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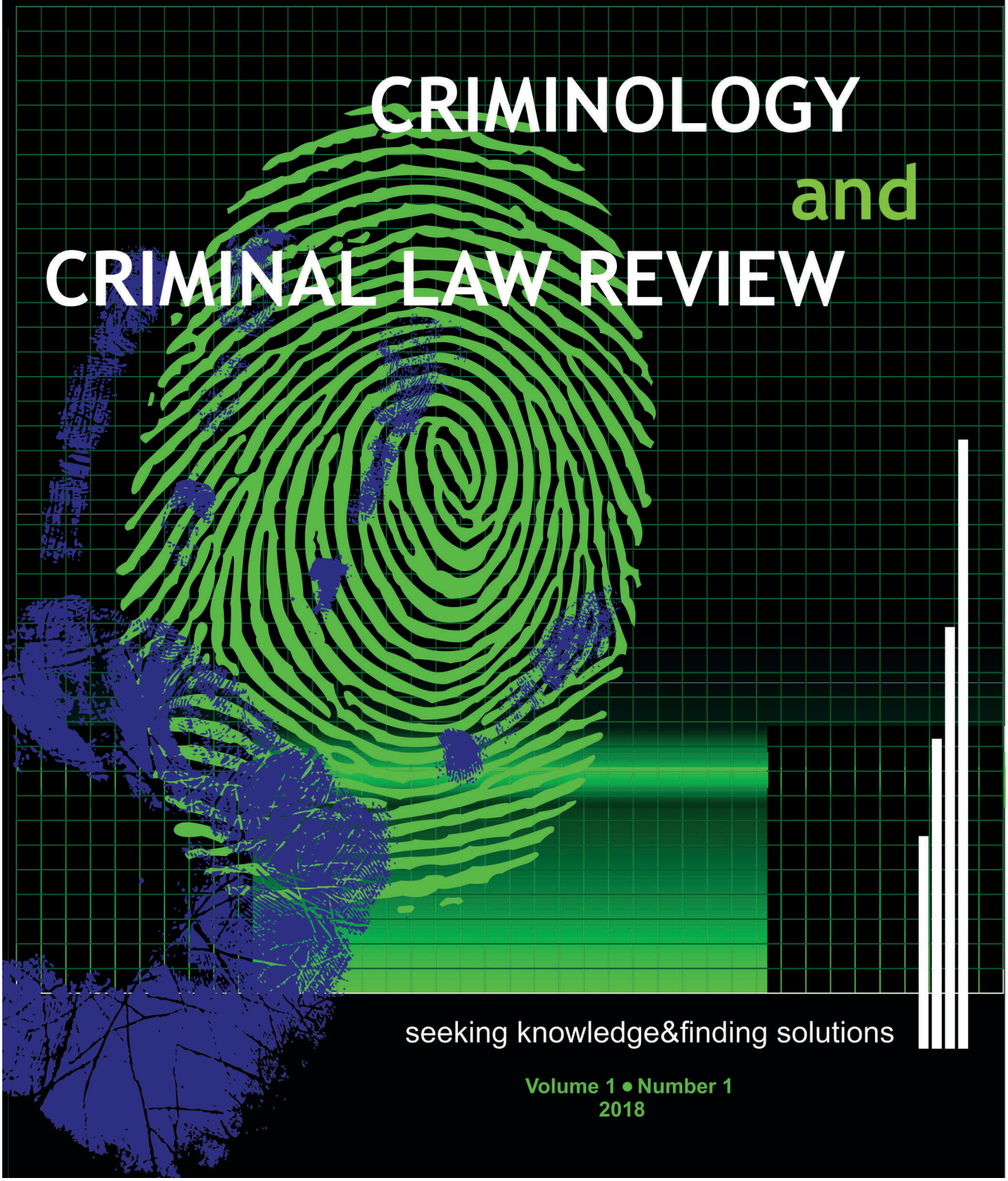

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CONTENTS

CRIMINOLOGY AND CRIMINAL LAW REVIEW
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Incapacitation and incarceration. A comparison between Italy and the United States

Mariateresa Gammone[a*]
[a]*University of L'Aquila, Italy*

Abstract

In the West there has been scarce academic reflection on incapacitation. Scholars, in general, ignore or dislike almost all aspects of incapacitation, including those related to "broken windows theory" and "zero tolerance theory". American practical attitude, on the contrary, is characterized by severe implementation of the incapacitation approach. The death penalty is an example of total incapacitation and the prison is an example of partial incapacitation: one is definitive, the other is limited in time and space.

In the United States, incarceration is hard, not only for ordinary people: when caught by investigators and prosecutors, white-collars criminals go to jail for years (even if the term "criminal" does not have easy and collectively accepted meaning). In Italy many prosecutors and police officers disagree with mercifulness, but are obliged to apply the rules of a lenient institutional system. To some observers, this leniency is due to political reasons.

In the western world incapacitation perspectives are not implemented in a coherent manner. Consequently there are not undisputed incapacitation policies and in some countries (such as Italy) even the concept and the term "incapacitation" almost do not exist. Even if the starting point of incapacitation could be found in the Italian criminology school, which discovered and emphasized the concept of dangerousness.

Keywords*: incarceration; incapacitation; crimininological paradigms; Italy; United States of America.*

1. Criminological paradigms

There are various criminological consequences of a supposed great divide between East and West. In terms of incapacitation and incarceration we can see the existing differences, but similarities can also be identified along a continuum of historical and existential possibilities (Gammone 2012).

As regards the West, we develop our considerations with particular reference to countries such as Italy and the United States, because these two countries form the two extremes in the continuum of Western experiences on incapacitation.

Specific criminological paradigms exist in many parts of the world (Sidoti 1993a). In the West, on some profiles, Italy and the United States see the political predominance of very different paradigms. For example, in many of the USA states the death penalty is still enforced, while Italy represents the place in the world where the death penalty was abolished for the first time, in the eighteenth century, under the drive of Enlightenment culture. In the USA, death row exonerations fostered awareness of mistakes in death penalty sentences and changed law-and-order policies. Many states substituted death

*Mariateresa Gammone, *E-mail address*: *mariateresa.gammone@univaq.it.*

penalty with something very similar to a virtual death: life prison without any chance of parole (Garrett 2017). In China, as well, there are dominant specific paradigms in many criminological fields, from the organization of justice to reconciliation (Braithwaite 2015). Regarding the death penalty China is closer to the United States than to Italy, while it is clear that perhaps a major part of the Italian population would prefer to implement penal systems closer to the American or Chinese traditions, rather than implementing the Italian tradition, which is the most respectful of human rights (Sidoti 2012). To some observers, even regarding the organization of justice China is closer to the United States than to Italy. Prosecutors in Italy do not represent the government in the case brought against the accused person. They are totally independent from government and proudly represent the Constitution (Sidoti 1993b).

Along with the divergences there are also convergences between Italy and the United States. As an example of certain convergent proposals we may consider Italian prisons. There are proposals characterized by considerable and different practical consequences, just think of the abolitionist proposal. Considering ideological perspective, it is enough to remember that in a statement issued in June 2000, Antonio Martino, then Minister of Defense, said: Italian state prisons are a real "national shame", and as a solution, he proposed to entrust the administration of prisons to private firms or institutions - obviously accompanied by state control, in order to avoid easily imaginable phenomena (such as the presence of organized crime in the sector).

Incapacitation and rehabilitation are two paradigms, among the many existing ones (Gammone 2017a). These are not the only two, nor the most important, in fact there are so many other paradigms, such as those based on cost-benefit theory, according to which the basis of human actions is selfishness. Human behavior would basically be a utilitarian calculation and crime would be no exception: it would be the result of a convenience in terms of individual cost-benefit analysis in the structure of social opportunities. In this perspective, the prison serves to explain that crime does not pay: it should be better being honest. Deterrence presupposes cost-benefit theory. Incapacitation can be considered a paradigm in a sense which was used firstly in English-speaking countries, but can be understood as a research program (Lakatos 1968).

The expression "prison–industrial complex" has been used in order to describe the incarceration explosion, which has characterized the American criminal justice system (Christie 1993). There is a clear analogy between the expressions "military-industrial complex" and "prison–industrial complex" (Melossi 2015). The term "military-industrial complex" was formulated by President Dwight D. Eisenhower, in his farewell address, January 17, 1961. "We annually spend more on military security than the net income of all United States corporations. This conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence — economic, political, even spiritual — is felt in every city, every Statehouse, every office of the Federal government. We recognize the imperative need for this development. Yet we must not fail to comprehend its grave implications. Our toil, resources and livelihood are all involved; so is the very structure of our society. In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex". To some observers there has been an evolution from the military-industrial complex to the "deep state" (loosely synonymous of a fluid network with de facto control of national government, without regard for democratically elected leadership).

A range of tactics drive the expansion of American private incarceration. The mass incarceration tore families apart and destroyed institutional budgets, but favored one interest group: the private prison industry. In the early 1980s, private prisons barely existed in the United States, but after we have seen a massive transfer of taxpayer dollars. Annual private prison revenues for big companies have grown to billions. Therefore, these astronomical revenue figures demonstrate that private prison have big political support. Government contracts (local, state, and federal) provide the dominant source of private prison revenue. In addition to lobbying, for-profit prison companies also spend vast sums of money on campaign donations. "Between election day and the end of Trump's first month in office, the stocks of the two largest private prison companies in the US, CoreCivic (formerly the Corrections Corporation of America) and the Geo Group, doubled, soaring by 140% and 98%, respectively. Just as Exxon learned to profit from climate change, these companies are part of the sprawling industry of private prisons, private security and private surveillance that sees wars and migration – both very often linked to climate stresses – as exciting and expanding market opportunities. In the US, the Immigration and Customs Enforcement agency (Ice) incarcerates up to 34,000 immigrants thought to be in the country illegally on any given day, and 73% of them are held in private prisons. Little wonder, then, that these companies' stocks soared on Trump's election" (Klein 2017: p.155).

The crisis of governability undermines the trust in the Western model. Vested interests have disturbing influence in democratic governance, especially in the American system, malignantly described as "one-dollar one-vote" rather than "one-person one-vote". Law professors show that the political theory of corruption goes far beyond bribery laws. Teachout (2016) focuses on juridical statements and juridicial decisions. "The Supreme Court has become populated by academics and appellate court justices, and not by people with experience of power and politics, who understand the ways in which real problems of money and influence manifest themselves. (...) This new legal order treats corruption lightly and in a limited way. It narrows the scope of what is considered corruption to explicit deals. It reclassifies influence-seeking as normal and desirable political behavior". Teachout highlights the concerns the American founding fathers had about corruption and provides a fair perspective on recent "populism" and "art of the deal".

In the United States the term "criminal" does not have any simple and collectively accepted meaning. A crime is an act punished by a criminal law. Consequently, we may have uncertain judgment on some actions that cannot be considered illegal, although from a moral point of view they are strongly condemned. American courts routinely hand down harsh sentences to individuals, but a very different standard of justice applies to corporations: there is an art of "backroom deals" (Garrett 2016). In its best way, crony capitalism can sometime devolve into elaborate hypocrisy, with only the mere appearance of democratic control. In 2017, the Pew Global surveys showed that a great majority of Western respondents say they do not have confidence in Western political leaders. 74% of global respondents express little or no confidence in U.S. President Donald Trump.

American practical attitude toward corruption is characterized by severe implementation of the incapacitation approach (Gammone 2017b). Incarceration is hard, not only for ordinary people: when caught by investigators and prosecutors, white-collars criminals go to jail for years (Gammone 2013).

The Italian situation is very different. From middle-class criminals to petty villains, from politicians to apartment thieves, there are legislations and jurisdictions that systematically produce low levels of incarceration. In criminological theories and in

specialized discourses on justice, the position of those who call for strict and swift justice upon the perpetrators of crime does not prevail. The approach of those who want a cautious justice prevails. In their opinion justice must be aware of the social reasons of crime and temperate towards those who are on the margins of existential happiness and economic well-being. Laws, regulations, legal decisions and judgments allow this situation. Many prosecutors and many police officers disagree with mercifulness, but are obliged to apply a lenient institutional system. To many observers, this leniency is due to political reasons.

2. Incarceration and incapacitation

The idea of progress has been defined "the soul and the guide of Western civilization". Prison is a privileged place for measuring Western progress. The classic Butterfield text of 1931, *The Whig Interpretation of History*, describes the conception of a historical evolution characterized by gradual humanitarian interventions such as those against corporal punishment, torture and cruel treatment of minors.

Today's jails are the result of the spread of reformist ideas beginning in the 18th century. In *The State of the Prisons*, the 1777 milestone, John Howard converts Dutch Protestant asceticism to London's philanthropy and Catholic monastic tradition: a new definition of punishment and penitentiary is born. Only the history of Western colonialism can hold confrontation in terms of pathos and contradictions: the good intentions and best rhetoric of the West met in prison, with all the distance that unfortunately often exists between theory and practice. There is sincere commitment to the prevention of crime; on the forefront, we find pedagogues like Maria Montessori and Anton Semenovyč Makarenko.

In the best Anglo-Saxon tradition, reflections and interventions on the prison stand out, from John Howard and Jeremy Bentahm to the revolutionary innovation of John Augustus. In the history of social sciences, the Italian School of criminology (Sidoti 2008, 2016) and other criminological schools have confronted themselves discussing the jail, in an ideal and methodological controversy of great importance. In particular, just referring to prison studies many scholars scientifically defeated the Italian criminological school. They however have added that Italian criminologists were deservingly distinguished from previous correctional practices. "Lombroso's distinctive merit lay in his humanitarianism", wrote C. Goring in one of the most relevant criminological works in every time (1919: p. 11). Lombroso, Ferri, Garofalo were reformers and pioneers (Radzinowicz 1998). According to Ferri, the Italian school of criminology has taken the same historical course of development as medicine. At the dawn of the nineteenth century, the physicians still wrote that “insanity” was a moral sin of the insane. Pinel advanced the idea that insanity was not a sin, but a disease like all other diseases. The Italian School “maintains, on the contrary, that it is not the criminal who wills; in order to be a criminal it is rather necessary that the individual should find himself permanently or transitorily in such personal, physical and moral conditions, and live such an environment, which become for him a chain of cause and effect, externally and internally, that disposes him toward crime” (Ferri 1906: p. 22).

Nazi racism was based not on Italian theories, but on appreciated thinkers such as eugenicist Francis Galton. The Italian School of Criminology was intended to confront dangerousness, but also clearly intended to support a humanitarian treatment of criminals, prisoners, lunatics, and minors. Cesare Lombroso was at the origins of biological criminology (Gibson 2002; Gammone and Sidoti, 2010). However, "beset by European

critics, Lombroso took comfort in his 'almost fanatical' US followers" (Rafter 1992: p. 541).

With regard to security and control, today the dominant practical prospect is incarceration. According to authors such as Christie, incarceration was "the western world's alternative to the gulag" and, according to many authors, such as Wacquant, we have witnessed a shift "from the social to the penal state, from slavery to mass incarceration" in our recent times. He sees the simultaneous and converging deployment of restrictive *workfare* and expansive *prisonfare*.

This would represent an extraordinary reversal of the traditional route. Norbert Elias has written famous pages concerning the "psychic process of civilization". In a multi-century journey, the world's growth in social capital, the minor inequalities, the highest levels of democracy and the solidity of political systems have greatly influenced the Western way of thinking about criminals. In the 1960s the decrease and "civilization" of crime that had begun in the period of Enlightenment and Beccaria were interrupted. Steven Pinker argues that violence in the world has declined both in the long run and in the short run. Empathy is on the rise. Barbaric practices such as human sacrifice and execution by torture have been abolished, while cruelty towards women, children and animals is, Pinker claims, in steady decline.

Sometimes are sleeping even the better angels of our nature. Paradoxically, the United States, one of the countries in which the Enlightenment ideals have become more widespread, is also the country with the highest rates of incarceration, with numbers that mark a clear break in continuity. It was observed that the number of detainees began to increase dramatically after the great social and racial disorders of the 1960s. After 1968, crime in Europe too, it became a dominant theme, but in the United States the number of prisoners was only comparable with South Africa or the Soviet Union; as a percentage, it was 14 times that of Japan. Millions of people were, in various ways, subject to criminal prosecution. In addition to detainees at the federal, state, and local levels, it is necessary to count people on parole, on probation, and serving outside of the prison walls and in the community with some sort of restrictions or conditions placed on the detainment, restraint, custody; that band of citizens tripled in twenty years. A nation that is, more than any other in the world, consecrated to the principles of freedom, has become the one that more than any other in the world self-defines itself as an amass of delinquents, prisoners, and offenders (Garland 2001).

In the United States, the theme of incapacitation was rediscovered theoretically and practically. The death penalty was an example of total incapacitation and the prison was an example of partial incapacitation: one was definitive, the other was limited in time and space. Along with the incapacitation, many scholars have stressed the importance of victimology, which pose the in relieve the suffering caused by crime and especially predatory crime. In the United States, despite the resources involved in incarceration, the results were controversial. From *Human Rights Watch*'s reports to *The Prison Journal*, many sources have stressed the perverse effects of incarceration. For example, aggression was very significant in prisons: at some point detainees from prison go toward society, bringing back the brutality learned during detention.

The growth of incarceration would be in contrast to that age-old decline in violence that has been described by so many authors and has become very famous; equally well-known is another opinion: many people prefer incarceration to rehabilitation and believe that decline of violence in the US is linked with high rate of incarceration. They think very

simply that if the criminals are in jail, they are incapable of committing new crimes outside the prison.

3. Italy and the United States

James Q. Wilson makes his first appearance on the scene of academic and political debate with an article titled "Crime and the Criminologists" in *Commentary* magazine, in 1974, then revisited and republished several times. His famous anthology volume, since his first publication in 1983, featured authors who would have had strong recognition in subsequent years, such as Richard Herrnstein, Travis Hirschi, and Charles Murray (who wrote on incarceration in an incisive manner). The new perspective promoted by Wilson was at the center of the then forgotten other analysis, such as the one on the incapacitation, which had important precedents.

In the United States, some Rand Corporation studies mark the origins of a new reflection on incapacitation, along with Wilson's interventions (his article on broken windows theory appeared in 1982, written with G.L. Kelling). The reflection on incapacitation is born as a new paradigm, even if the theme of incapacitation is very ancient: it can be found in classical doctrines, which include the extreme measures (hand cut or death penalty) up to jail or chemical castration of sex offenders, in differently determined ways, according to the times and the geography.

In the United States, during the 1960s and 1970s, the police was entrusted with considerably less power to investigate and prosecute individuals, based on suspicion rather than on definite evidence of illicit actions. Broken Windows Theory in the 1980s introduced a change in concepts and policies. According to the theory, the environment signals its security situation to the people, including to potential criminals. By maintaining an ordered environment, individuals are dissuaded from causing disarray and commit crimes. Environments filled with mayhem, such as broken windows or graffiti, indicate a lack of surveillance and the consequent cost-benefit analysis on the capacitation to commit crime without control, investigation, prosecution, with an increase in illegal activity. In the late 1980s and early 1990s, the civility laws provided legitimization for incapacitation of "uncivil" activities in urban spaces. Incapacitation converted in incarceration. These civility laws effectively bolstered severe incarceration by incapacitation of behaviors considered socially inacceptable, such as drunkenness, sitting or lying on sidewalks, sleeping, urinating, and begging in public spaces.

Even in American sociological and criminological literature there is enormous resistance to discuss incapacitation. Abound reductive visions, which for example tend to confuse incapacitation and predictive policing.

Incapacitation and rehabilitation have often intertwined. Even charities have been contributed to various spurious kinds of incapacitation. The "placing out" system was devised by Christian charities in the nineteenth century to alleviate urban disorder. Fearing that children raised amid poverty would become degenerate adults, concerned religious Americans developed relocation programs to rescue "innocent" youngsters from horrible poverty. Reformers went somewhat further in their efforts to move away from a prison-like approach to dealing with juvenile indigence; for instance, at times they have placed numerous Native American children in non-Native American homes, in the East and Midwest, in order for them to absorb "the values of work and the benefits of civilization" (Margolin and Montijo 1995). There are many kinds of incapacitation *with the best intentions*.

From the Reagan era onward, there was a great deal of criticism towards incapacitation concepts, which were in a sense old, but were successfully reassembled in an approach presented as a new paradigm. From the analysis of Zimbardo to the theory of broken windows, a theoretical thread was found that wore a new ideal and new canvas, certainly new in the indications of institutional choices, completely different from the past. Just the prisons became a clear reference to differentiation; it was said: we went from the Welfare State to Warfare State, from rehabilitation to incarceration. Because of the politically correct clash, the community of sociologists and criminologists was clearly divided.

One key element was the reflection on the "dangerous offender", with a strong accentuation of crime that is "serious". The consequences in terms of incarceration were immediately clear and explicit, although it was emphasized that in theory it would have been possible to pay particular attention to serial predators, as a result of the reduction of incarceration in relation to casualties: "One desired spinoff of selective incapacitation would be a reduction in prison overcrowding". Many talked about a new paradigm, and new penology, although in the 1930s there had been an important use of the concept of incapacitation. Less severe forms of incapacitation are often concerned with partially disabling rather than totally disabling offenders from reoffending. The person is restricted only in a partial aspect of his existential possibilities. Partial incapacitations comprehend condemnations such as disqualification from driving, prohibition to participate in certain sports events or curfews.

It was emphasized in the premise that the theme of incapacitation has not great attention in the current Italian academic field (Zagrebelsky 1992; Stella 2006). Much more attention is reserved to other issues, such as the inhumane conditions of some prisons (Anastasia 2013; Anastasia and Corleone 2009). After Lombrosian approach and after Fascim, the public mood was very progressive**.** In Italy there has been some reflection on incapacitation, but it has remained absolutely minor and peripheral. According to some, there would be a paradox: among many common people and among many public servants working in repressive institutions, prison is considered an institution that has the primary function of preventing criminals from committing other crimes. However this primary function does not have much space, in Italian scientific literature (Gammone and Sidoti 2012).

Many Western scholars, in general, neglect all aspects of incapacitation, from "theory of broken windows" to "zero tolerance theory", because they think that the two theories both have a political propensity, even if this is not true. In some authors the lack of reflection on incapacitation is often linked to an explicit (and, of course, legitimate!) preference for different thematic aspects. In other authors, however, these theories and these thematic areas are known and cited, but they are clearly rejected. According to them, punishment, imprisonment, death penalty do not serve anything, on the basis of documentation deemed incompatible from a statistical point of view (even though few data are controversial as those referring to the measurement of the effects of incapacitation)

On the recent revival of incapacitation, the starting point is the 1980 US elections, with the unexpected success of Ronald Reagan, who was president for all the 1980s. Between 1960 and 1980 there was a constant annual increase in crime rates, which had led to a growth of 300 percent. After constant annual increases, in 1982 the number of the most serious crimes decreased by 3 per cent, and in 1983 by 7 per cent. At that time an important political turnaround took place, under many profiles, including the way in which crime and prison were considered.

The theme of rehabilitation was always considered to be a priority in the United States; especially when dealing with first offenders guilty of small crimes. The "Father of Probation", John Augustus, was born in the United States; in the initial part of nineteenth century, he made the first pioneering efforts in the world to campaign for non-custodial sanctions. With Reagan's presidency, from that moment on, a different and moderate approach becomes an institutional priority. In the extreme, conservatives said that Americans had to choose between an intervention that worked (incapacitation) and an intervention that did not work (rehabilitation). It was believed that if prison and incapacitation were not enacted, the consequence would inevitably be a higher percentage of crimes. In this perspective, the prison would be a sure tool to reduce crimes, as opposed to rehabilitation, which would be a beautiful but unrealistic utopia. In the fiery climax of those years, the political and ideological confrontation was immediately preeminent. Sidoti's analysis takes into account some explanatory factors of trend change (other important factors, such as demographic ones, have been omitted to simplify the argument, even though it is acknowledged their relevance). At the beginning of the 1960s, the United States "had not yet completed the path that was a feature of European history: a widespread public intervention in many areas of social life for preventive and welfare purposes. At the beginning of the 1960s a public opinion stream was formed, which became the majority in the elections, first with Kennedy's presidency, and then with Johnson's presidency. In 1964, the US government solemnly declared ~~a~~ war on poverty; President Johnson's National Crime Commission, led by Ramsey Clark expressed concepts that become classics in this regard: fighting poverty, education, the contrast of inadequate housing and unemployment are the best ways to fight crime. A law in favor of civil rights is a law against crime. The money spent on schools is money spent against crime" (Sidoti 1998: p. 82).

Along with the declared war on poverty, the United States began another undeclared war against Vietnam, and a huge amount of money that could have been used in one direction was then used in the other direction, with the result that in one sense both wars were lost. In the 1960s, a belief was dominant: the "paradox of poverty in the midst of abundance" had to be combated, a view shared by democrats and even by many Republicans.

It is important to insist on these profiles, because probably we are in a similar scenario, over time, when the policies of Presidents Bush and Obama (which in many respects were homogeneous) have been radically questioned by Donald Trump's election. At the basis of the new approach established with the advent of the Reagan Presidency, there was the reworking and rediscovery of ideas that existed in English-speaking-Saxon culture, but which had been prematurely judged as old, obsolete, archaic, from Swift's *modest proposal* to the *uncontrolled geometrical growth* of Malthus, from W.G. Sumner to Social Darwinism. In a new sociological and criminological perspective, old heuristic sets were taken up: theories, concepts, hypotheses, diagnosis, prognosis, therapies, prescriptions, practical and interpretative specifications. These doctrinal and heuristic sets, albeit old-fashioned and different, had a new common enemy: the welfare state, immigration, leniency, and above all, faith in education and rehabilitation.

It was a Great Retreat, but not everywhere in the West. Incapacitation in Italy is an underestimated theme and sometimes treated, even from a criminological point of view, as related to those who are not fully self-sufficient: a mere assertion of the inability to act. The rehabilitation paradigm is always preeminent. In some treatises, incapacitation is dealt

with in the specific criminological sense, but it is peripheral, considered to the importance given to other themes, which are considered to be paramount.

Great scholars, from Durkheim to Dewey, rightly pointed out that education was the decisive problem, above all because the birth of a modern industrial, urban, literate and democratized society. However education is not the only problem to be considered. Today, we are exiting industrial society and entering a post-industrial society, and, for that new world, educational models are still under construction, both regarding prisons and the society at large, outside prisons. Rehabilitation paradigm, in particular, presents difficulties in terms of individual responsibility and the unwanted consequences of human actions.

Incapacitation must be distinguished from dissuasion and deterrence. Dissuasion means to persuade people to refrain from illegal action. Dissuasion is to be achieved by convincing people and discouraging to engage in confrontation or threaten violence. Deterrence means warning of punishment, including with *deterrence by denial*, which means persuading people not to do wrong things by explaining that wrongdoings will be defeated. In other words, if the laws do not discourage a person from admitting wrongdoings (the goal of dissuasion), they might discourage him from using them (the goal of deterrence by denial - that is, that he will not be able to achieve his operational objectives). Incapacitation is just another thing: it is not concerned with the causes of the offense, as is the case with moral examination, or with the therapy of the offender, as is the case with rehabilitation, or with the nature of the offense, as is the case with retribution. The rights of the victim have preeminent consideration. The overall aim of incapacitation is to prevent the offenders from reoffending in the community.

Incapacitation is often indispensable, for example against offenders such as terrorists and mafia criminals (Gammone 2014). There are so many other serious and hateful crimes committed and their perpetrators spread concern and fear. The fact is that the theme of incapacitation is related to the theme of danger and often this point is not perfectly clear even among scholars, accustomed to considering the concept of punishment in reference to three theories: rehabilitation, deterrence, retribution (Sidoti 2012). Incapacitation is often neglected, even if it has distinct roots and distinct reasons, not only with respect to rehabilitation and retribution, but also with respect to deterrence. There are various contaminations; for example, in prisons incapacitation can coexist with the rehabilitation purpose; conceptually, inability does not want to threaten or injure: it just wants to prevent the repetition of crime, in order to protect the potential victim (Viano 1990; Audet, Katz 1999).

According to many observers (Davigo, Ardita 2017; Davigo and Sisti 2012) incarceration must first be applied to white-collar criminals (because they often produce, in quantity and quality, greater damage than street offenses). According to the same observers, the state must be scaring, as a "necessary evil", but in Italy prison does not discourage white collar criminals. Therefore, they systematically repeat their transgression, because they are not "afraid", discouraged by sanctions (prison in the first place, but not only). A paradox could be seen: prison is very important against their odious crimes, but in prison there are not enough white collar criminals that should instead be there.

To critical observers there is no incentive in Italy to behave well, but there are incentives to behave badly and so everyone behaves badly. The crimes of those who fill the prisons are easy to commit but also it is much more difficult to make a financial prosecution than to make a prosecution against a car theft. In the last few decades, in the

West, the middle class has become increasingly smaller, there has been an impoverishment of the low positions and a shameful enrichment of those holding top privileged positions. In the past an administrator earned ten times the wages of his workers, now he/she earns one hundred times more. While there are situations in which people "need" to steal, in Italy a large part of those who steal are privileged and rich. This is not to say that Italians are all thieves, in fact Italians are for the most part victims of an unfair system and for this reason, and elections often give the idea of resignation.

Incapacitation in Italy has been underestimated and does not appear to be a topic of concern: neither for professors and nor for white-collars - as widely demonstrated by Italian chronicles. Apart from exceptions, resignation wins in many areas - along with its great allies, such as underestimation, ignorance, and expectation. Galbraith's picture of the affluent society was exaggerated; however it gave a reasonable image of political stability in a prosperous economy. Now, at least 15 million people in Italy live in deteriorating situations in the peripheries but also in urban centers. Insufficient and ineffective investments, massive degraded buildings, occupation of houses, unlawful disposal of waste, are some of the problems Italy faces in peripheral neighborhood like Zen in Palermo, Secondigliano in Naples, São Paulo in Bari, Dams in Genoa and Tor Bella Monaca in Rome. In those degraded areas, for years drugs have been the main economic activity (Sidoti 1994a). Now residents are living in a more difficult situation. The lack of effective policies regarding incapacitation, dissuasion, deterrence, has been combined with the lack of effective welfare policies and fight against poverty.

Where there is no incapacitation, there is incapacity. Not only the degraded areas are experiencing a devastating crisis; even the most famous Italian "art cities" seem overwhelmed by difficulties, with garbage piling up near containers and horde of beggars at every corner. In Venice, Florence, Rome, and in many other beautiful cities, many observers see systematic depletion of the historic-artistic heritage that was the unrepeatable mark of the country.

Poverty remains high in Italy, and is slightly up. According to figures published by Italian statistics institute, 4.742m people are in absolute poverty during 2016, 144,000 more than in 2015. "Absolute poverty" means being unable to buy a basket of goods and services "essential to a minimum acceptable standard of living" (Sidoti 2012).

One of the ideological pillars of the European Union is the freedom of circulation of goods, capital and people. This ideological principle has become more and more effective due to the growing interconnection of communication systems. However, there is also a downside. Many youths in Africa are underemployed. In some areas, climate change, terrorism, famine and wars are causing severe social unrest (Sidoti 1996b, 1997). This clandestine migration between Africa and Italy has spiked in recent years. Overall arrivals are up: Africans are fed up with the lack of opportunities in their home countries and are escaping at higher-than-usual rates. The ability to prevent (and to incapacitate) an unwanted conduct is absent in many Italian sectors, inside and outside national borders. The same problem is present in many countries, but in Italy it has specific characteristics.

4. Political corruption and incapacitation

The decisive role played by civic participation in modern democracy is explained in a large literature, from Robert Michels' views about political parties to Joseph Schumpeter's elitist theory of democracy.

In order to explain as much as possible my approach to the problem of incapacitation (its minimal role in the Italian theoretical debate and in the Italian public policies), I'm

mainly referring to Sidoti's analyzes, which in various ways and on various profiles, I'm reporting and summarizing.

The Italian economy was once a success story. Italy made a glorious transition from shattered Second World War loser to the world's fifth mightiest economy. After the Second World War, from 1946 to 1991**,** the average annual increase in overall gross domestic product was the highest in the world (after Japan); still in the 1980s Italy's annual rate of growth was among Europe's highest. In 1992 and 1993 Italy achieved the best export performance of any major industrialized country. This history of extraordinary economic successes was suddenly and abruptly interrupted, coinciding with a furious political confrontation on the issues of legality that began in 1992 and which is still ongoing, characterized by experiences that have become known all over the world: "Clean Hands operation" and "Anti-Mafia movement". On the Mafia, the incapacitation policies have been implemented in a masterly way (Sidoti 2012); on corruption the incapacitation policies have not been implemented at all.

It was only after the killing of Judge Giovanni Falcone and its security guards, in 1992, that the Italian politicians promoted a new regulation on prisons, the "41-bis law", which severely changed custody for mafia bosses by introducing secluding measures and solitary confinement. This is the strictest legislation on incapacitation existing in Italy. The state was forced to react as it never had before. The mafia groups had to face a counter-offensive on an unprecedented scale; they were overwhelmed.

Until 1992, being in prison for a mafia boss was like staying in a kind of restrictive and incommode hotel from where they could nevertheless continue to exert their leadership, ordering strategies and tactics. The new regulation of 1992 was a literal application of the logic of incapacitation. Perhaps it is one of the best applications (for consistency and for profitability) of this logic within a Western democratic system. This regulation has been severely contested (in a wide and very diversified ensemble, which goes from the lawyers of the mafia to the purists of extreme democratic leniency), but it worked very well. The major Sicilian mafia bosses have died in prison, while they were subjected to this type of severe incapacitation. Precisely because the incapacitation in Italy has been applied with great success in this sector (and practically only in this sector), the fact that it has not been implemented in any other sector must be carefully spelled out.

The resistances are in the political, cultural, academic areas. The political resistance is motivated by the fear of a large part of the politicians that the incapacitation policies could be used against them and against their own electorate (obviously not the whole political class is homogeneous: only the majority rejects the incapacitation policies). Cultural resistance is linked to the Italian tradition, which is the most tolerant and democratic in the world. The academic resistance is linked to the pre-eminence of Catholic, Marxist, radical ideologies, which have found fertile ground in the Italian ideological tradition and attentive ears in that part of the political class that does not want to be questioned its parasitic domination of Italian society.

For years, from the late1940s to the early 1970s, western governments enjoyed an unprecedented period of tumultuous productive growth, with improving economy, rising incomes, and soaring living standards. Italy was heavily impacted by the international financial crisis of 2007–2008, which is reputed by many experts to have been the worst global crisis since the Great Depression of the 1930s. Italy's economy contracted by over 9% since 2007 and faced 13 quarters of recession. The period from 1970 saw a number of important economic and social changes that initiated a long-term upward trend in the level of public debt. Since the 1970s**,** the welfare spending (pensions,

social services, wages, and many further subventions) has caused a high level of government fiscal engagement. On the one hand, higher levels of public expenditure were caused by institutional changes such as the foundation (for political reasons), in 1970 of regional political administrations. On the other hand, the greatest reason of the increase of public debt lies in the peculiar economic difference of the Southern regions of Italy. There are enormous regional disproportions between the highly industrialized and dynamic North and the rural southern Mezzogiorno areas, where poverty, unemployment, and organized are problems rooted in a long history. In his reflections, communist theoretician Antonio Gramsci emphasized the "absolutely antithetical conditions" of Northern and Southern Italy at the time of the Italian Unification in 1861. South and North of Italy had a very different economic and social history for more than one thousand years.

The Italian economy is burdened by a huge public debt. Public spending covers current outflow (salaries, services, etc.) and investments. The country's national wealth is four times larger than its public debt and Italy is the world's eighth-largest economy, but interests take oxygen away from the country. For political reasons, there has been no rigor and current governmental spending has augmented. Politicians have chosen to increase public debt without funding investments. Many say that Italians and public debt are like two shipwrecked people tied to the same raft: if one is too heavy and goes under, the other is also pulled down.

In the years of the cold war, there was a steep rise in the cost of being in politics, after the great social uproar of the late 1968, the "red scare" grew to the same level. The political class preferred to create huge autonomous sources of finance either using public economy or inventing other means of intervention. For some years this mechanism, which started in the 1950s, did not create difficulties for the economic development of the country. But with time it achieved terrifying proportions. "From the 1960s, Italy was affected by *hyper-politicitation*: from universities to hospitals, from the judiciary to the opera houses, the parties politicized many public organizations and increased by promises the growing appetite for jobs. One of the first consequences of this abnormal enlargement of political activity has been the disappearance of the sense of the state as the seat of rational and impartial powers" (Sidoti 1993c: p. 145). The supreme consequence of the high cost of politics was an almost bureaucratized system of kick-backs (Sidoti 1994b).

During the cold war, everyone knew that the cost of clientelism was paid by an enormous corruption network. In Italy more than a million people are in full-time politics; they are therefore professional politicians in the strict sense: for some of them politics is a vocation, for some of them it is a means of gaining a living, and for some of them it is a career for upward social mobility. They *live off* politics. "There are two ways of making politics one's profession: Either one lives 'for' politics or one lives 'off' politics. (...) The distinction hence refers to a much more substantial aspect of the matter, namely, to the economic. He who strives to make politics a permanent source of income lives 'off' politics as a profession, whereas he who does not do this lives 'for' politics" (Weber 1919: p. 14).

In Italy incapacitation of bad politicians is very difficult. In part they are the backbone of the functioning of the country (because they cover important public roles at various administrative levels) in part they dominate the same elective assemblies that in theory should make the laws to depoliticize the country (Berggruen and Gardels 2013). Aside from the ideology of rights, that of duties should also be valued. For some observers, the political crisis with which advanced western societies have been grappling since the early

seventies is essentially cultural; they advocated the necessity of constraints, duties and virtues (Ionescu 1984).

In the West today, Berggruen and Gardels say, we no longer live in "industrial democracies", but "consumer democracies", which resulted in short-term thinking, paralyzing partisanship, and demanding populism. Today's democracies survive in a multi-polar world where no single power dominates and in which many national experiences are becoming culturally very atypical (Luce 2017). Polyarchies have free associations, fair elections, inclusive institutions, civic rights, freedom of expression, and critical information. However, these sacred principles unwillingly favor the proliferation of contradictory centers of power. The best institutions of democracy have been heavily complicated by the *vetocracy* of dissentious groups.

To many observers, the lack of extended incapacitation policies has determined large discontent and discomfort. Strenuous governmental support for a relentless clean-up of political corruption appears incomplete, controversial, and mendacious to the majority of the population. In a popular culture where descriptions of awful politicians abound, the worst villains are the hypocrites who dictate morality and behave very differently. From 1992 onward, surveys have indicated that too many people are not confident in politics; a high percentage are disappointed, angry, indifferent, demoralized, and even terrified. In almost all the advanced democracies, voters are skeptical or in revolt; in Italy, worst confusion is dominant: not only old certainties and loyalties are dead, but also many people are unsure about their savings, retirements, jobs, and personal integrity. Not much has changed since Clean Hands. From this point of view, in the last twenty years the situation has profoundly deteriorated.

In conclusion, in the western world incapacitation perspectives are not implemented in a coherent and ruthless manner. Consequently there are not undisputed incapacitation policies and in some countries (such as Italy) even the concept and the term "incapacitation" almost do not exist. Even if the starting point of incapacitation could be found in the Italian criminology school, which discovered and emphasized the concept of dangerousness (Sidoti 2006).

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Conditions of detention under art. 41-bis 2nd subparagraph of the penitentiary system: its exact functionality
Some comments to the circular letter n. 3676 of 2.10.2017

Alessia Meloni[*,a], *Antonella Fabi*[b]
[a] *Forum of Rome, Rome, Italy*
[b] *Forum of Rome, Rome, Italy*

Abstract
Considering the sensitivity and the complexity of this topic, it cannot but be evident that its discussion will inevitably be lacking and probably flawed as well. The risk of an incomplete and biased critique is always lurking. And the circular letter's analysis about the special penitentiary system's organization, as laid down by art. 41-bis "O.P", cannot but be exposed to this kind of critique. In fact, the regulation is particularly unique, complex and structured, affecting practical realities, whose dynamics, sometimes almost undetectable, can only be completely understood by those who gained, during the many years of their profession, study and daily work, long-established knowledge of the criminal mobster phenomenon.

Keywords*: penal institutions, conditions of detention, order, penalty.*

Several issues converge on the organization of the special penitentiary system: while on one hand there is a need of protection of the fundamental rights of the individual, detained in the restricted regime, on the other hand there are specific finalities, on a same constitutional level, concerning the guarantee of national security, public security, economic welfare, defence of order and crime prevention, health and ethic safeguard, individual's rights and freedom protection.

In the balancing process of the interests, all of a constitutional level, it is crucial to consider that the provision of a special penitentiary system is nothing but a prevention measure, aimed at interrupting contacts between prisoners, representatives of organized crime and the clique's members, which is operative outside, in order to prevent the commission of crimes.

All the prisoners subjected to this special regime share a high criminal profile and a proven ability to keep contacts with the outside world, despite the fact they are in a detention regime.

The latter is the main raison d'être underlying the adoption of particular prevention measures, laid down by law and specified in the ministerial act, which, despite the fact they determine restrictions to the ordinary exercise of individual rights of the person, are justified with the one's peculiar dangerousness and ability to maintain links with the

* Alessia Meloni, *E-mail address:alessia.meloni@gmail.com*.

outside world and, therefore, their leading position in the criminal organization, with consequent harm to public security.

The envisaged measures do not aim at punishing the prisoners, as they are not meant to exacerbate their affliction and they do not serve as an adjustment after the sentence has been served because of nature of the committed crime.

Such measures do not tend to impose an additional affliction, added to the already existing penalty, on those who are subjected to the special penitentiary system.

Their purpose is to prevent further crime commission.

This is their raison d'être.

This is why they assume full attention and a careful observation of the department life, instrumental and functional to the pre-emptive purpose, which must not be undone by merely repetitive conducts and decrease of attention.

It cannot be underestimated that, every day, in every moment of his department's day, every prison officer carries out a guarantee function towards society's safety.

The basic condition in order to properly apply the art. 41-bis regime, with due regard for its special and distinctive connotations, is the uniform implementation of the rules and practices within the penal institutions, thus preventing the system to be disrupted by procedural divergences.

In fact, a divergent application of the rules, as well as mistakes in their exact implementation, might provoke a breach in the system and, eventually, its collapse.

The contact with the outside world, which the penitentiary system promotes as functional to a social reintegration, cannot, in this peculiar detention regime, determine, in any way, even indirectly, a link among prisoners, belonging to criminal organization, with the latter's members which are at large (Constitutional Court 376/1997; order 417/2004, 192/1998).

In this perspective, the development of sociality groups inside the penal institution is of a decisive importance (Art. 3.1 of the circular letter n. 3676 of 2.10.2017 *"Nella determinazione dei gruppi di socialità il Direttore dovrà avvalersi del personale dedicato alla custodia"*).

Crucial factors in the development process of sociality groups are the culture, the knowledge of the crime syndicate and the experience acquired by those who work in the penitentiary system's sector.

The creation of the sociality group requires a careful assessment of the prisoner's backstory, of his origin's region, of his membership's clan and of the geographical area where the clan operates.

Sociality groups must be formed in a way that precludes any order, information, news coming from the outside world to be communicated and that there is no contact between prominent personalities, regardless of the criminal organization they belong to.

This is why the group's composition should consist of only one major criminal personality among less prominent members, who do not belong to the same criminal organization or to allied or opposed organization operating in neighboring territories.

Indeed, the formation of sociality groups must be made in such a way which excludes that, during the outdoors hours and sociality moments, there are any possibilities to constitute, or reconstitute, forms of aggregation, which allow to strengthen the criminal network, functional to the conception, planning and commission of crimes by prisoners subjected to the special regime.

Without any doubts, this assumes the capability of a careful, conscious and focused observation of the prisoner's life under the special regime, as, behavioral profiles, apparently insignificant, acquire crucial importance in the perspective of tracing criminal realities and projects.

The prisoner's history, directly learnt through his file, as well as through information coming from other penal institutes, where he stayed (It is also relevant to know the prisoner's conduct in the different sociality groups where he had been inserted in other penal institutions, in order to check his different behavior, calm or unruly, towards other prisoners), and his observation, allow to acquire all those elements, useful for the assessment of his skills in maintaining contacts with the criminal world, in carrying out operations of "approaching" and sharing of interests between mobster cliques, which are expression of different territorial origins.

In this perspective the attention given to the different moments of the prisoner's life, restricted to the special regime and of his behavior, is crucial.

The inspection of his correspondence, with the help of post office and censorship's employees, reveals potential contacts, between the prisoner and other people, even under the 41.bis regime.

Therefore, it is evident that the composition of the sociality group must be made considering external contacts and links which may exist between other prisoners in the 41-bis section.

And the observation of the conversations between the prisoner and his relatives allow to reveal if there are any new alliances or new approach among mobster cliques.

If it is acceptable that these must be the dynamics to consider when creating sociality groups, it also must be considered that the circular letter, when referring to the creation of sociality groups, seem to underestimate this set of knowledge and essential elements of assessment.

When stating that the Director, must use the guardianship staff in the formation of sociality groups, there is no consideration of that set of knowledge, as well as of the mobster phenomenon's dynamics, whose acquisition and chance of understanding assume direct experience and interpretative skill.

Actually, there is no clarification of which are the qualified figures, who have the necessary stock of knowledge about mobster culture and experience, who must be used by the Director in the group's formation.

Thus, with regard to the "impossibility to communicate" of art. 3 (Art. 3 "*Dovrà essere assicurata l'impossibilità di comunicare e di scambiare oggetti tra tutti i detenuti/internati anche appartenenti alla stesso gruppo di socialità".* Such provision has been introduced after Cass. n. 5977 of 8.02.2017, modifying the common practice of allowing the transfer of foodstuffs, coming from the monthly package, to the sociality fellows) of the circular letter, it would have been appropriate to punish the breach of the prohibition. This is because of the different thinking of the different institutes directors who, in the case of breach of the prohibition, do not conclude the disciplinary procedure with a sanction, filing proceedings initiated against the detainees responsible for the "greetings".

In the prison culture and in particular in the hierarchical scale of the criminal organizations, it has been observed that addressing the greeting is the one who usually occupies positions of paramount criminal responsibility, against which there is submission and obedience by the other constraints. Whoever is in the position of preeminence has the

power to move the balance within the section in which he or she resides, assigns the order, and grants his approval to take certain actions.

Sometimes all of this is backed up in the greeting to one of the same rank, or to a superior rank criminal subject.

No aspect of a detainee's life, restricted to the special regime, must be underestimated.

In this regard, the European Court of Human Rights (CEDU, Nov 13th 2007, appeal 65039/01, Schiavone vs Italy) has held that the special restrictions of the 41-bis regime, while constituting an interference in the exercise of the right to respect for family life, guaranteed by art. 8, par. 1 of the European Convention for the Protection of Human Rights ("*Everyone has the right to respect for his private and family life, his home and his correspondence."*), cannot be regarded as infringements of the same law when the conditions set out in para. 2 of the same art. 8 ECHR are met.

According to the latter, "*there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".*

Thus, the Strasbourg Court held that the special regime governed by art. 41-bis of the "O.P" does not constitute a violation of the fundamental right enshrined in the conventional law, but points out that an interference, in order to be considered necessary in a 'democratic society', must in particular remain proportionate to the legitimate aim pursued.

In this way an interpretative canon of the discipline of art. 41-bis has been introduced.

Therefore, the ECHR considered the restrictions related to the talks and the visits of the family members in the case of prisoners under 41-bis compatible with Art. 8 of the Convention, because they aimed at breaking the links between the detainee and the mafia membership organization.

The aim is to minimize the risk of exploitation of family and personal relationships, given the established use of family reunion, as a vehicle for the transmission of orders and instructions outside the prisons, in order to achieve the aim of prevention related to the prevention of crimes (ECHR, GC, 17.09.2009, Enra vs. Italy; ECHR, sect. ii, 12.01.2010, Mole vs. Italy; ECHR, sect. ii, 19.01.2010, Montani vs. Italy; ECHR, sect. ii, 13.11.2007, Schiavone vs. Italy).

In this regard, the Administration, in implementation of the Constitutional Court ruling 376/1997, initially introduced the possibility of carrying out a part of the visual talk with children under 16 years without partition glass to protect the need for affectivity of children, towards the parent detained, and to prevent the minors from having negative consequences due to the prolonged detachment from the parental figure (Circular dap n. 543884.1.1. 41 bis of 6.02.1998).

Legislation prior to 2009 allowed more room for discretion. Subsequent regulatory developments have progressively led to a reduction in margin of discretion.

With circular no. 3592/6042 of 9 October 2003, the Administration has established a lowering of the age limit from 16 to 12, stating that interviews of prisoners subject to the 41-bis regime with children under 12 years of age may take place without partition glass,

in talking rooms with video-recording equipment throughout the duration of the interview, in the case where the talk is exclusively with the child, or for a time not exceeding 1/6 of the total duration, in the case where there are also other family members.

Law 94/2009 further amended the regime in art. 41 bis, reducing again the scope for organizational discretion, allowed to the administration in the choice of concrete restrictive measures to be taken.

However, the administration, with circular dap n. 0101491, dd.12.03.2012, while respecting the changes to the detention system, which intervened after the law 94/2009, has decided to confirm the most favorable arrangements for the interviews of restricted persons under the regime of art. 41-bis with the minors, in order to ensure a balance between the exercise of the affectivity of minors at an early age towards detainees and security needs.

The restricted regime, even with regard to talks, has a significant difference to the ordinary prison system, justified by the need to prevent the passage of communications between the detained person and members of the mobster association outside the prison.

These limitations are already expressed in indent 2-quarter lett. B of art. 41-bis and imply both quantitative restrictions ("the suspension of the rules of treatment and the institutes referred to in paragraph 2 precedes ... the determination of the interviews in the number of one per month to be performed at regular intervals"), and qualitative ones (prohibition of the passage of objects), as well as in relation to the confidentiality of the interviews, subject to audit and registration.

In this regard, the Strasbourg Court found that the presence of isophonic glass, as a barrier to physical separation between the prisoner and the members of the prison during the encounters in the prison context, is justified by the need to prevent the passage of objects that could facilitate escape of the detainee, of the commission of further offenses and ultimately of reasons for the protection of the community, which, pursuant to art. 8 ECHR, allow such forms of interference in individual and family life (ECHR, G.C. 17.09.2009, Enea vs. Italy).

Based on the foregoing, with specific reference to art. 16 of the circular, it should be noted that the provision concerning the interviews, with no partition glass between the detainees in a differentiated regime and the children under twelve years old, does not seem to adequately assess the security requirements, coterminous to the restricted regime, to the extent which it does not provide for revocation of the permission to use the interview with no partition glass with minor, responsible for the delivery of messages between the prisoner and the adult family members.

Similarly, the provisions concerning the strolls, the room and the painting room (Art. 11.2, 11.4 and 11.5 circular n. 3676/6126 of 2.10.2017) cannot fail to comply with the purposes of the restricted regime and those requirements of homogeneity "of application, within the various prisons, of the rules and practices which characterize the detention under the dictates imposed by art. 41 bis O.P ", as stated in the preamble to Circular no. 3776/6126 of 2.10.2017.

In fact, the wording of the provisions in question leaves room for different interpretations and consequently for various disputes.

And indeed detainees can stay outdoors for no more than two hours a day.

The problem is, however, to understand how such hours should be distributed.

Two hours outdoors are set: one hour at the strolls and one hour in the break room equally.

The problem is to figure out how to settle if the detainee wants to make two hours in the break room, since art. 11.4 of the circular provides only one hour of room use.

Practical application of this provision may be easy in some institutes, but for structural reasons it is impracticable in others.

Even the attendance of the painting room presents numerous problems.

And indeed, despite the submission to censorship of the correspondence of the prisoners, there is the use of colors that can facilitate the outside circulation of cryptic messages.

Considering the purpose of the restricted prison system there was and there is to be a reflection on the opportunity to use colors for the editing of correspondence, rather than leaving it to the sensitivity of the censorship staff.

In fact, it must be considered that detainees in the regime provided for in art. 41-bis are, however, the prominent figures of the mafia organization, which, as history confirms, if not prevented, would have no hesitation in prosecuting criminal activities.

Criminal attitudes almost ontologically pervade their individual identity.

For this reason circular's provision concerning the library and book service, as well as those on personal computers (Art. 11.6 "library and book service"; art. 14.1 "personal computer") lend themselves to inevitable criticisms.

The possibility of buying books, through a maintenance company, even with a hard cover, renovate the subject.

Hardcover books were previously forbidden, as it was believed that they would be used to conceal the so called "pizzini" (Hand-written piece of paper containing messages), handcrafted daggers and more, as they were difficult to inspect.

The reasons for the ban did not stop, though the ban was inexplicably removed.

The provision regarding the personal computer erroneously also refer to the provision of art. 16.5 instead of 16.4, which regulates the delivery of documents and documents between detainees and defendants, correspondence assisted by the guarantees referred to in art. 103 C.p.p. and 35 disp. att. C.p.p.

The provision reflects a serious discrepancy.

Indeed, on the one hand, the consultation of judicial material on computer support is subject to the authorization of the Judicial Authority, on the other hand, the delivery of judicial acts between detainees and defenders (on digital support) is taken out of any control whether it is a prior or subsequent one.

It cannot but be emphasized in this regard the perplexity around the choice made by the circular to derogate from the provisions of ordinary law.

And most importantly, it must be considered that the ability to receive DVDs and CDs will make having external contacts easier, enabling encrypted files to circulate and more.

The indispensability of controls arises not only from the need to interrupt the contacts between the mobster criminal and the external criminal world, but also to ensure the safety of other prisoners and of the prison employees.

So in terms of searches (Art. 25.1 "perquisizioni"), the provision lends itself to criticism.

The provision objectively limits (and inappropriately) the search power.

Meanwhile, mere instrumental control, by means of a metal detector, does not allow to detect any "pizzini", handmade daggers derived from wooden sticks of the brooms, blades extracted from the razors supplied enclosed in the oral cavity and inside the pockets

Nevertheless, the norm raises the attention threshold of prison employees, stating that "particular attention should be paid whenever the detainee / interned within the institution has the possibility of physical contact with family members or with third parties, in order to avoid message delivery and the exchange of items ".

And it is true that the provision allows manual search and denudation, but only in case of "grounded suspicion" about the possession of objects that are not allowed, dangerous for the order and the security of the institute not detectable through the technical system control.

The provision inevitably raises the question of when this suspicion can reasonably be excluded in the presence of individuals of such high crime, such as those under the restricted regime.

Moreover, with regard to the search provision, in the case of a manual search, it is must be written a specific report, in which the reasons for requiring manual search must be specified, and it may be absurd to have to write, in larger departments, about 200/300 reports per day, with considerable workload.

Not to mention that sometimes the need for control may arise from a mere intuition of the prison employee and his subsequent groundlessness would led to continuous complaints from the detainees' lawyers.

After a careful reading of the recent circular content is it clear that it does not take into account the complex reality of the restricted regime of 41-bis, the resources provided by the institutes and in some cases the purposes of the special detention regime.

This also emerges from the provision concerning spiritual assistance (Art. 36 "assistenza spirituale").

The previous departmental provisions in this regard, concerning the movement of prisoners under a restricted regime, state that the opening of the detention room is allowed in the presence of at least two units of the Penitentiary Police.

It follows that the simultaneous opening of the detention rooms presupposes the mobilization of prison police personnel, probably not available within the individual institutes, with consequent vanishing of the purpose of preventing fraudulent contacts between detainees belonging to different social groups.

The major need after this brief review of some of the circular's profiles is that, even after the necessary and indispensable process of balancing the interests of the detainee as a person and of national security and public order, there shall be no space of freedom, which can, to some extent, be inappropriately used for the consolidation of the criminal network.

Every regulatory vacuum, any incompleteness of the law provision, any neglect and superficiality of discipline is always perceived by the citizen as a *vulnus*, such as a defeat of the Institutions and as concessions of room for manoeuvre to criminal organizations.

This is not because people ask for revenge.

But it cannot be neglected that forgiveness, which falls within the sphere of subjectivity of each individual, is different from the oblivion and the need for guaranteeing public order, the security, the safety and the freedom of those living in this State.

And this is a fundamental and indispensable guarantee, which is at the same time the reason for the existence of a State that wants to be based on the values expressed by our Constitution.

What ordinary people ask is not to be humiliated by instrumental forgiveness, which is perceived by Mafia as a message of weakness and dialogue.

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Italy's Penitenciary Order: art.41 bis OP. Juridical and criminological profiles

Gianmarco Cifaldi[a], Ermenegilda Scardaccione[b]
[a]*University "G. d'Annunzio" of Chieti-Pescara, Italy*
[b]*University "G. d'Annunzio" of Chieti-Pescara, Italy*

Abstract

The introduction in our penitentiary system of differentiated regimes for the execution of the sentence is based on some fundamental principles underlying our system that mainly concern the social danger and the treatment of the convicted person. Both concepts are strongly oriented on the person of the condemned because the social hazard is configured, according to the same normative dictate (art.203 cp), as quality of the person and treatment as a tool for re-education and re-socialization and, therefore, modification of the behavior of the person. On these principles is based the reform of 1975. The introduction of differentiated regimes, which seems to contradict the principles established by the reform, however, takes on a political significance as it corresponds to historical periods of particular social alarm determined, in a first phase, from the phenomenon of terrorism and, in a second phase, from the increase in the mafia phenomenon. The text traces the historical development of the legislation in its evolution and subsequent changes, identifying some aspects that have been criticized regarding the principles of protection of the rights of prisoners and the possible violation of constitutional principles. However, the possibility of differentiated regimes for detainees belonging to organized crime is reiterated, as an effective means of breaking the links between the convicted person with the criminal association, in a process of fight against the Mafia which continues even during the execution of the sentence. It ends with the presentation of the most recent modification proposals.

Keywords: social danger; penitentiary treatment; organized crime; rights; social defense.

1. Premise

The provision of a differentiated regime for some categories of prisoners characterizes the enforcement systems of many countries and not only with regard to Italy. The rule is generally dictated by the need to provide for the execution of sentences that do not leave the condemned the possibility of continuing to harm

· Gianmarco Cifaldi. E-mail address: gianmarco.cifaldi@unich.it;
· Ermenegilda Scardaccione. E-mail address: gilda.scardaccione@unich.it.

even if he has been convicted and in any case is in a situation of captivity with the strict control of the competent authorities.

It is possible to identify general criteria that are independent from the single penal systems underlying the application of differentiated enforcement systems. In the first place the type of crime: there are crimes in fact that cause a particular social alarm for the physical and psychological damage caused to the victims and for the fallout they have on social perception. Reference can be made to all crimes against the person, especially if committed with particular violence, to sexual crimes, especially if perpetrated to the detriment of minors or crimes against property and against the person who assume particular importance from the point of view of social dangers as they presuppose adherence to an association structurally oriented towards criminal activities. Another criterion that generally justifies the application of differentiated penal enforcement regimes concerns the criminal career of convicts: the repetitiveness of the criminal conduct is indicative of a stable delinquent profile to make the subject more predisposed towards a stabilization of criminal behavior. This also presupposes even more severe sentences. Another criterion concerns the personality profile of the condemned person who refers to particular categories of offenders where there are psychopathological disorders that, even if not such as to justify an assertion of non-imputability of the subject, create conditions of execution of the sentence that they can not be assimilated to those of other prisoners. To this category can be added that of drug addicts, who however have even more specific characteristics, with particular effects on the behavior in prison due to the deprivation of the substance. So far, there have been highlighted the conditions that determine differentiated enforcement procedures based on characteristics that are structurally related to the type of crime and the characteristics of its author, while there are conditions that determine the application of differentiated and contextual systems that presuppose contingent situations. S refers to behaviors by prisoners related to the prison environment and which may jeopardize prison safety. In this case, these are restrictive measures that can be transitory when the management of prison life has returned to normal. These are rebellions and riots or insubordination that may occur among prisoners during prison life that put at risk, not only the normal administration of the institution, but also the physical safety of the personnel and other prisoners.

Coming more in detail to the Italian situation, a substantial distinction must be made when referring to differentiated enforcement regimes between differentiated regimes for restrictive purposes and differentiated regimes for curative and educational purposes: in the first case the objective is to ensure internal security (in case of behaviors damaging security inside the prison) or external (regarding the fallout that some categories of offenses and types of offenders can have on the safety of the social community), in the second case the objective is to ensure to particular categories of prisoners the specialized interventions necessary for adequate social reintegration. In the first case the

inspiring principle is that of the dangerousness that distinguishes some categories of convicted intesa, as stated in the same art. 203 of the c.p., "a quality of the person", a concept that inevitably can not ignore the type of crime and the characteristics of the authors especially regarding their criminal career.

Another aspect that can not be neglected of our penitentiary system is the concept of treatment, the cornerstone of penal execution in Italy and still the backbone of our penitentiary system. Concretely, the treatment is based on a model of justice that is strongly sociorebilitative and which is also reflected, as already mentioned, in the Constitutional Charter, and should be considered the purpose of social reintegration of the offender in a perspective that sees the penalty as an instrument, perhaps using a paradoxical expression of "compensation" on the part of the institutions towards subjects previously deprived of social opportunities. It is clear that such goals often come to assume a utopian meaning even if they involve highly trained and highly motivated staff. To the ideology of the treatment, which often failed and was criticized because of the non-reduction of recidivism which was supposed to be the most ambitious result, an ever-increasing expansion was added in our system of punishing contacts with the territory and the tendency to increasingly implement the prisoner's relations with the outside world both with admission to prison benefits and such contacts provided, both with the granting of non-custodial measures and facilitating the inclusion of the subject in the social context after assessment, of course , of a positive prognosis on future behavior. It is clear that this system could not include convicts with a particularly alarming criminal profile such as not only to offend the collective sensibility, but also to undermine the sense of security of the community.

In fact, our penitentiary system provides for regimes differentiated by virtue of the normative dictates of the person "socially" dangerous with different facets and executive aspects that have developed over time: it is appropriate at this point a brief historical account of how it is configured in our system penitentiary this orientation.

2. Historical development of the norm

The law n. 354/1975 represents a moment of historical importance for the execution of penalties in Italy. After 30 years of political, legal and cultural debate, a reform of our criminal justice system has been launched, for years in crisis because it is anchored to old custodial assumptions and not enough to protect the rights of the condemned. 1955, they had expressed themselves with the Minimum Rules of the Rights of the inmate emanated by the United Nations. With the prison reform, the constitutional principle laid down in Article 27 is finally complied with and numerous innovations are introduced which will undergo, over time, significant changes in an expansive or deflationary direction depending on historical-political circumstances. Among the fundamental contents, the conception of a sentence based on the personality of the condemned, based on the principle of scientific observation of the personality as a prerequisite for the activation of

treatment interventions that have the main objective of the re-socialization of the condemned, aimed at the reduction of recidivism. Another fundamental aspect is the introduction of alternative methods to the execution of the penalty that do not prescind the detention, considered, in the sociooreacative perspective of the reform, instruments even more effective for the social reintegration of the condemned in particular for specific categories of convicted as example drug addicts. Execution outside the criminal court is inserted both in a rewarding perspective, which refers to the regulation of permits, both to the application of real penal measures governed by a regulation that provides for them as autonomous measures, applicable according to legal requirements and not only in relation to the behavior held during the execution of the sentence. The treatment model of execution of the sentence and the philosophy of the benefit, as well as the prospect of a system that does not constrain the response of the state to the crime to the exclusive use of detention, has represented a cornerstone of our penitentiary system and still represents a significant foundation demonstrated by a constant expansion over time of alternative measures to detention.

And the differentiated schemes? The reform does not give up the type of socially dangerous prisoner supported by a historical period in which inside our prisons there are "special" prisoners convicted of crimes such as armed band association and terrorist activity. The provision of a special surveillance regime for terrorists is governed by Article 90 of the penitentiary system and provides, on the initiative of the Minister, the suspension of routine treatment activities for a pre-arranged period strictly necessary for security needs. The provision is not exempt from criticism; the general physiognomy of the law, the excessive power attributed to the administrative authority and the fact that over time the prescription tends to become stable even if the security needs have ceased is challenged. The establishment of special prisons has marked the remission of the application of Article 90 even if the provision sometimes continues to exist even within special prisons.

With the overcoming of the "years of lead" the Gozzini law (1986) seems to bring to completion the process of renewal of the criminal execution begun with the reform of '75, eliminating the impeding crimes for access to alternative measures to detention and expanding and fostering relations between prison and territory. It also reduces the period of scientific observation of the detainee's personality from 3 months to a month in order to facilitate the entry of the condemned man to a regime of freedom, this trend of our penitentiary system that will have a constant development concretized with adjustments subsequent regulations.

The Gozzini reform replaces art. 90 with art. 41 bis I subparagraphs: even if no substantial changes are introduced as the Minister remains in issuing the provision and the indeterminateness of the provision still remains subject to the internal security needs of the institution, a greater guarantee for the condemned. In issuing the provision there is an obligation for the minister to limit the elimination

of the treatment opportunities to a single prison and only in cases where particularly serious conditions for the order and security are found. There is no reference in the prison legislation to mafia association crimes for which there is no foreclosure for access to ordinary treatment practices or to penitentiary benefits.

3. The introduction of the art. 41bis

The introduction of art. 41 bis OP. was inserted in a significant social and political context for the history of our country. The 90s are in fact characterized by an emergency due to the expansion and spread of the mafia phenomenon that has occurred in massacres that affect the heart of the state and the population, culminating in the killings of the magistrates Falcone and Borsellino. The spread of the mafia phenomenon that, in addition to the territory, also extends to the prison following the Palermo maxi trial and the arrests that ensue, impose special legislation that provides for a regime of execution of differentiated punishment for subjects characterized by a social dangerousness which tends to persist even during the period of detention. These legislative interventions mean that even the execution of the sentence, and not only the activity of law enforcement, become part of the strategies to combat organized crime.

With the law n. 203/1991 and n. 356/1992 introduces in our penitentiary system a so-called "dual-track" route addressed mainly, if not exclusively, to organized crime. The art 4 bis of the OP in fact provides for the exclusion from the granting of premiums, alternative measures, excluding early release, for crimes involving the mafia association (416 bis of the criminal code) but also for other types of offense that require however a condition of social danger of the subject. If with the 2002 reform (Law of December 27, 2002, No. 279), which definitively stabilized the discipline, the application of a different regime was limited to the detainees who were challenged by the aggravating circumstance of 416bis, then there was more and more the range of crimes for the application of a special regime has been expanded, thus creating a rather heterogeneous crunch of crimes and not exclusively referring to convicted persons involved in organized crime. Unlike the first paragraph of art. 41bis which provides for the suspension of the treatment benefits for a specified period and in the case of exceptional damage to the internal security of the institution, the second paragraph and the second paragraph bis provide for the suspension of the treatment regime for a fixed period (4 years) but extendable by two years in two years. The extension or suspension is subject to the detachment by the convicted person with the criminal association. The introduction of art. 14 bis which introduces the special surveillance regime: in this case the provision, of a transitory nature, but extendable, is determined by ascertaining the behavior of the detainee of destabilizing behaviors for the balance inside the prison such as, for example , violence and threat to other inmates or attempts at subjection and subordination.

This provision certainly has its justification: in the past the prison for the mafia did not represent an obstacle and an impediment in continuing the criminal

activity both as regards contacts with the outside and as regards the restructuring of a hierarchical system to the internal prison of the mafia organization. In this perspective, the application of art. 14a. The prison for the mafia also represented a reason for pride and a phase in which contacts were constantly maintained outside with the mafia association, which were given orders, as well as representing an opportunity for recruitment of new work once finished the expiation of the sentence.

Article. 41bis I and II comma both refer to the concept of hazard but while the first paragraph considers an "internal" danger, referring to the internal security needs of the institute, the second paragraph considers an "external" danger that involves social security (Canepa, 2010). External dangers as it is reflected on the impact that a certain type of crime has on society (Cifaldi and Serban, 2018: p. 701; Goga, 2017: pp. 78-90), but which also presupposes a structural aspect of the offender, socially dangerous by virtue of the type of crime to which it belongs. The application of hard prison in the enforcement system is not justified by the criminal offense but by the ability to liaise with an association operating in the territory considered to be of high potential for social danger. The application of art. 41 bis configures the past and the present of the condemned man, since it is constitutive elements of membership in the criminal association and the current ability to maintain contacts by issuing orders and directives.

We are certainly facing an exception from the principle of personality profile and scientific observation that the penitentiary system contained in its original formulation. From a criminological point of view, a personality profile of the convicted person with characteristics of a socially dangerous subject emerges, not so much in relation to the type of crime committed as in virtue of the criminal context from which it comes.

It should not be overlooked another aspect that emerges from the first paragraph of art. 4 bis where it is explicitly stated that access to penal benefits is favored if the special convicts decide to collaborate with the justice and to help the police and justice in the fight against the mafia organization or to sever the bond with the mafia organization, aspect that makes Pavarini (2007) say that we are faced with a "soft inquisition" capable of "dissolving languages".

4. Benefits of the application of art.41 bis, results and subsequent re-elaborations

Article. 41bis in all its application modalities obeys to precise preventive purposes and social defense and should not be interpreted as a more severe form of punishment towards criminals who have been guilty of particularly serious crimes. The discriminating factor is represented by the extent to which the perpetrator represents a danger to the same social organization that feels threatened: the social danger of the subject is therefore placed in a perspective of collective security that disregards the damage, however significant, that can have suffered the single victim. Particular importance therefore assumes the purpose to favor the separation

from the mafia association, to carry out an effective control in relation to any contact with the criminal association and former prison guide especially by those who play a leading role in the association, promote the acquisition of valuable information with the promise of suspending access to prison benefits for the capture of other members of organized crime. It is in this perspective that the provision envisaged pursuant to art. 4 bis I paragraph with the provision of restoration of prison benefits in case of availability by the sentenced to cooperate with the justice or in the case of convicted who, having played a marginal role in the criminal association, can not make a significant contribution to the investigation judicial. This regulatory provision confirms the instrumental nature of the new legal framework and the political project to achieve a fight against organized crime that involves all phases of criminal intervention.

Despite the need for a restrictive measure and its effectiveness in countering the mafia phenomenon, numerous criticisms of the introduction of art. 41 bis, which apparently seems to derogate from the founding principles of the Penitentiary Reform in our country. According to some criticisms, there is a violation of Article 27 of the Constitution and the principle according to which the penalties must be inspired by the principle of humanity and tend to re-educate the condemned even if both the Constitutional Court and the Court of Strasbourg have never disregarded the conformity of this provision in its substantial plant, but only in respect of individual measures considered unnecessarily vexatious.

Constitutional doubts have also been expressed with regard to the provision of the art.41bis II paragraph of the application of the jail hard even to individuals not condemned to final punishment but awaiting trial: the Constitutional Court has expressed itself in this sense by stating first that " belonging to a mafia association implies a permanent adhesion to a criminal association normally strongly rooted in the territory, characterized by a dense network of personal connections and endowed with particular intimidating force "(Corte Cost., sent 21 July 2010, No. 265), and, secondly, arguing that in the presence of the challenge of Article 416bis c.p. one can not ignore the application of the most afflictive measure "since it is not" minor "measures sufficient to sever the relationship between the suspect and the belonging criminal sphere, neutralizing the dangers" (Court of Justice, judgment of 21st July 2010 , No. 265). The Court itself therefore neutralizes the risk of injury to constitutional rights by appealing to the need to preclude any possibility that the defendants of crimes committed within a mafia association they can continue to maintain contacts with them and therefore continue to represent, even if they are brought to justice, a public danger for the community.

Wanting to resume what Vittorio Grevi claims "the involvement of the prison apparatus towards the achievement of heterogeneous objectives with respect to the functions proper to it, is one of the many prices that have had to be paid in the framework of the more general strategy to combat organized crime. A rather high price, [...] probably necessary at a particular historical moment characterized by the offensive of the worst crime ", which" we hope [should not] be paid for a long time

"(1994, p.15). After more than twenty years from those words, our order continues to pay that price, perhaps a sign of the persistence of an emergency, the mafia, far from the sunset.

Ministerial circular 3619/6069 of 21 April 2009, introduces a new aspect in the regulation of art. 41bis, as it provides for the establishment of a High Security section for the execution of the sentence of those for whom there has been revocation of the regime of the hard prison, as ceased the conditions of social dangerousness following the loss of contact with the mafia association. This way of execution of the sentence also configures another type of convict belonging to a mafia association characterized by a non-apical role within the organization, but rather marginal and perhaps of low labor. However, these are "different" prisoners from others subject to a reinforced control regime but not excluded from the treatment opportunities in which particular precautions are applied (Falzone, 2015). The discriminating factor in the application of the high security regime compared to the "hard prison" is not so much the different criminal position concerning the role played in the criminal organization by the condemned man, but rather the prevention of excessive concentration of convicts belonging to organized crime and avoiding contamination, exchange of information and proselytism among leaders and affiliates inside the prison. The purpose of the fight against the organization is always the prevailing requirement of the criminal and penitentiary response. A signal of change, while preserving the supporting structure of art.41bis, and its physiognomy as an instrument to combat the mafia phenomenon, comes from circular DAP 3676/616 of 2 October 2017 solicited by the work of Table 2 of the General States of the Criminal execution - detaining life, responsibility, security circuits. The circular seeks to reconcile the difficult need for the homogeneity of the execution of the sentence and its humanity with prevention and social defense. In its contents, the objective is to eliminate from the restrictions provided for by art. 41bis any vexatious and arbitrary content, specifying uniform rules of execution in compliance with the law and constitutional principles. The objective is to ensure that the application of art.41bis does not represent "... an additional affliction to the penalty already imposed" but "must remain linked to the preventive purpose".

Reconciling the protection of the rights of the condemned with the need for prevention and social defense is never an easy task in the administration of justice and it can not be excluded that there are contingent circumstances that impose the sacrifice of individual rights for the protection and recognition of collective rights, among which, of primary importance, those of victims. The only risk that must be avoided is that certain provisions, so to speak, of emergency, do not become a stable and indiscriminate procedure no longer justified by the circumstances that produced it.

There remains a problem that the jurisprudence has often posed, that is if "the hard prison" should be destined only to those who played a pioneering role in the mafia organization if the end of the special regime was to be the fracture of the link

with the association criminal. A tendency towards a discretionary assessment concerning the role played by the convict in the criminal organization seems to prevail and therefore the possibility that he has to maintain contact with it and provide information. It is therefore a matter of resorting to a non-a priori evaluation to avoid applying purely afflictive punishment procedures, an assessment which the administration must take on.

5. Conclusions

The introduction of the so-called hard prison regime in our penitentiary system undoubtedly represents a regression with respect to a manner of execution of the sentence certainly advanced and in line with the European principles introduced with the reform of '75. Those principles of humanisation of punishment considered indispensable in a modern penitentiary system are no longer valid, not only through methods of enforcement of the punishment of the dignity of the person and his physical integrity, but also in the availability of opportunities for social reintegration after it has been the penalty is served. But we know that an effective process of recovery of the individual can not ignore a path of reflection of the crime, and in this sense expresses the same principle introduced by the law n.230 of 2000 to the art.27, with the purpose to develop in the convicted an assumption of responsibility that does not exclude the same recognition and the need for reparation against the victim of the crime. The main instrument for achieving this objective is represented by the elements and contents of the penitentiary treatment and by the opportunities offered by our penitentiary system to be able to expiate the sentence outside the prison. The application of the different enforcement system of the sentence, as mentioned above, denies the prisoner such possibilities but is justified by essential needs and fully compatible with an emergency that was necessarily faced. Article. 41 bis was in fact an effective means of contrast since, faced with pervasive criminal phenomena and which do not remain foreign to the internal organization of (Cifaldi, Serban 2018: p. 716), the repressive action must involve all the agencies involved in the control, including prison. We could not continue to make the prison itself become an instrument of prosecution or even confirmation of the criminal phenomenon of the mafia type. In fact, the differentiated prison regime has not only helped to prevent prisoners from continuing to maintain contacts with the criminal organization, but also to allow the identification of others belonging to the organization and to bring them to justice. The phenomenon of pentitism, also favored by the 41 bis, even with its lights and shadows, has in fact allowed the discovery of several mafia cells and the capture of prominent members of the criminal organization.

The fundamental problem therefore is not so much the injury of the constitutional principles, even if there were no abuses on which the same Court of Strasbourg has expressed, due to the lack of access to the treatment regime reserved for all prisoners, as the moral fallout that such exclusion leads. If the instrumental objective has certainly been reached, the exclusion from the treatment opportunities

in cases where the differentiated regime has never been revoked, has led to foreclosure in the condemned to start a process of recognition of the gravity of his own history and of the entity of the damage done to the moral reform of the person to whom we must always tend. The establishment of the High Security Section and the recent ministerial proposals have opened a door to a fight against organized crime phenomena that, while not renouncing the right punishment and control, do not neglect, perhaps utopistically, even the change of motivations and orientations in the personal dimension.

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Epistemology of the social control

Fabrizio Fornari[·]
[a]*University "G.d'Annunzio" of Chieti-Pescara, Italy*

Abstract

In the phenomenological and hermeneutical perspective, the analysis of the relationship between intellectual phenomena and social dimensions tends to consider both the cognitive moment and that of social conditioning as interdependent elements. In this context, the cognitive dimension, as it fulfills a function of the representation of reality, can appear deeply connected to the logic of power, which proceeds in the attempt to «make eternal» a normative structure historically founded. Historically, the criticism of ideology along the lines indicated by the School of Frankfurt in the thirties, has shifted its attention from the denouncing of totalizing conceptions to the analysis of the multiple processes through which the logic of dominion intervenes in the building of social reality.

Key words: *social control; social order; power.*

Historically, the criticism of ideology along the lines indicated by the School of Frankfurt in the thirties, has shifted its attention from the denouncing of totalizing conceptions to the analysis of the multiple processes through which the logic of dominion intervenes in the building of social reality.

The same interpretation that Habermas has of ideology as distorted communication is connected to such a perspective's change, although in itself, recognizing the indissoluble link which unites any type of knowledge for a specific possibility of interests, ends up presenting itself despite the intentions of Habermas as historically conditioned.

As seen, in the phenomenological and hermeneutical perspective, the analysis of the relationship between intellectual phenomena and social dimensions tends to consider both the cognitive moment and that of social conditioning as interdependent elements. In this context, the cognitive dimension, as it fulfills a function of the representation of reality, can appear deeply connected to the logic of power, which proceeds in the attempt to «make eternal» a normative structure historically founded.

Following this line an important contribution comes from Michael Foucault and his *microphysics of power.* Thus, we will momentarily return to Foucault, but now without having touched upon the origins of the structuralism thought of Claude Lévi-Strauss.

Lévi-Strauss, whose thoughts have deeply influenced the way in which the contemporary sociological theory has understood the cognitive-cultural moment, believes that a rigorous scientific investigation of the cultural forms can be developed showing how beyond the variety of their manifestation, remain in them some basic *common structures.*

As in the order of the sciences of nature general and principles are given reducible in mathematical formulas, so the *cultural order* seems inscribed within some invariants

· Fabrizio Fornari, *E-mail: fabrizio.fornari@unich.it.*

connected to an «unconscious purpose of the spirit» (Lévi-Strauss 1947, 527). Departing from such presuppositions, in an analogy with the linguistic theory of the Swiss (1857-1913) and especially with the historical-structural phonology of the American linguist Roman Jakobson (1896-1984) of Russian origins, Lévi-Strauss understands the cultural sphere as a *system of signs* produced in an unconscious way by the unchanging mechanisms operating in the human mind.

In this context, which negates the *humanistic* value of social sciences, refusing any system of historicist evolutionism, culture and society appear both as single expressions of a deep organization, which dictates the rules of the constitution of both the cultural forms and those of the social order. The *diachronic* transformations, which take place in the historical times, are nothing else but epiphenomena linked to some constant categories of *synchronic nature.* Therefore, it is not about examining the relationship between society and culture but, rather, it will be necessary to understand how the social order is the reflection of the cultural order and how this is. In turn, this is directed to the structure that is at the basis of the human mind.

In this way, Lévi-Strauss is convinced he has resolved the antinomy between historical determinism and conscience finalism, which had characterized the sociological thinking of the end of the Nineteenth century, as the purpose of the mind determines *de facto* the socio-cultural horizons, as well as in the variety of their manifest contents. The latter, for their part, no longer are the result as the decisive highlight to the underlying structure of social phenomena:

In anthropology as in linguistics, therefore, it is not comparison that supports generalization, but the other way around.

If, as we believe to be the case, the unconscious activity of the mind consists in imposing forms upon content, and if these forms are fundamentally the same for all minds – ancient and modern, primitive and civilized (as the study of the symbolic function, expressed in language, so strikingly indicates) – it is necessary and sufficient to grasp the unconscious structure underlying each institution and each custom, in order to obtain a principle of interpretation valid for other institutions and other customs, provided of course that the analysis is carried far enough (Lévi-Strauss 1958, 21).

Analogously, defining the *episteme* as coherent *system* of ideas and values in which the image that an epoch has of itself materialize. Foucault, while remaining extraneous to the idea of a constant structure of the human spirit, conceives the totality of the discursive contexts present in a determined society not only as a matrix of the collective methods or representations of reality, but also as the source of the *production* of the objects and of the social subjects.

For Foucault, scientific rationality as it has already been partially seen, does not proceed in a linear and cumulative way, nor does it contain a set of logical laws absolutely true and irrefutable. The idea of an evolutive *continuum* is absolutely fictitious, since the passage from one epoch to another takes place through *epistemological fractures,* whose emergency is totally *causal.* The rational path of humanity configures itself, as Nietzsche's way, as a «series of interpretations», always revocable, which are born from a complex of practices socially shared. In this sense, the possibility to reference a concept of rationality in an absolute sense becomes unthinkable. Rather, one will need to recognize that different forms of rationality that exist, each one characterized by its own "spirit of time" (cf. Foucault 1969). Therefore, Foucault denies the naturalness of the Cartesian ego, reducing the subject to a simple *support* of the signifying and of the significances. It is, that is observed once again, against the historicist exaltation of the subject who acts in history, the attempt to oppose history and its subject of *structure,* thinking a

historicity without subject (cf. Masullo, 1996: 260 and ff.).

Hence the effort, always of Nietzsche an influence of understanding philosophy in the same manner of a diagnostic activity, which configures itself as a truth «archeology of knowledge» (cf. Foucault 1969).

In *Madness and Civilization: A history of Insanity in the Age of Reason,* Foucault shows how in the epoch of the classical rationalism (Seventeenth century), the *episteme* affirms itself according to the instrumental method, as seen in Bacon, Galilei and Descartes, of the «operating in accordance with an end», that is of the rationalization in the terms of Max Weber. Such an affirmation, at the same time, institutes a strict division between rationality and madness, in which the first appears linked to criteria of productive efficiency while the second is defined as a *senseless wandering*, characterized by the absence of productive capacity. The need to produce goods makes it appear as abnormal, insane, what is not part of the logic of production, although this happens not so much to exclude what does not let itself be included in the system, but rather to *delimit* and *impose* itself through the opposition with an antagonist (cf. Bodei, 1997: 141).

The rising of the mental institutions in the modern age, is interpreted by Foucault as an expression of an increased social control of the deviation oriented to the *normalization*, by virtue of what appears *deviant* everything that is not part of the parameters of the productive rationality: the confinement assumes the significance of the net separation that the new culture intends to establish between madness and reason. Separation which assumes the elevation of the latter to the level of the normative parameter as of the gnoseological, ethical, or individual order and social. The consequence which immediately arises is the gnoseological-ethical alienation of the insane for which he is considered the "alienated" *tout-court* and madness ends up being confused with immorality, the crime and the licentiousness of any kind (Corradi, 1977: 47).

These theses, which lies at the base of the contemporary anti-psychiatric movement, gently push the reflection of Foucault from the analysis of the «effects of power » produced by the «medical look» to the study of the epistemological field in which knowledge is given.

If the Renaissance *episteme,* dominated by the semiotics of similarity and of identity, interprets words as things to decipher (cf. Foucault, 1966: 49), the *classic* episteme (from the second half of the seventeenth century forward), represented by the *Don Quixote* by Cervantes, expresses the distress and the crisis of a world in which writing has ceased to be the prose of the world, «similitudes have become deceptive» and things «still remain stubbornly within their ironic identity»; things, that is, «they are no longer anything but what they are; words wander off on their own; they lie sleeping between the pages of books and covered in dust» (*ibid.*, 53). The age of the Cartesian *Regulae*, in which the aesthetic fantasies of similarity leave the place to the ideal of the *mathesis universalis*, for which the significance of a thing coincides with the order that it occupies within the universal *mos geometricus*: the logic of representation supplant that of similarity.

In this phase, representation is configured as *order of signs* which expresses the external reality as such. An order which, however, is unhinged, but at the same time inevitably maintained, by the repeated obscure violence of desire that, rejected by reason, asks to be *epistemically* rehabilitated in the manifesting of transparent and impeccable representations, such as those expressed in the literary work of Sade and in the philosophy of ideologists (cf. *ibid.*, 230, 262).

From the epistemic crisis of the âge *classique* comes Kant, who, with the concept of

transcendental subject, is able to give a solid foundation to the representation: «If going forward a knowledge will be possible, this will take place only as its legality, its validity are referred to a synthetic subject, constituent, organizer of the experience» (Cotesta, 1979: 54). In this perspective, for Foucault, occurs the «birth of man», in the sense that before the end of the eighteenth century, man properly did not exist.

Writes Foucault:

In the scientific discourses that the contemporary man has formulated from the seventeenth century forward, it appeared, in the eighteenth century, a new object, man. With man appeared the possibility of constituting human sciences and it also appeared a kind of ideology or of general philosophical theme which was that of the imprescriptible value of man. When I say imprescriptible, I intend it in a very precise sense that is that man has appeared as object of possible sciences – the sciences of man – and, at the same time as the being thanks to whom every knowledge was possible. Thus, man belonged to the field of knowledge as possible object and, on the other hand, was radically at the point of origin of all sorts of knowledge (Foucault 1969, in Caruso, 1969: 106-107).

The appearance of man is accompanied by the emerging of the «finitude», which, for Foucault, originates when the human being begins to exist within his organism, in the shell of his head, in the armor of his limbs and in the whole structure of his physiology; when he begins to exist at the center of a labor by whose principles he is governed and whose product eludes him; when, finally, he lodges his thought in the folds of a language so much older than himself that he cannot master its significations, even though they have been called back to life by the insistence of his words (Foucault, 1966: 346).

Starting from Kant, who also thinks about finite based on finite itself (cf. *ibid.*, 343), the subject comes to be committed both on the *empirical* front and on the *transcendental* one, exalting in the first case the gnoseological-sensorial abilities of man and showing, in the second case, the *historical-social character* of knowing. In both cases, man finds himself thematizing his own limits, at the same time of subject and the object of knowledge. It follows the possibility to relate to the limit of the *unthought-of* and the unknown; in fact, the margin of finitude within which the subject is cannot not resend to the other from himself:

The unthought-of (whatever name we give it) is not lodged in man like a shriveled-up nature or a stratified history; it is in relation to man, the Other: the Other that is not only a brother but a twin, born, not of man, nor in man, but besides him and at the same time, in an identical newness (*ibid.*, 355-356).

So, the Other configures himself in the modern man as infinite dislocation of the origin, as impossibility of seeing his own beginning (cf. *ibid.*, 360).

However, the subject, for Foucault, has already inscribed in himself the germ of his own dissolution, being born within a paradoxical situation. Man, in fact,

Finds himself in the dominion exercised on him by things, objects, by positivity, but he disperses himself in it; in that dominion man finds the beginning and the end of his history, the alpha and the omega (Corradi, 1977: 103).

What exists is not man, but the structures, which are the only real *object* of human sciences (which Foucault reduces to three: psychoanalysis, ethnology, linguistic). The «death of man», for Foucault, is an irreversible fact:

In our day, and once again Nietzsche indicated the turning -point from a long way off, it is not so much the absence or the death of God that is affirmed at the end of man (that narrow, imperceptible displacement, that recession in the form of identity, which are the reason why man's finitude gas become his end); it becomes apparent, then, that the death of

God and the last man are engaged in a contest with more than one round: is it not the last man who announces that he has killed God, thus situating his language, his thought, his laughter in the space of that already God, yet positioning himself also as he who has killed God whose existence includes the freedom and the decision of that murder? (Foucault, 1966: 420).

Man «speaks, thinks and exists in the death of God»; therefore «his murder itself is doomed to die»: man, himself will «disappear» (cf. *ibid.)*.

Within such disappearing, the *problem of language* assumes a central role. In line with his previous analysis, Foucault asks himself:

Since man was constituted at a time when language was doomed to dispersion, will he not be dispersed when language regains its unity? (*ibid.*, 421).

Thought can do nothing but escape the paradox of the totalizing individualization, abandoning «the illusory refuge of closing within himself» (Bodei, 1997: 147) and reflecting on the «technologies» and the mechanism, as anonymous as socially shared, which are at the foundation of the same construction of the self.

The criticism of subjectivity joins with the criticism to power. Consistent with the premises contained in the theory of language and of the *episteme,* intended as autonomous structures producers of reality, power too is considered as an active principle which creates the types of knowledge and determines the methods of production. Against the juridical conceptions of power which consider only the question of sovereignty and its legitimacy and so reconnect the power to a subject or a state apparatus. Foucault intends the power as the control system *internal* to the types of knowledge and that of common language, to the mechanism of censorship, the system of rewards, the totality of the interpersonal and collective relationships. Power segregates, supervises, punishes, criminalizes who opposes it, exercises in humble places, more than in the splendor of the parliamentarian chambers or of the courts: in the dormitories of mental institutions and of barracks, in the hospitals' wards, in the rooms of colleges, in the classrooms (Bodei, 1997: 143).

It follows that «the power is not above but within society, it does not spread only through ideology or consensus, but through thousands of practices which involve the body and the space» (*ibid.*).

It is thus possible to emphasize the *devices of power*, those mechanisms that the analysis of Foucault can discern, and which are all the more effective, the more they are intimately connected to the fabric of sociality and the more they enter into the psycho-physiological domain of the individual.

According to Foucault, power is not a social institution, nor a pure form of interdiction, nor «a certain power of which some would be endowed», but it rather is «something that circulates, [...] that functions and exercise itself through a reticular organization» (Foucault, 1977: 184).

In the radicalism of Foucault's setting is delineated, after all, the path travelled in our days, by the criticism of ideologies. If, starting from Marx, ideology presented itself as a covering or a mask of the domain, now it is precisely the latter to be considered the source of language and knowledge. At this point, the possibility of discriminating what is ideological from what is not is no longer given. Everything, in a certain sense, has become «ideology»: the same social sciences respond to practices of power aimed at the *prevision* and the *control* of events, actions and actors, limiting the complexity of the actions.

With Foucault, the relativism which Mannheim wanted to prevent becomes the normality of a sociology of knowledge in which, rather than a distinction between conceptual

apparatuses and sphere of the social, configures itself in a sort of commingling of material and cultural factors as constitutive elements in the process of formation of «reality».

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Myth and Reality of the Global Terrorist Threat

Pino Arlacchi[*,a]
[a] *University of Sassari, Italy*

Abstract
The media constantly bombard the public with all sort of threats: the terrorist threat, the environmental threat, criminality, immigration and epidemics, without bothering to distinguish, clarify the context, weigh the messages and be responsive on the ultimate effects of their alarms. Not to mention the idea of a great vulnerability to lethal incidents such as terrorist attacks. Yet, both domestic and international terrorist events are in decline. On this subject, the mismatch between public perception and the reality is extreme.

Key words: *Human security, terrorism, weapons of mass destruction.*

1. Overblown threat

Most figures, facts and interpretations of global security and terrorism developed on academic level in recent years have passed unnoticed or have not been transferred to the public discourse. Governments and the media ignore this kind of knowledge and the non-disastrous vision of the current human security that derives from it. They run the opposite view and promote a paranoid way of looking at the matter. Many people, and among them many individuals devoted to human progress and peace, are convinced, therefore, to live in a world ever more dangerous and violent.

The media constantly bombard the public with all sort of threats. *If it doesn't bleed it doesn't lead* has become the creed of news broadcasted around the clock. The final result of this hysteria is the spreading of a sense of powerlessness, if not cynicism and indifference, about what happens in the most unfortunate parts of the earth. Not to mention the idea of a great vulnerability to lethal incidents such as terrorist attacks.

On this subject, the mismatch between public perception and the reality is extreme. Almost everyone thinks of September 11th 2001 as a symbolic event, which inaugurate a new era of global insecurity. But how many – apart from a handful of scholars and insurance companies – care to quantify the temporal diagram of terrorist actions and their frequency and severity in order to measure their real level of danger?

The media censor this aspect. Rarely do they publish graphs that show the real picture, because they prefer to dwell on sales based on the amplification of fears that increase audience and circulation (and spread terrorist propaganda at the same time). Western governments pretend to follow the U.S. in the holy war against the fundamentalist devil and leave the public at mercy of media alarmism, without worrying about providing

* *Former Undersecretary General of the United Nations,*
Email: arlacchi.pino@gmail.com

people with serious evaluations of the actual scale of the threat.

A menace that is much smaller than most people think. Because both domestic and international terrorist events are in decline.

Yes, in decline. And not just recently, but for at least 25 years in almost every part of the world. The perception of transnational terrorism as a growing, existential threat to global security is wrong and misleading. This misconception is due to a twofold error of calculation and interpretation.

At the root of this error is the conflation of terrorist attacks properly said on one side, and violent attacks and casualties occurring in warzones, acts not classifiable as terrorist but under the category of "insurgency" on the other side. This conflation is a byproduct of the hysterical post 9/11 media and governmental approach to terrorism. The tragedy did have a strong impact on how terrorism has come to be understood, creating a definitional confusion. "The vast majority of what is now commonly being tallied as terrorism occurs in war zones like Syria, Iraq, Afghanistan. But to a considerable degree, this is the result of a more expansive application since 9/11 of standard definitions of terrorism, to the point where virtually any violence perpetrated by rebels in civil wars is now being called terrorism… Before 9/11, terrorism was, by definition, a limited phenomenon. It was often called the "weapon of the weak" because it inflicted damage only sporadically. If terroristic violence became really sustained and extensive in an area..the activity was generally no longer called terrorism, but rather war or insurgency…" (Mueller, Stewart, 2016).

The terrorism/insurgency conflation has become increasingly popular (Hoffman, 2006: 20-34; Kilcullen, 2010: 35; O'Neill, 2005: 33). Typical insurgency entities like the Hezbollah, Hamas, the Taliban, Nepali Maoists[1] (Khalil, 2013), are currently labeled as "terrorist groups", as well as all players in the Syrian and Iraqis civil war that do not fit into the political taste of a major contender: " the United States brands those fighting the government of Bashar Al-Assad to its own convenience: ISIS fighters are deemed to be "terrorists," while those insurgents approved by the United States are labeled the "moderate opposition." Assad himself is more consistent, if equally self-serving: any violent opposition to a sitting government, he says, is "terrorism." (Khalil, 2013).

This distorsion creates the false impression that the world is awash in terrorism. Moreover, it reduces the reliability of all numbers produced by most databases on terrorist attacks and casualties.

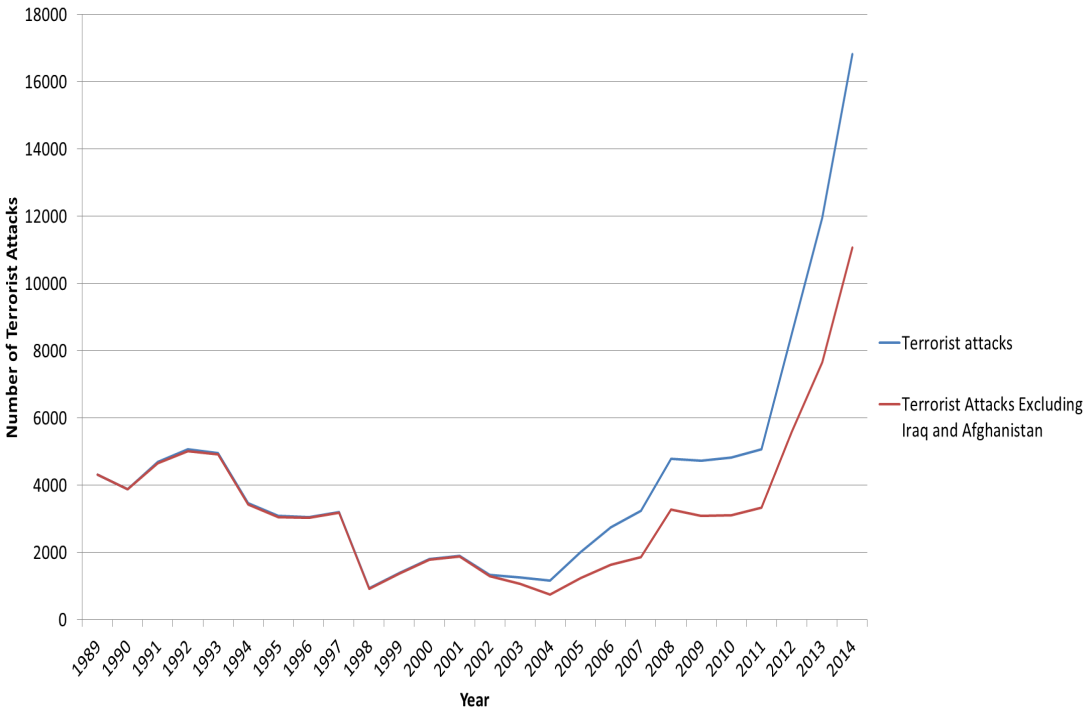
There is a way to generate more trustworthy figures, as shown by two RAND Corporation researchers who tried to disaggregate attacks occurring in warzones afflicted by insurgencies and civil wars from attacks occurring in non-conflict areas. They used the University of Maryland Global Terrorism Database for the quantification of terrorist attacks, and numbers on civil war and insurgency from the Uppsala Conflict Data Program in 194 countries (Ziegler& Smith, 2017).

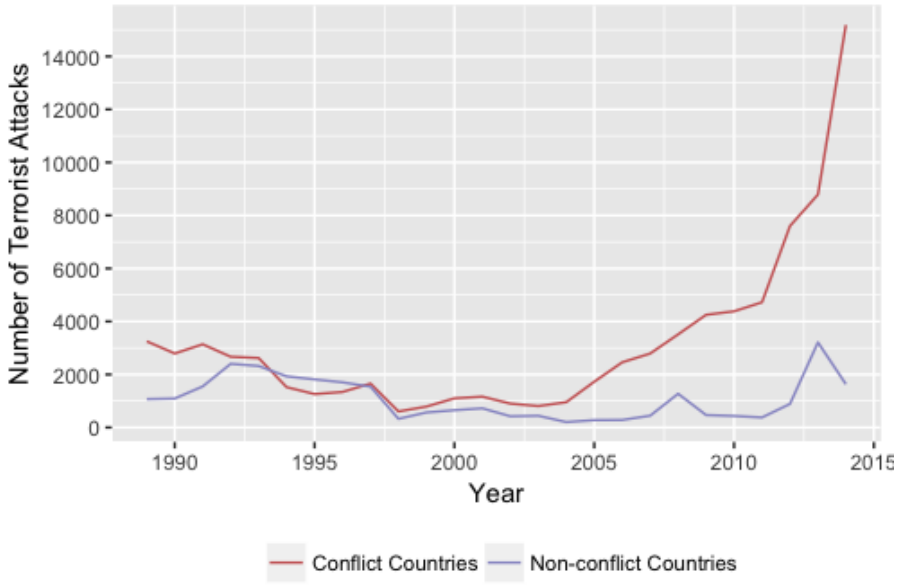
Figure 1 shows that global terrorist attacks a) decreased drastically and regularly for the 25 years from 1989 to 2014: from more than 4.000 attacks in 1989 to less than 1.000 in

[1] According to a scholar who makes an (unconvincing) case against distinguishing between the two entities " unlike their insurgent counterparts, terrorists: (a) are less reliant on the simultaneous use of nonviolent methods, (b) apply specifically uncompromising forms of violence, (c) operate with limited community support, (d) are numerically smaller, and (e) do not maintain territorial control.

2004. b) attacks rose dramatically after 2004 reaching almost 17,000 in 2014. The numbers from 2015 and 2016 (not shown) have remained remarkably high, but below the 2014 peak. " It is tempting to surmise from the strong trend upwards in Figure 1 that terrorism is on the rise and that the threat is expanding worldwide. However, this is only part of the story. More than 70 percent of the attacks in the past 10 years transpired in just two regions, both of which have seen extensive insurgency and civil conflict during that time: North Africa/Middle East and South-Central Asia. Most terrorism transpires in the context of insurgency, but to equate the two phenomena is misleading and inaccurate " (Ziegler& Smith, 2017).

Figure 1. *The* researchers proceed calculating the number of incidents outside of places beset with civil wars and insurgencies producing less than 1.000 battle-related death in a given year. Figure 2 shows terrorist attacks between 1989 and 2014 in countries with and without active civil wars.





The numbers of this figure show a major downward trend shared by attacks in both zones from the beginning of the '90 to 2004, when it starts a widening gap between conflict and non-conflict countries. Conflict countries show a spectacular increase that until 2014 and coincides with the Arab Spring turmoil, the rise of the so called "Global War on Terror" spearheaded by the United States, and the expanding Western wars – open or covert - in Iraq, Afghanistan, Lybia, Pakistan, Syria, Mali, Yemen.

"The graphics hint at meaningful differences in terrorist attacks since 9/11, when the "Global War on Terror" began, and the years preceding it. And in fact, our models uncovered meaningful distinctions between the eras. While terror-related headlines tend to imply the worst, the truth is much more prosaic. Terrorism since 9/11 is down – and dramatically so – in countries not suffering from civil wars and insurgencies. The majority of terror incidents that have taken place during the global war on terror were linked with insurgencies and civil wars.

While this was still the case before 2001, the association between terrorism and insurgency has grown significantly stronger during the era of the war on terror. Relatedly, outside countries afflicted with these forms of political violence, terrorism has been remarkably reduced since 2002. Accounting for the fact that most terrorist activity takes place within the context of active insurgency, the number of terror attacks since 9/11 is significantly lower than between 1989 and 2001. A country not suffering civil conflict was more than 60 percent more likely to experience terrorism prior to or during the year 2001 than since " (Ziegler& Smith, 2017).

The figure of 3.123 death claimed each year by major terrorist assaults worldwide in 2002-2016 comprises 200-300 lives claimed outside war zones by what Western media consider the most dangerous form of terrorism, the extremist Islam (Jenkins, 2006: 179-184). " That's 200 to 300 too many, of course, but… it is about the same number as deaths from bathtub drowning in the United States" (Mueller& Stewart, 2016). The balance of an Islamic State assault to 10 Western countries, between June 2014 and June 2017, was of 1.676 casualties, 558 each year (Islamic State (IS) Attacks in West, 29 Jun 2014 – 25 Jun

2017). That's 558 too many, of course, but not a number capable to seriously harm a group of countries that can stand, during the same period, an average of around 50.000 annual deaths caused just by road accidents.

2. What is terrorism?

But what does the word "terrorism" actually mean? A universally accepted definition of terrorism does not exist yet. There have been attempts to categorize terrorism for a long time, but still so far no agreement has been reached. Two well-known scholars of the subject published a list of 109 definitions proposed between 1936 and 1981 (Schmid& Jongman, 1988).

While the concept of "organized crime", after a multi-decennial discussion, has today a universal definition, – expressed in Article 2 of the U.N. Palermo Convention of 2000 on transnational crime – the U.N. member states are still at the stage of discussing a definition of terrorism.

In this matter the real deficiency is not, in my opinion, the most frequently mentioned, namely the difficulty in labelling a behavior that for some is terrorism and for others freedom struggle. Or the fact that we are talking about a method of political fight rather than a precise historical entity.

3. State terrorism

The genuine shortcoming in addressing the problem of international terrorism is one that is not mentioned in political and diplomatic discussions because it is too embarrassing: I refer to the problem of state terrorism, which is one of the most deadly form of violence. U.N. member states swiftly label and punish violent actions committed by, so to say, "private" groups, but have never even tried to discuss that patterns of their own behavior that could be considered as acts of terrorism.

Almost all countries would be willing, for example, to accept a definition of terrorism that focuses on the killing of innocent civilians by non-state entities in order to terrorize people and force a counterpart to follow a given course of action. But this definition does not encompass *state* terror and does not protect us from the new Hitler, Stalin or Pol Pot. Neither does it protect us from the repetition of the most horrible episodes of regression in the standards of civilization. Like some war crimes committed by the "forces of good" during the Second World War and the subsequent anti-colonial conflicts. How could we otherwise classify certain actions such as the bombing of cities and villages by a state in response to attacks by guerrilla forces, or simply to keep going at an agonizing enemy? These questions are not extravagant.

Take the case of the incineration of Hiroshima and Nagasaki at the end of the Second World War. Even by the standards of the time it was a crime against humanity, which caused the death of two hundred thousand civilians, perpetrated without a serious military motivation.

The proof of this is the disagreement on the use of atomic power by some of the most senior American military officials, including General Eisenhower (Eisenhower, 1999)[2] and

[2] General Eisenhower, then Allied commander-in-chief, wrote in his memoir: "In 1945 Secretary of War Stimson, visiting my headquarters in Germany, informed me that our government was preparing to drop an atomic bomb on Japan. I was one of those who felt that there were a number of cogent reasons to question the wisdom of such an act. During his recitation of the relevant facts, I

by some of the very scientists who conceived and manufactured the nuclear bomb (http://www.newworldencyclopedia.org/entry/*Bombing_of_Hiroshima_and_Nagasaki*).[3]

It is paradoxical that, in spite of the fact that state terrorism represents one of the major threats to the human security, large numbers of researchers and government officials reject the idea that states use terrorism, and that the study of state terrorism is worth of a systematic analysis (Jackson, Murphy, Poynting, 2011; Selde, So, 2004). For them, the only political violence that deserve to be scientifically investigated is the one put in place by non-state, private actors. At maximum, they accept the term "political violence" to classify death coming from individual assassinations, slaughters, kidnappings, disappearances, torture, bombing of public places, and similar acts performed by a state agent: acts that by any measure fit squarely into the category of terrorism.

However, if we try to compare the order of magnitude of the "terrorism from below" with the violence of a state which unleash its strength against its own citizens, we get a yearly figure of 3.123 death against 250.000 for the period 2002-2016. The estimate come from the Center for Systemic Peace, that advance the following evaluation: " The frequency and lethality of "international terrorism" does not appear to have increased much in recent years, and, in any case, remains at extremely low levels when compared with any other form of political or criminal violence…HCTB attacks *(attacks with more than 15 fatalities, ndr.*) have killed more than 43.730 people since 9/11..By way of comparison, major episode of political violence have resulted in an estimates 3,5 million death during the post 9/11 period" (http://www.systemicpeace.org/conflicttrends.html).

One frequent objection to the use of the concept of state terrorism in the field of terrorism studies is of a weberian offspring : states cannot engage in terrorism because they alone have the right to the legitimate use of violence. Supporters of this view forget that the state monopoly of force is legitimate as far as it is carried out according to formal laws. The use of state violence is highly regulated, and "does not include the right to use extra-legal violence against randomly chosen civilian targets – or to commit genocide, ethnic cleansing, war crimes, and other such acts " (Jackson, 2011).

Moreover, the state is not the exclusive depositor of the right to use force. Under particular circumstances, international law allows non-state actors to use violence to protect their fundamental rights against repressive states when all peaceful and legal methods have failed, or other states have failed or abstained to intervene. " In reality, Western states and international organizations have a long history of recognizing and even supporting violent non-state groups, some of whom have practiced terrorism, including: the resistance to Nazi occupation; the PLO, the ANC, SWAPO and other UN-recognized movements " (Jackson, 2011).

An international treaty against terrorism that would sanction acts performed by

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had been conscious of a feeling of depression and so I voiced to him my grave misgivings, first on the basis of my belief that Japan was already defeated and that dropping the bomb was completely unnecessary, and secondly because I thought that our country should avoid shocking world opinion by the use of a weapon whose employment was, I thought, no longer mandatory as a measure to save American lives."

[3] Two of the prominent critics of the bombings were Albert Einstein and Leo Szilard, who had gone on afterwards to play a major role in the Manhattan Project, argued: "If the Germans had dropped atomic bombs on cities instead of us, we would have defined the dropping of atomic bombs on cities as a war crime, and we would have sentenced the Germans who were guilty of this crime to death at Nuremberg and hanged them".

states would have the effect of adding up a quite appropriate imputation– on top of that of crime against humanity – to those responsible for an atomic bombing, and to the authors of any act involving indiscriminate massacres of civilians.

What happened in Lebanon in the summer of 2006 is a very clear example of the legal-political asymmetry that impede the reaching of an agreed definition of "terrorism". According to several humanitarian organizations and U.N. agencies, both Israel and Hezbollah committed war crimes during the August 2006 fighting. These confrontations left over a thousand people dead, mostly non-military, and caused a very large destruction of the Lebanese civilian infrastructure.

Human Rights Watch, in particular, condemned both sides for the arbitrary use of force against the civilian population. The Israeli government was blamed for regularly avoiding to distinguish– in its attacks against Gaza, Beirut and other places – between combatants and non. The Hezbollah paramilitary were stigmatized for launching many katyusha rockets on populated areas of northern Israel. Both have also been accused of using cluster bombs in civilian areas. The U.N. High Commissioner for Human Rights has uttered the same accusations and has warned violators about their personal responsibility under international law (Arbour, 2006).

But according to today's prevailing views on terrorism, only Hezbollah's behavior could be stigmatized as "terroristic", because they are a non-state entity. Accordingly, the parties can be accused for violating humanitarian law during the war in Lebanon, but only Hezbollah may have committed, in addition to war crimes, terrorist acts.

Twenty-one conventions against terrorism exist and are in force, and some of these are very effective. But they only cover measures designed to protect transportation, and criminalize specific actions of specific groups in specific circumstances, without touching wider spheres of jurisdiction. Most criminal laws against terrorism are therefore largely domestic, enacted and enforced by sovereign states through internal legislation.

4. The political impotency of terrorism

When debating about terrorism, it must be borne in mind that terrorism is a proven strategy of political struggle. Terrorism is a method of action that involves the unrestrained use of violence to spread fear among opponents and the general public.

One of the most common mistakes is to identify terrorism with an ideology, a political party, or as an expression of a given culture or civilization. Terrorism has never been the prerogative of a specific region or civilization. Its indifference to history, anthropology and geopolitics is one of the first features that struck its scholars.

Terrorism is not, and has never been, a monopoly of the extreme left. It has been used quite frequently also by the extreme right and neo-fascists groups. Indeed, its relationship with the most conservative forces is more intimate than it appears at first sight, and is not limited to the existence of right wing terrorist practices along with those of the left. The leftist and anarchist terrorism has regularly "worked" for conservation, because the results of its actions have almost always been the opposite of those intended by its protagonists.

The most important lesson to be learned from the history of terrorism is perhaps that grassroots terrorism, that one that operates at the level of the small political games, rarely hits its targets. Its importance is related to its ability to spur another, much more serious, kind of terror. Let's call it "the great games terrorism", an entity that can have devastating effects.

During the seventies and eighties, the moderate European Left clashed frontally with the leftist extremist groups. One of the strongest arguments used against those groups was that their armed struggle, while bringing no benefit to the popular masses, was of great help to their capitalist counterpart. The kidnapping and murder of the Italian former Prime Minister Aldo Moro in 1978 by the Red Brigades, for example, did not accelerate the advent of socialism in Italy. On the contrary, the incident stirred a conservative reaction that delayed for almost a couple of decades the electoral victory of the Italian center-left.

Terrorism is not an ideological phenomenon. It is a behavior performed by states, groups and individuals to shorten the cycle of the political processes. Terrorist subversion aims at bringing down governments, encouraging uprisings and wars, starting revolutions and counter-revolutions, scaring voters, manipulating other governments and countries, gaining independence and crushing nationalist guerrillas. It can lean to the right or to the left, can be nationalist or internationalist, secular or religious.

But the chances of success of state terror are not the same as those of private terror. When states entered the field of terrorism with their killing machines, the deeds of "bomb-lords" looked almost ridiculous in comparison. The skepticism of the founding fathers of socialism toward terror as a method of political struggle, moreover, was not so much motivated by reasons of principle. The doubt was rather on terrorism as a winning strategy.

Lenin wrote that terrorism could be useful for brief moments, but he believed it to be wrong and counterproductive (Lenin Collected Works, 1971). Trotsky later on insisted that actions of terror, even when they reach their goal, disorient the ruling class only for a short time, and that capitalism as a system, however, does not depend on the existence of a single member of government, and will not disappear only because of his physical elimination (Trotsky, 1911).

The leaders of international workers' movement, therefore, opted for collective action through strikes, demonstrations and even revolutions, but involving the masses. These same leaders never considered violence in itself as a political asset, and consistently refused the idea of "exemplary action" against a single opponent.

Historical events have abundantly proved the validity of the socialist criticism towards terrorist anarchism and individualism. Between the mid-nineteenth century and the outbreak of the First World War there was the greatest wave of political attacks of contemporary age. Between 1850 and 1914 anarchists, ultra-nationalists and simple misfits killed or tried to kill, one at a time, almost all kings, prime ministers and presidents available on the European, American and Japanese stage.

In those times political assassination was quite fashionable. Two Japanese prime ministers were killed and there was even an unheard of attempt to kill the Emperor. Three American presidents - Lincoln, Garfield and McKinley - suffered the same fate. There were multiple attempts to assassinate Bismarck and Kaiser Wilhelm I of Germany. Tsar Alexander II was murdered in 1881. The French President Carnot was eliminated in 1894. The Spanish Prime Minister Antonio Canovas in 1897, Empress Elizabeth of Austria in 1898 and the King of Italy Umberto I in 1900.

If we add to these facts the murder of the Russian Prime Minister in 1911 and a round of attacks on minor political figures in other parts of the world, it is easy to understand why the general public ended up with the conviction of facing a giant anarchic conspiracy aimed up to subvert the established order. Governments and police chiefs, however, did nothing to counter that impression, perhaps because they were aware of the true terms of the question.

Today few remember these facts, and history textbooks contain scant references to the times of the great assassinations. The reason can well be because of their minimal impact on the actual course of events (Chaliand, 2007).

And what about the assassination in Sarajevo of the Archduke of Austria, which according to common knowledge sparked the First World War in 1914? The most respected scholars exclude that it was this event that triggered the conflict. They believe instead that it erupted mainly because of Germany's demand for international status – since it saw its position in world affairs inappropriate to its naval, economic and colonial power - and because of the decision of the Allied Powers not to satisfy this demand (Fischer, 1968).

The war would have taken place even without Sarajevo, because all the major players wanted it to start: sooner or later some accident would have occurred in some part of the continent or in the vicinity - in the Balkans, on the Rhine, in Morocco - and the powder keg would be sparked (Luard, 1988).

So far, almost nowhere in the world have terrorist groups managed to rise to power with weapons in hand. Only after abandoning the armed struggle and evolving into legal movements have they moved closer to power. This differentiates them from liberation armies and guerrilla national movements which in most cases have reached their goals. The method of terror has resulted in temporary changes of the political life, but its overall impact on the course of history has been modest.

Of course, no one can accurately calculate the effects on the subsequent events of the violent elimination of individuals like Napoleon, Lenin, or Hitler in the early stages of their careers. But these are quite hypothetical exceptions. More than sixty prime ministers and heads of state have been killed since the Second World War, but it's hard to think of a single case in which the policies of a country were radically changed as a result of a terrorist attack. There have been, as mentioned above, accelerations or decelerations of the processes in place, but not major reversals.

" Indira Gandhi was killed. Her son Rajiv Gandhi continued in her tracks, and the Indian policy has not changed significantly even after the assassination of the latter. There has been no change in U.S. policy as a result of the assassination of John Kennedy, nor in Sweden after the murder of Olaf Palme. King Abdullah of Jordan was killed by a Muslim fanatic, but Hussein, his nephew, continued his policies. Anwar Sadat was assassinated by a militant of an extremist sect, but Mubarak, in broad terms, carried on his policies on Israel and other issues " (Laquer, 1987).

It can be said that, when acts of terrorism have been effective, they have been so in the opposite direction to that desired by their perpetrators. The most significant outcome of terrorist actions carried out in Latin America during the sixties and seventies of last century, for example, was the replacement of democratic regimes with military dictatorships.

When the targeted governments could not use for their own advantage the public outrage created by a terrorist assault, they started counterterrorism policies extended to a large political spectrum. Very often, these policies have been ferocious. Operation Condor was a campaign of political repression and state terror involving covert operations and assassination of opponents implemented in South America by right-wing juntas with the active support of the US government during the seventies and eighties of last century. Some estimates are that at least 60,000 deaths can be attributed to Condor, against around 1.000 attributable to private terrorism (Rohter, 2014; McSherry, 2002; Morrock, 2010).

5. Not an existential threat

Contrary to what many of its acolytes believe, terrorism is rarely a genuine phenomenon, free from contamination and "pacts with the Devil". The world of terror has always been crowded with provocateurs, secret police and security services that attempt to tinker with the special human gallery they deal with. Terrorist leaders sometimes intrigue with secret agents and accept to do dirty works in exchange for weapons, money and protection, in a game of mutual exploitation that often reaches paradox. Since these are *ad hoc* arrangements between actors who do not trust but despise and fight each other, they often give unexpected effects.

Terrorist factions are not capable of causing great changes on their own. Terrorism has a limited capacity of destructiveness and destabilization. The amount of lethal violence and destruction of goods that these groups are able to implement are modest, and the fear they can provoke is also of short duration.

Todd Sandler and Walter Enders did very accurate calculations of international terrorism losses . They concluded that " for most economies, the economic consequences of terrorism are generally very modest and of a short-term nature… large diversified economies are able to withstand terrorism and do not display adverse macroeconomic influences. Recovery is rapid even from a large-scale terrorist attack…the immediate costs of most terrorist attacks are localized, thereby causing a substitution of economic activity away from a vulnerable sector to relatively safe areas. Prices can than reallocate capital and labor quickly" (Sandler& Enders, 2005).

The International Monetary Fund estimated that the 9/11 attacks cost the U.S economy up to 0,7% in lost GDP that year. These results have been confirmed by other studies according to which " an act of terrorism accounts for a mere blip in economic damage. Economists often point to research showing that after the Madrid train bombings in 2004 and the London subway bombings in 2005, gross domestic product in those countries barely budged and showed little direct correlation to the attacks.

Even in the United States after the Sept. 11 attacks, consumption remained relatively stable, though investment fell. (There have been bigger impacts on places like Bali and Tunisia, whose economies depend heavily on foreign tourism.)

If the stock market can be considered a barometer of economic confidence, it is remarkable to see how quickly it typically rebounds after a terrorist event. In the case of New York, Madrid and London, the market briefly dropped but then recovered, often within weeks. In the case of Sept. 11, the S.&P. 500-stock index returned to where it had been before the attacks just 30 days later " (Sorokin, 2015).

It is also, as we have seen, a matter of definition. When terrorism really spreads out over large geographical areas and begins to cause many casualties and big material destructions, then it is no longer terrorism. It is war, insurgency, revolution or struggle for independence.

If, as has been aptly noted, terrorism is drama, many of its effects should unfold only in the virtual field. But terrorism is not just drama. It can do much more damage when it becomes an asset in the hands of powerful vested interests, holding long range strategies and able to use the hype and fear produced by terrorist attacks to achieve their goals more quickly, or to expand their businesses and strengthen their sway.

Besides traditional right-wing groups ready to satisfy the demand for order coming from communities frightened by accidents in public places and on public transports, there

are military industries and security bureaucracies that rip great benefits from the climate of confrontation and war generated by terrorist activities.

Security agencies are able to deviate towards their strategic interests the institutional reactions to emergencies, taking advantage of the panic that spreads among the general public after a surge of extreme violence. By taking into account the historically perverse relationship between terrorism and its most die-hard enemies (armed forces, war industries, autocracies, police forces and secret services) we can better understand its most recent developments (Curtis, 2010).

Bin Laden and many leaders of Al Qaeda are not monsters. They did not jump straight out of hell with bombs in their hands ready to attack the Kingdom of Good. They are actually old friends of intelligence agencies that have gone out of control and have decided to play on their own (Dreyfuss, 2005). But it is exactly on them that the appeal of neocons and the American war party has been built, allowing the invasion of Iraq and Afghanistan and the increase of the US military budget.

Few exaggerations are as implausible as that which defines terrorism as an existential threat to the West. In fact, no single group or even a set of subversive groups is able to destabilize, or even seriously damage, a Western state.

Comparing September 11th to a world war is absurd. For any citizen of the planet, the probability of being victim of a terrorist attack are in the order of one on several million.

6. Cyber terrorism and the dirty bomb

Globally, the victims of international terrorism are a small figure compared to those of civil wars and even road accidents. These facts, however, are considered irrelevant by the proponents of the Third World War, the one on terrorism. According to them, after September 11th we have entered a new era. The era of the possible use of weapons of mass destruction by terrorist groups. The era of cyber terrorism and of the „dirty bomb".

At this point, many questions arise. One may ask, for example - taken for granted the reduced danger of "material" terrorism - if cyber terrorism poses such a big threat. The answer is negative. Cyber terrorism is largely an invention of companies that sell security systems. It all started with the fear-scam of the year 2000, (the Millennium Bug) that was supposed to blow up computer software at midnight on December 31, 1999. A threat that never materialized, but was a multi-billion dollar bonanza for a group of industries.

Cyber terrorism - Joshua Green wrote in 2002 and his words are even more valid today - simply does not exist. No one has ever been killed by a computer. Al Qaeda and its followers have never used computers for destructive activities. Many computer experts agree that it is virtually impossible to use the Internet to inflict death on a massive scale (Green, 2002; Weimann, 2005).

Too much emphasis on cyber terror could detract from other, more serious, counter-terrorist efforts. One of the most respected scholars on the matter, Dorothy Denning, has urged not to compare cyber terrorism to weapons of mass destruction or even to car bombs and suicide attacks. The same scholar warned against inflating the cyber terrorism menace:

" The foregoing evidence shows that terrorist groups and jihadists have an interest in conducting cyber-attacks and at least some capability to do so. Further, they are attempting to develop and deploy this capability through online training and calls for action. The evidence does not, however, support an imminent threat of cyber terrorism. Any cyber-attacks originating with terrorists or cyber jihadists in the near future are likely

to be conducted either to raise money (e.g., via credit card theft) or to cause damage comparable to that which takes place daily from web defacements, viruses and worms, and denial-of-service attacks.

While the impact of those attacks can be serious, they are generally not regarded as acts of terrorism. Terrorists have not yet demonstrated that they have the knowledge and skills to conduct highly damaging attacks against critical infrastructures (e.g., causing power outages), although there are a few indicators showing at least some interest " (Denning, 2007).

All of the above does not mean that computer crime is not a problem. It is a problem, and even a serious one. But it has nothing to do with terrorism and terrorists. Hackers and other cybercriminals cause billion dollars a year of damage to businesses and citizens with their worms, viruses and bombs. But they have no intention to destroy the cyberspace, or use it to procure catastrophic damages.

Hacker groups do not sympathize and do not engage with cyber terrorism, because it would be against their interests to cause mass disruption of the information infrastructure in which they live and prosper with their extortions, scams and thefts.

They do not, moreover, have any access to the "sensitive" systems of the public security sector. "To fall in the domain of cyber terror, a cyber-attack should be sufficiently destructive or disruptive to generate fear comparable to that from physical acts of terrorism, and it must be conducted for political and social reasons. Critical infrastructures, which include telecommunications, electrical power, oil and gas, water supply, transportation, banking and finance, emergency services, and essential government services, are likely targets. Attacks against these infrastructures that lead to death or bodily injury, extended power outages, plane crashes, water contamination, or billion dollar banking losses would be examples " (Denning, 2007).

Compared to the private sector, governments are many years ahead in terms of computer security. The IT security systems of the planet, both military and civilian (armed forces and police and intelligence agencies computers) are not physically connected to the internet. They are not connected between themselves either, because of legal prohibitions and the inter-agency competition.

Even the possibility of a terrorist action against the electronic system that monitors aircrafts in flight – the scary vision of thousands of airplanes out of control - is very remote. Air traffic management systems are disconnected not only from the internet but from any other system, including the circuit of airspace administration. The "electronic Chernobyl" or the "digital Waterloo" may be good excuses to make money by selling useless counter-terrorism gadgets, but do not belong to the realm of credible threats.

One of the most accurate and comprehensive analysis of the cyber terrorism/cyberwar issue carried out in 2012 leaves little room to doubt: " Cyber war has never happened in the past. Cyber war does not take place in the present. And it is highly unlikely that cyber war will occur in the future. Instead, all past and present political cyber attacks are merely sophisticated versions of three activities that are as old as warfare itself: subversion, espionage, and sabotage. That is improbable to change in the years ahead " (Rid, 2012: 5-32).

If most cyber incidents do not represent an additional threat to national and international security, why media and so many private and public leaders exaggerate cyber threats?

The answer is lucrative government contracts. Investment in cyber defense

capabilities grew exponentially under the Obama administration, reaching 19 billion budget in 2017. The "Cybersecurity Market Report" predicts global cybersecurity spending will exceed $ 1 trillion from 2017 to 2021 (Morgan, 2017). Traditional Pentagon contractors own 85% of US critical infrastructure assets and have created their own cybersecurity centers. " The nature of this relatioships led several scholars to suspect excessive, unaccountable spending by the government. Like the "military-industrial complex," this relationship can otherwise be known as the "cybersecurity-industrial complex," the close nexus between the Pentagon, defense contractors, and elected officials that could lead to the unnecessary expansion of cybersecurity spending and a breakdown of checks and balances " (Mok, 2017; Jerry&Watkins, 2011; O'Connell, 2012: 197-198).

And what about the "dirty bomb", a nuclear device that consists of a cocktail of ordinary explosives that causes havoc when detonated? Here we are most certainly talking about fairy tales. The scholars of radiation not paid by the Pentagon, have consistently evaluated that the possible casualties of a "dirty bomb" explosion would be in the order of one or two. The actual victims of this bomb would probably be those caused by the panic generated by news of the explosion (Carter, 2014; Zimmerman, 2004; Rockwell, 2003).

7. Terrorism and weapons of mass destruction

Even the so-called nuclear terrorism is an exaggerated threat. A menace that also begins to show signs of aging, as the first to evoke it was the physicist J. Robert Oppenheimer, the father of the atomic bomb in 1946. According to Oppenheimer, three or four men could have theoretically smuggled single parts of a bomb into New York City and then blown the whole city up. From then on, "the suitcase nuke" has entered the discussion. Experts such as Brian Jenkins began their career more than forty years ago, taking it for very likely that a terrorist attack using nuclear technologies would occur (Jenkins, 1975). Well. We are still patiently waiting.

The chance of an attack by a terrorist group with nuclear weapons is extremely remote. Nuclear technology is complex, and it is not easy, even for a sovereign state, to produce "reliable" nuclear weapons. It takes thousands of scientists, and technologies and materials that cannot be found in supermarkets, as highlighted by the Gilmore Commission (Gilmore Commission, 1999). It also takes years of experiments, because atomic bombs are different from other weapons.

If you want them to serve the purpose, they need to be tested. It is true that Bin Laden was looking for them, but that does not mean that he would have found them. And if he had found them, he also would have had to find a place to try them. In addition, he would have needed a large, secret location to host a team of rebellious scientists, the means to deliver the bomb, etc.

The black market of nuclear materials is also known to be full of imposters and thieves. All cases investigated by the Atomic Agency in Vienna so far have proved to be scams. In the eighties even a metal - the so-called *red mercury* - was bought and sold because it was considered as fissile material. But the real problem was that neither red mercury nor its properties exist. Scammers had invented them out of the blue. Just like the "death ray" and portable nuclear bombs that Italian prosecutor Carlo Palermo unmasked during his "Arms and Drugs" investigation, in the early eighties (Arlacchi, 1988).

And what if a rogue state decided to arm some client country or a terrorist group with nuclear bombs, in order to hit an enemy without revealing the source of the attack?

This is a question I asked myself a few times, but my neighbors at the United

Nations, IAEA officials and scientists, always replied that even the most fanatic autocracy does not make conventional military technology available to other governments or private entities. A powerful state can sell to an ally weapons that are more advanced than the average of those available in the region of destination, but will not share the most advanced armaments with anyone. And if this applies to conventional weapons, it is even stricter for nuclear ones.

In addition, there is the obstacle of the genetic "signature" that is typical of each nuclear device built in each single country. If this device is exploded in any place on earth, current technology allows nuclear experts to trace its origin. Should a government of fools put nukes in the hands of a terrorist group for an attack, it would be immediately identified and would become the target for any resulting international reaction. Therefore, those who encourage these fantasies either do not know what they are talking about or belong to the party of fear and deception.

Now, what about chemical and biological weapons? What is the real risk in terms of a possible terrorist use? The risk is in this case insignificant. These weapons either do not exist at all or, if they do exist, they are unreliable on the battlefield. No serious military strategist would take them into consideration (Meselson, 1991; Panofski, 1998). The only terrorist attack with chemical weapons that has ever taken place was the one in the Tokyo subway in 1995, which caused a huge hype but few casualties.

Independent scientists continue to argue that the use of gas masks is sufficient to neutralize the worst effects of an attack with chemical weapons, and that mass vaccination to protect us from an attack with biological weapons is unnecessary. But this is a huge deal for pharmaceutical companies. They certainly did not like the publication in October 2004 in the International Journal of Infectious Diseases, of a study that confirmed the WHO recommendation about no necessity of vaccination (Zanders, 2004: 9-14).

As for the actual lethality of these weapons, Richard Clarke - the member of the US National Security Council who resigned during the Bush administration - described what happened before his eyes at the White House on the eve of the invasion of Iraq: " What would we do if Iraq used chemical or biological weapons?… We took the issue to the "inner cabinet" of Principals chaired by Brent Scowcroft. … Scowcroft… turned to Cheney (Secretary of Defense). "Mr. Secretary, what would you recommend?" Cheney then looked at Powell (State Secretary) …. "Go on, Colin, say what you think," Cheney urged. Powell shrugged and…said, "I just think chemical weapons are goofy" …

Growing more serious, Powell explained. "Chemical weapons will just slow us down a little. We will batten up the tanks and drive through. I don't think Saddam will use biological weapons because they are not really suited for the battlefield. They take too long. Besides all of this shit can literally blow back on you. And nuclear, I don't think he has nuclear" (Clarke, 2004).

Yet the issue of proliferation of weapons of mass destruction dominates the agenda of international security since a decade. But dissatisfaction with this concept is growing. It threatens to divert our attention from the real weapons of mass destruction, those that produce large numbers of victims every year. These are the conventional weapons together with small arms. The ordinary weapons - rifles, pistols, machine guns - which are more frequently used than bombs and tanks, because of the type of conflicts that prevail today.

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Euthanasia: a review on worldwide legal status and public opinion

Garima Jain[a], *Sanjeev P. Sahni*[b]
[a]*Jindal Institute of Behavioural Sciences, O.P. Jindal Global University, India*
[b]*Jindal Institute of Behavioural Sciences, O.P. Jindal Global University, India*

Abstract

The moral and ethical justifiability of euthanasia has been a highly contentious issue. It is a complex concept that has been highly discussed by scholars all around the world for decades. Debates concerning euthanasia have become more frequent during the past two decades. The fact that polls show strong public support has been used in legislative debates to justify that euthanasia should be legalised. However, critics have questioned the validity of these polls. Nonetheless, the general perceptions about life are shifting from a 'quantity of life' to a 'quality of life approach', and from a paternalist approach to that of the patient's autonomy. A 'good death' is now being connected to choice and control over the time, manner and place of death. All these developments have shaped discussion regarding rights of the terminally ill to refuse or discontinue life-sustaining efforts or to even ask for actively ending their life.

Key words: *euthanasia, ethics, public opinion, law.*

1. Background

The moral and ethical justifiability of euthanasia has been a highly contentious issue. It is a complex concept that has been highly discussed by scholars all around the world for decades. One of the earliest definitions of euthanasia, by Kohl and Kurtz, states it as "a mode or act of inducing or permitting death painlessly as a relief from suffering" (Beauchamp & Davidson, 1979: 295). The definition however fails to take into consideration the importance of 'motive' in euthanasia. For instance, as per this definition of euthanasia, it is immaterial as to whether the act has been committed with the motive of ending the life of the person so as to take away the property of the deceased or whether it has been carried out as a genuine effort to decrease the pain and suffering. Webster's International dictionary defines euthanasia as "an act or practice of painlessly putting to death persons suffering from incurable conditions or diseases" (Beauchamp & Davidson, 1979: 295). This definition is an improvement on the previous one given that it takes into account the fact that the act of euthanasia can only be carried out when a person suffers from an incurable disease. Hailey in 1956 defined euthanasia as "administering an easy painless death to one who is suffering from an incurable and perhaps agonizing ailment" (Beauchamp & Davidson, 1979: 295). However, the above definitions also fail to account for the 'motive' factor in their description of euthanasia. The other drawback of these definitions is that they fail to differentiate between the various types of euthanasia – active

· Garima Jain. Email: gjain@jgu.edu.in
· Sanjeev P. Sahni. Email: drspsahn@jgu.edu.in

and passive euthanasia. Reichel and Dyck take care of this issue by defining euthanasia as "an intentional and deliberate act to cause the immediate death of a person with incurable or painful disease". The definition can however be critiqued to be too narrow given that it encompasses only active euthanasia within its ambit.

The confusion and inadequacy in the definitions saw a change in the terminology in the last two decades. The definition saw a real advance when Beauchamp and Davidson in 1979 came up with the most broad and inclusive definition that sought to include both active and passive euthanasia within its ambit.

"A death of a person A is an instance of euthanasia if and only if it is intended by at least one other person B who is either the cause of death or a causally relevant feature of the event resulting in death; there is either sufficient evidence for B to believe that A is acutely suffering or irreversibly comatose, or there is sufficient evidence related to A's present condition such that one or more known causal laws supports B's belief; B's primary reason for intending A's death is cessation of A's suffering or irreversible comatoseness, where B does not intend A's death for a different primary reason, though there may be other relevant reasons and there is sufficient evidence for either A or B that causal means to A's death will not produce any more suffering than would be produced for A if B were not to intervene; the causal means to the event of A's death are chosen by A or B to be as painless as possible, unless either A or B has an overriding reason for a more painful causal means, where the reason for choosing the latter causal means does not conflict with the evidence; A is a nonfetal organism" (Beauchamp & Davidson, 1979: 295).

The above definition tries to ensure that euthanasia envisage only those acts which are carried out with a motive of decreasing the person's suffering in case the condition is irreversible. It also makes sure that foeticide is not carried out in the garb of euthanasia. Similarly definitions came up such as Young's definition of euthanasia in 1996 as "bringing about the death of another person because she believes the latter's present existence is so bad that he would be better off dead, or believes that unless she intervenes and ends his life, his life will become so bad that he would be better off dead" (Beauchamp & Davidson, 1979: 295).

Types of euthanasia

Euthanasia can be classified in a number of ways. One way of classification can be by the manner in which the act of euthanasia is conducted – active and passive euthanasia. The other way of classification can be based on the nature of consent given by the person seeking euthanasia- voluntary, non-voluntary and involuntary. There is another terminology that is used in instances where a physician assists in the death of a patient. Jonsen defined physician assisted suicide (Jonsen, 1994-1995: 459) as "the situation where a doctor helps a patient to commit suicide by providing the patient with the means to end her life at the patient's autonomous request". Euthanasia, whether active or passive, is therefore different from physician assisted suicide in the fact that in physician assisted suicide, the doctor prescribes medicines or drugs that would assist the patient in ending his life. He does not actively resort to the injection or intake of such drugs.

Active Euthanasia

That instance of euthanasia where a lethal substance or injection is administered to the patient so as to induce death is known as active euthanasia. Active Euthanasia has been under a lot of debate in the last few decades. People have generally opposed the idea of active euthanasia stating that the act violates the right to life of a patient. It also violates the doctor's Hippocratic Oath, since the oldest version of the oath does not talk about euthanasia as a duty that is bestowed upon the doctors. However, in contemporary times, active euthanasia has received support from more medical professionals and scholars. They have opined that the legalization of euthanasia is favorable for several reasons. Firstly, it allows terminally ill patients to end their suffering and extreme pain. They are not forced to endure their lives even against their will. Secondly, the concept of autonomy of life and the issue of right to die has crept into the arguments in favor of euthanasia. Proponents of euthanasia are of the opinion that every individual has a right to choose if he or she would like to end his life voluntarily and in what manner. It is essentially based on the concept of self-determination (Brock, 1992: 11). Philosophers, governments, medical professionals, scholars and social activists have time and again come up with various arguments but there has been no conclusion that has been reached in this aspect.

Passive Euthanasia

Passive euthanasia can be defined as those instances where necessary treatments such as antibiotics, drugs and other life support systems that are indispensable for the continuance of life are withheld. In case of passive euthanasia, no lethal drug is injected into the body of the patients so as to induce death. While most countries have spoken against the legalization of active euthanasia, some of them have gone ahead to legalize passive euthanasia. However, there are certain criticisms that cloud the domain of passive euthanasia as well. Passive euthanasia involves the withdrawal of life support systems that leads to the further worsening of the quality of life since it results in gradual death. In some situations there can be a possibility where the quality of life being lived is worse off than having no life at all. This could arise for a various reasons. The argument that comes up from pro- active euthanasia advocates is that living a life of extreme pain and suffering should have an automatic right of the patient to choose to make a decision regarding the inducement of his death.

2. Classification on the basis of nature of consent given by the patient

Euthanasia can also be classified on the basis of the nature of consent that is obtained from the patient – voluntary, non-voluntary and involuntary.

Voluntary Euthanasia

Voluntary euthanasia refers to those instances of euthanasia in which a clearly competent person makes a voluntary and enduring request to be helped to die. Euthanasia can be said to be voluntary even in those instances where the person is no longer competent to give his consent but he had, in a previous situation, asserted his wish to die if such circumstances arose in future. If, while still competent, a person expresses his desire to die in particular situations of incurable diseases of extreme pain and suffering, the act of euthanasia in such circumstances results in the performance of voluntary euthanasia.

Non-Voluntary Euthanasia

Non-voluntary euthanasia refers to those instances of euthanasia where a person is either not competent, or unable at the time, to express a wish about euthanasia and has not

previously expressed a wish for it. The consent in such situations remains unexpressed due to a variety of reasons. For example, because a patient is seriously ill or handicapped, is a newborn infant, or because illness or "accident have rendered an initially competent person permanently incompetent, without that person having previously indicated as to whether she would or would not like euthanasia under certain circumstances" (Kuhse, 1992).

Involuntary Euthanasia

Involuntary euthanasia refers to those instances where a competent person's life is brought to an end despite an explicit expression of opposition to euthanasia. Such a situation of involuntary euthanasia can arise when a person is either not asked to give or withhold his consent to the inducement of his death or refuses to consent to the act. Involuntary euthanasia is considered to be akin to murder since the death is caused against the will of the patient. Medical practitioners usually do not carry out involuntary euthanasia in an explicit manner. It has however mostly been argued that some "widely-accepted medical practices, such as the administration of increasingly large doses of pain killing drugs that will eventually cause the patient's death, or the unconsented-to withholding of life-sustaining treatment amount to involuntary euthanasia" (Kuhse, 1992).

3. Legal status and public opinion of Euthanasia: worldwide perspectives

Debates concerning euthanasia have become more frequent during the past two decades. The fact that polls show strong public support has been used in legislative debates to justify that euthanasia should be legalised.1 However, critics have questioned the validity of these polls. Although the word "euthanasia" is derived from the ancient Greek eu (good) and thanatos (death), there is a general consensus in research, legislation and in the medical field to adopt a definition similar to the one used in the Netherlands: "Euthanasia is defined as the administration of drugs with the explicit intention of ending the patient's life at his/her explicit request." However, some authors suggested avoiding the use of the term "euthanasia" because of possible ambiguity and since this term can be emotionally charged. In addition, answers given to questions on euthanasia may be influenced by the wording of the question. A large scale Norwegian study in 2016, found moderate to large question wording and question order effects in an attitudes towards dying survey experiment (Magelssen, Supphellen, Nortvedt & Materstvedt, 2016). Another concern is the fact that people may not be well informed about end-of life practices. Within the context of a public information day, Gallagher found that almost half of people thought that treatment withdrawal was euthanasia and an Oregon study revealed much confusion in patients about their end-of-life options. For some, such confusion may be understandable because they believe that there is no moral distinction between acts or omissions that result in death. They contend that "passive" and "active" euthanasia are morally equivalent. However, legislation as well as medical practice invariably distinguish between these practices. Therefore, the results of these public surveys must be looked at with caution. Nonetheless, the general perceptions about life are shifting from a 'quantity of life' to a 'quality of life approach', and from a paternalist approach to that of the patient's autonomy. A 'good death' is now being connected to choice and control over the time, manner and place of death. All these developments have shaped discussion regarding rights of the terminally ill to refuse or discontinue life-sustaining efforts or to even ask for actively ending their life.

Europe

In various European countries, the question whether the possibility of terminating the life of suffering and terminally ill patients in medical practice should be legalised, has been publicly debated. In 2002, both the Netherlands and Belgium legalised (active voluntary) euthanasia (Deliens & van der Wal, 2003: 1240). In Switzerland, (physician) assisted suicide (PAS) is not prosecuted when it is done without 'self-interest' (Bosshard, Fischer & Bar, 2002: 527). Although in most countries euthanasia remains illegal, sanctions are also often being downgraded and applied infrequently. Sometimes amendments in the law distinguish a medical decision that ends the life of a patient with unbearable pain at the request of the patient from murder (Bamgbose, 2004: 290). In most European countries, public debates on these issues are being held. Two elements have been particularly important in this change, in the social and political debate and in the procedural rule-making. First, the evidence that euthanasia occurs in many European countries (as well as outside Europe) has increased concern about the necessity to better understand how euthanasia is performed and how to ensure safe practice (Deliens & van der Wal, 2003: 1240). The growing support of the general public for a 'right to die' legislation has been an important influence for the euthanasia debate (Benson, 1999: 2658). European studies of public attitudes towards euthanasia show that a majority of citizens think that euthanasia and/or PAS is acceptable or should be legalised: 80–93% in Germany (Helou, Wende, Hecke, Rohrmann, Buser& Dierks, 2000: 308) ; 84% in Great Britain (O'Neill, Feenan, Hughes & McAlister, 2003: 721); 82% in Switzerland (Hurst & Mauron, 2003: 271); 61% in France (Teisseyre, Mullet & Sorum, 2005: 357); 50% in Finland (Ryynanen, Myllykangas, Viren, & Heino, 2002: 322); 24–65% in Poland (Domino, 2002: 105). However, far from all European countries were studied (in particular, the Eastern European countries were missed out), and the use of different instruments or questions limits comparability between countries. Many previous studies were also limited to health professionals' attitudes towards euthanasia (legislation), which is important because medical professionals will be the primary actors (Ben Diane, Peretti-Watel, Lapiana, Favre, Galinier, Pegliasco, et al., 2003, 154). Awareness of public opinion is, however, also important since individuals and families would be initiators of the requests for euthanasia and subjects of the decision-making process (Genuis, S. J., Genuis, S. K., & Chang, 1994: 701).

Netherlands has a long history of debates and discussions on euthanasia. One of the earliest cases on euthanasia that came up in Netherlands was the Postma Case (Gevers, 1996: 326) in 1973. In that case, a physician was convicted for having facilitated the death of her mother who had consistently requested him for euthanasia. The Alkmaar Case (Gevers, 1996: 326) followed the Postma Case in 1984 where a 73 year old, chronically ill woman in the advanced stages of multiple sclerosis, was euthanized by the doctor after several requests. This was the first case where the Supreme Court of Netherlands recognized the doctrine of necessity and allowed euthanasia to be carried out in specific circumstances. The court went on to formulate guidelines that were to be followed by the doctors and the patient while carrying out euthanasia. The guidelines state that the request for euthanasia was to be made by the patient and it should be "entirely free and voluntary, well considered and persistent". Euthanasia could be allowed in only those circumstances where the patient was experiencing intolerable suffering and pain, with no hope of improvement and with no available means to alleviate the patient's suffering. It was also

mandated that a doctor should perform euthanasia only after he had consulted an impartial colleague who has experience in the field.

The various euthanasia requests that came up before the court led the Netherlands Parliament to legalise active euthanasia in 2002 through the enactment of the Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2002. The act defines euthanasia as the "deliberate termination of the life of a person on his request by another person" (Gevers, 1996: 326). The Act envisages the creation of a medical review board that has the power to suspend prosecution of doctors who have performed euthanasia when each of the following conditions is fulfilled - the patient's suffering is unbearable with no prospect of improvement or alternative remedies, the patient's request for euthanasia must be voluntary and must be shown to be persistent over time, the patient cannot make the request under the influence of others, psychological illness or drugs, the patient must be fully aware of his condition, diagnoses and options, the doctor, before carrying out euthanasia must consult with at least one other independent doctor who needs to confirm the conditions mentioned above, the death must be carried out in a medically appropriate manner by the doctor or patient, and the doctor must be present and the patient should be at least 12 years old (patients between 12 and 16 years of age require the consent of their parents).

The Groningen Protocol was developed in 2004, which allowed euthanasia of children below the age of 12 only if the requirements of the protocol were followed – the child should be suffering from hopeless and unbearable pain, the consent of the parents to termination of life is a necessity, the doctor must consult an impartial colleague and there should be careful execution of termination of life.

Widespread prevalence of permissive attitudes towards euthanasia in Netherlands has been well documented in research (Cohen, Marcoux, Bilsen, Deboosere, van der Wal, Deliens, 2006: 743). Relatively more permissive attitudes have been found among the general public in comparison to practitioners, however, overall research suggests that there is an unambiguous support for euthanasia and the legal act in Netherlands (Rietjens, van der Heide, Onwuteaka Phillipson, van der Maas, van der Wal, 2005: 1723). Despite the international criticism and slippery slope argument the public opinion has remained largely unaltered (Holsteyn & Trappenburg, 2001). Several reasons have been posited to explain this pattern of support such as the role of the Dutch healthcare system, general openness of the society towards contemporary ideas (Rietjens, van der Maas, Onwuteaka Phillipsen, van Delden, van der Heide, 2009: 271) and less religiosity (Verbakel & Jaspers, 2010: 121). However, this tolerant public opinion does not imply 'absolute' support for euthanasia and physician assisted suicide. Initial surveys conducted among the general population in Netherlands focused on euthanasia in general and contained questions such as "What should a doctor do when a patient asks him to put an end to his suffering by administering a lethal injection?" (Rietjens, van der Heide, Onwuteaka Phillipson, van der Maas, van der Wal, 2005: 1723) and "Please tell me whether you think euthanasia (terminating the life of the incurably sick) can always be justified, never be justified, or something in between" (Cohen, Marcoux, Bilsen, Deboosere, van der Wal, Deliens, 2006: 743). Although the results of such surveys mirrored the openness of the Dutch majority towards euthanasia, but, they were unable to capture the complexity of their opinions. A mixed method study by Kouwenhoven et al. (2012), conducted after almost 8 years of the euthanasia legislation in Netherlands, presented some important findings in this regard.

Interestingly, the results indicated that majority of the physicians and general population considered physical symptoms as a prerequisite to unbearable suffering. Only a minority of physicians and general public agreed with performing euthanasia in cases of chronic depression (physicians 35% public 28%), early dementia (physicians 28%, public 24%) or being tired of living (physicians 36%, public 26%) even though the law permits euthanasia or PAS for mental suffering (Kouwenhoven et al., 2012). This suggests that although there is broad support for euthanasia and PAS, the opinion of professionals and the general public in Netherlands is contingent on various factors.

After the Netherlands legalised euthanasia in 2002 (Weber, 2001: 372) by providing an exemption for doctors, Belgium followed suit. The Belgium Act of Euthanasia of May 28, 2002 defines euthanasia as "intentionally terminating life by someone other than the person concerned, at the latter's request'. The Act legalized active euthanasia (The Belgian Act of Euthanasia of May 28th, 2002) for competent adults and emancipated minors upon their request. The provision however necessitates the fulfilment of certain conditions. The request should be voluntary and the patient requesting euthanasia must be in a "medically futile condition of constant and unbearable physical or mental suffering that cannot be alleviated". The Belgian Parliament went one step ahead of the 2002 act when it legalized euthanasia for terminally ill children on February 13, 2014 (European Institute of Bioethics). Certain safeguards were however placed to ensure that children are not exploited by means of the provisions of this act. The act requires the patient to be conscious of their decision and they are required to give a free informed consent only after they are made aware of the meaning of euthanasia. The request for euthanasia should be voluntary and must have been approved by the child's parents and medical team. The child's illness needs to be terminal, he must be in extreme pain and suffering with no available treatment to alleviate his distress. The law also makes provision for a psychologist to determine the patient's maturity to make the decision.

It is interesting to note that post the enactment of the law in Belgium, the number of mercy killings has remained constant (Cohen, 2009: 438). This means the only difference now is that doctors do not have to carry out the procedure illegally. In general, the permissiveness towards euthanasia in Belgium is quite high, close to that in Netherlands, despite being a population majorly consisting of a Catholic majority. This may be due to the low level of religiosity in Belgium (Verbakel & Jaspers, 2010: 121). In a large-scale study conducted to understand the public opinion on Euthanasia in Belgium, interviews were conducted with leading scholars and practitioners in February 2003 and February 2005 (Cohen, 2009: 436). In Belgium, three-quarters of the society were found to be in favour of legalising euthanasia (Cohen, 2009: 436), as they recognize the importance of the quality of life (Cohen, 2009: 436). It was observed in the study that focus in the North (largely Dutch speaking), where people are more open about euthanasia, is on the patient's autonomy. However, in the South (French speaking), the people tend to rely on physicians; this also explains why the number of reported cases is higher in the North (Cohen, 2009: 436).

The law in Switzerland allows the prescription of deadly drugs to a Swiss person or to a foreigner, where the patient takes an active role in the administering the drug to himself. Article 115 of the Swiss Penal Code, which came into effect in 1942, considers assisting suicide a crime if and only if the motive is selfish. In Switzerland, active assisted

suicide, a doctor prescribing and handing over a lethal drug, is illegal (*BBC News*, 25 June 2010).

German law also states that active assisted suicide, the act where a doctor prescribes and hands over a lethal drug, is illegal. German law however allows assisted suicide if the lethal drug is taken without any help, such as someone guiding or supporting the patient's hand. The law also clearly forbids actively assisted euthanasia as per Paragraph 216 of the Criminal Code. By contrast, it is not illegal to purchase lethal medications for someone who wants to die. Germany allows passive assisted suicide. Doctors are allowed to "switch off assisted breathing and feeding systems for a terminally ill patient, if this is the expressed will of the patient". This is regulated by the advanced decision by the patient. Indirect assisted suicide is also permitted by means of administering strong painkillers, which can have the effect on weakened organs of cutting short life, such as giving morphine to cancer patients during their final stages. The German laws have been backed by the decision of the German Federal Court of Justice which ruled that the cutting of life support for consenting, terminally-ill patients is not a crime (Schadenberg, 2014). It is interesting to note that in Germany, the term 'euthanasia' is avoided, as it relates to the policies of the Nazi era. The memory of Nazi history has been posited as a probable reason for their reservations against the practice of euthanasia (Cohen, Marcoux, Bilsen, Deboosere, van der Wal, Deliens, 2006: 743). In a study that involved 12 European countries from 1981-1999, found that despite the increase in permissiveness and decrease in religious beliefs, there was no significant increase in euthanasia acceptance among adult citizens in Germany (18-year-old or above) (Cohen, Marcoux, Bilsen, Deboosere, van der Wal, Deliens, 2006: 743).

The French parliament has voted unambiguously in favour of a law allowing terminally ill patients to cease treatment and enter a "deep and continuous sedation" until they die. Patients are also allowed to make living wills, stating that they do not want to be kept alive artificially if they are too ill to decide. Passive Euthanasia was legalized in France way back in 2005. The confusion remains as to whether active euthanasia has been legalized in France due to this law (Chazan, 2015). Public opinion on the other hand, has seemed to have shifted towards an acceptance oriented attitude regarding euthanasia. Data from 1981, 1990, 1999-2000 and 2008 wave of the European Values Survey (EVS) showed that France along with Netherlands, Belgium, Denmark and Sweden) (Cohen, Marcoux, Bilsen, Deboosere, van der Wal, Deliens, 2006: 743).

Asia

In the case of India, even though the exact statistics on the number of euthanasia requests is not readily available, there have been numerous instances that have come up in news reports where people have demanded euthanasia (Satija, 2015). In India, the debate surrounding euthanasia has mainly focused on the various judicial decisions that have tried to analyse as to whether right to life under Article 21 of the constitution encompasses within its ambit the right to die. In the case of R Rathinam v. Union of India (1994 (3) SCC 394), the court held that Section 309 of I.P.C., which deals with attempt to commit suicide, violates Article 21, and is hence void. In Gian Kaur v. State of Punjab (1996 (2) SCC 648), *a* constitutional bench held that the *"right to life"* does not include within its ambit the *"right to die"*. Public consciousness about euthanasia reached the pinnacle with the Aruna Shanbaug incident in 1973. Shanbaug, a nurse at KEM Hospital, Mumbai went into a persistent vegetative state when a sweeper sexually assaulted her. The hospital staff took

care of her for 37 years after which an activist journalist, Pinki Virani filed a writ petition (*Aruna Shanbaug* v *Union of India* 2011 (4) SCC 454) at the Supreme Court in 2009 requesting the court to grant euthanasia for Shanbaug. The court in a landmark decision in 2011 went on to legalize passive euthanasia in certain instances. The Supreme Court specified two irreversible conditions to permit Passive Euthanasia – 1) the brain-dead for whom the ventilator can be switched off 2) those in a "Permanent Vegetative State for whom the feed can be tapered out and pain-managing palliatives be added, according to laid-down international specifications". The court further laid down the following guidelines:

- The decision to discontinue life support is to be taken either by the parents or the spouse or other close relatives, or in their absence, a next friend. The doctors attending the patient can also take it.
- The decision should be taken in a bona fide manner in the best interests of the patient.
- The decision requires approval from the High Court concerned.
- When such an application is filed, the Chief Justice of the High Court should constitute a Bench of at least two Judges who should decide as to whether to grant approval or not. A committee of three reputed doctors is to be nominated by the Bench, who is to give report regarding the condition of the patient.

The Shanbaug decision was followed by a PIL (*Common Cause* v *Union of India* (2014) 5 SCC 338) that was filed by NGO Common Cause to declare the right to die within Article 21. A three-judge bench observed that the judgment in *Aruna Shanbaug* case was based on a wrong interpretation of the constitution bench judgment in *Gian Kaur v. State of Punjab*. Therefore, the court referred the issue to a constitution bench, which shall be heard by strength of at least five judges. The Shanbaug decision remains the legal status of euthanasia in India.

Regarding the opinion of the general public on Euthanasia, there is a lack of national level data. Studies majorly review the legal developments and arguments for and against the legalization of euthanasia. Furthermore, the few opinion surveys that have been conducted, have majorly focused on the population of professionals such as doctors, lawyers and judges rather than the public in general. One such study conducted on 200 doctors across 28 hospitals in Delhi reported that, majority of the doctors did not support active euthanasia, but, there was a strong support for voluntary passive euthanasia among psychiatrists and intensivists (as opposed to oncologists and hematologists) (Singh, Sharma, Aggarwal, Gandhi, Rajpurohit, 2015: 49).

In China, euthanasia has not been legalised. The proposed legislation to legalize euthanasia in the National People's Congress in 1995 was not passed (Scherer & Simon, 1999). The first survey in China regarding the public opinion on euthanasia dates to 1985 (Pang, 2003). Since then there have been several public opinion surveys in the 1990's as well which have shown the support of public, especially the younger respondents with higher education, towards voluntary active euthanasia (Pang, 2003). China however, is also majorly influenced by Confucianism which morally sanctions euthanasia in very limited circumstances. In addition to this, due to China's strained healthcare system it is advocated that reforms should focus on reforming the healthcare system rather than legalization of euthanasia (Chai, 2015).

The Japanese Government has no official laws on the status of euthanasia and the Supreme Court of Japan has never ruled in this matter. However, there have been two local court cases that have decided the nation's policy towards euthanasia (Hongo, 2014). While the Kawasaki Kyodo Hospital Case created guidelines on Decision Making Process of Terminal Care, the Court gave certain conditions that are necessary to carry out active and passive euthanasia in the Tokai University Hospital Euthanasia Case (Katsunori, 2012).

For passive euthanasia, the following three conditions must be met:

• The Patient must be suffering from an incurable disease, and must be in the final stages of the disease.

• The patient must give express consent to stopping treatment. If the patient is not able to give clear consent, their consent may be determined from a pre-written document.

• The patient may be passively euthanized by stopping medical treatment, chemotherapy, dialysis, artificial respiration, blood transfusion, etc.

For active euthanasia, the following four conditions must be met:

• The patient must be suffering from unbearable physical pain.

• Death must be inevitable and drawing near.

• The patient must give consent.

• The physician must have exhausted all other measures of pain relief.

Both euthanasia and assisted suicide are illegal in Singapore as per S.17 of the Advanced Medical Directive Act 1997. The Act has express provisions stating that -

"nothing in the Act shall authorise an act that causes or accelerates death as distinct from an act that permits the dying process to take its natural course".

"nothing in this Act shall condone, authorise or approve abetment of suicide, mercy killing or euthanasia".

Active Euthanasia in Thailand qualifies as murder under S. 288 of the Criminal Code. Physician-Assisted Suicide qualifies as assistance of suicide under S. 307 of the Criminal Code. Under S. 12 of the National Health Act of Thailand, a person is given the right to make a living will to refuse the public health service that is provided to lengthen his terminal stage of life or to refuse the services to lessen his sufferings from the illness (Aisha, 2011).

USA

While some states in the US have legalised euthanasia or physician assisted suicide, others have still not gone ahead with the decriminalisation of euthanasia. Results of the World Values Survey 1981, 1990 and 2000 point towards an increased acceptance of euthanasia among Americans. The General Social Survey (1977-2002) showed that the acceptance of euthanasia among general public increased from 1978 and peaked in 1990-1991 and then slightly decreased from 1994-2002. Another systematic review of 39 studies (1991-2000) concerning the attitude of physicians regarding physician assisted death and euthanasia revealed that physicians held more favourable attitudes towards physician assisted death. The acceptance rate of physician assisted death ranged from 14 to 66 percent, whereas for active voluntary euthanasia it ranged from 23 to 63 percent. Around one third of the physicians would agree to participate in physician assisted death, if it were made legal.

Regarding the legal status of euthanasia in USA, the state of Oregon legalized euthanasia through the Death with Dignity Act of 1997. The provisions of the act allow patients who are terminally ill or hopelessly ill to request for lethal medication. The patient

is required to make two verbal requests and another in writing with a witness, for the doctors to end his life. There should at least be two doctors and they should "agree on the diagnosis, the prognosis of the disease and the capability of the patient". Since the state has legalized physician assisted suicide, he is required to personally administer the medication.

Washington became the second state in the US to legalize euthanasia in 2008 through the Washington Death with Dignity Act. The patient is again required to make two verbal requests and another one in writing. The requests need to be 15 days apart and the patient must be suffering from a terminally ill condition with a life expectancy of six months or less.

Montana, in December 2009 legalized euthanasia through Baxter v. Montana (*Baxter* v *Montana* 354 Mont. 234). Competent patient had the right to die with dignity. Physician can assist the patient by providing prescription lethal medication that the patients are required to take on their own.

Vermont legalized euthanasia in May 2013. Euthanasia was granted a legal status by enactment of Act 39 of the End of Life Choices. The law also requires that the patient provide two oral and one written request. The most important requirement of the Vermont state law is that the patient needs to be a resident of the state so as to participate in euthanasia.

California has most recently legalized euthanasia. The topic was brought to the forefront in California by the case of Brittany Maynard, a 29-year-old with a brain tumor who moved from San Francisco to Oregon and took her own life. In the case of Barber v. Superior Court, two physicians had honored a family's request to withdraw both respirator and intravenous feeding and hydration tubes from a comatose patient. The physicians were charged with murder, despite the fact that they were doing what the family wanted. The court held that all charges should be dropped because the treatments had all been ineffective and burdensome. The courter went on to say that the withdrawal of treatment, even if life ending, was morally and legally permitted. Competent patients had the right to decide to withdraw treatments, usually after the treatments were found to be ineffective, painful, or burdensome (Procon.org, 21 February 2017). The Californian Parliament finally passed a bill legalizing physician assisted suicide in September 2015 (the bill became effective from January 1, 2016).

Australia

The debate about euthanasia started in Australia with the enactment of the Rights of the Terminally ill Act (ROTA), 1995. A watershed moment in the history of euthanasia, this act legalized voluntary euthanasia and physician assisted suicide in the Northern Territory of Australia. This jurisdiction was the first in the world to legalize euthanasia and the first to repeal it. This act permitted a physician to respond to the request of a terminally ill adult patient (18 years and above) experiencing severe suffering. Within nine months of the enactment of this act, there were seven requests for euthanasia out of which four patients were legally granted permission. During this time, the act met with strong opposition especially from religious leaders. In 1997, by a margin of four votes the act was repealed and the Euthanasia Laws Act, 1997 was integrated into the Northern Territory (Self Government) Act (Plattner, 1997: 645).

Thereafter, there have been several futile attempts to pass laws supporting euthanasia despite the overarching support of the public demonstrated through various opinion polls since 1987 (Tran, 2015). Plattner (1997) termed the repeal of ROTA as mere

"symbolic formality". Even through the 1990s, surveys showed the stable support of the public, with variations depending on circumstances (Sikora, 2009: 31). Voluntary and non-voluntary euthanasia was more likely to be supported by Australians when death was impending (Sikora & Lewins, 2007: 68).

4. Conclusion

Euthanasia is a highly sensitive issue. The issue of support or rejection of euthanasia far being black or white is contingent upon several factors such as the type of illness, degree of suffering, religious affiliation, country's health care system and socioeconomic status of patients. For countries that have legalized euthanasia, counterarguments such as religious reasons, slippery slope arguments, lack of an efficient health care system and compromising ethics have been posed. Formulation of guidelines and their strict implementation in this case becomes important. However, in addition to the laws, medical professionals also need to be equipped with the knowledge and expertise to make such challenging decisions. Therefore, opinion of the public and medical professionals is of limited importance unless the legal and health machineries are ready to handle euthanasia requests.

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Corruption as a social problem

Gianmarco Cifaldi[a] *
[a] *University "G.d'Annunzio" of Chieti-Pescara, Italy*

Abstract
Corruption was a widely known crime since ancient times, but nowadays has become a social problem. Commonly regarded as one of the most serious offences against public administration, it has been condemned and prosecuted through time in different ways. The term "corruption", according to the Italian Digesto, comes from the Latin verb *corrumpo*, meaning to damage, to rot, to undo and, figuratively speaking, to deprave. The Digesto also says that the fundamental concept of corruption stemmed from Greek legislation. The corruption of a public officer in the detriment of a private citizen was punished by death penalty, pecuniary payment or by "civic degradation". Naturally, the latter was administered according to the gravity of the case**.**

Keywords: *corruption; Italy; law; organized criminality; Transparency International.*

1.The roots of the corruption phenomena

Corruption was a widely known crime since ancient times, but nowadays has become a social problem. Commonly regarded as one of the most serious offences against public administration, it has been condemned and prosecuted through time in different ways. The term "corruption", according to the Italian Digesto, comes from the Latin verb *corrumpo*, meaning to damage, to rot, to undo and, figuratively speaking, to deprave. The Digesto also says that the fundamental concept of corruption stemmed from Greek legislation.

The corruption of a public officer in the detriment of a private citizen was punished by death penalty, pecuniary payment or by "civic degradation". Of course the latter was administered according to the gravity of the case.

A fragment of the XII Tables proves that the very ancient roman law prosecuted the corruption of a judge by "extreme torture".

Roman law, originally, considered the acceptance of gifts or payments by public officers as improper behavior, not a crime.

Afterwards, with the spread of roman territories, population and administration, legislative measures were issued, in order to prosecute public officers taking possession of goods they were not supposed to own. Such measures consisted in giving back the sum embezzled.

At a later stage the *crimen pecuniarum reputundarum* was defined as abuse of power, employed by public officers to obtain illegitimate goods, and a permanent court able to judge such violations was established, as attested during Cicero's times.

Gianmarco Cifaldi. E-mail address: cifaldi@unich.it.

Barbarian peoples' legal systems rarely refer to this type of violation, mainly because of the nomadic asset of their society, which was definitely not a State and therefore lacked the normative rules for public power.

The ecclesiastic law, according to the Digesto, offers a wide number of dispositions against corruption.

In what is commonly known as intermediate law, the corruption of a judge is called "barratry" and it defines the theory of *crimen corruptelae*.

Modern legislations such as the Napoleonic Code (1810), in those sections regarding passive corruption, established prison and pecuniary sentences for the public officer who accepted or embezzled money to carry out his duties.

Tuscan (1853) and Sardinian (1859) Codes, according to Murri's study, established an organic system quite similar to that in force.

The Rocco Code, following the Zanardelli Code, maintained a continuity with its predecessor, conforming to the key concept of Italian law. The only difference between the two was in the penalties for the corruptor and for the attempt at corrupting.

Corruption today:

GRECO: Council of Europe anti-Corruption Group

GRECO was founded in 1999 by the Council of Europe anti-corruption Group in order to try and supervise the State Mebers' respect of the anti-corruption norms elaborated by the organization. The Group consists of 49 State Members (47 from the EuC, Belarus and the U.S.).

GRECO's main purpose is that of improving the ability of its members in fighting corruption by means of a dynamic process of reciprocal evaluation and peer pressure. The Group helps in identifying gaps in national policies against corruption, and it encourages the States to adopt the appropriate legislative and institutional reforms. GRECO is, moreover, a forum where to share good policies as far as prevention and inspection of corruption are concerned (rpcoe.esteri.it).

GRECO's evaluation system, as stated in the Organization's official website, is based on the gathering of information by means of questionnaires, while specialists pay visit to the Countries involved in order to gather information directly from the main national characters.

The Organization attempts at improving the abilities of the State Members against corruption, so to meet the anti-corruption standards required and established by the European Council.

They are summarized as follows:

The Penal Convention on Corruption, in force since July 1st, 2002

The Protocol on the Convention on Corruption, in force since February 1st, 2005.

The Civil Convention on Corruption, in force since November 1st, 2003.

GRECO and the Italian State

Italy took part in GRECO on June 30th, 2007, and it has been since evaluated twice, ending up with 22 recommendations. (2000-2) (2003-6).

"Having adhered after the second cycle of general monitoring, our Nation was subject to an adjunct evaluation procedure regarding certain arguments discussed in the previous years: independence, specialization and the means national organisms can employ

in order to prevent and fight corruption, extension of immunities, incomes from corruption, public administration and corruption, legal persons and corruption.

GRECO has been promoting a series of recommendations through time: July 2nd, 2009, January 31st, 2011 and on May 27th, 2011, the first conformity report on Italy (Greco RC-I/II (2011) 1E).

Italy is at the moment summoned to give clarifications on 13 recommendations only half fulfilled. With reference to the third cycle of monitoring, the evaluation report on Italy was adopted on March 23rd, 2012 and it contains 16 recommendations which the authorities will have to implement within 2014, especially with reference to state funding of political parties. On June 13, 2013 the Group of States against Corruption published their annual report, encouraging its members to enhance the prevention of corruption of MPs, judges, etc.

2. Transparency International

Transparency International is a no profit NGO aiming at fighting any form of corruption by means of specific indicators and research parameters which may help to understand and analyze the processes of corruption manifesting themselves in politics, economy and business, and society.

The outcome of such researches are publicly available on the official website, along with the so called Measuring Instruments for the Perception of Corruption.

They are three, listed as follows: CPI, BPI, B.

• Corruption Perception Index (CPI) – It determines how corruption is perceived in the public sector and in politics in various Countries, according to which each Nation has a score that ranges from O (maximum) to 10 (absence of corruption). It is a composite index, calculated on the basis of research and interviews administered to business experts and prestigious institutions. Its methodology varies each year in order to depict local realms as faithfully as possible.

Research is conducted by Universities or Research Institutions on behalf of T. I.

• Bribe Payers Index (BPI) – It highlights the ranking of bribe payers among the major industrialized nations in which the use of bribing in order to obtain commissions has not yet been eradicated, even though bribing officials is considered a crime by these countries' legal systems.

TI's survey on Bribe Payers is the largest and most complete public-opinion poll on the perception of the causes of corruption ever made. This survey integrates the first BPI (1999). Results today offer detailed answers on the export businesses' inclination to corrupt the most corrupted sectors; on big companies managers' level of awareness on the extraterritoriality of the OECD Convention against corruption, which has made illegal to bribe foreign public officers; on how these companies are implementing their conformity to the Convention; on the perception of irregular commercial operations; on bribing in order to seal contracts.

BPI has been applied to the emerging countries which are highly involved in foreign investments.

Interviews were administered to senior managers of national and multinational companies, as well as to financial managers and directors, Chambers of Commerce, national and foreign commercial banks and legal and marketing offices. The questions of the survey are intended to portray the impressions gathered by multinational companies belonging to Bribe Payers.

The results depict the opinions of experts in international commerce, who are in the best position to evaluate the extent of corruption and bribing to public officers in emerging countries.

• Corruption Perception Barometer. It was created in 2003 by Transparency International in collaboration with Gallup International. It is a survey administered to citizens, investigating their perception of the spread of corruption in various areas (politics, judiciary, private sector, public Institutions, information, etc.). (Website: www. transparency.it)

3. The notion of corruption

Corruption is not an easy concept to define. Any definition would be incomplete, given the heterogeneity of the elements distinguishing it. For this reasons, the legislator has to present a large number of bills.

We are quite used to hearing definitions such as moral corruption, political corruption, mafia, economic or social corruption. But it must be considered that the phenomenon can vary considerably from State to State, given the different spatial and temporal dynamics, and the variation of juridical and social assets.

According to F. Cazzola, three denotative criteria must be taken as permanent features in order to delineate a more precise explanation: legality, public interest (common good), public opinion.

Of course corruption is everywhere the violation of legally defended ethical norms (Meny, 1995: p. 9).

Corruption has always existed as a fact. It has changed through time, adapting itself to the historical, political and social realms, which allowed its diffusion.

At present, episodes of corruption have increased considerably during the last twenty years, in free Countries as well as in dictatorially driven Countries.

The power of corruption as a worldwide social pathology is a grave risk for all democratic Countries, since it is in contrast with democracy itself.

The end of the Cold War in 1989 was a crucial moment for the development and stabilization of democracies, even though corruption as power has not ceased to undermine our democracies' stability.

American functionalism has pointed out the advantages of a certain amount of corruption in socialist and undeveloped countries: corruption was the necessary key for certain stiff and rusty engines to get started again (Della Porta and Meny, 1995: p. 2).

R. K. Merton, following the sociological and anthropological turn of structural functionalism, came to theorize that the corruption of the political apparatus would help to implement certain functions unattended by official structures, thus coming to the conclusion that corruption could not be restrained, for this would imply devastating consequences on the system's stability. Corruption as a means to compensate for the functional flaws of official structures (Cazzola, 1992: p. 482).

Corruption is paradoxically meant to be a useful instrument to integrate in a given social and political system those groups which, if left out, would undermine the integrity and stability of the system itself.

According to the theories exposed so far, corruption would seem a consequence of social tensions (ethnic, economic), as well as a determining factor able to ensure the stability of a given structure of power.

Integrationist theorists such as Merton have maintained that corruption allowed the humanization of public interventions, making up for the functional flaws of the official apparatus in an impersonal and objectifying contemporary society (Cazzola, 1992, p. 484). Corruption is, according to these theories, perfectly able to foster the integration of certain groups in a given social and political system. Otherwise the system's integrity would be jeopardized by these groups' behavior.

The economists' approach to corruption is somehow similar to Merton's theorization. Corruption is regarded as a favorable phenomenon for economic investments since it would halve consumption –the entrepreneur would find these occult, illegal practice the best way to develop his business (Cazzola, 1988, 18-19).

V. Pareto, as commented by G. Sapelli, gives a different explanation:

We have now, on a different scale, a new feudality, partly reproducing the substance of the old one. In those times, gentlemen would gather their horses to go to war and, in case of victory, they would get the war chest. Nowadays politicians, unionists do the same: they gather their troops for the elections, to fight their enemy and obtain the profits of the winner (Sabelli, 1994, p. 59).

Pareto's passage is a crucial one, for it clearly depicts the factual historical and general form of corruption, especially in contemporary society's political systems.

Pareto gives no alternative: the social apparatus of uniformity puts on display the impossibility of finding any behavior which would not be founded on fraud and deception, in politics as in the market. […] The peoples' ethical conscience is the only thing that would "save us" (G. Sapelli, 1994, p. 60).

This is a consequence of conceiving power as a praxis, the ruling class using two fundamental instruments for its self preservation: force and art, the capacity of politicians held "by the romans and by our contemporaries" (Sapelli, 1994, p. 61).

Pareto's position is thus illuminating, in their punctual explanation of what corruption is. He speaks of "demagogic plutocracy", a new way of administering power which uses money and decorations as its principal instruments.

Weber's theory is just as illuminating as Pareto's: political and economical corruption is the consequence of the tendency to guarantee the acquisition of goods by groups or individuals, thus establishing a "political capitalism" which is nothing but the reproduction, in modern times, of the medieval class power (Sapelli, 1994, p. 56).

4. Corruption and the Italian State

Recent laws pursuing the goal of fighting and preventing illegal activities in public administration by enhancing supervisory bodies are two: a law passed on November 6th, 2012, n.190 implementing the UN convention against corruption dated October 31st, 2003, and Strasburg's penal convention on corruption dated January 17th, 1999.

Law n. 190 modified the Italian penal code as follows: 1) it increases the penal terms for the crime of corruption; 2) it separates the crime of duress bribery by introducing embezzlement in giving or promising utilities instead of duress bribery; 3) it introduces the crime of illicit influences and corruption among privates; 4) it introduces extra punishments and confiscation of goods for active subjects in bribery and corruption.

The Italian legal system orders the crime of corruption according to sections going from 318 and 322 of the Penal Code.

The aforementioned sections contain a complex and articulated discipline, conjured up to fight, as Vassalli wrote, one of the gravest phenomena "of disaggregation of the State and of the social order".

These very sections enlist a number of hypotheses for corruption, as follows:

N. 318 p. c.: corruption for the performance of duties

More specifically, n. 318 quotes: the public officer who, to perform his duties or power illegally receives, for himself or a third party, money or other goods or accepts a promise, is punished by a prison term ranging from one to five years:

N. 319 p. c.: corruption fora n act contrary to official duties

N. 319 bis p. c.: aggravating circumstances

N. 319 ter p.c.: Corruption in judiciary acts

N. 319 quarter p.c.: embezzlement in giving or promising utilities

N. 320 p.c.: Corruption of a public officer

N. 321 p.c.: punishment for the corruptor

N. 322 p.c.: instigation to corruption

N. 322 bis p.c.: embezzlement, concussion, corruption and instigation to corruption of members of the EU and Foreign States and its functionaries.

Corruption, according to the Italian legal system is therefore a necessary collusion type of offence, consisting in a criminal arrangement, factum sceleris, with commodity of the functional activity of public administration as its main object (Fiandaca et al., 2002: p. 219).

The Code distinguishes between proper and improper corruption.

Proper corruption happens when the commodity concerns an act which is contrary to official duties, while improper corruption occurs when the commodity has for its object an act which is in conformity with official duties.

Corruption is also antecedent or subsequent.

Antecedent corruption happens when the retribution is established before the act and with the purpose to perform it (Fiandaca, 2002: 220). On the other hand, subsequent corruption regards an act that already took place (Fiandaca, 2002: 220).

According to the authors, Fiandaca and Musco, the legislator considers proper corruption as a more serious offence, since the commodity has for its object an act which is contrary to official duties.

On the other hand, improper corruption expresses an attenuated non-value (Mirri, 2008, p. 3).

This quite fragmentary, variously interpretable discipline on corruption has in fact mislead interpreters, who have through time tried to solve problems and misunderstandings, quite often operating controversial distinctions.

Part of the juridical theory maintains that corruption should be divided into two different crimes: active and passive corruption.

Other theorists holds that the two subjective positions should be unified in a multi-subject offence. On a structural plan, corruption is a figure requiring, to be enacted, two or more people (Mirri, 2008, p. 3).

Leaving these different theoretical approaches aside, the most relevant distinction is that between proper and improper corruption.

The "public officer" is the active subject of proper corruption. Moreover, according to sec. 320 -1, active subjects are also "any person in charge of public service" and according to sec. 321, "the private person" (estraneus).

If one considers the definition of "public officer" given by the Penal Code, corruption involves all public officers, from low rank employee to managers (Caferra, 1992, 36).

Potential active subjects are those who were elected on a public duty, therefore a significant part of MPs.

Steering away from penal theory, the range potential active subjects widens notably, including those who hold power in a given society.

Of course parts can be exchanged on various levels, when corruption is acted. The essence of corruption as the act of receiving or accepting the premise, for oneself or for a third party, of money or any other utility, remains unaltered.

The position of the subject in the dynamic of the corruptive act can vary.
Criminal conduct is enacted when the intraneus receives or accepts the promise, and the extraneus promises money or any other utility.

The notion of utility is a broad one, and it has been broadly interpreted.

Corruption demands at least two actors. According to the political economy approach, as Rose Ackerman stated, single episodes of corruption are the result of the meeting of two individuals who, on the basis of a cost-benefit ratio, decide it more convenient for them to pay and receive a bribe (Della Porta et al., 1994: p. 17).

He who is corrupted must necessarily be the agent of another individual (or of an organization), since the main goal of bribing is to give precedence to individual needs in detriment of those of the organization he works for. In order to be suitable for a corruptive act, he who is corrupted must necessarily hold a position of power (Della Porta et al., 1994: p. 17).

5. Conclusions

Italian society during the eighties can be defined as extremely dynamic as well as anomic, unable to fix common behavior rules apt to regulate the action of its individuals and groups (Magatti, 1996: p. 24).

Anomy is a sociological concept created by Durkheim to explain social complexity. Social structure is more fragmentary in respect to its past, and individualism is all pervading.

The disequilibrium between social question and the ability of the system to get back to it leads to a phase of "rebellion", the followed by one of "innovation" (Magatti, 1996: pp. 195-196).

"Rebellion" in Italy can be traced back to the seventies, the so called "years of lead" and terrorism, Merton defines rebellion as a form of adaptation which encourages men to abandon their social structure, while forcing them to re-enter in a new type of society (Ilie and Serban, 2014: pp. 418-425). This new structure will imply alienation from the goals established beforehand.

Innovation is the "attempt to force and search for alternatives that go beyond the existing institutional order. […] Innovation is, on the other hand, akin to, and often encompasses, deviant behavior" (Magatti, 1996: p.196).

A fragmentary social structure and a semi-permanent political crisis gives way to two types of reaction.

On the one hand a new bottom-up type of growth is looked for, on the other deviant behavior are fuelled, and they find in corruption and influence peddling its main reference background (Magatti, 1996: pp. 196-197).

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