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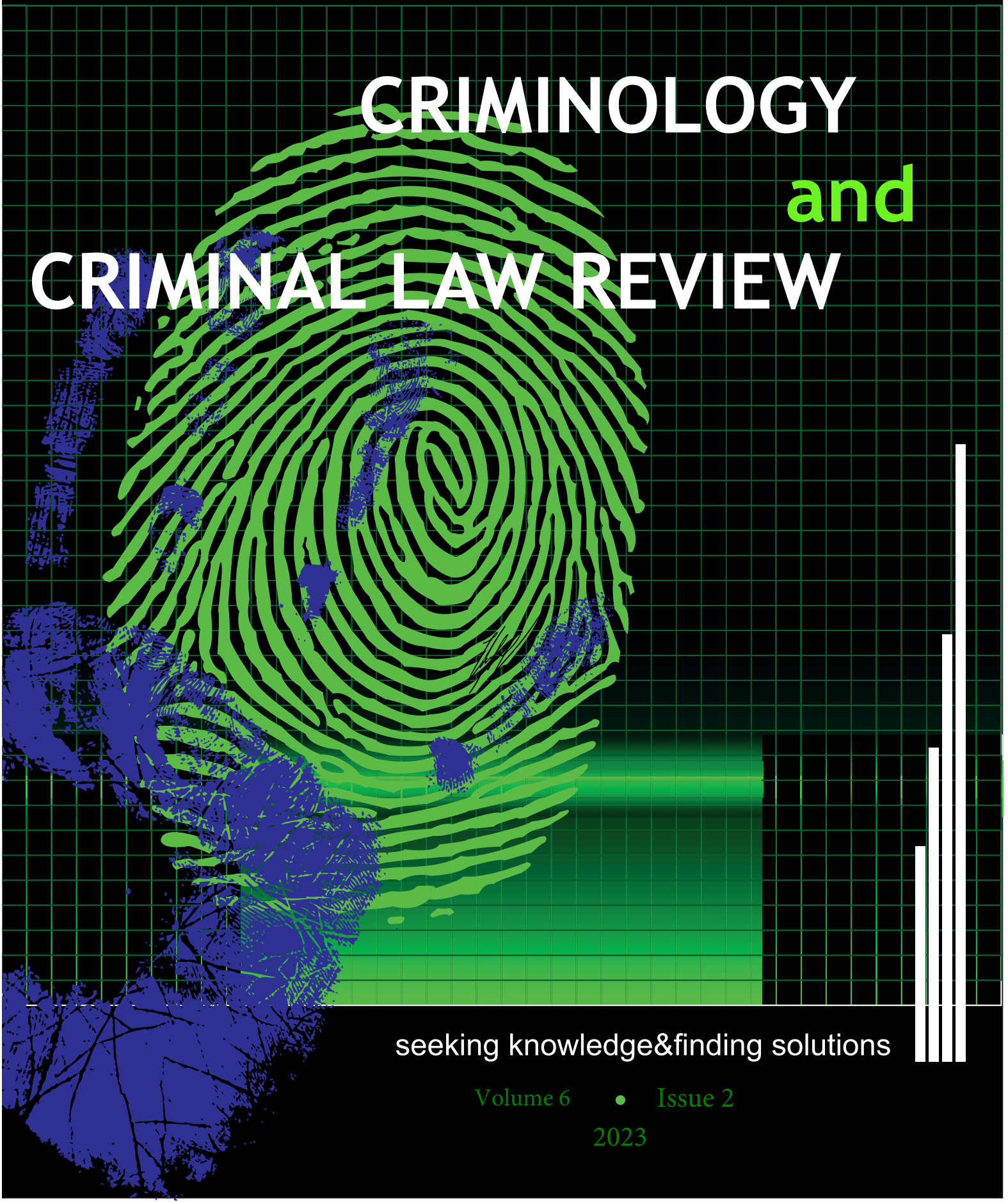

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Beyond Criminal or Civil Asset Forfeiture in Kenya

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Abstract

Notwithstanding the enactment of anti-corruption sanctions on the statute books, corruption in Kenya continues unabated. There has arisen need to deploy non-conviction based civil forfeiture to supplement the use of criminal forfeiture. The landmark *Stanley Mombo Amuti case* is illustrative. In 2019, the Court of Appeal upheld the constitutionality of Section 55(4) of the Anti-Corruption and Economic Crimes Act, which burdens a defendant to explain the source of his disproportionate wealth. However, the Court merely required the defendant to forfeit only one-third of the Kshs. 141 million (1.3 million $ USD) demanded by the government. The case expresses leniency in application of corruption sanctions. This paper compares corruption sanctions using economic assumptions based on the rational self-interested maximizer. Because of the enormous profits which accrue from embezzlement, and because of the weak legal framework, public officials may not be deterred from corruption offences, whether by criminal or civil forfeiture. Instead, two 2019 Bills seek to introduce minimum sanctions and prohibit corrupt culprits from holding public office in future. The paper claims that civil forfeiture is limited to punishing money laundering, which constitutes but one phase of a criminal transaction. Forfeiture thus seems designed to circumvent the rigorous process of proving the predicate offence. This alternative procedure alleviates the prosecution from the onerous burden of proving guilt beyond reasonable doubt, which attaches to criminal sanctions. However, increasing certainty of perfect disgorgement does not deter potential embezzlers. Reforms propose that non-conviction based forfeiture should necessarily be accompanied by payment of damages equivalent to twice the amount stolen or double the prison duration for ordinary fraud offences under the Penal Code.

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Keywords: punishing corruption*;* disgorgement*; Amuti v EACC;* deterrence*;* Kenya's Constitution*;* Ndegwa Commission*;* unexplained assets*;* public nuisance*;* corporate crime

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1. Introduction

The penalties meted out by Kenyan courts under section 48(1) of the Anti-Corruption and Economic Crimes Act (No. 3 of 2003) appear inordinately low. This suggests a failure to distinguish the seriousness of corruption from ordinary fraud offences under the Penal Code (Chapter 63 Laws of Kenya). Corruption is "the abuse of entrusted power for private gain" (Transparency International). It is renounced during the second stage of the social compact, during an agreement on how people are to be governed. This is the constitution proper (Ghai 2013: p. 76) as distinct from the first phase. The state is neutral and values each citizen equally so that corrupt officials undermine the very reason for entering into the social contract in the first place. Corruption causes social disintegration.

Other justifications exist for punishing corruption more severely than simple theft. First, because wealthy criminals who manipulate books of accounts may easily cover their tracks, since they can afford the services of more sophisticated defence counsel. Therefore corrupt elites are more costly to apprehend and difficult to prosecute than conventional thieves. Second, because corruption tends to resemble victimless crimes, like prostitution, gambling or sale of illegal drugs (Cooter and Ulen 2008: p. 289). Unless morally-sensitive whistleblowers take it upon themselves to sound an alarm, or until auditors unravel mischievous accounting practices, corrupt practices do not manifest themselves to causal observers. Third, because corporate corruption is perpetrated collectively, they are even harder to prosecute and punish than ordinary corruption. Agents who perform an abstract entity's actions are different from its directors, who are its mind. Therefore, conventional crime definitions like *actus reus* and *mens rea* do not comfortably fit corporate crimes (Dervan and Podgor 2007). Moreover, corporations lack a physical body to kick or jail and thus responses to their wrongdoing require special counter organizational measures in addition to counter personnel measures (Cohen 2020). Therefore, countries like Australia, go further to impose culture-based theories which criminalize corporations for failing to carry out due diligence (Colvin 2008). Enterprise entity theory even attributes culpability on foreign parent corporations for breaches by a domestic subsidiary (Dearborn 2009).

2. Teething Problems in Punishing Corruption

Given the difficulty in proving corruption, in order to circumvent the high standard of proof required to convict criminal offenders, some countries opt for an alternative remedies such as non-conviction-based forfeiture of unexplained assets. Recently, Kenyan courts have upheld a legal provision which permits such civil forfeiture by anti-corruption courts. However, this paper questions whether perfect disgorgement of embezzled funds

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provides full atonement for the criminal culpability of corruption. Two questions arise. First, to what extent have public resources, been misappropriated by corrupt public officials? Second, how have domestic anti-corruption laws, policies and institutions responded to complex corrupt practices? Upon evaluating the effectiveness of anti-corruption measures, any shortcomings in domestic strategies may be supplemented.

Section 3 postulates that the economic "assumption that criminals, victims and law enforcers are rational, that is they all respond in predictable ways to changes in costs and benefits" (Veljanovski 1996: p. 55). However, section 4 argues that in an ethnic context, group solidarity may be deployed to buttress, rather than defeat corruption. Considering that the potential considerable benefits accruing from corruption are both economic and political, the paper claims that perfect disgorgement provides insufficient punishment to deter corrupt practices. Section 5 critically analyses the Kenyan Court of Appeal's landmark decision in *Stanley Mombo Amuti v The Ethics and Anti-Corruption Commission* (Waki, Gatembu and Odek, JJA 2019, hereafter *Amuti's case*). Although it upheld the principle of asset recovery, curiously, the suspect retained more than Kshs 100 million of allegedly unexplained assets and forfeited only Kshs 41 million to the government. This was partly because the EACC relied on a quantity surveyor, instead of a forensic accountant to support its claim. Section 6 insists that beyond civil forfeiture, reasonable people who perceive that a public official's wealth is disproportionate to their earnings, are aggrieved by such manifestly unaccountable behavior. This is comparable to public nuisance. The paper concludes that widespread annoyance and discomfort arising from such incongruence constitute the crime of public nuisance (Eagle 2018: p. 94). It is therefore insufficient for the law to merely punish corruption by criminal forfeiture, by way of a fine which is equivalent to the sum of public monies corruptly stolen. Rather, in order to mark the seriousness of corruption's distortion of democratic values, its fines should be twice the amount of moneys stolen (ACECA section 48). It follows that in default of repayment the culprits should serve an imprisonment term which is twice that of seven years for the ordinary crime of fraudulent false accounting by directors under the Penal Code. Kenya's Anti-Corruption and Economic Crimes Act currently prescribes a maximum of ten years imprisonment. It should be enhanced to 14.

3. Deterrence Theory Meets Systemic Corruption

3.1 Deterrence

Apprehending and convicting corrupt officials is particularly costly in terms of specialist manpower, considerable time perusing documentation, and even equipment. Yet fines simply deter by the *threat* that they will be imposed. Significantly, "[t]o achieve 1 percent reduction in property crime by greater policing would require an annual expenditure of over 51 million. This is 10 times the cost of achieving the same reduction through an increase in the imprisonment rate or the length of imprisonment" (Veljanovski 1996: p. 57). Thus the costs of enforcing the criminal law and detecting crime can be lowered by progressively lowering the severity of the fine whilst reducing the conviction rate (ibid. p. 56).

Economics can also be used to analyse legal procedure: "the disposition of cases through pre-trial negotiation is cheaper and offers 'gains' to both prosecutor and defendant. The prosecutor trades a lower sentence for the certainty of conviction, thereby saving the costs of 'proving' guilt beyond reasonable doubt" (ibid. p. 61). The accused is encouraged to plead guilty by trading the uncertainty of a trial which may impose a more severe sentence if he insists on pleading his innocence, with the certainty of a lower sentence if he pleads guilty.

3.2 Corruption by Rational Public Officials

For Holmes the best model of man to base our law on is that we should constrain the "bad man" (Holmes 1897: p. 478). Similarly for Hobbes "every man ought to be supposed to be a knave, and to have no other end, in all his actions, than a private interest" (Hobbes 1985). However, if everyone is a knave, "how does the public good of peace ever come to be produced," Riker (1971: p. 377) poses? Cooperation begins when a political entrepreneur undertakes to produce it. Despite the payment of politicians to produce beneficial public goods, they have a temptation to defect from cooperative tasks in their own self-interest (ibid. p. 376). What maintains the social contract in the face of such temptation is some combination of force and custom. Corrupt public officers should be prevented from free-riding on the integrity of honest ones. In the absence of a culture of integrity as is prevalent in certain developing countries, honesty must be enforced by threats of sanctions, ultimately physical violence, through a police and judicial system. However, force is expensive not only to apply, but also because of the animosity it arouses. Crucially, since money bribes are small, silent and secret, therefore using force to repress corruption requires even greater justification.

The alternative to force is persuasion. To suppress corruption, states propagate an ethic of patriotism. To this end, Kenya's Constitution contains an entire chapter on "Leadership and Integrity" (Constitution 2010: Ch. 6). Without complying with these values, it is not possible for any person to hold state office. Employing civil servants who believe in public ethics make integrity easier. Not only does the Constitution create a plethora of political offices, commissions and other state offices, but also, state officers highly remunerated. However, many citizens may be unwilling to pay high taxes to sustain highly paid politicians. Therefore the court has recently determined that only the

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independent Salaries and Remuneration Commission can increase the remuneration and emoluments of Members of Parliament [ibid. Art. 230(4)]. Hence, before resorting to force, civic education seeks to manipulate public officials to internalize and serve the public good.

Although force must be used on all those involved in embezzlement, police action alone will not suffice to prevent it, since it costs too much to hire specialist auditors who can detect corruption in all its forms, investigate, prosecute and punish culprits. Society, particularly low-income developing countries, is unwilling or unable to bear the costs of fighting corruption. Philanthropists need to support the cause though donations. Core donations may be applied directly to development projects, but others should be applied to capacity-building of public officers, and ultimately, sanctions. The fight against corruption begins by electing officials who possess public ethics to refrain from it. Hence Kenya's Constitution requires that Governors must hold a university degree (Elections Act 2011). This supposes that religious norms, such as "thou shalt not steal," or Kantian ethics to "do unto others as you would have them do unto you" are essential corruption antidotes. Public officials should internalize and obey ethical rules.

Since all citizens can contribute to corruption, everyone should have a conviction to internalize integrity. Citizens should not vote for candidates with corrupt records. However, in developing countries, the electorate is not merely illiterate and innumerate, but also poor and desperate. Besides, the electoral process itself is riddled with malpractices. While citizens should desist from offering bribes, many feel that providing due process to suspects is too time consuming and ineffective. Although public order values are the same for everyone, in the short term it is the poor who stand to lose the most from corruption, since public goods shall be undersupplied. The rich only suffer corruption's long-term effects upon rioting, robberies and widespread social unrest which erupts among the masses (Riker 1971: p. 381). Ultimately, peace as the absence of fear of crime is threatened by risk of social upheaval. Yet, the extent to which individuals tend to be acutely conscious of risk is a subjective factor and varies from culture to culture. Experience of risk depends on one's level of education, religious beliefs and other circumstances such as access to private security. How can the government construct sanctions so that fewer public officials wish to adopt noncooperative strategies in producing anti-corruption as a public good?

3.3 Civil Servants and Business: The Ndegwa Commission

Society can attach a cost to non-cooperation by punishing public officials who fail to produce public ethics. That is what we do when we add anti-corruption forensic investigators, train them in forensic accounting and equip them with tracing tools and powers for search, seizure and freezing of accounts. These actions have the value of increasing cooperation. To be effective, they need not reduce the amount of corruption to zero or a negative amount. They need merely make corruption less attractive than ethical behavior. The other way to manipulate the dilemma is to increase the value of cooperation. This may be achieved by enhancing the perks, prestige or salary packages for public officer positions. Naturally, a society with limited means cannot reward everyone in this way. Lowly paid public officers are especially prone to corruption because they have no stake in the system. Society can increase the stake of this select class by finding nonpublic jobs through with they may supplement their income (ibid. p. 382).

In 1972, to restructure public service and remuneration in Kenya, the Ndegwa Commission permitted public servants to engage in private business to augment their wealth. It broke a longstanding colonial rule. Hence the report was withheld for three years. Since 1975, public servants consequently face acute conflict of interest by delivering their own private services to the state with little accountability and oversight (Khamisi 2018, Chapter 6, citing the Constitution of Kenya 2010). Therefore, a 2020 Report of the Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce Report (BBI 2019) proposes to rescind the Ndegwa Commission's recommendations as a measure to reduce conflicts of interest between public officers and suppliers who secure public tenders to produce public goods. BBI proposes that state officers should be restricted from doing business with the government. With the proposal to have corporate bodies disclose their owners when under investigations, people will steer clear of looting to guard their reputation. The proposal to digitize all government services will go a long way in minimizing corruption. BBI has recommended speedy prosecution and conclusion of corruption cases. The corrupt have been getting away with their misdeeds by using delaying tactics in courts, waiting for something new to come up to take attention away from them. It also proposes stiffer sentences and punitive fines for those found culpable. This shall include recovery of stolen property or property acquired through suspect means (Martin, 2020).

3.4 Reprisal or Redistribution?

To apply Riker's reasoning, if the number of people tempted by noncooperative behavior is relatively small – that is, the level of ethical behavior is relatively high because most public officials appreciate the benefit of cooperation, then reprisal is an efficient method. In such cases, fraud is committed by few officials who are either too sick, or too stupid or too shortsighted to recognize the benefits of cooperation anyway. Physical restraints and reprisals are the only devices that can work on them (Riker 1971: p. 382). Conversely, if the number of public officials tempted by fraud represent a large class of relatively normal officials then it is impossible to use reprisals methods. Large scale reprisal on a scale

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sufficiently repressive to prevent corruption in this case amounts to a surveillance, if not a police state, which may precipitate a civil war. All three are inordinately costly. An unwilling public may prefer the corruption that is being put down to the surveillance or repressive policing involved in putting it down. This seems to be the predicament in ethicized polities. In Kenya, corruption suspects appeal to ethnic identities to shield them from prosecution. Political instability which prosecuting powerful suspects may precipitate dampens the fight against corruption. Therefore, one must use redistribution, at least in part. Hence this paper shall consider more recent proposed Bills to enhance corruption sanctions by introducing minimum fines by criminal courts, given leniency of non-conviction based forfeiture measures.

4. Applying the Rationality Model to Anti-Corruption Policy

How would a rational criminal respond to the expected punishment schedule? Under certain assumptions, a rational amoral decision-maker will embezzle money so long as the benefit exceeds to expected punishment. Only when the punishment still exceeds perfect disgorgement does the public official expect to be worse off for engaging in corruption. So embezzlement will not occur. Reducing the seriousness of corruption in Kenya has been effected through pursuing non-conviction-based asset forfeiture. Yet, this paper claims that this strategy would not deter the rational public official from corruption. Instead, it is recommended that civil asset forfeiture should be accompanied by aggravated or exemplary damages and committal to civil jail for contempt of court in default of payment. This punitive aspect resembles criminal forfeiture where a custodial sentence may be imposed in default of a fine equivalent to twice the amount embezzled. Deterrence theory suggests that when the amoral decision-maker gains more than they would expect to lose, then they would embezzle some money. “When the expected punishment exceeds perfect disgorgement, the criminal experts to be worse off for the crime. So embezzlement will not occur” (Cooter and Ulen 2008: p. 496).

On one hand, more certain and severe punishment reduces the seriousness of the offence committed by rational criminals in order to reduce the risk be faces in the increased punishment schedule (ibid.). Hence to stop corruption requires not only an increase in severity of sanctions such by imposing custodial sentences. It may also be deterred by enhancing the certainty of punishment through detection, arraignments, prosecution and conviction. The paper recommends enhancing the power of the EACC to detect corruption through employing forensic accountants and rewarding whistleblowers.

However, the corruption prosecution strategy should be tailored to suit country-specific contexts. Where particular types of corruption are so widespread, prosecuting would not be cost-effective. Instead, a redistribution strategy would be more practical. Deterrence, through certainty of prosecution and conviction, is only viable in situations where most normal public officials shun corruption.

5. Kenya Supreme Court's Forfeiture of Unexplained Assets in the *Stanley Mombo Amuti Case*

Article 232 paved way for the enactment of the Ethics and Anti-Corruption Commission Act (No. 22 of 2011) which established the Ethics and Anti-Corruption Commission pursuant to the provisions of Article 79 of the Constitution. Sec 7 of the Act gives EACC the mandate to investigate any matter that raises suspicion that corruption or economic crime has occurred or is about to occur. In *EACC v Stanley Mombo Amuti* [2015], it was noted that the Commission does not infringe on the right to a fair trial, right to own property and right to silence by proceeding with the investigation. The burden of proof is with the Commission but it can shift to the respondent if the court orders so. The standard required is that of a balance of probability. Sec 55 provides for the forfeiture of unexplained assets. In the case of *Director of Assets Recovery Agency & Ors, Republic versus Green & Ors* [2005], the court stated that: "In civil proceedings for recovery under Part 5 of the Act the Director need not allege the commission of any specific criminal offence but must set out the matters that are alleged to constitute the particular kind or kinds of unlawful conduct by or in return for which the property was obtained." The case of *Stanley Mombo Amuti* [2018] the Judge of Appeal Otieno Odek stated that the concept of "unexplained assets" and its forfeiture under Sections 26 and 55(2) of ACECA is neither founded on criminal proceedings nor conviction for a criminal offence or economic crime. Sections 26 and 55 of ACECA are non-conviction based civil forfeiture provisions. A non-conviction-based confiscation occurs independently of any criminal proceeding and is directed at the property itself, having been used or acquired illegally. Conviction of the property owner is not relevant in this kind of confiscation. This clarifies why at times we don't have people jailed for the offence of corruption, but the money stolen is paid back. Our country is democratic with rule of law which implies due process.

This section evaluates the Kenyan court's interpretation of the asset forfeiture provision in the *Amuti case*. The facts were that in July 2008, upon receiving complaints about his disproportionate wealth the EACC obtained warrants to search Amuti's office and home seized cash, bankers' cheques, motor vehicle log books as well as numerous land title deeds all valued at approximately 1 Million Euros. He worked as the financial controller of the National Water Conservation and Pipeline Corporation at a gross monthly salary of Kshs. 306,000/= (2,787.65 $USD). In his previous public office, he earned Kshs. 255,000/= (2,323.04 $USD). Although he had worked for 26 years as an accountant, nonetheless, his assets were grossly disproportionate to his income. He allegedly received over Kshs. 140 Million (or 1 Million Euros) into his account during a 10 month period

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between September 2007 and June 2008. Two key issues before the High Court were first: "whether the defendant is in possession of 'unexplained assets' pursuant to the provisions of the ACECA." Second "whether he should be condemned to pay the Government of Kenya Kshs 140,976,020/= (1,284,285.49 $USD) being the cumulative bank deposits made between September 2007 and 30 June 2008 and Kshs 32,500,000/= (296,073.61 $USD) being the value of the amount of landed properties constituting unexplained assets." In *Kenya Anti-Corruption Commission v Stanley Mombo Amuti* [2011], High Court Lady Justice Kalpana Rawal (as she then was) stuck down section 55(4) as unconstitutional for reversing the burden of proof by requiring the defendant to prove his innocence, contrary to his due process rights. However, in 2015, the Court of Appeal reversed her opinion and returned the civil forfeiture proceedings to the High Court for determination on merits [Koome, Okwengu and Azangalala JJA *Ethics and Anti-Corruption Commission (The legal successor of Kenya Anti - Corruption Commission) v Stanley Mombo Amuti* 2015]. In 2017, Amuti forfeited Kshs. 41 Million, courtesy of a High Court decision by Lady Justice Lydia Achode. The Court of Appeal upheld that decision in 2019. The Supreme Court dismissed his appeal from the Court of Appeal, since it lacks jurisdiction to consider non-constitutional questions (Maraga, CJ & P, Mwilu, DCJ & V-P, Ibrahim, Wanjala and Lenaola, SCJJ *Stanley Mombo Amuti v Kenya Anti-Corruption Commission* 2020). Under ACECA, Parliament has not infringed a defendant's fair trial rights since they have a reasonable opportunity to explain the sources of their disproportionate assets before its forfeiture. Ken Obura contends that the fight against corruption should strike a balance between society's need to eradicate corruption and the corresponding need to protect the rights of affected individuals (Obura 2020). However, this paper observes a gap in the literature arises since the EACC's recovery mechanism was only 2/3 successful in the *Amuti case*.

6. Corruption as Public Nuisance

6.1 Ingredients of Public Nuisance

This paper draws an analogy from the law of public nuisance. It observes that the purpose of civil forfeiture proceedings is to freeze a defendant's assets and prevent them from benefiting from illicit proceeds. By definition, public nuisance is a condition that is the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by a considerable number of persons (Kiwanda and Mutyaba 2015: p. 255). Public nuisance should be accompanied by damages (Cooke 2011:

p. 369), where there is social harm by corruption by the loss of public faith in the social contract. Hence for effective deterrence to obtain, a liable defendant should forfeit more than the sum equivalent to the embezzled moneys, or serve civil jail in default.

6.2 Proposed Enhancement of Sanctions

Theoretically, a corruption fine under ACECA should be substantively greater than the seven years provided under the Penal Code. The latter include frauds by trustees and persons in a position of trust, and false accounting (Penal Code sec. 327), fraudulent disposal of trust property (ibid. sec. 328), fraudulent appropriation or accounting by directors or officers (ibid. sec. 329), false statements by officials of companies (ibid. sec. 330), or fraudulent false accounting by clerk or servant which provide for a maximum seven year imprisonment term. Indeed, the Penal Code provides that those convicted of "false accounting by public officer" (ibid. sec. 331) "shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both."

The current provision of section 48 of ACECA provides a fine of not more than one million shillings. To stem the surge in corruption in the country, a new Anti-Corruption and Economic Crimes (Amendment) Bill (2019a) seeks to substitute the *maximum* one million shilling fine for corruption and economic crimes under paragraph (a) of section 48, with a *minimum* fine. It proposes that:

> A person convicted of an offence under this Part shall be liable to –
>
> (a) a fine not *less than* one million shillings, or to imprisonment for a term not exceeding ten years, or to both; and (emphasis supplied)
>
> (b) an additional mandatory fine if, as a result of the conduct that constituted the offence, the person received a quantifiable benefit or any other person suffered a quantifiable loss.
>
> (2) The mandatory fine referred to in subsection (1)(b) shall be determined as follows – (a) the mandatory fine shall be equal to two times the amount of the benefit or loss described in subsection (1)(b);
>
> (b) if the conduct that constituted the offence resulted in both a benefit and loss described in subsection (1)(b), the mandatory fine shall be equal to two times the sum of the amount of the benefit and the amount of the loss.

Moreover another 2019 Bill to amend ACECA seeks to impose personal liability on "[a] person who is convicted of an offence of corruption or economic crime and who was involved in the management of a public company, institution or state organ that suffered pecuniary loss as a result of that corruption or economic crime" and to "completely bar anyone convicted of an offence under the Act from holding office as a public or state officer" [Anti-Corruption and Economic Crimes (Amendment) Act (2019b, sec. 50A].

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6.3 Beyond Criminal and Civil Forfeiture

6.3.1 The Preventive-Fault Doctrine

The preventive-fault doctrine of corporate culpability or corporate compliance program finds liability when a corporation fails to put in place an effective internal system of controls to prevent commission of the crime. Sentencing Guidelines issued by the United States Sentencing Commission (1988 [2015]) practically mandate organizations to follow the compliance programme to prevent criminal activity. The Guidelines provide beneficial treatment to corporations by setting forth lower penalties if they have implemented effective compliance programmes prior to the commission of the offence. It convinces prosecutors that the company and its senior managers took all reasonable steps to prevent errant conduct (Gruner 2007).

6.3.2 Corporate Crime as Negligence

The corporate cultural corruption is the focus of the Australian Penal Code [1995, section 12.4 (2)] which introduces some form of aggregation of negligence. The body corporate's conduct is deemed negligent by aggregating the conduct of its employees, agent or officers. Corporate negligence may exist even without proof of individual employees' negligence. Furthermore under the Australian Criminal Code, negligence can be shown in one of two ways. First, by showing inadequate corporate management control or supervision of the conduct of the corporation, employees, agents, or officers. Second, by showing that the body corporate has failed to provide adequate system for conveying relevant information to the relevant persons.

7. Conclusion

Beyond protection from physical violence or involuntary property transfers, in a good society private citizens should be protected from the perception that wealth has not been legitimately earned. This is particularly concerning the wealth of public officials. They should not only *obey* but also *internalize* ethical rules. Hence under section 55(4) of ACECA, which provides for non-conviction based forfeiture of unexplained assets, there is no requirement for the EACC to prove that the unexplained assets are actually the proceeds of any predicate crime. Rather, the onus is on the defendant to show that it is possible, on a

balance of probabilities, for their wealth to have been earned legitimately. In *Amuti's case*, he did not.

Two questions are answered. First procedural. Kenyan law permits the EACC to commence civil proceedings using a lower standard of proof of a balance of probabilities so as to forfeit a defendant's unexplained assets. Second, evidentiary. The quality of evidence required in order a defendant's assets to be forfeited to the government require the use of sophisticated forensic techniques such as asset tracing. However, much of the EACC's evidence in *Amuti's case* was rejected by the High Court because it was adduced by a quantity surveyor, rather than a forensic accountant. Although investing in detection, prosecution and conviction increases the rate of conviction, it is also costly. There is therefore need to develop theories from which decision makers may infer corruption from the face of conspicuous consumption of unexplained assets and *threaten* increased sanctions. Thus in 2019, two Bills were published to increase the sanctions for corruption under ACECA. It is further recommended that, procedurally, the accounting profession should harmonize its standards in order to facilitate freezing and forfeiture of assets squirrelled across transnational borders. Substantially, the UN Convention against Corruption [2003 Article 57(5)] can be implemented by agreements for the final disposal of confiscated property.

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Financial crimes and transnational investigations: lawfare and economic war between countries

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Abstract
This paper demonstrates the extraterritorial effects of anti-bribery legislations of central countries, especially the United States of America, in order to show that they are much more like economic war tools than justice measures. Instead of questioning such procedures in international arenas, other central countries – such as England, France and Germany – started to use these same extraterritorial tools in their anti-bribery legislations, albeit in a less intense way.
The effects for the least developed countries – to the detriment of which these foreign laws are applied – are very negative, quite contrary to what the official agenda suggests. The fight against corruption does not take place, after all, in favor of the countries most affected by this white-collar crime and it is important that this becomes crystal clear, in order juridical, economic and political manipulations not to happen against them. After all, the anti-bribery discourse seems not to be more than a mere tool in the hands of these central countries in favor of their financial interests. This OECD paradigm in fact generates a vast territory for the occurrence of lawfare far beyond the borders of the leading countries – but for their benefit –, with harmful and impoverishing effects for their targets.

Keywords: *Financial crimes; transnational investigations; anti-bribey legislations; economic war; economic sanctions; lawfare.*

1. Introduction

The Foreign Corrupt Practices Act (FCPA), issued in 1977 by the United States of America, is clearly being increasingly used as a weapon of commercial war to the detriment of companies from other countries – most of them developing nations. In addition to the prison sentences eventually imposed on their officers and employees, large

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companies allegedly involved in corruption outside the United States of America have been increasingly financially punished, extremely severely, on American soil - and for the benefit of the US Treasury – without any justification for this in the light of international law.

Instead of questioning such practices in international courts, however, other leading countries, are putting into practice the efforts expressed in the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* by the Organization for Economic Cooperation and Development (OECD), which means they are adopting a similar strategy, even though they have not, of course, obtained as large financial returns as the United States of America.

Thus, this paper addresses this scenario from the concept of "lawfare", to demonstrate that criminal law – and, specifically, the discourse against corruption – at national and international levels has served the financial interests of leading countries in detriment, especially, of developing nations and their main companies.

2. International context and the use of anti-corruption laws as a weapon of economic war

Although the allusion that the field of criminal law is in crisis has become commonplace, the truth is that this phenomenon is not restricted to contemporary times. On the contrary, this much talked about crisis has been inherent to criminal law as a set of norms at least since the Enlightenment and the emergence of the first states of law (Sánchez 2012: p. 3). It is possible to point out, therefore, that crisis is the very regular functioning of the modern criminal justice system. Or that, in reality – at least from the perspective of punitive power – there is no crisis at all.[1]

Regardless of the lens through which contemporary criminal law is analyzed, it is undeniable that its trend and activity is quite expansive. This is the symptom that fundamentally distinguishes our time (Sánchez 2012: p. 8). A time that lives in the simple perversity of the ephemeral, that glorifies the moment, and that no longer wants the law as a minimally stable and lasting value of collective life, but as a mere instrument at the service of various strategies (Costa 2010: p. 8). Including the use of law as a weapon of war, a concept that, although called "lawfare" only in 2001 (by Charles Dunlap Jr.), comes from Hugo Grotius (1583-1645), the father of international law, as pointed out by Orde F. Kittrie. Indeed, in the first decade of the 17th century, European countries competed for control of maritime routes and Portugal, seeking to protect its economic interests, intended to forcibly exclude the Dutch East India Company from the Indian Ocean, having even allocated its fleet there as a way of persuasion. Irresigned, the Dutch East India Company hired Hugo Grotius to develop a theory that would wrap it up financially, which resulted in the 1609 work *Mare Liberum*, according to which all nations are free to use the oceans for trade, anticipating in more than four hundred years some of the technological and socioeconomic factors "that are making law a more powerful and prevalent weapon in twenty-first-century conflicts" (Kittrie 2016: pp. 4-5).

If the first use of what is now known as lawfare is related to trade disputes between countries, it is not surprising that in present times financial crimes, practiced in the

[1] This is not, however, the conclusion of Jesús María Silva Sánchez (2012: p. 5), for whom criminal law is in a crisis of legitimation, identity and epistemological legitimacy. José de Faria Costa (2010: pp. 12-13) points out that criminal justice is living dramatic moments of crisis, to a greater or lesser extent, throughout the world, with disaggregating consequences not only to the basic values of democratic regimes, but also to the social fabric itself. Undeniably, both authors are correct.

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economy of a *global village* (Marshall McLuhan), provide the most fertile field for its incidence. The market economy has become almost universally accepted, having imposed itself informally even in Cuba or, as in China, paved the way for a coexistence with dirigisme under the political logic of "one country, two systems", so that today's corruption operates far more in the financial markets than in government offices – and it is frequently related to modern crimes, such as influence peddling or insider trading (Fernández 2004: pp. 213-217), which often touch interests beyond the national borders in which they may have occurred.

That is why discussions about the transnationality of financial crimes are on the agenda. There are already those who defend the internationalization of interests protected by the penal rule, which would mean overcoming a way of thinking centered on the limits of application of the criminal rule to the protection of national legal assets – and from then on, undoubtedly, the association of a movement to defend a supranational public thing would be the next step (Tricot 2005: pp. 753-765).[2]

But there is no need to go that far. The 2008 financial crisis renewed the international community's efforts to fight corruption and money laundering (Kyriakos-Saad, Esposito and Schwarz 2012: p. 165) and, as is known, on the pretext of endorsing them based on the *Convention for Combating Bribery of Foreign Public Officials in International Business Transactions* (known as *Anti-Bribery Convention*) of the Organization for Economic Cooperation and Development (OECD) – which took place in November of 1997 – the United States of America, through the approval of the International Anti-Bribery and Fair Competition Act of 1998 – which amended the Foreign Corrupt Practices Act of 1977 (FCPA) – has been monitoring the entire world according to its own interests. After all, it is certain that the movement of the criminal justice system, anywhere in the world, has other functions besides those that are announced and marketed.

The approval of the International Anti-Bribery and Fair Competition Act of 1998 was preceded by an emphatic statement by then President Bill Clinton, saying that the Foreign Corrupt Practices Act of 1977 had removed competitiveness from American companies in countries where, in one way or another, the payment of bribes to senior public officials was crucial or common practice when signing international contracts. It was therefore necessary, he argued at the time, to pass legislation that would also subject foreign competitors to US laws, leveling the playing field (Spalding 2010: p. 391). This is exactly the justification presented by the OECD for the *Anti-Bribery Convention*:

[2] Juliette Tricot (2005: p. 757) argues that although most national legal systems foresee corruption as a crime, only the United States of America – through the Foreign Corrupt Practices Act (FCPA) – do so in relation to foreign public servants, which would remove the competitiveness of American companies. In reality, however, other regulations also foresee this conduct as a crime. One example is Brazil, that since 2002 applies it to the crime of active corruption in an international commercial transaction, provided for in article 337-B of the Brazilian Penal Code). In addition, the FCPA is applied far beyond North American borders, serving as a justification - albeit illegitimate - for the United States of America's role as the "police of the world".

"Investment, competition, and markets are global, and efforts to keep them fair and open have to be global too" (OECD 2011: p. 14).[3] It cannot be forgotten that "[u]ntil recently, bribing foreign government officials was not only permissible in large parts of the word; it was tax deductible" (Smith and Parling 2012: p. 253).

But other consequences, which Andrew Brady Spalding describes as "unwitting", have been observed since then: "Companies subject to anti-bribery legislation are investing less in countries where bribery is perceived to be more prevalent." While recognizing that some may assume that this is precisely the legislation's objective – developing countries depend on foreign investments to stimulate their economies and, therefore, local governments tend to implement legislative and structural reforms to curb corruption –, the author sheds light on the fact that this is, in reality, the path expected to be taken by means of "economic sanctions", not criminal laws. And this is not acceptable, after all, because the victims of criminal conduct end up suffering the consequences of its implementation, more so than those who practice it. Furthermore, the author suspects – and rightly so – "that despite these costs, the sanctions will fail to effect meaningful reform" (Spalding 2010: pp: 355-356).[4]

Therefore, the imposition of "de facto economic sanctions"[5] is also a lawfare tool that has been used very effectively by the United States of America around the globe. As it is known, the U. S. Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) have considerable authority to prosecute foreign companies regardless of their country of origin or the location of corrupt activity. It is enough that the company has some connection with the United States of America, which can mean anything from obtaining some advantage in American markets – even in legal ways not connected to corruption practiced in another country – to simply maintaining assets in some American bank (Kaczmarek and Newman 2011: p. 747).

But not only that. A mere phone call or sending of an "e-mail, text message, or fax from, to, or through the" United States of America is sufficient to attract US jurisdiction beyond its borders, as the DOJ and the SEC expressly state in the Resource Guide to the US Foreign Corrupt Practices Act (DOJ and SEC 2020: p. 10).[6] The range for using US law as a weapon of war is therefore extremely vast, and the consequences for countries with high levels of perceived corruption are absolutely dire.

Between 2009 and 2018, China and Brazil were, respectively, the two countries that suffered the most penalties based on the Foreign Corrupt Practice Act (Instituto Brasileiro de Governança Corporativa 2019). On October 14, 2020, the US Department of Justice claimed before the Eastern District of New York that the Brazilian company J&F Investimentos S. A., based in São Paulo, paid approximately US$ 177,600,000 in bribes to Brazilian public employees between 2005 and 2017. On the same date, J&F Investimentos

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[3] Throughout the changes surrounding the Anti-Bribery Convention, some countries, including Germany, France, the United Kingdom and Japan, expressed concern that hasty ratification would put them at a competitive disadvantage, since "bribing public officials was a necessary part of business transactions in certain countries." It was established, therefore, that the Anti-Bribery Convention would only enter into force after the ratification of five of the OECD's ten largest exporters, "representing at least 60 percent of total OECD exports" (Kaczmarek and Newman 2011: p. 752).

[4] Andrew Brad Spalding (2010: p. 356) says that their "fears are likely more pronounced where the target country is poor; they may be more pronounced yet when the country otherwise enjoys economic conditions that are highly conducive to growth."

[5] Expression by Andrew Brad Spalding (2010: p. 351).

[6] If they are American companies or people, the use of e-mail, text message or telephone is not even necessary to give cause to law enforcement outside the United States of America because "[t]he 1998 amendments to the FCPA expanded the jurisdictional coverage of the Act by establishing an alternative basis for jurisdiction, that is, jurisdiction based on the nationality principle." (DOJ and SEC 2020: p. 11).

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S. A. "entered into a plea agreement with the government" and agreed to pay a US$ 256,497,026 fine and report to the DOJ "the status of its enhanced anti-corruption compliance policies and procedures for a term of three years" (Stanford Law School 2021a). The largest monetary sanction applied under the Foreign Corrupt Practice Act was also to the detriment of a Brazilian company: Odebrecht SA had to collect US$ 3,557,626,137 in favor of the American treasury (Stanford Law School 2021b) for the payment of bribes outside the United States of America (Stanford Law School 2021c).

Mexico, Nigeria, Indonesia, India and Gabon were subsequently the other countries most affected by the Foreign Corrupt Practices Act since the statute's enactment (Stanford Law School 2021d). In 2020 alone, more than US$ 5,800,000,000 of sanctions were imposed based on the Foreign Corrupt Practices Act (Stanford Law School 2021e). The scenario is revealing: in 2010 eleven of the twenty companies involved with the Foreign Corrupt Practices Act were outside the United States of America; these companies were responsible for 94 percent of the penalties imposed in this very same year (Smith and Parling 2012: p. 241) and, last but not least, out of the ten largest penalties paid by companies between 2008 and 2011, nine were from outside the United States of America (Cassin 2011). In the words of Kevin E. Davis:

"In theory, anti-corruption law can serve not just to condemn and to prevent, but also as a way of securing compensation for victims. When it comes to regulation of transnational bribery, practice has not yet fully caught up to the theory. The practice of imposing substantial monetary sanctions on multinational enterprises that are complicit in transnational bribery is a useful step toward the goal of compensation. Those sanctions are especially likely to result in actual payments when imposed by states in a position to move against assets the firms value. In principle, the resulting funds could be channeled to victims of corruption. In fact, the UN Convention commits its signatories, which include most countries in the world, to cooperate in transferring confiscated proceeds of corruption, and awarding compensation, to victimized states. To date, however, the funds collected rarely have been used for the purpose of compensation. They typically are remitted to the Treasury of the United States or whichever other country has launched the relevant legal proceeding" (Davis 2019: p. 8)

Consequently, it is no wonder that other leading countries are encouraged to issue laws with effects far beyond their borders – especially because another strategy would not have any effect, since the United States of America "are not accountable to international courts, as they have not ratified the treaties that may compromise them" (Zaffaroni 2006: p. 62).[7] The United Kingdom and its Bribery Act of 2010 is perhaps the most notable example. According to its Section 12 (2), British law applies to anyone who has a "close connection with the United Kingdom", even when no action or omission has occurred at its

[7] My translation of the original: *"no rinden cuentas ante tribunales internacionales, pues no ratificaron los tratados que puedan comprometerlos."*

borders (United Kingdom 2010). France, for its part, enacted Loi nº 2016-1691 (Loi Sapin II) in December of 2016, adopting extraterritoriality in crimes against the Public Administration if committed by someone of French nationality or by those who have habitual residence in French territory or on it develop all or part of their economic activity (France 2016).[8] In turn, Germany, Europe's largest economy, quickly joined the United States "as the world's leaders in foreign bribery prosecutions" (Funk 2014: p. 24).

Although it is know that "[s]overeignty in the age of globalisation and capitalism has been a widely contested doctrine", one cannot lose sight that "the use of extraterritoriality over the last few decades has been one-sided with little critical eye on the impact" on other countries and that "[b]alance is crucial in the current world of increased interdependence." However, it is clear that "only powerful states possess the regulatory acumen and political vitality to dictate the direction of regulation of corruption." It is not surprising, moreover, that the extraterritoriality of the law is being used only in favor "of a few elite states without much emphasis on the procedural fairness of the justified national interests" (Ojewumi 2017: pp. 38-41).

Indeed, in most of the numerous cases involving corruption that U. S. prosecutors have taken up since the mid-1970s, the connection with the United States of America was merely incidental (Davis 2019: p. 1), and it was not possible to state that criminal prosecution across borders would be justified on the principles of international law. The principle of universal justice would also not be invocable, since it may not be an exaggeration to say that any country in the world foresees corruption as a crime – although not all in relation to the foreign civil servant (among which are included some of those who joined the OECD Anti-Bribery Convention).

Furthermore, reliance on foreign institutions to combat and punish corruption of local officials rests on a presumption of ineffectiveness in national law that is highly contestable. After all, "[n]o matter how well intentioned and competent they might be, foreign legal institutions typically can only deploy coercive force within their own territory. Everywhere else they require the cooperation of local authorities" (Davis 2019: p. 14). Therefore, it is possible to conclude that either the local law is ineffective because the local authorities are already corrupted or weakened before the companies that operate there and, consequently, foreign institutions would not have practical conditions to bring those responsible to trial[9] or, on the other hand, the repressive legal system works as expected and the application of external anti-corruption laws is unnecessary and, at least, unfair. After all, this being the case, the same misconduct ends up being punished by multiple agencies, which will

"jeopardize some of the most fundamental attributes of due process, including: advance notice of what conduct will attract liability, advance notice of the forum in which liability will be adjudicated, timely adjudication of liability before an impartial tribunal, no more than one trial for each allegation of wrongdoing arising from the same transaction, and punishment proportionate to the harm or risk of the harm created" (Davis 2019: p. 15).

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[8] Loi nº 2016-1961: "Article 21 Le même chapitre V est ainsi modifié: 1º la sous-section 3 de la section 1 est complétée par un article 435-6-2 ainsi rédigé: « *Art. 435-6-2.* – Dans le cas où les infractions prévues aux articles 435-1 à 435-4 sont commises à l'étranger par un Français ou par une personne résidant habituellement ou exerçant tout ou partie de son activité économique sur le territoire français, la loi française est applicable en toutes circonstances, par dérogation au deuxième alinéa de l'article 113-6, et l'article 113-8 n'est pas applicable."

[9] Scott P. Boylan (1995: p. 2003), for example, explains that "[t]he United States currently has the means to combat the payment of bribes by U.S. citizens to corrupt Russian Government officials through the Foreign Corrupt Practices Act ('FCPA'). Unfortunately, U.S. officials have failed to vigorously enforce this legal mechanism vis-à-vis corrupt practices in Russia and the former Soviet Union."

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From there Kevin E. Davis draws a timely parallel between the neo-imperialist interventions in Africa, Asia, and Latin America – which were said to be "ways of bringing good governance to benighted peoples but were criticized for being ineffective, illegitimate, and unfair exercises of power by some groups of people over others" and the extraterritorial effects of anti-corruption laws in leading countries, also called "the OECD paradigm" (Davis 2019: p. 16). But perhaps the most correct term – due to its scope – is really "lawfare", after all companies from developed countries with strong economies find themselves dealing with the Foreign Corrupt Practices Act as well: in 2010 the German car company Daimler agreed to pay more than US$ 90 million (and retain a corporate compliance monitor) and to pay another US$ 90 million plus in disgorgement (and retain an independent compliance consultant), as Charles Smith and Brittany D. Parling point out. On the other hand, General Motors and Ford, its biggest competitors in the United States of America, never had any problems with the Foreign Corrupt Practices Act, "notwithstanding the fact that they largely sell the same kinds of vehicles through the same kinds of distribution networks in the same high-risk countries around the world" (Smith and Parling 2012: p. 249).

3.The discourse against corruption and enemy criminal law applied to organized crime (related to business)

Eugenio Raúl Zaffaroni says that, unlike productive capital, the globalized market is not managed by businessmen, but by economic conglomerates that, from time to time, navigate the gray waters of financial delinquency, falling victims of clashes with other competitors and causing real catastrophes in the markets by the collapse of their cardboard empires, phenomenon that motivated the boost of medieval-like inquisitive legislation – with spies, whistle-blowers, secret procedures and absurd guarantor positions – applicable to an endless set of infractions considered to be affected by *organized crime*. However, according to the author, this so-called *organized crime* is nothing more than a pseudo-concept invented by the media and politicians, and around which criminology never reached a consensus, so that countless heterogeneous criminal conducts – of different levels of severity – end up being attacked by the same legislative measures. The less widespread conception of *market crime* as organized crime shows the heterogeneity of the concept (Zaffaroni 2006: pp. 60-61) and its plasticity for any type of discourse manipulation.

It seems undoubtable that the labels *organized crime* and *corruption* are functional categories for the elimination of competitors without due constitutional guarantees for that purpose. Furthermore, still in the path of Eugenio Raúl Zaffaroni's reflections, "[t]he campaign against corruption seems to focus more on avoiding higher costs to foreign investors in peripheral countries than on the ethical principles that are enunciated or on the

structural damage they cause to local economies" (Zaffaroni 2006: pp. 61-62).[10] It is the truth. The history of the fight against corruption is the story of the corruption of that fight. Whether it is due to disrespect for the fundamental laws and guarantees of the accused in these emergency criminal proceedings, or because of the undeniable interests behind the major corruption scandals and their subsequent political use, the fight against corruption, as it has been conducted around the world, is nothing more than an instrument in the hands of the powerful. It is certainly not, as someone unsuspecting might gather from official propaganda, a remedy for democracy and human rights of the populations of peripheral countries.

On the contrary. Corruption cases become major scandals through the use of showy terms and the leak of sensitive information from ongoing criminal proceedings to a news-hungry media that produces headlines that are as scandalous as they are often dishonest. Reputations are destroyed in seconds and entire families are stigmatized for a lifetime, even if they are later proved innocent. In the case of public officials, elected in peripheral countries, whose worldviews are not aligned with central geopolitical interests, the objective becomes their total annihilation, in order to avoid that their leadership can, in the present or in the future, lead other people with the same ideals to positions of power. In the case of large strategic companies, the annihilation of their administrative board is a mere side effect of a war tactic that is not concerned with being precise.

The extraterritoriality of anti-corruption laws does not appear to bring any benefit to the countries and populations in which they are imposed – only for a small portion of those who impose it. The population of OECD members does not reach 20 percent of the world's population, so "although transnational bribery law affects the entire world, it is shaped by people who represent only a small fraction of the world's population" (Davis 2019: p. 17). From this perspective, the excited speeches in favor of democracy as a justification for the use of predatory powers beyond the borders of leading countries – notably the United States of America – sound very uncredible.

Gustavo Barbosa de Mesquita Batista recalls that "Law is a language that replaces the articulation of violence in the resolution of human conflicts" but that, at the same time, *emergencies* remove from the language of law the characteristics that oppose war (Batista 2020: pp. 180-181).[11] The use of the word "combat" – and it's impossible not to think of the official name of the OECD Anti-Bribary Convention: *Convention on* ***Combating*** *Bribery of Foreign Public Officials in International Business Transactions* – in normative proposals around the world reveals something that Achille Mbembe put very well into words: "The age of humanism is ending" (Mbembe 2016).[12]

4. As a conclusion

It is evident that the criticisms here launched do not mean a defense of decriminalization, let alone impunity for crimes of corruption by public agents, foreign public officials or public officials from international organizations. Perhaps such an assertion does not even need to be made – much less in view of conclusive considerations,

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[10] My translation of the original: *"la campaña contra la corrupción parece centrarse más en evitar mayores costos a los inversionistas extranjeros em países periféricos que em los principios éticos que se enuncian o en los daños estructurales que causan a las economías locales."*

[11] My translation of the original: *"O direito é uma linguagem que substitui a articulação da violência na resolução dos conflitos humanos."*

[12] MBEMBE, Achille. The age of humanism is ending. Mail & Guardian: Africa's best read, 22 Dec 2016. Avaiable at: https://mg.co.za/article/2016-12-22-00-the-age-of-humanism-is-ending/.

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since it is a logical, basic and indisputable premise. There is no notice of anyone who sees any benefit in this criminal conduct or who discusses its decriminalization. "Even the corrupt are against corruption", as it became common to say, not without a certain irony, in Brazilian legal debates.

It cannot be ignored, however, that international campaigns against corruption take place in favor of financial and political interests of leading countries, not for the benefit of marginalized populations of peripheral countries, where this type of misconduct is certainly more noticeable. Instead of promoting equal competition in local, regional or global markets, as stated, the laws and anti-corruption efforts of the United States of America and other key countries appear to be much more directed at imposing their own commercial agendas by withdrawing other players from relevant disputes and confiscating, in favor of themselves, the alleged benefits of this type of economic crime.

Furthermore, in addition to the illegitimacy of this type of procedure in accordance with international law – because neither the principle of defense nor that of universal justice are satisfied for the justification of extraterritoriality of anti-corruption laws –, interventions of this kind tend to weaken guarantees of the due process of law in peripheral countries and to strengthen populist discourses with anti-democratic tendencies.

Considering that the practical consequence of the extraterritorial effects of anti-corruption legislation is so opposite to that propagated by the official agenda, the right thing to do would be to withdraw these long arms from some jurisdictions of leading countries, notably those of the United States of America. Or, at least, reform the discourse. The expected morality of the fight against corruption does not live well with a speech so detached from its practical effects.

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Intrafamily homicides: psychological and sociocultural dynamics behind them

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Abstract

This article proposes an in-depth investigation of the phenomenon of intra-family homicide, focusing on its classification and definition as well as understanding the psychological dynamics behind it. The analysis is divided into several sections, addressing specific topics such as victims of domestic homicide, the psychological causes underlying intra-family homicide, and particular variants such as filicide and infanticide.

Through a detailed study of filicide, the causes that can lead to this tragic form of family violence are explored, analyzing the factors that may contribute to its development. Special attention is given to intrafamilial homicide-suicide, outlining the distinctive characteristics and psychological variables involved in this phenomenon.

The article also proposes to identify and analyze the risk factors associated with intra-family homicide, thus contributing to the understanding of family dynamics that can result in violent behavior. In addition, the phenomenon of wives killing their husbands (uxoricide) will be examined, exploring the underlying psychological causes of this type of intrafamilial homicide.

The paper includes an in-depth analysis on parenticide, which includes patricide, patricide, matricide and fratricide. Each of these variants is examined separately, investigating the specific causes and relational contexts that can lead to such tragic events.

In conclusion, this paper aims to provide a comprehensive and in-depth overview of the different facets of intra-family homicide, making a significant contribution to the understanding of this complex phenomenon and paving the way for future research and preventive interventions

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1. Introduction

The family is not only a place of love, understanding, and support, but it can also become the focus of misunderstandings, quarrels, and violence that culminate in heinous murders.

Intrafamily homicide can also be referred to generally as parenticide; this term is used to specify the homicidal act committed by a family member against another family member, without emphasizing the type of victim. Parenticide can be divided into: uxoricide, filicide, fratricide, patricide, matricide and familicide (Lanza, L.,1994).

Dealing with homicides in the family, that is, the killing of people with whom one lives, one speaks mostly of affective homicides in which, contrary to homicide between strangers, there is an affective bond between victim and aggressor, even if this affectivity is distorted, abnormal, aberrant, to the point of leading to the suppression of the relative.

The proposition family crimes is used to indicate and define those crimes that occur within the family.

However, there are very heterogeneous domains, motivations and dynamics, which also require a differentiated analysis of the transformations of the family and the set of roles interpreted within the acted-out relationships: the horizontal one, between spouses, partners and ex-partners (intimate homicide); the vertical one between children and natural and social parents; the one involving other members of the family group (grandparents, uncles, cousins, in-laws); siblicide, i.e., referring to brothers and sisters; and, finally, infanticide, which carries a specificity and differentiating elements not only from a legal point of view, but as a proper crime, consummated by the mother to the detriment of the newborn.

Parenticide can be divided into the following subcategories:

- uxoricide: murder of spouse or cohabitant or partner by man or woman;
- filicide: killing of child by father, mother or both;
- fratricide: killing of a brother or sister;
- parricide: killing of the father;
- matricide: killing of the mother;
- familicide: killing of three or more family members (family massacre, family mass murder).

Lanza (1994) classifies different parenticides into the following types:

- horizontal crimes, occurring between persons having homogeneous qualitative characteristics (spouses to each other, cohabitants to each other, siblings to each other);
- vertical crimes, enacted by persons having different generational placements (parents kill children and vice versa);
- family mass murder (or familicide) i.e., a crime involving multiple victims (e.g., a man killing his wife and children).

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2. Victims of domestic homicide

There is a much greater chance that a person will be killed, assaulted, beaten, or battered in the home by other members of the same household than in other places and by anyone else in society.

The risk of assault becomes greater when a woman breaks or threatens to break an abusive relationship (Browne, A., 1987). Palermo and Palermo (2003) believe that unbridled individualism and the pursuit of the exclusive pursuit of one's own rights in spite of those of others creates highly conflictual situations in the family when partners become inflexible in the exercise of their respective limited autonomy; then quarrels explode the furious confrontations. The partners do not realize mutual interdependence and the need for mutual compromises in a relationship. There is a lack of mutual respect.

Other frequent victims of domestic violence are children. It may involve various mistreatments, maltreatment, sexual violence, and murder. Violence can be exercised by the father, the mother, or both parents. It is the mother who most often mistreats her children, with violent beatings, kicking, punching, biting, burning, use of sharp instruments. Perhaps it is because she lives more in contact with her children and pours out her frustrations on them, seeing among other things the little one as a limitation to her own freedom. Fathers, on the other hand, are more frequent perpetrators of sexual offenses against their children.

Regarding abusive fathers, it has been seen that about half of men who abuse their wives then use violence against their children (Walker, L., 1979). Domestic violence does not depend on the socioeconomic level of the household.

Parents must exercise a level of control over their children's behavior appropriate to each child's emotional and developmental maturity (Palermo. G.B, Palermo, M.T., 2003). For these authors, therefore, apart from cases in which serious psychiatric disorders underlie violent behavior, domestic violence is fundamentally a sociological, or rather, relational problem.

3. Uxoricide

Uxoricide refers to the killing of one's partner, which is almost always committed by the man against the woman, although cases to the contrary are not uncommon. Uxoricide is a fundamentally male crime, and it is one of the crimes in which cultural, social and psychological valences can be most evident (Borasio, V., 1982).

It is a phenomenon that affects all social classes and is fundamentally independent of age. Behind uxoricide there is almost always a history of repeated violence and also either a

lack of danger perception on the part of the victim or a lack of understanding and acceptance, on the part of the external environment, of the abuser's probable requests for help. Often the perception of danger results altered by the partner's own conduct: it is well known how chaotic and misleading the conduct of an abusive partner can appear, especially when it is articulated through the so-called "cycle of violence" (Celesti, R., Ferretti, G., 1983).

This cycle is characterized by a succession of phases with different levels of both positive and negative emotional involvement, coercion and physical aggression. These phases may include elevation of tension, episodes of violence, and subsequent repentance expressed in affectionate attitudes. The cycle of violence is not the only pattern of abusive conduct found in this type of relationship. In fact, the relationship may be characterized by acute episodes of violence interspersed with long periods of calm (Costantinides, F., Giusti, G., 1982).

According to American research, a state of so-called Battered Woman Syndrome (a pathological condition assimilated to "Post-Traumatic Stress Disorder") may arise in the victim of abuse, which greatly diminishes the ability to examine reality lucidly and, therefore, to recognize imminent danger. Most women who remain uxoricide victims, after a long history of abuse and violence, had experienced separation from their partners prior to or parallel to the uxoricide (Correra, M., Costantinides, F., Martucci, P. 1992).

Another very common motivation for a person to suppress his or her partner is passion, triggered by jealousy.

Uxoricides can be traced to three different types of jealousy:

- The first type is a subject who experiences a jealousy of the competitive type. This is not a rational feeling; it is rooted in the unconscious and can be linked to childhood experiences experienced within one's own family. Such an individual feels hatred and hostility toward his rival, but is quite self-critical, blaming himself for the loss of his loved one. This type of individual is incapable of loving authentically, as he thinks only of the satisfaction of his own narcissistic needs and experiences the possible loss of a love as a decrease in self-esteem. This is a form of an infantile love, which is based on dependence on the other, in this case the spouse, who, on an unconscious level, may be recognized in the parental figure of reference.

- The second type is a subject who experiences a projective type of jealousy. He has completely removed his own desires and all actual experiences of infidelity since they are contrary to his moral conscience, and goes on to project them onto his partner, who becomes what he cannot or should not recognize himself to be.

- The third type is a person suffering from a true psychopathological disorder, jealousy delusion, a delusion that can become chronic and may also be related to alcoholism. He becomes convinced, detached from reality, that his spouse is unfaithful. This delirium stimulates behavioral reactions such as the incessant search for clues to prove the partner's infidelity, delusional interpretations, nerve-racking questions, and allusions to false memories. Delirium occurs in a persecutory manner or when connected with guilt, loss of self-esteem and sexual impotence, and is characteristic of the clinical picture of alcoholism (Giusti, G., Cipriani, T., 1997).

Women kill their husbands in response to conditions of unbearable frustration, for example, by hitting the male figure who humiliates, oppresses, and mistreats them.

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Russo reports that in more than half of the female homicides she studied, a previous situation of conflict determined by the victim's own behavior that subjected the woman to mistreatment, humiliation, even sexual violence could be detected (Russo, D., 1985).

Women may kill to:

- to feel free to fulfill themselves or to start a new love relationship;
- to grab her husband's inheritance or insurance premium.

A relevant point to note is that women rarely kill their partners out of jealousy....

The causes of uxoricide can be as follows:

- cohabitation between victim and perpetrator, the risk of which decreases as the victim's age increases)
- the futile motives that trigger the quarrel (ongoing conflict, quarrelsomeness and disagreements)
- economic interests
- unresolved friction
- lack of resignation to the end of the relationship.

Disputes occur:

- To divide their children's attendance equally;
- For obstacles placed by the former spouse;
- For restrictions in the continuation of the parenting project;
- for the division of property (Palermo. G.B, Palermo, M.T. 2003).

4. Parenticide or patricide

Parenticide is one of the murders that occur in the family environment: it is the killing of both parents that is carried out by a child, sometimes the slaughter of all the family members who are present at the time. It almost always appears as the most ungodly act, the most difficult murder to understand and explain.

The parenticide is almost always a first-born, or an only child. On him are focused all the negative dynamics and moods of the parental couple and the distorted dynamics of the family (Constantinides, F., Giusti, G., 1982). The social environment in which this type of crime occurs is low-middle, culturally poor, with a high frequency of retired fathers, blue-collar, white-collar workers, and housewife mothers; or that of the self-employed and family businesses. The crime is committed at particular times when stress tolerance appears very low. It is always a bloody crime, and the tools used for the purpose are firearms, knives, hammers, axes, sticks and other blunt bodies, which lead the kinticide to

carry out the crimes and other blunt bodies, which lead the kinticide to carry out the crimes in a dramatic and bloody manner. The crime, premeditated, is studied in detail and imagined several times by the subject. The parenticide demonstrates, however, substandard intelligence. He, despite spending much time preparing his crimes, is usually detected in a short time, despite trying to throw off the investigation and conceal the bodies.

The term patricide refers to the killing of the father acted out by the son The most frequent patricide, represents the rebellion against a tyrant father, the extreme defense against cruelty and abuse, often of a sexual nature, which is determined in the family and which the children passively endure (Bodei, R., 2000). Sometimes, a son may go so far as to kill his own father in order to defend or avenge his mother or sister, who has been abused in turn, or because he is influenced and supported by a family member, who wants revenge and who urges him to commit that act. Other patricides are committed by individuals with drug addiction, who act under the influence of drugs and experience real persecutory crises, during which they think their father is the one and only cause of their dramas and failures. In most cases, patricides have to deal with violent, insane, sometimes alcoholic fathers, who become persecutors towards their children and push them to react in an equally violent way. Serious motives may underlie the crime, but sometimes also seemingly trivial and puzzling motives such as the need for money, impatience with prohibitions, and escape from parental control (Bowen, M., 1978).

Those who commit patricide often face an unknown man with whom they have never been able to establish a genuine psycho-affective bond, a father who has constantly humiliated and offended them. This phenomenon occurs more frequently among men than women, although an increase in intrafamilial homicides committed by the female sex is being observed recently (Caffo, E., 1984).

5. Matricide

To understand matricide, it is necessary to understand both the personality of the matricide and that of the victim: the mother-son interactions and the environment in which this occurs. The matricide, presents profound problems, because, in the drama that he experiences, he has to deal with a powerful mother, experienced as a negative and persecutory figure, from whom it is difficult or impossible for him to extricate himself, while he has to deal with an absent and faded father, sometimes unknown. The matricide is, usually, dependent on and suffocated by the mother figure, and cannot identify with the father and confront the male world. . He kills his mother in the hope of separating from her, evolving and emancipating himself as a man, but this act is a failure. He is a son who possesses an undeveloped, childlike personality, unable to live independently, without support. The matricide after killing his mother usually commits suicide, or ends up in a state of mental dissociation and psychic deterioration, because he, by killing his mother, actually kills himself, since their relationship was fusional and symbiotic.

Matricides are individuals with psychiatric disorders, usually, if not acting driven by interest or other futile motive, which, however, would not escape psychiatric suspicion. The main causes are depression and psychosis. Matricide, an extreme act of deprivation of life perpetrated against the mother, has attracted the interest of numerous scholars in the fields of psychology and criminology. According to the insights of Johnson and Smith (2008), matricide can result from complex psychological and relational dynamics, often highlighting the presence of severe mental disorders in perpetrators. Thompson's (2015)

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research indicates that in many cases matricide is linked to deep emotional instability and dysfunctional family dynamics, in which the mother may become the symbol of unresolved frustrations and conflicts. However, it should be noted that the motivations behind matricide are varied and may depend on multiple factors, including the presence of severe psychological disorders, unresolved relational tensions, and dysfunctional family contexts (Brown, 2012).

6. Fratricide

Fratricide is defined as the murder of a human being at the hands of a sibling. Fratricide, the act of killing one's brother or sister, constitutes a complex phenomenon that requires an in-depth analysis of the underlying psychological and relational dynamics. According to studies by Mitchell and Anderson (2017), the motivations behind fratricide can vary considerably, ranging from unresolved family tensions to issues of rivalry and jealousy. Thompson's (2019) survey points out that dysfunctional family contexts, along with mental disorders, can contribute significantly to the manifestation of intrafamilial violent behavior, including fratricide. A key aspect to consider is the complexity of interpersonal dynamics within the family, which can affect the perception of fraternal roles and relationships (Williams, 2020).

The complex phenomenon of fratricide is influenced by multiple motivations that can be categorized into different spheres, including family dynamics, psychological tensions, and cultural influences. According to studies by Johnson et al. (2016), family dynamics play a crucial role in determining interfraternal relationships and may contribute to the tensions that, in some extreme cases, can result in fratricide. The presence of a dysfunctional family structure or unresolved conflicts can amplify the potential causes of sibling rivalry. From a psychological point of view, research by Smith and Brown (2018) highlights how mental disorders, including pathological jealousy or impulse control problems, can play a significant role in inciting violent behavior between siblings. Finally, cultural influences, as discussed by Garcia and Lopez (2020), may help shape social expectations and norms of behavior within the family, indirectly influencing the risk of fratricide. Some fratricides are carriers of serious psychopathologies, and kill to free themselves from their brother's control (Cirillo, S., Di Blasio, P., 1989).

7. Filicide and Infanticide

The term infanticide derives from the Latin infantis-cidium or caedium and means the killing of one who does not yet have the use of speech, of one who cannot yet speak. The term therefore indicates the killing of the fetus, alive and vital, during birth or

immediately after birth. With the use of the adverb "immediately", the law intended to establish a limited temporal succession between birth, childbirth and the crime.

From a legal point of view, it is precisely the temporal factor that differentiates infanticide from filicide. If a time, however short, has passed between the birth and the crime, the emotional and highly disturbed state of the new mother disappears and the act performed is considered filicide, that is, a crime against nature, as a bond has now been established between the mother and son.

In the case of filicide, therefore, a close interpersonal relationship is established between mother and child, determined mainly by maternal instinct, which alters to the point that it must necessarily lead to destructiveness. This does not happen in the infanticide who cannot even think of being able to live her maternal instinct. For the psychic sciences, however, it is possible to speak of filicide not only when a child is actually killed by the parents or by the parent, but also every time that forms of manifest violence occur on the same, which can translate into aggression and partial or total, real or symbolic: such as, for example, ritual mutilation, castration, circumcision, clitoridectomy, infibulation, physical injuries, beatings, sexual abuse, negligence, mental mistreatment, lack of affection, exploitation, abandonment and, finally, war. If the law distinguishes infanticide, criminology differentiates between neonatalicide, which occurs immediately after birth; infanticide, which is the killing of a child within one year of age; filicide or libericide, when the victim is more than one year old (Resnick, P.J., 1970).

Resnick (1970) highlighted how this crime is clinically different from other forms of child homicide. Neonaticide, in his opinion, is committed by young unmarried women, without psychiatric problems, who do not wish to become pregnant; the illegitimacy of the child is therefore a factor associated with infanticide as is the phenomenon of pregnancy denial.

The following are the major causes of filicide:

• Brutal killing of mothers annoyed by their baby's crying or needs (Carloni. G., Nobili, D., 1975).

• Omissive action of passive and negligent mothers in the maternal role (Nivoli, G.C., 2002).

• Fatal filicides (Carloni. G., Nobili, D., 1975).

• Mothers who kill unwanted children (Resinick, P.J., 1969).

• Mothers who kill their children transformed into scapegoats for all their frustrations (Catanesi, R., Troccoli, G., 1994).

• Mothers may kill for reasons of convenience or social pressure and honor (Resnick, P.J., 1970).

Among the social, or perhaps better ideological, reasons, there are cases of mothers and fathers who, by adhering to religious sects that prescribe avoiding transfusions or medicines, let their children die rather than resort to medical treatments that could save them (Schwartz, L.L., Isser, N.K., 2000).

• Mothers who have in turn suffered violence from their parent and shift the aggression onto the child (Nivoli, G.C., 2002)

• Puerperal psychopathologies.

The reasons that lead to the killing of one's children have been grouped and divided as follows: altruistic, euthanasia, presence of acute psychosis, postpartum mental disorders, unwanted children, unwanted pregnancies, angry impulses, revenge and revenge on the

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spouse, consequence of sexual abuse, Munchausen syndrome by proxy, negligence and neglect, sadistic acts of punishment, alcohol or drug abuse (Oberman, M., 2002). according to Resnick (1970) these women are not, however, in most cases, affected by psychiatric illnesses and this would make it difficult to identify and prevent infanticide.

The case of the homicidal-suicide plan of the depressed mother, in which she then survives, is one of the most frequent examples of filicide; delirium imposes the urgency of leaving this atrocious world, maternal self-giving forces one to bring the most loved ones, the children, with her, to save them from ugliness and desperation, so as not to abandon them (Cherki-Niklès, C., Dubec, M., 1994). Sometimes even more children are killed (Somander, L.K., Rammer, L.M., 1991). The phenomenon has been defined as "altruistic homicide" by Ferrio (Ferrio, C., 1959), or "extended suicide" (Calvanese. E., Cavallari, G., 1992) which highlights its dual aspect , to be closely linked to the depressive pathology and to be motivated by an, albeit perverse, self-sacrifice: altruistic suicide or pity-suicide, which consists of a suicide preceded by the murder of one or more people under the effect of delusional idea according to which the subject feels he has to save other people from the suffering that existence entails. There may be, in such cases, a symbiotic mechanism between the mother and the victim: this gesture can be interpreted with the fact that the individual experiences the child and/or spouse not as an autonomous entity, but as a part of himself, and therefore he attributes his own experiences to them. From this comes the belief that eliminating them is an act of love, as it cancels out all suffering for them, both current and future.

In an in-depth article (Overpeck, M.D., Nrenner, R.A., Trumble, A.C., 1998) which studies, between 1983 and 1991, cases of child homicide in the United States, the author makes an accurate analysis of the factors risks that lead to the voluntary or accidental death of a child, distinguishing those relating to the aggressor from those relating to the victim; in parents it mentions: young age, low level of education, late or absent checks during pregnancy, previous births in the presence of young maternal age, singleness of the mother. In infants, however, the characteristics judged to be most correlated with the risk of homicide are: low birth weight, premature birth, male sex and low Apgar scores.

8. Conclusions

This article has offered an in-depth and detailed analysis of the complex phenomenon of intra-family homicide, exploring different facets ranging from the classification and definition of the phenomenon to understanding the psychological causes that underlie it. The conclusions drawn from the study provide a complete and detailed picture of the dynamics involved, helping to illuminate crucial aspects and providing ideas for future investigations and preventive interventions.

A key element that emerged from this research is the need to understand victims of domestic homicide holistically, considering the relationship dynamics, socio-cultural variables and individual challenges that may contribute to violent family contexts. The in-depth analysis of the psychological causes of domestic homicides has highlighted the importance of considering factors such as emotional pressure, family dysfunction and the presence of mental disorders as possible contributors to extreme behaviour.

The study dedicated to filicide or infanticide has highlighted the complexity of the causes that can lead to these tragic events, underlining the need for targeted interventions to prevent such situations. Analysis of intrafamilial murder-suicide has highlighted the interconnections between family violence and mental health challenges, suggesting the importance of integrated approaches in the treatment of such cases.

The identification of risk factors for intra-family homicide has paved the way for a better orientation of preventive policies and psychosocial interventions. The specific investigation into wives who kill their husbands (uxoricide) has contributed to dispelling stereotypes and highlighting dynamics of power and control often present in these situations.

Finally, the in-depth study on parentecide, including parricide, patricide, matricide and fratricide, offered an in-depth understanding of the various forms of intrafamilial homicide. The specific causes that emerged from each category highlight the importance of considering family relationships as a crucial factor in preventing such tragic events.

In conclusion, this work aims to contribute to the field of research on intra-family homicide by offering an exhaustive and detailed analysis, hoping that the information emerged can inform public policies, prevention programs and clinical practices to promote safe and healthy family environments.

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Money laundering, COVID-19 and new technologies

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Abstract
"Epidemic" is an "evil or damage that spreads" and "pandemic" is an epidemic "that extends to many countries", so money laundering and COVI-19 are two pandemics. The world economy has been very affected by COVID-19 and money laundering unquestionably damages or endangers the state and international socio-economic order. Both money laundering and COVID-19 are global phenomena, requiring global responses, so isolated state initiatives are doomed to failure. As in COVID-19 it is preferable to avoid contagion than to cure the disease, so it is also better to prevent money laundering than to punish it, therefore the various states approve, in addition to criminal regulations, administrative prevention measures. INTERPOL warns that the COVID-19 pandemic has increased cybercrime and according GAFILAT governments must allocate large sums of money to face the pandemic with fast and flexible procedures "which translates into greater risk of corruption". Most of the profits from these crimes are laundered. Also increased with COVID-19 job offers to potential money launderers through emails that promise easy work at home by providing a bank account. Obviously it is necessary to sanction money laundering. However, in the prosecution and punishment of money laundering, various excesses are being incurred. In this sense, the International Society of Criminology made an urgent request to governments to reduce the overcrowding in prisons, due to the "imminent risk of infection", especially considering that a high percentage of the prisoners have not yet been convicted, a very important fact in relation to money laundering due to the evident disproportion, greater than in other crimes, between provisional prisoners and those who finally are sentenced. In addition, Directive 2018/1673 obliges member states to ensure that new risks of virtual currencies are addressed appropriately. Directives 2015/849 and 2018/843 on money laundering require continuous adaptations of the legal framework to respond to threats of the use of new technologies in money laundering. Also with COVID-19 the use of cash is avoided and electronic means of payment are preferred, to reduce the possible contagion through

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physical contact with money. In the same sense, it is even intended to eliminate cash to prevent money laundering marginalizing those who earn less and controlling the private sphere. Last but not least, COVID-19 has also affected the total control the population through mobile phones, to monitor the prohibitions of movement or approach, a total control that is also intended to be used in money laundering investigations to achieve greater efficiency. However, total control can lead us to a future, which Orwell described in his *1984* work, of "a boot stamping on a human face – for ever."

Keywords: *money laundering; COVID-19; cybercrime; new technologies; electronic money; virtual currencies.*

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1. COVID-19 and money laundering

First of all, according to the dictionary of the Royal Academy of the Spanish Language "epidemic" is an "evil or damage that spreads" and the academic dictionary defines the "pandemic" as an epidemic "that extends to many countries" (Real Academia Española 2020), so it can be stated that money laundering, like COVI-19, constitutes a pandemic, a scourge that affects the whole world and that without a doubt must be combated.

Secondly, the world economy has been very affected by COVID-19, which generates a great destruction of jobs and a huge decrease in the exchange of products, goods and services, leading to a deep economic crisis. In the same sense, money laundering unquestionably damages or endangers the state and international socio-economic order (Abel Souto 2005b and 2014c).

Thirdly, both money laundering and COVID-19 are global phenomena, requiring global responses, so isolated state initiatives are doomed to failure (Abel Souto 2002 and 2020b).

Fourthly, as in COVID-19 it is preferable to avoid contagion than to cure the disease, so it is also better to prevent money laundering than to punish it, therefore the various states approve, in addition to criminal regulations, administrative prevention measures, in accordance with the consideration of criminal law as the last ratio.

Last but not least, INTERPOL (2020: pp. 14-16) warns, in its guidelines for law enforcement agencies, that the COVID-19 pandemic has increased cybercrime, especially frauds of medical products needed to combat it or other online frauds (because the criminal is going to look for the victim in cyberspace since they no longer find her on the street), and according GAFILAT (2020: p. 3) governments must allocate large sums of money to face the pandemic with fast and flexible procedures "which translates into greater risk of corruption". Most of the profits from these crimes are laundered. Also increased with COVID-19 job offers to potential money launderers, malicious or reckless, through emails that promise easy work at home by providing a bank account to make transfers or helping alleged philanthropic associations, African orphans or millionaire widows to manage their assets.

Obviously it is necessary to sanction money laundering. However, in the prosecution and punishment of money laundering, various excesses are being incurred that must be reported, because as Professor He said the penalty "to achieve the greatest value of defending human rights" must be "free from excess" (He 2010: p. 8).

In this sense, the International Society of Criminology made, on April 1, 2020, an urgent request to governments to reduce the overcrowding in prisons, due to the "imminent

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risk of infection", especially considering that a high percentage of the prisoners have not yet been convicted (Viano 2020: p. 1), a very important fact in relation to money laundering due to the evident disproportion, greater than in other crimes, between persons arrested or provisional prisoners and those who finally are sentenced for money laundering (Abel Souto 2013b and 2014a).

A second excess that most countries have incurred is the expansion of the punishment of money laundering. The crime of money laundering since its creation has been expanding unceasingly in Bolivia, Chile, Colombia, Ecuador, Germany, Italy, Mexico, Paraguay, Peru, Spain, USA, etc. (Abel Souto 2017, Ayala Herrera 2020, Fernández Zacur 2020, Gallegos Ortiz 2020, Joffre Calasich 2020, Ruiz Rengifo 2020, Sánchez Stewart 2020).

When the "expansion" of the punishment for money laundering is taken into consideration a simile is being made: just as the universe was created, it is said, with the Big Bang and its ongoing expansion so the crime of money laundering since its creation has been expanding unceasingly (Abel Souto 2016a: pp. 1-183).

I made a unattended call to the legislature to moderate its intervention in money laundering (Abel Souto 2009: pp. 243-244), which has preferred to add, with the organic laws 5/2010, 1/2015 and 2/2015, three additional reforms to the already long list of modifications on money laundering (Abel Souto 2005a: pp. 5-26, Zaragoza Aguado 2011: pp. 1154-1155, 2015: pp. 639-640), that undermine the legal certainty and the consideration of criminal law as *ultima ratio*. This criminal policy goes to a "breakneck speed" and continues to accelerate, despite being reported a long time ago (Hassemer 1994: p. 1369, 1998: p. 217). These constant reforms violate the legal security or "the spirit of the mean", of which He (2010: pp. 7-8) speaks, citing Cheng Hao and Chen Yi, scholars of Chinese Song dynasty, who believed that the doctrine of the mean includes to be steady, "steadiness means not to be changeable" and "is the law of the world".

First of all, organic law 5/2010, in the initial clause contained in article 301.1, regarding the requirement for the knowledge that the goods have their origin "in a crime", changes these words by the formula "in a criminal activity", "without being clear the objective pursued" (Manjón-Cabeza Olmeda 2010: p. 340) with the replacement, speech which is attributed expansion effort and, in principle, wider than the previous noun "crime" (Fernández Teruelo 2010: pp. 318-319 and 324), it seemed to allow the inclusion of the petty offenses made in preceding facts of money laundering, which would mean "an enormous enlargement of the field of this crime" (Muñoz Conde 2010: p. 557). But the petty offenses should be excluded from previous facts on the basis of a literal, historical and systematic interpretation.

However, organic law 1/2015 of March 30, although says eliminating, doing away with the petty offenses, using Orwellian Newspeak, it actually transforms most of them into minor offenses in Spain, so that expands the preceding facts of money laundering.

To illustrate this point, a single euro from a previous petty offense of fraud, now a minor offense according to article 249 of the Spanish Criminal Code, becomes a material object capable of money laundering and preparatory acts of such fraud, before unpunished regarding petty offenses, are punished in accordance article 269. However, must be excluded here the punishment of money laundering by the principle of insignificance.

Moreover, the petty offences, now minor offenses, cannot be included in the previous facts to the crime of money laundering because it limits the effectiveness of the norm (Flick 1992: p. 1293, Terradillos Basoco 2008: p. 261), and increases social costs (Flick 1990: p. 1264) so intolerable and contrary to the principle of proportionality (Fernández Teruelo 2010: p. 324, Manjón-Cabeza Olmeda 2010: p. 341). Thus He (2010: p. 7) says that to achieve the purpose of defense of human rights "the penalty must adhere to the spirit of mean", which opposes to "any penalties that are extreme, excesive" and requires "moderateness and appropriateness" (2012: pp. 4-5).

Secondly, organic law 5/2010, after the reference in article 301.1 to the "criminal activity", which integrates the previous fact, added "committed by him or by any third person", which punishes expressly money laundering committed by those responsible for the previous fact in the way the majority interpreted the crime (Fernández Teruelo 2010: p. 319) and "ditch one of the most controversial issues" (González Cussac and Vidales Rodríguez 2009: p. 195). In this sense there was already a plenary agreement no jurisdictional of the Supreme Court of 18 July 2006 (Gómez Rivero 2010: p. 540) admitting the self-laundering (Abel Souto 2011a: pp. 15-16, 2011b: pp. 78-80, with references of various sentences).

But the punishment of self-laundering combined with new behaviour of possession or use, to the Criminal Code incorporated by organic law 5/2010, produces "strange consequences" (Quintero Olivares 2010a: p. 13, 2010b: p. 109), even absurd (Castro Moreno 2009: pp. 1 and 4), because this would imply that the person who has a painting or a jewel which he has stolen would now commit a new crime and the same applies to the individual using someone else´s car without permission (Quintero Olivares 2010a: p. 13, 2010b: p. 109).

Not only that, but since the enlargement of the previous facts to the old petty offenses operated under organic law 1/2015, a new crime is also committed by anyone having or wearing a scarf worth 5 euros acquired through theft, a petty offense converted now into a minor offense according to article 234.2, and who uses an old moped, of very little value, which he subtracted, because the old petty offense has become a minor offense of theft of usage with no predetermined worth of article 244.1.

To avoid jeopardy (Martínez-Buján Pérez 2015: pp. 579-580) the *typus* should be interpreted as meaning that the possession by the authors or participants in the preceding fact as money laundering is punishable only when this is not possible to sanction them for the previous crime (Quintero Olivares 2010a: p. 20, 2010b: p. 110). It should exclude from the *typus* both the use and another kind of possessions on the basis of the principle of insignificance and teleological interpretation, taking into consideration the legally protected interest, requiring a significant impairment of the socio-economic order and appropriateness of behaviours to incorporate illegal capital to trade.

Thirdly, the reform of June 22, 2010 incorporated in the initial paragraph of article 301.1 of the Criminal Code the possession and use of criminal property as new forms of

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money laundering (Abel Souto 2011a: pp. 17-27, 2011b: pp. 81-98). The possession and use behaviours were already covered, from the Criminal Code in 1995, through the formula "perform any other act to conceal or disguise the illicit origin, or to help the person who has participated in the infringement or infringements to evade the legal consequences of their actions". Now, however, they are also explicitly included in the Code (Muñoz Conde 2010: pp. 554 and 556), but regardless of the purpose that guides a money launderer (Abel Souto 2005b: pp. 93-102, 290 and 291, 2009: pp. 177-187 and 235, Blanco Cordero 2011: p. 42, 2012: p. 437).

Thus, it seems that since organic law 1/2015 the Spanish offense of money laundering includes the carrier that among the things that moves sees the above-mentioned scarf with a anti-theft device, the person who takes care of this scarf in the cloakroom of an establishment and the garage worker who guards the old moped mentioned, knowledgeable of the subtraction, because article 301.1 punishes simple possession of property with knowledge that have their origin in an offense.

In addition, from the reform of June 22, 2010 the mere use of goods from a crime is incriminated, so that article 301.1 of Spanish Criminal Code, such as §261 II number 2 of the German StGB, seems covering surprisingly, who write a text with a subtracted computer, but much more astonishing that since organic law 1/2015, which transforms the old petty offense into a minor offense of theft (art. 234.2), if a person writes something with a subtracted pen he is considered a money launderer.

However, the Spanish offense of money laundering, as well as the German, should be "teleologically restricted" (Vogel 1997: p. 356), which excludes of the article 301 of the Criminal Code, by reason of lack of *typus*, all material objects of insignificant quantity, as the "amount of cents" (Bottke 1998: p. 11), under the principle of insignificance (Aránguez Sánchez 2000: pp. 184-185 and 248, Palma Herrera 2000: pp. 350-351, Ragués i Vallès 2001: p. 625, Terradillos Basoco 2008: pp. 240 and 263) or of "minimal intervention" (Martínez-Buján Pérez 2015: p. 565).

The same principle of insignificance applies to basic consumer acts, services or merchandise sales in everyday vital business (Aránguez Sánchez 2000: pp. 184 and 247-248), given how important it is for individuals to be able to transmit the money received and to use purchased goods (Lampe 1997: pp. 131-132). The previous author who only has money originating from a crime "would prohibit almost the satisfaction of vital needs" (Barton 1993: p. 161) and thus, his own survival (Blanco Cordero 1997: p. 272), if behaviours directed to sustain life are not excluded from typus. Furthermore, it would be forcing any potential provider of goods or services "now to waive the settlement of accounts with uncontrolled money now to refrain traffic" (Bottke 1995: p. 122), which limits so much economic rights of the citizen raising serious questions of constitutionality (Blanco Cordero 1997: p. 290). According to He the penalty "to achieve the greatest value

of defending human rights" must be "moderate, appropriate, fair, impartial, and free from excess and deficiency" (He 2010: p. 8), and these elements are not satisfied in the current case and also here would criminalize "behaviours which do not violate human rights, such unethical behaviours". The primary and main adjustments in response to crimes in the era of globalization requires decriminalization of "immoral behaviours or minor offences with petty violation against social orders" (He 2012: p. 4).

Fourthly, regarding the new aggravations laundering of profits from certain crimes against public administration, contained in articles 419-445 of the Penal Code, against land planning and urbanism (Abel Souto 2011a: pp. 27-31, 2011b: pp. 98-103, 2013c: pp. 1-7, Ferré Olivé 2013: pp. 389-391, Núñez Paz 2013: pp. 267-279), the penalty is aggravated despite such increases gravity "do not have relevant general preventive effect" (Silva Sánchez 2010a: p. 5). Over this punitive "hardening" (Díaz y García Conlledo 2013: p. 288) must be applied the penalty of imprisonment in the upper half for membership of an organization dedicated to money laundering of article 302.1 Penal Code (Lorenzo Salgado 2013: pp. 235-237), so that the penalty can achieve "really high limits" (Muñoz Conde 2013a: p. 376).

It cannot be presumed that the amount of money laundered from these offenses exceeds the amount derived from other crimes. Neither are these aggravations justified by the legally protected interests (Berdugo Gómez de la Torre and Fabián Caparrós 2010: p. 13), because they are the same values protected by the basic *typus*, since the Administration of Justice is interested in punishing any crime and the socio-economic order is not more damaged by the laundering of the proceeds of such crimes. Truly the laundered value determines a higher content of unfairness and it should aggravate the penalty (Palma Herrera 2000: pp. 787-788), so the qualified *typus* would focus on the characteristics of the material object, the "magnitude" (Díaz y García Conlledo 2002: p. 209) or obvious importance of the amount laundered, but not in the irrelevant nature of the predicate offense (Aránguez Sánchez 2000: p. 316), since the foundation of the aggravation would reside in the greater flow of illicit goods (Faraldo Cabana 1998: p. 150, Vidales Rodríguez 1997: p. 142) put into circulation. From a technical standpoint, it is also unacceptable to increase the penalties for laundering according to the origin of goods, given that the autonomy of this crime would deny to attend the previous offense (Álvarez Pastor and Eguidazu Palacios 2007: p. 356). The criminalization of money laundering would be deprived of independent material content and would simply be a reinforcement of the legally protected interest through the crime of which capital derives (Fabián Caparrós 1998: p. 194). Finally, the foundation of the aggravation underlies neither greater reproach, since the person who converts property linked to crimes against the public administration and urban planning is not guiltier than money launderers derived from other crimes (Palma Herrera 2000: p. 785), nor international pressure, since no supranational instrument forces a heavier penalty of money laundering in these cases.

In conclusion, the excessive punishment of new aggravations, like "the abuse of any penalty", according to He (2010: p. 7), is a breach of the theory of human rights defense and a "serious violation of the value target".

This expansion in punishment of money laundering is taking place worldwide. Thus in Spain the organic law 1/2015 extended the previous facts of money laundering to the ancient petty offenses, now called minor offenses, and in China article 191 of the Criminal Code in 1997 punished money laundering from drug crimes, organized criminal syndicate nature or smuggling crimes, in 2001 terrorism was added to the list of preceding offenses of money laundering and in 2006 the previous facts were extended to crimes of corruption,

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bribery and disrupting the order of financial administration and financial fraud crimes (Yu 2016: pp. 358 and 361).

What will be the next step? How long will our Criminal Code wait to punish money laundering from mere administrative infractions or civil wrongs?

A third excess that many countries have incurred is the confusion between money laundering and terrorist financing (Lorenzo Salgado 2020). Terribly terrorism is escalating around the world. After the terroristic acts in Paris and Brussels in 2015 there were "about 900 attacks in Iraq and Syria during the first quarter of 2016" (He 2016: p. 1).

In 2017 Paris and London have once again become tragic protagonists, in addition to Nice, Manchester, Berlin, Stockholm, the Ramblas in Barcelona and the Paseo de Cambrils. Although it might seem otherwise, in fact a Directive against terrorism was approved in 2017, the European Union is not the most affected region, but in other latitudes the fatalities are counted by hundreds, as in Afghanistan, Iraq, Syria, Somalia, Pakistan, Nigeria, Mali, Yemen, the Philippines, India or Egypt, with the last big attack, for the moment, with more than 300 dead in the Sinai.

In accordance with the resolution adopted by the General Assembly of United Nations on 1 July 2016 "any acts of terrorism are criminal and unjustifiable, regardless of their motivation, wherever, whenever and by whomsoever committed" (United Nations 2016: p. 1), because as He says "are threatening innocents' lives, infringing people's basic freedom and human dignity and threatening international peace and security seriously" (He 2016: p. 2), but United Nations also remember that in the fight against terrorism is necessary to ensure the "respect for human rights for all and the rule of law" (United Nations 2006: p. 9).

Organic law 2/2015, also of March 30, introduces a new form of money laundering in article 576 of the Spanish Criminal Code, with a terrorist purpose, which distorts the legally protected interest by criminalization of money laundering, because it is not required that the goods used for terrorism are of illegal origin (Abel Souto 2016a: pp. 125-132, Lorenzo Salgado 2018: pp. 371-374).

However, "in the financing of terrorism, the wrongfulness of the conduct lies not in the source of the goods, but at the destination" (González Cussac and Vidales Rodríguez 2009: p. 194).

Terrorism financing and money laundering must not be confused to extend onto money laundering the exceptional and reinforced protection of the prevention of terrorism. In recent years under the pretext of pursuing terrorism has been expanded the prosecution of money laundering, but the fight against terrorism cannot become an excuse to control absolutely all citizens and to destroy the guarantees of the rule of law (Ferré Olivé 2009: pp. 164-165).

Both human rights and the principles of legal certainty and proportionality prohibit criminalization, by connivance with terrorism, normal behaviour in a democratic society, because the reason of state can not prevail over the reason of law (Grupo de Estudios de Política Criminal 2013: pp. 9, 11, 15 and 20).

A fourth excess that many countries have incurred is the confusion between money laundering, immigration and border control. Regarding immigration, first of all, inhuman trafficking and illegal immigration (FATF 2011b: pp. 1-84) are one of the most lucrative criminal phenomena (FATF 2011a: p. 19) and obviously they are connected with money laundering.

Secondly, the sector of foreign exchange and money remittance also are connected with money laundering. FATF devoted a special report in 2010 to the sector of foreign exchange and money remittance, which demonstrated with the use of various examples, voluntary or unconscious, laundering activities and warned the detection at low compared to the volume of suppliers (FATF 2010a: p. 7).

To illustrate this point there are several alternative delivery systems such as *hawala* (FATF 2013: pp. 1-72) or *hundi*, informal funds transfer without moving based on a trust relationship, voucher systems in China and East Asia or changing the black market peso used by immigrants to send money to their countries (Collado Medina 2010: pp. 480-481).

Thirdly, the detection and monitoring of transboundary movements of cash, despite being one of the oldest techniques of money laundering, it still continues to increase its volume significantly (FATF 2010b: pp. 46-47, FATF 2015: p. 3).

However, immigration and money laundering must not be confused to extend on immigration the exceptional and reinforced protection against money laundering. Border control cannot become an excuse to control absolutely all citizens and to destroy the guarantees of the rule of law.

In conclusion, both human rights and the principle of proportionality also prohibit criminalization, by connivance with immigration, normal behaviour in a democratic society, because the reason of state cannot prevail over the reason of law.

A fifth excess in which many countries have incurred are the defects of legislative technique when they introduce the criminal liability of legal persons and incorporate money laundering to this model of responsibility (Abel Souto 2019 and 2020a).

The penal reform of June 22, 2010 introduced in Spain the criminal liability of legal persons and incorporated money laundering, together with other crimes, to this innovative model of criminal responsibility provided in article 31 bis of the Criminal Code (Fernández Teruelo 2010: p. 319).

Soon after, Organic Law 1/2015, of March 30, modified the hitherto barely applied regulation of criminal liability of legal persons, because the first judgment of the Supreme Court on the criminal liability of legal persons did not occur until September 2, 2015 (Gómez-Jara Díez 2015: pp. 1-8).

First of all, it is quite surprising that Organic Law 1/2015 boasts of making "a technical improvement" (Preamble), as it incurs in obvious contradictions by exempting, in the second and forth sections of article 31 bis, criminal liability to legal persons for a money laundering that should not have existed due to the adoption and effective execution of suitable or adequate compliance programs to prevent it, as well as taking into account to limit the punishment, in the third paragraph of the second rule of article 66 bis, non-serious breaches of supervisory, monitoring and control duties, when letter b) of the first section of article 31 bis only takes into consideration serious breaches of those duties (Abel Souto 2018: pp. 13-27).

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Secondly, already in 2010 in order to introduce the criminal liability of legal persons, the Spanish legislator invoked the alleged "need to comply with international commitments" (Bermejo and Agustina Sanllehí 2012: p. 460). However this model of responsibility was not mandatory (Mata Barranco 2015: pp. 126 and 129), because international agreements normally only require "effective, proportionate and dissuasive" sanctions, that is to say, administrative sanctions, security measures and other legal consequences other than penalties in the strict sense of the term were enough (Silva Sánchez 2010a: p. 3).

In addition, managers and executives who have not adopted an effective compliance program will be held liable together with the company (Díaz-Maroto y Villarejo 2011: p. 460), given that now all act "as guarantors of the non-commission of money laundering offenses in their organization, in other words, as police officers" (Silva Sánchez 2010b: p. 9). and in case of non-cooperation the Damocles sword hangs over them for a money-laundering penalty (Arzt,Weber, Heinrich and Hilgendorf 2014: §29).

Thus, the evaluation and monitoring by the obliged subject or legally bound party of the danger of money laundering with respect to its clients, through compliance programs (Bonatti Bonet 2017, Gómez Tomillo 2016, Nieto Martín 2015, Reyna Alfaro 2018), plays an important role in determining the criminal liability of legal persons (Bermejo and Agustina Sanllehí 2012: pp. 446 and 459-461). However, the mere existence of a protocol of good practices "will not be enough" (Rosal Blasco 2015: p. 1), in order "to mitigate or exclude the liability of a legal person or avoid the liability of certain individual obligors" (Díaz y García Conlledo 2013: p. 292), despite the fact that Organic Law 1/2015 introduces in a contradictory manner a new second (first condition) and fourth sections in article 31 bis of the Criminal Code that exempts from criminal liability legal entities that effectively adopt and execute a model of organization and management suitable or adequate for the prevention of crimes of the nature of the committed or for the significant reduction of the risk of their commission, because in the majority of cases the latter money laundering will prove the inefficiency of the model, its unsuitability or inadequacy to prevent it and that the danger of the commission of a criminal act has not been significantly reduced. Even when an interpretation in accordance with the principle of validity requires understanding suitability, adequacy or effectiveness in a relative sense, the exemption is condemned to "insignificant use" (González Cussac 2015: p. 189), demonstrated by the Italian experience. This is important to note here because the penal reform of 2015 literally reproduces a criticized Italian Legislative Decree of June 8, 2001; in the majority of cases, as in the country cited, the mitigating factor, provided for the "partial accreditation" will be resorted to, which of course cannot refer to an inadmissible alleviation of evidence, of the prevention systems, "skillfully combined with accordance" (González Cussac 2015: p.

189), which has the powerful stimulus of the fear to suffer closures of premises or suspension of activities that entail a much greater loss for the company.

Organic Law 1/2015 also contradicts itself in "the only novelty" (Borja Jiménez 2015: p. 279), that it incorporates to article 66 bis. The reform limits for legal persons, in the third paragraph of the second rule of the aforementioned article, to a maximum duration of two years the penalties in the crimes committed by those subject to the authority of the legal representatives, to those authorized to decide on behalf of the legal entity or those who have powers of organization and control, when the liability of the legal entity "derives from a breach of the duties of supervision, monitoring and control that is not of a serious nature". The truth is that the forgetful legislator of 2015 forgot that in the same reform the criterion of "due control", which was contained in article 31 bis, in the second paragraph of its first section, was modified by the "less demanding" (Fiscalía General del Estado 2016: pp. 20 and 59), formula "Serious breach ... of the duties of supervision, surveillance and control" of the current letter b) of 31 bis, following the recommendation made by the OECD to the Spanish authorities of "greater precision" in the "duty of control". Thus, Organic Law 1/2015 is incongruous (Blanco Cordero 2015: p. 1017), given the fact that it stops punishing, in accordance with letter b) of the first section of article 31 bis, the less serious and minor breaches of due control and at the same time, contradictorily, takes into account to limit the penalty, in the third paragraph of the second rule of article 66 bis, non-serious breaches of supervision, monitoring and control duties that are now atypical.

Last but not least, the second rule of article 66 bis refers to legal persons used "instrumentally for the commission of criminal offenses", which offers an authentic interpretation of instrumentalization, "that the legal activity of the legal entity is less relevant than its illegal activity", although the identical wording of the two letters b) of the second rule of article 66 bis raises problems. This poses problems, given the fact that the same hypothesis serves to overcome the two- and five-year term limit or allows the permanent imposition of sometimes coinciding certain penalties. The afore said legislative negligence must be resolved with "a systematic interpretation" and in accordance with the principle of validity that allows to distinguish "a greater intensity of the criminal instrumentalization of the legal person" (Borja Jiménez 2015: p. 280). Therefore for example if a tax consultancy firm is dedicated to the laundering of money something more than to its legal work the two year limit in the penalty of prohibition of carrying out activities could be exceeded. It would be possible to exceed the five year ceiling for this penalty if the company is much more engaged in money laundering than providing advice and it would be possible to impose the aforementioned prohibition on a permanent basis when "the company is almost exclusively dedicated to money-laundering" (Borja Jiménez 2015: p. 281).

In conclusion, the use of dummy corporations for money laundering is frequent, as is evidenced by the judgments of the Supreme Court of June 26, 2012 and February 4, 2015, which make reference to some fifteen companies, some domiciled in tax havens such as Belize, the Bahamas, the Virgin Islands, Panama, Liberia, Jersey or Liechtenstein, which concealed the ownership of a huge volume of properties "which are listed twenty-three pages of the ruling of the Court of first instance". Until recently the accessory consequences and the doctrine of piercing the corporate veil were sufficient. Said doctrine prohibits the prevalence of the created legal personality if fraud is committed or third parties are harmed, as is reflected in the Supreme Court judgments of March 2, 2016 and 5 December 2012, which confirmed the involvement of 14 companies -including four from Delaware that participated in three limited liability companies, a couple of companies

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domicilied in Gibraltar and two other companies domiciled in the United Kingdom- of a lawyer, whose assets were clearly and unjustifiably confused with the assets of the companies, to the payment of costs, fines and civil liabilities derived from their crimes of money laundering and against the Treasury, civil liability with regard to which, of course, there was no problem that it corresponded to legal persons, as noted in the judgment of the Supreme Court of April 9, 2012 (Abel Souto 2019).

2. New technologies and money laundering

According 6 Whereas of the *Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law* virtual currencies present "new risks and challenges from the perspective of combating money laundering and Directive 2018/1673 obliges member states to "ensure that those risks are addressed appropriately", but already years before *Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing* required "quick and continuous adaptations of the legal framework" (28 Whereas) to respond to threats of the use of new technologies in money laundering and *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing* insists on the "need to adapt to new threats" (6 Whereas) and extends the scope of Directive 2015/849 to "providers engaged in exchange services between virtual currencies and fiat currencies as well as custodian wallet providers" (8Whereas).

Money laundering is a "crime of globalization" (Levi 2012: p. 107). Its importance nowadays is transcendental because of the economic crisis we are suffering.

Indeed, it was noted that "an offense that has benefited most from the internet is money laundering" (Velasco San Martín 2012: p. 75), "generalised and radicalized" (Sandywell 2010: p. 46) by the new electronic media, with a "spectacular" (Pérez Estrada 2010: p. 306) development thanks to the potential provided via internet and electronic transfers (Fernández Teruelo 2011: pp. 231 and 234) for executing this crime (Abel Souto 2012a: pp. 1-45, 2012b: pp. 220-247, 2013a: pp. 266-284, 2013b: pp. 1-53, 2013c: pp. 1-7, 2014a: pp. 80-91).

The increasing use of new payment methods, such as transactions and movements of funds, resulted in an increase in the detection of cases of money laundering committed using telematic media (FATF 2010b: p. 7). These new technologies are appealing to money launderers mainly because of the anonymity (Mata Barranco 2010: p. 19, Miró Llinares 2011: pp. 12-13 and 25-26) provided, high marketability and usefulness of funds and global access to ATM network (FATF 2010b: p. 7). To these factors one should add: the

problems of persecution (Gless 2012: pp. 3-22), which requires new investigation methods that must maintain the delicate balance between security and fundamental rights (Pérez Estrada 2010: pp. 307, 309 and 311-317).

In any case, to avoid misuse of legal insufficiencies in new technologies by organized crime (Angelini and Gibson 2007: pp. 65-73), internet cannot be an "area outside the law" (Gless 2012: p. 22), but must be regulated (Gómez Tomillo 2006: p. 189).

Undoubtedly, the new payment systems facilitate money launderers´ criminal activity. These systems are better than cash for moving large sums of money, non-face to face business relationships favour the use of straw buyers and false identities, the absence of credit risk, as there is usually a prepaid, discourages service providers from obtaining a complete and accurate customer information, and the nature of the trade and the speed of transactions make it difficult to control property or freezing (FATF 2010b: p. 21).

However, the development of technologies, including the internet, has unquestionable advantages involved and even provides, through online resources, verification of identity or other duty of surveillance for the prevention of money laundering (The money laundering 2011: pp. 37-39 and 54). The new payment methods are the result of the need to both offer commercial alternatives to traditional financial services and to include everyone in the system irrespective of poor credit rating, age or residence in areas of low bank offer. These methods can also have a positive effect on the economy, given their efficiency in terms of speed of transactions, technological security, low costs compared to payment instruments based on paper, and accessibility, especially for prepaid cards and payment services with mobile phones, identified as a possible tool to integrate excluded individuals because of poverty (FATF 2010b: p. 12).

For example, a total of four million people in the United States receive Social Security benefits without actually being bank accounts holders. To reduce their dependence on cheques, which force translates in them spending between 50 and 60 dollars a month in check cashing, bill payment or sending money to their families, benefits were provided with prepaid cards with which could buy goods or get cash. Moreover, in 2009, the war displaced in Pakistan more than a million people, and their government distributed prepaid cards with a maximum value of 25,000 rupees, about $ 300, for the immediate assistance of 300,000 families. Similarly, in Afghanistan, the police salary is paid via mobile phones, so that policemen do not have to leave their job in order to collect their salary. This also reduces the possibility of corruption or bribery (FATF 2010b: pp. 12-13, 15 and 20).

In 1996, the Financial Action Task Force (FATF) was specifically concerned in the recommendation number 13 with new technologies and the danger they pose for potential money laundering by allowing the realization of huge transactions instantly from remote locations, while keeping the anonymity of the transgressor and without the involvement of traditional financial institutions. The absence of financial intermediation makes it difficult to identify customers and to keep a record of relevant information. In addition, traditional investigation techniques become ineffective or obsolete to new technologies: the problem of physical volume of money posed for launderers (Abel Souto 2013b: pp. 2-6, Vidales Rodríguez 2015: p. 16) —to the point of leaving the paper money because of slow movement— is minimized with "electronic money", its rapid mobility, especially on the internet, difficult to trace the funds transferred and the unusual volume of data to analyze make it almost impossible to detect any suspicious activity.

Please note that 38 years ago there was no internet. However, a decade and a half later the closure of the “European Union Bank” (Schudelaro 2006: pp. 47-72) was agreed in Antigua, the bank that became famous for being the first bank to operate through the

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internet and for advertising explicitly on the web that this was the right bank for tax evaders and money launderers (Blum et al. 1999: pp. 52-57, with reproduction of the advertisements that the "European Union Bank" made available in internet, Martin 1997: pp. 38-39). In 2012 nearly three-quarters of households in the European Union have internet access and over a third of the population makes banking online (Bruselas 2012: p. 1, Comisión 2012: p. 1). Today there are more than 4.5 billion internet users in the world.

Precisely for this reason the FATF developed, in October 2010, a report regarding the use of new payment methods for money laundering (Baldwin and Fletcher 2004: pp. 125-158) which focused on prepaid cards, payment services on the internet (Philippsohn 2001: pp. 485-490, Ping 2004: pp. 48-55, Yan et al. 2011: pp. 93-101), steady growth, and its misuse for the implementation of the so called "cyber laundering" (Filipkowski 2008: pp. 15-27) as well as on payments with mobile phones. Notably, with regard to his latter issue, it is estimated that 1,400,000,000 people used payments via mobile phones for their financial transactions in 2015 (FATF 2010b: p. 18).

Also the FATF has provided revised recommendations on February 16 2012, of which recommendation number 15 indicates that countries and financial institutions should identify and assess the risks for money laundering relating to new technologies, while recommendation number 16 discusses about electronic transfers and identifying both their originators as beneficiaries (FATF 2010b: p. 17).

In June 2014 the FATF produced another report on virtual currencies (FATF 2014: pp. 1-15), in June 2015 published a Guidance for a risk-based approach virtual currencies (FATF 2015a: pp. 1-46), in October 2018, the FATF modified recommendations 15 to clarify that it is applied to financial activities involving virtual assets and in June 2019 the FATF approved a interpretative note to recommendation 15 for virtual assets and virtual asset service providers obtain and summit required beneficiary information to conduct USD/EUR 1000 transactions (FATF 2019: pp. 4 and 55-56).

As for the detection and monitoring of transboundary movements of cash, and despite being one of the oldest techniques of money laundering, it still continues to increase its volume significantly (FATF 2010b: pp. 46-47). Thus, the study of the framework of the Mafia published by Varese criminal goods arrived in Italy by a large network of individuals who traveled from Russia with cash (Varese 2012: p. 242). There are also new "money mules" recruited by email with the excuse of having an opportunities to work at home through internet. Sometimes the only payment they receive is criminal prosecution for money laundering (Clough 2010: pp. 187-188).

In addition, the Financial Action Task Force urges countries to ensure that their authorities impede or restrict the movement of cash which is potentially related to money laundering (FATF 2012: pp. 25 and 99-102) and the United Nations Convention against corruption provides that "States Parties shall consider implementing feasible measures to

detect and monitor the movement of cash… across their borders", but "without impeding in any way the movement of legitimate capital".

It has been said that the cash is the common medium of exchange in criminal transactions (Jurado and García 2011: p. 172). In similar vein, the Spanish government, having more closely in mind its tax collection purposes, approved in 2012 a bill to combat tax fraud. The government limited to 2,500 euros cash payments (Ley 7/2012, article 7) and on 2017 the Spanish government wanted to limit cash payments to 1,000 euros. So also France and Italy, and the Indian government banned on 2016 money notes of 500 and 1,000 rupees.

However, in order to escape the Charybdis of paper money we will find the Scylla of electronic money, because new payment technologies are not without risks that may thwart prevention and repression of money laundering (Abel Souto 2012a: pp. 1-45, 2013a: pp. 266-284, 2016c: pp. 345-353, González Cussac and Cuerda Arnau 2013: pp. 1-540).

Also with COVID-19 the use of cash is avoided and electronic means of payment are preferred, to reduce the possible contagion through physical contact with money. In the same sense, the aforementioned preventive measure of money laundering has an impact, which even intends to eliminate cash., but behind the apparent dogma of the criminogenic character of cash hides a program that exceeds the fight against crime, further marginalizing those who earn less and allows control of the private sphere (Pieth 1992: p. 27).

Last but not least, COVID-19 has also affected the total control of the population through mobile phones, to monitor the prohibitions of movement or approach, a total control that is also intended to be used in money laundering investigations to achieve greater efficiency. However, that total control can lead us to the world of Orwellian telescreens, to a future, which Orwell described in his *Nineteen Eighty-Four* work, of "a boot stamping on a human face – for ever."

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Cosa Nostra: a historical and sociological analysis of the Mafia organization

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Abstract

The study focuses on two key dimensions: the historical and sociological aspects of the Mafia, examining in detail the evolution from an "old Mafia" to a "new Mafia" and identifying key distinctions between Cosa Nostra and other criminals. The organization of Cosa Nostra is analysed, breaking down key elements such as the organization's goals, internal roles, the recruitment process, the steps to officially become a mafioso, and the rules that govern Cosa Nostra's operations. This paper also explores the meaning and importance of Mafia language as a communication tool within the organization. The main objective of this paper is to provide an in-depth understanding of the Mafia as a complex phenomenon by analysing the historical context and contextualizing its sociological evolution. Detailed analysis of organizational aspects, rules and language helps shed light on the inner workings of Cosa Nostra, providing a solid basis for understanding this unique criminal phenomenon. It is intended to contribute to the existing literature on the subject, offering new perspectives and insights useful for future studies and for the formulation of strategies for countering and preventing.

Keywords: mafia; crime; criminal organization; illegal behavior.

1. Introduction

"Mafiosi" were first mentioned in 1862-63. The mobster presents himself as a guardian of the weak, the wretched, and resorts to violence to oppose the power of the rich. What

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makes the mafioso such is a set of values and beliefs that distinguish his way of thinking, living and acting. The aspiring mafioso when he joins Cosa Nostra abandons his most authentic feelings, abandons his old friends, old relationships; from initiation onward only other "men of honour" will count. Cosa Nostra is an organization that pursues its own objectives, which may be enrichment and extortion in order to impose authority as opposed to that of the state. The "architecture" of Cosa Nostra reflects that of the family and re-proposes its objectives. The basic member of the "family" is the man of honour or soldier who performs an important function within the "family," he, in fact, by his actions tends to increase its power. The personality characteristics that an individual must possess based on which Mafia selection takes place represent the stereotypical Sicilian male.
The rite of affiliation represents the moment when the affiliate makes explicit his or her consent to join Cosa Nostra, its objectives and the means by which to pursue them. As in any organization, Cosa Nostra also has its rules, but these are not written anywhere, because they are inscribed in the mind during the long teaching process to which the future man of honour was subjected in the family. The actions of mafiosi highlight a deviation from social norms; the gangster Mafia reveals itself to be a state within the state. Mafiosi were first mentioned in 1862-63, in a highly successful popular comedy entitled precisely "I mafiusi di la Vicaria," and set in 1854 among the camorrist inmates of the Palermo prison. The Mafia has been seen as a mirror of traditional society, with a focus on political, economic, or more often socio-cultural factors; as an enterprise or type of criminal industry; as a more or less centralized secret organization; as a legal system parallel to that of the state, that is, as an anti-state. Regarding the old Mafia, most authors see it as a reaction to the baronage of the wretched, the weak and opposed to the overpowering of the barons, the lords. In reference to the new Mafia, it is appropriate to ask whether baronage or, rather, the spirit of baronage has faded. In Sicily, Mafia violence arises from deep feelings of powerlessness, it develops as a reaction to passivity and an attempt to react to powerlessness; this attempt is carried out in destructive ways. The Mafia obtains solidarity, even today, from the masses of the wretched, the segregated groups, who have a deep distrust of the state; the crisis of structures, the social marginalism that characterize some institutions favour delinquent associations, forms of violence at the individual or group level. If the ancient Mafia had a mediating function between social classes, the new Mafia presents itself as a control of power, indeed a struggle for power for the exclusive profit of the mobsters, who, adapting to the industrial economy, resort to new methods and pursue new ends. The new Mafia no longer protects the wretched, it abandons the mediating functions of the old Mafia; the new protégés are industrialists, politicians, singers, actors, directors of film or record companies, it penetrates sports circles to the point of controlling and deciding on all sorts of competitions or sport events (Bonanno 1985).

1. What distinguishes Cosa Nostra from other criminals and why we speak of "organization"

Let us try to highlight what is the core of Mafia sentiment, what is the core of values that makes the Mafioso a category on its own that distinguishes it from other criminals, characterizing it as being part of a criminal elite springing from ancient cultural roots that are purely and entirely Sicilian.

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1. *family context*: it has been repeatedly stated that it is the family and in particular the mother figure who is the repository of the mafioso's reference values. The cultural universe of reference is an all-male universe, where being mafioso means first and foremost being a man, not having feelings, being strong, courageous, feeling superior to others; despising the feminine, feelings, weakness, homosexuality (Lo Verso and Federico 1993). The Mafia apprentice, if he comes from a historically Mafia family, sweet there is already a "man of honour," will copy his attitudes and deeds, will feel proud to have been chosen amongst all others for his characteristics of courage and reliability, to be part of this criminal elite that is Cosa Nostra. The would-be mafioso will look up to the exploits of his father or other figurehead, show courage and callousness from an early age, or grow confident in the affection and silent respect of Mafia women;
2. *social context*: the aspiring mafioso, upon joining Cosa Nostra, renounces his most authentic feelings and abandons old friendships and relationships. From initiation onwards, only "men of honour" and emotions that conform to traditional practices passed down for decades by the organization will be relevant. This marks the beginning of a double life for the "man of honour", based on a two-faced morality. By maintaining sober behaviour and low visibility, with an appearance of legitimate activity and a well-structured family, the "man of honour" preserves his social cover. A different, but increasingly frequent, discussion concerns those coming from common crime who aspire to a leap in quality, trying to become part of Cosa Nostra. Perhaps this last development, the recourse to subjects from outside the family traditions of Cosa Nostra, may represent a sign of weakness of the organization, which needs soldiers willing to do anything and who are in a condition of psychological and moral subjection to the boss, who is increasingly being mythologized (Brancato 1986);
3. *the interpersonal context*: the aspiring mafioso when he joins Cosa Nostra abandons his most authentic feelings, abandons his old friends, old relationships; from initiation onward only the other "men of honour" count, the feelings and practices admitted by the organization according to traditional patterns handed down for decades. With initiation begins for the "man of honour" a double life that is based on a double morality. The man of honour will keep sober behaviour, will be inconspicuous, will have a semblance of legitimate work, and will have a well-structured family. Cosa Nostra does not allow stable extramarital relationships that can crack its monolithic image.
The man of honour generally regards women outside the group as "prostitutes," with whom one can have sexual relations but not even stable romantic relationships. Only the mother and wife are worthy of the highest consideration, in addition to the regular wives of leaders and other associates. The community of honourable men appreciates the man who boasts multiple sexual relationships with women, as this is confirmation that he is a true man capable of self-assertion without being overwhelmed by feelings. Sex and ritual

eating, almost like modern agape, often serve in Cosa Nostra to strengthen blood ties. Conviviality represents a crucial moment to test the loyalty of guests, and it is no coincidence that during the Mafia war many ferocious executions occurred through the deception of an invitation to share a meal. On these convivial occasions, women are categorically excluded. (Carli 1981). When a justice collaborator is asked about the meaning of being simultaneously religious and criminal, he usually replies that he has received all the sacraments, from baptism to marriage, and that he has shown respect towards the Church and priests. As a mafioso, he never perceived the actions carried out as negative, as they were considered in line with superior morality, almost a sort of reason of state. The mafioso lives aware of the constant presence of death; every mistake can be punished by death and even the suspicion of betrayal can lead to the same fate. The mafioso maintains an intimate relationship with death, having the ability to impose it with apparent ease. He himself with extreme ease imposes it; he himself with equal extreme ease can suffer it. Often the suspected man of honour is faced with a dilemma: to respond or not to respond to his boss's summons. To such meetings, one must go unarmed because it would be a grave offense to be discovered armed, but it may also happen that one never returns from such meetings. Equally serious, on the other hand, would be not to respond to such a summons, which could in theory be only clarifying, because it would mean confirming one's betrayal (Cosarrubea and Blandano 1991). The term Mafia implies a polymorphous phenomenon, with many faces, affecting different areas of collective life, especially the economy and politics, but also the everyday way of life. If Mafia is, therefore, a generic term indicating a complex phenomen generated by a certain way of thinking and being, Cosa Nostra designates the organization of men of honour, a formal organization that pursues its own goals with its own methods, the extreme realization of this way of thinking and being. The existence of a formal Mafia organization was acquired by overcoming, over time, the many resistances from the institutional culture that denied its existence. The architecture of Cosa Nostra was reconstructed thanks to the revelations of several collaborators and the work of judges and investigators who worked for a long time in total isolation. For a time, the phenomenon was denied, and once it could no longer be denied, the formal aspect of it was denied, even though there was no lack of indicators of such an existence even through the voices of those who considered it from this point of view (Cinà 1995). According to Carli and Paniccia, organization is a social structure characterized by a system of defined i.e. expected roles, in a certain sense independently of the individuals who assume them and specific cultural mechanisms, and which has transformation as its goal (Carli and Paniccia 1981). The definition suggests the existence of rationality as a general characteristic of organizations, rationality of purposes, rationality of means, rules and ways to achieve them; and, finally, as an implicit result, rationality of the entire organizational structure (Kaneklin and Manoukian 1990). Rationality is a common feature of all organizations, as is the consensus they receive from those who join them; alongside these common features, each organization, being, in fact, characterized by its own roles and culture. Rationality refers to the mental set-up of awareness of those who adhere to an organization of which they share, rationally in fact, its goals and means to achieve them, while consensus concerns the nature of the bond that is established between those who adhere to the organization and the organization itself. Membership is based on sharing the organization's objectives and never on coercion, meaning that no one can be forced to join an organization without sharing its objectives and the means of achieving them (Correnti 1987).

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2. The objectives and roles within Cosa Nostra

Cosa Nostra is an organization that pursues its own objectives, which may be enrichment and extortion to impose authority as opposed to that of the state. Behind these goals it is possible to identify the theme of stuff and power. The obsession with stuff and power creates the conditions for the organizational functioning of Cosa Nostra, particularly with regards to goals and the means to achieve them. The proper functioning of an organization depends on its ability to achieve the goals it sets for itself; this poses Cosa Nostra with the problem of change, because this depends on the achievement of goals, which is in turn connected to the transformations taking place in the environment over which it operates. Cosa Nostra, in fact, like any other organization, has a problem of internal credibility, linked to the achievement of objectives, which can be seriously compromised by failures; this, falling back on the organization itself, eventually undermines its functioning (D'Avanzano 1996). It is necessary to consider that the successes of the State push this organization to reorganize itself and it has, in the past, demonstrated an undoubted transformative capacity so much so that one can consider this very capacity a distinguishing feature of it from other criminal organizations. There is not a new and an old Mafia, the Mafia undergoes continuous changes to cope with the new demands that come to it from the reality that surrounds it , Cosa Nostra tirelessly adapts its methods to new times, making them gradually more sophisticated, it is always new because its means, its strategies are always functional to the historical moment in which it acts, to achieve such a degree of functionality, it undergoes continuous organizational changes that provide for the management changes that occur with the typical mechanisms of that organization: murder (Falcone and Padovani 1991). Cosa Nostra 's architecture reflects that of the family and re-proposes its objectives. The roles envisaged in it are the familiar male ones, with the exclusion of the maternal role, which is entirely projected onto the organization itself. The basic cell of the organization is called, precisely, the "family," consisting of a certain number of men of honour, a number that varies from 50 to 300 members, headed by a head of the family. The "family" operates in a well-defined territory over which it attempts to extend its power. Within this territory all activities within it are within the knowledge of the "family" and can take place only with the consent of the head of the "family." The basic member of the "family" is the man of honour or soldier who

performs an important function within the "family," he, in fact, by his actions tends to increase its power. Membership in a powerful "family" is a reassuring element for those who belong to it. The head "family," just as it happens in any family, protects its interests, both regarding the activities that take place in the territory of competence, and with regard to the set of families, which constitute Cosa Nostra (Di Forti 1971). The “Capo Famiglia” is elected from among the men of honour belonging to a particular "family." Election is by secret ballot, almost always by unanimous vote, after contacts have taken place among the men of honour to sound out who among them is best able to represent the interests of the "family." The “Capo Famiglia” directly chooses the deputy “Capo Famiglia” and his advisers. Between the “Capo Famiglia” and the man of honour is the “capo decina”, so called because he has ten soldiers under his orders. The head of the dozen can have contact with the head "family." The "family" chiefs in the same province elect in turn the provincial representative, the various provincial representatives are part of the regional commission, which is the governing body of the entire organization. The functionality of the Mafia organization depends on its centralized character; in fact, the more centralized and clandestine an organization is, the more terrible it is, because it has the means to effectively control the market and maintain order in its territory, with a very short interval between decision-making and entry into action (Falcone and Padovani 1991).

3. Recruitment

The personality characteristics that an individual must possess based on which Mafia selection takes place represent the stereotypical Sicilian male. Antonino Calderone argues that every man of honour feels that way and feels superior to any other thug (Arlacchi 1992). The mafioso if he has to kill, he kills without question and without asking any questions. Without letting out uncertainties and especially without having any. Without manifesting compassion (Falcone and Padovani 1991).
The recruitment of men of honour is not random but is done by following standardized procedures with strict selective criteria. Not everyone can join Cosa Nostra. This university of crime requires one to be valiant, capable of violent action and, therefore, to know how to kill. Knowing how to kill is a necessary but not sufficient condition. Belonging to a Mafia environment, relationships with men of honour constitute in the initial stage a great advantage (Falcone and Padovani 1991). The recruitment procedure involves an observation, a caring for the chosen individual, a teaching of him through a pedagogical mode that can be described as the passing on of notions from the older to the younger. One becomes a man of honour by family inheritance, though not by simple succession. Succession would be a risk because unworthy men, in the sense of unsuitable, for the needs of Cosa Nostra could be affiliated. For this reason, Calderone argues, there is an observation, a study of the best young men by the oldest (Arlacchi 1992). The chosen one at first does not know the intentions of the Mafia "family" that has become aware of him, however, and that has expectations of him. In the life of the boy living in a Mafia environment there is a moment when he begins to understand that his father, brothers, uncles are part of an inner circle. At this precise moment belonging to that group for the

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boy is his only aspiration. There is a strong attraction to an idealized world in which the mobster is seen as a kind of authority, a person to whom everyone turns to ask favours, to solve problems (Arlacchi 1992). The family system of the mafiosi appears closed or even impermeable to external crossings, in it they have no ignition other than information from the family members themselves. In this sense it is a cultural system that informs itself. The church is not only a place to pray, but also a place of aggregation, a place to get acquainted and learn relational models different from those of the family, in other words, a place deputed to the teaching of values and ethical principles that may be dissonant with those proposed in the family.
The rite of affiliation represents the moment when the affiliate makes explicit his consent to join Cosa Nostra, its objectives and how to pursue them. The oath he is about to take will commit him for life (Falcone and Padovani, 1991). The sequence of the ceremony is as follows: the candidate is led to a secluded place where the ritual will take place. At the chosen location is the “Capo Famiglia” and other men of honour who are often lined up on one side. The presence of the “Capo Famiglia” and the other men of honour sanctions the re-appointment of the one about to be sworn in. The “Capo Famiglia” explains to the future man of honour what the Nostra is and what rules govern it. He warns him that there is still time to renounce affiliation. The candidate reaffirms his willingness to affiliate. In reality, renunciation would coincide with a sure death sentence. The “Capo Famiglia” invites the future man of honour to choose a godfather, a figure who will vouch for him and guarantee him in front of the entire "family." Then the oath-taking ceremony begins. The future man of honour is asked which hand he shoots with; on the index finger of that hand an incision is made from which a few drops of blood are drawn. At the same time the “Capo Famiglia” in a stern and threatening tone enjoins him never to betray, adding that one enters Cosa Nostra with blood and with blood one leaves. With the drops of blood, a sacred image is daubed, usually that of Our Lady of the Annunciation whose anniversary falls on March 25. The image is burned. The neophyte, trying not to let the fire go out, passes from one hand to the other the burning image and in the process swears never to betray Cosa Nostra deserving in case of betrayal to burn like the image. The rite of affiliation is concluded (Di Forti 1982).

4. Cosa Nostra's rules and its language

As in any organization, Cosa Nostra also has its rules, but they are not written anywhere, because they are inscribed in the mind during the long teaching process to which the future man of honour was subjected in the family. The rules of Cosa Nostra represent the exasperation of typically Sicilian values and behaviour (Falcone and Padovani 1991),

reflecting in an exaggerated way Mafia thinking; they are functional to the existence of the Mafia family. The guiding rules that apply in Cosa Nostra are those of loyalty and obedience; the others descend from these (Arlacchi 1992). If the interest of the Mafia family is at stake, feelings toward relatives, friends take a back seat. There are implicit rules, that is, which will never be stated, but which are part of the mafioso's psychic heritage. The mafioso must show that he is never afraid (Falcone and Padovani., 1991). It is during the oath-taking ritual that the future man of honour is reminded of the rules of Cosa Nostra. Fundamental is that of obedience. During the rite of affiliation, however, the following rules are reminded: do not covet the woman of other men of honour; do not exploit prostitution; do not kill other men of honour, except in cases of absolute necessity; avoid denunciation to the police; do not get into conflict with other men of honour; always demonstrate serious and correct behaviour; maintain absolute silence with outsiders about Cosa Nostra; and never introduce oneself to other men of honour alone. The rule requires that another man of honour, known to those who are to make contact, vouch for their respective affiliation with Cosa Nostra by uttering the words: this man is the same. Another rule, finally, is to always tell the truth. When this does not happen, it means that the man of honour either does not respect his interlocutor or is himself not respected. In either case one of the two will have to die. In the Mafia organization the certainty of punishment is known. Every man of honour knows that if he violates the rules punishment is inevitable and that the punishment will be carried out. Punishment is applied in the same way both within the organization, in other words against the men of honour, and outside, in other words to the people who are the objects of Mafia blackmail, or even between competing Mafia families. On the external side, there is a gradualness of punishment that is inflicted on those who want to escape paying the "Pizzo" necessary to obtain Mafia protection. In these cases, the punishment initially has the function of a signal by which one communicates that one is serious, then in a continuous crescendo one arrives at the final punishment which consists in the killing of those who have been warned but did not understand the warning (Di Maria et al. 1989).

Most of the words, particularly the words Mafia and omertà, are symbolic words. The origin of the word Mafia comes from the Arabic "mu'afah," composed of the root mu' which means health, safety, vigour, strength, courage, and the verb "afah," which means to protect, safeguard, preserve hence the action noun mu'afah, which stands for man's ability to protect the helpless from the stronger. Omertà does not mean humility as it might seem at first glance, but omertà, the quality of being "omu" meaning serious, firm, strong. Omertà is a feeling all its own that consists of making oneself independent of social laws, of settling all disputes either by force, or, at most, by the arbitrariness of the most powerful representants. The foundation of omertà is silence. For the mafiosi, the word omertà indicates a reaction to passivity to the law, to social justice. This word reveals the bond that holds the members of the Mafia brotherhood together: one must know how to remain silent and resolve issues of honour internally, whoever speaks is a traitor. In this way, for mafiosi, the word omertà indicates man's ability to keep a secret, to keep it hidden from the law, from others, from representatives of paternal authority. The mafioso who does not abide by the code of silence is expelled from the association and must be killed. On the contrary, for the representatives of official society, for those who are not members of the Mafia, silence is a sign of cowardice: anyone who remains silent to social justice on the actions of the Mafia is considered an individual incapable of reacting; silence for non-Mafia members is an indication of passivity. Thus, the word silence also turns out to be a symbolic word and is characterized by projective ambiguity

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(Di Maria et al. 1995). The words Mafia and silence still reveal the characteristics of symbolic words today, maintaining their original magical force even in the recent developments of Mafia associations. For each of these two words, two clusters of meanings can be distinguished, one of which groups together responses that indicate positive qualities and express the spirit of the Mafia, the other is made up of responses that indicate negative qualities and express the condemnation of the Mafia by justice social. The analysis of the language of the Mafia requires an exploratory procedure, a deciphering technique to reach the deep roots of the Mafia, the ghostly life of Mafia associations. The language of the Mafia, which allows communication between mafiosi, is a symbolic language, of a projective ambiguity and is understood intuitively and unconsciously internally, but must be deciphered by others, by non-mafiosi. This language is not made up only of words, on the contrary, in conversations between mafiosi the pauses, glances, gestures are rich in meaning; the agreement can be communicated to the other with a grimace, the pact with a hug which indicates not only the agreement, but also solidarity between the members of a society of brothers. Words, being symbolic words, are rich in meaning; a word can indicate various things, but it expresses the spirit of the Mafia and cannot be misunderstood by the mafiosi. The Mafia boss sometimes receives a nickname, which characterizes his personality. The mafiosi speak to each other in Sicilian dialect, nevertheless their language acquires characteristics for which it can be defined as the language of the Mafia, as it indicates the things, the secrets of the Mafia and by others, to be understood, it must be deciphered (Di Maria and Lavanco1992).

5. Conclusions

In conclusion, the in-depth analysis conducted on the Mafia, examining both the historical and sociological aspects, has allowed us to shed light on a complex and constantly evolving criminal reality. The distinction between the old Mafia and the new Mafia highlighted significant changes in the criminal context, with new challenges and emerging dynamics. Through the in-depth study of Cosa Nostra, an intricate organizational structure emerged, characterized by precise objectives, well-defined roles, a consolidated recruitment system and stringent rules.

Understanding the objectives of Cosa Nostra provided a clear vision of the motivations underlying the criminal activities, while the analysis of the roles within the organization highlighted the complexity of the internal dynamics. The recruitment, described in detail, revealed the strategies used to increase one's power and influence the surrounding context.

The procedure to officially become a mafiosi appeared as an intricate and symbolic ritual, which underlines the secret and elite nature of this criminal organization.
The Cosa Nostra rules, emphasized throughout the analysis, highlighted rigorous compliance with the Mafia code and severe consequences for those who break it. Furthermore, Mafia language has proven to be a fundamental element in internal communication, helping to consolidate identity and cohesion within the organization.
In summary, the Mafia represents a complex phenomenon that goes beyond common crime, with deep historical roots and significant sociological implications. The in-depth study into the details of Cosa Nostra has allowed us to outline a complete picture of this criminal organization, highlighting its darkest and most intricate aspects. Understanding these dynamics is crucial for developing effective combating and prevention strategies, seeking to preserve the safety and integrity of society.

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