bias-Related Violence, 1988). A research carried out among a total of 24.718 Australians found that 35% of respondents think that homosexuality is immoral, and within this percentage, 43% of respondents identify as men and 27% as women. In particular, Australian adults are more disapproving of homosexuality, though anti-gay perceptions and opinions are particularly recorded among youths aged 14 to 17, a majority of whom are males. The determining factors of a gap in males’ and females’ perceptions of homosexuality are the respondent’s age, class, level of education, and background. Educational attainment levels also influence the “profile of the homophobe”: among those with higher education level, 33% of males and 17% of females think that homosexuality is immoral; these findings increase among people with lower education level, where 53% of males and 38% of female confirm the same trend. Differences are also recorded with regards to social status: whereas 23% of people from higher classes consider homosexuality as immoral, this percentage increases with people from lower social classes (45%; Flood & Hamilton, 2005). Research carried out at both national and international level highlights empirical evidence of discrimination against LGB people in different spheres (health, workplace, education, leisure, etc.) (D’Ippoliti & Schuster, 2011). Varying anti-homosexual behaviors and attitudes, legislation, and policies are recorded in different national contexts. The existing surveys and research in this field are developed by both academics and NGOs. The World Values Survey contains updated information, including individual reactions to (the presence of) a potential homosexual neighbor. A survey carried out in 2000 found diverging trends in Canada (17%), Holland (6%), Singapore (47%), Switzerland (20%), England (24%), and the US (23%; WVS, 2006).

It should not surprise that the analysis of the contexts of violence in the above survey shows that it takes place mostly in schools (Berrill, 1990). Around 80% of Pilkington and D’Augelli’s gay, lesbian, and bisexual respondents declare they have been victims of verbal abuse due to their sexual orientation (Pilkington and D’Augelli, 1995). Other instances of actual abuse and/or fear of assault include: threats of physical violence (44%, 19% of whom were threatened twice before data collection); damage to personal assets (23%); throwing objects (33%); following or stalking (30%, 6% of whom suffered from these incidents more than once); spitting (13%); physical assault (being beaten, kicked, or punched, 17%); threatening with weapons (10%); sexual violence (22%); verbal abuse at home (22%); fear of physical violence inside the home (7%); fear of verbal abuse at school (31%); fear of physical violence at school (26%). In Sears’ study on schools, only two out of a total of 36 schools had support systems in place for homosexual students. As a consequence, many students tried to “pass” as heterosexuals at least until they took their diploma (though some of them would leave school before then; Sears, 1991).

Franklin discusses educational environments, and argues that group rape on campus targeting girls and assaults to gay men (including those who are perceived to be gay) are provoked by the need of males to strengthen their (homo)social bonds: the enactment of violence is a celebration of masculine power and a public display of heterosexual masculinity. In other words, to adopt a (violent) masculine behavior/conduct is to participate in a performance where the victim’s role is to become the object of violence, whereas the perpetrator’s is to strengthen a (hegemonic) masculinity (Franklin, 2002)³.

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A survey of 100 homosexual people in the city of Victoria, carried out by the Gay men and Lesbians Against Discrimination (GLAD), has shown that: a) 70% of respondents suffered from physical abuse, threats of physical abuse, or verbal abuse in public places; b) 36% of women and 39% of men were threatened with physical assault; c) 11% of women and 39% of men were actually assaulted; d) 12% of women and 18% of men were harassed by the police (Sandroussi & Thompson, 1995; Berrill 1992; Nardi & Bolton, 1991); e) 6% of men and 2% of women were physically assaulted by the police (GLAD, 1994).

Men are more likely to be physically assaulted in public than women, whereas women declare that one out of three instances of assault take place inside the home, in the workplace, and/or where they study (we should also bear in mind the differences in family context). The most comprehensive study is Gregory M. Herek and Kevin T. Berrill' 1992 work on anti-gay violent conducts. In particular, Berrill's study employed a comparative perspective on different surveys of violence against gays and lesbians in several US states over the period from 1988 to 1991. A wide majority of his respondents reported instances of verbal abuse (80%), while others (40%) declared they were threatened with violence (17% of whom were victims of physical assault). Still others were threatened with more serious assault (e.g., with weapons) (9%), or were followed or stalked (33%). Other reported violent attacks, including: hitting with an object (25%); vandalism (19%); and spitting (13%). The research shows that homosexual people, or people who are perceived as homosexuals, are likely to be the victims of verbal abuse, physical threats, beating, crimes against the individual, and in some cases, extreme acts of violence or death (Berrill, 1992; Herek & Berrill, 1992). A study of 400 gay and lesbian adolescents carried out in London, England by Trenchard and Warren recorded that more than 50% of the respondents were verbally abused, 20% of them were kicked, and 10% were forced out of home, whereas many were recommended medical treatment (including therapy), due to their sexual orientation (Trenchard & Warren, 1984). Cox (1994) drafted a research report commissioned by Sydney Gay & lesbian Rights Lobby focused on an in-depth analysis of the aggressors' characteristics. Findings show that 85% of the incidents (169 in total) were caused by men, as compared to 12% caused by both men and women, and only 2% caused by women. According to the victims (113 cases), the average aggressor was aged under 25 (61%) or under 30 (78%). The violence was usually inflicted by a group of people (Cox, 1994). The San Francisco group Community United Against Violence (CUAV) also reported the "young man" as typical would-be aggressor, who normally acts in concert with other young males, none of whom knows personally the victim. A study on the profile of aggressors involving 418 victims demonstrated that 92% of subjects were attacked by men, 57% reported multiple aggressors, and 54% of aggressors were under the age of 21 (or younger) (Berrill 1992: 30).

According to the National Coalition of Anti-Violence Programs, Anti-Lesbian, Gay, Bisexual and Transgender Violence, more than 50% of violent conducts against gays and lesbians were by youths aged under 29, specifically 20% are aged 18 or under 18, and 37% are aged between 18 and 29 (National Coalition of Anti-Violence Programs, Anti-Lesbian, Gay, Bisexual and Transgender Violence, 2005). It is useful to look at the classification along lines of ethnicity, gender, and age, as it seem to play a fundamental role for extreme violence (like homicide) against LBGT people. As argued previously, aggressors are usually white men. According to findings collected in New York City by Gary D. Comstock, 67% of aggressors are whites, 94% of whom are men. The study refers to "gay-related" homicides collected over the period from 1970 to 1990 (as gathered and/or reported in newspapers), and it emerges from a comparison between 32 statistical US surveys that focused on violence against gays and lesbians (Comstock, 1991)⁴. The authors of a crime are usually thrilled by the violence they perform, and they would celebrate the event. Their violent conduct is also seen to boost their self-esteem. These authors

of violence are normally younger males than their victim(s), whom they do not personally know; and, they tend to act as a group. Several reasons are provided to justify the violence committed. In particular, it is worth noting how these subjects speak about the violence as a “recreational” moment, something “fun/entertaining” because of the ways in which homosexual people in society are perceived as inferior, marginalized, and denied of rights. Secondly, there is the belief that gays and lesbians lack cultural and social protection. An additional reason, which was common in the 1980s, is that gays are seen as plague spreaders, and that they should be held responsible for the AIDS epidemic (Sarre & Tomsen, 1997; Schembri, 1995). Furthermore, data collected by the National Coalition of Anti-Violence Programs show that violence against LGBT people is carried out more often by whites (47%), and by white males in particular (82%). It has been said that most of the perpetrators of violence are adolescents or aged 20. In Comstock’s study, nearly half of the subjects displaying anti-LGBT conduct are aged 21 or under, whereas the majority is represented by people aged under 28. Findings of the NCAVP demonstrate that 57% of the total of aggressors whose age was known were aged under 30 – 20% were aged 18 or under, 37% were aged between 18 and 29 (specifically, the average aggressor’s age ranged between 15 and 22). Victims are usually younger than their aggressors. According to a survey sampling 2,259 gays, lesbians, and bisexuals living in Sacramento (California) 28% of gays (N=898), 19% of lesbians (N=980), 27% of bisexual men (N= 191), and 15% of bisexual women (N=190) reported episodes of victimization⁵ from the age of 16 and onwards, due to their sexual orientation (Herek, Gillis and Cogan, 1999). Huebner et al. have analyzed a sample of 1,248 young gay and bisexual men (average=23 years; age range: 18-27) in three South-Western cities of the US; 5% of them report instances of harassment and physical violence due to their sexual orientation in the previous six months (Huebner, Redchook and Kegeles, 2004). Another research focusing on young LGBT people sampled through involving local associations in New York City highlights that 11% of respondents were physically assaulted because of their sexual orientation, whereas others (9%) were victim of sexual violence, harassment and/or verbal threats (78%; (D’Augelli, Grossman and Strarks, 2006).

It is clear that the study of extreme violent behavior/conducts against homosexual people presents intrinsic problems, ranging from the criteria of identification, classification, and recording that take place after the victim’s death. The term “gay prejudice related homicide” or “gay-hate related homicide” denotes a homicide where the victim is either a homosexual or someone who is perceived as such. The Homicide Monitoring Program (NHMP) of the Australian Institute of Criminology has gathered detailed information about the homicides, the victims, and the aggressors since July 1989 and onwards. The database made it possible to compare data collected by the New South Wales Police Gay/Lesbian Client Consultant on the homicides of homosexuals occurring over the period from 1 July 1989 to 30 June 1999⁶. These data reveal that a total of 37 homicides of gays and 454 homicides of men took place in New South Wales. In order to distinguish between “gay-hate related homicides” and “homicides of non-homosexual men” data have been coded according to several criteria: a) formal and informal acknowledgement of the aggressor; b) the evidence of anti-gay/lesbian abuse; c) the proximity to a well-known gay bar or venue; d) the proximity to cruising areas; e) information about the reasons of the attack made available from people who knew the victim and/or the aggressor; f) the nature of the harm inflicted; g) the nature of the violence; h) the relationship between the event and gay events; i) the absence of any other reason; l) possible sexual advances made by the victim. The findings reveal that homosexuals are killed in residential buildings (62%) as opposed to non-homosexual victims (51.4%), and that the majority of homicides occurs inside the victim’s home. The majority of gays is killed at the hands of a group (54.5% compared to 44.2%), they are usually older than their non-homosexual counterparts, and

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they are nearly always white Caucasian males (93.1%). The reasons leading to the victim's death include beating, punching or kicking, or else, blunt tools (a knife is the most common tool used in homicides of non-homosexual men). For both groups considered, the most common lethal tool is the knife, or similar bladed object – only 3.4% of victims are killed with a gun (as compared to 27.8% of non-homosexual victims). Generally, these assaults are more violent and physical: they are characterized by their brutality (e.g., repeated stabbings, brutal beatings, mutilation and dismembering of the corpse). The attacks usually follow some sort of socializing and contact between the victim and the aggressor. It is worth looking at the profile of the aggressor(s): in 29.5% of cases, they are boys aged between 15 and 17 (three times as much the number of non-homosexual victims, which accounts to 8.4%). Aggressors aged from 18 to 24 account for 39% of the total, whereas those who attack gays are aged from 15 and 24 (and they are usually five years older than the victim). They are generally white (93.2%), unemployed (81.8%, as opposed to 47.9% of aggressors of non-homosexual people), and unmarried (77.3%, as compared to 63.7% of aggressors of non-homosexual people).

A recent analysis provided insight into the shaping of the dynamics typical of homophobic behavior/conduct. This is the study based on the reports curated by Italian Arcigay over the period from 2006 to 2011 documenting homophobia, which were also published in the local and the national press. The data have been coded according to the time period, the geographical location of the attack, the social and personal details of the aggressor(s), and above all, the kind of relationship (or lack thereof) between the victim and the aggressor(s), the kinds and dynamics of violent conducts, and their effects. The total number of episodes of violence is around 235 cases (see Rinaldi, 2013c for an in-depth analysis of the findings). A closer look shows that the majority of victims of varying degrees of anti-homosexual conduct and violence are males identified and/or perceived as homo/bisexual (68.5%; N. 161), others are MtF (23.4%; N. 55), females identified and/or perceived as lesbian/bisexual (6.4%; N. 15); still others are FtM (1.7%; N. 4). The perpetrators of violence are nearly always Italian young men, who act in concert with their group, and who often display very violent dynamics in public places. The victims are perceived as homo/bisexuals and seem to be particularly vulnerable during the period from adolescence to age 20 and in the age group 21 to 30 (91% of them are indeed students). The majority of aggressors are not among the victim's friends or connections. In most cases, and particularly with regards to homo-bisexual males, the attack and/or the violent conduct are performed against individuals and aim at erasing the victim's singularity and attempts at border-crossing. Aggressors often employ multiple forms of violence, including physical and verbal abuse: younger aggressors (read, in schools) recur to teasing and insulting, whereas young adults seem to use more physical violence. Among the kinds of assault, those who are particularly violent and/or causing the death of the victim are remarkably brutal: more violent and physical attacks include repeated stabbings; savage beatings, mutilation and dismembering of the corpse. Many of these attacks are conducted after some kind of socialising or contact between the victim the aggressor, and in areas that are considered under "masculine" surveillance. Several aspects are worth taking into account: aggressors are young males and/or young adults. It has also been demonstrated that males are more likely to have heterosexist views; indeed, fathers, brothers, and sons tend to have the more violent reactions when they learn about a non-heterosexual family member. Inside educational environments like schools, males tend to display a more violent reaction against a potential or actual peer who identifies and/or is perceived as non-heterosexual. Research carried out in the US context also highlights that males are more likely to perceive lesbianism as a threat to the fundamental social institutions than women (see Rinaldi, 2012 for a survey of the extensive literature in the field of anti-LGBT conduct). In addition, violent attacks are often carried out by groups of people against

individuals. Usually, the aggressor and the victim do not personally know each other, and the violence enacted is extremely severe. One element that emerges with clarity is that the aggressor's gender and the situated cultural constructions of masculinity seem to play a fundamental role for generating anti-homosexual violent behavior/conduct.

To summarize, the characteristics of extreme anti-homosexual violence, as far as the profile of the perpetrator, the victim, and the characteristics of the violence are concerned are: a) the perpetrators are young males and/or young adults; b) the attacks and the violence are carried out by groups; c) the perpetrator and the victim usually do not know each other; d) anti-homosexual violence is particularly brutal (compared with violence to non-homosexual individuals); e) the violence is mainly carried out in public places. The gender of the perpetrator and cultural constructions of masculinity, in a heterosexist and hegemonic system, seem to play a fundamental role in producing homophobic and anti-homosexual behavior.

INTERPRETATIONS

Masculinity and its hierarchies seem to be key for understanding anti-homosexual behavior/conduct and violence. It has been demonstrated that, generally, males tend to hold sexist views (Herek, 2002; Burn, 2000; LaMar & Kite, 1998), where for instance, fathers, brothers, and sons react more violently to a homosexual family member than mothers, sisters, and daughters (Herek, 1988; Kite, 1984; Bertone et al., 2003). Within school environments, research carried out in the US shows that males are more likely to display and aggressive behavior towards a peer who identifies and/or is perceived as homosexual. More specifically, males are likely to consider lesbianism as a threat to the fundamental social institutions (D'Augelli & Rose, 1990). Johnson et al. have noted that the males in their sample are more likely to view homosexuality as a choice in need of a cure through "therapy" (Johnson, Brems and Alford-Keating, 1997). Males also highlight the need to maintain and preserve traditional gender roles, so they adopt negative and oppressive behavior against "feminine" gays (Parrott, Adams and Zeichner, 2002) and "masculine" lesbians (Laner & Laner, 1980).

Socio-criminological research should address, as has recently happened, the ways in which the cultural construction of masculinity may involve adopting violent and/or deviant conduct and practices. In other words, it should acknowledge how, in these cases, a crime is one way to perform masculinity (Messerschmidt 1993, 1997, 2000, 2004; Messerschmidt – Tomsen, 2012; Tomsen, 2009).

Some scholars, including Eve Kosofski Sedgwick (1985) with her definition of "homosociality", have looked at how male bonding for males is grounded in and reinforced by homophobic, misogynistic, and violent conducts. The performative aspects of masculinities are usually reiterated across homosocial lines. Masculinity is performed through a series of practices in the presence of other males, whose role is to allow and to support these very practices. Homosocial bonding exerts a powerful influence over sexual relations and gender constructions for non-LGBT young males: for instance, male friendship is revealed as a priority, as opposed to male-female friendship. On the contrary, platonic friendships with women is seen as dangerous and as ultimately leading to "feminization". Sexual intercourse is the primary test to achieve competent male status, as is the sharing of (hetero)sexual stories. Combined to real or imagined practices, these are the methods through which to enact and/or to perform male bonding (Flood, 2008). Violent conducts against non-heterosexual males therefore can be seen as instrumental to the strengthening of male (homo)social bonds and the celebration of masculine/male power. Violent

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behavior takes the form of a public display of heterosexual masculinity: the enactment of male violence is a collective performance, where the very act of identifying object of the violence has the strengthening of the aggressor(s)' (hegemonic) masculinity as both its objective and performative effect. Most of the violent practices through which subjects distance themselves from behaviors and conducts deemed as "less masculine" are learned and performed during the process of gender socialization. Young males are pressured to conform to "typical" and "normative" gender roles (as males), and to use/employ these (violent) practices in order to "do" and to "mean" *this* kind of masculinity. This is to say that the victim is exploited to validate the organization of dominant gender and sexual roles, particularly the role of the heterosexual male – both on a physical and a symbolic level.

The gender of the aggressor(s) (and of the victim) and the cultural constructions of masculinity within the heterosexist hegemonic order seem to play a crucial role in the shaping of anti-homosexual violent conducts.

Socio-criminological research needs to be aware that masculinity should no longer be interpreted as a fixed trait (relating to behavior or personality). It should be analyzed, instead, as a series of collective (male) practices, which offer are dominating or subordinating. We need to focus on the ways in which males construct the masculine category, both with regards to social relationships and to the practices they employ to appear as *competent* members. It is a matter of understanding what it means *socially* to be a male and, above all, to *belong* to the social category of males: these fundamental processes are substantiated by *performing* masculinity and being recognized as "masculine/male" ("competent social members", "competent males"). It is necessary to recognize oneself, be recognized, and convince others that you can measure up, to identify and understand the system of credibility made concrete by the use of "configurations of practices" (masculine and heterosexual) (Carrigan, Connell and Lee, 1985). However, this definition does not effectively identify which of these practices constitute masculinity, though it highlights the necessary cooperative production of masculinity (of masculinities) and the consequent subordination of femininity (and of "non standard", "non competent", "subordinate" masculinities).

Being a male means possessing a masculine *self* that signifies a "dramatic" effect: this includes the intentionality of the subject and the interpretation of others. It is clear that the implications of masculinity vary from culture to culture and across historical periods, and that this also varies according to other characteristics related to social actors (age, ethnicity, social class, able-bodiedness/disability, etc.) (Schrock and Schwalbe, 2009). To avoid considering essential characteristics (it is not a given that those recognized as male have a male body, Halberstam, 1998), Schrock and Schwalbe argue that masculine practices have in common a specific type of behavior, *one which signifies a masculine self* (Schrock and Schwalbe, 2009, p. 280), not a specific body. In this sense, it becomes very difficult to identify a single and undeniable form of masculinity. The two scholars criticize this way of defining multiple masculinities because it clouds differences within the same category, and it undermines individual capacity for action. One therefore learns how to handle identity codes (Schwalbe and Mason-Schrock, 1996), which consist of constituent symbols of the gender order (Connell). Individuals' possession and competent and appropriate handling of these symbols is the basis for approval within a group of peers, as well as the acquisition of a certain status. Many of the processes of approval and recognition start with a comparison with other significant figures within the family (parents), who may be approving or disapproving of their children's appearance, behavior, games, wardrobe and language. The literature considers primarily a series of characteristics related to the acquisition of a highly regulated masculine self from early age on (Lever, 1978; Messner, 1992): boys do not express pain, suffering or fear. It is clear that many of these processes start in the family – boys "must" learn to express and therefore to flaunt sexual desire for girls either through

vulgar language (Thorne, 1993; Fine, 1987), or through more or less obvious forms of aggression and harassment, in order to mark violently their heterosexuality (Pascoe, 2007). Another common trait is the variety of references to violence and aggression, both in concrete and symbolic terms. Often, parents, or adults in general legitimate resorting to violence (Athens, 1992; 203; Messerschmidt, 2000), openly or subtly. The gender matrix is seen in bullying, but also in the ways in which males who are marginalized (because of their ethnicity or social class) can discover that, for example, they can impress their peers by disobeying the rules imposed by teachers or superiors, and/or by responding to teachers (Willis, 1977; Ferguson, 2000). Young people socializing in gangs and delinquent groups, for example, learn that they can acquire their male status through symbolic or concrete acts of intimidation. Essentially, they must learn to pretend they are serious, also because in order to give sense to their masculinity they must, for instance, inspire deference and fear in others.

The ideals of the media contribute to the different significant practices males can use in their masculine behavior and acts. Take, for example, the research on stories of super heroes; masculine cinematic legends, etc.; the ideals of the media can therefore be used as a shared symbolic language to identify certain practices as “signs” of masculinity. On the other hand, they can also be used to devalue specific signs of masculinity: consider the representations of working-class whites (Butsch, 2003), teenage mothers and young underclasses, gay men (Linneman, 2008), and ethnic minorities in general.

All masculine behavior, therefore, represents a demand to belong to the privileged gender group. Males construct their own masculinity in a specific way and according to specific procedures, which vary according to the social context. When some men are not able or do not want to follow the dominant ideal, they may find other ways to compensate for their masculinity. Some, for example, emphasize certain aspects of the dominant ideal to construct an effective masculine behavior (job and income), whereas men with lower economic capital and fewer resources use other strategies in order to maintain control over their relationship with their partner (Pyke, 1996).

As noted again by Schrock and Schwalbe, masculine acts and behavior are strategically adapted to available resources, individual competences, local cultures, and the expectations of the (local) public (Schrock and Schwalbe, 2009, p. 285). Other forms of compensation manifest themselves, for example, in cases of modest work: rather than trying to control others, men show that they cannot be controlled (through jokes, sexist conversations, etc.). Since not all men are able to meet the standard of the “dominant male”, adaptations are also necessary in terms of subculture: working class men come together in pubs or gambling halls where they can drink (Peralta, 2007), talk openly about sex, assume aggressive postures, whereas others engage in risky behavior, or criminal activity (Messerschmidt, 1993).

“Compensatory” masculine behavior can reproduce inequalities which disadvantage sub-groups of men: for example, self-defensive displays of crudity and aggression by underprivileged boys lead to their disinvestment at work and at school (Willis, 1977; Anderson, 1999). In the phases of research and analytical conceptualization, an analysis focused on the relationship between masculinity and anti-gay (and lesbian) violence should avoid reifying and essentializing masculinity, which is wrongly considered an essential quality of male bodies and psyches, as well as treating it as if it had an “explanatory capacity” (Schrock and Schwalbe, 2009, p. 289). This involved determining the identity process which enables social actors to place themselves inside categories and reproduces them; documenting and analyzing “manhood acts”, that is, the identity process that males use and the repertoire they enact to stake their claim of belonging to the dominant gender, in order? to maintain the social reality of the group, loyalty to the group, privileges etc. Ultimately, it is necessary to consider males’ use of “the order of the interaction” in cooperative terms to construct “manhood acts”; what type of moral order (of masculinity

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and femininity) they construct; what hierarchies of desirability of genders and bodies; how individual behavior is controlled and supported; and how that symbolic material which allows them to engage in competent, convincing masculine behavior is created and shared. Socio-criminological research has been bling to these aspects of gender, taking for granted its male gaze.

As Harry states, certain factors are necessary for anti-homosexual violence to manifest itself, in particular: a) the establishment of a gender system with specific, defined, definitive boundaries; b) motives for which any departure from gender roles (and from the sexual practices culturally linked to the latter) is culturally perceived as abominable; c) the presence of groups of men who need to validate constantly their male status; d) the estrangement of these male groups from the conventional moral order in force; e) a series of opportunities and conditions which give way to anti-homosexual behavior (spatial characteristics of the location of the violence, specific days and times, unsafe areas of the city, etc.) (Harry, 1992, p. 113).

Homophobic behavior has expressive and communicative value, in that an openly and visibly anti-homosexual act unequivocally *proves* the hegemonic heterosexual masculinity of the individual carrying it out. Thus, violent acts and behavior are proof of the refusal and rejection of homosexuality; they represent a “masculinization” practice within the processes of gender socialization. Every homophobic act aims to intimidate not just the victim but the whole group associated with the victim, whether concretely or merely in the perception of the perpetrator. Not only gay and lesbian individuals are targeted, but also heterosexual individuals who are perceived as homosexual or who do not conform to dominant normative sex and gender models. Whenever homophobia is the subject of social and psycho-social studies, the socio-cultural context must be taken into consideration, because there are as many forms of anti-homosexual violence as there are hegemonic gender models and forms – both outside and inside the homosexual community.

Given the scarcity of comparative data available on the process of victimization of LGBT people, it is possible to gain an understanding of the effects that social actors anticipate in their deviant/criminal conduct through a socio-constructivist approach to deviant and criminal action (von Cranach & Harré, 1991; Harré & Secord, 1977). On one hand, this approach allows framing the pragmatic, instrumental effects of the subject’s aims and objectives; on the other, it offers an understanding of the expressive, communicative effects of the different interpretations, and which are linked to contextual forms of control and amplification.

The first kind of effects are known as “effects of the Self”: a subject performs an action such that, if they were looking at it from the outside, the action involved an assessment of their own identity. In this case, the performative dimensions of the shaping of a masculine self, the subject’s ability to master their own impressions of themselves, as well the impressions of other people (i.e. the male reference group) in order not to lose one’s face all function as expressive and communicative reference points. These are used by the (young) male to provide a justification for his acts in the context of the normative and symbolic organization of “being male” and “belonging to the male group” (e.g., “they deserve it, a real male should not do what they are doing!”, or “the violence I can use is proof that I know how a real male should behave, and other males will be able to see this, too”). The second kind of effects is the so-called “relational” model: it refers to “the communicative value of an action performed within an imaginary or actual relationship, which is somehow meaningful for the subject who performs it”. In the context of anti-LGBT conducts, the emphasis on the (imaginary or actual) relationship sees the action in terms of the shaping of roles, dimensions of power, leadership, and (sense of) belonging. Of particular relevance here is the violent action performed by and in the presence of a group of males against a male subject

who is identified and/or perceived as homo/bisexual. The kind of relationship and of victim boosts the aggressor's self-esteem: the target of a violence is thought to testify the hegemonic position of heterosexual males and the necessary subordination of "other" males. It also allows building and strengthening leadership, hegemonic views, and (sense of) belonging to a particular group.

The third kind of effects are called control effects, which are variations of the relational effects. In particular, they refer to subjects' relationship with formal and informal agencies of control (such as, the family, the police, etc.) and with what are broadly understood as normative regimes. A paradox emerges here, since social actions are governed by norms much in the same way as deviant actions, thus some norms are followed whereas others are transgressed. However, it should be observed that anti-LGBT conducts operate in the same domain as broader symbolic and cultural norms (e.g., the shaping of a "respectable", "pure", "originary" masculinity), even though they also have effects exceeding the legal limit and subject to penal sanctions (e.g., homicide, beating, theft, etc.). They also and often are used to provide justification for the very deviant act performed (a male should not behave like this). The last kind of effects are known as "effects of change". They are analyzed according to "a systemic approach to the relationship among individuals and systems as two inter-related entities: for this reason, a potential change [...] in any one component of the system will have effects on the whole system". Here, the subject may interrupt what they consider as an impediment to their self-development, or conversely, they may wish for stability and being immune from change, which is perceived as harmful. Violent actions, and specifically those targeted at males who identify and/or are perceived as homo-bisexuals seem to offer a different language to articulate the threat posed by boundary-crossing. The effects outlined above may provide insight into understanding violent actions as directed at the preservation of the boundaries of a group. To conclude, it seems necessary to consider carefully the main implications of (the study of) victimology with regards to LGBT populations, and to the processual and group characteristics of violence.

CONCLUSION

Sexuality, and sexual behavior and practices, are fundamental to understand the ongoing social transformations of identities affecting culture, economics, politics, and law. Sexuality, desire, and emotions are not just expressions of impulses and biological facts; they acquire significance within the processes and social constructions which produce them, and by which they are regulated, maintained and transformed. The social basis of sexuality implies that societies and cultures possess their own *sexual configuration* (Berger & Luckmann, 1966): certain sexual practices are defined as morally desirable and others are undesirable, abjected (Kristeva, 1982); some are "natural" and others are "unnatural" (Young, 1990). Heterosexuality, particularly some of its dominant forms (Richardson, 1996), seems to assume a privileged role in Western societies in sexual classifications and differentiations regarding the body. The heterosexual configuration projects its (hetero)normative and (hetero)sexist models onto the natural world and onto other species, including humans, as a reference point to create social expectations and to project forms of relationships. It thus contributes to the construction of processes of naturalization and essentialization which, both at a micro- and macro-social level, are transformed into structures and practices of normalization, discrimination, marginalization, punishment, and exclusion. Heterosexuality is defined as the normal and natural observation point from which we define reality, its relationships, and its equilibriums. As Chrys Ingraham argues, this leads to the definition of categories of identity ("natural", "essentialized") and the corresponding belief systems which succumb to the misleading idea of sexuality

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as static, fixed and not highly organized, regulated, and institutionalized (Ingraham, 2005). Categories constructed in this way inevitably reproduce hetero-normed/hetero-normalized/hetero-normalizing hierarchical systems. Other sexual realities are defined around these categories as deviant, criminal, pathological, atypical, unnatural, and immoral. In this sense, dichotomic categories are constructed and exist only hierarchically and in opposition to each other. Individuals therefore have to assume a static, culturally predetermined gender role: there is “one” prevailing gender role (the male) and a derivative one (the female); there is “one” (single, unique and original) defined (hetero)sexual orientation. The *heterosexual matrix* dictates that one can be “male” (heterosexual) or “female” (heterosexual), and that any alternative cannot be taken seriously. These predetermined genders express a static conceptualization of sex and sexual practices, which are defined hierarchically and in opposing terms through the compulsive practice of heterosexuality (Rich; Butler, 1990). Criminologists (and others) therefore should avoid getting caught up in essentialism, and pay attention to the cultural meanings attributed to sexualities in their analysis of the construction of criminal reality. This should be the case in spite of the fact that sexualities can, and certainly do, have a “natural” base. The dominant sexual categories and power structures continue to be privileged, normalized, naturalized or “forgotten” in the dual sense of being the standard or taken for granted, as they are made concrete in a single and all-encompassing story of “outlooks”. Like being white, middle-classed, and able-bodied, heterosexuality is socially constructed as a dominant, *universalized, social institution* even within socio-criminological research.

A study that is above all aimed at tackling homophobic conducts should open a series of questions, including:

1. **The different phases across the reproduction and socialization of the subjects’ (sense of) belonging and gender roles:** giving that aggressors and victims are young, it is necessary to take action and to build programs in different environments, like schools and educational institutions, and the contexts of socialization;
2. **Violence often involves belonging to a group and building a reputation,** as we have seen, within the contexts of some kind of “public” acknowledgement and/or recognition: the number of crimes reported is scarce, which should lead one to consider the connivance of hegemonic gender systems with their normalized and legitimized practices of violence;
3. **The lack of stable and homogenous data** inevitably leads one to infer that socio-criminological analysis and the public opinion should work together to stimulate legislators to take action in favor of the introduction of anti-LGBT crimes as subject of specific laws and charges. These changes would not only result in more accurate and reliable data to use for future research, they would also make a necessary contribution to sexual justice in every specific national context.

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KEY TERMS AND DEFINITIONS

Cisnormativity: Ideological assumption that all individuals have a gender identity which corresponds to the sex they have been assigned at birth.

Heterosexism: System that provides the basis for a given society to develop a form of segregation based on sexual orientation which privileges heterosexuality.

Heterosexual Matrix: A hierarchical order which prescribes gender assignments (male vs female) and a corresponding (hetero)sexual orientation.

Heterosexualization: A range of institutional, cultural and interpersonal practices which force individuals to adhere to heterosexuality considered as the only and original sexual orientation.

Homophobia: Negative attitude (from simple discomfort, to hate, to total hostility and extreme violent conduct) of an individual or group towards homosexual individuals or relationships.

Homosociality: Male bonding usually produced during young age reinforced by homophobic, misogynistic, and violent conducts.

Lesbophobia: Negative attitude (from simple discomfort, to hate, to total hostility and extreme violent conduct) of an individual or group towards homosexual females.

Transphobia: Negative attitude (from simple discomfort, to hate, to total hostility and extreme violent conduct) of an individual or group towards transgender and transsexual individuals.

ENDNOTES

- ¹ Lesbians seem to be absent from studies on victimization. Canadian scholar Ellen Faulkner has carried out research with the Department of Justice and the Calgary Police commission for hate crimes targeted at local gay and lesbian communities. Her earlier works were concerned with the representations on the media of harassment and violence against gay people, in which the typical victim is the (older) homosexual, sexual predator bothering the “good” heterosexual guy, who eventually kills him “by right”. For Faulkner, the collective perception about gays and lesbian is not too dissimilar from the representations of violence against women, and the two seem to share the presence of some kind of “co-operation” between the victim, the deed, and the aggressor. Faulker goes on to argue that research and analysis focusing on victimization fails to take lesbianism into account because of the primacy accorded to the “masculine” gender in studies of violence against non-heterosexual people, and that both the research and interpretation processes are flattened out to make space for the psychological domain (i.e. homophobia), not for institutionalized heterosexism. Lesbians are under-represented in a great deal of the research available, both as perpetrators of violence and as victims, which contributes to the silencing of female experience within the analysis of anti-homosexual violent conducts. In an Australian context, Gail Masons in her detailed analysis (1997) argues that lesbians are doubly stigmatized within a heterosexist context, which explains why anti-lesbian violent conduct is aimed both at the victim’s (female) gender and (lesbian) sexual orientation (Mason, 1997). The theories and the methods employed fail to account fully for the experience of lesbians, particularly given that conceptual and methodological frameworks are modelled on “masculine” experiences of anti-homosexual violence, to which they refer. Although Faulkner’s study records similarities of gender(ed) experiences within the victimization of non-heterosexuals, it also sheds light on lesbians’ specific experience of violence through a triangular approach to data collection (in-depth interviews; content analysis; self-report surveys). In most of the research on the experience of victimization of gay men, they are victims of extreme forms of violence; conversely, the aforementioned research carried out in Canada revealed that lesbians are subject to harassment and sexual violence across the entire life course (the same as their heterosexual counterparts) (Faulkner, 1997). Whereas gays are typically victims of forms of violence against “males” (attempted homicide, and other violent crimes), lesbians usually consider themselves as more often at risk. Feelings of fear of a violent attack can be so strong as to influence their behavior, to such an extent that they may decide to modify their conduct in order to avoid potential attacks (Faulkner, 2003, p.155). This should lead one to consider gender as explanatory variable common to both heterosexual and non-heterosexual women within processes of victimization. This hypothesis seems to be confirmed also by the numerous surveys on victimization showing that lesbians are victims of a violent act performed by someone they know (often, this is a colleague, a family member, an ex-, a man or a woman they know). This research also confirms that the percentage of violence against lesbians inside the private sphere is higher than violence against gays. Lesbians are primarily targets of violence from male family members (brothers and fathers), which could lead one to infer that a great deal of crimes committed against (women and) lesbians are under-represented due to their categorization “simply” as domestic violence (Faulkner, 2003, p. 156).
- ² Discrimination is a complex phenomenon that involves numerous disciplinary contexts and interacts with varying dimensions and variables belonging, including legal discrimination. Therefore, it is not possible to gather specific evidence of the victimization of LGBT populations even through a

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comparative approach to the research available in this field. This is mainly due to the existence of different categorizations of crimes, different periods, different patterns resulting from the analysis of gender, sexual orientation and gender identity. There are also problems about sampling and defining the samples (at times, convenience samples are employed, as it is not possible to gather the exact figures related to non-heterosexual people).

- 3 Some scholars, and in particular, Eve Kosofski Sedgwick (1985) with her definition of “homosociality”, have looked at how male bonding for males are grounded in and reinforced by homophobic, misogynistic, and violent conducts. The performative aspects of masculinities are usually reiterated across homosocial lines; in other words, masculinity is performed through a series of practices in the presence of other males, whose role is to allow and to support these very practices; cf. Sedgwick, E. K. (1985), *Between men. English literature and male homosocial desire*, Columbia University Press, New York. Michael Flood (2008) argues that these forms of homosocial bonding exert a powerful influence over sexual relations and gender construction for young heterosexual males: male friendship is revealed as a priority, as opposed to male-female friendship. On the contrary, platonic friendships with women is seen as dangerous and as ultimately leading to “feminization”; sexual intercourse is the primary test to achieve competent male status, as is the sharing of (hetero) sexual stories; combined to real or imagined practices, they are the methods through which to enact and/or to perform male bonding (Flood, 2008).
- 4 Statistical data on 1.482 sexual orientation-related hate crimes collected by the *F.B.I.’s Criminal Justice Information Services Division* (2009) included males who were victims of anti-homosexual prejudice (55.1%); subjects who were victimized due to anti-homosexual prejudice (27.1%); lesbians who were victims of anti-homosexual privilege (15.3%); bisexuals (1.8%); and victims of anti-heterosexual prejudice (1.4%). Cf. <http://www2.fbi.gov/ucr/hc2009/victims.html> (accessed 25 July 2012).
- 5 Specifically, 13% of gays, 7% of lesbians, 11% of bisexual men, and 5% of bisexual women had been victims of simple or aggravated assault; 4% of gays, 3% of lesbians, 7% of bisexual men, and 4% of bisexual women had been victims of sexual assault due to their sexual orientation.
- 6 The New South Wales police is the only police force that has ever gathered systematically the information about homicides of non-heterosexuals. They also devised different strategies and interventions aimed to reduce and to combat homophobia: among them, the Police Gay/Lesbian Liaison Officers (GLLOs), a special police Corp, educational campaigns, training activities in schools, collaborations with local LGBT groups. They are also part of annual Mardi Gras march in Sydney, carrying the slogan, “We’re here because we care”.

Chapter 8

Transnational Organized Crime: The Branching of Mafias Into the Global Era

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ABSTRACT

Criminal organizations have opened up to profound global transformations, putting themselves on the financial markets and creating a network in Mafia style. The present contribution intends to offer a framework of transnational criminal organizations, starting from defining aspects, normative forecasts and peculiarities, and then describing the Italian mafias and those of Eastern Europe, China, and Nigeria. Through these analyses the author intends to demonstrate how although Italy is the only country to have introduced “the Mafia Criminal Association” ex Art. 416 bis of the Penal Code, other countries also know this phenomenon. China, Russia, sub-Saharan Africa have given rise to mafia-style criminal organizations, even though they have not legally defined them. Today the branching of these associations at transnational level brings out their mafia values and the need to intervene with the legal and investigative methodology that was first experimented in Italy.

INTRODUCTION

Criminal organizations have conquered important slices of the world market.

By hatching from the territories of origin, they have opened themselves to profound global transformations, also thinking about their own values, their goals and their own rules. The mafias have, therefore, reached the global dimension, they have extended as entrepreneurs, starting initiatives under monopoly and putting themselves on the financial markets, not only through illegal activities.

Collaborations are consolidated between the endogenous and foreign criminal organizations, giving life to that phenomenon that the author defies as “intermafiosity”, which often sees involved countries of Europe, the Balkan area, Asia, North Africa and the South America. Mafias who tend to assume more

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and more transnational character, establishing cooperation agreements with foreign criminal networks, to maximize old and new opportunities offered by the markets and minimize the risk of identifying assets offences by the law enforcement authorities.

The United Nations Convention against Transnational Organized Crime, adopted by the General Assembly in resolution 55/25 of 15 November 2000 in New York, is the main international instrument for combating transnational crime. It is an expression of the recognition by the Member States of the seriousness of the phenomenon and of the need to promote and stimulate greater international cooperation.

The present work will show how the Italian criminal organizations have been able to seize the opportunities offered by globalization and the consequent great economic, political and social changes, and primarily by the internationalization of financial markets. The ‘Ndrangheta, in particular is the most rooted mafia in the EU countries and the world.

In fact, it moves families to other territories where it creates stable locations and is the only criminal organization of Italian mafia-style to have more offices, in Calabria, in the center-north and abroad. From the analysis of the rooting of the ‘Ndrangheta internationally, author then goes to the analysis of organized Chinese crime, Russian and Nigerian associations, also focusing on their diffusion in Italy.

In a transnational dimension, the Chinese underworld operates, with the indigenous and allogenic criminals present on the territories, in the conduct of illicit business and does so with a “mafia-style” methodology.

The Triad is the name that was given in the West to a secret society, founded in China in the seventeenth century and now become a dangerous mafia criminal organization. It has its bases in Hong Kong and the island of Taiwan, but it is also widespread in Europe and the United States of America.

Even the Russian mafia, inserted in the global networks of transnational traffics, encounter Italian and foreign criminal associations, and are operative in different sectors. It is not a single Russian mafia, but a number of ethnic mafias, who come from the former Soviet Union and have been able to infiltrate politics and public administration progressively and massively.

A section of the present work is dedicated to the trafficking of human beings and to the Nigerian organized crime, which in Italy manages it. Trafficking in people is a complex phenomenon, because the displacement, deception and exploitation of victims is not achieved in a linear way, but hides in the processes of illegal immigration and the black market circuits of labor. Sexual exploitation is the main goal of women’s trafficking. The Nigerian mafia manages not only the exploitation of the prostitution, but also the drug dealing and the transfer of money of the countrymen in exchange of commissions.

These are organizations that operate by violating criminal laws and regulations of different national jurisdictions. The transnationality of the crime perpetrated, the causal contribution of several subjects from different countries and the realization in foreign territories of different stages of the criminal action, often produce a problem of *jurisdiction shopping*, that is to say jumps of jurisdiction, which make it more difficult to identify and punish those responsible.

THE AFFIRMATION OF TRANSNATIONAL ORGANIZED CRIME

The emergence of transnational crime is part of that profound process of transformation inaugurated at the end of the last century, which is globalization. In particular, its evolution must be analyzed in relation to the emergence not only and not so much of new criminal groups, as to the emergence of new offences, considered transnational because of their ability to overcome borders, so called *cross-border criminal activities*.

The globalization, whether it is the vision of Giddens (1991) and that of Bourdieu (1998), has transformed the Western societies and the concept of national State, with a transfer of powers to the world markets and with a consequent weakening of welfare functions.

Freedom of movement, exchanges and generally increasing globalization, with the diffusion of new information technology and its "light" capitalism, whose production model is delocalized in every part of the world (Palermo, 2010), has favored the widespread diffusion also of organized criminal phenomena, promoting their capacity to make network.

Thus, adapting itself to the principle of economic rationality of the capitalist production system, they have conquered important slices of the world market. *The mafias loosen their geographic definition, therefore, and give new boundaries, new identities, new roles, changeable and flexible, which follow the evolution of the processes of economic globalization* (Palermo, 2015, p. 120).

The global economic system thus becomes a *drugged* system, in which flows of *grey money* also converge.

Let's think about the weight of the economy, the financial gains of large publicly traded transactional companies, which are certainly superior to the effect of the system of related companies, or to profits arising from drug trafficking, from prostitution etc..

And the banks, which operate on the capital market and world transactions, and the institutions responsible for their control, do not seem interested in understanding where those capitals come from, favoring in fact the rise of lawful and illicit trafficking in criminal organizations.

The transnational character of organized crime began to speak in 1975 in the V Congress of the United Nations on "Prevention of Crime and Control: The challenge of the last quarter of a century", held in Geneva (DOC. A/CONF. 56/INF. 5 of August 4 1975). It began to be highlighted how organized crime was changing and how it was strengthening alongside the national dimension, including the transnational one.

Noting that the States had not yet defined the concept of transnational crime it was described as:

...those instances of crime as businesses..., which span the borders of two or more countries, either because the economic behavior concerned involves crime committed concurrently against the laws of two or more countries (income tax fraud or financial manipulation that is illegal in two or more countries, for instance) or because the crimes, though planned and directed in one country, may have their economic or social impact in another (p. 22). ...In distinguishing transnational from international crime, any proposed definition would differentiate actions exercise nation States from those exercise persons or corporate bodies (p. 118).

Criminal organizations, in particular mafia-type, create transnational networks to increase and extend their illegal trafficking and this document is the first act of international awareness to cope with organized crime and transnational crimes. Organized crime was reaching over the years a geographical extension and an increasingly intense international level of coordination, as well as an effective presence in all the

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lucrative criminal activities, from the drug market, to smuggling of weapons, illegal transfers of capital, trafficking in people, especially women and children for the exploitation of prostitution, the trafficking of migrants and then gambling.

The proceeds from these illicit activities, which in some cases even exceed the value of the gross domestic product of some states, increase the power of criminal organizations and their ability to infiltrate and control different sectors of public life.

In the early nineties, the United Nations, while having trouble of defining the transnational character of crime, provided a more detailed indication of its fundamental characteristics:

Defining transnational crime is difficult. Transnational crime by its very nature is issues as it transcends national jurisdiction, as well as the parameters of information systems and law enforcement agencies. It was assumed for the purpose of the supplement, that data on offences whose inception, perpetration and/or direct or indirect effects involved more than one country would be compiled. Only the substantive elements, and not the formal legal paradigm, of individual crimes of a transnational nature were included (Doc. A/CONF. 169/15/ADD. 1 of April 4, 1995, par. 9).

Organized crime increasingly increases its revenues also thanks to legitimate activities, channeling its proceeds through foreign financial centers, passing through foreign companies. Let's think, for example, of waste disposal, a lawful and necessary service that the criminal enterprise satisfies with unlawful means (landfill or dumping in unauthorized land).

The most important instrument that provides a complete definition of the phenomenon under consideration is the United Nations Convention against Transnational Organized Crime, adopted in Palermo in 2000. In particular to art. 2 Lett. A) establishes:

Organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefits.

The concept of transnational organized crime implies, therefore, the call for *transnational crime*, that is, the conduct of those who act for private purposes by transcending the confines of a single state, and because criminal conduct has begun in a state and has ended in another, either because the authors who made it belong to different states or have moved on a different plane from the national one.

Criminal organizations, therefore, go beyond state borders in search of greater enrichment at lower costs, focus on the dissemination of transnational management of illegal affairs, and force the quality and number of links between active groups in geographically very distant areas.

Increasingly transnational mafias, who perform crimes that are difficult to investigate and often unpunished.

There is often a tendency to speak indistinctly of international crime and transnational crime, without specifying the profound differences.

International crime, in fact, implies the existence of a criminal organization that, coming from a specific geographic area, projects in other countries, carrying out its activities outside the original borders.

Transnational crime, on the other hand, is a more complex and dangerous phenomenon, as it is the container expression of all crimes committed by criminal organizations in different countries, offences that are nothing more than stages of a single criminal project. These are crimes for which the Commission requires the sharing of several criminal associations, which, each in its own state, will carry out a phase of the offence, a part of it. Transnational crime will only be perfected by the causal contribution of several criminal organizations operating in different countries.

International crime, therefore, violates international laws and regulations; It is not *fit to strike the international community as a whole* (Focarelli, 2011).

Transnational crime, on the other hand, is characterized by its ability to violate criminal laws in several jurisdictions (Adler, Mueller, & Laufer, 1994). *The intentional slaughter of a civilian aircraft carried out by a military unit is an example of an international offence while the hijacking of an aircraft is a transnational offence* (Savona, 1998, p. 3).

The United Nations Convention against Transnational Organized Crime, adopted by the General Assembly in resolution 55/25 of 15 November 2000 in New York, defines art. 3 that:

An offence is transnational in nature if:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effects in another State.

The callback convention was complemented by three protocols: one to prevent, suppress and punish Trafficking in people, especially women and children, another to combat the trafficking of Migrants by land, sea and via area; a third protocol against the manufacture and illicit trafficking of firearms.

The States which have ratified it have thus undertaken to adopt a series of measures against transnational organized crime, such as: legislating on the subject with the provision of specific offences; Encourage the adoption of radical interventions for extradition, judicial assistance and cooperation of police forces; To promote training and technical assistance in order to increase the contrasting capacities of national authorities.

The removal of barriers to the movement of goods and services and the free flow of funds has facilitated transnational trafficking in mafias, illegal arms and narcotics trafficking, marine piracy, environmental offences, trafficking in human beings and of organs, money laundering through complex financial and computer operations (recently bitcoins).

Transnational Organized Crime

Let's think about the transnational chain that manages the trafficking of people from the PRC. In fact, Chinese crime, in order to manage trafficking, had to establish relations and agreements with the criminal organizations that controlled the different countries where their countrymen had to transit, creating a real *integrated criminal system*. There are also certain criminal cases which in themselves imply the transnational dimension (for example, the drug trafficking). These criminal associations operate *criminal system* mostly with that Mafia method that, as after will be highlighted, in Italy, and only there, allows the application of an ad hoc standard (art. 416 bis Penal Code) and all related measures to attack and block the assets of the organization.

Transnational organized crime is, therefore, a phenomenon that goes beyond the realities of the individual countries involved and which finds its expansive energy in the legislative inhomogeneity existing between the different countries and in the lesser ability to contrast some States. The difficulty of identifying transnational crimes, among other things, is also determined by the scarcity of information, their interdependence and the diversity of the structures of the criminal organizations involved.

The transnationality of the crime perpetrated, the causal contribution of several subjects from different countries and the realization in foreign territories of different stages of the criminal action, have often produced a problem of *jurisdiction shopping* which made more difficult to identify and punish the perpetrators.

THE INFILTRATION OF THE ITALIAN MAFIA

Ritualism and symbolism, criminal associative mentality, sharing of values and rules, objectives of social, economic and political control of the territory, delinquently modalities are characteristics common to the Italian mafias. However, they are *expressions of territories that have had a particular and distinct relationship with the state and in which cultures have sediment inevitably by history and by the various socio-anthropological evolutions. Even where they have experienced historical alliances or contingent complicity or have produced double affiliations, the mafias have retained their social, cultural and political specificities* (Palermo, 2012, p. 67). Attracted by the easy gains that the new international scenarios opened and aware of the difficulties of the international justice system to identify and sanction the new traffics, even the criminal organizations of Mafia-style Italian have extended their tentacles across the border.

Spain, Germany, Belgium, Great Britain, Holland, Luxembourg, Switzerland and entire areas of Eastern Europe have thus become the main reservoir for recycling, for drug trafficking, for real estate and commercial investments. Spain (Costa Brava, Costa del Sol, Canary Islands), France (Côte d'Azur, Nice, Mentone, Cannes), the Netherlands and Poland have become fugitive shelters; the ports of Rotterdam, the Netherlands, and Antwerp, Belgium, are important bases for drugs from South America.

In the report of the 2013 "Threat Assessment. Italian Organized Crime" (p. 16), Europol (European Union Agency for cooperation in the contrast activity) emphasizes that *In the national contributions to Europol's last two major EU-wide threat assessments-the 2011 OCTA and the 2013 SOCTA-Italian Criminal groups were reported as active only in a handful of Member States besides Italy.*

That circumstance could have made it think that Italian organized crime was not a major threat to the EU, but *this would be a false impression. The fact that the Italian organized crime activities are so clearly under-reported is evidence of the insidious threat it poses to the European Union.*

Their activities are only less visible and *the criminal behavior normally associated with Italian Mafias, i.e. racketeering, extortions, loan-sharking, collection of protection money, all perpetrated in a stifling atmosphere of total control of the territory, while painfully present in their areas of origin, are virtually non-existent in their activities elsewhere: the overall strategy of Italian Mafias when operating abroad is that of keeping a low profile* (Europol, 2013, p. 16).

‘Ndrangheta, Camorra and Cosa Nostra are now, therefore, branched out in many European countries.

In France they recycle illicit capital and invest in drug trafficking. In Germany, especially in the wealthiest regions, such as Baden-Württemberg, North Rhine-Westphalia, Bavaria and Hesse, have infiltrated the legal economy and the different production sectors have been divided: Cosa Nostra the building, the Camorra sale of counterfeit goods, the ‘Ndrangheta (most present and aggressive) drug trafficking. In Spain, the Italian mafias, in addition to managing drug trafficking, recycle dirty money, especially through construction companies, transport companies, real estate activities, shops and restaurants. Holland and the United Kingdom are also used for the European cocaine market, coming from South America, and hashish from Morocco. Similarly, Bulgaria, which is increasingly supporting Slovakia, is the center of drug trafficking and a privileged location for the reinvestment of illicit capital through financial activities. Belgium for years is a center of interest especially for Cosa Nostra and the ‘Ndrangheta, dedicated to drug trafficking and economic-financial offences. While Switzerland continues to be the prime destination for money laundering, together with Romania.

The Italian mafias are infiltrating the economy in a silent way, often simply offering their goods and services at lower prices, or offering loans at high interest rates, with the ultimate goal of acquiring the company forced to fail or to encourage A merger, with the purpose of taking away decision-making power to the distressed partner, *at the same time exploiting his good name and honest face.*

The Italian mafias also regularly use their corruptive power as an enabling factor. *The enormous wealth of The Mafias can be used to exert influence over decision-makers, including those involved in public tenders* (Id).

In particular the Mafia from organization operating in Sicily, soon opened to international markets, spreading colonies a little everywhere and creating that network of business, which has gone from the nineteenth century rustling smuggling, the market drugs and which today operates in the financial markets.

Cosa Nostra generally tend to stabilize on a territory. Let’s think, for example, about his transfer to America at the end of the nineteenth century. Yet today it allows its members to use its structure and relations to undertake transnational criminal activities. On the other hand, it is precisely the fluctuating characteristics of globalization that no longer necessarily require the allocation of Cosa Nostra in the new territories in which it has extended its trades, being able to preserve its “headquarters” in Italy and carry out actions Abroad or using technology or temporarily sending his “*picciotti*”.

Its pyramidal structure is safe and the new methodologies allow it to operate from its living rooms.

In Europe Cosa Nostra is mainly present in Spain, France and Germany, while its most significant presence outside the EU is In the United States, Canada, Venezuela and South Africa (Europol, 2013, p. 16).

Unlike Cosa Nostra, the Camorra operates in a more visible and noisy way.

The Camorra does not have a unified structure and when it operates outside its territory it mainly focuses on drug trafficking, cigarette smuggling, counterfeiting, illicit disposal of waste, money laundering activities.

Transnational Organized Crime

Spain is the EU country of preference for many, but they have also been found operating in France, the Netherlands, Germany and Switzerland. The Camorra is also present in the USA, where it has been listed among the four main trans-national criminal threats (Id.).

The most invasive criminal group exported from Italy is the 'Ndrangheta, which has taken root mainly in two areas of Europe, in the Iberian Peninsula and in an area between Germany, Holland and Belgium.

The 'Ndrangheta had two strengths that allowed her to act undisturbed and to be considered in the criminal environment at international level the most reliable organization: Having long been considered *a marginal curiosity, a bizarre linguistic invention, a tramp and homemade version of the Sicilian Mafia* (Gratteri, Nicaso, 2009, p.19) and its family structure.

The 'Ndrangheta, in fact, was the lesser known and most undervalued criminal organization, for a long time it was not recognized an identity (Palermo, 2012).

It was even thought that the 'Ndrangheta was a circumscribed phenomenon, born following the economic boom of the sixties. This inattention allowed the 'Ndrangheta to act undisturbed.

Often the 'Ndrangheta occupies with its trades the same areas occupied by the Camorra, but they have two different ways of relating to the Territory. The Camorra, in fact, unlike the 'Ndrangheta, does not colonize a territory, but only creates points of contact for its trades. The 'Ndrangheta, similar to the Sicilian Mafia, is well rooted in the territory, but, contrary to this, is not bound to the territory, which represents, instead, the place of origin, the starting point.

The 'Ndrangheta is the only mafia to have two locations-observes Ciconte (2008, 191)-One in Calabria, the other in a municipality of central-North or abroad. In addition, sometimes, some 'ndrine (crime families), the most powerful and most numerous, have even three: one in Calabria, one in the center-north and one abroad.

As Europol observes in the report of 2013:

The Calabrian 'Ndrangheta is among the most powerful organized crime groups at a global level. Its colonization strategy is spreading all over the world. The 'Ndrangheta holds a dominant position in the cocaine market in Europe, and is involved in many other criminal fields, including weapons trafficking, fraud, rigging of public tenders, corruption, intimidation, extortion and environmental crime. The 'Ndrangheta employs sophisticated money laundering practices to conceal its immense profits. The clever use of legitimate business structures created by its Clans permits them to hide the criminal nature of their profits and, combined with corruption, to infiltrate the economic and political environments in which they operate. In Europe, the Clans are mainly active in Spain, France, the Netherlands, Germany and Switzerland, with some expansion into Eastern Europe. The 'Ndrangheta is also very powerful in Canada, the United States, Colombia and Australia (p. 17).

The other Italian criminal organizations of mafia-style are not permanently operating abroad, although there are no arrests in some countries, as in Netherlands, Germany, Switzerland and Albania. The European Union Serious and Organized Crime Threat Assessment (SOCTA) of 2017 has highlighted how transnational organized crime increasingly adopts the tools offered by technological innovation to carry out its trades. Consider for example the use of drones by drug traffickers to avoid border controls, the use of social media by thieves or encryption by criminals to protect their communications and data.

The Darknet (Clarke, Sandberg, Toseland & Verendel, 2010), moreover, has become a key environment for illicit online trade, facilitating the trafficking of organized crime, trade in drugs or firearms, documentary fraud and cybercrime.

This explains why today the dissemination and operation of Italian mafias, unlike that of other foreign criminal organizations (e.g. China), is no longer accompanied by migratory waves, as it had been in the past for the Mafia in the USA.

Today organized crime does not need to be physically and permanently on a territory, operates online and, when necessary, only shifts the time to organize and start the management of its trades, for the rest part of its activity can be carried out at a distance through new technologies.

THE CHINESE MAFIA AND THE INFILTRATION IN THE ITALIAN TERRITORY

Europol reports in the 2017 report that today in the 28 member countries of the European Union are under investigation, about five thousand criminal organizations and if it is true that only for Italian ones is provided for the standardization of typing as *Mafia-type Associations*, it is equally true that: many foreign criminal sodalities are also characterized because *they use the force of intimidation of the associative bond and of the condition of subjugation and of silence that derives from it to commit crimes, to acquire in a way direct or indirect management or otherwise control of economic activities, concessions, authorizations, procurement and public services or to make profits or unfair advantages for themselves or others, or in order to prevent or hinder the free exercise of vote or to provide votes to themselves or others at the time of electoral consultations* (art. 416 bis Italian Penal Code).

Jean-François Gayraud (2010) considers mafias the Sicilian Cosa Nostra, the Italian American Cosa Nostra (in the United States), the 'Ndrangheta from Calabria, the Neapolitan Camorra, the Sacra Corona Unita from Puglia, the Chinese triads, the Japanese yakuza, the Albanophone mafia (in Albania and Kosovo) and the Turkish Maffya.

In particular, the Chinese criminal associations seem to reproduce the model of the 'Ndrangheta. They are based, in fact, on a familiar basis, relying on the feeling of belonging to a group, the so called Guanxi (关系), which goes beyond the bond of blood. At the etymological level, the term guanxi means "gateway to a hierarchy or group" and, as specified by Ying Lun So and Antony Walker (2006, pp. 3-4) *the simple translation of the Chinese word guanxi is relationship. The same word can be used either to refer to people when the word means human relationship, or non-human issues... When the word appears in English... It refers only to relationship between people... One the primary Differences in the Chinese and Western ways of doing business could be traced to the fact that in the West business developed its own culture separated from private and personal culture, with a different set of rules and a character its own. In the Chinese context there is no separate morality for business. There are no separate rules that divides the conduct of business from that of personal affairs, in which the key factor is proper human relations. A successful business relationship between Chinese companies begin with the establishment of a personal bond between the principal managers of the companies and is based thereafter on the careful maintenance of these personal ties* (De Mente, 1992).

Transnational Organized Crime

Therefore, that of organized Chinese crime is an “extended economic family”, linked by common interests: the pursuit of profits both lawful and illicit.

More precisely with the term Chinese organized crime we can refer to three criminal groups: the *Triads*, the *Tong* and the *Street Gangs* (Booth 1990; Huston, 2001; Chin, Zhang & Kelly, 2002).

The *Triads* represent the most well-known Chinese criminal organizations, which, as we will see, refer to Ancient secret associations, initially born to pursue lawful purposes, with time moving to the illegal markets.

The term *Tong* derives from the Mandarin *tang*, literally meaning a hall or meeting place, to indicate probably those original associative forms that represented the first types of self-government of the Chinese communities. They are associations that appear legal, have their own offices, provide legal and administrative assistance to their followers, but their leaders are often criminals and, behind several seemingly lawful activities, they conduct illegal business.

The *street gangs* appeared in the late '60 in the USA and were the product of Chinese migratory flow in American Chinatown. They were initially the response to attacks by other ethnic groups and were strengthened as criminal groups organized following exchange and mutual support relationships with the criminal part of the *tong*.

The *triads* represent the most powerful mafia in the east and are spreading in a capillary way even in the West.

Their internal hierarchical organization means that there are not, or are not visible, stable federation connections between the various *triads*, nor can it be said that there is a summit organism, such as the Sicilian *cupola* (dome) of *Cosa Nostra*.

The Chinese mafia organization begins between the 17th and 18th centuries and its origin is linked to legends that lead their birth to an act of resistance of a group of Buddhist monks from a monastery called Shaolin, against the Qing dynasty (or Ch'ing).

It is said, in fact, that, around 1644, the Qing dynasty conquered China, ending the Ming dynasty and southern China was trying to rebel. The group of Buddhist monks joined several rebels who reached the Shaolin Monastery, when, in 1647 or 1674 (or even in 1732), according to the various chronicles, the Qing Empire troops massacred the monks of the temple, which was then burnt. Only five of them managed to save themselves and, on their way, they saw a censer floating on the waters of a river, on which an inscription pointed to them to “overthrow the Qing and restore the Ming”. That is how they created the first secret Chinese society, the *Triad* (denomination with which they called the English colonialists of the nineteenth century), or *Hong Men* (Great Gate) or *Sun Hoh Hwui* evolved in *Tian-of Hui* (Society of three United: heaven, earth, man, the three powers in nature) (Milne, 1826), with a symbol in the shape of an equilateral triangle (Wilson, & Newboldm 1841; Ownby & Somers Heidhues 1993; Rodier, 2012).

According to historians, however, the birth of the first triad would rise to 1760, in the province of Fujian, and its main objectives would not have been of a political nature, but of aid to merchants and immigrants.

In the 19th century the *Triads* also participated in the *Opium War* and the *Yellow Turban Uprising*, led by the *Taiping* and sedated by France and Britain, which, having at that time the control of Hong Kong, prohibited any form of secret society. It was then that the *triads*, in a silent manner, devoted themselves to activities such as smuggling and piracy, made links with political power and began to influence decisions regarding the fate of the country. So on January 1, 1912, Sun Yat-sen, an important member of the *Triad Ge Lao Hui*, proclaimed the Republic of China. The *triads* were, therefore, beginning to assume more and more apical roles. After the Second World War, the *Triads*' power reached such high levels

that the United States agreed an anti-communist pact: supporting the Nationalist Party of Chiang Kai Shek to prevent Mao Tze Tung from gaining power. Mao was still in power and in '49 began a strong repression against these organizations: 820,000 people were incarcerated many other executed and many migrated to Macao, Taiwan and the United States.

In this period the secret societies were, banned as illegal, but soon the Chinese government began to resort to the Triads, which had a great economic richness and could provide liquidity to the country. This collaboration allowed China to thrive in a time of crisis, thanks to the *authorized* delinquency. Since the years '70, therefore, this attitude of tolerance towards the triads allowed them to grow and emerge again. The only condition to be respected was not to try to overthrow political power and operate in total secrecy.

In the same period, the Triads diaspora continued in a progressive manner: from Hong Kong to Great Britain, the Netherlands, South Africa and the North American continent.

Among the most dangerous triads we remember the *14k* or *Sap Sze Wui*, considered in the years '90 the largest and most powerful operative in Macao; *Shui Fong* (the water room); *Sun Yee On* (new virtue and peace), the most powerful organization in Hong Kong, with over 30000 members and over 55000 affiliates worldwide; the *Wo Shing Wo*; the *Luen*; the *King Yee Triad*; the *Hung Mun Triad*, etc.

The new migratory wave of the late '80 that led the Chinese communities to settle not only in America and Australia but also in Europe, has produced the entry into these countries also of the Triads (Lanna, 2017).

The Triads manage illegal emigration from China to new lands. The technique they use to settle and organize their criminal power passes mainly through the start of commercial activities, the acquisition of economic activities, the subsequent monopolization of territories and the creation of a *Chinatown*. A veritable fortress closed to law enforcement and other criminal organizations. The Triads are thus substituted for the original criminal associations in the management of drugs, prostitution and gambling and in offering other services, such as the trade in organ transplants.

Today they are booming and, having historically had the need to create an invisible system of transfer of capital, they are excellent interpreters of financial globalization, managing to assume a role of leader compared to other mafias.

From a structural and organizational point of view, the triads are similar to secret sects, characterized by rituals and symbolisms (e.g. tattoos; combinations of numbers matched to various roles within the organization). Usually the bosses of the Chinese underworld, unlike others, do not aspire to notoriety, but only to exercise power, so much so that their identity is kept secret. Secrecy is typically for Chinese culture a dogma, for which so called are rare *repentants* or co-workers of justice.

The internal structuring of the Triads varies according to the external conditions, but some characteristics remain constant and in the first part the organizational levels: at the top of the hierarchy there is the chief, called the *Mountain Master* (Shan Chu) or *Dragon's head* (Lung Tau) or *489*, or *Big Brother* (Tai Lo); at the next level there is an underboss, called *438*. The chief is surrounded by two managers (438): the *avant-garde*, an operative manager, and the *Master of Incense* (Hueng Chu), the guardian of traditions and responsible for recruiting new followers, with a leading role in the organization. The leader and the underbosses define the general strategy of the Organization and take care of relations with the foreign criminal organizations.

Below this first level we find the *Committee of the officers*, with functions of spokesman of the organization, security officer and adviser. The *soldiers* or *49*, who act on the field under the direction of a ten cape, the Cho Kun, occupy the last step. Aspirants to join the association are called *Blue Lanterns* and must pass a series of trials before entering the fellowship.

Transnational Organized Crime

In Italy the Chinese bosses manage their trades from the motherland and delegate the management of the activities in the cities to the sub-APIs and to the criminal grunt work. From the DIA (Anti-Mafia Investigative Directorate) report on the foreign mafias in Italy, published in June 2018 and related to the period September-December 2017, it emerged that the Chinese organized crime is extended on much of the Italian territory, in particular in Lombardy, in Tuscany, in Emilia-Romagna and in Lazio.

The Chinese organized crime in Italy is mainly devoted to gambling, to the recycling of dirty money, to the facilitation of illegal immigration (aimed at “trafficking”, to work “black” and to prostitution), to offences against the person (sometimes committed in the context of intimidation or clashes between groups against each other), robbery and extortion in the detriment of compatriots, counterfeiting of trademarks, smuggling of cigarettes, falsification of documents, Sectors to which are added, albeit in a residual way of activity related to gambling and drug trafficking, in particular methamphetamine (type *Shaboo*), sometimes practiced in connection with the Philippine community (DIA, 2018).

For accounting practices, primarily functional to tax evasion, Chinese crime often employs Italian consultants and professionals.

Most of the crimes are committed within the community, so they do not arouse particular attention in public opinion and do not make visible the potential of this mafia, which we can see, however, in all its dangerousness in the United States. On the other hand, the migratory process of Chinese towards Italy is certainly much more recent than the United States, where the Chinese presence has a history of more than one hundred and fifty years. When Chinese crime is projected outside, it does so to recycle and repurpose capital, with complacent professional environments.

The first conviction in Italy for mafia Association against an organized group dates back to 1994, the year in which the Court of Rome with the criminal judgment No. 285, condemned under art. 416 bis C.P. a group of Chinese citizens, belonging to the Tiger Head clan, at whose summit was Zhou Yiping. The Court found in the power of conditioning of the countrymen by the defendant, who took them to retract the declarations during the trial or even to leave the country before the start of the trial, those characters of the Mafia-style association that availed itself of the associative constraint and the intimidating force of art. 416 bis Italian Penal Code, to which it has been previously referred. This rule is only typed in Italy and expressly foresees the possibility of being applied also to foreign criminal organizations that operate on the Italian territory. In fact, the standard call back is difficult to implement. The Court of Cassation pays particular attention to the externalization of the “intimidating method”, and has excluded the applicability of art. 416 bis C.P. on several occasions and not only for the Chinese mafia, but also for the Nigerian and Ukrainian, as it stated that it is not *crystallized or sufficiently diffuse the fame or the criminal prestige of the groups that are predominantly confined in the respective national reference communities* (Sparagna, 2015, p. 18). On the point most recently the Court of Cassation (Sez. 2, no 50949 of 2017) stated that *the offence provided for by art. 416-Bis Penal Code is also integrated by organizations which, without having control of all those who live or work in a given territory, have the purpose of subjecting to their criminal power an indefinite number of people Immigrants or immigrant clandestinely.*

Lastly (Cass., sez. II, 21 July 2017, no 1586) the Court stated that *the offence referred to in art. 416 bis is also configurable with regard to organizations that, although without checking indistinctly how many live or work in a particular territory, circumscribe their illicit attentions to the detriment of the members of a specific community, using of typical Mafiosi methods, since the reason for the peculiar crimination is given by the recourse to such methodology, reputed in the highest degree detrimental to the protected goods.*

The Triads, therefore, are increasingly evolving as transnational criminal organizations of Mafia-style and technological progress and the globalization of markets could increasingly foster the affirmation of this criminal phenomenon, for to counteract the need for effective legal instruments and to ensure a specific preparation for international bodies to ensure security.

THE MAFIAS OF EASTERN EUROPE

The *Organizatsya*, the organized crime of Mafia of Russia, also known as *Mafiya*, has imposed quickly on Russian territory and just as quickly has spread abroad.

Erroneously it was considered that the Russian was a new phenomenon only because in reality until the Eighties these mafias remained closed within the country and not visible.

Unlike the Sicilian Mafia, they have never had a top-down structure, a *cupola* (dome) does not, therefore, direct them. These are more or less powerful bands on a local basis, also with their own initiation rites (e.g. tattoos to distinguish affiliates).

As Mark Galeotti observes (2018a, p. X) *the 1990s were the glory days of the Russian gangsters, though, and since then, under Putin, gangsterism on the streets has given way to kleptocracy in the state. The Mob wars ended, the economy settled... And he adds "The subcultures of the vory (the plural of VOR) dates back to the earlier, tsarist years, but was radically reshaped in Stalin's gulags between the 1930s and 1950s. First, the criminals adopted an uncompromising rejection of the legitimate world, visibly tattooing themselves as a gesture of defiance. They had their own language, their own customs and their own authority figures. Over time, the Vory would lose their dominance, but they did not disappear resort. In post-Soviet Russia, they blended in with the new elite. The tattoos disappeared, or were hidden beneath the crisp, white shirts of a carps new breed of gangster-businessman, the avtoritet ("authority").*

The capitals of these criminal organizations are the product of that plot, realized after the collapse of the Berlin Wall, in Russia and in some countries of the former Soviet empire, between state industry, petroleum, dirty capitals that came from abroad, Arms trafficking, drug trafficking, with the necessary contribution of public representatives. *People who steal left, right and center administer Russia. It is a "kleptocracy". They just do not do it in the traditional way that we are used to, threatening people at the corners of the street. They do it through government procurement and corrupt agreements. This is where the main overlap occurs between how the gangsters operate and how the elite operates. The boundaries between the two are really labile* (Galeotti, in Ferranti, 2018b).

In the organization, although there is no vertical structuring, we can identify three levels: small bands, groups of 10/15 people who remain independent of the organization; large brigades of 200/300 people who control the smaller groups and thieves in the law (*vor v Zakone*), which are the groups with more power, which also involve professionals and for this they are able to operate on the financial markets.

Today the Russian mafia is as visible and powerful as to make Russia nicknamed "a Mafia state", perhaps because there is a lot of corruption.

The fall of the Berlin Wall if on the one hand opened the doors of the former Soviet Union to the powerful criminal organizations of the world, on the other, it allowed the Russian mafia to come out into the open and invade Western Europe. Germany (with Solnzevskaya Bratva, Ismailovskaya and Tambovskaya), Austria, Poland, Czech Republic, Hungary and more recently France and Spain have become the "bases" of the Russian Mafia.

Transnational Organized Crime

The Russian mafia carries its own capitals, carries its delinquents and controls the investments it realizes, but does not try to seize the chosen territory.

In particular, the Solntsevskaya Bratva, considered in the top five of the world's most dangerous criminal associations and one of the richest, is a powerful mafia-based organization in Moscow. It takes its name from the district Solntsevo, from which it was born in the mid '80 and in 1996 had taken control of the markets of gambling, prostitution, trafficking of heroin and cocaine, smuggling of weapons and recycling, and already could surely be considered one of the big corporations of crime.

The transnational character of the Russian mafia is evident from the fact that the offences are committed by stages, carried out in different countries. Let's think for example, about drug trafficking: most of the world's heroin production is concentrated in Afghanistan and the Balkan routes represent the main channels of trafficking in heroin and Russia is a transit and production country, for supplying the European market. Similarly for the trafficking of cocaine from Latin America. The availability of raw materials for the production of drugs, the corruptibility of control and security bodies have meant that the Russian mafia could become partners of the other criminal organizations in the management of drug trafficking and weapons market.

Italy has also not been immune to the spread of organized crime in Russia, which, starting from Marche, has been located throughout the country, especially in Rome and Milan, where it is dedicated to prostitution, to the recycling of dirty money, to the trafficking of immigrants. Illegal immigrants.

As in Russia, even in Hungary the institutions arising from the collapse of the socialist system, were unable to respond quickly to the phases of economic transition, thus allowing Russian organized crime to extend. In particular, Solntsevskaya Bratva devoted itself to money laundering, investing in the legal economy, especially in the oil and weapons industries.

Hungary is strategically a bridge between Eastern Europe and the Balkans, it is a nodal point of collection and sorting: from Ukraine arrive women to start to prostitution and from Croatia and Serbia are imported weapons and drugs, from Romania come forces Irregular work from the Caucasus. The number of criminal organizations in the country is growing and in addition to the Russian mafias are also coming organizations from China and South America.

The Czech Republic, one of the most economically flourishing and advanced countries of the former communist bloc in central and eastern Europe, has criminal organizations, mainly Russian, Ukrainian and Moldovan and are increasing groups from Croatia, Serbia, Albania, Bulgaria, Romania, Vietnam and China, as well as the Turks (mainly dedicated to money laundering) and the Greeks (in the field of drugs and prostitution). There is no shortage of Italian Camorra (especially in the real estate sector), the South American, Lebanese, Iranian and Nigerian mafias. The mafias present in Prague interact with the world of professionals and are integrated with other groups abroad. In fact, they do not aim to create their own criminal network, but to support foreign mafias.

The condition is no different for Slovakia, where various criminal groups are engaged in the illegal arms market, coming from Moldova, the Caucasus and the Balkans and headed for Sub-Saharan Africa and the Middle East. There are more than 50 criminal organizations in Bratislava, predominantly Albanian (for prostitution), Turkish and Kosovar (for drugs), Ukrainian, Russian and local.

The countries of the former Soviet Union have seen the emergence of that organized crime that even existed and operated in a less visible and more controlled way. The destabilization that they have experienced has been the fertile ground to allow these mafias to enlarge and enrich themselves with the support of politics and to come out in the open with all their dangerous potential.

THE TRAFFICKING IN WOMEN AND THE ROOTING OF NIGERIAN MAFIAS IN ITALY

Among the illicit activities of organized crime there is also the market for the sexual exploitation of women. Women and children who are often initiated into the prostitution market, deprived of their rights and considered as pure bargaining goods (Capaldo, Perrella 2018).

The 2011/36/EU Directive on the prevention and combating of trafficking in human beings and the protection of victims moves in a gender perspective.

The trafficking of women, mostly for the purpose of sexual exploitation, is, therefore, a form of gender violence that in some respects seems to evoke the ancient enslavement and that over the last decade has taken on in Europe more and more relevance and visibility.

Trafficking in human beings implies the use of force, deception or coercion in order to exploit the person who becomes the victim and constitutes a transnational crime.

In particular, the trafficking of Nigerian women destined for sexual exploitation is a growing phenomenon and in Italy has largely replaced the so-called white treats, girls from Eastern Europe, who, until the early twenty-first century, were occupying the prostitution market. Sexual exploitation is, in fact, the main aim of the women's Trafficking (European Parliament, Directorate General For Internal Policies Policy Department, Citizens ' Rights And Constitutional Affairs, 2014).

In the resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103 (INI)), the European Parliament highlighted that *there are several links between prostitution and trafficking, and recognises that prostitution — Both globally and across Europe — feeds the trafficking of vulnerable women and under-age females, a large percentage of whom are between 13-25 years old; Stresses that, as shown by data from the Commission, a majority of victims (62%) are trafficked for sexual exploitation, with women and under-age females accounting for 96% of identified and presumed victims, with the percentage of victims from non-EU countries showing an increase in the past few year* (p. 5).

The majority of trafficking victims for sexual exploitation are, therefore, women and girls under age and in recent years, there has been an increase in the number of victims from Nigeria.

The history of the migrations of Nigerian women dates back to the years '80 and was the product of the debt crisis of Nigeria and the consequent policies desired by the International Monetary Fund and the World Bank, which went to affect a condition already disadvantaged. Thus, as is the case today, repression, poverty and unemployment were the fertile ground that pushed girls aged between 20 and 30 years (while today the age has dropped, 16-25 years) often educated and coming from the main towns (primarily Benin City) to reach Europe, where they ended up making prostitutes. It was a time when it was not known in the countries of origin what these young migrants actually did, and so often it was the parents who pushed their daughters to borrow money and go to Europe to help the family. By the time *the prostitutes became of the Madam (held), which from Italy employed other people in Nigeria: recruiters, traffickers and people who falsified the documents* (Taub, 2017).

The *new wave* of women victims of trafficking for the purposes of sexual exploitation finds its reason always in the condition of precariousness and poverty (Riccio, Hernandez, Perrella, 2018), this time determined by the low quotation of the oil, fundamental resource for Nigeria.

Transnational Organized Crime

The new *slaves* are very young, very often underage, of various ethnicities (Igbo, Yoruba, Bini, Edo) with low literacy rates.

To manage this trafficking today is a mafia more violent than Cosa Nostra, born on the university campuses between the years '70 and '80 among wealthy boys of Lagos and Benin City. These first groups began to acquire power with violence in the university context and then spread also on the political level, controlling the territories. From the confraternities are born, therefore, clans with their own hierarchy and rites, tribal and voodoo.

The Nigerian mafia has multiple deals: from drug dealing, to money laundering, to pimping. It is becoming more and more in South America, in the USA, in Europe and also in Italy.

In northern Italy the most present Nigerian mafia is the one called Eiye and controls the distribution squares in Veneto, Lombardy and also in Sardinia. One of the most emergent groups is that of the Black Cats, which have the operative base in Padua and manage the drug dealing, the prostitution mainly juvenile and the trafficking of the whites, mostly Italian addicts.

As emerges from the report of the first half 2018 of DIA in Lombardy begins to emerge also the crime of white collar Nigerian mafia, especially in Brescia, the hinterland of Milan and Bergamo.

In southern Italy, however, we find the brotherhood of Black Axe, originally from Benin City, located mainly in a small town in the province of Caserta, Castel Volturno, where it manages and organizes trafficking in human beings and prostitutes. The Black Axe also operates in Sicily, especially in the area of Palermo, while in the eastern area we find the Vikings. The latter would also be present in Emilia Romagna.

In general, Nigerian mafias are part of illicit markets not occupied by local mafias, although, as DIA observes (2018, p. 111), it must be considered that *even for a kind of control and monitoring of the territory, local mafias maintain vigilance over trafficked by people from other states.*

In the report of the Department of Information for the security of 2018, Italian intelligence declares that:

In the panorama of the foreign mafias operating in national territory, the most dynamic and structured are confirmed the Nigerian formations, active in a wide range of areas of illicit drugs such as drug trafficking, the exploitation of prostitution and trafficking in human beings, which is also to ensure grip and influence on the diaspora. The acquisitions gathered have been a process of renewal/remodulation of the associations, inclined to acquire greater autonomy of decision than the organizations present in the motherland, and to conform their modus operandi to Delinquent models of Western mafias. The intensification of relations with national organized crime is part of this evolutionary phase, characterized by a different level of subalternity or interaction, depending on the regions of settlement and the degree of influence at local level, of autochthonous organizations (p. 72).

The Nigerian mafias have a top-level structure, as well as Cosa Nostra, and the operative structures know only the person who directs them and know nothing about the higher levels. Nigerian associates are often composed of individuals from the same tribes and include in the lower levels of criminal labor other Africans from Kenya, Tanzania, Mali and Senegal.

They are characterized by a strong esoteric component: Rites of Initiation ju-ju, or voodoo or Macumbe in the phase of the recruitment of victims, tools to retain them once they have arrived in Italy and destined to prostitution. This magic-religious factor strengthens the associative constraint and produces an atmosphere of subjection and of “*omerta*” (code of silence), which has allowed the applicability of art. 416 bis Italian Penal Code.

The presence in the Italian territory of the Nigerian Mafia and the role in the trafficking of drugs and trafficking of women for the purpose of sexual exploitation is an alarming reality and the lack of reliable data, also due to the invisible character of the criminal activity of the Nigerians, does not allow us to fully understand the dangerous ramification on the territory.

The European Union has also stressed the problematic nature of identifying and pursuing these new criminals, problematic which makes the current policy of preventing and combating trafficking in human beings ineffective.

CONCLUSION

Faced with the risks and the potential criminals of this era and taking into account an increasingly interconnected world, the real big global challenge is to evolve with solidarity and appropriate cooperation at the legal, economic, social and cultural level, which to the protection of human rights and to produce legality and security.

The analysis conducted highlighted the existence of criminal organizations in Italy and abroad, committing transnational crimes. These associations are characterized by the Mafia method that does not find at international level a specific regulation.

It is necessary, therefore, to overcome that reductive and dangerous vision according to which the mafia organizations are only an Italian phenomenon. China, Russia, Africa and many other countries know and implement the *Mafia method* not only in their own countries.

To think of guaranteeing a regulatory system actually capable of combating the expansionist process of these global mafias is, therefore, necessary not to underestimate them and intervene with an internationally homogeneous regulation.

It is, ultimately, necessary and urgent, to seek to identify a “minimum” of “justice” that is widely shared and shareable, irrespective of their latitudes, ideologies and cultures (Palermo, 2010).

The art. 416 bis of the Italian Penal Code and its almost forty-year application to local mafias could, therefore, represent a beacon to be followed.

For over a decade, moreover, the European Parliament has urged the Member States to adopt the crime of Mafia-style association and the connected rules of confiscation, even in the absence of condemnation, of non-justifiable goods. In particular, in its resolution of 23 October 2013 on organized crime, corruption and money laundering (as well as in the 2016), the European Parliament highlighted the need to *establish the definition of organized crime (including, among other things, the crime of participation in a mafia-style organization. In the same year, Europol also recommended, being a member of a Mafia-type organisation must be considered as a crime in itself. Anti-Mafia legislation must be harmonised at EU level, and extradition requests for fugitive Mafiosi should be prioritised by receiving competent authorities.*

Despite the different stresses today not only do we have an art. 416 bis, but there is also a lack of a single legal definition of organized crime that can make investigative and judicial cooperation efficient in combating transnational organized crime.

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KEY TERMS AND DEFINITIONS

Anti-Mafia Investigation Directorate (DIA): An investigative body with tasks to combat organized crime of the Mafia type in Italy.

Camorra: Organized criminal association of mafia type born in Naples (Italy).

Intermafiosity: Collaborative network between endogenous and foreign criminal organizations.

Kleptocracy: A mode of government where corruption exists and where power is used to seek personal annuity.

Mafia: Organized criminal association born in Sicily (Italy), also called Cosa Nostra. Today indicates all organized criminal associations that use the force of intimidation of the associative bond and of the condition of subjugation and of silence that results from committing crimes.

Transnational Organized Crime

‘Ndrangheta: Organized criminal association of mafia type born in Calabria (Italy). It is the only mafia present on all continents.

Pentitismo: A phenomenon that has developed since the first half of the 1980s and that sees people involved in organized crime collaborating with the public prosecutor (collaborators of justice or repentants).

Picciotto: Boy belonging to a mafia criminal organization, he represents the lowest level in the organization hierarchy.

Sacra Corona Unita (SCU): Organized criminal association of mafia type born in Puglia (Italy). Its name derives from the symbolic elements that characterize it: *sacred*, because at the moment of affiliation the new member is “baptized” or “consecrated”, *crown*, because the rosary is used in processions and *unit*, to remember the strength of a chain made of many rings.

Transnational Crime: A type of offense prepared, planned, directed or committed in several States, even at different stages, or which produces effects in several States.

Chapter 9

Stories of Pain and Hope: Victims of Mafias in Europe and Around the World

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ABSTRACT

In this chapter, the subject of mafia violence will be investigated from the victims’ perspective. It will also focus on best practices and the national regulations by which government authorities and the civil society at large attempt to assist, support, and offer rehabilitation and resilience to the victims of mafias in Latin America, Central America, Asia, Russia, Africa, and Europe.

INTRODUCTION

Across the world, stories of mafias are also stories of death. After the massacres perpetrated by the most ferocious criminal organizations, all that remains is the endless pain of the relatives, colleagues, and friends of those killed. In the eyes of the mafias, acts of homicide are meant to wipe out an enemy of their criminal organization and to force those who dare to oppose them into silence.

Giovanni Falcone, the heroic judge responsible for convicting the main boss of the Cosa Nostra in Italy, described the following fundamental characteristic of the mafia underworld: “the more bloody, ruthless, and cruel the execution appears in the eyes of ordinary citizens, the more pride the ‘man of honor’ will derive from it and the more his value will be esteemed within the organization” (Falcone & Padovani, 2017).

Within this context, the principal witnesses to the horrors of the mafias and corrupt powers are the victims’ relatives. In recent years, their contribution has proved decisive in awakening the sentiments of the international public and individual governments in the fight against organized crime. In fact, it is clear that *victims of crime have remained virtually invisible until recent times when they have been recognized as a distinct social category in their own right, and the first coordinated responses have been formulated to address their demands* (Del Re & Shekhawat, 2018).

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Stories of Pain and Hope

In criminological literature, this new perspective on awareness has shifted the very concept of victimhood.

As Jan van Dijk recently noted, over the past five decades, *ongoing secularization has incrementally allowed those harmed by crime to resist their labeling as victims with its adverse, incapacitating role and expectations of meekness. Increasingly, victims reject being called 'victims,' requesting to be called 'survivors' or 'harmed parties' instead* (van Dijk, 2019).

In this context, the “Libera Memory” project, fostered by the Libera Association, a social organization founded by Italian priest Luigi Ciotti, has proved to be a formidable tool in expressing the pain, hopes, and shared expectations of justice and truth in an open and international context.

It is recognized that organized crime and the mafia are neither synonymous terms, nor completely opposite concepts. Since the year 2000, the United Nations Convention against Transnational Organized Crime has provided an internationally recognized definition of an organized criminal group as *a group of three or more persons existing over a period of time acting in concert with the aim of committing crimes for financial or material benefit*. This definition was also adopted in the EU’s Council Framework Decision 2008/841/JHA of October 24, 2008 in the fight against organized crime, and continues to reflect law enforcement authorities’ conceptualization of organized crime across the world. However, this definition does not adequately describe the complex and flexible nature of modern organized crime networks. A mafia group, more specifically, is a type of organized crime group that attempts to control the supply of protection and shares a common set of rituals and rules. As of today, Klaus von Lampe has collected another two hundred definitions of “organized crime,” obtained from papers of the leading global scholars in criminology (von Lampe, 2019).

While recognizing the complexity and diversity of criminal phenomena throughout the world, the concept of “mafia” will be applied, in this study, to all criminal groups, wherever named locally, that employ intimidation, subjugation, and codes of silence through the use of actual or threatened violence, corrupt public officials, graft, or extortion, and generally have a significant impact on the people in their locales, region, or the country as a whole.

The same structures of support and assistance for victims of crime can be practically extended to all those who suffer the violent activity of criminal organizations, specifically named mafias, or authoritarian or corrupt regimes.

BACKGROUND

The *Libera* network—Associations, Names and Numbers against the mafias—was founded in Italy on March 25, 1995, to promote the involvement and to support all those interested in the fight against mafias and organized crime. Libera is a current network of over 1,600 associations, groups, and schools committed to reinforcing organizational synergies between local, political, and cultural entities with the capacity to promote a culture of legality. There are 80 international member organizations of Libera International in 35 countries in Europe, Africa, and Latin America. Some of Libera’s concrete commitments are: law enabling the social reuse of assets previously confiscated from organized criminal groups; the education and promotion of democratic lawfulness; the fight against corruption; antimafia education camps; support for mafia victims and their families; campaigns promoting social justice policies; and projects dedicated to jobs, development, and anti-usury activities.

The collaborative and “co-responsible” work of citizens, associations, social cooperatives, movements, schools, trade unions, dioceses, parishes, and scout groups is important for engagement against mafias, corruption, and other criminal phenomena. Moreover, this network advocates for social justice through the continuous research for truth, protection of rights, transparency, and a legal system grounded in equality.

In order to achieve the goals outlined in its mission, Libera works in several specific sectors which work on different areas of social expertise. These include, but are not limited to, the “social antimafia” promotion of rights, education of legality and peace, independent information, culture, and a general condition of social justice.

Aside from the other sectors, Libera International particularly works for the creation and strengthening of transnational networks in a social antimafia framework. It represents a new approach for most of the non-Italian organizations with which Libera works, including new strategies based on culture, education, and the promotion of human rights and social justice to respond to the terrible impact caused by criminal activities and mafia-like culture. Libera International’s activities contend with the characteristics of mafias around the world. The mafias don’t adhere to the limits of geographical borders and they spread, not only as “criminal organizations,” but also hidden in legal, economic, or political activities. This sector functions in Europe thanks to Libera Europe and the satellite organizations founded by Italians living abroad and organized into local entities. Within Latin American countries, Libera currently collaborates with ALAS—*América Latina Alternativa Social* (Latin America Social Alternative)—bringing together 40 organizations from 12 countries from all over Central and South America. Furthermore, Libera International is committed to raising awareness and diffusing knowledge and information in Italy about occurrences abroad in terms of illegal phenomena and their various legal, illegal, national, and transnational connections. It also aims to introduce experiences and narratives of victims’ relatives, activists, and civil society representatives from other countries (Libera International, 2019a).

In this context, the extraordinary work of the Libera Memory project aims to keep the memory of the mafias’ innocent victims alive and to stand by their families, organizing meetings and training events. Thanks to the generous testimonies of the relatives, Libera Memory is able to collect the stories of the innocent victims of mafias. It is not only about collecting individual stories; they are the stories of our territories, and together they tell a piece of our country’s story. Reading and learning these stories, supporting the families in transforming their pain into commitment, and pursuing truth and justice for all innocent victims of mafias is a responsibility undertaken by Libera in order to come together to build a public and shared memory: a memory that stays alive. With this in mind, a multimedia archive named *Vivi* was created, designed to be open and accessible to all and to tell all the stories of the innocent victims of mafias. A virtual place, that can be visited for free whenever desired, where one can learn and meet the hundreds of victims killed by mafia violence and discover who they were, what they did for work, and what their dreams were (Libera International, 2019b).

Thanks to the commitment of the Libera Association, in 2017 the Italian Parliament passed a law declaring March 21st as a “National Day of Memory and Commitment in Remembrance of Mafias’ Innocent Victims.”

Each year, March 21st is celebrated with a series of public activities during which the names of all innocent victims of the mafias are read aloud. March 21st, the first day of spring, has become a symbol of hope in Italy and a chance to meet the relatives of victims who have found the strength to overcome their grief through Libera, developing their sorrow into a search for deep, real justice, and transforming memory into a concrete, non-violent agent of solidarity and peace.

Stories of Pain and Hope

What is the purpose of cultivating the memory of the mafias' innocent victims' sacrifices? What value does this daily effort have for present and future generations? Distinguished thinker Vittorio Foa has observed that *the memory of others makes sense only if effected with the right questions in mind* (Foa, 1996). The best response to these questions is found in the words of the sociologist Renate Siebert: the link between the memory of the past and the responsibility of the future can be successfully realized through the face-to-face meetings between the sufferers of the most painful events and the youth of today:

if we do not convey the significance of memory, remembrance, and oblivion to preceding and subsequent generations, we hardly live in a world that knows a past and future (Siebert, 1997).

Bridging the gap between civil society and the relatives of organized crime victims has generated unexpected outcomes.

Van Dijk's assessment must be wholly acknowledged. Recalling the well-known criminological theory of Thorsten Sellin and Marvin Wolfgang, he emphasizes the role of victims in new policies against organized crime (Sellin & Wolfgang, 1964). According to van Dijk, victimology makes an important distinction based on the length of the causal chain: *according to this logic, primary victims are directly harmed by the crime. They can be subdivided into natural persons and legal persons. Secondary victims are family members and other loved ones of primary victims* (van Dijk, 2011). This is an important category because in many countries, such secondary victims are assigned procedural rights in criminal trials and made eligible for awards by State Compensation Funds for Victims of Violent Crime, including the Italian Fund for Victims of Organized Crime and Terrorism. Tertiary victims, in van Dijk's view, are persons or entities that are indirectly harmed by the crime. They can alternatively be described as indirect victims. In many cases, indirect victimization will be collective in nature.

Victims of mafias and organized crime generally exhibit three challenging conditions:

1. The traumatic impact of violence (incurred either directly or vicariously);
2. The threat to their physical safety and that of their relatives due to possible retaliation or threats;
3. The experience of loneliness, isolation, and fatigue (if not expelled) following their new condition of victimhood that exacerbates the injustice suffered and the sense of helplessness and loss.

The extent of association among victims has very often managed to address these vulnerabilities. The community's commitment has encouraged judicial reviews for the pursuit of truth, that for a long time remained *hidden by political maneuvers, force of extortion by mafias, and corruption, but also by the opaque veil of far too many idle and tamed minds* (Ciotti, 2017). The lessons learned from the words of mafia victims has fortunately been able to undermine an important feature on which criminal organizations thrive: indifference.

Various authors have pointed to the significance of this evolution on the sociocultural level, demonstrating that the new millennium has witnessed the flourishing of multiform arts of inventions producing artifacts, ideas, practices, sites, and social networks that contest the mafia power structures that organize their own territories and weapons of intimidation, codes of silence, violence, and death that they use to secure criminal borders. In the aim of producing a collective cultural revolution, members of the anti-mafia movement strongly assert that such civil transformation must begin with each citizen practicing a culture of legality (Pickering-Iazzi, 2017).

The participatory contribution of victims has given rise to previously unseen traits in antimafia policies, especially within the context of indirect antimafia policies. Many of the indirect policies are viewed as a means to rally support for the state's fight against the mafia, centered on a program of solidarity with victims and victim activism. Prolonged experience in different countries shows how indirect policies can help to build and sustain legal measures based on the legitimacy of the victims.

MAIN FOCUS

Latin America

In Latin American countries, sharing victims' experiences has resulted in the remarkable reinforcement of *resilience*: the community effort that allows us to rise above devastating individual circumstances and to resist, react to, and alter a tragic reality in a constructive manner.

Just like in Argentina, the voices and tears of the mothers of Mexico have been able effectively reach the hearts of a significant portion of the public, revealing a criminal reality to the world that had been neglected for too long.

Every year on May 10th, the same day as the celebration commonly known as Mother's Day (*Día de la Madre*), the mothers of missing Mexicans unite in the March for National Dignity, loudly shouting: "*¡vivos los llevaron, vivos los queremos!*" (they were taken from us alive, we want them back alive!). There are at least eight worldwide drug cartels vying for power in Mexico, which has unleashed a permanent war that has cost the lives of thousands of innocent victims.

The criminal cartels of Sinaloa and Jalisco *Nueva Generación* (New Generation) continue to be among the most powerful on a global scale, despite the extradition of noted drug trafficker Joaquín "El Chapo" Guzmán to the United States. The latest report of the Anti-mafia Investigation Directorate, the branch of law enforcement that fights organized crime in Italy, confirms the close ties that persist between the Mexican drug traffickers and the 'Ndrangheta (DIA, 2019). The recent alliance between the Calabrian mafia and the *Los Zetas* Mexican cartel has in fact resulted in a new entry route of cocaine into Europe. At the same time, women (*narcas*) have assumed a more significant role in the trafficking of narcotics within individual cartels.

In this context of fierce and indiscriminate violence, homicides and forced disappearances have rendered Mexican cities among the world's least secure. In a recent study published in March 2019, the city of Tijuana is identified as having the greatest number of recorded homicides in the world, followed by the other Mexican cities of Acapulco, Victoria, Juárez, and Irapuato (CCSP, 2019).

Forced disappearances with state involvement and those committed by non-state actors continue to be common, and those responsible enjoy almost absolute impunity. Current data in 2019 from the Official National Register of Missing and Disappeared Persons reveals that the number of people in Mexico officially registered as missing has exceeded 40,000 (AP, 2019).

Investigations into cases of missing persons continue to be flawed and authorities have generally failed to initiate immediate searches for the victims. Impunity for these crimes continue.

On January 15, 2019, Mexican President Andrés Manuel López Obrador established a "Truth and Justice Commission" to assist the families of the 43 students from the Ayotzinapa teacher's college who disappeared in Iguala, Guerrero in 2014. It was fitting that the decree establishing this important initiative was one his presidency's official acts in December. It was also fitting that the parents of other

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disappeared people stood outside the ceremony demanding that his administration address their cases as well. The disappearance of the students in Iguala shocked the conscience of Mexico—and the world—in a way few atrocities in the country have before. The impact was due to the large number of victims, the fact they were students, police participation in their abduction, and the authorities' inability or unwillingness to find them. Further fueling the public's outrage was the fact that these horrific crimes were not isolated incidents.

The ALAS association unites relatives of victims of organized crime and collects their heartbreaking stories. Also particularly significant in this context is the activity of *Red Retoño para la Prevención Social de la Delincuencia Organizada* (Burgeoning Network for the Social Prevention of Organized Crime): a network comprised of victims, victims' relatives, organizations, groups, collectives, students, and strategic players whose goal is to have a collective impact (moral suasion) on government institutions with the aim of preventing, mitigating, and addressing the damage caused by organized crime in Mexico.

Yolanda, mother of Dam Jeremeel who disappeared in May 2016, expressed the sentiment uniting all Mexican mothers of the victims of forced disappearances:

we mothers are committed day after day and continue to search for them, to search for them alive, in the hope of finding them alive. No matter how much time has passed, our love and pain as mothers will never stop searching for them. They are part of us, even when the authorities want to see us give up, get depressed, get sick, and cease to put pressure on them. This will never happen; our need as mothers to search for our own children and our love for them are the ingredients that allow us to get out of bed every day with the hope and belief that today could be the most beautiful day of our lives, if only we could see them again and embrace them (ALAS, 2017).

Many young people who had disappeared were journalists conducting research on the activities of drug traffickers and the corruption within government apparatuses.

In order to find the truth behind the “forced disappearances”, dozens of search brigades (*brigadas de búsqueda*) were formed, fostered by women who do not cease to look for their own missing children (*desaparecidos*). The brigades comb through lands, albeit with extremely limited means, searching for mass graves where they might discover some trace of their own kin (ALAS, 2018).

The spread of new media and social networks has given rise to the importance of these practices of community support for relatives of victims of narcos and “forced disappearances” in all Latin American countries. The virtual platform has become the new “plaza” of protest and the sharing of victims' experiences with the aim of putting pressure on government authorities to enact new neighborhood policies for the victims of organized crime. In this context, Latin American women have become the protagonists of a new chapter in the fight against criminal organizations and the corruption of government apparatuses, not only in Mexico and Argentina, but also in Colombia and Brazil.

United States of America

As the historian Salvatore Lupo has explained, the current use of the term “mafia” in American language has attempted to underline a strictly ethnic component, with the aim of “pointing a finger at the cultural baggage brought by Italian immigrants (other than Sicilians) to the New World, in the suspicion that their codes of silence (*omertà*) and the archaic tendency towards violence attributed to them are derived from secret connections between secret associations” (Lupo, 2002). In reality, the Italian-American

mafia has always had unique connotations. Subsequent historical research has in fact ascertained that Italian-American mafia families are localized and that Italian hegemony over organized crime in the US has always been limited (Critchley, 2009).

In 1951, the Special Senate Committee to Investigate Organized Crime in the United States (Kefauver Committee), concluded its work after holding numerous public hearings in major American cities, recognizing for the first time that *there is a sinister criminal organization known as the Mafia operating throughout the country with ties in other nations in the opinion of the committee* (US Senate, 1951).

The Organized Crime Control Act of 1970—including the better-known Racketeer Influenced and Corrupt Organizations Act, known by the acronym RICO—was proved to be one of the most effective legal tools against the American mafia and other analogous criminal organizations. The RICO act punishes those who infiltrate legal businesses and make use of revenues generated by a “pattern of racketeering activities.”

After 9/11, American officials have highlighted ties between organized crime and terrorist groups such as Al Qaeda. The fight against transnational organized crime was subsequently subsumed under the broader objective of the war against terrorism. Much attention was focused on the alleged ties between terrorist groups and the global drug trade.

Despite some success, the American mafia has not yet been completely eradicated. According to the most recent estimates, today the mafia families include more than 3,000 members and affiliates in the US, scattered mostly throughout the major cities in the Northeast, the Midwest, California, and the South. Their largest presence is concentrated around New York—where since 1931, five families have run a criminal alliance (Bonanno, Colombo, Gambino, Genovese and Lucchese)—as well as in Philadelphia, Chicago, and southern New Jersey. The major threats to American society posed by these groups are drug trafficking (particularly heroin) and money laundering. They are also involved in illegal gambling, political corruption, extortion, kidnapping, fraud, counterfeiting, infiltration of legitimate businesses, murder, bombings, and weapons trafficking.

The United Nations Convention against Transnational Organized Crime (UNTOC), held in Palermo, Italy in December 2000, has established measures to criminalize the conduct of “organized criminal groups.” Of course, this is most effective when the criminal operations resemble a more traditional mafia style or gang structure rather than the fluid networks of more sophisticated operations or the even more elusive ad hoc connections that are created and dispelled almost spontaneously. All the components of the US strategy against organized crime are found to be replicated in the UN Convention. A key requirement of those involved in ratifying the UN Convention was the passing of legislation criminalizing four separate specific crimes, specifically the criminal acts of participation, facilitating, counseling, and/or the actual commission of crime involving an organized criminal group (Beare & Woodiwiss, 2014).

The Victims of Crime Act of 1984, the Victims’ Rights and Restitution Act of 1990, and the Crime Victims’ Rights Act of 2004 guarantee that victims occupy a central role in the criminal justice process and in American legislation. The Attorney General Guidelines for Victim and Witness Assistance provide guidance on compliance with victim rights laws and establish forty Justice Department policies on working with victims and witnesses.

In the United States legal system, a “crime victim” is defined as a person who has been directly and proximately harmed (physically, emotionally, or financially) as a result of a committed federal offense (e.g., mafia crimes). In the event that a crime victim is under 18 years of age, incompetent, incapacitated, or deceased, the crime victim’s legal guardians, representatives of their estate, family members, or any other persons deemed suitable by the court may assume the crime victim’s rights, as long as that person

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is not a defendant in the crime being investigated or prosecuted. Foreign citizens may be victims in some cases. Businesses, corporations, and non-profit organizations can be eligible victims, and an authorized representative of the entity should be designated for purposes of notification.

According to American legislation, victims of organized crime in particular are specifically guaranteed the following fundamental rights:

1. The right to be reasonably protected from the accused.
2. The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
3. The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
4. The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
5. The reasonable right to confer with the attorney for the Government in the case.
6. The right to full and timely restitution as provided by law.
7. The right to proceedings free from unreasonable delay.
8. The right to be treated with fairness and with respect for the victim's dignity and privacy.
9. The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
10. The right to be informed of the victim's rights.

The Witness Security Program (WSP) has contributed significantly to the successful recruitment of cooperating victims as witnesses. Established by the 1970 Organized Crime Control Act, the WSP protects victims who serve as witnesses and provides individuals with new homes, identities, and jobs. The WSP has been extremely successful, albeit expensive. Approximately 18,000 victims, witnesses, and family members have entered the WSP since 1971. In fact, very often a "witness" is a victim of a serious crime who testifies at trial, thus exposing himself/herself further to serious and imminent danger (e.g., witnesses of criminal acts that occurred in their home or immediate environment, such as relatives of members of criminal groups, entrepreneurs, and traders victimized by a racket).

Asia

As clearly illustrated by one of the leading scholars of organized crime in Asia, the Chinese mafia can be separated into two different larger associations (Wang, 2017): Red Mafia (corrupt public officials) and Black Mafia (street gangs). The term "Red Mafia" refers to corrupt public officials who sell extralegal protection and abuse their power and office. The main categories of Red Mafia services include sheltering organized crime groups and protecting illegal entrepreneurs in the criminal underworld, supplying insider information and protection for businesses or individuals, sheltering subordinates' corrupt transactions, and distributing public appointments regardless of bureaucratic norms and regulations. The term "Black Mafia" refers to street gangs that provide extralegal means of dispute resolution and private protection. The distribution of these gang services is largely dependent on the gangsters' *guanxi* networks.

In Chinese subculture, *guanxi* is a system of interpersonal relations that is built on continued acquaintance between individuals and the exchange of favors. Within the system of *guanxi*, personal relationships are established that can then be used to exploit business opportunities or obtain work privileges. The

Chinese mafia benefits from the dark side of *guanxi* practice. Within a criminal environment, *guanxi* guarantees the quality of Mafia services, and thus induces individuals or entrepreneurs to purchase extralegal protection. In China, as in Italy, the major benefits to mafia groups in creating such alliances include: obtaining protection from politicians who have the power to intervene in antimafia law enforcement activities; and securing substantial contracts for public works.

The Triads are the most well-known organized crime group in China, Hong Kong, and Macao. In addition, there are other large organized crime gangs. The Big Circles is a loose alliance of criminal gangs founded by former Red Guards of the Cultural Revolution. They are active in “Snakehead” human trafficking and other criminal operations.

All criminal organizations in China make use of violence to impose their own dominance in main criminal activities (especially the trafficking of drugs and weapons and the exploitation of prostitution).

The violence perpetrated by the Chinese mafia is very often extremely brutal. This is clear from the signature Triad instrument of torture, punishment, and execution: the kitchen meat cleaver. The bodies of Triad victims are sometimes horribly mutilated. Severed limbs are sometimes used as a warning. Chinese Court records give accounts of numerous victims of chop attacks.

When they are abroad, victims of the Chinese mafia are usually forced to live and work in miserable conditions for many years in order to pay off their debts to the smugglers.

In recent years, a new perspective has developed regarding the need to protect the victims of organized crime, including in China.

A series of specialized campaigns/struggles has been organized by the central government over the years to tackle certain types of crime, including organized crime, gang crime, prostitution, drug trafficking involving women and children, and counterfeit currency. In addition, local governments at various levels prefer to launch “strike-back” campaigns to curb locally-based criminal groups. Nowadays, the forces of law enforcement provide support and encourage victims to report their experiences to the authorities.

There is no shortage of ties between the many different Asian criminal organizations, and the Japanese Yakuza is considered by many one of the most powerful in the world. The origins of this vast organization date back to the 16th and 17th centuries in Japan. It evolved in a similar way to the hierarchical structures of the Sicilian mafia: the *wakato* (president) controls several vice-presidents, whose orders are issued to various lieutenants that command a legion of *wakai shu* (soldiers).

Yakuza gangs control a wide variety of illegal revenue generated from activities ranging from securities fraud to traditional extortion of civilians. These hierarchical criminal organizations are classified under Japanese Law as *boryokudan* (violence groups). The modern Yakuza trace their lineage back to the *machi yakko*, 17th century Robin Hood-like civil defense groups, who protected townspeople from gangs of rogue samurai. Times of crisis have provided the Yakuza with high profile opportunities to promote their image as protectors of the people. Yakuza groups delivered aid to the victims of the Great Hanshin Earthquake in 1995 and again following the Great Tohoku Earthquake and Tsunami in 2011. News stories in 1995 frequently emphasized the Yakuza’s ability to deliver aid to the Japanese people. Other reports portrayed the Yakuza operating as de facto police, patrolling the streets in gangs to enforce order.

Only in recent years has a broad movement been developed to fight the Yakuza, now widespread across all of Japan.

As several important studies have noted (Reilly, 2014), periods of intense violence during turf wars between gangs, widely reported acts of Yakuza vigilante justice, and the Yakuza’s increasing connections to foreigners have fostered a resilient and vocal anti-Yakuza movement. The new century has seen the rise of vigorous anti-Yakuza campaigns organized by citizens’ groups, which work in close cooperation

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with police. Campaigners distribute posters and pamphlets, publicize their activities on local radio stations, and run confidential advisory services for people with Yakuza-related problems. Police officers visit businesses, factories, town halls, and temples to give instructions on how to deal with Yakuza intimidation. Civic anti-Yakuza demonstrations have become strident and combative in ways previously unseen. Conscious of the fact that the gangs traditionally flaunt their presence at festivals, many citizens' groups now sponsor an "anti-Yakuza float" in their local festival procession. Some campaigners have confronted the Yakuza directly by staging loud demonstrations in front of buildings where gangs have purchased office space. Some civic centers have set up employment programs to help ex-Yakuza secure work. The torrent of lawsuits, injunctions, appeals, summonses, petitions, indemnity claims, and other civil actions generated by citizens' groups and anti-Yakuza campaigners around the country have provided plenty of work for Japan's attorneys. There are now nearly 4,000 anti-Yakuza volunteer groups in Tokyo alone. These groups compile lists of suspected gangsters and collaborators and circulate them to estate agents, landlords, hotels, and small business owners. There are campaigns to prevent Yakuza from participating in public auctions, to stop them from receiving welfare benefits, and to expel them from public housing projects (Rankin, 2012).

Against this backdrop, the Anti-Boryokudan Law, enacted in 1991, was the first of Japan's three major laws against organized crime. The Anti-Boryokudan law is an executive law that prescribes regulations for the Yakuza. The law has undergone a number of revisions since 1991, most notably in 2006 and 2012. The Anti-Boryokudan Law expanded police investigative powers over the Yakuza, allowing Prefectural Police to require Boryokudan groups within the Prefecture to submit reports, in addition to subjecting those groups to on-the-spot police inspections. The Anti-Boryokudan Law also provides an avenue for corrupt members of the police force to impose a protection scheme on the Yakuza and the law's primary effect has been mobilizing the public consciousness against the Yakuza.

Russia

The *Vory v zakone*, translated literally as "thieves in the law", is the most dangerous criminal network active in ex-USSR countries since the 1920s. Within the context of this criminal organization, rites, rules, aliases, and tattoos have been developed to codify one's affiliation with the mafia association. Throughout the existence of the USSR, the *vory* ran small-time activities within the *gulags*. They would act as arbitrators among prisoners and administered their own brand of justice. Once free, after the fall of the Soviet Union they returned to their villages recreating the same criminal organization. Many contemporary criminals claim to be the legitimate heirs of the old *vory* and utilize the *vory*'s jargon and rituals (Varese, 2001).

In the Russia of today, the enormous and varied world of the *Mafija* is made up of numerous and very powerful criminal groups that have demonstrated an extraordinary ability to adapt to a capitalist marketplace (Varese, 2011). It is estimated that there are currently more than 5,600 organized criminal groups active in Russia. The *Organizatsya*, the new Russian mafia, is divided into ethnic groups (Chechens, Georgians, Armenians, etc.) and has carried out a process of internationalization over time, benefiting from the influx of criminals that fled the former USSR out of fear of being captured or killed by rival gangs.

The absence of an effective mechanism providing physical protection to victims, witnesses, experts, suspects, and accused people in Russia has a negative effect on the effectiveness of the fight against organized crime. Victims' families are often in danger of becoming victims themselves of various unlawful

acts, including murder. Therefore, to ensure an effective fight against organized crime, it is important to guarantee real protection of witnesses, victims, and experts. It is also essential to establish special methods for processing criminal cases related to organized crime, including providing for protective measures to facilitate in-court testimonies.

In February 2019, Russian President Vladimir Putin introduced a bill into the State Duma that aims to combat the country's unofficial criminal hierarchy. Among other measures, the proposal includes new penalties for the *vory v zakone*. Putin's bill describes them as *individuals who hold a high rank in the criminal hierarchy*. The proposal would also penalize participation in "gatherings of organizers, leaders, or other representatives of criminal organizations," more commonly known as *skhodki* in the criminal community. Under the new bill, "criminal authorities" deemed to be the direct leaders of groups of organized lawbreakers could face a life sentence. This legal proposal may prove to be an effective tool in protecting victims of the Russian mafia.

Africa

In contrast to other regions, most notably Latin America, the study of organized crime has not been prioritized in Africa. That is now changing, driven by a greater focus on the issue of community development. Essentially, organized criminal activity in African countries has specific features that make it possible to situate such activity on a spectrum extending from the state-legitimized to the purely private. Many African countries have weak law enforcement and have experienced a rapid growth of a wide variety of globalized markets in recent years. In all but a handful of cases, the rise of organized crime in Africa became perceptible at a time of extensive political and economic change. These particularities make African countries rather distinct from many other places where the concept of organized crime has been established for a longer period of time.

A characteristic feature of organized criminal activity, in many parts of Africa where it can be identified, is a set of relationships generally involving senior figures within the state or important local power brokers, as well as professional criminals. Organized criminal activity is often concerned with channeling or directing resource flows from or to African countries in an organized way over a certain period for the purpose of illicit gain. Drug trading, kidnapping, embezzlement, the large-scale theft of minerals, or other clear criminal activities exist on a sustained basis in many parts of Africa, in both "weaker" and "stronger" states.

According to Mark Shaw, the director of the Global Initiative against Transnational Organized Crime, broadly speaking Africa has four types of organized crime. They are all evolving in different ways and there is some overlap between them. They also affect the continent and its citizens in different ways, and this should determine the areas where organized crime is designated to be most serious (Shaw, 2018).

The first of these typologies can be seen in places where organized crime is relatively entrenched and most recognizable to outsiders as mafia-style organizations. The use of violence is a defining feature, and Cape Town provides us with an adequate example. The city's gangs and criminal networks, including corrupt connections within the police, allow us to draw parallels to the Italian mafia. In Nigeria, the phenomenon is slightly different. Relatively sophisticated criminal networks—with greater global reach, but less geographic control domestically—also resemble the recognized definition of organized crime. Nigerian criminal groups, for example, have a substantial hold in Italy, an achievement in and of itself given the crowded environment of organized crime within the country.

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The second category of organized crime in Africa is more complex. On the surface, criminal networks in other parts of the continent less resemble the classic definition of organized crime groups. Instead they function more as networks that link outsiders and insiders on the continent, with a focus on moving illicit products or resources.

The third category, according to Shaw, sees a strong cross-over between loose political organizations, militias, or armed groups, and trafficking or smuggling operations. Libya, the Sahel, and the Horn of Africa are examples.

The fourth and final category of organized crime in Africa is cybercrime. This is included as a separate category because it is likely to increase in Africa as internet prevalence increases.

The future of organized crime in Africa will be a combination of the four typologies. How they evolve—or dissolve—will depend on criminal commodities (such as a change in global drug trafficking patterns) and external markets (such as changes to Asia's seemingly insatiable desire for environmental products). But the real difference will depend on the degree to which legitimate states, with respect to the rule of law, can contain organized crime.

A recent and careful study commissioned by the Italian government's Ministry of Foreign Affairs (Di Liddo et al., 2019) has revealed how organized crime has arisen as a symptom of profound economic, social, political, and cultural unrest in different African countries. Analysis of the evolutionary trend of African organized crime has demonstrated its capacity to establish itself very quickly, running parallel to large economic, social, and political change in the continent and proving itself to be, in many cases, far more cutting edge than African public institutions. The profound adaptability and operational flexibility of African crime has allowed its networks to exploit illegal markets in any political or security situation, whether in countries generally perceived as stable, as in Ghana, in those experiencing ongoing tensions, as in Nigeria, or those plagued with violent internal conflict, as in Mali or Libya.

Beyond its chosen operating model, African crime has always managed to become systemized, creating contact networks and structures of common benefit, be they with the most corrupt parts of institutions or with genuine outlaw movements such as groups of jihadists or ethnic insurgents. The persistence of the hybrid nature of the continent's ecosystem has facilitated the adaptability and the operative flexibility of African organized crime, where legal and illegal worlds continue to overlap and intersect all too often, fueled further by the general sentiment of the population that, in response to state inefficiencies and weaknesses in governance and rule of law, tends to distrust authority and consider criminal practices legitimate and acceptable.

Protection for victims of African mafias has manifested especially through forms of support for victims of trafficking, often destined for prostitution, slave labor, and sexual slavery. Particularly within Europe, international law stipulates direct assistance using "street workers." Two special measures, approved after the United Nations Convention against Transnational Organized Crime and adopted at the time of the Palermo Conference of 2000, protect the victims of human traffickers. They are: the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Beginning in 2006, the United Nations Refugee Agency (UNHCR) has provided guidelines to counteract the significant increase in victims of human trafficking and to ensure international humanitarian protection for victims based on the principles established by the Geneva Convention of 1951.

Unfortunately, new legislation recently introduced in individual European countries may present obstacles to the system of protection for victims of human trafficking. After passing law No. 132 on December 1, 2018, Italy has strongly limited immediate access to measures of international protection for migrants who reach the Italian shore after traveling across the Mediterranean aboard makeshift vessels to escape the most ferocious criminal organizations or authoritarian African regimes.

Europe

There are a recorded five thousand criminal organizations currently active in the 28 member nations of the European Union, according to the most current Europol estimates (Europol, 2017). Over the past few years, criminals of more than 180 nationalities were involved in serious, organized crime in the EU. A detailed study by the Transcrime Research Centre has provided evidence of organized criminal activity within the EU as a whole, although it is difficult to precisely determine the extent of activity in each Member State (Savona & Riccardi, 2018). In any event, the variety of business sectors and criminal actors involved is wide. The research and investigative reporting clearly show the increasing roles of the Russian, South American, and Chinese mafias in Europe. Additionally, we have known for decades about the intra-European entrenchment of all the major Italian mafias (Camorra, Cosa Nostra, 'Ndrangheta), each developing in their own unique way. Drug markets remain the largest criminal markets in the EU. More than one third of the criminal groups active in the EU are involved in the production, trafficking, or distribution of various types of drugs. The drug trade generates multibillion-euro profits for groups involved in this criminal activity. The EU retail drug market is estimated to be worth at least 24 billion euros per year. The immense profits generated from the drug trade fund various other criminal activities, allowing organized crime groups to thrive and develop their criminal enterprises at the expense of the health, prosperity, and security of EU citizens. Europol indicates that violent crimes targeting rival organized crime groups often take place in the context of “turf wars” over territory or influence. Organized crime groups extort property or money from their victims through intimidation, threatening to carry out serious harm and murder. Very few criminal groups engage in extortion as their core activity. Some mafias offer to carry out racketeering and extortion as a service for other criminal networks and lend “professional extorters” to affiliated clans. Kidnappers will abduct, hold, and release individuals in exchange for ransom payments. In the EU, this type of criminal activity is not widely carried out by mafias. However, organized crime groups involved in migrant smuggling have been known to use the threat of kidnapping in order to extort debt payments.

In recent years, the concept of victims within European culture and, by extension, community law, has seen progressive changes, and is met nowadays with increasing attention from civil society, the European Parliament, and individual member states.

As has been duly emphasized (EUFRA, 2019a), in former years, if a victim had any role in criminal justice systems, it was only as one witness among others. But now, victims take an increasingly significant part in the proceedings. There have been several approaches to conceptualizing the victim in an appropriate manner. Overall, five models can be distinguished:

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- The victim acting as a witness and delivering evidence in the public interest;
- The damaged victim being allowed to pursue civil law claims to restitution on a civil-law side-track added to the criminal proceedings;
- The harmed victim conceptualized as an individual in need and deserving of sympathy and help;
- The wronged victim acknowledged as an individual whose rights have been violated and who, therefore, is entitled to redress;
- Finally, the victim not only acknowledged as the person wronged but, consequently, also recognized as entitled to a role as a party to the criminal proceedings.

During this development, the legitimate interests of victims of violent crimes were increasingly recognized and, accordingly, the role granted to victims became more and more significant. These five models can therefore be viewed as stages in the remarkable progress made in favor of victims of violent crime, from a radically marginalized position to a witness enjoying full status as a party to the criminal proceedings.

In the European framework today, there is no existing regulation aimed at protecting victims of mafias specifically. However, one effective tool for protecting the rights and security of victims of criminal organizations comes from the detailed legislation aimed at safeguarding the victims of violent crimes, which is certainly applicable in cases concerning typical mafia crimes.

Two legal instruments reinforce the rights of victims in secondary EU law: the Council Framework Decision of 2001 on victims' testimonies in criminal proceedings; and the Victims' Rights Directive of 2012. They mark significant steps towards a fuller recognition of victims' rights. Both are characteristic of the current transition from a needs-based to a rights-based understanding of crime victimization, progressively granting victims the right to actively participate in the proceedings.

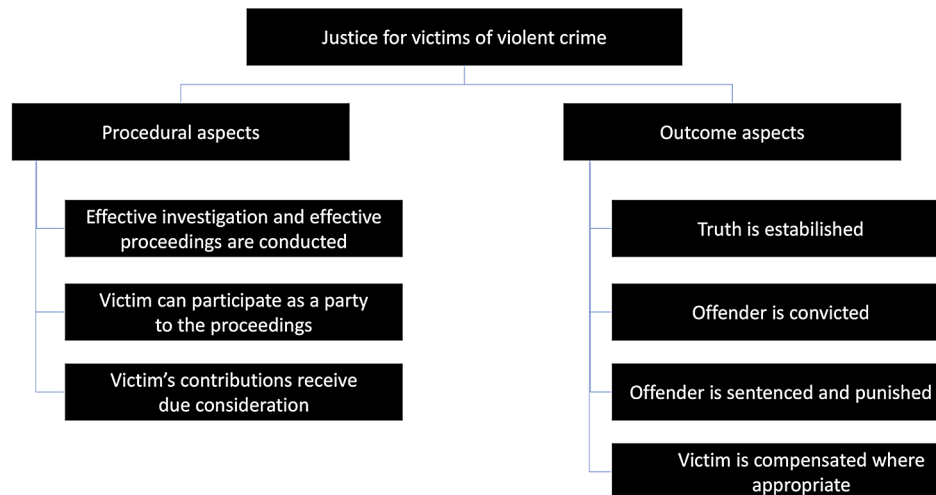
European directives define the "victim" with reference to harm caused by a criminal offence. Family members of a person whose death was directly caused by a criminal offence, possibly perpetrated by a criminal group, are included in the definition, because they too suffered harm as a result of the death of their relative. Because of this double causation—where a crime results in death and the death causes harm to family members—European legislation states that these family members are "indirect victims of the crime."

European Union member states are obligated to ensure that victims of crime *are able to participate in criminal proceedings and are recognized and treated in a respectful, sensitive, tailored, professional, and non-discriminatory manner in all contacts with [...] a competent authority, operating within the context of criminal proceedings*, according to Article 1 of the Victims' Rights Directive.

Therefore, the Victims' Rights Directive covers:

- Victims' access to support services (Article 8 of the directive);
- Victims being heard or requesting that evidence be taken (Article 10);
- Victims being entitled to an effective prosecution (Article 11);
- Victims being protected against repeat or secondary victimization (Article 18).

Figure 1. Justice for victims of violent crime in Europe (EUFRA, 2019a)
 Source: European Union Agency for Fundamental Rights (2019)



All these situations and many more are thus “governed by EU law.”

The role of antimafia associations in Italy, as well as in other European countries, has proved decisive in fostering active participation in providing immediate support for victims of organized crime.

One of the core provisions of the Victims’ Rights Directive is Article 8. It grants victims the right to access victim support services, or more precisely, the right to *confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings*. Article 9 of the directive conceptualizes victim support services in a fairly comprehensive manner as comprising:

- Emotional and psychological support;
- Social support in terms of advice concerning practical and financial issues;
- Information about victims’ rights and their potential role in the proceedings;
- Advice concerning the risk of secondary victimization;
- Advice relating to the risk of repeat victimization.

Community bodies have repeatedly called on EU member states to monitor their compliance with their obligations under the Victims’ Rights Directive, to assess the risks of secondary victimization and of retaliation against victims, as well as to take, whenever necessary, effective measures to protect victims against these risks. They should have especially robust protocols and routine practices in place to ensure that offenders do not intimidate victims in the course of criminal proceedings. This is an extremely high and recurring risk, particularly in the event of mafia crimes, for which reason the victims must be duly protected from the possibility of retaliation (EUFRA, 2019b).

Article 58 of the Victims' Rights Directive of 2012 expressly states that "victims who have been identified as vulnerable to secondary and repeat victimization, intimidation, and retaliation should be offered appropriate measures of protection during criminal proceedings. The exact nature of such measures should be determined through individual assessment, taking the victims' wishes into account. The extent of any such measure should be determined without prejudice to the rights of the defense and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure."

CONCLUSION

In various countries of the world, major steps have been taking in granting the victims of organized crime the attention they deserve from government authorities. The legislations of the United States and European Union appear especially to be leaders in effecting this system of protection. However, much remains to be accomplished to avoid secondary victimization and retaliation to the detriment of those who have already lost a relative due to criminal violence.

The antimafia movement is destined to assume a central role in the future policies of assistance for victims of crime.

In this respect, we must wholly acknowledge and share the forward-looking cautionary tale of Luigi Ciotti, one of the most courageous and tenacious promoters of a new culture of participation in the fight against organized crime in Italy, Europe, and around the world.

In his recent speech before the European Parliament, the president of the Libera Association voiced his denunciation of Mafia syndicates and organized crime and has proposed a set of legislative and operative proposals against them. According to his prominent opinion, repression measures must be coupled with prevention and education, along with "consciousness raising." He stated that *we must trigger co-responsibility, virtuous daily behaviors, and a moral code embedded in everyday life. It's the language of democracy, the vocabulary of 'us'* (Borsa, 2019), because *mafia syndicates have regained control in Italy, and they are stronger than before. No European country is immune or impervious to this. Organized crime has no borders, it carries out its business everywhere, and it possesses the skills to use the most modern and sophisticated technologies to carry out illegal trafficking. Uprooting Mafia syndicates, Mr. Ciotti continued, requires that repression measures be coupled by prevention, cooperation between policymakers and civil society, strengthened volunteer work, and cultural activity in schools. This entails restoring human dignity, overcoming egoisms and nationalisms. Totalitarian regimes evolve as a consequence of numb consciences and ignorance.*

The program of reform proposed by Libera can be considered a guideline for the improvement of European and international regulations in order to counteract the mafias and protect victims of organized crime (Libera International, 2019c).

The program strongly encourages the following on the European and international levels:

- The re-elaboration of the definition of “organized crime” that takes recent “social” and legal developments into account, emphasizing the importance of analyzing both the internal organizational model (strong ties) and the model of incrimination of external relations (to which critical importance must be attributed to completely isolate the action of criminal associations) as well as introducing an obligation to incriminate in cases of behaviors that involve an alteration of market economy rules through violent or intimidating dynamics;
- The strengthening of the fight against organized crime and the confiscation of criminal assets;
- A more effective strategy in the field of combating illicit drug trafficking. Within this context, we can conceivably adopt measures to support actions aimed at reducing demand through approaches that are not always repressive;
- More efficient international cooperation in the fight against human smuggling and trafficking through the promotion of policies for the protection (physical and economic) of victims of human smuggling and trafficking, especially in the event of crime, guaranteeing their acceptance and preventing inhumane rejection that would push them back toward criminal organizations and regimes;
- The promotion of new legislative initiatives on the protection of witnesses and whistle-blowers for the creation of a structured protection system, given that confirmed experience of contribution of insiders has proved crucial in order to shed light and therefore dismantle the networks and criminal activities;
- The strengthening of the fight against money laundering. It is necessary to foster the development of standards that consider the extreme opacity of the origin of criminal assets, including the disproportion between economic-financial resources and lawful income (unexplained wealth), which is also important in terms of confiscation as a collateral tool of repression.
- A new strategy for the fight against eco-mafias and transnational illicit trafficking activities to the detriment of the environment;
- A more structured coordination of the fight against the illicit arms trade;
- The strengthening of the discipline of high-tech surveys to facilitate the transnational acquisition and storage of electronic evidence in criminal proceedings (e-evidence);
- The promotion of a more effective and functional judicial system, guaranteeing not only the criteria of efficiency, but also competence, transparency, and independence, in order to limit red tape abuse;
- The strengthening of the protection of rights to information and safety of those providing information with respect to vocational practice in the specific freedom of expression and protection of sources;
- Greater support to civil society for preventing and combating organized crime.

Furthermore, it is particularly important to appeal directly to European and international bodies so that they provide for the strengthening of the protection of victims from organized crime and violent crime. From this perspective, the European model has decidedly improved: in line with the European Directive 29/2012 and building on the importance of the value of constructing a “collective memory” for the victims of organized crime, we must guarantee funds dedicated to taking care of and supporting organized crime victims, also encouraging the direct and indirect reuse of confiscated assets. Furthermore, we must define, with a specific regulatory act, parameters that ensure a “fair and adequate” nature

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of compensation due to the victims of violent intentional crimes, preventing national authorities from granting compensation of negligible value for extremely serious events.

In this last respect, the “Lifejacket” project, founded in Italy by the Libera Association, constitutes an innovative and sustainable approach to promote an integrated system to provide support to victims (Libera International, 2015).

It is a program dedicated to supporting victims of mafia and people in danger, from a psychological and social viewpoint, through non-violent protection. Intervention measures include:

- Unarmed escort: thanks to unarmed company, witnesses of crime feel protected and that they are not alone, gaining confidence in their commitment. Furthermore, this discourages violent attacks due to high visibility of potential damages with consequent media attention, interest of institutions, and public disapproval;
- Psycho-social support: creation of a network of social relationships, psychological support, and solidarity to break the loneliness suffered by witnesses of crime and their families;
- Media advocacy: keep public attention high on witnesses of crime and related topics, promoting the transformation process from passive victim to positive social actor.
- Education and research: develop sophisticated knowledge about how to manage critical situations and organizing interventions.

With this methodology, it is possible to integrate, where existing, safety measures for police organs charged with the physical protection of victims through psycho-social interventions and relational support. The constructive cooperation between institutions and the police forces responsible for protection, the reference to the practice of nonviolent accompaniments proven effective in other countries in conflict, the use of web performances with public events, and interventions in schools represent a new and effective practice of protection through visibility, support, and awareness. This is a pattern that could potentially be implemented by EU stakeholders and interested subjects on a large scale.

Libera’s mission envisions a helpful relationship based on the ability to trust that the other will not encroach, but rather be “on their side,” illustrating the meaning of accompaniment.

Civil society-based action is sustainable and could thus be extended creating a European and international network. It could lead to an era of tightening ties between the institutions and civil societies of those border countries. The strategic use of the Web facilitates the coordination and the dissemination of news and stories of victims and witnesses of mafias across borders. The Web, to paraphrase Marc Augé (1995), has thus become an actual “place,” and a *starting point for identifying the novelties of global communication that might represent opportunities of development for the antimafia movement (...) by redesigning the shape of relevant communities, personal relations, and social identities* (Bagnoli, 2017).

In his last speech before a student audience, given a few days before being killed by the Sicilian mafia, judge Paolo Borsellino stated: *the fight against the mafia should not simply be a work of disconnected crackdown initiatives, but rather a cultural and moral movement in which we all participate, especially the younger generations, the most suited to witness the marvel of a fresh scent of liberty that rejects the stench of moral compromise, indifference, contiguity, and therefore complicity*. It is true. Everyone must take responsibility for the mafias’ victims. Their stories of pain and hope belong to all of us.

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KEY TERMS AND DEFINITIONS

Cosa Nostra: An historical mafia organization founded in Sicily, an island in the south of Italy, strongly rooted also in America.

Desaparecidos: (Typically in South America) Persons whose have disappeared, presumed killed by organized crime or members of armed services.

Guanxi: (In China) The system of social networks and influential relationships wich facilitate business and other dealings.

Mafia: A criminal group, wherever named locally, that employ intimidation, subjugation, and codes of silence through the use of actual or threatened violence, corrupt public officials, graft, or extortion.

'Ndrangheta: A mafia organization originating and operating chiefly in Calabria, a region in southern Italy, with screenings all over the world.

Triad: A secret society originating in China, typically involved in organized crime.

Victimology: The study of the victims of crime and the psychological effects of their experience.

Vory-v-zakone: (In Russia) Also called “thieves in law”, is a society of criminals comparable to more famous secret fraternities.

Chapter 10

The Fight Against Corruption

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ABSTRACT

Corruption, generally speaking, can be defined as “abuse of power for private gain” that can be classified as grand, petty, and political, depending on the amounts of money lost and the sector where it occurs. Therefore, it is a phenomenon that compromises rule of law, weakens public institutions and democracy, impacting negatively on productivity and economy. Indeed, because of all these implications, it can be analyzed stressing social, economic, politic, or legal perspectives. These features have allowed experts from different fields to investigate the phenomenon, which does not exclusively concern conduct punishable by criminal law, but also conduct that can be considered just an “expression of maladministration” in both the public and private sectors. This chapter seeks to address the legal aspect of corruption. In particular, it overviews the main anti-corruption measures international community has adopted in recent years. By showing the evolution and steps that led to the actual treaty situation, the Authors offer a hint on the goals achieved and those to be achieved.

INTRODUCTION

First of all, it must be said that – unfortunately - bribery is a widespread phenomenon.

It raises serious moral, economic and political concerns, undermines good governance, hinders development and distorts competition. It erodes justice, undermines human rights and is an obstacle to the relief of poverty. It also increases the cost of doing business, introduces uncertainties into commercial transactions, increases the cost of goods and services, diminishes the quality of products and services, which may lead to loss of life and property, destroys trust in institutions and interferes with the efficient operation of markets.

Governments – as we will see - have made progress in addressing bribery through international agreements such as the Organization for Economic Co-operation and Development’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption and through their national laws. In most jurisdictions, it is an

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offence for individuals to engage in bribery and there is a growing trend to make organizations as well as individuals liable for bribery.

Nevertheless, the law alone is not sufficient to solve this problem: corruption is also a global phenomenon, indeed, over the past two decades, large improvements have been rare, if progress is made it is thanks to continuous and difficult work over decades. Drawing on Rose-Ackerman and Palifka, corrupt acts include the following actions (among others):

- **Payment of bribes** (offered or extorted) to get public services or to evade taxes;
- **Embezzlement and public service fraud**, even if not involving bribes (for example, officials may steal money from investment funds);
- **Nepotism**, or cronyism to benefit a particular family or group;
- **Buying influence and conflicts of interest**, when individuals take advantage of their position in government to extract favors or personal benefits from a government decision. Kleptocracy is the most extreme form of state capture, in which the state is managed to maximize the personal wealth of its leaders.

When corrupt activities are pervasive and deeply concealed in the public sector, it can have significant negative impacts in other areas, including regulatory and judicial State functions. Beyond the leakage of funds, the effects include the negative impact on the quality of public policies; wasted talent and effort in the private sector, to which economic revenues and works are denied in favors to individuals and firms engage in unproductive activities; the curb of economic growth (Krueger, 1974, pp. 291-303).

There are essentially three rationales that underpin criminalization of corruptive behavior and the fight against public corruption in general, both in a domestic and an international context:

- The need to uphold the integrity of the public administration and the confidence of citizens in the public administration;
- Safeguard the proper functioning of the public administration;
- The necessity to safeguard the transparent functioning of the market and fair competition.

The internationalization of the fight against corruption should of course in the first place be explained by reference to the internationalization of the phenomenon of corruption itself, that is that an increasing number of corruption cases involves a foreign element (International Monetary Fund, 2019, pp. 39-41). The Multidisciplinary Group Against Corruption, which was set up by the Council of Europe's Committee of Ministers in 1994, identified four parameters which are important in distinguishing corruption cases: the persons involved; the service rendered; the undue advantage that is offered; circumstances in which that advantage is offered. Each of these parameters may involve a foreign element, which allows qualifying a corruption case as international, or transnational (Jaeger, 1988, p. 163).

Even the internationalization of the economy, that have been a significant impact on the evolution and persistence of corruption, is not recent, it is only in the course of the second half of the 1990 that the international community has succeeded in adopting international instruments to fight corruption on an international level.

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Nowadays, there are four main international anti-corruption conventions, namely: Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention issued by the Organization for Economic Co-operation and Development - OECD) of 1997; Council of Europe Criminal Law Convention on Corruption of 1999 and Additional Protocol to the Criminal Law Convention on Corruption of 2003; the Council of Europe Civil Law Convention on Corruption of 1999; United Nations Convention against Corruption (UNCAC) of 2003.

BACKGROUND

The global awareness on the issue of corruption raises only in the last decades. The introduction of penalties to combat corruption in public life dates back to the nineteenth century, when French Napoleonic *Code pénal* of 1810 State's concern to make public officials' misuse of their offices a serious offence against public confidence in the administration's probity and impartiality has taken measures to respond to the need of the State. After the French revolution, the political idea that government powers are derived from the people and hence should be used only to the interest of the people became firmly entrenched. It is this fundamental modern, democratic political concept, which lies at the basis of the criminalization of corruption (Stessens, 2001, pp. 891-892).

THE INTERNATIONAL FIGHT AGAINST CORRUPTION

It is from 1970s that it was put into the international agenda. The principal influencer of this changing was the United States of America, because of domestic events linked with Watergate investigations. This case highlighted the ambiguous conduct of prominent political and businessman, guilty of exchanging political favors, or manipulated public procurement with questionable financing to political campaigns, bringing disdain to public opinion, but also greater reflection on the matter. As investigations continued, it was discovered that more than 400 American companies were involved in corruption cases and participation in illicit payments to foreign governments. The evidence brought to the attention of the Congress, that started a series of discussions, conducted to the adoption of Foreign Corrupt Practices Act of 1977 (FCPA), the first to introduce corporate liability, responsibility for third parties and extraterritoriality for corruption offences, meaning companies and persons can be held criminally and civilly responsible for corruption offences committed abroad. Though doubts remain about its success in the areas of compliance and enforcement, the FCPA has unequivocally entered the business culture of American companies operating internationally (Posadas, 2000, pp. 348-354). Thus, the strictness of FCPA provisions feared US corporations for possible business loss as there were differences in the international playing field, hereupon US struggled to advocate an international anti-corruption treaty, forcing to adopt a minimum standard of criminalization also in other States.

The negotiations started with the UN Economic and Social Council (ECOSOC), but the different objectives and the continuous contrast between North and South of the Globe led to a failure of the debate. In particular, "Northern States", pressed for a Convention condemning the offering of bribes by transnational companies; on the contrary, "Developing States", pushed for the simultaneously adoption of a code of conduct for those corporations. The former refused that condition and negotiations were abandoned. It was only in 2003 that UN finally adopted a Convention against Corruption (UNCAC).

The first international organization to adopt a binding international instrument in the fight against corruption was the Organization of American States (OAS), with the 1996 Inter-American Convention against Corruption, concentrated in both domestic and transnational cases of bribery. Actually, it is ratified by 23 states and, apart from the obligation to provide for effective incriminations of corruption, provides a number of preventive measures and lays down rules on jurisdiction, such as extradition and international assistance, and co-operation in the fight against corruption – including co-operation in the field of the identification, seizing and confiscation of proceeds from corruption (Organization of American States, 1996).

In 1997, the Organization for Economic Co-Operation and Development (OECD) has been signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which issued the first global anti-corruption measures based on a mechanism of monitoring and supporting towards Member States (Organisation for Economic Co-Operation and Development, 1997).

As the title indicates, its application field is limited to active corruption of foreign officials, consequently, the convention is not concerned with passive corruption by foreign public officials, nor with corruption in purely internal situation. This limited application field is the reflection of, on the one hand, the remit of the international organization under whose auspices the convention was drawn up – the Organization for Economic Cooperation and Development; on the other, the anti-corruption legislation of the most prominent member state of the OECD, the United States of America, from which it was directly inspired.

The Convention introduced deeply innovative provisions¹ that is binding on the Member States (even non-OECD members), in subject to ratification. The verification mechanism focuses on the “peer review” tool: the first phase consists in the generic evaluation of the degree of adaptation of national legislation to the Convention; the second, focuses on the judgment expressed by the OECD evaluators in relation to the effective application of the Agreement, in the country examined, from a legislative, administrative and regulatory standpoint. The work of OECD against international corruption continues with the monitoring of recommendations. It is important to underline that the OECD Convention and the related implementation rules, including the penal ones issued the member States, are not limited to pursuing the corruption of officials from other Member States but extend, without the constraint of reciprocity, to the corruption of public officials of any country in the world. An act of corruption is therefore considered a crime punishable in Italy, regardless of the citizenship of the corrupt official and the state or international organization to which it belongs (Organisation for Economic Co-Operation and Development, 2007, pp. 23-24).

From its side, the European Union (EU) has benefited from this international anti-corruption movement and has progressively strengthened the anti-fraud measures against EU economic interests. This need is evident if we consider that in 2009 it has been estimated that corruption alone costs the EU economy €120 billion per year, just a little less than the annual budget of the European Union. Because corruption and low rates of inclusive growth are mutually reinforcing, fighting corruption is of key importance if structural reforms are to be sustainable. So, the Union continued to develop initiatives of protection of the internal market, including anticorruption proposals, fight against organized crime, anti-money laundering measures, etc. (European Semester Thematic Factsheet, 2017).

In 1999 the Council of Europe, an institution that work for develop and uphold a pluralist democracy, the human rights and the rule of law, has taken a lead in fighting corruption as it poses a threat to the very foundations of these core values. Its multidisciplinary approach is based on three interrelated elements:

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- **Setting of European Norms and Standards:** Such as legal instruments for the criminalization of corruption in the public and private sectors, liability and compensation for damage caused by corruption, conduct of public officials and the financing of political parties – that improving the capacity of States to fight corruption, domestically as well as at international level;
- Monitoring of compliance with the standards, entrusted to the Group of States against Corruption (GRECO), which also control the respect of the Criminal Law Convention on Corruption (CETS No. 173) and the Civil Law Convention on Corruption (CETS No. 174);
- Capacity building offered to individual, Countries and Regions, through technical co-operation programs.

On the legislative level, two instruments have been approved by the Council of Europe: The Protocol to the Convention on the Protection of the Communities' Financial Interests ("EC Corruption Protocol") and two Conventions on Corruption ("EU Corruption Convention"). The first Protocol to the Convention, adopted in 1996, differentiates between "active" and "passive" corruption of public officials (both at national and EU levels), emphasizes the importance of cooperation between States and harmonizes the penalties for corruption offences with conferring an interpretative jurisdiction on the European Court of Justice (ECJ). Therefore, it allows national courts, when in doubt as to how to interpret the Convention and its Protocols, to petition the Court of Justice of the European Union for preliminary rulings (Council Act, 1996).

The EU Corruption Conventions, respectively on Civil and Criminal Law, have been ratified in parallel with the EC Corruption Protocol. They share similar language but are distinguished by the scope of their application: while the second applies to corruption affecting the financial interests of the European Communities, firsts are not restricted to this area alone (Posadas, 2000).

The Criminal Law Convention on Corruption, entered into force on November 2002 (Council of Europe, 1999a), aiming to coordinated criminalization of a large number of corrupt practices, inserting provisions concerning aiding and abetting; immunity; criteria for determining the jurisdiction of States; liability of legal persons²; the setting up of specialized anti-corruption bodies; protection of persons collaborating with investigating or prosecuting authorities; gathering of evidence and confiscation of proceeds. After ratification, States are required to provide for effective and dissuasive measures and its implementation will be monitored by the Group of States against Corruption (GRECO). The Civil Convention on Corruption, entered into force on 2003, aims to strengthen international cooperation in the fight against corruption, recognized as a strong threat to economic development and the proper functioning of markets. It is divided into three parts: the first, "Measures to be taken at national level", prescribes to provide for effective appeals in favor of people who have suffered damage resulting from a corrupt act (with specifications regarding compensation and precautionary measures to protect the parties); the second part, highlighted the importance of cooperation between the member states (regarding notifications of documents, obtaining evidence, recognition of foreign sentences), entrusting control over the implementation of these provisions to GRECO; in the final clauses there are some clarifications, including the possibility of proposing amendments and concluding multilateral agreements between States to strengthen the application of the provisions contained in the Convention (Council of Europe, 1999b).

As mentioned above, the Group of States against Corruption is a Council of Europe anti-corruption control body, that helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms. The Group, established in 1999 with an agreement of 17 member States of the Council of Europe, currently consists of 49 member States (48 countries from

EU and the United States of America). Membership in GRECO, which is an enlarged agreement, is not limited to Council of Europe member States: any State which took part in the elaboration of the enlarged partial agreement, may join by notifying the Secretary General of the Council of Europe. Moreover, any State which becomes Party to the Criminal or Civil Law Conventions on Corruption automatically accedes to GRECO and its evaluation procedures.

GRECO monitoring comprises:

- A **“horizontal” evaluation procedure** (all members are evaluated within an Evaluation Round) leading to recommendations aimed at furthering the necessary legislative, institutional and practical reforms.

The evaluation process follows a well-defined procedure, where a team of experts is appointed by GRECO for the evaluation of a particular member. Following the on-site visit, the team of experts drafts a report which is communicated to the country under scrutiny for comments before it is finally submitted to GRECO for examination and adoption. The conclusions of evaluation reports may state that legislation and practice comply – or do not comply – with the provisions under scrutiny. The conclusions may lead to recommendations which require action within 18 months or to observations which members are supposed to take into account but are not formally required to report on in the subsequent compliance procedure³.

- A **compliance procedure** designed to assess the measures taken by its members to implement the recommendations.

The assessment of whether a recommendation has been implemented satisfactorily, partly or has not been implemented at all, is based on a situation report, accompanied by supporting documents submitted by the member under scrutiny 18 months after the adoption of the evaluation report. Compliance reports contain an overall conclusion on the implementation of all the recommendations, with the purpose of decide whether to terminate the compliance procedure in respect of a particular member⁴.

- A **Rules Procedure**, a special procedure based on a graduated approach, for dealing with members whose response to GRECO’s recommendations has been found to be globally unsatisfactory.

GRECO provided a platform for sharing best practices on the prevention of corruption. The main objective of GRECO is to improve the capacity of its members in the fight against the phenomenon by using a dynamic process of mutual evaluation and peer pressure.

The World Bank and the International Monetary Fund (IMF) did not take an active role against corruption until the emergence of anti-corruption initiatives in the mid-1990s (Elliot K. A.,1997).

The World Bank’s corruption efforts have focused on improving the procurement processes of the Bank’s funded projects and in a recent paper on the subject, the General Counsel pointed out that the World Bank can hardly insulate itself from major issues of international development policy, such as the fight of corruption. The Bank can take many actions in this direction: it can conduct research on the causes and effects of this worldwide phenomenon; it can provide assistance, by mutual agreement, to enable its borrowing countries to curb corruption; finally, if the level of corruption is high so as to have an adverse impact on the effectiveness of Bank assistance and the government is not taking seri-

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ous measures to combat it, the Bank can take this as a factor in its lending strategy towards the country. The major problem in this respect is that in doing so the Bank and its staff must be concerned only with the economic factors and should refrain from intervening in the country's political affairs. Therefore, the concern here is not with the exercise of state powers in the broad sense but specifically with the appropriate management of the public sector and the creation of an enabling environment for the private sector (World Bank, 1997).

The IMF intervention, instead, has focused on promoting the importance of fighting corruption as a principle of good governance. A growing recognition that systemic corruption can undermine prospects for delivering sustainable and inclusive growth has determined a more vigorous commitment in this area by the organization. The IMF's work in both economic reviews and Fund-supported programs, with regard of the standard outlined in *The Role of the IMF in Governance Issues: Guidance Note from 1997*, which refer to corruption as an issue that should be covered, in particular where assessed to have a significant short - to medium-term macroeconomic impact. Although the organization has found that it has indirectly brought benefit in the fight against corruption through its technical and fiscal monitoring work, recently updated its policy on governance and corruption. The policy inaugurated on 2017, focuses on both the "supply side" of corruption (the bribe given) and the "demand side" (the bribe taken), believing that to effectively eliminate corruption it is necessary include steps to curb corrupt practices, whether direct (for examples bribing foreign officials), or indirect (for examples with money laundering) (Press Release No. 17/315, 2017).

One of the most promising developments is about the role of NGOs. In 1993 a group of former executives of the World Bank established an international non-governmental organization entirely committed to anti-corruption initiatives: Transparency International (TI). From this date, it has been extremely active in this field, raising the visibility of the subject around the world, with useful tools such as the Corruption Perception Index, that rates Countries by their perceived tolerance of governmental corruption and, recently, the "Bribe Payers Index", which ranks developed Nations by the extent to which they are perceived to use corrupt practices in international business transactions.

These statistics have important effects on the reputation of a Country at world level and, consequently, contribute to orienting the choices both of investors and governments with which they have diplomatic relations. Precisely for this reason it is believed that they can exert considerable pressure on Countries by influencing them to make progress towards standardization in the international measures against corruption.

As for Italy, the fight against corruption is one of the areas in which the State's collaboration with the OECD has developed more recently, with excellent results on various levels – including the synergies of action and the promotion of transparency of corporate structures. Italy was among the first countries to ratify the Convention, in force since 2001 and, more precisely, from the date of Legislative Decree No. 231, which introduced the administrative liability of companies, even without legal personality, according to article 11 of the Law No. 300/2000.

The Italian Penal Code criminalize active and passive bribery of public officials defined, by article 357, as those who perform legislative, judicial or administrative "public functions", employment that the jurisprudence interprets in the widest possible extension and may include employees of public enterprises which have been officially granted licenses to perform public services. Italy does not provide for any immunities or jurisdictional privileges in relation to offences under the Convention and entrusts the task of preventing and combating corruption to the Ministry of Justice, the various law enforcement authorities (*Guardia di Finanza* – Financial Police, *Carabinieri*, State Police), the Financial Information

Unit (FIU), the Anti-Corruption National Authority (ANAC) and the Public Administration Department. Legislative Decree no. 231/2001, as amended by Legislative Decree no. 146/2006 on money-laundering, and by Law no. 190/2012, *Provisions for the prevention and repression of corruption and illegality in the public administration*, so-called “Anti-Corruption Law”, that establishes new provisions for whistle blower protection in the public sector for public officials and employees who report cases of misconduct to the judicial authorities, Court of Auditors, or their hierarchical authorities. Additionally, several measures taken to establish whistle blower protection in the private sector were also reported during the consultations with stakeholders (United Nations Office for Drug and Crime, 2015). The term of “whistle blowing” has many different facets and, due to this, it has many of different definitions. Generally, the most used and current definition is: the disclosure by an employee of confidential information, which relates to some danger, fraud or other illegal or unethical conduct connected with the workplace, be it of the employer or of a fellow employee(s). Whistle blowing is generally viewed as a process rather than an event and it can be internal (the agent reports the irregular activities to an internal control body) or external (the agent indicates the irregular practice to an external body) to an organization. Increasing awareness of the problems faced by whistleblowers in terms of loss of jobs, victimization and other types of retaliation and their role, particularly in detecting and preventing fraud, has led to the development of whistleblower protection legislation. The first regulation on whistle blowing is introduced by the US Sarbanes Oxley Act of 2002, but the finding that whistle blowing regulations plays an important role to encourage employees to report their suspicion, has led many states, including Italy, to include this provision within their own legislation. Moreover, whistle blowing rules also help to develop a culture of openness, accountability, and integrity (Law Teacher, 2018).

However, corruption in the Public Administration is a widespread phenomenon and involves both managers and administrative leaders, as well as individual officials willing to accept money or other advantages in exchange for a favor to get around a bureaucratic obstacle or, perhaps, to obtain the award of a public contract. In Italy the National Anti-Corruption Authority (ANAC) is an independent public body established with administrative functions in the sensitive sector of corruption prevention in Public Administrations, which can intervene with inspection, regulation and sanction. The ANAC was entrusted with functions that were once attributed to the AVCP (Authority for the Supervision of Public Contracts) and to the Commission for the evaluation, transparency and integrity of public administrations (CIVIT) (Cantone, 2018). The Authority is called above all to analyse the causes and factors that favor corruption in the organization and processes of Public Administrations, identifying interventions to prevent and counter it. This includes the preparation of the annual National Anti-corruption Plan, a document, which contains guidelines and useful indications for Public Administrations called upon to implement all the obligations provided for by the law against corruption. The ANAC also has the task of supervising and controlling the application and the effectiveness of the measures adopted by the public administrations. In particular it can:

1. Request the transmission of news, information and deeds to public administrations;
2. Order the adoption of deeds, or provisions, requested by the anti-corruption plans or by the law;
3. Order the removal of behavior or acts that conflict with anti-corruption plans, or the law.

With regard to public appointments, ANAC is also assigned an advisory function. In particular, it is called to express mandatory opinions on ministerial directives and circulars concerning the interpretation of provisions on the matter of impossibility of conferment –cases in which it is not possible to accept

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a public office – and incompatibility – cases in which it is not possible to carry out two tasks simultaneously. If the activity and the organization of the Public Administration are transparent, the chances of producing corruption phenomena diminish. For this reason, the ANAC has the task of monitoring compliance with the obligations to publish the documents and information required by law, for example public announcements, appointment orders.

On January 31, 2019, after months of intense discussions, new legislation introducing amendments to the Italian Criminal Code aimed at preventing and punishing corruption involving public agencies entered into force. Italy has placed 54th in 2017's Corruption Perceptions Index (CPI) with a score of 50 out of 100 points, one of the lowest in EU, this is a huge problem and a heavy annual cost for the economy (Transparency International, 2018a).

The so-called “bribe - destroyer law” (“*spazzacorrotti*”) expands existing crimes related to corruption activities to include *those who, exploiting or boasting of an existing or alleged relationship with a public official, improperly give or promise to give to others money or other benefits in return for the illicit intervention of the official, or who provide or promise to provide a remuneration in return for the exercise of the official's functions or powers*. Additionally, it modified the definition of “foreign public official” to include also the individuals that perform functions and activities within a public international organization, as well as members of international parliamentary assemblies, members of international organizations and officers and judges of international courts. Another important provision is introduced by amending the Decree which rectified the United Nations Convention against Transnational Organized Crime (UNTOC) and the introduction of new opportunities to conduct investigations. Although it has been 15 years since Italy signed the UNCAC, it is only now that the bill attributing to Public Prosecutors investigating in bribery cases the possibility to use under covered agents, which the Convention requires. In addition, wiretapping, as well as the use of Trojans, will be now permissible in investigating these crimes (Italian Official Gazette, 2019).

The most controversial part of Law 3/19 is the reform of the statute of limitations, a provision that entry into force on January 1, 2020. In this regard, it is envisaged that after the decision of the judge of first instance, the limitation period will be tolled until the final decision, regardless whether the defendant was convicted or acquitted by the first instance sentence (Petronio & Piantanida, 2019). Although it will take time to assess its actual impact on the business climate in the country, this bill is undoubtedly an important step toward a more comprehensive anti-bribery regime, particularly with regards to combating corruption in public administration.

But the greatest testimony of the international community's effort to fight corruption as a transnational phenomenon is the United Nations Convention against Corruption (UNCAC) adopted by the General Assembly in Merida on October 31, 2003, with Resolution no. 38/4. The document is divided into a Preamble, dedicates to explain the aims and the *raison d'être* of the text in question, VIII chapters and 71 articles which briefly could be summarized as follows:

- **Articles 1- 4:** General Provisions.

These preliminary articles have been written with the intent to further clarify the aims pursued with the ratification of the Convention, in fact, there are mentioned *the promotion and strengthening of measures to prevent corruption*, the promotion of international cooperation and integrity, responsibility and good faith in the management of public affairs as the mains purposes.

- **Articles 5- 14:** Preventive measures.

This chapter indicates which measures the States can undertake to combat corruption. As written also in the Legislative Guide, the prevention of corruption is more effective in environments that encourage integrity, allow transparency, enjoy strong and legitimate regulatory guidance and integrate the efforts of the public, private and civil society sectors together. The articles, briefly formulated, does not specifies the role of an eventual organ for the fight of corruption, but underlines the absolute importance that this entity is endowed with independence, means and personnel. Therefore, it represents a “special authority” with a task of carry out identification and repression activities.

Finally, deserves attention the art.13, which requires States to stimulate the participation of civil society (individuals, communities and non-governmental organizations) in the fight against corruption, promoting information campaigns, but above all transparency and participation in decision-making processes. In particular, letter b) of this article calls for *ensuring effective public access to information*, for examples, Italy has taken this invitation by providing the institution of generalized civic access, pursuant to art. 6 of Legislative Decree 33/2013, as amended by Legislative Decree 97/2016, which, *in order to promote widespread control over the pursuit of institutional functions and the use of public resources and to promote participation in the public debate*, guarantees anyone the right to access data and documents held by public administrations (Italian Official Gazette, 2016).

- **Articles 15- 42:** Criminalization and law enforcement.

The firsts five articles incentive the Member States to adopt such legislative and other measures to establish a criminal offence for bribery of foreign public official, or official of a public international organization, when offering or giving an undue advantage, for himself or another person or entity. The seconds five are focusedd on bribery in the private sector, when committed intentionally in the course of economic, financial or commercial activities. Finally, there are a series of “support” standards that specify and add elements to the previous rules, in particular:

- Probative standards, prescription and judicial proceedings;
- The protection of the victims, experts, injured parties and the so-called whistle-blowers;
- The consequences of the acts of corruption, including the reparation of damage;
- The specialized authorities for the fight against corruption;
- Banking secrecy;
- Previous judicial proceedings.
 - **Articles 43- 50:** International cooperation.

The Convention places a strong emphasis on the need to cooperate between Member States. In particular, within these articles are mentioned various types of international cooperation such as extradition, mutual legal assistance, law enforcement cooperation, transfer of criminal proceedings and special investigative techniques, such as electronic or other forms of surveillance and undercover operations.

- **Articles 51- 59:** Asset recovery.

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This chapter focuses on one of the major problems faced by the Convention: the money laundering. In order to facilitate implementation of the measures provided in the preceding paragraphs, each State can develop regional, interregional and multilateral initiatives such as investigation, prosecution and confiscation.

- **Articles 60- 62:** Technical assistance and information exchange.

With the aim of increase the ability to fight the corruption, each State Party shall develop specific training programs for the personnel responsible for preventing and combating corruption, as well as assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries.

- **Articles 63- 64:** Mechanisms for implementation.

In those articles there are a clarification of the role and the composition of a Conference of the States Parties to the Convention, established to improve the cooperation between States Parties and the capacity to achieve the objectives of the Convention, and the Secretary-General of the United Nations.

- **Articles 65- 71:** Final provisions.

This chapter is intended to further explain the mechanisms of signature, ratification, approval and entry into force of the Convention for each Member States, besides to providing the possibility of making amendments or to withdraw from the Convention (United Nations Office on Drugs and Crime, 2004).

Actually, there are 183 member countries of the United Nations Convention against Corruption (UNCAC), including Italy, which ratified the convention with Law 116/2009.

In the years following the drafting of the UN convention, there have been important developments in the fight against corruption at the regional level, particularly in African States.

The Organization of African Unity (OAU) demonstrated a high degree of insensitivity and passivity towards corruption, allowing the phenomenon to develop into a pandemic. All that is changed, as the African Union (AU) – which has replaced the OAU in 2002 – has taken a bold step towards this problem; in fact, at the second annual summit of the AU Assembly holding in Maputo, Mozambique, in July 2003, the AU adopted the African Union Convention on Preventing and Combating Corruption (AUCPCC). The Convention is a shared roadmap for States to implement governance and anti-corruption policies and systems on a national and regional level, as there is no general international law on the problem.

However, the AUCPCC and the initiative of the AU to address a problem that, though *universally disapproved yet is universally prevalent*, is only feasible if individual countries adopt and implement these provisions nationally. The overall structure of the Anti-Corruption Convention is similar to that of the Inter-American Convention against Corruption and it is comprising of a Preamble and 28 articles which criminalize corruption in the public and private sector, obligating State parties to adopt legislative, administrative and other measures to tackle corruption, that cost to Africa approximately \$148 billion annually (Ordinary Assembly of the Union, 2003). The Anti-Corruption Convention aims to achieve four objectives:

1. Promote and strengthen the development in Africa of anti-corruption mechanisms;
2. Promote, facilitate and regulate cooperation among state parties;
3. Remove obstacles to the enjoyment of human rights, including economic, social and cultural rights;
4. Establish conditions necessary to foster transparency and accountability in the management of public affairs.

By signing this document, African states promise to adopt effective measures to combat corruption and embezzlement, in the hope that developed countries will, inter alia, set up coordinated mechanisms to combat corruption effectively, as well as commit themselves to the return of monies (proceeds) of such practices to Africa.

The obligations listed in the Convention include measures to establish, “as offences”, the acts of corruption as defined in the Convention; to establish, maintain and strengthen independent national anti-corruption authorities or agencies and to create, maintain and strengthen internal accounting, auditing systems, in particular, in the public income, expenditures and procedures for hiring, procurement and management of public goods and services.

Mention must also be made of the obligation to strengthen national control measures to ensure that the setting up and operations of foreign companies in the territory of a State Party shall be subject to the respect of the national legislation in force (Udombana, 2003).

In addition to criminalization, the Anti-Corruption Convention also focuses on preventive measures, that also regarding the public awareness and education. In fact, there is a strong attack both on the demand and supply sides of corruption that requires state parties to criminalize both the solicitation or acceptance, and the offering or granting of bribes (Olaniyan, 2017).

While in such document AU leaders and governments promoting initiatives to fight corruption, according to a 2018 report of Transparency International, many African countries, lose an average of 25 per cent of all resources dedicated to development, through the procurement process due to misappropriation of funds and corruption. So, despite these efforts and international commitments, such as the United Nations Convention against Corruption, corruption is and remains a significant threat and hindrance to African states, particularly in establishing democratic institutions and attaining sustainable development goals (Transparency International, 2018b).

On the contrary, in the ASEAN region, where there are some of the richest, fastest-growing economies, as well as some of the planet’s poorest people, no treaty against corruption was drafted. According to the estimates of Transparency International, corruption continues to plague most of this States, furthermore almost 50 per cent of people in ASEAN countries surveyed believe corruption has increased, while only a third say their government’s efforts to fight corruption have been effective (Transparency International Secretariat, 2015). Recent corruption cases, prosecuted by foreign jurisdictions, have brought to light the fact that large amounts of bribes are being paid in Southeast-Asia using intermediaries to secure contracts, such as the 2017 Rolls Royce case, \$18.8M in bribes were given in Thailand and the 2018 Panasonic executives illegitimately paid a public official \$750,000 over six years to obtain information (Burke, Kawai, & Gargaro, 2018). To address these issues, the development and implementation of regulatory frameworks to forbid bribery of foreign public officials and establish the liability of legal persons are key. ASEAN Member States have all ratified the United Nations Convention Against Corruption (UNCAC), but now it is evident the need to establish a joint public- private action to address bribery involving companies in the ASEAN region, but also to provide a platform for key stakeholders, govern-

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ments, anti-corruption national bodies and civil society to engage in practical discussions about the future of businesses and their role in fighting corruption (United Nation Office on Drugs and Crime, 2018).

As said before, organizations therefore have a responsibility to proactively contribute to combating bribery. This can be achieved through leadership commitment to establishing a culture of integrity, transparency, openness and compliance. The nature of an organization's culture is critical to the success or failure of an anti-bribery management system.

This International Standard is intended to support the establishment of such a culture by providing an anti-bribery management system framework.

A well-managed organization should have a compliance policy supported by appropriate management systems to assist it in complying with its legal obligations and commitment to integrity. An anti-bribery policy is a component of an overall compliance policy.

Moreover, the anti-bribery policy helps an organization to avoid or mitigate the costs, risks and damage of involvement in bribery, to promote trust and confidence in business dealings and to enhance its reputation.

This International Standard reflects international good practice and is applicable across all jurisdictions: it's applicable to small, medium and large organizations in all sectors, including public, private and not-for-profit sectors.

The bribery risks facing an organization vary according to factors such as the size of the organization, the locations and sectors in which the organization operates and the nature, scale and complexity of the organization's activities. Therefore, this International Standard specifies the implementation by the organization of policies, procedures and controls which are reasonable and proportionate according to the bribery risks the organization faces. Annex A provides guidance on implementing the requirements of this International Standard.

Conformity with this International Standard cannot provide assurance that no bribery has occurred or will take place in relation to the organization as it is not possible to completely eliminate the risk of bribery. However, this International Standard can help the organization implement reasonable and proportionate measures designed to prevent, detect and address bribery.

This International Standard can be used in conjunction with ISO 19600 and other management system standards such as ISO 9001, ISO 14001, ISO 22000, as well as ISO 26000 and ISO 31000.

This International Standard specifies requirements and provides guidance for establishing, implementing, maintaining, reviewing and improving an anti-bribery management system. The system can be standalone or can be integrated into an overall management system. This standard addresses the following in relation to the organization's activities:

1. Bribery in the public, private and not-for-profit sectors;
2. Bribery by the organization;
3. Bribery by the organization's personnel acting on the organization's behalf or for its benefit;
4. Bribery by the organization's business associates acting on the organization's behalf or for its benefit;
5. Bribery of the organization;
6. Bribery of the organization's personnel in relation to the organization's activities;
7. Bribery of the organization's business associates in relation to the organization's activities;
8. Direct and indirect bribery (e.g. a bribe offered or accepted through or by a third party).

This International Standard sets out requirements and provides guidance for a management system designed to help an organization to prevent, detect and address bribery and comply with anti-bribery laws and voluntary commitments applicable to its activities.

In this International Standard, the term “bribery” is used to refer to the offering, promising, giving, accepting or soliciting of an undue advantage of any value (which could be financial or non-financial), directly or indirectly, and irrespective of location(s), in violation of applicable law, as an inducement or reward for a person acting or refraining from acting in relation to the performance of that person’s duties.

This International Standard does not specifically address fraud, cartels and other anti-trust/competition offences, money-laundering or other activities related to corrupt practices (although an organization may choose to extend the scope of the management system to include such activities).

The requirements of this International Standard are generic and are intended to be applicable to all organizations (or parts of an organization), regardless of type, size and nature of activity, and whether in the public, private or not-for-profit sectors.

If the whole or part of any requirement in this International Standard is in conflict with, or prohibited by, any applicable law, then the organization will not be obliged to conform with the relevant whole or part of that requirement. In particular, the organization shall determine external and internal factors that are relevant to its purpose and that affect its ability to achieve the objectives of its anti-bribery management system. These factors will include, without limitation, the following:

1. Size and structure of the organization;
2. Locations and sectors in which the organization operates or anticipates operating;
3. Nature, scale and complexity of the organization’s activities and operations;
4. Entities over which the organization has control;
5. Organization’s business associates;
6. Applicable statutory, regulatory, contractual and professional obligations and duties.

The International Organization for Standardization (ISO) is a worldwide federation of national standards bodies (ISO member bodies) and each member body interested in a subject for which a technical committee has been established has the right to be represented on that committee. International organizations, governmental and non-governmental, in liaison with ISO, also take part in the work. ISO collaborates closely with the International Electrotechnical Commission (IEC) on all matters of electrotechnical standardization.

The procedures used to develop this document and those intended for its further maintenance are described in the ISO/IEC Directives, Part 1. In particular the different approval criteria needed for the different types of ISO documents should be noted.

For an explanation on the meaning of ISO specific terms and expressions related to conformity assessment, as well as information about ISO’s adherence to the WTO principles in the Technical Barriers to Trade (TBT).

ISO 37001, anti-bribery management systems, specifies requirements and provides guidance for establishing, implementing, maintaining and improving an anti-bribery management system. The system can be independent of, or integrated into, an overall management system and it addresses the following bribery risks in relation to the organization’s activities:

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- In the public, private and not-for-profit sectors;
- By/ of the organization, or by its personnel, or business associates acting on/ for its behalf;
- Direct and indirect bribery (e.g. a bribe paid, or received through, or by a third party).

The term “bribery” is used to refer to the offering, promising, giving, accepting or soliciting of an advantage (which could be financial or non-financial), directly or indirectly, in violation of applicable law, as an inducement or reward for a person acting, or refraining from acting, in relation to the performance of that person’s duties.

However, this general use of the term “bribery” will be further informed by — and an anti-bribery management system will need to be designed to help an organization comply with — the antibribery laws applicable to the organization.

Bribery can take place in or through any location, it can be of any value and it can involve financial or non-financial advantages or benefits. Top management shall demonstrate leadership and commitment with respect to the anti-bribery management system by:

1. Ensuring that the anti-bribery management system, including policy and objectives, is established, implemented, maintained and reviewed to adequately address the organization’s bribery risks;
2. Deploying adequate and appropriate resources for the effective operation of the anti-bribery management system;
3. Communicating both internally and externally regarding the anti-bribery policy and of conforming to the anti-bribery management system requirements;
4. Ensuring that the anti-bribery management system is appropriately designed to achieve its objectives;
5. Directing and supporting personnel to contribute to the effectiveness of the anti-bribery management system;
6. Promoting an appropriate anti-bribery culture within the organization and encouraging the use of reporting procedures for suspected and actual bribery;
7. At planned intervals, reporting to the governing body (if one exists) on the content and operation of the anti-bribery management system and of allegations of serious and/or systematic bribery.
8. The anti-bribery objectives shall:
 1. be consistent with the anti-bribery policy;
 2. be measurable (if practicable);
 3. be achievable;
 4. be monitored;
 5. be communicated;
 6. be updated as appropriate.

The organization shall determine and provide the resources needed for the establishment, implementation, maintenance and continual improvement of the anti-bribery management system. In relation to the personnel, it shall provide adequate and appropriate anti-bribery awareness and training, taking into account the results of the bribery risk assessment.

Documented information required by the anti-bribery management system and by this International Standard shall be controlled to ensure that it is available and suitable for use and that it is adequately protected (e.g. from loss of confidentiality, improper use, or loss of integrity).

For the control of documented information, the organization shall address the following activities, as applicable:

1. Distribution, access, retrieval and use;
2. Storage and preservation, including preservation of legibility;
3. Control of changes (e.g. version control);
4. Retention and disposition.

Documented information of external origin determined by the organization to be necessary for the planning and operation of the anti-bribery management system shall be identified as appropriate and controlled.

The organization shall evaluate the anti-bribery performance and the effectiveness of the anti-bribery management system. In this view, it shall conduct internal audits at planned intervals to provide information on whether the anti-bribery management system.

When a nonconformity occurs, the organization shall react promptly to the nonconformity, and take action to control and correct it, evaluate the need for action to eliminate the causes of the nonconformity and, if necessary, make changes to the anti-bribery management system.

In conclusion, the organization shall retain documented information as evidence of the nature of the nonconformities and any subsequent actions taken; or the results of any corrective action.

CONCLUSION

Much has been done, but there is still a lot to do in the field of anti-corruption. The trend that has been settled is that of a transition from the adoption of typically repressive measures to preventive ones, from criminal to administrative instruments, all with a view to increase involvement of civil society.

Prevention is now a key pillar in the fight against corruption and many States have set up specific rules and institutions to prevent corruption and enhance integrity in the public sector. Preventive measures, based on a careful diagnosis of risks and vulnerabilities, need to be targeted at the problems they seek to remedy and be used where there is a real need. In fact, the UN Convention of Merida of 2003 contains, next to one aimed at reinforcing the repressive and criminal action, another that aims to strengthen the preventive one. In particular, the art. 5 textually written provide that each State must develop *effective and coordinated policies to prevent corruption that favor the participation of society and reflect the principles of the rule of law, good management of business and public goods, integrity, transparency and responsibility* (United Nations Convention Against Corruption, 2003).

In this context, great importance is gaining the supervisory role of anti-corruption authorities. These entities have proved to be a fundamental link in the chain of the fight against corruption, for example by increasing awareness of governs and professionals; with the continued support, or training, of the agents; the incentive to introduce legislative reforms and reinforce anti-corruption provisions (including a better definition of offences, higher sanctions where they are needed, and fast-track provisions) (European Semester Thematic Factsheet, 2017).

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KEY TERMS AND DEFINITIONS

ANAC: The Italian's Anti-Corruption National Authority with administrative functions in the sector of corruption prevention in Public Administrations, which can intervene with inspection, regulation and sanction.

AUCPCC: The African Union Convention on Preventing and Combating Corruption, adopted by the AU Assembly in July 2003, is a shared roadmap for States to implement governance and anti-corruption policies and systems on a national and regional level.

Corruption: Dishonest or illegal behavior that can occur both in public and in private sector and, if pervasive, it can have significant negative impacts in other areas, including the negative impact on the quality of public policies.

FCPA: The US Foreign Corrupt Practices Act of 1977, the first measure that introduce corporate liability, responsibility for third parties and extraterritoriality for corruption offences.

GRECO: The Group of States against Corruption established in 1999 with an agreement of 17 member States of the Council of Europe as an anti-corruption control body, that helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms.

OECD Convention: The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which issued the first global anti-corruption measures based on a mechanism of monitoring and supporting towards EU Member States, but with an application field limited to active corruption of foreign officials.

UNAC: The United Nations Convention against Corruption, negotiated on October 2003, is the universal anti-corruption instrument for developing a comprehensive response to a global problem.

ENDNOTES

- ¹ At the time of the conclusion of the Agreement in almost all OECD countries the corruption of foreign public officials did not integrate the details of the crime.
- ² Legal entities will also be liable for offences committed to benefit them and will be subject to effective criminal or non-monetary sanctions.
- ³ For a more detailed analysis on the five GRECO's evaluation road: Group of State Against Corruption. *Evaluation*. Council of Europe. Retrieved from: <https://www.coe.int/en/web/greco/evaluations#%2222359946%22>: [2]
- ⁴ Regarding Italy, the Council of Europe Group of States against Corruption (GRECO) concludes that the State has made progress in preventing corruption in the judicial system, but that much more needs to be done to comply with all the recommendations, in particular those concerning parliamentarians. A justice sector reform launched in 2016, strongly expected by 2020, could improve the efficiency of civil and criminal proceedings, for example with regard to appeals, the decriminalization of minor crimes and accelerated procedures, alternative dispute resolution mechanisms, the organization of the courts, the digitalisation of the management of procedures, etc. For a more detailed analysis see: Group of State against corruption. (2018). *Fourth Evaluation Round Corruption prevention in respect of members of parliament, judges and prosecutors. Compliance Report Italy*. Council of Europe.

Chapter 11

SNA as an Integrative Framework: A Holistic Approach to the Study of Organized Crime

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ABSTRACT

Since the second half of the year 1900, when the concept of organized crime became a matter of scientific interest, the inherent complex nature of this social phenomenon has been reflected in a multitude of definitions, methods, and analytical tools. Today, the time of integrating the huge body of knowledge, accumulated over time, has come. This chapter identifies a new and promising integrative tool in the social network analysis (SNA). In this regard, three main themes will be discussed: Why is an integrated approach to the study of organized crime necessary? How could SNA assist the researcher in structuring and implementing an effective integrative approach? and, In which ways could SNA resolve issues linked to the integrative approach, and, vice versa, to what extent a systematic integrative approach could improve the quality of SNA applied to organized crime?

INTRODUCTION

Our global and post-millennial context involves continual and rapid changes in all key societal processes and structures. This rapid evolution of social phenomena, along with a consequently rapid growth of scientific knowledge, is important in explaining organized crime as well. Scholars, historically, have approached this subject from a variety of perspectives, ranging from the traditional anthropological and sociological theories to complex quantitative, theoretical and methodological approaches. Today, the time to integrate all the theoretical and methodological perspectives, applied to the study of organized crime, has come. Being able to implement an effective and systematic integration means, above all, being able to progress in the study of criminal organizations, with one eye on the future and another on the past.

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Even though an integrative approach would be highly desirable in theory, in practice it poses problems, which have often dissuaded researchers to develop a coherent and systematic method of integration. One of the main problems linked to integration concerns the necessity of building a coherent approach, which could identify the specificities of a criminal group without excluding the presence of typical features, such as some levels of organization, that make organized crime a unique criminal phenomenon. A key answer to this challenge could be found in an analytical tool, which proves to be successful in facilitating the integration of previous works and theoretical concepts within a framework that captures the configuration and peculiar features of the criminal organization subject to study.

The present study identifies SNA as a potential effective framework within which a coherent integration of different theories, methodologies, levels of analysis and multidisciplinary perspectives could be realized, without producing confusing and overcomplex results. The potentiality of SNA resides in its main object of study—social networks. They are fluid, multi-faced and flexible structures, which allow the researcher to capture the complexity and dynamicity of social phenomena and, at the same time, to identify the specificities characterizing each human organization.

Three main issues will be discussed in the following paragraphs:

1. Why is an integrated approach to the study of organized crime necessary to progress in the study of this criminal phenomenon?
2. How can the peculiarities characterizing the SNA approach assist the researcher in structuring an implementing and effective integrative approach?
3. In which ways could SNA solve issues linked to the integrative approach and, vice versa, to what extent could a systematic integrative approach improve the quality of SNA applied to organized crime?

This article aims at paving way for the creation of a coherent and systematic integrative approach to the analysis of organized crime.

BACKGROUND

The Concept of Organized Crime Through History

Over the past century, the concept of organized crime has been used in different national and international political contexts to define a variety of criminal phenomena. With changing historical contexts, an array of theoretical, police, and legislative criminal code definitions of organized crime has resulted in the absence of consensus on the conceptualization and related operationalization of this construct. The complexity intrinsically related to the study of organized crime is reflected, first and foremost, in the impressive variety of definitions and theoretical perspectives used to describe the world of illegal business and organizations.

To begin with, one of the most discussed and analyzed aspects of criminal organizations concerns their structures (Varese, 2010, 2017). The first interpretation of organized crime structures, igniting public debate in the United States in the 1950s, depicted criminal organizations as being under the control of an alien conspiracy—the Italian–American Mafia. The latter was characterized by strong ethnical connotations and a solid and hierarchically organized structure. In this regard, Donald Cressey

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(1967), an American sociologist and criminologist, proposed the bureaucracy model of organized crime by asserting that criminal organizations were *rationally designed to maximize profits by performing illegal services, and providing legally forbidden products demanded by members of the broader society* (Cressey, 1967, p. 107). The hierarchical structure of organized crime dominated the scientific and public debate in those years when gangster movies such as “The Godfather” depicted a romantic version of the Italian–American Mafia.

However, during the second half of the 1900s, several scholars criticized this conceptualization of organized crime. At the beginning of the 1970s Albin (1971) and Ianni & Reuss-Ianni (1972) laid the foundation for questioning the dominant mythologies and stereotypes linked to organized crime and its supposedly rigid and bureaucratic structure, by underlying the importance of traditions and kinships in shaping Italian–American criminal organizations. Similarly, studies about Sicilian Mafia by Hess (1973) and Blok (1974) emphasized the relational nature of organized crime by highlighting how mafia groups emerged and were structured around a network of relationships that connected different forces at different levels. Other scholars, such as Smith (1975), Reuter (1983), and Haller (1990) switched the definitional focus to a primarily business, organizational, structural perspective—typical of legal enterprises. From this perspective, organized crime members were somewhat similar to illegal entrepreneurs, not without some significant differences mostly linked to the illegal nature of the services provided. Also, from the 1990s to the early 2000s, the illegal enterprise perspective strongly influenced European scholars’ conceptualization of organized crime (Varese, 2010, 2017).

Currently, a more flexible and fluid conceptualization of organized crime has highlighted the importance of criminal networks in the understanding of organized crime. Indeed, focusing on criminal relationships, instead of assuming the existence of statistic and rigid hierarchical structures, is crucial to understand the peculiarity of each criminal group and avoid an inflexible interpretation of crime (Bouchard & Amirault, 2013). The analysis of criminal networks has incorporated criminal groups known as terrorist organizations in the “family” of organized crime.

The structures of organized crime are not the only concerns of scholars. Another important matter concerns the activities carried out by criminal groups. Theorists and analysts of organized crime have identified different types of activities that typically characterize criminal organizations along with different strategies that criminal groups adopt to organize and impose their businesses in the illegal market. At first, they focus on the monopolistic tendencies of organized crime groups (Varese, 2010, 2017). In the last century, the renowned American economist Thomas C. Schelling (1967, 1971) vigorously asserted the propensity of illegal organizations to eliminate competitors and seek exclusive influence. Secondly, they highlight the capacity of organized crime to provide illegal goods and services in great market demand by specific population segments (e.g. Cressey, 1967). Finally, theories about the monopolistic tendencies of criminal organizations over illegal activities are questioned to propose a less rigid and controversial construct which introduces some level of chaos and disorganization in the analysis of organized criminal activities. Indeed, some scholars (e.g. Block & Chambliss, 1981; Reuter, 1983) underlined how monopolistic control of the illegal market is hardly achievable and, potentially, not so desirable for criminal organizations. In this regard, Reuter (1983) highlighted the presence of relatively small criminal groups, which are more likely to get involved in a never-ending series of small projects and agreements rather than a well-structured and organized routine of criminal activities.

Although they occupy a marginal position in the analysis of criminal organizations, individualities comprising criminal groups have been a subject of research as well. The focus on individual traits and aspects, which could influence the involvement in criminal activities, started with Lombroso (1876) and was followed by the attention paid to criminal careers, the impact of individualities on group dynamics, the reasons behind the choices of getting involved in organized criminal groups and the impact of psychological traits on organized criminal behaviors¹.

The complexity intrinsically related to the study of organized crime could be further explored by investigating the multidimensionality of its analysis. Indeed, while discussing criminal phenomena characterized by a collective dimension, researchers have often claimed the necessity of exploring the relations among individual features, individual choices, the broader organization, and wider socio-cultural contexts. This fascinating but complex task pushed scholars to investigate organized crime from different perspectives and levels of analysis. According to Von Lampe (2016), organized crime is not a clearly defined empirical phenomenon. On the contrary, a myriad of aspects of the individual and social universe interacting together in different combinations and within different levels of the socio-historical reality help define this phenomenon. In other words, organized crime needs to be explored while considering at least three levels of analysis: micro-level, focusing on individualities; meso-level, focusing on groups; macro-level, focusing on the broader social and cultural context in which the groups take shape and evolve. Each level of analysis brings with it a variety of factors and features that influence and shape organized criminal groups and their existence, evolution, and disintegration.

This intriguing assortment of aspects that shapes organized crime encourages several scholars from a variety of different disciplines to explore the topic in all its multi-level and multi-factor shades. Criminologists, psychologists, anthropologists, political scientists, economists and legal scholars have contributed to the study of organized crime. Finally, the heterogenous panorama of conceptualizations and levels of analysis and disciplines, which contributes to develop the wide body of scientific literature about organized crime, found their natural counterparts in the variety of quantitative and qualitative methodologies applied to the study of the criminal phenomenon. Nowadays, the real challenge implies the possibility of integrating different aspects of organized crime within a theoretical and methodological framework, which provides enough flexibility to define the specificities characterizing each criminal organization and simultaneously underlines the common aspects that organized crime groups share.

An Integrative Approach to the Study of Organized Crime

The complexity of social phenomena, such as organized crime, was often pointed out in the past century. Since 1960s, the so-called “integrative approach” has frequently been mentioned as a potentially suitable resource to cope with the challenges posed by the complexity of human life. Over the years, an integrated approach to the study of criminal phenomena has meant, first and foremost, the combination of different approaches, theories and levels of analysis. (Barak, 1998)

Thus, the integrative approach is far from being a new idea. Barak (1998) traced the roots of an integrative approach applied to criminological studies back to the works of the earlier 20th century sociologists, such as Merton (1938), Sutherland (1947) and Cohen (1955). However, it was in 1990 that C. Ray Jeffery claimed the necessity of integrating the existent body of criminological knowledge to progress from both scientific and practical points of view. The author underlined the indissociable link between a deeper and more holistic understanding of criminal phenomena, achieved by integrating both the theories of crime and of criminal behaviors, and the possibility of improving preventive actions

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(Jeffery, 1990). More recently, other scholars have claimed the necessity of mixing different levels of analysis (Robinson, 2004) and approaches derived from different disciplines (Walsh and Ellis, 2007) to amplify the comprehension of criminal behaviors and groups.

Due to the aforementioned complexity, which characterized its individual and collective nature, organized crime could be considered as a subject of study, particularly suitable for being explored through the lens of an integrated perspective. This is why, during recent years, the analysts of organized crime have paid growing attention to the potentiality of integrated approaches. Nonetheless, the actual implications of a systematic integrative approach applied to the study of criminal organizations have never been explored in depth. When some kind of integration was theorized, it mostly focused on the combination of different theories, sometimes derived from different disciplines (i.e. Rostami, Mondani, Liljeros, Edlin., 2018).

The reason behind the difficulties experienced by researchers in implementing an efficient integrative approach are clearly understandable: conducting integrated research is far from being a risk-free practice. Several obstacles linked to integration itself could negatively impact the results and reliability of the study. For example, different theories or analytical methods could be based on specific assumptions that the integration with other theories or methodologies would contradict. Conflicting assumptions, underlining different theories or methodologies, when not acknowledged properly, could nullify any attempt of progressing of the scientific knowledge through the integrative approach (Snijders, 2011). Another problem could concern the combination of qualitative and quantitative methodologies related to data collection and analysis. In other words, researchers from a qualitative tradition can experience some difficulties in adopting quantitative methodologies related to data collection and data analysis. Conversely, researchers in the quantitative field have often struggled with qualitative data collection and analysis methods. Indeed, qualitative and quantitative approaches have often been considered as two separate worlds having different goals and parameters. (Bamberger, 2000, p. 3–4). Further problems could be related to an appropriate selection of levels of analysis. Indeed, selecting which levels of analysis would be suitable to explain a specific phenomenon is far from being immediate. A central matter in terms of multi-level analysis concerns whether the information from one level can inform the study of another level of analysis. To exemplify, not all the information about individuals can properly explain a phenomenon occurring at the group level and vice versa, not all group level factors are necessarily linked to individual features or behaviors. On the contrary, patterns among different levels of analysis need to be carefully explored and selected in order to guarantee coherent results (MacDougall-Schackleton, 2011, p. 2077). In the same way, multidisciplinary perspectives need to be coherently selected in order to avoid over complex results. Indeed, conducting multidisciplinary research primarily means paying great attention to what kind of data is relevant, what type of analysis is suitable, and what research questions are important (Locker, 1994).

With this in mind, it becomes clear that the risk of making any sort of mistakes increases dramatically when an integrated approach is applied. The more the integration is inclusive, the more the risk of making mistakes and producing over complex or confusing results is high. Consequently, the growing consensus concerning the suitability of applying an integrated approach to the study of complex social phenomena, such as organized crime, collides with the undeniable difficulties and risks that the integration itself implies. This is why an effective integrative approach should establish some basic research needs to assist the researcher in performing a valuable analysis. The research needs in question could be satisfied in a myriad of different ways depending on the type of integration the researcher intends to carry out. Nonetheless, the type of analytical tools selected to carry out the analysis plays a crucial role

in terms of succeeding or failing of the integration. On the basis of the aforementioned peculiarities of criminal organizations, the present article argues that whatever potential analytical tool which could help in carrying out a valuable integrated analysis should respond to at least three fundamental exigencies:

1. Representing a comprehensive framework within which the integrative analysis could be structured coherently;
2. Capturing the dynamicity and complexity of organized crime phenomena without generating over complex and confusing results;
3. Allowing the researcher to identify all the methodological tools, theories, levels of analysis, and multidisciplinary knowledge which could be appropriately integrated in relation to each specific case of study.

In other words, the type of integration this article proposes rejects any static and rigid *modus operandi*, to emphasize the necessity of building the integrative approach in relation to specific criminal phenomena, their peculiar features and intrinsic complexity.

A growing, multidisciplinary body of scientific literature has identified SNA as a promising analytical tool to explore the complexity of social phenomena. The present article suggests the use of SNA as a valuable framework and analytical method to carry out an integrated analysis of organized crime. The following section will present SNA and its potentiality when an integrated approach to the study of organized crime is required. The final section will mention the limits of SNA, the advantages and disadvantages of using an integration approach to the study of organized crime networks and the future challenges to overcome in order to implement an effective integrative approach.

SOCIAL NETWORK ANALYSIS: AN INTEGRATIVE FRAMEWORK

Social Network Analysis: An Overview

In recent years, the analysis of social networks has been identified as an analytical tool being able to capture the complexity and fluidity of social phenomena. As its name suggests, within the frame of SNA, human relationships become the gateway to study and interpret social phenomena. The importance of the network system in the study of crime dates back to the mid-1900s. However, the modern version of SNA has developed in recent years as a synthesis of three schools of thought: (a) the sociometric analysis using graph theory, (b) the exploration of the patterns of interpersonal relations, and (c) the investigation of the structure of relations from an anthropological point of view (Hanemann & Riddle, 2005). This new approach has been successfully applied to the study of organized crime. Its main attempt is to reconstruct criminal networks by focusing on the contacts between and among offenders or other key actors in the network.

The dynamicity of SNA largely derives from something central in the study of criminal organizations—their collective dimension. However, the nature of the collective dimension depicted by SNA is less inflexible and more dynamic than the one theorized by previous organized crime conceptualizations and definitions. Indeed, the application of SNA to the study of organized crime has introduced the possibility of identifying the actual structures of each organized crime group without assuming the existence of predetermined and rigid hierarchical structures. In other words, SNA assists the researcher

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in investigating organized crime by safeguarding the complexity and, at the same time, the specificity of each criminal group.

Borgatti (2013) indicates social networks as a *way of thinking about social systems that focuses our attention on the relationships among the entities that make up the system, which we call actors nodes* (Borgatti, Everett, Johnson, 2013, p.1). In this definition, it is possible to identify the first important multidimensional aspect of social networks: the integration among actors (individual level), relationships between two actors (dyadic relationships) and the broader network structure. It is only the first of a variety of aspects characterizing SNA, which makes it one of the most suitable tools to capture the multidimensionality intrinsically related to the study of organized crime—a multidimensionality, which could be expressed through the integration of different levels of analysis, methodologies, theories and multidisciplinary perspectives.

Given the scientific literature on the topic, the following paragraphs will explore how SNA could represent a valuable integrative framework, which could allow the researcher to investigate criminal groups from a multi-level, multimethod, meta-theoretical and multidisciplinary perspective, without, however, overcomplicating the analysis and sacrificing the specificity, which characterizes each criminal group.

Multi-Level Analysis

Johnson B. (2010) argued that *neither criminal behavior nor society's reaction to it occurs in a social vacuum – for this reason criminology as a discipline is inherently a multi-level enterprise* (Johnson, 2010, p. 615). The necessity of conducting a multi-level analysis is even clearer in the case of a subject of study such as organized crime, which involves several actors connected to each other within a broader illegal organization. Morselli (2009) has underlined the valuable opportunity of applying the SNA analysis at different levels of analysis in order to offer a more complete and dynamic understanding of the “organized crime” phenomenon (Morselli, 2009). Huerta and Dandi (2014) identified three distinct levels of analysis SNA allows the researcher to integrate: the “actor-focused” (or individual) level, the “meso-level” and the “network” level (Huerta, Dandi, 2014).

Actor-Focused Level

Factors related to individual aspects of organized criminals have often been ignored in the study of organized crime. Performance measures, motivational aspects, personal organizations' parameters and general resources are some of the individual factors likely to interest researchers of organized crime (Morselli, Gabor, & Kiedrowski, 2010).

The SNA applied to organized crime can assist the researcher in detecting individual factors, related to the network (or networks) they belong to. Three major social network measures, correlated with the concept of centrality, are associated to the individual network level. Network centrality measures indicate to what extent an actor (or node) is central (or peripheral) in terms of relationships within the network (Freeman, 1979). The position of actors within the network plays a fundamental role in the analysis of organized crime for at least two reasons: first, they indicate the extent to which the nodes can control the information or communication flow within the network (Morselli, 2009); second, the most central actors are possible targets for law enforcement actions, such as monitoring or disrupting the criminal network (Sparrow, 1991). Third, they help us in defining which actors can act as brokers by connecting other individuals which would not be connected other ways (Freeman, 1979).

Below is a brief overview of the aforementioned measures:

1. **Degree centrality.** This metric expresses the position of an actor within the network, based on the number of ties, connecting him with other actors (Freeman, 1979). A higher number of ties could imply the possibility of access to a higher amount of information and of being central in the group actions and affairs (Freeman, 1979).
2. **Closeness centrality.** It indicates to what extent a node is close or can easily reach other nodes (Freeman, 1979). Actors characterized by lower closeness centrality scores could be considered as being well-positioned, due to their possibility to obtain new information faster than others (Borgatti, 2005).
3. **Betweenness centrality.** This measure determines to what extent a node connects other nodes within the network. Nodes characterized by higher betweenness centrality values are considered to have a strategic position within the network (Freeman, 1977). Indeed they act as brokers or bridges between other nodes, making them able to control the flow of information through the network (Freeman, 1979).

These network metrics have often been successfully applied to the study of organized crime. To give some examples, Morselli (2010) used two centrality measures, degree and betweenness centrality, to assess vulnerable and strategic positions within an illegal drug distribution network linked to the “Quebec Hell Angels”, a club for motorcyclists, founded in the USA, whose members were accused of committing criminal activities worldwide. The study revealed how different positions within the network impact the likelihood of being arrested (Morselli, 2010).

Meso-Level

From a network perspective, the meso-level includes dyads, triads and their larger structures, which are known as cliques, clans and plexes. Here, the term meso-level refers to smaller structures, potentially identifiable within a broader network (Huerta, Dandi, 2014). From a sociological perspective, a dyad is the most basic type of social group: it is a relationship which links only two individuals (Becker, Useem, 1942, p.13). A triad is a social group connecting three people. It can be also considered as a small highly connected sub-group of three individuals. Small highly connected sub-groups could include more than three individuals; in this case they could be defined as cliques or clans (Johnson, Merton, 1960, p.7–9).

The importance of the analysis of dyadic relationships and sub-groups mainly resides in the fact that the level of strength and cohesion, characterizing those types of links can impact the dynamics of the whole network. For example, Von Lampe (2003) argues that the most basic unit of any kind of criminal cooperation is a criminal exploitable tie, connecting two individuals. According to the author, the exploitability of a tie resides in the presence of at least two relational elements: shared criminal dispositions and common basis of trust (Von Lampe, 2003). The extent to which both these elements influence trust through the strength of the dyadic ties, could influence the level of cooperation and the broader network as well.

Dyadic relationships are often considered potentially intense, but also more unstable and temporary, compared to triadic links. George Simmel (1964) argued that the dynamics, characterizing triadic ties are not reducible to the ones characterizing their dyadic components. Indeed, the presence of a third individual embedded in the relationship could potentially signify the existence of a mediator in case of

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conflict between the other two actors. The mediator would reinforce and stabilize the triadic relationship (Simmel, 1964; Krackhardt, 1999).

The meso-level analysis of organized crime is essential to capture network dynamics and features, which could not be detected when we consider the network as a whole. For instance, in his study about the nature and features of Chinese crime organizations, Zhang (1997) underlined the importance of dyadic relationships in activities, such as smuggling, where a broader organizational structure is limited (Zhang, 1997). Furthermore, several studies about terrorism have shown the central role played by sub-groups in the understanding of organized criminal networks (Perlinger, Pedahzur, 2011; Reedy, Gastil, Gabbay, 2013; Ouellet, Bouchard, 2018).

Network Level

Network level metrics are measures which describe the network as a whole. In the study of organized crime, these metrics have often been used to determine the level of cohesion, characterizing a criminal network. Some of these metrics are similar to the ones related to the actor-focused level but, instead of focusing on the role of specific nodes, they represent the average network central tendencies (Huerta & Dandi, 2014). This is the case of the Freeman graph centralization measures, such as Freeman density centrality, Freeman betweenness centrality and Freeman closeness centrality, which indicate to what extent ties are concentrated around few central nodes. It could be interpreted as an indicator of power of most central nodes as well (Freeman, 1979; Hanemann & Riddle, 2005).

One of the most common ways of expressing network cohesion is through a measure called “Density”. Density of the network expresses the proportion of ties, actually existing among nodes in relation to the maximum number of potential connections, which could exist in the network if all nodes were reciprocally connected. To clarify, the term “potential connection” indicates all the relationships between two individuals that could potentially exist despite their actual existence in the network (Hanemann & Riddle, 2005). An alternative to density, in terms of network cohesiveness, is a measure known as “average degree”. The latter expresses the average number of ties per person. The kind of information which is obtained by calculating density and average degree, is the same. Nonetheless, the average degree is often considered as more intuitive and directly interpretable than “density”, because it is closely related to the nodes (Hanemann & Riddle, 2005).

Finally, another measure expressing network cohesion is known as “average geodesic distance” or “shortest distance”. Geodesic distance refers to the number of relations in the shortest possible path from one actor to another. From a network-level perspective, the average geodesic distance indicates the mean length of the shortest paths between all pairs of nodes comprising the network (Yang, Wang, Xi, Ye, 2018). A short average geodesic distance is considered to be a property of highly cohesive networks, due to the ease with which information resources flow within the network (Hanemann, Riddle, 2005).

The importance of understanding the level of cohesion within a criminal organization lies in the fact that highly cohesive networks are considered suitable to make information and resources flow in an easier way, to increase the possibilities to reach group goals and create a shared identity among affiliates. Moreover, highly cohesive networks are identified as being more resistant to any attempt of infiltration and disruption (Borgatti, Everett, & Johnson, 2013, p. 181; McGloin & Kirk, 2010). However, the concept of cohesion and its impact on criminal networks is far from being easily interpretable. Indeed, low connected networks could be inefficient when high levels of cooperation and social control are required. On the other hand, overly connected networks could be inefficient in terms of flexibility,

ability to diversify criminal activities and connections among different types of individuals and groups. Moreover, high levels of cohesion could have a negative impact on small criminal groups' possibilities of survival (e.g. see Ouellet, Bouchard, & Charette, 2019).

Multi-Methods Approach

SNA has received growing attention thanks to its capacity of assisting researchers in the implementation of mixed methods analysis. The valuable potentialities of a multi-methods approach rely, first and foremost, on the possibility of exploring complex human phenomena, such as organized crime, from a growing holistic perspective. The suitability of SNA for combining quantitative and qualitative methodologies is derived from its intrinsic, dualistic nature, which combines the interest for the structures and forms of social relationships with the interest in the reasons why social processes and structures are generated. More clearly, while quantitative approaches contribute in mapping and measuring social relationships, their presence and absence, qualitative approaches are necessary to explore all the different shades and shapes, which characterize human beings, their relationships and reasons behind their existence and mutation (Edwards, 2010).

Quantitative Approach

Since the 1970s, SNA has broadly been emphasized as an efficient mathematical tool to map and measure social relationships, on account of the development of computer packages to analyze social ties, such as Pajek (de Noy et al., 2005) and UCINET (Borgatti, Everett & Freeman, 1999). The appeal of SNA as a quantitative method has increased by virtue of the integration of other types of mathematical tools. For instance, quantitative studies about social network have produced some interesting results by combining SNA with different statistical models.

The development of mixed SNA-statistical models has experienced an intense progress in recent times (Snijders, 2011). Nonetheless, some peculiarity linked to the SNA descriptive metrics and data makes the integration between the latter and standard statistical models quite challenging. The first challenge to be taken into account when statistical models and the SNA metrics are integrated is that the nodes composing the network are all dependent on and linked to each other. Consequently, the assumption of the independence of observations that is essential in standard statistical models and implies that the data used in the model are not connected to each other in any way, is violated. The second challenge concerns the random assumption of samples, a common assumption of inferential statistical tests which implies the data to be collected from a random sample from the population object of study. Samples commonly used in SNA are only rarely randomly selected from a population. On the contrary, SNA usually deals with individuals belonging to few networks, or, even, one network only (Snijders, 2011).

Different statistical techniques have been used over the years to overcome the aforementioned difficulties. Diviak (2018) identified four main techniques, which have successfully integrated SNA with statistical analysis in the purpose of exploring organized crime from different perspectives. The techniques in question are: 'quadratic assignment procedure' (QAP), block modeling technique, 'exponential random graph models', and 'stochastic actor oriented models'. A detailed analysis of the techniques in question is beyond the scope of this paper. More detailed information about the statistical models and techniques mentioned above can be found: in Simpson (2001) concerning the 'quadratic assignment procedure', in Borgatti and Everett (1999) in relation to the 'block modeling' technique, in Robinson

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et al. (2007) concerning the technique of ‘Exponential Random Graph Models, in Snijders (2017) in relation to the ‘stochastic actor oriented models’. Some of these techniques have been applied to the study of criminal networks. For instance, in their study about the impact of kinship ties and violence on cooperation between Italian and Russian criminal organizations, Campana and Varese (2013) have performed a Multivariate Quadratic Assignment Procedure to explore the reason behind the willingness to cooperate among individuals belonging to different groups. The study has shown that sharing information about violent acts increases the likelihood of cooperation among organized criminal members (Campana, Varese, 2013). Another example comes from the study about terrorism network by Helfstein and Wright (2011). The two authors applied ‘Exponential Random Graph Models’ to test two different theories related to terror networks: the first theory argues that network structures, when related to terrorism, tend to be non-redundant in order to maximize operational security (OPSEC), while the second theory suggests that terror structured networks tend to be characterized by few well-connected individuals. In their analysis, the authors did not find any support for the two theories but have, instead, shown that the network structures tended towards decentralization and triadic closure (Helfstein, Wright, 2011).

Qualitative Approach

The great attention paid to SNA and its mathematical developments has had the effect of leaving the ‘qualitative side’ of social networks analysis at the margins. Nonetheless, qualitative techniques are essential in the study of human phenomena, because they can assist researchers in displaying some aspects of social life, not usually reachable by means of mathematical tools. For instance, mapping social relationships means, above all, reducing them to static dyadic categories. Thus, the context in which the social relationships took place and evolved, along with the content and nature of ties remained unanswered questions.

A matter of first importance is, for instance, the quality and strength of human relationships (Peay, 1980). Conceiving a network as an integration of ties, which do not vary in their nature or strength, could result into an oversimplification of social analysis that has a direct impact on the results of the analysis and their interpretation. Thus, qualitative approaches could represent a valuable complement to quantitative methodologies. Due to its focus on evolving systems of human relationships, SNA represents a unique opportunity to combine quantitative and qualitative methods. Indeed, a mixed method approach could assist the researcher in both mapping and measuring human beings’ relationships and, at the same time, exploring their quality, nature and variability within specific socio-historical and cultural contexts (Edwards, 2010). Edwards (2010) identified three main ways in which SNA has been integrated with qualitative methodologies.

The first way implies the use of qualitative approaches to inform the use of quantitative SNA and vice versa. In other terms, qualitative research could represent a preliminary stage, which allows researchers to collect data and gain knowledge about a specific context in which the social network took form and evolved. On the other hand, quantitative SNA can be used to collect network information about a social context the researcher wants to explore by means of a qualitative approach (Edwards, 2010). For example, some studies have used ethnographies to collect preliminary information about the cultural contexts of social networks, subject to study (Neaigus et al., 1994; Dolcini et al., 2005).

A further way of integrating qualitative methods and SNA is assimilating both approaches at both levels, data collection and analysis. More precisely, in the latter the qualitative approach could represent a preliminary stage allowing the researcher to contextualize the networks he intends to study but it could, at the same time, be used as a supportive tool, which assists the researcher in interpreting the results of the analysis. Studies, which have implemented this type of technique, have produced a sort of triangulation that has been translated, for example, in the use of different types of data to explore the same phenomenon. Interviews are one of the most often applied techniques in this type of integration (Bidart, Lavenu, 2005; Bellotti, 2008).

Finally, a further possible way of integrating SNA and qualitative approaches consists in mixing qualitative methods of data collection at the level of the analysis only (Edwards, 2010). In this regard, Coviello (2005) affirms that relational data are more easily analyzable and interpretable when collected by means of qualitative approaches rather than quantitative methods. Indeed, qualitative network data can be treated as numerical data, suitable for statistical analysis, but they can also provide valuable details about the context, meanings, process, and dynamics characterizing a specific network. Content analysis, interviews and ethnographies represent suitable methodologies allowing the researcher to investigate networks from a qualitative perspective, but also to contextualize and interpret any kind of quantitative analysis (Edwards, 2010; Coviello, 2005).

Unfortunately, some of these qualitative techniques are difficult to apply when the subject of interest is organized crime. The study of criminal organizations deals with a major obstacle concerning qualitative techniques, such as interviews and ethnographies, implying a direct contact with organized criminals and criminal organizations. Indeed, reaching those kind of individuals is not only difficult, but also dangerous. A safer exception could be represented by informants and inmates belonging to criminal organizations. However, because of such problematic aspects linked to organized crime research, the integration between social networks analysis has hardly ever been adopted as an analysis tool in the studies on criminal organizations. Content analysis is the technique which is most widely integrated to SNA in relation to organized crime. For instance, in his study about drug-trafficking mafia groups, Calderoni (2012) integrated the analysis of the criminal networks with a content analysis focusing on the main tasks carried out by criminals in the drug-trafficking chain along with their status in the organization (Calderoni, 2012).

Multi-Theoretical Approach

The opportunity to integrate different levels of analysis and different methodologies, within the framework of SNA, opens the door to a further integrated approach to the study of organized crime: the multi-theoretical analysis. The huge body of theories and perspectives characterizing the criminological field is further enriched by the common practice, among the analysts of organized crime, to borrow theories and perspectives from other fields of studies. SNA represents a valuable support to the integration of different theories, especially when they focus on different levels of analysis, in that the researcher is able to visualize and analyze both the relationships between and among individuals and their positions within the group and the overall configuration of the network directly. In other words, the network itself becomes a guide, which defines and shapes the most suitable theoretical integration that a specific organized group requires. This paragraph suggests some potential multi-level theories and perspectives, which could be applied to the study of organized crime. The present idea has been suggested by Huerta and Dandi (2014), who drew from Astley and Van de Ven's (1983) four basic theoretical concepts, ap-

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plied to the study of organizations and which could be coherently integrated and organized within the SNA framework.

The first theoretical concept, which could be applied to the SNA of organized crime is the so called 'strategic choice'. It suggests that individuals build their relationships on the basis of the benefit they can obtain from a tie. In the case of organized crime, for example, the 'strategic choice' principle could be strictly associated to the tendency of organized criminals to build lucrative relationships on the basis of shared business needs (Haller, 1990).

However, the type of benefit that relationships provide to individuals could differ on the basis of the nature and the strength of the relationships in question. Granovetter (1973) classified interpersonal ties as strong, weak or absent. The term 'strong ties' usually refers to close circles of family members or friends, who tend to share a high level of similarity and reciprocal trust. Despite their being quite solid in terms of trustworthiness and reciprocal support, strong ties are less likely than more tenuous connections to carry new information within the close circles. On the other hand, weak ties could facilitate the building of larger social networks, within which information and new ideas flow more easily. Thus, weak connections play a key role; they act as a sort of a bridge within a multitude of individuals allowing information and resources to circulate easily. Finally, Granovetter (1973) defined a connection as 'absent' when it is expected to exist but it actually does not.

The importance of individual connections, their existence and their nature is strictly related to the theoretical construct of 'social capital'. The latter refers to those norms and values of reciprocity and trustworthiness which arise from social networks and which can strongly influence productivity and actions of individuals and groups (Putnam, 2001). In 1985, Granovetter used the term of 'social embeddedness' as a way of describing to what extent individuals' actions are influenced by the social relations within which they are embedded (Granovetter, 1985).

Somewhat related to the concept of 'strategic choice', the term 'natural selection' implies that ties are developed as a consequence of individuals' attempts to adapt to specific environmental/external conditions or group's goals. In other terms, the way in which relationships are structured could influence the ability of an organization to survive and, vice versa, the necessity of the organization's survival can impact the selection and structure of social ties (Baum, Singh, 1994). When organized crime groups are examined, the concept of 'natural selection' and need of survival could be connected to what Carlo Morselli (2007) defined as the efficiency/security trade off of criminal organizations, which highlights the double necessity of organizing networks to pursue business goals and at the same time to keep the organization and its members secret and secure (Morselli, Giguère, Petit, 2007). It could be argued, for example, that the survival of criminal organizations is influenced by the group's ability of building network structures, which allow them to achieve business goals without compromising the secrecy and security of criminal organizations.

From a broader perspective, the theories of 'collective action', which trace their roots in the work of Mancur Olson (1965), focus on those situations where organizations create links and connections with each other to maximize the profit, share resources and information. This could be the case of transnational organized crime or, more locally, of alliance among different types of organized crimes, such as the cooperation among Italian organized crime groups. Those issues represent an increasingly central matter in the nowadays global society.

The concepts of 'strategic choice', 'natural selection' and 'collective action' are mostly related to the way in which individuals react to external stimuli and contingencies, while system-structural approaches consider relationships as a product of environmental dynamics. In other terms, relationship building is

influenced by environmental factors, which could be explained by theoretical concepts, such as proximity, homophily, social contagion, and social persuasion. To begin with, the concept of physical or geographical proximity remains a fundamental variable in terms of network building and a key mechanism in the understanding of information flows within networks (Agrawal et al., 2008; Breschi, Lissoni, 2009). Geodesic distance measures, discussed in the paragraph about multi-level analysis, are strictly linked to this theoretical concept. Further, the concept of homophily theorizes that individuals tend to create links with other individuals, considered to be similar. It is a central theoretical construct in the literature of organized crime, because it is connected to the concept of trust among criminals who share common traits and values (McPherson, Smith Lovin, Cook, 2001; Weerman, 2003; McCuish., Bouchard, Corrado, 2015). Finally, social contagion and social persuasion are theoretical concepts which refer to the tendency of individuals to influence and condition each other. These theoretical constructs have often been associated, in criminology, to the concept of 'social learning', which points out the essential role played by contextual factors, such as other individuals' behaviours and thoughts, in the development of criminal or non-criminal conducts (Akers, 1973; Bandura, 1977).

All of the aforementioned theoretical concepts could be integrated to interpret different levels or aspects of the same network. Nonetheless, and despite the multitude of theoretical perspectives and concepts, employed to investigate organized criminal groups, a systematic integrative approach focusing on organized crime theories is still far from being realized. However, the analysis of social networks has already been pointed out and used as a potential suitable theoretical framework. By way of example, McIllwain (1999) proposed an organized crime theory which integrated previous theoretical contributions related to organized crime and combined them to social network theories, whereas Spapens (2010) advanced an analysis of organized crime based on the integration of theories stemming from economic sociology and organization sociology (Spapens, 2010).

Multidisciplinary Approach

As a set of different analytical tools, SNA has attracted the attention of a myriad of analysts belonging to different disciplines and fields of study. Sociology, anthropology, economy, political science, psychology, mathematics and physics are some of the fields of study that have applied SNA to explore their object of study in depth (Freeman, 2004). Furthermore, as already mentioned, the analysis of social networks has been developed from both formal mathematical advancements in sociometry and graph theory (Moreno, 1934), and ethnographic studies about the structures of kinship and interpersonal relations (Barnes, 1954; Bott, 1957; Mitchell, 1969). On the other hand, analysts of organized crime, as stated before, have borrowed concepts, theories and methodologies from a range of disciplines beyond criminology, including anthropology, economy, history, psychology, political science, legal studies and neurobiology. Briefly, if the analysis of organized crime was a living organism, it could be said that being multidisciplinary is in its DNA. Indeed, a multidisciplinary perspective represents a relevant aspect of all the aforementioned integrated approaches. Concerning the integrated multi-level approach, for example, a multidisciplinary perspective could mean the application of different theories or methodologies to each level of study. Theoretical concepts from sociology, anthropology, economy and political science, could improve the interpretation of results at the meso and macro levels of analysis, while psychological theories could represent a valid support to interpret the results at the individual (actor-focused) level. Once again, SNA could represent the guide that assists the researcher in organizing the huge body of multidisciplinary

knowledge and approaches within a coherent framework: it is flexible and captures specific peculiarities of the case in study.

PROBLEMS AND POSSIBLE SOLUTIONS

The integrated approach the article proposes has some limitations we need to discuss about. The first and central limit concerns the study of organized crime itself. In 1967, Cressey (1967) cautioned researchers that, *the secrecy of participants, the confidentiality of materials collected by investigative agencies, and the filters or screen on the perceptive apparatus of informants and investigators pose serious methodological problems for the social scientists who would change the state of knowledge about organized crime* (Cressey, 1967, p. 102). In the subsequent 50 years these methodological challenges remain salient. Organized crime is still a problematic subject of study because of the obstacles experienced by researchers in obtaining valuable and reliable data. Most of the sources of data used in the scientific literature on organized crime, especially when SNA is applied, are the so-called ‘secondary sources’, which have originated from judicial cases, law enforcement and intelligence databases (Calderoni, 2014). Consequently, the data reflect the perception and exigencies of law enforcement (for a deeper assessment of the issue see Morselli, 2009, p. 44–50; Bouchard, Ouellet, 2011, p.83–85 and Calderoni, 2012). Furthermore, the data are necessarily incomplete because individuals or relationships not covered by investigations or not present in law enforcement database are missing (Calderoni, 2014). Finally, the limits concerning the integrative approach itself, such as the risk of contradicting assumptions the different theoretical and methodological approaches are based on, the potential incompatibility between qualitative data and quantitative methodologies and, vice versa, between quantitative data and qualitative methodologies, along with the risk of producing incoherent and over complex results, have already been mentioned.

Issues concerning the data used in the analysis of organized crime have often been discussed and some solutions have been proposed. Improving the quality and reliability of data derived from secondary sources is highly desirable in theory, but difficult to be implemented in practice. Nonetheless, focusing on long and detailed investigations could reduce the risk of missing data (Campana, 2011). Finally, recent studies have demonstrated that network measures and property remain strong even when they are tested for missing data (Morselli, 2009, p. 48; Malm et al., 2011).

An integrated approach to the study of organized crime could represent a further solution to improve the quality of data, analysis, and results. For instance, by integrating qualitative and quantitative data and methodologies, it would be possible to reduce the impact of law enforcement perception and missing data. To clarify, data derived from secondary sources, such as investigations or judicial processes, could be integrated with data derived from interviews and questionnaires to those judicial officers or policemen, who carried out the investigations and processes. Interviewing those criminal-organizations members who have been incarcerated or turned into informants or crown witnesses would be even more suitable. In the article ‘The 40 members of the Toronto 18: Group Boundaries and the analysis of Illicit’ by Ouellet and Bouchard (2018), the integration between data derived from interviews with an individual embedded in a terrorist organization and data derived from court document records, coherently organized within the broader framework of a longitudinal networks analysis, assist the authors in exploring the extent to which the assessments of criminal groups are influenced by official data (Ouellet, Bouchard, 2018). However, this is not the only way an integrative approach could improve the quality of

network analysis. Indeed, by combining different levels of analysis, methodologies and theories, it would be possible to better contextualize, widely explore and more precisely explain those processes, factors or variables, which influence the building, evolution and dissolution of social networks, by avoiding an oversimplification of human relationships and by understanding the impact of internal and external forces on criminal groups and their members.

Thus, an integrative approach could effectively improve the quality of SNA applied to organized crime, but SNA can be a valuable and effective tool to improve the quality of the integration as well. Indeed, SNA could represent an integrative framework and guide to organize different theories, methodologies and level of analysis effectively by taking into account the features and specificities, which characterize each criminal organization and by avoiding over complex and incoherent analysis and results. The possibility of visualizing social networks, which some software package for the analysis of social networks (UCINET) provides, makes the integration processes easier and more immediate.

FUTURE RESEARCH DIRECTIONS

Despite the need of systematic and coherent integration applied to the study of organized crime has often been claimed, researchers are struggling to put it into practice. The aforementioned risks and limits, such as the problem of conflicting assumptions, which expose the integrative approach to some important criticisms, are strictly linked to the fact that the ability to perform a valuable integration implies the researcher to acquire a wide range of knowledge about different fields of study, methodologies and theoretical perspectives. In 1999, Golde and Callagher claimed that the university system should prepare students for a more integrated and multidisciplinary way of conducting research, because the great majority of studies are conducted within established boundaries of a given discipline. Mastering knowledge, reconciling conflicting methodologies and theories, finding an intellectual community to support and encourage this type of research, along with overcoming the fear that such integrated work will not be recognized by the scientific community, are all challenges to be taken into account and overcome by those students who intend to follow the path of the integrative research (Golde, Gallagher, 1999). The integrative study of organized crime needs to receive more structured attention, especially in terms of theoretical and qualitative analysis integration. More and deeper studies about the potentiality of SNA as an integrative framework need to be carried out.

Finding an analytical tool to be employed as a framework and guide to implement valuable integration becomes central. Criminology, and more specifically the study of organized crime, could represent a perfect field where new types of integrative approaches are experimented. The suitability of SNA as an integrative framework needs to be deeply theorized and tested. Thus, future research should improve and develop this idea by finding new and effective ways to transform SNA in an effective integrative framework, which assists the researcher in progressing in the study of organized crime.

CONCLUSION

The study of organized crime has produced a huge body of knowledge, by means of different methodological, theoretical, multi-level and multi-disciplinary approaches that impose the necessity of integrating all scientific material to progress in the research about criminal organizations. The matter of a systematic and structured integrative approach to the study of criminal organizations has never been discussed in depth.

In the present article, three main steps have been identified as suitable guidelines to implement an effective integration: 1) identifying a comprehensive framework within which the integrative analysis could be structured coherently; 2) capturing the dynamicity and complexity of organized crime phenomena without generating over complex and confusing results; 3) identifying all the methodological tools, theories, levels of analysis, and multidisciplinary knowledge that could be appropriately integrated in relation to each specific case of study.

It has been argued that the SNA of organized crime could respond to these exigencies. Indeed, SNA has been pointed out as a suitable analytical tool and framework, which could assist the researcher in integrating coherently different levels of analysis, different theories, methodologies and multi-disciplinary perspectives by focusing on the specificities which characterize each criminal group. The SNA flexibility would avoid rigid and static conceptualization of organized criminal networks by capturing the complexity and fluidity of social phenomena and would allow the researcher to structure the integrative approach on the basis of the configuration and features of each criminal organization.

Furthermore, an integrated approach within the framework of SNA would assist the researcher in improving and overcoming some obstacles related to both the integrated analysis and SNA when they are applied to organized crime. On the one hand, allowing a deeper understanding of human relationships and avoiding oversimplifications of both the analysis and the results, the integrated approach would improve the quality of SNA. On the other hand, SNA would represent a useful tool to build an integrated approach focused on specific features of the criminal groups under study, which would prevent the researcher from producing over complex and confusing results.

The suitability of SNA as an integrative framework needs to be deeply theorized and tested. Thus, future research is required to test and develop this idea, which could represent a significant step towards an integrative research applied to the study of organized crime.

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KEY TERMS AND DEFINITIONS

Complexity: Something, which involves complicated processes, situations, and aspects, the comprehension of which require a holistic approach.

Content Analysis: A research approach, which consists of coding and interpreting text data by means of a systematic classification process.

Ethnography: The systematic analysis and description of people’s cultures, traditions, and systems of meaning.

Hierarchical Structures: A structure organized at multiple levels, where every entity is subordinate to another entity to form a chain of command that looks like a pyramid.

Holistic: An approach or point of view, which takes into account the whole of something and not just some aspects.

Motivational Aspects: The reasons that lie behind individuals’ actions or choices. In criminology, identifying the reasons, which push people to commit criminal acts, has always been central in understanding of criminals’ behaviors. Different disciplines have proposed a huge variety of theories and hypotheses about this complex and intriguing topic.

Sociometric Analysis: Sociometric techniques are qualitative methodologies, which measure social elements connected to human relationships, such as social acceptance or rejection.

ENDNOTE

¹ For example, theories about the tendency of specific ethnicities to get involved in organized crime groups (Block, 1979), or the propensity of certain personality traits of influencing criminal behaviors, such as psychopaths (see works by Rabin 1979).

Chapter 12

Systematic Violence of Organized Crime in México: Consequences for Personal Development in Youth's Narrative


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ABSTRACT

This chapter has the aim to present an analysis of narrative in youths in the context of systematic violence as a product of organized crime, an expression that constitutes a negative indicator of their personal development, starting from the experiences of whom have lived through that violence in their environment. This is an exploratory analysis, accomplished through a discussion group made up of five youths from three states (Tamaulipas, Coahuila, and Estado de México), between ages of 21 and 23 years old, all social sciences university students. The results identified the explicit recognition of violence as a phenomenon distinct from relational or socio-political violence. Discussion emphasizes that through the application of community interventions that consider the citizen, especially youth, participation is necessary to reclaim peace and social equilibrium to aspire for a better regional and national development.

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INTRODUCTION

To speak of systematic violence derived from organized crime and the personal development of those who lives in violent environments includes identify different interconnected dimensions at social, psychological and legal levels, and at the system as a Nation-State. Among them, we could mention that the selected topic refers to different aspects on the individual's, as violence generates damaging effects through finding oneself in a situation that risks suffering it (Heinle, Molzahn & Shirk, 2014). Among the damages, one can find psychological and social damages suffered by victims, which frequently overrun victim's capacity to confront and adapt (Echeburúa, 2004).

The negative impact on the quality of life exacerbates as the situations that risk violence and the continuous threat usually carry with them an uncertainty component. This experience tends to encompass what happened in the past, what happens in the present, and what could happen in the future. Experiences derived from this exposure can be especially severe in contexts where this violence is extreme and reaches the rule of law, generating a deterioration in local and national development, creating crippled entities and communities.

An important link to this idea is that people's wellness compromises before the lack of positive indicators on the societies' wellness, thus the different inequities are worrying, especially those that refer to topics of security and justice (Lerner, 2015; Rice & Stewart, 2008). One of the macro efforts on a global scale is the United Nations' Millennium Development Goals Declaration (UN, 2015, 2017) which emphasis on the search for social justice (Ekmeci & Arda, 2015; Freiman, 2012) for different societies advocating development.

Of particular attention, the interest to study violence's impact on wellness is indicated as a life or death topic (Buttler, 2011), not only on terms of vulnerability conditions as its consequence, but also for the high cost of human lives that it has brought. At the same time, it constitutes great costs that equate to the 1,92 gross domestic product in Mexico, being the second country with the greatest cost before crime and violence between 17 Latin American countries analyzed according to the Inter-American Development Bank, with an annual cost of 41,295 millions of dollars (Jaitman, 2017). To recapitulate, the purely economic development of organized crime tends to be inversely proportional to the levels of rule of law and safety.

With this, the priority topic linked to organized crime's violence would rest on the capacity to mitigate and repair the damage on the social cohesion and human capital, through the betterment of public policies that emphasize civil participation on networks, the promotion of civilized citizenship, along with the respect to legality and human rights. This would achieve through interventions directed to promote what would be the "human development indicators", as the background on the topic of violence and insecurity; considering that the impact has been polygonal and has represented significant problems to social dynamics with great costs for our communities and societies'. It is thus, estimated that violence and insecurity, associated to personal and human development, represent some of the fundamental aspects observed as linked to different inequities on human beings (Sen, 1985) and should be reflected upon and attended, considering direct experiences of people that live in contexts where this type of violence has been growing.

Thus, the experience linked to these settings are analyzed in the present work with an exploratory approach, and with a special interest in youths and their narratives, endeavoring to reflect upon how the effects of this violence have led to social uncertainties and affected the everyday quality of life of

those who live exposed to it in México. For this, the text includes some considerations and notions to contextualize the analysis as a framework.

Organized Crime's Violence as an Endemic Problem and its Impact on Individuals

Historically, the phenomenon of criminality and violence has not diminished, but has grown starting from the eighties. One of the hypothesis is that it is a natural process in man's life because of modernization (Fukuyama, 2014). Among the proliferated crimes, we can find homicides as a product of the typical social conflict, with its lack of social solidarity between members of the same group affecting the social cohesion, which we all belong to (Grondona, 2010). In the face of the knowledge of the aftermath that violence has generated in practically the whole world, it is possible to observe singularities based on history, social and cultural characteristics.

It is been observed that while only a few countries are safe from a particular type of violence, societies with a profound underdevelopment or where fragility on their rule of law exist, show a strong rise on social violence. We could ask ourselves if this global status implies an almost universal lack of social solidarity or a structural complexity to explain and understand it, as organized crime has a great capacity for adaptability and versatility when faced within different contexts, especially those where social fragility exists. It results more versatile and a greater and negative operational force than the development and implementation of national or international models.

Even so, what was said above must be contextualized, recognizing that we live in transition contexts that can influence daily lives in many ways, including the increase of social violence. As an example, there are social and political changes in several countries in Central America; it produced a great upheaval after the end of the armed conflicts that coincided with changes in the international order and at the same time a transformation in the social structures, especially those with a socio-cultural nature (Murillo Zamora, 2016). Another example are the economic contexts, like Free Trade Agreements not only those concerning America but also in other continents (as the One Belt, One Road in Asia), since now we live in a globalized world.

In these transition contexts, new kinds of violence and criminality started to appear and consolidate in an important manifestation. Violence started to permeate in everyday reality, and be perceived in a constant and explicit manner, particularly in communities where social injustice problems worked in tandem with violence, transferring to social and individual scopes, giving ways to complex manifestations of violence in multiple layers of society (García Oramas, 2015).

In that scope, violence generated by organized crime is one of the events with the greatest impact in Mexico and has demonstrated the social harm that has weaken social and justice institutions in its territory. A sense of injustice, impunity and corruption has reigned in the populace and amplified in the rest of the country (Gómez San Luis and Almanza Avedaño, 2016). In Mexico, the criminality problem is such a serious situation that affects society in a macro global scale that does not appear to decrease even with governmental efforts. As a strong indicator, Mexico occupied the 16th place from 115 nations with the greatest violence and delinquency index at a global scale, with 10,6 homicides per 100 thousand inhabitants; that is thus considered one of the most insecure countries with a high degree of corruption (Arroyo Juárez & Rodríguez Sánchez Lara, 2012; Gutiérrez Cuéllar, Magdaleno del Río & Yáñez Rivas, 2010).

On another hand, Mexico positioned 30 out of 100, dropping 28 points in relation to the Perception of Corruption Index 2016, and occupying the 123th place out of 156 evaluated countries, which has signaled it as one of the countries on red alert on its transparency systems. If we analyze the region's high indexes, corruption is as an important threat in this precise moment because of the presence of violence, and if we do not deal with this problem in time, it foreshadows a risk in the effectiveness of the security policies that would be applied (Transparencia Internacional y Transparencia Mexicana, 2017).

Faced with this phenomenon, it is important to consider an aspect of individuals in this context permeated by constant violence: how do we represent people in this social reality and how does the existence of endemic violence in our country impact the subjective experience of wellbeing or its lack thereof, while living in environments of extreme violence. The approach to this topic permits the rethinking of the prevailing discourse around civic security, so a greater conscience develops through socialization that assists in the proposition of a positive mobilization around the problem and restoration of lost peace and social equilibrium, without depositing exclusively on the State. Aspiring to free ourselves from the entrapment that leads to an endemic violence without distinction that grows and adapts (for example, that of organized crime in traditional and new ways). By achieving this proactivity, the fight to mitigate the endemic violence from organized crime would probably be more strategic, with the own citizenry aspiring to minimize the damages generated from organized crime and social violence. This would be a positive application in almost every level in developmental terms.

As within the above, an argument exposes that in the fight against organized crime and the damages they produce, the UN member states (2015, 2017), in their Millennium goals must execute and be aware to the principles of *mutual trust, shared responsibility, and effective cooperation* to struggle against these transnational networks or structures. In fact, European efforts to consolidate the topic exist with a millionaire investment model. Even so, development and economic growth models could be insufficient to weaken the blows that the organized crime "sells". In that way, betting on the development proposal is to consider reflecting upon the mentioned three principles and on civic actions with a reciprocal participation from the government-state, to be more comprehensive of the dimension and forms of the problem, and the way to approach it to improve the social quality of life, in the countries "trapped" by this problem. In this matter, we could say that violence happens in endemic perpetuated conditions, is evolving to a certain extent and the newest technological advances (as the Internet), the socio-cultural and relationship changes and the new different economic contexts generated by the world trade agreements are creating different ways to a versatility of expressions in which criminality and social violence manifests.

On another hand, when we evocate the individual's capacity to adapt to violence, it becomes worrying in terms of the subjective experience of those who live in an environment with increasing extreme violence. Development and wellbeing do not reduce to a simply economic standpoint; instead, it includes the everyday quality of life in the presence of nonviolent environments. Then, the question is if it possible to consider the violence indicators as indicators for counter-development that affect the personal wellbeing on individuals.

There are studies that refer to the impact on individuals' daily lives generated by systematic violence on their places of origin, so they have adopted certain survival or lifestyles generated by the perception of insecurity of their territories and the fragility they perceive front the state (Martínez, Ávila, Vera, Bahena, & Musitu, 2016; Laca & Navarro, 2013; Sánchez & Ruiz, 2011). It is important to emphasize that these research also state that growing up on violent environments has an effect on the social equilibrium and wellbeing, damaging the social cohesion, eroding the social capital and the collective efficacy, all of which impacts people both on a social level, and their emotional and physical health as well.

Systematic Violence of Organized Crime in México

Living immersed in violence associates to particular knowledge that people construct about the nature of society and the conditions of the world they live in; this signifies that violent social relationships affect expressions of solidarity and the representations of justice, trust, responsibility, and compassion (Posada & Parales, 2012), which are fundamental dimensions in strategies for attending problems associated with violence.

With the exposition of all the elements above, there is a need to visualize violence linked to organized crime not just as a variable to be studied, but as a social problem largely legitimized by social institutions and an endemic problem with no beginning nor end. Its study in different empirical levels can represent a potential contribution to generate knowledge that, in a future could assist in the search for communities free of environments with this problematic.

Differentiating Violence Generated by Organized Crime From Other Types of Violence

It is necessary to mention the importance of differentiating relational violence (gender violence) and socio-political violence from violence generated by organized crime, as the last structural characteristics have an organized capacity to cause harm and multiple victims from a single action and also possesses a great power of seduction to capture members that form “complimentary” links for its illicit actions. On another hand, part of its power can reside on their capacity of infiltration to the State main security and justice institutions.

Because of that, in Mexico the law against organized crime was decreed on November 7th, 1996. It regulated, from a legal standpoint, how organized crime is configured and sanctioned. Its second article points:

When three or more people organize themselves to perform in a permanent or repeatedly way, conducts that by themselves or in concert with others, have as an objective or result to commit one of the following crimes, will be sanctioned by its own fact, as members of organized crime (Gobierno de México, 1996).

Considering a wide diversity in their illicit activities, the law above has specified the felonies that apply to the whole of the national territory and circumscribes in the states’ and the federal (national) codes. Even so, it is important to point out that up to recently that “organized crime” has constituted a felony by itself.

Additionally, it is important to point out that the goals of these organized groups are directly linked to the economic gain by the use of violence and coercion, i.e. they are groups that possess a high economic motivator (neither ideological nor in pursuit of power). They distinguish by a structural hierarchy, with an authority that plans and controls, with a great strategy, a strong internal discipline and having as a key ally corruption and the use of technology, maintaining a permanent diversification that constitutes a dynamic sector, which generates riches and employment, but at a “counter-development” level.

Table 1. Description of organized crime’s distinctive characteristics

Trans nationality
A transnational felony constituted when it is committed in more than two nations. At the same time, when it is committed in one nation, but its substantial part, i.e. the preparation, planning, direction, or control is in another nation; also, when it is committed in one nation but produces important effects on another one.
Linkage with the State
They exceed governmental control, as its complex organization and articulation networks have inserted themselves in various State’s institutions. They do not present an ideology, but they pursue political goals as to accrue influences to enjoy impunity and continue developing their illicit activities.
Hierarchical Structure
They have relationships generally familial or with great affinity that permit them to maintain an ideal solid structure to plan and define their objectives based on an enterprise-type system. They have a high level of internal cohesion.
Fight for Territories
They characterize for confrontations with other organized crime organizations to obtain new territories or certain markets, which generates the use of violent resources to achieve these objectives, as the case of fights between cartels.
Specialty
They dedicate themselves to a certain kind of felony, with the disadvantage that they can mutate if the circumstances merit this action. Independently of their capacity to mutate to other felonies, their specialty makes them much more effective at the performing of their illegal actions and, as a result, their economic gains increase.
Systemic Violence as a Medium
Among the principal consequences that their illicit activities bring with them there are the high levels of violence, product of their warring capacity, their connection to other types of felonies like weapon trafficking, and money laundering; economic power capable of infiltrating State spheres; capacity to finance political organizations; and weakening the State.

Source: (Alda, 2015-b; Castle, 1997; Rivera Clavería, 2011)

Citizenship in the Face of Systemic and Expository Violence From Organized Crime

Organized crime’s activities have a national and local impact. Izcara-Palacios (2012), expresses that violence has led to a strengthening on the idea of predestination. This belief has a relieving effect, as it gives a way to a lack of worry. The rationalization of violence as something inevitable, that obeys already established forces, generates appeasement, as there is no sense in worrying about an event previously designed. In a certain way, this “disregard” is what keeps them going on. Even so, it can be reinforcing in the present conditions, immobilizing or paralyzing the civil capacities to develop positive strategies to improve the social environment.

Even if the organized crime and transnational crime groups do not essentially pursue political goals, nor do they have an ideological focus, these groups’ actions generate influence in the States. This can provoke outcries from the populace to the State, as it is questioned its capacity for protection (public security) and, on another hand, a generalized lack of trust is generated; and through that lens, doubts about possible alliances between the State and organized crime are generated (Alda, 2015-a, Alda 2015-b; Rivera Clavería, 2011).

In this sense, there is a significant consensus that organized crime achieves the greatest advances in countries where there is social inequality and a greater degree of social and economic instability. The coincidence between this phenomenon and social fragilities has made it so that, in a decade, it moved from being considered a problem occurring in only certain countries and regions to being one of the

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basic factors when threats to general national security and, particularly, democratic governance are defined (Murillo Zamora, 2016).

The social conditions that Mexico presently demonstrates, with a social cohesion damaged by organized crime groups, entail a strong impact on the citizenry, at such degree that it drastically affects people's lifestyle and bring diverse psychosocial phenomena as psychosocial stress and social fear. At the same time, State organisms appear incapacitated to respond to the myriad insecurity problems, and with the existence of corruption between the leaders, there is fertile soil for criminal activities. These criminal activities seem to be consider as the consequence to a group of factors that include both economic and social conditions, and demographic and psychological factors, along with factors pertaining to respect for the law and its imposition.

Thus, systemic socially framed violence produced by organized crime is a sizable problem, a humanitarian emergency, and, in its most down to earth expression, a poorly adapted manner that interferes with social wellness and equilibrium. The language used to mark a completely governmental era as a "war against drug traffic" and its powerfully negative social representation conveys a general lack of hope in the citizenry. It is important to mention that it was one of the recurring elements influencing violence in Mexico; so if we analyze these elements along with what we socially attribute to the "war against drug traffic" and its significance on everyday life, we could possibly understand more about it. Even to this day, it is difficult to confirm when will it end, or for how long will it continue to dominate our social environment?

The Role of Citizenship: "Trapped" Citizenship Versus "Paralyzed" Citizenship

The citizenry is not only a passive entity that receives the impact caused by orders and/or decisions made by the State (Baños Ramírez, 2015). It also has the power to demand rights that permit interaction with the government body, and exercise its decision-making in pursuit of its own benefit. As such, it is possible to ascertain that being a citizen is to be subject to the rule of law. This can give a way to the idea that when adhered to the state's strategy the populace (active citizenship) can help mitigate that counter development indicators brought out by violence.

Faced with the increasing violence and the surge of threats to individual and social integrity, the safety issue has become something pertaining to practically all people. The subject of insecurity, seen from the State's perspective, considers that it protects its population from any threats. Today, this premise does not prove valid for different political, economic, social and legal conditions. This leads to inquire about the role played by organized crime groups in the countries' policies, as their action has directly influenced the exercising of political power, contrary to people's' rights in a State considered in balance and democratic. So, in Mexico, organized crime transformed from a conflict pertaining to the police to one of national security because of the increase in violence related to it, and particularly, to drug trafficking (Montero, 2012; Rivera Velázquez, 2014; Rivera Velázquez, Valdez Rivera & Varas Uribe, 2015; Schedler, 2014).

The most empowered citizenship would then demand better opportunities to guarantee its individual and collective wellness. Nevertheless, faced with the growing cost to perform appropriately the activities pertaining to governments, there has been an increase in citizens' perception of insecurity and discontent. This empowers actors not from the State, who take advantage of the spaces left behind by the State. This leads to governance problems, which increases the State's fragility and threatens democracy, supposedly the best way to implement policies that generate equity and increase the whole population's

actions, contributing to human safety and individual and collective development (Murillo Zamora, 2016, Schedler, 2014).

Faced with this, we could ask ourselves to what extent does the sense of citizenship include these subjective notions? As a final element, about the development in Mexico and its prosperity we could say that we are failing in the objective quality of life indicators, but we Mexicans are happy. This speaks volumes of a manner of wellness entailed in the notion of development; but around systematic violence, especially that generated by organized crime is not applicable, and is still contradictory and ambiguous. That is why research objectives focus to analyze in an exploratory manner the subjective experience, both direct and indirect, of youths in a day-to-day context with the explicit presence of organized crime's systematic violence in Mexico.

METHOD

This work is part of an ongoing project in the institutional frame of the social sciences area in the Autonomous University of Yucatan (UADY), regarding the process of citizenship strategies when faced with organized crime's violence. The exploratory study used a qualitative framework, which emphasized the individual, subjective experience. This methodology focused describing in the most complete manner the human conduct, free of prejudices. Thus, as a methodological strategy, it encompasses the attentive listening to those similar or different cases that permit the creation of a representative structure of the different lived and registered experiences (Ruiz Olabuénaga, 2012; Martínez Miguélez, 2004).

Participants and Procedure

Five students (3 women and 2 men) between 21 and 23 years old formed a discussion group (Barbour, 1995). They were from zones identified as possessing a high level of violence (Tamaulipas, Coahuila and Mexico State) and they were pre grade students related to social sciences. Their collaboration consisted in contributing lived experiences related to direct or indirect violence due to their residence in environments considered as high-risk ones. Participation in the discussion group was voluntary.

Instruments and Technics

The discussion group leaned on a questionnaire (Creswell, 2009) based on indicators relating to direct or indirect experiences in environments steeped in violence produced by organized crime. Thus, discussion-generating questions were prepared built upon a list of situations that occur directly or indirectly in a violent environment. These questions helped to lead into deeper experiences, distinguishing events that could have been lived in a direct or indirect manner; the manner in which they happened, and how they affect their environments in a day-to-day basis. The discussion groups were audio recorded for their qualitative analysis.

RESULTS

Firstly, it is important to mention that the students referred strongly violent acts, such as: observing drug-messages on bridges, group assault using intimidation, personal extortion by telephone, a person's *levantón* (kidnapping of a person in transit), forcibly kidnapping, hitting someone with pieces of wood as a mode of coercion, among others. All of this generated ideas expressed as: "...we are going more and more to organized crime that (everything) ends in death". These events were some of the most intense acts related to the presence of organized crime.

The participants referred to the prohibitive situation in public spaces.

...yes because here (in his community) a lot of times there is curfew, you cannot go to the clubs, at a certain time the violence starts. You cannot go out to do homework... you do not go out so late anymore, you do not go to certain places, also you walk at different times, you do not walk so late...

At the same time, they highlighted the violence that happens between the cells of organized crime

another motive is when they do not pay to those who sell, or they want to try to steal from those they manage, what is known as a reckoning, also between groups (there is violence) and internally...

They also mention that not all acts of violence register as actions derived from organized crime, which could hinder their "legitimate" recognition on official statistics and indicators. Thus, murders committed by these groups classifies as murders, in a general category without any other classification, unless they show special configurations (such as shootouts, square fights, or activities linked to drug, people or weapon trafficking).

In another hand, they refer to

...what is known as a reckoning, also between groups and internally,

which, in part, they attribute to the high level of bloody violence. They expressed situations and experiences inside their school environments:

...for example, in our university, supposedly, there is a security booth at the entrance, but no one is there, so to enter the campus... the falcons are just outside that booth or inside, like to be able to enter, they are always outside or inside, but they are always there and have radios, then they are communicating all the time...

They indicated that organized crime has great power of infiltration:

to camouflage themselves, they go like students, they wear backpacks...,

and so, even if this "camouflage" is used to apparently go unnoticed, they have become part of the environment and this is identified as a sign of power. One of them said:

...Actually, one time, there was a shootout and one of the falcons ...went into the classrooms and took a girl to shield himself. He practically took her as a hostage... he pointed the weapon at her and was talking on the radio... in the beginning they hid among themselves, they used to be discreet up to a point, but they come into the school more and more. Even the university's authorities know, but they cannot report... in my university,... they hit guys, they do rapes, all out in the open and the dean chose to ask the military for help, and they came into the university. They entered and made their rounds all around the neighborhood. They reported but, obviously, nothing was done... Actually, that is why there is no security guard anymore, they threatened them...".

DISCUSSION

The participants' narrative reflect content that affect considerably their quality of life, affecting their daily routines and actions. One of the topics for reflection is the social power conferred to organized crime, which seems to maintain structurally a strong control over damaging actions in some sort of overwhelming flood. This can erode the life's possibilities of those who expose frequently to violence, as the attribution of meaning that we, as a society in consensus, assign to social acts relates to the meaningful experiences we have incorporated as individuals and social beings (Maturana, 1997).

Violence derived from these groups is not only the experience of a particular individual; but instead, violence goes to the community as a whole. Then, it is important to study and explain how ideas, beliefs, and conceptualizations on the way we live and experiment organized crime's violence impact our lives and the ways in which we develop certain means as a response, maybe as a survival strategy (naturalizing it or not); this

This exploratory study focused on the perception of a group of Mexican youths on the direct or indirect experiences of violence linked to organized criminality and its effects. The participants presented themselves as highly worried about their present and future, as well as their families', expressing that living in an environment of constant fear about what will happen tends to limit their quality of life. Thus, it is visualized the existence of an interference on the present human and social development. The analysis of the subjective experience of those trapped in this interference or those who have adjusted themselves is paramount, to be able to determine firmly the ways in which the citizenship can mobilize or organize itself to improve the social situation and the State's cooperation.

This study supports and joins the results of diverse research that indicate that the systematic violence generated by organized crime has a strong impact on people's psychosocial functioning (Arroyo Juárez & Rodríguez Sánchez Lara, 2012). Such impact can encompass contextual, emotional, cognitive and behavioral components; all of them key psychosocial dimensions on the human being.

On a cognitive level, an example is that the perceived risk, represented in ideas, thoughts and expectations on the probability of being a victim and the fear before this real threat, play a role on the person's reactivity, who anticipates being a potential victim. This generates avoidance behaviors and the modification of habits and routine (Martínez, Ávila, Vera, Bahena & Musitu, 2016; Laca & Navarro, 2013; Sánchez & Ruíz, 2011). On another hand, the "social fear" is something that seems to be implicit on expressed narratives; it become an emotional state that limits or interrupts the trust, meeting, and coexistence behaviors, for example, between coworkers, neighbors and family members, along with the hopelessness before such a close situation of violence. The above has radically modified the daily

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life in the main cities where people experiences extreme violence, where this type of violence linked to organized crime breeds.

The organized crime take advantage of the new scenarios generated by economic contexts as the Free Trade Agreements, like NAFTA in North America or One Belt One Road in Asia. It doesn't matters if the agreement is mainly developed in one continent because its influence could get to countries worldwide. For example, One Belt One Road, has its development and influence directly in Asia and in its contact with Europe or even Africa in more than fifty countries; but it can get to extend its influence to America. Considering the tense relations with the Trump, México is particularly inclined to get involved with this agreement given the interest in diversifying its commercial ties.

These type of agreements can have both, positive and negative, implications in matter of imports and exports and influence in cultural terms. Unfortunately, on the negative side, they are source of diverse types of criminality. They can be a space for the organized crime to extend its tentacles and increase its economic incomes, for example, through traffic of precious objects, organs and even persons, with which the criminal events can go in increase along with the power of organized crime and give an open opportunity to develop broad patterns of social violence across several countries.

Thus, the quantitative indicators are not the only important ones, but also the qualitative, subjective and social ones, which bring the groundwork for a clear, critical and dialogical understanding in relation to the conditions, and effects produced by organized crime's systematic violence on the development. As noted, studies that focus on the psychological and social damage in the copy of constant violence tend to habitually affect people's capacity for adaptation and have negative effects on social interactions. This experiences based on that exposition can be especially severe in environments where this violence stays for a considerable length of time, for example, in the case of threatened collectives (e.g. journalists or activists) (Arteaga Botello, 2003).

In the environments in which the growth of violence has increased, the community intervention is a type of citizen participation focused on the way that community could and should be a collective response before organized crime's violence. Starting from the idea that the community has its own regulatory strength. And that it helps individuals to develop in an integral manner in the environment in which they are immersed, darkened by the social fear in its expressions of isolation, lack of coexistence and absence of organized participation to promote citizenship practices and community management as a way to combat social fear and collective anguish (Carrera Robles, 2014).

Finally, as an interesting point of view, Amartya Sen (1985) expresses that every State as "a government, has to be judged in function of the concrete capabilities of its citizens". Thus, many Mexicans could be outside of what the author points out, in the more evolved concept of the conjunction between Citizenship and State. Therefore, we would have to rethink if Mexico's public and economic policies really consider and think of the citizenry as people imbued with these real rights and if the citizens, at the same time, are aware of the active and emerging function in the interest of rescuing ourselves as communities. Or, as in other points in history, we stay as passive subjects at the mercy of our serious social problems.

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KEY TERMS AND DEFINITIONS

Falcons (“Halcones”): Spies or watchers paid by organized crime to provide information to facilitate the work of criminals.

Levantón: Type of kidnapping where there is usually no negotiation, and usually ends in the murder of the victim.

Organized Crime: Type of crime that is characterized because three or more people are organized to perform repeated or permanent behaviors that help the performance of other crimes. Organized crime is characterized by its trans nationality, its linking with the state, its hierarchical structure, the fight for territories, its specialty, and the use of systematic violence as a medium.

Socio-Political Violence: Indirect violence characterized because the structures of the state and society, violate the rights and development of certain vulnerable groups of the population.

Strongly Violent Acts: Violent acts such as murder, mutilation or torture, which may or may not be used as a message to inflict fear on the population.

Systematic Violence: The use of various manifestations of violence to achieve the same goal.

Violence Generated by Organized Crime: Any type of violence used by organized crime to achieve its objectives (such as the control of territories, people, state institutions, etc.).

Chapter 13

Online Child Pornography: Conceptual Issues and Law Enforcement Challenges

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ABSTRACT

This chapter presents some challenges faced by the police in identifying child pornography images. In particular, three main problems will be discussed throughout this chapter. The first lies in deciding whether an image is explicit enough to be considered pornographic. The second issue lies in determining whether the victim is a child or someone who appears to be a child. A final challenge concerns how to deal with sexually explicit images produced by someone who is a child themselves. It will be argued that despite emerging investigative and forensic methods, the decision-making process engaged in by police officers still presents some specific challenges. These aspects will be discussed through an analysis of semi-structured interviews with 23 French police officers and forensic analysts working in departments specialising in policing cybercrime and online child sexual abuse.

INTRODUCTION

Since the late 1990s, alongside utopian rhetoric about the opportunities new technologies would foster, there has been growing concern about the Internet and child safety. Increased awareness of the child pornography issue has been associated with a simultaneous recognition of the Internet as a medium for the distribution of abusive materials and the facilitation of a number of sexual offences against children (Taylor, Holland, & Quayle, 2001).

Although child pornography existed long before the emergence of information technology (Tate, 1990), there is a general consensus that its development has increased the availability of child sexual abuse images (Taylor & Quayle, 2003; Wolak, Finkelhor, & Mitchell, 2011; Fortin & Corriveau, 2015). The Internet and digital technologies have facilitated the production, distribution and possession of such material, allowing offenders to operate across borders and to take advantage of the unique qualities of

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the online environment, namely anonymity, accessibility and affordability (Cooper, 1998). Simultaneously, information technology has provided a new space where offenders can communicate, share criminal experiences and find justifications for their criminal behavior, as well as easily contact the victims (Quayle & Taylor, 2002; Fortin & Corriveau, 2015; Macilotti, 2018b). As a result, online child pornography has become a truly global problem and one of the most concerning forms of cybercrime (Yar & Steinmetz, 2019).

In response, in the late 1990s and early 2000s most Western countries introduced legislative measures designed to protect children and young people from Internet abuse, primarily addressing the production, exchange and possession of child pornography through the use of information and communication technology. The main purpose of these measures is to combat those who promote child sexual abuse by creating and disseminating child pornography, as well as those who contribute to child sexual exploitation by collecting such material. To tackle online child sexual abuse and more generally cybercrime, many governments have also formed specialized police units that investigate these offences through a broad range of reactive and proactive methods. In addition, international and national efforts have been made to increase the level of cooperation and coordination among police forces, as well as between public and private sectors (Yar & Steinmetz, 2019). Yet despite the considerable resources committed to tackling online child pornography, policing this crime can still encounter a number of problems.

This chapter aims to explore the challenges faced by the police in identifying child pornography images, as well as the way in which law enforcement personnel respond to the growing complexity of this phenomenon. These aspects will be discussed through an analysis of semi-structured interviews with 23 French police officers and forensic analysts drawn from a doctoral study on online child pornography (Macilotti, 2018b), and postdoctoral research on law enforcement's response to cybercrime. On a national level, the interviews were conducted with police officers working in departments specializing in policing cybercrime and online child sexual abuse (n=15)¹. On a local level, interviews were conducted with law enforcement officers operating in cybercrime units or in forensic investigation divisions (n=8).

Three main dilemmas were underlined by the interviewees and will be discussed throughout this chapter. The first lies in deciding whether an image is explicit enough to be considered pornographic. The second issue lies in determining whether the victim is a child or someone who appears to be a child. A final challenge concerns how to deal with sexually explicit images produced by someone who is a child themselves. It will be argued that despite emerging investigative and forensic methods, the decision-making process engaged in by police officers still presents some specific challenges.

LEGISLATIVE AND POLICING MEASURES TO TACKLE ONLINE CHILD PORNOGRAPHY

Defining Child Pornography

Child pornography can be behaviorally defined as *the sexually explicit reproduction of a child's image* (Lanning, 2010, p. 80). It usually refers to visual depictions (e.g. photographs, videos, magazines) showing a minor subjected to a broad range of abusive acts, including forced sexual poses, masturbation, oral and penetrative sex. These types of representation involve a number of criminal behaviors ranging from the production to the possession of this material, through its commercialization and distribution. As such, children are victimized not only when the images and videos are produced, but also every time

this content is posted, shared or viewed. In essence, child pornography is a form of sexual abuse and exploitation that causes long-term social, psychological and physical harm to the victims (Domhardt, Münzer, Fegert, & Goldbeck, 2015).

In this regard, it should be noted that there is a growing tendency among public authorities, activists and scholars to question the appropriateness of the term “child pornography”. Critics highlight that this term fails to capture the nature of the harm suffered by the victims portrayed in such images (Leary, 2016). Therefore, several organizations and institutions such as the European Parliament, the Interagency Working Group on Sexual Exploitation of Children and Interpol suggest “child sexual abuse images” or “child sexual exploitation material” be used, because these images are permanent records of children being sexually abused/exploited, rather than some type of pornographic representation (ECPAT, 2016).

While acknowledging these reservations, the term child pornography will be used throughout this chapter as it is the one most frequently used in both national and international legislation. Its definition does however vary somewhat depending on the legal instrument in question. National laws may indeed diverge in defining what actually constitutes “pornography” and who exactly counts as a “child” (Taylor & Quayle, 2003; Akdeniz, 2008; Gillespie, 2010b; Hessick, 2016).

First, the notion of “pornography” is contingent upon moral and cultural values and its definition, being socially constructed, may vary according to the context (see also Carrière, 2006). Moreover, in some countries pornography is linked to the notion of obscenity, whereas in others it is related to sexuality and sexualized behavior. As Taylor and Quayle note (2003, p. 3), these *differing criteria mean that it is quite possible for a picture to be regarded under laws that emphasize sexual qualities as child pornography but to fail in jurisdictions where obscenity or public morality definitions prevail.*

A further issue, and one which deserves a close attention, lies in defining what the term “child” means. At its simplest, this word is used for denoting a person in the early phases of life, an individual who is in one way or another not an adult. However, the distinction between children and adults is related to a given conception of childhood that is neither “natural” nor “universal”. As initially argued by Ariès (1973), the concept of childhood is socially and historically constructed rather than biologically given. Its definition is shaped by beliefs, values and cultural norms that change among and within societies, as well as over time (Jenks, 2004; Norozi & Moen, 2016). Establishing when a person stops being a child and becomes an adult is therefore a rather complex matter. Criteria vary from the chronological to physical sexual maturity, through legal status or cognitive and psychosocial abilities (Gittins, 1998; Mathews & Collin-Vézina, 2019). Even from a solely legal perspective, in a given country a person can be considered an adult for one purpose, such as marriage, but a child for another one, such as voting (Leary, 2016).

Considering the transnational nature of online child pornography, national divergences raise serious jurisdictional and practical issues and make it difficult to combat this problem effectively (Yar & Steinmetz, 2019). Successfully combating child pornography requires a global response that can only be achieved by adopting harmonized and coordinated measures (ICMEC, 2016). A number of international legal instruments have addressed these issues by setting out some minimum standards that should be enforced by signatory states, such as the 2000 Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography², the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (“Lanzarote Convention”)³ and the 2011 European Union Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography⁴.

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All three documents consider as a “child” any person below 18 years of age, although some exceptions are provided⁵. This decision, however, seems to be based more on convenience than on any clearly identifiable principles (Gillespie, 2010a). Since the age of consent for sexual activity varies significantly across the world⁶, choosing the age of 18 years - which is the standard age of majority in many countries - is likely the most acceptable compromise. In other words, whichever age is chosen, it is essentially a political matter, which raises further issues as discussed in the next pages.

In regard to “pornographic” content, these treaties state that the definition should at least include any visual depiction of a child engaged in real or simulated *explicit sexual activities*, as well as any representation of the *sexual organs* of a child for *primarily sexual purposes*. However, while deciding if an image is pornographic is not particularly difficult when the content depicts sexual acts, assessing the *sexual purposes* of a given image may be quite complex.

Besides these preliminary issues, it should also be noted that not all states have adopted specific provisions for protecting children from this form of sexual abuse. A recent review of relevant laws in 196 countries revealed, for example, that only 82 countries *have sufficient legislation* and that 35 have *no legislation at all specifically addressing child pornography* (ICMEC, 2016, p. vi)⁷. Moreover, even when a legal provision is in force, the definitions of child pornography may still diverge in terms of content and form of the material. While some national legislation proscribes only explicit representations of child sexual abuse, others adopt a broader approach including images that portray children in a sexualized manner or context (Interpol, 2018). Some countries prohibit only visual depiction of children, whereas others also include audio or textual material (Gillespie, 2010b). Another additional issue lies in whether there is a need for the image to display an actual child. Some national and international laws, for example, consider that sexually explicit material depicting real persons above the age of 18 years but who appear to be underage is also child pornography (for a discussion see Nair, 2019). This question is even more controversial in cases involving morphed images and “virtual” child pornography, both deserving of further consideration.

Advances in information and communication technology have made it possible to create sexual depictions of young people without directly involving real children. There are different ways in which this can occur. One of the most discussed is related to pseudo-photographs that comprise, for example, pictures or collage of pictures in which a child’s face is digitally transposed onto an adult’s body engaged in sexually explicit conducts (Gillespie, 2010b). The “virtual” child pornography refers to a broad range of sexually explicit depictions that have been entirely computer-generated without involving real children.

Such materials pose additional challenges both legally and academically. The “Lanzarote Convention” and the 2011 European Union Directive, for example, include the “fictitious” material within their definition of child pornography, but they allow signatory states to decriminalize its production or possession for private use, in so far as no pornographic material depicting real children has been used to create the “fictitious” content. This decision can be better understood by (briefly) examining the academic debate about whether this content should be proscribed. As noted above, child pornography is seen as a permanent record of a child’s sexual abuse and its criminalization is justified by the harm caused to the victims. Since no such harm need be committed to an actual child to create morphed images and “virtual” pornography, some scholars argue that these materials cannot be considered as child pornography (Hessick, 2016). However, others suggest that the criminalization of pseudo-photographs involving images of real children can be justified. Although morphed images are produced without directly abusing a child, their content is exploitative and could cause psychological harm to that child (Ost, 2009). Last, “virtual” pornography perhaps raises the most doubts, as it is entirely created without harming an actual

child either directly or indirectly. Its criminalization is then justified on other bases such as the potential risks posed to child safety, especially with regard to the grooming process (for a discussion see Akdeniz, 2008). In this respect, the UN Special Rapporteur on the sale of children, child prostitution and child pornography warned that, even though this kind of pornography does not involve the direct abuse of a child, *its power to 'normalize' images of child sexual abuse and incite sexual exploitation of children should not be underestimated and must be adequately addressed* (Petit, 2004, p. 8).

Policing Online Child Pornography

The rise of the Internet and the rapid developments in various forms of information technology had a huge impact on child pornography by making it easier to collect, distribute and produce such material. Therefore, national and international efforts have been made not only to harmonize criminal legislation but also to adapt law enforcement responses to the challenges raised by Internet-related child sexual abuse. Policing online child pornography offences and cybercrime in general requires specific expertise in information technology and digital forensics, as well as coordinated and cooperative responses to cope with the transnational nature of these crimes.

In response, a number of countries have created dedicated digital units to investigate a broad range of cybercrimes, including online child sexual abuse and exploitation. Although the organizational structure and the territorial jurisdiction of these units may vary according to each national police system, there are some similar trends that can be highlighted. On a national level, several countries have established hi-tech divisions mainly working on major, multi-jurisdictional cybercrime investigations. On a local level, many police forces have specialized units or groups that are tasked with investigating ICT-related crimes, conducting digital forensic analysis, maintaining the chain of custody and testifying on the evidence collected (Jewkes, 2012; Yar & Steinmetz, 2019).

In addition to the creation of specialist units, investigative methods have evolved to include more sophisticated techniques designed to take advantage of the very features of the Internet and online environments that criminals exploit. While ICT is often seen as a tool to facilitate the commission of a wide range of crimes, it can also open up new opportunities for law enforcement agencies, since many online activities leave digital trails that can be used by police investigators and forensic analysts. Besides the “traditional” reactive methods, cybercrimes can be addressed by using undercover techniques, advanced tools for monitoring P2P networks, websites, chats and other online spaces, as well as standardized and sophisticated procedures for collecting evidence and performing forensic analysis (Walden, 2012; Martellozzo, 2015; Fortin, & Paquette, 2018; Macilotti, 2018b).

Moreover, the de-territorialized nature of cybercrime has required a significant increase in law enforcement cross-border cooperation and coordination. This represents one of the major challenges for police systems that have traditionally been organized on a territorial basis (Yar & Steinmetz, 2019). With regard to online child pornography offences, different practices have been implemented in order to facilitate cross-jurisdictional investigations and information sharing.

Valuable resources for law enforcement agencies are, for example, international and national databases that centralize information about illegal images, victims and offenders identified during police operations. On an international level, Interpol hosts the International Child Sexual Exploitation image and video database (ICSE) that maintains a repository of more than 1 million content items (images, videos and hashes) uploaded by and on behalf of 88 countries as a result of investigations into online child sexual abuse. Besides providing tools for analyzing and comparing child pornography materials,

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it also allows specialized investigators to exchange information and share data on previous and ongoing cases (Interpol, 2018)⁸. On a national level, several law enforcement agencies maintain their own repositories of child pornography material and some of them are connected to the ICSE database (ECPAT, 2018). Among those, of note are the National Child Victim Identification System (NCVIS) in the United States, the Child Abuse Images Database in the United Kingdom (CAID) and the National Centre for the Analysis of Child Pornography Images in France (CNAIP/CALIOPE). Police forces can also use intelligence tools that enhance information sharing among federal, state and local investigators such as the Child Exploitation Tracking System (CETS), a software-based solution developed by Microsoft in collaboration with Canadian law enforcement and currently used (or in the planning stage) in various countries⁹. Regardless of the specific features of each instrument, child pornography databases and investigative tools are designed to help identify and locate the victims of child sexual abuse, as well as the potential offenders. Systems to recognize images and share intelligence are also intended to reduce the duplication of efforts, by letting investigators know if an image has already been discovered in another country or jurisdiction and whether a suspect has already been identified in other operations or is currently subjected to an investigation.

In other words, the policing of online child sexual abuse involves a wide range of public and private actors other than the police themselves. As Jewkes notes (2012, p. 539), *just as the policing of terrestrial space has demanded a 'joined-up approach' between individual citizens, private sector agencies and the police, so too has the policing of cyberspace become a pluralistic endeavour*. Besides law enforcement agencies and police coordination bodies like Interpol and Europol, a number of other state-funded organisations, private sector actors and interest groups play a part in the fight against online child sexual abuse (Yar & Steinmetz, 2019). Several nations have decided, for example, to involve Internet Service Providers (ISPs) and other Internet intermediaries in the process of reporting and, in certain cases, removing child pornography materials. In France, this is the case of *Point de Contact*, an independent organization created in 1998 by French telecom and online service providers that hosts a “hotline” allowing members of the public and IT professionals to report content perceived as illegal. Once the content has been confirmed as child sexual abuse material, the information is then transmitted to the hosting providers (if the content is hosted in France) and to the Central office for combating crime related to information and communication technologies (OCLCTIC), the main French cybercrime unit which also manages the national platform for reporting online illegal contents (PHAROS). Similar instruments have been adopted in other countries and can also be coordinated by organizations such as the Internet Hotline Providers in Europe (INHOPE), which represents a network of 51 hotlines in 45 countries and whose mission is to support the work of these hotlines and to streamline processes for reporting illegal online contents (ECPAT, 2018).

Despite these significant efforts to tackle child pornography, policing this phenomenon and more generally cybercrime can still encounter a number of difficulties. Besides the problem of statutory variations across national systems which can affect international cooperation, there is a broad range of other issues, including *problems of linguistic diversity, variations in policing cultures, asymmetries in available resources and levels of expertise across different forces* (Yar & Steinmetz, 2019, p. 221).

Moreover, the rapid advancement of technology is making the investigation of child pornography extremely resource intensive, especially considering the increasing storage capabilities of seized digital devices. In these cases, even determining that no crime has been committed demands a significant amount of time and effort (O'Donnell & Milner, 2007). An examination of the dilemmas faced by French police officers when evaluating the content of child pornography images will be used to illustrate these issues.

INVESTIGATING ONLINE CHILD PORNOGRAPHY: POLICE PRACTICES AND CHALLENGES

One of the first challenges in investigating child pornography offences lies in proving that the material discovered during the investigations or saved on the seized electronic devices fits the legal criteria in terms of type of content and victim's age, as also noted in some studies carried out in the United States (Wells, Finkelhor, Wolak, & Mitchell, 2007) and in the United Kingdom (Kloess, Woodhams, Whittle, Grant, & Hamilton-Giachritsis, 2019).

The French Penal Code defines child pornography as any pornographic representation of a person below 18 years of age or a person whose physical appearance is similar to a minor, unless it is proved that the person was over 18 on the day picture was taken (art. 227-23). This provision also applies to pornographic drawings, morphed images and computer-generated material portraying a child (Véron, 2017). With respect to the “pornographic” content, the law does not provide any definition, but jurisprudence and doctrine consider that it is the sexual nature of the content involving a minor that determines this qualification (Dreyer, 2016).

However, deciding whether a given image fits these criteria may be quite difficult. For example, different studies pointed out that not every image that is attractive to a person with a sexual interest in children has a clear sexual purpose or is necessarily sexualized in its content (Taylor, Holland, & Quayle, 2001; Wolak, Finkelhor, & Mitchell, 2011; Macilotti, 2018b; Fortin & Proulx, 2019).

Moreover, in the majority of child pornography investigations, the evidence of the crime scene is represented in digital form. Therefore, the ability of law enforcement agencies *to investigate and prosecute the perpetrators will be driven by the availability and accessibility of such data to investigators, whether in the context of intelligence gathering, evidential retrieval, analysis or presentation in court* (Walden, 2012, p. 603). The acquisition and examination of legal evidence derived from computer systems and other media devices, otherwise known as computer or digital forensics, can be extremely difficult, especially because of the intangible and often transient nature of data in a networked environment (Walden, 2012).

This task is even more complex considering the growing volume of data involving abusive images that requires analysis. Investigators and forensics experts must process computers and digital devices whose storage capabilities are constantly increasing, as well as analyze a broad range of Internet and communication data (e.g. log files, temp files, IP address, etc.). As Yar and Steinmetz note (2019, p. 218), such forensic work can be very time-consuming, especially *in cases where computer data are protected by encryption technologies that must be ‘cracked’ before they become legible:*

unfortunately, we have more and more suspects with a huge quantity of files, terabytes (...) the analysis may take several days or even months if they use steganography, encryption or if the videos are stored online. (Police officer: ID17)

As mentioned above, national and international efforts to establish repertories of child abuse images have improved information sharing and identification techniques. Police officers can use different automated procedures to acquire evidence and perform forensic analysis. A common method is comparing data stored on the seized devices with a list of known illegal images that have been detected during previous investigations. The comparison is usually based on digital image “fingerprinting”, which refers to a one-way numerical code (generated by a mathematical algorithm) uniquely identifying each specific

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image (Tropina & Callanan, 2015). By comparing suspicious materials with images already identified as child pornography, police investigators and analysts can reduce the efforts required to examine digital data during legal search, seizure and forensic analysis:

the list of digital signatures is helpful, like other tools for extracting and recovering data (...) compared to some years ago, we have really strong tools and procedures (...) I'm not saying that it is always easy, but they speed up the analysis, for example during a legal search. (Police officer: ID16)

However, the main limitation of relying on repositories of known digital signatures is that they cannot easily detect new material or images that have been modified. As Tropina and Callanan note (2015, p. 93-94), *the minor changes in the suspect image (cropping, resizing, re-coloring, etc.) means that the image fingerprints will be different from the ones on the list*. In these cases, forensic analysts can make use of specific image recognition software that directly scans the *content* of seized material and looks for overlaps with known illegal images. The analysis is performed by comparing characteristics such as human bodily features and colors of the scene:

the first step is sorting out what is already known by using the digital signature of the file. Then, we analyze via specific software (...) that makes a comparison based on shape, color and background of the image with materials already in our or Interpol's database (...) compared to digital signatures, this tool is more powerful and it allows us to see if the content of the material has similar features to other images. (Police officer: ID7)

Although these procedures facilitate the detection of child pornography material, they do not completely do away with the task of evaluating the content of such images, especially in cases regarding abusive material that has not already been investigated by law enforcement agencies:

forensic tools surely help us a lot, but in any case at some point I need to check the contents, which means time, resources ... especially when there is a lot of data to analyze and the material is not clearly pornographic. (Police officer: ID17)

In this respect, police officers and forensic analysts may encounter some difficulties in evaluating visual depictions that do not present sexually explicit contents, or that portray postpubescent victims. An illustration of these issues can be provided by considering what types of images are actually collected by persons with a sexual interest in children, as well as the way in which law enforcement personnel cope with the dilemmas surrounding their evaluation.

Evaluating the Nature of Child Pornography Images

Several taxonomies of child sexual material have been created and used by academics and some public authorities in order to better understand the adult sexual interest in children, as well as the behavior of offenders involved in production, dissemination or possession of child pornography. The most notable one is the COPINE scale (Combating Paedophile Information Networks in Europe), a classification resulting from a detailed analysis of over 80,000 images and more than 400 video sequences (Table

Table 1. Taxonomy of different kinds of child pornography (COPINE scale)

Level	Name	Description of pictures qualities
1	Indicative	Non-erotic and non-sexualised pictures showing children in their underwear, swimming costumes, etc. from either commercial sources or family albums; pictures of children playing in normal settings, in which the context or organisation of pictures by the collector indicates inappropriateness.
2	Nudist	Pictures of naked or semi-naked children in appropriate nudist settings, and from legitimate sources.
3	Erotica	Surreptitiously taken photographs of children in play areas or other safe environments showing either underwear or varying degrees of nakedness.
4	Posing	Deliberately posed pictures of children fully, partially clothed or naked (where the amount, context and organisation suggest sexual interest).
5	Erotic posing	Deliberately posed pictures of fully, partially clothed or naked children in sexualised or provocative poses.
6	Explicit erotic posing	Emphasising genital areas where the child is either naked, partially or fully clothed.
7	Explicit sexual activity	Involves touching, mutual and self-masturbation, oral sex and intercourse by child, not involving an adult.
8	Assault	Pictures of children being subjected to a sexual assault, involving digital touching, involving an adult.
9	Gross assault	Grossly obscene pictures of sexual assault, involving penetrative sex, masturbation or oral sex involving an adult.
10	Sadistic/Bestiality	(a) Pictures showing a child being tied, bound, bestiality beaten, whipped or otherwise subjected to something that implies pain. (b) Pictures where an animal is involved in some form of sexual behaviour with a child.

Source: Taylor et al. (2001)

1)¹⁰. Based on ten levels of severity according to the increasing sexual victimization of children, the COPINE scale presents a continuum of material ranging from non-erotic and non-sexualized contents up to images portraying sadism or bestiality (Taylor, Holland, & Quayle, 2001).

Although this scale is not formally used by French law enforcement agencies, its approach appears to be particularly useful since it covers material that is not strictly illegal in nature but gives information about the way in which adults sexualize what otherwise may be quite innocent material (Taylor & Quayle, 2003). As revealed by studies of offenders' child pornography collections, although many individuals possess representations that portray sexual contact between adults and minors or children's genital areas, there are also several offenders who collect less explicit material, such as images depicting children in suggestive poses or showing non-sexualized content (e.g. photographs of a child in a bathtub, in swimming costumes, in adverting materials, etc.) (O'Donnell & Milner, 2007; Wolak, Finkelhor, & Mitchell, 2011; Macilotti, 2018b; Fortin & Proulx, 2019).

In other words, studies examining offenders' collections reveal that a wide range of representations are used by adults who are sexually interested in children to fuel their fantasies, and not all of these materials would be included within the legal definitions of child pornography. This raises a number of questions for investigators and forensic analysts who must determine whether an image is explicit enough to fit statutory provisions. Although French legislation does not provide a legal definition of "pornography", according to jurisprudence this term refers to images whose content presents a sexual nature¹¹. However, while proving that a given representation is illegal may be relatively easy when it emphasizes at least children's genital areas, assessing the "sexual nature" may become more difficult as soon as the images

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present less explicit scenes (see also Wells, Finkelhor, Wolak, & Mitchell, 2007; Kloess, Woodhams, Whittle, Grant, & Hamilton-Giachritsis, 2019). Furthermore, even if a given representation cannot be considered pornographic, it may nevertheless provide useful intelligence for the investigation. This is for example the case of materials displaying non-sexualized contents, nudity and erotic poses that correspond to the levels 1-6 on the COPINE scale (Table 1).

Representations defined as “indicative” or “nudist” refer to non-sexual material that comes mainly from legitimate sources such as television advertisements, clothing catalogues featuring children modelling underwear and family photo albums. The “erotica” level involves images displaying children in varying degrees of nakedness that has been surreptitiously taken by the offenders in safe environments such as playgrounds or beaches. The common trait shared by these materials is that they are not sexualized in their content. It is rather the way in which the person uses and looks at such images that makes them sexual in nature (Howitt, 1995; Taylor & Quayle, 2003).

Although they do not generally fall within statutory provisions, police investigators and scholars suggest such images should be considered attentively, as they can provide valuable information when it comes to understanding offenders’ behavior and detecting other possible offences. The context of these materials, the principal themes illustrated, the way in which they are organized and potentially produced, or the fact that the collector adds sexual details by drawing on them may be indicative of the degree of the offender’s sexual interest in children (Taylor & Quayle, 2003; O’Donnell & Milner, 2007; Lanning, 2010):

some pictures are apparently innocent (...) but if they are in folders with others clearly illegal, if they are carefully classified then ... maybe they are not pornographic, but they give us some intel about the suspect’s behavior. (Police officer: ID3)

one thing is downloading a child pornography video; a completely different thing is taking the risk to wait outside a school to take a picture (...) I’m not saying that the first act is not serious, but the second surely raises further questions. (Police officer: ID15)

Police investigators have additionally observed that some of this apparently non-sexualized content is, instead, an integral part of sequences of images in which children are forced to gradually reveal their body (see also Fortin & Corriveau, 2015). Colloquially defined as “modelling” or “borderline” materials, these representations range from images that portray fully, partially clothed or naked children usually in contexts suggesting a sexual purpose, up to materials that emphasizes children’s genital areas (levels 4-6 COPINE scale):

there are series of pictures of prepubescent girls who are not necessarily naked or there is a crescendo, the children are gradually undressed while the pictures are taken, but the poses are really suggestive. (Police officer: ID10)

From the 1970s, these representations have often been produced alongside more explicit content by semi-professional “studios” or “magazines”, especially during periods characterized by the absence or the relaxation of censorship laws (Tate, 1990; Taylor & Quayle, 2003; Wortley & Smallbone, 2006; Poulin, 2009). Moreover, with the increasing criminalization of child sexual images, a number of commercial websites and online spaces started to sell “modelling” content and erotic pictures of children in

order to avoid criminal prosecutions. As Taylor and Quayle note (2003, p. 7), this material appears “to have been very carefully produced to fall just within the limits of what constitutes legal pictures in the country that hosted the web site”.

However, images displaying erotic and “modelling” content are usually taken into account during police investigations not only because some of them can fit within statutory provisions, but also for the reason that the presence of such materials in a collection may point to other criminal offences and particularly child sexual abuse (Carr, 2003):

through analyzing pictures of naked children, we have discovered more egregious content (...) even physical assaults on minors. This is why it is important to consider these images too. (Police officer: ID10)

A study conducted by Wolak *et al.* (2005) in the United States showed that only 1% of people arrested for possession of child pornography had “softcore” images alone, but some of them had also sexually victimized children. Further, in a previous work, we analyzed one of the largest international police investigations against an Italian professional producer of child pornography (operation Koala), who used to advertise mainly erotic photographs and videos on his websites. This operation revealed that behind online spaces selling “modelling” content were more serious materials and offences. From the analysis of online communications and seized digital devices, law enforcement investigators identified a network of around 2,500 offenders from 28 countries who were involved not only in the distribution and collection of images often portraying sexual assaults against children, but some of them also in the production of these materials, either directly participating in the physical abuse or requesting tailor-made videos (Macilotti, 2018b).

In conclusion, only considering content that depicts explicit sexual acts when analyzing child pornography would exclude from the examination some of the images discussed above. However, since individuals sexually interested in children are also stimulated by non-sexualized representations, different criteria are used to assess “borderline” materials without criminalizing all images of children’s bodies that could be potentially used by adults to fuel their fantasies. According to law enforcement investigators, representations of naked or semi-naked children that do not depict sexual activities may fall under the legal provision of child pornography if they imply lasciviousness or a sexual purpose. Besides the objective content, this means considering the circumstances surrounding the collection of images and videos, as well as the way in which a given material suggests a sexual setting by depicting a child in allusive contexts or in provocative poses intended or designed to elicit a sexual response in the viewer:

there is nudity and ... nudity, the difference lies in the way in which nudity is showed and the context of the image, if it suggests a sexual purpose. (Police officer: ID4)

it is all about the general aspect of the picture (...) if it is intended to sexually arouse the viewer... suggestive poses, sexy scenarios, context of the collections. (Police officer: ID11)

Determining the Age of Children

The international and national effort in establishing child pornography databases and in sharing information has produced significant improvements regarding victims’ identification¹². However, in many child pornography cases police officers are not able to identify or contact the victims. Difficulties arise from

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the increasing amount of child abuse material that needs to be analyzed, from the technical resources used by offenders to hide their identity or encrypt their data, as well as from the type of specific offence under investigation:

identifying a child only relying on the content of the image, without having any other additional information, is really difficult. (Police officer: ID2)

cases involving thousands of images and videos downloaded for example through file-sharing software, where you do not have any clues about the origin or the location, it is difficult. (Police officer: ID15)

In the absence of information about the victim, determining whether the person portrayed is young enough to be considered a child can be quite complex (Wells, Finkelhor, Wolak, & Mitchell, 2007). The age assessment is generally based on the appearance of the individuals portrayed in the images and on their stage of physical and sexual development. However, police officers underline various factors that impact their decision-making process and give rise to several doubts (see also Kloess, Woodhams, Whittle, Grant, & Hamilton-Giachritsis, 2019).

Firstly, assessing the age by analyzing the physical appearance of a person can be particularly complex due to the characteristics of digital materials. Images may sometimes be of such a low quality that the physical stage of sexual development of the individuals depicted cannot be ascertained. Additionally, in many images the victim's face is hidden or the child's secondary sex characteristics as well as body parts are not always visible:

unfortunately, we are dealing with more and more videos where the face of the author and the victim are hidden (...) sometimes bodies are partially covered or the scenarios do not provide sufficient information. (Police officer: ID3)

In other content, facial features do not correspond to the physical development of the victim's body:

if I look at the face of some victims I think they are not children, but actually their bodies are not sexually mature. (Police officer: ID14)

Moreover, child pornography producers may use a broad range of deception techniques in order to increase or reduce the apparent age of the individuals depicted in the images. They can portray "barely legal teens" in child-like scenarios, as well as use makeup, lingerie and sex toys in order to present children as young adults (see also Poulin, 2009):

some girls especially from East or Asian countries are 18 years old (...) but they are disguised in such a way that they appear to be younger (...) school uniforms, pigtails, toys (...) in some series it is the opposite and children are portrayed like adults. (Police officer: ID6)

Finally, police officers can encounter a number of difficulties when the images depict adolescents:

when you deal with images of teenagers, deciding whether or not they are minors is difficult (...) It's true that we don't need to prove that they are actually underage, but even the judgment based on the apparent age is not simple. (Police officer: ID18)

As shown by studies on individuals arrested by law enforcement agencies, child pornography collections portray a wide range of victims. Most offenders collect material displaying prepubescent children, mainly aged between 6 and 12 years, but there are also individuals possessing images that depict minors who have clearly reached physical sexual maturity (Wolak, Finkelhor, & Mitchell, 2011; Quayle & Jones, 2011; Macilotti, 2018b; Fortin & Proulx, 2019).

In this respect, while deciding whether a person is underage is not complex when images portray toddlers or people in the developmental age of early and later childhood, the evaluation becomes problematic as soon as the digital materials involve postpubescents victims (Wells, Finkelhor, Wolak, & Mitchell, 2007; Cattaneo *et al.*, 2009). As Taylor and Quayle note (2003, p.3), *there are enormous individual variations in the normal development of secondary sexual characteristics, making visually based judgements about age very difficult*. According to some scholars, this could lead to some bias with a tendency to overestimate the age of adolescents in images (Fortin & Corriveau, 2015) and to more likely consider pictures portraying prepubescent children to be child pornography (Wells, Finkelhor, Wolak, & Mitchell, 2007).

Police investigators and forensic analysts say caution must be exercised in cases involving images that do not clearly fit within statutory provisions. In instances where the content of images and the bodily features of victims do not provide sufficient information, they consider a number of contextual factors in order to determine whether the person is a child or someone who appears to be a child. Useful indicators can be derived from the metadata of the digital materials, the background of the images and the circumstances in which materials are collected and organized. The investigators' decision-making process can also be supported by additional information drawn from their professional experience as well as from suspects' behavior and digital practices:

I consider if "borderline" images are collected along with materials clearly illegal. (Police officer: ID3)

I look at the technical aspects of the image, I look at the metadata. (Police officer: ID6)

I search for all the aspects that can help me understand the suspect, if he is interested in children (...) online communications, "boy-love" forums, browser history. (Police officer: ID17)

Youth-Produced Sexual Images

An additional issue in investigating child pornography offences concerns how to manage cases involving teenagers who use digital devices to create and share sexual images. Several studies highlight a dramatic increase of this "self-generated sexual material", as also stated by one of the law enforcement investigators in charge of the French child pornography images database (CALIOPE):

at the moment, what happens most often is teenagers who take pictures of themselves and then send them (...) these images end up circulating and we find them here in our database. (Police officer: ID7)

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Wolak *et al.* (2012) reported that in the United States the arrests for production of child pornography have more than quadrupled between 2000 and 2009, with the growth largely driven by cases in which young people produce images themselves, from an estimated 22 in 2000 to 1,198 in 2009. Quayle *et al.* (2018) analyzed the characteristics of child pornography images portraying children identified through police investigations in the United Kingdom and whose data had been submitted to Interpol and included in its database (ICSE). This study showed that, between 2006 and 2015, 44% of the images of identified children were self-taken and that, since 2010, the amount of self-generated content has exceeded each year more than 40% of the total number of images depicting known victims. In both studies, the majority of the self-generated sexual material involved adults who groomed children to participate in the production of pornographic material through seduction, manipulation, deception or threats, as well as other young people engaged in malicious and coercive conduct. However, some cases also involved children who created sexually suggestive images of themselves without any prompting or suggestion by a third party.

Some scholars therefore suggest that youth-produced images be classified into two categories: “aggravated” and “experimental” (Wolak & Finkelhor, 2011). The first category implicates criminal or abusive elements beyond the creation, sending or possession of self-generated material, and usually involves adults who solicit sexual images from minors or the abusive behavior of other young people. The “experimental” category, by contrast, does not involve adults and refers to youth-produced image cases where there are no abusive circumstances beyond the creation or sending of these materials.

In this regard, one of the first problems for police officers is that the cases coming to their attention may include all these types of self-produced images. In the absence of information about the context of production, deciding whether a given material is the result of abusive behavior or of a consensual act can be quite challenging:

when I analyze the data, I'm not always able to say if the teen's image is voluntary or not. Except from some videos, understanding the context of the production only on the basis of the visual material is difficult without any other information. (Police officer: ID17)

Moreover, while “aggravated” cases clearly constitute violations of child pornography laws and may also be accompanied by other harmful behavior (such as grooming, harassment or cyberbullying), “experimental” incidents do not necessarily have these dangerous implications and may raise a number of questions regarding their criminalization:

there are no doubts when an adult is involved, our law is clear. On the contrary, the case is different when the images have been shared between adolescents, maybe in the context of their relationship (...) it all depends on the situation, we need to distinguish abusive behavior from consensual behavior. (Police officer: ID18)

A research conducted in the United Kingdom with a representative sample of secondary school students (11-16 years old) showed, for example, that 16% of the minors interviewed had generated a naked or semi-naked image of themselves, and 69% of them had produced this material without any pressure or solicitation (Martellozzo *et al.*, 2017). Some sexually explicit materials may indeed be created and shared in the context of “sexting”, which is the most commonly used term for referring to communications of a sexual nature, including text messages, videos and images, sent via mobile phones and other digital devices (Ringrose, Gill, Livingstone, & Harvey, 2012). Despite the variety of

its definitions (Barrense-Dias, Berchtold, Surís, & Akre, 2017), sexting relates to a range of practices where self-generated sexual materials may be seen as alternative ways of expressing sexuality among young people (Villacampa, 2017). Although in some cases this content is created through some form of pressure or influence, the process of self-producing and sending sexual images may also take place in the context of romantic relationships, as well as may be perceived by young people as a form of flirting or as a way of establishing their identity by experimenting with sexuality (Cooper, Quayle, Jonsson, & Svedin, 2016; Macilotti, 2018a).

Regardless of the reasons driving youth sexting practices, consensual self-generated material still remains problematic. Images created for a private use may be subsequently distributed or posted online without the consent of all the protagonists featured, as well as be used to blackmail the youngsters depicted or to tarnish their reputations (Wolak & Finkelhor, 2011). In these cases, it is legitimate to criminalize the distribution or possession of such material since this behavior constitutes a form of sexual exploitation that can cause serious harm to children. However, even non-abusive sexting can have legal implications for minors who have been investigated or charged for child pornography offences in different countries (Sacco, Argudin, Maguire, & Tallon, 2010; Wolak, Finkelhor, & Mitchell, 2012; Shariff, 2015; Crofts, Lee, McGovern, & Milivojevic, 2015).

The problems surrounding non-coercive sexual material have also been underlined by police officers, especially because French legislation is not clear about the legal status of sexting and its potential consequences (Robitaille-Froidure, 2014):

our law does not punish the production of child pornography if the person portrayed is above 15 years of age, there is no abuse and the image is for private use. The problem is that these pictures are often taken precisely for sharing them with others. In my opinion, the provision is not sufficiently clear on this point (...) Its literal application could have serious consequences for adolescents. (Police officer: ID23)

As Villacampa notes (2017, p. 11), the absence of clarification about the legal status of sexting may give rise to *the paradox that laws designed to combat child pornography are now being used to punish children themselves for sexting*. Several scholars therefore suggest that consensual sexting among minors be decriminalized, and legal measures reserved solely for cases where there is evidence of malicious intent, exploitation or other abusive behavior (Gillespie, 2013; Shariff, 2015; Crofts, Lee, McGovern, & Milivojevic, 2015; Hessick, 2016; Villacampa, 2017).

This specific issue has also been addressed by some national legislation as well as by international legal instruments (Wolak & Finkelhor, 2011; European Commission, 2016). The 2011 European Union Directive, for example, allows signatory States the right to disapply its provisions on the production or possession of pornographic material involving children who have reached the age of sexual consent, when that material is produced and possessed with the consent of those children and only for the private use of the persons involved, in so far as the acts did not involve any abuse (art. 8.3)¹³. However, according to the European Commission report on the state of implementation of this directive (2016), only seven member States have chosen to apply this non-criminalization clause¹⁴.

Although the minors involved in producing or sharing self-generated sexual material do not necessarily end up being charged or convicted for child pornography offences (see for example Walsh, Wolak, & Finkelhor, 2013), consensual sexting among young people remains a controversial topic in many countries, particularly when specific clauses excluding children from criminal responsibility are not provided.

CONCLUSION

This chapter explored a range of issues related to the legislative and policing measures introduced to tackle child pornography. By discussing the opinions of a sample of French police officers, this chapter underlined specific challenges law enforcement agencies may encounter in investigating this phenomenon, and particularly in evaluating the content of child abuse images.

In France as elsewhere, techniques used to analyze such material are becoming increasingly sophisticated (Yar & Steinmetz, 2019). Law enforcement agencies are dedicating significant resources to expanding forensic capabilities by including a broad range of methods and tools designed to reduce the time needed to evaluate images and videos, as well as to enable police officers to focus on material displaying unidentified victims. Nevertheless, identifying the nature of pornographic images and ascertaining the age of children can be complicated by definitional challenges and by the volume and quality of data that require analysis. The unique features of the Internet, the increasing storage capabilities of digital devices and the use of anonymization and encryption techniques make forensic analysis extremely time-consuming and resource intensive. This can be a significant problem, especially on a local level where police officers do not necessarily work within a dedicated Internet child pornography unit, and are instead involved in a broad range of cybercrime investigations, all of them requiring specific resources and expertise.

A final challenge for law enforcement personnel concerns cases involving youth-produced sexual images. While self-generated material as a result of adults' sexual solicitation does not raise doubts in terms of law enforcement's response, French legislation is not clear about the legal status of sexually explicit images shared in the context of sexting among youngsters. The changing dynamics of child pornography mean that provisions need to be clarified in their definition and scope, and specific strategies need to be developed to help investigators in cases involving young people only. More importantly, any action designed to protect children requires a "joined-up approach" between all the actors potentially involved, such as families, educational communities, youth welfare services and children themselves. With regard to sexting, although it is important to increase awareness among youngsters of the potential consequences of producing and sharing sexual images, it is also essential to handle these practices as a part of a broader educational program designed to provide young people with the right resources to help them understand their social and romantic relationships in a critical way.

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KEY TERMS AND DEFINITIONS

Child: For the purposes of child pornography laws, any person below the age of 18 years.

Child Pornography: Any sexually explicit reproduction of a child’s image. Child pornography is a form of sexual abuse and sexual exploitation.

Computer Forensics: Forensic science that focuses upon the acquisition and analysis of legal evidence derived from computer systems and other digital devices.

Cybercrime: A broad term that refers to criminal activities committed using networks of electronic communication (e.g. the Internet) and digital devices.

Grooming: In the context of child sexual abuse, this term indicates the solicitation of children for sexual purposes. It refers to the process of building and establishing a relationship with a child in person or through ICT to facilitate either online or offline sexual contact with that person.

Internet: A collection of many interconnected information systems that transmit data over wired and wireless telecommunications networks all over the world.

Sexting: A neologism combining the words “sex” and “texting.” It is used to describe sexually explicit communications (e.g., text messages, videos, and images) exchanged via mobile phones and other digital devices.

ENDNOTES

¹ Within the National Police, the Central office for combating violence against the person (OCRVP), which has a specialist group working on child sexual abuse and exploitation; the Central office for combating crime related to information and communication technologies (OCLCTIC), the investigative division of the Sub-directorate for the fight against cybercrime (SDLC). Regarding the National Gendarmerie, the Internet crimes against children department (RAMI) within the Cybercrime investigation division (DLCC), currently incorporated into the Centre for the Fight against Digital Crimes (C3N).

² A/RES/54/263, 25 May 2000.

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- ³ ETS 201, 25 October 2007. It should be noted that the Council of Europe Convention on Cyber-crime (ETS 185, 23 November 2001) also addresses the problem of child pornography.
- ⁴ OJ L 335, 13 December 2011. This directive replaces the Council Framework Decision 2004/68/JHA.
- ⁵ The “Lanzarote Convention” defines as a “child” any person below the age of 18 years, but it provides for some exceptions. The signatory states have the right not to apply its provisions “to the production or possession of pornographic material involving children who have reached the age of sexual consent” when “these images are produced and possessed by them with their consent and solely for their own private use” (art. 20.3). Art. 8.3 of the 2011 European Union Directive includes a similar provision with regard to the production, acquisition or possession of such material.
- ⁶ The age of consent varies from 11 (Nigeria) to 21 years (Bahrain). In most Western countries, the age of consent is 16, although this does vary even within the European Union (e.g. 15 years in Croatia, Czechia, Poland, Slovakia, Slovenia, Sweden; 14 years in Austria, Bulgaria, Estonia, Hungary, Germany, Portugal, etc.) (European Commission, 2016, p. 7). Additionally, there is no legal age of consent in some countries because all sexual relations are forbidden outside of marriage (e.g. Iran, Pakistan, Afghanistan, Oman, Qatar, Saudi Arabia, Sudan, etc.).
- ⁷ It should be noted that some national laws prohibit any type of pornography, regardless of whether the individuals being depicted are adults or children (ICMEC, 2016).
- ⁸ According to Interpol’s website, this database contains information about more than 17,000 identified victims and 8,000 identified offenders. 54 countries and Europol are connected to the database (last accessed 15 April 2019).
- ⁹ United States, United Kingdom, Canada, Australia, Italy, Spain, Brazil, Chile, Indonesia, Romania.
- ¹⁰ This scale has been developed by a research group based within the Department of Applied Psychology at University College Cork in Ireland.
- ¹¹ See, for example, Court of Cassation, criminal chamber, 9 November 2005, n. 05-80.971.
- ¹² On January 2017, Interpol declared that 10,000 victims of child sexual abuse around the world have been identified through its database. According to its website, on December 2018 more than 17,000 victims had been identified (last accessed 15 April 2019).
- ¹³ This optional clause is also included in the “Lanzarote Convention” (art. 20.3).
- ¹⁴ Austria, Cyprus, Germany, Finland, Hungary, United Kingdom chose to apply this clause to both the possession and production of child pornography, while France only applies it to the production of such material (European Commission, 2016, p. 10).

Chapter 14

Crime and Victimization in Cyberspace: A Socio-Criminological Approach to Cybercrime

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ABSTRACT

The development of information technologies in recent years has transformed our society into a “hyper-connected space” in which the pitfalls, the risks, as well as the damages to the victims have grown exponentially. Identity theft, hacking, information piracy, threats to data integrity, on-line scams, or CEO fraud are the commonplace keywords that are part of the internet of things. Cybercrime can cause serious harm and long-term effects, whether the victims are individuals or companies. It is important to address the definition of “cybercrime,” since the term itself refers to a harmful behavior that is in some way related to a single computer or to a computer network and examine the main types of computer crimes in order to understand which countermeasures can be implemented to counteract these phenomena where the human factor is the fundamental component to promote the concept of “conscious attention” as a necessary resource to limit the risks of “cyber victimization.”

INTRODUCTION

The development of information technologies in recent years has transformed our society into a *hyper-connected space*: a new scenario within which activities are progressively shifting into the physical world. Internet, mobile apps and information technology are terms that pervade our culture by changing the social structure, attitudes and everyday life, such as communications, trade, finance, etc.

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Cyberspace has created new business opportunities and social change. It can be viewed as a *space-non-space*, consisting of three distinct layers where Government, defense organizations, society and the private sector interact. Technology, at the very bottom, builds the infrastructure: hardware, software and other technical component are the bone framework of the net and define the borders of cyberspace. The middle layer, the social one, is the *non-physical-space*, where the vast majority of people's day-to-day activities take place online. The top layer is the governance, a strategic level that focuses mainly through describing in the guideline, monitoring it, and where economic or politics programs is drawn up by countries, governments and high tech company. These actors cooperate and compete in the marketplace. It is the level where authority, rules and procedure are defined. Three parallel, independent layers but in continuous interaction with each other. Any changes in a given level result in immediate feedback and even faster adaptation. Crime is a breakdown and can take place in each of these three layers at once or singularly. Threats are global and indifferent to national borders. A quick response time is needed in order to maintain stability and continuity among layers. Crime can be made against an infrastructure, people, business enterprises or governments, generating devastating effects on the national economy. Interconnectedness of information and communications systems and the global nature of the threats demand international cooperation and convergence to tackle cybersecurity risks. Cybercrime can cause serious harm, whether the victims are an individual or a company, and to the same extent can generate victimization processes with long-term effects on the victims.

This chapter will analyze it through a theoretical framework, crime in cyberspace with a socio-criminological approach, examining the aspects of computer crime with particular reference to the theories of Routine Activity and Rational Choice. Furthermore, it will present recent developments in the field, examining Jaishankar's theoretical proposals of the *Space Transition Theory of Cyber Crime* (Jaishankar, 2007a). The criminological analysis therefore will provide an in-depth understanding of the concept of cybercrime, providing an analysis of these antisocial behaviors and a brief comparative overview of international legislation and cybercrime typologies. The virtual dimension of computer crime presents, at times, typical characters of physical crime, sometimes different, depending on whether the unlawful action is carried out towards or by a computer system or network. Distinguishing whether the computer system in cybercrime is a tool or a target of the illegal action is fundamental in order to recognize which type of offense can be prosecuted. The crime scene nowadays is broad, digital evidence has become more ephemeral, volatile and easily alterable. No longer are there geographical boundaries and obstacles face between the criminal offense and the effect of the unlawful act: technology, different jurisdictions, skills, people. Actions needed to prevent this new form of crime require collaboration and coordination of a multiplicity of subjects. On the one hand, those who are called to intervene promptly in the event of an IT incident, such as law enforcement or the judicial system, and on the other hand, the civil society, the individuals who use new technologies daily and need to be aware of victimization issues.

THEORETICAL FRAMEWORK

Before analyzing the phenomenological aspects of Cybercrime, it seems necessary to expose a theoretical framework and delineate the criminogenesis of antisocial behavior in the network society. Recent studies have shown that it is possible to apply the Cohen and Felson Theory of Routine Activities Model within an *a-dimensional* environment such as Cyberspace (Eck & Clark 2003; Junger, Montoya, Hartel & Heydari, 2017).

The original elaboration of this theory is inspired by the model of Cultural Criminology proposed in the Chicago School tradition, which postulates a convergence between crime, time and space and identify a proximity element or a direct link between aggressor, victim and antisocial behavior (Shaw & McKay, 1942; Eck & Weisburd, 1995). A criticism of the application of this model in the computer crimes environment firstly highlights the absence of direct contact between the criminal and the victim and secondly the temporal asynchrony between offense and its consequences (i.e. victimization process) (Reyns, Burek, Henson, & Fisher, 2011).

Eck and Clarke (2003) were arguably the first to identify this shortcoming in the traditional routine activities approach when seeking to explain crime and victimization in a fluid space like the Internet, an environment where both time and space are relative. The shortcoming, they argued, could be accounted for in the way that networks as integrated locations might be conceived as a composite place—a space in at least a symbolic sense—where offender and victim meet by proxy, but with sufficient depth of contact to invoke the routine activities model (Arntfield, 2015, p.375).

According to the theory of routine activities, in order to commit a crime it is necessary that three factors exist simultaneously: a supply of motivated offenders with criminal intentions and the ability to act on these inclinations, the availability of appropriate opportunities such as suitable victim or target and the absence of a capable guardian who can prevent the crime from happening. These three elements must converge in time and space for a crime to occur: the unavailability of one of these three factors prevents the crime from being committed. The presence of a capable guardian is held to deter individuals from offending. Guardianship can be the physical presence of a person who is able to act in a protective manner, such as a law enforcement officers or security guards, who plays a formal social control. It can be also a subject (individual or group) involved in an informal social control or, at least, can be in the form of passive mechanical devices such as a fence, a video surveillance or security systems. The guardian's purpose is to limit a criminal's access to suitable targets.

The essential aspect of routine activity theory is the interaction between motivation, opportunities and goals. The presence of guardians will discourage most offenders from attempting to commit an offense. The presence of opportunities associated with a lack of protection increases the criminal motivations and the likelihood of an ongoing crime so, a person or a social group, is at risk of victimization when in proximity of a potential offender, “proximity criterion”, is an interesting target from a symbolic or economic point of view, “remuneration criterion”, and is not sufficiently protected, “availability criterion” (Scarscelli & Vidoni Guidoni, 2008).

It must be considered that in the computer crimes environment these three conditions occur very frequently.

The suitable target by criminals is the “data”, in its broadest sense of the word, such as a single computational element, that represents the value of information itself, personal or financial data, industrial or scientific secrets. The target can also be intended as a portion of programming code, a script, that automates the execution of tasks, allowing to control network devices with devastating consequences. This days, “data” and “information” are the focus and assume an immeasurable value and an appeal that builds the “needs wants and demands” in criminal environments.

The frequent lack of adequate and capable guardians (technologies or persons) the huge availability of *unaware* victims, generates the necessary environmental and conditions to realize the offenses.

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The etiological analysis of Cybercrime can be placed within the Rational Choice Theory, in the broader criminological paradigm of the Classic Sociological School, with particular reference to Becker's Economic Theory of Criminal Behavior. The theorists of Rational Choice postulate that an action is considered rational when the social actor, in front of different courses of action, undertakes what in his opinion will provide the best result. In this sense, the deviant action becomes the rational behavior that appears to the actor the most appropriate choice to achieve its goals (Elster, 1993).

The Economic Theory of Criminal Behavior (Becker, 1968) considers the deviant such as a consumer within the free marketplace. The criminal in this sense is defined as that rational actor driven by the desire to maximize his own well-being.

Becker synthesizes the Economic Theory of Criminal Behavior through the formulation $O_j = (pj, fj, uj)$, where the number of crimes committed (O) by a person at a particular time (j) is function of the probability (p) to be identified, arrested and convicted for his behavior, of the sanction (f) envisaged for that type of crime and other cumulative variable (u). The variable (u) identifies, for example, the utility resulting from performing illegal or legal activities, but also the will to commit that specific illegal act. Based on Becker's postulates, an increase in the probability (p) of being identified, or an increase in the foreseen sanction (f) or penalty following a conviction, should limit or reduce the utility expected by offender in the execution of the crime.

Ontologically, computer crime is characterized by rapid execution, by a strong level of anonymity as well as labile environment, inconsistent and jagged borders, which reduces the possibility of fast and certain identification of the offender as well as adequate and prompt action against it. The almost total absence of harmonization of the rules of substantive law at international level and the difficulty of collaboration between police forces among different countries greatly influences the success of the investigative activities, with consequent repercussions in criminal judgments.

Recent studies on the causal factors of crime in cyberspace have shown that the analysis of the phenomenology of computer crimes requires a new and broader reading in theoretical terms.

Jaishankar (2008) considers cybercrime as a new form of crime that develops into a new space, the cyber space, which presents characteristics and peculiarities different from what is considered physical space (Jaishankar, 2007a, 2008).

The Indian criminologist proposing the "Space Transition Theory of Cyber Crime" highlights how the analysis of this new type of crime cannot ignore seven fundamental postulates, pillars of what he defines Cybercriminology: a new sub-discipline included within of the broader theoretical framework of Criminology.

Cybercriminology is understood by the scholar as *the study of causation of crimes that occur in cyberspace and its impact in the physical space* (Jaishankar, 2007a, p.1).

Jaishankar assumes that the behavior of people changes in the transition between the physical and the virtual space because Space Transition Theory is an *explanation about the nature of the behavior of the persons who bring out their conforming and non-conforming behavior in the physical space and cyber space* (Jaishankar, 2007b, p.7).

He postulates that:

1. Persons, with repressed criminal behavior (in the physical space) have a propensity to commit crime in cyberspace, which, otherwise they would not commit in physical space, due to their status and position;
2. Identity Flexibility, Dissociative Anonymity and lack of deterrence factor in the cyberspace provides the offenders the choice to commit cyber crime;
3. Criminal behavior of offenders in cyberspace is likely to be imported to physical space which, in physical space may be exported to cyberspace as well;
4. Intermittent ventures of offenders in to the cyberspace and the dynamic spatio-temporal nature of cyberspace provide the chance to escape;
5. Strangers are likely to unite together in cyberspace to commit crime in the physical space; (5b) Associates of physical space are likely to unite to commit crime in cyberspace;
6. Persons from closed society are more likely to commit crimes in cyberspace than persons from open society;
7. *The conflict of Norms and Values of Physical Space with the Norms and Values of cyberspace may lead to cybercrimes* (Jaishankar, 2007b, p.7).

Cyberspace is therefore to be considered as a new and different *locus commissi delicti* within the concepts of *Identity Flexibility*. Anonymity produces an inhibitory effect and a lack of deterrence factor provides the offenders with the choice to commit cybercrime (Jaishankar, 2008, 2011).

DEFINITIONS AND CLASSIFICATIONS OF CRIME IN NETWORK SOCIETY

The multidisciplinary aspect that characterizes the study of phenomena related to computer crime, the lack of contact between the perpetrator of the crime and the victim and the cause-effect asynchrony, generates a remodulation of the concept of known space and time, limiting in some cases the field of analysis.

The technological evolution and the ever-closer convergence between electronic devices and communication networks has gradually changed the concept of criminality to the point where it is unlikely that during a criminal investigation there are no digital evidences. Terms such as computer crime, computer related crime, high tech crime or net-crime are often used as synonyms to indicate criminal activities involving devices with high technological impact (Clough, 2010).

Numerous authors, Clough (2010) of all, believe that the most appropriate term to describe this criminal phenomenon is “Cybercrime”, referring to the three-level classification provided by the United States Department of Justice (US DOJ, 1997). In the “Legislative Analysis of the 1996 National Information Infrastructure Protection Act” the term Cybercrime is used to indicate those crimes in which the computer or communication networks are the target of criminal act instead of tool to implement this activity. Otherwise, electronic devices or communication networks can incidentally be involved in the implementation of criminal activity and analyzing these technologies it will be possible to acquire and seize evidences relating to the illegal activity itself, for example access log, mobile devices activity, telephone records, etc. (Tonello, 2015).

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The US Department of Justice tripartite classification can therefore be summarized in “computer crimes”, “computer-facilitated crimes” and “computer-supported crimes” (Clough, 2010, p.10).

The Council of Europe (CoE) in 2001 within the “Budapest Cybercrime Convention” identifies with the term cybercrime all those criminal activities that can interact on the security of data and networks, infringe copyright, but also concerning fraud committed through the computers or networks and child pornography.

In the summary of the Treaty it can read:

The Convention is the first international treaty on crimes committed via the Internet and other computer networks, dealing particularly with infringements of copyright, computer-related fraud, child pornography and violations of network security. [...]. Its main objective, set out in the preamble, is to pursue a common criminal policy aimed at the protection of society against cybercrime, especially by adopting appropriate legislation and fostering international co-operation (CoE, 2011).

The purpose of the Treaty is to provide a harmonization of the rules of substantive and procedural law in order to ensure international cooperation to counter cybercrime.

The first articles of the Treaty provide definitions that summarize the complex of criminal activities concerning computer crimes phenomena covered by the agreement. In particular:

1. Offenses against the confidentiality, integrity and availability of computer data and systems:
 - a) illegal access
 - b) illegal interception
 - c) data interference
 - d) system interference
 - e) misuse of devices.
2. Computer-related offenses:
 - a) computer-related forgery
 - b) computer-related fraud.
3. Content-related offenses: offenses related to child pornography
4. Offenses related to infringements of copyright and related rights. (CoE, 2011).

Gordon and Ford (2006) more broadly define cybercrime as any crime that is facilitated or committed using a computer, network, or hardware device as, according to the proposed model, the offense can be carried out both on a “computer alone” and in any other “non-virtual” location. In this sense the hardware device can be considered as the “agent of crime” but also the instrument that facilitates the crime, “facilitator of the crime” or the “objective of the criminal conduct” (Gordon & Ford, 2006 p.2).

The scholars identify two types of cybercrime that define *Type I* and *Type II*.

The Type I cybercrime is, from the perspective of the victims, generally a singular event, it is often placed by *crimeware* programs (keystroke loggers, viruses, rootkits, etc.) through or exploiting system vulnerabilities. Instead Type II cybercrime includes activities such as cyberstalking, harassment, child predation, extortion, corporate espionage, planning or carrying out terrorist activities online, etc. and it is generally facilitated by programs or software that do not fit under the *crimeware* classification and furthermore, from the perspective of the user, there are repeated contacts or events (Gordon & Ford,

2006, p.3). It is clear that it is extremely difficult to provide a single definition of Cybercrime. What is crime and what is cybercrime?

Grabosky (2001) first and Brenner then (Brenner, 2004), concluded that cybercrime resembles traditional crime as *old wine in new bottles*. Cybercrime stands out with to crime for a lack proximity between the victim and the perpetrator when an offense is committed (Brenner, 2004). However, overall, analyzing the effects of the unlawful conduct there is no a real border since all those offenses against the *confidentiality, integrity and availability* of computer data and systems have a direct impact on the real world, in particular on the economic aspect. Examining an illegal access or a data interference to a hypothetical electricity supply system company or to the national health system servers, effects can be observed both on electronic systems, with denial of availability of services, but also on people who cannot use these services. Similarly, identity theft of credit card's scam affects people, cardholders, but also to the banking system itself, resulting in the blocking of payments, replacement of the credit card and account, etc. Also is for computer-related fraud or computer-related forgery and even for offenses related to infringements of copyright and related rights. Cybercrime like crime has direct and indirect financial cost impacts such as direct and indirect victims.

A broader discussion could be made about content-related offenses such as child pornography. In this case, computers and networks are only a tool or a medium that is not always necessary but useful for deviant behavior. The analysis of this phenomenology, not the subject of this chapter, will necessarily have to be oriented towards two directions: a first one that will refer to a criminological-clinical theoretical framework, analyzing child molester behaviors and motivations. A second one must necessarily refer to the economic context of the illegal market of the media production through the children sexual exploitation (i.e. pedo-business).

In short, cybercrime can be regarded as a peculiar expression of crime though technologically oriented. The tools may change, however the aims are similar: to put in place multi-offensive anti-social behaviors, whose contrast requires a strong specialization for Law Enforcement and a high international cooperation as well as a harmonization of the rules of international law. Overall, cybercrime is crime mediated by networked technology (Wall, 2007) and it be considered as old forms of crimes such as theft, fraud, harassment, finds a new way of life through cyberspace and information technology (Stalans & Finn, 2016).

CYBERCRIME AND CYBER VICTIMIZATION

There are common elements that provide fertile ground for the development of different types of cybercrime. First of all, computer networks, Internet among all, allow contact, even if virtual, between many users in a quick, simple and low-cost way.

It is estimated that to date 4,4 billion users are connect to the Internet, it means 56,8% of the world population is online and 1 million new users join the online community every single day (Internet World Stats, 2019), there are now over 8.98 billion mobile connections worldwide, which surpasses the current world population of 7.69 billion implied by UN digital analyst estimates (GSMA Intelligence, 2019).

The latest data shows that three-quarters of the world's internet users buy something online each month, with more people now making purchases on mobile devices than on desktop and laptop computers; 2.82 billion people around the world bought consumer goods like fashion, groceries, or electrical appliances online in the past year and representing growth of 3% versus 2017. The amount of money for

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online consumer goods purchases now exceeds US\$1.75 trillion per year, up 14% versus the previous 12 months (Datareportal, 2019). Certainly, there are few companies that do not use wired technologies for the production of goods or services, and it is safe to say that no government agencies in the world are isolated from the network and IT services. Secondly, new technologies have become accessible to everyone, even people without particular skills with programming environments and textual interfaces. In the past these tools were instead necessary to be able to use electronic devices.

Recent studies (Junger, Montoya et al., 2017) show that digitalization leads to a normalization of victims of cybercrime, meaning that digital victims are more similar to the average citizen than the victims of traditional crime. A recent study testing the mediating effects of Routine Activities showed that victims of traditional crimes are often young, male, with low education, less wealthy and with tendencies to spend more time outdoors (Bunch, Clay-Warner & Lei 2012). Instead, cybercrime victims are both male and female of all ages, even if the victims of online fraud are more often female and older when compared to victims of traditional fraud (Junger, Montoya at all, 2017). The scholars highlight behind this normalization is due to computers are present everywhere and people spend online a considerable amount of time, thus people of different socio-economic status have same chances being victimization. Some online behaviors increase the risk of victimization such as time spent online, tendency to easy click on no safe links or attitude to purchasing goods looking for best prices. Time spent on social media or forums increases the risk of harassment and, as it is clear, attitude and time spent on online shopping or online banking can increase risk of fraud or identity theft (Pratt, Holtfreter & Reisig, 2010). The researchers affirmed that there is a crime chain with multiple victimization applies to cybercrime and often a criminal event connects to a subsequent, for example: *phishing or hacking is a step to steal someone's identity in order to withdraw money from a bank account.[...] other studies suggest repeat victimization; for example, some websites being repeatedly attacked* (Junger, Montoya at all, 2017, p.2).

It is known that anonymity is one of the factors that can facilitates the commission of crime. Technically it is possible to trace any telematic connections and identify origin and recipient, but there is still a *de facto* anonymity due to difficulties in international judicial and Law Enforcement cooperation. The fragmented nature of networks, internet firstly, facilitates criminal activity as there is no a centralized *corpus iuris* to establish the norms for lawful and unlawful behaviors (Stalans & Finn, 2016).

Some attempts to harmonize regulations at international level, such as the aforementioned Council of Europe Cybercrime Convention, are intended to fill these limits but still clash with the extreme speed of criminal action as well as with fragility and the fast dispersion of digital evidence.

Brenner (2004) then points out that at the local level the strategies of contrast to cybercrime are developed to counter criminal actions within the territory and national jurisdiction, even though criminal actions often originate from national borders. Furthermore, the technological expansion and the economic development deriving from "New Co." has favored the growing, in some geographical areas, of *safe haven*, where high levels of anonymity are guaranteed, allowing bogus identity useful for criminal actions. Safe haven, such as offshore havens, fiscal paradises or tax havens, are terms already known in investigations concerning economic crimes. As is difficult for investigators to acquire financial information within state-nation systems whose economy is based primarily on the import and store of foreign capital by securing banking secrecy (McIntyre, Phillips, Baxandall, 2015), in the same way it is hard to trace and size digital evidence through the world wide web.

In the last years European Union and the United States have understand the need for international cooperation and harmonization in protecting information security. U.S. and the EU cooperate on cybersecurity and cyber-defense in numerous assemblies. Both are signatories to the Council of Europe

Convention on Cybercrime and collaborate on cybersecurity in multilateral organizations. At the EU level, this consists primarily of legislation that takes effect in 2018: The Network Information Security Directive (NIS Directive) and the General Data Protection Regulation (GDPR). The EU NIS Directive (Directive 2016/1148 of the European Parliament and of the Council of 6 July 2016, Concerning measures for a high common level of security of network and information systems across the Union) declares that *the global nature of NIS problems, there is a need for closer international cooperation to improve security standards and information exchange, and promote a common global approach to NIS issues*. In the United States the Report by the Commission on Enhancing National Cybersecurity, highlighted that *the growing convergence, interconnectedness, interdependence, and global nature of cyber and physical systems means that cybersecurity must be better managed in all contexts—international, national, organizational, and individual* and recommended that *the transnational nature of the internet makes international cooperation essential to an effective and secure digital economy* (NIST, 2016, pp.4,47).

Under NIS directive, member states must adopt a national cybersecurity strategy that ensures high levels of security for computer systems and networks with particular regard to those deemed essential, designating competent authorities to monitor national application of the directive, and a single point of contact for cooperation across member states. The legal framework concerning cybersecurity in the United States is composed by numerous federal and state laws, regulations, and policies. Some applying across sectors and others aimed at specific government or private sectors. The National Institute of Standards and Technology (US NIST) plays an important role promoting innovation and competitiveness, developing technical standards. NIST has been develop a set of methodologies, procedures, and processes that would align with business and technology needs for cybersecurity. The framework was developed through a collaboration with industry, academic, and government stakeholders. As in EU, data breach notification is a central feature of U.S. privacy and data protection norms.

PHENOMENOLOGY OF COMPUTER CRIMES

Cybercrime is generally considered as crime aimed at increasing financial gain and focused primarily on obtaining personal information that can easily be converted into cash. As has been said before cybercrime is a multi-offensive conduct where the actors are driven by various intents having different goals and skills. To understand phenomenology of crime on cyberspace it seems useful to provide a typing of the actors involved in. Analyzing motivation, target and *modus operandi*, some literature show a three-level classification of offenders: cybercriminal, competitors and cyber espionage agents, and hacktivist (Friedman & Bouchard, 2015).

Cyber criminals are driven to obtain financial return. They use crimeware software tool such as malware and high skilled methodology such as exploits “zero day” vulnerabilities, credential escalation or social engineering attacks like phishing, to stole credit card or financial accounts data, personal information or user login credentials, etc.

Competitors and cyber espionage agents are aimed to obtain commercial, economic, political or military advantage. They stole information, intellectual property or adversary credentials that can be used to shortcut product development, win competitive bids, anticipate business strategies, or to gain advantages in military or political struggles. Cyber espionage has long been known to military organizations and federal government agencies, now it is being detected by an ever-widening circle of companies that bump up against foreign competitors (Friedman & Bouchard, 2015 p. 14). That illegal activity can

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be performed by commercial companies, by government or contractor agents on behalf of commercial companies, government and military organizations. They use same crimeware technology and tools such as cybercriminals.

Hactivist are moved by political beliefs or ideological motivations to discredit or damage opponents. Their efforts are aimed at compromising computer systems, networks or critical infrastructures. Nowadays few enterprises, companies or governments are immune to this disruptive phenomenon.

Hactivists' goal is to steal classified information and publishing in the websites or seeking to make systems or networks unavailable by temporarily or indefinitely disrupting services and resources (Distributed Denial of Service attack, DDoS). Denial of service is typically accomplished by flooding the targeted with massive requests in an attempt to overload systems and prevent legal access from being fulfilled. Attackers often use crimeware or malicious software to capture classified information or credentials. Hactivism is a cultural ideological movement and offender can be a lonely one or groups united for same intents, beliefs and goals. Organizations like Anonymous, for example, came into notoriety in 2008 with *Operation Chanology*, an attack against the church of Scientology. Since then there are many attacks that have been attributed to the group against different targets with multiple ideological aims. The organization is globally distributed with initiatives and operations started by individual groups. People lend a hand where they have capabilities and leaders seem to be both naturally selected as well as being historically connected with the organization. The group focuses on high anonymity on hiding IPs and people identity.

It is important to note that even if some authors include hacktivism within cybercrime, others argue that this approach is debatable: depending on the situation or the point of view, cyber hacktivist groups such as the mentioned "Anonymous" can be alternatively seen as criminals or civil rights protectors (George & Leidner, 2019). However, the aim of this chapter is to analyze the effects of antisocial behavior in the digital environment and the efforts to reduce that by social control agencies. In this regard the intents or goals that drive actors are not the focus of this analysis, but the poly-victimization conducts are. Cyber hacktivist actions produce various impacts to many subjects such as individuals, governments or institutions with devastating economic, political and social consequences, so there is a strong linkage between cybercrime and hacktivism seen as a high tech multi-offensive conduct.

Types of Computer Crime in Brief

To examine the different types of computer crimes it seems necessary to highlight some terms that can characterize the attacker's *modus operandi*.

Term *vulnerability* refers to a known weakness of an asset that can be exploited by one or more attackers. It can be a known or unknown issue that allows an attack to be successful. Vulnerability can concern computers system, devices, networks or can also be at organizational level. If it involves technologies, to prevent an attack, it is necessary to interact on a technical level by evaluating the reliability of the systems and protecting the network with specific devices, updating the operating systems and avoiding the use of potentially dangerous software. If the vulnerability is at an organizational layer, it is necessary to adopt protocols and procedures that reduce the risks. A typical example of organizational vulnerability is not to eliminate credentials of users who no longer have authorization to access systems, such as former employees or employees who have changed roles or duties. Vulnerability assessment is critical to ensuring security systems by identifying weak points and developing strategies to respond quickly to threats.

Threat refers to a set of circumstances that can potentially damage a system, a device, or a network. There are three main types of threats: natural threats, such as earthquakes, floods or atmospheric events in general, which can cause considerable damage to structures but also to computer systems; unintended threats, such as in the case of an organization, an employer who accesses to unauthorized information and then intentional threats. In IT field there are many examples of intentional threats including spyware, malware, or actions of a dissatisfied employee. Furthermore, worms and viruses are also classified as threats, because they could potentially cause damage to a computer system through exposure to an attack. *Risk* refers to the potential for loss or damage when a threat exploits a vulnerability. Risk can also be defined as follows: $Risk=f(Threat \times Vulnerability)$.

Therefore, an attack is any action exploiting a vulnerability to realize a threat involving the *availability, integrity* and *confidentiality* of the data. Countermeasures are procedures, methods, actions, devices, and software that allow to remove or reduce vulnerabilities and limit the risks.

Availability, Integrity and Confidentiality, also known as the AIC triad (or sometimes CIA triad, but it is often confused with the US Central intelligence Agency), is an information security model that define policies within an organization to ensure data and business continuity. Confidentiality is a set of rules that limits access to information only by authorized people, integrity is the assurance that the information is trustworthy and accurate, and availability is a guarantee of reliable, continue and correct access to the information. Security in IT field is a collect of technical and organizational rules, policies and procedures based on AIC triad. Firstly is necessary assessment of the context: of the structure and organizational model such as the geographical distribution, the organizational units, the roles, the competences and the responsibilities, but also of its aims, and mission; furthermore a vulnerability assessment of physical and logical resources, such as systems, users classification and services and information access rights.

The main cyber-attacks can be subdivided according to the previously indicated classification: computer as a target or computer as a tool.

Computer as a Target

When computer system is a target, malware is one of the most common cyber-attacks. Literally the term comes from malicious software. Malware is a program developed with the purpose of unauthorized access to a computer and taking control of it. Malware can also be used to manage attacks distributed to sensitive targets. This type of threat is spreading globally and constantly over time. Symantec in the “2019 Internet Security Threat Report” estimated that there are over 140 millions of Windows computer system malware and over 4 millions of malware that can compromise Apple systems. Cost of malware attack and his different variants increase by years. Accenture (2019) in the “Annual cost of cybercrime study”, found that the total value at risk from cybercrime is US\$5.2 trillion over the next five years. A destructive variant of malware is the malicious software that is called Ransomware or Crypto Locker. Ransomware are trojans that target different systems in order to encrypt files on computers. This type of cyberattack has paved the way for a new generation of complex and dangerous computer security threats. Crypto Locker is typically spread and delivered through social engineering and user interaction. Opening a malicious email attachment, clicking on a malicious link within an email or on a social networking site. The malware can be disguised as fake email attachments which appear to be legitimate correspondence. Usually the source seems from reputable companies such as banks and other financial institutions or government agency. Attackers will use email addresses that will tempt a user to read the email and open the attachment. Malware infects computers and restricts their access to files by cryptogra-

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phy system unless a crypto-values ransom is paid. *NotPetya* is the name of one of the most last disruptive malware, infected firstly Windows computers in Ukraine. Analysts found that it is introduced in 2017, and alleged to be from Russia. The Malware spread across Europe causing billions of dollars' worth of damage, encrypting everything on the hard drive, and it spreads on its own accord rather than in an email attachment. Nowadays is still infecting numerous device all over the net. The NotPetya infected computers, show message says:

If you see this text, then your files are no longer accessible, because they have been encrypted. Perhaps you are busy looking for a way to recover your files, but don't waste your time. Nobody can recover your files without our decryption service.

Nowadays Encryption technologies are large used both in cybersecurity and in cybercrime. Encryption can be used to protect data and systems from threats, furthermore can be used to hide illegal conducts, communications within cybercriminals or underground transactions, such as in dark web, using cryptocurrencies. Numerous malwares use encryption technologies to restrict access to victim's data for ransom.

Ransomware attack is the new business model for cybercrime, and is a global phenomenon. The "2019 Official Annual Cybercrime Report" analyzed that at the end of 2016, a business fell victim to a ransomware attack every 40 seconds. Cybersecurity Ventures predicts that will rise to every 14 seconds by 2019 and every 11 seconds by 2021. In 2017 the FBI estimated that the total amount of ransom payments was approaching \$1 billion annually (Herjavec Group, 2019).

DDoS or Distributed Denial of Service, is a type of attack that has the purpose of blocking the computer or the attacked network, preventing the system from functioning properly, through a real bombardment that compromises the functionality. In DDoS attack multiple compromised computer systems storm a target, such as a server, government website or other network resource, and cause a denial of service for users of the targeted resource. The flood of incoming messages, connection requests or malformed packets to the target system forces it to slow down or crash and shut down, thereby denying service to legitimate users or systems. DDoS attacks are carried out by numerous threat actors, individual criminal hackers or organized crime. A Kaspersky Lab analysis (2018) shows that the financial implications of reacting to a DDoS attack in 2017 was \$2.3 million for enterprises, compared to \$1.6 million in 2016. Meanwhile, the financial implications of reacting to a DDoS attack last year was \$123,000 for SMBs, up from \$106,000 in 2016.

Computer as a Tool

Many other types of crime can be attempted by using computers. As Susan Brenner highlight in "old wine in new bottles" (Brenner 2004), these types of cybercrime resembles traditional crime in some aspect.

Fraud and identity theft are most common offenses on the cyberspace using computer system as a tool to carry out the illegal action. According to Javelin Research (2017), in the *2017 Identity Fraud: Securing the Connected Life Report*, 15.4 million Americans were victims of identity theft in 2016, as long as 2018 with 16,7 million victims with a stealing amount of \$16,8 billion with an increase of 8% (Javelin Research, 2018). Identity theft has been among the top consumer complaints with the Federal Trade Commission (FTC) for the last 17 years, and ranked as the most consumer complaint from 2000 to 2015. Identity fraud or ID theft can be described as the use of stolen identity in criminal activity to obtain goods or services by deception. Criminals use identity stolen information to open bank accounts

or obtaining credit cards, loans and state benefits. Data can be used to scam other victims with bogus identity useful for criminal actions.

A more dangerous variant (in economic terms) than identity theft is what is called CEO fraud, Business E-mail Compromise (BEC) or e-mail Account Compromise (EAC). CEO Fraud represents a very high threat and risk for companies, generating unimaginable economic losses. CEO Fraud is a scam in which cybercriminals spoof company email accounts and impersonate executives to try and fool an employee into executing unauthorized wire transfers, or sending out confidential tax information. The scam is carried out with business e-mail accounts compromise. Through social engineering or computer intrusion techniques, offenders are able to obtain sensitive information about their target. The scam may not always be associated with a request for fund transfer. A variation of the scam involves compromising legitimate business e-mail accounts and requesting Personally Identifiable Information or Wage and Tax Statement forms for employees. The BEC or EAC is targeting small, medium, and large business and also personal transactions. According to FBI statistics CEO fraud is now a \$12 billion scam. Between December 2016 and May 2018, there was a 136% increase in identified global exposed losses. The scam has been reported in all US states and in other 150 countries. Fraudulent transfers have been sent to 115 countries. It appears Asian banks located in China and Hong Kong are the primary destinations of fraudulent transactions, however financial institutions in the United Kingdom, Mexico and Turkey have also been identified recently as prominent destinations (FBI-IC3, 2018).

CEO Fraud or BEC is a typical phishing variant also called “whaling”, because it looks for “big fish” (the company executives). It appears like a legitimate request for a bank transfer sent from the compromised account of a high-level corporate executive, such as CEO or CFO, to an employee within the company, who is generally the person that processes such requests. Another variant is the Business Contacts through Compromised e-mail (BCCE). The employee business e-mail is violated by criminals maybe because it is used both for personal and work communications. Offenders through employee’s e-mail send numerous requests for payment of fake invoices, modified with the bank accounts controlled by fraudsters, to suppliers identified by the violated e-mail contact list. The requests appear legitimate and the payment carry out to the criminals’ accounts. BCCE as a multi-offensive conduct produces victims in the violated e-mails company and in the supplier company.

In the Business Executive and Attorney Impersonation, victims are contacted by scammers who present themselves as lawyers or representatives of law firms and claim to deal with confidential or urgent matters. Victims are pushed by the criminals to act quickly and secretly in managing the transfer of funds. This type of scam can occur at the end of the working day or week and be scheduled to coincide with the closure of the activities of international financial institutions. Risk reduction also depends on increasing awareness of potential victims of dangers and threats.

CONCLUSION

Cybercrime is a major global security challenge. The rapid evolution of tactics and technology adopted by cybercriminals requires integrated and common policies by numerous actors. This challenge requires unprecedented collaboration among stakeholders: governments, companies, vendors, suppliers, customers and researchers. Notwithstanding all the efforts of the international community, the CoE Convention of Cybercrime stands today as the only multilateral treaty imposing obligations to states in the way they address malicious activities in cyberspace. Despite the fact that it was conceived and adopted by

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member states of the Council of Europe, the Convention is open to non-CoE countries (among them the Convention was ratified by the United States, Israel, and Australia). However, the Convention has technical limitations and did not address a number of issues, such as the stealing of digital identities, cyberbullying or cyberterrorism. Since cybercrime groups operate across borders, states cannot fight them alone, and criminals often take advantage of the inherent struggle in attributing a cyber-attack, in pursuing international investigations, and in bringing criminals to justice for a crime perpetrated in a foreign country.

The solution most used in western countries is that of a strong public and private partnership. This requirement was recognized internationally and highlighted in 2006 by the General Assembly of the United Nations with resolution A/RES/60/288 of 20 September 2006, which defines common strategies to fight international terrorism and also underlines and hopes for a tighter collaboration between public and private. This collaboration is needed because for many reasons, firstly because evidence necessary by police to solve a cybercrime is often held by the private industry outside of police's jurisdiction, furthermore in cybercrime investigations less restrictions may apply to cross-border cooperation for industry than to national law enforcement. Partnerships are essential to making cross-jurisdiction, cross-culture cooperation work because the private industry is often one of the main victims of cybercrime and needs to cooperate with law enforcement of different countries. Last but not least, public-private partnerships are essential to reducing the risks for Internet users too. Risk reduction also depends on increasing awareness of potential victims of dangers and threats in cyberspace. Numerous cyber-attacks are based on social engineering: a gathering information methodology that exploits what is called the weakest link in security, the Human Being. Technologies help build a security environment but without awareness of the risk associated with incorrect use of technologies threats will always be current and criminals will reach their goals. The human factor is the fundamental component to promote the concept of *conscious attention* (Balloni, 1998) as a necessary resource to limit the risks of cyber victimization. Culture of cybersecurity encompasses topics such as cybersecurity awareness and information security frameworks but it must be broader in both scope and application, being concerned with making information security considerations an integral part of any individuals, in their way of live. Awareness, culture of cybersecurity, skills, harmonization of law and international cooperation are keywords in cyberspace to win in this global challenge.

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KEY TERMS AND DEFINITIONS

Countermeasures: Procedures, methods, actions, devices, and software that allow to remove or reduce vulnerabilities and limit the risks.

Crimeware: Is a class of computer programs or set of programs designed specifically to facilitate and sometime, to automate illegal activity online.

Cybercrime: In a broad sense is a crime in which the computer or communication networks are the target, tool, or are involved in criminal act.

Cyberspace: It is the immaterial environment consisting of devices and communications networks, which connects computers and allows users to interact with each other using computer-mediated communication technologies (CMC). The term today is commonly used to refer to the “internet world” in a broad sense.

Risk: A potential loss or damage when a threat exploits a vulnerability. Risk is function of threat and vulnerability and impact.

Threat: In computer science is a set of circumstances that can potentially damage a system, a device or a network.

Vulnerability: Refers to a known weakness of an asset that can be exploited by one or more attackers. Vulnerability can concern computers system, devices, networks or can also be at organizational level.

Chapter 15

Bullying, Cyberbullying, and Interventions in Schools

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ABSTRACT

Issues of bullying and cyberbullying among schoolchildren are nowadays a matter of international concern, with school bullies, cyberbullies, and victims having become a topic of public concern and research in various countries around the world. This chapter, besides a definition of bullying and cyberbullying, explains the characteristics, types, causes, and consequences of these acts based on findings from various studies. In addition, the chapter presents some school-based intervention programs, implemented in different school settings, with the aim of effectively reducing levels of bullying and cyberbullying in schools. Finally, the chapter aims to provide guidelines and propose best practices in order to fight acts of violence and aggression.

INTRODUCTION

The aim of this article is to deal with bullying and cyberbullying. A guide is necessary to deal with the problem of bullying and cyberbullying behavior in schools and to describe strategies and activities for coping with them. So, this article aims at analyzing **interventions** in schools, to prevent and to face these phenomena.

Every day, the mass media report newsworthy crimes related to the phenomenon of bullying or cyberbullying, so it must be dealt with not just from a punitive and repressive perspective, but in a preventive way, through the improvement of personal and social well-being.

The first section will focus on the scientific literature about bullying and cyberbullying: bullying is an unwanted, aggressive and assertive behavior among school-aged children. This behavior is repeated over time and it causes embarrassment. Both **bullies** and **victims** may have serious, lasting problems. The place where bullying acts occur is school. Cyberbullying is bullying that occurs in the internet and it is sadly a reality of the digital age. The typical elements of traditional face-to-face bullying, such as repetition, intention, power imbalance, are also considered in the cyber context.

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The main focus of this article will describe and deepen the possible **interventions** in school to prevent and face bullying and cyberbullying, highlighting that a correct preventive policy is linked to a satisfactory **education** on legality and responsible citizenship. School is the ideal place for proposing and implementing real preventive policies in order to raise the awareness of both students and teachers, educators and all the school personnel on bullying and cyberbullying. The reference is to a series of **interventions** and actions which can aim in the first place at legality and the recognition of the other as an individual worthy of our respect, care and attention. Secondly, various activities, such as reading, games, videos and role play, which foster in students the maturation of positive relations with others, prosocial skills and empathy, must be carried out with the aim of reducing qualitatively and quantitatively the phenomenon of bullying and cyberbullying. Indeed, students can't fight bullying and cyberbullying on their own. They need **interventions** at every level of school.

For example, more than half of all states in the U.S. have passed bullying laws that encourage schools to develop policies to contrast bullying, cyberbullying and related behaviors (Kowalski, Limber & Agatston, 2012).

The spread and growing concern at international level regarding the phenomena of bullying and cyberbullying led to the production of an international document, the Kandersteg Declaration Against Bullying in Children and Youth in 2007, with the aim of promoting healthy relationships and preventing victimization in children and youth.

This Declaration says that *Every child and youth have the right to be respected and safe. Bullying is a violation of this basic human right. [...] It is recognized globally as a complex and serious problem. It has many faces, including the use of emerging technologies, and varies by age, gender, and culture.* Besides that, the Declaration specifies that *It is the moral responsibility of adults to ensure these rights are honored and that healthy development and citizenship are promoted.* In fact, *the mental and physical health, social, and academic consequences of bullying have an enormous impact on human and social capital. The costs of bullying burden our education, health care, social services, and criminal justice systems, as well as work force productivity and innovation. Bullying concerns and affects us all* (University of Berne, 2007). This is what it is important to emphasize, the fact that the whole of society must take on these issues.

BACKGROUND

The phenomena of bullying, and more recently cyberbullying, have been studied for several years. In the 1990s there was an increase in the research on this phenomenon at international level. Bullying and cyberbullying are relational phenomena and concern the human relations between the **bully**, the **victim** and the spectators, without forgetting every adult who has the duty to educate and guide them in the formation of their personality (Smith & Monks, 2002). Different definitions have therefore been given to these phenomena.

According to Olweus (1978), bullying is a negative action when someone intentionally inflicts, or attempts to inflict, injury or discomfort upon another. A student is being bullied or victimized when he is exposed, repeatedly and over time, to negative actions on the part of one or more other students.

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Sharp and Smith (1994a, p.1) define bullying as a *form of aggressive behavior which is usually hurtful and deliberate; it is often persistent, sometimes continuing for weeks, months or even years and it is difficult for those being bullied to defend themselves. Underlying most bullying behavior is an abuse of power and a desire to intimidate and dominate.*

The same authors, in another book (Sharp & Smith, 1994b), describe bullying as a systematic abuse of power. They specify that there will always be power relationships in social groups, by virtue of strength or size or ability, force of personality, sheer numbers or recognized hierarchy. In bullying, the abuse is repeated and deliberate; it is particularly likely to be a problem in social groups with clear power relationships and low supervision, such as the armed forces, prisons and also schools. While not denying the importance of other contexts for bullying, they affirm that school bullying perhaps arouses revulsion because the problem is general and because children do not have the awareness of rights that adults have.

As well as school bullying, kids today are experiencing a new type of bullying that has been made possible through technological advances, such as smartphones and Internet. As Kowalski et al. write (2012, p. 57), *in keeping with Olweus' (1993) definition of bullying, Peter Smith and his colleagues (2008, p. 376) defined cyberbullying as 'An aggressive, intentional act carried out by a group or individual, using electronic forms of contact, repeatedly and over time against a **victim** who cannot easily defend him or herself.*

BULLYING: CHARACTERISTICS AND TYPOLOGIES

According to many definitions of bullying, different authors underline that there are various forms of bullying. These episodes of bullying can take place in different ways, more or less explicit and obvious (Sharp & Smith, 1994b; Smith & Ananiadou, 2003; Telefono Azzurro, 2014). A first distinction concerns direct or indirect attacks. Direct bullying concerns those more visible aggressive and bullying behaviors and can be acted out both physically and verbally. Direct physical bullying can consist of hitting, kicking and punching, pushing, pinching, scratching, biting, pulling hair, taking others' objects or ruining them. Direct verbal bullying implies threatening, insulting, offending, making fun of, expressing racist thoughts, extorting money or material goods. Indirect bullying, on the other hand, is played out more on the psychological level, it is less obvious and more difficult to identify but not for this reason any less harmful for the **victim**. Examples of indirect bullying are the repeated use of grimaces and vulgar gestures, spreading gossip and slander about the **victim** and damaging friendships.

Smith and Monks (2008) identify a further category, that of aggressiveness of the relational type. This form consists of excluding a classmate from play and from the circles of friendship, of telling the **victim** that they will be friends only if they do what they are ordered to do. These acts aim to damage the self-esteem or social status of the **victims** or both and at times can take on direct forms such as verbal refusal, negative expressions of the face or gestures and strategies of avoidance, or it may take on indirect forms of aggressiveness based on slander and on the exclusion of classmates. The same authors emphasize that these forms of aggressiveness change depending on the age and gender of the students. Males and females do not differ by verbal aggressiveness, while males are more likely to adopt a type of direct and physical bullying and females indirect. These differences however are not found in smaller children but become more pronounced with the passing of the years; as the years pass, a type of physical aggressiveness also changes into a verbal and indirect one and this change is more obvious in girls than in boys. When they intend to attack a classmate, boys use ways which have the aim of causing the

greatest damage possible to their **victim** and therefore use physical violence, whereas girls use indirect and relational bullying which prevents reaching the values of intimacy and friendship.

With reference to the different forms of bullying, Fedeli (2010) underlines that most of the cases of victimization which have unfortunately led to suicide are the object of relational bullying, which is revealed as particularly dangerous as it affects the **victim** in a constitutive part of their sense of identity, i.e. their social belonging: *creating a condition of isolation around a child means intervening very deeply on their self-image as a socially competent person and, therefore, on their self-esteem* (Fedeli, 2010, p. 43). This type of bullying is also dangerous as often adults fail to identify it, as it does not leave visible physical signs, but produces small but constant changes in the **victim's** mood.

In addition, various typologies of bullying may be identified (Menesini, Nocentini & Palladino, 2017): ethnic bullying, based on ethnic or cultural prejudice which consists of deriding the **victim** because of the color of their skin, their cultural traditions, their ethnic group, their religion, nationality or language; sexist bullying, based on negative stereotypes linked to gender; sexual bullying, concerning sexual harassment of the **victim**; homophobic bullying, based on negative stereotypes relative to sexual orientation; bullying against disability, which consists of marginalizing or deriding classmates with physical disabilities or with problems of learning; bullying of more gifted classmates or which is concretized in negative acts towards a classmate who is particularly gifted or talented at school.

Thus bullying is characterized by three specific criteria (Olweus, 1997): it is aggressive intentional behavior, it is carried out repeatedly and over time and it is characterized by an imbalance of power. *One might add that the bullying behavior often occurs without apparent provocation. This definition makes it clear that bullying can be considered a form of abuse, and I sometimes use the term peer abuse to label the phenomenon. What sets it apart from other forms of abuse such as child abuse and wife abuse is the context in which it occurs and the relationship characteristics of the parties involved* (Olweus, 1997, p. 496). As bullying involves several students, to understand this phenomenon it is necessary to understand its relational nature: it is therefore fundamental to focus on the problems of behavior of the individual but also and above all on the type of relationship that has been created between the **bully** and the **victim**. Therefore, more than focusing attention on the actions of the **bully** or on their characteristics, it is important to understand the relational dynamics existing between the **bully** and **victim** (Telefono Azzurro, 2014).

Bullying is thus a group phenomenon, with different roles. Genta (2017) identifies different roles, all of which are of extreme importance: **bullies**, those with aggressive behavior and who encourage their classmates to take part; the **victims**, the target of the repeated acts of bullying; the spectators or viewers, i.e. the silent majority, those who keep a distance; the watchers and the supporters of the **bully**, the former are those who while not taking part in the initiative, help the **bully** in the aggressive activity, the latter are those who encourage the **bully** to continue in their actions, laughing at the offences targeting the **victim**; the defenders, those who offer help and comfort the **victims**, inform an adult and try to make the **bully** stop; lastly, the students who do not play any role.

In bullying dynamics, an important variable can also be recognized in the school climate (Genta, 2017): it must foster dialogue between teachers and students, help the student to recognize in adults' figures of reference to turn to for any problem, and to welcome the weakest. On the contrary, the perpetuation of bullying would be fostered and the role of the **victim** is immobilized, with negative consequences on the **victim's** well-being and on the **bullies'** sense of omnipotence and impunity. In addition, the awareness of the silent majority, who are neutral and indifferent in the face of acts of bullying, must be raised, in the

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hope that some of them take up the role of defending the **victims** and opposing the **bullies**. This could turn out to be a successful preventive strategy against this phenomenon.

Sharp and Smith (1994) try to explain how some children became **victims** of bullying and others take part in bullying. They explain that certain factors, called “risk factors”, may predispose a child to persistent bullying, or being bullied, even if they do not make it inevitable. Many factors are involved: **bullies** may have an impulsive and aggressive temperament, a lack of social skills or be quite socially skilled in manipulating situations to their advantage; they may suffer from the lack of warmth between their parents or in the family or because of the use of physical violence within the family; they do not have clear guidelines. On the other hand, children who are bullied may have a shy or weak temperament and lack assertiveness skills; in general, being different in some way (for example, from a different ethnic group), or being vulnerable, or needing special **education**, often together with a physical disability or mild/moderate learning difficulties, are all risk factors for being bullied.

Bullying brings with its negative consequences for physical, psychological and relational health, both for the **bullies** and for the **victims** and can also have negative impacts on the observers. The relationship between the experience of being a **bully** or a **victim** and short- and long-term health has been proven and this relationship remains active independently of the presence or not of other individual and family risk factors (Menesini et al., 2017). In dealing with this topic, it is necessary to be aware that the resulting consequences are often lasting in time. The role of **victim** and aggressor tends to have implications in time and in different contexts, taking on stable characteristics: they often remain imprisoned in their roles as they grow older. The **bully** becomes an antisocial adult, the **victims** are destined to lose their self-esteem, to suffer from anxiety and somatic problems, dropping out of school, suffering from depression and, in extreme cases, committing suicide (Ricci, 2010). The risk therefore is that the **bully** acquires inappropriate relational methods as they are characterized by great aggressiveness and by the need to dominate others; this attitude can become transversal to the various contexts of life as the subject will tend to repropose the same style of behavior in all the situations, outlining in the long term the risk of antisocial and deviant behavior in adolescence and adulthood. The **victim**, in the immediate, may show disorders of various kinds, at both physical and psychological level and may experience the desire to no longer spend time in the places where they meet their persecutor, as these places are perceived as dangerous and therefore to be avoided. The **victim** experiences very deep suffering, which often implies a devaluation of their identity (Telefono Azzurro, 2014).

Bullying is only one of the possible expressions of aggressiveness implemented by youngsters.

Olweus (1999, p. 12) affirms that *bullying is thus aggressive behavior with certain special characteristics such as repetitiveness and an asymmetric power relationship. This makes it clear that there is a good deal of aggressive behavior that is not bullying; for example, when there is conflict and aggressive interchange between two persons of approximately the same physical or mental strength, or when a person in a restaurant line verbally or physically attacks another person whom he has never met.*

Although it is not always simple to recognize at first sight the different types of aggressive behavior, Telefono Azzurro (Telefono Azzurro, 2014) gives us guidelines to distinguish acts which can be linked to bullying and those which, on the other hand, are not part of this phenomenon. A first category of behavior which cannot be classified as bullying is that concerning particularly serious actions, which are closer to an actual criminal offence. Examples of antisocial and deviant behavior concern, for example, attacking a peer with knives or other dangerous objects, making serious threats, causing serious physical injuries, stealing very expensive items, sexual harassment or abuse. The behaviors which can be defined “almost aggressive”, which often take place between peers, do not represent forms of bullying. Rough

games and “fights”, particularly amongst boys, or making fun “for fun” cannot be defined as bullying as they imply symmetry in the relationship, an equality of power and an alternation of roles between the abuser and the **victim**.

CYBERBULLYING: ONLINE BULLYING

The U.S. Department of Health and Human Services (<https://www.stopbullying.gov/>) affirms that cyberbullying takes place over digital devices such as smartphones, computers, and tablets. Cyberbullying can occur through sms (short message service), text message, instant message, e-mail and apps, or online in social media, forums or wherever people can view and share content. Cyberbullying includes sending, posting, or sharing negative, harmful, false, or mean content about someone else. It can also include sharing personal or private information about someone else causing embarrassment or humiliation. In fact comments, photos, posts and content shared by individuals can often be viewed by strangers as well as acquaintances. The content that an individual share online (both their personal content as well as any negative, mean, or hurtful content) is permanent and it may be seen by classmates, teachers, and relatives in the present or in the future. Cyberbullying can harm the online reputations of everyone concerned: the **bully**, the **victim**, the audience.

This kind of aggression can follow episodes of school bullying or be isolated behavior. A **cyberbully** can be a stranger or a person known by the **victim**, they can act on their own or supported by other “online **bullies**”, anonymously (“protected” by a pseudonym) or revealing their identity. It is also true that in some cases cybebullying is not anonymous, namely a pupil can be victimized online by the same teenager who targets him offline, at school for example, or by people he knows.

There are various behaviors that constitute cyberbullying. The first one is flaming, that refers to a heated and unpleasant exchange between two or more individuals that occur via any communication technology. At first sight, it would seem to occur between two persons that are on an equal playing field, but in reality an unsuspected aggressive act may create an imbalance in the conversation. Cyber harassment generally involves repetitive offensive messages sent to a **victim** over a long period of time. The denigration is derogative and false information (including digitally altered photos or videos) about someone that is posted on a web page or sent to others via mail or instant messaging. Thanks to the impersonation, the **cyberbully** uses the **victim**'s passwords to gain access to his account so he poses as the **victim** and communicates inappropriate and cruel information. Outing refers to sharing personal, often embarrassing information about the **victim** without his agreement. Online exclusion means that the **victim** is out of a group and it can occur in any type of password-protected environment or when he is knocked off a list. Cyberstalking refers to the use of electronic communication with the intention of stalking the **victim** through repetitive harassing and threatening communication. In order to increase the **victim**'s humiliation experience, **cyberbullies** sometimes digitally record assaults and upload the video on to the internet and these acts are called video recording of assaults. Finally, sexting refers to the sending or posting of nude or semi-nude pictures or videos via text messages or other electronic means (Kowalski et al., 2013). Four types of cyberbullying can also be classified, divided according to four classes of behavior. The first concerns written-verbal attacks: these are written or verbal attacks with the aim of offending the **victim**, for example by sending messages with insults, posting insulting comments on the social networks; visual attacks, which include sending or publicly and/or privately sharing compromising or embarrassing personal photos or videos; personification, which concerns the

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unauthorized access and use of the **victim**'s private credentials and account; exclusion which appears in the exclusion of the **victim** from online groups, for example WhatsApp groups (Menesini et al., 2017).

The main characteristics of cyberbullying (U.S. Department of Health and Human Services) can be found in pervasiveness and accessibility: the **cyberbully** can reach and attack their **victim** at any time and in any place thanks to smartphones which are always on and often connected to the internet, and in the persistence of the phenomenon, as the defamatory material posted on the internet can remain available online for a long time; in the absence of emotive feedback, the **cyberbully**, not seeing the reactions of their **victim** to this behavior, is never totally aware of the damage they cause; in the infinite number of viewers, as online diffusion cannot be controlled and the people who can witness episodes of cyberbullying are potentially unlimited; in the multiplication of **cyberbullies**, as the online nature of cyberbullying allows many to become **cyberbullies**, even only by sharing or promoting the episode. In the last place, a further criticality is identified in the underestimation of the phenomenon by adults.

Finally, the differences between bullying and cyberbullying can be outlined. The former is anonymous, as the **cyberbully**, behind the mask of anonymity in a text message, can often be sure they are eluding the law or the limits of protection of the people's rights. A further characteristic is the possibility of having immediate access to a global public that entails a mechanism of de-responsabilization which tends to ignore the effects of their action on the **victim** (Genta, 2017). The author cannot therefore see the **victim**'s reaction and the absence of this feedback makes it more difficult to feel empathy with the **victim** or feel shame or regret. In addition, it can be noted that the variety of roles played by spectators is more complex than that of traditional bullying: the spectator can be identified who can support the **cyberbully** when content is sent or posted, the spectator who can be with the **victim** when they receive the message or visit the website where the defamatory content is present. Lastly, it is difficult to avoid cyberbullying because the **victim** unfortunately does not have a safe place where they can hide and can be victimized everywhere and at any time (Donghi, Pagani, Appiani & Caravita, 2018).

BULLYING, CYBERBULLYING AND EDUCATION ON LEGALITY

A correct preventive policy aimed at fighting these phenomena cannot be exempt of an adequate and opportune **education** on legality and responsible citizenship. School, together with the family, represents the best context to implement this type of **intervention**.

Acts of bullying and cyberbullying appear during adolescence and pre-adolescence and, in order to understand their dynamics, it is necessary to address the context of school, as well as the *social and cultural one in which the boy and the girl develop, its norms, its values and the characteristics of the world of the family and work* (Bonino & Cattelino, 2011). It is during this period of life that children/youngsters start to develop a certain autonomy, both of movement and of navigation on the internet. In addition, as Canestrari (1988) indicates, it is precisely during adolescence that socialization on legality takes place, through the development of the political conscience and of the full exercise of citizenship and that the obligations and duties of the adult citizen are learned.

School therefore cannot exonerate itself from its teachings which concern **education** on legality, respect for rules and the recognition of the other as a person with rights.

“Culture of legality” (Balloni, Bisi & Costantino, 2008) means all those attitudes, representations and behavior oriented both by the norms of the social bond and by the set of formally coded rules that refer to the legal system and the related formal institutions. The concept of legality refers to the more general problem of order, no longer considered as integration and passive assimilation of the legal and social norms, but as a presupposition of the legitimization of the democratic society and active formation of the conscious citizen. Only if these concepts are well understood by youngsters can the violent and arrogant acts of bullying and cyberbullying be prevented.

In addition, from an educational perspective (Calandri, Borca & Bonino, 2001), for the concept of legality to be correctly internalized, it becomes very important that certain types of conduct are correctly punished, in order to systematically prevent every deviant act. In this context, the social rules are ways that protect the individual from their impulsiveness and help them manage the inadequacy of their behavior with respect to the different situations. If therefore these are made explicit and respected, they give security to the individual and to children and adolescents. Teachers and parents are certainly the main educators of children and adolescents; it is therefore up to them to teach the rules and their function. The teaching will be more effective, the more the adult-child/adolescent relationship is significant (by affection, respect, esteem).

It is therefore important to dedicate important resources to the activity of information and raising awareness on legality and correct civil coexistence in schoolrooms.

It is also necessary to become aware that Internet is one of the technologies most used by adolescents and preadolescents, as it allows socializing, becoming informed, having fun and learning. It is therefore appropriate to deal with this new “virtual reality” which is increasingly pervasive and which occupies a good part of the life of adolescents. The world of the web is an exceptional opportunity for personal growth, but the risks that can be run in the case of not navigating correctly must not be underestimated. Young people must therefore be educated on a conscious and mature use of the web to be protected from any dangerous situations (Bianchini, 2016).

The Internet is increasingly a source of searching for information on the subjects that arise during conversations with friends, discussions with the family members, lessons at school: it is a sort of “tutor” that allows access to a world of knowledge, which includes not only written texts, but also pictures, sound and video files, applications, chats, forums and blogs. However, it becomes difficult to estimate the number and the scope of the possible consequences of the use of the internet: *this use takes place at a critical phase in development: adolescence, i.e. at a very delicate time of growth and when the image of the self should be brought into focus, the cognitive capacities and the critical judgement on what is done, thought and said should be enriched* (Bisi, 2003, p. 14). The physical and intellectual development, new social milieus and the change in interpersonal relations are very important challenges of development and it is precisely in early adolescence that the ethical consequences of the actions of children become more significant for themselves and for others (Giannini & Sgalla, 2011). In this picture, the risks that an adolescent can meet when navigating on the internet are not to be underestimated and cyberbullying is a part of this picture. **Education** on the correct use of the web is therefore necessary, in order to guarantee increasingly effective safety in the world of the web as well. From an educational perspective, the concept of safety, linked both to “real squares” and to “virtual squares” must be correctly learned, especially by youngsters, through courses of awareness-raising on the topic of legality and correct civil coexistence.

INTERVENTIONS IN SCHOOLS

School bullying and cyberbullying are a pervasive problem, affecting a significant minority of children and can have immediate and long-term negative effects on **victims**, perpetrators and on the general school climate. So, in order to effectively tackle acts of bullying and cyberbullying it is important to improve preventive measures and **interventions**.

The figures that refer to this problem are alarming. Despite a wide variety in the estimates of incidence and prevalence of the phenomenon in relation to the different age ranges considered, the instruments used and the time range taken into consideration, the studies conducted on a large scale in Western countries show that about 4-9% of youngsters refer being violent, while 9-25% of the same report having been **victims** of bullying behavior (Menesini et al., 2017). In a study of 2014 on bullying and cyberbullying, Modecki et coll. (as cited in Menesini et al., 2017, p. 21) analyzed 80 studies out of a sample of 335,519 young people from 12 to 18 years old and estimated that 35% of the teenagers were affected by the problem of bullying as a **victim** or perpetrator and 15% by cyberbullying.

The international Trends in International Mathematics and Science Study (TIMSS) of 2015¹ collected data on bullying and cyberbullying on students in their fourth and eighth year of schooling. Thirty-nine countries took part in the study and it emerged that at international level 63% of students declared never having undergone acts of bullying and cyberbullying, 29% of students stated having suffered them monthly while 8% on a weekly basis. From a comparison between the various countries, it emerges that bullying and cyberbullying are a global problem for many societies. In addition, it is increasingly clear that bullying in schools is on the increase and has a negative impact on the performance of the students (Istituto Nazionale per la Valutazione del Sistema Educativo di Istruzione e di Informazione, 2015).

All the drama of this issue also emerges from an international study “An Everyday Lesson. #END-violence in Schools” conducted by UNICEF in 2018 (United Nations Children’s Fund, 2018). This analysis of data (based on data from 122 countries with data from the HBSC - Health Behaviour in School-age Children Study - and GSHS - Global School-based Student Health Survey - and covering 51% of the global population of children aged 13 to 15 years) underscores how common violence is in schools around the world. Globally, half of students aged 13–15, about 150 million, report experiencing peer-to-peer violence in and around school. This number includes students who have been bullied or have had a physical fight and students who routinely deal with corporal and other degrading forms of punishment, physical and sexual attacks and gender-based violence. Besides that, about 720 million school-aged children live in countries where they are not fully protected by law from corporal punishment at school. Violence in schools puts bodies, minds and lives at risk. It causes physical injury and can lead to depression, anxiety and suicide. Referring to bullying, the report describes that slightly more than one in three students aged 13–15 experience bullying. In 39 industrialized countries, 17 million young adolescents admitted to bullying others at school.

Based on this evidence, school is the privileged place where projects on well-being and awareness-raising can be implemented. From the very first **interventions**, it appeared that bullying, and cyberbullying at a later stage, are relational phenomena and as such can be prevented and fought only through the extensive involvement of all the players present in schools. The concept of scholastic policy has thus been outlined: a process which acts on all the dimensions of school life, for example cultural, educational, normative and organizational. To intervene it is necessary to work out a project that can foster the integration of the different needs and potential present in a community (Maggi, 2010). School is that institution where youngsters are educated and prepared for adult life and to reach this wide and complex objective,

there can be no doubt that the role of the teacher and of the educators assumes great social importance and enormous responsibility. School has always played a very important role in the growth of children and youngsters, both due to its function of **education**/schooling and for the fundamental contribution to the construction of self-esteem, experimentation and acquisition of social skills (Telefono Azzurro, 2014). Adults who work in classrooms must also be able to recognize the symptoms of bullying, paying attention to some alarm bells. The value of preventive, but also of repressive, policies cannot disregard recognition of the phenomenon studied. In this regard, Maggi (2010) identifies five possible phases of an integrated anti-bullying scholastic policy. The first phase concerns the awareness of the extent of the phenomenon through knowledge of the climate in the classroom, the internal dynamics amongst the youngsters and with the teachers and the ways of communication and relations. To this end, tools such as questionnaires, tests and, to a lesser extent, interviews and focus groups are used. The second phase is awareness-raising, to be implemented through discussion on violence present in the classroom and in the school, in order to clarify the meaning of bullying (clearly distinct from other forms of aggressiveness or relational difficulties), to show that bullying exists and in which forms and proportions, to answer those who deny the existence of acts of violence. The third phase is integrated design, in which the whole scholastic community takes part to outline a global anti-bullying project that can involve all the classes or a specific target, to plan training for teachers, students, parents, and to plan individualized **interventions**. The fourth phase is the concrete activation of the project and the evaluation in progress. Lastly, the fifth phase consists of the final evaluation of the results obtained through a comparison with the data collected before and after the project. The efficacy of a project is translated into the reduction of acts of bullying, into the decrease of youngsters who are in the role of **bully** and **victim** and into the settlement of relations of violence in course.

Thus, to recognize whether a youngster has been repeatedly victimized by a classmate or whether the same youngster is the author of actions of bullying, it is possible to refer to some behavioral indicators. The **victim** of bullying is repeatedly made fun of cruelly; attacked physically, has objects or material goods (books, money...) stolen, damaged and lost; appears defenseless and reacts to the conflicts and quarrels withdrawing or crying; is often alone and excluded from the group of classmates at recreation; is the last to be chosen in team games; does not have a good friend in the class; appears depressed and cries easily; suddenly or gradually performs worse at school; has difficulty speaking in class; shows anxiety and insecurity; seeks the vicinity of adults at playtimes. The indicators of a possible **bully** concern repeatedly making fun of classmates; physical aggressions on classmates; damaging and stealing objects belonging to others; the intentional exclusion from the group of certain classmates (Telefono Azzurro, 2014).

Any preventive policy, like the **interventions** to be implemented in schools, has as its main objective that of reducing as much as possible the problems deriving from bullying and cyberbullying and avoiding, as far as possible, the development of new issues.

As Sharp & Smith (1994a) recommend, any school which is considering acting against bullying should begin by establishing an anti-bullying policy. This kind of policy should provide a framework for implementing any other kinds of **interventions**. In fact, it is important to create a social climate which rejects bullying behavior and promotes co-operative behavior. Olweus (1997) clearly affirms that **bully/victim** problems in school concern some of our basic values and principles: it is a fundamental democratic right for a child to feel safe in school and to be spared oppression and the repeated, intentional humiliation involved in bullying. No student should be afraid of going to school for fear of being harassed or degraded and no parent should need to worry about such things happening to his child. He

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finds different principles in **intervention** programs: it is important to try to create a school environment characterized by warmth, positive interest and strong limits on unacceptable behavior and in the case of violations of limits and rules, non-hostile and non-physical sanctions should be applied. Implied is also a certain degree of monitoring and surveillance of the students' activities in and out of schools. Moreover, adults at schools and at home should act as authorities at least in some respects. The **intervention** programs are based also on an authoritative adult-child interaction in which all (adults and children) are encouraged to take responsibility for their own actions.

In the study focused on the prevention of the phenomenon of bullying and cyberbullying in schools, strategies that have the aim of developing empathic, prosocial and cooperative skills towards others in the pupil are usually used. These characteristics are an effective instrument against the onset of the phenomena of aggressiveness and bullying, and these trends have effectively proven to be decisive in *supporting a successful scholastic path, as well as fighting trends of depression and aggression* (Caprara, as cited in Nuccetelli, 2011, p. 64). Recently, the group dimension of these phenomena, which are not limited to the sole **bully-victim** relationship, has been increasingly underscored. There is therefore an increasingly felt need to create actions in the class which address all the members of a group, usually using strategies which come under cooperative works or the support of a classmate. It is important to stimulate prosocial skills, empathy and the respect for rules in the students and in this type of action a very important part has to be devoted to the discussion by the whole group of reference of the cooperative activities recently carried out, in order to be able to deal with any problems that emerged. The children/adolescents must realize the dynamics that have emerged inside the group, offering the chance to speak, to ask questions and to discuss. Moreover, that regarding support for an individual, the aim is to develop figures of reference and support in the class or in the school for all those who feel the need for comfort and help by a classmate (Berdondini, 2002).

Planning actions of prevention and fighting bullying and cyberbullying, precisely by virtue of their relational connotation, can be developed on various levels.

Four levels of action can be distinguished, depending on the addressees that are to be involved (Menesini, as cited in Maggi, 2010, p. 101). Each of these is characterized by different actions and strategies, has strong and weak points and refers to a particular interpretation of the phenomenon. At the first level, the work is on single individuals involved (**bullies/cyberbullies** and **victims**) through individual support and support in the class. The approach is of the moral type (right/wrong), legal (abiding by/against the rules) or humanistic (understanding instead of punishing). The second level concerns the work with the class group to boost social skills, the promotion of cooperation and solidarity and the mediation of conflicts between peers. The third level concerns the work that can be done with the school community against bullying, thanks to collaboration between the school and the family. At the fourth level the local community intervenes from a point of view of community psychology.

Other authors (Caravita & Gini, as cited in Donghi et al., 2018, p. 146) identify three levels of action: the school level, where there is the involvement of the whole scholastic community with the aim of creating an anti-bullying and anti-cyberbullying policy shared by all the members. The actions to be undertaken are the anonymous revelation of the issues, making a univocal definition of the phenomena studied, working out efficient strategies for the management and prevention of bullying and the organization of public meetings. The second level identified is that of the class, where there is the involvement in the action of the whole group of students, independently of the role that they have in the bullying action with the aim of raising the awareness of the pupils on the phenomenon and promoting the social skills and the behavior of help and mutual support. The actions which can be implemented concern work groups

and actions of peer-education. The individual level is the third and includes targeted actions on **bullies/cyberbullies** and **victims**, for example concerning anger management, increased empathy, restoring the **victim**'s social relations with classmates and increasing self-esteem.

The David Mathews Center for Civic Life in collaboration with the National Issues Forums (in U.S.A.) find three options for approaching these critical problems. The first option suggests that zero tolerance policies are the best solution and that the **bully/cyberbully** must be punished: bullying and cyberbullying are unacceptable, so they must be treated with zero tolerance. Teachers and instructors must do more to prevent aggressive acts and they must provide tougher consequences for those who engage in it. Besides that, school district anti-violence policies and students' code of conduct must be strictly enforced. The second option wants to reinforce preventive measures in schools, because they are the best way to deal with bullying and cyberbullying. So it is important to create a supportive school culture that equips teachers and students to address the root causes of bullying and cyberbullying. And lastly, the third option thinks that bullying and cyberbullying are problems present in the whole of society and not limited to schools. Family and the whole community must also take part in **intervention** and preventive activities (McCauley, 2015).

One of the most consolidated and effective programs is the Olweus Bullying Prevention Program, proposed by Olweus in the Scandinavian countries following episodes of suicide by youngsters as consequences of acts of bullying and then applied all over the world. It is a program which is defined as systemic because it involves all the levels of action: individual, class, school and community. This project (Olweus & Limber, 2010) aims to promote better peer relations at school, reduce existing bullying problems and prevent them, so it is important to restructure the pupils' social environment at school through positive and pro-social behaviors. It is based on four principles, *adults at school should: (a) show warmth and positive interest and be involved in the students' lives; (b) set firm limits to unacceptable behavior; (c) consistently use nonphysical, nonhostile negative consequences when rules are broken; and (d) function as authorities and positive role models* (Olweus & Limber, 2010, p. 377). These principles have been translated into different measures and acts to be used at individual, classroom, school and community level. Olweus affirms that the number of students who may have avoided direct involvement in bullying as **victims** or perpetrators because of the project is substantial. Also the number of students who escaped bullying through the **intervention** program is high. Besides that, a certain proportion of the **intervention** schools have been able to maintain reduced levels of bully and **victim** problems, as was found in the 5-year follow up project (Olweus & Limber, 2010).

In the wake of the Olweus project, Sharp and Smith developed the Sheffield Anti-Bullying Programme in England, a systemic program of which the the main action was to provide an anti-bullying policy for the whole school. This program provides teachers with a wide variety of material (videos, readings, plays, peer-counseling, games) built up on the knowledge of the problem that can be used to deal with the bullying. The assessment, conducted with an age-cohort designed at experimental level in 23 schools in the 1990s, showed that the program has significant positive effects both on bullying and on victimization (Sharp & Smith, 1995b; Menesini et al., 2017).

Telefono Azzurro, an Italian non-profit organization started in 1987 with the aim of protecting and propagating children's rights, suggests many **interventions** to carry out with pupils for raising awareness about bullying and cyberbullying, improving empathy and promoting their best personal resources. It is not strictly necessary to propose so-called "special" activities, i.e. based on courses that can be done once and limitedly in time. These actions become the preferred tool of prevention because they simultaneously involve the whole class (or children from different classes) and they can be offered with a certain

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continuity throughout the school year. These activities have been conceived to involve the whole class in the prevention action with concern for the **victims** and with the intention of raising the awareness of the potentially positive subjects but who are often indifferent and apathetic towards the fates of their weaker classmates. The activities have the aim of developing the so-called silent majority into “agents of change”, appealing to the positive resources in the class and to the natural capacity of children to feel empathy for their classmates in difficulty. Activities can include reading texts and using audiovisual material, such as texts of narrative, poetry, newspaper articles, film videos, cartoons and programs on current affairs; role playing, which lets the children carry out in a simulated form (for example acting out “scenes” they have improvised, situations which they could really encounter in daily life; problem solving, a metacognitive technique in which the students have to solve problems; cooperative learning), which lets the students work in small groups on a common task, fostering the participation of all of them. These activities have many goals: improving the awareness about bullying and cyberbullying; encouraging pupils to take responsibility for their own actions; highlighting the important role of the witnesses; developing empathy and putting themselves in the shoes of others and strengthening peer-to-peer relationships. It is very useful, at the end of each activity proposed, to make these teachings visible through writings, drawings and rules of coexistence that can be displayed in the classroom or in the corridors of the school (Telefono Azzurro, 2014).

From this concise overview of the **interventions** to fight bullying, it emerges that with suitable anti-bullying and anti-cyberbullying **intervention** programs, it is possible to reduce aggressive behavior and problems of bullying and victimization.

So, it becomes the duty of the teachers and educators to bring the bullying back into a wider picture, to review it, considering the relations of force between subgroups, alliances and oppositions or competitions that are present. In this picture, bullying takes on a different meaning towards a less moralistic direction but more open to complexity. The possibility of change, which is real both for the **bully** and for the **victim**, allows stating that the **bully** and the **victim** are masks, social roles, which do not coincide with the people. Every human being, and every boy and girl even more so, are fortunately much more compared to the role played in a given situation. The temptation of labeling in the case of bullying is very strong in adults, easy prey of a certain cynicism, as in youngsters, who are almost always convinced of being what they are and not being able to change. For those who have an educational role, the responsibility of not making anyone, let alone those growing up, coincide with the suffering reality of the moment, is very strong and clear (Buccoliero, 2007).

Eventually, it is necessary to very briefly point out that there are issues related to **interventions** in school: for example, a school must have enough money to pay experts that can develop **interventions** and unfortunately it is not possible for all schools. Besides that, schools’ curriculum is full of subject to study and it is hard to include extra hours for extra projects. Moreover, it is difficult to verify in the close future the efficacy of solutions that programmes suggest to **victims** and **bullies**.

CONCLUSION

Bullying and cyberbullying are pervasive phenomena in the life of a youngster and these issues are becoming increasingly the object of concern and studies at international level.

Bullying is intentional behavior, it is carried out repeatedly and over time and the relationship between the **bully** and the **victim** is characterized by an imbalance of power. So, in order to use the term bully-

ing, there should also be an imbalance in strength, an asymmetrical relationship of power. The **victim** cannot defend himself easily.

Cyberbullying is bullying on the internet and it has specific features that are persistence, because digital devices offer an ability to immediately and continuously communicate 24 hours a day, so it can be difficult for children experiencing cyberbullying to find relief; permanence, because most information communicated electronically is permanent and public, if not reported and removed; the difficulty of noticing, because teachers and parents may not overhear or see cyberbullying taking place.

The roles children play in bullying and cyberbullying are not limited to those who **bully** others and those who are bullied. Those who actively or passively witness the behavior or protect against it are also involved. So even if a child is not directly involved in bullying, they may be contributing to the behavior. In fact witnesses may support bullying acts or stop them, so it is important for them to learn what they should do when they see bullying happen.

Therefore schools and the adults who work in them have to collaborate on scheduling and implementing concrete actions in schools against these serious problems which are growing at alarming rates amongst children and teenagers. A number of studies (Tofi & Farrington as cited in Menesini et al., 2017, p. 37; Evans, Fraster & Cotter as cited in Menesini et al., 2017, p. 37) show that the anti-bullying programs are often effective, with clear and lasting effects, even though the results vary considerably from one program to another.

Preventive measures are possible only if there is a domestic and social background that is attentive to the manifestations of affliction and capable of developing resources, potential and skills. There can be no doubt that the most useful resource to oppose and the most important one to prevent bullying is an educational system based on collaboration between families and schools.

Parents, school staff and other adult caregivers have a role to play in preventing bullying and cyberbullying. They can help children to understand what bullying and cyberbullying are; they can tell children that acts of bullying and cyberbullying are unacceptable; they can keep the line of communication open, talking and listening to them; they can teach them to treat others with kindness and respect.

As a conclusion to this chapter, it is important to provide some suggestions that can act as a guide to prevent, manage and fight the onset of the phenomena of bullying and cyberbullying as best as possible, in the awareness of the fact that unfortunately there is no “magic recipe” to solve these issues. The youngsters must be given clear and concise indications: respect others; speak to an adult if you are the **victim** or witness of acts of bullying and cyberbullying and tell them as well if one or more of your classmates act aggressively; react if anyone makes fun of you at school or on the social networks, if you are the **victim** of acts of violence, if someone steals objects that belong to you and ask for help to solve these problems; defend yourself if you are the **victim** of bullying but refuse violence; use the social networks responsibly and respectfully to communicate with your friends; involve your classmates who are excluded from games and activities; think and reflect before acting. Adults can reflect on some guidelines on how to handle the phenomena of bullying and cyberbullying: become aware of the problem and do not minimize, underestimate or tolerate the acts of bullying and cyberbullying; intervene promptly in episodes of prevarication; give support to the **victims**; consider the **bullies** as people to be helped as well as to be “stopped”; foster dialogue with the children and between all the educational figures; invite the youngsters to ask for help; involve them in looking for adequate solutions for the problem; boost their self-esteem and autonomy; foster episodes of positive socialization, including through out-of-school activities, contact experts for competent help (Associazione Future Is Now, 2016; Telefono Azzurro, 2014).

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KEY TERMS AND DEFINITIONS

Anxiety: Psychic state characterized by a sensation of fear and intense worry, without an evident cause and deriving from an interior conflict.

Deviant Behavior: Behavior which is dissociated from the norms shared in a specific social context.

Empathy: Capacity of understanding the state of mind of others and putting yourself in their shoes.

Parental Control: System of checking navigation on the internet with the purpose of avoiding content considered negative.

Prosocial Behavior: Behavior which is concretized in actions directed at benefiting and helping other people without seeking external compensation.

Self-Esteem: PA subjective process which leads the individual to assessing themselves thanks to self-approval of their value based on self-perceptions.

Social Network: Web service which allows creating and managing a personal space in which to post pictures, videos, links, express impressions, states of mind, share thoughts and comment your own posts and those of others.

ENDNOTE

- ¹ The TIMSS 2015 by the IEA (International Association for the Evaluation of Educational Assessment) analyzes the performance of students in Mathematics and Science in over 60 countries. Conducted every four years (the 2019 study is currently under way), the TIMSS also provides information on the progress of students through the degrees of education; the cohort of students assessed in the fourth primary year in a TIMSS cycle reaches the third year of lower secondary education in the next cycle (e.g. the students attending the fourth year of primary education in 2011 attend the third year of lower secondary education in 2015). The TIMSS measures the performance of the students relative to the fourth year of primary school and the third year of lower secondary education and monitors the implementation of the school curricula in the participating countries. This survey, due to the emergence of the phenomena of bullying and cyberbullying, has decided to include in the questionnaire a scale to measure these phenomena from the answers provided by the students on 8 items (“I have been made fun of or insulted”, “I have been excluded from games or from some activities”, “Someone has told lies about me”, “They have stolen something from me”, “I have been hit by other students (e.g. pushed, punched, kicked)”, “They have forced me to do things I didn’t want to do”, “They have spread embarrassing things about me”, “They have threatened me”) which asked them to indicate how often they were victims of episodes of bullying, including via text messages or the internet (Istituto Nazionale per la Valutazione del Sistema Educativo di Istruzione e di Informazione, 2015).

Chapter 16

Environmental and Corporate Crimes: The Case of Polluting Industries in France

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ABSTRACT

Drawing inspiration from researches on environmental crime and corporate crime, this chapter examines the case of air pollution caused by road transport and industry in France. The purpose of the author is first to document the nature and extent of these health threats to populations and second to highlight the existence of delinquent practices (defined as deliberate violations of legal norms) that sometimes play a major role in perpetuating these threats. The author first examines the issue of pollution caused by automobile engines and returns to “Dieselgate.” It then details the pollution problems observed in the Fos-sur-Mer industrial area in the south of France and its consequences on the health of local populations.

INTRODUCTION

The issue of health disasters caused by human economic activities has been increasingly publicized since the 1970s, in connection with the emergence of ecology as a new philosophical and political trend in Western countries. Major accidents and other “disasters” that occur regularly (such as Seveso, Chernobyl, Fukushima or oil spills) have also led States and supranational bodies such as the European Union to increase the number of laws, control bodies and measurement tools. This set of public concerns and institutional mobilizations quickly boosted scientific research in the biomedical and climatological fields. Moreover, the lawyers soon took up a new world of constantly evolving national and international standards. An environmental law was thus established in the mid-1970s. The arrival of social sciences in this field is much later, at least in Europe (in the United States, a sociology of the environment is constituted as a sub-domain of the discipline since the end of the 1970s [Buttel, 1978 ; Catton, Dunlap, 1979]). However, a real dynamic is now at work at the beginning of the 21st century. In France, it can be seen at work in political science, particularly in the study of these new public policies and new forms

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of activism, or in the analysis of the agenda setting of new public problems (e.g. Gilbert, Henry, 2009; Jouzel, 2012). Health sociology and occupational sociology have also integrated these new health and environmental safety issues (e.g. Collectif, 2010; Terressac, Mignard, 2011; Fournier, 2012; Thébaud-Mony et al., 2012).

More recently, sociologists have proposed linking these questions to those traditionally associated with the theme of “insecurity”, by talking about health disasters affecting populations, but also about fraud and tax evasion ruining States, as well as “ignored insecurities” (Palidda, 2016). This chapter proposes to contribute to this new field of research in two ways. The first is to document the nature and extent of these health threats to populations. The second is to highlight the existence of delinquent practices (which will be defined as deliberate violations of legal norms) that sometimes play a major role in perpetuating these threats, following in the footsteps of Edwin Sutherland’s research on the White Collar Crime (Spire, 2013; Lascoumes, Nagels, 2014; Mucchielli, 2014, 2015). More precisely, we will draw inspiration from research on Corporate Crime developed since the 1980s, one of whose branches soon made the link with environmental and health issues of interest to the Green criminology movement as it has developed since the early 1990s in England and the United States (see the first reports by Bottoms, 1994; and South, 1998). The fields of study covered by these issues are particularly broad and diverse (Hall et al., 2016). Turning to the case of France, we will limit ourselves here to examining the case of air pollution caused by road transport and industry, a major pollution in terms of health and the environment.

AIR POLLUTION: THE SITUATION IN FRANCE

Santé Publique France (SPF) is the national public health agency created in April 2016, following the law of 26 January 2016 on the modernization of the health system, with the mission of “effectively protecting the health of populations”. In June 2016, it published a report entitled *Impacts of Chronic Exposure to Fine Particles on Mortality in Continental France*, which is in line with the scientific work of the World Health Organization (WHO) and the European Environment Agency (EEA). This report provides a comprehensive overview of the extent and health effects of air pollution (fine particles of 2.5 micrometers), based on a study of all municipalities in metropolitan France in 2007-2008. These pollutions are defined as “a complex mixture composed of primary pollutants emitted directly by the sources of pollution (road traffic, industry, heating, agriculture...)”. These include, for example, sulphur oxides, volatile organic compounds, particles, metals (lead, mercury, cadmium, etc.). Secondary pollutants not emitted directly from a source but resulting from chemical reactions in the atmosphere, such as ozone and nitrogen dioxide, are also considered.

This report first confirms that, “through various mechanisms including oxidative stress and inflammation, exposure to air pollution, particularly fine particulate matter, contributes to the development of chronic diseases such as cardiovascular, respiratory or neurological diseases, and cancers. It also promotes reproductive and developmental disorders in children. It also aggravates the symptoms of diseases in people suffering from chronic diseases” (Santé Publique France, 2016). The agency estimates that air pollution is responsible for about “48,000 deaths per year, which corresponds to 9% of mortality in France and a loss of life expectancy at 30 years that can exceed 2 years”. This is the second leading cause of death after tobacco (about 78,000 deaths per year), “but we choose to smoke or not. However, we do not choose the air we breathe. Finally, this health disaster would have a total annual cost of around

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100 billion euros to French public finances”, according to the report of a parliamentary survey in 2015 (Sénat, 2015).

In addition to the pollution caused by the combustion of firewood by private individuals, three main economic sectors are responsible for most of the air pollution: the road transport sector, the industrial sector and agriculture. We will focus here on the first two, which are the two most important.

POLLUTION FROM CARS AND TRUCKS

The main pollution from road traffic is nitrogen dioxide (NO₂). The latter irritates the respiratory tract, causes respiratory and cardiovascular diseases, and is highly carcinogenic.

In 2017, the French car fleet numbered more than 39 million vehicles (INSEE, 2017). It consists of passenger cars (83% of the total) and heavy goods or passenger vehicles (17% of the total). Diesel engines, which used to be the vast majority, have been steadily declining in recent years as a result of government action. Since 2017, they have accounted for just under half of the total vehicle fleet, but remain dominant in freight transport.

In 2016, land freight transport amounted to 338.5 billion ton/kilometers (Commissariat Général au Développement Durable, 2018, 28). Its upward trend is based on road transport, French and - even more so - foreign. The registration of heavy goods vehicles is also increasing sharply and the average journeys they make are getting longer. At the same time, rail and inland waterway transport are decreasing.

Pollution Measurement

The transport sector, particularly road transport, is strongly responsible for the increase in energy consumption in France and the emission of pollutants and greenhouse gases (GHGs). It consumes 82% of petroleum fuels in 2016 and accounts for nearly 30% of GHG emissions (compared to 22% in 1990). These GHG emissions have been increasing in the transportation sector in recent years (Office of the Commissioner General for Sustainable Development, 2017, 12-13). Indeed, the improvement in the environmental performance of vehicles (fleet renewal, generalization of catalytic converters, etc.) does not compensate for the increase in the total number of kilometers travelled on the road. Heavy goods vehicles are responsible for more than one-fifth (21.3% in 2016) of GHG emissions, while they represent only one-twentieth (5.2%) of road traffic (ibid.). Finally, diesel-powered vehicle engines are responsible for 84% of GHG emissions in the road transport sector, whereas they now account for only about half of the vehicle fleet, after having long been its core.

The Question of Diesel and “Dieselgate”

Gasoline and diesel are two products of petroleum distillation but with different chemical properties. While gasoline is a mixture of light hydrocarbons, diesel blends heavier hydrocarbons that cause much more pollution to fine particles, the latter being the most dangerous to the respiratory and cardiovascular systems of the human body. But the discovery and awareness of the problem of fine particle pollution is recent, and can be dated from a report by the International Agency for Research on Cancer in 2012 (Pasteau, Perez, Teulière, 2015). However, it was in the early 1980s that France decided to give priority to diesel engines for passenger cars, by taxing them less. The government’s aim at the time was to favour

a technique that would give the French automobile industries an advantage in the now global competition, as well as to satisfy the demands of the oil industry, which was concerned about the widespread use of electric heating to the detriment of oil heating (the latter being a poorly distilled product with characteristics very similar to diesel fuel). Buses and trucks, on the other hand, had long been diesel-powered. As a result, diesel accounted for up to 70% of French car sales in the early part of 2010.

Faced with the fact that technological innovations (such as particulate filters) can only marginally reduce the pollution caused by diesel engines, the public authorities have undertaken to varying degrees to gradually reduce this proportion. Certainly, it seems that there is only one example of a region in the world that has totally eradicated diesel engines: the city of Tokyo in Japan (Pasteau, Perez, Teulière, 2015, p. 9). But restrictive standards and disincentive taxes are multiplying throughout the European Union (Euro standards). Especially as scientific studies are accumulating to overwhelm this technology. In May 2017, researchers estimated in the journal *Nature* that nitrogen oxide pollution from diesel engines was probably responsible for nearly 40,000 deaths worldwide in 2015 (Anenberg et al., 2017). One major obstacle remains: the resistance of European industrialists, who have long based part of their financial success on diesel and have resorted to criminal practices to preserve it.

It was in 2015 that Dieselgate broke out, when the US Environmental Protection Agency revealed that the German group Volkswagen, the world's leading car manufacturer (also owner of the Audi, Skoda, Seat and Porsche brands), with a turnover of nearly 240 billion euros at the time, massively evaded the approval tests of its vehicles to hide polluting emissions. In France, the Directorate General for Competition, Consumer Affairs and Fraud Control (DGCCRF), seized of the problem, launched a "survey on the practices relating to nitrogen oxide (NO_x) emissions of a dozen car manufacturers marketing diesel vehicles in France", including the two largest French manufacturers. In November 2016, it announced that it would report to the courts the results of its investigation into the Renault group (the fourth largest in the world in terms of turnover), which was also suspected of having used software designed to distort pollution test results in order to obtain the necessary approvals for marketing in Europe. The French agency added that this "fraudulent strategy" had probably lasted since 1990 and that it involved the entire "management chain" of the group (Génération Nouvelles Technologies, 16 March 2017). Finally, in September 2017, the French agency revealed the result of its investigation into the PSA group (Peugeot-Citroën, the 9th largest group in the world in terms of turnover), which it also accused of "fraudulent strategy" and "deception" concerning the homologation tests of at least two million vehicles sold between 2009 and 2015, twice as many as those that were the subject of the first scandal at Volkswagen. Finally, it appears, on the one hand, that some groups such as Volkswagen have tried to put pressure on the media by threatening to reduce their advertising investments if they give too much coverage to the case, and on the other hand, that the main European car manufacturers have already begun to try to circumvent the new "WLPT" (Worldwide Harmonised Light Vehicle Test Procedure) standards set up by the European Commission following the first scandal. We can therefore speak here of a "normalization of deviance" in the sense that, in the culture of the companies concerned, managerial norms clearly dominate legal norms (Aggeri, Saussois, 2017, pp. 93-94). The analysis of Volkswagen's delinquent practices also highlights the fact that they are all the more widespread since state regulatory authorities have so far used the law only as a mediation tool in "a certain management of illegalisms made up of collusion and accommodation relations between the regulator and the regulated" (*ibid.*, p. 85).

Industrial Pollution

The problem is very old and the historiography of industrial risks has developed considerably in recent years (Centemeri, Daumalin, 2015; Le Roux, 2016; Massard-Guilbaud, 2010; Charvolin et al., 2015). Smoke, gas and smells have been a cause for concern since the strong development of the industry in the 18th century and led to regulations at the beginning of the 19th century. However, it was not until the 1980s - in the context of growing concern for the environment and political ecology, and the global repercussions of the Seveso (1976), Bhopal (1984) and Chernobyl (1986) disasters - that environmental epidemiology and toxicology studies multiplied, linking industrial pollution to a number of diseases, particularly respiratory ones. Meanwhile, massive industrialization in some regions has caused health disasters that still affect the surrounding populations today. Few examples have really been studied over time (Marichalar, 2017). And the quantification of occupational diseases is still in its infancy in France, with the exception of asbestos, which constitutes more than 80% of cancers recognized as being of occupational origin (Conseil d'orientation sur les conditions de travail, 2015, p. 221). However, there is no doubt about the situation of many major industrial sites.

The Example of Fos-sur-Mer and the Etang de Berre

The geographical analysis proposed by the experts from France Santé Publique (2016) first indicates that pollution is higher in large urban areas: the Paris region, the north-east and the Lyon-Marseille axis. But many rural and even suburban areas are also heavily polluted due to industrial activity. We will remember here the example of the Marseille region, around the Etang de Berre. Several municipalities are particularly affected by the effects of pollution, located a few tens of kilometres northwest of Marseille, around the mouth of the Rhône and the Mediterranean coast: Fos-sur-Mer (approx. 16,000 inh.), Port-de-Bouc (approx. 17,000 inh.) and Port-Saint-Louis-du-Rhône (approx. 9,000 inh.) south of the pond, Berre (approx. 13,500 inh.) and Rognac (approx. 12,000 inh.) in the northeast.

In the early 1970s, France decided to set up a huge industrial port area in Fos-sur-Mer, in a mixture of the ideology of progress by industry, Parisian technocracy and the denial of environmental and health issues (although already largely known at the time: Perrin, 1974). Some dream of seeing the birth of "French California" at the dawn of "the year 2000" (Paillard, 1981, p. 44). The municipality will then gradually cover itself with refineries, oil depots, chemical, metallurgical and steel plants, industrial and household waste treatment plants, cement plants and LNG terminals. On a territory that nowadays has about fifty industrial installations, three major and highly polluting activities are still present. First, metallurgy with the steel giant Arcelor Mittal, a group based in Luxembourg, the world's leading steel producer, whose turnover reached 80 billion dollars in 2013. Then there is oil refining with Esso, the French subsidiary of the American oil group Exxon-Mobil, which is one of the ten most profitable companies in the world, with a turnover higher than most countries in the world (nearly \$440 billion in 2013). Finally, petrochemicals, with the American multinational Lyondell-Basell in particular.

However, it appears that the factories of at least two of these three groups pollute, while trying to hide it from the public eye, regularly committing offences, again allowing us to talk about routine delinquent activity or organized delinquent practices. Dozens of various problems (exceeding pollution standards, repeated incidents, delays in safety work to be carried out, etc.) have been reported by the public authorities concerning Arcelor Mittal's plants¹. The problem is even more serious in the case of the petrochemical group Lyondell Chimie France, which handles in particular butanol and propylene

oxide for the production of polyurethanes (chemical components used to manufacture plastics found in countless materials and in most objects of everyday life). However, these molecules are highly toxic and have a high risk of inflammation. Inhaling them is at best irritating, at worst carcinogenic. The same applies to the liquefied fuel gases manufactured and stored by the company, which are used in particular to manufacture ethers used in motor fuels.

On 21 October 2010, an inspection by the Regional Environment Directorate took place, which submitted its report on 8 August 2012. On 17 September 2012, the Bouches-du-Rhône prefecture sent the company a formal notice order, the reading of the “recitals” of which is instructive:

« Considering that LYONDELL Chimie France operates four boilers for its steam needs at its Fos-sur-Mer site;

Considering that during his on-site visit, the Classified Facilities Inspector found that the company had not complied with the applicable regulatory values for air emissions from its boilers since 2009 and that the applicable dust concentration limit at the boilers was regularly exceeded;

Considering that the operator does not comply with the applicable requirements and that the exceedances observed have persisted for several years ».

Did Lyondell subsequently change its behavior? This is not the case. In 2014, the “hazard study” revealed persistent problems. The prefectural decree of 9 April 2014 specifies that “the operator’s control of the risks related to his activity does not seem sufficient” and prescribes a series of measures to be taken. At the Berre-l’Étang site, huge quantities of liquefied flammable gases are stored, presenting major health risks in the event of a leak or fire. The law therefore requires the industrial company to equip its site with adequate detection and alarm systems, which it is reluctant to do. The prefectural decree of formal notice of 16 September 2015 notes this time that, despite the instructions given following inspections and numerous exchanges of letters, the manufacturer has not taken “these technical measures[which] contribute to the prevention of major accidents that could lead to lethal effects on the establishment’s environment”.

Finally, the companies of the Lyondell-Basell group do not only pollute the air, but also the water. The problem has been recognized at least since 2010. However, it persists, as the company refuses to undertake the sealing work necessary to secure its pipes. On 16 March 2018, the Préfecture des Bouches-du-Rhône issued a new formal notice order against the petrochemical group concerning the Berre-l’Étang site, concerning the pollution of groundwater aquifers to the northwest of the municipality. In passing, the decree noted that “some leaks have been identified for more than 9 years without any sealing work carried out since then”.

The Health Threat: Accumulation and Convergence of Strong Indicators

There is no systematic data collected on the occupational diseases of people working on these polluting industrial sites, only a series of testimonies centered solely on the employees of these companies and not on their countless subcontractors (Grandmaison, 2017, p. 31). On the other hand, the consequences of industrial pollution around the Étang de Berre on the respiratory and cancerous pathologies of the surrounding populations have been known by health institutions for several years, albeit in an incomplete

Table 1. Comparative mortality indices (CMI) in four communes in the Bouches-du-Rhône

	Fos-sur-Mer	Port-de-Bouc	Port-Saint-Louis-du-Rhône	Berre-l'Étang
All causes	109	113	115,3	113,5
Premature	99,9	130	121,8	120,2
Preventable	103,1	139,1	117,2	116,1
Cancer	121,6	121,3	114,3	129,2
Lung cancer	136,8	151,3	108,6	178,8
Regional average	100	100	100	100

Source: Inserm-CépiDC, 2009-2013; SIRSéPACA « portraits de territoires socio-sanitaires » [en ligne]; author's calculations

way. In particular, it is established that women are at a much higher risk of myocardial infarction than in the average of equivalent municipalities and that men are at two and a half times higher risk of acute leukemia (Pascal Bensa et al., 2012), even though the study studied only two polluting agents. In general, local data have long been lacking and populations (as well as local doctors who regularly report in the press on alarming levels of certain diseases in their patients) have been kept not only in ignorance, but also in contempt for their fears and daily illnesses, including by public authorities. Strangely, the Regional Health Observatory (ORS PACA) has never conducted a diagnosis on the Commune of Fos-sur-Mer. Only on its website is a summary study of the neighboring municipality of Port-Saint-Louis du Rhône, which nevertheless establishes a very significant excess mortality compared to the region in terms of respiratory tract diseases (+77.3% compared to the regional average) and cancers (+31.9%), in particular lung cancers (+61.8%) (Dumesnil, Saugeron, 2013, 12). This is all the more surprising as the statistical data on the causes of mortality, available on its community-wide information system, clearly suggest a concentration of problems, particularly deaths from lung cancer, in several municipalities in the Étang de Berre where industrial sites are concentrated (Table 1).

Faced with this lack of diagnosis, however, local mobilizations have made it possible to include in the file studies that are certainly partial, but with significant and totally convergent results. Three studies, based on three forms of civil mobilization, were published in the space of three years, in addition to a study carried out by a State agency.

First, in 2015, participatory scientific research was conducted to describe individual health problems based on the study of a randomly selected population of 816 individuals or households, constituting a representative sample of the population of the municipalities of Fos-sur-Mer and Port-Saint-Louis-du-Rhône (Allen, Cohen, Ferrier, Lees, 2017). Its results indicate that the population suffers much more than the average from asthma (mainly men), cancers (mainly women, breast and uterine cancers) and diabetes. In total, nearly two thirds of the population reports at least one chronic disease (asthma, other respiratory disease, respiratory allergy other than pollen, dermatological disease, cancer, autoimmune disease, endocrine disease and/or diabetes), almost twice the French average. About two thirds are also affected by a chronic symptom (eye irritations, nose/throat symptoms, headache, skin problems, nose bleeds). On a geographical scale, it appears that some districts are even more affected than others because they are located closest to industrial installations and are most exposed to breathing polluted air regardless of the direction of the winds. In these neighborhoods, it is the health of the entire population that is globally threatened by industrial pollution.

Then, at the end of January 2018, Air Paca (an air quality monitoring association approved by the Ministry of the Environment) published the results of a study aimed at “quantifying, using risk indicators, the impact of air pollution on health”. The report states that “the use of this tool in the Étang de Berre region has made it possible to identify the areas for which management thresholds are exceeded, for the first time in such an approach, by integrating 39 substances and all sources of pollution (industry, transport, heating, ships, etc.) on the scale of a territory composed of 66 municipalities” (Air Paca, 2018, p. 2). The study first concludes that there are pollutants related to road and highway traffic, as well as an airport, as in other regions. But it adds that, for other pollutants, the exceedances of the observed risk management thresholds are “specific to the study area[...] around the Gulf of Fos, Martigues and Berre where many industrial activities are present” (ibid., 23). In concrete terms, in Fos, Martigues and Berre, three molecules linked to industrial activity pose a risk to the health of the population with regard to certain cancer diseases. And recognizing it was a first for a government department that was often criticized by local associations.

A few days later, in February 2018, the “Association de défense et de protection du littoral du golfe de Fos” (created in 2002 by a small group of inhabitants) has organizing a public meeting to reveal the results of a study it had carried out on a series of food products from the Gulf of Fos: bull, sheep, goat cheese, chicken eggs, fish, mussels, olive oil and hay (ADPLGF, 2018). Two specialized and independent laboratories searched the samples for about 50 chemical compounds. Then the “Institut écocitoyen pour la connaissance des pollutions” (IECP, see below) and its scientific council interpreted the results. The latter are of particular concern in the case of bull meat and eggs, where very high concentrations of dioxins (carcinogens) and polychlorinated biphenyls (endocrine disrupters) have been found. Seafood products, on the other hand, revealed a significant presence of heavy metals (lead, cadmium). As a result, “the association, supported by the town hall of Fos-sur-Mer, decided, after fifteen years of alerts, to transmit to the courts with the filing of a complaint against X for endangering the lives of others” (Mandard, 2018).

Finally, in May 2018, another local initiative replaced the apathy of the health authorities. The IECP, created in 2010 by local authorities and led by academics, submitted a report presenting the results of a “study on the impregnation of the population with atmospheric pollutants in the Fos-sur-Mer industrial port area” (IECP, 2018). After a telephone survey, 138 people aged 30 to 65 were interviewed face-to-face between September and November 2016 in the commune of Fos and in a commune 20 km away in order to compare. Urine and blood samples were systematically taken. The pollutants sought were metals, polycyclic aromatic hydrocarbons, benzene, PCBs and 17 dioxins/furans considered to have significant toxicity. The study confirms that the presence of pollutants is mainly linked to food (consumption of seafood, garden vegetables) and lifestyle (activities such as gardening increases exposure to pollutants), but it shows that these daily ordinary activities are precisely made more risky in the municipality located in an industrial zone. The measures show “an over impregnation of the population exposed by inhalation for lead, two furans typical of industrial emissions, and benzene but only in the oldest people”. She pointed out that “gardening in the exposed area was associated with an increase in total PCB impregnation compared to the control area”, that “consuming garden vegetables was associated with an increase in cadmium impregnation in the exposed area, while the effect was protective in the control area” and finally that “the consumption of local seafood was associated with an increase in PCB, dioxins/furans, mercury and chromium impregnations”. Again, the study is limited due to low enrolment and the lack of recent comparative national data. However, it is a strong and converging third index.

PROVISIONAL CONCLUSIONS: FURTHER RESEARCH ON CORPORATE CRIME

The issues raised in this chapter echo the debates that have occupied the sociology of crime and criminology for the past twenty years or so in England and North America. They are only just beginning to be investigated in France, where it is difficult to emerge from a phase where political-media “scandals” probably tend to polarize opposing attitudes of radical dramatization or euphemism. The environmental and health problems mentioned in this text are, however, old and their origins known. So it is rather their persistence that surprises, or even their resistance, given the increasing scale of mobilizations and regulations aimed at combating them (Jaworski, 2009; Neyret, 2015). Certainly, at the international level, it is easy to understand how national egoisms threaten to ruin the efforts of scientists at any time. The story is not new (Boudia, Henry, 2015; Aykut, Dahan, 2015). Recently, the hope raised by the collective commitments made at COP 21 in December 2015 in Paris quickly turned into disillusionment after the 2016 US presidential elections. However, at the national level, with the themes of environmental protection and public health generating a broad political consensus, one would expect rapid and important developments. However, this is hardly the case. In the report of a Senate committee of inquiry on air pollution, the parliamentarian who led it clearly expressed this feeling of powerlessness: “Why such a delay between the level of scientific knowledge (physical, biological, medical, economic) and political decision-making on air pollution? (...) Your committee of inquiry can only note the failure of the measures taken over the past twenty years (...). More seriously, your committee of inquiry notes that the same measures are being proposed, studied, not applied, forgotten and then proposed again” (Sénat, 2015, p. 13). These findings are an invitation to investigation for the social sciences.

Indeed, political science research highlights the contradictions and opacities surrounding the concrete implementation of public policies: “the management of many issues (such as shale gas or pesticides) shows the gulf between the principles of openness and many administrative and political practices that remain discretionary” (Lascoumes, 2012, p. 125). The role of administrative officers of control bodies in the management of health alerts (Jouzel, Prete, 2017) and more broadly in clarifying the issues and conflicts surrounding the production of health and environmental expertise (Henry et al., 2015; Council, Henry, 2016) are just beginning to be studied. Research is also in its infancy as to the role of local elected officials, who can disrupt polluters by joining forces with state control agents or, on the contrary, enter into “logics of shared governance and territorialized regulation” with industry (Fournier, Mattina, 2013). Moreover, traditional trade unions seem, for the time being, to be very little mobilized in France on environmental issues such as industrial pollution, unlike what can be observed in other countries. The issue of whistleblowers and their protection has not yet been studied in this area. As for citizen mobilizations, without the assistance of the State or local elected officials, they are inevitably powerless and remain generally scattered and ephemeral (Calvez, 2016). As for the sociology of delinquency, there are still many areas to be investigated. As for industrial practices, it would be important to be able to analyze strategies for “securing delinquent practices” (Spire, 2013) as well as strategies for resisting pressure from States, the media and citizen mobilization. On the administrative side, questions arise in particular about the nature, effectiveness and efficiency of controls and sanctions carried out by the State and its law enforcement institutions in all the areas concerned (police, justice, labor inspectorates, tax officials, bodies responsible for monitoring compliance with health and environmental standards, etc.). But beyond this identification of hidden weaknesses in the implementation of public policies and the handling of health warnings, two other “macro” phenomena probably play a decisive role in understanding the permanence of problems whose diagnosis seems established.

The first is the gradual concentration of companies that has been taking place since the 1970s in most economic sectors, in connection with the financialization and globalization of markets, leading to the creation of multinationals whose turnover is higher than that of most countries in the world (Bauchet, 2007; Chavagneux, Louis, 2018). Faced with economic giants who are weighing more and more heavily in every respect (and can exert more than ever various forms of blackmail on employment and investment on States), it is understandable that public authorities are experiencing major difficulties in the negotiations required to adopt new, more stringent production standards. However, most of the management of major risks is still played out in this balance of power between government services and industry (Bonnaud, Martinais, 2008). It is also understood that it is in return much easier to make individuals feel guilty and tax them (Boutaric, 2014).

This concentration also gives these economic groups - and this is the second phenomenon - a tenfold increase in power in terms of lobbying, corruption and crime. As we have seen in the two examples of industrial pollution developed, these practices have never disappeared. And they are found almost systematically in the analysis of health and environmental disasters, for example in the pharmaceutical industry or the agri-food industry (Mucchielli, 2018). In France, one may even wonder whether they are not particularly strong because of the high level of collusion between the world of political leaders from the “grandes écoles” (in particular the National School of Administration [ENA] and high engineering schools, what Bourdieu [1989] called the “noblesse d’État”) and that of economic leaders, collusion which is reflected in particular in common practices of “slipping” (Bouzidi et al., 2010; Rouban, 2010) as well as recurring problems of conflicts of interest and corruption. The case of the Ministry of Health and Pharmaceutical Industry is now well known, but it is far from being the only one (Thébaud-Mony, 2014; Lenglet, Touly, 2015). Far from being reduced, the “scrambling” is in fact increasing between the defense of the general interest and that of private interests (France, Vauchez, 2017; Cassia, 2018). It is therefore highly likely that this only perpetuates the relative impunity enjoyed by certain industrial groups that daily degrade the environment and the state of health of populations.

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KEY TERMS AND DEFINITIONS

Corporate Crime: Crimes committed either by a corporation or by individuals acting on behalf of a corporation or other business entity.

Corruption: The fact that a person entrusted with a specific function (public or private) solicits or accepts a gift or advantage of any kind in order to perform, or refrain from performing, an act within the scope of his or her duties.

Dieselgate: An industrial and health scandal linked to the use by the Volkswagen group, from 2009 to 2015, of various techniques aimed at fraudulently reducing the polluting emissions of some of its engines during certification tests.

Environmental Crime: All forms of environmental damage voluntarily produced by individuals and organizations.

Lobbying: Set of more or less subtle methods used by a specific group to obtain decisions that are in its interests by using its power and influence.

ENDNOTE

¹ See this company's file on the classified installations website: www.installationsclassees.developpement-durable.gouv.fr/ ("établissement n°1052"). All the administrative decisions that follow in this paragraph are taken from this site.

Chapter 17

The Evolution of Terrorism Threats

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ABSTRACT

Terrorism is relatively recent in history, but in this short time, it has experienced a radical and progressive change in many ways. Starting from the teaching of the Athenian historian Thucydides, it is necessary to trace a brief history of terrorism to better understand a phenomenon that has proven extremely dynamic and complex. Born in France at the end of the 18th century, it was an instrument of intimidation and repression that was very useful for authoritarian regimes that took power over the centuries, but it was even more so for non-state actors who later used such violent actions to counteract the states. Today, the threat of terrorism is very different from the past: it is global, indiscriminate, and mostly of a political-religious nature, placing the need to review security measures and adapt them to new circumstances.

INTRODUCTION

At the end of 1900, European-American governments and analysts have put forward the hope that, with the end of an era marked by disastrous interstate conflicts and rivalry between powers, a new one would be opened, characterized by the transition to the democracy and the free market of an increasing number of States. Such positiveness derived from the first openings of the former Communist countries, many of which were preparing to enter into close relations with the European Union, from the acceleration of the globalization, thanks to which the world was more interconnected, but above all by the assumption that, after having fought two world wars and faced the effects of the abuses committed by the totalitarian regimes, any government wanted to face a new phase of rivalry between powers. However, the perspective of a new phase of relations and, of the international system characterized by peace and international security has had to set aside. To threaten it, there are no more the interstate dynamics, but the intra-state ones. In facts, once the danger of a nuclear escalation has been set aside – at least for the moment – old ethnic, religious and politics hostility, that have remained largely latent inside single States, has come to the light. The beginning of the new millennium thus has inaugurated a new season of conflicts, which

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although differed among them for many aspects, they presented some peculiar characteristics including: the asymmetry of the parts, which involves a substantial disproportion between the respective strength of the belligerents (as in the case of a confrontation between a State and a non-state actor) and the potential “lack of limits of the war”, which refers both to its extension beyond the boundaries of State borders, and to the involvement of civilians, but also to the possibility that to fight is used various methods and tools (Hoffman, 2007, p. 22). Both concepts allow us to delineate the main features of what are known as “hybrid threats”, from which the States have tried to defend themselves in the last decades, trying to adapt their own political and military strategies. Although the new forms of conflict involve the use of various tactics by the weaker actor to succeed in putting in difficulty the rival, the one that has become more known and how continuous to be perceived by governments, citizens and international institutions as the most pressing it is without doubt the terrorism. To well look, this is not a completely new phenomenon; however, previously the topic had not been widely debated within the international bodies, just as it was not addressed with interest by the western press. In effects, the terrorism of the ‘900s, were perceived as “far”, in time or space, and for this reason the understanding of which was not considered neither urgent nor influential on the daily life. With the attacks of September 11th 2001 on the American soil all this changes. Shortly after the tragic event, which has caused the death of 2,996 people and wounded more than 6,000, US President, George W. Bush, has declared the beginning of the “war to the terrorism”, a multidimensional campaign of almost unlimited that, precisely for this reason, it has continued over the years with undoubted consequences in terms of criticisms, retaliations and deaths. At the same time, this date is become symbolic of a new condition in which every person, regardless of the geographical place in which he resides and from the profession he or she performs, could be victim of an attack. The terrorists’ new targets progressively become civilians, guilty only of having found themselves in the wrong place at the wrong time, marking a fundamental watershed among those that many analysts have defined the “old” and the “new” terrorism, marked by a constant state of alert and fear (Spencer, 2006, p. 4-5).

BACKGROUND

The attempt to give the word “terrorism” a univocal meaning can be started right from the time when it had reached its maximum, the ‘70s. In particular, the UN tried in vain to obtain a universal agreement after the 1972 Munich Olympic massacre. However, some nations - in large parts of Africa, Asia and the Middle East - were unwilling to label groups as “terrorists” if they sympathized with their goals, due to the disqualifying aspects of the label, and the solution was not found. Precisely for this reason, as pointed out by Louise Richardson, a universal definition of terrorism should be independent of the group’s objectives (Bruce, 2013, p. 26). Many other descriptions could be cited, many of them proposed by experts and researchers, or currently being used by national authorities, or international organizations. In particular, important attempts to find an agreement for a universally valid definition can be found in the International Convention on the Suppression of Terrorist Financing, which entered into force on 10 April 2002, which did not define the phenomenon as such, but rather the terrorist, attributing the crime (under Article 2, paragraph 1) to *anyone by any means, directly or indirectly, illegally and intentionally, provides or raises funds with the intent to use them or knowing that they are intended to be used, in whole or in part, in order to perform: (a) an act that constitutes a crime pursuant to and as defined in one of the treaties listed in the Annex; or (b) any other act intended to cause death or serious bodily*

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injury to a civilian, or to any other person who has no active part in situations of armed conflict, when the purpose of such an act, by its nature or context, is to intimidate a population, or oblige a government or international organization to do or refrain from doing anything. While a clearer description can be found in UN Security Council Resolution No. 1566, considered on October 8, 2004, where one relates to acts of terrorism, it is stated:

criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature.

One of the most rigorous attempts to provide a world-compatible summary of what had been proposed up to now regarding the term “terrorism” was made by Alex P. Schmid and Albert J. Jongman, who examine 109 different definitions of terrorism and, calculating the frequency with which certain aspects were cited, managed to elaborate a long definition incorporating 22 elements:

Terrorism is an anxiety-inspired method of repeated violent action, employed by (semi-)clandestine individuals, groups, or state actors, for idiosyncratic, criminal, or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population and serve as message generators. Threat and violence-based communication processes between terrorist (organization), (imperilled) victims, and the main targets are used to manipulate the main target (audience(s)), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought (Schmid, & Jongman, 1988, p. 28).

Nevertheless, this has not resolved the problem and, therefore, today it deals still with one of the most controversial matters of the inter-nationalistic debate, so more than 212 definitions of terrorism are used all over the world, which differ among them from the aspects considered (how motivations, used tactics, objective, etc.), as well as from the experiences in such sense. The problem lies in distinguishing it both from the crimes common of the same type (homicide, kidnapping, guerrilla, etc.), both in comparison to behaviors disciplined by different international tools by the penal conventions on the terrorism and, notably, from the international humanitarian right. The matter sets only not great uncertainties to theoretical level, but also, and above all, practical. In facts, without an accord on thing exactly to intend when it speaks of “terrorism”, a solution cannot be found for defeating him/it, or at very least to embank him/it, neither to establish the suitable answer from a State struck by an attack and towards what subject should address him on the base of the international (considered terrorists individually, States supporter, etc.) right (Barberini, 2004).

THE PAST, PRESENT AND FUTURE OF THE MOST DANGEROUS PHENOMENON OF MODERN SOCIETIES

The history of the terrorism in origin probably coexisted with that of the political violence which, in the West, sees its origin in the regime of terror imposed by the Jacobins in France from the winter 1793 to the summer of 1794, whose purpose was the transformation of the society through the demolition of the old government in order to succeed, the leaders of the revolutionary movement led by Robespierre, once assumed power, they established a radical regime, based on the systematic elimination of the opposition through authoritarian and unconstitutional means. These actions, according to those responsible were necessary, in fact it was Robespierre himself who stated in his famous speech "*Sur les principes de morale politique*" exposed to the National Convention that *the terror is nothing else than the severe and inflexible justice, that is the emanation of the Virtue*. In such meaning, the Jacobins applied the term to his/her own actions and his/her own politics, but in that years the term still had a neutral meaning very different from the one will assume in the years to come. The shift toward a negative meaning can be individualized in striking way with the advent of the totalitarianisms in Russia and in Germany. Both regimes eliminated all the internal oppositions and persecuted potential adversaries; moreover, they tried to impose a total political control over the society by controlling all form of association, censoring the press and terrorizing the population. The terrorism of State had so known its maximum peak, but it will continue to be perpetrated by the military dictatorships in a lot of parts of the world in the following years. A change both in descriptive and evaluative of the word can be individualized, instead, in the second half of the 19th century. During this phase, terrorism was still an internal factor to single States, but to use it were no longer government leaders, but non-state groups. It was the period marked by the political struggle of anarchic or left organizations (such as the Marxism), or from ethnic-nationalists and separatist ideologies (for example Irish, Basque and Palestinian). The aim of the first groups was to use the violence to politicize the masses and to incite them to rebel against the capitalistic system; while the seconds wanted the independence for their ethnic group, or the fusion with another State. At that times, it primarily concerned secular groups that, disenchanted by the results achieved through the other methods of political struggle, used extreme actions to hit the social and political order considered unjust and oppressive, showing the vulnerability of it towards the oppressed ones and, in last analysis, to impose a political and social change (Copeland, 2001). A further development in the use of terrorist strategies occurred after the World War II, when it became an important part of the anti-colonial struggles. As Wilkinson points out, this has an important meaning as it was *the only clear example in the modern history in which the sub-government organizations that use the terror as their main weapon have been able to reach their long-term political goals, that is the withdrawal of the colonial power and establishment of a form of government favored by the insurgents* (Wilkinson, 1992, p. 230). All these actors, according to many researchers, could be included in the broad category of the "old terrorism" because, although they pursued different objective, they shared some general characteristics. First, their requests were negotiable, such as the release of some arrested companion or the payment in exchange for the release of hostages. In according to place, connected to the precedent point, violence was contemplated and proportionate for course and intensity to the pursued political objectives. The terrorists did not therefore carry out an excessive and indiscriminate violence, which would have reduced their legitimacy for the real or potential supporters. Usually the attacks were studied in the detail and they contemplated to objective symbolic, or of tall profile: political, military government buildings, etc. So the more spectacular were actions, the more it would have benefited from the propaganda and the diffu-

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sion of their message. Naturally, with the advent and the diffusion of mass media, such result has been increasingly amplified, but it must be underlined that for the terrorists it was important to continue to have the support of the population. For this reason, traditional tactics were used – knives, guns, bombs – while they were showed scarce interest for the weapons of mass destruction; moreover, an attack was almost always followed by a statement which, in addition to claiming the merit of the deed, explained the reason why it was conducted against that particular objective. Finally, each group belonging to the so-called “old terrorism” it had a clear hierarchical organization, in which there was a leadership with command and control task. To the inferior levels there were often the specialized active members in determined circles (for instance in the manufacture of bombs or in the murder), followed by suppliers of material, technical or organizational support and, finally, the passive supporters that limited him to spread the ideas of the movement (Spencer, 2006, p. 7-8). This brief examination show therefore that, despite the phenomenon of the terrorism and the fear to it connected two recent factors are held; in reality, they were very more common between 1970 and 1990, although this concerned only a small number of European and American Countries. The data reported by the Global Terrorism Database effectively show this finding, showing that in Europe in 1979, 1019 attacks were perpetrated, a peak that has not been reached. Likewise, it can be seen that groups guilty of committing acts of terrorism over time have changed, but despite the common perceptions, the death toll of terrorism in the past few years would not be particularly high compared to the previous period (Sanger-Katz, 2016).

The dilemmas about how to prevent, or respond to a particularly serious act of terrorism, have been emphasized since 2001, when internal terrorism has become global and the international community has become aware that such threat require for a common effort. To put this need was al-Qaeda, a Sunni Islamic terrorist organization born in 1988 during the war in Afghanistan, bearer of ideals due to Islamic fundamentalism and engaged in the execution of violent actions against the various pro-Western Islamic regimes, both from the western world. Of course, al-Qaeda was not the only terrorist organization to endanger international security; however, it was undoubtedly the most representative of a hybrid threat, able to exploit the weaknesses of the national states, as well as the presence of environmental factors - political, economic, social, or otherwise - that allowed the diffusion and acceptance of radical or revolutionary ideologies within a community. In fact, over time al-Qaeda has become a generic brand used by the media and in politics to indicate a series of militant organizations apparently dedicated to a restoration of a “pure”, “origins” Islam, through violent means and attacks, as well as a “new terrorism” for which new policies were needed to deal with it effectively. The new terrorism is often described as a predominantly political-religious phenomenon, where the latter is intentionally exploited to transform faith into ideology, so as to make it a motivational element and a moral justification for actions that would otherwise be considered intolerable. A confirmation of this metamorphosis with respect to the past can be traced in numerous researches, among which the Institute of Economics and Peace (IEP) deserve particular attention, whose data show that, with the beginning of the new millennium, the Religious extremism has overcome national separatism to become the main engine of terrorist attacks around the world¹. However, it is good to bear in mind that this is a phenomenon that varies from one region to another, with a strong concentration in the Middle East, North Africa and Sub-Saharan Africa in which there is also the greatest number of deaths (Arnett, 2014). In these places, many clerics and charismatic men have supported the radicalization of Islam, affirming its legitimacy according to the Qur’an, persuading ordinary citizens to adopt an uncompromising view of the world in accordance with the belief of religion, fighting the infidels and ending the pervasive oppression of one’s own community (De Veer Krukliis, 2014). According to the Report realized following the research on religious ex-

tremism among Muslim believers living in Poland, *radicalization is a process of adopting an extremist system of values combined with the expression of approval, support or use of violence and intimidation as a method of achieving changes in society or encouraging others to do so* (Szlachter, Kaczorowski, Muszyński, Potejko, Chomentowski, & Tadeusz, 2012). Therefore, individuals who are inspired by radicalism believe that violence is a divine duty, performed in response to theological demands and justified by the Scriptures for which they are ready to die. Many believe that the will to use widespread and indiscriminate violence is also connected to this. In this sense, some political analysts, including Bruce Hoffman, have pointed out that these non-state actors pose a very different and potentially far more deadly threat than traditional groups. In fact, with their actions they no longer aim at making clearly defined political demands, but at the destruction of society and the elimination of large sections of the population, no longer exclusively of carefully selected symbolic objectives (Spencer, 2006, p. 9-11). 2001 has thus become in the eyes of the world one of the fundamental watersheds of history, an emblematic date following which the form, the perception and the study of a phenomenon are substantially different from the past. Since then the cry of “*Allah Akbar!*” pronounced by the terrorists shortly before the completion of a massacre has become familiar and the discussions about the link between terrorism and religion have multiplied to become the order of the day with the danger of radicalization of young people apparently far from the Islamic creed. The growth of the attention on Islamic terrorism by the world public opinion is not due exclusively to the serious attacks perpetuated by the militia, but also due to the increasing globalization and computerization. The spread of new technologies in the world, with their advantages in terms of accessibility, affordability, lack of regulation and the possibility of reaching a potentially huge public, has proved to be extremely advantageous for terrorist organizations in the same way as for legal companies. Of course, in both cases it was a progressive use and, as far as the jihadist groups are concerned, we could see a substantial increase in both the websites used and the type of content (Weimann, 2014, p. 2-4). In fact, if in the early 2000s terrorist organizations operated or controlled only a dozen websites with mostly limited aims to propaganda and ideological training; today, the authorities openly admit that they have difficulty in curbing the spread of content spread over chat rooms, blogs, social networks, other types of websites. This is the focus of a study realized by Gabriel Weimann (2015) in which he reported the data of such significant increase. In particular, the expert claims that in 1998 the number of websites containing terrorist material was about 12, in 2003 the number has risen to 2,650 websites and in 2015, there were about 9,800 sites. Another confirmation come from the United Nations Office on Drugs and Crime (UNODC), which in 2012 published a detailed study on the topic entitled “The use of the internet for terrorist purposes”, that examines the six categories of goals, sometimes overlapping, that can be achieved by terrorist organizations with an efficient use of internet technology: propaganda (which includes recruitment, radicalization and incitement to terrorism); financing; training; planning (both through secret communications and with open-source information); execution; and cyber-attacks. So, once the potential of the network has been ascertained, an increasing number of terrorist groups have broadened their knowledge of cyberspace to promote their cause and keep in touch with their own cells around the world. The problem in the first decade of the 21st century has remained largely latent, but since the first years of its birth, ISIS has further raised the level of danger deriving from the use by terrorists of what, more recently, has been identified by NATO as a new “battleground”. In fact, online content has gradually become a source of primary importance for so-called solitary wolves, i.e. individuals who prepare and commit violent acts alone, outside any command structure and without material assistance from any group. Social media is an essential component of this “technologization” of terrorism. The organizations have understood the

huge advantages of those platforms to communicate each other, or spread their radical ideologies around the world for recruit new supporters and young people ready to sacrifice themselves for the purpose. As reported by the statistical survey conducted by Paul Gill and Emily Corner based on interviews with radicalized individuals, 77% of solitary wolves have self-radicalized online; among these, some have used manuals and tutorials on the production of weapons to assemble rudimentary devices, others have benefited from the possibility of maintaining internal communication (Gill, & Corner, 2015). The number of attacks by these actors is growing strongly, posing a further threat to international security, even more difficult to detect and, consequently, to stop. In this regard, in 2010 the then director of the CIA, Leon Panetta, declared that the attacks made by these individuals could represent the main threat to the country. In the same year, in fact, appeared on the network a detailed guide to carry out attacks, *in which were reported the information needed to make an IED explosives with readily available materials that would not have aroused suspicion, some of which are available at home. Moreover, the number of people, apparently without any connection to the jihadists, but in reality, ready to die to spread the panic in the Western States was on the rise* (Iacch, 2016). Beginning in 2014, following the proclamation of the birth of the Islamic State by its leader, Abū Bakr al-Baghdādī, the use of the Internet has been further refined, making it the most advanced media group that has ever existed. ISIS has optimized the existing propaganda machine by making it ready to take action to exalt the deeds of every bomber in the world and, at the same time, support war operations. Videos made with unprecedented skills and professionalism have invaded the network to be conveyed to a wide audience, composed of enemies and sympathizers. In December 2015, alleged members of the Islamic State have launched a new online magazine on the cyber-jihad, “Kybernetiq”. In its 15 pages, the document aims to instruct the new militants about the cryptography and the most sophisticated methods for hid their identity, that is the main instrument to have success in the cyberwar against Western States. This is a further proof that the leaders of the most powerful terrorist organization consider technology a fundamental tool in the fight against their adversaries, important as the “physical war”². On the one hand, bloody images with the execution of the “infidels” captured and the threat of striking symbolic places of the West and of Christianity; on the other hand, real-time updates on the military operations that illustrated the progress and propaganda aimed at attracting the sympathizers living elsewhere, showing the serenity and leisure time of those who had chosen to fight for the establishment of a State founded on the intransigent principles of *Sharī`a*. Thousands of men and women all over the world have accepted the message sent in the name of the *jihād*, some showing their support with online donations, others leaving for the provinces of the caliphate, others becoming recruiters of new recruits and “facilitators” for those who showed themselves willing to leave for the war zones. In June 2014, the Soufan Group published its first report on foreign fighters in Syria, indicating the presence of about 12,000 foreign fighters from 81 countries. Almost eighteen months later, despite the constant international effort to contain the Islamic State and curb the flow of foreign fighters, their number has more than doubled to reach its maximum (The Soufan Group, 2015, p. 5). According to a more recent report, realized by the Radicalization Awareness Network, the flow decreased significantly in 2016, but in the meantime the amount of foreign terrorist fighters had reached the amazing figure of 42,000 coming from over 120 countries (EU RAN, 2017).

In 2016, when the ISIS had lost most of the area previously under its control and, therefore, was about to be definitively defeated territorially, the group’s online strategy has changed. It no longer asked young people to leave to fight alongside the militia in the conflict areas in Syria and Iraq; on the contrary, the supporters of the cause were urged all over the world to remain in their own country and hit it by any means. A confirmation of this change can be traced in the messages disseminated later, both on

the online platforms and in the magazines of the group, where their supporters are encouraged to carry out attacks in Western places of call. Furthermore, in an article in the latest issue of the Islamic State's English-language journal, *Rumiyah*, which was published that year, mention is made of the possibility of using what will become known as the "Vehicle-Borne Improvised Explosive Device":

Use trucks as weapons to hit infidels. A medium-sized truck will not arouse suspicion but will inflict more damage than a military fighter. A vehicle launched at high speed during a recall event for the unbelievers, will do a carnage. The vehicles are like knives because they are extremely easy to acquire, but unlike knives, which if found in possession can arouse suspicion, a vehicle does not raise any doubt because of their widespread use in the world (Iacch, 2016).

According to the latest Global Terrorism Index, the total number of deaths has decreased by 27% between 2016 and 2017, highlighting the strong decline of the IS in Iraq and Syria. Nonetheless, the number of terrorist incidents has risen to 282 in Europe, the highest number in the last twenty years, and the impact of terrorism remains widespread, with ISIS confirming itself as the most lethal organization in the world, as well as with better ability to recruit new members in Western States (Institute for Economics & Peace, 2018). With the territorial defeat of the Caliphate, almost all States around the world are facing with two problems: the returnees and the process of their own citizens captured in Syria or Iraq as ISIS fighters. The term "returnees" refers to men and women who left their homes in the West to join ISIS or similar terrorist organizations in Syria and Iraq as fighters or supporters now want to come home. Our knowledge about departees and returnees is scarce mainly due to substantial methodological problems: most existing 'profiles' are based on estimates which, with the lack of common terminology, vary considerably in terms of how data is collated by security and intelligence agencies; moreover, qualitative analyses of returnees' backgrounds, experiences, and motivations are based on small sample sizes – due to the difficulties of acquiring research participants from within the conflict zone, or the inaccessibility of returnee participants due to a fear of self-incrimination (Scherrer, 2018). In light of these limitations, it is extremely difficult to make reliable generalizations about returnees, that could help the authorities to identify potential risks. In Europe, according to the Soufan Center, almost 1200 individuals have already returned in their own countries, an average of 22-24%, that are mostly Belgium, Denmark, France, Germany, Netherlands and UK (Barrett, 2017). The major problem of this phenomenon is the motivations besides their decision to left Syria and Iraq, if it represent a delusion for the real life in the Caliphate or the decision to make jihād elsewhere. A similar dilemma arises for prisoners detained in Iraq and Syria who, although in some cases have expressed regret for the actions committed, continue to represent a danger for the security of the interested States which, if they will receive them, will plan specific social reintegration measures.

Another aspect that must be dealt with is the terrorism financing. Hand in hand with the internalization of terrorism and the search for a common approach to define it, it was also understood the importance of identifying financial sources that allow terrorist organizations to survive over time and take violent actions. As eminent scholars have noted, *there is no successful organization without successful financing* (Koh, 2006), in fact, despite all the changes mentioned above, the need to have a monetary base can be considered one of the few aspects that has never changed. Every structure, however modest, requires money to perform some basic functions, including: recruitment and training; arms supply; search for popular consensus; direct costs of the attacks and maintenance of the possibly implanted social structure. To be able to fulfil these functions, over time the terrorist organizations have used multiple sources of

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income that could be divided into two basic categories: legal, within which are included the money paid by charitable organizations or NGOs, the profits derived from entrepreneurial activities and possible individual donations; illicit, drugs, including drug trafficking, human beings, archaeological heritage, oil and weapons. Given the importance of the financial sector, since the end of the 1990s, international authorities have begun to define a regulatory framework that could hinder the livelihood of terrorist groups and punish those who help them by sending money or other resources. The first document in which it has been made reference to the financing of terrorism, as an aspect distinct from others, is the International Convention on the Suppression of Terrorist Financing, signed in 1999, within which it is provided both to give a precise definition on what should be understood with the word “funds”, both to determine what are the behaviors to be criminalized. In particular, the Article 2 affirms:

Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) *An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or*
- (b) *Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.*

In the same year, the UN Security Council Resolution no.1267, with the purpose of countering Al-Qaeda, introduced the two measures that should have enabled the sustenance and, ultimately, the capacities: the so-called black listing, i.e. the inclusion of individuals/groups recognized as terrorists within a list managed by the Sanctions Committee; and measures to freeze funds and other economic resources. After the attack on the Twin Towers, the awareness of the seriousness of the international terrorism problem has increased as well as the attempts to put in place adequate legislation for prevention and contrast of terrorism financing. In fact, the day after the attack, the UN Security Council has issued Resolution No. 1368 and No. 1373, in addition to condemning the terrorist attacks, makes an appeal to international community to increase efforts to suppress all forms of terrorism and its sources of funding. Furthermore, the UN Resolution No. 1373 has created a subsidiary body to combat terrorism, the Counter Terrorism Committee (CTC), with the task of monitoring the implementation of UN Resolution No. 1373 in Member States as well as testing their legal system to combat the financing of terrorism. Over the years, the legislation to combat terrorism financing has been the subject of numerous interventions, some of which aimed at regulating particular sectors or assets of strategic interest; however, the same international bodies have admitted the inadequacy of these forecasts, too slow and unable to counter the new financing strategies adopted by terrorist organizations. Even the European legislation has been object of a constant innovation in the years following September 11, 2001, adapting to the measures issued at international level and to the constant and urgent need to implement more stringent measures for safeguarding the economic system and protecting the safety of citizens. The first result of this effort is the Directive 2005/60/EC, concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, which repealed Council Directive 91/308/

EC and made a definition of money laundering and of financing terrorism. At the operational level, the Directive 2005/60/EC arrays a control obligations for credit and institutions, legal professionals, etc. Still on the provisions of Directive 2005/60/EC, *each Member State must build and finance a Financial Information Unit (FIU) with the task of research, analysis and communication on behalf of the competent authorities of information on money laundering and terrorist financing operations.* The institutions and private subjects obligated must report to the FIU of their own country the suspicious operations of money laundering or financing of terrorist activities. A further effort in this direction is implemented by international bodies such as the Financial Action Task Force (FATF), an intergovernmental body established in 1989 with the primary objective of promoting strategies for combating money laundering, terrorist financing and, starting from 2008, weapons of mass destruction. The FAFT has tried to carry out constant updates on the possible scenarios related to the methods used to finance terrorism. In fact, it has published almost a dozen reports between 2008 and 2015, as well as carried out studies dedicated to individual terrorist organizations such as Al-Qaeda and associated groups in West Africa (2013), the Taliban (2014) and the Islamic State in Iraq and Syria (2015). The Islamic State and the ascertainment of its ability to spread its ideology around the world, succeeding in convincing young men and women to fight with jihadists, or make a terrorist attack in the West led to further regulatory evolution. The UN Security Council Resolution n. 2178/2014 deserves special attention for its innovative purposes. The document, in addition to reiterating the commitment previously taken by the Member States to counter terrorist financing, condemns violent extremism and provides for a system of sanctions for the recruitment, organization, transport or equipment of people traveling to a State other than [their States] for the purposes of commission, planning or participation in terrorist acts. In this way, the international body has taken measures to try to stop a phenomenon that has underlined the particular and urgent need, that of the so-called Foreign Terrorist Fighters (FTF). Foreign Fighters represent an important resource for terrorist operations, but they can also be a resource of money for the organization in many ways, for examples they can transporting money, or material useful for the group, from their own country to the conflict zone, or obtain money through robberies, frauds, illicit traffic, etc. (Wilson, 2018). The European Directive currently in force for the prevention of the use of the financial system for money laundering or terrorist financing is the 2015/849/EU. This legislation wants to make coherent and additional measures for discipline the “new sectors” related to financial flows. It is the case of the payment with electronic money, that represents a new system to be used to finance terrorist organizations. After the territorial defeat of the Islamic State, the danger of foreign terrorist fighters has been replaced by the possibility that the most powerful terrorist organizations use cryptocurrencies, social networks and apparently welfare associations for the strengthening of the organization, the financing of their own media campaigns aimed at spreading terror or recruit new members and carrying out international attacks. For this reason, the need to keep the legislation up to date and the exchange of information at all levels to try to curb the danger of terrorism has not ceased. As the former director of transnational threats in the White House National Security Council, Lee S. Wolosky, repeatedly stated, *since terrorist networks transcend national borders, it is essential to improve international cooperation* (Kaplan, 2016).

CONCLUSION

Being a multidimensional phenomenon, the study of terrorism lends itself to being analyzed from multiple points of view, which may concern the economic, social, psychological, political, religious and much more. Beginning when non-state actors began to use it, but more significantly at the beginning of the 21st century, the international community began what could rightly be defined as an unprecedented war in history that, although with some changes, continues today. After the failure of military operations in the Middle East and North Africa, some of which it is feared to have accentuated the anti-Americanism of the Muslim populations, there was a need to adopt a different approach, which would allow greater consideration to be given to diversity socio-cultural nature of the countries in which the threat was higher. At the same time, all States have implemented new anti-terrorist legislative measures - just think that in the recent past only 31 States had this legislation, while in 2014 they were 109 (Pokalova, 2015, p. 478). In more recent times, the attempt was largely that of homogenizing the parameters of the anti-terrorist laws and of giving greater emphasis to the exchange of information between States and the armed forces, as well as to greater cooperation with civil society, whose dynamics can be the cause of that social alienation that is sometimes exploited by recruiters to radicalize young men and women. Therefore, recently the danger is no longer so much the possible attacks carried out by terrorist groups from distant countries, but rather those carried out by individuals apparently without any connection with the jihadist world, but ready to die for his cause.

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KEY TERMS AND DEFINITIONS

Al-Qaeda: A militant Sunni Islamist multi-national organization founded in 1988, which has the goal of removal of all foreign influences in Muslim countries and the creation of a new caliphate ruling over the entire Muslim world.

FAFT: The Financial Action Task Force is an intergovernmental body established in 1989 with the primary objective of promoting strategies for combating money laundering, terrorist financing and, starting from 2008, weapons of mass destruction.

Foreign Terrorist Fighters: Individuals who have travelled from their home states to other states to participate in or support terrorist acts, including in the context of armed conflict, especially in Iraq and Syria.

ISIS: The “Islamic State of Iraq and the Levant,” is one of the most powerful terrorist organizations which in the 2014 establishment a so-called Islamic State in Syria and Iraq.

Radicalization: A process by which an individual, or group, comes to adopt increasingly extreme political, social, or religious ideals and aspirations that reject or undermine the status quo, or the ideas of his Nation.

Returnees: Men and women who left their homes in the West to join ISIS or similar terrorist organizations in Syria and Iraq as fighters or supporters now want to come home.

Terrorism: There is no an universal definition, but we can affirm that is an anxiety-inspired method of repeated violent action, employed by (semi-)clandestine individuals, groups, or state actors, for idiosyncratic, criminal, or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets.

ENDNOTES

- ¹ In 2013, out of 35 conflicts, 21 were motivated by religion, although often it was not the only cause. For more information see: The Institute for Economics and Peace. (2014). *Five key questions answered on the link between peace and religion*. IEP.
- ² *KYBERNETIQ. La nuova rivista della cyber-jihad per istruire alla cyberwar*. (2016). Geopolitical review. Alpha Institute. Retrieved from: <https://geopoliticalreview.alphainstitute.it/2016/01/18/kybernetiq-nuova-rivista-cyber-jihad/>

Section 3

**Crime and Victimization
Prevention and the
Rehabilitation of Offenders**

Chapter 18

Medical Liability Defined by Guidelines

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ABSTRACT

Italian law 24/2017 introduces a conformity assessment procedure to a behavioral pattern in case of an adverse occurrence committed by a sanitary professional: this one will be not stated criminally liable if his conduct has been recognized as compliant with guidelines. This chapter analyzes the mechanism provided by Italian Act, which is considered a useful instrument for managing the systemic complexity, but also a “shield” to defend the health profession. Despite some difficulties due to different factors (scientific and technological advance, prevention and control of clinical risk, enormous and sometimes unreliable flow of medical knowledge) the application of standards appears to protect healthy workers from accusations and social tensions by allowing for the actual circumstance. The object of the study will be Italian policies about public health and risk management and most significant judgments of Supreme Court. It will contextualize the damage in a relativistic and interactionist perspective.

INTRODUCTION

The aim of this chapter is to contribute to the analysis of the profound changes that are affecting the health system through the study of ministerial guidelines. They represent a strategy of managing the systemic complexity.

Scholars agree on the indication of a multiplicity of factors that intervene in the aforesaid transformation process. These features are subsumable to the dynamic configuration of the contemporary society: active and conscious role of patients, high number of mass media as channels of information, socio-demographic differentiation of the demand for health care, scientific and technological development, as well as polysemic recognition of the well-being's condition. Such variable scenario explains the emerging trend towards system rationalization. While both demand and supply of health care are changing, the tools for the control of clinical risk are necessary. So, the Italian recent legal reform of 2017 answers the

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need: it excludes the imputability of sanitary professionals in the event that his conduct complies with ministerial recommendations or, failing that, good clinical-assistance practices. The sanitary worker is not imputable if his action is characterized by slight negligence. The law's aim is to reduce the complexity of the behavioral dynamic in case of medical error by introducing a judgment rule.

This essay is dedicated to investigate this strategy which becomes a device not only to prevent adverse events, but also to protect healthcare professionals. A reconstruction of the theoretical debate on the rationalization of the system will be carried on focusing on the issuing of standards as a socio-technical practice.

The documentary investigation will adopt a dual analytical perspective: in fact it will concern, on the one hand, the regulatory interventions that have regulated sanitary workers' responsibility, in particular law n. 189 of 2012 and law n. 14 of 2017; on the other hand, the sentences of the Court of Cassation which recall them and which have significantly contributed to the interpretation of cases of liability for mistake in the presence of ministerial parameters.

In this way, a dynamic configuration of the causality will emerge, considering that the various sentences recall clinical rules and anchor them to the need to analyze the specific case in which the error occurred and, possibly, the damage to the victim.

COMPLEXITY OF THE NATIONAL HEALTH SYSTEM AND ROLE OF GUIDELINES

The institutions of health are characterized by an intrinsic complexity because they accompany the history of individuals in their most delicate phases: life, illness and death (Ferrera, 1997).

No health system can adequately accommodate all assistance requests: an incessant process of change puts a strain on care institutions and, therefore, on the participants, subjecting them to a repeated effort to adapt (Blanchet, Nam, Ramaligam, Pozo Martin, 2017). This instability represents the interpretative cornerstone of the reflections that will be developed in these pages.

A further remarkable aspect is connected to the ethical question of resources allocation: the spending on health services is under rationalization in order to combine financial planning with strategic planning and to implement public policies according to rational criteria; these choices cannot ignore the public purpose of social promotion and investment (Grossman, 1999, 1972; WHO, 2001).

It follows the need to produce a policy able to reconcile two instances: on the one hand, the health system not simply seen as a cost, but as a productive resource and as the main indicator of the level of social development; on the other hand, the urgency of containing its expenditure within the limits of financial availability and in harmony with the budget restrictions indicated by European institutions.

In Italy, health policies employ huge amounts of public and private money in *a daily alchemy that brings together very articulated skills and production factors* (Colicelli, 2007) and within a framework marked by corporate processes and regionalization. The latter have activated mechanisms of accountability of the administrative action according to methods of control inspired by criteria of efficiency and effectiveness in compliance with the Ministerial LEA (Essential Levels of Assistance)¹. They also have required a redefinition of the guiding principles of the decision-making processes aimed at balancing the demand for health services with the rationalization of the financial commitment.

The study of the dynamics of change is useful for two reasons: on the one hand, it emphasizes a new idea of health that can no longer be understood as the absence of illness but as a “total psycho-physical well-being”; on the other hand, it improves the ability to detect the new needs of patients and healthcare professionals (Fanci, 2018). This explains the notion of an active system in which different parts complement each other and configure, from time to time, the specific space-time dimension for interaction processes; such conception still constitutes the mainstay of medical practice (Fanci, in press).

Parallel with an advanced technological and scientific development (Bruni, 2008), aimed at pursuing safety and efficacy of care, there is a discomfort of the citizens who do not doubt the competence of the doctor who treats them, but often reproach him with little empathy and little time for dialogue (Ricciardi, 2019). However, doctors also report frustration and professional concern, as well as the perception of being accused by patients and “managed” by general managers (Lehoux et al, 2019)². All this leads to a paradoxical situation: *discontent physicians, healthier but unhappy citizens, increase in alternative medicines, exponential increase in costs* (Ricciardi, 2019, p. 13)³.

What has been said so far makes us understand that, in the health organization, there is a widespread tendency to the rationalization of professionals’ actions to “control” systemic complexity and convey behaviors. Assuming that there is a spontaneous inclination of collective existence to organize reality through the use of categories, some have spoken of an “explosion of controls” (Power, 1997) resulting from the need for security and governability of complex organizations. In a highly regulated context: *audit operates in a regulatory space where regulators and politicians do not wish to be encumbered by systemic doubts about audit; they need to be reassured that it works or can be made to work better* (Power, 1997, p. 47). This organization model is based on procedures and quality standards and it is suitable because it conveys the actions of those who act within the system. Therefore, the only admissible evaluation is that of compliance or non-compliance with the behavioral scheme. This explains its diffusion also in the health system where the idea of controllability is closely linked to that of risk management.

The latter is a widespread health policy strategy that defines a set of procedures and behavioral rules aimed at guaranteeing patient safety and, consequently, at making the health system more reliable and safer. It is the favored tool to improve the parameters of clinical practices: “clinical risk refers to the possibility that a patient is subjected to an involuntary damage or discomfort attributable to health care, which causes an extension of the hospital stay, a worsening of health conditions or death” (Ministry of Health, 2007, p. 11). Following the publication of the reports *To Err is Human* (Institute of Medicine, 2000) and *An Organization with a Memory* (Department of Public Health, 2000) the topic of safety has been placed at the center of the world political agenda (Landrigan et al., 2010; Leape, Berwick, 2005).

A decisive role can be attributed to the diffusion of the “evidence-based” approach. At the end of the last century, Evidence-Based Medicine (EBM) inspired a reversal in the processing of clinical practices: if before they referred to the experience of individuals or to groups of doctors, the new method is based on evidence provided by the epidemiology that has become the “gold standard” of clinical practice and research. In its first diffusion phase, evidence-based medicine presented itself as a fundamental opportunity for an «epistemological» revolution capable of radically modifying not only the traditional approach to teaching medicine and medical practice but also to significantly influence the organization of health systems and health policies as a whole, as well as the agenda of biomedical research (Evidence-based Medicine Group, 1992). This involved a marked use of statistics and the elaboration of an instrumentation that allows to employ new treatments and techniques through a constant revision of the scientific literature evaluated according to its degree of reliability (Timmermans, 2010) and on the basis of various criteria: *the numerosness of the samples of the study, its quality in terms of research plan and statistical*

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techniques used, the clinical relevance and the presence of a peer review process [...] “large numbers” that [...] summarize and define the guides of treatment and diagnosis (Mozzana, 2015, p. 630).

The sociological study of standards has developed in a non-univocal way. Initially, two different approaches could be identified: the one of support, when their usefulness and effectiveness were stressed for the communication between different entities, or the one of criticism, when the risk of social homologation and uniformity was highlighted (Brunsson, Jacobsson, 2000). In recent years, a theoretical perspective has emerged defining parameters as a socio-technical practice in which two complementary dimensions coexist: a constitutive and a concrete one. The first deals with the dynamics of construction, highlighting its procedural and conventional matrix: the procedure for setting a rule is based on the agreement between the actors involved. The second deals with the moment of “putting” advices “into practice”. These considerations lead to the identification of some features: the setting of standards represents a form of social regulation especially used when organizations are weak ((Brunsson, Jacobsson, 2000); they can affect more institutions and actors far in time and space (Bowker, Star, 1999); recommendations appear neutral and objective because they can be attributed to an apparatus of moral and technical criterions (Power, 2002), even if, when they are analyzed, they are clearly the result of agreements and their “contextualized” character emerges (Mozzana, 2015, p. 633).

As mentioned in the previous lines, sociological analysis has focused on the application of guidelines in the therapeutic field, highlighting the active and institutive role of the clinical practice. In a relationship of reciprocal conditioning, guidelines are defined on the basis of scientific evidence, taking into account the professional knowledge that performs on the outlined standards. As if they were two sides of the same coin, an interdependence emerges between the regulatory scope and the cognitive one: on the one hand it detects the procedural matrix, which originates from negotiations (Desrosières, 2011) and which specifies the criteria of behavior (reliable because it is the result of a procedure and because it has the weight and the solidity of the statistical evidence). On the other hand, reference is made to the knowledge and description of reality on the basis of the relevance of a clinical practice and evaluation, always scientific statistical one, of the approach to a pathology. In essence, evidence-based cases and recommendations inextricably take shape in the curative practice.

In the opinion of the writer, this particular moment of fusion, in which norm and knowledge merge, represents the lens through which the application of the ministerial instructions can be analyzed in the definition of the casualty in case of medical error: the analysis of the prescriptive content of the standard must be strictly connected with the concrete case and, therefore, to the scientific knowledge and approach to the care path.

GUIDELINES AND MEDICAL RESPONSIBILITY IN ITALY

In this essay the focus is on medical responsibility because it shows a greater social impact regarding the protection of the victim. Moreover, the judgments dealing with errors committed by physicians are much more numerous and significant than those concerning the other health professions.

Medical malpractice configures a hypothesis in which the doctor makes mistakes even in the presence of an adequate level of knowledge. The feature is the subjective element of the action, that is the negligence of not having prevented the fact. While admitting the inaccuracy of science, knowledge plays a defining role and makes it possible to distinguish between the “mistake” in the strict, inevitable, creative sense and always around the corner (Popper, 1959), and the avoidable “error” which implies

dishonesty, negligence or inexperience in professional practice. These categories are fundamental in the interpretation of doctrine and jurisprudence since they constitute the semantic content of the casualty between medical action and damaging event; in fact, legal science has defined the qualifying criteria and offered a range of techniques and interpretative languages with which the cause-effect relationship can be defined. About this it is useful to examine normative texts and the particularly significant jurisprudential judgments: such exploration restores the exegetical orientation of the juridical culture of recent years about standards and clinical risk management strategies with respect to the question of whether or not a doctor is responsible for a harmful event.

Regulatory Framework

In most OECD countries, including Italy, liability claims must be assessed in a judicial, civil (which relates to compensation for damages) or criminal (when it concerns imputability for injury or death).

The doctor is someone who, in criminal jargon, is defined as “occasional criminal”, i.e. a person not accustomed to committing crimes (Guarnieri, 2004); but we must remember that he is not allowed to abstain from the provision of care and he is required to perform it. If a criminal trial had been instituted for a harmful event, the judicial authority, after ascertaining the casualty and the existence of the subjective element, could have applied the cases covered by the penal code in force.

Furthermore, it is very difficult to outline general guiding principles for imputation of responsibility or binding rules of diligent conduct that can be applied uniformly to the multiple cases of sanitary error (Toriello, 2017), given that clinical practices are subject to continuous changes.

In the civil law field, the responsibility of the doctor or healthcare professional was classified as extra-contractual (pursuant to article 2043 of the civil code) until the 1999. With the sentence n. 589 of 1999, the Supreme Court considered the theory of the “social contract” to be applicable in this sector; so, the liability for damages (both of the structures and of the doctors) was brought into the context of the contractual breach (art. 1218 cc).

This was followed by a tendency towards contractualization, that is, the expansion of contractual responsibility with a consequent exponential increase in insurance premiums, both for structures and for those specialists who are most exposed to compensation claims. This process had the merit of overcoming the previous address for which the patient had to prove the illicit fact of the guilty party, in order to obtain compensation for the damage. However, it has undoubtedly led to a considerable increase of the number of cases in which the liability of the doctor and of the healthcare structure was deemed recognizable.

This, together with the concomitant jurisprudential⁴ elaboration of liquidation tables of biological damage (considered applicable to the whole national territory, by the Supreme Court since 2011⁵), has determined an increase of the judicial causes for medical malpractice. Moreover, physicians risked to be condemned to pay increasingly larger compensations for damages, if they were not able to prove that they had correctly performed their work or that the damage claimed by the patient had resulted from a cause not attributable to them. The reaction of the category has favored the spread of the so-called “defensive medicine” with an annual cost for the health service of some billion euros that still weights on public finances putting the national health service at risk⁶.

In such a situation, the legislator intervened in 2012 with the well-known “Balduzzi Decree”⁷, establishing in art. 3 that: *Without prejudice to the ruling of the article 2236 of the civil code, in the assessment of slight negligence in the activity of the health professions the judge, in accordance with article 1176 of the civil code, takes into particular account the observance, in the concrete case, of guidelines and good*

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*practices accredited by the national and international scientific community with the declared intention of containing expenditure and limiting the responsibility of the health professions*⁸.

The subsequent law n. 24 of 8th March 2017 - the so-called “Gelli-Bianco law”⁹ - shows attention to the needs of public finance and the sustainability of the system without appreciably reducing the concrete possibilities of victims’ protection (Gattari 2017). It orders on penal and civil topic repealing the aforesaid Balduzzi’s art 3.

The Italian legislator regulates criminal liability through the inclusion of the art. 590 sexies in the penal code and establishes the following: *If the event has occurred due to inexperience, the punishment is excluded when the recommendations are respected as defined and published pursuant to the law or, failing this, the good clinical-assistance practices, provided by the aforementioned guidelines are adequate for the specifics of the concrete case*¹⁰.

With reference to civil liability, the law 24/2017 expressly provides for the contractual liability (pursuant to articles 1218-1228 of the civil code) of health facilities (public or private) and confirms the centrality of standards or clinical assistance good practices in the quantification of the compensable damage.

Finally, it introduces the institution of the obligatory conciliation attempt with the provision of penalties in the event of violation either for damaged parties (which can be sentenced to the expenses of lite) or for insurance companies.

The significant aspects of the outlined regulatory framework are the use of the guidelines as a tool for defining criminal conduct, the confirmation of contractual liability in civil matters and the obligation to attempt reconciliation with the victim. These features are important because they point up a willingness to compromise between the need for victim protection and the medical class’s one. The ministerial prescriptions can shield the physician by patient or his parents’ assault in an adverse event and the conciliatory attempt’s mandate aims to promote a constructive dialogue between the interested parties. It is worth mention also the confirmation of a contractual liability. The last one represents an occasion to consolidate the health system’s “double track” in civil proceedings: it means that both the health organization and the doctor are liable for the damage caused to the patient on their own account.

All these marks are focused on Court Technical Consultant’s (CTC) action: as a funnel, the expert gathers questions judge and processes them in his report. This is possible thanks to his special knowledge. He is a medical examiner which skill allows to relate the damage to the concrete case. This argumentative process is very important on account of various reasons: the processual truth’s elaboration makes use of legal and medical knowledges and pinpoints a common ground in order to the specific event; in this way it leaves room for considering the professional choice and his conduct as regards ministerial guidelines. It is certainly no coincidence that in all the judgments here analyzed the judge has made recourse to the technical consultant. This testifies to the absolute centrality of the medical-legal knowledge in the construction of the responsibilities of the trial parties and the protection of those who suffer a medical error.

Creation of the National System of Guidelines

As mentioned above, parameters became a central interpretative tool in the assessment of liability after the emanation of the Balduzzi law in 2012. However, only with the subsequent regulatory intervention of 2017¹¹, the procedural mechanism of their definition took form through the establishment of the SNLG¹² (National Guidelines System) at the Italian NIH (National Institute of Health). The article 5 of the law n. 24/2017 establishes that: *In performing health services with preventive, diagnostic, therapeutic, palliative, rehabilitative and forensic medical services, the operators of the health professions adhere to*

the recommendations of the guidelines published pursuant to paragraph 3 and processed by public and private bodies and institutions as well as scientific societies and technical-scientific associations of the health professions registered in a special list established and regulated by decree of the Ministry of Health¹³, to be issued within ninety days from the date of entry into force of this law, and to be updated every two years. In the absence of the aforementioned recommendations, the health professions operators adhere to good clinical-assistance practices.

The SNLG¹⁴ is managed by a strategic committee and coordinated by the President of the NIH. It is the only public access point for health professionals, managers, decision makers, users and caregivers to a set of advices for clinical practice according to criteria of relevance, non-redundancy and internal consistency. At the same time, the NIH, through the CNEC (National Center for Clinical Excellence, Quality and Safety of the Cure) acts as a methodological and independent guarantor for the evaluation of those parameters produced by third parties and of good quality, informed by the best evidence available and responsive to the country's health needs based on criteria of clinical, economic and social relevance and impact.

To this end, criteria for prioritizing health issues are published on the SNLG website and there is a section dedicated to good clinical-assistance practices relating to areas for which guiding rules are not yet available.

For example, among the criteria for the evaluation of the priority there are:

- Disease burden on the Italian population and on the NHS measured through objective criteria (prevalence, mortality and costs);
- Variability of professional practices in Italy not justified by the available evidence;
- Inequalities in care processes and results;
- Type and quality of available evidence;
- High costs of health practices with high organizational or technological impact;
- High clinical risk;
- Social requests and needs perceived by the population.

On the basis of the operational manual prepared by the CNEC¹⁵, the committee proceeds as follows: it verifies the eligibility of the guideline based on pre-requisites of priority and not redundancy; it evaluates it with explicit criteria in terms of reporting quality, methodology adopted and relevance of the recommendations with respect to the mentioned¹⁶ evidence; it offers possible feedback to the proposer for corrections and adjustments; it publishes it in the SNLG in case of positive evaluation.

At the time of writing, seventeen ministerial advices are indicated in the evaluation phase; among these, we can mention the diagnosis and treatment of autism spectrum disorder in adults and adolescents, antibiotic prophylaxis in ophthalmology, conscious sedation in dentistry, cataract surgery in pediatric age, type 1 and 2 diabetes mellitus therapy, clinical diagnosis of upper limb tendinopathies of possible work origin¹⁷.

Orientation on Guidelines of the Supreme Court Jurisprudence on Criminal Liability

The previous section, dedicated to policies on the subject of medical malpractice, has described the situation “before” and “after” the introduction of guidelines in the Italian legal system, defined with the creation of the SNLG. In this section, we are going to analyze the criminal jurisprudential orientation of the Supreme Court since 2012, with particular attention to the decisions following the 2017 regulatory reform¹⁸. This research’s choice is due to the fact that in civil matters the “double track” of doctor’s and structure’s responsibility has been consolidated; this entails a constant increase in the costs incurred for insurance contracts for damages.

As for criminal liability, the well-known Balduzzi law had already pointed out the standards as a criterion of judgment, subordinating the evaluation of doctors’ conduct to these guides. According to the Supreme Court of Cassation judges, it was an attempt to objectify the procedures of the judicial decisions which had the merit of opening the passage to an: *extrinsic parameter of reference which guarantees a greater peremptory character to the evaluation of possible negligence profiles of the healthcare professional*¹⁹.

On the subject of negligence, and therefore of penal judgment of imputability, the law did not regulate the gross one; therefore, jurisprudence intervened. Since the first judgments after the entry into force of the law, it has recalled the need to «measure» the distance between the professional’s concrete action and the direction of behavior; moreover, it has described as simplistic the choice of restricting the gross negligence only to those cases of *macroscopic violation of the most elementary rules of the ‘medical ars’ (or of evident ignorance or extreme absence of expertise in the execution of the therapeutic act)*²⁰ and suggested to configure the gross negligence in front of: *a considerable deviation from the appropriate action, as defined by guidelines and good practices accredited by the scientific community, taking into account the need to adapt to the peculiarities of the disease and the specific conditions of the patient*²¹.

Furthermore, the 2012 law did not even limit the reference environment of standards, or whether they should be used as the sole criterion of evaluation of profiles of inexperience or imprudence or negligence. On this subject, after a first restrictive orientation that only focused on the inexperience, jurisprudence endorsed a broader perspective that included other profiles, such as that of generic negligence²². Last one is more favorable than the proper malpractice.

With the law n° 24 of 2017, the Italian legislator, in the wake of the Balduzzi law, definitively establishes the value of the criminal offense as a “complementary” rule with respect to the instructions provided by the ministerial recommendations and, failing that, by good clinical-assistance practices; the aim is jointing protection of the security of the care and a conscious and correct management of the health risk.

According to a first interpretative trend, the Bianco-Gelli law provides for *a new criterion of standardization of the negligence in the health sector* to the extent that it bases the judgment of criminal responsibility on: pre-established regulatory constituents²³.

The Court states that the *virtuous innovative impulse* of the reform must be identified above all in the legislator’s desire to select and codify the parameters of clinical practice in order to guarantee the determination of the rules and the predictability of judgments: the law, in order to provide “safety of care”, ensures to the health institution the management of the medical activity, building an institutional control system of the sanitary activity, relevant under public law, that guarantees its implementation in a constant and up to date way, conforming to controlled scientific evidence²⁴.

This also redefines the role of the healthcare actors who is obliged to comply with the established and institutionalized standards and can assert *the legitimate claim to having his or her behavior judged as the same directives imposed* (Proto Pisani, 2018: 3).

Judges also specify that this regulatory framework can solve the interpretative problems posed by the juridical configuration of negligence in the health sector: *empty and shady representation, with a strong normative imprint, that needs to be “heterointegrated”*²⁵ and in this sense, guidelines can contribute to represent its semantic content.

The second case law considers the criminal law introduced by the 2017 reform as more favorable than the Balduzzi regulatory framework, as the second paragraph of the art. 590 *sexies* of the penal code, provides a cause of non-punishment of the health profession operator in the sole case of inexperience, regardless of the gravity of the negligence. It is, therefore, a case of non-punishment in a technical sense, and so, excluded from the principle of negligence, whose ratio is to be found as follows: *the legislator chooses not to mortify the initiative of the professional with the fear of unjust reprisals, exempting him from punishment for a mere evaluation of criminal political opportunity, in order to return to the doctor an operational serenity so as to prevent the so-called phenomenon of defensive Medicine*²⁶.

The Supreme Court of Cassation intervenes to remedy the conflict. While admitting that each interpretation contains remarks that can be shared, it does not adhere to either of them and proposes its own one, considering not only “to the letter” but also the *ratio* of the instructions contained in the Gelli-Bianco law, on the basis of the long legislative path on the theme.

The Joint Sections accept that orientation according to which there is a cause of non-punishment in the technical sense and which occurs only in the cases in which the doctor has identified and adopted appropriate prescriptions to the specific case, in slight negligence due to inexperience. There are two points of reference from which the judges of the Supreme Court deduce these argumentations: the parliamentary works, which show the political will to differentiate the gross negligence from the slight one for inexperience and to follow the direction of the Balduzzi Law; the legal tradition which has shown that the theme of the penal relevance of the medical responsibility is subjected to the question of gradability of the subjective element. However, this last observation is linked to the dreaded risk of introducing an unjustified unequal treatment in respect of other equally complex professional categories operating in humanely delicate situations.

The usefulness of an assessment of the compliance of doctor’s conduct with respect to ministerial recommendations is reiterated on the basis of an objective criterion of a “quantitative” type, namely: *‘quantum’ of variance from the behavior that one would have expected as the useful one*²⁷, and of a subjective one concerning: *the measure of personal reproach based on the specific conditions of the agent and his degree of specialization; the problematic or equivocal nature of the case; the particular difficulty of the conditions in which the doctor operated; the objective difficulty of gathering and linking clinical information; the degree of atypicality and newness of the situation; the urgency; the motivation of the conduct; the awareness of keeping a dangerous conduct*²⁸.

This judgment activity must be carried out in the context of a process of contextualization: *taking into account the parameter of the ‘homo eiusdem professionis et condicionis’, which is the one of the model of the agent concretely operating, in the specific real conditions*²⁹.

An extremely interesting point, here, concerns the risk of reducing the judge’s discretion with the introduction of the public law model for the formalization of standards. The Joint Sections share the undoubted usefulness of the SNLG which guides disoriented doctors, cause the proliferation of clinical parameters, and represents, at the same time, a tool for the “heterointegration” of judgment criteria (Di

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Landro, 2012); national register promotes the necessary flexibility of adaptation to the concrete case and the sharing of scientific and professionals associations contribution.

In light of this method of “accreditation”, the discretionary power of the judge seems to be limited but, in fact, it is not: the prevision that the regulation respects the “adequacy” in the concrete case remains central, being of fundamental importance that the choice of the doctor falls on appropriate guiding principle in relation to the evolution of the clinical picture that lies ahead. Judges, in this sense, claim without hesitation that guidelines are not binding requirements: *also following the procedure, now monitored and governed [...] and therefore tending to form a system with connotations of public law, guidelines do not lose their intrinsic essence, already highlighted in the past with reference to good practices. That is to say to constitute a condensation of the scientific, technological and methodological acquisitions concerning the individual operational areas, considered as such after a careful selection and distillation of the various contributions, without any pretense of immobilism and without suitability to rise to the level of binding rules*³⁰.

This argumentation allows the Joint Sections to exclude that the system introduced with the Gelli-Bianco Law is linked to any automatism; with equal tenacity it is denied that the guidelines can act as a «protective shield» for doctors against the legal actions of those who have been victims of malpractice because the effectiveness and the prescriptive force of the recommendations depend on their demonstrated “adequacy” to the specificity of the single case. The sentence also states that this assessment of consistency represents for the health professional: *the means to regain autonomy in completing one’s professional talent and, for the community, to dissolve the risk of bureaucratic homogenization. This would restore the danger for the safety of care and the risk of defensive medicine, in a negative vortex destined to self-sustaining*³¹.

The judges of the Supreme Court conclude by denying clinical instructions their regulatory nature, reiterating that they are: *precautionary rules only valid if adequate with respect to the purpose of the best care for the specific case of the patient and, in the opposite hypothesis, implying the duty to distance on the whole chain of health professionals concretely involved*³².

GUIDELINES TO GUARANTEE CARE RELATIONSHIPS

What has been said so far gives us the opportunity to identify very important interconnected aspects.

Certainly, the health system is highly articulated and complex (Iannone, 2018) and the elaboration of decision-making procedures, organizational models and regulatory outlines are moving in the direction of an institutional innovation to guarantee greater safety in the care pathways.

As already highlighted, a central part of this process of change is constituted by a significant tendency to rationalization through the provision of behavior patterns. Taking into account their double structure, regulatory (related to its content of prescriptions) and cognitive (concerning the understanding and diagnosis of the statistically recurrent clinical reality), those who move in health institutions have relied on the orientation function of guidelines, especially in very delicate situations such as malpractice. In this circumstance the doctor-patient interaction is damaged and the pure and simple reference to a clinical practice or to a coded guide may not adequately contribute to the reconstruction of the interaction of care. In fact, it can be emotionally easier for the victim to misunderstand the reference to the guideline as a protective shield of the medical class. For this reason, it is extremely useful to recall some of the argumentations advanced by the judges of the Court of Cassation.

In the texts of the sentences, some expressions have been intentionally highlighted in italic cursive: if in a first phase guidelines had been qualified as “extrinsic parameter” (Cassation 28187/2017, Tarabori) or in terms of “pre-established regulatory constituents” (Cassation 28187/2017, Tarabori), at a later date the Joint Sections stated that behavioral canons are precautionary in nature and cannot be binding cause their intrinsic immobility (Cassation J.S.8070/2018). It follows that the safety of care must equally concern the patient and the healthcare professional because the protection of the right to health passes through a double perspective: request and offer of assistance. Therefore, on the one hand, it is essential to avoid “unfair reprisals” against doctors in order to restore their “serenity” and “regain autonomy” in choosing the best therapeutic path. On the other hand, the centrality of guidelines should be re-emphasized as useful tools for managing risk and predictability of clinical practices, without attributing them a binding nature and, therefore, preventing the implementation of any form of automatic execution. Only the judgment of adequacy to the concrete case allows to dissolve “the risk of bureaucratic homogenization” to the detriment of the patient’s real health conditions.

The exercise of the discretionary power so makes use of a point of intersection between the regulatory and descriptive function of the clinical case which is characteristic of standards; in it, norm and knowledge combine showing the way in which “facts” reported by scientific evidence and prescriptions of behavior take shape in practice (de Leonardis, 2009). Moreover, the invitation to complete clinical parameters with other sources means to contrast propensity for their regulatory and pre-established force.

In this side, the judge’s point of view takes into account the organizational and cognitive dynamism as well as the context of the doctor-patient interaction. Accordingly, the guidelines function goes beyond that of defending the healthcare actors from victims’ lawsuits and includes a guarantee role of the relational aspect as the adequacy judgement of concrete case solicits a great effort to contextualize.

However, this heritage of legal culture doesn’t agree with the medical one, mainly regarding the aforesaid procedural dimension. The expert’s competence can respond to this difficulty. His knowledge allows the specification of the conduct, of the judgment’s parameters and of the consequences’ predictability. For these reasons the judiciary asks for his help. However, his intervention is not enough.

The panorama of today’s evidence-based medicine (that has now become evidence-based health care and policy), and that of ministerial prescriptions (its most typical and “popular” product) are under continuous change. The perception of complexity and “delicacy” of the theme has transformed, starting from the elusiveness itself of the concept of “evidence” which assumes different meanings for doctors, patients, policy makers and managers (Canadian Health Services Research Foundation, 2005). The procedures of evaluation, control and election of guidelines require technical skills (knowing how to collect evidence), value judgments (on their quality) and social skills (in the management of deliberative processes among members of expert panels). A solution to these critical issues lies, according to some, in the adoption of a multidisciplinary approach through a wide process of elaboration, inclusive of the points of view of those who are in some ways “concerned” by recommendations, patients and representatives of the pharmaceutical companies included (Institute of Medicine, 2011).

The attention of the scientific and legal community has highlighted their aspects of criticality and development.

The low quality of a large number of guiding rules is criticized: some of them are unreliable due to methodology, contents or results diverging from the expected ones; also to the persistence of poorly representative panels (Iannone, Montano, Minardi, 2017). Furthermore: *their frequent overlapping on the same subject with instructions, sometimes inexplicably conflicting even with the same evidence base, the absence or lack of incisiveness of prioritization programs and the very significant problem of*

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the need to keep them constantly updated have done the rest(Iannone, 2018). The phenomenon known as “corruption of evidence” is reported: foreign interests, mostly of commercial nature, condition the scientific and statistical significance of some practices. The institution of the Italian SNLG represents an important but still slow and not very forceful innovation: at the time of writing there are just seventeen registered guiding instructions, some of which are still awaiting their final positive evaluation.

With regard to the elements on which to invest, it is undoubtedly indicated the need to define priorities according to precise criteria of relevance, non-redundancy, internal consistency and health needs. Consequently, it is desirable to stimulate the production of patient-oriented standards, capable of responding to clinical questions relevant to citizens, and the promotion of a sort of «parameters» for doctors and other health professionals, as well as politics, health manager, for the benefit of those who are recipients of health care (citizens, patients, caregivers).

The indication of elements to be improved and developed is not an end in itself, but it has some strict implications in terms of health professionals responsibility: the alignment of what is recommended with the best and current scientific evidence allows us to avoid the risk of recommending suboptimal or outdated practices, in constant delay with respect to the development - sometimes tumultuous - of biomedical research and based on choices made “on patients” and not “with” patients.

The creation of a form of accreditation with the new SNLG represents an extraordinary opportunity for the NHS to provide citizens with better social health care and assistance, to stimulate the medical scientific community and professional associations in a cultural effort to research and critically synthesize the available evidence. Also health decision makers and managers would be stimulated to a greater awareness of the implications of health policy choices with the common intention of ensuring an adequate care relationship.

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KEY TERMS AND DEFINITIONS

Civil Liability: Liability arising from the breach of a private law obligation and thus falling within the sphere of relations between private individuals; it is a case of unlawful act regulated by art. 2043-2059 of Italian Civil Code.

Contractual Liability: It derives from a default of an obligation and does not disregard the subjective element; it is regulated by the service's contract.

Essential Levels of Assistances: The Essential Levels of Assistance (LEA) are the services and works that the national health service is required to provide to all citizens, free of charge or for a participation fee (ticket) with public resources collected through general taxation (taxes). For the list cf. [Http://www.salute.gov.it/portale/lea/dettagliocontenutilea.jsp?lingua=italiano&id=4773&area=lea&menu=vuoto](http://www.salute.gov.it/portale/lea/dettagliocontenutilea.jsp?lingua=italiano&id=4773&area=lea&menu=vuoto).

Inexperience, Imprudence, and Negligence: They are legal categories on which the negligent action is defined. Negligence exists in cases of complacency, lack of attention, while imprudence occurs in cases of hurry, rashness, insufficient consideration. On the other hand, incompetence, contrary to the "expertise", focuses on what the doctor is able or unable to do or on his experience or inexperience. In essence, incompetence is characterized by the non-observance of the *leges artis*, that is to say the violation by the healthcare professional of a specialistic and/or technical rule, either due to his ignorance, inability or ineptitude to apply it or to his concrete non-application despite having had to do it.

Negligence: It is the subjective element of the conduct. It integrates when the agent does not behave diligently according to the rule of "good family father". It can be slight (in Italian "generic") or gross. Latter appearances mostly in cases of professional responsibility. The relevant conduct is due to inexperience, imprudence and negligence. Finally, the negligence may relate to a civil or criminal offence.

Non-Contractual Liability: The violation concerns a previous legal constraint (whatever the source from which it derives) or the generic precept of the "*neminem laedere*" (art. 2043 c.c.). There is a strong tendency for non-contractual liability to be linked solely to the existence of damage, particularly in relation to the pursuit of certain activities.

Penal Liability: Condition of the person responsible for a criminal conduct carrying a penal offence out.

Sicurezza della cura e gestione del rischio clinico: Patient safety is a structural component of leas and is a key aspect of clinical governance with a view to improving quality. It is one of the overriding aims that the national health service sets. The development of effective interventions is closely related to the understanding of the critical aspects of the organization and the individual limits, asking for a widespread culture to overcome barriers, implementing measures organization and behavior, promoting the analysis of adverse events and collecting the lessons that may derive from these.

Supreme Court or Court of Cassation: It is the supreme body of justice which ensures the correct observance and uniform interpretation of the law, the unity of national objective law, respect for the limits of the different jurisdictions and settles conflicts of jurisdiction and attribution. It has a single seat in Rome and jurisdiction over the whole territory of the Italian republic. It is divided into sections, each composed of a president and four councilors, divided by subject-matter assignments. When a legal question gives rise to a particular jurisprudence dispute, the supreme court shall rule in united chambers called joint section.

ENDNOTES

- ¹ At the time of writing, the latest monitoring of LEA concerns the year 2017. The State-Regions agreement of 23 March 2005 entrusts the verification of the obligations, which are held by regions, to the Standing Committee for the verification of the supply of the LEA in conditions of appropriateness and effectiveness in the use of the resources which, together with the Board of verification of the fulfillment, allows the regions involved to access the bonus portion of 3% of the sums due as financing of the indistinct share of the net health needs of own revenues (Ministry of Health, 2019).
- ² Scholars reviewed 4820 abstracts and more than 790 full texts of articles; they observed that: *Across countries, the most frequently reported challenges pertained to: service delivery (25%), human resources (23%), and leadership and governance (21%)* (Lehoux, 2019: 63).
- ³ The importance of feelings of dissatisfaction and disappointment can be seen in the large number of associations set up to protect patients and doctors and which operate throughout the national territory, offering their members assistance, legal or personal one. As a mere example, we can recall the long and extensive experience of *Cittadinanzattiva* (Active Citizenship). It is an organization, founded in 1978, which promotes the activism of citizens for the protection of rights, the care of common goods, support for people in weak conditions. It has also prepared a *vademecum*, whose title is *Cura di Coppia* (2018), containing the rights and duties of both parts of the care relationship based on the principles contained in the Code of medical deontology and in the European Charter of Patient's Rights. See <http://www.curadicoppia.it/files/vademecum.pdf>
- ⁴ For 2018 tables, see http://www.aneis.it/download/professione_patrocinatore/note_operative/tabelle-milano-edizione-2018.pdf
- ⁵ See Cass. civ. sez. III, 07/06/2011, n. 12408. Retrieved from <https://www.fondazioneforensfirenze.it/uploads/fff/files/2011/2011-2/2011.10.04%20Risarcimento%20danni/Materiale/Sentenza%20Cassazione%20Sez.%20III%207.6.2011%20n.%2012408.pdf>
- ⁶ Cf. National Agency for Regional Health Services at <http://www.agenas.it/medicina-difensiva-quanto-ci-costa>
- ⁷ D. L. 13 September 2012 n°158 containing urgent provisions to promote the development of the country through a higher level of health protection, converted with modifications by the Law of 8 November 2012, n° 189 (Retrieved from <https://www.gazzettaufficiale.it/eli/id/2012/09/13/012G0180/sg>
- ⁸ “Given the extraordinary need and urgency to proceed with the reorganization of the healthcare system, taking into account the reduction of the financial resources allocated to the National Health Service following the various measures to contain public spending, through the reorganization and

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improvement of the efficiency of some fundamental elements of the Service itself, in order to guarantee and promote a higher level of health protection in this context, adopting measures aimed at territorial assistance, at profession and responsibility of doctors, at health management and clinical governance, and at guaranteeing essential levels of assistance [...] at the adoption of technical standards for hospitals”(art. 3 Balduzzi Decree, cit.).

⁹ Provisions regarding the safety of care and of the patient, as well as in matters of professional responsibility of the health professions (retrieved from <https://www.gazzettaufficiale.it/eli/id/2017/03/17/17G00041/sg>
¹⁰ Art. 6 co 1 L. 24/2017 cit.

¹¹ In 1998, SSN already provided a National Guidelines Plan; experience has not fully met the expectations of governing clinical risk and has not filled the growing gap in medical knowledge. However, it has favored the diffusion of the culture of appropriateness and evidence-based medicine by preparing the cultural and scientific environment for the maturation of the SNLG.

¹² Decree of the Ministry of Health of 27 February 2018, Establishment of the National Guidelines System, retrieved from <https://www.gazzettaufficiale.it/eli/id/2018/03/20/18A01899/sg>

¹³ Decree of the Ministry of Health of 2 August 2017, List of scientific societies and technical-scientific associations of the health professions (retrieved from <https://www.gazzettaufficiale.it/eli/id/2017/08/10/17A05598/sg>)

¹⁴ See: <https://www.snlg.iss.it/>

¹⁵ See: https://snlg.iss.it/wp-content/uploads/2019/01/manuale-operativo-SNLG-v2_aprile-2018.pdf

¹⁶ For further information and methodological references to quality assessment techniques of international relevance see. <https://snlg.iss.it/?p=297>

¹⁷ See: <https://snlg.iss.it/?p=1225>

¹⁸ The words in italic cursive in the judgments are mine.

¹⁹ Cass. 20/04/2017, n. 28187, Tarabori, Rv. 270213. Retrieved from <http://www.giurisprudenzapenale.com/wp-content/uploads/2017/06/2017-28187.pdf>

²⁰ Cass. 29/01/2013, n. 16237. Retrieved from <https://marasciuolo.it/documenti/finish/3-documenti/63-cass-pen-16237-2013-colpa-lieve-e-responsabilita-penale-del-medico.html>

²¹ Cass. 15/04/2014, n. 22281, Cavallaro, Rv 262273. Retrieved from <https://www.penalecontemporaneo.it/upload/6858-cass-48014-18.pdf>

²² Cass.06/06/2016, n.23283. Retrieved from <http://www.giurisprudenzapenale.com/wp-content/uploads/2016/06/cass-pen-2016-23283.pdf>

²³ Cass. 20/04/2017, n. 28187, Tarabori, Rv 270214. Retrieved from <http://www.giurisprudenzapenale.com/wp-content/uploads/2017/06/2017-28187.pdf>

²⁴ Cass. 20/04/2017, n. 28187, Tarabori, Rv 270213. Retrieved from <http://www.giurisprudenzapenale.com/wp-content/uploads/2017/06/2017-28187.pdf>

²⁵ Cass. 20/04/2017, n. 28187, Tarabori, Rv 270214. Retrieved from <http://www.giurisprudenzapenale.com/wp-content/uploads/2017/06/2017-28187.pdf>

²⁶ Cass. 19/10/2017, n. 50078, Cavazza, Rv. 270985. Retrieved from <https://www.penalecontemporaneo.it/upload/4604-cass5007817.pdf>

²⁷ Cass. 22/02/2018, n. 8770, Mariotti. Retrieved from <https://www.penalecontemporaneo.it/upload/9383-su877018.pdf>

²⁸ *Ibidem.*

²⁹ *Ibidem.*

³⁰ *Ibidem.*

³¹ *Ibidem.*

³² Cass. 22/02/2018, n. 8770, Mariotti. Retrieved from <https://www.penalecontemporaneo.it/upload/9383-su877018.pdf>


Chapter 19

Favoring Crime Desistance and Social (Re)Integration of Offenders Through Intersectoral Partnerships


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ABSTRACT

The purpose of this chapter is to show the importance of intersectorality in partnerships to successfully understand and influence the processes of crime desistance and of social and community (re)integration of people subject to judicial control. It begins with an outline of the “what works” and “how it works” movements and provides tools to help understand such notions as crime desistance, (re)integration, trajectories, and intersectorality. After describing the objectives of the (RÉ)SO 16-35 partnered research project, the authors present various intersectoral collaborative initiatives in the United Kingdom, the United States, and Canada and indicate what, according to the literature, contributed to their development. The chapter concludes with the identification of two central principles in the development of intersectoral partnerships aiming to favor crime desistance and social and community (re)integration trajectories: a culture of dialogue must be instilled, and the initial objective of the project must be kept in mind.

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INTRODUCTION

Integration can contribute to all people with a criminal history managing to develop a sense of belonging and of cohesion with society. In parallel, it can help reduce the stigmas associated with their entry into the judicial system. To this end, an entire process must be deployed; the paths taken to achieve the goal are rarely linear. As defined by François Bérard (2015, p. 5) of the Association des services de réhabilitation sociale du Québec, social and community (re)integration is a *[Translation] long-term, multidimensional, individualized adaption process that is not complete until the person [subject to judicial control] participates in all aspects of life in the society and community where [he/she] is evolving and for which [he/she] has developed a sense of belonging*. It has a broader scope of action than the notion of reinsertion, which, for its part, implies the introduction of a person into a given social setting, but not necessarily a transformation process. The prefix “re” in parentheses serves to include both those who must be reintegrated and those who never were and must therefore be integrated.

In recent decades, the notion of social (re)integration has become central as much in the literature on offender rehabilitation (the “What works” movement¹) as in the literature on crime desistance (the “How it works” movement). To facilitate crime desistance and social and community (re)integration trajectories of people who have committed offenses, it is necessary to acknowledge that these people have several concomitant difficulties or problems and therefore various needs that must be met. However, a sole service provider can rarely satisfy all these needs. This is why several partnership projects have come to be in various countries. The Québec program called “(RÉ)SO 16-35” is one of these projects.

The purpose of this chapter is to show the importance of intersectorality in partnerships to successfully understand and influence the processes of crime desistance and of social and community (re) integration of people having committed offenses. It begins with an outline of the “What works” and “How it works” movements and provides tools to help understand such notions as crime desistance, (re)integration, trajectories, and intersectorality. After describing the objectives of the (RÉ)SO 16-35 partnered research project, the authors will discuss the various initiatives of intersectoral collaboration in the United Kingdom, the United States, and Canada as well as what, according to the literature, contributed to their development.

BACKGROUND

From “What Works” to “How it Works”

In their work entitled, *Preventing Crime*, a compilation of 13 literature reviews on what works and what does not work in terms of crime and victimization prevention, Welsh and Farrington (2007) stressed the importance of basing any correctional approach on a rigorous and rational evaluation of the empirical data. They showed that rehabilitation programs could reduce the risk of recidivism by 10 to 40% (“What works”), but also reaffirmed the importance of intervening to reduce the harms related to crime, redress the resulting injuries, and better integrate people subject to judicial control into society. To identify “What works” in terms of rehabilitation, the researchers based their work on the index of recidivism rates as an indicator of the effectiveness of the programs and attempted to identify the risk and protective factors associated with recidivism (Farrington & Ttofi, 2011; Hopkins & Wickson, 2013; Worling & Langton, 2014). In this regard, Andrews and Bonta’s (2006) Risk-Need-Responsivity (RNR) model

for evaluating and rehabilitating people having committed offenses is a good reflection of the “What works” movement. It consists of: 1 - adapting the level of service to the delinquent’s risk of recidivism (risk), 2 - evaluating and targeting the criminogenic factors (need), as well as 3 - adopting effective intervention strategies based on the cognitive behavioral approach and adapting them to the delinquent’s characteristics. However, this model has been criticized for its focus on flaws (recidivism, risk, and risk factors), its extensive, systematic application to all people having committed offenses, and its lack of consideration for responding to the individuals’ primary or non-criminogenic needs. The researchers believe that, for these reasons, participants in the RNR programs would have difficulties in terms of motivation and commitment (Brogan, Haney-Caron, NeMoyer, & DeMatteo, 2015; Corneille & Devil-lers, 2017; Ward, Yates, & Willis, 2012).

Without rejecting the relevance and importance of the “What works” movement, some researchers have proposed to turn their attention instead to “How it works” (Craig, 2015; F.-Dufour, Brassard, & Martel, 2016; Maruna & LeBel, 2012). In fact, their focus is not so much on those who have persisted in delinquency (sometimes called “recidivists”), but rather on those who have desisted, in other words, who have put an end to *[Translation] a period of transgressional behaviors* (Farrall, 2012, p. 13). They are concerned more particularly with crime desistance, that is, the process through which people subject to judicial control have progressively engaged in adopting behaviors that comply with the law and in permanently stopping their criminal activities (Bottoms & Shapland, 2016; Burnett & Maruna, 2004). The main objective of proponents of “What works” is to prevent risk and protect the community, whereas supporters of “How it works” aim to facilitate desistance by providing support to people who have committed offenses.

Crime Desistance

The desistance process is currently the object of debate within the scientific community; the structural theory and the cognitive change theory understand it differently. The former perspective is inspired by reflections of authors like Hirschi (1969) and conceives that crime occurs when an individual has broken off from the social structure. Sampson and Laub (1993) contributed to this interpretation by specifying that desistance occurs when new ties with society are created. Regeneration of the social fabric would operate through social sanctions and norms throughout time. The new ties may come in the form, for instance, of a new job, a study program, or a spouse. According to these authors, crime desistance occurs because social pressure is “applied” on the individuals through employment, study, or the spouse, which “obliges” them to abandon their criminal activities. It is thus a structural explanation that leaves little room for the idea that offenders choose to change their path.

The cognitive change theory was developed by authors like Paternoster and Bushway (2009) in response to the structural perspective. According to these authors, it reduces the scope of the people’s actions to default choices. They argue for researchers to focus more on the agency of the actors, that is, their ability to set objectives and make decisions to achieve them. Similarly, numerous authors have advanced that to desist, a person subject to judicial control has to have been previously open to undergoing such a transformation (Bottoms & Shapland, 2011; Skardhamar & Savalainen, 2014). However, Giordano, Cernkovich, & Rudolph (2002) noted that being ready to accept change was only the first step in the cognitive transformation process and that in the second step, the “hooks of change” had to present themselves and the person had to have the right attitude. In the third step, the person would begin to define his/her own identity, which would generate a fourth transformation step, this time related to the lifestyle and the representation that the person forms of crime (Maruna, 2001).

Laub and Sampson (2009) criticized the cognitive change theory, recalling that the desistance process does not necessarily involve conscious decisions. This opened the door to a third explanation of the factors and mechanisms underlying the desistance process, that is, the one that Cid and Marti (2015) called the “strain-social support theory” and that was developed notably by Cullen (1994) in his address to the Academy of Criminal Justice Sciences. In that text, Cullen (1994) challenged the relevance of isolating the factors belonging to the offender from those that fall under the social structure. The social structure—to use his example—may indeed have an influence on the actor’s adoption of prosocial behaviors. Nonetheless, one must not lose sight of the fact that the said support is itself part of a social structure that generates inequities. The role of researchers who endorse this perspective would be to document all the obstacles that arise during the process to assist the people desisting and to identify the factors that facilitate desistance trajectories (Farrall, 2002; Lebel, Burnett, Maruna, & Bushway, 2008).

For their part, F.-Dufour, Brassard, and Martel (2016) noticed that in the structural explanation of desistance, the people desisting were dismissed, so to speak, from their own process, whereas the cognitive change explanation did not sufficiently explain the relationship between the said change and the offenders’ actions. To identify a third path in the debate on the desistance process, the authors preferred to turn to the morphogenic theory, which takes into account both the people’s intentions and their social environment (Archer, 1995). In fact, they focused on the dynamics and interdependence of the relationships between society and the individuals. These authors believe that because of its multiple dimensions—including starting points, unfavorable positions, costs of opportunities, personal identities, and social identities—desistance becomes a group of projects that are conducted in a non-linear fashion.

Recent studies on the desistance process have all highlighted the importance of adopting an inclusive posture that aims at recognizing its great complexity. To this effect, the identity, cognitive, and social dimensions must all be considered (Samson & Laub, 2012). For instance, Nugent and Schinkel (2016) suggested viewing desistance as a transitory period during which actions, relationships, and identity undergo changes. Their study helped elucidate the difficulties encountered by people subject to judicial control, such as isolation, a sense of failure, and even despair. Additionally, there are several stigmas attached to their label as “a criminal” that hinder their integration (Abrah, 2019; Landreville, 2004).

To demonstrate the complexity of the process, Maruna and Farrall (2004) proposed to break it down into two types: primary desistance and secondary desistance. McNeill (2016) added a third one: tertiary desistance. These types of desistance must not be understood as a sequence or a continuum that hierarchizes levels of advancement, but rather as analytical benchmarks meant to distinguish various aspects of the trajectories of people having committed offenses, as explained in Table 1.

By working at documenting the notion of desistance in an inclusive manner, researchers are paving the way to the introduction of a vast range of new intervention practices, and even to the reduction of resistance toward them (Herzog-Evans, 2011). This phenomenon is called “assisted desistance,” that is, interventions that help people with a criminal history remain on their desistance trajectory (King, 2013). For example, studies tend to show that to encourage the process, caseworkers must participate in transforming the social, contextual, normative, and psychological conditions that favored these people’s entry into delinquency (F.-Dufour & Brassard, 2014). To do so, caseworkers may concentrate on the motivations, opportunities, and capacities of these people to desist from crime (McNeill, 2009). This is possible only if a relationship is developed based on listening and talking (McCulloch, 2006). The dialogue that a caseworker establishes with the people would contribute to their resocialization and, by extension, to their social and community (re)integration (Fox, 2015).

Table 1. Definitions of the Three Types of Desistance

Primary desistance	The person with a criminal history no longer commits any offenses. This is reflected in the person's behaviors.
Secondary desistance	The person with a criminal history changes his/her self-perception and self-definition. This is reflected in the way the person recounts his/her life trajectory.
Tertiary desistance	Society notes an identity change in the person desisting. This is reflected in the ways that friends, family, and the community perceive the person.

Source: (Maruna & Farrall, 2004; McNeill, 2016)

Social and Community (Re)Integration

In his address at the conference of the International Corrections and Prisons Association, McNeill (2018) defined “(re)integration” as the end point of a rehabilitation process during which the citizen relearned the principles of reciprocity toward his/her community and honored them by reclaiming them. The author identified four forms of rehabilitation:

These definitions highlight the fact that offenders are not solely responsible for their social and community (re)integration and that the challenge requires several resources to be mobilized and encouraged to collaborate. Cullen and Gilbert (2013) agreed, reaffirming the importance of building on strategies that facilitate social integration.

Trajectories

It is important here to underscore the fact that the process of crime desistance and of social and community (re)integration both belong to the semantic field of the notion of trajectory. As written in the collective work edited by Brochu, Landry, Bertrand, Brunelle, and Patenaude (2014, p. 37), *[Translation] The notion of trajectory has been used in varied fields of psychosocial research to better understand the long-term evolution of various spheres of an individual's life*. It testifies to the development of a problematic situation and of all the associated problems as well as the progressions and regressions. Moreover, it concerns the variations of different episodes, phases, and transitions, their interactions, and the contexts, as well as their duration. Brochu, Patenaude, Landry, and Bertrand (2014, p. 38) added that, *[Translation] The notion of trajectory thus comprises a dynamic dimension through which the person can be situated at the crossroads of external and internal determinants that evolve over time*.

Table 2. Definitions of the Four Different Forms of Rehabilitation

Personal rehabilitation	Solidification of the identity of the person with a criminal history as a person who is desisting through the acquisition and development of new skills, reinforcement of the motivations, and examination of his/her value system.
Judiciary rehabilitation	Requalification of the offender as a citizen through the restoration of his/her legal status
Moral and political rehabilitation	Dialogue where citizens, civil society, and the state negotiate conditions of retribution or of remedy that appear fair to them.
Social rehabilitation	Work by the community to enable the person having committed an offense to regain a position within society and to change his/her representation of what a “criminal” is.

Source: (McNeill, 2018)

Like the notions of desistance and of (re)integration, the notion of trajectory is not linear (in Brochu, Landry, Bertrand, Brunelle, & Patenaude, 2014). The end of an offender's criminal activities does not always go first through desistance and secondly through his/her successful (re)integration. People having committed offenses could have completely desisted from crime without ever managing to integrate; inversely, offenders could be socially (re)integrated without ever having completely abandoned their criminal activities. Similarly, people having committed offenses could take their first steps toward desisting and toward (re)integrating in parallel. In fact, the plural expression, *crime desistance and social and community (re)integration trajectories*, would more accurately designate the processes in their entirety.

Other keys for understanding: crime desistance and social and community (re)integration trajectories are themselves often crossed by other co-occurring problems, such as mental health problems, addiction, risky behaviors, homelessness, and difficulties integrating well into the job market (Berger, Abu-Raiya, Heineberg, & Zimbardo, 2017; Campbell & Hansen, 2012; Chen, 2018; Pineau-Villeneuve, Laurier, Fredette, & Guay, 2015; Tremblay, Brunelle, & Blanchette-Martin, 2007). To respond to this reality, it seems relevant, given the great complexity of offenders' trajectories, to increase the flexibility and integration of the service trajectories, using an intersectoral approach (Brochu, Landry, Bertrand, Brunelle, & Patenaude, 2014). Intersectorality is characterized by a mobilization of several intervention sectors to satisfy specific needs. It banks on each caseworker's skills being complementary and enabling an action that is better suited to these needs (Lebeau, Vermette, & Viens, 1997), hence the need to develop intersectoral partnerships.

DEVELOPMENT OF INTERSECTORAL PARTNERSHIP PROJECTS

In Canada, and more particularly in Québec, 16 researchers and 23 partners from public and community-based organizations decided in 2018 to unite their efforts and expertise in the *(RÉ)SO 16-35* program, subsidized by the Social Sciences and Humanities Research Council of Canada for seven years (2018–2025). This team of research and community partners falls mainly under the “How it works” movement. The principal objective is to develop and apply more effective, concerted intervention strategies supported by an intersectoral partnership that would favor crime desistance and social and community (re)integration trajectories of young offenders aged 16 to 35 years old. The sectors particularly targeted are delinquency, addiction, mental health, employability, and housing, in three regions in Québec: Mauricie–Centre-du-Québec, Québec, and Montréal.

Four specific objectives will be pursued:

1. Describe the crime desistance and social and community (re)integration trajectories of youth having committed offenses;
2. Analyze the collaborative relationships between the various actors in crime desistance and social and community (re)integration of youth having committed offenses;
3. Develop intersectoral action strategies to favor crime desistance and social and community (re)integration of youth having committed offenses;
4. Design, implement, and evaluate the implementation of an intersectoral pilot project responding to the needs of youth having committed offenses as part of their crime desistance and social and community (re)integration.

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In all, six research projects, mobilizing mixed, quantitative, and qualitative methodologies will be conducted. They will attribute as much importance to the perceptions of the youth themselves (Axis 1) as to the services providers (Axis 2). The projects will culminate in the identification of intersectoral action strategies and the implementation of a pilot project (Axis 3). The results of this program will be used, notably, to develop knowledge of the problems presented by youth having committed offenses and of their various crime desistance and social and community (re)integration trajectories, to offer them enhanced, integrated services inspired by this knowledge, as well as to produce clinical, training, and teaching tools.

This Canadian experience is inspired by national and international initiatives, which follow various movements. They have in common the idea that intersectoral collaboration must remain at the core of the process, and that, consequently, a network of partners must be developed. As food for thought, it is important to consult the writings of various researchers and partners regarding their own collaborative experiences. This reflective feedback will help provide an understanding not of what works in terms of intersectoral partnerships, but rather of how they work.

Echoes From the United Kingdom

In their article entitled, “A seamless partnership?”, Corcoran and Fox (2012) dealt with the establishment of Chestnut Centre, an initiative launched by the Diversion program of the Ministry of Justice of England and Wales that promoted, notably, crime desistance and social and community (re)integration of female offenders. The pilot project, funded over 14 months, consisted in grouping together under one roof an array of services intended for women who were considered at risk of committing a crime or who had been convicted of doing so, to help them, among other things, access healthcare, manage their finances, find housing, and beat their addiction. Instead of presenting a report on the outcomes of the project for the women, the authors looked at the relationships between the various partners who put their shoulder to the wheel throughout this experience. They believed that the relevance of the project resided in the fact that the relationships between the partners were not trapped in a logic where there was an interdependence between a provider and a contractor. The partnership behind Chestnut Centre rather favored what Evers (2005) called “organizational hybridization,” which is the process of constantly adapting behaviors, attitudes, values, and roles adopted by the various actors in response to the great complexity of the challenges. The authors believed that this shift from integration of services to integration of practices constituted an avenue for favoring crime desistance and social and community (re)integration trajectories. However, they pointed out that this process also comes with power games that arise as barriers to collaboration. Consequently, they invited researchers to remain attentive to the contingency of partnerships and to the uncertainty that they generate. As the authors stressed, grouping actors together in no way guarantees their mutual understanding or their adaptation speed. For relationships to be built, the roles and work distribution of all the partners must be constantly renegotiated, without their losing sight of the consensus, which, in this case, was the need to respond to these women’s needs.

For her part, Gray (2013) developed a completely different reflection on intersectorality in partnerships by examining the Youth Offending Teams (YOT). Seeking to respond to the great complexity of the problems faced by youth, the YOTs are partnerships between police officers, probation officers, teachers, health professionals, and youth with the mandate to intervene simultaneously on several fronts to facilitate the crime desistance and social and community (re)integration trajectories of young offenders. The author recalled that despite their inclusive, intersectoral, and holistic approach, these partnerships had,

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according to various audits (Solomon & Garside, 2008; National Audit Office, 2010; Hopkins, Webb, & Mackie, 2010), only limited success regarding, for example, the impact on the rate of recidivism and the associated risk factors, such as the youth's lifestyle, pro-criminal attitude, motivation to change, substance use, and self-perception. The audit results were particularly disappointing with respect to mental health, education, and employability. However, instead of seeking to evaluate the failings of the process or to improve the methods used to measure the youth's well-being, the author chose to re-situate YOTs in the sociopolitical framework of the "new penalty". The new penalty is characterized by the calculation of risk and the individuals' accountability for their actions. On this topic, the author made this comment:

(W)hile youth under the supervision of YOTs are provided with wide-ranging social welfare support to target specific criminogenic needs, this support is "conditional" on their compliance with requirements which are intended to responsabilize them to negotiate their own needs in order to reduce the likelihood of reoffending (2013, p. 531).

The author thus raised the criticism that the main limitation of these partnerships is that they constrain youth to follow crime desistance and social and community (re)integration trajectories by making them solely responsible for the risks of failure. This critique agrees with that of McNeill (2018), who, as previously mentioned, pointed out that crime desistance and social and community (re)integration are not individual processes. Constraining youth having committed offenses to enter alone in a crime desistance and social and community (re)integration trajectory is practically obliging them to shoulder major social and economic inequities. In a true approach to crime desistance and social and community (re)integration, the opinions of young offenders on matters of justice must be heard, and all the partners must commit to opening a dialogue with them.

Echoes From the United States

In 2008, the United States Congress adopted the *Second Chance Act*, which aimed at offering funding to projects favoring crime desistance, social and community (re)integration, and collaboration between researchers and criminal justice practitioners. A few authors shared with the scientific community their thoughts on their experiences with partnerships within this vast program. This is the case notably of Rudes, Viglione, Lerch, Porter, and Taxman (2014), who made a sincere plea in one article for collaboration between the researchers and practitioners. The authors stressed the importance of communication, mutual respect, and mobilization to ensure that the project would run smoothly. According to the results of their literature review, the main benefits of partnerships would be to multiply perspectives, break isolation, better identify resources, and improve research results. Partnerships would, however, pose challenges relating to, among other things, use of the results, consensus around the vocabulary to use, seeking of research funding, maintenance of the primary mandate, engagement of the various partners, trust, and, of course, decision making. To illustrate these findings, the authors presented the highlights of four collaborative projects that they had developed at the Center for Advancing Correctional Excellence at George Mason University in Virginia with certain correctional service agencies, that is the Maryland Department of Public Safety and Correctional Services, the Motivational Assessment Program to Initiate Treatment, the Virginia Department of Corrections, and Juvenile Justice. The collaborative projects consisted, for instance, in finding ways to improve motivational interviewing during the probation processes or in reducing the domestic violence committed or suffered by young offenders

Figure 1. Key Elements That Contribute to the Success of a Partnership

Source: Rudes, Viglione, Lerch, Porter, & Taxman, 2014, p. 256



to encourage their crime desistance and social and community (re)integration trajectories. The authors synthesized what they considered to be the key elements in the success of a partnership in this model:

In their opinion, accessibility—which concerns data availability, resources, as well as relationships—is what forms the core of a partnership. The second element that the authors identified concerns the written agreements between the institutions, which provide a formal framework on which will rest, on the one hand, the collaboration and, on the other hand, the formulation and planning of a common objective, seriously thought out thanks to an open discussion. To successfully maintain the objective, the partners must provide continual, iterative feedback. Finally, this feedback must successfully preserve the relationship between the partners and, by extension, their willingness to pursue the same objective, to maintain their agreement, and their accessibility. In fact, the authors made it more clear that the success of a partnership rests on openness toward the other. The model that Rudes, Viglione, Lerch, Porter, and Taxman (2014) developed has inspired other collaborative research projects in the United States, in particular the one by Drawbridge, Taheri, and Frost (2018). After carrying out a project where a correctional program was evaluated, these authors wished to recall the importance of dialogue in the success of partnership projects.

Another theoretical model for understanding what favors the good development of intersectoral partnerships is the one that Bryson, Crosby, and Stone (2006) developed. After analyzing the literature on this topic, the authors proposed to analyze an initiative based on six components:

Christie (2016) revisited this model to analyze the success of the drug courts in Florida. These are real tribunals where the treatment of people having committed drug offenses is negotiated. They have successfully developed a team approach through which the judge, prosecutor, client, and defense—who are used to confrontation—are required to collaborate, notably thanks to advice from treatment providers and case managers, to find the best option to help the “clients” overcome their drug use problems.

Table 3. Bryson, Crosby, and Stone’s Model

Components	Example of indicators of success
Environmental factors	The partners acknowledge that they cannot solve the problems alone.
Process	The partners learn to trust each other, communicate well, become organized, and respect the other partners’ skills.
Governance structure	The operating rules and the procedures are instituted.
Contingences and constraints	The power games do not jeopardize access to certain resources.
Outcomes	The collaboration provides mutual gains and, more importantly, helps each partner to recover after a failure.
Accountability	The partners seek ways to improve their collaboration.

Source: (Bryson, Crosby, & Stone, 2006)

The author stressed the fact that without this intersectoral collaboration, it is the public that would end up managing the said problems. She demonstrated that the development of this type of initiative rests on the various factors and mechanisms identified by Bryson, Crosby, and Stone (2006). She suggested systematically documenting how each conflict between the partners was handled to provide tools to subsequent collaborations.

Echoes From Canada

In a special edition of the *International Journal of Public Health* regarding the importance of intersectoral collaborations for targeting social determinants of health, Dewa, Trojanowski, Cheng, and Sirotych (2012) published an article reporting on the factors related to the success of court support programs in Ontario. They focused more particularly on the court-based, post-booking diversion programs that target people with mental health problems who have been accused or convicted of a crime, as well as on the mental health courts where all court staff have been trained specifically in mental health. After interviewing the directors and administrators of these programs, the authors noted that the factors linked to their good development was “partnership development, adjustment to broader mandates, and addressing ongoing challenges” (Dewa, Trojanowski, Cheng, & Sirotych, 2012, p. 7). Mostly, they stressed the importance of investing time in such a process and to leverage, as Steadman, Morris, and Dennis (1995) had previously suggested, the boundary spanners, which comprise the functioning of the two systems and which may in this regard provide an integrated service. If service integration becomes possible, it is because partnerships enable a practice community to unite around a same objective. The change of posture helps develop a new professional identity (Henry, 2012).

In Québec, Brochu and Landry (2010) believe that an important condition for the development of intersectoral programs is to document and analyze their implementation. In this spirit, all the partners involved in the *Programme de traitement de la toxicomanie de la Cour du Québec* (PTTCQ) thought out and deployed a logical evaluation model. Implemented in 2012, the PTTCQ is a program that is incorporated in a specialized tribunal for cases of people with addictions who have committed offenses and that allows sentencing to be suspended so the person can undergo treatment (Bernier, 2017). The model created by the partners enabled them to provide feedback at the end of the process, more specifically proposed adjustments and modifications to the program so it could better meet its objectives. In their report, the team members underscored the power to give the people an important place in the process,

while considering the psychosocial dimensions (such as levels of addiction to a substance or intervention needs) that influence crime desistance and social and community (re)integration trajectories. Also, and especially, they acknowledged *[Translation]* what a feat it was for this partnership to succeed in such a demanding implementation context given its complexity and the multitude of actors assembled (Plourde, Goyette, Brochu, & Alain, 2014, p. 38). Among the conditions for success of the partnership, the authors proposed the introduction of a *[Translation]* process of reflection that will reduce the gap between the objectives *[of the project]* and the priorities (Brochu & Landry, 2010, p. 3) of each of the partners.

Collaboration between the mental health and justice sectors has been affirmed, through the implementation of the *Programme d'Accompagnement Justice-Santé Mentale* (PAJ-SM) in various municipalities, especially Montreal, where a pilot project was conducted in 2008. The purpose of this project, born from an initiative of the Fondation EJLB, the *Fondation des maladies mentales*, and the *Société québécoise de schizophrénie*, is to unite a multidisciplinary team (composed notably of a judge, lawyers, a physician, criminologists, and a liaison officer) around an offender dealing with a severe, persistent mental health problem (Rose, Baillergeau, Hurtubise, & McAll 2012). The objective is to *[Translation]* offer integrated health and social services as well as legal services more adapted to the condition of the accused with mental health problems, to propose alternatives to imprisonment (Provost, 2011, p.1). The actors in this program describe it as an accompaniment in which people subject to judicial control are required to work on themselves and to take responsibility for their treatment as well as for their own crime desistance and social and community (re)integration trajectory. Although the authors of the scientific articles on the PAJ-SM (Jaimes, Crocker, Bédard, & Ambrosini, 2009; MacDonald & Dumais Michaud, 2015; Dumais Michaud, 2017) underscored its innovative nature and its potential for favoring the crime desistance and social and community (re)integration trajectories of people subject to judicial control, they also raised criticisms that were in line with Gray's (2013) previously cited critique. Indeed, they presented this program as an *imperfect and temporary* (Jaimes, Crocker, Bédard, & Ambrosini, 2009, p. 186) solution to deinstitutionalization and to the difficulties of access to health services, in which the actors seek to hold individuals accountable for problems that were also (and mostly) social. In fact, it is important to remember the multidimensionality of rehabilitation as conceived by McNeill (2018). The fact remains that the program responds to real problems experienced by offenders and that it contributes to dejudicializing mental health problems. In fact, the PAJ-SM is truly a process of integration and, consequently, merits, according to authors, that solutions be found to improve it.

CONCLUSION

Favoring crime desistance and social and community (re)integration trajectories means supporting offenders to allow them to regain their place in society. They will thus develop their full potential and, by extension, that of their community. Bédard's (2015) and McNeill's (2018) definitions of social and community (re)integration both recall that crime desistance and social and community (re)integration trajectories do not depend solely on the offender's willingness and that society as a whole also participates in facilitating and/or hindering this process. Similarly, the notion of trajectories as described by Brochu, Landry, Bertrand, Brunelle, and Patenaude (2014) takes into account not only the plurality of the problems experienced, but also their evolution over time. This conceptual architecture also introduces intersectorality, that is, an approach resolutely aimed toward the adaptation of services to offenders' specific needs and toward the integration of these services. From that point on, the development of partnerships appears

as a means to favor crime desistance and social and community (re)integration trajectories. That said, the manner of deploying the partnership projects rests notably on two important principles: a culture of dialogue must be instilled and the initial objective of the project must be kept in mind, whether it is to reduce recidivism (“What works”) or to (re)integrate people with a criminal history (“How it works”).

To instill a culture of dialogue, the authors cited have identified openness and accessibility as the best attitudes to adopt to ensure good communication. This implies that the actors respect their partners and the offenders alike. Thanks to this openness, the actors can better listen to the opinions of the others, adapt their discourses and practices accordingly, and even sometimes accept to correct themselves to better do so. Such an attitude helps bring about real dialogue, that is, a constructive exchange involving and mobilizing all the actors.

For the partners to keep in mind the initial objective of the project, it is important for them to have had sufficient discussions to agree, consensually, on the identification of the difficulties in the crime desistance and social and community (re)integration in question, and especially on the means to deal with them. It is rarely possible to execute these means quickly and by oneself. Given that the solutions are more of a collective, or more accurately social, nature, and that they take time, it is easy to stray—for a multitude of reasons—from the initial objective. Consequently, it is important to constantly remember during the execution of the project that all the partners involved have a common goal, which is, in this case, crime desistance and social and community (re)integration of people subject to judicial control.

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KEY TERMS AND DEFINITIONS

Crime Desistance: Process through which people subject to judicial control progressively engaged in adopting behaviors that comply with the law and permanently put an end to their criminal activities.

How It Works: Movement in criminology that pertains to crime desistance and whose objective is to facilitate it by providing support to people subject to judicial control.

Insertion: Introduction of a person into an environment.

Intersectorality: Mobilization of several intervention sectors to satisfy specific needs.

(Re)integration: Process of adaptation that allows an offender to develop, in the long term, a sense of belonging and of cohesion with society. It covers several dimensions, notably personal, legal, moral, political, and social.

Trajectories: Lines tracing the evolution of various spheres of an individual's life over a relatively long period. Consequently, this evolution is neither static nor linear.

What Works: Movement in criminology that pertains to the rehabilitation of people subject to judicial control and whose objective is to prevent risk and protect the community.

ENDNOTE

¹ This expression was formulated to oppose the “Nothing works” movement inspired by Martinson's (1974) work.

Chapter 20

Role of Collective Approach in Offender Rehabilitation

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ABSTRACT

The main focus of this chapter is to understand the importance of collective approach regarding offender rehabilitation. In order to understand the collective approach as a phenomenon, the chapter will shed some light on the importance of this approach towards the betterment of any society. Some sections of the chapter will also delve into the realm of possible cause/s of the offences committed and will try to address the questions pertaining to the categories of why, how, and what. The scope of this chapter is limited to offences that were freely chosen as a wilful behaviour. Hence the offences perpetrated owing to mental illness, sexual desire, and under the influence of any drugs are beyond the scope of this chapter.

INTRODUCTION

Offense is one of the primary factors contributing to the rise of anxiety in communities across all societies. Therefore, concerns with regard to the offender's treatment hold immense significance for clinical and policy practitioners. Scholars explain their own understandings about offence in many different ways. Scholars like Michael and Adler (1933), Becker (1963), Gould, Kleck, and Gertz (1992), Tifft (1995) explained offence as 'an act that is capable of being followed by criminal proceedings'. This definition can be divided into two parts: the first part expresses the presence of some offender involved in some kind of criminal activity and the second part prescribes that the offence is to be followed by some criminal proceedings. Crime reports from many countries indicate a rising trend in the rate of crime in their respective territories. As pointed out by Clarke (1977) there are several reasons that have contributed to the increasing rate of crime in society. Among the many reasons, non-socioeconomic circumstances are considered to be one of the most influential ones. Many a time, criminal offences such as murder or stealing are driven by personal or family need, which is a very serious concern. Notwithstanding the reasons behind the increase in criminal incidences, there is still a need to act towards the rehabilitation of the offenders. Two visible approaches are there in terms of treating offenders: the first is the retaliation

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(paying back) approach in the form of punishment and the second is the compassion approach, which treats offenders as chronically ill patients and advocates for the offender's redemption through suitable rehabilitation program. Another approach towards the rehabilitation is the collective approach where policymakers and counsellors work together towards a positive development of the offenders.

The chapter starts with a brief description of the socioeconomic causes which foment offence. In addition, some parts of the chapter are dedicated towards the different approaches of rehabilitation, such as Good Lives Model (GLM), Risk-Need Responsivity (RNR) model (Andrews & Bonta, 2010) and positive criminology. Finally, the chapter discusses in detail the various parameters associated with the phenomenon.

BACKGROUND/ CONTRIBUTING FACTORS

The term 'offence' is a polysemous and contradictory one; hence, there is no singular, clear definition to be found in literature and scholars are describing it according to the context (Henry & Lanier, 1998). Yet for the sake of our understanding one may primarily perceive it as a negative event in which two parties are involved: one is the victim and the other is the offender/s. An event can be recorded as a crime only when the offenders adversely impact or harm the victim/s. Owing to its heterogeneous nature; the causes of offence are also multifarious. There are many factors that impact the varieties of offences committed in society, which can be further segregated into the three main factors policy-related, environmental and personal (Table 1).

Some scholars have categorized offence under learned behavior, that is, offence which can be learned through different means. Sutherland (1947) lists some key parameters through which criminal behavior can be learned:

1. Offenders often learn how to commit a crime.
2. Strong association with likeminded people may lead to learning criminal behavior.
3. A major part of the learning happens within close personal or peer groups.
4. The learning process comprises specific techniques for performing specific offences/crimes and also definite drives, attitudes and objectives to commit offence/crimes.
5. There are similarities between the learning of criminal behavior and that of other behaviors.
6. Even though unlawful activities, to some extent, are an expression of unfulfilled desires and values, committing an offense cannot be justified in terms of these values and needs.

Table 1. Factors that impact the offences

Policy factors	Environmental factors	Personal factors
Poverty	Low IQ	Single parenting
Inequality	Media violence	Lack of parental control
Unemployment	Illegitimacy	Child abuse
Lack of Education	Drugs	Homelessness

Source: Created by author from literature

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within three years of their release from prison, and 77 per cent were arrested within a period of five years (Maruna & King, 2009).

In their study, Maruna and King (2009) focused on people's outlook towards offenders and found out that those who think that criminal activities are the outcome of wilful behavior and are chosen freely are more likely to be penalize than those who believe that offence is the outcome of external circumstances and constraints. The focus of the research by Maruna and King revolves around the internal and external locus of control. In his research, Crow (2001) mentioned that we should treat offenders as patients and also as a danger to the community. However, the point is that men suffering from illness are subject to sympathy, whereas the ones belonging to the other category, that is, criminals are often subjected to hate. This partiality is rather irrational, and "it is because of this difference in attitude that prisons are so much less successful in ameliorating criminal tendencies than our hospitals are in curing illnesses" (Crow, 2001).

Treatment of the offenders through rehabilitation is repeatedly linked to other terms, notably 'rehabilitation', 'reform' and 'resettlement'. Each of the three terms is indicative of change with respect to their getting restored to their earlier position in society. The *Concise Oxford Dictionary* defines 'rehabilitation' as restoring 'former privileges or reputation or proper condition'.

Approaches Towards Rehabilitation

The focal point of a rehabilitation program should revolve around its objective and it should articulate its founding assumptions in relation to identification of key interventions, targeted groups, the process and the goals (Ward & Marshall, 2004). A well-outlined rehabilitation approach should work as a linking theory. An impactful theory of offender rehabilitation should be allied with the etiological theories and practice models. Additionally, there should be a connection between the factors that are related to offenders' behaviors and the approach in which intervention is essentially executed. Other than this, the approach should clearly incorporate the style, attitude and motivational factors, and also clarify the importance of therapeutic alliance (Ward & Marshall, 2004). In fact, a positive approach aided by the motivational element is the key for all successful rehabilitation practices.

Fundamentally, a rehabilitation approach should be constructive and concurrently the focal point should revolve on the postulates of life enhancement and risk reduction, which embrace the endorsement of strengths and well-being (Tweed et al., 2011). For instance, if the center of focus is primarily on the offender's destructive actions and the consequent inferences made about their behavior, then chances are high that pejorative views against them will be formed quickly. On the other hand, if a criminal is judged keeping in mind that he/she possesses intrinsic values as a human being (which include self-rule, potential to change, etc.), then the feelings experienced and publicized by the organizer/practitioner towards him are most likely to be those of respectful consideration. An approach of justice towards the offender constantly maintains the vision that offenders are valuable since they are human beings or have the potential to be so regarded. Therefore, offenders should moderately decide what is good for them, how to approach the judicial system and get benevolence during the judicial treatment or intervention. Even though the imposed penalty should convey an ethical message to the lawbreaker and confront him with the harm that his actions had caused to the victims, it is clear that any intervention should not involve looking for payback. The basic objective of any positive rehabilitation program should be the attainment of human good along with managing any type of relevant risk factors—present and future. It is essential to be mindful of both goals in mind when working with offenders, as the focus of both the points is to

reduce the chances of reoffending. According to Govier (2002), forgiveness is one of the crucial elements under any rehabilitation framework. The element of forgiveness in rehabilitation framework helps offenders realize their mistakes and the facts that their action/s has caused several physical, mental and emotional hurts to another human being. Govier (2002), in his work, explained that forgiveness helps offenders realize their mistakes and thereby transform their selves. Therefore, forgiveness can always be an important element under all progressive rehabilitation programs. And, this element cannot be introduced by practitioners, because it is the sole prerogative of the victim. For an effective rehabilitation framework, it needs to be emphasized to practitioners while they work with offenders that they should not undermine the victim's suffering that they have gone through at the hands of the offenders. The main focus of any positive rehabilitation program is to make the offender realize his/her mistake and also not to get engaged in the same or similar detestable actions in the future. To forge a rapport with the offenders is also one of the critical elements of a positive rehabilitation program. The practitioner should also be fully aware of his/her roles and responsibilities. For an intervention program to be successful, it is necessary that practitioners increase the offender's self-esteem and motivate them for future good behavior (Marshall et al., 2003). An effective intervention plan would focus on a collaborative approach towards the enhancement of the offender's self-esteem; displaying warmth, empathy and encouragement towards the offender would help attain the real goal of intervention (Marshall et al., 2003). To get effective and successful results, it is necessary that offenders perceive practitioners as trustworthy. Concurrently, it is imperative for practitioners to be observant of their value attitude towards offenders (Potter, 2002).

SOLUTIONS

Need for a Collective Approach Towards the Offender's Rehabilitation

Any type of offence is likely to have a direct impact on the society, because an offence or a crime is always a two-way process; on one hand, there is an executioner and, on the other, there is a sufferer, and both of them belong to the same society. Only when we visualize an offence or a crime in this perspective, its actual impact can be conceived to befall the society at large. We have already introduced the two approaches of dealing with the offenders—the punishment approach and the improvement approach involving concise efforts. The focus here is mainly on the second approach, that is, the improvement approach (rehabilitation). For any effective rehabilitation, one needs to focus on three things—selection, implication and the outcome analysis of rehabilitation programs. Selection should be based on the focal point, that is, the objective of the program. A selection of rehabilitation should be customized based on individual needs, such as the offender's background and current needs. Implication should cater to the needs of the offender/s to the maximum extent. The analysis part should focus on positive outcomes and to see whether the offender would be able to infuse positive behavior, empathy for others, self-confidence and self-discipline in his/her own life. In the context of offender's rehabilitation, many models have been presented by scholars in different contexts.

Risk-Need Responsivity (RNR) model. Considered as a significant model for rehabilitation of offenders (Blanchette & Brown, 2006; Ward, Mesler, & Yates, 2007), the RNR model was proposed and coined by Andrews and Bonta (2010). It is one of the pioneering rehabilitation models that are in use currently. The central focus of this model is the identification of criminogenic factors (e.g., antisocial attitudes, employment instability and negative social influences) to reduce the possibility of the person's

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attraction towards potential offending behaviour. The model has been developed and contextualized within a general personality and cognitive social learning theory of criminal conduct (Andrews & Bonta, 2006). Many components have been introduced over time into the basic theoretical principles to advance and strengthen the plan/design and implementation of effective interventions.

These principles explain, for instance, the importance of a respectful and collaborative working environment/relationship with clients, and also the importance of effective and efficient leadership that assist and facilitate effective interventions (Andrews, 2000; Andrews & Bonta, 2006). In other words, the three basic principles on which the RNR model functions are as follows:

- ***Risk principle.*** To match the level of service to the offender's risk to reoffend.
- ***Need principle.*** To assess criminogenic requirements and target them during the treatment.
- ***Responsivity principle.*** To increase the offender's aptitude for learning through rehabilitative interventions that align the cognitive behavioral treatment with the learning style, motivation, abilities and strengths of the offender.

Good Lives Model (GLM). Ward and Stewart (2003), while propounding the Good Lives Model (GLM), disapproved of the notion of criminogenic needs for overlooking additional essential human requirements that trigger most favorable personal accomplishment. GLM emphasizes on strengths (i.e., primary good qualities). According to them, the main goals for criminal rehabilitation should be the attainment of basic goods of 'friendship, creative pursuits, enjoyable work, loving relationships, positive self-regard, and an intellectually challenging environment' (Ward & Stewart, 2003, p. 142). Consequently, Ward and his fellow researchers have extended what they call the good lives model (GLM) through diverse research (Ward & Gannon, 2008; Ward, Melzer, & Yates, 2007). Along the way, GLM has been understood as a positive, restorative and, strengths-based, way to implement rehabilitation to offenders. In some instances, it has also been considered as a substitute to RNR in the specific areas of offender personal identity and motivation (Ward, Melzer, & Yates, 2007). Sometimes, GLM has been critiqued for its weakness with regard to theoretical and practical implications (McMurran & Ward, 2004; Ward, Polaschek, & Beech, 2006). GLM mainly emphasizes on the function of human motivation and organization/agency in criminal behavior, which is considered as the main attribute that differentiates GLM from RNR.

Positive Criminology. Positive criminology is an innovative theoretical outlook in criminology whereby the stress is on social enclosure and the utilization of integrative and optimistic authority to assist individuals and groups, so that they can resist themselves from engaging in any type of destructive activities and crimes. The core pillars on which positive criminology is based are humanistic values and capabilities (e.g., compassion, altruism, social acceptance, love, forgiveness and gratitude; Ronel & Elisha, 2010). The basic principle of positive criminology is that with the help of humanistic approach and empathetic understanding of the situation of the offenders, it is possible to rehabilitate an offender in a positive way. Moreover, positive criminology theorizes risk factors as signs of potential development rather than vulnerability and devastation. Another important focus area in this approach is the improvement of resilience in the offender in terms of avoiding any future crimes (Ronel & Haimoff-Ayali, 2009). Theories and approaches that represent the positive criminological perspective include re-integrative shaming, criminology as peace-making, restorative justice, recovery and desistance from crime (Ronel & Elisha, 2010).

Table 2. Understanding of future research direction

	Offer a collective approach towards the offender's rehabilitation
When	<ul style="list-style-type: none"> · Offenders wish to enhance positively · Sense of guilty · Wants to be a part of society · When offence is by choice
Why	<ul style="list-style-type: none"> · Reduce the level of crime · Enhance the level of security in society · Develop good citizen
How	<ul style="list-style-type: none"> · Through positive approaches · Develop need-based approaches

Source: Created by author from literature

FUTURE RESEARCH DIRECTION

Three basic questions will help lay the foundation for a roadmap for future research in this area. These are: When, Why and How. Before offering any rehabilitation program towards the betterment of offender, one needs to answer these three questions (see Table 2). When explains the correct time and ways for the rehabilitation program, Why explains the impact of these programs towards the society and how explains the implication part of the programs.

However, the implications of the three questions are based on the context. Since the context plays an important role in the rehabilitation program. Future research should be directed on the basis of specific context.

CONCLUSION

The objective of the chapter was to understand the cause of offence, approaches for rehabilitation and the role of a collective approach in implementing a successful rehabilitation program. Crime is difficult to understand and can only be explained through the society approach, which is referred to as how people of the society look on offenders and also what is the social outlook for the rehabilitation and the reintegration of the offenders in the society after completing the rehabilitation program, that is whether the personal, interpersonal and community supports for human behavior are favorable or unfavorable to crime. The success of a rehabilitation program is also dependent upon the society approach (how the society will assimilate the offenders after a successful rehabilitation program). It emerges in the discussions that when the contingencies of human action go unnoticed, events based on essential human desires and optimistic goals can get criminogenic. Under the rehabilitation approach, the chapter focused on the three main approaches which are essentially based on justice and dignity, under which again the main focus was on understanding the core strength of the offender and to develop a rehabilitation program which can positively impact their lives. The element of justice in any rehabilitation program is possible to the extent where all the parties (offenders, victims and the society) are ready to put efforts in order to jointly recognize needs, responsibilities and solutions (Pallone & O'Connor, 2002). Earlier studies on community attitudes regarding prisoners and ex-prisoners (Demski & McGlynn 1999; Helfgott 1997; Homant & Kennedy 1982; Hurwitz & Peffley 1997; Kjelsberg et al., 2007; Steffensmeier & Kramer,

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1980) and on support for rehabilitation (Applegate et al., 1997, 2000; Cullen et al., 1983, 1990; McCorkle, 1993), bring forth the point that members of the society are likely to have very contradictory outlooks on this key aspect.

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KEY TERMS AND DEFINITIONS

Collective Approach: Collective approach is a shared behavior of a group of people towards the betterment of society.

Crime: Crime is an illegal or prohibited action punishable by an authority or law.

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Criminal Behavior: Criminal behavior refers to a behavior of a lawbreaker which leads to and including the commission of an illicit act.

Environmental Factor: Environmental factors are the external factors which influence an individual thinking pattern.

Offence: Offence is understood as some action which outrages the ethical or physical sense.

Personal Factor: Personal factors are the individual factors which strongly influence the crime pattern.

Policy Factor: Policy factors are all those factors which have been enforced by administration or government.

Practitioners: Individuals enthusiastically engaged in a discipline, or occupation, particularly medication or rehabilitation.

Rehabilitation: Rehabilitation is a systematic approach towards the betterment of a criminal.

Chapter 21

Prison Treatment Programs From an International Perspective

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ABSTRACT

The generalized use of imprisonment to meet the need for security witnessed by the high rates of incarceration in countries such as the United States makes it necessary to question sentences, seeking to shape them so that they actually pursue the purposes indicated by international resources. In harmony with the model proposed by international resources for which detention can actually constitute a period capable of facilitating re-entry into society, in the chapter, some local experiences regarding the treatment of prisoners will be discussed. The reduction of recourse to the precautionary measure of deprivation of liberty is a good practice to limit the detained population. As for the methods of treatment within the prison walls, a penitentiary model based on the empowerment of the prisoner and on the recovery of his or her social, family, and work dimensions seems the only way to legitimize the deprivation of freedom beyond a logic of mere suppression.

INTRODUCTION

In western culture, the concept of punishment is accompanied by that of chastisement for wrongdoing involving violation of a system of socially shared values; within the latter, punishment therefore constitutes the natural answer to criminal behavior.

General prevention demands justify recourse to legally determined punishment of those who break the rules of coexistence, also for the purpose of dissuading those who have violated the penal precept from repeating their behavior.

The abandonment of corporal punishments and the progressive reduction of resort to capital punishment in the most mature legal systems have contributed to making the prison sentence the main instrument of punishment among those contemplated by present-day penal systems.

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The criticisms of the total institution made by the abolitionist and reductionist movements that have developed above all on the old continent – positions that one can also share if one looks to the effects produced by incarceration on avoidance of re-offending – have not undermined the centrality of privation of liberty in the single legal frameworks, also because of the impossibility of leaving violation of a penal precept unpunished.

The objective of returning an individual to society able to respect the rules of pacific coexistence¹ is nothing but an attempt to dignify a purely punitive instrument like incarceration, gearing it to a purpose: re-education.

Extremely briefly, the term *re-educate* refers to activity of correction of the defects provoked by bad upbringing or by deviations from an upright moral and social life; therefore, if the objective seems clear and shareable, one has to realize that, although the theme is amply disciplined by national and international sources, so far there is no clear-cut definition of re-educational treatment, when this is to take place in a prison context.

Re-education goes hand in hand with loss of liberty for enactment of a criminal punishment, whereas the custodial experience has to satisfy particular parameters so that that objective can be considered at least exactable.

BACKGROUND

Before going into the analysis of international and European legislation on the rehabilitation of the author of a crime, it is mandatory to dwell briefly on some theoretical aspects which come from socio-criminological literature (Sette, 2017, pp. 104-118).

Rehabilitation is a model inspired by Positivism and which shifts attention from the crime to the offender, the latter becoming the only “object” of knowledge.

A positivistic vision of the State is therefore asserted, which takes on the duty of organizing the actions which, as well as for purposes of social defense, have to be taken for the directed to the convict to “free him” from the condition that led him to commit crimes. In relation to crime, it is believed that the mere negative action (punishment) as well as mere neutrality (defense) are not sufficient methods and this is based on the presupposition that criminality and the crime rate can be significantly reduced only by establishing the conditions that produce them and then changing these conditions (Sutherland, 1994, p. 946).

Therefore, the modern state, as well as the demands of retribution, theorized by the Classical School, in a constant attempt to maintain order, tends to shift its objective towards the resocialization of the perpetrators of crimes (Balloni, Bisi & Sette, 2015, p. 24). The offender is thus subjected to specific prison “treatment”; over time, techniques, juridical institutions and non-detention punishments have been perfected. The last-mentioned developed initially in countries of common law from as early as the end of the 19th century through the practice of probation.

It is to be remembered that the Positivist School developed in open contrast with the previous approach of the Classical School, according to which criminal law represents the main instrument of formal social control and prevention (general and special). This change of paradigm is due to the fact that, in the passage from the 18th century of the Enlightenment to the 19th century of the Positive School, it was the world that had changed (following industrialization, urbanization and mass immigration) and the rational

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explanation of deviance was no longer capable of interpreting these social phenomena or of preparing efficient strategies of control, prevention and treatment of social pathologies (Dal Lago, 2000, pp. 52-53).

Alongside the model of retribution proposed by the Classical School, a new orientation developed towards more open forms to be implemented during the expiation of the punishment (for example through alternative measures to detention) aiming at helping the resocialization of the offender. The goal of social reinsertion of the prisoner (or in general of the convict) must lead to prison management based on “curative” objectives which also include improving the conditions of prison life (De Leo, Patrizi, 2002, p. 66).

It is inside this re-educational-treatment model that the figure of prison specialists, such as psychologists, educators and social comes into being, who are given the task of helping the judicial authority to understand the personal, social and family characteristics of the author of the crime, as these could represent some of the causes that have contributed to his committing the crime.

The objective is that of rehabilitating the subject through an individualized “treatment”, implemented with the punishment, which is different according to the conditions of the individual and his dangerousness (Cellini, 2013, p. 32).

A LOOK AT THE LAWS IN FORCE

On the legislative front, important prescriptions on the theme of people involved in penal procedures are contained in the *Universal Declaration of the Rights of the man* approved by the General Assembly of the United Nations in New York on December 10 1948, to which there must be added the *Minimum Rules for the Treatment of Prisoners*, adopted with a UN Resolution of June 30 1955.

The latter source for the first time defines the principles and limits of incarceration, whose punitive content is already inherent in the loss of freedom (Rule 57).

If therefore the purpose of the punishment is to protect the community against crime, this purpose can be considered as attained only if *upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life* (Rule 58).

Hence re-education is welcomed in an international source in which the purpose of the treatment is specified, namely arousing in convicts the desire and ability *to lead a law-abiding and self-supporting life* (Rule 65).

The safeguarding nature of the measures quoted is perceived in a particular way in the prescriptions relating to personalized treatment, to the re-educational value of work and education, to attention to family relationships, and to post-penitentiary assistance.

On the theme of international sources, it is correct to point out that the minimal standards of guardianship in the penitentiary sphere approved in 1955 were revisited and integrated with the *Minimum Rules for the Treatment of Prisoners* (Mandela Rules), adopted on December 17 2015 by the General Assembly of the United Nations.

The aforesaid *corpus* of rules lays down the guidelines for the treatment of people deprived of their freedom, also defining good practices in the management of prison facilities on the basis of the modern orientations on the theme of re-education.

Education, professional training and work are indicated among the necessary tools for prison to achieve its primary purpose, namely to protect society against crime by returning people to society able to live respecting the law.

In Europe, democratic countries have implemented the system of guardianship relating to people deprived of their freedom, stimulating development of a prison model based on the re-socializing function of punishment.

The concept of *re-educational treatment* – serving to correct the bad inclinations of the individual – will often be referred to by European sources, although in the latter the aim is to privilege protection of the fundamental rights of prisoners, as well as the prerogatives of those people that are deprived of their freedom.

In this framework we have to read the *Convention for the Protection of Human Rights and Fundamental Freedoms*, adopted in Rome on November 4 1950, where art. 3 enacts prohibition of torture and inhuman and degrading treatments, together with the *European Prison Rules* adopted on February 12 1987.

Supplanting Recommendation R(1973) 5, with which the first provisions were laid down on the theme of convicts, the European Rules were to be updated in 2006 with Recommendation R (2006) 2.

In addition to imposing living conditions compatible with human dignity, the European legislation has the merit of defining the inspiring principles of the treatment of prisoners; among these, there is stressed the importance of elements like personalization of programs (art. 66), maintenance and strengthening of bonds with the family and the external community (art. 65 *lets. c*), and fundamental aspects for the recovery of the individual like work (art. 71) and education (art. 77).

Hence, while the first documents relating to protection of the rights of prisoners were adopted by the United Nations, with the introduction of the *Prison Rules* the Council of Europe aimed to confer greater cogency on the minimum standards of detention in European countries, resorting to the *Committee for the prevention of torture and inhuman or degrading punishments or treatments* (CPT), founded with the *European Convention for the Prevention of the Torture and Inhuman or Degrading Treatment or Punishment* of November 26 1987.

Alongside “formal” protections, typical of evolved legal systems, there is the activity of the CPT (European Committee for the Prevention of Tortures and Inhuman or Degrading Treatment or Punishment) in examining the treatment of people in prisons, through a system of inspections (scheduled and *ad hoc*).

In protection of the legal positions of single individuals, the role of the CPT integrates that of the European Court of Human Rights in promoting a model of infliction of punishment based on work, education and culture, in which recourse to the custodial sentence is to be seen as an *extrema ratio* in a more complex system, where alternatives to prison must be privileged.

Regarding these, it is necessary to mention Recommendation R (2010) 1, with which the Council of Europe aimed to define common rules on the theme of *probation*².

The numerous resolutions and recommendations addressed to member states, with which the Council of Europe intends to dictate guidelines to states on the theme of treatment of prisoners, thus complete the European system; among these, major value has to be attributed to the previously mentioned Recommendation R (2006) 2, with which the 1987 European prison rules were confirmed and updated.

Generalized recourse to the custodial sentence to satisfy the need for safety, testified to by the high rates of incarceration in countries like the United States (666 prisoners every 100,000 inhabitants in 2016) or Russia (436) and also involving, though to a slighter extent, the countries of the EU (117), makes it necessary to reflect on the contents of punishment, so that the latter can truly pursue the aims indicated by international sources.

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A contribution is made to the objective of making imprisonments conform to the principles of humanity by the Committee for the Prevention of the Torture, with its inspection functions, alongside the activity of the *European Prison Observatory*, thanks to which good practices can be identified for management of the prisons, in line with the principles of *normalization* and *conferment of responsibility* present in the *European Prison Rules*³.

The European panorama, though characterized by extreme heterogeneity due to the presence of different penal systems, privileges a prison model respecting the person imprisoned and his or her needs and demands.

In conclusion, the attention and sensitivity shown by the European institutions on an extremely delicate theme like that of privation of freedom is perceived above all in the work of harmonization of the single systems in place through carefully oriented interventions, which can serve to make imprisonment an experience “really” able to prepare a subject to return to society.

A separate reflection must be made regarding the Italian prison system, recently the object of sentences by the European Court of Human Rights, in view of the conditions of excessive overcrowding experienced by prisoners.

Despite national legislation in harmony with European orientations on the theme of enforcement of punishment depriving people of freedom and the presence of alternative measures to imprisonment, Italy has evident problems of a logistic nature deriving from the presence of crowded structures.

Since the pilot “*Torreggiani*” sentence of 2013 much has been done, both regarding improvement of the conditions of prisoners (this is the interpretation to be given to the spread of the “open” regime), but also relating to the reduction of the incarcerated population (also pursued through “house imprisonment”, introduced with Law 199/2010).

Faced with the criticisms of Italy from by the Strasburg Court, despite the initiatives aiming to limit the prison population, the latter had gone back up – towards the end of 2018 – to the worrisome threshold of 60,000 people.

THE SEARCH FOR ALTERNATIVES TO PRISON

As already announced, despite careful enunciation of guiding principles for application of punishments – first among them the custodial sentence – the international sources cannot be asked for a univocal definition of the concept of re-educational treatment of perpetrators of crimes; on the contrary, these sources limit themselves to describing the essential elements of an ideal model, in turn implemented in the single countries.

Generally speaking, the objective of facilitating the return to society of those people that by breaking a law have violated the norms of civilian cohabitation unites all the models of treatment developed in the penal systems of the old continent.

It seems useful here to mention some local experiences that have proved effective in relation to the abovementioned objective, so that they can possibly constitute good practices to export.

Since the causes that lead an individual to commit a crime are manifold, it is clear that the idea of a universally valid and effective treatment is actually utopian; social and cultural deficits, substance addiction and poverty, are often causal factors in relation to the criminal choice of the individual. The latter being the fruit of a multiplicity of con-causes, it is not certain that the strategy to be adopted in relation

to the commission of a crime can prove equally effective for all individuals; moreover, it is not evident that a custodial sentence always constitutes the most suitable solution.

In this sense, it is necessary to observe that many European countries, in the attempt to limit the prison population, are privileging punishments of a community type for the purpose of reducing recourse to incarceration.

Seeing the deleterious effects that accompany incarceration, the *European Prison Observatory* has addressed the theme of distance monitoring through electronic bracelets (in use in Italy but also in France, England, Wales and Poland), together with community service as “probation”, as well as the use of house imprisonment, appraising the ability of these measures to contribute to limiting the prison population, when they are adopted as an alternative to prison.

In some countries, like Italy and Latvia, the desire to reduce recourse to imprisonment is a result of the problems connected to the high rates of prison overcrowding. Nevertheless, while Italy has stimulated the house imprisonment system, Latvia has attained to a stable reduction of imprisonment through a change in penal legislations.

Contrary to what might be expected, the use of alternatives to imprisonment or recourse to punishments of a community type (e.g. unpaid work for the community) does not appear able stably to reduce the prison population.

By contrast, the use of alternative measures in the absence of any support activities that can facilitate the re-education of the individual can sometimes take on a stigmatising quality. By way of example, one should think of electronic monitoring; it is a measure that is useful for avoiding prison in the remand phase, but one that in actual fact does not produce appreciable effects in terms of social inclusion, since it is aimed at mere control of the individual, rather than at his or her rehabilitation.

On this theme, it seems useful to reflect on the content of Recommendation R (2010) 1 through which the Council of Europe aimed to define the concept of *probation*, stressing that this practice can contribute effectively to public safety provided control is accompanied by activity of assistance, orientation and support.

On the theme of the possibility of access to measures to be carried out in a state of freedom, the *European Prison Observatory* also stresses that ethnic differences and situations of administrative irregularity can particularly limit access to alternatives to imprisonment. This leads to a high number of foreigners being present in prisons, thus in fact reducing possibilities of integration in the social fabric for those people that, living in situations of administrative irregularity, in the absence of a stable occupation or domicile, will be forced at the end of the custodial period to leave the host country because they are expelled.

The above considerations must not induce us to abandon the search for alternatives to imprisonment; even simply reducing recourse to prison in the remand phase in favor of less stigmatic solutions seems, instead, to be an act of civilization, especially in penal systems like the Italian one, in which a person is innocent until proven guilty.

In the sphere of alternatives to imprisonment, the so-called probation of Anglo-Saxon law constitutes a solution able adequately to reconcile safety demands with the aspects of care and control of the individual.

In Italy, an analogous measure was also recently introduced for adults⁴, who can profit – for crimes for which the law contemplates up to 4 years in prison – by suspension of the trial process and at the same time be “put to the test”. In this framework, on the individual there can also be imposed, alongside obligations regarding compensation of the victim, performances for the community, as well as the obligation to undergo rehabilitation in a state of freedom.

Valorizing solutions of a community type makes it possible to take some of the burden off the prison system, in the meantime limiting the de-socializing effects typical of brief incarcerations.

NEW APPROACHES ON THE THEME OF MANAGEMENT OF DRUG ADDICTION AND IMPOSING RESPONSIBILITIES ON PEOPLE IN PRISON

Among alternative solutions to imprisonment, great interest has been aroused by the Portuguese decision to decriminalize the use of narcotic substances, replacing arrest with the obligation to appear before “dissuasion committees” (CDT), through which to arrange treatments for getting people off drugs or sentencing those caught to fines or services for the community.

In the framework of policies for damage limitation, the Portuguese solution is the result of decriminalization of the so-called “recreational” use of drugs that – though continuing to be illegal – is dealt with using non-penal tools, encouraging adhesion to therapeutic processes.

Likewise, also thanks to legislation on the theme of drugs aiming at rehabilitation rather than repression, Holland has managed to lower the rate of incarceration, which was down to 59 prisoners every 100,000 inhabitants in 2017.

Through specific legislation on light drugs, also specifying what modalities of purchase and levels of consumption are allowed, the Netherlands have succeeded in stimulating adhesion to programs of treatment for users, going beyond solutions of a penal type, which nevertheless are still used in the fight against the heavy drugs traffic.

Considering the ineffectiveness of the merely repressive response in limitation of drugs consumption, the political choices made in Portugal and in the Netherlands aim to manage recreational consumption to ward off the dangers connected to abuse. The latter, transforming the so-called “recreational user” into an “addict”, produces problems regarding law and order and public safety, when drugs production and traffic is managed by big criminal groups.

The decision to adopt an approach of a preventive type appears even more shareable in situations in which addict status takes on a causal value in relation to the commission of a crime against persons or property, through which the individual derives the necessary financial resources to satisfy his or her needs as a user.

It could easily be maintained that behind the ideology of tolerance underlying the model described there lies an approach of an over-tolerant type to problems linked to drug use in modern societies; nevertheless, on the theme of treatment programs, it is important to specify that setting aside a repressive measure of a penal type does not in the least mean the absence of consequences for the individual.

In Portugal, if the cases of those people that appear for the first time before the dissuasion committees for taking drugs can be suspended, on relapsers recognized to be addicts the committees themselves can impose punishments like fines, community service or health treatments to be undergone with their own physicians.

In order not to interrupt the therapeutic relationship with the health facilities entrusted with treatment and with getting people off drugs, in the case of refusal by the individual found with drugs the Portuguese police hand the latter a specific summons.

In conclusion, almost two decades after the introduction of the legislative reform, the increase in the number of people that go into rehabilitation together with a decrease in the deaths through overdose, as well as of contagions from HIV recorded in Portugal, seems to confirm the value of the strategies adopted.

The valorization of non-custodial solutions for the approach to problems of a criminal type has not in fact eroded the centrality of the custodial measure in modern penal frameworks.

Despite the criticisms, the punishment consisting in loss of freedom, to be carried out in a prison, still today constitutes an essential tool for the fight against crime.

If in the past limitation of freedom contributed – in the framework of mitigation of the national punishment systems – to progressive abandonment of corporal sanctions, today the international sources lay down a host of principles to which this measure has to conform, in order for this to be legitimized within the single legal orders.

As it is not possible to mention all the international sources on the theme in their entirety, for the evident purpose of warding off the de-socializing effects that inevitably accompany loss of freedom, it seems useful among them all to mention the principle of “normalization” contained in the *European Prison Rules*.

In line with this principle, approaching as closely as possible “free” life, prison life should allow interiorisation of the rules that are at the basis of peaceful cohabitation, also through involvement of prisoners in some aspects of management of life inside, like what happens in community structures.

On this theme, it seems useful fully to recognize the validity of the English experience at Grendon, a prison facility with a strong therapeutic connotation, where the prisoners participate in internal decisional processes according to the principles of democracy.

All the inmates, called “residents”, participate in meetings and discussions in which they can vote on every aspect of prison life, electing a president and a vice-president among the inmates, also modifying the single “constitutions” of the prison, except for the regulations forbidding the introduction of drugs, violence and sex.

The prisoners themselves can also vote to decide what residents have the right to do paid work, and can impose sanctions in case of violation of internal rules.

Opened in 1962, the facility houses about 240 prisoners in 5 subsections each formed by 40 “residents”.

The peculiarity of the English facility is to be sought first of all in the typology of those people that are kept there, mainly people affected by antisocial personality disorders that elect to be assigned to Grendon to undertake a pathway aiming at change. This pathway is based on a precise approach in which there are numerous opportunities for discussion in therapeutic groups formed by around 8 individuals, during which matters of daily life are faced, together with experiences of free life.

Though having a selected target, through valorization of aspects like dialogue and discussion, the English experience shows that it is possible to maintain order inside the prison while privileging active participation of prisoners in internal management, also producing appreciable effects in terms of containment of critical events and good results regarding reduction of number of re-offenders.

The community paradigm is also in use at the Dutch *Norgerhaven* prison, a facility which was in the news in 2015 for having taken in 250 Norwegian prisoners, sent out of their own country because of overcrowding. Thanks to the ample opportunities for movement, the prisoners there can follow their own commitments according to a treatment scheme based on training, education, civic education and counselling, arranged with an internal tutor.

It is appropriate to clarify that any form of treatment put in place in a prison will be destined to fail if the prisoner perceives the punishment as an undeserved abuse of power. To avoid a similar risk it is necessary first of all to mitigate the repressive aspects connected to loss of freedom; mention was made of the importance of involving the prison inmate in the organization of some aspects of life inside;

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nevertheless, it seems appropriate to stress the need to establish a correct relationship with the prison operators, as well as with the staff responsible for custody.

Though universally pursued by all prison systems, the sincere consent of the individual constitutes the presupposition for the start of a pathway of rehabilitation.

If on the one hand rehabilitation cannot be imposed on a person because of its status, consent to enter a rehabilitation program cannot entirely be extorted through a prison experience based on punitive and repressive aspects. If this happened, the risk would be giving back freedom to people even more hostile toward a society incapable of providing them with a serious alternative to crime.

MITIGATING PRISON EXPERIENCE IN FAVOR OF RECOVERY PROCESSES

Mention was made of the principle of normalization according to which life in prison should be similar – as far as possible – to free life. Nevertheless, on the theme of law and order, it seems useful to mention art. 51 of the European Prison Rules, where it is prescribed that *The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody* and that *The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners who are under their control.*

With the clear intention of avoiding the use of punitive tools which can only be justified in extreme cases, Recommendation R (2006) 2 privileges use of mechanisms of reparation and mediation for the resolution of internal conflicts.

Having to ward off negative effects for prisoners' physical and mental health due to a harsh prison regime, based entirely on security measures (physical barriers, video-surveillance, electronic control, searches, immobilization tools, disciplinary punishment, etc.), for the maintenance of internal order, the Council of Europe hopes for an evolution of the concept of security in a "dynamic" sense. This change is only possible through development of positive relationships among prisoners and prison guards called on to interact firmly and fairly considering the particular situation experienced by inmates⁵.

Treatment of prisoners according to criteria of equity and justice, their involvement in daily life, the use of clear communication channels, implies a quality change in the concept of security, also for the purpose of limiting the deleterious effects that accompany loss of freedom.

Here there is no intention to underestimate important aspects connected to enactment of punishment for a crime in the prison sphere, just as one has to reject the idea of submitting to the same regime people with different profiles of dangerousness.

Nevertheless, as we cannot do without privation of freedom, it appears useful to direct our efforts toward the creation of a more human prison regime in which, thanks to a positive climate, it is possible to overcome distrust toward the whole institution and its operators.

For imprisonment to be able to constitute a useful period for favoring the return to society, mitigation of the prison regime must necessarily be accompanied by the contents typical of the treatment offer.

If mitigation of the harshest aspects of prison life constitutes the presupposition to legitimate the use of the prison, recognition of civil rights, facilitation of contacts with the outside, and valorization of school and university education, must constitute the contents of the prison experience.

An example of conferment of responsibility and development of a sense of affiliation is afforded by Polish prisons, through valorization of the democratic rights of citizenship and particularly recognition of the right to vote, prisoners being allowed to participate in the selection of deputies and senators, as well as in the election of the European parliament.

Regarding maintenance of bonds with the family, in countries like England, Wales and Scotland – where among other things it is possible to make video calls to relatives – the *Assisted Prison Visits Scheme* (APVS) financially supports the families of prisoners from the most disadvantaged communities of the European Union in facing travel expenses, thanks to the allotment of special funds destined for social security.

On the theme of maintenance of relationships with relatives and use of modern technologies, today Italian prisons have electronic switchboards that allow prisoners provided with prepaid telephone cards to contact their loved ones without going through the guards.

In Italy, the Department of Prison Administration has also recently encouraged the directors of single prisons to create *Skype* stations to allow prisoners to enjoy conversations with their families via the web.

For recognition of education as a fundamental aspect of prison life it is useful to mention the Italian experience of university poles in prisons, with education that historically is set alongside the compulsory education courses present in prisons on the peninsula.

In the era of computer science, of particular interesting is the “Cyber bases” pathway set going in 2007 by the French Ministry of Justice, in which the aim was to experiment in prison with supervised access to the Internet, for the purpose of implementing computer literacy among the prison population.

Distance training projects were also set going in the same period in Austria through the “*Telfi*” (Distance learning for people in prison) system, thanks to which prisoners can follow courses on information technology and, study German in depth.

The items mentioned constitute a clear example of how the elements of treatment in prisons universally recognized by the international sources can also be put in place in very different situations.

WORK AS AN INSTRUMENT OF SOCIAL INTEGRATION OF CONVICTS

A separate reflection is in order regarding the theme of work in prison and in particular the pedagogic value of the latter within processes of re-socialization of prisoners.

The *Mandela Rules* of 2015 devote a series of dispositions to convicts’ work, in which it is stressed that this activity must serve to *maintain or increase the prisoners’ ability to earn an honest living after release*⁶.

Likewise the European Prison Rules emphasize the positive value of work thanks to which prison should maintain or increase *prisoners’ ability to earn a living after release*⁷.

Interpreted as a right/duty (Denmark), not conditioned by the punishment inflicted (France) or recognized as obligatory as a consequence of the conviction (England, Wales and Germany), prison work is universally accepted as one of the fundamental elements for recovery of those people that have committed crimes.

The need to boost work in prisons often comes up against bureaucratic problems connected to setting work going in prisons; likewise difficult is involvement in training and work of prisoners serving short sentences.

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If prison work has to imitate “free” work, it seems utopian to entrust the public prison with the task of creating enough work opportunities that are also qualitatively suitable for the whole prison population, in keeping with what is contemplated by the international sources.

Seeing assistance work as not conforming to the spirit of the norms mentioned above, for the creation of really qualifying work opportunities, the intervention of private companies and particularly of the industrial sector seems essential.

In Italy there have been significant experiences like the artisanal “Giotto” patisserie in the *Due Palazzi* Padua prison and the coffee roasting shop created in the *Le Vallette* prison in Turin.

Nevertheless, the German experience has shown that – on a large scale – through prisons it is possible to produce wealth for the government budget. The reference is to the experiment carried out in prisons in Lower Saxony and particularly in the *Oldenburg* prison where, thanks to involvement of private firms, it was possible to open shops in which to employ prisoners stably for assembling parts for cars, as well as producing material for wind energy plants.

The example quoted bears witness to how, through policies of incentivizing prison work in such a way as to make them competitive, it is possible to avoid movement of firms that – being able to count on a more advantageous local work force – have been able to enjoy immediate logistic advantages, keeping some aspects of workmanship of their products on the national territory.

In addition to increasing the number of prisoners usefully employed in work inside, the work of German prisoners has produced positive effects on the economic front, bringing in about ten million euros. Indeed, in 2013 alone, prisons in Lower Saxony attained proceeds equal to 18 million euros, with a profit of five million euros, ensuring a major saving for the government in terms of reduction of the expenses necessary to face prison maintenance.

Faced with the continual search for low-cost labor, forcing firms on the old continent to move their production sites to countries outside Europe, prison work – if properly supported – can therefore constitute a real opportunity, also in periods of economic crisis.

On the individual front, reduction of moments of idleness and inactivity is translated into a double advantage when useful employment in a stable activity involves a qualitative improvement of life in prison.

Secondly, thanks to the possibility of earning money, the prison inmate can face the personal expenses that he or she meets in prison, also contributing to the maintenance of his or her family by sending money to them. This aspect must be considered anything but secondary if we analyze the typology of inmates in European prisons, where foreigners make up 30% of the population, although the percentage among the free population is 7%.

As it is not possible exhaustively to analyze the reasons why even within penal systems that fundamentally guarantee people’s rights we assist at a distortion of reality, we cannot ignore the fact that this datum is the result of migration of an economic type that has gradually developed over the years.

The considerations made on the European situation regarding the high numbers of foreigners in prisons can be considered just as valid if we analyze the American context, where in 2017 Afro-Americans constituted 60% of the prison population, against a presence in the territory equal to 30%.

Considering that at a global level all prison systems tend to overestimate the most disadvantaged sectors of the population in prisons, useful punishment should fill those training, work and social gaps that have led the individual living in a situation of disadvantage to commit a crime.

SOLUTIONS AND RECOMMENDATIONS

In the present writer's opinion, work and professional training must constitute the necessary tools to confer a real meaning on a prison sentence. Otherwise, limitation of a person's freedom would have no justification outside merely repressive logics.

For work to constitute the starting point for treatment, this aspect must be stimulated in all its forms, and even take place outside the prison, overcoming distrust and preconceptions; in this sense, it seems useful to mention the experience of "electronic tagging", which allows prisoners in the Netherlands to go independently outside a prison facility and return there at the end of the activity.

Punishments like fines, electronic tagging or community service are privileged by a punitive system historically oriented toward rehabilitation like that of countries like Holland, where limited recourse to long prison sentences, added to a good level of social integration, has allowed a reduction of the prison population.

In the present writer's opinion, in line with the example just quoted, work – in lieu of loss of freedom – could constitute the principal sanction in a modern justice system oriented toward rehabilitation of the individual.

Previously the concept of "community sanction"⁸ was mentioned. This is an instrument largely used in the countries of the United Kingdom, where even for very serious crimes the judge can suspend prison sentences, only ordering partial enactment of them in prison for some crimes (ones committed with firearms, burglaries, crimes committed by relapsers).

Likewise, in Denmark it is possible to resort to alternatives to prison in all cases for which the judge does not consider detention necessary, like what happens in Catalonia, where many prison sentences can be suspended or replaced with community service, without a distinction being made in terms of the gravity of the crime.

Italy has long had a ramified system of alternatives to detention, a system that nevertheless is exposed to some understandable procedural criticisms, seeing that a different judge is competent to apply the measure than the one that handed down the sentence.

In general, measures of a community type represent a modality of enforcement of a sentence through which the aim is to overcome the deleterious effects of incarceration, through guided pathways of emancipation from crime to be carried out in a state of freedom.

We are referring in particular to what naturally happens inside prisons, where prolonged contact with an environment only made up of criminals, in evident contrast with the objectives that imprisonment is meant to pursue, leads the individual to become a hardened criminal.

In addition to thwarting this risk, by imposing services for society and involvement of the latter in the terminal part of the prison experience, the sanction of the community type becomes visible to the community, which is able to perceive its effects in this way.

CONCLUSION

In conclusion, to limit recourse to measures depriving people of their freedom in the remand phase with the aid of distance monitoring systems, adopting policies of damage reduction relating to possession of drugs, at the same time valorizing extra-penal measures aiming at recovery of the individual, represent good practices to limit the prison population.

Nevertheless, as also maintained by the *European Prison Observatory*, the objective of gradually reducing the population to “be treated” cannot be attained solely with alternative measures to detention, but also requires structural reforms able to limit the number of people that come into contact with the penal system.

As for the modalities of treatment inside prisons, a prison model based on accepting responsibility and on recovery of the inmate’s social, family and working dimension, seems to be the only solution justifying privation of freedom inside a modern penal system aiming at social reintegration of the offender.

With the exception of some European situations, the high rates of incarceration, added to the global increase of the prison population, seem to confirm the indispensability of prison and privation of freedom in policies for the fight against crime.

In the opposite direction, the experience of decidedly progressive systems – one thinks in particular of the countries of the United Kingdom – shows that, in many cases, sanctions of a community type can usefully replace prison.

Since these are considerations of a general type, it is useful to specify that though their validity is recognized, many of the experiences mentioned are the fruit of precise political choices by national governments, and as such are hardly exportable to other countries.

On the theme of prison work, the business of German prisons that over the years have received orders from entrepreneurs and private firms, profitably employing thousands of prisoners in work inside, has been possible thanks to a marked reduction in the hourly pay of the prison inmates, evidently allowed by the German system.

Seeing the recreational value of work, one may wonder if it is possible to imitate that experience in those systems in which this possibility is not yet contemplated.

The damage reduction policies introduced by Holland and Portugal on the theme of drug consumption is the fruit of a precise political orientation of national governments in relation to drug use, a theme on which other countries have adopted diametrically opposite solutions. We refer to what happens in the United States, where contributing to the high rates of incarceration are precisely those people that end up behind bars for possessing moderate quantities of drugs.

Judging from a recent investigation, it does not seem that the policies of criminalization of drug use overseas have achieved appreciable effects in terms of reduction of drug use.

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KEY TERMS AND DEFINITIONS

Community Sanction: The restrictive measure through which to maintain the offender in society, also thanks to the imposition of conditions and obligations, according to a precise personalized program.

Decriminalization: Cease or reduce to treat something as illegal or as a crime.

Probation: Relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety.

Probation Agency: Any bodies designated by law to implement the above tasks and responsibilities. Depending on the national system, the work of a probation agency may also include providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime.

Social Reintegration of Offenders: Includes programs to supervise and assist offenders in social adaptation after imprisonment.


ENDNOTES

- ¹ *Minimum Rules for the Treatment of Prisoners adopted with UN Resolution of June 30 1955, and in particular what is contemplated by art. 58, which states that *The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life*”, and art. 59, which states that *“To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.**
- ² Appendix I to Recommendation R (2010)1 Part I: *Scope, Application, Definitions and Basic Principles.*
- ³ Recommendation R (2006) 2 Art 5: *Life in prison shall approximate as closely as possible the positive aspects of life in the community.*
- ⁴ Italian Law 67/2014.
- ⁵ Recommendation R(2003) 23.
- ⁶ Art. 98 Mandela Rules.
- ⁷ Art. 26 recommendation R (2006) 2.
- ⁸ Recommendation R(1992)16 on the theme of European Rules on the sanctions and measures applied in an external penal area where the term “community sanction” is used to define the restrictive measure through which to maintain the offender in society, also thanks to the imposition of conditions and obligations, according to a precise personalized program. On the subject Recommendations R (2000) 22 and R(2010) 1 subsequently intervened.

Chapter 22

Sex Offender Treatment Program in Prison and Rehabilitation

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ABSTRACT

The chapter seeks to demonstrate and describe, from a critical perspective, the most widespread treatment models and programs for sex offenders in prison, opting for integrated approach based on risk assessment and the evaluation of their psychological and social characteristics. Furthermore, specifying factors that can affect the success of the treatment leads to the conclusion that sex offenders require the implementation of differentiated programs focused on their personal characteristics and needs. The reduction of recidivism is indicated as a criterion with which to assess the effectiveness of the programs, although the results achieved in research on the matter do not always agree and do not always confirm a reduction in repeat offenses in the subjects undergoing treatment. The chapter concludes by calling for greater program development and more precise methodological accuracy in verifying the results.

INTRODUCTION

Punishment or Rehabilitation? Which Intervention for Sex Offenders

Sexual crime is one of the most alarming and disconcerting aspects of the criminal phenomenon as a whole. It is in fact an offense that arouses particular social indignation and a greater sense of insecurity compared to other forms of crime, although these are certainly not less serious. The strong emotional impact caused by these crimes is an expression, as has been argued, not only of a culture where sexuality has a meaning that most frequently offends the moral sphere of people, but also of the violation of private life and of affective relationships, mostly used to guarantee protection and emotional development. In fact, statistics show that the overwhelming majority of sexual abuses and violence occur in intimate

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relationships, and in acquaintance or educational/caring relationships. The recent survey carried out by the National Institute of Statistics, which has updated previous data for 2006 to the last 5 years, shows that among women between the ages of 16 and 70 (6 million 788 thousand) 21% (4 million 520 thousand) have been generally a victim of sexual violence, 5.4% (1 million 157 thousand) suffered the most serious forms of sexual violence such as rape (652 thousand) and attempted rape (746 thousand). The data confirm the greater incidence of intimate relationships between victims and perpetrators or, in any case, the presence of pre-existing relationships: in fact separated or divorced women have suffered physical or sexual violence to a greater extent than the others (51.4% against 31.5% of the Italian average). Higher incidences are also found for women aged between 25 and 44 years old, among the most educated (with a degree or diploma), among those who work in important professional positions or who are looking for a job. Moreover, to be considered are the available data regarding sexual abuse against minors, which also include pedophilia phenomena: in Italy, according to Istat, in 2010 there were 574 sexual acts with minors, reported by the police to the judicial authorities (Istat, 2014 cit. in Rosso et.al. 2015). Most of the abuses and violence involve children, even though such offences are statistically less evident because they are mostly undeclared, an aspect that inevitably increases social indignation and the demand for exemplary punishment of offenders. The damage caused to the victims is incalculable, especially if they are developing adolescents: numerous surveys report the invasiveness of the consequences of the violence that affects the psychological and behavioral sphere of those who have suffered the crime. Some authors (Di Cori, Fedeli & Sabatello, 2012) stress the devastating and invasive effects of the traumas suffered. These can produce perversions in the structure of the individual's psyche, deviating his/her development and binding his/her to the paradoxical, coactive logic of repetition. Among the consequences is also the future growth of antisocial behaviors, which however presuppose the combined action of other forms of abuse, not just sexual (Di Cori, Fedeli, 2010, Fedeli, Di Cori & Sabatello, 2011). Other studies (Carr, Duff & Craddock, 2018) highlight the consequences on the life cycle of mental health, including post-traumatic stress disorder, physical health and psychosocial adaptation. To be stressed is that in many cases the perpetrators of sexual crimes do not always come from degraded and culturally poor social environments. An example is provided by pedophilia, which causes greater social alarm, considering that the perpetrators of sexual crimes are often hidden and, apparently, above suspicion. Because of the impact on victims, social alarm and indignation about a crime that injures people in the most private and intimate sphere of human relations, these offenders were for long subject to measures exclusively focused on physical punishment such as drastic pharmacological measures like chemical castration.

Recently, due to the observation that punitive and repressive actions did not yield effective results on the reduction of recidivism, experiments have been developed above all in North America, Canada and the United States, where the phenomenon of sexual abuse and violence is particularly widespread and where a significant number of sex offenders are brought to justice: for example, according to data from the Bureau of Justice Statistics, in 2008 more than 165,000 sex offenders convicted of rape and sexual assault were in prison (Guerino, Harrison & Sabol, 2011). The National Parole Resource Center (2014) reports that 95% will be subjected to non-custodial measures with an approximate rate of 10,000–20,000 per year. Therefore, a fruitful basis has been created to envisage models of treatment during the execution of the sentence in prison and in community supervision, also after release. This is completely different to what occurs in Italy, where the experiences of treatment programs are implemented only within the prison, with the purpose of promoting a rehabilitation program for the offender as well as enacting punishment. The main aim is to rehabilitate the person, certainly, but also to reduce the recidivism and consequently ensure greater safety for the potential victims, mainly women, and children and for society as a whole.

Sex Offender Treatment Program in Prison and Rehabilitation

This chapter has the following purposes:

- a. to identify, by means of a research analysis, the therapeutic treatment methods and treatment programs most widely applied internationally, but also focusing on the Italian situation, in order to describe them from the point of view of the application criteria;
- b. to report the difficulties underlying the realization of treatment programs in relation to personal socio-psychological and criminological variables (e.g. offender's personality, attitudes, cognitive distortions, previous career) and institutional ones;
- c. to assess, from the point of view of statistical analysis, the effectiveness of treatment programs in reducing recidivism and the extent to which the previous risk assessment influences the success of the programs;
- d. to verify how to remedy critical issues in consideration of future developments.

PROGRAMS AND TREATMENT MODELS

Therapeutic Approaches and Treatment Experiences

The models of intervention can be classified according to a more clearly therapeutic perspective, centered on the person, but adopting a psychosocial approach and intervention models focused on the entire criminal career of the subject and on his criminal records. The therapeutic approach most commonly used is the cognitive behavioral one. Petruccelli & Pedata (2008) propose a model divided into several phases based on:

1. Recognition of the sexual fantasies that characterize, from a clinical point of view, sexually deviant acts, first experienced on a phantasmatic level, with the purpose of counteracting them
2. The cognitive distortions that hinder attention being paid to the victim and the damage caused, with the purpose of developing empathy towards him/her and the proposal of reparatory actions
3. The management of emotions with the purpose of learning to control them and
4. The prevention of recidivism by considering the personal and contextual characteristics of the subject.

Other authors also affirm the validity of the cognitive behavioral approach because it gives the offender an opportunity to reformulate sexual behavior in a prosocial direction and to regain understanding of what the "other" needs through recognition of the victim (Carabellese, Rocca, Candelli, La Tegola & Birkoff, 2012, Giulini & Xella, 2011). This is indeed a more suitable method for this category of offenders because it takes account of the cognitive factors that influence the behavior of sex offenders: these are attitudes like to build cognitive constructs that tend to deny the victim, trivialize the crime committed, manifest negative and contemptuous feelings towards women or tend to affirm the sexuality of children in the case of child molesters. These attitudes can be measured with actuarial assessment tools that can be applied at a preliminary stage before the program starts and, since cognitive distortions are a peculiarity of those offenders, their presence can impede the success of the treatment program. Clinicians should take into consideration that denial is not just a constructed category; when it becomes a continuum of cognitive distortions, it requires attention because it can influence the treatment's progress (Levenson,

2011). The Bumby Rape Scale (BRS) (Bumby, 1996) measures cognitive distortions in perpetrators of sexual crimes. By means of a questionnaire consisting of 36 items, it determines up two dimensions: excusing rape and justifying rape. The former measures cognitive distortions that tend to diminish the event blaming the characteristics of the perpetrator or the behavior and social characteristics of the victim. The second dimension weighs the cognitive distortions that tend to justify the behavior of the offender understating the emotional and psychological consequences on the victims and ascribing part of the responsibility to them.

The Bumby Rape Scale has been found to be efficacious in measuring the level of cognitive biases in sex offenders (Blumenthal & Gudjonsson, 1996, Bumby, 1996) and it is able to verify the extent to which these sexual biases are more present in sex offenders than in ones who are not sex offenders (Scardaccione, Fontanella & Gravelli, 2018). The Bumby Molest Scale (BMS) (Bumby, 1996) is similarly structured in the form of a questionnaire with 37 items. Its purpose is to measure cognitive distortions concerning child molestation and sexual violence. The Bumby Molest Scale does not have a two-dimensional structure. Children molesters can show greater awareness of the social disapproval aroused by sexual violence against children, but they also tend to consider the social alarm caused by their actions as excessive and the penalties applied to them as too severe (Ruggiero, Basilisco, Scardaccione, Fontanella, 2019). In treatment program carried out at the Detention Center of Bollate, Milan (Italy), one of the most innovative programs and among the first introduced in Italy, the presence of otherwise of denial by the inmates who participated in the project, was an essential moment and a condition necessary for admission to the program. (Giulini & Xella, 2011). The convicts admitted to the program had to take responsibility of the crime committed even if it was subsequently attempted to admit also ones who denied their guilt. The initial assessment on the perpetrators of crime had a multi-functional character, not only ascertaining denial, minimization and cognitive distortions; it also involved a clinical evaluation that ascertained the functioning of the personality, the mental state and the presence of a possible psychopathological diagnosis. A preliminary phase of inclusion of the sex offenders, who participated to the project in activities with the other prisoners, was significant, as also by other experiences in Italy (Ruggiero, Basilisco, Scardaccione, Fontanella, 2019). The interventions involved all the prison personnel with different kinds of professional training and they comprised group activities, individual interviews and participation in educational projects with the aim of improving expressive and communicative skills. The main goals can be identified in cognitive restructuring, improvement of the emotions management and social and familial reintegration. The importance attributed to cognitive biases can be also found in other experiments conducted in Italy, such as the one at the prison of Vercelli (Rosso et al., 2015). In the project carried out in Vercelli on a group of 34 prisoners, who joined the program as volunteers, especial emphasis was given to assessment of denial or admission of the crime in relation to the effectiveness of the treatment or otherwise.

Contrary to the project of Bollate, those who did not admit their crime were admitted to the treatment program as well. The results obtained did not bear out the hypothesis, that the non-admission of responsibility creates resistance among the convicted against taking part in treatment programs; furthermore the authors point out that even those who did not completely accept their responsibility for the crime, did not hesitate to participate in the treatment activities, all of which were successfully completed.

If the prisoners had denied committing the offence, it might have invalidate the success of the treatment and it would be a risk in the future. Ware, Marshal & Marshal (2015) argue that three approaches can be take:

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1. Admitting to the treatment programs only those who admit that they have committed the crime;
2. Excluding those who deny (“categorical deniers”) from treatment programs;
3. Providing special programs for deniers. The authors finally suggest that the empirical evidence does not confirm any of these solutions and they call for studies on samples with a larger number of subjects who deny and broader categories of sex offenders.

From a methodological point of view, also in the project carried out in Vercelli, the best therapeutic model was considered to be the cognitive-behavioral one, even if associated with other types of actions which will be described below. Not be excluded is an assessment which evaluates possible mental disorders of Axis I (mood disorders, anxiety, sleep disorders, substance use, impulse control, dissociative disorders, etc.) and Axis II (mental personality disorders and handicap) according to the DSM-V classification (American Psychiatric Association, 2013),

A cognitive behavioral therapeutic model thus appears to be the one most appropriate to the characteristics of sex offenders. This method has an impact on the reconstruction of cognitive constructs in such a way as to influence pro-social behavior. It is also the one most suitable for subjects who are in detention and must serve a term that may not last long enough for analytical psychotherapy. Nonetheless the above-described projects demonstrate that programs for sex offenders prisoners need to use a multi-dimensional approach, and moreover multi-purpose activities, where the therapeutic activity includes a preliminary assessment that measures the magnitude of cognitive distortions and denial, clinical diagnosis and assessment of other variables concerning the familial and social situation. Contextualizing the crime is crucial: the offender is not a monster but he has committed an act very serious for the victim and the community. Hence the operational activities are carried out using an approach that gives priority to group activities, enhanced communication,

the management of emotions and individual interviews, also with the combination of more than one treatment method.

Treatment Models and Theoretical Reference Approaches

Some treatment programs for sex offenders has been presented thus far: henceforth described will be treatment models construed as intervention pathways based on theoretical reference constructs and which can be embedded in a treatment program . The predominant treatment models for the rehabilitation of sex offenders can be considered the Risk - Need - Responsibility Model and the Self-Regulation Model (Good Lives). The Risk - Need - Responsibility approach is concerned with the application of the risk factors in assessment of recidivism, considered to be the fundamental prerequisite for the beginning of the treatment program, whose success depends on the level of risk of the subject, level of risk measurable with actuarial instruments that are now widely accredited. Ward, Gannon & Yates, (2008), Levenson, Macgowan, Morin & Cotte, (2009) stress the importance of risk assessment for the successful outcome of the treatment and the relapse of offender, considering also the type of behavior. A study of 194 child molesters and 214 rapists shows that there is often a mismatch between risk assessment and type of behavior: child molesters were subjected to more intensive treatment than rapists, underestimating the violent and antisocial tendencies of the latter. Moreover the study concluded that clinical treatments do not always contemplate the risk assessment that should be systematically used (Smid, Kamphius, Wever & Van Beek, 2013).The same administration of justice tends to apply the same types of treatment without taking into account the different levels of risk that entail varying the intensity of treatment

(Lovins, Lowenkamp & Latessa, 2009). The same opinion is expressed by Volpini, Manniello & De Leo (2008) who argue that clinical diagnosis itself cannot be an effective tool with which to assess the risk of recidivism because it depends on the discretion of the consultant. The authors, after reviewing the main instruments of risk assessment propose a model that integrates the personality profile, constructed through the clinical-anamnestic interview and the analysis of violent action, conducted with the actuarial assessment.

Formerly the Good Lives Model for the rehabilitation of the offender and the Self-Regulation Model for the crime process were combined in a planned and integrated approach to the treatment and supervision of sex offenders. The Good Lives Model is aimed at increasing and enhancing the intervention included within the Risk/Need/Responsivity Model, applying a cognitive-behavioral orientation, both found to be effective in reducing recidivism (Yates, Prescott & Ward, 2010). Elsewhere, the validity of the Risk/Needs/Responsivity Model (RNR) (Andrews & Bonta 2007) and of the Good Lives Model (GLM) has been confirmed (Ward, 2006, Ward & Gannon, 2006, Ward & Stewart, 2003) integrated with the Self-Regulation Model (SRM) (Ward & Hudson, 1998; Ward, Yates, & Long, 2006, Yates & Ward, 2008), an overall intervention potentially valid for the development of the self-efficacy of the offender, of his/her social reintegration and the safety of the community, even if the results are not exempt from critical issues requiring analysis (Wilson & Yates, 2009).

The RNR Model is based on three key principles: first, to assess the degree of risk in order to regulate the intensity of the treatment program; second, to consider the criminogenic profile of the offender in relation to lifestyle and the onset of deviance, which is not always considered by exclusively clinical and therapeutic interventions; third not to be ignored is the offender's motivation to undergo a treatment plan, an aspect fundamental for the continuation and effectiveness of the treatment. Whilst Andrews and Bonta (2007) argued that the RNR Model can be applied to all those convicted and just to sex offenders, Hanson (2009) has more recently maintained that this is a treatment model, if all three principles are applied, particularly effective for sex offenders because the results achieved by a cognitive-behavioral multidimensional approach promotes social learning.

The principal criticism of this model may concern its focus on risk assessment and offender criminogenic needs at the expense of therapeutic work on the offender, thus compromising the motivation to undergo treatment by the offender and, therefore, to bring it completion. Completing the treatment plans is an effective tool for reducing relapse (Hanson & Bussière, 1998). It can be concluded that the limitation of this model is that it does not sufficiently consider the importance of personal support in reinforcing the motivation to undergo treatment, in order to allow its continuation. This entails the need to integrate several models.

The Self-Regulation Model and the Good Lives Model, unlike the Risk-Need-Responsivity Model, are more focused on the person than on the development of the subject's criminal career regard to the risk of recidivism. Differently from previous theories, the SRM follows an approach according to which individuals undertake a different path of deviance that does not ignore initially positive feelings. It is a model that includes several multiple factors that lead to the crime and to which treatment programs must adapt (Ward & Hudson, 1998, Yates, 2005, 2007; Yates & Ward, 2008 cit. In Wilson Yates, 2009). The goal is a restructuring of the self towards socially adapted behaviors through the development of reflective and interpersonal skills and a more realistic moral structure. The GLM is based on the acquisition of experiences positive and useful for the well-being of the individual. The main positive experiences that one wants to acquire concern autonomy and emotional balance: for example, intimacy should not be repressed if it is necessary to operate on the child molester, but he or she must be oriented towards

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objectives that do not include children. This is an intervention model that considers the person as a whole and not as a constellation of risk factors (Yates & Ward, 2008). The goal is not just to reduce risk factors but to improve the lifestyle of the subject. The GLM is well integrated with the SRM which helps the subject to identify the life goals to be achieved and as primary goods the capacity for self-regulation and internal and external barriers to achieve the objectives. The combined action of the two models is considered more effective in discouraging sexually inappropriate behavior because it ranges cross biological, psychological and social environmental factors (Ward & Gannon, 2006). The pathway to risk reduction must necessarily include important lifestyle domains such as the self, family, community, employment and leisure time. Wilson and Yate (2009) highlight the limitations of the RNR model, which being too focused on risk assessment strives to override the comfort of the subject. The authors argue: “it is clear that sexual recidivism is the result of complex interaction of offending specific and environmental factors, which span biological, psychological, and social realms” (p. 160). This entails the necessity to integrate the two models and at the same time pay attention to the subject’s willingness, to undergo a treatment program (Responsivity) as a factor that measures their effectiveness. The analysis of the factors that influence the successful outcome of the treatment will be carried out later in this paper.

The review of the various treatment models for sex offenders in execution of punishment must consider sexual crime also from a psychopathological perspective in order to assume a different diagnostic and treatment evaluation. Questionable, however, the hypothesis that tends to consider extra-familial abuse more easily comparable to pedophilia according to the principle that those who abuse children outside the family have no ability to establish sexual relations with adult women, unlike those who abuse within the family (Prentky, Knight, Rosenberg & Lee, 1989, Miner & Dwyer, 1997). In this regard Rice and Harris (2002) argue that those who abuse outside the family environment are less likely to be diagnosed with psychopathy and pedophilia: they less frequently abuse male victims; they cause less pain; and they have lower recidivism rates for sexual and violent crimes.

An important aspect to consider is that the implementation of a treatment program includes a wide range of elements that do not end with a therapeutic intervention. This is a complex application that must deal with various factors and obstacles that might occur. In fact sex offenders do not represent an homogeneous category of perpetrators also from the point of view of criminal conduct: the different levels of danger of occasional exhibitionist and the sexual or pedophile predator may not be included in a single classification of sex offenders (Carabellese, Rocca, Candelli, La Tegola & Birkoff, 2012), The diversity of sexual predators manifests itself not only in the psychopathological profile but also in the type of conduct, because there is difference among rapists, child molesters, female sex offenders, juvenile sex offenders and cyber-sex offenders (Robertiello, Terry, 2007): being aware of such differences is a fundamental factors in choosing the most effective treatment. According to Carabellese, Rocca, Candelli, La Tegola & Birkoff (2012), although reference is made to psychopathological classifications, there is a similar contamination: not all sex offenders are pedophiles, which entails inclusion in the broader category of paraphilias, while from a psychopathological point of view the most widespread pathologies among sex offenders are classifiable mainly in Axis I and Axis II disorders with important prevalence indices of Cluster A, B and C disorders and without excluding mental deficits, disorders of mood and substance abuse. The authors consider the difficulty of dealing with these types of sex offenders because they have a high degree of deviance and a tendency to relapse. In these cases a pharmacological treatment must be considered, it should have its own effectiveness excluding the so-called chemical castration practiced in some countries. Elsewhere violent sexual behavior is considered an obsessive-compulsive manifestation associated with a disorder of affective regulation, with the presence of an underlying

psychopathological condition (Capraio & Petrucci, 2015). However, the pharmacological treatment of sex offenders with psychopathological diagnosis must be embedded within a therapeutic approach. As said above, Petrucci and Pedata (2008) propose a cognitive-behavioral therapy that works on deviant sexual arousal, cognitive distortions, affective control disorder and relapse prevention. Other authors highlight the importance of employing statistically validated diagnostic tools for a more correct evaluation of the disorder ((Schimmenti, Passanisi & Caretti, 2014). We can draw the conclusion that the application of therapeutic interventions to sex offenders implies a multi-dimensional approach that integrates different models, obviously given the complex characteristics that this category of subjects exhibits and the strong tendency to relapse.

Article 4bis of the Italian Penitentiary Law, includes sexual crimes among the impedimental crimes that prevent access to alternative measures, and the penitentiary administrations foresees the placement of sex offenders in protected sections, this being also for their security against grievances of common criminals. This means that any experimental program for the admission to treatments with other detainees, from which sex offenders are excluded, encounter difficulties with respect to acceptance by common prisoners (Ruggiero, Basilisco, Scardaccione, Fontanella, 2019).

In conclusion, it is important to stress the importance of the training of those who participate in the implementation of treatment plans for sex offenders. They latter are often entrusted to the goodwill and gumption of prison staff, while specialized training is essential to identify the criteria for admission of inmates to treatment and proceed to the operational phase.

FACTORS AFFECTING PROGRAM EXECUTION

What Factors Are We Talking About?

Bearing in mind the theoretical assumptions of the intervention models previously described, a key factor that can positively influence treatment programs is the response of the offender to undergoing the program - that is, if he agrees to it and how - according to a criterion of "Responsivity" of the RNR Model. Involvement and refusal significantly explain the treatment progress (Levenson & McGowan, 2004). A study on 61 male offenders, encouraged to participate in group therapy, shows a positive correlation between involvement and progress in treatment and a strong inverse relationship between refusal and treatment progress through an actuarial assessment (Sex Offender Treatment Rating Scale, Sexual Offender Denial Scale). The offender, in fact, can refuse to undergo the treatment. This refusal may depend on non-admission of the crime committed. The tendency to deny their guilt is also visible among numerous sex offenders: in a research on 86 sex offenders on probation and parole, the most frequent needs expressed concerned interpersonal relationships and the lack of social skills and for some respondents it was hard to face the sequence of their crimes as well. Few considered their deviant sexual behavior to be a problem for them (Langevin, Wright & Handy, 1988). This confirms above stated necessity to support integration with models more focused on personal needs and self-regulation such as SRM and GLM . Some authors maintain that a treatment based exclusively on the elimination of deficits and risk factors is probably not adequate to motivate offenders to accept treatment and it does not take full account of psychological abilities and personal identity. The GLM, at the same time considering the risk factors and supporting the importance of risk management, has the merit of explaining why those risk factors are a problem for the person and for the society (Fortune, Ward, Mann, 2015).

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An appropriate assessment of the needs for treatment and the risk of relapse in sexual offenders is the central pillar of treatment and management of sexual crime in the community. This assessment considers that the presence of factors such as the experience of being valued, being able to help others, practicing social skills and knowing one another thoroughly can greatly improve one's self-esteem and interpersonal functioning. By contrast feelings of inadequacy and lack of appropriate relationships may be an important vulnerability factor for a huge number of sexual offenders (Cortoni, Beech, Craig, 2017).

It may therefore be concluded that the treatment programs for sex offenders must be "tailored" on the needs of the subjects, where it is necessary to consider both the risk factors represented by the criminal career and the psychological needs, often linked to personal experiences characterized by abuse and violence, emotional deficits, relation difficulties, affective poverty, with the consequent incapacity to build long-lasting relationships and solid bonds. Therefore the risk of recidivism is addressed with an approach based on the offender's vulnerability that nevertheless represents a risk factor that hampers his/her personal and social rehabilitation.

Moreover, elements related to the personality structure and psychopathological developments may influence the offenders response to the treatment. This is evidenced by a study on a sample of 778 sex offenders: some types of sexual offenders, exhibitionists, drug abusers, with high scores in psychopathy, with attention disorders and hyperactivity, with brain damage, most frequently want to undergo treatment but do not complete it, compared to those who receive a low score (Langevin, 2006). Hence also the response to psychotherapeutic treatments fluctuates according to the type of crimes committed and personality characteristics. Comparing 64 sexual offenders (rapists, molesters and incestuous) evidences a different response to treatment based on personality characteristics. Molesters exhibit more marked traits of anxiety than the incestuous offenders. After the first applications of therapy, all subgroup, especially incestuous offenders, show reduced anxiety; regard to self-esteem, molesters reduce it while incestuous offenders and rapists increase it (Valliant & Blasutti, 1992). Also contextual factors can influence the development of treatment programs. A survey has analyzed the factors that influence the involvement of offenders convicted of sexual crimes and reported that psychosocial factors such as hostility, impulsiveness, fear and anxiety assume an insignificant role in the involvement of convicts, while a more significant role occurs in the contents of the treatment, (therapeutic relationship, program objectives), even though these aspects are underestimated by the researchers (Holdsworth, Bowen, Brown & Howat, 2014).

In conclusion, in order to influence the involvement of convicts in the execution of punishment, the literature highlights various factors that affect both the personal sphere of the subject and contextual aspects related to the prison environment and the contents of the treatment. The personal factors include the personality profile of the sex offenders and its possible psychopathological implications, but also the attitude towards the victim and the crime: we have already discussed of denial of the crime committed and negative attitudes towards the victim characterize this category of offenders. Some experts argue that on the one hand the cognitive component is important for programs for sex offenders and is widely validated by research; on the other that it is sometimes misused, with too much time unnecessarily devoted to cognitive restructuring and to the development of empathy towards the victim (Barnett & Mann, 2016).

What Monitoring on the Development of Treatment Programs for Sex Offenders?

It can therefore be assumed that implementing treatment programs is certainly related to the willingness of the offender to be treated; a willingness often determined by the acknowledgement of the crime and by consideration for the victim not subject to cognitive distortions but recognized in the damage caused. A tool helpful for practitioners to evaluate the willingness of sexual offenders to undergo treatment programs, and also for their subsequent outcome, is SOTIPS - Sex Offender Treatment Intervention and Progress Scale (Mc Grath, Cumming, Lasher, 2012). SOTIPS is a questionnaire administered both to offenders with prison sentences and those subject to alternative measures (probation, parole). It is composed of 16 items each with a reference rating. The areas covered by the questionnaire pertain to an integrated perspective according to the above expressed principles that consider personal, psychological, social and crime-related factors and the career of the offender. The purpose, in fact, is to explore the subject's sexual sphere with regard to behavior, attitudes, interests and risk management. Another field considered by the questionnaire concerns responsibility for the sexual crime. This item assesses the extent to which the individual believes that his sexual offense is the result of his personal decisions, and also the extent to which he believes that it was due to external reasons, if he uses strategies of displacement and diffusion of responsibility (Bandura, 1999). In the psychological approach the personal sphere is more deeply probed than impulsiveness, management of emotions and problem solving ability, the social sphere is investigated from the point of view of stability and social support, regarding work, where the person lives and the factors negative and positive social influence and, if the offender is in prison or another institution, the influence of the other prisoners or residents with whom he chooses to associate or collaborate. It is decided to devote part of this study to the description of this instrument because it is believed that it well expresses the application of the multidimensional perspective advocated in this chapter, and demonstrates how a tool effective to undertaking a treatment program must integrate several application models. SOTIPS is administered before the start of the treatment to measure the subject's willingness to undertake treatment program, and it is also used to identify what needs and requirements should be addressed. During the execution of the program it is useful to monitor its development and, at the end of the process, to verify the effects produced on the cognitive, behavioral, emotional sphere and on possible social developments in a rehabilitative terms.

EFFECTIVENESS OF THE PROGRAMS IN THE REDUCTION OF THE RECIDIVISM

The Reduction of the Recidivism as a Criterion of Effectiveness of Treatment Programs for Sex Offenders

This section will analyze the effectiveness of treatment programs in modifying the behavioral orientation of sexual offenders and consequently preventing that deviant behavior from recurring. The reduction of recidivism is a good measure of the effectiveness of treatment programs, and almost all the literature it considers it a positive evaluation criterion for the effectiveness of programs. The reduction of recidivism is also a good criterion of effectiveness in regard to prevention of future victimizations.

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In fact, studies on the recidivism of sexual crime, interest both researchers and those who work within the criminal justice system. This is because such studies are necessary to activate effective strategies to combat crime and strengthen social security. Thus they:

a. provide an empirical basis which to gain better understanding of different categories to public safety by those who commit sexual offenses; b. facilitate the identification of the various risk factors associated with criminal reoffending; c. can be helpful to policymakers and practitioners to build strategies aimed at fighting recidivism (Przybylski, 2014). They are numerous and do not always achieve homogeneous results, due to issues such as the length of the follow-up considered, the kind of sanction applied, because offenders are not always exposed to the same risk-level in the period examined (parole, probation) (Maitz, 2001, Przybylski, 2014), or the method used, because in some cases the subjects of the sample have died in the meantime moved or whose residence cannot be verified (Heil, Harrison, English, & Ahlmeyer, 2009).

Meta-analysis studies on samples of sex offenders under treatment and untreated sex offenders, show that recidivism is more frequent in offenders not subjected to treatment compared with those undergoing treatment (Hanson, Gordon, Harris, Marques, Murphy, Quinsey, & Seto, 2002, Lösel & Schmucker, 2005, Hanson & Morton-Bourgon, 2009). There is a counter-trend in long-term analyses: the study by Oliver, Wong & Nicholaichuk (2008), referring to the findings of Harris and Hanson (2004), reaches similar conclusions. The study, carried out on a sample of 472 subjects under treatment and 282 subjects not under treatment, demonstrates that, in the former group, the rates of reconviction for sexual crimes are 11.1% after 3 years of follow-up, 16.9% after 5 years, 21.8% after 10 years, in the latter group the reconviction rates for sex offenders are 17.7% after 3 years, 24.5% after 5 years, 32.3% after 10 years of follow-up. However, the lower reconviction rate for sex offenders involved in treatment programs is confirmed. Other studies confirm a long-term escalation of sexual recidivism (Hanson & Bussière, 1998, Oliver, Wong & Nicholaichuk, 2008).

Some studies do not clearly show the efficacy of treatment in reducing recidivism: a study carried out by Marques et.al (2005) on a group of 220 sex offenders with two control groups (225), of which one had not participated in treatment programs and the other had refused to participate, did not show any significant differences in the reduction of recidivism in the three groups (21.6 percent for the sex offenders who completed a year or more of treatment, 20 percent for the sex offenders who volunteered for treatment but who did not receive it and 19.1 percent for the sex offenders who refused treatment), although the authors noted that the subjects involved in the experimental group had higher risk characteristics, less motivation to participate in the program and more sexually deviant behavior than the control group. Also elsewhere there are no significant differences between treated and untreated subjects. A study involving 403 sex offenders subjected to treatment and 321 not subjected to treatment in a 12-year follow-up found no evident differences between the two groups concerning the recidivism rate (Hanson, Broom & Stephenson, 2004), while significant differences on the reduction of recidivism have been highlighted by another research study. There was a significant difference between treatment and comparison group reconviction rates for sexual and violent crimes combined. Treated offenders had a combined sexual and violent two-year reconviction rate of 4.6 percent, compared to a rate of 8.1 percent for the untreated comparison offenders (Friendship, Mann & Beech, 2003).

We can hypothesize that the reduction of recidivism attributed to treatment programs does not follow unitary criteria but differential ones because it is influenced by factors that concern the characteristics of offenders, the level of risk and the type of behavior. The analysis of the literature therefore evidences doubts concerning the effectiveness of treatment programs for sex offenders in reducing recidivism:

objections mainly concern the methods used, because research is not always experimental, and most randomized controlled studies have not produced obvious evidences. In fact, it is argued that although the methodology of these studies should be improved with well-designed and executed randomized controlled studies, it can nevertheless be admitted that some therapeutic approaches can produce positive results on at least a partial reduction of the recidivism of sexual offenders (Przybylski, 2014). This author admits that, in recent years, studies on the efficacy of treatment for sex offenders have improved, giving greater credibility to the positive results concerning the treatment effect; more and more frequently experts tend to use studies that consider control groups with statistical verification of equivalence of the results obtained and systematic reviews and meta-analysis. Several studies confirm the lower rate of recidivism in sex offenders under treatment compared to untreated sex offenders (MacKenzie, 2006 Drake, AOS and Miller, 2009, Schmucker and Lösel, 2015), although we must consider differences with respect to the type of offenders (Marques et al., 2005). Marshall and Marshall (2010, p.5) provocatively stated, "We believe the empirical literature justifies a positive answer to the question 'Can sexual offender treatment be effective?'. Furthermore, we confidently interpret the literature as indicating no evidence of negative effects arising from sexual offender treatment". Even if the debate on which is the most correct research methodology and if the results achieved are short or long term, also immediate results achieved within the application of the treatment program make an important contribution to the studies on the efficacy of the treatment (Harkins & Beech, 2006).

Factors Influencing the Treatment Programs on Reduction of Recidivism

However, the empirical evidence does not entirely prove the efficacy of the treatment, because it is necessary to consider the individual characteristics of each sex offender, his needs and risk tendency. What therefore guarantees the effectiveness of a treatment, is how it is tailored on the needs of the subject. The RNR Model is considered one of the treatment models most effective in reducing recidivism (Hanson et al. 2009, Wakeling, Mann, Carter, 2012). This probably depends on the fact that the assessment of the degree of risk, guaranteed by the application of the model, has a crucial impact on the results obtained.

High-risk sexual offenders, who completed intensive residential treatment had more than twice less probability of reoffending than high-risk sexual offenders who did not receive intensive treatment. On the other hand, low-risk sexual offenders who received intensive treatment were 21% more likely to relapse than low-risk sexual offenders who did not receive intensive treatment (Lovins, Lowekamp & Latessa, 2009). This means that the intensity of the treatment applied in relation to the level of risk can be considered another significant factor with respect to the results obtained. The degree of intervention should be commensurate to the risk of recidivism in sex offenders. This presupposes a risk assessment that is validly ascertained with actuarial methodologies currently considered as the most reliable. There is now a variety of actuarial risk assessment tools, which use static, historical factors to place individuals into different categories according to their likelihood of reconviction (Wakeling, Mann, Carter, 2012). The authors conclude by stating, after having reviewed a large body of research on programs carried out in the United States, Canada, England and Wales, that 100 hours of treatment program is sufficient for low-risk sex offenders compared to high-risk sex offenders, unless they present a high level of denial and resistance to undertaking a treatment program. It is also important that the low-risk offenders are separated from high-risk ones to avoid contamination. Andrews & Bonta (2006, 2003) believe that high-risk individuals do not present specific psychopathologies associated with criminal behavior - anxiety, depression, suffering and self-esteem - such to represent the focus of the treatment. It is nevertheless

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opportune for the justice system to invest resources also in low-risk sex offenders, as they are also liable to recidivism, and it would be unpleasant for the victims who would feel violated if there were no guarantee of treatment even for non-highly dangerous subjects. In this perspective, the RNR Model and a risk assessment, considering both static and dynamic factors, could be helpful for a diversified application of treatment programs. What the literature thinks about the RNR Model is rather controversial because if the model is considered a valid tool for reducing recidivism based on risk assessment and the needs linked to criminogenesis, there are those who highlights its limitations because it is unable to explain why risk factors are problematic for the individual and for society (Fortune, Ward, Mann, 2015)

According to the analysis of the literature concerning treatment programs for sex offenders, in the past twenty years a cognitive-behavioral approach has been considered the most effective in reducing relapse (Marshall, 1996, Moster, Wnuk & Jeglic, 2008). This is demonstrated by some significant research: a positive follow-up is found in sex offenders subjected to cognitive-behavioral programs and prevention of relapse, compared to ones treated with less specialized psychiatric programs or not liable to any treatment. Statistically there are no significant differences with regard to the factors that determine reconviction (McGrath, Hoke & Vojtisek, 1998). A meta-analysis study (43 studies) shows a reduction in recidivism in sex offenders subjected to treatment compared to subjects not treated, pattern apparent also in the perpetrators of non-sexual offenses. The behavioral and systemic cognitive models outperform the others in the reduction of recidivism, unlike the treatment models used prior to the 1980s which, according to the authors, obtained poor results (Hanson, Gordon, Harris, Marques, Murphy et al., 2002). Another study considered 195 sex offenders imprisoned and involved in cognitive behavioral treatment programs. In a 6-year follow-up, individuals who had completed the treatment had less likelihood of reoffending than those who had only partially accepted the treatment and those who refused it. There was no significant difference between the groups with respect to the risk level subject to preliminary assessment with Static99 and RRASOR1 (McGrath, Cummings, Livingston & Hoke, 2003). However, it is clear that treatment programs are mainly focused on cognitive and behavioral aspects, considering affective and emotional aspects to be of secondary importance, whereas problems in affective regulation play a fundamental role in the onset of sexual abuse. Therefore, necessary in the future is closer consideration of these aspects in both research and treatment programs (Gunst, Watson, Desmet & Willemsen, 2017). However, there are those who argue that even if the theoretical and empirical literature finds that the fear of intimacy and the lack of involvement in intimate relationships operates in sex offenders and that it increases the propensity to sexually abusive behavior, its etiological role in interpersonal functioning and abusive sexual behaviors lacks a theoretical foundation and evidence-based research (Martin & Tardif, 2014).

More recently, the importance of the effects of incarceration on the recidivism of sex offenders has also been highlighted: misconduct in custody and longer periods of incarceration, positively associated with revocation and sexual recidivism, increase post release reoffending for high-risk sex offenders. This means that in the assessment of the risk of recidivism the effects of incarceration must also be closely considered (Hsieh, Hamilton & Zgoba, 2016). On the other hand, a prison environment oriented towards therapeutic programs positively influences a reduction in recidivism in sex offenders. This is shown by research involving prisoners and prison staff. In a therapeutically oriented prison, the staff has positive attitudes towards prisoners and trust in their change. Similarly, inmates attribute to the prison and its staff the merit of having contributed to their change. They consider the prison a place in which they can reflect on their problems and solve them. The methodology used is that of the semi-structured interview conducted with convicts and staff. Thus apparent is the importance of the context in the rehabilitation of offenders. (Blagden, Winder & Hames, 2016).

Despite the controversial opinions and the results obtained by not always consistent researches, it is possible to maintain that greater success in reducing recidivism is achieved in offenders subjected to treatment compared to offenders not so subjected. The objections concern the methodological aspects and what kind of sex offender – specific- treatment program to be used.

Firstly the empirical evidence regarding the effectiveness of the treatment and its results must be strengthened in order to prevent effective treatments from being ineffective and ineffective treatments from being effective. To this end, improved methodological accuracy should be encouraged: the use of a randomized controlled trial design does not automatically make the results of a study reliable, whereas the use of control groups with a correct statistical methodology should be increased to validate the results obtained.

Another way to proceed is to verify the results by means of a differential criterion. Not all sex offenders are equal. They have different personal and judicial characteristics, and it has been repeatedly argued that treatment programs must follow an individualization criterion, tailor made to personal needs and recidivism risk. This point of view presupposes, at the methodological level, that use is made off subgroups to assess the effectiveness of a specific treatment for a specific category of convicts (if for example with psychopathological characteristics, or with particular aggressiveness or relational difficulties) with the purpose of verifying whether that type of treatment works for that type of offender.

The aim is also to compare the relationship between the results obtained from the sub-groups with the overall data, because the positive effects of treatment for a particular sub-group of sex offenders may be masked by the finding that the treatment did not have a positive impact on the overall treatment sample and at the same time not selectively stress the benefits of treatment for a sub-group of subjects, ignoring the results for the overall treatment sample (Sherman, 2003).

An accurate assessment of the risk of reconviction especially for violent offenders is functional both to the validity of the results achieved by the research and to the effectiveness of the treatment. The risk assessment can be both clinical and actuarial, and numerous risk assessment tools are currently available for sex offenders risk assessment to be used in an approach integrated with clinical assessment.

CONCLUSION: PROPOSAL FOR AN OPERATIONAL SCHEME

It is very difficult to draw conclusions because of the complexity of the subject dealt with in this chapter, which deals with levels of complexity regarding the opportunity or otherwise of using human and economic resources for the treatment of sex offenders in order to reintegrate them into civil society.

Sexual crimes, especially when committed against minors, generate particular social indignation and a sense of insecurity which often goes together with a demand for exemplary punishment of their perpetrators.

After many years in which punishment or at most pharmacological therapy was considered sufficient for sex offenders, the development of the psychological and social sciences has contributed to the possibility for rehabilitative treatment to be applied to sex offenders, as already foreseen during the execution of the sentence for all offenders .However, the rehabilitation of the person is always a benefit for society because it can help protect the latter from the repetition of criminal behavior.

The implementation of sex offenders specific treatment programs in prison presents different levels of complexity that this chapter has attempted to outline. The first level of complexity concerns the personality of the perpetrators: sexual offenders have different characteristics not only in relation to the

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type of crime committed, more or less violent, but also in relation to their history, not only judicial, but also personal, family and social. Not be excluded is the presence of pathological personality structures or even just emotional states that can influence the design and in implementation of treatment program.

The complexity of offenders' characteristics requires the application of diversified treatment methods suited to the needs of the subjects, providing for a preliminary assessment whose approach is by now integration between clinical and actuarial evaluation. The criminal executive system is not always able to support such complex programs which require adequate knowledge and highly qualified personnel.

A second level of complexity consists in understanding whether implementing treatment programs for sex offenders has a positive effect or whether it produce any effect and therefore requires the investment of worth investing resources: scholars are largely agree that reducing recidivism is a criterion of effectiveness. This is just as complex a criterion as how to measure the results obtained.

The numerous studies in the literature do not always report homogeneous results regarding the effectiveness of treatment in the reduction of relapse, also due to research methodologies that are not always appropriate. Comparing treated and untreated groups of offenders does not always show statistically significant rates of recidivism that yield certainty as to the actual effectiveness of the treatment used.

Besides to the statistical methodology used, there are a number of variables that influence the success of treatment. In addition to the personal aspects of sex offenders, they concern the level of risk, the involvement and ongoing participation of the offender, whether or not he has concluded the treatment.

This further confirms the need for individualized programs: the provision of individualized treatment for offenders is a fundamental principle of Italian penitentiary system, which takes account of the individual differences among individual convicts.

In spite of the controversial opinions, the majority of scholars are agree in supporting the application of treatment programs, having noted the presence of a reduction in recidivism validated by some research, as well as partial results or in subgroups, even if the total sample is not involved.

The third level of complexity lies in deciding which model of intervention to apply. Also in this regard there is animated scientific debate between those who stress the need to adhere to a model that prefers the assessment of the risk of recidivism or models more explicitly oriented to the strengthening of the Self and the empowerment, factors also resolving for a change of sex offenders with respect to sexual behavior and pro-social attitude. The rehabilitation of clearly pathological subjects with personality disorders or pedophiles can create major problems. The research itself demonstrates the difficulty in undertaking and continuing treatment programs with a high rate of recidivism for these types of offenders

The studies analyzed agree on identifying cognitive-behavioral therapies as the most effective in treating sex offenders, because they are able to affecting the mechanisms of negation and cognitive biases that characterize this category of offenders.

In conclusion it is possible to outline an operational scheme in the following phases:

1. Preliminary phase of treatment plan:
 - a. Diagnostic assessment of the personality of sex offenders also in consideration of the type of crime and previous criminal history;
 - b. Assessment of negative mechanisms and cognitive biases;
 - c. Assessment of the risk of recidivism;
 - d. Measurement of the willingness and responsivity of sex offenders to undertake a pathway of treatment;

2. Operational phase of treatment plan:
 - a. Preliminary inclusion of sex offenders in joint activities in order to overcome the resistance of other inmates and attempt to integrate them;
 - b. Choice of the model of treatment and elaboration of the program. A theoretical model is necessary even if the program must be planned with account taken of the characteristics of offenders and their specific needs;
 - c. Ongoing monitoring of changes in the subject;
 - d. Verification of the results at the end of the project;
 - e. Follow-up on the subject's subsequent behavior. The criteria of positive effectiveness of the subject should be identified not only in the non-commission of other crimes but also in work stability and social and interpersonal relationships.

One point that needs to be further clarified is that sex offenders may also have committed other types of crime, so that they can, once the sentence has been served, commit non sexual crimes. In this case a criterion of success must be established, even if it is deemed more appropriate to establish as the criterion of success detachment from the deviant sexual behavior.

In Italy, treatment programs for sex offenders have recently been experimented with: it is hoped that there will be a steady increase, possible because in the Correctional Administration there is widespread interest in and motivation for implementing treatment programs for sexual offenders. The Correctional Administration has invested time in the training of personnel in the treatment of sex offenders

However, the resources, often economic as well as human, are not always available, nor are there the contingent conditions that allow projects to be carried out. The personnel of the prison may have prejudices about the rehabilitation of sex offenders that oppose the development of treatment despite having acknowledged their positive social impact.

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KEY TERMS AND DEFINITIONS

Alternative Measures to Detention: Refer to non-custodial measures or a partly custodial measures that allow individuals to reside in the community, subject to a number of conditions or restrictions on their freedom of movement. In Italy, for example, in the phase of post-trial detention of sentenced persons, the Law 26.7.1975, No. 354 (Italian Penitentiary Act), from article No. 47 to article No. 58-*quinquies*, includes a series of alternatives measures, like community measures such as “the assignment of offenders to Social Services on probation,” home detention, special probation for drug addicts or alcoholics, etc.

Bumby Molest Scale: Is used to measure cognitive distortions concerning child molestation and sexual violence.

Bumby Rape Scale: Is used to measure cognitive distortions in perpetrators of sexual crimes, and the level of cognitive biases in sex offenders.

Cognitive Behavioral Therapy: Psychotherapeutic treatment that can help patients manage problems. Its goal is to change patterns of thinking or behavior that are behind people’s difficulties.

DSM-5: The *Diagnostic and Statistical Manual of Mental Disorders* (published by the American Psychiatric Association) is the handbook used by health care professionals as the authoritative guide to the diagnosis of mental disorders. It contains descriptions, symptoms, and other criteria for diagnosing mental disorders.

Italian Penitentiary Act: Law no. 354 of 26 July 1975 is the first organic reform of the Italian penitentiary system.

National Institute of Statistics: The Italian National Institute of Statistics (ISTAT), a public research organization, is the main producer of official statistics at the service of citizens and policymakers.

National Parole Resource Center: NPRC is a partnership of the Center for Effective Public Policy and the Association of Paroling Authorities International, supported by funding from the Bureau of Justice Assistance (BJA). It helps, supports and shapes the future of parole as an increasingly effective stakeholder in the criminal justice system.

Pedophilia: An abnormal condition of being sexually interested in children.

Chapter 23

Religion, Rehabilitation, and Reintegration of Prison Inmates Into Mainstream Society

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ABSTRACT

This chapter surveys scholarly works on the extent to which religion influences inmate rehabilitation and reintegration into mainstream society. Apart from conceptual explanations, the empirical reviews add to its analytic claims. This study argues that despite the functions of religion in relation to crime and its pro-social behaviour, its rehabilitation and reintegration function is limited due to the neglected roles of faith communities, families, and other legal institutions. The literature analysis concludes that the efforts to institute religion in prison to reform and rehabilitate inmates are fruitless due to the divergent interests of the actors involved. The religious civil society organisations that participated in convicted prisoner rehabilitation did not show the same interest in their reintegration into mainstream society.

INTRODUCTION

Taking from Hesiod's mystical poem on 'war among the gods' to that of the philosophical writings of Plato, Aristotle, and Comte, there was a dramatic shift from religious thoughts to scientific reasoning about the origin of society and the nature of behavior. It is expected that, in the 21st century, the influence of religion on people and bureaucratic institutions would have minimized tremendously. Interestingly, religion has taken on another form. This time, in the heart of a state bureaucratic institution - prison. To the extent that, the significance and pervasiveness of religion in most prisons in Africa cannot be underestimated. Religion, as Durkheim notes, performs crucial functions in the society. Inmates who were once members of the larger society take their religiosity to prison. Their contact with other prisoners, prison officers, and visiting clergy makes religion, together with other support structures, take on a rehabilitation function to equip inmates with accepted societal values and norms to ensure successful reintegration upon discharge.

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Rehabilitation is to help inmates take care of themselves and maintain good social relationship with others. Another rationale is to inculcate the attitude of shared meaning to reduce behavior deterioration and complications. Experts are called to implement these functional gains of rehabilitation within and out of prison. It is imperative to note that rehabilitation is initiated not only from within the confines of the prison but also from outside. Within the prison, it starts from admission of inmates through to their discharge and reintegration. After release, it is expected that family members, faith communities, and social workers continue the process until ex-convicts become functionally independent as possible. However, this is not entirely the case, even for those who embrace religion.

This chapter aims to examine the relationship between religion, rehabilitation, and reintegration. The chapter argues that, despite the functions of religion in relation to crime and its prosocial behavior, its rehabilitation and reintegration function is limited due to the neglected roles of faith communities, families, and other legal institutions. And that, the very persons and legal institutions with the manifest functions of ensuring reintegration end up thwarting it. This chapter sheds light on this triad concepts through literature survey and empirical review.

EXAMINING RELIGION

The history of religion is characterized by error and illusion (Radcliffe-Brown, 1945). To Gaur (2011), the exact place and time of the origin of religion is not really known. As a result, this paper will not dive into its origin and history. That said, it is important to state that, in the sociological study of religion, certain things are not of so much importance to the sociologists. For instance, whether a particular religion is true or false (Assimeng, 2010), but rather the social functions of religion (Radcliffe-Brown, 1945; Nottingham, 1952). Some earlier sociologists have discovered the social functions of religion as follows: maintenance and support of the social order; control of the activities of men and women in their encounter with their social and natural environment; provision of circumstances which bring people together to participate in common activities understood and meaningful to them, such as festivals in traditional societies; regularization of the network of social relationships and; the ultimate source of cohesion in society (Assimeng, 2010 p. 11).

Aside the illusionist characteristic associated with religion, there is no generally accepted definition of the term. According to Beckford (2009), ‘What is religion?’ or ‘What is really religious?’ remain argumentative and has the possibility of rousing up disagreement in public life. Nonetheless, many scholars have attempted to define religion in their own way based on their background and understanding of the concept, as the concept means different things to the sociologist or anthropologist, the theologian, and the psychologist. In the Henry Myers’ lecture of 1945, Radcliffe-Brown stated that the common way of probing religion *is to regard all of them, or all except one, as bodies of erroneous beliefs and illusory practices* (p. 153). The implication is that only one type of religion may not be erroneous, that is, if we are to regard all except one, but how is such a religion determined? This is a difficult question if not impossible to be answered.

Roberts (1984) identified the substantive definitions, the functionalist definitions, and the symbolic definitions as three basic definitions of religion. The substantive approach centers on the “essence” of religion. This falls in line with Tylor’s (1873) idea of spirit beings, and Durkheim’s (1912) notion of the sacred. In respect of the functionalist definitions, Roberts (1984) exemplified Yinger (1970), that *we define a social institution as religious if it fulfils the manifest function of the religion*. That is, the focus

on religion should be on what it *does* and not what religion *is*, as already discussed above. This approach by Yinger seems to be dependent on Malinowski, Radcliffe-Brown, and Evans-Pritchard. The last approach – symbolic - identified by Roberts (1984), epitomizes Geertz (1966, p.14) position of religion *as a system of symbols which act to establish powerful, pervasive and longstanding motivations in people by formulating conceptions of a general order of existence and clothing these conceptions with such an aura of factuality that the moods and motivations seem uniquely realistic*. This understanding of religion adopted by Roberts (1984) seems to examine religion from different perspectives. To some extent, it is all embracing so far as our knowledge and understanding of religion is concerned.

Religion, as expressed by many adherents, has the following components: faith, self-surrender, emotion, moral values, self-sacrifice, devotion, inspiration, and spiritual and transcendental experiences. According to James (1985), faith is about a belief in the glory, uniqueness and superior quality of the object of faith. The object of faith may be a “God”, spirit, or object. The faith in an object is held firm as long as the value ascribed to the object of faith is not considered false, as it is evident that unless a person is of the view that something is powerful and of high value one cannot trust in it. With faith, one yields up his personal will and sees him or herself as a tool for the comprehension of some Supreme-will. Self-surrender is often accompanied by emotions - the feelings activated by experiencing sorrow, hate, love, fear, hope, wonder etc., and frequently accompanied by certain physical changes, as increased heartbeat or respiration, and often obvious manifestation, as crying or shaking. To Gaur (2011), emotions may manifest itself to comprise an emotion of reunification with supreme-being; emotion of esteem or admiration over the miracles of an Almighty; and an emotion of total obedience to the will of a deity.

Moral values, self-sacrifice, inspiration, and transcendental and spiritual experiences demonstrate a person’s religiosity. No matter a tradition, culture, or people, Turner (2003) argues that there is somewhat mystical and spiritual experiences. These experiences, whether spiritual and transcendental give the individual some kind of a feeling of complete satisfaction, be it physical, biological or psychological. These experiences are means through which individuals depart from the human self to experience the infinite and cosmic consciousness. Hence, religion and its associated practices tend to exhibit some influence on criminal behavior.

RELIGION AND CRIME

In a study of high school students by Hirschi and Stark (1969), it was established that there was no correlation between criminal behavior and church membership, as churches failed to teach their members to love their neighbors. The churches’ “failure”, as argued by them, *would seem acute* (1969, p. 203). Burkett and White (1974) argued that while it is challenging to squabble with the findings of Hirschi and Stark (1969), their conclusions attract questions. Christian adolescents like many other adolescents do engage in unlawful activities. This could mean that some Christians are not living up to the expectations of biblical teachings, but it could also mean that the Christian adolescent’s faith is an honestly effective influence; nonetheless other secular or worldly influences are equally effective. Could the findings of Hirschi and Stark (1969) hold true for other countries like Ghana? Or other religious faith such as Islam, Judaism etc.? This paper shares that, whilst some adherents may express and demonstrate “love” to their neighbors, others may be unable to do so. After all, the church may preach about love but it behoves on the individual to practice it. This, to some extent, points to the fact that churches, unless they are cults, are not in the business of controlling the behaviors of individual members. The quantifying of religiousness

as church attendance in the work of Hirschi and Stark leaves much to be desired. To Elifson et al. (1983), church attendance is most likely compared to *classroom attendance* (p. 78), an indicator of performance considered as poor. This is so because criminality cannot be considered to depend on church attendance, but rather other secular factors like peers, parents, and environmental dynamics (Fernquist, 1995).

Religion deters criminal behavior (Banks, Maloney, & Wittrock, 1975; Jensen, 1981). Criminal behavior had a strong inverse relationship with church attendance, and church membership than with other specific religious beliefs like belief in God, heaven, after life etc. (Ellis & Peterson, 1996). This implies that the number of times people attend religious services do not determine whether they will engage in criminal activities or not. This is also suggestive that people go to church for varied reasons and not necessarily to curb their criminal behaviors and tendencies. However, to Evans et al. (1996) participation in religious activities may reduce the risks associated with both minor and serious forms of delinquent behaviors. Ellis and Peterson's (1996) use of few countries in their study must be subjected to interrogations. In that, a more broad based study could have added more credibility to the findings of the study considering the variability within and among other countries.

In a multivariate analysis, religion was found to be an unimportant predictor of criminal behavior when other variables such as parental control and peer influences were added (Fernquist, 1995). However, other empirical findings (Freeman, 1986; Jang & Johnson, 2001; Johnson et al., 2000a, b) suggest that in communities characterized by poverty, decay, disorganization, and disadvantaged the effects of religiosity remain significant. In most part of Africa, prison is characterized by poverty, decay, lack of rehabilitation structures, and disorganization. As the author has argued elsewhere, it is the lack of rehabilitation structures in most prisons in Ghana that make inmates subscribe to religion in prison.

Out of these analyses, it is obvious that the relationship between religion and criminal behaviors are mixed, yet, one thing that comes up clear is that apart from the numerous factors in the society, religion is a pro-social factor that shapes people's behavior towards crime.

RELIGION AND PRO-SOCIAL BEHAVIOUR

Empirical evidences (Johnson, Larson, Li, & Jang, 2000; Jang, & Johnson, 2001) indicate that individual religious commitment, and religious congregations can help avert urban youths who may be considered as high risk from engaging in delinquent behavior. Other evidences show that individuals, particularly youths who have a long history with religion may benefit from the cumulative effect of the practice by reducing the risk of involvement in illicit drugs (Jang & Johnson, 2001). This is a clear case of religion as a protective factor shielding its members from violating social norms. While religion serves as a protective shield against criminality in the mainstream society, in prison it takes on a variant and added functions. Inmates rediscover and adhere to their faiths not merely to avoid trouble; their affiliation with an established religious sect is to enable them access the material resources mobilized by the CSOs for inmate adherents (Yin, 2018). Being that most of the prison staff are religious, inmate's exhibit deferential behaviors in order to ingratiate themselves to the prison staff and to the visiting clergy in their effort to "walk the talk".

The link between increasing religiosity and higher levels of prosocial behavior has received much attention in recent years. Among these numerous research, is found that religious commitment is a source of promoting social well-being, hope, meaning, purpose, and self-esteem (Koenig et al., 1999),

and educational accomplishment (Johnson et al., 2000b). Undeniably, the more religious people are, the more likely they are to give to charities and to volunteer time for civic purposes (Brooks, 2006).

According to Byron and Curtis (2014), research has shown that individuals involved in prosocial activities and attitudes - something that forms an integral part of faith-based organizations and many churches - seem to reduce the risk of violence among them. It is believed that having a good understanding of the issues associated with prosocial behavior will help in the improvement of future intervention and prevention strategies. It is for this reason that religion remains crucial in prisons for inmates, as well as for prison administrators.

RELIGION IN PRISON

There are many religious groups in prison. The dominant religious groups are usually the ones dominating in a particular local society, or a country at large. As shown in the work of Montgomery and Turner (2013), the religious preferences of 20,259 inmates indicates that about 65.33% of inmates preferred Christianity – various protestants denomination, 25.80% had no preference/ atheist or agnostic, 3.6% preferred Islamic/ Muslim or Mohammedan, 2.61% were Christian – Catholic, whilst religions such as Wicca, Buddhist, Mormon, Satanist etc. had less adherents. This finding is similar to that of O'Connor and Duncan (2011), where they found that 48% of inmates were Christians/ Protestants, 7% had no religious preference, and 7% preferred Catholics, with the remaining inmates having preference for other religions. Parts of the findings of Montgomery and Turner (2013), and O'Connor and Duncan (2011) are similar to that of Yin's (2018) study of inmates' religiosity in Ankaful Maximum Security Prison in Ghana. Yin found that 68% of inmates were Christians, 25.9% were Muslims, whilst 6.1% were Traditionalist. This confirms the findings established by Antwi (2017) that there were many religious denomination in the Nsawam Medium Security Prison in Ghana. All these suggest the presence of religion in most prisons in Africa, Europe, North and South America.

In the studies referred to above, the data show that majority of inmates were Christians but it does not connote that Christians are criminally oriented. Whether a particular prison will have more Christian inmates or Muslim inmates depends on the social or religious structure of the community within which the prison is located, as well as the available laws. It would not be surprising to have many inmates with indigenous (traditional practices) religious affiliation in an environment where such traditional practices dominate. The many religions in prison epitomize religious plurality in prison. This is a wakeup call that religious groups outside prison have critical roles to play in prison, as well as the need for states support system in terms of legal mobilization to enforce and/ or promote religious pursuits.

In the empirical article by Clear et al. (2000), it was indicated that the practice of religion in prison is somewhat influenced by prison culture, the presence of different racial and ethnic groups etc. which they called "prison society" (p. 56). The meaning of religion in prison was attributed to different levels – individual and societal levels. The former is the fact that every inmate has different reasons for being religious, whilst religiousness is largely influenced by the presence of religious people in prison - societal level. Clear and Sumpter (2003) showed that the relationship between inmate religiosity and their adjustment to prison conditions was statistically significant. This position by Clear and Sumpter is epitomized by O'Connor and Perryclear (2003), that religion played an important role in the rehabilitation of inmates. Nonetheless, they noted that attending religious services was not enough to convert inmates into being morally upright people; but rather inmates must highly be involved and participate

in the religious services. This position is not different from what previous authors established between church attendance and crime. It must be stated that church attendance and religious engagement all form part of the conversion process.

RELIGIOUS CONVERSION IN PRISON

Religious conversion usually means to change from ones' previous way of life to a religiously accepted way of life. The converted person now becomes a born again. Not all conversion may be true, however, it is very difficult to distinguish between a conning person and a converted person as one would not easily know whether the self-acclaimed converted person is not conning. The difficulty in distinguishing, according to Kilbourne and Richardson (1989) may be the reason for the desperate need of research into the origins of conversions. According to Snow and Machalek (1983, p. 265), instead of asking the question of, what is conversion? Rather we should ask *what is it that changes when someone converts?*. Paloutzian, Richardson and Rambo (1999) are of the view that a person's experience yields small by way of change that is measurable in that person's character, nonetheless in its place, conversion revolves reflective change in a person's disposition purviews such as self-identity and personal goals.

To be a born again Christian or Muslim means adopting not only the Bible or Quran as a book of faith but also abiding by the teachings and practices of the book. This new-found faith gives meaning or offer direction to the converted person (Gallagher, 1990). Both Christianity and Islam, and other faith based religions give the individual the opportunity to re-examine the world. Likewise, inmates who genuinely embrace their faith may have the opportunity to reflect on their lives and the world in general.

In Gaur's (2011, p. 76) work on India prisons, when the question of "What do you feel about imprisonment or prison life?" was put to inmates, multiple responses were received. Among these responses, 81% of inmates viewed their imprisonment as the will of God. This response should place religion at the heart of prison work, as religious interpretation of imprisonment serves as adaptation technique used by inmates. Religion in this regard can also serve as a tool for rebranding and reshaping of inmates. About 48% saw imprisonment as a platform to cultivate the ambition of becoming useful members of society, about 21% said it was an opportunity for inmates to repent of misdeeds, 17% as source of deterrence, 34% the emergence of a better person, 58% proximity with God and His creation, 47% the retrogression of progress, 41% the opportunity for correction, 29% the source of incapacitation, 29% the place of spoiling, whilst 43% saw prison life as the source of inclination towards criminal tendencies. This portrays different experiences of prisoners in respect of prison life. Whilst some inmates saw imprisonment as a useful tool to aid their conversion others also saw it as not beneficial. Nevertheless, the value inmates placed on religion shows that indeed religion is an important aspect of prison life.

RELIGION AND PRISON SUBCULTURE

According to Irwin (1980), there is a prison subculture just like there is in the normal social world. This implies that many activities that take place within the prison may be a reflection of the 'free' world. Within prisons, prisoners have their own culture with traditions, norms, and a leadership structure (Sykes, 1958). To Carroll (1974), some inmates form cliques based on what they share in common. These cliques may be based on professional, racial, or country lines whilst other inmates may choose to mingle with only

a few close friends (Jones & Schmid, 2000). In the case of Ghana, Yin (2018) found that, the cliques were more on religious, ethnic, and country lines than professional and racial lines.

The inmate's decision to be part of a subculture depends on many factors, which may include for protection against physical abuse and theft from other clique members or gangs. To Yin (2018), one of the main reasons for an inmate to be part of a clique was to meet some material ends. Yin further revealed that, in prisons in Ghana, an inmate could be affiliated to multiple cliques. He therefore argued that, if cliques are for protection from other clique members as shown by Irwin (1980), then Ghana prisons present a different case as cliques rather functioned toward meeting the materialistic needs of inmates, whether legitimate or illegitimate, and for other social engagements within the 'social field'. Nevertheless, the need for protection from other clique members as suggested by Irwin does not negate protection from prison wardens, as generally, all inmates are under the protection of prison authorities. As part of the subculture, some inmates were members of a religious sect and engaged in different religious activities (Antwi, 2017; Yin, 2018). This affiliation was and among many others motivated by the inmates quest for spiritual protection.

It should be stated that, not all inmates were assimilated into the prison subculture. Clemmer (1958) argued that inmates in prison for short periods - a year or two could endure deprivations due to the belief that their confinement would not last. As a result such inmates were hardly assimilated into the prison subculture - religion. However, this depends on the inmate's educational attainment, socio-economic and marital status, age, race, and religion (Drowns & Hess, 1995), and the extent to which the inmate was involved in criminal activities. It is the sociological functions of religious cliques that make this subculture significant to warrant religious programs in prison.

RELIGION, REHABILITATION, AND REINTEGRATION

To Cullen and Jonson (2012, p. 25), *the concept of rehabilitation rests on the assumption that criminal behavior is caused by some factors. This idea postulates that committing crime is not only the freewill of the offender, but violating the law is also due to a person's psycho-social environment and development, or biological make-up.* The main justification behind rehabilitation is that, if breaching the law is caused by certain environmental factors such as social, economic, and psychological, then reoffending can be dealt with if the right correctional intercessions are put in place.

There are three different perspectives on imprisonment of offenders of the law. Some scholars are of the view that incarceration is the way to deal with criminals, as harsh sanctions is believed to deter people from committing further crimes. The second perspective shares that prisons should be scraped off or abolished. The abolitionist share that the prison institutions have been unable to rehabilitate or reform prisoners; hence all prisons irrespective of the type should be shut down (Cullen & Johnson, 2012). To Conklin (1995), the prisons, with all its rehabilitation programs – religion etc., have failed to rehabilitate and prevent inmates from reoffending after being released. In as much as it has failed in this regard, it is also an inhumane approach to dealing with people who commit crime. Lanier and Stuart (1998) are in favor of community controls and community treatment replacing the prison system. The final view shares in the domain of rehabilitation of inmates. These scholars are of the view that imprisonment provides the opportunity to help inmates to rethink and reshape their lives through trade training and religious moral guidance (Lewis, 2009).

In respect of the third school of thought, educational, vocational, and religious programs have been introduced in some correctional facilities to serve a rehabilitation function for inmates. To Schumacher and associates, those inmates who were enrolled in vocational and or academic programs were more successful after discharge than those who did not enroll in any. Baumer et al. (2009) assert that educational and vocational preparation, drug treatment and some other life skills training are examples of programs designed for inmates with the purpose of economically empowering them in order to curb their propensity to recidivate.

Harrison and Schehr (2004) share that rehabilitation programs in prison are not effective and do not work in curbing recidivism. These authors are of the view that the debilitating prison environment is not the ideal place for rehabilitation programs, but rather outside the confinement walls of the prison. In the context of Ghana, Hagan (2013) and Yin (2018) make the point that educational programs in prison is fraught with challenges such as lack of trained teachers and textbooks, as well as lack of motivation for both teachers and student-inmates. These problems make rehabilitation in prison almost impossible. Boufard et al. (2000) and Lewis (2009) argued that most of the studies that seem to have favored rehabilitation as effective lack rigor in its methodology.

There are institutional programs that aim at rehabilitating and reintegrating offenders into the society. As discussed above, many prisons across the world have in common programs such as vocational training, formal and non-formal education, and individual and group counselling. To Baumer, O'Donnell, and Hughes (2009), drug treatment, life skills, educational and vocational preparation are examples of multiple programs designed for inmates' rehabilitation to minimize recidivism. The reason attributed is that there is a correlation between unemployment and crime (Boufard, MacKenzie & Hickman, 2000). Hence, focusing on these vocational and educational programs are very critical in prisoner rehabilitation. To Thomas and Zaitzow (2006), many administrators viewed prison programs as essential components of incarceration, as it equips the prisoner with skills as well as helps the prisoner to deal with the problem of time. With these programs, inmates' inactivity less turns into resentment.

Religious activities form an essential part of prison programs. According to Fox (1982), religious activities help inmates to use their energies and talents in beneficial and meaningful ways. It has been argued by scholars that, for some inmates, prison programs present the alternative for them to involve in gang related activities (Thomas & Zaitzow, 2006). However, informal religious activities may provide opportunities for inmates' to make use of available resources. For example, the formation of prayer groups, singing groups, spiritual peer counselling, or individual faith based exploration, enable inmates to come together to use prison church materials.

Religious programs such as fasting and prayer, song ministration, bible studies, evangelism etc. are geared toward promoting or connecting the faith of an inmate to his/her deity. In the qualitative report by Ofcom (2005), these programs show personal faith in action, from a 'committed', subjective and involved point of view. They show how individuals or inmates faith affected their lives, and culture. In the same report, participants stated that religious programs should not just be about ritual and worship, but also about contemplation, meditation, and reflection.

According to Clear et al. (2000), *the emphasis in promoting the expansion of religion-based programs indeed lies in the claim that faith in a higher power prevents relapse into criminal activity better than secular changes* (p. 53). Reducing recidivism is one main reason why religious programs are promoted in prison. Apart from recidivism, Kerley, Mathews, and Blanchard (2005) also established that the propensity of inmates to argue and fight was directly and indirectly reduced by religiosity. Some of the reasons for inmates' being religious, according to Clear et al. (2000, p. 53) were attributed to their way of

“dealing with guilt” - some kind of internal coping mechanisms (Koenig, 1995), to “find a new of life” in *God* or supernatural being, “dealing with the loss, especially freedom” as they claim to get another kind of freedom or redemption from their found religion, as a measure of “safety”, to gain “material comforts”, to get “access to outsiders” through visits of Clergy, and to maintain “inmates relations” as religious practices encourage good relationship with peers and neighbors (Clear et al., 2000, p.54). This supports the assertion that religion is used by many inmates as a coping strategy. Nevertheless, the ultimate function of these religious programs is to convert the inmate from his criminal deeds to the practice of the teachings of his religion.

The deliberations above suggest that rehabilitation, and for that matter religious rehabilitation is critical to the development of inmates. If the essence of imprisonment is to rehabilitate convicts then the needed structures must be in place to teach inmates new values and norms, and practices (Crossman, 2017). New roles must be assigned to inmates to aid the resocialization process. The training of inmates in prison, either through formal education or religious guidance, is one of the ways to help them put aside their former self and adopt a new self that reflect the mainstream culture (Antwi, 2015; Hagan, 2013). Through religious training, inmates adopt ‘good’ virtues to replace their previously acquired criminal traits of defrauding by false pretense, stealing, robbery, rape, defilement etc. This is not the case for all inmates, as other inmates’ intention for embracing religion is not for rehabilitation and/ or redemption but for the material benefits associated with the practice of religion.

Maruna, Immarigeon and LeBel (2004, p. 5) define offender reintegration as *a systematic and evidence-based process by which actions are taken to work with the offender in custody and on release, so that communities are better protected from harm and reoffending is significantly reduced. It encompasses the totality of work with prisoners, their families, significant others and victims in partnership with statutory and voluntary organisations.* To other scholars, *social reintegration of offenders is the coming back of prisoners into the community to continue normal life* (Ajala & Oguntuase, 2011, p. 187). This new life must be supported by the family, friends, and faith communities. According to Quaker Council for European Affairs (QCEA) (2011), families, and by extension faith communities play a vital role in the reintegration of ex-felons. They do this by offering them the needed support and stability. This implies that, the benefits of positive support that ex-prisoners receive from close friends, relatives, and the faith community can make a difference in mitigating recidivism and promoting successful reintegration.

In respect of faith communities, according to Cnaan (2000), one can easily assume that there are faith communities in most neighborhoods with the necessary resources to accept ex-prisoners and help in their reintegration process. However, McRoberts (2002) shows the differences between many faith communities who visit inmates while serving their time in prison and the few programs directed toward helping ex-felons in the challenging transition of reintegration. According to Bazemore and Erbe (2003), the type of community offered by faith communities could be important in the re-entry process. This has largely been neglected. The greater involvement of faith communities in re-entry does not only provide the forums of informal social control but also provides offenders the opportunity to act on faith community groups in the re-entry process because faith communities’ engagement is reciprocal. By this, it appears that the capacity of faith communities to help ex-felons reintegration depends on the kind of supports the faith communities have to offer and the faith communities’ capacity to nurture ex-convicts in their paths towards successful reintegration (Shapland & Bottoms, 2011). The work of Armstrong (2014) shows that faith communities offered a favorable environs for ex-convicts to exhibit new behaviors both to themselves and others. However, Yin’s (2018) study of religion as an organizing principle in prison showed that, the attitudes of faith communities toward prisoners during their incarceration differed from

the behaviors showed to inmates after discharge. In that, many ex-convicts were rejected by the very religious CSOs that provided them with moral guidance whilst in prison. It was for this reason that Yin argued that, the involvement of faith communities in prison is to extend their congregation and to uplift their image in the general public.

Despite Yin's (2018) argument, it is important to note that, successful reintegration of offenders depends on securing reasonable employment. Lipsey (1995) revealed that, getting employment for ex-convicts is one of the single most effective means of reducing re-offending among ex-prisoners. Visser et al. (2005) and Berg and Huebner (2011) argued that, gaining good and legal employment ensures post-release success of offenders (see Duwe, 2010; Mackenzie, 2006; Sampson & Laub, 2003, 1993; Hagan, 1993; Uggen, 2000; Bushway & Reuter, 2002). Petersilia (2003) observes that if inmates gain employment after post-release, it plays a critical role in the reintegration process. Unemployment of ex-convicts had devastating consequences on their lives (Small, 2005). It is for this reason that Adams, Chen and Chapman (2016) are of the view that ex-convicts should have employment opportunities opened to them. Unfortunately, this is barely the case, as imprisonment makes people less likely to be employed (Brown, 2011; Schmitt & Warner, 2011). Yin (2018) adds that, prisoners hardly learn a trade or acquire employable skills whilst in prison. This is because most prisons do not provide the outlet for such training (Antwi, 2015; Hagan, 2013; Yin, 2018). The utmost 'meaningful' things, it appears to be engaged in by most inmates in Ghana are to eat, walk, and sleep for the greatest period of their incarceration. Majority of inmates are sentenced to prison with hard labor, yet there seem to be no laboring on-going. Explicitly, there is no rehabilitation taking place in most of the prisons in Africa for inmate skill development. Unlike many European countries and North America. As a result, most prisoners in many parts of Africa have developed institutionalized personality. Evidenced in these analyses, though not so obvious, many of the prisons in Africa are interested in the custody of the inmates but not their rehabilitation. Hence, finding employment after prison discharge appeared meaningless to ex-convicts.

Yin's (2018) study of religion in prison revealed that, even those inmates who practiced religion and were considered by warders and the clergy of religious CSOs to be faithful in prison showed contrary behaviors upon discharge. It was not surprising that religious CSOs rejected some ex-convicts who made attempts to join their congregation. Inmates who combined their imprisonment with religious experiences became compelling to their audience. These ex-convicts used this opportunity to defraud innocent citizens and some churches.

Yin further shares that, some ex-convicts were offered employment by friends and relatives but rejected it, perhaps due to their institutionalized personality. They preferred gallivanting their community, and networking with other ex-convicts – sharing their incarceration and post-incarceration experiences. Others have become street evangelists, overtly for the purpose of touching souls, but covertly for income. The purpose of the religious message may be right, but the intent of the ex-convict may be criminal.

CONCLUSION

As stated from the onset, this paper aims to examine the connection between religion, rehabilitation, and reintegration. Throughout, it has been shown that, religion is an integral part of many societies in the world. This is perhaps so because of what adherents say religion does for them. It is therefore not a shock that religion has permeated most prisons, especially in Africa.

From the discussions above, the pro-social tendencies of religion makes it highly desirable in prison institutions. Informally, prisoners engage in religious activities. Their engagement aims to help them shed away their criminal tendencies to imbibe new ways of life based on the precept of their faith. It is for this reason that prisons in Africa and in elsewhere have introduced religious programs to facilitate such purpose.

Whilst religion may be embraced by inmates, its functions for which it was unofficially instituted may not be achieved. Inmates subscribe to religion for different reasons. Some of which could be for coping with prison time, materialism etc. Most often, as the literature suggest, the reason (rehabilitation and redemption) for which an inmate is expected to be part of a religious group is not towards redemption as their religious teachings advocate. This was manifested upon discharge, as some ex-convicts capitalized on their religious knowledge to defraud citizens who may fall victim. It was also discovered that, the religious CSOs who participated in inmates' reformation process in prison refused to accept them to be part of their congregation upon discharge. Whilst some family members were willing to accept their ex-convict kin, others dread having something to do with them.

Employment opportunities have been suggested to aid reintegration by many scholars, however, it has also been shown that some ex-convicts willfully rejected the employment opportunities presented to them by friends and relatives. Not because they do not want to be engaged but because they lacked the requisite skill to aid them. Not to be blamed but the institution mandated to carry out the rehabilitation agenda. Ironically, others are seeking for jobs but are unlucky because of their stigmatizing tag as former convicts. Based on this, one can state that, the action and inaction of faith communities, family, and the prison (state bureaucracy) determine whether reintegration will be possible or not. Efforts are been made, yet thwarted by the very actors of the reintegration process.

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KEY TERMS AND DEFINITIONS

Conversion: The process of changing or causing a person to change from his/her criminal ways to adopt a new self, that is based on the precept of his/her faith.

Crime: An action or omission which constitutes an offence and is punishable by law.

Ex-Convicts: These are individuals who have been discharged by a prison and no more serving a sentence.

Inmates: These are individuals who are convicted by a competent court of jurisdiction and serving a prison term.

Pro-Social Behavior: Prosocial behavior is a type of voluntary behavior designed to help others.

Rehabilitation: The process of equipping inmates with skills so that they can implement after discharge.

Reintegration: The action or process of integrating an inmate back into society.

Religion: Beliefs, rituals, practices, and symbols (overt or covert) in and of a higher power considered by adherents and (or) a group of adherents (organization) as sacred and performs certain meaningful functions in their life and in the life of other believers.

Religious Civil Society Organizations: Society considered as a community of citizens linked by common interests and collective activity.

Subculture: A behavior at variance with the dominant prison culture.

Chapter 24

Criminological Treatment of Abusing Partners

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ABSTRACT

Criminological rehabilitative treatments of abusive partners have always been considered of key importance from a preventive point of view. Criminological research, and our experience as criminologists, has proved that even the most abusive partners—including uxoricides—after their convictions repeat the same violent relationship pattern. That said, the Chair of Criminology (University of Milan) set up the first action and research program in Italy offering treatment for perpetrators of domestic violence, called S.A.Vi.D. (Stop Alla Violenza Domestica – an Italian acronym meaning: Stopping Domestic Violence) in 2010. Information about all the subjects treated will also be described and discussed: age, legal status motives, offender behavior prior to treatment, whether and how behavior changed after treatment.

INTRODUCTION

Domestic violence, or Intimate Partner Violence (IPV), has been described by the World Health Organisation as *a very widespread phenomenon relating to all forms of psychological, physical and sexual abuse encompassing the various forms of coercive behavior exerted by any member of a more or less enlarged family unit for the purposes of emotional control and affecting women and underage children primarily* (C.I.S.M.A.I., 2000). Worldwide, according to the WHO, almost one third (30%) of women

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who have had relationships report having undergone some form of physical and/or sexual violence by a partner over the course of their lives. Globally, as many as 38% of murders of women are committed by their male partners. Violence can have a negative impact on women's physical, mental, sexual and reproductive health - and that of children. Epidemiological studies highlight that the phenomenon cuts across all social groups and is still very widespread worldwide in every context, whatever the cultural, economic or social status of those involved. More than half of all women killed are murdered within a couple relationship and almost all of these by current or former husbands or partners.

SOME ITALIAN DATA

In recent years murders of men have diminished while female murder victim numbers have remained stable overall (Istat, 2019). Murders rates are diminishing but women murder rates are diminishing less. According to Istat 2017 (Istat is the Italian National Institute of Statistics) figures 4.9% of women have experienced violence from a partner (1 million, 19,000), 3% from a current partner (496,000) and 5% (538,000) from a former partner. Separated and divorced women suffer higher levels of physical or sexual violence during their lives (51.4%) as do women with health problems or disabilities, at 36%. The most at risk are women aged 25 to 44 (35.9%).

Over recent years physical and sexual violence has gone down from 13.3% to 11.3%, as compared to previous years. Physical and sexual violence from current or former partners has gone down: physical violence from 5.1% to 4% and sexual violence from 2.8% to 2%. It has gone down more for younger women. Violence from current or former partners has, however, increased in seriousness with numbers of women being injured moving from 26.3% to 40.2%, very or quite serious violence from 64% to 76.7% and women fearing for their lives after violence from 18.8% to 34.5%.

The most recent data showing a slight reduction in violence may indicate that policies designed to prevent and combat the phenomenon may have achieved at least some success. Reti Antiviolenza – Anti-Violence Networks - involving Centri Antiviolenza – Anti-Violence Centers - (in 2017 49,152 women turned to anti-violence centers), institutions such as the local health authorities, social services, the police and violent partner treatment centers have been set up in recent years in a social climate more critical of violence thanks to the various laws of the last 18 years.

Until 2001 Italian law made no separate provision for domestic violence which was punishable under other legal categories.

THE LAW

With law no. 154 in 2001, certain ad hoc measures to protect victims were introduced. In the context of preventative measures judges can order those accused of violence out of the family home and ban them from other places frequented by victims (article 282-bis, penal code procedure). Similar measures can be taken by the civil courts on request by domestic violence victims via protection from family abuse law. In such cases judges can request the involvement of the social and health services and anti-violence centers.

With law no. 38 dating to 2009 (the stalking law), (art. 612-bis Italian Criminal Code) which added the crime of stalking to the Italian penal code, a ban on stalkers going to places frequented by victims was brought in. Such crimes involve repeat behavior capable of causing victims constant anxiety or fear

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or a well-founded fear for their own safety or that of those close to them. Punishments are more severe if the perpetrator is a person with whom the victim has had an emotional relationship.

In 2013 Italian parliament then ratified law no. 119 which came into force on 1st August 2014 in the wake of the Istanbul Convention (Council of Europe, 2011), the first internationally binding tool to define violence against women as a violation of human rights and a form of discrimination. This set out the various forms of violence against women which states were to include in their penal codes or judicial law and brought in important new safeguards:

1. **Aggravating circumstances** including ‘witnessed violence’ (violence committed in the presence of children).
2. **Victim protection laws:** Legal hearings involving victims in protected form, the obligation to inform victims of measures taken against the accused (withdrawal, termination or modification of measures), automatic prosecution in abuse cases, irrevocability of action against stalking in cases of serious threat and revocability in other cases only in court; bans on family mediation and couple therapy.
3. **Strengthening of the powers of the judicial police** involving mandatory arrest in the presence of flagrant bodily harm and injury in domestic violence cases, official reprimands by police stations for abuse and stalking, urgent removal from the family home by the judicial police for many violent crimes, in the case of flagrant violence and where the risk of repeat violence exists.
4. Issuing of residence permits for foreign victims of domestic violence.
5. **Extraordinary action plans against violence** including treatment programs for abusive partners.

In 2002 the Council of Europe invited member states to organize projects designed *to incentivise the perpetrators of violence to adopt violence free behaviours, encouraging them to take stock of their actions and take responsibility for them*. The aim was thus to offer perpetrators action plans not simply as an alternative to punishment but as a supplementary measure designed to prevent further violence. In Italy this took the form of the 2017-20 *Piano Strategico Nazionale sulla violenza maschile contro le donne* (National Strategic Plan on male violence against women) (which encompassed the activation of re-education for the perpetrators of domestic violence).

TREATMENT PROGRAMMES: S.A.Vi.D. (STOPPING DOMESTIC VIOLENCE)

Repeat offending is one of the highest of the various crime categories: it has been estimated that approximately eight out of ten men repeat their abuse, including against other women (Baldry, 2006). Judicial action alone, however important and indispensable, cannot combat the phenomenon alone while the *Centri d’ascolto* (counseling centers) treatment programs have been shown to be more effective than prison if followed through to the end, because they significantly reduce the risk of repeat offending (Creazzo & Bianchi, 2009). In a survey of 40 assessment studies on programs for violent men Gondolf (2004) found success rates ranging from 50 to 80%.

The earliest treatment programs date to the late 1970s and were prompted by the action of feminist movements in the United States, Canada, Australia and Great Britain. Over the years various operational developments and schools of thought have ensued and follow up analysis has confirmed the efficacy of such programs in reducing violent behavior, whatever the theoretical approach used. The majority

of criminological treatment programs for abusive partners are based on the idea that violence against women is part of a patriarchal and discriminatory culture in which differences in role and power really exist and must be taken account of in treatment (Merzagora Betsos, 2009), without losing sight of other individual factors.

Programs targeting abusers, according to guidelines by the RELIVE (2015) association, of which S.A.Vi.D. was one of the founding partners, must, however, take an approach which includes multiple analysis levels:

- **Socio-cultural factors** including the social and gender context, unequal power relationships between men and women in our society, widespread use of violence as a way of dealing with conflict in our culture, legal and social sanctions for domestic violence.
- **Relationship factors** including the type of gender related power dynamics within the couple, conflict resolution and communication methods, etc.
- **Cognitive factors** including beliefs and approaches to relationships and gender roles, expectations relating to relationships, female partners, children and the self (masculinity, identity).
- **Emotional factors** including anger, frustration, failure, shame, jealousy and fear management, etc. and the experiential components on which these beliefs are based - attachment behaviors, sense of identity, expectations, etc.
- **Behavioral factors** including replacing violent and gender-specific authoritarian behaviors with skills and abilities enabling people to establish relationships based on respect and equality, the ability to communicate and resolve conflicts and stress and anger management.

S.A.Vi.D., as we have seen, is a research and action on domestic violence project set up at Milan University's Criminology chair in the Forensic and Insurance Medicine Section of the Bio-Medicine for Health Department. It is a specialist criminological- clinical center working in education, training and action regarding the perpetrators of violence in line with the recommendations of the Council of Europe on preventing and combating violence against women and domestic violence (Council of Europe, 2011).

The working group is made up of criminologists, psychologists and psychotherapists.

S.A.Vi.D. was set up in 2010 on the basis of an agreement with UEPE - *Ufficio per l'Esecuzione Penale Esterna* (parole office). In 2012 a partnership agreement with *Provveditorato Regionale dell'Amministrazione Penitenziaria* (Regional Penitentiary Administration Service) was drawn up for those requesting alternatives to imprisonment. Since 2014, thanks to a partnership with *Azienda Sanitaria* (Health Unit) of Milan, it has also been working with abusive partners who have not been imprisoned and on occasions not even reported to the police and, from 2015, those referred by defense attorneys for probation applications. The approach used is the same for everyone but it is adjusted to each individual judicial category.

S.A.Vi.D. works with abusive partners - to date only men - in three fundamental spheres: cultural, clinical and criminological.

It works with anti-violence networks in accordance with European quality standards with the following aims:

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1. To offer a specialist service acting to treat violent partners committing crimes, supporting their reintegration into the local community and socially.
2. To identify good technical-operational practices responding in a suitable, specialist way to the domestic violence phenomenon in all its complexity.
3. To study and 'map' the phenomenon, paying special attention to analyzing criminogenesis and the related social, cultural and psychological crime dynamics.
4. To perform an assessment of the results of the research project for the purposes of organizing these into protocols for dissemination and replication.
5. To foster and develop a service which can act as a local benchmark on the domestic violence theme.
6. To train sector staff and raise awareness of the objectives of the project and the results achieved.

S.A.Vi.D. pays special attention to training and constant supervision of criminologists working in the treatment of abusive partners.

Criminological treatment both inside and outside prison cannot be improvised but requires specific skills. It is indispensable that those carrying out criminological interviews are not simply generic behavioral science experts but are trained in the legal and criminological fields. Clinical criminological interviews must respond to diagnostic (criminogenesis and crime-dynamics), prognosis (future behavior forecasts) and criminological treatment indication issues (Merzagora & Travaini, 2005).

As we have seen, and also affirmed in our document on minimum standards for domestic violence perpetrator treatment programs put forward at the Strasbourg Seminar of November 2004, those performing treatment in this field must be capable of implementing risk evaluations in addition to other skills. They must be well acquainted with risk and protection indicators for risk management itself. It is also important to underline the need for specific knowledge of the ethics and legal aspects relating to domestic violence law and victim protection, as well as professional confidentiality and the limitations in it.

Service providers must notify interested parties - who are not necessarily those in treatment - that where there are reasonable grounds, both in words and behavior, to believe that someone is at risk, they will be duty bound to notify the authorities as well as keeping other institutions involved and the victim informed of progress in the event of danger.

The authorities prefer the term "criminological treatment" to "therapy" or "cure" because the objective is not to cure perpetrators psychologically - although this may take place later - but to encourage these men to see their violence as an expression of a distorted view of women and couple relationships and an inability to recognize, contain and manage their emotions. The "therapeutic empathic listening alliance" is not an option here as this responds to an explicit need targeting individual wellbeing which is established in the psycho-therapeutic context. There is a specific institutional mandate with legal implications requiring a 'critical' attitude, not to the individual himself but to his criminal behavior.

Criminological clinical treatment work with the perpetrators and victims of domestic violence is designed primarily to raise awareness of violent behavior and those responsible for it, prompting ownership of one's actions (Merzagora Betsos, 2009). It is important to reiterate that criminological treatment should not be confused with a psychological or psychotherapeutic trajectory nor psychiatric work.

Mental illness requires psychotherapists, crime requires criminologists because it is not a cure (*ibidem*, 2009). Psychotherapists are not always willing to take on this type of patient or capable of dealing with violence and may fall into the denying or downplaying violence trap. In the absence of specific

violence training or constant attention to the repeat offending risk, psychotherapists may advance hypotheses implying justifying or projecting blame which may put victims at further risk, as an individual in treatment revealed:

I.P.: *“After a turbulent night she went to Accident and Emergency! I went out for a bit and then I returned home. I called my psychologist, I looked for something online on anger management. What I did makes me doubt... I blame the psychologist, too... for too long these aspects were left out of our sessions and... were not considered potentially dangerous...”*

O.: *“What do you want from us?”*

I.P.: *“I want to supplement what I’m doing with the psychologist with something else on anger...”*

WORKING METHODS IN THE S.A.Vi.D. CONTEXT

The treatment program involves a number of steps. Where the individual involved comes from an institution, staff can meet those referring the perpetrator in advance.

During the first meeting with the perpetrator of the crime the field of work is identified, the terms of treatment clarified, the role of the staff explained and a ‘contract’ drawn up setting out the commitments agreed to, including a privacy consent form and agreement to the interviews being recorded. Furthermore, full documentation on all individuals is examined and a personal ‘criminological file’ drawn up.

Subsequent meetings consist of:

- Criminological interviews relating to crimes committed.
- Individual treatment interviews (at least 8 - duration assessed case by case) with special attention to:
 - Culture of discrimination and gender inequality.
 - Early warning signs of the abuse cycle and attachment pathologies.
 - Perpetrators’ increased sense of responsibility, greater awareness and breakdown of the neutralization techniques adopted by the latter.
- Re-evaluation meeting on the progress made.
- Intermediate and final reports.
- Monthly staff supervision for staff lasting 2.5 hours.

Two staff members are directly involved in treatment, a man and a woman with specific criminology training, preferably one with a legal background and one with psychology training. Experience in the field has confirmed the effectiveness of this choice in the face of the ability of the legal expert to better clarify to the IP (Intimate Partner) the legal articles cited in his sentence and foster his understanding of the meaning of his sentence and the consequences of any repeat offending. Psychological staff members are better prepared as regards personal and family case history and in evaluating potential mental illness both current or prior, enquiring into the relationship dynamics between abuser and victim and attachment methods. The male-female pairing also allows for different perspectives which offer further guarantees of parity, prejudice breakdown and treatment balance.

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Criminological treatment does not in itself involve specific in-depth psycho-dynamics and interpretations although specific action based on staff's specific relevant experiences should not be ruled out. Constant supervision enables staff to realign treatment objectives and ensures that work on any beliefs, prejudices and projections is done.

S.A.Vi.D. has currently chosen to work with individual sessions. The motives behind this choice are the difficulties involved in making up groups of sufficient size (users begin their sessions at different and prolonged time frames) and also because an individual approach seemed preferable, above all at the outset. This is what one of our users commented, a man who had been referred to an Anti-violence Center by a Surveillance Court having been sentenced to 1 year and 2 months for domestic violence and threats.

I.P.: *"First I was at a center which did group sessions but it didn't suit me and I asked to change. My only obligation is to follow a program, here or there, so I come to you".*

O.: *"Why didn't it suit you?"*

I.P.: *"Too many people, too much noise, I couldn't get a word in or think... it isn't easy to talk about these things with too many people. Other people's stories aren't of interest to me. I need to talk..."*.

Those accepted for treatment do not show signs of mental illness or serious forms of dependence. In such cases they are first sent to centers and specialist services whose task is to treat these.

DATA ANALYSIS

Our considerations are based on a case study of 58 men, 64% of whom were Italian citizens with 27% from North-Africa, two South Americans, two from Eastern Europe and one Chinese citizen.

The best represented age group (64% of the case study) was 30 to 50 with very few younger than 30 (%) or over 60 (2). None was suffering from serious psychiatric illness: two reported having suffered from panic attacks in the past and one was in treatment at a specialist center for depression and generalized anxiety. 27 admitted to using alcohol or drugs.

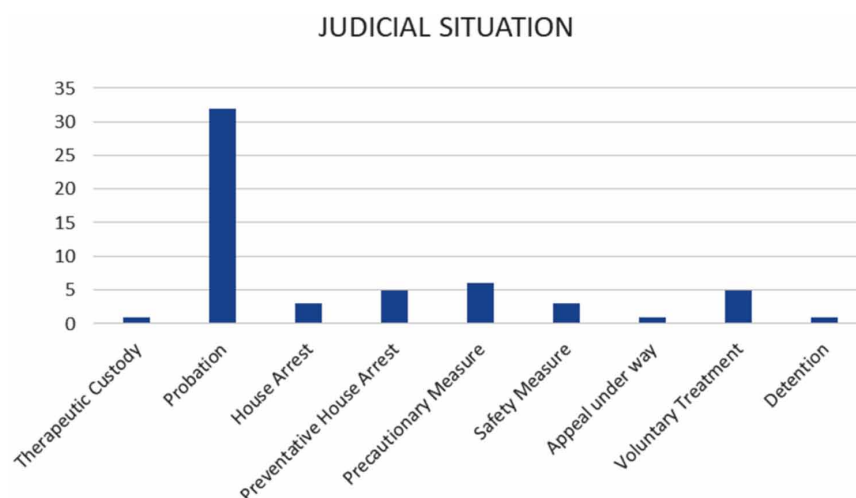
Over 60% had attended lower middle school, 3 were graduates and 14 had a high school diploma. 69% had a more or less stable job.

The majority of the men in the case study had been referred to S.A.Vi.D. by the UEPE for the reasons shown in figure 1 and, at the moment of treatment had been entrusted to the social services with the risk of losing their legal privileges in the event of repeat offending.

The early warning role of the health services thus seems to have functioned in prevention terms. In fact, five IPV cases had been referred by *consultori familiari* (family counselling centers) responsible for families (one of these later spoke of the peculiar nature of the situation and the application to S.A.Vi.D. made)

Staff were aware that, at least initially, the motives behind applications for treatment had little to do with a desire by abusers to change their violent behavior and control their tendency to "lose control when angry" and were more indirect and instrumental in nature. Sometimes they had been prompted to apply by lawyers or required to do so by judges and then, after a series of legal processes, had shown a willingness, or appeared to do so, to avoid more serious sentences.

Figure 1. Legal status at the moment of the request



33% of these individuals were already repeat offenders with the same woman or a new partner, such as Mr. B who has three pending legal accusations for abuse and having threatened his partner in front of her son, abuse and battery of his previous girlfriend and for having attempted to kill his subsequent partner.

S.A.Vi.D. practice is to invite partners to an interview to notify them of treatment, get their view of their abuse and reassure them that they will be contacted in the event of danger. Only two agreed to this interview and these were cases judged false positives. The others agreed to a telephone conversation but did not want further contact.

Around 50% of the subjects dealt with by the SAVID criminologists had previous police records. The most frequent IPV related crime was threats (49 out of 58), followed by sexual violence in four cases.

Thirteen owned firearms and two had made use of these during IPV episodes, nine had threatened partners with cold weapons and one with an object used for offensive purposes.

The criminological dynamics are in keeping with the majority of the international studies. In our sample, techniques of neutralization (Matza & Sykes, 2010) and justification have been used, such as:

- **Denial of their responsibility** (“I don’t remember, I hit her but it wasn’t me... it’s the stress to blame”).
- **Downplaying the damage done** (“yes but first I break objects, glasses, then just a few slaps...”).
- **Blaming the victim** (“She provokes me and goads me on, she doesn’t know her place, she attacks me unjustly, if I feel offended I snap”).
- **Denying the victim.**
- **Idealizing the traditional family** according to their own culture.
- **Not paying enough attention to him or the home.**

The majority of the men in the study referred to anger as something outside themselves, in the interviews, justifying by jealousy what is really a sense of ownership and abandonment anxiety. All showed an inability to bear frustration, delay the gratification of needs or recognize others as people with their own needs. The action of the staff thus targets stimulating a more personal and authentic motivation

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Figure 2. Justification for their actions by perpetrators and crime dynamics

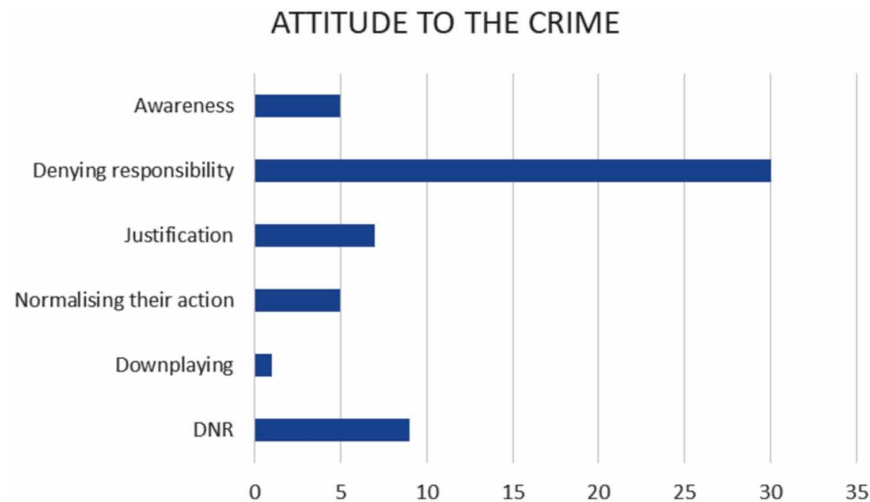
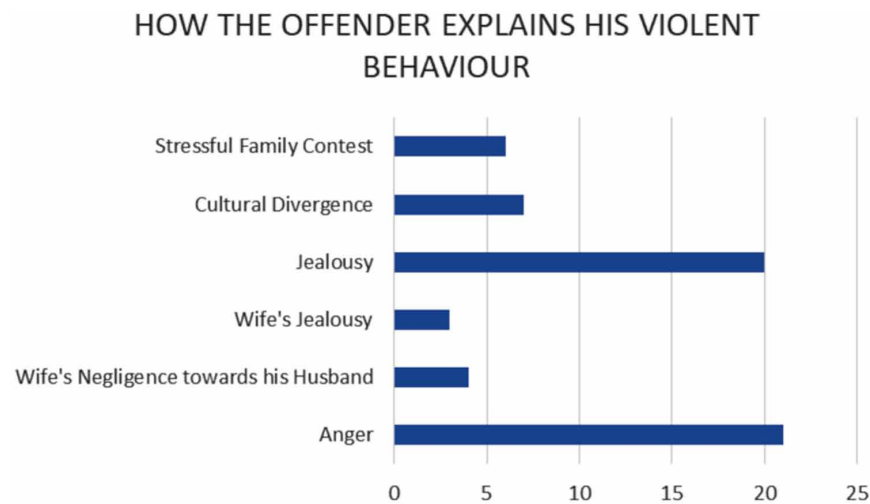


Figure 3. Reasons given



in addition to taking responsibility for their behavior in such a way as to build strong foundations for this trajectory, because without personal motivation for change it is difficult to embark on an effective progress trajectory. This is made more challenging by the fact that society still shores up prejudice via gender inequality and social support makes it difficult even for the non-violent to exclude a culture and atmosphere of discrimination and prejudice.

O.: *“So you’ve stopped drinking?”*

I.P.: *“Whilst I’m in Italy, yes, but at home in Romania I can’t”.*

O.: *“You can’t... at home?”*

I.P.: *“My peers tell me that a real man never stops drinking”.*

In any event, all agree that the domestic violence risk factors comprise misogyny and conservative ideas, the concept that it is important to 'be respected' at home, 'chauvinist' ideas, a belief that violence is a good way to resolve problems and men must exert control over their partners. A man being treated for violence gives the following as the motivation for his actions:

I.P.: *"Before I was feared and respected, I wanted them to understand who was in charge at home".*

O.: *"... and so?".*

I.P.: *"I gave her a number of slaps to choke what she was saying. At a certain point... when the words don't come... everything goes black... I get angry and lose control...".*

Sometimes violent partners referred by the courts to treatment programs or whose wives have decided to leave them are shocked by the accusations made them. This conversation between a staff member and an abusive partner is illuminating (*ibidem*, 2010):

O.: *"So she reported you to the police? You didn't expect that?"*

I.P.: *"No, she went to A&E and they reported me to the Carabinieri. Then before the judge she withdrew her accusations. It's always been like that between us. We've been together for twenty years and she'd never been to hospital... but they're not important things... she provoked me, she goaded me and I can't help it and that time I went for her with punches and a few kicks...".*

O.: *"But the trial is still under way?"*

I.P.: *"Yes, but we'll put everything right now. She says, get help and I get help. But for what? I'm not ill... but the lawyer also says that if I get treatment... it'll all be resolved and everything will go back to normal. But I don't get it... it wasn't like this once... my father put my mother in her place... men once got respected at home and nothing happened".*

O.: *"Now, though, you've been reported to the police and this means you've committed a crime".*

I.P.: *"A crime? What a big word, I'm not a delinquent, I work ten hours a day..."*

O.: *"What were you accused of?"*

I.P.: *"For beating up my wife in front of the children and threatening to kill her. But I know lots of men in my town who... you can't let women do anything they want in front of the children".*

This conversation is illustrative of one of the dominant themes of the first treatment sessions. It is a matter of male/female stereotypes (six of the sample still live with the partner they abuse) which are broken down in treatment of violent men and victim therapy.

As figure 4 shows, many of the people treated report living in families with a range of problems which include neglect, and in which abuse and violence are a usual communication channel. And, as is well known, children soak up what they see and hear and tend, for survival's sake, to identify with the aggressor rather than the victim. Whilst it is true that not all those who suffer violence are, in turn violent, Istat data shows that percentages of children witnessing episodes of violence against their mothers are increasing (from 60.3% in 2006 to 65.2% in 2014) and that 22% of men witnessing violence between their parents go on to be violent as do 35.9% of those who have suffered minor physical violence.

It is still difficult to get men and women to understand how risky it is for children to live in a violent atmosphere and for children to see this as a 'normal' family model, as this contributes to the cycle of violence in future generations.

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Figure 4. Family of origin

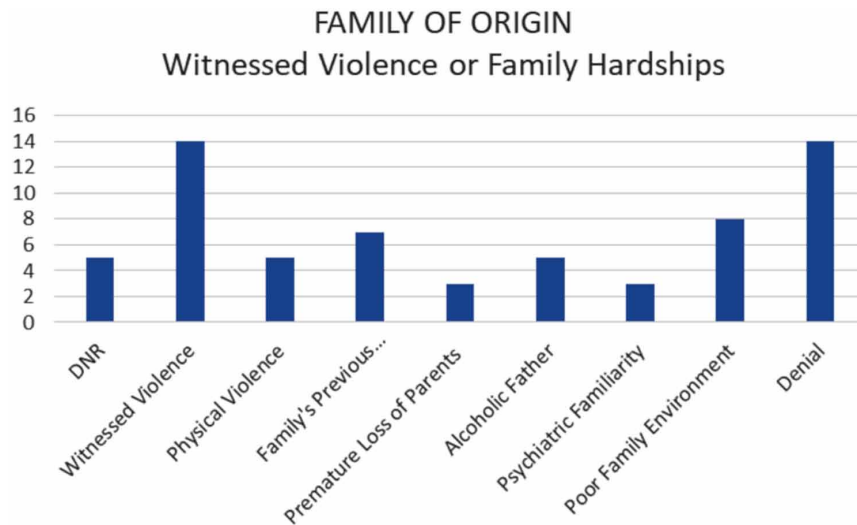
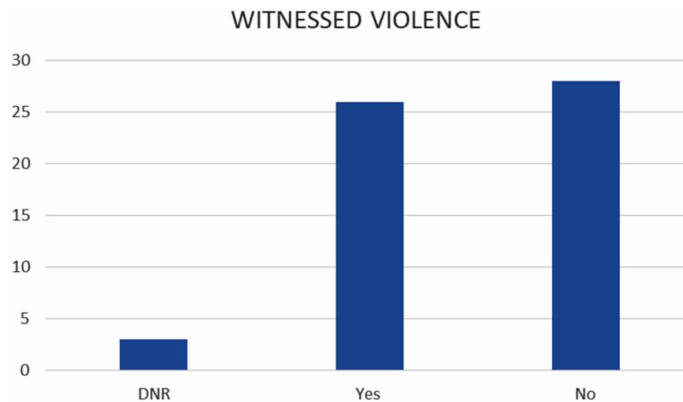


Figure 5. Witnessed violence. Violence in the presence of underage children



Nearly all the men in the sample are fathers (50 out of 58). 42% admit that children have witnessed or were present in the home during violence. Frequently during sessions it emerges that these men do not realize the effect their violent behavior has on their children's development. They deny that their children understand as they are "too small" or because they were "in their rooms" and struggle to understand their experiences and needs. So work is done on their own experiences as children.

Men's violence frequently begins during pregnancy. According to Istat, 11.5% of pregnant women experience violence with all the consequences which can be imagined on their and their children's health. The screening work done by the Lombard health authorities illustrates that IPV is one of the main risk factors (59%) in perinatal psychological illness.

The results of the treatment, and especially complete treatment cycles, show a change in attitude towards domestic violence crimes committed and the will of the men involved to continue treatment. At the outset of the treatment only 9% of the men involved showed some degree of awareness of the crime

Table 1. Results

Attitude towards the crime	Before treatment	After treatment
Non Admittance of Responsibility	53	11
Admittance of Responsibility	5	34 (59%)
Interruption of the Treatment	9	
Ongoing Treatment	4	

committed and the others showed a tendency to downplay and deny violence and to consider it normal. 91% felt in no way responsible for it while, at the end, 59% were capable of recognizing and admitting their responsibility.

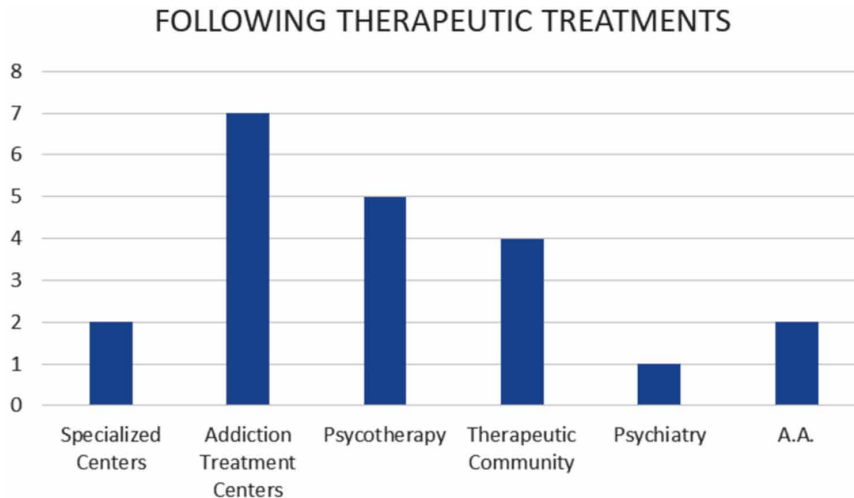
Admitting responsibility is the primary step in breaking the violence cycle and has prognosis value. Via admitting responsibility, supplemented by skill training treatment techniques, staff attempt to foster the development of alternative responses to violence in the event of unbearable emotions.

At the end of treatment cycles some ask to continue: In general these are isolated individuals who have finally found someone ready to listen to them and managed to talk about themselves and their feelings for the first time. Here they are encouraged to learn to ask for help in more suitable contexts. 35% of the sample felt the need to continue after their S.A.Vi.D. treatment and chose autonomously to continue treatment at other specialist centers to deal with their personal problems, including by undertaking individual and/or group therapy.

Ideally participation in these programs, like all action for ‘change’, should be voluntary but sometimes the motivation to change one’s beliefs is not to be taken for granted and thus an initial ‘obligation’ is welcome and can be used instrumentally if nothing starts to move during treatment.

One of the critical issues which can lead men to break off and not complete treatment (9 men) is a result of delays in treatment proposals, above all due to the slowness of the judicial system. As table 2 makes clear, long periods, of 10 to 15 years after the event, further demotivates. Some men refused

Figure 6. Subsequent specialist action



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Table 2. Treatment delays

Year crime committed	Year Treated
2011	2013
2010	2015
2008	2010
2004-2008	2015
1990-2007	2010
2006	2016
2006-07	2013

treatment because it was offered them shortly before the end of their sentences. Clearly others abandoned treatment for personal reasons, first of which was a refusal to question their actions and behavior and other irremovable beliefs.

There were two ‘anomalous’ cases or, so to speak, cases assessed as ‘false positives’ relating to two men dealing with their partners’ psychiatric illness and obsessive jealousy. Mr D is a case in point.

Mr D was accused of domestic violence by his wife who he still lives with. An analysis of Mr D’s story, confirmed by his adult daughter, and in a somewhat confused and unreliable way by his wife herself, is that the atmosphere in the home was unbearable as a result of the latter’s obsessive jealousy.

“Mr D”, wrote the criminologists responsible for treatment, “is not a typical domestic violence case and is not strictly a criminological issue. His is, in actual fact, a situation of family malaise deriving from relationship difficulties between husband and wife and between mother and children and linked to the wife’s lack of constancy in taking her psychiatric drugs. As the service is made up of staff with both criminology and psychology skills it was, however, decided to take him on, after discussions within the team. To date no abuse or episodes of domestic violence have occurred. Mr D’s adult daughter was heard and confirmed the family malaise and moments of powerful tension when her mother did not take the psychiatric drugs prescribed her by the health authorities. His referral to S.A.Vi.D. by a *consultorio familiare* (family counselling center) meant that preventative work was done by experts “when the facts occurred”. In this case it was decided to give the man concerned a listening space and the opportunity to speak in the context of an unliveable family situation in which he risked becoming violent but had chosen not to do so”.

DISCUSSION AND CONCLUSION

In recent years the transcultural aspect of criminology treatment, in addition to psycho-pathological assessments, has become increasingly important (Merzagora, Travaini, Pizzoli, & Caruso, 2016). In this sense, ever greater joint working between cultural mediators and criminologists is desirable. As far as our own experience is concerned, the greatest problems emerged with Chinese citizens, both linguistically and in terms of understanding the complexity of personal and intercultural relationships.

A further theme worthy of attention, though currently merely hypothetically, for S.A.Vi.D. is that of LGBT relationship violence, because it is well known that relationship violence is not simply a matter of heterosexual relationships. IPV, as a form of abuse of power, can take place in any relationship, whatever the gender or sexual orientation, and can lead to full-blown murder (Travaini, 2013).

English speaking literature underlines that violence is just as much a feature of LGBT relationships as of heterosexual ones. In Italy only one study has taken place, carried out by *Arcilesbica* (a lesbian association), on its presence in the lesbian community and its results seem in line with non-Italian studies (Arcilesbica, 2011). In Italy there is currently no provision for these homosexual women just as there are no anti-violence centers which take in homosexual men or transgender individuals.

In conclusion, the statistical limitations of our sample notwithstanding, certain common denominators have emerged: whatever the measurability and efficacy of the criminology treatment offered, S.A.Vi.D.'s treatment programs are in any event an opportunity to think about complex and intimate issues which are difficult to deal with alone. Furthermore, as it is not a psycho-therapeutic program, the risk of excessively destabilizing action in emotional and psychological terms is much lower.

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KEY TERMS AND DEFINITIONS

Criminodynamics: Analysis on “how” the crime has been committed, or when the criminal career started, focusing mainly on the psychological and motivational dynamics of the offender.

Criminogenesis: Assessment process that aims to identify one or more possible reasons that could explain why the offender committed a crime. The process focuses on different aspects, such as personal and psychological features, life experiences, social and environmental factors, and in general, everything that led him to commit a crime.

Criminological Interview: Professional meeting (between a criminologist and an offender) that aims to understand the criminogenesis, whenever possible, and to identify the best treatment strategies to adopt.

Criminological Prevention: One or more coordinated actions taken by a criminologist to prevent or reduce second offence behaviors. It's divided into primary, secondary and tertiary prevention.

Criminological Supervision: Activity in which an experienced criminologist helps and professionally supports a less expert colleague.

Criminological Treatment: Individual or group treatment intended for offenders, aiming to promote awareness about moral disengagement of their actions, award of all the damages caused and to identify new strategies to prevent or reduce repeat offence.

Repeat Offence: Commission of a new offence by someone already found guilty for the same crime or for a different one. This is a very significant index of criminal danger, since it gives the criminologist an idea about the offender's ability to understand the consequences of his/her criminal actions.

Chapter 25

Victimology of Predatory Crimes and Prevention Techniques: Thefts and Robberies in the Process of Building a Sense of Insecurity

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ABSTRACT

It is a well-known fact that the construction of insecurity is not directly proportional to either the crime rate nor to the violence of crime. It follows autonomous dynamics which are generally linked to psychological and communicative factors. The generation and production of fears are a result of a complex intermixing of exogenous and endogenous factors related to the individual perception of main social phenomena. The chapter, having examined the principal types of robbery and theft, will develop the crime-fear relationship with specific concern in regard to the issue of self-defence. The author will subsequently analyse the tools which favour the prevention of theft and crime, with particular attention to security policies, management of the urban space, types of informal social control, and primary-secondary victimization, paying particular attention to the construction process of collective fears and the new forms of segregation/social exclusion.

INTRODUCTION

The process of construction of insecurity is not directly proportional to either crime rates or the violence of crime but follows autonomous dynamics in which the psychological and communication aspects play a significant role. To generate and reproduce the fears in individuals are a complex intertwining of exogenous and endogenous factors, attributable both to direct experience (in particular due to the fact of having been the victim of a traumatic event), and to the perception of the main social phenomena, of the crisis situations (economic and employment crises, health and environmental emergencies, natural

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disasters, etc.), of the care of the territory (and, more specifically, of the urban territory). The study of the relationship between the individual and space (space of life and built space) thus represents a stimulating key to reading the contemporary processes of construction of insecurity and victimization. When the individual perceives himself as fragile, he naturally tends to strengthen his most intimate barriers, closing himself up within "his" space and thus reducing the interaction with everything outside, considered dangerous. This defense mechanism manifests itself both individually and collectively.

In the ancient and medieval ages the walls protected the city and the citizens from the dangers coming from the outside world, today the "new" walls have the function of safeguarding the modern and opulent western societies from the risks of the foreigner, who - coming from the outside - is unknown, incomprehensible and, therefore, dangerous. With the design of the gated community, we try to reproduce the same protective-segregate mode of the ancient city, through the experimentation of hyper-controlled territories.

To the inhabitants of the liquid-modern world - says Bauman (2006, p. 90) - accustomed to practicing the art of liquid-modern life, moving away from discomfort is usually a better choice than facing it. At the first sign of evil, they seek a way out that has a solid enough door to lock themselves in.

The balances that regulate a democratic society must not insist on the wall as such (which, as has been said, represents a natural defense mechanism), but rather on its permeability, putting aside the characteristics of fracture/exclusion and affirming those of control/defense. The approach to the wall - be it built or symbolic - allows, therefore, to interpret the main victimization processes: only through a balanced relationship between inside and outside, in fact, will it be possible to attenuate social tensions and significantly affect individual and collective fears, thus reducing the number of those secondary victims, the result of that widespread sense of insecurity that arises from the intolerance of the other and that characterizes contemporary society. The theme of the evanescence of walls and "liquid" boundaries is deeply linked to the issue of predatory crimes, which today are, especially in the urban centers, among the main causes of social unrest. In fact, breaking into the most intimate sphere of individuals to remove a good - regardless of the violence used by the offender - means breaking that link between outside and inside, which allows the individual to be kept in balance with respect to "other", contaminating the victim's living space and thus freeing all his frailties in the outside world. It is no coincidence that apartment thefts - as well as car theft, pick-pocketing and theft of computer data - are considered, today, among the crimes that most affect the sense of insecurity, sometimes even more than bank robberies or large thefts on commission (theft of jewels or works of art), often considered in the collective imagination as real "professional jobs." It is not unusual, in fact, that the deeds carried out by this type of criminal, perhaps also because of a cinematographic literature that has often idealized him, rather than being disapproved, are taken up and emphasized: the "bank robber" is often considered not so much as one who brings harm to ordinary people, but 'only' to credit institutions (or to large companies or, again, to particularly wealthy people), who do not have problems of an economic nature, who earn on the shoulders of workers and that they will be covered by the damage suffered through the insurance system (a vision derived from the so-called Robin Hood syndrome). The idea, instead, that a criminal can have access, to steal, inside a "any" house, generates in people a deep sense of anguish and a feeling of prolonged frustration, regardless of the fact that this, then, succeeds actually in his criminal intent. A simple housebreaking usually produces in individuals the same emotional reaction as someone who has been robbed; this derives from that fragility intrinsically linked to the violation of individual boundaries (physical and psychological).

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The chapter, after an examination of the main types of theft and robbery, will deepen the crime-fear relationship with particular attention to the issue of legitimate defense. Very often, in fact, the issue of “domestic” predatory crimes and, more specifically, of apartment thefts is linked to the particular current issue of greater flexibility in the sale of arms to citizens. People tend to reduce the danger to simple conceptual dichotomies - inside and outside, good and bad, friend and foe, indigenous and foreign, black and white - through a process of polarization that tends to reinforce extremes. In this case, too, it is a defense mechanism, which helps individuals to tackle problems by simplifying them, but which risks being misleading. Life, in fact, is not made of black and white, but there is some gray nuance. Thus, between outside and inside, we can find an impassable barrier of reinforced concrete or a porous and permeable membrane (Ellin, 2006), which decides what to pass and which has an important regulatory function in individual and collective relationships. In this regard, it is simplistic to think that “arming” citizens can generate security. The use of weapons and, in particular, of firearms, must be well regulated and controlled by the public security authorities in conjunction with adequate training and a mature awareness on the part of the holders. There is, in fact, a real risk that the number of secondary victims related to the increase in arms in the population may increase (in particular due to the inadequacy of using such tools, due both to inexperience and to the unpredictable emotional reactions of the holder), but also that this could feed the clandestine market, whose direct consequence could consist in a significant increase of violence in the perpetration of the crimes with an increase of lethality of the criminal actions (not only between the offenders but also between victims).

An organic approach to security should provide for an ever-greater integration of hard tools (firearms, walls), with soft tools, such as strengthening urban vitality, forms of participatory security, natural social control, which are essential elements in the construction of truly sustainable security. The prevention of theft and robbery, therefore, can and must be managed by public administrators through the application of “formal” tools (walls, weapons, police, etc.) and “informal” (neighborhood security, participatory policies, urban vitality, urban design, etc.). Obviously, some do not exclude others, indeed, the best path to take to counter the phenomenon in question, while at the same time affecting the sense of insecurity, is precisely what democratically integrates all these resources.

PREDATORY CRIMES, SPACE AND VICTIMIZATION PROCESSES

If for theft and robbery, there is a univocal and shared definition when referring to the so-called predatory crimes it is no longer so defined. Generally, there is a tendency to reduce this form of crime to property crimes (usually thefts and robberies) or, sometimes, crimes against the person. From an etymological point of view (Pianigiani, 1926), the term “prey” derives from the Latin “*præ*” (forward) and “*éda*” (food), therefore, literally, “food that lies before me”. From here, it seems evident that the predatory act is much more than a mere subtraction of a good since food is the essential element for the survival of every living being. The survival instinct, in fact, requires the subject, to reach the end, to apply to the action a good dose of strength and violence. In ethological studies, the predatory act corresponds to the capture of an animal belonging to a particular species by another belonging to a different species, with the aim of feeding and, therefore, of keeping alive. In international law and, more specifically, in war law, the *ius prædæ* is generally associated with violent forms of looting, which, during conflicts, far exceeded the mere acquisition of goods and which acted on the identity of peoples, through the submission and humiliation of individuals through the destruction and removal of assets, but also through murder and rape.

The debate, of an ethical-philosophical nature, even before it is legal and normative, which has gradually developed, had as its object the issue of lawfulness, in the course of war actions, the destruction of buildings and the plundering of goods which, although belonging to an enemy power or its citizens, they did not present any direct relationship with the purely military purposes of the belligerents (Tampieri 2006, p. 27).

In criminological studies, the predatory crime takes place through the removal of a good from a victim and is characterized by disproportionate use of violence (physical and psychological) against it. The criminologists belonging to the School of Genoa, Italy (Bandini, T., Gatti, U., Gualco, B., Malfatti, D., Marugo, MI, and Verde, A. 2004, pp. 523-525) referring to various studies - such as those of Mayhew (1985), Hough (1985), Maguire (1980) and Shapland, Wilmore and Duff (1985) - examine a series of typically “predatory” crimes (burglary, car theft, even serious sexual assaults, robberies), highlighting, from a victimological point of view, the relevance of secondary damage: from feelings of insecurity, fear and anger to real pathological conditions and strong social unease.

Taking up ethological studies, we can see how, in the manifestation of this phenomenon, criminals frequently act in a “pack” mode, surrounding the prey (or circumventing the victim) so as to render it harmless and be able to discharge aggression on her. Very often the intensity of violence and aggression showed by the offender is not proportional to the outcome of the raid: the significant injuries found on the victims (permanent damage to the body and mind, caused by mutilation, disfigurement, rape, etc.), often associated with meager gains, they show how such criminal actions are not aimed at the acquisition of a good for mere economic purposes, but represent a real strategy of affirmation by one individual (or a group of individuals) with respect to another, usually fed by a condition of frustration derived from an extremely marginal social and/or psychological position of the criminal, which, in turn, is frequently fed by substance abuse, especially those stimulating the central nervous system, such as amphetamines or cocaine, which are taken to lower inhibitory levels.

Predatory behaviors are generally multi-offensive, simultaneously involving the injury of multiple rights of the victim, who is often also beaten, kidnapped, killed in the course of the criminal action, and tend to induce in the population a particular sense of powerlessness, frustration, and restlessness. Predatory crime is generally characterized by three elements (Calzolari and Veratti, 2007, p. 28-30):

1. An offender who has the need - individually or in groups - to satisfy a deep need; it is a need that can be amplified by acting in a group (such as, for example, youth gangs) or conditioned by the use of substances and/or alcohol;
2. A modus operandi that shows disproportionate forms of violence, which go well beyond the function of mere neutralization of the victim;
3. An apparent aspect of randomness and unpredictability, which make the elaboration of a precise crime analysis difficult, since it is not easy to isolate a defined criterion of choice of target places and times.

The predatory crimes are, therefore, a mixture of crimes against property and against the person, in which the offender generally transcends any “criminal” rule of common sense, freeing himself, during his actions, from that deep inner anger that characterizes his social being. By their nature, then, these crimes tend to be oriented towards weak and lonely victims, generally, they are very young, women or elderly people, but also families, small groups and, in general, all those living in urban areas considered “at risk”.

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The victim, in fact, has a profound relationship with space, understood both as an “open” space (the living space), and as a “closed” space (the inhabited space). The concept of living, which clearly goes beyond the mere meaning of “occupying a house”, brings together the most intimate and personal elements of the human being. Precisely for this reason, one of the most common and important defense mechanisms put in place by individuals is to limit the living space - so as to safeguard and protect their intimacy and identity - through the construction of symbolic walls (which often also become real), whose thickness is proportional to the degree of fragility perceived by them. More, in fact, the human being perceives the need for protection (this can happen due to endogenous and/or exogenous elements), the more it tends to invest in the protection of its most intimate and private sphere, strengthening the wall that surrounds it both from a psychological point of view, that from a physical point of view. Said natural defense mechanism is generally implemented by those who live in difficult urban contexts, in which traditional security policies seem to have failed and in which the most common natural security elements fail to emerge due to poor social cohesion.

The extraordinary development of the media has reduced, if not cancelled, the traditional spatial and temporal dimensions, significantly affecting the shape and consistency of urban walls. The contemporary wall - be it real or symbolic - is characterized, compared to the past, to be fluid, changeable and, at the same time, extraordinarily resistant. The modern forms of protection (the new walls), which are strongly imposing themselves in the urban fabric of the great metropolises (fortified and isolated neighborhoods, instruments of physical defense of private properties, video surveillance networks, cities in the city, etc.), must be considered not so much for their physicality and, therefore, for their more properly protective function, but for their influence on a social level, which, as has been said, can contribute to the production of increasingly closed, individualized and fearful societies. Although the wall of the post-modern city, by mixing indifference, uncertainty, and fear in its cement, proves to be more and more exclusive, we cannot, however, neglect the fact that it still represents one of the most important defense mechanisms; precisely for this reason, it can be useful to extrapolate and enhance its control and social defense capabilities in an apparently wider context. In a sense, the wall could also be seen as the cement of society (Elster 1989) that takes shape, that is the material that holds together and reinforces the meshes of the urban (and human) fabric, preventing the disorder from spreading and social war. For this reason it is increasingly urgent to carry out a profound reflection on the role of the wall in society, working on its typical characteristics (porosity and fluidity), not so much to “demolish” it - since it is, even on a psychological level, an indisputable instrument of protection of the individual - but, rather, to enhance and exploit its functions of protection and social regulation.

Contemporary society is perhaps the safest that has ever existed, but - despite this - the sense of insecurity seems to assert itself in an increasingly decisive manner. Numerous studies show that the decrease or increase in crime rates (and, therefore, in a contingent danger) does not affect the trend of the sense of insecurity. The process that generates and regulates the collective fear, as already mentioned, is linked to a series of factors, which ignore a real, concrete and imminent danger, as in the case of environmental risks or economic crises, of the bad information (role of the media) or of the instrumentalization of determined events opportunely realized for obtaining consent (role of the politics). Thus, all this produces a form of fear which has lost its traditional boundaries, and which therefore no longer has a clear and well-defined dimension.

Returning to the strict criminological issue, it is possible to state that crimes are “predators” when they present the following elements:

1. The presence of a particular type of offender; generally it is a someone with a narcissistic personality, which manifests social pathologies derived from exclusion (social and/or psychological), often associated with problems of a clinical nature (forms of dependence, but also real mental disorders), which applies to his actions criminals, uncritically, with disproportionate doses of aggression and violence;
2. The presence of a socially, psychologically and physically fragile victim, who seeks protection by hiding behind symbolic walls (which often take shape and become real), built to delimit his “living” space or the place where he keeps his most intimate possessions and private individuals;
3. A space (living space and built space) in which the administrators are distant from the real problems of the citizens and where, in turn, the citizens have neither do not have the tools to contribute significantly to the natural control of “their” territory, nor antibodies to counteract that isolation and the exclusion to which they are subjected.

The “inhabited” space is, for the individual, the most sacred place of existence and extends to all here places that have a meaning in his life story: in addition to the house, therefore, the workspace (a business, an office, a study, etc.), but also a car, a piece of furniture (a wardrobe, a chest of drawers), a bag or a personal computer. The first and most important ‘living’ space of life is, of course, the person himself, both from a psychological point of view (life, which contains experiences, affections and memories), and from a physical point of view (everything that the individual wears and that he/she carries, such as clothes, bags, etc.).

In procedural criminal law, the “inhabited” space corresponds, in a certain sense, to that space that the judicial police can search in the context of an investigation of a particular crime, or those places, considered in the availability of the suspect or of the investigated, in which, more likely, useful elements could be hidden for the identification of a culprit or, in any case, necessary for the continuation of the investigation. The mere fact of forcibly penetrating these spaces is perceived by the person as a profound violation of his intimacy with significant psychological consequences. Also, for this reason, these police activities are rigidly anchored to national penal laws, which are subject, at least in democratic countries, to constitutional principles. The Constitution of the Italian Republic, for example, in art. 13, on the inviolability of personal freedom, states that *no form of detention, inspection or personal search is admitted, nor any other restriction of personal freedom, except by reason of the judicial authority and only in cases and manner required by law.*

The feeling of discomfort and frustration that as a result of a violation of the “inhabited” space, regardless of the aggressive charge used in the criminal act and the economic damage suffered by the victim, significantly affects the sense of insecurity, the individual and collective construction of fear and, more generally, on the processes of urban victimization. Precisely for this reason, predatory crimes are those that mostly involve decision-makers and public administrators, who tend not to underestimate them and put them at the centre of their political agendas, both as regards the elaboration and application of security policies (both locally and centrally) and in terms of public communication strategies.

Even considering the differences between the criminal laws in the various countries, it is, however, possible to include in the set of predatory crimes (in relation to which it is reiterated that a universally shared definition does not exist) robbery, extortion and some types of aggravated theft, such as theft in

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the apartment, pickpocketing and theft of computer data. Furthermore, it is believed that sexual violence can also fall into this category of crime, which, although it does not refer to crimes against property, combines extremely high aggressiveness, a clear predatory will be aimed at the submission of the victim and a clear psychological-emotional detachment between the offender and the same. Since the attribution of responsibility for sexual violence is sometimes conditioned by the culture where it is perpetrated, it is appropriate to specify that a crime cannot be defined only by a national law, which could also not define such a certain behavior, but rather by law universal that defends the physical integrity and dignity of every living being.

Crime - says sociologist Vidoni Guidoni (2004, p. 15), in terms of its relativistic dimension - is not a static and universal category that is based on some higher moral order and valid in any age and historical context, but a category that changes according to the changes that intervene in the relations between criminal law and society. It can indeed be argued that certain actions fall within the type of behaviors that are criminally relevant depending on the situation, the status of the offender and the victim, the culture or the historical periods .

In addition to the aforementioned crimes, it is worth mentioning the fraud and the housebreaking, which, although not exactly predatory crimes (even if they may represent the incipit of a predatory attitude), however develop in the community that form of unease and frustration derived from the violation of borders and caused by the “fraudulent” sharing of a place or an experience, breaking that balance at the base of the relationship of trust between people.

To conclude the discussion on predatory crimes, it is considered appropriate, finally, to point out that sometimes the predatory criminality is made to correspond to the so-called “widespread crime”, a term widely used precisely in the discussion on urban security, since both categories of crimes produce a sensible social alarm, mainly in urban contexts, and a consequent interest on the part of those who govern. Widespread crime, compared to predatory crime, refers to a greater typology of crimes, which are not necessarily associated with that disproportionate manifestation of violence and aggression, which, instead, characterizes predatory crimes; these are basically “street” crimes, such as, for example, the small drug dealing, the brawl, the drunkenness, personal injuries, damage or obscene acts. The Rome Observatory on Security dedicated to businesses of the Chamber of Commerce defines widespread crime that set of crimes that, even if they do not cause clamor and do not cause sudden alarm, continuously keep citizens in a state of restlessness and insecurity. Accordingly, the widespread crime is a daily persistence, a spatial extension, a high frequency of the perpetration of crimes, such as to give rise to and thus entail a state of constant tension and social concern.

Predatory crime is not the most violent form of social deviance, nor is it the one that creates greater damage to the community. Think of organized crime, environmental crimes or white-collar crimes. Certainly it represents, in modern Western societies, one of the conditions of greatest concern, as well as important forms of primary victimization (the subjects directly drawn from such crimes) and secondary (individuals, especially those with greater fragility, conditioned by the sense of insecurity produced by “predators”). The situations that are generated, however, can be easily exploited, in particular when they are forcibly associated with other significant phenomena of social change (such as economic and employment crises, ecological and health emergencies, immigration, etc.), following which it is easy to tend to generalization of problems and research “of the person responsible” (usually precisely identified in the most fragile and marginalized social categories) on which any responsibility falls. All this, which could stimulate the interest of unscrupulous administrators in the search for mere consensus, risks

triggering dangerous and useless “war between the poor”, exacerbating forms of intolerance and social divisions in communities and between communities.

According to Dalla Chiesa (2007, pp.9-10), the reasons that put the “security” issue at the center of the citizen’s apprehensions are three, intertwined: a tendential aging of the population on a global level with an increase in fragile citizens who they perceive themselves more and more exposed to acts of violence, an ever smaller *capacity for collective self-defense* due to a loss of strength of the *social networks* and of the extended family and, finally, the phenomenon of immigration, which *upset the mental schemes through which life contexts are interpreted and understood*. Clearly, the apprehensions related to the theme of immigration must be observed from the point of view of social change and the impact that this phenomenon has on local communities, which, also due to general aging, tend to be more fragile, more “conservatives” and, therefore, more closed on themselves. An elderly society feels fragile and, therefore, tends to strengthen its protective “walls”, showing itself more hostile to change and more intimidated towards the unknown.

The security policies that, in sociological and political studies, have always had a certain margin of autonomy with respect to social policies, in reality, should always be analyzed and developed as such.

The process of defining, constructing and articulating the theme - states Bricocoli (2005, p. 179) - leads to considering urban security as a jumble of problems that can hardly be referred solely to full-blown criminal activities and to questions of order public, but, while progressively recognizing that there are many problems that contribute to producing urban insecurity, this awareness and spirit seem to be contradicted, if not invalidated, by policies, interventions and actions that the local government promotes and carries out almost exclusively involving the structure of local police and external subjects in interventions oriented to a strongly reductive view of the nature of the problems.

Only a greater integration between the different aspects of welfare (and the issue of public security is one of these), in fact, will be able to provide the communities with an antidote against exclusion, conflict and social conflict, guaranteeing real and truly sustainable security.

VICTIM, LEGITIMATE DEFENCE AND DIFFUSION OF FIREARMS

One of the most interesting aspects, from a victimological and criminological point of view, of the discourse on predatory crimes, is that which relates these to the increase in urban insecurity. This is the origin of the discussion on the topic of legitimate defense and, in particular, on the tools that could be adopted by administrators to counter this threat.

The traditional paradigm underlying public security provides a balance between preventive and repressive actions. Ferri (1928, pp. 5-7), already in the 1920s, dealing with criminal justice, highlighted the distinction between preventive defense and repressive defense, where the former - typical of police activity - presupposes conduct anti-social (and, therefore, dangerous), while the second - typical of the judicial authority - is consequent to the execution of a criminal offense. Sutherland (1996, p. 549), then, assigns to the police the task of maintaining law and order and enforcing the penal code, distinguishing situations where the “preventive” function of order protection intertwines with the more “repressive”, attributable to compliance with the penal code. Loubet del Bayle (2008, p. 25), an author particularly attentive to the issue of the complexity of police functions, before addressing the broader discourse of social relations, considers it useful to recall the *Grande Encyclopédie* of 1910, according to which police

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power, *by repressing and preventing* crimes against persons and property, it ensures obedience to the representatives of the State and the application of the provisions promulgated by the leaders.

Finally, Radzinowicz and King (1981, pp. 173-178) ask whether the main task of the police is to arrest the worst criminals, to control serious disorders (repressive function) or to offer a daily service to the public for advice, reconcile and maintain peace (preventive function). It is interesting to note that the same authors, going into more detail, seem to show concern about the imbalance between the two functions, stating that most modern policemen believe that the most important part of their work is the capture of criminals (the investigative departments and the crime teams are in fact considered the elite of the police corps) and hypothesizing the presence of a tenuous line of demarcation that separates *the prevention of the real crime and the protection of the institutions from subversions with the use of force* from the *resorting to force to stifle requests for changes or illegitimate protests*. In this regard, it is considered appropriate to underline the relevance of these considerations: an organic policy aimed at generating a security that is truly sustainable cannot ignore the valorization of those police departments that carry out prevention activities in a stable manner (community police and proximity, patrols, management of territorial public security centers, analysts, etc.). It is necessary, today, where it has not yet been done, to elaborate a serious system of evaluation of the personnel that makes “prevention” in relation to the achievement of the specific objectives. The results of public policies, which too often are reduced to a mere reading of statistics through an uncritical reading of “numerical data” (a sort of “security by weight”), tend to overshadow those operators, whose objective it should be the achievement of absolute zero (perfect prevention, in fact, should lead to a total reduction in criminal events). Clearly all this, in police organizations, has a considerable weight, significantly affecting the career of police officers, with repercussions on the quality of work and the service offered.

For this reason, it is believed that despite the countless components that interact and interfere in the general model of “public security”, even today, the dichotomy prevention-repression constitutes the basic system and the point of reference for modern public policies for the security, provided that the administrators strive to maintain balance.

The same police activity shows this ambivalence: the departments that operate with ‘ostensive’ modalities (foot or motorized patrols), have a dissuasive function and, therefore, of prevention, while the departments that carry out investigative and criminal activities have a function mainly “repressive”, taking action following the commission of the crime. This is obviously a didactic subdivision: an efficient judicial police activity, for example, generating greater security in the community, also has a preventive function. Public policies also follow, in a certain sense, this model, with security policies having a predominantly preventive function (they are intended to discourage the commission of a crime or incivility), while criminal policies are more oriented to what happens following the commission of a crime, through the management of the penitentiary system and the surveillance activity against those who have been convicted of committing a crime.

As for the preventive function, the one most preferable to the theme of this chapter, it is possible to talk about an activity that moves on a double track: that of safety (physical security) and security (human security). Much work has been done on these aspects in recent years, especially in the United States and Latin America. From the security point of view, the planning that tends to reinforce the so-called “natural defenses” of urban communities has been particularly rich in the last 20-30 years, both from a social point of view (with neighborhood networks, police of proximity and municipal guards, applications that provide indications to the inhabitants of a particular neighborhood, etc.), that from a technical-urbanistic point of view (road networks, public transport, lighting, etc.).

These tools, which tend to solicit informal security through a direct involvement of the community, despite having sometimes stimulated the interest of citizens, have not always met their expectations: sometimes they were considered as mere palliatives, other times they were not perceived as significant and other times they were considered real failures by the public service. This situation occurred mainly in those countries (most of them in Europe) where public welfare policies are generally quite efficient and where the citizens continue to express expectations towards the State, showing little confidence in the interventions “since low” (the community) at least on issues involving security and the fight against crime. The same “participatory” urban security projects carried out in other countries, such as in Latin America or the United States, have produced more interesting results, although they have shown strong contrasts due to the sometimes too “elitist” community planning, associated with a significant increase in the phenomenon of urban segregation (from residential complexes of high commercial value, such as gated communities, to poor self-built informal agglomerations, such as, for example, the Brazilian favelas). The risk, in fact, is that of an ever greater urban fragmentation related to forms of census-type housing polarization: a richer population, which can afford to invest more resources in prevention tools, enhances its territory and has greater bargaining power against a local government deemed inefficient. so that, sometimes, public administrators, to compensate to endemic lack, rather than redistribute the resources coming from the communities, they prefer to privilege a territory (the one that “pays” more, or the more affluent one) rather than another, with the risk of creating unequal treatment among citizens.

The security policies of proximity, on the one hand, have actually led to a new and widespread awareness of the role of the community and of the citizen in the prevention of criminal conduct, on the other hand, however, have caused, in some specific situations, new fractures social not only of an economic nature, but also urban planning and the protection of collective security. Not surprisingly, the interesting urban, anthropological and sociological studies, developed by Jane Jacobs (1961) and other authors such as Oscar Newman, C. Ray Jeffery and Alice Coleman, aimed at reinforcing the vitality of the territory and natural security through urban design, have often been surpassed by the expansion of a “protective-segregation” type of planning, which on the one hand seems able to provide a significant “medieval” defense (modern walls that defend cities against external threats), but on the other hand it shows its limits with regards to the more “human” aspects of security, affected precisely by the appearance of new fractures, new border spaces in the urban fabric and new forms of exclusion.

Alessandro Petti, referring precisely to the medieval models of protection, believes that this phenomenon of encastellation is spreading all over the world. Individuals or private bodies are allowed to act in the name of public interest. The boards, that govern the gated communities have the authority to impose a particular regime of ownership and use of the spaces strengthened by private use of the police (Petti, 2007, p. 26).

As regards, instead, the more “physical” aspects of safety, it must be said that thanks also to the new technologies, the industry produces increasingly more refined defense instruments: from video surveillance systems to increasingly sophisticated alarms connected to wireless networks and increasingly advanced locks. More traditional instruments are used, especially in Africa and Latin America, as electrified barbed wire and, much more trivially, shards of glass cemented to the upper points of the walls surrounding the houses. If the urban planning aspects and the built spaces can have a direct impact on the quality of life (understood as social living), these instruments have, instead, decidedly more aseptic characteristics and a mostly deterrent-preventive function. The same video surveillance systems, which mainly serve to provide a contribution following the occurrence of a criminal event, are actually purchased and installed more for their dissuasive capacity.

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This is evident both from the market of false video cameras in strong ascent, and from the lack of care in the installation of the same, due to which sometimes it is not possible to trace the elements necessary to identify the perpetrator of a crime. In general, these tools have the function of acting before the crime is committed.

Social insecurity, therefore, is nothing but the synthesis of a multiplicity of problems of a social, cultural and economic nature, which have a privileged connection with the urban space. The State has the task of intervening in critical situations, through its social defense agencies, with adequate criminal policies to repress the most serious actions (those subject to criminal sanctions) and security policies to prevent - by means of conflict reduction interventions - deviant and antisocial behavior. Between emergencies and trends, in the last twenty to thirty years, the so-called “security factory” (Battistelli 2008) has developed, namely that (productive) system which, through the synergies of a significant number of public and private actors, has introduced on the market a series of instruments able - at least in appearance - to offer citizens total protection from urban dangers and from the fears connected to them. The economic metaphor used by Battistelli requires reflection. The factory, as a typical element of the capitalist economic system, aims to produce, to sell and, therefore, to earn (money, but also consent). If the market proves to be saturated, the “factory”, in order to avoid a possible failure, should be able to put in place a series of moves capable of convincing the consumer that, despite everything, he still needs his product. This commercial strategy, which is absolutely legitimate in a normal production context, can become dangerous when security is discussed. In fact, this would mean generating a condition of constant and permanent uncertainty. The product “for safety” is today so closed between an industrial-productive logic and a commercial logic, that very often the process of construction of the request is carried out at the same time as the product itself is created, so as to guarantee the production and sale as few negative flexures as possible over time. The security factory, therefore, moves in this direction: it produces the tools to “defend” against the threat and, at the same time, produces insecurity, so that the tools can continue to be produced and sold. It is important to underline how necessary it is to approach the “product” (i.e. the instruments) always in an aseptic and neutral manner. In fact, it is not the tools that make the system work and orientate they are only the means to reach the end.

Still in relation to the tools “for security”, it is worth reflecting on the question of expert knowledge, which, sometimes, can divert scientific research and/or decision-makers of the real causes of the problem. This is a very important issue, considering that among the main products of the “safety factory”, there are also academic structures and training institutions, which in recent years have exponentially increased their educational offer in the areas of criminological, forensic and security sciences, thus following - in a productive/commercial logic - the trend of the moment. The flowering of courses of every order and degree has had, among other things, the effect of channeling the attention of a part of the community towards certain themes and, at the same time, of contributing to the spectacularizing of violent and criminal phenomena. The media have succeeded in obtaining an ever-greater availability of “experts”, thanks to which it has been possible to apply the official chrism to that condition of danger and constant threat to which citizens would appear subject. Training market, lack of interest in scientific research and showcases of experts are the ingredients that have contributed significantly to a distortion in the perception of social reality on these issues.

The so-called “repressive aspects” of social defense tend, on the other hand, to become stronger when prevention tools seem not to work; that is, when citizens feel themselves more exposed to crime in general and predatory crime in particular. As has already been said, this fear is not necessarily related to the actual increase in crime rates (which in any case can affect), but it can also be traced back to a “direct”

traumatic experience, to a lower level of social cohesion in the community of reference, to crises of other nature (economic crisis, unemployment, natural catastrophes, etc.) or to the perception of an ever greater distance between the citizen and the institutions. Also, the communicative aspects can have a significant impact on the community; the sense of security, in fact, can be induced, through public policies and media actions oriented towards certain goals. In all this, of course, politics and administrators have a responsibility to provide effective tools for reducing social conflict, undertaking shared paths of cohesion and integration that are indispensable for building “real” security. As in everything, therefore, it is reasonable to think of integrated policies, in which there is a right balance between human aspects and physical security: prevention and repression should be placed at the extremes of a continuum and security policies should be in a position of balance.

With regards to the relationship between victim and predatory crimes, it is important to investigate the legislation that regulates the purchase and use of firearms, considered by some a valid instrument of personal defense. This is a topical issue, in particular in Italy and in Brazil (that differ greatly in terms of crime rates) where both governments have recently discussed the issue of legitimate defense and the granting of authorizations to purchase and carry firearms. Needless to say, the issue has generated quite a few discussions, both politically and among citizens. The starting point is the confrontation between offender and victim more balanced, offering an additional defensive tool to protect the citizen. In Italy the discussion has involved the theme of inhabited space, within which greater guarantees of protection for the citizen would be provided in the event of a firefight with an attacker. From a purely political point of view, it was very clever to intervene on that space - which has already been widely discussed previously - which represents the most intimate place of the individual or the reference point for the safety of citizens. Regardless of the judgments on the issue of firearms, it is worth repeating the uselessness of “closing oneself” inside the house (concretely and metaphorically) with the aim of uncritically protecting oneself from all that is outside: it is necessary not to abandon the road that leads to shared and shared security.

In relation to the various tools useful for guaranteeing greater community safety, doubts are raised about the effectiveness of firearms or, better, about legislation that allows them to be more widely spread in the territory. This is not because of an ideological issue, but for at least three concrete reasons. First, there is the problem of the ability to use by legitimate holders. In fact, those who hold a weapon should carry out constant training which should be followed by a periodic evaluation, which can attest to the practical and psychological suitability of that subject at that specific moment. A capacity, even if “certified”, would not allow knowing what the reaction to an altered emotional state could be when the person finds himself using the weapon. Secondly, there is the question of accidents (domestic accidents or errors in the evaluation of the use of the weapon). Firearms should be stored in suitable places (armored cabinets) without ammunition, but such a situation would not allow the use of this instrument for defensive purposes. For this reason, it is likely to think that those who intend to acquire weapons for reasons of personal safety, tend to have them ready to be used. Clearly, a weapon that is not in a “safe” condition (stored in an unsuitable place and equipped with ammunition) represents a constant danger, especially in homes where more people live and, in particular, children. It is also not unlikely that a weapon ready to fire can be used to react to a presumed threat that, later, may not turn out to be such (the classic “false alarm”). Finally, greater circulation of weapons in the homes of the “civil” population would affect the number of weapons traded on the black market, as these are the result of theft and receiving items. It is clear that a greater spread of firearms on the territory is inevitably associated with a greater number of harmful (often lethal) events, which may concern the offender, but also the victim of the crime. Consid-

ered, therefore, that a greater ease of purchase of firearms could not be separated from a more articulated control system on the holders by the administrative authority (with consequent costs borne by the State) and that there is a well-founded risk that this can increase in predatory crimes - precisely because of the characteristics of this particular type of crime - the level of violence and damage, it is considered more profitable to think about an investment oriented to more effective (and less invasive) physical defense tools and, possibly, to the so-called non-lethal weapons (electric and acoustic weapons, pepper spray), without abandoning, however, the community security approaches.

CONCLUSION

The considerations proposed in this work have tried to demonstrate how, despite some limitations, a new logic, more participatory, in modern security policies is now possible, desirable and perhaps necessary. Contemporary society, which is characterized by an extraordinary rapidity of action and interdependence of events, lives with an ever-increasing apprehension the presence of the unknown, of the different and of the foreigner. In other words, society shows its walls and its limits in a clear and unambiguous way, thus amplifying the social contrast and, at the same time, a widespread sense of insecurity (which is a consequence) and new forms of victimization. We can assume that urban fear is the result of two questions: one more objective and more quantitative, that of crimes (in particular predatory ones), of violent events and of incivilities (that is, of “criminal statistics”), and one more subjective and more qualitative, attributable to the relationship of individuals (and groups) with “critical” social events, not necessarily violent or criminal. If the problem relating to the trend in criminal rates has a significant link with the level of development of a particular society (and, therefore, with political, economic and social factors), that of perceived security is certainly attributable to a more dimension “human”, where the capacity for cohesion and social integration plays a decisive role. These considerations allow us to understand the complexity of the phenomenon and, consequently, how it is useless, counterproductive and misleading to reduce, today, the safety policies to mere action/reaction interventions. In this sense it should be noted that it is increasingly urgent to rethink a new model of public security that is more flexible, more dynamic and less anchored to anachronistic and top-down practices, often borrowed from the military organization; there is a need for a policy model that really takes the territory and the local into consideration. To do this it is necessary to think about a project that considers the values of community and proximity as central, a project that does not get lost, as unfortunately often happens, in centralistic drifts.

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KEY TERMS AND DEFINITIONS

Community Policies: Interventions aimed at involving the community through the active participation of citizens in public decision-making processes.

Perceived Insecurity: Fear for the individual to remain the victim of an unspecified critical event, regardless of the real environmental condition in which he finds himself and of the real risk to which it is actually exposed.

Predatory Violence: A particularly violent criminal action, aimed at neutralizing a victim through disproportionate use of aggression, generally with the intent of stealing a good from them.

Proximity Police: Model of ostensive police that has the function of producing prevention through a constant presence on the territory and a greater closeness to the citizens, with particular attention to the most fragile categories.

Social Control: Regulation and social defense activities implemented by specific government agencies (formal social control) or by civil society through the active participation of citizens in the social life of the community and in informal instruments of territorial control (natural social control).

Urban Fear: A feeling of frustration and anxiety, developed among the inhabitants of the cities, derived from the fear, not always justified, for the citizen to remain a victim of a crime or a violent event.

Urban Segregation: Spatial organization, separated from the urban fabric, of certain categories of citizens who, due to economic, ethnic, defensive or cultural reasons, are far from the “formal” city or decide to leave.

Chapter 26

Active Citizenship in Urban Security Policies: Is Neighborhood Watch a Solution?

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ABSTRACT

What does it mean to be protected? To live in a constantly monitored space, or feeling heard by the institutions? Supervise the neighborhood or be involved in the design of security policies? The chapter analyzes citizens' active participation as a further element for an effective implementation of urban safety policies. It will analyze citizen involvement in ensuring the safety of their territory through neighborhood watch groups in the European context. The authors try to answer the following questions: Why are the neighborhood watch groups born and why do some people choose to join these programs? What value do citizens give to the groups? What are the potential benefits and risks for local communities?

INTRODUCTION¹

The objective of this chapter on the participatory approach to urban security is to stimulate critical thinking regarding the citizen participation in neighborhood watch activities, in order to contribute to the maintenance of security in their neighborhoods.

In particular, the question is whether and how social ties impact the perceived feeling of security and the role they have or could have in planning and developing security policies.

The area of reference is therefore that of policies of crime prevention which, as well as being an extensively discussed issue in criminological literature, takes on great importance in the public debate and strongly conditions political agendas.

These policies head in the direction of integrated prevention or new prevention, characterized by a set of measures and actions with the aim of preventing the perpetration of deviant behavior, understood in the widest meaning - including both criminal offenses and acts of rudeness - and hindering its spread.

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The main figures and the object itself of preventive policies have changed. The players promoting such policies have multiplied, with it being no longer only the State, but also local authorities, voluntary associations and citizens themselves. Security is increasingly the product of a common effort. The community therefore becomes at one and the same time the addressee and the promoter of actions and interventions aimed at reinforcing the bonds of trust and collaboration and is increasingly a leading figure in the context of policies of public security.

The active involvement of the citizens in the phases of planning and developing policies of urban security was also emphasized in the Manifesto *Security, Democracy and Cities: Co-producing Urban Security Policies*, adopted in 2017 at the International Conference of the European forum for urban security (Efus). The Manifesto states that security co-production must involve citizens in all phases of the planning, implementation and evaluation of security policies, avoiding limiting their participation in a function of simple surveillance. This means that it is necessary to give priority to forms of participation based on principles of solidarity, ensuring that these co-production mechanisms involve civil society in all its diversity (EFUS, 2017).

It is in particular with community prevention that the focus shifts to the active role of the citizens in maintaining security. These policies are characterized by a set of coordinated social and situational activities with a certain continuity, implemented by groups of citizens organized at various levels, with the aim of improving the social and environmental conditions underlying disadvantage, disorder and crime, in a geographically defined area (Hughes & Edward, 2004).

Community crime prevention means, in operational terms, participatory security policies and refers to a set of actions *intended to change the social conditions that are believed to sustain crime in residential communities. It concentrates usually on the ability of local social institutions to reduce crime in residential neighborhoods* (Hope, 1995, p. 21).

The importance of taking into consideration this approach is the fact that security is a polysemantic concept and requires polycentric management. This is why situational prevention policies that focus on regeneration of urban areas to reduce potential crimes, should be accompanied by a proactive community prevention policy, involving the whole community.

The policy makers and the police, in particular at local level, have to review the public policies and the interventions on urban security, including in relation to the increased spread of insecurity amongst citizens.

Concern about crime, understood as a widespread social concern, or fear of crime, understood as the individual fear of being the subject of a victimizing episode (Furstenberg, 1971), appear in a context where daily life is lived between global and local concerns which escape our control, undermine our perception of security and our trust in the institutions. The threats from terrorism and the increasingly widespread fear of foreigners, the waves of migration, the economic recession, precarious social conditions and youth unemployment are only some of the global fears to which we increasingly respond at an individual level, closing ourselves up in ourselves.

The concept of anomie developed by Durkheim and reviewed subsequently by Merton, may be applied to our society which consistently lacks points of reference and solid social relationships. Anomie concretely appears in periods of instability and economic crisis, but also in a context of rapid and uncontrolled social change. It is in this frame that the sense of helplessness, feelings of insecurity and anguish may arise causing repercussions not only on individuals and collective social actors but also on one's configuration of urban spaces (Durkheim, 1971; Merton, 1957).

Active Citizenship in Urban Security Policies

Individuals and communities are more reluctant to address institutions and cooperate with each other to achieve a goal. In this regard, US sociologist R. Sennett explains the concept of uncooperative self, to outline defeating behavior that some individuals take towards the new challenges posed by society, *a distinctive character type is emerging in modern society, the person who can't manage demanding, complex forms of social engagement, and so withdraws* (Sennett, 2012, p. 199).

It is in this context that regulatory and law enforcement agencies, particularly at the local level, are called upon to review urban security policies in the fight against crime and insecurity. In fact, the latter should not stop at mere intervention on the territory and control of the population, but go further and take action to restore trust and social bonds through mediation and active involvement of citizens. In fact, if community has the right to form an opinion regarding safety, it also has the duty to take part in its maintenance.

CRIMINOLOGICAL THEORIES AND PREVENTIVE POLICIES

In relation to the studies that have investigated citizen involvement as concerns prevention of crime and the socio-environmental context, the theoretical studies conducted by the Chicago School in the 20s, must be taken into account again. Among them we can mention Clifford R. Shaw and Henry D. McKay (1942) who, in addition to developing the model of concentric areas, started the Chicago Area Project (CAP), in 1932. The community program is still active, aimed at supporting the neighborhood community helping people to cope with changes and social order problems that may occur, employing the involvement of local resources; to anticipate or, when possible, avoid intervention of the bureaucracy of repressive justice. In the authors opinion, deviant and criminal behavior, caused primarily by social disorganization, can be effectively prevented through stronger and consolidated community relations (Sette, 2008).

The Chicago School's sociological theories have also greatly affected Robert Sampson's studies, underlining how the characteristics of the place influence an individual's behavior or residence. By analyzing the relationship between social disorganization and the structural characteristics of the neighborhoods, it also appears that crime is linked to the lack of institutions capable of ensuring social control in the same neighborhoods, as well as residential mobility and weak social ties.

In *Great American City*, Sampson (2011) studies neighborhood effects and firmly supports that behavior, perceptions, relationships, destiny of individuals and, therefore, one's social life, are strongly dependent on the space where one lives. Poverty and social problems in certain neighborhoods cannot be justified by cultural variables or individual inequalities, but also, and above all, by neighborhood inequality and, as a result, the author suggests interventions linked to the territory rather than to individual inhabitants.

The theoreticians of social control attribute a fundamental role to social ties in maintaining order. In this perspective, a person is free to commit acts of delinquency because their ties with the conventional order have been severed in some way (Hirschi, 1969). In the absence of social ties, of sensitivity for or interest in others, anyone could run the risk of committing a crime, but there exist in society repressive forces and conditionings, identified as factors of control and containers, that limit the tendency to violate social norms. The stronger the bond with the community, the less probability there will be to adopt deviant conduct. The mere application of repressive norms should therefore be supported by policies oriented towards improving the quality of life in the local context which, according to Reckless, could be achieved by reinforcing the internal containers, such as self-control, a good self-concept, a sense of

responsibility and the external containers which operate in the social context, i.e. institutional consolidation of the rules, common aims and expectations, but also identity and a sense of belonging (Reckless, 1967).

Still in this perspective, Travis Hirschi in *Causes of Delinquency* (1969) classifies and describes the elements that make up the social bond, attempting to explain how each of them is correlated to deviant behavior and how these elements are connected with one another. As is generally known, the author identifies four types of elements that characterize the social bond:

1. **Attachment:** This refers to the internalization of shared social norms and the capacity for empathy. A person who is not concerned about the desires, the opinions and expectations of others, will not be bound by social norms. The greater the level of the individual's attachment to their family, school, peers, the higher the level of internalization of the norms will be.
2. **Commitment:** This refers to the individual investments in terms of time, energy and commitment, in pursuing socially and culturally approved aims. Hirschi underlines the fundamental role played by ambitions and individual aspirations in maintaining conformity: a good level of education, a profession, a certain reputation, whether these are assets that the individual has acquired and does not want to risk losing or assets that the individual hopes to obtain, make the individual act conventionally and therefore have a conventional conduct. Hirschi compares these first two elements to the psychic agents of Freud: he defines attachment as the sociological equivalent of the Superego and commitment corresponds to the Ego (Hirschi, 1969, p. 20).
3. **Involvement:** This is based on the assumption that schedules, deadlines and appointments which keep a person engaged daily in carrying out conventional activities, limit the probability that the same can find the time to devote themselves to criminal or deviant acts.
4. **Belief:** Believing that the shared values and social norms are valid.

According to this theory, the greater or lesser probability of committing deviant or criminal acts depends on the solidity of social bonds. Individuals who have more solid relations with their peer group, with their family and with school, have greater probabilities of adopting conforming behavior and not deviating from the socially and culturally accepted norms.

In particular, the Rational Choice Perspective, developed in the 80s by Cornish and Clarke (1986), sees the offender as a person who has the faculty of reason and acts freely, selecting from the available alternatives. The offender adopts the behavior that ensures the greatest profit and wellness, evaluating the potential benefits of breaking the law. According to this perspective, therefore, the mechanisms underlying the choice of adopting a criminal behavior are not very different from those underlying the adoption of a compliant conduct regarding the individual decisions.

The core of the routine activities theory of Cohen and Felson (1979), however, is the concept that the conduct of criminals is favored by the stability of daily activities. According to the authors some places are more exposed than others because of the type of activities and relationships that are present. In this perspective the likelihood of committing an offense will be greater in the presence of a person motivated to accomplish it, in the presence of an interesting target and in the absence of control. If just only one of these three basic elements is present, the likelihood of committing a crime decreases.

In the same period, Hindelang, Gottfredson and Garofalo (1978) develop the theory of lifestyles, stressing that the risk of encountering episodes of victimization is dependent on the lifestyle adopted. From this perspective the combination of social role, position in the social structure and rational component of action, play a fundamental role in the possibility of being a victim of crime. Our behavior,

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daily activities and places we live in, are based on the three mentioned above factors, along with the expectations coming from human relationships. Therefore, according to the authors, the higher the status and social position are, the lower the risk of victimizing incidents is.

The application and operational aspects of these theoretical perspectives in the field of security measures are applied to situational prevention policies, intervention strategies in physical locations, based on the eliminations of those situations and factors that may favor deviant behavior or spread incivility forms. Situational crime prevention *calls for minutely analyzing this specific crime type (or problem) to uncover those situational factors which facilitate a crime's commission. Intervention techniques are then devised to manipulate the situational factors. In theory, this approach reduces crime probability or reduces cues increasing a person's motivation to commit a crime during specific types of events* (Freilich & Newman, 2016, p. 205).

Hypothesis put forward by the anthropologist Jane Jacobs in *The Death and Life of the Great Cities* (1961), underlines that the control of the territory by the police forces is necessary but not sufficient to ensure safety: citizens must be proactive and aid police force, through spontaneous vigilance. Residents should feel they are part of the neighborhood in which they live and should actively take part in defending it:

the first thing to understand is that the public peace - the sidewalk and street peace - of cities is not kept primarily by the police, necessary as police are. It is kept primarily by an intricate, almost unconscious, network of voluntary controls and standards among the people themselves, and enforced by the people themselves.

Based on Jacobs studies, the architect Newman developed the concept of “defensible space” (1973). Pointing out that urban space design may significantly reduce one’s sense of insecurity and the crimes that may arise. The author also stressed the importance of visual inspection by residents and downsizing of the public spaces, in order to maintain neighborhood safety.

Situational prevention policies, that focus on regeneration of urban areas to reduce potential crimes, should be accompanied by a proactive community prevention policy. These policies are characterized, on one hand, by community policing, already advocated by Wilson and Kelling in the 80s (1982), closer to citizens’ needs and sensitive to even minor infractions, and on the other hand by the citizen empowerment policy, through collective participation in new forms of active involvement as concerns safety.

It is therefore on the basis of this awareness that correct policies of security should be worked out with their efficacy in reducing crime and episodes of victimization depending on the capacity to adopt measures of integrated prevention that act in the same way on the context and on the causes that generate crime and delinquency, without preferring one aspect to the detriment of the other.

Incentivizing bonds and cohesion between citizens, as well as the relationship of the latter with the institutions, can be functional to preventing victimizing experiences and criminality.

Sanctions and active citizen participation could therefore prevent or stop deviant behaviour. In this regard, promoting and consolidating social participatory bonds and reinforcing the relational component and sense of belonging, individuals should be discouraged from acting in a non compliant manner, but rather should be pro-active in order to participate in the policies that regulate safety on the territory.

NEIGHBOURHOOD WATCH: AN EXAMPLE OF ACTIVE CITIZENSHIP IN ENVIRONMENTAL MANAGEMENT

Among the ways in which citizens can take action and participate in crime prevention, neighborhood control plays a key role. This shared security model involves organizing citizens residing in the same neighborhood into groups, which are committed to monitoring the areas surrounding their homes, noticing any suspicious activities or people reporting them to the police. The neighborhood control groups therefore do not perform law enforcement tasks, do not directly engage with criminals and do not patrol the areas. They simply contribute to neighborhood safety without replacing the local law enforcement. In residential areas with a neighborhood watch groups, there are signs indicating the program is in force, in order to warn and deter unwanted behavior and would-be criminals.

As regards the type of crimes to which residents focus preliminary on, *the vast majority of programs identify residential burglary as the sole or most important target crime of neighborhood watch. Some programs list other offences that it is hoped neighborhood watch will reduce. The list of other offences is sometimes specific (e.g. 'street robberies, auto thefts and vandalism') and sometimes general (e.g. 'street crime' and 'property crime')* (Bennett et al., 2008, p. 5). All those illegal actions more closely related to family or personal sphere, such as domestic violence, do not appear to have been taken into account.

The situations felt by citizens as potentially risky or dangerous do not necessarily constitute an offense in itself, but may nevertheless contribute to increasing the perception of social alarm. The reference is, for example, to the presence of vehicles or strangers, begging, the homeless and, more in general, situations of urban decay and acts of vandalism.

The tendency of citizens to control their neighborhood, carrying out activities of neighborhood watch through groups formed on WhatsApp is increasingly topical and widespread. The ways the activities are carried out are the same as for the traditional groups of neighborhood watch, with the difference that the members of the group use WhatsApp to share information in real time more quickly and efficiently, reaching hundreds of people at the same time.

Pridmore et al. (2018) say how WhatsApp neighborhood crime prevention (WNCP) groups can be *more efficient than patrol-focused neighborhood teams, because they have a lower participation threshold and require less intensive commitment efforts of citizens, municipalities and police* (Pridmore et al., p.4). These practices which, according to the authors can also be defined as 'do-it-yourself' (DIY) policing (Pridmore et al., p.2), are not only an evolution of the traditional neighborhood watch groups but represent organized units independent of the local institutions and are often started on the initiative of the citizens, according to a bottom-up type of approach.

The *neighborhood watch* came into being in the United States in the early 1970s but quickly spread to other English-speaking countries, in particular England, from the 1980s (Bennett et al., 2008). To date, these experiences are a consolidated reality in many European countries, in Australia and in Canada.

The *European Neighborhood Watch Association* – EUNWA has been founded at European level, collecting the main experiences and useful training material. Consulting the site of the European Crime Prevention Network – EUCPN, it appears how experiences of neighborhood watch have spread widely in the countries of the European Union.

WhatsApp neighborhood crime prevention (WNCP) groups are active in over 7,250 neighborhoods in the Netherlands and Belgium (Pridmore et al., 2018). As Van Eijk argues, the growing spread of these groups in the Netherlands may be due to *a long history advocating cooperation in the fight against so-called petty crimes (e.g., bicycle theft, shoplifting) [...]. In the 1980s, the national government proposed*

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that this kind of everyday crime was the result of an erosion of communality and solidarity, and that partnerships in the communities were needed to revitalize social bonds (Van Eijk, p. 224). In Breda a project of WhatsApp neighborhood crime prevention (WNCP), “Buurtpreventie Breda”, was started in 2010 which involves over 600,000 people and about 8.300 groups are believed to be present in the whole of the Netherlands. Citizens, police forces and municipalities collaborate in order to increase security and the quality of life, exploiting the potential of the speed of information offered by the messaging system (ECPA, 2018).

The Estonian Neighborhood Watch (ENHW) Association is present in Estonia. It was started in 2000 and is recognized as the biggest non-governmental organization in Estonia in the field of crime prevention (Meško et al., 2013).

In Denmark the “Nabohjælp” project was started in 2012 which actively involves citizens to prevent robberies and increase security in the community. According to the project’s information sheet, *central to the project is the modernization of the neighborhood watch concept in Denmark which consists of a new visual expression and a new online digital neighborhelp platform/tool that makes it easy for citizens to organise, participate in and maintain neighbourhood watch schemes in their neighbourhoods* (EUCPN, 2017, p. 1).

If the experiences of neighborhood watch are expanding continuously in these countries, in Slovenia and in Germany they are still not very common because *such new practices recall memories of forms of the totalitarian regime under the patronage of the Soviet Union. The collective memory on their totalitarian history is still too strong to accept the contemporary practices of social control since it recalls memories of the times of “total control”* (Meško, 2009, p. 32)”.

Similar reflections can also be extended to Spain, marked by the Inquisition and by the dictatorial regime of Francisco Franco. Attributing competences of social control to citizens can arouse worry and concern, where it can lead to a limitation of freedom and fundamental rights, as well as the return of nationalist feelings.

It has been observed that, far from seeking community solutions to meet crime and insecurity, neighborhood watch risks being translated into simple increasing the actions by the police in close collaboration with the citizens, finding fertile ground mainly in those urban spaces occupied by a middle class constantly looking for strangers and those different from themselves (Ruiz Rodríguez, 2010).

In Spain there have been numerous experiences of community prevention, understood as collaboration between the police and citizens, which have led to fruitful results on the prevention of some specific forms of micro criminality linked, for example, to drug-pushing or mugging. However, in these cases, the participation of the citizens did not come about spontaneously, but was fostered and incentivized by local authorities and institutions (neighborhood associations, professional associations or municipalities) or was part of wider programs of *community policing* (Del Castillo, 2013).

Through close collaboration with the police, the community learns how to use techniques and skills that allow replacing or increasing the efficacy of police interventions to prevent the offense. These commitments have led to important projects of anti-crime town planning and useful programs of victim self-protection, especially for domestic violence, and the experiences of community policing have also increased (Diez Ripollés, 2004).

Diez Ripollés, in agreement with De Molina and García, recognizes as extremely dangerous the tendency to involve the community directly in the prevention of the crime as, far from representing progress in the response to criminal phenomena, it represents, on the contrary, a preoccupying regression (García & De Molina, 2009).

It has been observed that in Italy and in Hungary *local communities fear the citizen patrols because of their aggressive attitude; these patrols are often illegal as they do not operate in collaboration with local authorities* (Van Eijk, 2017).

In actual fact, neighborhood watch is widespread in Italy and there are increasing numbers of local authorities that have entered into agreements with the local authority departments for security and with the local Prefectures in order to create neighborhood watch groups and encourage and consolidate a direct relationship of trust between local police and citizens (Reatti, 2018).

On the basis of the example of the *European Neighborhood Watch Association - EUNWA*, the *Italian Neighborhood Association* – INWA has also recently been created in Italy, started in March 2018 with the intention of increasing study and research in this field.

Another point of reference for private citizens and local administrations interested in joining a project of this type is the *Associazione Controllo del Vicinato (ACdV)*. Active since 2009, the Association is made up of a network of volunteers called “area contacts” and carries out an activity of coordinating the various programs of neighborhood watch active nationwide. At the moment, 63,850 Italian families have joined the program of the *Associazione Controllo del Vicinato*. The data available in the national register of the ACdV, updated to May 9, 2019, show the municipalities in Italy that have joined the project and help to understand the spread of these groups. Over half of the Italian regions have joined the project of neighborhood watch and, of these, most are in northern Italy (Piedmont, Lombardy, Veneto, Friuli Venezia Giulia, Liguria, Emilia Romagna), three are in central Italy (Tuscany, Umbria, Marche, Lazio) and only two are in the south of the country (Abruzzo and Puglia). The first of all is Lombardy, with 1,181 active neighborhood groups in the Association, with Emilia Romagna coming second, with 410 groups, followed by Veneto (281) (ACDV, 2019).

MANAGING INSECURITY, SOCIAL TIES AND ACTIVE CITIZENSHIP

Recent studies carried out at international level, having as their subject the participation of citizens in community organizations for crime prevention, show the impact and benefits that these programs can have on society (Kang, 2015; Batella & Ribeiro Lopes, 2012).

A neighborhood watch program can effectively reduce deviant and criminal acts making people feel safer and improving the quality of life. It can also help to restore or increase the bond of trust towards institutions. In fact, citizens identify and report suspicious activities citizens to local law enforcement providing useful information. As a result more criminals may be arrested and convicted. This neighborhood watch program brings community members together and strengthens community cohesiveness, decreasing the opportunities for criminals to commit crimes.

According to Rosenbaum (1987) attentive surveillance by the residents of a given neighborhood can reduce the opportunities for criminal acts to be committed, having an impact on the perceptions and on the decision-making processes of the potential offenders. The tendency of the residents of a neighborhood to report any activity deemed suspicious is an effective deterrent to the extent that it has an impact on the perception of the risk of being caught.

We can ask if some of community features, such as racial composition, unemployment and residential stability, influence social control of the community itself. Kang (2015) has suggest that people residing in different districts show the manners in which they participate very, taking into account the impact of the social context on individual decisions, rather than personal characteristics. Kang argues that individuals

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residing in areas with lower rates of aggression, violence and burglaries, are more likely to participate in neighborhood watch programs. Individuals that residing in more stable and privileged communities, and / or with fewer immigrants will actively take part in protecting their neighborhood. The results of research conducted have confirmed that some positive features of the context have actually influenced the level of social control of the community. However, unlike initially suggested, it has been shown that individuals living in disadvantaged areas are more likely to join neighborhood watch groups. The author believes this is an attempt made by the residence to defend their own territory.

Another study sees the role of society as a complementary activity in aiding police in tackling crime. Batella and Ribeiro Lopes (2012) reflect on spatial manifestation of crime, a geographic approach to crime that also questions the role of the organization of society through social ties. In particular, a research project has been presented to study a case of community action aimed at reducing crime, where the police force works together with community members in various Brazilian districts. A safety net and community - oriented policing, which the authors acknowledge as a viable strategy to combat crimes and criminal misconduct. It is also highlighted also how *along with reducing and preventing crime, the project [...] reduces the sense of insecurity in a community in which the program is present* (Batella & Ribeiro Lopes, 2012, p. 125).

Wickes *et al* (2017) focus their attention on the importance of social bonds in solving neighborhood problems. According to the academics, the probability that a group of people resident in the same neighborhood take part in actions of informal social control for issues felt as particularly significant is all the greater, the strong and more stable the fabric of relations characterizing the neighborhood. The exercise of informal social control therefore requires the existence of solid social bonds.

The results of a survey carried out on 100 neighborhoods in Seattle (Wallace, 2015) show that being involved in activities protecting one's neighborhood, for example watching over neighbors' properties, has a strongly positive influence on the perception of disorder. Involvement in neighborhood activities, whether they are initiatives which have sprung up spontaneously among private citizens or have been proposed by the local administration, can increase the awareness of the residents with respect to the problems of the neighborhood and allow seeing one's neighbors from a more positive point of view than before.

Dixon (2017) in analyzing a case of WhatsApp neighborhood watch groups active in the north-west of Johannesburg, introduces the concept of "affective mooring", acknowledging that *a WhatsApp group chat offers a sense of rootedness amongst the flows of people and things in a neighbourhood. This sense can be understood to hold, even stabilize, a community through feelings of collective presence and "being in this together"* (Dixon, 2017, p. 494). Belonging to a WhatsApp chat of neighborhood control can have an impact in positive terms on the sense of belonging and on the perception of security of the people who join it. In programs of this kind, *a mooring is understood as both a fixed form amongst flows but also an affective source that creates feelings of stability, perhaps even safety and comfort. Through WhatsApp group chat, the neighbourhood becomes a particular virtual anchor for the community, based on the group members' investment in a particular location* (Dixon, 2017, p. 498). What do they receive in exchange? The author, analyzing the groups' chats, raises some problematic issues in this type of program which concern, in particular, the attitude of mistrust of the residents in regard to strangers, meaning *someone who is out of the ordinary in the neighbourhood, which is signalled by their clothing, their gait or appearance. Strangers loiter. Strangers are dirty. Strangers are drunk. Strangers are noisy. Strangers are too quiet* (Dixon, 2017, p. 495). In a context marked by great economic inequality, the neighborhood which is the object of the study, unlike others, enjoys a certain level of affluence and

represents a sort of gated community, characterized by a strong privatization of the urban space and a widespread presence of private surveillance. Nevertheless, the residents felt the need to start WhatsApp neighborhood watch groups against levels of crime that have generated fear and anxiety:

In a period of one year, neighbours reported 13 burglaries, 17 robberies and 10 car thefts to their local police station. [...] In other instances, group members report a car hijacking in the neighbourhood that involves children. Neighbours anxiously recount scenes of housebreaking. Often, messages are sent to the group to verify strange sounds and account for cars and people in the neighbourhood (Dixon, 2017, p.499).

It is interesting to note how other studies carried out in completely different local communities have reached similar conclusions. One study carried out in two municipalities of northern Italy explored the effects of neighborhood watch, attempting to assess their benefits and risks (Reatti, 2019).

The unit of analysis of the survey, conducted using integrated qualitative and quantitative methodology, is represented by 15 neighborhood groups via WhatsApp, started experimentally in 2015 and which have subsequently become a consolidated experience, involving over 1,500 citizens. The areas which are the object of study have similar physical and social characteristics. Both enjoy a fairly extensive network of associations, with numerous associations for culture, sport and voluntary work. The population data on foreigners, i.e. residents with a nationality other than Italian, shows that the presence of resident foreigners, in each municipality, is less than 9% of the resident population. In both areas, moreover, the level of criminality is definitely limited and the problem mainly felt by the population and reported is represented by robberies.

The qualitative phase consisted of holding semi-structured interviews, involving the heads of the police forces, the local administrators and the contact people of the neighborhood groups. The content of the WhatsApp chats were analyzed at a later date. In the qualitative phase, a questionnaire was given to the subjects in the neighborhood groups and to a control group made up of citizens who are not members of the groups, in order to investigate whether any differences and which ones exist between the two.

What the interviewees have in common is a perception of greater security as a dimension closely linked to the presence of other people on whom to rely: merit is given to the groups of increasing trust in neighbors and having led to the residents gradually becoming closer. The interviewees agree in believing how the groups have been fundamental for getting to know new people and strengthening the social ties in the neighborhood. This is an aspect which, in their opinion, has also had an impact in positive terms on the perception of security of the members.

The fact that the tendency to oppose the situation before the formation of the groups, characterized by solitude, indifference, lack of mutual interest and selfishness, with a new situation connoted by balance and stability, not only in terms of greater security, but also of a stronger integration, interaction, interest, attention and closeness, is common to the interviewees, is worthy of note. Micro criminality and the absence or precariousness of stable social ties within one's living space are therefore two aspects which are constantly underscored and put in close relation with one another (Reatti, 2019).

Where does the border lie between legal behavior, considered socially acceptable and the behavior, situations or people to be considered a risk, a danger or a threat to individual integrity and that of the community? What are the concepts of dangerousness and suspicious associated with? From the analysis of the content of the WhatsApp chats of the neighborhood watch groups that collect the reports of the members, there emerge some elements in common with the aforementioned study. A first aspect concerns

the widespread apprehension of the citizens for episodes of micro criminality, in particular robberies. In the second place, the neighborhood watch groups do not only report robberies, attempted robbery, frauds or acts of vandalism, but also the presence of travelers and Rom and, more in general, people or things generically deemed “suspicious”. Thus, the mere presence of “caravans”, “fields”, “camps” of travelers in certain parts of the city can easily become sources of alarm even in the absence of a real threat to the safety of those who live or work in that city. Suspicion therefore seems to be always present. Who or what has to be considered as suspicious, on the other hand, is not so clear. The presence of an element other than the usual context of life arouses attention. Everything that is strange, unusual, different or unknown becomes suspicious. It is in this sense that the exasperation of the concepts of belonging and reclaiming the community can be considered to lead to the spread of dangerous and unjustified scenarios of alarmism. Watching over one’s community can paradoxically lead to the spread of suspicion of what or who is different, the stranger, understood in its widest sense and not necessarily linked to nationality or ethnic group, but rather to non-belonging to the social context, the place or the community where the same groups operate (Reatti, 2019).

In this regard, Lub underlines that *the data show that neighbourhood watch can generate several negative effects such as stigmatisation, excessive social control, an absolute interpretation of the objective of “security” and vigilantism, and residents taking impulsive action under the banner of community crime prevention* (Lub, 2018, p. 140).

If it is true that social ties, reinforced following episodes of deviance and criminality which threaten the shared norms and undermine the collective conscience, can stimulate solidarity and reciprocal help, making up for and compensating a widespread perception of isolation and solitude, it is however necessary to stop and reflect on the risks to which this aggregation against a common enemy, whether a person or an event, can lead. Strong social cohesion can lead to a total closure towards the outside world, generating excessive fear and fueling feelings of insecurity which are not justified by the existing reality. A sort of self-fulfilling prophecies may occur, where the prediction generates the event and the event verifies prediction, as W. I. Thomas has argued “If men define situations as real, they are real in their consequences” (1928, p. 572).

The statistics relative to the trend of robberies committed in the areas of reference do not show worrying increases. On the contrary, the data illustrate a drop in robberies in recent years.

Despite this evidence and the membership in neighborhood groups, the analysis of the data of the questionnaire shows that only 22% of the respondents perceive a drop in criminality in the last three years, almost half of them (49%) believe that it has increased. 50.5% of the members of the groups state that they do not feel very secure in the town where they live. According to 95% of the members, however, the neighborhood watch groups help reduce this perception of insecurity and limit episodes of micro criminality. The dimension which, to a greater extent than others, is associated with membership or not of a neighborhood watch group is represented by social ties: the presence of people who are members of neighborhood watch groups is associated more easily with a context connoted by strong ties. In this case there is a contradiction with what emerged during the interviews: the contact people declared exactly the contrary, i.e. that thanks to the neighborhood groups, they were able to form new relations with people they did not know before and to restore a social cohesion which, in their opinion, had been lost. A possible interpretation of this discrepancy is that the presence of strong ties is not a necessary and favorable *presupposition* for the creation and development of the neighborhood watch groups, but rather a *consequence of participating in them*. From this point of view, the decision to join a neighbor-

hood watch group may derive from the perception of instable and precarious relations characterizing the context of one's life (Reatti, 2019).

Evident analogies are found in a study carried out in the Netherlands which involved WhatsApp neighborhood watch groups active in seven districts of Rotterdam, very different from one another. Whilst some areas are perceived as very safe, others are affected by significant rates of crime (Pridmore et al, p.7). This study as well, conducted using an integrated methodology, consisted of a series of interviews of the coordinators of the neighborhood watch groups and the police and in a questionnaire given to the members of the WhatsApp groups.

The coordinators of the neighborhood watch groups underscored the feeling of solitude that pervades people when they are victims of a crime. In their opinion, the groups are useful for consolidating the interpersonal relations between members, offering reassurance at a time when they feel the most vulnerable. Greater social cohesion and reciprocal support therefore help the citizen feel safer. It is the active involvement of the citizen, more responsible and more attentive and interested in questions of public security that increases the perception of security. The police forces concerned also deem extremely positive the neighborhood watch activity by the citizens, seen as a useful contribution to the work of investigation, as well as an effective way of increasing proximity and the relationship of trust between the police and citizens.

However, the results of the research do not confirm the hypothesis of the authors, according to whom active citizenship positively influences the perception of security. This negative reaction can be explained by the fact that *active citizenship, in this case accompanied by active involvement in a WNCP group, makes citizens more aware of potential threats and dangers in their environment*" (Pridmore et al, p. 19). Another explanation could be related to the assumption that *active citizenship might lead to decreased feelings of safety and uncertainty because of a lack of skills and knowledge of how to handle problematic situations and the inability to solve more structurally embedded neighbourhood problems. Here, active involvement of community police in citizen initiatives might help decrease uncertainty and improve feelings of safety* (Pridmore et al, p. 19).

CONCLUSION

The neighborhood watch groups can be useful for reinforcing social cohesion and reducing the perception of insecurity of the members. Even though the data available are not sufficient to establish a direct causal relationship between membership of groups and reduction of criminality, it can be hypothesized that these are effective, if used with the due caution, in particular in the prevention of the predatory type of offenses. The behavior of the deviant actor would be limited both by the presence of attentive "guardians" and by the influence attributed to the changed environmental variables. Balloni observes, in this regard, that *the evolution of this type of criminality may be in relation to different methods of social control, the evolution of technology in the perspective of prevention and also the fact that these offenses, in certain situations, can effectively not become very remunerative. [...] they [...] becomes the expression of a particular model of behavior, tending to an end (the profit) which is carried out in a particular context where the action is fought or helped by positive or negative valences* (Balloni et al., 2015, p. 16).

It should be noted in this respect that the neighborhood watch does not sort out the root of the problem, but it produces only a displacement of crime. A territorial or a temporal displacement may occur: the criminal may decide to act in another place or to move the action in the future. Furthermore, the offender

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can also change his modus operandi, bypassing the obstacles and changing the target. A redistribution of crime is therefore obtained, and this is not a solution.

In spite of the above having been recognized, the problematic issues and the critical points raised cannot be ignored. The extreme vagueness and ambiguity that surrounds the concept of “suspicious”, brings with it the danger of mistrusting any person or situation that is different or unusual with respect to one’s own context, thus fueling the perception of insecurity and heightening feelings of alarm, therefore obtaining the opposite effect with respect to the one desired. Fear thus becomes an aggregating feeling which unites people, making them feel part of something. Moreover, neighborhood watch schemes can severely restrict fundamental citizens’ freedoms and rights and a long-term effectiveness of such this programs is questionable.

This risk can perhaps be limited by avoiding allowing the development of such initiatives in the hands of citizens, but framing them within rules defined and established by the police.

Trust, belonging, civic sense, mediation, and active citizenship are the key words that ought to always be included in political agendas and in interventions in communities. Correct security policies ought to be planned by incentivizing community policing closer to the needs of the citizens, but also proposing processes for making the citizens themselves feel responsible. Involvement and the participation of the citizens in security policies can however be limited to taking on the form of actions of surveillance by groups of citizens, but they ought to be translated into projects of an educational, social and cultural type as tools of integration. In this regard, it appears essential to incentivize socio-criminological research, proposing empirical approaches of the bottom-up type which, starting from the real needs of the citizen, are able to involve the players appointed for formal social control, up to the policy makers.

Therefore, being protected does not mean living in a constantly watched over environment, but feeling listened to by the institutions, not watching over the area but being a participant and involved in the phases of designing security policies. The hope therefore is to develop participated security, understood as greater collaboration and cooperation between the police and other institutions (university, neighborhood associations, social and health services) without forgetting the citizens themselves. At the basis of the development of urban security policies, there has to be the awareness that scientific knowledge, together with the experience in the field of the police, the experiences of voluntary associations which deal with crime victims and the evidence that the institutions have of the problems of the community, contribute to designing and promoting new and effective tools for the purpose of improving the quality of urban living and protecting the citizen.

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KEY TERMS AND DEFINITIONS

Active Citizenship: A citizen who takes an active role in the community's context, such as in the neighborhood security, community policing, or in other social activity.

Incivilities: All sorts of phenomena that do not constitute serious crimes themselves, but disturb and create disorder, increasing the perception of social alarm.

Neighborhood Watch Groups: A shared security model that involves citizens residing in the same neighborhood, with the aim to monitoring the areas surrounding their homes, noticing any suspicious activities or people reporting them to the police.

Stranger: Person who does not belong to a particular social context, place or community.

Suspicious: The presence of someone or something perceived as strange, unusual, different or unknown.

ENDNOTE

¹ Some of these reflections are part of the Author's PhD research "Riconfigurare i legami sociali tra appartenenza e partecipazione: una sfida per nuove politiche di sicurezza urbana. Analisi di alcune esperienze in Italia e in Spagna", PhD in Sociology and Social Research, XXXI cycle, University of Bologna - *Alma Mater Studiorum*, Italy.

Chapter 27

Community–Based Policing to Prevent and Combat Crime: Specific Perspectives and Strategic Solutions in Vietnam

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ABSTRACT

As one of the most populous countries in the Asia area, Vietnam has been continuing to develop and integrate into the region since ‘Renovation Period’ in 1986. Alongside several considerable achievements in the field of socio-economic, political, social, and sustainable development, Vietnam is also facing practical challenges in the society, particularly crime. This chapter reviews the overall picture of crime with its related trends and patterns, which will be based on the outcomes of National Program for Prevention and Control Crime of Vietnam, 1998 until 2010. Additionally, the author introduces and analyses the community-based policing’s approach, one of the most critical projects in the system of 15 operations of the National Strategy of Preventing and Combating Crime in the period of 2016-2025 and orientations toward 2030, which provide Vietnam’s responses with its viewpoints, targets, tasks, and solutions to deal with crime.

INTRODUCTION

Since the end of the 1990s the financial crisis has impacted, directly or indirectly, on almost countries in the Southeast Asia and made the situation of region has been complicated in many areas, no except for Vietnam. Additionally, the revolution of science and technology and the process of globalization took place strongly, deeply and comprehensively, to all aspects of social life. The consequences of the financial crisis, the global economic recession, food security issues, natural disasters and epidemics are becoming common concerns and worries of nations (Sidel, 1998; Thayer, 2003). Local warfare, arms

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race, ethnic and religious conflicts, interference, subversion, terrorism, territorial disputes, sea and island disputes are complex. Southeast Asia has become a focal point to attract attention and increase the influence of major countries, and there have been instabilities in relations between some regional countries and within some countries (Boothroyd & Nam, 2000; Nathan, 1999).

Implementing the policy of innovation and international integration in the end of twentieth century, Vietnam has achieved great achievements, comprehensive and historical significance. The economy continued to be stable and developed, the average annual GDP growth reached 7.2% (Boothroyd & Nam, 2000; Woods, 2002). The material, cultural and spiritual life of the people has been improved and developed as well as the great solidarity of the people is constantly strengthened; meanwhile, the national defense and security is maintained, social security order is ensured. Additionally, foreign relations and international cooperation have been expanded and Vietnam officially became a member of the World Trade Organization (WTO) in 2007 and was elected as a non-permanent member of the UN Security Council for the term of 2008-2009 (Arkadie & Raymond, 2003; Gillespie, 2005; Thayer, 2004). Vietnam's position in the international arena constantly strengthened and enhanced.

However, the reverse of the process of international integration, socio-economic development has generated many new complex issues affecting the prevention and combat of crime. Other social issues such as free migration, urbanization, land management, urban order, environmental pollution, natural disasters and epidemics are complicated; especially the impact of the reverse of the market economy leading to the differentiation between rich and poor, social stratification, the lack of employment has greatly affected the life and spirit of the people of all strata (Thayer, 2005; Vuving, 2001). The flip side of the Internet, movies, culture, Western lifestyles are negatively impacting the lifestyle and personality of a part of society, especially young people (Hibbard & Tang, 2004; Thayer, 2004). The preparation of a number of branches and localities in the process of international integration is not good in many aspects, leading to loopholes and shortcomings for criminals to take advantage of activities.

To ensure national security and social order, on 31 July 1998, the Government issued Resolution No.09/NQ-CP on "Strengthening Prevention and Combat Crime in the New Situation" and the Prime Minister issued Decision No.138/QD-TTg to approve "National Program for Crime Prevention and Control" (hereafter, Program 138). It is the most pillar and important strategy of Vietnam to prevent, control, and combat crime in the nationwide scope. After 20 years, the Program 138 has been recorded as one the most impacted activities to contribute maintain national security and social order in Vietnam. At the online conference of the Program 138, January 2019, Standing Deputy Prime Minister of Vietnam and also Chairman of the Program 138, confirmed that analyzing and assessing lessons and experiences of two decades implemented this Program were considered as one of the eight prioritized duties in the 2019.

This chapter provides the newest the National Strategy for Preventing and Combating Crime from 2016 to 2025 with a Vision Towards 2030, with focusing on the first important project out of total of fifteen projects – community-based policing to fight crime and rehabilitate offenders at home and in community. It is considered as the fundamental provisions of Communist Party of Vietnam to lead the whole of society involve for creating 'matrix of people' in prevention and combating crime. Approaching official statistics of Vietnam's authorities in terms of prevention, combat, and crimes control during the period of 1998-2010, first, this paper focus on introduce overall background of the Program 138 with its related activities, in which emphasize the model of community-based policing as one of the most pillar project of the Program. Second, the study also identifies major programs with its specific contributions of the community-based policing to prevent and combat crime in Vietnam during 12 years in the past. At this section, the process of implementation, outcomes and barriers of the community-based

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policing's model will be also assessed and exchanged before identifying the main lessons learned to prepare in the period of 2016-2025 and towards 2030. The final section concentrates on solutions and recommendations to improve the effectiveness of community-based policing in Vietnam and also look for further research in the future. To do it, at this part, the chapter reviews Vietnam's responses with its viewpoints, targets, tasks, and solutions to deal with this battle through assessing the new National Action Plan (2016-2025 and towards 2030).

COMMUNITY-BASED POLICING: INTERNATIONAL AND VIETNAM' CONTEXT

One Model in Crime Prevention

Since the nineteenth century, Peelian conception of policing have called for the establishment of community policing as a policing paradigm. After then, there are a number of various debates and conversations about the nature and contribution of this model in practical policing (Trojanowicz & Bucqueroux, 1998). In the 1970s–80s critiques of the criminal justice system precipitated the foundation of an alternative to the traditional responsive mode of policing to improve the effectiveness of crime prevention (Bartkowiak-Theron & Crehan, 2010a, 2010b). Towards the high-visibility policing with problem-solving, peacemaking, interagency work and active involvement of community members, the usual definition of community-based policing is wide ranging and its applications are even more extensive in the Western countries (Fleming, 2010; Putt, 2010a). Considerable research in the United States has been undertaken to understand the philosophy, elements, implementation, and effectiveness of community policing and even, pointed out that substantial financial support has been provided by the US government to support community policing activities (Miller, Hess, & Orthmann, 2017). Indeed, since its rise in popularity over the last thirty years, notably during the mid-1990s with the creation of the Office of Community-Oriented Policing Services, many LEAs in the United States have implemented these programs that are generally in accordance with the overall components of community policing to maintain social order (Hughes & Rowe, 2007; Trojanowicz & Bucqueroux, 1998).

Working in partnership with the local community to address crime and antisocial behavior problems is a defining feature of contemporary community policing (Fleming, 2010; Putt, 2010b). Collaboration, cooperation, and coordination are also frequently promoted as a key feature of effective crime prevention programs (Morgan, 2010; Wu, Jiang, & Lambert, 2011; Wu & Sun, 2009). In Australia, commitment to a community-based model of crime prevention has meant that police are frequently called upon to collaborate with local authorities and community organizations in their planning, implementation and review of crime prevention activity (Bartkowiak-Theron & Crehan, 2010a; Morgan, 2010). Meanwhile, they are an important component of community policing in practice in almost Western countries, these partnerships (particularly where they involve community organizations) have received considerably less attention than other aspects, such as community engagement and local problem solving in Bangladesh and China (The Asian Foundation, 2010; Wu & Sun, 2009). Indeed, community-oriented policing or community-based policing in most countries often reshapes traditional police management and operational strategies through facilitation of collaborative working relations between citizens and police, based on a problem-solving approach that is both responsive to the needs of the community and sensitive to the challenges that police face in performing their responsibilities. Additionally, to apply this model can create space and opportunities for citizens and police to discuss their respective views and

expectations and matters of common interest, but also helps to make police more responsive to citizen interests (Bartkowiak-Theron & Crehan, 2010b; Putt, 2010a; The Asian Foundation, 2010). In which, community is considered as the central layer of policing's policies and strategies in order to mobilize the role of local residents to involve crime prevention with police forces (Hughes & Rowe, 2007; Trojanowicz & Bucqueroux, 1998).

Background of the Program 138

After the Renovation Period, known as Doi Moi (Vietnamese), the Government has taken urgent measures to strengthen security protection, social order and safety in the new situation. Accordingly, all ministries, branches, levels and the whole people have actively responded and participated, social order and safety situation in general has made positive changes, achieved certain results, contributed to stabilize the overall situation of the country. However, the situation of crime in Vietnam still tends to increase and develop complicatedly and even, the structure of crime components has changed with a number of complex modus operandi (Prime Minister, 1998). Particularly, organized crime such as corruption, smuggling, trafficking in women, and drug trafficking has been caused of serious consequences for worrying the whole society (MOLISA & UNDCP, 2000; Yem, 2001b).

Many types of new crimes violate the order of economic management to appear and complicated developments such as taking advantage of high technology to cheat through the Internet, stealing in the fields of finance, banking, telecommunications, and crime in field of securities investment, fraud in labor export, study abroad. The smuggling situation is complicated in many places, especially in border areas through small-scale trade routes, at border gates, at sea and through air routes into Vietnam. Besides commercial fraud and taking advantage of VAT refund policy, it has very serious consequences. The situation of transportation, storage and consumption of counterfeit money takes place in many localities throughout the country and tends to increase. It is noteworthy that corruption crimes cause serious consequences, affecting people's confidence (Binh, 2004; Hung, 2004). In addition, drug crimes have new complexities, harsh, very drastic characteristics; meanwhile, types of social evils such as prostitution and gambling are quite popular not only in urban areas but also in rural areas (UNODC, 2005; Yem, 2001b). Crime and violations of environmental laws in recent years have been serious in most areas and areas and are growing fast that led to heavily devastated for environment, in which natural resources illegally exploited are threatening the sustainable development of the country (Ngu, 2006; Ung, 2007).

These urgent situations are due to many reasons but mainly due to the impacts of the reverse of the market economy along with the management, economic, cultural and social weaknesses of the State agencies organizing the economic affairs. Economic organizations, social organizations, we have not yet evaluated the serious nature of serious development of crime in the new period, to set out guidelines and measures to fight accordingly. The legal system is not synchronous, the enforcement of the law is not serious, the coordination of legal protection agencies is still lacking, many sectors and levels have not properly considered the work of participation in the room, Anti-crime. A part of cadres, including officials of law enforcement agencies, are corrupted, affecting the beliefs of the masses; Crime prevention work in families, schools and population communities has not been given adequate attention.

Community-Based Policing to Prevent and Combat Crime

In order to create a strong change in the effective struggle with crimes, promote the combined strength of the entire political system, responsibilities of branches and levels in preventing and fighting crime, the Government decided to conduct guidelines and measures to direct the prevention and combat crimes in the new situation through launching the Program 138 in July 1998, in which the community-based policing is considered as the most important project.

Community-Based Policing in the Program 138

In Vietnam, protecting national security and maintaining social order are a career of both the political system, the Party and the State assigns Vietnamese police forces to be the core. In which, the movement of the entire people to protect the Fatherland security is a voluntary and organized activity of a large number of working people involved in preventing, detecting and fighting against crimes to protect national security and ensure social order, and keep safeguarding social security for protecting state assets and people's lives and property. The first president of Vietnam, Ho Chi Minh (1984, p. 18) pointed out that 'have to rely on people, have not to leave people. Otherwise it will fail. When people help us a lot, they will be successful, help us a little, they will have little success, help us completely will win completely'. The movement of the entire people to protect the national security held a strategic position, is one of the basic working measures of the police forces, is the basic foundation in the cause of protecting the national defense and preserving social order. The revolution is the cause of the entire people, fighting to protect the national security and preserving social security is also the cause of the whole people. Thoroughly grasping this ideology of the CPV, in 2005 the Prime Minister decided officially that 19 August every year is "National Day to Protect National Security and Maintain Social Order"

Vietnam wishes to create a big progress in social safety and order through implementing a number of activities and projects from the Program 138. It will contribute to not only maintain rule of law and build a healthy environment as well as law-governed ways of living and working, but also basically reduce crimes, actively serving the national construction and development (Yem, 2001b, 2004). This Program's target is to reduce crimes in general and serious crimes in particular in the period of 1998-2010 and furthermore, to gradually build a healthy living environment in population communities, schools and families, thus creating marked progress in social safety and order. To do it, Vietnam established four major projects in the Program 138 to concretize these contents, in which the first project is recorded as the fundamental strategy, known as community-based policing. This strategy project aims to promote strengths of the whole society to participate in preventing and combating crimes, but also to create a strong change in order and security, especially in sensitizing, educating and reforming the wrong people at family and community. Besides that, when deploying comprehensively all strategies of the Program 138 can raise the sense of law observance in communities and promote the imitativeness and creativeness of grassroots levels in the work of crime prevention and combat (Hong & Ngu, 2001).

Under the provision and management of the Vietnam Fatherland Front (VFF), this project also poses out its specific characteristics and distinguish contributions with other projects and operations, which are often funded and operated by Ministry of Public Security or Ministry of Defense in Vietnam (Tiem, 2000; Yem, 2001a). Although the VFF is not one part of public security or police, over the past years, the Central Committee of VFF has organized training courses for more than ten thousand officials of the Front at all levels, and organized conferences to draw experiences in the whole country to review and coordinate with other movements such as drug prevention and combat and social evils, ensuring traffic order and safety, hunger elimination and poverty alleviation (Sidel, 2008; Thayer, 2008). In the

coordination of struggle, crime prevention, the important task of VFF is to propagate to raise awareness for people of all strata, each family and community, so that each person can know self-prevention ways to protect yourself, your family and your society. In the process of implementation, there have appeared many good and typical models that have been applied and replicated in many localities, such as clubs for crime prevention, youth clubs with law, people's security team, self-management team, mediation team, confederation of temporary residence, temporary absence and other number of specific communes namely "5 increase, 3 decrease, 2 delete" (Ngu, 2006; Thuy, 2009; Ung, 2007). Among of them, typical models are built in areas of parish and neighbouring areas such as "advanced parish, exemplary Catholic family", "peaceful village", "advanced parish", "peaceful fishing village"... have brought about practical results, contributing significantly to maintaining security and order in the residential area (National Steering Committee 138, 2010). The model "residential without crime and social evils", "safe and healthy residential area" has become the criteria for evaluation, review, recognition of "cultural family", "advanced residential area, "cultural village" in the campaign 'all people unite to build cultural life in residential areas" (National Steering Committee 138, 2010).

Besides that, through leading National Steering Committee 138 (NSC 138), Government enhances the social management in localities such as the management of residents, households, temporary stays and temporary absence, launch the mass movement for entire people to participate in detecting, denouncing crimes in communes and wards (Tiem, 2000; Yem, 2001a). Moreover, the Ministry of Public Security consult and advise the Government in building networks of receiving reports and information on criminals in localities in order to report criminal information to the authorities (Hong & Ngu, 2001). Additionally, through the matrix of mass organizations and unities in the sociality, the Government mobilizes the entire population to participate in the management and education of law offenders in population communities as well as provide vocational guidance and help to create jobs so as to involve and reform them into good citizens for their reintegration into the social community (National Steering Committee 138, 2010; Yem, 2003). In which, the important role of social organizations such as the Youth's Union, the Women's Union, the Front organization and families is essential bodies to guarantee and pledge to educate juvenile delinquents. According to allocating task of Prime Minister (1998) in the Program 138, the VFF is requested to assume to prime responsibility for this project while the Ministry of Public Security, the Vietnam Women's Union, the Ho Chi Minh Communist Youth Union, the Vietnam War Veterans' Association and other ministries and branches to participate therein.

There are some main outcomes of the first project in the Program 138, community-based policing, achieved in the period of 1998-2010.

Propaganda, Education and Mobilization in the Community-Based Policing Project

Within the scope of communist state, following up father-figure leadership and their ideologies as the most important requirements to prove loyal factor with Communist Party and State and propaganda is an essential issue (Nghia, 2005; Quang & Steiner, 2005; Tam, 2018). Propaganda and education on crime prevention are always identified as one of the key and regular work areas, which have been strengthened by all levels and sectors. As one positive contributions of these propaganda and education in terms of preventing and combating crimes in the Program 138, Ministry of Information and Communications, Vietnam Television, Radio Voice of Vietnam, Vietnam News Agency, Nhan Dan Newspaper, and leading- journals have directed to promote propaganda with many rich and diverse ways to spread widely to all classes of people (MPS, 2010; National Steering Committee 138, 2010). Some useful results

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coordinated to build propaganda programs and reflected more news, articles and reports in relation to crime prevention's campaigns as well as created open-access sections and news pages on crime prevention and combat which assist the Government to educate and raise awareness for officials and people not violating the law. Besides that, propagating advanced portraits, good experiences, warn of threats, watch out for ways and tricks of criminals that help the people to understand the nature and pattern of crime and also give some basic skills to avoid and prevent (Hoan, 2015; Thanh, 2008). To do it, the NSC 138 guided and consulted all their local branches to give information, policies, and provisions of Government and Communist Party in relation to crime control, which publish on radio news, television broadcasting festival, and posters as well as send these pamphlets and materials to institutes and schools (Yem, 2010a, 2010b). All these directions have been integrated between the Program 138 and other curriculums to organize training courses for leaders and managers of ministries, branches and localities to promote activities and improve the effectiveness of state management in crime prevention and control. After that, those leaders and have regularly organized classes for training and fostering law and knowledge on crime prevention and combat for officials at all levels and branches of grassroots cadres and propagandists throughout the country (Meredyth, McKernan, & Evans, 2010).

Besides that, to organize seminars and to propagate laws and civic responsibilities in the prevention and control of crimes as well as crime's harm consequences have also implemented by multilateral cooperation among members of Government. There includes the Ministry of Defense, the Ministry of Public Security, the Ministry of Justice and the Ministry of Public Affairs Communication, Central Vietnam Women's Union, Ministry of Education and Training, Central Ho Chi Minh Communist Youth Union, Vietnam General Confederation of Labor, Vietnam Farmers Association, Vietnam Veterans Association Vietnam, Vietnam Television, and Vietnam Voice. One of the interesting models in raise awareness of people to prevent crime in the public is that organize exchanges of clubs to anticipate crimes and praise advanced examples in the movement of people participating in crime prevention and control among youths in the Red River Delta and Mekong Delta provinces (SODC, 2010). Others produced legal documentaries, reportage films, and feature films on crime prevention and combat to spread widely to people of all strata. According to the Standing Office on Drugs and Crime (SODC, 2011), between 1998 and 2010, regarding propagative documents, there are at least over 50,000 leaflets, about 10 thousand CDs propagating the Criminal Code, Civil Code in H'Mong ethnic language, approximately 10,000 handbooks on crime prevention and drug prevention in the Program 138 printed and released to the public.

In terms of forms and methods to deliver the contents of propagation in crime prevention, under the leadership of the NSC 138, there are a number of various ways with its relevant activities applied successfully during over the past 10 years. Accordingly, provinces and cities in the northern, southern, central northern and highland region have directed to guide to their departments, branches and unions to use a variety of diversified directions and suitable forms, which based on the local conditions and ethnic identities and religious backgrounds (National Steering Committee 138, 2010). In order to enhance the close relationships between the Government and local people in the process of implementing the Resolution 09/CP and the Program 138, the NSC 138 suggested to organize more than 11.2 million households and nearly 11 million members signed commitments not to commit crimes and social evils as the form of memorandum of understanding (MoU). Apart from these MoUs, all contents of community-based policing's project (Project 1) will be also requested to allocate into teaching programs in schools, preaching and sermon programs in churches, temples, pagodas in order to propagate and popularize followers, monks and nuns (National Steering Committee 138, 2010). Also, authorities of all levels at 63 provinces and cities have maintained activities of the legal clubs and law libraries, in which by the end

of 2010, there were more than 13,000 law bookcases on the basis of communes, wards and towns in the whole of country, attracted more readers (National Steering Committee 138, 2010). Besides, there are many meetings, parades and propaganda campaigns, extracurricular sessions, night of propaganda and prevention for crime by art forms such as rhetoric and poetry. In the grassroots areas, the implementation of the campaign “all people unite to build a cultural life in residential areas” has been integrated with the movement of all people denouncing criminals, considering it as the standard of row emulation to get ‘citizen of year’ at communes, wards and townships. The NSC 138 has recorded at least 708 models of these excellent examples in the period of 1998-2000, whom they have been paid attention to direct, build and replicate advanced typical models in crime prevention and control by the authorities (National Steering Committee 138, 2010).

Call for Community-Based Policing to Combat Crimes

In Vietnam, depending on specific situations and urgent circumstances, periodically, the NSC 138 will consult and advise the Government to generate and launch the total campaign to combat crime. Through the Ministry of Public Security’s constructing, these attacked events will require the ministries, branches and localities regularly revise and improve the effectiveness of state administrative management measures on security and security such as entry and exit management, household registration, demographic and temporary residence registration and temporarily absent. During the over 10 years, the Program 138 have 1) maintained over 11 thousand points of temporary residence and temporary absence declaration; 2) conducted basic surveys in 10 thousand communes, wards and towns and 4 thousand public areas; and 3) coordinated to prepare documents to send 48,737 subjects to education at communes, wards and towns, 22,878 subjects to educational institutions, 10,730 subjects to reformatory schools, 22,138 subjects to medical facilities established records of management of thousands of subjects with criminal records and convictions for trafficking in women and children (National Steering Committee 138, 2010). As the other countries in the region to respond in any emergent situations from the people, they can contact directly via hotline phone number, in Vietnam beginning of the Program 138 is also set up 113 as police force’s hotline contact for everything (Kwiatkowski, 2019). Alongside with maintaining the effectiveness of police force 113, the model of hotlines and mailboxes denouncing crimes at public places has been received tens of millions of information related to crime and security to help law enforcement office to deal with crimes. To support it, the functional sectors including Ministry of Culture; Labor, Invalid and Social Affairs; Information-Communications; Public Security and Defence closely coordinated in the management of business lines with conditions affecting social order and safety (SODC, 2012; UNODC, 2012). Open and effectively implement many inspections, mobilize people to submit weapons and explosives, over 12 years have recovered over one million guns of all kinds, 500 bombs, thousands of mortars, nearly one million pomegranates bullet and additionally, the Program 138 continuously organized peaks to launch mass attacks against crimes to ensure social order and safety in the country (National Steering Committee 138, 2010). Accordingly, in the past 12 years, 694,771 crimes have been investigated and discovered, of which 390,859 crimes of infringing upon social order, 143,591 drug-related crimes, 160,321 crimes of infringing upon order of economic management sacrifices and positions. Relevantly, the People’s Procuracies and the People’s Courts at all levels have prosecuted and adjudicated the first instance 607,684 criminal cases with 963,016 defendants, ensuring political and legal requirements, creating trust for people in prevention and combat crime.

THE OUTCOMES OF COMMUNITY-BASED POLICING IN THE PROGRAM 138

After 20 years proclaiming the Program 1998, Vietnam have established a strategic planning with its systematic viewpoints to crime control. A different perspective of Vietnam with the rest of Western countries that is crime prevention's program and strategy have to supervise and lead the Communist Party through the model of community-based policing. Within the scope of the chapter, these achievements and outcomes will be mentioned and analyzed in the period of 1998-2010.

Positive Results

A number of crimes to threaten social order and safety has decreased. From 1998 to 2010, the country has discovered 953,135 crimes of all kinds, including 649,223 crimes relating to social order, 160,321 economic crimes, 143,591 drug offenses. It decreased 102,830 cases, accounted for 10.07%, compared to the period 1986 – 1997 (National Steering Committee 138, 2010). Crime due to social causes still accounts for a high proportion, many cases of barbaric nature, murder cases due to social causes accounted for over 90%, of which 21% are murder cases of family members (MPS, 2000). Besides that, human trafficking is complicated, with sophisticated and inhumane tricks in both domestic and international markets. From 2004 to 2010, 1,754 cases were detected, an increase of 220% compared to 5 years ago, with 3,171 traffickers and 4,314 victims (Phuong, 2013). Emerging from trafficking in women and children and kidnapping and appropriation of children in the northern mountainous provinces; buying and selling babies and young children in the fetus, taking advantage of the policies for adoption, marriage brokers to trick the sale of women and children abroad and even, recently there have been lines of trafficking in men, buying and selling organs (Phuong, 2013; Tuan & Thanh, 2013).

After 12 years of implementing Resolution 09/CP and the Program 138 has achieved many important and outstanding in both macro and micro roles. Firstly, at the macroscopic impact, the Program connected into full play the synergy of branches, levels and mass organizations and the masses, created a fundamental change in the society's awareness of responsibilities and benefits in prevention and fight against crime. All levels of Party committees, authorities, unions, agencies and enterprises have more clearly defined responsibilities in the state management of security and order, raising the level of preventing and combating crimes into the whole of society. It was being to create the initiative in preventing and eliminating factors and conditions for generating crimes and even, for causing political instability. By doing this, the Program contributed in gradually consolidating the people's security posture and serving effective in the cause of national socio-economic construction and development. Besides, through community-based policing project, the Program 138 developed and formulated a mechanism to coordinate and promote the combined strength of both the political system and the whole society to participate in preventing and combating crimes. The effectiveness of measures to prevent crimes and social evils from the grassroots is enhanced, creating real changes in social order, maintaining the legal discipline, building a healthy living environment, lifestyle and working under the law, creating a new climate and promoting great resources in crime prevention and combat.

For microscopic impact, second, the community-based policing has played a part in the effectiveness of criminal investigation's process and its related handles. Through propagandizing and calling for citizen's involved campaigns to share and provide information-related crimes, the police in all level investigated and discovered many big criminal, economic, drug and corruption cases and also peeled off many complicated syndicates and serious criminal groups. Additionally, the achievement of the model

of community policing in the Program 138 is also to reflect on building many models, organizing mass participation in crime prevention and combat at grassroots levels as well as creating conditions for more strata of the population to participate more directly in crime prevention and combat activities. This matrix of battle based on community and local people contributed to create a stable and healthy environment to promote local socio-economic development, making people truly believe in the Party's policies and guidelines, knowledge and sense of law observance, vigilance is enhanced, ready to participate in crime prevention and combat.

Restrictions and Weaknesses

In addition to the important results, in the official report of the National Steering Committee 138 (2010) summarized and pointed out some shortcomings and weaknesses in the process of implementation of community-based policing's model. There includes:

Firstly, the Party committees and local governments have generally had the interest in leadership and direction, but some places have shown that they are not deep, regular and continuous. Many measures of directing implementation are still formal, stopping at the stage of organization to thoroughly grasp resolutions and plans. Some sectors from the city, the province to the grassroots level have not coordinated to implement synchronously, there is also the idea of white-handed allocation to the police force; The task of preventing and combating crimes is not considered one of the key political tasks of each branch, each agency and unit.

Secondly, propaganda to mobilize people to participate in preventing and combating crimes is not really deep, the content of propaganda in many places is still general, not yet practical, and has not created a positive and strong change of the whole commune. Assembly; the role of branches, Fronts and unions in the management, education, sensitization and improvement of offenders in families and population communities with low efficiency places. The solutions of social prevention, economic and educational measures have not been coordinated yet, so the causes and conditions of criminal offenses are still limited. Many models, typical in crime prevention and control have not been replicated in time.

Thirdly, the socio-economic management of many levels and branches, especially key economic sectors, has many loopholes, shortcomings for corruption and negative things to happen, causing frustration and reducing confidence of the masses.

Fourthly, the situation of crime still has many potentials. Organized crimes, crimes with foreign elements, high-tech crimes, crimes in the banking and securities sectors tend to increase, but actively prevent, prevent and fight weakly. Criminal crimes are dangerous, drug-related crimes, rape, anti-public service executor, child abuse crimes, juvenile crimes ... are still more and more painful. The detection and handling of corruption crimes is still limited.

Finally, the construction and improvement of the legal system on fighting against crimes has not yet met the requirements and requirements of practice. The regulations on regimes and policies for people with meritoriousness, injuries, sacrifices in, preventing crimes; regulations on protection of criminal accusers, witnesses and victims in criminal and economic cases have not been issued. The construction of projects, projects, investment in procurement of equipment, technical equipment for crime prevention and judicial expertise has not met the requirements, affecting the effectiveness of preventing and combating crimes.

SOLUTIONS AND RECOMMENDATIONS

To generate drastic changes in the awareness, perception and sense of responsibility of the bodies, agencies and people in obeying the laws, the Program 138 in the period of 2016-2025 and towards 2030 highlights the important role of community-based policing. Accordingly, the Government continues improving the policies and laws on crime prevention as well as learn selectively the positive contents of community conventions and rules in preventing and fighting crime and in maintaining grass root order and security.

Firstly, augmenting the quality and efficiency of the nationwide campaign - “all people protecting national security and social order.” Accordingly, the Program 138 will renovate the contents, forms and solutions of this campaign in line with the security and order missions. In particular, developing and consolidating the movement in focused areas, strategic regions, minor ethnic localities, religious quarters, border zones, islands, industrial parks and major cities that will be prioritized to call for the whole of powerful society.

Secondly, the new stage of the Program 138 will innovate constantly the model and measures of propaganda and education that enhance the people’s awareness in crime prevention. It will combine between various models of propaganda that is far-reaching, concentrated and individualized and propagative information through mass media. These contents will be held by units of the VFF (principal role), political and social organizations, entities, schools, neighborhoods and residential quarters (associate members). To enhance the positive contributions of community-based policing, the Program will prioritize specific propaganda for individuals who are prone to committing or repeating crime and for pivotal areas concerning order and social safety, which can create websites for the “all people maintaining order and safety”-matrix.

Thirdly, investing to build up good practices in the “all people protecting national security and social order”-campaign should be implemented as frequently as possible. Through developing and improving the models of public self-management, self-prevention, self-protection and self-reconciliation with regard to order and security in families, communities, offices, agencies, enterprises and schools that raise local people’s awareness and attitudes to involve crime prevention with authorities. Besides, the NSC 138 encourage to carry out partial and final assessments regularly to gain experience, reiterate highly efficient models, study and create new models that fit in each locality. Also, depending on relevant functions, ministries and its bodies should organize events in which the people, employees and students sign written commitments to the construction of residential quarters, communes, precincts, offices, enterprises and schools to involve the campaign “the whole of community to explore and report information-related crime”.

Finally, all law enforcement agencies should deploy comprehensively the strategy ‘community-based policing’ to apply information-related crimes provided by citizen into their preventive activities. To do it, Ministry of Public Security (MPS) have to regulate and enhance the quality and efficiency of professional measures, renovate methods, improve the monitoring and statistics of criminals, maintain actively updated on criminal activities in critical areas and sectors. Furthermore, to ensure the strengths of all society, not police forces, the Program 138 needs to request involving of other forces and units in the army, customs, forest management, inspectorate, and private surveillance organization to expose law violations and crimes promptly. Upholding the role of units of marine police, border guard, customs, police and aviation security in jointly patrolling and controlling borders in land, on sea and on island, postal and air routes that will create a matrix-battle community to prevent and combat crime.

FUTURE RESEARCH DIRECTIONS

The community-based policing is not new model and unique application for policing in Vietnam and other countries around the worlds. However, the life changes with a number of potential threats and practical challenges to request police have to change relevantly to ensure social order in any society. In order to understand and apply the community-based policing more effective in the new situation, it needs more specific researches and further information to focus on. There are at least three future directions in terms of this model that should be demonstrated, including:

Firstly, to research deeply about the model of community-based policing or community-oriented policing from experienced countries in the region and around the world. Based on these positive findings, the NSC 138 should introduce in the Vietnam's context and look for any suitable initiatives to apply.

Secondly, to continue focusing on trends and patterns of specific crimes in Vietnam such as sexual assault, drug-related crime, and murders to identify the good model of community-based policing to prevent and control in order to compare with other countries. These outcomes will contribute to build up the background and literature in the crime prevention, rehabilitation and victim support.

Thirdly, to share and discuss the effectiveness of each sub-project in community-based policing of Vietnam as well as different countries with the purpose for exchanging owned experiences and excellent lessons together. It will play a part in understanding and developing the role of police in crime prevention.

CONCLUSION

To reiterate, in Vietnam, crime prevention is one of the imperative missions to ensure the national security and social order. The process of crime prevention must coincide with the missions of economic development, social advancement, national defense, security and diplomacy in great contribution to national industrialization and modernization and to international integration. In which, the model of community-based policing is always considered as the central pillars to implement crime prevention and combating. In Vietnam, for 20 years to implement the Program 138, mobilizing entire population to protect the national security and social order held a strategic position and also was one of the main tasks, needs measures of basic operations of the policing. Still the present, Vietnam has been always affirming that in the working measures of the public security system, the method of mass mobilization with citizen-involved contribution is the basic and leading measure and also playing a decisive role in the quality and efficiency of the operational aspects of the public security affairs. In order to maintain national security and ensure social security, mobilizing and promoting the role of the masse as well as building police forces closely linked to the people are one of the basic objectives and long-term strategies in Vietnam.

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KEY TERMS AND DEFINITIONS

Communist Party Leading: Is basic provision, integrated viewpoint and compulsory requirement to prevent and combat crime in the communist state such as Vietnam.

Community-Based Policing: Is a strategy of policing that focuses on building ties and working closely with members of the communities in order to enhance the effectiveness of policing.

Information-Related Crimes: Is any information in terms to criminals and its related behaviors to be founded and explored by people and they inform, either directly or indirectly, to police.

Matrix-Battle Community: Is the model to refer combination between the mass organizations, local communities and law enforcement offices to prevent and combat crime in Vietnam.

Ministry of Public Security (MPS): Is a standing office on drugs and crime of the Program 138 and Minister of MPS is also standing vice chairman of this Program in Vietnam.

Program 138: Is known as the National Program on Prevention and Combating Crime in Vietnam and is also considered as the most important programs in this field.

Renovation Period, Known as Doi Moi (Vietnamese): Is the name given to the economic reforms initiated in Vietnam in 1986 with the goal of creating a “socialist-oriented market” and the term *Doi Moi* itself is a general term with wide use in the Vietnamese language.

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