STUDIES OF ORGANIZED CRIME

The Organized Crime Community

Essays in Honor of Alan A. Block

Edited by

Frank Bovenkerk and Michael Levi

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Volume 6

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Edited by

Frank Bovenkerk
Professor of Criminology
University of Utrecht
Utrecht, The Netherlands

and

Michael Levi
Professor of Criminology
Cardiff University
Cardiff, The United Kingdom

Editors:
Frank Bovenkerk
Willem Pompe Institute
16 Janskerkhof
University of Utrecht
Utrecht, The Netherlands 3512 BM
f.bovenkerk@law.uu.nl

Michael Levi
School of Social Sciences
King Edward VII Ave., Glamorgan Building
Cardiff University
Cardiff, The United Kingdom CF10 3WT
Levi@Cardiff.ac.uk

Library of Congress Control Number: 2006931772

ISBN-10: 0-387-39019-7
ISBN-13: 978-0387-39019-2
e-ISBN-10: 0-387-39020-0
e-ISBN-13: 978-0387-39020-8

Printed on acid-free paper

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Contributors

Frank Bovenkerk is cultural anthropologist and professor of criminology at the Willem Pompe Institute for Criminal Law and Criminology at the University of Utrecht in The Netherlands. His main fields of research are organized crime, discrimination and crime and ethnicity. He published on the Turkish Mafia in 1998 (together with Yücel Yesilgöz) and on the personality traits of organized crime bosses in 2000. His current interest is moving toward the field of cultural criminology.

Chrisje Brants, originally a journalist, is a lawyer and a criminologist, and professor of criminal law and criminal procedure at the Willem Pompe Institute for Criminal law and Criminology, University of Utrecht, The Netherlands, where she is head of department. Her main fields of research are comparative (international) criminal law and criminology, and crime, law and the media. Her most recent publication in English: "Gold collar crime The peculiar complexities and ambiguities of war crimes, crimes against humanity and genocide" in: *The International Handbook of White-Collar and Corporate Crime*, with Gilbert Geis (Springer, 2006).

Maarten van Dijck is senior researcher at the University of Tilburg. He obtained his doctorate with a thesis on tolleration in the Dutch legal system. He is in charge of the EU project Assessing Organised Crime in Europe.

Petrus C. van Duyne is professor of empirical penal science at the University of Tilburg. He is psychologist and jurist and has carried out research on fraud, economic and organised crime, including money-laundering and corruption. He coordinates the Colloquia on Cross-border Crime in Europe and is the coordinator of the EU-project Assessing Organised Crime in Europe.

Gilbert Geis is professor emeritus, Department of Criminology, Law and Society, University of California, Irvine. He is a former president of the American Society of Criminology and recipient of the Society's Edwin H. Sutherland Award for outstanding research. His most recent books are Criminal Justice and Moral Issues, with Robert Meier (Roxbury, 2006) and White-Collar and Corporate Crime (Prentice Hall, 2006).

Dienke Hondius is an associate professor at the History Faculty of Vrije Universiteit Amsterdam and a staff member at the Anne Frank House, Amsterdam. She has written about anti-Semitism around the time of the Liberation, the treatment of Jewish survivors upon their return, and race and racism in Dutch society.

Michael Levi has been Professor of Criminology at Cardiff University, Wales, UK since 1991, and has been researching organised and white-collar crime issues since 1972. He has degrees from Oxford, Cambridge and Southampton Universities. His books include Drugs and Money (with Petrus van Duyne), 2005; Fraud: Organization, Motivation and Control I and II,1999; Money-Laundering in the UK (with Michael Gold), 1994; The Investigation, Prosecution, and Trial of Serious Fraud, 1993; Regulating Fraud: White-Collar Crime and the Criminal Process, 1987; and The Phantom Capitalists: the Organisation and Control of Long-Firm Fraud, 1981, to be republished by Ashgate in 2006 with a new introduction. He is currently completing White-Collar Crime and its Victims and White-Collar Crime in the Media for Clarendon Press, Oxford, and a variety of research studies on serious and organised crime.

Don Liddick received his PhD in Administration of Justice from the Pennsylvania State University, and is presently the program chair of the criminal justice department at Penn State-Fayette. He has written numerous books and articles in the area of organized crime and political corruption. His most recent book on environmental and animal rights terrorism will be published by Praeger in Fall 2006.

Tom Naylor is Professor of Economics at McGill University in Montreal. His main fields of research are black markets, smuggling and international financial crime. He is author of eight books of which the best known are: Hot Money and the Politics of Debt; Economic Warfare: Embargoes, Sanctions Busting and State-Sponsored Crime; and Wages of
Crime: Black Markets, Illegal Finance and the Underworld Economy. His latest book, Satanic Purses: Money, Myth and Misinformation in the War on Terror, is slated for publication in the autumn of 2006.

Henry N. Pontell is professor of criminology, law and society and of sociology at the University of California, Irvine. He is a former vice-president of the American Society of Criminology, and recipient of the Albert J. Reiss, Jr. Distinguished Scholarship Award from the American Sociological Association. His most recent books are *Profit Without Honor: White-Collar Crime and the Looting of America*, with Stephen Rosoff and Robert Tillman (Prentice Hall, 2006) and *The International Handbook of White-Collar and Corporate Crime*, with Gilbert Geis (Springer, 2006).

Francisco Thoumi holds a B.A. from the Universidad de Los Andes and his Ph.D. at the University of Minnesota (Economics). He is professor of Economics

and Director of the Research and Monitoring Center on Drugs and Crime, Universidad del Rosario, Bogota and author of Political Economy and Illegal Drugs in Colombia, Lynne Rienner, 1995 and Illegal Drugs, Economy and Society in the Andes, The Johns Hopkins University Press, 2003. He is member of the Board of Directors of the Colombian Economic Sciences Academy.

Introduction

This volume is a commemoration of Alan Block's contribution to the academic life of the communities that he has inhabited. Although these revolve principally around organized crime and its organisation – hence our title, *the Organised Crime Community* – they involve different disciplines: history, political ideology, Jewish studies, and, to a lesser extent, feminist scholarship (in relation to women's role in organised crime). A significant editorial contribution resides in his long 17 year editorship of *Crime, Law and Social Change*, following Bill Chambliss and Stan Cohen in that role: we are delighted that its publisher, Springer, has chosen to publish this volume. Each year for three decades, he has been a tireless Europhile, bringing generations of students – totalling about 1,000 – over to Europe on summer trips to explore the complexities of European responses to crime for gain, and we hope that this has brought greater mutual understanding of comparative criminology. He started in Sicily – an obvious place for a criminologist interested in organised crime to start an excursion career – where he visited the Center of the famous reformer Danilo Dolci. After that Alan went to Denmark, then to The Netherlands, Germany and back to Italy. However the Netherlands was his primary venue for student courses in Europe, supplementing his long stays at the University of Delaware and Pennsylvania State University.

Alan's primary work and his principal claim to academic posterity lies in his use of historical ethnography and investigative social research, combining documentary analysis with oral history. His interviewees included retired people, insider agency informants, and current practitioners from intelligence, law enforcement and revenue departments. The complex mosaics of lies, half truths and truths arising in such work are always provisional, seldom conclusive, but Alan tried to triangulate as best anyone could. This came through particularly well in his first book, *East Side West Side*, about gang homicides in New York, which he completed at Cardiff University while on an exchange scheme in 1977, when he and one of us (ML[1]) first

[1] In true Mafia tradition, his bankers had not transferred funds: Mike Levi lent him money, which as a man of honour, he repaid! On a less positive note, Frank Bovenkerk remembered the time when their lectures on Holland as a high crime country were amply confirmed when all their luggage was stolen from them at Schiphol Airport. So perhaps a cosmic balance was in operation.

met. He and Bill Chambliss (who founded *Crime, Law and Social Change* under its previous title *Contemporary Crises*) worked together on a valuable collection of essays entitled *Organizing Crime*, a verb/adverb that we have both found useful in our own work, emphasizing the active construction of crime with personnel and technical resources to hand, as contrasted with the almost parodied and usually static, hierarchical term 'organised crime' that has generated so much misunderstanding and disinformation in the academic and practitioner communities.

A second theme of Alan's work is a focus on 'history from below', following the great EP Thompson's work not just on the making of the English working class but on the criminalisation of common property. A third is Jewish studies, noting the neglected religious/ethnic affiliations of both male and female Jews to the organisation of crime, thereby complicating the stereotypical Italian American and Irish American (Catholic) image of organised crime. Finally, he will be remembered for what we consider to be his most original theoretical contribution: the loose merger of corporate interests, organised crime and political crime into what he termed 'the serious crime community'. Rather than seeing businesspeople, gangsters, politicians and unions as diametrically opposed, he saw them as forming overlapping interest coalitions which almost guaranteed failure in the 'War on Organised Crime'. Although he and others writing in this tradition may have overstated the degree of harmony between business, full-time criminals and politicians, it was and is important for people to look for unholy alliances if they are to understand the market economics and politics of crime and crime control.

These different strands are well represented by the contributions to this volume which, with the exception of Alan's own classic study of Iran Contra, which represents the best of his own work and which still has a contemporary resonance, were specially written for this *Festschrift*. We have selected as contributors people who have all written for the journal under Alan's editorship.

The contributions of two former Ph.D. students of Alan's followed his own work to the closest degree. Jeff McIllwain and Clinto Leisz write about the American history of organized crime. Don Liddick's chapter best represents his idea of the international serious crime community. Henry Pontell and Gilbert Geis follow Block's example of looking into new venues for serious criminals to operate, in this case identity fraud. Block's travelling mode of doing teaching and writing has brought him an especially large personal network in The Netherlands, and this is represented by four contributions. Dienke Hondius, who has thought Alan's class in Holocaust studies in Amsterdam, has interviewed older Dutch contemporaries about what they remember about the deportation of the Jews. Petrus van Duyne and Maarten van Dijck critically deconstruct the use and misuse of the term 'organized crime'. Whether or not s/he wishes to do so, a student of organized crime will eventually run into the problems arising from (the criminalization of) drugs. Block wrote extensively on this and in this volume, the theme is taken up by Francisco Thoumi on Afghanistan and Colombia, and by Frank Bovenkerk on the Netherlands. The political economy of the control over the money trail is a theme addressed by Tom Naylor, who has previously contributed so much work on the

underground economy to the journal, and by Mike Levi who describes and seeks to account for the history of the anti money-laundering movement. The final chapter, by Chrisje Brants, deals with the significance of international justice and whether international criminal tribunals make a significant contribution in combating war criminals.

Frank Bovenkerk

Michael Levi

1 The Origins of IRAN-CONTRA: Lessons from the Durrani Affair

Alan A. Block

> "Besides, the overhead expenses of a trafficker in what is considered a fair way of business are enormous. There are always false birth, marriage and death certificates to be obtained and travelling expenses and bribes to pay quite apart from the cost of maintaining several identities. You have no idea of the cost of forged documents Mr. Latimer. . . . The point is that a trafficker needs plenty of capital. If he is known there are always plenty of people willing to provide it, but they expect fantastic dividends. It is better to have one's own capital."
>
> Eric Ambler, A Coffin For Dimitrios, 1939.

Introduction

For many interested in the contemporary history of the Iran-Contra affair, its origins appear to be a settled issue. Debate has moved to other topics such as whether or not Iran-Contra represented a chronic or episodic dysfunction in the processes of U.S. foreign policy; whether or not it signaled a profound and permanent change in the style of U.S. National Intelligence covert operations; and whether or not it marked the introduction of "privatized" covert activities and what that might mean in light of certain Constitutional and other legal principles. Academically speaking, Iran-Contra is increasingly in the preserve of scholars such as Yale's Harold Hongju Koh who points out, for example, the NSC "had taken on significant operational responsibilities" by 1974 that ultimately led to a swapping of roles with the CIA. This swap completed "an inversion of institutional responsibility that first began during the Vietnam era."[1] He adds amusingly that "[c]ongress no more designed the NSC to execute national security policy than it designed the Council of Economic Advisers to print the nation's money."[2]

I am of the opinion, however, that the origins of U.S. weapons sales to Iran are far from settled. Despite the various public bodies that investigated the affair and published their accounts and much of the fine and authoritative work by careful writers such as Theodore Draper,[3] there still seem to be certain consequential issues and individuals virtually unexplored. A close look at them and their activities pushes the weapons transactions with Iran sufficiently back in time to challenge the standard interpretations.

Standard Accounts

There is a standard view of when and why the U.S. decided to sell weapons to Iran. It was supposedly the path chosen to get Iran to lean on its Shiite surrogates in Lebanon who had kidnapped several Americans. The view is composed of two closely related scenarios which nonetheless merge into one generalized claim. The first was developed by President Reagan's Special Review Board chaired by Senator John Tower of Texas. Edmund Muskie and Brent Scowcroft were its other members. Officially established by the President on December 1, 1986, it was directed to produce a report examining "the proper role of the National Security Council staff in national security operations, including the arms transfers to Iran." The President gave the Board (called the Tower Commission), which had virtually no legal powers to investigate (it could not subpoena documents, compel testimony, grant immunity[4]) only a couple of months to complete its work. After approximately three months (it requested and received a few weeks extension), the Tower Commission produced its findings. I have supplemented them with material from the National Security Archive's chronology.

Both chronologies determined that the idea of clandestine sales of U.S. weapons to Iran originated in the summer of 1984 when international arms dealers including Adnan Khashoggi,[5] and most importantly Manuchehr Ghorbanifar a former Savak officer, desired to move the U.S. and Iran into an "arms relationship."[6] The question of precisely when Khashoggi and Ghorbanifar came together is unsettled, however. One version has Ghorbanifar, who lived in France (and still does), presenting his "bona fides" in a November 1984 meeting with American Intelligence operative and former CIA officer, Theodore Shackley, in Hamburg, West Germany. There Ghorbanifar claimed to represent the interests and desires of Iran's Prime Minister Hussein Mussavi. Confirmation of Ghorbanifar's influence for skeptics in American Intelligence was provided by the ex-head of Savak's counterespionage branch, former General Manucher Hashemi.[7]

The munitions men and their allies worked diligently on their plans and deals from the summer into the following year, although the Central Intelligence Agency did issue a warning to other government agencies, holding Ghorbanifar was a fabricator.[8] Ghorbanifar had a bit of an uphill fight to convince the Americans of both his sincerity and ability. He thus suggested several tests, for instance, trading captured (in Iraq) Soviet equipment for American TOW missiles, or arranging a cash ransom paid to Iran for the release of four Americans kidnaped in Lebanon including CIA Beirut station chief, William Buckley.[9]

At this point the evidence presented by the Tower Commission, and the National Security Archive, is somewhat vague on whether the weapons deal was approved by CIA director Bill Casey or still anxiously awaiting NSC authorization. One line suggests that through the winter and early spring of 1985, there was little movement in the Iran arms deal. But then, Lieutenant Colonel Oliver North, a U.S. Marine officer assigned to the National Security Council as Assistant Deputy Director for Political-Military Affairs, was given

documents and other material stating "that Shackley had contact with an Iranian [Ghorbanifar] who said he thought he could ransom Buckley."[10] Subsequently the deal was put into motion.

Another line holds that Casey and a former legal client of his, Roy Furmark, helped initiate important meetings between all the principals – Ghorbanifar, Khashoggi, Yaacov Nimrodi (arms dealer and former Israeli Defense Attache in Teheran), Amiran Nir (advisor to Israel's Prime Minister Shimon Peres on counter terrorism), Adolph Schwimmer (weapons merchant and a Special Advisor to Peres) – as early as January 1985.[11] The Israelis had a number of items on their agenda including, of course, making certain that Iran had enough munitions to continue, but not win, the war against Israel's foe, Iraq. Quite obviously, Israeli interests, as seen by Prime Minister Peres, Nimrodi, Nir, and Schwimmer, were best served by a prolongation of the Iran-Iraq war.

This second line which advocated an early CIA presence behind the entire affair, gained a stronger measure of credibility through the actions of Casey's man, Furmark who was also a business associate of Khashoggi's. In this line, Furmark appeared to have been responsible for bringing together Khashoggi and Ghorbanifar. According to Furmark's testimony before the Tower Commission, he met Ghorbanifar in January 1985 and then introduced him to Khashoggi a little later.[12] This, if it is accurate, puts Casey at the center of the conspiracy.

Nevertheless, whether inspired and directed (at arms length) by Casey of the CIA, or waiting in the wings for NSC approval which was soon enough on the way, the arms dealers' machinations came at a propitious moment for them. American National Security Council staffers had vainly, so far, looked for a way back into Iran, a method that would provide the U.S. with some leverage. Weapons were always the first and foremost consideration even though it was reported that an October 1984 study conducted at the highest national security levels on the issue of access to Iran through a resumption of weapons deals concluded that the U.S. had little to look forward to.[13] In fact, one year earlier, a National Security Council study called for "operations to limit arms" from third countries to Iran. This was part of a decided "tilt" toward Iraq likely stemming from its recent battle-field performance. The study noted "U.S. interests would not be served if Iraq were to collapse."[14]

Shortly after the study had percolated around, on January 23, 1984, the State Department placed Iran on its list of countries supporting international terrorism. Iraq, on the other hand, had been taken off the dreaded list in December 1982 and was almost immediately granted over $200 million in "credit guarantees to finance sales of U.S. farm products." Much later this would be understood as the start of a long-term massive illegal weapons deal paid for by U.S. taxpayers involving an Italian bank – Banca Nazionale del Lavoro – with a branch in Atlanta, Georgia.[15] This was the so-called BNL scandal which lightly brushed over Henry Kissinger and George Bush. In addition, the Administration encouraged certain Persian Gulf Arab countries to "increase financial support for Iraq," and in the early spring of 1984 sent Special Envoy Donald Rumsfeld to Baghdad to discuss improving bilateral relations with Iraq, paying special attention to a

proposed pipeline deal which involved several quite shady characters who were exceedingly close to CIA Director Casey.[16]

Lawrence E. Walsh was appointed Independent Counsel on December 19, 1986, to investigate the Iran-Contra scandal. In his *Final Report* released in January 1994, Walsh held the origins of "The Iran operation involved efforts in 1985 and 1986 to obtain the release of Americans held hostage in the Middle East through the sale of U.S. weapons to Iran, despite an embargo on such sales."[17] Walsh added the Iran "initiative, was actually a series of events" that began in the summer of 1985 and lasted through the following year. Supplying Iran was a joint effort between Israel and the U.S. Israel sent U.S. manufactured weapons to Iran three times in 1985. The initial shipment took place August 20. Walsh noted the 1985 shipments led to the release in September of that year of a single American hostage in Lebanon.[18]

Walsh also commented on several other issues relating to arms sales to Iran including Israel's desire for U.S. help in gathering intelligence on Iran, and an offer from Iran to purchase artillery shells from Israel. These issues were broached during a May 1985 meeting between Prime Minister Shimon Peres and Michael Ledeen who was a part-time consultant to the National Security Counsel. Ironically, one of the messages Ledeen gave to Peres dealt with America's desire for Israeli help in securing intelligence about Iran. Peres told Ledeen that Israel would do nothing about the artillery shells without U.S. approval. Ledeen reported the discussion to National Security Adviser Robert McFarlane.

According to Walsh there was also a third concern that surfaced in a Special National Intelligence Estimate in May 1985. Requested by CIA Director Casey, the Estimate dealt with a potential Soviet influence in Iran which had to be countered with "new approaches" that could include eliminating "restrictions on weapons sales to Iran."[19] Casey tried to elevate the Estimate into a National Security Decision Directive. In June 1985 the NSC drafted the document for McFarlane's consideration. On June 17 he sent it to Casey who endorsed it and to the Secretaries of State and Defense (George P. Schultz and Casper W. Weinberger) who opposed it.[20]

While there were other issues and considerations, it is clear that both the President's Special Review Board (John Tower, Edmund Muskie, Brent Scowcroft) and Independent Counsel Walsh agree the weapons deals with Iran were done in the hope of securing the release of American hostages. Independent Counsel Walsh returned to this theme in his 1997 memoir *Firewall: The Iran-Contra Conspiracy and Cover-up*. "Beginning in March 1984," he noted, "members of Hezbollah, a fundamentalist Shiite group sympathetic to the government of the Ayatollah Khomeini, kidnapped seven Americans – including William Buckley, the CIA chief of station – in Beirut, Lebanon." What Walsh sought to establish when it came to President Reagan was that he had indeed authorized the sale of arms to Iran in order to free the hostages, thus making a mockery of his oft-repeated statement of "no concessions to terrorists," and violating both the Arms Export Control Act and the National Security Act.[21] In the second paragraph of *Firewall* Walsh succinctly states his case: "Reagan was within range of impeachment for his secret authorization of the sale of American weapons to Iran in exchange for American hostages. . . . Moreover, breaking the cardinal rule of

covert operatives, he had begun to believe his own cover: He had persuaded himself that he had not been trading arms for hostages; he had merely tried to establish a friendly relationship with Iranian moderates."

By Happenstance

I came to this project quite by accident, the result of an interest in a former Assistant U.S. Attorney of some renown. This was E. Lawrence Barcella, Jr. who had been the lead prosecutor in the Orlando Letelier murder case in Washington, D. C., and subsequently served on the several prosecutions of Edwin Wilson, Jr., the former CIA agent convicted of selling C4 explosives to Libya and plotting to murder several people including Barcella.[22] What piqued my interest was a news story that Barcella, while still an Assistant U.S. Attorney, had given a supposedly improper opinion on an arms deal that was part of Iran-Contra. Lyn Bixby of *The Hartford Courant*, had picked up this information from a deposition given during the appeals process of an arms case prosecuted in Connecticut.[23] The case was USA v. Arif Durrani, a resident alien from Pakistan, in the arms trade for many years. Durrani was convicted of violating the Arms Export Control Act by arranging to transport Hawk missile parts to Iran in 1986.

On Friday, August 9, 1991, Durrani's lawyer, William M. Bloss, deposed a former beauty queen, right-wing radio personality and arms dealer, Barbara F. Studley. Bloss asked her about a shipment of weapons from Poland to Honduras in 1985. Ms Studley was a difficult witness and when pressed by Bloss answered both crossly and somewhat off the point – "I had absolutely nothing to do with Iran. I don't know anything about the Iran-Contra Iran segments. This was a legitimate shipment approved in writing by the Justice Department before we shipped it. Absolutely legitimate."[24] Bloss asked who had approved the operation and Studley responded, "Larry Barcella signed it."[25]

I called Barcella to ask about this. He said that a government official had contacted him for a legal opinion on a weapons transaction. The official told him that "an asset of the United States, a person who brokered weapons," had been approached by someone and invited in on an arms deal. The official explained to Barcella the business involved foreign weapons shipped to foreign ports. The asset had asked the official to find out "if it was appropriate." Barcella told me that he had checked with those who oversaw ITARS, which turned out to mean International Trafficking Arms Regulations, and concluded it was not our business. It was neither inappropriate nor illegal. Pressed to reveal the government official's identity or at least position, he wouldn't say. In a telephone interview with Bixby in 1992, however, Barcella did acknowledge Studley's name was mentioned in his conversation with the unidentified official.[26]

I was not particularly impressed by Barcella's answers any more than I had been by his handling of the Letelier and Wilson cases. I wondered why a government official, presumably from the CIA or the National Security Council or some other Intelligence agency (officials in the Department of Agriculture do not run

assets), would ask a sitting AUSA for a legal opinion. The CIA has a General Counsel's Office, and the others have something similar. Why go out of shop?

Lyn Bixby's relentless probing turned up several likely suspects as Barcella's visitor. One was Oliver North. Bixby wrote: "During congressional hearings in 1987, [retired Major General John] Singlaub, an associate of Ms Studley's, testified that he had talked with North about his desire to support the Nicaraguan contras and had cleared the items in his weapons shipment with North. The delivery went from Poland to Honduras, and Swiss banks were used for money transfers. In advance of the arms shipment, Singlaub said he also discussed the legality of the venture with North, who gave him some rules to follow after checking with 'someone in the Justice Department.'"[27]

The work that made Barcella famous had some very rough corners. The Letelier case ended up with the main culprits lightly punished.[28] According to the FBI case agent, Al Seddon, a deal was cut with Michael Townley, the mastermind of the assassination and dozens of other murders, who was extremely close to the Agency.[29] The Wilson cases had an even larger share of odd corners and strange occurrences. Additionally, in the early 1980s, command of the Wilson investigations was taken from Barcella by high officials in the Department of Justice. Explaining the change, Deputy Assistant Attorney General Mark M. Richard stated Barcella was not "well-liked" and thought not competent to handle the complex multi-jurisdictional task force involved in the Wilson case. Richard also remarked that Barcella's superiors in the U.S. Attorney's office in Washington felt he was not keeping them informed of crucial developments, and that the relationship between Barcella and the FBI was strained.[30]

The Durrani Affair

The only thing left to do was to speak to Durrani. We met in the summer of 1997 in Manhattan and then a week later in New Haven, Connecticut, at Bill Bloss's law office. Durrani said he was wrongfully convicted and that Barbara Studley and General Singlaub could have established his innocence had they chosen to tell the truth in their depositions. Durrani's innocence hinged on his assertion at trial that when he was arrested he had been working on a U.S.-Israeli sanctioned transaction. He was asked in the spring of 1986, he said, by representatives of the Israeli Ministry of Defense to locate 240 specific parts for the U.S. manufactured Hawk missile system that Iran had purchased back in the 1970s. He ended up working on this project with a Portugese arms dealer, who held a Spanish passport, Manuel J. Pires. In years past, Pires had handled secret CIA arms transfers to Angola, and later to both Iran and Iraq.

Hawk Missiles and Spare Parts

For an effective counter-weight to Iraq's air campaign, Iran needed both spares for their older Hawk batteries and new Hawk missiles as well. As far as the Iran-Contra investigators determined, in the summer of 1985, Pires was the middleman

in a shipment of Hawk parts that came from U.S. stockpiles. They were shipped to Iran through Brussels and West Germany. In October of that year, National Security Advisor, Bud McFarlane, approved another shipment of Hawk parts. The following month a CIA proprietary delivered 18 new Hawk missiles to Tehran.

Hawk transactions never ran smoothly, however. Oliver North wrote that this happened because the U.S. and Israeli private operatives "were unfamiliar with the operational parameters of the HAWK."[31] The weapons they agreed to ship were absolutely "inadequate" to meet Iranian requirements. In addition, Iran's military situation was critical – "The Iranian descriptions of the state of their equipment, lack of competent management, inability to use much of the remaining U.S. materiel portends the real possibility of a military collapse (at least by the Army) in the near to mid-term." Thus, North noted, "there is considerable pressure on the interlocutors in Europe to produce quickly."[32]

In late November 1985, North asked retired Air Force General Richard Secord to work with the Israelis on the Hawk program. Later the Israelis delivered 80 Hawks to Lisbon, Portugal. These Hawks were loaded on "three chartered aircraft, owned by a proprietary," North wrote, which then took off for Iran.[33] In March, the Iranians declared they desperately needed 240 types of spare parts for their stock of older Hawks. They were particularly anxious to get Klystron electron tubes, without which their older Hawks were so much scrap. However, finding parts for these weapons was not easy. Standard military supplies no longer carried them. In the middle of April 1986, North wrote that he was unable "to locate all the parts that Iran" wanted. The list was in the hands of both the CIA and the National Security Council.

Durrani's Niche

Shortly after the Iranian revolution, Durrani became close to a number of the most important Iranian Revolutionary Guards who controlled Iran's military forces. He was particularly cozy with Rahim Malekzadeh, an engineer educated in Germany, who was in charge of logistics and was reportedly the second most important figure in the Revolutionary Guards. At times Durrani acted as an advisor or weapons inspector for Malekzadeh. He also gave Malekzadeh the use of a corporate credit card and a Swiss bank account through which millions of dollars passed as the Iranians paid for some of their logistical needs. To say the least, he was trusted by the Iranians. "Interlocutor" Pires was especially chummy with the Israelis, particularly Abraham Shavit who was based in Belgium and was the manager of a Belgium company called ASCO.[34]

The Iranian "interlocutor" handling the Hawk spare parts problem at this time was the notorious George Hassan. Under the Shah, Hassan had been the Chief of Police in Tehran, a Savak officer, and a CIA operative. During the Iranian revolution Hassan was detained by members of the Revolutionary Guards but soon released after a hefty bribe. He very quickly headed for Turkey and from there went to Germany and then briefly Austria. He finally moved to Portugal establishing

himself in Lisbon. Either despite his past or because of it, Hassan had become the key weapons broker for Iran.

It was Hassan who first approached Durrani about helping on the Hawk spare parts problem. They met briefly in Portugal where Durrani was inspecting an Israeli shipment of Hawk missiles as a favor for Malekzadeh. Durrani was non-commital; he had other business interests to tend. Hassan then told Pires to try and coax Durrani into cooperating. Pires sent various emissaries to him. Finally, after about eight months Durrani agreed to meet with Pires. Early in 1986 they finally met in Portugal. Durrani said he would help locate the parts. He was told he would get the list when he returned to the U.S. At Washington's National Airport, Durrani was handed the list by a National Security Council staffer. He went to work.

Durrani found many of the parts at the Radio Research Instrument Company in Danbury, Connecticut. This firm bought surplus military parts as scrap, and then sold the parts as reconditioned equipment. In making the deal with Radio Research Durrani lied, telling the company the parts were to be exported to Jordan and that he would soon have all the necessary papers and permits. Radio Research became suspicious and notified the U.S. Customs Service which put Durrani under heavy surveillance, tapping his phone calls to Radio Research and videotaping his meetings. The first shipment was allowed to proceed in order for Customs to trace its various permutations on the way to Iran. On August 29, Durrani was joined by Pires at Kennedy Airport to see the shipment off and to take care of any last minute problems. The cargo headed for Brussels where it was met by a Pires-affiliated company called Comexas.[35] New invoices were produced that showed the final destination was the National Iranian Oil Corporation. The parts were then loaded on a plane heading to Iran.

Between August 29 and October 3, 1986, when Customs nabbed him at Radio Research after he had arranged a second shipment, Durrani travelled to London where he says he met North who was using the alias Mr. White. At the meeting Mr. White urged him to move with dispatch in getting the parts.[36]

Trial and Tribulation

The lead prosecutor in the Durrani trial was Assistant U.S. Attorney, Holly Fitzsimmons; the judge was Chief Judge T. Gilroy Daly who ran a very tight court. Daly refused to allow into evidence any of the emerging Iran-Contra material. The prosecution did present a witness from the CIA, Charles Moyer, who testified that "all the HAWK parts shipped by the CIA in 1986 were procured by the Agency in the month of May, and were transferred to Israel for transshipment to Iran in May and August."[37] That was it for the CIA. A National Security Council witness testified there were no records of Oliver North being in London when Durrani claimed to have met him. That was it for the NSC. The rest of the case was concerned with the desiderata of the Radio Research deals. Audio and video tapes were played for the jury. And then, it was all summed by the prosecution – with the Agency out of

the Hawk parts business before Durrani's first shipment, the transaction had to represent a private, unsanctioned, illegal, greedy, criminal act.[38] Other proof can be found in a once "secret" Israeli chronology of the Iranian transactions. Amiran Nir, "the Prime Minister's advisor on Combatting Terrorism," was the primary Israeli contact during what they called "the second stage" of Iranian deals. There were three transactions that took place in this stage. It is the second deal that is significant for Durrani's assertion. According to the Israelis, the second was "the supply of spare parts for HAWK missiles by the U.S. to Iran through Israel." They reported that this took place over the course of three months – May through August 1986, although they also point out that the stages and transactions always overlapped with one another and thus there was "no clear and unequivocal distinction" between them. See, The Iranian Transactions: A Historical Chronology – Part One," 29 July 1987, p. 3. The jury agreed and on May 13, 1987, Durrani was sentenced by Judge Daly to ten years in prison and fined $2,000,000.

There are many codas to the Durrani case, however. The first has to do with Pires. Durrani's team wanted him to appear as a witness for the defense. But before the trial Pires was visited in Lisbon by both Fitzsimmons and Special Agent Stephen Arruda from Customs. Pires gave them some telexes and faxes that passed between Durrani and himself and then added that he had nothing to do with the U.S. government, nothing to do with the U.S. clandestine arms trade to Iran. Pires agreed to appear as a witness for the prosecution, but only if he could testify from either Portugal or Spain. He then decided not to testify at all. The defense began to wonder why Pires was not indicted either as a co-conspirator or accessory. Fitzsimmons' answer was that he was not a U.S. citizen and thus could not be charged with knowing that the sale of the Hawk parts was against U.S. law.[39] This despite the seemingly elementary fact that the Comexas airfreight manager, T. Van de Meerssche averred to both Fitzsimmons and Arruda that Pires "gave instructions for all respective freight to the respective freight forwarders involved," and that "Our [Comexas] instructions for forwarding were given only" by Pires and/or his representatives in Belgium.[40] Pires was therefore in charge of changing the false freight-forwarding documents, etc. Clearly, these were the actions of a co-conspirator. Fitzsimmons' explanation became even more retrospectively strange in light of subsequent events.

Precisely 56 days after Durrani was convicted, Pires turned up as a surprise visitor at the Federal prison in Phoenix, Arizona. At the request of Holly Fitzsimmons, Warden Carlson "approved a *one-time* visit for Mr. Manuel Pires to visit inmate DURRANI, Arif, Reg. No. 09027-014."[41] According to Durrani, Pires came to threaten him; according to Holly Fitzsimmons she ran into Pires at the Phoenix airport but had nothing to do with his visit. She did say to writer and reporter Lawrence Lifschultz that "it was not a coincidence that Pires, Arruda and herself were in Phoenix at the same time," and then added in a moment of lucidity that to have arranged this visit would have denied Durrani his constitutional rights.[42] Later Pires admitted visiting Durrani, but he said he did it "officially . . . through the legal channel," but he denied having met with Fitzsimmons and/or Arruda.[43] The warden said the visit had been arranged by Durrani's attorney, the "lady attorney," which clearly

would have been news to Bill Bloss and Ira Grudberg. In addition to confronting Durrani, Pires may have been in Arizona to meet with General Singlaub because they were both working on the little-noticed Renamo hostage crisis in Mozambique. In a recent interview, Louis Serapiano, Renamo's representative in the U.S., stated that he spoke to Pires who called him from the U.S. Custom's office in Newark, New Jersey in the summer of 1987. Any way one looks at it, the Arizona interlude was exceptionally peculiar.

Curious Episodes

There are still more odd occurrences. The Customs officer who was really in charge of law enforcement's Durrani operation was John B. "Joe" King although his name was redacted from the Studley deposition mentioned above and only appears in one of the Durrani court documents and government papers. Although he was present at Durrani's arrest, he was never called as a witness. There was a concerted effort to keep King on the extreme outside of the Durrani case for two reasons. King, a former New York City policeman, was part of a highly-secret team, a special multi-agency task force sometimes described as an "anti-terrorist unit," established in the late 1970s to track weapons sales to South Africa and Iran. Among the companies set up by King (who had many code names) and his team was Fino Enterprises in New York, an arms brokering firm. The team was "allowed to kidnap suspects, make deals to drop charges against arms merchants and even sell arms to Iran," all supposedly for the purpose of controlling the illicit traffic.[44] Second, King and members of his team worked closely with Barbara Studley and her weapons operation. At least one "secret team" member was actually hired by her in September 1986. And he has stated that all of his activities were cleared by "U.S. Government officials."[45] To complete the circle, Larry Barcella is one of King's strongest supporters. Barcella told me that King worked with him on the Letelier case, that he has known him for more than 20 years, that he believes King is the "most imaginative and effective federal investigator" he's ever known, and that they worked the October Surprise investigation for Representative Lee Hamilton's congressional committee. Barcella added that he would not have worked on the investigation without King and so told Hamilton.[46]

Of course it is difficult to fathom why anyone would place much faith in Hamilton's judgement on the staffing of his October Surprise investigation given his early performance in the Iran-Contra scandal. In the summer of 1986, Hamilton was easily beguiled by North into believing that he had nothing to do with illegal aid to the Contras. Following Hamilton's meeting with North in the White House Situation Room in August 1986, NSC counsel Bob Pearson remarked that Hamilton "underlined his appreciation to Admiral [John M. Poindexter] and to Bud [McFarlane] for full cooperation offered by NSC." Hamilton did not think there was any merit in media reports of North's illicit activities and was prepared to recommend that Congress mind its own business.[47]

Examining the Durrani case places one inside the always confusing and often inept world of weapons dealers made up of brokers, deal makers, hustlers and grifters who mixed and mingled with spies from every intelligence service in the world. Services that were insular and crime ridden. Services in which just about any action could be and was justified. Services, as Arthur Schlesinger, Jr. once described the CIA, in which men were "professionally trained in deception, a wide choice of weapons, reckless purposes, global charter, maximum funds and minimum accountability."[48] To put it most mildly, this has always been a volatile mix. Secret weapons projects are never neat and tidy, always unkempt, prone to breakdown, riddled through with profit takers. One thing is certain, however. Selling weapons to Iran by official representatives of the U.S., with the approval of the Administration, no matter the ways in which involvement was hidden, started before the Palestinians and/or their supporters took a single U.S. hostage in Lebanon. As I will show, this is the history lesson buried in the details of the Durrani case and its aftermath which continues on leveraging secret documents and finding secret people.

The Iran Side[49]

When it comes to the Iran side of Iran-Contra, neither the Tower Commission, nor the Independent Counsel, nor the congressional committees that investigated the ensuing scandals, got it right. The U.S. sale of weapons to Iran was assuredly begun prior to the hostage taking in Lebanon. There is some intimation of this in a Congressional Research Service paper written by Richard M. Preece in January 1984 and updated that August. Preece noted that by 1983 a considerable illicit traffic in U.S. arms to Iran had developed. American companies were using South Korea and Israel as cut outs for both new weapons and spare parts sent to Iran."[50] This was certainly common knowledge in the region, for Preece wrote that Iraqi officials were disturbed by this traffic and angered that Washington had done nothing about it. In March 1984, he noted, the State Department gave Richard Fairbanks, Ambassador-at-large, the job of pressuring Israel and the "friendly Asian states" to cut it out.[51] But while there might have been some arms traffickers in Western Europe cutting their own deals, there is little doubt that many of the transactions in which American firms were using Israel and South Korea, and other nations, to mask their sales were known and approved by U.S. Intelligence and the Reagan Administration. In the main, this was not an illicit nor an illegal traffic.

Barbara Studley and GeoMiliTech

The first U.S. plan to provide Iran with U.S. weapons was prior to August 15, 1983, the date when an ostensibly private company was formed in Delaware, which actively sought either to sell or exchange weapons with Iran as well as to supply the Contras.[52] The firm, GeoMiliTech Consultants Corporation (GMT),

was established by Barbara F. Studley, the former beauty queen from Miami who became a conservative radio talk show host for WNWS in South Florida. In 1984, she claimed to have had fifteen years as a "political lobbyist" including eleven working the Pentagon. Studley was GMT's President. According to its 1984 brochure, the company had corporate offices in Washington, D. C. and Tel Aviv, Israel. Before it moved to Washington, it was located in Miami Lakes, Florida. The 1984 brochure also claimed four Regional Offices and Affiliated Agencies established in Brussels, Frankfurt, Seoul, and Tel Aviv.

In addition to President Studley, GMT's corporate structure by then included an Executive Vice President, two Vice Presidents, a Secretary-Treasurer, and four consultants. The Executive Vice President was Ron S. Harel, a veteran of the Israeli Air Force who specialized in "tactical cargo and light and early warning aircraft." He was also the co-pilot of the C-130 that rescued Israeli hostages in the famous raid on Entebbe, Uganda. Since the late 1970s, Harel reportedly was a consultant to a number of "leading U.S. Defense Department contractors" particularly helpful in the field of international marketing. Harel was in charge of GMT's Tel Aviv office and also headed his own development firm called Maced Marketing Consultancy & Development located in Ramat-Gan, Israel. Harel was officially brought into the GMT fold on May 11, 1984, when GMT established "branch offices of the Corp., including but not limited to an office in Israel."[53] On the same date, GMT's corporate minutes reflect the decision to set up bank accounts in foreign countries including Israel. GMT's bank in Tel Aviv was the Israel Discount Bank Ltd.

Navy Captain Bruce E. Herbert was one of the Vice Presidents. Herbert was described as "a recognized authority on intra-theater airlift to support deployed combat forces." Herbert, a naval aviator, had retired from the Navy but was called back to active duty on several occasions including the Falkland Islands War where he worked on "Foreign Military Sales and Precision Guided Munitions." Herbert also had coordinated modernization plans for the Air Force, Army, and Navy while assigned to the Pentagon. Finally, he had been a staff member for a standing House Committee not, however, identified.

The other Vice President was Joel Arnon who had been an Assistant Director General in the Israeli Ministry of Foreign Relations. According to GMT's announcement, Arnon had around 30 years of experience in Israel's Diplomatic Service including work with the Israeli Mission to the United Nations. From 1976 to 1983, he was described as Israel's Consul General for the Southeastern U.S. At the time of his initial relationship with GMT, Arnon was also the Executive Vice President of GTL, Global Technologies, Ltd.

Global was a mirror company of GMT, controlled by Studley who laid out the "inter-working conditions between GMT and GTL" in a memo to both Harel and Arnon. While Harel was in charge of GMT's Tel Aviv office, located in a building called the Asia House at 4 Weizman Street, Arnon would be a GMT consultant. On July 1, 1984, Arnon was to "begin working for Global Technologies" from an office in Jerusalem. Harel would then become a consultant to GTL. Studley was insistent that "GTL and GMT remain separate corporations with separate identifications, addresses, phones, etc."

The rest of GMT's initial corporate structure was composed of four consultants: Major General George J. Keegan, Jr, USAF (retired); Major General John Kirk Singlaub, USA (retired); John E. Carbaugh, Jr.; and Louis F. Petrillo. Keegan was a former head of Air Force Intelligence who was a "leader in efforts to revise the faulty U.S. estimates about the Soviet quest for military superiority, shortfalls in judgement of Soviet spending for defense, violations of SALT agreements and massive deception of the Free World and the USSR's efforts to exploit detente." Not surprisingly, Keegan retired in 1977, and then served in various capacities with conservative organizations such as the journal "Strategic Review," the Peace Through Strength Coalition, and as President of the Institute of Strategic Affairs.

Major General Singlaub had been Chief of Staff, U. N. Command, U.S. Forces in Korea, and the head of the U.S. Eighth Army in Seoul, Korea. During the Vietnam War, he was the "Commander of the Joint Unconventional Warfare Task Force." Before Vietnam, Singlaub was Deputy Chief of the CIA mission in Korea, and before that, China Desk Officer for the CIA. Left out of the brochure was Singlaub's creation of a new American chapter called the United States Council for World Freedom (USCWF) of the "World Anti-Communist League at a meeting in Phoenix, Arizona, on November 21, 1981. The Vice-Chairman of the USCWF was Lieutenant Daniel O. Graham, formerly head of the Defense Intelligence Agency. To get the USCWF ball rolling, Taiwan lent it around $20,000.[54] By 1986, Singlaub had become the head of the World Anti-Communist League.[55]

Attorney John E. Carbaugh (who had a reputation for mental peculiarity) worked for eight years as Senator Jesse Helms Administrative Aide. He was thus a Professional Staff Member of the Senate Foreign Relations Committee and the Senate Armed Services Committee. With Ronald Reagan's election, Carbaugh served on the Transition Team for State, Defense, and the National Security Council. Studley noted that Carbaugh "brings to GMT a direct contact to the political and military structure of foreign governments, as well as a comprehensive insight into the inner workings of the United States government." She added that "[h]e is currently a consultant to major U.S. corporations involved in national security" and to the State and Defense Departments.[56] The GMT office in Washington, opened early in 1984, was adjacent to Carbaugh's law office.[57]

The final listed GMT consultant in its initial phase was banker Louis F. Petrillo. At that time he was Vice President and Director of International Services for Florida National Bank.

The Organized Crime Element

Over the course of GMT's life, there would be other renowned military figures – Army Lt. General Robert L. Schweitzer who was once the Director of Strategy Policy and Plans, the Deputy Chief of Staff for Operations and Plans and enjoyed a post in the Reagan White House, comes to mind – springing up as consultants.[58]

But likely far more important was I. Irving Davidson who was never listed on any GMT paper at all. Davidson was a mobster's dream – "grease for the machinery," he once described himself – although his closest organized crime associate, the infamous Carlos Marcello, ended up behind bars. Writer John H. Davis thought Davidson was "the epitome of the Washington lobbyist, a schemer and promoter with a vast international network of powerful acquaintances" that included Persian Gulf potentates and the Sultan of Oman, tin-pot dictators from Central America and "Mafia bosses."[59] Davidson lobbied for the Teamsters Union and Jimmy Hoffa, Anastasio Somoza, "Papa Doc" Duvalier, and Rafael Trujillo, and he sold Israeli tanks to Nicaragua.[60] He knew everyone of importance in Washington and Israel; weapons were his metier.

On Saturday June 23, 1984, at a swanky Washington hotel, he spent some time with Barbara Studley, Ron Harel and General Keegan. The conversation covered a number of topics but finally got around to "technical sales representations."[61] A couple of months later, Studley once again met with Davidson. In between those meetings, Davidson spent time with several notorious organized crime figures including Abe Gordon, a Teamster official and top New York mobster.[62] Studley and Davidson kept in touch. They had a chat, for example, at GMT's office in October 1985. Perhaps Davidson's most interesting close friend, however, was Joseph Francis Nesline the leader of organized crime in Washington, D.C.

Nesline was born in Washington in 1913 and became a bootlegger during Prohibition. Following Repeal, Nesline who was a gambling manager opened illegal casinos in the Washington area. He also killed one of his rivals in the winter of 1951 during a dispute in a gambling club in the Northwest section of Washington. The homicide helped establish Nesline's reputation in the District.[63] From then on he was Washington's most menacing organized criminal. Nesline's closest associate was a New Jersey born gangster named Charles Tourine.[64] A formidable organized crime figure himself, Tourine was part of a gang of New Jersey racketeers led by Ruggiero Boiardo which was affiliated with the New York Genovese crime syndicate. Gambling was one of Tourine's specialties and he operated casinos in Havana in the pre-Castro days. Tourine, like Nesline, found opportunity everywhere. In 1976 he and several former federal and state officials from Alaska were charged with conspiring to establish organized prostitution and gambling for Alaska's pipeline workers.[65] Nesline and his associates also exerted a strong influence on the underworlds of Amsterdam[66] and Hamburg during the 1970s.The primary contact in Hamburg was Wilfried Schulz who owned restaurants in Hamburg's red-light district, and was a fight manager, a thief, pimp, gambler, and extortionist. Another Nesline connection in Hamburg was Davoud Dargahi born in Teheran in 1932. Dargahi had been living in Hamburg since 1957 and was associated with Schulz in organizing boxing matches and various criminal activities.[67] Moreover, Iranian authorities claimed Dargahi was involved in the smuggling of heroin to the U.S.[68] Nesline's criminal activities were primarily gambling, narcotics trafficking, pornography, prostitution, and the fight game.[69]

Obviously, Davidson had the talent and pluck to move in political power centers like the National Security Council, the Department of Defense, the GeoMiliTech

crowd and in the world of Jimmy Hoffa, Carlos Marcello, and Joe Nesline. Davidson was, when all was said and done, both a tutor and facilitator for GMT.

All Manner of Secret Deals

Although not officially in GMT's ranks until May 1984, Ron Harel worked with and for GMT from 1983 until the beginning of 1986. Indeed, according to Harel, his first meeting with Studley took place in Miami where the discussion centered on selling "M48-A5 tanks to Iran" using Israel and Korea as the cover.[70] Somewhere along the line there was a draft proposal concerning the tanks which stated the following:

The Israel Ministry of Defense, Export Division, hereby acknowledges that GeoMiliTech Consultants Corporation (GMT) of 1919 Pennsylvania Ave., N. W., Washington, D.C. USA, has been granted the authority to present to the Government of Korea [the cutout for Iran] the following:

1. Technology of upgrading and modifying of M-47, M-48 tanks.
2. Systems and spare parts relating to M-47, M-48 tanks.
3. Technology of the Merkava tank.
4. Systems and spare parts relating to the Merkava tank.

In addition, GMT, is hereby authorized to discuss the possibility of a joint venture with the government of Israel or their appointed foreign corporation.

Harel stated that Bruce Herbert, who ran GMT's Washington office when it first opened (either in January or February 1984), traveled to London to meet an Iranian middleman, E. J. Bajzert, in order to negotiate the deal. Bajzert was in contact with the London office of the National Iranian Oil Company (NIOC) on Victoria Street which handled the international network and housed a clandestine group of Revolutionary Guards running the show. The Iranians used NIOC accounts to pay for weapons and supplies.

Herbert's idea was to trade 200 tanks for Iran's fleet of U.S. built F-14 fighter aircraft.[71] The F14s had been bought by the Shah from the Grumman Aerospace Corporation during the 1970s. The tanks would be supplied by Israel, the cutout in the transaction.[72] To understand the background of this complicated plan, it is helpful to briefly review the Grumman-Iran deal. Back in 1974 Grumman sold 80 F-14s to Iran.[73] Grumman delivered 79, the last one in 1978. At Iran's request the 80th plane was kept in the U.S. for testing and further engineering.[74] The Shah paid $2.2 billion for the planes and the training and maintenance services that were crucial.[75] A scandal over the sale erupted in 1976 when it was announced that Grumman had paid "foreign agents" $6 million to make the deal despite the Shah's strong objections to this practice. On the heels of this disclosure, it was learned that Defense Secretary James R. Schlesinger upped Iran's "share of research and development costs involved in F-14 production," because he was angry with OPEC's 1973 rise in the price of oil. Finally, a State Department cable

to the Pentagon's Foreign Military Sales Office that ordered price parity for the F-14, so that Iran was charged no more than the Navy paid, was "administratively misplaced" for almost a year.[76]

As the Iranian revolution gained steam in late 1978, one of the revolutionaries' targets was Grumman's headquarters in Isfahan which they firebombed. *Washington Post* reporter William Branigan wrote "that some of the U.S. weaponry supplied to Iran had been sabotaged,[77] although he did not indicate by whom. According to one source, Iran's F14 fleet had been targeted by U.S. Intelligence while another source alleges that Iranian military officers still loyal to the Shah destroyed the training and test manuals and, more importantly, the coded taped program (AWG9) that ran the fire control system which allowed the F-14 to identify six different targets at the same time and to fire both Sparrow and Phoenix missiles with deadly accuracy. The source added that some of the F-14s were still in their original crates and never were operational. Whether these were so or not, it is certain that U.S. military intelligence was profoundly concerned with the F-14s' formidable Phoenix missiles. Indeed, Grumman was attempting to get the missiles back through a Canadian company that was very close to the Canadian government. In the midst of these delicate negotiations, Grumman was charged by the Securities and Exchange Commission, in January 1979, for having paid somewhat more than $24 million "in secret commissions to sales agents" who had worked the F-14 sale to the Shah. It turned out the $6 million in illegal payments revealed in 1976 was only the first payment.[78] The Canadian ploy fell apart.

The F-14 saga is not quite over yet. In the waning days of 1981, after some serious setbacks in its war with Iraq, Iran sent a letter to Grumman's London office asking to buy spare parts for the F-14s. Iran's useable F-14s only numbered about nine and they were not flown in combat against Iraq. Instead, they were used as "control aircraft, with their advanced radar and electronics guiding other planes to their targets or warning the pilots of Iraqi aircraft attacks."[79] What kept the other 70 or so aircraft grounded was a combination of the missing program and the lack of spare parts, the latter of which were absolutely crucial. There was an added element to the F-14 issue by the time Herbert proposed the operation. The Navy had a new aircraft carrier but Grumman was not able to supply the required number of F14s.

This was the very complicated situation when GMT went into action. To get the ball rolling, Herbert, who it is said represented Naval Intelligence's interest in the matter, devised a code the better to hide the Iranian issue from prying eyes as correspondence was sent around the world. The overall Iranian deal was called The Chess Game. Juice meant explosives, while Mother stood for rocket launchers, and Children translated to missiles and rockets. Castle was Herbert's code name, Cleopatra was Studley's. Prince was Manuel J. Pires. Project Sea Lion was code for the proposed tank deal with Iran as were certain references to Taiwan and Korea. Albatross stood for the Grumman F14 transaction. Bishop was Iran.

Back and forth the talk went. Harel and Herbert had several meetings with Bajzert who finally informed them that Iran agreed to swap part of the

F14 fleet for the tanks – all but 30 planes – and wanted spare parts for the remainder.[80] Either the Navy and/or Grumman and/or Herbert said no. It was over this issue that the deal finally floundered. Herbert left GMT sometime after July 1984. He says that Studley fired him when the deal fell through but other insiders suggest he left because the Navy's interest had waned. In either case, Studley informed Harel there was "[n]o way it can fly – our end will not supply spares for the remaining fleet."[81]

Before he left GMT, however, Herbert sent a status report of "all realizable Washington sales activities" of which he was aware. Because GMT was an Intelligence-based operation – a third channel as Bruce Herbert likes to characterize it – activities were strictly compartmentalized; only Studley and perhaps Singlaub and CIA Director Bill Casey knew everything. Herbert reported there were ten on-going activities including a Hawk aircraft one with Iran that had the potential to bring into GMT's coffers $5,875,000.[82]

GMT's role in the Hawk operation was to act as a middleman for Michael Austin the owner of Austin Aerospace. Studley informed Harel that Austin gave GMT a six month exclusive to handle the Hawk presenting it to "Taiwan, Korea, Israel, Morocco, Pakistan, Zaire, Peru, Ecuador, Yugoslavia, Guatemala, Phillippines, and possibly South Africa. She added that "20 'HAWKS' can fit in a Boeing 747 in crates – can 'fly out of box'. Wings can be reassembled in minutes."[83]

That summer there were several other Iranian-based initiatives in the works, in addition to the Hawk proposition. One had to do with explosives, another with J79 and JF17 jet engines for F-4 aircraft that were to be supplied to Iran and a third concerned helicopters. On the latter issue Harel wrote to Studley, on September 13, 1984, that he had "met with Teamco from Brussels and the Bell-Textron Helicopters President who reassured me that he would back us for our program in Iran and that we should come up with a proposal and plan to sell new Bell helicopters thru Teamco to Iran." He added that Westland helicopters "are seeking our assistance in selling helicopters to Iran (there is no conflict of interest with Bell since this is a bird of a different feather) and we shall work both."[84]

(Actually, Westland's boss, Roger James, had allegedly already signed a contract with Iran for 36 helicopters and now "needed" GMT's "assistance in execution and performance.") Studley responded pointing out that one million dollars was hanging in the balance on both the explosives (fertilizer) and the jet engine arrangements. She was anxious, she told Harel, for any information.[85]

The complexity of GMT's activities was growing. For example, GMT had already entered into cooperative relations with both Teamco in Brussels, and Truventa A. G., a firm headquartered in Basel, Switzerland, owned by the Berger brothers who had exceptionally good connections with Iran. Likely their connections had been materially helped by their partner, George Hassan. The companies had signed contracts with Iran to supply spare parts and perform maintenance on Bell's helicopters.

Of all the firms in Europe selling weapons to Iran, Teamco might have been one of the most significant for it was supposedly a somewhat vaguely hidden

large-scale Israeli Government operation. Of course Teamco and Truventa also provided another layer of camouflage for yet other companies working with Iran. For example, Stork facilities and Israel Aircraft Industries' (IAI) engine division were interested in contracts to overhaul the jet engines everyone thought were about to be bought by Iran. But Stork needed the "permission of its principals, Fabrique National," and IAI required "a European intermediate organization . . . to protect the source identification."[86]

The "full partnership" between GMT and Truventa covered all programs in Iran and Peru, the latter ones having to do with both the military and the police. Truventa was important for at least three reasons: the first was the Bergers' and Hassan's influence in Iran, the second was that it hid GMT's involvement. "For various known reasons," wrote Ron Harel, "both programs, Peru and Iran, shall be conducted through Truventa."[87] And third, GMT sold 22 jet engines to Truventa for around $40 million leaving GMT with a profit of $5,040,000.

In a few months there was another game on. This one featured reconstituted F-4s with additional spare engines. The transaction was in the hands of Austin Aerospace and GMT was a potential player. Austin was going to buy the F-4s from Egypt and sell them to Iran after running them (or the paper) through Turkey. In November, Austin Aerospace telexed Harel further details about the F-4. Austin pointed out this offer would go to "3 other groups whoever comes in first that is who we are going to proceed with." Hidden behind this chatter was the simple fact that Austin Aerospace was under the sway of a cabal of former CIA and Defense Department swindlers who controlled the transport of U.S. weapons to Egypt. Intriguingly, General Singlaub played with the cabal when it came to Austin Aerospace. He was on its Board of Directors.

There were 18 F-4s "overhauled as of last December 1983; there are spare parts sufficient for 18 months operation." There were 20 spare engines. For the entire transaction, the cost to the Iranians was over $300 million.[88] For GMT to play, it had to come up with a serious and irrevocable letter of credit which it did not do.[89]

One of the Iranian proposals that GMT capped was for the explosives which appears to have been negotiated either in late 1983 or early 1984. On February 14, 1984, Scandinavian Commodity, headed by Karl-Erik Schmitz and located in Malmo, Sweden, sent a confirmation letter on this matter to Ron Harel. The arrangement was for 2,000 metric tons of propellant for 155 millimeter howitzers. It would be sent in plastic bags placed in cardboard boxes on pallets in new containers painted white. The only printing on the containers would be "SCANCOM"; there would not be any other marks or labels. The price was $6.80 per kilo. The payment: "Net cash against presentation of documents with Kredietbank, Luxembourg against irrevocable letter of credit opened by Bank Melli (Iranian bank) London in buyers favour." The material would be loaded on board a ship at a Dutch port and delivered to "southern Iranian ports." Any problems "shall be constructed and decided in conformity with the Iranian laws and also the place of jurisdiction will be in Iran."

Overall, GMT was pleased with the progress of the transaction although there were some matters that had to be changed. Perhaps the most important had to do with the Bank Melli and letters of credit (L/C). On the 25th of July, GMT wrote to Schmitz the following: "Sub. Financial arrangements. 1) As discussed during our meeting in Vienna, neither IMI [Israel Military Industries] nor Hirtenberger [one of IMI's chiefs] can receive Bank Melli's direct L/C. It must be an L/C obtained by a European bank. If this issue is solved then there are no problems whatsoever."[90] Over the course of a few months, the deal had also grown a bit larger and even more complex. There was now more material – 3,000 metric tons of T.N.T., fuses, and 81 and 120 mm mortar flare shells, and two types of 155 mm howitzer shells.[91] Interestingly enough, some of the material in the transaction (not the T.N.T. or 155 mm shells, however) might have been produced at the U.S. Army arsenal in Radford, Virginia, operated by Hercules.[92]

GeoMiliTech covered its tracks well when it came to its relationship with Scandinavian Commodity and Mr. Schmitz as can be seen when this particular Iranian exchange was exposed in 1987. A Reuters dispatch from Stockholm noted that Swedish Customs authorities were claiming "that Israel had sold millions of dollars worth of explosives, artillery ammunition and shell components to Iran through a Swedish middleman between 1984 and 1986." Israel heatedly denied the charge although the Swedes had seized documents that clearly implicated Israel Military Industries. (Reuters and the Swedes did not know, of course, that Israel's Ministry of Defense had a secret signed "understanding" with Major General Singlaub representing GMT[93] and that GMT itself had an agreement with the Ministry concerning the marketing of tanks mentioned earlier). One of the documents that showed IMI's involvement also detailed a series of subterfuges used in the operation. The actual orders for the explosives came from Sweden's largest arms company, Bofors, "with which Schmitz was closely associated." Other documents disclosed the shipments were supposedly bound from Western Europe to the Yugoslavian port of Bar.[94] There was no mention of GeoMiliTech which was well hidden behind Scandinavian Commodity, IMI, and Yugoslavia which came into the picture as the supplier of the most significant product in the deal – the 155 mm long range howitzer shells. The Yugoslav side was handled by Igor Schou Kjeldsen, affiliated with GMT and Scandinavian Commodity, who knew his way around Yugoslavia's Federal Directorate of Supply and Procurement, a part of the Federal Secretariat of National Defense. On July 18, 1984, the Federal Directorate in Belgrade sent Igor a copy of Scandinavian Commodity contract – No. V-2/MBL/DS-1.

The transaction was done; the items delivered to Iran; the profits deposited. Harel sent a telex saying all went smoothly; Studley responded – "Happy days."

"Better to have One's Own Capital"

Barbara Studley prepared the ground to hide money earned by GMT in 1984. The first step was to hook up with Jean B. de la Giroday who lived in Bethesda Maryland. His resume indicates a Ph.D. in international finance from Oxford University and

many years experience with Eurodollar bond issues. It also shows seven years as the Managing Director of Banque Cantrade, Geneva, the founding of a Nigerian merchant bank dubbed the African Banking Company Ltd., and, the creation of the Turks and Caicos Banking Company Ltd (T&CBC).

While he may have indeed "structured and created" T&CBC, he was apparently never an owner of record. According to the T&CBS's 1983 brochure, it was established in Dec. 1980, and capitalized at US $500,000. "With significant business growth, the capital has been increased to US$2.65m," noted the brochure. There were two main shareholders: (1) "The Union Planters National Bank of Memphis, Tennessee, a leading regional bank with assets of over US $1.7 billion," and (2) "Motorships, Inc. of Monrovia, Liberia, wholly owned by Mr. Nils O. Seim," characterized by retired British banker David Whitby "as a secretive Norwegian shipping tycoon." Seim was Chairman of the Board of Directors of the Turks and Caicos Banking Company. One of its directors was William M. Matthews Jr., "chairman & CEO of Union Planters National Bank [UPNB]." Its other officers included Eustace A. Brooks, secretary (British American Life Insurance Company); general manager, Anton J. B. Faessler, "formerly of Zurich, Switzerland." Whitly recollected that "Faessler may have been ex-Banque Cantrade (merchant bank subsidiary of Union Bank of Switzerland.) At some point in the 1980s, Seim died and Bill Matthews left the Board of the Union Planters National Bank. When Matthews exited Union Planters, it sold out its investments in T&CNB as well as in a Paris financial company (Finacor) and a countertrade firm in Nigeria called Unitrade.

Studley's second step was the incorporation on December 10, 1984, of a Turks and Caicos company called Consulentia Ltd., whose sole director was Giroday.[95] Next she contacted Harel to tell him that he was the only one who could use Consulentia and the only one who would know about it, except, of course, for Giroday, Florida banker Petrillo, and Terence Donegan who was their attorney in the Turks and Caicos. She added that Harel was never to mention Consulentia over the phone or in a telex; never to call Donegan from Harel's office; and never to mention his name to Donegan if calling from another source. He was only to say "C. L. Corp." Consulentia, she literally underlined, must not be linked to his office, and, she further pointed out that there were *no records of the firm in the Washington office*.[96]

Consulentia raises other somewhat confusing but potentially dramatic issues in the burgeoning off-shore world Giroday constructed for Studley. Recollect that Giroday claimed in his c.v., that Banque Cantrade (Zurich) "asked" him to "*to create, structure and develop Banque Cantrade, Geneva*. He did so and was the Geneva manager from 1970 through 1977. What makes this extraordinary is the following: when Robert Vesco was busy looting Bernie Cornfeld's tottering mutual fund empire, Investors Overseas Services, he used the services of "Consulentia a sub of Banque Cantrade."[97] Vesco testified that in December 1970, he first approached George Phillipe, a "senior official at Bank Cantrade, a subsidiary of Union Bank" of Switzerland, "to determine if it had an interest in purchasing the Cornfeld shares."[98] Then.a few days before the closing on Cornfeld's

stock in January 1971, it was reported that a shell corporation, Linkink Progressive Corporation S.A., was bought from Consulentia, the deal having been arranged by Phillipe.[99] Actually, Linkink was sold to the Vesco team by a Panamanian company, Red Pearl Bay, "whose principals have never been identified," although Phillipe was surely one of them.[100] The shifting from Consulentia to Red Pearl Bay was accomplished by Vesco and the Banque Cantrade gang to add another layer of almost impenetrable secrecy to their purchase of 6,000,000 Cornfeld-held IOS shares which had to be hidden from the purview of Union Bank's top officials. Linkink's usefulness quickly came to an end when it was bought by something called American Interland whose name was almost immediately changed to Hemispheres Financial.[101]

Consulentia needed a bank account. In the first week of February, 1985, Studley had Giroday instruct a lawyer in Zurich, Dr. Michel Haymann, to open an account for Consulentia at Bank Leu's branch in Zurich. The name of the account was "Lewistown-9020-40418-0." Haymann was to be the permanent and only custodian of the Lewistown records. On March 5th she wrote Haymann a "confidential" letter informing him that Ron Harel was to have total authority over the account. Furthermore, Harel's instructions had to be given in person at the bank and he had to present two proofs for verification of his identity: his Israeli passport number, 1373864, and the double account code. Harel was also allowed to phone in instructions from Israel but had to go through a very elaborate double call system replete with codes. Finally, she wrote "*[p]lease note that under no circumstances must my name ever be revealed to the bank as the beneficial owner of the account* [her emphasis]."

Consulentia and the Lewistown account were set up for several reasons. One was to hide money from others at GMT; another, as Ron Harel said, was both "to avoid taxes in the U. S" and scrutiny "because the transactions were not legal in the United States"[102] Money was moved back and forth between Consulentia and another GMT account named "Claude" at the Banque Nationale de Paris in Geneva, Switzerland, and likely others yet unknown as well. Handling "Claude" was Eddy Maisonneuve, BNP's *Sous Directeur*. On May 16, 1985, Studley cabled Maisonneuve to advise him "of confirmation received . . . transfer of $3.3 million to 'Claude.'"[103] A couple of weeks later, Harel sent a note to Paul Husser at Bank Leu, Zurich, in order to transfer funds from "Lewistown 9020-40418-0" into "Claude" at BNP.[104]

She was very good at concealing money and, it turned out, borrowing but not repaying large sums. In 1987, banker Petrillo started on his long slide to prison because of loans or money transfers to Studley who did not repay them. While the head of finance for GMT, Petrillo had moved from Florida National Bank to the Bayshore Bank of Florida, a small Miami-area institution. The year before, 1986, Petrillo had transferred $2 million from Bayshore to an overseas bank at the request of Studley. Unfortunately for Bayshore's depositors, this was about all of the bank's net worth.[105] Bayshore was crashing and hardly anyone besides the malefactors, it seems, knew where the money went, what it was used for, and whether it would ever be repaid.

It really was not much of a mystery. Petrillo gave Studley a $2 million line of credit when he was with Florida National. Studley used the money to pay GemoMiliTech's salaries and to purchase a house in Falls Church, Virginia. Studley hoped to make a profit and repay the loan. When Petrillo left Florida National he illegally changed the paper work moving or converting Studley's "past due" account to Bayshore. He did it to gain some time while waiting for Studley to pay up. She did not, of course, although she did try but failed to sell around 20 percent of GMT's stock to raise the $2 million.

Bayshore stockholders filed a couple of lawsuits naming Petrillo, GeoMiliTech, Studley, and General Singlaub as the irresponsible parties. They finally learned the $2 million was to cover two "bad checks" written by Studley, and that Petrillo gave her a $1.5 million cashier's check from Bayshore in order to hide a depleted $1.5 million line of credit he gave her when he was with Florida National Bank.[106] They got nothing from the lawsuits.

These financial flip flops took place as GeoMiliTech presented Bill Casey its ultimate plan – a coordinated series of weapons deals worth $80 million, many of them barter arrangements with Israel, all of them worked through a secret Swiss bank, the whole package guaranteed to evade the "consent or awareness of the Department of State or Congress."[107] The program was hand-delivered to Casey by Edward N. Luttwak, now a distinguished author and Senior Fellow in Preventive Diplomacy at the Center For Strategic & International Studies in Washington; then described as an employee of GeoMiliTech.[108] "He has served as a consultant to the Office of the Secretary of Defense, the National Security Council, and the U.S. Department of State. He is an associate of the Japan Finance Ministry's Institute of Fiscal and Monetary Policy. Dr. Luttwak is a frequent lecturer at universities and higher military colleges in the United States and abroad (recently in Argentina, Italy, France, Japan, and the United Kingdom). He was the 1988 Nimitz lecturer at the University of California, Berkeley, and 1989 Tanner lecturer at Yale University. He is author of eight books, including The Endangered American Dream (Simon & Schuster, 1993), Strategy: The Logic of War and Peace (Harvard University Press, 1985), and the constantly reprinted Coup d'etat (Harvard University Press, 1985), published in 14 languages. He serves on the editorial boards of Geopolitique (France), the Journal of Strategic Studies, and the Washington Quarterly. He received a Ph.D. from the Johns Hopkins University. He speaks French, Italian, and Spanish."

Petrillo went to prison for six months after pleading guilty to fraud. Studley and Singlaub, to the contrary, have carried on like old troopers. Most recently they have been peddling a "revolutionary missile guidance software system" developed by Rabbi Eliot Sherman, a U.S. citizen resident in Israel, and an unidentified associate. Working with them are Fob James, Jr., the Governor of Alabama, and Alabama's First Lady, Bobbie James, who are reportedly close friends of the Rabbi. In 1997, the Rabbi hosted the Alabama couple on a trip to Israel during which Bobbie James noted "Alabama's close ties with Israel have resulted in blessings like better student test scores. . . ."[109] This year the Governor arranged "an unusual meeting" in Washington, reported Brett Davis of the

Huntsville Times, with both Washington military officials and Alabama's congressional delegation. Studley and Singlaub attended the meeting during which a request was made for more than $3 million from next year's defense budget to test Rabbi Sherman's guidance system.

Summary in Brief

Weapons are very big business although GeoMiliTech never seems to have hit the really big time either because the competition was too tough and equally well connected, or because its leadership was not all that competent. There were plenty of CIA "proprietaries" in the field, and many Israeli covert firms and operations that had been around for some time. Indeed, the Israelis had put in place Bahamian cover for weapons sales no later than 1972 when they formed the General Aviation Corporation Ltd. on July 11th of that year. The shareholders included a couple of New York attorneys, Yigal Dimant listed as an English merchant with a company called Lisbona Ltd., and several firms such as Intercontinental Aircraft Limited and Atlantic Pacific Aviation Corporation. Among the company directors in 1972 were Adolph Schwimmer and Moshe Nirim.[110]

Later on GeoMiliTech would have to compete with General Secord and his unseemly crowd who took a while to get started in the Iran-Contra game. They had to hold back because they had to extricate themselves from a potentially damaging investigation into crimes they committed as the transporters of U.S. weapons to Egypt following the Camp David Egypt/Israel peace treaty. Their transport company was named EATSCO. To save themselves they "greymailed" the White House by threatening to reveal bribes and kickbacks they had paid to extremely high Egyptian officials. This effectively killed the investigation but it did take some time. I must add that Larry Barcella helped in their resurrection and it was the EATSCO crowd that made up the cabal at Austin Aerospace.[111]

It also seems likely that the failure to make the original F-14 deal put somewhat of a damper on the operation though it is not possible to be sure. And that is because Studley and the gang were selling Hawk missile parts to Iran back in 1983–84. The spares were made in Oklahoma. They were also very likely brokering TOWs to Iran years before they became the stuff of conspiracy. Nevertheless, the other deals seemed modest in comparison to the F-14. There is also no telling what role the Iran-Contra scandal itself did to muddy the weapons field at such a profitably deadly time no matter what grandiose plan Luttwak handed Bill Casey.

GeoMiliTech looped together Studley's desire for enrichment with her right-wing passions as it likely did for Singlaub and perhaps others as well. For a while it was like a half-way house for spies, both official and self-selected, situated on a magical highway running between Tel Aviv and Washington, Lisbon and Tehran. GMT played with the big boys in Washington and Israel. Now it seems to have bottomed out with Fob James and Rabbi Sherman. Although GMT may end as comedy, it is nonetheless an essential part of the history of Iran-Contra.

Notes

1. Harold Hongju Koh, *The National Security Constitution: Sharing Power After the Iran-Contra Affair* (New Haven: Yale University Press, 1990), pp. 56–57.
2. Ibid., p. 54.
3. Theodore Draper, *A Very Thin Line: The Iran-Contra Affairs* (New York: Touchstone, 1992).
4. President's Special Review Board, *The Tower Commission Report* (New York: Bantam Books and Times Books, 1987), p. 16.
5. For a while Khashoggi was something of a mystery man whose name was linked in the mid-1970s "in the U.S. to the overseas payoff scandals of Northrop and Lockheed," who was wanted for questioning by a federal Grand Jury and the Securities and Exchange Commission, and whose companies were held together by holding corporations "slithering between national tax jurisdictions." He survived the scandals of the 1970s and remained around the top of the arms world for another decade at least becoming intimately involved in the Iran arms deal. See my "The Khashoggi Papers," in *Contemporary Crises: Law, Crime and Social Policy* (1988), 13: 1.
6. The National Security Archive, *The Chronology: The Documented Day-by-Day Account of the Secret Military Assistance to Iran and the Contras* (Warner Books, 1987) p. 58.
7. Ibid., p. 72.
8. Ibid., p. 62.
9. Ibid., pp. 72–73.
10. Ibid., p. 77.
11. Ibid.
12. Ibid., p. 78.
13. Ibid., p. 69.
14. Richard M. Preece, Foreign Affairs and National Defense Division, Congressional Research Service, the Library of Congress, The Iran-Iraq War: Implications for U.S. Policy," Issue Brief Number IB84016, updated 08/03/84, date originated 01/23/84, p. 25.
15. See Peter Mantius, *Shell Game: A True Story of Banking, Spies, Lies, Politics – and the Arming of Saddam Hussein* (New York: St. Martin's Press, 1995).
16. See, James C. McKay, "Part Seven, Aqaba Pipeline Project," *Report of Independent Counsel: In Re: Edwin Meese III* (Washington, D.C., Government Printing Office), July 5, 1988.
17. Lawrence E. Walsh, Independent Counsel, *Iran-Contra: the Final Report* (Times Books, 1994), p. xv.
18. Ibid., p. 10.
19. Ibid.
20. Ibid., p. 11.
21. Lawrence E. Walsh, *Firewall: The Iran-Contra Conspiracy and Cover-up* (New York: W. W. Norton, 1997), p. 9.
22. I was writing a paper dealing with the Wilson case, among other issues, that I called "Spies and Lies: The Serious Crime Community," for presentation at the annual meeting of the American Society of Criminology in San Diego, 1997.
23. Lyn Bixby, "Head of Iran Hostage Probe Linked to Arms Deal," *Hartford Courant,* May 29, 1992, p. A1.
24. United States District Court, District of Connecticut, United States of America, Plaintiff, vs. Arif Durrani, Defendant, "Deposition of Barbara Studley," Civil B-90-090, Crim. B-86-59, August 9, 1991, p. 51.

25. Ibid.
26. Bixby.
27. Ibid.
28. Taylor Branch and Eugene M. Propper, *Labyrinth* (New York: Viking Press, 1982), pp. 609–610.
29. Author's interview with former FBI agent Al Seddon, November 1997.
30. U.S, House of Representatives, Select Committee to Investigate Covert Arms Transactions with Iran, and U.S. Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition, "Deposition of Mark M. Richard, August 19, 1987.
31. Oliver North, Reply to note of 08/31/85 13:26, SECRET – Subject: "PRIVATE BLANK CHECK." This document is in Tom Blanton (ed.), *White House E-Mail: The Top Secret Computer Messages The Reagan/Bush White House Tried to Destroy* (New York: The New Press, A National Security Archive Documents Reader, 1995), Chapter 5.
32. Ibid.
33. Reply to note of 08/31/85 13:26 – SECRET – NOTE FROM: OLIVER NORTH, Subject: PRIVATE BLANK CHECK, Wrap Up as of 2030 EDT., in *White House E-Mail*, Chapter 11.
34. United States District Court, District of Connecticut, United States of America, Plaintiff versus Arif Durrani, Defendant, Civil B-90-090 (TFGD), Crim. B-86-59 (TFGD), "Sworn Statement of Ron Harel," March 21, 1992, in Montreal, Quebec, Canada, C. L. Klein, Official Court Reporter, p. 56. Hereafter noted as Roh Harel, "Sworn Statement."
35. T. Van De Meerssche, Manager airfreight/Comexas, to Honorable T.F.G. Daly, Chief Judge, U.S. District Court, Bridgeport, CT., "Subject: Proces Verbal B 827/86 vo 400 Dated Nov. 13th 1987, Fax Nbr 00/1/818/8892363, sent to Judge Daly on 29 December 1989 from Comexas N.V., Zaventem, Belgium.
36. Interestingly enough, in Joan Didion's review of Dinesh D'Sousa's *Ronald Reagan: How an Ordinary Man Became an Extraordinary Leader*, she writes "Yet D'Sousa's vignette casts Lt. Col. North, whose several code names included "Mr. Goode" and "Mr. White." *New York Review of Books*, December 18, 1997, p. 19.
37. Lawrence Lifschultz, Steven Galster, Rabia Ali, *Bordering On Treason? The Trial and Conviction of Arif Durrani* (East Haven, Connecticut: The Pamphlateer's Press, 1991), p. 40.
38. There is no doubt that the U.S. and Israel were in the business of supplying spare Hawk parts to the Iranians. Indeed, President Reagan "specifically authorized delivery of HAWK missile parts to Iran" on July 30, 1986. Early in August, the U.S. sent a dozen pallets of spare parts to Israel which then moved them to Iran. However, the shipment was still incomplete. There were approximately 170 parts still absent. Among the many proofs of the U.S. role in the Hawk spare parts shipments consider the following:

    "On November 11, 1986, Robert L. Earl, a Marine Lieutenant Colonel who had been on Vice President Bush's Task Force on Terrorism and subsequently moved to the NSC in the spring of 1986 to work in North's office as a Deputy Director of the Political-Military Affairs Directorate, compiled a list of the "the weight and cube of everything shipped" to Iran. "TOWS and **HAWK spare parts** [my emphasis] was 215,464 lbs and 18,782 cu.ft. The capacity of a C-5 is 291,000 lbs and 34,734 cu.ft. Ergo," he wrote, "room to spare" And he added, "All of the above remains SECRET, of course. CIA is reporting this info in greater detail to the SSCI [Senate Select Committee on Intelligence]." MSG FROM: NSRLE – CPUA TO: NSRKS – CPUA

11/25/86 11:14:55, To: NSRKS – CPUA, NOTE FROM: Robert L. Earl, SUBJECT: SUPPLIES cc: NSCPC – CPUA, in *White House E-Mail*, Chapter 6.

39. Lifschultz, p. 19.
40. T. Van De Meerssche. The 1989 fax memorializes the statement made by Van de Meerssche in 1987.
41. United States Government, Federal Correctional Institution, Phoenix, Arizona, Rick Stiff, Executive Assistant, MEMORANDUM, "Special Visit Authorization," July 8, 1987.
42. Lifschultz, p. 34.
43. Ibid.
44. King's statements about his team's *modus operandi* were told to reporter Ric Eyerdam of the *South Florida Business Journal*.
45. Michael E. Timpani to Arif Durrani, "Letter" 12 February 1993.
46. Author's interview with Barcella.
47. *White House E-Mail*, Chapter 7.
48. Arthur M. Schlesinger, Jr., *Robert Kennedy and His Times* (Boston: Houghton Mifflin Co., 1978), vol. 1, p. 477.
49. For non-specialists seeking to understand the recent history of Iran there are few studies in English more interesting than Manucher Farmanfarmaian and Roxanne Farmanfarmaian, *Blood and Oil: Memoirs of a Persian Prince* (New York: Random House, 1997), and on the era of the Shah and the revolution, Ryszard Kaupscinski's *The Emperor: Downfall of an Autocrat* (New York: Vintage Books, 1984) and his *Shah of Shahs* (New York: Vintage Books, 1986); additional, William Shawcross, *The Shah's Last Ride: The Fate of an Ally* (New York: Touchstone, 1988). Robin Wright's *In the Name of God: The Khomeini Decade* (New York: Touchstone, 1989) is enlightening.
50. Preece, p. 25.
51. Ibid.
52. State of Delaware, Office of Secretary of State, "Certificate of Incorporation of GeoMiliTech Consultants Corp.," August 15, 1983.
53. GeoMiliTech Consultants Corporation, "Certified Copy of the Minutes of the Board of Directors of GeoMiliTech Consultants Corps." a Delaware Corp., May 11, 1984.
54. Scot Anderson and Jon Lee Anderson, *Inside The League: The Shocking Expose of How Terrorists, Nazis, and Latin American Death Squads Have Infiltrated the World Anti-Communist League* (New York: Dodd, Mead & Company, 1986), pp.150–152.
55. Ibid., p. 55.
56. One of Carbaugh's duties for GMT was to ask South Korea's "first Assistant Minister of Defense, General Park Choon Sik" about "providing 300,000 M-107 155mm empty shells and projectiles. Park responded that "these could only be for Iran and therefore he could not authorize such sales." John E. Carbaugh, Jr. to Barbara Studley, President, GeoMiliTech Inc., "Memorandum: A Report of the Activities in Korea," July 29, 1984.
57. Barbara Studley "letter to Mr. Ron Harel, MACED Marketing Consultancy & Development," January 6, 1984.
58. On Schweitzer see, Michael Getler, "2 Ed-Aides to Haig Ger Key Posts on National Security," *Washington Post*, January 22, 1981, p. A9; and "Pentagon Nominates Once-Criticized General," *New York Times*, April 30, 1983, p. 5; and, Susan F. Rasky, "North Urged Leniency for Honduran Linked to Assassination Plot," *New York Times*, February 23, 1987, p. 9.
59. John H. Davis, *Mafia Kingfish: Carlos Marcello and the Assassination of John F. Kennedy* (New York: McGraw-Hill, 1989), p. 425.

60. Ibid.
61. The information comes from I. Irving Davidson's personal calendar once in the possession of a detective from the Washington Metropolitan Police.
62. See U.S. Government, Federal Bureau of Investigation, Special Agent William A. Vericker to SAC, New York, "Subject: NY 3936-C, Criminal Informant, Re: John Dioguardi," NY 137-9495, September 16, 1963.
63. Washington, D.C., Metropolitan Police Department, "Statement of Facts in Case of Prisoner Joseph Francis Nesline," taken by Detective R. G. Kirby, D.C.P.D. 74798.
64. Federal Bureau of Narcotics, "Examination of Passport Office File of Charles Tourine, Sr.," December 6, 1961.
65. "Ex-U.S. Attorney and 8 Others Indicted in Alaska Prostitution," *New York Times*, August 9, 1976.
66. Direction de la Police Bureau Interpol, 47 Raamweg, La Haye to Interpol WASHINGTON, "Reference Your Letter No. 7522/LS of 5 April 1978 concerning Joseph Francis Nesline and others, Mensaje Postal Condensado, No. 7.323/3465 D/PR, May 8, 1978.
67. INTERPOL WIESBADEN, BUNDESKRIMINALAMT to Interpol Washington, "Investigation Reports submitted by the Landeskriminalamt Hamburg and Kiel, Re: Joseph Nesline," variously dated in 1977-78-79.
68. Interpol Teheran to Interpol Tokyo and copy to Interpol Washington-Rome, "Reference Radio-Message No: 386 of 6th June 78 regarding Dargahi Daviad dob. 5th Feb. 33 Iran," September 11, 1978.
69. This last point opens yet another series of connections – Nesline and Tourine worked with Nigerian fighter and former world middleweight champion Dick Tiger in a casino in Nigeria, and Nesline bought an interest in light-heavyweight champion Bob Foster from the fighter's manager Morris Salow a known bookmaker and loanshark. State of Connecticut, Department of State Police, Statewide Organized Crime Investigative Task Force, "Historical Data Sheet Re: Morris Joseph Salow," sent to Department of Police, Montgomery County, Maryland, April 12, 1978.
70. Ron Harel, "Sworn Statement," p. 16.
71. Ibid., p. 21.
72. Ibid., p. 21.
73. Richard Halloran, "Iran Said to Use F-14's to Spot Targets," *New York Times*, June 7, 1984, p. A3.
74. Richard Halloran, "Iran Rebuffed By U.S. In Bid For Parts for Its F-14's," *New York Times*, December 13, 1981, p. 14.
75. Harold J. Logan, "Grumman Seeking Pilots for F-14 Training in Iran," *Washington Post*, April 11, 1977, p. A4.
76. Seymour M. Hersh, *New York Times*, September 11, 1976, P. 27.
77. William Branigin, "U.S. Firm's Offices In Iran Bombed: Exodus Continues," *Washington Post*, December 9, 1978, P. A1.
78. John F. Berry, "Iran Payoff Is Charged to Grumman," *Washington Post*, January 5, 1979, P. C8.
79. Halloran, December 13, 1981.
80. Roh Harel, "Sworn Statement," p. 23.
81. Barbara Studley to Ron Harel, "Re: Trip Report 13 September: Item 14," September 19, 1984.
82. Bruce E. Herbert, Vice President, "Memorandum for Barbara F. Studley, President, Subject: Status Report – Washington Office," July 24, 1984, p. 1.
83. Barbara Studley to Ron Harel, "Memorandum," September 26, 1984, p. 1.

84. Ron Harel to Barbara Studley, "Trip Report and General Status/Information," September 13, 1984, p. 2.
85. Studley to Harel, "Re: Trip Report."
86. Ron S. Harel, Executive Vice President to Mr. Werner Neumann, TRUVENTA A.G., Renweg 32, Basel, Switzerland, "Letter: The following is intended to summarize the various projects in which we are cooperating . . .", September 13, 1984, p. 4.
87. Ibid.
88. Michael Austin, Chairman Austin Aerospace, "Telex" Ron Harel, GMT, November 20, 1984.
89. A couple of months prior to Michael Austin's telex, another Iran weapons opportunity presented itself. Something called the European Consulting Service, registered in Panama, sent an inquiry to GMT for up to 5,000 TOW missiles, half with the improved warhead which had better armor piercing capabilities. Just to get into the game GMT had to come up with $500,00 and deposit it in a seller-designated bank. See, E. C. S. (European Consulting Service), Avenida Gusto Strosemena, Republic of Panama, "Quotation for TOW BGM 71A – Improved," September 5, 1984.
90. Ron Harel to Scandinavian Commodity, Telex, July 25, 1984.
91. Ron Harel, Maced Marketing Consultancy & Development to Barbara Studley, GeoMiliTech Consultants Corp., Miami Lakes, Florida, "Letter," March 15, 1984.
92. The original telex was sent to Mr. Schmitz, the head of Scandinavian Commodity, by a representative of the Radford Arsenal, and a copy sent to Ron Harel, May 9, 1984.
93. Zvi Reuter, Director, State of Israel, Ministry of Defense, Foreign Defense Assistance & Defense Export, to M/G (R) Jack Singlaub, GMT, Washington, "Letter: I hereby prolong the option described in my letter No. 2581 of 20.3.85 until the 31st Dec., 1985," August 13, 1985.
94. Benny Morris, "Israel denies it is selling arms to Iran," *Jerusalem Post*, December 3, 1987, p. 1.
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106. Rick Eyerdam, "Loans That Sunk Bayshore Subject of New Investigation," *South Florida Business Journal*, October 14, 1991, p. 1.

107. Ibid.
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109. Brett Davis, "Iran-Contra figures help James lobby for system," *Huntsville Times*, August 15, 1998, p. A1.
110. General Aviation Corporation Ltd, Bahamas Central Files #18,906/72. This file is part of a collection of Bahamian documents secured by IRS operatives, resident in The Bahamas, who were part of a secret undercover operation dubbed Tradewinds. See my *Masters of Paradise: Organized Crime and the Internal Revenue Service in The Bahamas* (New Brunswick, New Jersey: Transaction Books, 1998).
111. One of the EATSCO principals was former CIA officer Tom Clines. According to a memorandum prepared for the CIA's Inspector General on February 10, 1982, following an interview with Tom Clines by two members of the Inspector General's Office, Barcella "sent a letter to Salem and Clines' other Egyptian colleagues stating that Clines was cooperative on the Wilson/Libya matter. This was to enable Clines to placate his Egyptian colleagues who were disturbed by Clines' media attention. Clines believes that Barcella sent a copy of this letter to CIA's OGC [Office of General Counsel]. (COMMENT: OGC has provided OIG [Office of Inspector General] with a copy of this letter which is filed in the Wilson/Terpil/Clines soft file.)"

2
California Dreams and Gangster Schemes: The Standley Commission, the Guarantee Finance Company, and the Social System of Organized Crime in post-World War II Southern California

Jeffrey Scott McIllwain

Clinton Leisz

> Come to Los Angeles! The sun shines bright, the beaches are wide and inviting, and the orange groves stretch as far as the eye can see. There are jobs aplenty, and land is cheap. Every working man can have his own house, and inside every house, a happy, all American family. You can have all this, and who knows...you could even be discovered, become a movie star...or at least see one. Life is good in Los Angeles...it's paradise on Earth. Ha ha ha ha. That's what they tell you, anyway.
>
> "Sid Hudgens," *L.A. Confidential* (1997)

> Go back to Jersey, Sonny. This is the City of the Angels and you haven't got any wings.
>
> "Dudley Smith," *L.A. Confidential* (1997)

Introduction*

In the summer of 1947, a volley of articles in the *Los Angeles Times* reported that an influx of East Coast hoodlums and gangsters were pouring into Southern California and that this apparent underworld variant of Manifest Destiny necessitated concern

* I dedicate this to my professor, dissertation chair, colleague, friend, and surrogate "Pa," Dr. Alan Block. I chose to write on the subject of the Los Angeles underworld in honor of it being Alan's adopted hometown (by way of Brooklyn and Miami). I also dedicate it to my late grandfather, Carlo Guarino, who found this same underworld to be a source of income and pleasure for many decades.

on the part of the citizens of Los Angeles and its numerous suburbs. Earl Warren, California's Governor and the future Chief Justice of the United States Supreme Court, expressed the rationale behind this concern: "One gangster moving into California from another State where he has power does not mean much, but the minute he becomes associated with others in...bookmaking and the like it becomes serious."[1] Warren elaborated on the seriousness of the threat when he stated, "No Governor could or should view with complacency a condition which can be so harmful in his State as the development of an underworld."[2] Thus, Warren was astutely aware that the perceived westward demographic shift in the nation's underworld and the consequent burgeoning of criminal networks represented a serious challenge to California.

Governor Warren soon took steps to address the situation, especially since it coincided with a more pressing political interest. Governor Warren needed to undermine the newly elected State Attorney General, Frederick Napoleon Howser, for cause. The former District Attorney of Los Angeles, Howser passively represented the interests of Artie Samish, a powerful Sacramento lobbyist who represented liquor and racetrack interests and an extensive list of underworld clients. "Not only was Howser willing to look the other way as far as Samish's clients were concerned," noted California State Archivist and historian Kevin Starr, "[his] own coordinator of law enforcement was secretly running a string of slot machines in Mendocino County."[3] Since Howser was a fellow-Republican, Warren could not afford the political damage such a figure could cause his Administration and his future political aspirations.

To circumvent the influence of Howser, Samish, and Samish's clients on the state's justice system, Governor Warren created the Special Crime Study Commission on Organized Crime of the State of California on November 1, 1947. Governor Warren appointed retired admiral William Standley, the former chief of U.S. Naval operations and Ambassador to the Soviet Union, as Chair of the Commission. Governor Warren then appointed a close political ally, Warren Olney III, to administer the "Standley Commission."[4]

The formal task of the Standley Commission was to report on, "The extent to which persons are organized or are otherwise banded together, both inside and outside the State for business purposes which violate the laws of the State of California" and to discover "the means and methods used by such persons to further and promote their unlawful businesses and purposes in California."[5] In carrying out these tasks, the commission had two purposes. First, it had to make suggestions for the improvement of legislation and administration measures. Second, it had to inform the public regarding the means and methods used by organized criminals and to identify those involved to the greatest extent possible.

This latter purpose of the Commission provides an excellent glimpse at the process of organizing crime in post-War California's social system of organized crime, a system composed of the extensive networks "binding members of the underworld to upperworld institutions and individuals."[6] Although many scholarly studies exist on the history of organized crime in other American cities, Los Angeles remains relatively unexamined since organized crime has long been viewed as the purview of urban centers east of the Mississippi.

The investigations and subsequent reports of the Standley Commission offer a solid starting point for research on the subject. Subjects addressed by the Commission include the slot machine racket, gang violence and killers, abuses of writs of habeas corpus, police corruption, bookmaking rackets, attempts by some organized criminals to consolidate gambling in the state through protection rackets, and detailed assessments of the Los Angeles-based, high-profile gangsters Mickey Cohen and Jack Dragna and some of their competitors. With so many subjects to consider, it is necessary for our purposes to select a representative sample. Consequently, we will analyze a portion of the section of the reports dedicated to bookmaking rackets, specifically the investigation of the Los Angeles County-based Guarantee Finance Company. It is chosen, in part, because there are no famous gangster names directly related to the investigation. Indeed, the relative anonymity of the key players typifies the extent and the banality of organizing crime in Southern California during the post-War years.

The Guarantee Finance Company

In July of 1947, the Guarantee Finance Company set up shop on the first and second floors of 1747–1749 East Florence Avenue, which is located in an unincorporated section of Los Angeles County just outside the jurisdictional limits of the incorporated cities of Los Angeles, Bell, Maywood, and Huntington Park. By all outward appearances, the Guarantee Finance Company was a licensed and chartered corporation. The company was authorized to issue stock and, in September 1947, a personal property broker's license was obtained that allowed the company to engage in general finance and issue loans. While this finance and loan business looked perfectly legitimate to the casual observer, the Standley Commission would later say, "The Guarantee Finance Company and its affiliates were used to mask one of the largest criminal enterprises known to law enforcement officers in Southern California."[7]

Marvin D. Kobey was president of the Guarantee Finance Company. Kobey, along with Philip H. Colbert, Harry Rockwell, and Albert Kogus, were the principal members of the operation. Each of the members had a history of illegal bookmaking. Operating underneath these four men were more than 160 runners that who solicited bets from all over the City of Los Angeles. These runners gave potential bettors a phone number and coded phrase for placing bets over the telephone. The runners then returned to settle the wins or losses with the bettor.

The operators of the Guarantee Finance Company developed an ingenious system to mask its illegitimate sources of revenue. If a bettor lost, he would be approached and "advised" by representatives of a "partner" of the Guarantee Finance Company, the Guarantee Discount Company (both located at the same Florence Avenue address). According to the Standley Commission, the Guarantee Discount Company served the function of maintaining "accounts receivable and the settlements made with the runners out of the gambling business."[8] A witness testifying before the grand jury discussed the experiences of one unlucky bettor, who described the function of the Guarantee Finance Company in less benign terms:

"As his losses mounted...he was visited by two 'strong-arm men' who requested that he obtain a loan from Guarantee Finance in order to pay off his bookie losses."[9] Another witness dryly observed, "These boys could be real tough."[10] As a result, of this toughness, the bettor would make payments on the loan at usurious rates until his betting losses were repaid, using his home, car, furniture or other property as collateral. In this manner the Guarantee Finance Company was able to appear legitimate to authorities, all the while combining a lucrative gambling and loansharking operation that, according to sworn testimony of former State Assemblyman and Guarantee Finance Company attorney Ralph Welsh, generated approximately $7,000,000 in betting volume per year with a lucrative loansharking operation.[11]

The Standley Commission also uncovered evidence that the Guarantee Finance Company conducted illicit business on the transnational level as well. Based on the seized records it examined, the Standley Commission found that the Guarantee Finance Company served as the Southern California distributor for a lottery based in Mexico City:

> Included among the papers found in the offices of the Guarantee Finance Company were many relating to a Mexican lottery known as the International Sweepstakes, S.A., with headquarters in Mexico City. The Guarantee Finance Company was the distributing agency in Southern California for this lottery, and records were found showing that the firm had sold hundreds of lottery tickets to Los Angeles residents...[12]

It is worth mentioning that one of the lottery salesmen was an L.A. County deputy sheriff and many of the lottery's customers were also clients of the Guarantee Finance Company.

The seized records show that one of the largest loans made by the Guarantee Finance Company was to a tax consultant for the company named Harry Sackman. The loan was to be used for the purpose of assisting with the start up of International Sweepstakes, S.A. The Standley Commission reports,

> The proceeds of the loan were wired to him [Sackman] in Mexico City. The records of the company indicate that he [Sackman] was in Mexico City at that time in connection with the original formation of a lottery known as the International Sweepstakes of Mexico.[13]

Records of the company's incorporation in Mexico provide only the bare minimum of information about its capitalization, which stood at $500,000 pesos represented by 5,000 shares of stock.[14] Whether International Sweepstakes, S.A. was simply a subsidiary of the Guarantee Finance Company or a joint-venture with Mexican criminal entrepreneurs remained unknown to the Standley Commission.

What is clear is that International Sweepstakes, S.A. began advertising in Mexico City in early 1948 and held its first drawing, based on the racing results at the Handicap de las Americas held at the Mexico City Race Track, on May 9th, 1948. The company guaranteed the distribution of 1,000,000 pesos in prizes. This lottery was international from the start, as evidenced by the February 14, 1948 seizure of 64,254 books of lottery tickets valued at $1,200,000 by U.S. Customs officers when they stopped a delivery truck near Laredo, Texas.[15] The transnational activities of the Guarantee Finance Company illustrate, however, that the

company was constantly searching for sophisticated ways to increase profits that were not bound by local, state or national jurisdictions.

The first floor of the Guarantee Finance Company headquarters served as the office where the loans were processed. Just upstairs, through a fortified door that could only be opened with a passkey, the bookmaking business bustled. When an undercover police officer surreptitiously entered this area as part of an ongoing investigation into illegal bookmaking, "He saw a battery of 10 to 12 telephones operated by employees busily engaged in taking bets under the supervision of a 'pit boss.' An elaborate system of racks for holding the betting markers was observed."[16]

Such an extensive system relied heavily on the use of the telephone for remaining covert and handling the more than $7,000,000 betting volume per year. Indeed, the Guarantee Finance Company paid directly for 74 telephones and more than 100 more were part of the extensive telephone network scattered across satellite locations scattered across the County. The Standley Commission determined that the runner most likely paid for the telephones at the satellite locations (located in places like barbershops and bars). By today's standards, acquiring that many telephones, and service for them, does not seem like a big deal. However, as the Standley Commission points out, "...the ease with which the Guarantee Finance Company could obtain telephone installations even when wartime priorities and postwar shortages made it impossible for many legitimate applicants to obtain necessary service," was significant.[17]

The Roles of the Upperworld

If one wonders how the Guarantee Finance Company was able to obtain such an extensive telephone network for illegal activities while many legitimate consumers were being denied service, then one need not look much further than Kobey's relationship with one James B. Smart, Jr. Smart was the manager of the phone company branch responsible for providing service to the Guarantee Finance Company. According to the Standley Commission, Smart and Kobey were good friends. Nevertheless, their relationship entailed more than just friendship.

The Standley Commission reports, "Kobey persuaded him [Smart] to buy horses for Kobey under Smart's name. They were to be registered and raced under Smart's colors, but they were to be Kobey's horses."[18] The potential for Smart to receive financial compensation under this arrangement is implicit. Given the nature of Kobey's relationship with Smart, it is easy to see how the Guarantee Finance Company was able to secure telephone service for its operations. After the subsequent exposure of the Guarantee Finance Company as an illegal bookmaking operation, the telephone company transferred Smart to Oceanside and Kobey and Smart were both banned from thoroughbred racing.

Preventing the interference of law enforcement proved as uncomplicated as securing phone lines. The Standley Commission notes that,

The history of the Guarantee Finance Company and its allied organizations is illustrative of the peculiar blindness to organized crime that appears to overcome so many agencies of government when their attention is directed to obvious evidence of violations of the law.[19]

Indeed, the members of the Guarantee Finance Company operated with complete impunity for almost two years despite a pattern of documented complaints to the Los Angeles County Sheriff's Office from both the telephone company and the Los Angeles Police Department. Both knew that the Guarantee Finance Company was a front for bookmaking, but they could not convince the Sheriff's Office, which had jurisdiction in the unincorporated portion of Los Angeles in which the business was located.

The Standley Commission documented a pattern of evidence that the Los Angeles Sheriff's Office refused to take action despite knowing what was occurring at the Guarantee Finance Company. Captain Carl Pearson, head of the Sheriff's vice squad, provides a typical example of the "blindness" afforded to the Guarantee Finance Company. The Standley Commission reports,

The Special Crime Study Commission on Organized Crime has in its possession six reports to Captain Pearson, Los Angeles Sheriff's Office, by the telephone company telling him bookmaking was being conducted at the...address. These reports to Pearson, which began in 1947, had no apparent results.[20]

The Standley commission then goes a step further. It alleges that the Sheriff's Office did more than just turn a blind eye to the operations of the Guarantee Finance Company. Indeed, it actively assisted in protecting the operation from investigation by the Los Angeles Police Department.

After arresting several runners, Lieutenant (then Sergeant) James Fiske, who was in charge of the bookmaking detail of the Los Angeles Police Department's vice squad, obtained information from both bookies and bettors operating in the City of Los Angeles that the Guarantee Finance Company served as the headquarters for a large bookmaking operation. Fiske visited the Guarantee Finance Company's office twice in late 1947 and generated a large amount of intelligence concerning its operations. Though no arrests were made during either visit, on the second visit Fiske took all of the betting markers for the day. The Sheriff's Office responded to Fiske's actions towards the Guarantee Finance Company by having one of its Captains, Al Guasti, personally delivering a written "complaint and protest to Fiske's superiors about his attempt to enforce the law and a demand that he be ordered to refrain from carrying out his investigations into county territory!"[21] The Standley Commission's view of these actions were unequivocal:

The operations of the Guarantee Finance Company show not only neglect and indifference on the part of the Sheriff's Office, but actual resistance to police department attempts to investigate and bring to a halt the illegal operations of this syndicate.[22]

As far as the Standley Commission was concerned, the impunity under which the Guarantee Finance Company operated was a direct result of the inaction of the Sheriff's Office.

The Sheriff's Office was not the only source of complaints about Fiske's investigation. The president of the Guarantee Finance Company, Marvin D. Kobey, also expressed his ire. The Standley Commission reports that Kobey had a conversation with Lieutenant Wellport of the Los Angeles Police Department on September 13, 1947, at around 10:00 p.m., where he complained about Fiske taking his company's books. During the course of that conversation,

> Kobey told Wellport that it was generally necessary to negotiate with a man named Dave Rubin to open a gambling or bookmaking establishment in Los Angeles county. Knowing that, he said, he telephoned Rubin when he wanted to reenter the bookmaking racket and was informed he was too late...Kobey said that he next got in touch with a friend who was then the foreman of the Los Angeles grand jury and who advised him that he did not have to do business with Rubin...Kobey so informed Rubin, opened his bookmaking establishment and was not seriously interfered with until Fiske took his books.[23]

The conversation illustrates two important points. First, the candor of Kobey talking with a police Lieutenant about how he went about establishing his illegal bookmaking operation seems to indicate little, if any, concern about criminal prosecution for the activities. Second, Kobey's self reported connection with the Los Angeles grand jury foreman underscores another relationship that binds underworld and upperworld actors into this specific social system of organized crime.

With the surreptitious ties of Guarantee Finance Company to local law enforcement securely established, the Standley Commission then briefly turned its attention to its main target, the State Attorney General's Office. The Standley Commission reported that on January 13, 1949, Special Agent McClary of the Attorney General's office conducted an investigation of the Guarantee Finance Company at its headquarters. The Commission interviewed the treasurer and auditor of the company as part of the investigation. The Standley Commission determined, "After the subsequent exposure of bookmaking at that place [Attorney General Howser] reported that on the occasion of his agent's visit 'there was no activity that would lead Mr. McClary to believe that at that there was any illegal activity of any kind going on.' "[24] The Standley Commission made clear its skepticism of the comment by Attorney General Howser by noting that the records show no interruption of business on that date.

Creating Impunity

The Guarantee Finance Company understood that the fastest road to impunity from law enforcement was to pay it off. An analysis of the Guarantee Finance Company's books revealed that they had an account set up just for this purpose. After examining the books of the company, Charles Manaugh, special auditor for the Standley Commission, testified at the trial of the principals that, "The Guarantee Finance Co. officials paid $108,000 in 1948 to law enforcement officials for protection for bookmaking enterprises."[25] This relatively large sum of money used for payoffs to law enforcement officials paid substantial financial dividends.

The types of patrons associated with the Guarantee Finance Company also accounts for part of the impunity afforded to it by law enforcement. The Standley Commission points out that, "Guarantee records reveal that numerous loans were made to police officers of the Los Angeles Police Department, deputy sheriff's and other public officials."[26] Whether these loans were made under legitimate or illegitimate pretenses was not made clear in the reports. However, evidence of at least three cases of inappropriate police associations with the Guarantee Finance Company was reported in the press.

The first case involved Los Angeles Police Department Sgt. Robert Sumner, who was brought up on charges before a police board of rights for misconduct. Not only had he obtained a loan from the company, but he also took on a second job as a debt collector for the company. With regards to Sumner, the Standley Commission found,

> In addition to borrowing money himself, he helped the company collect some of its bad debts. According to testimony developed during the investigation, he "directed" one man in debt to a bookie, to the Guarantee offices threatening him with arrest if he did not apply for a loan. This example of Sumner's activities is not an isolated one. He used similar methods to redeem bad checks.[27]

The second case centered on a police officer attempting to get advance information on when the raid of the Guarantee Finance Company was to take place. Alice R. Ensloe, an investigator for the State Securities Corporation Commission, testified against Los Angeles Police Department Sgt. R.J. (Whitey) Hollis before a police board of rights hearing. Ensloe testified,

> Sgt. Hollis told me that he had been talking with the president of the company and that he (Sgt. Hollis) was informed that if they (the finance company officials) knew when the planned raid was going to take place "there might be a piece of change in it for somebody."[28]

The third case centered on a comment made by a sheriff's deputy that was overheard during the raid of the company. Alice Ensloe testified before the grand jury that she had seen a uniformed sheriff's deputy in the officers of the Guarantee Finance Company under curious circumstances:

> She said that the deputy entered the offices and approached Mrs. Welsh at the front desk to inquire, "How's everything? Has the smoke cleared up around here yet?" Miss Ensloe testified that Mrs. Welsh made a warning gesture and that the two conducted a short whispered conversation, at the end of which the deputy said loudly, "Well I guess you won't need any tickets today. I'll come back and see you later."[29]

This strange incident indicated to the Commission that the deputy sheriff was engaged in some disreputable business with the company.

Such a slew of formal and informal relationships between law enforcement officers and the Guarantee Finance Company illustrate the level of protection it possessed. Whether it was in the form of direct pay-offs, loans, jobs on the payroll, or other means, the Sheriff's Department provided the impunity that allowed the illegal bookmaking and loansharking operations of the enterprise to go unchecked. Consequently, any officer that investigated the Guarantee Finance Company faced a myriad of forces within his own organization that preferred that he not.

The Twisted Road to Collapse

The downfall of the Guarantee Finance Company did not result from any law enforcement effort to strike at its illegal activities. Rather, its exposure and ultimate demise began with an unlikely source, the State of California's Division of Corporations. The Division of Corporations regulated the licensing and business transactions of California corporations. After receiving anonymous complaints, employees of the Division of Corporations made an unexpected visit to the Guarantee Finance Company on January 27, 1949. They subpoenaed all of the company's records and solicited testimony for the purpose of determining if the personal property broker's license issued by the Division of Corporations should be revoked or not. During this investigation, the Standley Commission reported,

> ...principals of the company acknowledged "off the record" that bookmaking was being conducted there and offered voluntarily to surrender their loan broker's license in order to have the representatives of the Division of Corporations leave the premises without further inquiry – and without the company's records.[30]

The Division of Corporations, outside of the influence of Attorney General Howser's office and Artie Samish, declined the offer and completed a thorough investigation into the company's activities.

After the Division of Corporations obtained the records of the Guarantee Finance Company, the Standley Commission subpoenaed them. The next day, they summoned federal agents from the Bureau of Internal Revenue to study the records. On March 22, 1949, a meeting was held with the Standley Commission's chief counsel and investigator and the, "...Assistant Commissioner of Internal Revenue, the Director of the Intelligence Unit, and a number of other bureau officials," in Washington, D.C.[31] The purpose of the meeting was to discuss possible federal criminal prosecution of those behind the Guarantee Finance Companies illegal operations. The Standley Commission later reported,

> The commission representatives came away from this conference under the impression that...investigation of the matters disclosed by the Guarantee Finance records would be conducted with a view to criminal prosecution and that no compromise of criminal liability would be considered by the government in view of the size and nature of the apparent fraud.[32]

Hopes for such a prosecution were not well founded given that the principals behind Guarantee Finance Company remained one step-ahead of their pursuers. In this case, they simply used the tax law to their advantage. Before criminal proceedings began, the Standley Commission reported that Harry Sackman, the previously mentioned tax consultant for the Guarantee Finance Company who established International Sweepstakes, S.A. in Mexico, went directly to the Internal Revenue Commissioner in Washington, D.C. Sackman proposed to file amended tax returns for the members of the Guarantee Finance Company for the year 1948 without deducting more than $350,000 of unexplained "business expenses." The Internal Revenue Commissioner agreed, undercutting plans to prosecute Sackman's clients for tax evasion:

The bureau agents stated that the acceptance by the government of this proposal made it impractical to proceed against the members of the syndicate to compel them to disclose to whom these moneys had been paid, and, consequently, that it would not be possible for the government to prosecute such persons criminally, or even to collect from them the taxes and penalties due.[33]

Why was Sackman's visit to Washington, D.C. so successful? While the Standley Commission does not come to an explicit conclusion, it inferred that Sackman and/or his clients used either money or influence with politicians to quell the matter. The Standley Commission's suspicion that something shady was going on is inferred from what they called the "remarkable results" obtained by Sackman in Washington, D.C.[34] Whatever the reason for the Internal Revenue Commissioner's decision, the members of the Guarantee Finance Company subverted the anticipated federal criminal charges.

With federal remedies exhausted, a Los Angeles grand jury eventually indicted the four principals and eight other agents of the Guarantee Finance Company for "69 overt acts of bookmaking, operating a lottery and conspiring to make a book."[35] The four principals of the Guarantee Finance Company, Kobey, Kogus, Colbert, and Rockwell, and four of their agents, were convicted after a two-month trial for conspiracy to violate the bookmaking law. The principals were sentenced to state prison and the agents were sentenced to county jail time. The Standley Commission lamented the limit of the sanctions, noting "...the action taken by the county authorities was highly appropriate, but no charge of having conspired to defraud the United States was ever filed."[36] The comment by the Standley Commission embodies their frustration over continued inaction by United States Internal Revenue agents to strike at organized crime by going after income tax violations.

As for Governor Warren's informal mandate for the investigation, Attorney General Howser nor lobbyist Artie Samish were charged with a crime. However, the adverse publicity generated by the Commission's investigations derailed Howser's efforts to secure his party's nomination for the 1950 election, leading to the eventual election, with Governor Warrens's "*sub rosa* endorsement," of Democrat (and future Governor) Pat Brown to the Attorney General's Office.[37] This was a serious setback for Samish and his clients as they no longer controlled California's chief prosecutor.

The Social System of Organized Crime

In the words of the Standley Commission, "organized crime does not exist in a social vacuum."[38] Indeed, the case study of the Guarantee Finance Company clearly shows that the very thought of a vacuum is a naïve one given the company's extensive relationships with a gamut of upperworld actors. As the Standley Commission astutely observed, "All criminals are more or less dependent upon contacts with more respectable members of society and this is particularly true of those engaged in commercial forms of crime. For them, friendships with political figures are absolutely essential."[39]

These contacts with nominally more respectable members of society help constitute the social system of organized crime. This holds particularly true for the relationship between members of the criminal justice system and the criminal enterprise. Historical criminologist Alan Block differentiates between three potential roles of criminal justice in relation to the criminal enterprise. The first two roles of criminal justice concern, "...either the passive one of non-interference cemented by the bond of bribery, or the active one of pursuing crooks and harassing the enterprise."[40] These two roles are engaged in simultaneously with one another. The third potential role of criminal justice is actively aiding the syndicate. Block asserts, "...it would be a serious mistake to hold criminal justice especially law enforcement to just these two roles in illicit enterprise. There is a third one which is that of active criminality."[41] Examples of each of these three roles of criminal justice in illegal enterprise, non-interference, active pursuit of the syndicate, and active criminality, can be found in the case of the Guarantee Finance Company.

The Guarantee Finance Company spent a substantial amount of money to secure "non-interference." Bribes for law enforcement were simply viewed as a cost of doing business. The Guarantee Finance Company budgeted for this eventuality, as evidenced by their records that indicate $108,000 was paid to law enforcement in 1948 alone. Regrettably for the members of the Guarantee Finance Company, impunity was a relative experience given the multiple police jurisdictions in Los Angeles County. Indeed, not all law enforcement in the area was for sale. Lieutenant Fiske of the Los Angeles Police Department's vice squad illustrates the point. Fiske raided the Guarantee Finance Company and gathered extensive intelligence regarding the operation, despite the company operating in the jurisdiction of the Los Angeles Sheriff's Office. This is despite the Sheriff's Office's passive non-interference with, and active protection of, the Guarantee Finance Company as well as Attorney General Howser's unwillingness to take an interest in the matter.

To its credit, the Standley Commission recognized one of the major underlying issues represented by the case: the opportunities offered organized crime due to "...the fundamentally decentralized character of law enforcement agencies in the United States....." This decentralization, long a valued characteristic of American political culture and organization, imposed "...obvious disadvantages in coping with organized crime...."[42] The Commission went on to explain how there were 46 separate law enforcement agencies employing almost 9,000 persons in Los Angeles County at the time of their investigation. This was further complicated by the various agendas of the 75 police, courts, and city and county level prosecuting agencies in Los Angeles County that produced "inequalities by both accident and design in the treatment of offenders...."[43] Furthermore, the Standley Commission agreed with a conclusion of a 1949 State report, "A Report on a Survey of the Los Angeles County Facilities for Dealing With Crime and Delinquency," which found, " 'The situation is particularly deplorable because the geographical locations of the agencies' jurisdictions are so intertwined in many cases.' "[44]

The Standley Commission did find a few positives in its investigation. It noted that there were "some outstanding examples of good cooperation between a few small groups of agencies...." Yet this was not enough, because "...unfortunately there are a greater number of agencies not cooperating with one another." Consequently, "Most of cooperation in law enforcement in the county is attained by individuals employed by the different agencies and not by the agencies." Until cooperation occurred on the agency level, "This is in itself a situation which is an invitation to the growth and spread of organized crime."[45]

Nonetheless, the Commission's discussion of the jurisdictional issues that created opportunities for organized criminals still placed the blame for corruption on the criminals themselves, not the substantially flawed criminal justice system. Reflecting this point of view, one chapter of the Standley Commission's *Third Progress Report* is entitled "The Sabotage of Law Enforcement." In this chapter, the Commission argues, "the hallmark of organized crime is its persistent, corrupting endeavor to supplement its rule of force in the underworld with sufficient influence in government to avoid damaging interference from law enforcement agencies."[46] If not but for these organized criminals, the logic goes, corruption would not take root in the community.

Such a viral perspective of organized crime reflects the alien conspiracy theories common to the time. If there is a major critique to be made of the Standley Commission, it is that it explicitly embraced such theories in the way it framed its investigation, even when its own evidenced did not fit the mold. This led them to focus largely on criminals of Italian or Sicilian descent as *les provocateurs célèbres* to the exclusion of others. For example, reflecting the perspective of Governor Warren and the *Los Angeles Times* mentioned earlier, the Commission believed that organized crime in California was controlled by the East Coast successors of, "...the Mafia, and Unione Sicialiano, of which the notorious 'Lucky' Luciano was a member, and that incredible group of professional assassins in New York sometimes referred to as 'Murder Inc.' "[47] Though fashionable at the time, the view that organized crime was a national, hierarchal familial structure composed of Italians severely circumscribed the Commission's approach to studying and reporting on the phenomenon.

A simple examination of the networks created to advance the illicit enterprises of the Guarantee Finance Company allows for a more accurate, less-ethnically delineated assessment.[48] From this case study, it is evident that organized crime was neither a strictly Italian phenomenon nor was it just the simple relocation of East Coast racketeers to the West Coast. Rather, organized crime was firmly embedded within the local community and its Byzantine layers of political and criminal justice jurisdictions that encompassed a fluid network of a wide range of people of different ethnicities that bound members of the underworld to upperworld individuals and institutions.

Although the Commission recognized the importance of jurisdiction, it stopped short of concluding that the criminal justice system was, for all intents and purposes, a full partner of the professional criminals, motivated by the greed and/or quests for power of many of its employees. Indeed, if the Standley Commission had

been able to transcend its own prejudices and simply recognized the implications of the networks it uncovered in its investigations for what they were, more substantive findings, with broader social and political implications, may have developed. After all, as found in another recent study in which social network methodology was used to analyze historical data on organized crime,

> ...it is quite clear that a social network approach provides a more efficient, effective, and culturally sensitive means to identifying, analyzing, and explaining the phenomenon. It allows us to focus on the process of organizing crime, which brings to our attention actors that otherwise may be excluded from traditional approaches. Consequently, organized crime can be viewed more clearly in terms of its role and function in a given society.[49]

The Guarantee Finance Company is just one of a number of investigated by targets the Standley Commission. It investigated many other forms of criminal enterprise, violent crimes, and such underworld luminaries as Mickey Cohen and Jack Dragna, as well as their respective and overlapping ties to various law enforcement agencies and upperworld actors. Though largely failing to ask and answer some of the larger structural and functional questions pertaining to organized crime in the California, the Commission's reports serve as a valuable starting place for a much more comprehensive analysis of the social system of organized crime as it existed throughout the Golden State. The Standley Commission and its findings deserve much further study.

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3
New Times, New Crimes: "Blocking" Financial Identity Fraud*

Henry N. Pontell

Gilbert Geis

Introduction

Since the classic writings of Donald Cressey on embezzlement[1] and Edwin Lemert on check forgers[2] a variety of new financial crimes has emerged in the United States and elsewhere in the world. The roster includes credit card frauds and computer-assisted thefts, among a host of other illegal activities.[3] Moreover, individuals have not been the only perpetrators of such offenses. Two of the largest financial scandals of the late 20th and early 21st centuries involved organizations that committed financial crimes both within a specific industry and across the entire economy. The savings and loan scandal of the 1980s resulted in taxpayer losses of more than $150 billion and demonstrated that organizational insiders could knowingly destroy their own financial institutions through fraudulent schemes.[4] The more recent corporate and accounting scandals in the U.S. have shown how few lessons were learned from the crimes committed by those who, in Wheeler and Rothman's term, used legitimate firms as "weapons."[5] These recent financial frauds cost worldwide securities markets dollar valuation losses well into the trillions.

With the rise of the Internet, new forms of crimes, such as auction and on line banking frauds, have begun to wreak economic havoc on consumers and on the emerging e-commerce system. The proliferation of electronic means for personal banking has cleared new paths to fraud, with losses easily surpassing those of traditional forms of property offenses. A 2003 survey found that more than 4 million consumers had been victimized by checking account takeovers, half of which had occurred within the past 12 months, indicating a sharp increase in the activity.[6] Consumers reported an average loss per incident of $1,200, making the total national losses higher than $2 billion for the year.

Financial fraud has emerged as a major problem both in the U.S. and throughout the world. It has become intertwined with identity theft, which has been called "the fastest growing crime in America.[7] Identity theft includes crimes in

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* We dedicate this chapter to our good friend, *Alan*, with the greatest appreciation and gratitude for your wonderful insights, discussions, and collegiality throughout the years.

which a person's identifying material, such as a driver's license, credit card, or social security card is stolen. It also takes the form of the creation of a fictitious identity in order to engage in criminal acts. Many different offenses have been carried out after the theft of someone else's identity. The most common is the purchase of goods by use of an illegally acquired credit card of another person. Often the perpetrator will ask the cashier to ring up an amount well over the cost of the purchased item and request the overage in cash.

The Crimes

Legally, the crime of identity theft came into existence in the United States only in the late 1990s. The Arizona legislature enacted a barebones statute in 1996.[8] This was followed by the federal Identity Theft and Assumption Deterrence Act of 1998.[9] Of the seven outlawed categories of actions specified in the Act, the core outlaw behavior specified:

> Knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit or, to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.[10]

Possession of document-making equipment to produce false identifications also is forbidden.[11]

Identity theft as a crime category includes both old and new offenses. It is related to and facilitates new crimes, made possible by technological advances (most notably the networked computer) and new financial and organizational arrangements that include large amounts of identity information stored in numerous public and private databases (e.g., on-line banking, credit information, and e-business records). These new technologies and means to conduct financial transactions have increased the value of "identities" so that claiming to be that individual through information corroborated in various databases will result in a financial institution extending credit and/or releasing funds to the claimant. The same new technologies and financial arrangements have facilitated the theft of highly valued identities through practices such as "hacking" into large databases. The new economic order, much of which is based upon electronic transactions and similarly stored identity data, has produced a "crime facilitative environment"[12] in which new forms of lawbreaking flourish.

On the other hand, identity theft characteristically involves older forms of crime and financial fraud. In what has been noted as the "identity theft panic,"[13] the term "identity theft" is used to denote a wide variety of offenses such as checking frauds, financial crimes, counterfeiting, forgery, auto theft using false documentation, trafficking in human beings, and terrorism, all of which existed as crime categories before the diffusion of the term "identity theft." Widespread media publicity regarding the dire and dramatic impact on victims has been one of the major reasons for the creation of the new offense of identity theft. In reviewing the current literature,

Graeme Newman and Megan McNally note the importance of victimization issues in the creation of the crime of identity theft in federal law.

> It is clear that these identity theft-related crimes are not new crimes at all, but rather are old crimes enhanced by the use of, or theft of, stolen identities. However it is our assessment that the federal law derives not so much from those old crimes, but from the wide publicity in the late 1990s of victims of identity theft. These were victims who were repeatedly victimized over a period of time from months to sometimes years and who were unable to get back their identities or were unable to convince credit issuing and reporting authorities of their loss. The publicity gave rise to a series of Congressional hearings, which eventually resulted in the Identity Theft Act of 1998.[14]

Thus many of the behaviors now termed "identity theft" are age-old scams, swindles, and confidence games perpetrated on a massive scale using computers and new electronic technology. To the extent that this is the case, "identity theft" represents a means to update the understanding of older crimes that are enhanced by technology and corresponding cultural, legal, and security lags connected with the potential misuse of that technology. Some criminologists consider "identity theft" as a less comprehensive term than "identity fraud," and see the former as a subcategory of the latter.[15]

The characterization of identity theft as the fastest growing crime in America is the product of the stimulation of new criminal activity through opportunities created by new technology and new financial arrangements and the re-categorization of existing criminal behavior under a new label. The reported "rapid growth" of identity theft reflects increased criminal activity and increased reporting by victims.[16]

Three major categories of identity theft have been noted.[17]

1. *Financial identity theft* entails the use of personal identifying information, primarily a Social Security number, to establish new credit lines in the name of the victim, such as telephone service, credit cards, loans It also involves buying merchandise and leasing cars or apartments.
2. *Criminal identity theft* involves a criminal giving another person's identifying information to law enforcement in place of his or her own.
3. *Identity cloning* concerns where imposters who use the victim's personal information to establish a new life. This crime may include financial and criminal identity theft as well. Persons who attempt this form of fraud are usually undocumented immigrants, wanted felons, individuals who are avoiding paying child support, those escaping from an abusive situation, and others who wish to leave behind a poor work, marital or financial situation. They might also file for bankruptcy after purchasing merchandise using another's personal information.[18]

This paper deals with the first and most frequent category of identity theft: where it is used primarily to commit financial fraud.

There are numerous means by which criminals can obtain personal information in order to commit identity offenses. Identity theft is a means to an end. It can begin through the commission of other crimes, such as stealing wallets and purses that contain identifying information, purloining mail, including tax, banking, and

credit card information, diverting mail to a new location by filing change of address forms at the post office, posing as a legitimate organization (also known as "phishing"), obtaining information from the workplace by bribing employees, stealing it themselves if they are an employee, fraudulently obtaining credit reports, and hacking into databases (also known as "business record theft").[19] Identity information can also be obtained by rummaging through trash for personal information (also known as "dumpster diving"), finding others' personal information in one's home, using identity information shared on the Internet, or obtaining such information from e-mails.

Increasingly today criminals are taking advantage of electronic weapons to steal victims' identities. They operate offshore, from safe havens, and flood cyberspace with phony requests from legitimate businesses, such as e-Bay and Chase National Bank, indicating the need for an "update" on identifying information. The requests often are packaged with the correct logo and letterhead of the firm and a fictitious story about some foul up that will bring an end to the recipients' access to an account or other resource unless the legitimizing information is immediately forwarded. Organized crime groups commit many of these scams and they obviously have at least a modicum of success; otherwise they would stop. Even a single response out of hundreds of solicitations can more than compensate for the minimum cost and energy of the e-mail solicitations.

Phishing e-mails currently is one of the more widely used means to deceive large numbers of person into releasing their personal information to identity thieves. The biggest danger posed by this relatively new form of identity theft is that by stealing the identity of an organization, a thief can then obtain personal information on many individuals that can be used to commit a great number of financial crimes. Phishing has thus exponentially increased the ability of thieves to engage in identity fraud. About 30 percent of the phishing expeditions are limited to E-Bay and Pay-Pal, 60 percent to U.S. Bank or Citibank.[20]

If nothing else, phishing exemplifies what Rosoff et al. have termed the first law of electronic crime: "If it can be done, someone will do it."[21] Banks are currently overwhelmed by customer service calls because of such thefts. Trojan horse programs and key loggers are also used to steal passwords and account information. These can be installed on home computers through emails that contain viruses. Persons who do their online banking in places such as Internet cafes are more likely to be victimized by such surveillance programs. Online bill paying and bank management practices also currently leave users prey to criminals who can tap into their accounts. In most cases consumers are refunded the lost funds, but only if they report the thefts within a 60-day window.[22]

Although there are cases in which identity thieves steal large sums of money and wreak major financial and personal havoc upon their victims, in other cases the financial burden is rather modest, particularly when identity theft involves the misuse of existing credit cards or the creation of new ones. Since credit card companies currently feel obliged from the point of view of maintaining customer relations to cushion the financial blow of identity theft, retailers absorb a significant portion of the losses. A distinguishing attribute of identity theft is that financial

displacement from victim to thief is usually the least destructive – and, in many cases, the least expensive – aspect of victimization. The more serious damage lies in the sense of personal violation, psychological trauma, possible medical care, family issues, and other ill effects, including the time and expense involved in trying to restore one's financial identity.[23] Identity theft is, in this sense, a second-order crime; the value of the object stolen is generally far less than the value of goods whose security is endangered by the theft (bank accounts, credit rating, etc.).[24]

The Social Organization of Financial Identity Theft: White-Collar or Organized Crime?

Contrary to many media depictions and characterizations by law enforcement, identity fraud does not always constitute what most criminologists would consider to be white-collar crime. Many financial cases of identity fraud, are the work of con artists and organized crime rings, where offenders possess no legitimate occupational status, generally a major pre-requisite of inclusion into the ranks of white-collar criminals. With the exception of insider frauds committed by employees who use or sell personal data kept by their companies ("business record theft"), identity frauds can have little in common with white-collar crimes, other than that they are financial in nature, can remain hidden from victims for extended periods of time, and may leave difficult paper and electronic trails for investigators to follow. Some police agencies report that growing numbers of crystal meth users are stealing identity information in order to commit financial frauds to fund their drug habit. Computers found in methamphetamine labs have contained stolen personal data necessary for producing fake IDs and duplicate credit cards.[25] Such crimes could hardly be considered "white-collar" in nature, notwithstanding academic disputes over an exact definition of the term.[26] Identity frauds are economic crimes in that they involve monetary loss, but they are not likely to be carried out by relatively high status offenders in legitimate occupational or organizational roles, but rather, lower-level employees who are participants in organized criminal activities.

One major investigation documented the social organization of two major identity fraud rings that operated between 1999 and 2001 in Queens, New York, known as the "Nigerian Express," and another in Detroit, Michigan.[27] These crime syndicates resembled most others in that they were multi-tiered, organized, and had a number of participants performing specific roles, including, information gatherers or "data miners," "runners," and other legitimate accomplices, whose functions are performed before a fraudulent purchase is made or funds are obtained. First, identity information is collected, and not always from victims who are careless with their personal data. Government agencies, police investigators, and the media imply that victims are largely responsible for such crimes when they warn citizens not to carry a Social Security card, or to adequately safeguard PINs and passwords. But there is virtually nothing that consumers can do when employees of credit card companies, retail establishments, and other entities steal and

disclose their information. In the Detroit case, 3 of the 20 people arrested were customer service representatives of American Express who sold customer names, addresses, telephone numbers, credit card expiration dates, and social security numbers. In both Queens and Detroit, large files containing mortgage and video store applications and other paper items containing similar information were seized. The personal data necessary for financial identity theft can be obtained by fraud ring members whose work positions give them access to "sensitive information" or by recruitment of holders of these positions, such as customer service representatives and data entry clerks. Those who possess such information can transport it to numerous sites for years.[28]

Buyers of stolen information can be quite selective in their purchases. The most sophisticated ones will know by the first four numbers on a credit card both who the issuer is and their policies and will decide whether to buy the information. The market supply of such data has increased to the point where identities that were bought for $25 or more a few years ago have been purchased more recently for $15 or less.[29]

After the initial information is located or purchased, more data collection typically occurs. Files, often kept on computers, store essential "pieces" of identities. "Information specialists" fill in the gaps when identity data are incomplete. With just a name and social security number, a specialist can order a copy of a victim's credit report and obtain information on open credit lines. Credit card PINs can then be accessed, addresses changed to re-route billings to fraudulent addresses, and multiple users added to an existing account. A mother's maiden name can be obtained from a vital-records bureau. The final financial transactions usually are made by "runners," who purchase expensive electronics that are then sold to a complicit retailer for about half the market value. Runners are paid about 10% of the profit earned by ringleaders. The other ring members (e.g., fake ID makers and addressees who allow delivery of items to their home) are also paid off. In addition to item purchases, runners can also be assigned to make large ATM and credit card cash advance transactions.[30]

Accounts of ID theft rings speak to the considerable degree of organization involved in criminal operations that affect large numbers of victims simultaneously. Whether or not most financial identity theft is considered organized crime or white-collar crime is not merely a matter of semantics or academic interest, but has practical consequences in terms of enforcement and societal responses. As British criminologist Michael Levi notes:

> "Organized crime" used to be a phenomenon that was central only to American and Italian crime discourses about the 'Mafia', but – stimulated by the growth of the international drug and people migration trades and by the freeing up of borders since the collapse of the Soviet Union – the debate about it and specific national and transnational powers to deal with "it" has extended to Britain and other parts of Europe and beyond in the course of the 1990s. However unclear it may be about how "we" can assess whether crime is "organized" or not, the term is a unifying framework around which international police and judicial cooperation can be structured. Definitional ambiguities do not seem to inhibit

confident statements about the "scale of the problem" of transnational organized crime, which is always asserted to be "growing" and often said to be using hi-tech methods, as if crossing borders by plane, motor vehicle, digital phone or computer were not also done by businesspeople, professionals and the general population, probably in greater proportions than criminals at work do. Some crimes such as "identity theft" associated with fraud, organized crime and terrorism are also plausibly said to be growing.
.... "The problem of fraud" and official responses to it lack the "Evil Empire" rhetoric of the construction of the "organized crime problem".... The explanation for the neglect of fraud by the police is far from clear, but it appears to relate in part to some Victorian conception of prudence whereby everyone who does not take sufficient care of their own property deserves little sympathy. There are also a number of pragmatic factors, three of which are key: (1) there has been little central or local political pressure on forces to do more about fraud (e.g., via Key Performance Indicators or local ones in Policing Plans); (2) the low productivity of Fraud Squad staff in relation to standard police performance indicators, fraud being more labor-intensive to investigate; and (3) Chief Officers' own relatively unsophisticated appreciation of the business world and the possible impact of fraud losses on the local and national economy.
.... Whether the policing Panopticon will ever extend to encompass all types of fraud, however, is extremely unlikely, for despite the growth in public concern about their direct and indirect (via pension funds, etcetera) investments in the stock markets and about identity theft and other crime risks associated with the cyber-world, the iconography of fear of crime is more difficult to develop and sustain for "white-collar" than for "organized crime."[31]

Levi clearly notes the importance that crime labels have on public attitudes and responses from the justice system. Past academic research has grappled with the definitions as well as the differences and similarities between forms of organized and white-collar crime.[32] Considering financial identity theft as representing a form of organized crime rather than white-collar offending or an altogether "new" crime form allows criminal justice responses to target it more efficiently. This stands in sharp contrast to current legal and popular perception that sees identity fraud as due to technological advances, individual carelessness with personal information, the growth of the Internet, and legal and regulatory deficiencies. Organized crime exploits and may even help create systemic weaknesses and vulnerabilities. The rapid growth in financial identity frauds is in no small measure a result of that exploitation.

The Growth of Financial Identity Frauds

To put the growth of personal financial identity frauds in perspective, consider that the Federal Trade Commission (FTC) reported over 27 million victims of identity theft in the last five years. This is expected to grow to almost 1 in 4 citizens in the near future. A FTC survey polled 4,000 consumers and found that 507 reported being victims of identity theft. In the past year this led to the estimate that about 4.25 percent of the U.S. population had been victimized by identity theft in the same period of time. The survey found that Hispanics and

African Americans were twice as likely as Asians or Whites to experience the most serious type of fraud, and that middle-aged persons tended to become victims of the larger dollar amount frauds.[33] During the 12 months covered by the survey, businesses and financial institutions suffered about $48 billion in losses because of identity theft and victimized consumers paid more than $5 billion in out-of-pocket expenses to regain their financial identities."[34]

Family members were reported as the most common perpetrators against their kin and about half the victims knew how their identities had been stolen; "the other 50% still have no idea."[35] The FTC survey suggested that victims play a major role in discovering identity theft. More than half reported the theft after their purse or wallet had been stolen or after noticing aberrations on their paper or electronic financial account statements. Stolen information typically was used for about six months, with victims of lower income and educational levels having their information in play for longer periods. After discovery, it usually took three months to resolve the victim's financial status.[36]

Additional information is provided by a survey conducted in 2003–2004 by the Identity Theft Resource Center (ITRC), a large victim assistance organization located in San Diego. The goal was to create a baseline from which trends and patterns of identity fraud could be discerned. Two-thirds of those surveyed responded that they were victims of financial identity theft (as opposed to criminal ID theft, or cloning). The same number reported that their identity was used to open new credit accounts and over a quarter were aware of charges to an existing credit card account.[37] In addition to the significant amount of financial losses involved in these crimes, there was the personal trauma of victims who can spend months or years reestablishing their economic identity. Victims reported considerable losses of time and wages. They had to fend off creditors, coordinate legal responses, and contact official agencies. They also suffered from health problems and accumulated medical expenses, experienced family dysfunction, and feelings of anger, powerlessness, and fear among other emotional consequences.[38]

Learning more about the experiences of victims is necessary to bring about effective legal responses to financial frauds committed through identity theft. Several issues presently complicate accurate measurement of the phenomenon. For one, a victim is unable to report the crime until he or she (or another entity) discovers it, which may not be for some time. Second, the offense is not always reported when it is discovered, and when it is, it may be reported to any number of organizations or government agencies. Third, many law enforcement agencies lack the resources to record and follow up on such crimes. Fourth, the FBI Uniform Crime Reports do not have a separate category of crime labeled "identity theft," making it impossible to tabulate and analyze the extent of such acts over time. And finally, the current capacity of the enforcement system to collect information on identity theft is limited by the multi-jurisdictional nature of the crime. A victim may reside in one state, the offender in another, and the victimized business or financial institution in yet another.

Financial identity fraud has displayed an increasingly international component. The Federal Bureau of Investigation reports that many identity thefts and cyber

crimes that occur in the United States originate in other countries, including Russia, Romania, and West Africa. The Federal Deposit Insurance Corporation, a leading bank regulator, warned in June 2004 that increased corporate outsourcing of call-center tasks and other jobs to overseas sites has increased the risk of identity theft for Americans, whose personal and financial information was now being "outsourced" as well.[39]

It has been reported that at least 100,000 people in the UK were victimized by identity fraud 2003. The number of cases of identity fraud there has increased dramatically since 1999, when 20,000 cases were reported. By 2001, the figure had grown to 53,000, and in 2002 the number had doubled yet again.[40] Cabinet Office data suggest that identity theft cost the economy £1.3 billion in 2002 – about one-tenth of the total estimated cost of all fraud in the UK.[41]

In considering the "total costs" of identity fraud, it is undoubtedly the case that the total of crimes against persons is dwarfed by financial identity frauds that directly victimize large government assistance programs, and correspondingly, citizens and taxpayers at large. While reasonable information exists regarding financial identity frauds against consumers, there are no systematic data on such losses to government benefit programs where there may be no individual victim to report an offense. In the U.S. a number of scams against various government agencies have been uncovered which involve the use of social security numbers.[42] In Australia, identity fraud has been found to account for substantial losses to the nation's tax system.[43] The omission of these data in current identity fraud estimates creates a myopic view of the magnitude of this social problem that has been measured only by losses suffered by individuals.

Responses

Mainstream criminology has by and large missed the major transformation in the nature of crime in the 21st century, or, at a minimum, is lagging in taking up such issues as measured by work published in major journals or presented at professional meetings. Technology and information sharing, including the interconnectivity of large databases within and outside of national borders, combined with cultural and enforcement lags and inadequate policies, have created new criminogenic environments supportive of a variety of financial frauds. The industry response to losses, which is to pay them and transfer the resulting costs to retailers and consumers, is no longer proving to be a viable solution. For one, losses have mounted. For another, recently developed on line banking systems present new risks and challenges to financial institutions that are responsible for protecting the electronic transfer of client funds from internal and external threats. In what appears to be a major "irony of control,"[44] criminals have usurped the identities of financial institutions themselves in efforts to gain on line access to client information through "phishing."

One current industry response to this situation in the U.S. entails the selling of identity theft insurance to the public. While not designed to stop the spread of

identity fraud, it allows companies to reap profits with what sometimes are unnecessary safeguards, inflated prices, and ineffective services. The insurance implicitly acknowledges a significant level of defeat in combating such abuses on the part of industry. The insurers have formulated a program to profit from the very social problem they have helped to create. In this sense, financial identity theft becomes another "externality" created in the pursuit of corporate profits in the new electronic frontier, a problem that is to be dealt with by "someone else." The American population, stunned by 9–11 and its aftermath, the war in Iraq, victimized and disgusted with the scandals on Wall Street, are now being sold a false sense of security regarding a criminal threat that can wreak havoc with their personal finances and lives. They are told that as long as they can buy insurance, they needn't worry. At least until their privacy has been violated, their identity stolen, and their financial status left in disarray.

Financial identity fraud increasingly challenges the abilities of law enforcement agencies to respond to it, and of criminologists and others to inform policy in an area that is taking a gigantic toll on the national economy. The "band aid, thumb-in-the-dyke" approaches that have characterized the American response to identity fraud are likely to embolden perpetrators who have an excellent chance to escape detection because of the limited capacity of enforcement agencies to respond to their crimes.

Law enforcement officials report that smaller individual cases are sometimes ignored or delayed until they can be bundled into high profile, high-impact prosecutions. One FBI official notes, "It's the simple reality of us trying to build that small case into something larger before I commit resources to it."[45] The U.S. emphasis on terrorism and security issues also leaves correspondingly fewer resources available for other enforcement areas, including identity theft.

Reports in the U.S. suggest that local law enforcement agencies are already swamped with identity fraud cases, which in some jurisdictions account for a third or more of reported crimes. Authorities are currently unable to apprehend 95% of the violators.[46] For deterrence advocates, who see changes in statutory criminal laws and increased penalties as a solution, it appears that the floodgates are open, and the system's current capacity is strained far beyond any potential for the delivery of substantial sanctions. In other words, the risk-reward ratio is so far out of balance that crime prevention strategies need to go much further than the traditional increase of statutory penalties that in this case, among others, cannot be applied effectively. The grim irony of deterrence in practice is reflected in the surging levels of financially motivated identity theft. These offenses are expected to reach over 10 million cases in the U.S. this year, making it the number one economic crime in the country. Over 40% of complaints received by the Federal Trade Commission involve identity theft.[47]

The lack of an integrated plan on the part of government and the business community to deal with the rise in reported cases of identity fraud remains the central problem. Despite increased penalties, criminals generally have little to fear from such sanctions, as agencies are swamped with cases that are inherently costly and time consuming to investigate. The core issues associated with financial identity

fraud involve explicit standards of privacy and a level of protection of personal information that is commensurate with the increasing pervasiveness of electronic commerce. This includes an effective system of regulation for businesses and government agencies that store and use personal information. In addition, new technologies providing coordinated mechanisms to ensure authentication of a person’s identity in financial transactions need to be developed to ensure consumer safety. The values of the free market, which encourage financial transactions such as buying on credit, and electronic forms of banking, currently take precedence over, and are generally at odds with mechanisms that would prevent many forms of financial identity fraud. Official responses that encourage citizens to guard their information more carefully are certainly important, but so too is the fact that their personal information is no longer entirely in their control.

Conclusion

From a sociological perspective, financial identity fraud provides a new window from which to view processes of deviance and social control. The most sophisticated analyses of privacy, surveillance, and control tend to focus on state intrusions into individual privacy. Gary Marx, for example, notes the following:

> The study of privacy and secrecy overlaps the study of deviance and social control. In many settings privacy and surveillance are different sides of the same nickel. Privacy can serve as a nullification mechanism for the power offered by surveillance. Surveillance seeks to eliminate privacy in order to determine normative compliance or to influence the individual or for its own ends as with voyeurism.[48]

Surveillance used by criminals in order to commit offenses through identity fraud appears immune from traditional means of control and attempts to break through personal borders by exploiting weaknesses in current systems of privacy control. Criminal surveillance by identity thieves represents yet another form of “casing the joint.”

Systems currently designed to guarantee privacy and anonymity reveal yet another irony of control. In attempting to protect privacy from state surveillance we have created conditions through which others could violate that privacy. The delicate balance between privacy rights and state surveillance now has to be weighed against the costs incurred from a different threat to individuals; a criminal element intent on wreaking economic and personal havoc through financial identity theft. While state intrusion into privacy has become a major issue in post-911 America due to provisions contained in the Patriot Act, there is an equally serious threat of criminal invasion of privacy through identity theft. State and corporate actors, typically conceived in the security literature as desiring to extend their surveillance capabilities as far as possible, are strangely resistant to citizens’ calls for greater regulation and control regarding identity theft. Instead, they have sought to portray the protection of individual identities as the sole responsibility of each individual. As Gary Marx notes:

The(se) surveillance developments...are consistent with the strengthening of the neo-liberal ethos of the last decade. In what might be called the "only you" theory of social control, individuals are encouraged to protect themselves and those close to them, because government can't (or won't).[49]

The history of crime demonstrates that outlaws typically respond to measures designed to rein in their outrages by inventive tactics in which they fashion novel offenses that, at least for a time, thwart successful attempts at control. Identity theft is one of the most formidable innovations in the field of criminal enterprise. Its toll is tremendous. Its relationship with vital democratic issues of privacy and freedom make it a compelling issue for scholarly research and public policy programs. This chapter has sought to provide some sense of the ingredients of identity fraud, and hopefully, to spur subsequent work on what has been a sorely neglected matter in the criminological realm.

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4
The United Nations Oil-for-Food Program: Corruption, Bribery and International Relations in the Serious Crime Community

Don Liddick

The origins of the United Nations Oil-for-Food Program (OFF) lay with sanctions imposed on Iraq by the U.N. following Saddam Hussein's 1990 invasion of Kuwait. After the United States expelled Saddam from Kuwait in the first Gulf War, the U.N. prohibited member states from trading with Iraq until the Hussein regime had satisfactorily disarmed. Saddam of course refused to comply, the sanctions remained in place, and soon reports began to detail the suffering of the Iraqi people under the trade sanctions. The idea of allowing Iraq to sell limited quantities of oil to provide for humanitarian relief grew to fruition on April 14, 1995, when the U.N. passed Resolution 986, authorizing what has since become known as the "Oil-for-Food" (OFF) program.

Saddam Hussein initially rejected the proposal, but eventually signed a Memorandum of Understanding in May 1996 for the implementation of the program. Oil exported from Iraq was paid for by the recipient into an escrow account possessed by the BNP Paribas Bank. From there the oil revenue was to be apportioned to pay for Kuwaiti war reparations and ongoing coalition and U.N. operations inside Iraq (including weapons inspections), with the bulk made available to the Hussein government for use in purchasing regulated items to alleviate the suffering of the Iraqi people. In addition, the oil sales were to pay for the administrative overhead of the program – the U.N. Secretariat would receive a 2.2% commission on every barrel of oil sold, plus 0.8% to pay for weapons inspections. Over the seven-year life of the program (1996–2003), total oil sales amounted to $65 billion. The U.N. says that $46 billion went to Iraqi aid, about $18.2 billion was sent as reparations to Kuwaiti war victims, and commissions to the U.N. ran to $1.9 billion.[1]

A Formula for Fraud

From its inception the OFF program was poorly designed – in fact, it's fair to say that the system meant to provide humanitarian relief for Iraqi citizens could not have been set up any better, provided the goal was to create a mechanism for diverting huge oil revenues from their intended purpose. The U.N. Secretariat and Security Council agreed to terms that were easily subjected to manipulation.

First, Saddam Hussein was given authority to negotiate his own contracts to sell oil, and even to choose his own customers. Second, he was permitted to draw up his own list of humanitarian supplies, make his own deals on purchasing those supplies, and choose from whom he would purchase the goods. The U.N. also allowed Saddam to play a part in choosing the bank that would handle the funds and issue letters of credit to pay humanitarian aid suppliers (a French bank called BNP Paribas whose chief shareholder is Iraqi-born Nadhmi Auchi–convicted of "bank fraud" in another scandal!). Naturally the U.N. reserved the right to reject Saddam's oil contracts and aid distribution plans, and to control the program's bank accounts. The problem, as it turns out, was lack of oversight. From the beginning it was unclear how the responsibility for monitoring the program would be handled by the Secretariat, run by Kofi Annan and the 15-member U.N. Security Council. Ultimately, only two of the five permanent members of the Security Council (Great Britain and the United States) did any monitoring, with the Secretariat keeping contract records, controlling the bank accounts, and authorizing the release of oil revenue to pay for Iraqi imports.[2]

In October 1997 Kofi Annan appointed Benon Sevan to head the newly created Office of the Iraq Program (routinely called Oil-for-Food). Sevan served as executive director and ran the program throughout its seven-year existence, reporting directly to Annan. While a 2002 report issued by the Coalition for International Justice noted that the U.N. had been open about oil contracts during the first year of the program, Benon Sevan soon instituted changes that concealed the specifics of Saddam's oil allocations and contract awards to foreign suppliers. Important details of financial transactions were categorized as "proprietary," and basic information necessary to judge the appropriateness of business transactions were left out of official reports. The names of individual contractors, prices, and the quantity of goods purchased were all carefully guarded. The Office of the Iraq Program would release long lists representing billions in transactions with only vague and limited information included, such as the date, country of origin, whether or not the contract had been approved, and generic descriptions of purchases. The U.N. would also comply with Saddam's demand to convert oil funds from dollars to euros, complicating an already confusing bookkeeping system. Interest dividends from the BNP Paribas Bank, which held a balance of some $12 billion toward the end of the program, were not disclosed.[3] (In fact BNP Paribas made payments without proof goods were delivered, sanctioned payments to third parties not authorized as recipients, and received more than $700 million in fees under the U.N. program).[4] In 1998 the program expanded, doubling the amount of oil Saddam was permitted to sell, and by 2000 the cap on oil sales was completely removed. As allegations of fraud began to multiply by 2000, Oil-for-Food executive director Benon Sevan and the U.N. Secretariat looked the other way as billions were skimmed. Inside Iraq, officials in the State Oil Marketing Organization (SOMO) that provided inexpensive oil allocations to favored clients began to call their operations the "Saddam Bribery System."[5]

In sum, the tremendous amount of oil revenue generated, significant commissions to the U.N. (generating an obvious conflict of interest), a lack of oversight, and

unregulated contracts to foreign suppliers had created a perfect environment for kickbacks, the bribery of public officials, and the theft of money intended for Iraqi civilians suffering under United Nations sanctions.

The Scams

The mechanics of the Oil-for-Food fraud worked as follows. First, Saddam would sell at below market prices to his hand-picked customers–individuals or companies sympathetic to the Iraqi regime who were easily bribed. Saddam's oil contractors would then re-sell the oil at inflated prices, keeping fifteen to fifty cents per barrel, with the rest kicked back to Saddam as a "surcharge." Contracts to humanitarian suppliers were also awarded to companies willing to kickback a portion of contract profits to the Iraqi regime. Companies supplying food and medicine to Iraq under the OFF Program were charged "after-sale-service fees" and "inland transportation fees" that funneled $1.5 billion directly to Saddam Hussein. In all, the Independent Inquiry Committee (the Volcker Committee) that examined the United Nations OFF Program estimated that $1.8 billion in illegal kickbacks from oil contractors and humanitarian suppliers went to the Iraqi regime.[6] But Saddam Hussein was also smuggling oil out through Turkey, Jordan, and Syria in direct violation of United Nations sanctions. A U.S. Senate Investigation revealed that $13.6 billion in oil revenue was generated through illegal oil sales. This illicit revenue stream was of course beyond U.N. regulation–the whole point of the Oil-for-Food Program. To be sure, impoverished Iraqi's saw little if any benefit from Saddam's smuggling operations. Moreover, the U.S. Senate Permanent Subcommittee on Investigations concluded that both the U.S. and British governments were fully aware of the oil smuggling operations, but chose to look the other way because the principal beneficiaries were allies Turkey and Jordan–the Senate committee even determined that in some cases the U.S. facilitated illicit oil sales.[7]

In 2005 the U.S. Senate Subcommittee on Investigations revealed Saddam Hussein used his broad authority under the Oil-for-Food Program in an attempt to influence foreign officials and "maximize Iraq's influence throughout the world."[8] In part from interviews with senior Iraqi officials, including Saddam's Deputy Prime Minister Tariq Aziz and Vice President Taha Yasin Ramadan, the Senate Committee concluded that Hussein granted oil allocations to public officials, favoring those in political parties from countries that were members of the U.N. Security Council. Tahan Yasin Ramadan admitted that oil allocations to foreign officials were "compensation for support" in the Iraqi regime's efforts to have U.N. economic sanctions lifted.[9] About 30% of all oil contracts under the U.N program went to Russia, with a large number of allocations going to the pro-Kremlin Unity Party. Tariq Aziz told the Senate Subcommittee that the Unity Party received such a large number of oil allocations because Russia supported the Iraqi regime in issues before the U.N. Security Council. The powerful Russian Presidential Council also received a large number of oil allocations, and in one specific instance, Saddam Hussein ordered additional allocations to the

Russians for blocking a U.S.-backed resolution in the Security Council that would have addressed illicit trade at the Iraqi border.[10] Another U.S. Senate report detailed large oil allocations to the powerful Russian politician Vladimir Zhirinovsky, who then assigned those allocations to American oil trader Bayoil–the American company, Zhirinovsky, and other Russian companies paid millions in illegal kickbacks to Saddam. (Bayoil and its CEO have been indicted by the U.S. Justice Department).[11]

Released in September 2004, the Duelfer Report found that the Oil-for-Food program resurrected the Baghdad economy from terminal decline and provided the means whereby economic sanctions could be circumvented. Ominously, the report also found that the U.N. program provided a way for Saddam to enhance dual-use infrastructure and potential Weapons of Mass Destruction (WMD) development. In keeping with the orthodox view, the Duelfer Report concluded that the chief recipients of low-price oil allocations (and those who kicked back oil revenue to Saddam) were entities in Russia, France, China, and Canada–all countries who were generally anti-war and supported lifting economic sanctions.[12] However, it was subsequently revealed that the U.S. Central Intelligence Agency had deleted information from the Duelfer Report that was later made public by Congressional committees privy to the unedited version.[13] It turns out that prominent U.S. companies have been implicated in the scheme to kickback money to the Iraqi regime, including Exxon-Mobil, the Chevron Texaco Corp., the El Paso Corp., and the previously mentioned Bayoil. In fact, the U.S. Senate Subcommittee on Investigations determined that individuals and companies in the United States accounted for 52% of all the Oil-for-Food kickbacks to Saddam.[14]

In April 2004 the United Nations Security Council passed a resolution empowering the United Nations' Independent Inquiry Committee (commonly referred to as the Volcker Committee, after Paul Volcker, the former U.S. Federal Reserve System Chairman selected to head the investigation) to look into corruption in the Oil-for-Food program. Among the findings of the multi-volume Volcker Committee Report released in 2005 was the conclusion that Benon Sevan, the United Nations official directly responsible for the Oil-for-Food program, used his position to solicit and receive oil allocations from Iraq through a Panamanian-registered oil trading company. Sevan received $160,000 each year he headed the program, money he claimed came from an aunt in Cyprus. The Volcker Committee additionally found that Sevan directly received $150,000 in bribes during the course of the OFF Program, which delivered to Iraq food that was largely unfit for human consumption.[15] With support from U.N. Secretary General Kofi Annan, Sevan wrote letters to all former Oil-for-Food contractors asking them to consult with the U.N. before releasing documents to American Congressional committees investigating the fraud. The United Nations has in fact denied all requests from the U.S. General Accounting Office for access to internal Oil-for-Food audits.[16]

In addition to Oil-for-Food executive director Benon Sevan, additional information in the form of memos has surfaced which suggests corruption reaching as high as Secretary General Kofi Annan. The memos detail meetings between

Annan and the Swiss company Cotecna during a time period when the firm was bidding on the program to oversee humanitarian aid to Iraq–one document expressed Cotecna's confidence that they would receive the contract due to effective "lobbying" in New York diplomatic circles. Cotecna did receive the lucrative contract, ordinary Iraqi's were supplied with inedible food, and it was later revealed that Kofi Annan's son Kojo received large "consultant" fees from Cotecna at about the time it was vying for the humanitarian contract. A leaked internal U.N. audit would later show huge discrepancies between Cotecna reports and U.N. agency reports for the value of shipments into northern Iraq.[17]

Some of the most staggering allegations of fraud surfaced after the U.S. led invasion of Iraq in 2003. Seized documents from the state-owned oil corporations with close ties to the Iraqi Oil Ministry provided a list of Saddam's oil allocation beneficiaries that was subsequently published in a daily Iraq newspaper called *al mada*. The list included British MP George Galloway and his charity the Mariam Fund, French Interior Minister Charles Pasqua, the Russian Orthodox Church, former assistant to the Vatican secretary of state Reverend Jean-Marie Benjamin, Indonesian President Megawati Sukarnoputri, the Russian nationalist Vladimir Zhirinovsky, and Oil-for-Food executive director Benon Sevan.[18] For his part, George Galloway, appearing before a U.S. Senate committee, charged the most significant fraud had occurred under the Coalition Provisional Authority in post-invasion Iraq, perpetrated by "Haliburton and other American corporations.... with the connivance of your own government."[19] Naturally all those from the *al mada* list deny the allegations, although investigations continue. In any event, politicians and U.N. officials from dozens of countries are suspected of accepting bribes to support the lifting of economic sanctions. The Volcker Committee concluded that a total of 139 companies paid "oil surcharges," and 2,253 companies paid kickbacks to the Iraqi regime in connection with humanitarian contracts.[20]

Separate criminal inquiries are under way in France, the U.S. Senate, the U.S. Justice Department, and the Iraqi interim government. Thus far several people have been indicted. In 2005 Samir Vincent, an Iraqi American, pleaded guilty to being an illegal agent for the Iraqi government, and Alexander Yakovlev, a former Russian U.N. procurement officer pleaded guilty to the crime of accepting close to $1 million in bribes. In April 2005 three men, an American, a British citizen, and a Bulgarian were also indicted on bribery charges related to the Oil-for-Food program.[21]

Investigations in post-invasion Iraq have met with considerable opposition. A U.S. probe led by Ehsan Karim, the head of Iraq's independent Board of Supreme Audit, and the U.S. accounting firm Ernst & Young, was intending to share vital information with the U.N.-appointed Volcker Committee, but on July 1, 2004 Karim was killed by a bomb attached to his car. Another investigation by the Iraqi Governing Council (IGC) has been led by the international accounting firm KPMG and Ahmed Chalabi, widely known for providing faulty intelligence to the U.S. prior to the 2003 invasion of Iraq. When coalition forces raided Chalabi's offices at the Iraqi National Congress in May 2004, Claude Hankes-Drielsma, also appointed to oversee the inquiry, claimed that on the day of the raid someone hacked into his computer and deleted every file associated with the Oil-for-Food investigation.[22]

Financing Terrorism

On June 2, 2002 U.N. Secretary General Kofi Annan approved an expanded range of "supplies" Saddam Hussein could purchase with Oil-for-Food revenue. New sectors to be funded included "labor and social affairs," "information," "justice," and "sports."[23] (In the language of the Baathist party, it is not unreasonable to assume that money allocated for "justice" financed mass graves and rape rooms, while funds for "sports" may well have included a budget for Uday Hussein's penchant for torturing underperforming Iraqi athletes). The staggering amounts of cash generated through oil smuggling and kickbacks from oil and humanitarian contractors certainly financed a luxurious lifestyle for Saddam and Baathist party officials at the expense of ordinary Iraqis saddled with expired medicine and spoiled food. Of course much of the money went to foreign officials and entities in the form of underpriced oil allotments for the purpose of purchasing influence–Russia and France were chief beneficiaries at that end of the scam. But even journalists got in on the money–Saddam's regime reportedly bribed reporters with oil coupons. Hamida Naanaa, a French journalist known for her pro-Saddam positions, and Ahmed Mansour of Al Jazeera, were bribed with either silver or gold oil coupons worth a minimum nine million barrels of oil. In another case Shaker al-Kaffaji, an Iraqi-American recipient of a low-priced Iraqi oil allocation, helped to finance a film intended to discredit U.N. weapons inspections in Iraq.[24]

Perhaps the most troubling aspect of the entire Oil-for-Food debacle is the credible claim that skimmed profits were diverted to terrorist entities. The U.S. Senate Subcommittee on Investigations definitively established that terrorist entities and individuals who received oil allocations included the Popular Front for the Liberation of Palestine, the Mujahedin-e Khalq, and Abu Abbas.[25] The U.S. House of Representatives International Relations Committee also discovered in its investigation that Sabah Yassen, the former Iraqi ambassador to Jordan, was provided money to pay the families of Palestinian suicide bombers between $15,000 and $25,000. Although there is no conclusive proof that the money was derived from skimmed Oil-for-Food profits, the families of Palestinians wounded or killed in the conflict with Israel (including 117 suicide bombers) received over $35 million from the Iraqi regime.[26]

Other evidence suggests a link between the United Nations Procurement Department, the Oil-for-Food Programme, and Al Qaeda finance operations. The link is through IHC Services, a registered vendor to the U.N. Procurement Department. In a very obvious conflict of interest, IHC officials have served in the United Nations while simultaneously seeking contracts with the U.N. The real mystery is who actually owns IHC. A shareholder in IHC's holding company is Engelbert Schreiber Jr., an associate of one Ahmed Idris Nasreddin. Nasreddin has been designated a terrorist financier by the U.S., and the United Nations has said he belongs to or is affiliated with Al Qaeda. IHC Services is also linked to Saddam's former regime through Petra Navigation, a company blacklisted by the

U.S. for bypassing economic sanctions on Iraq.[27] In any event, corruption and fraud at the United Nations has apparently become institutionalized.

Conceptualizing High-End Fraud

The present case study is appropriately classified as organized criminality–not "organized crime" in the traditional sense of "families" with crime bosses, but rather loose networks of individuals who *organize* criminal endeavors. Moreover, the observed arrangements among different actors who recognize criminal opportunities and engineer massive thefts may be viewed theoretically as a manifestation of complex patron-client relations. Viewing the Oil-for-Food scandal through a patron-client lens allows us to conceptualize this particular criminal phenomena as a network of uneven power relationships among a wide variety of societal participants[28] – in this case, high ranking government officials, oil executives, journalists, clergy, terrorists, private firms that supplied humanitarian goods to Iraq, and officials at the United Nations. The advantage of framing the bribery, thefts, and fraud as being perpetrated by individuals enmeshed in patron-client relationships is that the participation of so-called "legitimate" or "upperworld" players who direct and channel the flow of material and nonmaterial resources is fully realized. In the present example, Iraqi government officials, with the willing participation of confederates in the United Nations, channeled the flow of oil resources away from the intended beneficiaries and into the pockets of corrupt public officials and opportunistic businessmen. Of course the whole scheme was made possible not merely because of the "patronage" of Saddam Hussein and his enablers at the United Nations, but was also completely dependent on the willing participation of "clients" who kicked back a percentage of illicit profits realized from the resale of low-priced oil allocations and the provision of substandard humanitarian supplies to the Iraqi regime. Naturally Saddam's clients were also expected to demonstrate loyalty to their patron, in this case by supporting the lifting of economic sanctions.

Deviant behavior associated with the United Nations Oil-for-Food scandal is high-end crime, committed by societal elites who essentially acted as war profiteers. Conditions arising from the Iraqi regime's invasion of Kuwait along with economic sanctions imposed by the international community created intense suffering among the Iraqi people. In a lesson demonstrated but never learned, intense regulation of a desired commodity (in this case oil) precipitated a black market for smuggled oil, a problem compounded by a seriously under-regulated relief program that provided every opportunity for theft and fraud. Prodigious hidden profits from oil sales gave Saddam Hussein much needed leverage in the world community, while the Oil-for-Food Program itself served as a mechanism for the bribery of public officials in a partially successful attempt to shape international relations. And, as is so often the case with crimes of the elite, wealthy government officials as well as private entities became wealthier still at the expense of the very poor.

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5
Bystander Memories Explored: Dutch Gentile Eyewitness Narratives on the Deportation of the Jews

Dienke Hondius

> "Silence and passivity change bystanders, whether they are individuals or whole nations. They can diminish the subsequent likelihood of protest and punitive action by them. In turn, they encourage perpetrators, who often interpret silence as support for their policies. Complicity by bystanders is likely to encourage perpetrators even more."
>
> (Ervin Staub 2003, 309)

Absence of Bystanders in Research and Memory of the Shoah

One might find it surprising that up to now, no specific research has been conducted on the people who witnessed the deportation of the Jews from the Netherlands. The history of the Second World War still annually generates dozens of new books and continues to play a significant role in the history curriculum and on Dutch television. But what about the people who saw it happen? *Omstanders*, the Dutch term for bystanders, still sounds unfamiliar. The reason for the absence of bystanders lies in the historiography of the Holocaust, which has been dominated by the division into two groups: people who were *good* in the war and people who weren't. With the possible exception of those who chose to 'bear witness' as a kind of 'recording Angel' – who even so may be condemned for not acting – bystanders do not fit into this simple scheme and we have yet to find a place for them. As far as I know, the first social scientist to refer to bystanders as a crucial social category in the Holocaust was American historian and political scientist Raul Hilberg, with his famous division into *perpetrators*, *victims* and *bystanders*. This was not until the 1990s.[1] In his film *Shoah*, Claude Lanzmann takes an initial look at the bystanders, i.e. the Polish villagers he interviewed in front of a church. These images provoked critical reactions to the film as a whole.

It is still possible to interview bystanders who were Shoah eyewitnesses in the Netherlands, and to present the results to academic and non-academic audiences alike. The greatest challenge would be to reconnect the bystanders with Jewish survivors and their children and grandchildren. Many former neighbours, colleagues, classmates and friends are still alive.

Shame

Barely any research has been conducted on Dutch bystanders up to now. In the matter of *right* and *wrong*, passive onlookers are increasingly viewed as *almost wrong*. Remaining passive, even though not actively harming, is nothing to be proud of; in fact it is increasingly viewed as something shameful. Shame, as Dutch sociologist Joop Goudsblom notes, can be defined as social pain.[2] Shame about one's own passivity is also a topic for further research. Is there more shame among bystanders? And about them? When did this shame start? Who feels this shame and who doesn't? Has this changed? Why? The connection between shame and changing social norms may provide greater insight, though it is difficult to test empirically other than by the possibly distorted retrospective self-reports of those involved.

New Moral Norm?

Israeli historian Yehuda Bauer formulates the new judgement on being a bystander as a strong moral norm, and analogously to the biblical Ten Commandments: "Thou shalt not be a victim. Thou shalt not be a perpetrator. Above all, thou shalt not be a bystander."[3] If this new norm is more widely acknowledged and accepted as a moral guideline, it could have a double effect: the shame about being a bystander will grow but people will be less inclined to be interviewed about their memories. When we contact people for interviews, we note that the *bystander stigma norm* has not yet spread throughout society and people are generally willing to be interviewed.

There was nothing even vaguely resembling this norm in the first decade after the Liberation in the Netherlands. The nationalist self-image was dominant. The Dutch saw themselves as victims of the Occupation, the Germans, the Nazis, and this self-declaration of victimhood made the Dutch also see themselves as *good* during the war, as having done *the right thing*. Internationally as well, the Netherlands was a small country admired for its courageous resistance against the huge, brutal Nazi Germany. This comfortable division worked for a long time. It was questioned to some extent in the 1960s by the student movement, when a new generation asked its parents *What did you do in the war?* But the criticism did not really change the issue of right and wrong. From the 1980s onward, the comfortable self-image began to slowly crumble. This process is still going on, still slowly. In addition, there is the new idea of trauma, of being traumatized. In the 1990s, the notion of traumatization was embraced and welcomed by the Dutch as something many of them had experienced: the war and the Shoah as national trauma. This process of appropriation, claiming the status of victim and ownership of a national trauma, helped eliminate the sense of guilt and shame. The concept of bystanders, passively observing the deportations, can be viewed as a reaction to the idea of everyone being traumatized.

In the 1980s and 1990s the value of eyewitness testimony on the persecution, in particular on the part of Jewish survivors, was increasingly recognized. Oral history and other interview projects rapidly expanded, culminating in the vast Visual History Foundation project initiated by Steven Spielberg, in which approximately 50,000 Jewish survivors were interviewed. The other groups of social actors, the perpetrators and bystanders, were not yet a research focus. This didn't change until quite recently, and is still a hesitant process. In the Netherlands, more children of collaborators have now agreed to be interviewed, but the collaborators themselves and the people who betrayed or killed Jews still remain to be found. A general non-controversial institution such as a university or general archive would be crucial in getting them to respond. Anonymity and trust would also be crucial.

In the Netherlands I agreed to initiate a project to record eyewitness memories of the persecution of the Jews called *Project Eyewitnesses*. It is an international project coordinated by the USHMM in Washington.[4] In the Netherlands my university is acting as host institution, and so far this is working quite well. We issued an initial press statement last year, which resulted in more than 300 very serious letters from eyewitnesses willing to be interviewed. So far, thirty have been interviewed on film and another thirty on audio only. My aims are threefold:

1. To gain knowledge and insight into the experiences and memories of gentile bystanders and eyewitnesses of the Shoah.
2. To analyse this knowledge and insight and compare it with the results of simultaneous international studies by partners in this project.
3. To present the results to academic and non-academic audiences.

In specific cases, it may be possible to reconnect memories of Jewish survivors and gentile bystanders in actual meetings and dialogues.

We are also focused on finding out more about betrayal and collaboration. Many Jews were betrayed by gentiles, but this is still a virtual blind spot in the research. Jewish survivors speak about betrayal, but their memories are often very limited. Many of the Jews who were in hiding stayed at numerous addresses, sometimes for only a short period of time. They experienced betrayal in the form of rumours passed on by others that things were now "too dangerous," and they had to leave. Why exactly things became too dangerous was usually not known to the Jews in hiding. We know from the history of Anne Frank's family how difficult it is to find out who betrayed the people in hiding.

Bystanders' Influence on Genocide

It should be possible to recognize more variation in the bystanders and adopt a more dynamic approach. The term bystanders is static and somewhat fatalistic and generalizing. Once a bystander, always a bystander? There are important

variations in their knowledge, complicity, and awareness. It is also clear that bystanders react differently to what they see. Bystanders do not just stand still, they also move, they are *mitlaufer, meelopers*, they go along with what others do, they do not protest, they are onlookers, or they look away (*wegkijken, zuschauen, abschauen*) Bystanders ignore, deny, look away, refuse to see, and these are aspects for research to address.

Hilberg's three-part division into victims, perpetrators and bystanders remains salient, but in my view it generalizes too much as regards bystanders. Social psychologist Ervin Staub divides the bystander category further.[5] He distinguishes the *heroic helper* as a separate group and distinguishes between *internal* and *external* bystanders, the insiders being close to a situation of genocide, and the outsiders, such as other nations or groups, being far away. He refers to some of the groups close to genocide as *semiactive participants*, e.g. German bystanders: "They boycotted Jewish stores and broke intimate relationships and friendships with Jews. Many benefited in some way from the Jews' fate, by assuming their jobs and buying their businesses."[6] One of Staub's insights is that it is quite difficult to separate passive bystanders from bystanders supportive of the perpetrators. This is especially difficult because passivity in a situation of genocide may be all the perpetrator needs to prevent resistance. Staub shows that bystanders "have great potential powers to influence events. However, whether individuals, groups or nations, they frequently remain passive. This allows perpetrators to see their destructive actions as acceptable and even right."[7] According to Staub, people tend to continue their behaviour in the direction they have taken, and to become firmer and less likely to change their behaviour over time. His general rule is that people learn by doing. For better or for worse. People learn and change as a result of their own actions. This is true of perpetrators and bystanders alike.

If a passive reaction is the first response after seeing an event, eyewitnessing an atrocity, people tend to hang on to that passivity.[8] This is why I feel it is crucial to recognize bystander behaviour, mechanisms and options in a situation as early as possible. "The earlier bystanders speak out and act, the more likely that they can counteract prior steps along the continuum of destruction or inhibit further evolution."[9] Bystanders influence each other, Staub notes, and in both directions. If bystanders remain passive, they substantially reduce the likelihood that other bystanders will respond. But as soon as some bystanders become active, others are apt to be activated as well. These findings bring us one step closer to the crucial issue of the conditions under which it is possible to activate passive bystanders. Early awareness and action and general education are crucial in preparing the ground for potential bystander activation. *Act early* is the first rule. And raising the awareness of common humanity is crucial. People – children, adults, whole societies – can "develop an awareness of their common humanity with other people, as well as of the psychological processes in themselves that turn them against others."[10] With these general insights in mind, and with an appropriate level of caution regarding both self-deception and other-deception in memories of such sensitive subjects, as well as of the

representativeness of volunteer respondents, let us turn to some of the initial results of our interviews.

Memories of Dutch Gentiles of the Deportations in Amsterdam

In a first geographical selection of the letters we received from deportation eyewitnesses, I focus on the memories about the city of Amsterdam, which approximately sixty letters have been about so far. The three student projects on other issues outside Amsterdam (one on people working and living around the transit camp in Westerbork in the rural northeast of the Netherlands, one on women working outside the home across the country, and one on memories in the city of Rotterdam) also illustrate similar aspects:

Power and Powerlessness

The letter writers present themselves as *zuschauer*, onlookers. They *happened to* see something. This self-perception implies a certain powerlessness and sometimes also surprise. Sometimes, but not nearly always, there is also fear. One woman [V. M.] went every day from suburban Amstelveen to an Amsterdam secondary school. Near Haarlemmermeer Station she remembers seeing "a group of at least a hundred poor Jews, maybe even 200, there was no end to it."

> "They were driven right in front of our noses by German (kraut) soldiers every ten meters next to them on both sides, hitting them. (...) It was so threatening. In our ranks (she was with a group of schoolchildren) there was a kind of zooming sound, a humming of dismay, of horror. Immediately the guns – with the barrels – were now pointed at us. Any resistance and they would have gunned us down just like that. (...) Yes, what could you do? Courageously shout something and then be shot down? (...) I see myself still standing there, fifteen I was, and the tears streaming down my face without a sound."

Age

Age is important in the role bystanders attribute to their passivity. People born in the 1930s are reporting their childhood memories. However, we also find that age can be used as an alibi, a justification of passivity. One woman clearly thought of herself as a child of fifteen, although she was talking about incidents that took place when she was eighteen, working outside the home, living with her parents but obviously able to go about her own business in many ways. Yet in talking about the sensitive issue of moving into an apartment that had belonged to a Jewish family, she used her age as an alibi: "Well you know, of course, I was only fifteen, and you don't know, you don't realize then... what is happening...

Fear and the Memory of Fear

Fear at the time should be distinguished from the memory of fear or fear as justification of passivity. Fear is an even more flexible category in memory, I find. The more painful questions about the deportations, such as *What did you do? How did you react when you saw that? What did you know*? can now quite easily be brushed off in the interviews by referring to one's age or fear at the time. One man born in 1936 [T.] was a schoolboy when he saw his downstairs neighbours being arrested.

"Before my very eyes, I can still see the whole family being very quickly taken out of the apartment – they could not take anything with them any more, and the father wanted to drink something. And I see those soldiers in the long green coats and helmets standing right in front of me. They could have taken me as well."

Another memory of fear is recalled by a man [De N.]. During a *razzia* or roundup in Rivierenbuurt in South Amsterdam, he was having dinner with his family when suddenly the Dutch SD came up and shouted "You are Jews!" It turned out they were looking for a family that lived ten houses further down the street, and they left as soon as they realized that. They had the wrong number. In the meantime they were able to warn this family and they got away, he writes.

Benefiting and Opportunity

To a certain extent, the gentiles of Amsterdam benefited from the deportation of the Jews, their housing and possessions. This aspect is generally overlooked and rarely admitted. We have to formulate specific questions to get to it. Some people mention benefiting, usually in an implicit way (cf. Götz Aly, *Judenmord*). In Dutch historiography, this is virtually unknown territory. We all know how "Jews were replaced by Nazis" in Germany, for example at universities and schools or in political positions. Benefiting in the Netherlands has not yet been referred to as such.

One woman explains how she *happened to* see some aspects of the persecution because she worked downtown in the old Jewish neighbourhood across from the Portuguese synagogue for a small Jewish company that made feather decorations for clothing from goose, swan and duck feathers and fur (attached to coats, hats, children's clothes etc). She was seventeen when she came to work there in 1941 or 42. She came from a very poor Roman Catholic family in the Jordaan, and apart from Jewish shopkeepers and market salesmen in the neighbourhood, she did not know any Jews personally. I ask her how she got the job. She says,

"Through a cousin who was the office boy there, doing all sorts of things, running errands. Jewish boys and girls were not allowed to work any more. My sister joined us later, she worked there as well."

That is the way things are in a city: there was a job and she took it. Something similar happens in the interview when I express my surprise that she knew what

was happening on the other side of the city, since it was far from where she lived or worked. Then she says, "I lived on Transvaalplein." (I say, surprised, I thought you lived on Lindengracht? When did you move to Transvaalplein?) She says:

"I think in '43, something like that. It was a Jewish apartment of course that we moved into. Yes. It had been empty for some time and then rented out again. The apartments were also rented to people from the coast who had to move. (What was the number?) Sixteen, Transvaalplein sixteen. It was actually a smaller apartment, but it was a split level, on the first and second floor."

This is just one small example of what can be referred to as benefiting. It also provides insight into everyday city life, how she and her cousin and sister found jobs in 1942 and 1943, and how their family moved across town to another apartment.

Another woman [O.-C.] writes that there were also Jews in the Lutheran Church in her neighbourhood on Dintelstraat, "who wore a Jewish star because it was compulsory. These people were hoping, that became clear to me later, that by staying at this church they would not be picked up and deported. In retrospect nobody realized what was happening," she writes. She has a very distinct memory of how she was on the street with her girlfriends immediately after the roundups, looking for money and jewelry that had fallen or been thrown on the street or among the bushes. This mention of looking for money or jewelry or other goods is rare. Robbery by others is mentioned several times. One woman [S.] lived in Disteldorp in North Amsterdam. "An old couple was still living at the end of the street I walked down every day. One afternoon I passed the house and someone called me through the letterbox!" The couple was hiding there and asked her do to some shopping. Twice she did some shopping for this Jewish couple and delivered the food behind the house. Later they were deported and, "the house was emptied completely by the next-door neighbours."

Distance and Closeness

One fascinating aspect is the simultaneous closeness or lack of distance and the sense of distance in these memories. Although people were often physically very close to the deportations, they write as if there was a tremendous distance. They were watching the deportations from behind a curtain, around the corner, at the neighbours' house, downstairs or next door. As if they were not there? As if they were very far away? As if there was a wall in between? The same woman saw the Jewish family she worked for being deported. They were "away," is how she describes it. One Jewish man who was married to a gentile woman was able to continue the business after his wife revealed that their daughter was not his, but actually the daughter of a gentile man. She was punished and sent to Ravensbrück, but the Jewish man survived. The rest of the Portuguese Jewish family was also taken "away":

"They – that family – were taken away quite soon. The son, who was a rabbi, the youngest Portuguese rabbi in Amsterdam, as well. His wife and children went along as well.

I thought then, in my innocence, that they were being sent to a work camp. You could almost say they had left voluntarily."

She repeats five times that at the time she did not know, did not realize what would happen. She describes the most terrible things that she saw and heard. There was a roundup in East Amsterdam one Sunday morning. She was staying with her sister in an apartment near the ground floor. They had to stay inside and saw Jews being taken away. They could not believe the rumours about the camps and the arrests of Jews and babies being beaten with their little heads on the stone floors. The next story is of what she saw downtown when she was at work. It was the deportation in open trucks of Jewish children, probably from the Jewish girls' orphanage on Waterlooplein or Rapenburgerstraat. In plain daylight her colleague who stood on the sidewalk recognized faces of children she knew and she cried out.

"In the back of those large trucks were those children. And she (her colleague) shouted, 'There go those children! There are the children! There are those children! And what about those parents!' And then she fainted. She fell down on the sidewalk. And we came out and helped her back inside... (Did you see it yourself?) I stood more in the back of the house. They were standing in front of me, taller people. Children of different ages. The children were standing, laughing, shouting, singing in the back of the truck, happy to be in the truck! (...) It happened quickly. I don't know if they were girls. They came from around the corner and the trucks passed quickly, they did not drive slowly. I wonder about the drivers. What they thought, driving the trucks. They must have had children of their own."

Distance is difficult to specify. I ask her how her parents reacted to the persecutions. In her answer, she evokes the sadness and surprise in the voices of her parents.

"They thought it was terrible. 'You know who is gone as well? And him, he's gone too. I haven't seen him in weeks. And she is gone too. And Moffie! German Jews. Gone as well. Pulsed too'."[11]

Then I ask directly about what she herself saw of the deportations. (And those acquaintances and neighbours, did you see from nearby that they left?) In her answer, she confirms the nearness and at the same time the distance. Names of colleagues come up.

"I did see it, yes. And your own bosses ... (pensive). You are all woven into it, and yet you are not. Let me say it this way. You keep it away somehow. Because if there are people you love and they are being taken away, well I don't think you can come to terms with that so easily! Yes. Duifje was a sweetheart. She was a colleague. Her husband was gone already. So you had incomplete families. She came to work there as well."

She pulls herself out of that memory again. She explains the distance between herself and the persecuted Jews. She was not one of them but, "You come into a Jewish atmosphere, you become familiar with it, like home, you feel more for it." In the case of her and her sister, there was considerable closeness, yet apparently not enough to become involved, to become active.

Memories of Passivity

As the stories unfold and the interview transcripts are made, I find more memories of passive than active reactions. I am particularly interested in the turning points in the personal histories and narratives. Under what circumstances do witnesses become helpers and under what circumstances do they become or remain passive? What people see, allow themselves to overlook, take in, decide to act upon – all the separate and crucial steps deserve further research. The relation between attitude and action is an old theme in sociology. *What We Say / What We Do – Sentiments and Acts* is a study written by Erwin Deutscher in 1973.[12] Deutscher notes the crucial importance of opportunity: recognizing an opportunity to act is a condition for becoming active. Not everyone recognizes their own opportunities. I am convinced that this variation in readiness to act is also gendered. It is connected to a person's level of self-esteem and confidence. The awareness that one is capable, has the possibility to act, is allowed to act, required to act, forced to act often still requires a question, an invitation, a request, a plea.

Helping and Self-esteem

A series of interviews made by one of my students, Katinka Omon, with women who worked outside the home in the war years and were eyewitnesses to deportations confirms this theory of opportunity, of the importance of self-esteem and the need to be asked. Most of the women somehow became involved in helping, taking care of Jews in hiding, e.g. by bringing food, doing the laundry or visiting. When I read the interview transcripts I am struck by a pattern. Without exception the women became involved in these activities when asked or ordered to do so by men, i.e. their boss, employer, husband, father or a friend of the family. Once they were 'activated', they were able to continue and take initiative and develop their activities independently, but the first step from being passive to becoming active was only taken after a man had asked or ordered them or gave them permission to do so.

Friendship, Bonding, and Trust

Jews and gentiles were neighbours, colleagues, acquaintances, classmates and friends before and during the Shoah. Some sort of bond would inevitably develop between Jews in hiding and the people who helped them. In many of these cases, they had not known each other before at all. We know some people have stayed in contact as friends for life after the war, but many have not kept in touch. This deserves further study. Several gentile women talk about this bonding in indirect ways in the interviews. They talk about trust, that they could be trusted.

For example, a gentile woman who worked as a secretary for Youth Hostels in the Netherlands. The organization was taken over by collaborators during the war

and Dutch national socialists were appointed as the new managers. So the woman had an NSB manager she had to report to every day. In and around her office, she came across Jews several times. She talks about a woman who worked at the office as a janitor and turned out to be doing resistance work, helping Jews to get ration cards and food. She hired an assistant, a young girl, to help serve coffee and tea to the office workers. The new girl was Jewish but blond, and no one knew except the interviewee. It was a dangerous situation because the staff were collaborators. The interviewee did not get involved in resistance work. She wants to tell the story, she says, because she feels the janitor who helped Jews has never been properly thanked. And she wants us to know that she could keep a secret and did not betray her.

"That janitor, and this is my point, that woman has never really received a thank you, I think, for what she did. (...) It was so courageous of her to do that. Because if she had been betrayed, in one way or another... But I knew about it, she trusted me (silence) and rightly so."[13]

It was in the janitor's office, where the interviewee would heat up some leftover food for lunch, that she unexpectedly saw two Jews:

"And there were two Jews there with their wrists bandaged. They had tried to cut their wrists. (...) She had taken them home, she lived above the office, so there they were, sitting there (...) When I came in, the Jews were terrified. 'No', she said, 'you can trust her'. Fortunately I was to be trusted. And (silence) that was so heartrending, you saw those people with those fearful eyes, terrible. What eventually happened to them, I don't know."

This interviewee worked and lived among Dutch Nazi collaborators. She found a flat that was very desirable, but belonged to a WA and NSB man who lived downstairs. She says she only recently realized what finding that flat meant.

"He asked of course where I worked. I never gave it a second thought, but realized recently that he probably asked those NSB people from the Youth Hostel Association about me and they said something good about me so I got the flat. Lots of people wanted a flat like that, but I got it."

The Jewish girl who came to work as the janitor's assistant is the only other Jew she mentions. "That she (the janitor) had the courage to have a Jewish girl working there, right in front of the NSB! Yes, you could not tell because she was blond." How did she feel about this girl?

"I thought it was rather cheeky to dare to do that as a Jewish girl. To serve tea and coffee to those NSBers. And never make a slip of the tongue, because if they asked about her background, she would have to make up something and be ready for that. I find that incredibly courageous."

Did any other colleagues know she was Jewish, or were you the only one?

"No, no, no, I don't think so (silence). If anyone knew, they would not tell anyone. And neither would I. No, I would never tell anyone. (...) You never knew who to trust. (...) And I didn't tell anyone at home either, no one."

Trust and Opportunities for Betrayal

We know now how dangerous the situation for Jews was. This is also a message in this interview. This gentile woman could have chosen to betray the janitor and the Jews, but she didn't, she could be trusted. Being trusted becomes a *good* memory: I could be trusted, so I was okay (even though objectively she was only a bystander). Another female interviewee [B.] similarly explains her trustworthiness. She worked in Amsterdam at a furniture shop with large showrooms. A Jewish man was hidden in the attic and she brought him lunch. No one knew about it. It is one of the first things she says in the interview.

"I was able to keep my mouth shut, I never slipped up. My parents never knew and neither did my fiancé later."[14]

There is pride in these memories. In retrospect, the same interviewee appears to have mixed feelings towards the man she helped. The last winter of the war was known as the Hunger Winter. Her employers asked her to bring sandwiches to a Jewish man hiding in the attic. Her memory is ambivalent. She had to do it, but sometimes he did not eat everything she brought him.

"A sandwich would be made for him, and I brought it to the attic. (...)And on Saturday afternoon sometimes a piece of cake – once I found a *soesje* (puff pastry filled with something) in the toilet. He didn't want to eat it. Even at a time when everyone was going hungry. I said to madam, 'that puff pastry is floating in the toilet.' 'Well,' she said, 'then he won't get that any more'."

When asked at the very end of the interview whether there is something that has not been discussed yet, after a silence she says:

"I spoke to that Jewish doctor later. 'Yes,' he said, 'I did not start jumping and dancing, but of course I was happy about the Liberation.' And I saw him again later. I had a daughter who was twelve and needed an eye specialist, and my general practitioner said, 'I'll send you to Ies, that little Jew,' he said. I said, 'Oh yes, I know him.' And I said 'I brought him his lunch and I did his laundry.' When I came into his office, (...) his mother opened the door and let me in. I had to give my name. She didn't know me that well, she only saw me once, and she pretended not to know me. Then I came to him, and he also pretended not to know me. I didn't like that so much."

Do you know why that was?

"I don't know. Once when I was there (presumably back when he was in hiding in the attic) it was my birthday. He gave me a tenner (ten guilders), but I had to hide it, I couldn't tell my parents who it was from. Later he said, 'Yes, after the war you will get a big present from me.' Well, I am still waiting for it (the present). (...) "He still lives on Koninginneweg (a well-to-do neighbourhood). I did not like it that after I brought him his lunch for two years, he would not say, 'How nice to see you again.' That was not to be..."

We see a mixture here of silent expectations, a bond, an unspoken accusation of ingratitude. He should have been nicer. He should have recognized her. She is disappointed. He could have given her a present. The same interviewee talks

about a friend who had any number of people in hiding during the war. She had a grocery shop at the time and now receives a resistance pension from the Foundation 40–45, which gives money to people recognized as having been in the resistance. “She said, ‘We deserve it’. She is a very nice woman, and I respect her a lot – she said (...) ‘I get (money) from the Foundation 40–45’.” The subtext here may be *she gets money and recognition, why don’t I?* We need to be careful not to overinterpret. But I think the hidden message is quite plausible in this case.

Watching Arrests and Deportations in Amsterdam

In the vicinity of Muiderpoort Station, a train station in East Amsterdam, people saw groups of Jews who were arrested being taken by foot to the trains after roundups in South and East Amsterdam. Most of the letters refer to a sense of powerlessness either at the time or in retrospect.

A man [Van S.] born in 1935 stood on a balcony on Amsteldijk as a child watching Jews walk to the station.

> “A long procession of people passed by our house. Then came the soldiers with guns. There was a woman who didn’t look Jewish, as my mother commented, and she was pregnant. She was carrying a suitcase of baby clothes with her. The suitcase fell open and my father hurried downstairs to help her. The soldier told my father in German that if he did not go away immediately, he could join the crowd right now.” He continues (in a letter): “We could not do anything. (He underlines this). They were in power. My mother said they were mainly picking up poor Jews, because the rich ones had already left. They (his parents) did not like the Jews. My mother found them arrogant and selfish, but in spite of that they found it terrible,” he writes.

A somewhat older man, born in 1928 [T.], also stresses his aloofness as a spectator and his powerlessness. On Polderweg, he writes, he regularly saw “groups of people, Jews with suitcases and other luggage and winter coats I remember, who were waiting there for deportation. We didn’t know anything about the atrocities of the concentration camps, but I remember having a very worried feeling. I was fourteen or fifteen and could not have done anything anyway – we were living the four of us in a tiny three-room apartment.”

One woman [Mrs. B. interviewed by Katinka Omon] remembers seeing a “very big roundup” that lasted

> “a whole Sunday in July, all the streets were blocked and all the bridges were raised around all the Jewish neighbourhoods, and then all those Jews were taken away. You could see if you were standing downstairs, because the station was somewhat higher, you saw all those Jews had to throw all their luggage on a pile (silence). And then they were put in that train, in those cattle cars, and it was blistering hot weather, and all day long the trains were full. Up until the evening, those people had to stand in the trains, I found that so terrible. Because there were children too, and you have to relieve yourself, how could that be done, inhuman. You could see that car closing, with that child sitting there like this – well this I did not see, but that is what happened. And yes, you stood there watching, but you were powerless.”

What did she know?

"Yes, you knew of course that if would get worse and worse. There were also some Jewish people who didn't take things so seriously. They said, 'In a week we'll be back'. But on the other hand, you would see announcements in the newspaper that many people had committed suicide."

Another woman [S.] describes the deportation of her neighbors.

"We were witnesses of all kind of events that we were of course totally powerless to stop, but we did feel despair. The worst memory is when we saw the last of our neighbours, an elderly grandmother, taken away in a Puls truck, the same truck that also took away all the furniture."[15] (...) "Our Jewish neighbours gave people in the neighbourhood all sorts of beautiful things in safekeeping for when they returned! I still have a few very beautiful tablecloths."

One man [De L.] saw his Jewish neighbours and acquaintances (Hogeweg and Pythagorasstraat in Watergraafsmeer,) being arrested. Two elderly Jewish ladies for example:

"One by one they shuffled with a very small bundle, a small wicker suitcase, a single bag, up the foot plank to the wooden benches in the truck. My mother, an uncle who lives with us, our maid and I watched through the curtains."

This image, watching through the curtains, is a recurrent one in the interviews.

Behind the Curtains

Quite a few of the interviewees refer to having seen arrests and transports from behind curtains. One woman [Van D.] waved at the Jews in a train shunting yard. She and her mother kept waving at the Jews in Watergraafsmeer, whenever there was a train there. One day a Jew escaped from the train. After that there was always a green-uniformed policeman with a machinegun guarding the trains, and she was no longer allowed to wave.

From the third storey on Vechtstraat, where she lived, another woman [K.] saw people being taken from a tall apartment building called the Skyscraper to Amstel Station.

"I was not supposed to look out the window. A German sound truck had driven around to announce this prohibition in the neighbourhood. Of course as a child that makes you want to look anyway through the crack of the curtain, and that is how I could see what is now Vrijheidslaan. What I saw was etched in my memory. There was a group of Jewish adults and children, at least five people walking next to each other, with suitcases and bags, the children with toys, in the direction of Berlage Bridge. Our neighbours must have been there as well, because for weeks we had been able to see a festively set breakfast table."

Several people wrote about having to stay inside during the roundups of Jews. During the deportations on Nieuwe Herengracht, a man [S.] who was eighteen at the time lived next to Café De Druif and looked out on the sluice in front of the house.

"I saw some Jews taken out of their homes on Nieuwe Herengracht and gathered near that sluice. There were maybe fifty of them. They didn't have much with them, perhaps a few bags. They looked scared and apparently tried to find out what was going to happen to them. I remember a sexy Jewish girl who tried in vain to get the Germans to change their minds. After some time the group was driven away in trucks. (. . .) That same morning we had orders from the German SA to stay inside. This prohibition against going out was lifted after the arrests. Then it was sad to see the vacated houses being plundered."

A woman who was nineteen at the time [Van Z.] saw the deportations on Pretoriusplein in Transvaalbuurt.

"At our square there was a public garden in the middle. There was an air-raid shelter underneath it. One night the Jews from the neighbourhood were driven into the shelter, and later they were taken away by trucks, with a lot of shouting. I slept at the front of the house and was awakened by the shouting. I knew what it meant. Another roundup, people from the neighbourhood being taken away again."

This was also how it went in the summer of 1944 during the last arrests in this popular neighbourhood.

"German trucks came down the streets with loudspeakers. No one was allowed to leave their house. The trams were waiting."

Seeing, not Seeing

Some eyewitnesses present themselves as victims. A woman [H.], now ninety-two years old, went to work and back twice a day by bike. She always passed the Dutch Theatre, Hollandse Schouwburg, which was where the arrested Jews were gathered before being taken to the train stations. She would see trucks being loaded, all sorts of things. Because of what she saw, she now regards herself as a victim of the Second World War. My colleague asks her why she kept taking the same route to work and back. Couldn't she take another route? Her answer is simply: "It was the shortest way to get there." When people appropriate the role of victim in retrospect and claim to have been traumatized, I feel we have to question this.

As is the case with the aspect of distance and closeness, there are intriguing variations in what people see, observe, notice, happen to see, glance away from and so forth. I was struck by a letter from a man [H.] who lived near the Nieuwmarkt area downtown, which was a Jewish neighbourhood, throughout the war. He writes about the ordinariness of life during the deportations. There was usually not a lot to see if you were just walking or bicycling around in the city, just like we do today, through the same streets. He writes:

"You might think I must have been a good eyewitness. I wasn't. Everything happened around me. I knew what was happening. If I saw something when I walked around the city, I would turn left or right, or I would turn around. Only one time a Dutch police officer was standing in front of an open door leading to a staircase. I could not keep from saying

something to him. They were taking away the Jews who lived upstairs. He said something like, 'If you want to, you can join them straightaway.' I was afraid and went on walking. Very sensible, but I still have a sense of guilt about it to this very day."[16]

Conclusion

As we continue this research project, it is clear that gentiles' memories of the deportations have a very direct, local and national impact and importance, as well as universal qualifications that can be compared to bystander behaviour, attitudes and memories in very different times, places and circumstances. In *Bystanders: Conscience and Complicity during the Holocaust*, American philosopher Victoria Barnett notes that among gentiles, empathy with the Jews was a factor in becoming active, but mere empathy was not enough. What was needed is what she calls "disruptive empathy: empathy that is willing to publicly challenge majority ideologies and fears."[17] This can be seen as a combination of empathy, opportunity, willingness to put oneself in other people's position and actively imagine what they are experiencing, and the courage to act.

The other side of the empathy coin, i.e. inclusion or a sense of obligation, is the exclusion from a circle of obligation and from a moral consciousness. American historian Claudia Koonz refers to the Nazi morality and moral ideal in her new book *Nazi Conscience*.[18] Her analysis is that an inner conviction of the Nazi ideals helped the gentile majority exclude Jews from their moral consciousness. This inner conviction did not take much time to grow, she stresses. This process of exclusion can happen overnight and almost spontaneously, which makes it all the more frightening and urgent to study. Empathy and exclusion from moral consciousness are both in evidence in our interviews. There is still a great potential for discovering new aspects of this difficult period in Dutch history and memory. To know more about how people remember the process of exclusion and how they reflect upon their own role in retrospect is providing insight comparable to that on other forms of genocide in the past and present alike.

Notes

1. Raul Hilberg, *Perpetrators, Victims, Bystanders: The Jewish Catastrophe, 1933–1945* (New York: HarperCollins, 1993).
2. Johan Goudsblom, Schaamte als sociale pijn. In: idem, *Het regime van de tijd*, Chapter 1 (Amsterdam: Meulenhoff, 1997).
3. Yehuda Bauer, *Remembrance and Beyond*, speech at the Holocaust Remembrance Day Ceremony, General Assembly Hall, United Nations Headquarters, New York City, 27 January 2006. Text: *http://www.un.org/holocaustremembrance/events/bauer.htm.*
4. United States Holocaust Memorial Museum, Washington, DC, Oral History Department. The director of this program is Dr. Joan Ringelheim, and the international coordinator is Dr. Nathan Beyrak. The films and tapes produced in this project are stored at the USHMM archives for further research.

5. Ervin Staub, The Psychology of Bystanders, Perpetrators, and Heroic Helpers. In: Staub, *The Psychology of Good and Evil. Why Children, Adults, and Groups Help and Harm Others*. (Cambridge UP 2003).
6. Staub 2003, 309.
7. Staub 2003, 292.
8. Staub: "As a result of their passivity in the face of others' suffering, bystanders change: they come to accept the persecution and suffering of victims, and some even join the perpetrators"(292). People are able to reduce empathy quickly, Staub notes, "Passivity in the face of others' suffering makes it difficult to remain in internal opposition to the perpetrators and to feel empathy for the victims. To reduce their own feelings of empathic distress and guilt, passive bystanders will distance themselves from victims" (306). "Silence and passivity change bystanders, whether they are individuals or whole nations. They can diminish the subsequent likelihood or protest and punitive action by them. In turn, they encourage perpetrators, who often interpret silence as support for their policies. Complicity by bystanders is likely to encourage perpetrators even more" (309).
9. Staub, 310.
10. Based on a wealth of scientific experiments, Staub recommends the following crucial steps: Healing from past victimization, Building systems of positive reciprocity, Creating crosscutting relations between groups and Developing joint projects and superordinate goals (318).
11. "Puls" refers to the name of an Amsterdam moving company who during and after the deportations of Jews went to their houses to empty the apartments of furniture and other belongings. "To Puls" became an infamous verb in Amsterdam. Usually the possessions of Dutch Jews were shipped to Germany.
12. Erwin Deutscher, What We Say/What We Do: Sentiments and Acts. Glenview/Brighton: Scott, Foresman and Company, 1973.
13. Interview by Katinka Omon with Ms. M., Amsterdam, 18 May 2005.
14. Interview by Katinka Omon with Ms. B., Amsterdam, 27 April 2005.
15. Puls: see note 12.
16. Quotes from letters to the Eyewitness Project/Project Ooggetuigen, Vrije Universiteit Amsterdam, Faculty of Arts, De Boelelaan 1105, 1081 HV Amsterdam, The Netherlands: 2005.
17. Victoria J. Barnett, Bystanders. Conscience and Complicity During the Holocaust. Westport/London: Greenwood Press, 1999.
18. Claudia Koonz, Nazi Conscience. Cambridge, Massachusetts: Belknap Press of Harvard University Press, 2003.

6
Mid East Meets Mid West? Theopolitics, Crime and Terror in the U.S.

R. T. Naylor

In the wake of 9/11, America struck back on two distinct fronts. The first, of course, was military. In short order American bombers, cruise missiles and Special Forces headed for Afghanistan to take out the "command and control centers" from which the perpetrators had committed mass murder. That most evidence pointed to a plot hatched in Hamburg by the suicide pilots themselves, might, in less urgent times, have raised questions about the effectiveness of America's intelligence services or the accuracy of its Air Force's navigation equipment. Hamburg, nearly fire-bombed out of existence during World War II, probably breathed a sigh of relief.

The second front was legal, specifically an attempt to not only round up the "sleeper" cells presumed to have been planted throughout the U.S., but also to engage in a world-wide effort to find, freeze and forfeit "terror dollars" before they could be put to work. Behind both the military and the legal-financial initiatives was the notion that not just 9/11, but a series of previous outrages against Americans, noteably but far from exclusively, the 1998 bombings of the American embassies in Dar es Salaam and Nairobi, were the handiwork of a sophisticated, hierarchically controlled Transnational of Terror inspired and directed by Usama bin Lāden, and financed from his alleged billions. These in turn were derived variously from his family fortune, his criminal rackets all over the world and outpourings of support from his well-heeled followers, particularly those in Saudi Arabia, with the money transferred covertly through Islamic charities and the notorious hawalah (underground banking) system.

Yet with each day that has passed since the terrible events, it has become clearer that this widely-accepted argument about the causes of and appropriate responses to 9/11 is liberally laced with myth and misinformation, with a heavy leavening of deliberate disinformation. In fact, when the conventional tale is broken down into constituent parts, it is hard to find anything in it which stands up to scrutiny.[1] The role of bin Lāden in various terrorist outrages has been grossly exaggerated; al-Qā'idah turns out to be largely a law-enforcement fable akin to the Mafia myth which has long confused public discourse and muddled legislative responses to crime; the notion of a general Islamic resurgence against the West is a fantasy peddled by the legions of instant "national security experts" whom the purported

threat permitted to crawl out of the woodwork and into the TV studios; most stories about the bin Lāden terror-treasury are fairy-tales retailed by people over-endowed with ambition or imagination and under-endowed with knowledge or common sense; and and the usual portrayal of things like the "underground banking system" or Islamic charities is the result largely of ignorance combined with ethno-religious bigotry.[2]

In fact, the very notion of an aggressive Islamintern out to destroy the moral and financial foundations of Judaeo-Christian Civilization is preposterous. Leave aside the simple fact that terrorist activity, with its resulting death and destruction, has actually been falling for two decades. Except for the upsurge in deaths caused directly by 9/11, it has continued to fall even as the U.S. government, seconded by the British one, proclaims the opposite – mainly to rationalize their own crimes in Iraq.[3]

If the understanding of the al-Qā'idah phenomenon has been riddled with hyperbole and hysteria, so too notions of the optimal way to respond. If al-Qā'idah was really an organization in some coherent and corporate sense, the optimal strategy might have been to decapitate and incapacitate it by military and legal (especially financial) means. Its leadership could be neutralized, its cadres incarcerated, its terror treasury seized. A single, well-aimed blow ought to do much of the trick with the first, while, a few mop-up operations took care of the rest.

On the other hand, if as became increasingly popular to believe, it was really an informal network or even a network of networks, the best approach might have been to round up its adherents, cell after cell in a series of targeted strikes over time. That might require, in addition to selective and short-term military action, longer-term vigilance and transformation of the legal environment (mainly by reducing rights to due process) to permit the forces of law and order to do their job.

But what if al-Qā'idah, if it existed as anything except an ex post construct in the minds of those struggling to understand things beyond their immediate experience, was really just a brand name adopted by a set of spontaneously formed grouplets with largely local roots and therefore prompted by largely local grievances? What if these grouplets shared, not so much a coherent ideology, but a set of somewhat similar grudges and a very similar propensity to express them in acts of sometimes gratuitious and indiscriminate violence? If that were true, what was the solution? Was the problem susceptible to any general approach, or was it best left to local actors to resolve in accordance with local conditions? Would that also suggest that once the local conditions start to change, the problem, provided it was successfully contained in the short-run with normal law enforcement methods, would go away by itself in the long?

These seemed difficult questions indeed. But Americans who wished to understand how certain groups in the Middle East could use religious faith to rationalize acts of seemingly gratuitous violence had no need to hire anthropologists to ruminate over al-Qā'idah shards from the Tora Bora caves while Israeli experts on "Arab terrorism" comment empathetically on prime-time TV. The heady mixture of political alienation, material deprivation and theological incitation which on

rare occasions leads to an explosion, literal or figurative, in the Middle East can be as American as a pre-Thanksgiving turkey shoot, down to and including large numbers of innocent victims.

Indeed, three years before the Nairobi and Dar es Salaam bombings, and six before the tragedy at the World Trade Center, a truck loaded with ammonia fertilizer laced with racing-car fuel exploded to rip apart the federal building in Oklahoma City, killing 169 people. The usual fingers quickly pointed to the usual Middle Eastern suspects, especially Saddam Hussein – since Usama was not yet a media star.[4]

However America's worst incident to date of domestic terrorism turned out to be a strictly home-grown affair. It occurred at a time when "Christian fundamentalism" was spreading rapidly across the country, and when groups of conspiracy-addled gun-nuts citing Biblical justification were robbing banks and armored cars, running phony religious charities, and staging bombings and shoot-outs with federal authorities, particularly in the Mid West against a background of foreclosed farms and boarded-up shops.

Bitter Harvest

The Mid West had seen hard times before. The worst had been during the Great Depression when catastrophically low commodity prices swept the region like a financial dust-storm, while Nature responded to ecologically disasterous agricultural practices by scooping up millions of tons of topsoil and dumping it on places like Chicago where so much of the region's grain and livestock output was processed and traded. The Mid West was rescued partly by the New Deal farm-subsidy system (which guaranteed revenues high enough to cover costs) and much more by World War II (which reduced the farm population while it drove up demand for produce). After the war, the area benefited further when the U.S., in economic competition with the USSR, began to dump abroad surplus grains as "food aid." The result was to promote consumption of wheat in former rice-eating areas, undercut indigenous farmers, and subsidize the emergence of corrupt pro-American elites who got rich distributing American agro-produce. This was more than just another tax-payer subsidy to big American grain companies. Under the terms of the program, grain, usually from U.S. government stockpiles, was sold cheaply to governments of poor countries who paid in national currency into local bank accounts from which the U.S. could draw to buy allegience or plot mischief as mood or exigency warranted. Meanwhile, in the U.S., huge amounts of chemical fertilizers caused output (temporarily) to grow so rapidly that the U.S. soon began paying farmers not to grow.[5]

That anomoly fed the backlash. During the Red Scare of the 1950s, the Republican Right took aim at the legacy of Franklin Roosevelt. Demands for dismantling the farm support system were backed by the usual tenured academic economists who argued that everyone else would be more efficient if subjected to the winds of

free competition. But given the political power of farm states, supports remained largely intact. Then, by the 1970s, they seemed irrelevant. Following major American sales to the USSR, grain prices shot up; and the U.S. government, along with commercial banks, began urging farmers to buy more land and to invest in fancier equipment to increase further the level of output – and their debt loads. Market demand relieved the U.S. of the need to stockpile, and food aid programs based on cheap sales shifted towards emergency projects to feed the acutely hungry in crisis situations. Simultaneously dramatically increased profits for big grain companies allowed them to diversify into all aspects of upstream processing. For a time family-farm prosperity disguised the underlying trend towards greater corporate power. Then, after 1979, when prices and interest rates reversed trends, the bottom fell out.

The Midwestern economy, its farms and small-town businesses dependent on them, entered a major crisis, exacerbated by cuts in farm subsidies. Unserviceable debts and unpayable taxes led to a wave of foreclosures, while the institutional base of American agriculture increasingly shifted from the family-farm to the agro-industrial firm. Surviving farmers were stripped of autonomy to labor as de facto serfs producing raw material (assembly-line "chickens," steroid- and antibiotic-laced beef and genetically-modified grain) for a handful of giant corporations. The burgeoning fast-food industry could then shove the resulting agro-chemical sludge in ever-larger helpings down the maws of electronically-lobotomized consumers who responded by increasing steadily in numbers and girth.[6] Appeals from farmers for government help were to no avail – given demographic shifts, the Mid West was more important to politicians as a source of electoral slush-funds from expanding agri-business corporations than as a source of votes from a shrinking share of the national population. The result was a dramatic rise in suicides, and a harvest of new recruits for right-wing rural insurgent groups which had already taken root in mid-western soil.[7]

Seeds of the "rebellion" had actually begun to sprout the decade before with a minor outbreak of publicly-proclaimed tax evasion by a few right-wing libertarians. Run-ins with the IRS gave the "movement" its first martyrs. As the 1970s dawned, others joined largely spontaneously, bringing their own favorite causes – like opposition to gun control. Social conditions seemed ripe for trouble – tensions from the 1960s race riots and the Vietnam war still lingered, federal politics was wracked by scandal, inflation accelerated, unemployment rose, real wages stagnated, and the wily Orientals of the "oil cartel" seemed intent on destroying the economic foundations of Judaeo-Christian Civilization. But as long as farm prices were high and interest rates reasonable, the rural community as a whole continued to till the fields, wave the flag and curse the A-rabs. By the 1980s, however, with the dual whammy of falling prices and rising interest rates, discontent had turned ugly. The Radical Rural Right sometimes using, like radical political Islamists, shallow religious rationalizations for violent political initiatives, moved from mouthing slogans to open confrontation with both the federal government and what seemed to them (with some justification) to be an exploitative economic system.

White Hoods?

There had been plenty of precursors to articulate the grievances of those in the rural areas who felt politically and/or economically disenfranchised. What these groups often had in common was a racist philosophy and strong opposition to more central government control. The Ku Klux Klan was the most notorious. Yet, far from a widespread organized conspiracy, the original KKK began when six young Confederate veterans created a club modelled on a college fraternity with absurd initiation rituals and vows of secrecy. Meanwhile across the South, opposition to Reconstruction had already bred a series of local vigilante groups who chased off black freeholders and sewed terror, often on behalf of white landlords, among black rural laborers and sharecroppers. These groups acted as well as extra-judicial law enforcement agencies to punish alleged crimes by blacks, the great majority of which were petty thefts driven by economic desperation. Increasingly these vigilante groups modelled themselves formally on the KKK with its strange uniforms and vows of secrecy. Although there was soon a token KKK "leadership" structure headed by an ex-Confederate general, most klans were set up and run on a strictly local basis; many adopted the name without even token affiliation with the "organization." Some acted, as had their vigilante predecessors, as extra-legal enforcers; some specialized in intimidating voters who might be tempted to vote Republican; some (noteably in Tennessee) acted as muscle to protect moonshiners from federal revenue agents. The only things they really had in common were resentment of federal authority, including taxes that were markedly higher than in the pre-bellum South, antagonism to black emancipation, and the paraphenalia pioneered by the original set of jokers, some of whom came to view their namesakes with a jaundiced eye.[8]

Similarly with Posse Comitatus a century later. Although depicted in later scare stories as a tightly-knit inter-state conspiracy, Posse, like its successors, was less an "organization" than a set of informal associations. These were linked mainly by a (more-or-less) shared critique of the American political and economic system sanctified by an idiosyncratic reading of America's two most sacred texts – the Constitution with its original Ten Amendments and the Bible with its pristine Ten Commandments. These play for the Radical Rural Right groups a similar role to that of the Qu'rān and the Sunnah for radical political Islamists. Although no doubt some "members," particularly in leadership roles, used these texts selectively to rationalize political action, others no doubt made a genuine attempt to understand their tribulations in terms of divine will and to respond accordingly, particularly if God was telling them to forget all this effete other-cheek stuff and to hit back hard.

Just as radical Islamists hold to quite a distinct theo-political creed than the great majority of Muslim fundamentalists, so too the beliefs of Posse Comitatus types were very different from those of mainstream Protestant "fundamentalists." Since to mainstream Christian Rightists, the U.S. itself is a divine construct, they do not seek to discard the founding principles of the U.S. or to

overthrow its political institutions, merely to return them to their spiritual roots, blithely unaware, it seems, of the extent to which those principles and institutions were the handiwork of Deists and Freemasons. They also regard Jews as the (temporarily) chosen people and the rebirth of Biblical Israel as the first step towards the glory of Armageddon when Jesus will vanquish forever Satan's Islamic hordes. By contrast, Posse Comitatus and some other RRR groups follow the "Christian Identity" faith. This holds the U.S. to be the Promised Land and the White Race (of northern European origin) to be the Chosen People. Jews, by contrast, are the seed of Satan: they spend their time plotting to dilute the purity of the White Race by encouraging them to cross-breed with inferior colored peoples, and by financing and training Blacks to take over the urban centers.[9]

Posse types, like most Identity followers, combined religious belief with worldly concerns. As survivalists, they stored, not just weapons and ammunition, but also freeze-dried and non-perishable goods to prepare for Armadeggon or federal forces. Unlike mainstream fundamentalists, Posse adherents and their RRR fellow-travellers rejected the legitimacy of the existing political process.[10] Instead they shared with radical political Islamists the (often hard to refute) view that the "justice" system was, at best, corruptly biased in favor of the wealthy, at worst, simply another tool in the hands of a repressive state. This led RRR groups to create alternative legal institutions premised on the primacy of community will and of local authority over other levels of government. In keeping with their doctrine of local sovereignty, Posse followers refused to use ID cards or licenses issued by the government; and they attempted to establish "sovereign" entities ranging in size from townships to entire states (as with the Republic of Texas movement) with their own legal systems. The result was a series of "Christian Common Law" courts set up to dispense a rough-and-ready form of justice based on a mish-mash of Biblical text, Constitutional fundamentalism and old-fashioned lynch law.

Posse Comitatus and its successors also focused their anger and energy on denouncing and defeating the tools of economic exploitation deployed against Christians by the Money Czars. If anything represented to them a black year, it was 1913 which saw the birth of both the Federal Reserve and the income tax. The first they viewed as a private monopoly presiding over a financial system based on usury and phony (paper) money – they recognized only gold and silver as legal tender.[11] The second they deemed simply unconstitutional. Together these twin institutions functioned (along with the cartel of big agro-business companies) as instruments of a Jewish-led international conspiracy whose objective was to economically enslave Christian peoples by stripping them of control of the land. Thus, in a vague way, the RRR also shared with radical political Islam notions of Zionist plots – although Israel's scorched-earth campaigns in Lebanon and no-earth campaigns in Palestine give to the denunciations of insurgent Islamists considerably more credibility than hallucinations about a Jewish One-World-Government conspiracy could ever confer on America's Radical Rural Right.

Posse's reaction to the threat was more than rhetorical. Posse members would try to block farm tax-auctions and disrupt foreclosure sales, while intimidating and harassing town clerks. Some moves were more preemptive in nature, particularly with the fiscal and banking systems.[12] To avoid the scrutiny of the IRS, Posse adherents worked through a system of barter houses across several states whose membership lists were confidential. This permitted members to convert cash into silver bullion and gold coin without receipts or records. Posse experts ran seminars on how to reduce apparent income by devices like bogus family trusts, to inflate deductions, and to get off the tax rolls altogether. They also deployed faith against the demon of the income tax. Such a blessed union of the sacred and the secular was personally embodied by the Archbishop of the Life Science Bible Church "linked to" Posse Comitatus. He spent two happy years selling ministerial credentials and the tax exemption that supposedly went with them for anywhere from $1,000 to $4,000 a hit before being jailed in 1981 on 21 counts of tax fraud.

The point of Posse tactics was not really to win, but to create an example for others on the premise that while the "system" can punish a few transgressions, it will crumble if faced with a massive tax revolt. Their pamphlets and seminars advised those facing litigation to defend themselves (since lawyers tend to make deals at the client's expense), and to flood the court with challenges based on their reading of the U.S. Constitution. Apart from insisting that the income tax is unconstitutional, they could make a Fifth Amendment objection – that filing tax returns is an act of self-incrimination. Finally, they were advised to insist on trial by jury which would give them an opportunity to propagate the message, and to find a more sympathetic ear than they could expect from judges.

Some tactics were more aggressive. One was to file forms telling the IRS that they had paid certain sums to certain people – usually judges, law enforcement agents or other IRS agents – to trigger tax investigations of the targeted individuals. They would similarly file phony liens against the property of public officials, judges and tax collectors, to impede property sales by and wreck credit ratings of the people they were after.

Since the monetary system, with its usurious banks and paper money, was as repulsive as the income tax, another tactic was to print phony Money Orders and cash them at banks or use them for payment at stores. Adherents of the Posse creed would also draw checks on non-existent bank accounts, collect the cash, then disappear before the scam was uncovered. They would create other types of paper purporting to be federal government-issued bonds, either attempting to cash them or, more commonly, using them as collateral for loans. In 1989 the FBI arrested a person whom it claimed was Posse's "director of counter-insurgency" in a scheme, so the agents said, to counterfeit U.S. money, exchange it abroad for bona fide foreign currencies, bring the foreign exchange home, then convert it back to U.S. notes to finance paramilitary activities.

Posse was not alone even in the early years. For example, The Covenant, The Sword, And The Arm Of The Lord (CSA), founded in 1971 by a former

fundamentalist minister, was a paramilitary survivalist group with its own settlement near the Arkansas-Missouri border where, convinced that American society was facing economic collapse, famine, rioting and war, the group stockpiled arms, food, and survival gear, and trained in the use of weapons. The main point of the settlement, the group insisted, was "to build an Ark for God's people" apparently so they could float their way to survival during the coming upheaval. The group also reputedly set fires in a rival church and a synagogue, and plotted to blow up a natural gas pipeline. To obtain resources, its leader instructed members to steal, using as his inspiration Biblical stories of how the ancient Israelites plundered the tents of the Philistines.[13]

The "hay day" (so-to-speak) of Posse Comitatus was probably the late 1980s, after which it declined, partly because of successful prosecutions, partly because of competition. The on-going farm crisis spawned an array of other "organizations" – We the People, the Farmers' Liberation Army, the Aryan Republican Army, the North American Freedom Council, the Silent Brotherhood, the Christian Patriots, the Family Farm Preservation, the National Freedom Movement (Freemen), the United Tax Action Patriots, and more. Like Islamic insurgents, these constituents of the Radical Rural Right operated in isolated grouplets. Security concerns alone would have dictated minimization of operational ties – ego and paranoia pointed in the same direction. Their interaction took the form mainly of sharing political ideas rather than the means, financial and logistical, to put them into action. What they had in common, apart from the fact that core members had usually been at the losing end of a struggle with either the IRS or the banks over ownership of property, was a more or less shared set of political and economic grievances and a general pattern of anti-government actions.[14]

Other groups reproduced Posse tactics. The Montana Freemen held seminars for people from all over the U.S. to hear about phony liens.[15] Digital technology greatly facilitated counterfeiting money-orders which, adherents were told, could be used to make deposits, settle debts or buy merchandise. The notion that they were committing a fraud was hardly a deterrent to those who felt that they had been on the receiving end of legalized robbery through the tax and credit system. Anyway since financial instruments normally issued by banks were not backed by gold or silver, they were already fraudulent.[16] One group created its own financial institution, the Common Title Bond and Trust, which issued "sight drafts" to the members to provide them with an ordained legal tender – one of their ministers ended up in jail for trying to use them to buy farm machinery.[17] Also in the Posse spirit, members of the Montana Freemen produced fake $50 bills.

Some merged economic with military action by holding up banks and armored cars, though the frequency seems to have been exaggerated. For example, the Aryan Republican Army was accused of "at least" 22 bank robberies in several states in the 1994–6 period – not bad for a group which consisted of six white supremacists. Reputedly the take from some raids was considerable. For example, once members of the Silent Brotherhood were said to have raked an armored car with machine-gun fire and made off with $3.6 million. Subsequently the group "treasurer" instituted a bonus system; and, so the story goes, the group was so flush with cash that, by the

late 1980s, anticipated Usama bin Lāden by financing other groups and paying scientists to develop weapons of mass destruction.[18]

Gulf War Syndrome?

Such a context nutured Timothy McVeigh. But it would take something quite different to transform him from just another "gun-toting redneck" (if he really was) into a mass murderer. That additional element was, ironically enough, the same one which changed Usama bin Lāden from loyal subject of the Saudi royal family into committed enemy of the U.S. and its despotic allies in and around the Persian Gulf.

For bin Lāden the turning point had been the shock of American soldiers in Saudi Arabia in 1991 ostensibly to defend against the (fabricated) threat of an Iraqi invasion. For Timothy McVeigh, then a good soldier in the American army, political radicalization began during the ensuing Gulf War with his realization that Arabs were normal human beings reduced, in too many cases, to begging handouts from their conquerors. He was subsequently haunted by images of the Iraqis he had killed on orders from a government he increasingly mistrusted. Once back home, the event which would galvanize McVeigh (and others of like mind) into action was the 1993 bloodbath in Waco, Texas.[19]

David Koresh and his Branch Davidians were followers of a bizarre but generally harmless (except perhaps to themselves) offshoot of the Seventh Day Adventists. They had holed up in their Waco compound to awake Armageddon, in the meantime helping their polygamous leader to follow the Biblical commandment to be fruitful and multiply. Aside from an aversion to paying taxes, the cult had no interest in confrontation with the federal government; and while its members betrayed a fondness for guns, they owned them at a rate consistent with Texas norms. However, whether by coincidence or design, the group found itself in the sights of the Bureau of Alcohol, Firearms and Tobacco just before its director was due to appear before Congress to beg more money. Federal agents had levied at Koresh and his cult charges that they stockpiled illegal weapons (all were legally obtained) and trafficked in psychoactive substances (against which Koresh proselytized). This last accusation permitted the federal agents to invoke their Drug War right to call on the army for material assistance. Hence, after the BATF bungled its own raid, leaving four agents dead, FBI agents with military support laid seige. They shone huge floodlights continuously on the compound, woke the inhabitants at dawn with blaring music and amplified shrieks of rabbits being slaughtered, cut off electricity and water, and drove tanks around the complex to crush automobiles, smash bicycles and tear up the gardens in which the cult grew its own chemically-untainted food. Anyone leaving the compound was publicly arrested. Finally they pumped in tear gas and launched an armored assault during which the compound burned down. In total 76 people were killed, all of the children and most of the adults inside – some died in the flames, some were killed by asphyxiation, others were hit by FBI sharpshooters. (The FBI afterwards claimed that some of the victims had shot each other.)[20] Coming shortly after the Ruby Ridge incident in

which federal agents gunned down the wife and son of a reclusive white supremacist, it was the last straw for Timothy McVeigh.[21]

America's political dissidents love to hatch, embellish and circulate arcane conspiracy theories. Every few years, for example, passions get renewed around the Kennedy Assassination. The conspiratorial mindset insists that Great Men must have great, or at least convoluted, deaths. That John F. Kennedy might have been killed accidentally by a bullet from one of his own security guards – the Secret Service agent reputedly stumbled backwards and discharged his weapon when the car in which he was riding suddenly accelerated in response to Lee Harvey Oswald's initial shot[22] – would be politically too embarrassing for the government to admit in public. This was particularly the case if it also happened that Kennedy was unable to duck after the first shot because the previous night's sex orgy had injured his back and forced him to wear a brace.[23] In any event, such an explanation would be dismissed out of hand by the Assassination Cult as just more government disinformation.

Similarly with the Oklahoma bombing. It provided an occasion for instant experts to contest the thermodynamic properties of ammonia fertilizer, even though the FBI lab had bungled and probably fabricated the results of its forensic investigation.[24] It also provided another chance for the usual gang of Islamophobes to insist that the bombing was either an inside (i.e. government) job or the product of some foreign plot, probably Middle Eastern in origin. Indeed, after 9/11 came claims that Terry Nichols, who had assisted McVeigh, had visited the Philippines and met with Ramzi Yousef, architect of the first World Trade Center attack – allegedly Yousef, commonly portrayed as a bin Lāden acolyte although Usama claims they had never met, had shown Nichols how to successfully explode an ammonium nitrate bomb.[25] The ease with which McVeigh was apprehended after the event was a tribute not to the skill with which foreign conspirators set him up to take the fall but to his own inexperience – like driving around without a rear license plate. Perhaps it also reflected the fact that he and his co-conspirator, contrary to the usual stereotypes, did act without the help of some covert organization of religiously-inspired fanatics whose Terror Treasuries overflowed with the proceeds of robbery and extortion, currency counterfeiting and financial fraud.

Less Than Meets the Eye?

Although the Radical Rural Right commited their share of newsworthy crimes – including bombings and assassinations – ultimately, there was less to it all than met the eye, unless the eye had a propensity to peer through lenses tinted by personal, professional or political ambition. Despite lofty and/or frightening names, most groups were little more than legends in their own minds; some were out-and-out scams; and a few took their religious ethics as a little more than a pretext to redistribute fellow citizens' private property. Still, both police and others with particular political agendas had no qualms about turning the phenomenon into a formal organization with a defined core membership in the "thousands" to

which could be added up to "ten times" that number of "supporters" all "linked" in one grand conspiracy.[26]

Not only was there really no organizational ties, there was also no financial relationship between various groups, much less an overall "financier of terrorism." Early estimates of the amount of the monetary resources the various RRR grouplets could command also turned out to be inflated – for the usual reasons. The FBI once claimed that the National Commodities Barter Association "linked to" Posse Comitatus served more than 20,000 people and laundered up to $500,000 per day. Yet Posse itself never had more than a few thousand "members," most just loud-mouthed vicarious thrill-seekers of distinctly limited means with little to launder except their shirts; and when offices of the barter house across several states were raided, the police seized precious metals worth no more than two million dollars, about the take from a reasonable jewelery store heist. Nor was the raid was exactly a brilliant legal success. A judge held that the federal warrants were too broadly defined, thus impinging on freedom of association, and ordered the return of all seized bullion and documents.[27]

Furthermore, far from threatening the financial foundations of the state, the impact of all the barter-house deals and tax seminars and phony paper was trivial. When the Montana Freemen (a.k.a. Silent Brotherhood) tried to put fake $50 bills into circulation, most places in the area, out of fear of counterfeit, refused anything bigger than a $20. Individuals who issued fake bank instruments were a tiny part of the "membership" of various groups and almost always acting on their own, not by the desire to bring Wall Street to its knees but out of personal financial hardship. Only a small amount got into the financial system where it posed a minor nuisance to a few small institutions. Much the way police hatch sting operations, bait them with government money, then wow the public with tales of how they cracked great criminal conspiracies, so with the RRR financial frauds. The FBI had infiltrated many groups and at least once (probably often) provided perpetrators with a computer and copier.

Even the notion of a mass armed confrontation with the state turned out to be as genuine as the money orders and property liens. There were isolated shootouts. But in the only major standoff, the so-called survivalists ran out of food and surrendered quickly. Charges against groups, too, turned out to be as inflated as their financial resources and numbers. For example, The Covenant, The Sword And The Arm Of The Lord was easily broken in 1985 after an FBI raid in which "hundreds" of weapons were seized, along with supposedly large amounts of cyanide; and the group's leaders were tried and imprisoned – for firearms violations, not for plotting to poison the water supply of nearby cities, as the initial claim went. Overall, during the Posse era, the amount of anti-government violence, while it certainly claimed victims, was minor compared to the 1960s with its anti-war demonstrations, race riots and political assassinations. What blew it out of all proportion was its media value when there was little else sufficiently dramatic to frame endless Pizza Hut and WalMart advertisements, along with the unfortunate propensity of law enforcement to cry "wolf" at the sight of the occasional rabid field-mouse.

Granted, after the FBI proclaimed victory over groups like the Posse, by the early 1990s the alarm bells began to ring again with the apparent proliferation of "militias," some of which shared personnel with defunct RRR groups. The Militia Movement was likely greater in total numbers than all RRR groups of the 1980s. But few militia members spent their energy and ammunition blasting the doors off of armored cars. Most seem to have been simple gun-nuts who liked to run through the woods in army-surplus combat fatigues pretending that the terrified rabbits that they blew apart were reincarnations of the Viet Cong – or had been dropped down to earth by black helicopters as the advance guard of One-World-Government forces. If religion played any role in their political lives, it was more likely mainstream fundamentalism which prayed for the in-gathering of Jews to Palestine and which cheered loudly whenever Congress voted to give ever-more money and ever-more lethal weaponry to Israel. In any event, the only really significant act of anti-governmental mass violence (as opposed to the occasional shoot-out with state troopers or Park Rangers) in the era had nothing to do with the Militia Movement or, for that matter, with the Radical Rural Right except perhaps a shared mindset of economic disenchantment and political anger.

Timothy McVeigh was of no particular religious persuasion while members of RRR groups were usually wielded their Bibles like blunt instruments. He was pro-choice while at least some of them were rabidly, sometimes murderously, anti-abortion. He did briefly hook up with the Ku Klux Klan, but dropped out since he had no interest in race war. Although he hung out occasionally with Posse and Covenant types, he never joined any of them. Much as with 9/11, it was the politics of reaction, not religious fanaticism, which led to the mass murder of innocents.

Nor was there a financial connection between McVeigh and any RRR group. If the Oklahoma City bombing, which cost only a couple thousand dollars, maybe less, had any outside financing, the most likely source was the proceeds of the robbery at the home of an Arkansas gun dealer – whose cache of cash, along with gold, silver, and jewels seemed to indicate a rather strong aversion to tax collectors.

In the final analysis the mass-murder in Oklahoma City had nothing to do with the rise of Christian "fundamentalism." Nor was the blast the work of a grand conspiracy financed from a centralized terror treasury. Rather it was pulled off by a couple of desperate loners looking for a way to express their personal anger and political frustration, and financed out of their back pockets. But perhaps that meant that, in a backhanded way, Mid-East and Mid-West really did have more in common than anyone previously realized?

Furthermore, far from the harbinger of a new and escalating round of RRR or militia violence, the Oklahoma City bombing took the wind out of the sails of an already becalmed movement, much as public outrage over 9/11 probably would have led across the Muslim world to a revulsion against mass-terror tactics and extinguished most sparks of sympathy for violent political Islam in the region if the U.S. government had not chosen to pursue a course of action guaranteed to give the perpetrators some sort of twisted legitimacy. Whether that was through short-sighted stupidity or long-term calculation will remain a subject which both serious historians and conspiracy nuts will debate for decades to come.[28]

That, of course, points to one level on which there was an enormous difference between the Mid West's Radical Rural Right and Mid East's radical political Islam, namely the U.S. government's official response, both in terms of rhetoric and policy action—financial, legal, and military. No serious analyst would try to classify various groups or militias as "cells" of Posse Comitatus.[29] The people who held up banks and armored cars were correctly depicted as criminals, not as Pistol-Packing Protestants. Financial shenanigans were met, not with a draconian expansion of the anti-money laundering laws, but with a quiet tightening of enforcement for fraud offenses which led to much of the leadership hauled off to prison, seriously weakening the movement even before Oklahoma City kicked the ideological props out from under it. No one suggested that the notorious *Turner Diaries*, a virtual manifesto of the Rural Radical Right and undoubtedly read by far more people than the so-called al-Qā'idah instruction manual, justified the FBI to secretly comb library records or scan on-line retail book sales. Most remarkably, the death of 169 people in Oklahoma City lead to neither the mass incarceration of militia members in Guantánamo concentration camp nor a decision to carpet-bomb Montana or Washington State, birthplaces of the most violent of the new Christian Identity-based groups. Nor, for that matter, did the White House call for an invasion of Texas after a member of one of the groups was caught there late in 2003 with a sodium cyanide bomb, a genuine weapon of mass destruction.[30]

Notes

1. On these points see R.T. Naylor, *Satanic Purses*: *Money*, *Myth and Misinformation in the War on Terror* (Montreal, 2006).
2. Some of the sources are diagnosed in Karen Armstrong's *Holy War: the Crusades and Their Impact on Today's World* (New York, 1988)
3. Paul Robinson "The Good News About Terrorism" *The Spectator* 04/02/05
4. The irrepressible Steven Emerson claimed that in 1992 he had attended a meeting of an "alphabet soup of Middle East terrorist groups" at the Oklahoma Convention Center (1) in 1992 "where I actually could have envisioned that I was in Beirut." Thanks to Jane Hunter for these quotes.
5. These issues are addressed in Dan Morgan, *Merchants of Grain* (New York, 1979). See also Maren, *Road to Hell*, 189–95. See also Christopher Barrett and Daniel Maxwell "PL480 Food Aid: We Can Do Better" in *Choices: the Magazine of Food, Farm and Resource Issues* 3rd Quarter 2004.
6. An excellent overview is by Eric Schlosser, *Fast Food Nation: the Dark Side of the All-American Meal* (Boston, 2001).
7. One of the better works examining this, despite its apocalyptic subtitle and rather simplistic economic determinism, is Joel Dyer, *Harvest of Rage: Why Oklahoma City is Only the Beginning* (Boulder CO:, 1997). Another book that contains useful information but is seriously flawed is Daniel Levitas, *The Terrorist Next Door: the Militia Movement and the Radical Right* (New York, 2002.) Levitas apparently finds unconscionable people's prejudices towards other ethnies only to the extent it seems a threat to his own. The anti-Catholic, anti-black, anti-immigrant etc. attitudes of the Radical Rural Right merit barely a mention.

8. See Allen Trelease, *White Terror: the Ku Klux Klan Conspiracy and Southern Reconstruction* (New York, 1971). There was a second KKK born in the early 20th, from which the current organization is descended – apart from the name and the ideology, it has no real organizational connection to the original. (See Kenneth Jackson, *The Ku Klux Klan in the City 1915–1930*, (New York, 1967) and Charles Alexander, *The Ku Klux Klan in th Southwest*, (University of Kentucky Press, 1965)
9. For general treatments, see James Coates, *Armed and Dangerous: the Rise of the Survivalist Right*, New York: . . . : Phillip Finch, *God, Guts and Guns* (New York, 1983) and James Cocoran, *Bitter Harvest: Gordon Kahl and the Posse Comitatus* (New York, 1995).
10. Finch, *God, Guts and Guns* 105; *New York Times* 12/3/84.
11. *Time* 28/2/84; *The Economist* 13/10/84, 2/11/85; Cocoran, *Bitter Harvest*, 25. Gordon Kahl, a Posse stalwart, even claimed that income taxes formed one of the ten principles of the Communist Manifesto. He was later martyred in a gunfight with IRS agents who would have been startled to find that they were secretly working for the KGB.
12. *The Economist* 13/10/84, 2/11/85; Cocoran, *Bitter Harvest*, 25.
13. Levitas, *Terrorist Next Door*, 205, 221. Interestingly this analogy does not figure in the ADL profile of the group, a profile which still dominates cyberspace and is recycled from one web site to another.
14. *Bismark Tribune* 5/21/89; *National Law Journal*, 16/7/95; Mark Pitcavage, "Every Man a King: the Rise and Fall of the Montana Freemen" *Patriot Profile* No. 3. 6/5/96.
15. The champion, a woman who called herself the "lien queen," was alleged, along with her disciplines, to have issued $800 million "worth" before being sentenced to 200 years. *National Law Journal*, 16/7/95.
16. Mark Pitcavage, "Every Man a King: the Rise and Fall of the Montana Freemen" *Patriot Profile* No. 3. 6/5/96.
17. *Bismark Tribune* 5/21/89.
18. James Coates, *Armed and Dangerous: the Rise of the Survivalist Right*, New York, Hill & Wang, 1987, 73; *New York Times* 12/4/82, 27/12/84, Dyer, *Harvest*, 246–7.
19. These issues are addressed in Richard Serrano, *One of Ours: Timothy McVeigh and the Oklahoma City Bombing* (New York, 1998).
20. A thorough examination of the Waco tragedy in its legal and political context is by David Kopel and Paul Blackman, *No More Wacos* (New York, 1997).
21. There is a fascinating contrast between the accounts of Ruby Ridge in Kopel and Blackman's *Wacos* 32–39 in which the target, Randy Weaver, is depicted as a loner entrapped by the feds, then smeared by government propaganda as a violent racist, and Levitas's *Terrorist* 301-4 in which the government line is taken at full face value, with even an apologia for the FBI blowing off the head of Weaver's wife while she held their 9 month old infant. Both books have agendas, but the Kopel and Blackman account rings truer.
22. This is the argument of Bonar Menninger, a ballistics expert, in *Mortal Error: the Shot that Killed JFK* (New York: 1992). However, even if its central thesis is correct, it does nothing to lift the clouds that surround Lee Harvey Oswald's background, intent and associations. See especially Edward Jay Epstein's *Legend: the Secret World of Lee Harvey Oswald* (New York, 1978).
23. Seymour Hersh,The Dark Side of Camelot (New York, 1997) 439, 449.
24. Phillip Wearne and John Kelly, *Tainting Evidence: Inside the Scandals at the FBI Crime Lab* (New York, 1998), Chap. 6 casts considerable doubt on the evidence used to convict (and execute) McVeigh.
25. See the views of Kenneth Timmerman in *Insight on the News* (sic) 19/4/03. Timmerman is the doyen of the get-Saddam brigade in the U.S. See also *Wall Street Journal*

5/9/02. On the broader conspiracy notions see Jim Keith, *OKBomb!: Conspiracy and Cover-up* (Liburn, Georgia, 1996).

26. For example, Levitas (*Terrorist Next Door* 201) claims: "Most people who considered themselves [apparently he had access to their inner thoughts] members of the Posse never filled out a membership card, signed a county charter, or sent in dues – they simply attended tax-protest meetings or participated in one of hundreds of 'Constitutionalist' or 'Patriotic' groups that were scattered across the country. [No guilt by association here!] By the early 1980s, right-wing tax protest had bcome practically synonomous [says who?] with Posse Comitatus." On the next page he manages to inflate the "threat" by orders of magnitude. "The FBI estimated only a few thousand Posse members, but more than one hundred thousand people read Saussy's book, and three to four times that number were regular readers of *Spotlight*." The Saussy book was a rather silly rightist rant advocating, among other things, funny money schemes; and *Spotlight* specializes in convoluted conspiracy theories which probably even many of its readers have trouble taking seriously. It is also worth wondering if Levitas made any effort to net out of the *Spotlight* readership numbers, all the people paid by the government or by certain tax-exempt foundations to monitor the marginal right for violations of various canons of political correctness.
27. Cocoran, *Bitter Harvest*, 163; *New York Times* 11,12/4/85.
28. The Center for Strategic and International Studies examined Saudis heading for Iraq to fight the U.S. and discovered that almost all were radicalized by the U.S. invasion. (Reuters, "Iraq invasion radicalized Saudi fighters: report" *ABC News* 19/1/05).
29. Even though law-enforcement did not make such claims, others with different agendas certainly did. Thus the depiction of various right-wing groups "with links to Bill Gale" with, of course, the nature of the "links" carefully undefined and unspecified. (In Levitas, *Terrorist Next Door*, 263.)
30. "CBS 11 Investigates Poison Gas Plot" *Viacom Internet Services Inc*. 26/11/03.

7
Assessing Organised Crime: The Sad State of an Impossible Art

Petrus C. van Duyne
Maarten van Dijck

The Unintended Artfulness of Assessing OC

For roughly two decades the issue of 'organised crime' succeeded in remaining high on the political law enforcement agenda. This is an astonishing achievement for something we know so little about that we are still struggling with its very definition. It is declared to be a serious matter, though that seriousness is semantically not contained in these words. Still, the seriousness is an inherent association, which would make 'petty' organised crime sound odd, though that is not a semantic contradiction. Indeed, the study of organised crime is anything but a light-hearted undertaking, though empirical research repeatedly demonstrates that 'organised crime' is plagued by much disorganisation (Reuter, 1983; Van Duyne 1993). Therefore one would expect that the efforts to assess this purported phenomenon would be of a thoroughness and a discipline commensurate with its seriousness. Is this expectation fulfilled?

Surveying the attempts which have been carried out to determine or assess this 'phenomenon' reveals little scientific and methodological discipline and much 'art'. 'Organised crime' as a subject of art? That does not sound very serious or thorough and certainly not befitting 'organised crime'. This statement needs a clarification.

Beauty is in the eye of the beholder and so is the seriousness of 'organised crime'. Assessments that aim to convey that attribution convincingly mostly do more than just recount organised crime 'facts'. That seriousness must be depicted by going beyond facts, which turns such assessments into a kind of 'expressive art'. Based on an 'organised crime assessment parade' of the last decades, which we carried out in the framework of the EU organised crime assessment project[1], we can discern in a figurative way various organised crime assessment art forms, of which we present a few below.

Some assessment reports, such as the Dutch organised Crime Monitor (Kleemans *et al.*, 1998 and 2002), may be characterized as 'impressionism'. The extensive study of 40 cases during the investigation phase is followed by a narrative (the actual report) in which the authors give their impression of the current situation and the latest developments. They present this not on the basis of

a meticulous analysis of (qualititative) data, but on the basis of a summarising account of a somewhat superficial assessment of case files. These were used for illustrating, confirmatory purposes. In each of the reports, the authors have chosen a few topics which are highlighted, to give the image a bit extra depth, just as the real impressionists did in their paintings.

The UK threat assessment may perhaps best be qualified as 'expressionistic', approaching the gloomy colours of Munch's painting 'The Scream' (reported stolen). There is certainly a cry of fear in the 1993 NCIS Threat Assessment: "behind the words [organised crime] in this paper lurk some of the most brutal international criminals ever known". What these words may mean exactly appeared to be of little concern: "Organised crime has many definitions; this may be because it is like an elephant: it is difficult to describe but you know it when you see it." And so are the UK threat assessments, which are on the one hand a stock-taking of what is 'known' collectively and on the other hand an awareness raising document. How and what is known collectively is only sketchily indicated.[2] If one wants to know more, the information is marked as 'classified'. In the past decade the picture of the 'scream' against organised crime has become gloomier.

The German Bundeskriminalamt situation reports have (with some imagination) a resemblance with the lines and squares of the Dutch painter Mondriaan. They contain much statistics and little theory or general claims about the depicted phenomenon. Contrary to the general German tradition to convey 'deeper meanings', the many tables remain in their total composition as flat as the geometrical squares and straight lines of the 'Victory Boogie Woogie' of that great Dutch painter. However, the German organised crime picture has only two colours: black and white.

The assessment are may also look like a pointillist painting, as we may see in the EU organised crime reports. The threatening picture consists of many other points provided by 25 member states, all according to a 'generally agreed-upon methodology'. However, behind that there is much artistic chaos, because no member state heeds any 'agreed-upon methodology'. All do as they like[3], leaving Europol with the arduous task of collating the organised crime threat picture from the fragments handed in by the member states.[4] True, the organised crime pointillism does not have the light-heartedness and colourful brilliance of Seurat.

To some extent all these older artistic styles get intermingled with more contemporary art: the endless repetition of the same image over and over again, as is one of the trademarks of Andy Warhol's Pop Art, with its Marilyn Monroe (representing, here, trafficked women) and Campbell's soup cans (in which drugs are concealed and serving as a laundering vehicle). For some years now, the assessment reports have made an in some respects welcome effort to convince us to abandon the old 'Syndicate' paradigm and replace it with the 'new' network approach. Apart from the emptiness of the word 'network' (as it is commonly used in the context of OC assessment) this plea for innovation has itself become a tired theme, giving the illusion but not the substance of analytical integrity.[5]

Some OC researchers tend towards magical realism while deliberately creating an image of sinister crime lurking to infiltrate into the upperworld economy of decent citizens. The spectator can not help but to feel threatened and uncomfortable.

As we will explain in the following section, this comparison with art is not just a playfully teasing metaphor. In the intentions of the authors – usually high-ranking officials – there is nothing artistic, let alone anything playful. It is telling that the metaphor sticks nevertheless. Why?

This paper sets out to explore several themes regarding the methodology of organised crime assessment. Why do current assessment approaches fail to provide a picture of organised crime that meets the standards of reliability and validity? What does it mean to have a reliable assessment report in terms of an operational delineation and data management? As will be argued, in the end, organised crime assessment is as much a *craft* as it is an art. It is a disciplined craft with strict scientific rules, virtually absent in the present-day assessments. Only a renewed focus on the methodological requirements of the assessment art will provide enough counterweight to the false imagery originating from popular but unsustained notions of organised crime.

Why so much Poor Assessment Art?

There are various reasons for this poor state of the assessment art. The most important reason is the social and political theme setting. The organised crime theme unfolded as an American internal law enforcement political item since the 1950s (Galliher and Cain, 1974). It was and is not a topic of many nuances and shades but of black and white. It was not just crime which was organised, but it was considered an almost tangible phenomenon, which threatened the fabric of the American society. In the beginning that threat of 'organised crime' was looked upon as *un*-American (Cressey, 1969; Galliher and Cain, 1974; Woodiwiss, 2003). The world of 'organised crime' was populated by American Italians at first, later by other ethnic groups, like Colombians: all un-American hoodlums. There was no such thing as white, Anglo-Saxon, protestant organised crime: there are no WASP-gangsters. This was not the right climate for a precise delineation of shared notions of organised crime. As a matter of fact, the definitions which were coined were imprecise with many fuzzy rims.[6] The imprecion of the definitions was noted, but no consequences were attached to that awareness. What mattered was that the very existence of the assumed phenomenon itself was not denied. Attempts to come to a serious definition, such as those of Maltz (1990) and more recently Finckenauer (2005), while remaining within the constraints of the organised crime creed, suffered from these limitations by implicitly incorporating the fuzziness of that creed. Occasional 'non-believers' made little impact in the organised crime discourse, even if doubts were voiced among federal and state law enforcement agencies from the very beginning (Bell, 1960; Hawkins, 1968; Office of the Council of the Governor, New York, 1966, Governor's Organized Crime Prevention Commission, 1973).

In the 1980s of the last century, the organised crime theme began to claim the attention of European policy makers. Of course, Italy had its traditional organised crime problem in Sicily, Naples and Calabria, but was organised crime not

threatening all Europe? In Germany and the Netherlands some concerned police officers and scientists – acting as 'problem owners'– worked hard to highten the awareness of this threat (Van Duyne, 2003; Von Lampe, 2001). They succeeded in creating a state of fear of organised crime. However, fear rarely brings clarity, as was also the case with the organised crime fear. The fuzziness of the many definitions was recognized again, after which the political 'organised crime business' went on undisturbed. We will discuss the definition problem in a later section.

The lack of care for precision opened the door to an intuitive inclusiveness. As soon as a new form of profitable crime was considered 'serious' and obtained political attention (like human trafficking/smuggling), it was included in the 'organised crime set'. New legislation like the anti money-laundering laws also extended the organised crime perimeter. The 'organised crime' painting canvas has always been of a panoramic size. If for political reasons an extension is desired, a new canvas is simply added. It does not matter much whether this is underlined by empirical evidence. In the organised crime assessment report of the Council of Europe we find an extensive chapter on economic crime.[7] Five years ago this would have been unthinkable. Now it is simply added. An associative connection may also be sufficient for an extension. At present we find frequently within one sentence the mentioning of organised crime and terrorism, as well as money-laundering and terrorist financing, though they differ widely.

The analytical poverty of the assessment art is also caused by the black-and-white depiction of the intended phenomenon, leaving little room for nuances. The black-and-white valuation concerns perpetrators as well as their misdeeds, though the two can merge quite confusingly, adding to the existing lack of clarity. Empirically, from a behavioural point of view, the focal point of the organised crime concept is 'what people do to organise crime' (for profit), not whether these people are evil personalities. However, that is not how organised crime is addressed and defined. Organised crime is about *serious* crime, committed by 'heavy' criminals. With this distinctive feature we open the gate for arbitrariness. Sometimes the feature of seriousness is left unspecified, which makes the definition unspecified too. And what are 'unspecified definitions'? In some descriptions of organised crime (like that of the UN), serious crime begins with offences with a maximum of at least four years imprisonment. This entails that the organisation of offences with a lower maximum penalty than four years imprisonment can become 'organised crime' by a simple act of legislation increasing the maximum penalty to four years.[8] However, the way the crime is being organised may still be the same. Thus the particular manifestation of crime has not changed, but its valuation. However, an assessment is supposed to be about criminal phenomena, not about legal valuations. The same applies to the valuation of the perpetrators. In police lingo, lower class and ethnic minority crime organisers are mentioned as 'penetrating' a certain crime area, which is subsequently qualified as 'organised crime'.

Assessing 'organised crime' is not a neutral undertaking carried out by detached researchers. Most of the time, it is carried out by law enforcement

agencies, which have an interest in its outcome. Particularly when these agencies are also tasked to fight organised crime, they have an understandable incentive to report (what they think are) serious threats. After all, they are doing a serious job. It is certainly not far fetched to state that the agency's own ranking correlates with the seriousness of its reported threats. Between agencies we even observed a kind of 'threat competition': who has the biggest threat?[9]

Finally, there is little looking back at the assessment gallery of the past years and therefore little incentive to learn from previous productions. In agencies' memos, one does not glean a learning process, but a certain saturation or even dissatisfaction with the previous assessments and subsequently a call for something new. Hence, situation reports should become threat or risk assessments or assessments with a strategic planning value for policy makers (CRIMORG, 133).[10] However, except for the evolving Belgium annual assessment reports (see also Black *et al.,* 2000), few or none of these changes were based on an analytical, critical learning process.

Definitions Adrift

The centerpiece in the organised crime discourse remains the problematic delineation of the intended phenomenon: defining organised crime. Instead of surveying the rich literature on 'defining organised crime' (see: Maltz, 1990; Dobovšek, 1996; Van der Heijden 1996; Fijnaut *et al.* 1998; Levi, 1998; Finckenauer 2005), we think it of more importance to pay attention to the way scholars and officials struggled to coin a proper definition. Despite Reuter's (1994) observation that the organised crime concept was still lacking a proper operationalisation, little progress has been made since.

Defining empirical phenomena can be considered a linguistic interaction between words and 'reality'. However, historically the interesting finding is that the organised crime issue did not start with reality but with words: 'In the beginning was the word'. And that word should denote something, though it was not clear what. But it was serious enough to assume that it did denote something real. The subsequent undertaking to fill the two words 'organised crime' with content, '*essence*', looks very much like a neoplatonic scholastic undertaking (Van Duyne, 2003). This search for the essence continues to the present day, just as for centuries monks have discussed the essences of 'horseness' or 'virtue' (Knowles, 1963). Linguistically 'organised crime' became in common parlance a 'being'. Being a noun, verbs could be attached to it and thus 'organised crime' could do all sorts of things, like 'organised crime is on the march', 'organised crime threatens to take over society', or 'organised crime penetrates licit businesses'. Fortunately there was also a 'real' mafia at hand, later in the US re-baptised as La Cosa Nostra, to give some content to this ill-defined word string.

How did the definitional undertaking fare? Designing an empirical definition is basically drafting a *decision rule*. It determines which observables are to be included in a set of cases or counting units. A part of an empirical definition consists of so-called *application rules* or the *observation tools*. Together they guarantee that when we measure, for example, the defined 'boiling point of

water', we measure the 100 degrees centigrade (at sea level). As far as organised crime *assesments* are concerned, proposed empirical definitions which fail the test to function as a decision rule for inclusion or exclusion must be discarded. Applying this principle to the organised crime definitions on which assessments are based clarifies why assessments fail to fulfil their pretensions.

As indicated before, the most important defect concerns the occurrence of the *value term*: seriousness. The cornerstone of 'organised crime' is not the organisation, but the seriousness judgement, which is applied variously. Some formulae leave the term in the definition open, allowing it to be extended whenever policy makers or legislators (representing society) value certain criminal activities as serious. This seriousness component also allows an application according to *who* commit certain crimes, even if these are less 'serious'. The UK approach is quite enlightening in this respect: crimes have to be committed by "serious and organised criminals" – those involved, normally working with others, in continuing serious criminal activities for substantial profit or gain. And how do we define a 'serious and organised criminal'? The UK threat assessment shows little concern for such subtleties like solving circular reasoning and simply continues as if all is perfectly clear: serious and organised criminals are those who are involved in serious crime.

Of the definitions we analysed, all but one (see below) were incapable of delineating the intended phenomenon. 'Loose' components like intentionality, undefined time span, 'negative impact on society' allowed the definitions to drift to unintended perpetrators or fields. This can range from a small group of burglars to heads of state or government, like Berlusconi, with legitimate entrepreneurs conspiring to set up cartels in between (Van Duyne and Van Dijck, 2006).

The definition which could not be 'cracked' was coined by the Dutch organised crime team *North and East Netherlands* in 2004: 'Suspect-combinations which commit two or more crimes with a maximum penalty of more than four years on illegal markets are included in organised crime'. The authors justified each single component and delineated them carefully from adjacent concepts like corporate crime and criminal networks. The component 'illegal markets' is important, because it comprises trading licit goods and services in a criminal way: for example, VAT and excise fraud schemes, (toxic) waste trafficking. Though one may consider this definition as rather broad, analytically it withstood the test: it contains no threats, negative impacts, or immeasurable purposes and unobservable intentions. However, it was telling that for assessment purposes, the Dutch National Police rejected this definition and chose a rather defective definition instead.[11] Indeed, the art of assessing organised crime is carried out using the wrong paint, too big a brush and on poor canvas.

The Multiple Lure of Language: Words

Though the organised crime literature is very extensive and has a complex appearance, the centre of the debate simply circulates around a few imprecise words. This is not unimportant, because words can direct the mind. Confusing

words may result in confusing ideas and debates around distorted representations. Apart from the word string 'organised crime', other words, equally vague though less debated, became fashionable: assessment, threat, risk and vulnerability. Let us see how these words functioned.

Assessments Unbounded

One may wonder what is so special about 'assessments'. It is little more than another vogue word, which slipped into the language from the military through the assurance and consultancy branch. Particularly this latter sector of the service industry is one of the most inventive as far as the linguistic wrapping of old trusted practices is concerned. These linguistic wrappings are like brand labels, and customers (businesses and authorities) buy these labels for inflated prices. It is difficult to identify a particular point in time, but around the middle of the 1990s 'assessment' obtained its place as an activity and as a best-seller service. Staff testing became 'competence assessment', 'assessment firms' were established to sell damage, risks and other 'assessment reports'; and evaluation reports were issued under the heading of 'assessment reports'.

It is little surprising that in the field of organised crime policy, the authorities followed this linguistic trend. Reports about the organised crime state of affairs became often 'organised crime assessments'. As the term has come into common usage internationally, its meaning and applications have diversified too: in non-English speaking countries, it may be used differently from how it has been used in the UK or the US.

A survey of the literature shows various types of 'organised crime assessments', depending on the adjective attached to it. The least pretentious and oldest is:

1. *the situation assessment*, as has been carried out by the Bundeskriminalamt of the German police. It should be noted that the denotation 'assessment' is not used in Germany for the annual reports about organised crime in that country: on the cover page of the reports we still find the original title denotation '*Lagebericht*', literally meaning 'situation report'. It consists of a presentation of the 'facts and figures' as have been handed in by the Landeskriminalämter of the Länder (states of the Federal republic). These are complemented by in-depth interviews with experts. Other countries, like the Netherlands and Belgium also issued such situation reports regularly. However, merely depicting the yearly state of affairs is not attractive, either for composing or for reading, if there is not a leading or explanatory theory behind it. And such a theory on organised crime is (still) missing.

As dissatisfaction set in, policy makers represented in Europol started to look for something different. As there is *a priori* agreement about the threatening nature of organised crime (there is no such a thing as non-threatening organised crime), the next kind of assessment was near at hand:

2. the *threat assessment* of which the organised crime threat assessment as carried out by the UK, is an example.

The choice to draft ‘threat assessments’ for strategic policy making and prioritizing police efforts is quite rational, albeit within the rough outlines of such a general wording only. However, as soon as we dig a little deeper, we get into a conceptual mud and confusion.

The first point of confusion comes from trying to answer the question ‘who is threatening’. The answer is: actors who are *about* to do something criminal in an *organised* way with a (serious) negative impact, as the assessment is about *organised* crime threats. And here the formulation shifts to either ‘organised crime’ as some discernable *being* or to a personification in the form of organised *criminals*. As far as the organised crime common parlance is concerned, it is not always ‘either-or’ because both are used interchangeably to denote what or who is threatening. Usually the conceptual slip is to the persons: at any rate acting criminal persons are threatening *and* they are organised. Or rather, organised criminals are threatening with committing crime, which is therefore an ‘organised crime threat’. Or can organised criminals also threaten with non-organised crime and should that then not be considered a threat? We are about to enter the pitfall of circular or at least oval reasoning, which will certainly be our fate if in addition we are forced to answer the question: “why are those criminals denoted as ‘organised’?”, when part of the answer is that they are engaged in ‘serious crime’. Thereupon one can insert one of the (defective) definitions, which may be of some help in case of a *situation* description but not in case of a *threat* assessment. This is about what existing ‘organised crime’ or ‘organised criminals’ (already formally identified) are assumed to do in the near future or are ‘able’ to do. And how do we define and determine ‘ability’? Hence the ‘organised criminal’ or some abstract organised crime entity – both ill defined – must logically be identified as preceding the discernable threat.

The second point of confusion concerns the nature of the threat to potentially threatened areas. As ‘organised crime’ is supposed to be about getting criminal profit, no economic or social sector is outside the circle of threat. Threats may be acute or latent, but while there are already many acute threats, the latent threats are a wide open unspecified category. The threats may consist of direct penetration, or an indirect sneaking because of money-laundering, which according to the FATF is all-pervasive. As Nicholas Dorn rightly put it in a presentation, one does not need to quantify each threat in absolute numbers, but one must at least provide a ranking from less to more severe threats.[12] Creating a justified order among all these threats is no easy task. How does one prioritize between the importation of counterfeited (and perhaps dangerous) Chinese toys and Dutch hashish? Or how does one make a choice between exporting toxic waste and out of date medicines to Africa versus protection rackets in the night-life scene of Berlin or Amsterdam? Given a potentially all pervasive organised crime threat, in the absence of an internal logic in the threat assessments or some yardstick for ranking threats, this will be determined by pragmatic political considerations or institutional power pressures. And these will take place irrespective of annual threat assessments. These assessment reports will not function as support tools for strategic decision making, but as justifying texts for decisions taken in other settings.

Finally, differentiating between what 'is ahead' and 'what is' at present is not very clear either, because 'what is' is threatening itself. 'Organised criminals' who are merely continuing their businesses cannot be excluded from the threat assessment. The very fact that they continue unabated and thereby consolidate their enterprises is sufficient to be considered a threat. This will certainly be the case if they have already been classified as a threat before: penal policy proclamations about threats are very seldom lifted.

We must conclude that organised crime threat assessment has no natural boundaries. The ill defined cornerstone concepts allow a shifting from actors to activities (and back), while the present is as threatening as the future and past threats remain alongside new ones.

The assessment art depicting threats is not much improved by the introduction of a variation of threat assessment, namely the

3. *risk assessment* of organised crime.

In the Council of Europe OC situation report 2005, the word 'risk' occurs 118 times. Risk can be defined as the harm times its probability: $R = H \times P$.[13] There is nothing wrong with using a formula, which is common in the insurance industry. But problems arise as soon as the variables must be substituted by actual values. To determine the statistical likelihood one needs unambiguous counting units, as the likelihood of organised crime is the frequency of those set of events divided by all criminal events: $p = \Sigma x_i/N$. In the absence of a proper delineation of single organised crime events, there is no factual basis with which to fill this formula. Measuring the second component – seriousness – is in the present situation hardly feasible. Insurance companies have standardized the seriousness component: all kinds of bodily harm have obtained a money value, which functions reasonably, though compensated victims may think it a bit arbitrary or may value their missing arm or foot higher. Determining the impact of a multi-faceted phenomenon like crime in general, with its indeterminable variety 'organised crime' in particular, leads to even more non-comparable arbitrariness.

Finally we have the assessment consisting of determining all sorts of weak points in sectors of trade and industry and of society at large, which may be the 'unguarded doors and windows' through which organised crime might penetrate. This is:

4. *the vulnerability assessment*, as has been carried out by the University of Ghent regarding the transport and the music sector (Vander Beken, 2004a,b; 2005).

Should vulnerability be considered as a fuzzy risk (where the 'organised crime risk' itself is already quite fuzzy)? As a matter of fact, the authors do not start with 'organised crime' vulnerability, because they argue correctly that it would bias their approach and would result in 'self-fulfilling prophesy'. Instead they argue for an 'environmental scan' to detect weak points which can potentially be abused by (organised) criminals. Methodologically, there is nothing wrong with describing weak points in certain sectors of society, as long as it does not count as an 'organised crime assessment', unless all the previous methodological flaws have been mended. However, as soon as the vulnerability assessment crosses over to

the ‘organised crime’ subject, it becomes affected by all the defects concerning the indeterminable nature of that notion (Von Lampe, 2004).

Summarizing what has been presented as an assessment of ‘organised crime’, we have situational, threat, risk and vulnerability assessments. Their mutual relation is far from clear. The same applies to the methodology, which should be at the centre of defining what an assessment is. However, the latter has never been defined. As a matter of fact, like with the word string ‘organised crime’, authors simply adopted a word and started to fill it with content they thought fit. This is certainly the case with the threat and risk based approaches, compounded by a semi-exact formula, whose components cannot be filled with the appropriate counting units. With the exception of the German situation reports, we end up with little more than vague words putting up a curtain of smoke. Close examination, however, often proves that there is no real substance to be found behind the smoke.

The Columbus Trap of Words

As remarked before, words that are semantically loaded with sketchy notions can determine the mind set or expectation bias with which reality is approached, investigated and interpreted. One may call it the ‘Columbus trap’, after the famous ‘discoverer’ of India, which happened to be the American continent. During the Middle Ages, people talked about India as the affluent country from which all sorts of coveted luxury goods and precious metals came. Discovering India would open the gate to golden hoards for the needy kings and provide the Catholic Church with the opportunities to win souls. But how to get there? Columbus knew a solution: by sailing westwards one was bound to land in the Indies. So he did and he discovered the Indies and called the inhabitants Indians. The mistake of having discovered another brand new continent did not matter as far as the Indians were concerned. The fact that the continent was later rebaptized ‘America’ did not affect their name: until the late 20th century – when they became ‘Native Americans’ in politically correct circles – they remained Indians and all the white settlers became Americans.

Something similar can be observed in the ‘organised crime’ assessment practice. Starting with a name and confused notions of how ‘organised crime’ and its population of ‘organised criminals’ may look like, law enforcement agencies and investigators set sail to ‘discover’ them and report on them. Not surprisingly, what they met and reported on *was* ‘organised crime’ and the uncouth people connected to it were ‘organised criminals’. Meanwhile, the spectrum of discovery has changed and widened. It became clear that behind (or alongside) the first organised crime discovery of hierarchical mafia-like organisations (Cressey, 1969), there was another area of organised criminal *networks* (Sparrow, 1991; McIllwain, 1999). Lately, other forms of organised crime, *business crime,* were brought within the orbit too, though with less enthusiasm and (or because of) a different population: captains of industry and their like (Van Duyne, 1991). For example, the above mentioned report on organised crime 2005 of the Council of Europe even devoted

half of its report on that economic crime area. A different population (not the lower class or ethnic hoodlums), though still under the same tribal name.

What we actually observe is an interesting social-linguistic phenomenon: there is an accepted common parlance, even if it is highly imprecise, which appears to be of little concern. Whatever is denoted, it is allowed to change in composition and population, but the parlance remains the same, which represents a common semantic shift. The reality changes, underlying meanings change, but the words in which the organised crime assessments are cast, remain. Small wonder that the assessment art is of such a poor nature. Actually, they are a subject for an open air sociolinguistic study.

Conditions for Disciplined Assessments

Even if much in the organised crime debate and the assessment reports is affected by the lure of words, we cannot discard them. As a matter of fact, we must return to them, but this time not with a broad brush, but with a razor-sharp engraver.

First we have to determine whether to maintain 'organised crime assessment' as a meaningful activity at all. What should 'assessment' mean? As the organised crime literature does not contain a formal definition of 'assessment', we will have to coin one for our purpose. The word 'assessment' stems historically from tax practices. It means: 'fixing or estimating the amount or value of property for taxation'.[14] If we return to this original use of the word, replacing the 'value of property for taxation' with 'the extent and nature of organised crime *as a whole*', we have a first component for our definition of organised crime assessment.

The next component concerns the verbal clause: 'fixing or determining the extent and nature of'. To design some tool for delineation we cannot restrict ourselves to a purely lexical explanation. 'Fixing' or 'determining' must be done in such a way that it aims to be directed in an *empirical* way to the tangible world. This component also needs a *time* element: 'assessing' does not mean a historical survey, but a determination within a certain determined present period.

What does the putting together of these components entail? In the first place it restricts the application of 'organised crime assessment' to empirical stock-taking that aims to formulate a judgement of a comprehensive organised crime situation. Such a judgement may contain a threat assessment – if based on empirical evidence and a properly defined yardstick. This implies that specific studies concerning single markets or specific aspects, like 'organised crime related violence' or 'the role of the woman', are not included as organised crime assessments. It also implies that secondary studies, based on other empirical works are not included either.

Summarizing: *an organised crime assessment is an empirical investigation aimed at providing a comprehensive quantitative and/or qualitative judgment of the whole purported phenomenon in a determined time span.*

To execute such an assessment two minimum conditions have to be fulfilled:

(i) an unambiguous delineation of the phenomenon *beforehand* by means of an operational definition;
(ii) determination of the *reliability* and *level of measurement* of the basic data.

To determine beforehand the perimeter or the set of observable units is obligatory to prevent an implicit shift – usually a broadening – in the selection process while doing the investigation. This weak point has already been elaborated in the previous sections. The reliability question and level of measurement will be discussed in the next sections.

If both conditions are not met the resulting assessment faces a validity deficit, which simply formulated, comes down the unanswerable questions: 'What are we talking about?' and 'How accurate are these statements?' Policy makers usually have no problem with a certain degree of vagueness. However, authors of assessments have to comply to stricter criteria if their work is to be taken seriously.

The Knowledge Craft of OC-Assessment

Assessing organised crime may be considered an art, but that can only be accomplished within a disciplined craft: the craft of empirical behavioural science. This entails a methodology of data collection, processing and interpretation. Creativity remains a part of it, but its outcomes must be justifiable and transparent. In the end, the depicted crime situation must match reality as much as possible. If an art style is to be chosen as a metaphor, photo-realism might be considered, though some consider it a craft. Of course, we do not have the illusion that reality can be depicted without interpretation or abstraction. But it disciplines us to heed the standard of objectivity as true craftsmen.

If in the definition debate in the context of politics and policy making precision may be of less concern, within the empirical framework of the assessment task preciseness does matter. A fuzzy notion, cast in a fuzzily worded definition, used as a selection criterion for selecting data is bound to yield a fuzzy data set. How to avoid ending up with a fuzzy data set?

Before we continue we must first answer the question whether it is appropriate to look for one single operational definition covering the whole intended field of what is commonly considered 'organised crime'. Designing a definition as a decision rule with which to determine the data set means delineating a research 'population'. Studying that population and coming to conclusive statement means that they apply to all elements (with a certain statistic probability and variability). And here we have the first methodological question to answer: is that population actually so *homogeneous* that such general statements can be made with any validity for the whole population? This question has never been addressed systematically. We return to it later.

The next question is: 'What is observed and how?'. This issue is inherently connected with the definition. The 'what' is determined by the definitional decision rule. The 'how' is part of the operationalisation of that rule, which is the stipulation

how the rule is applied in practice, as we illustrated with the definition of the freezing point for water or the intelligence quotient. Though widely different, in both cases the definition encompasses also the instrument, the measurement conditions and procedure: 'as measured by a calibrated Celsius thermometer at sea level' and 'as measured by the intelligence test X'. If those components are not added, statements derived from such unspecified measurement activities are considered invalid or undeterminable. And what are the comparable operationalisations in organised crime assessments? 'As measured by detective squads and other police experts'? Methodologically this cannot be considered a satisfying answer, as to what extent are they unbiased 'observation instruments'? Even an experienced law enforcement officer does not entail a guarantee of an unbiased look on reality.

Determining 'what is observed' or the observable is tantamount to determining the *counting unit*. What do statements like 'organised crime is on the rise' mean as an account of observations? What is observed? More organised crime counting units, like groups, individuals? In short, authors of organised crime assessment reports do not observe anything like 'organised crime in the real world'. They observe police reports which they amalgamate. This shifts the question to the police as observation instruments. Do the police directly observe 'organised crime counting units'? The answer is again negative: the police construct them for criminal investigation and prosecution purposes. What the police observe are: (sometimes targeted) persons doing things in interaction with with other persons. This is the raw observation material that subsequently becomes the construction in which (deeper) meaning is added to what is observed.

If the police are (one of the) the 'observation instruments', how do we know they are properly *calibrated* to produce reliable data? The importance of this question is self-evident as many important daily-life decisions depend on calibrated instruments on which people rely. Criminal forensic science is a matter of continuous calibration to provide uncontested evidence in court. If blood-alcohol measurement equipment is not calibrated, drunken drivers may (and should) be acquitted. What about the organised crime calibration and reliability? Without such a calibration we run the risk of the 'Columbus trap' in which the police functions as the Lycos software retriever dog: ask the police to find 'organised crime' and they return with 'organised crime'. Their results are gratefully included in the assessment reports which are subsequently (supposed to be) the basis for policy making. The question is whether this renders valid results. Perhaps we should let the investigations do what they do best, collecting evidence against criminals, and not burden them with the question whether what they investigate is 'real' organised crime or not. It is sufficient if their 'organised crime construction' is upheld in court.

This would transfer much of the decision making to the strategic level, where it belongs. When reflecting what questions must be addressed prior to the actual strategic assessment research, the following topics must be included:

- the population composition;
- the counting units;
- the observation/observer calibration to obtain sufficient reliability.

Underlying these methodological principles there are others, which surface on elaboration. If these principles are not heeded, statements like ‘organised crime is increasing’ are indeterminable at best, meaningless at worst. Usually they are meaningless because their contents are indeterminable. Let us address these issues separately and then return to the thorny definition problem to find a solution. Maybe the only solution is to apply *Ockham’s razor*, or the principle of parsimony: always favour the theory which can explain the same part of reality with fewer concepts. We will use that razor later.

Population Composition

Strictly following the definitions of organised crime, it may look strange that we would talk about the composition of the ‘organised crime population’, as they are (a) about groups and (b) what they do. The definitions do not deal with particular kinds or categories of offenders who may be involved. That is due to their very general wording, particularly related to the offences. However, this broad formulation has the consequence of potentially including a huge variability of offenders entering through the broad gate of ‘seriousness’. It does not matter whether this criterion is left open (the German definition, the EU-definition), or is determined by stipulating a maximum penalty of at least four years imprisonment. This four year criterion can hardly be considered a narrowing down of the potential population: in most jurisdictions simple property crimes, ranging from plain theft to tax fraud have this maximum. Other common conditions of most of the definitions are easily fulfilled too, adding to the variability of the potential input.

‘Collaboration of more than two persons’? For many property crimes offenders need support from accomplices: burglars need a look-out and a fence; defrauding managers may require the support of their accountant and a straw man for their front firm(s).[15]

‘Prolonged or indefinite period of time’? Among criminals trust is a scarce commodity. Hence, there is a high likelihood to commit new crimes with the persons with whom one has been successful before and are considered trustworthy. Criminals too have their mutual assessments. And how long should that time span be? With economic crime, which usually consists of a continuous law breaking management, the extended time span is virtually built-in if it is not a once-only scam of cheating a rich old widow.

‘Motivated by the pursuit of profit and/or power’? This is an *a priori* criterion. It is difficult to imagine purely emotional motivations (sex, revenge, sadism) with most kinds of profit oriented offences denoted as ‘organised crime’ (Kinzig and Luczak, 2004). Maybe a criminal could plead that his motivation was merely to outsmart the police, which would only be credible if he systematically distributed his loot to the poor and destitute. However, the times of Robin Hood with Little John are eight centuries ago. Of course, it does not exclude the psychological reward of outsmarting the police, in addition to the pecuniary reward.

The money-laundering condition is also built-in, given the present international state of anti-laundering legislation in many countries. The same applies to the international criterion: many offences are only profitable because of international price differences, either because of prohibition or taxation, which makes such cross-border traffic the only rational commercial undertaking to make a lot of money.

This broad brush is bound to sweep many criminal birds of widely different feathers together. Though there is no harm done nor a strictly logical mistake to stretch the boundaries of the class of organised crime from organised shop lifting to senior politicians (prime ministers not excluded) who defraud, deceive and corrupt witnesses in their own trial, any general statement applying to this huge diversity would be pretty meaningless. In that case the set 'organised crime' – being too full – is empirically meaningless too: statements with explanatory power need clearly measured distinctions within or between well defined (sub)populations.

If the focal point 'serious criminal conduct' of the research definition results in different manifestations of that conduct, we have different criminal categories or populations. One of the basic rules in behavioural science is: populations which are different must be treated accordingly. The cigarette smugglers, the illegal labour operators and the illegal cartel organisers display organisationally different kinds of conduct (Van Duyne, forthcoming). In addition, their social circles do not overlap: we meet different social networks. It is a plausible hypothesis that criminal market differences and the required social and technical skills and relationships attract different types of offenders who form non-comparable populations. In view of this, general statements about 'organised crime' cease to have a descriptive content and lack explanatory value. This implies that in an empirical context this word string has become redundant. In that case 'Ockham's razor' is to be applied: delete for research purposes concepts which prove to be redundant. Retaining this word string will merely serve conversational and political purposes.

Counting Units: back to the behavioural dimension

If we would task ourselves with drawing up a 'threat assessment' (which we would rather postpone for a while), we would have to say something about 'what' and 'how much'. Needless to say we would (a) one stumble again over the definition and (b) face the fact that 'organised crime' is not an observable thing but a constructed conclusion. How to solve this dilemma?

Let us simplify things by taking the word string literally: it is a *conclusion* about what *people* are *doing* or have *done*: actors and activities. This provides two basic main variables to which other variables can be attached.

The *actor* variable contains a large set of other variables or characteristics, of which some of the most important are:

- recorded personal backgrounds, including 'criminal history';
- relationships or interpersonal connections.

The *activity* variable contains of course the observed criminal activities, each of which has additional characteristics, like:

- Nature of the offence(s)
- Number of occurrences; and
- Modus operandi: ways of *organizing crimes*

However, what determines the organisation of particular crimes is a set of variables which are exactly at the cross section of these two clusters: relationships between individuals. Relationships between persons are constituted by what people *do*: *who* is doing *what* in interaction with *whom*.

At present we would not be complete if we would not add the *financial result* variable:

- the amount of proceeds and
- the handling of those proceeds (commonly called money-laundering).

Note that in this list of basic variables the words '*organised crime*' do not occur. Nevertheless, we can arrive at its behavioural approximation: the organisation of crime differentiated according to type of crime and/or nature of offender.

The Basic Observer's Level

In the previous sections we stressed the need for calibration: no reliable data without calibrated observation instruments. To ensure proper calibration may be difficult for social sciences in general; it becomes even more problematic with 'organised crime' observations. Ultimately, hardly any other instrument is involved except for the human eye, the human ear and, above all, the *interpreting* human mind. In the end, it is not what the camera, bug, tracking device or tape recorder registers, but how the information (in the form of words, documents, moving imagery et cetera) is interpreted. This makes the focus shift from the calibration of the instruments to a 'calibration' of the observer/interpreter.

The first relevant question here is: '*who* does the observation of the criminal actors and activities'? Obviously, law enforcement officers are the prime observers, though they are not the only ones. But to what extent are they 'calibrated' observers? The answer is: 'That depends what questions they have to answer', because the nature of the questions – the questionnaire – is part of the measurement instrument, together with the police-observer him/herself. Therefore, in an organised crime study the questionnaire must avoid the 'Columbus trap': questions evoking the organised crime 'mould' in which the answers will be cast. From this it follows that at basic observation level the police investigators/observers will get no questions about 'organised crime'. They get a list of variables such as indicated in the previous section, which they have to score rigidly.[16] That yields the raw data for further storage and processing at a next, analytic level, of which later.

What about the other information sources? Criminals, and victims and/'direct' witnesses are observers too and so are the many 'organised crime experts'. We have:

- the offenders themselves: e.g. statements, diaries;
- close direct observers, e.g. neighbours, relatives;
- law enforcement experts;
- investigative journalists.

Can they be considered calibrated observers of 'raw material'? The answer is again determined by the nature of the question. If they are interviewed about their direct, first hand experience some 'raw material' about actors and their activities may be sifted out. But when they are interviewed about 'organised crime', the potential raw material (if not distorted by memory) is at risk of being biased by the presented 'organised crime mould'. This evokes also a more general 'knowledge of the organised crime world', which is shared by detectives and criminals alike. Interview answers are therefore a mixture of reported memories of direct own experience combined with shared indirect knowledge. In statistical designs the latter is considered a 'measurement error', which must be corrected. Open interviews as qualitative 'measurements' can hardly be corrected for such measurement errors. They may tap something indeterminate like 'collective memory', which may contain facts as well as collective biases.

This critical valuation does not imply that these information sources must be discarded *a priori* as unreliable. There are sufficient studies in which careful use has been made of interviews and other 'memory documents', though not in the framework of an assessment as we defined it. For example they concerned facets of the drug market (Reuter and Haaga, 1989; Pearson and Hobbs, 2001; Adler 1985) or aspects of the Mafia and La Cosa Nostra (Paoli 2003; Firestone, 1996). Carefully selected and weighed they provide qualitative illustrations within an interpretative descriptive framework. In these studies the framework was not 'organised crime' as defined for assessment purposes, but rather the ways (drug) traders operate at certain levels or the nature and functioning of secret brotherhoods. Another interesting example is Bovenkerk's and Hogewind's (2003) lively description of the organisation of the homegrown cannabis production (see also this volume). Though they raise the question about potential criminal background organisers, they remain quite disciplined and close to what they (and the police) observed during the house searches.

With a meticulous recording at investigative observation level, the methodological problem of data reliability is far from solved. Apart from the fact that even for the best trained police officer or academic equipped with a well-tested variable list, there remain many interpretative moments (how to score 'cooperates with'?). In addition, at this observation level there are the 'lose ends' of unfinished cases. The investigation is still in progress and many statements lack sufficient corroboration, will be (re)interpreted later in de different light or may have to be reversed. From our research experience many 'observations' frequently begin with phrases such as: 'is (or are) believed to . . . ' or 'according to a person known to us, Mr X is said to be . . . . '.

Another question is where this 'basic observation level' starts and how should it be situated in the procedural chain of case processing: preliminary investigation (soft intelligence); pre-trial investigation (examining judge); first instance trial and appeal? There are observations at every level of criminal case processing, each with reliability questions of its own.

Accounting for Case Processing Levels

Methodology is not only a matter of technique; it is also a matter of accountability. It must always be clear at what level and in what situation the basic data collection has taken place (Van Dijck, 2006b, forthcoming). Applying this principle to the criminal cases we can discern a number of stages, which are determined by the criminal procedural code and which have an impact on the reliability judgement. Apart from being caught red handed in a smuggling operation, most criminal cases in the crime-market start with a pro-active 'warming-up' phase, followed by an 'identified suspect' phase and, if successful, by the phases of prosecution and trial. It should be added that in practice this distinction is not always so neat: during trial, cases can be referred back to the examining magistrate, or information gathering continues alongside prosecution. This is especially the case where there is plea bargaining or a structured 'organised crime' prosecution is envisaged. Nevertheless, the following levels can be discerned:

- '*hints and hunches*' during pro-active investigations: the intelligence phase of soft information;
- *criminal investigation*: there are identified offences and/or offenders, about whom legal evidence is collected to be presented in court. This phase is usually under the authority of the public prosecutor or examining magistrate;
- *the trial phase*, or rather phases if we include also the appeals.

How does this relate to the reliability question? Should this ascending procedural series also be considered as an ascending order of empirical reliability?

There is no exact symmetry between legal and 'scientific' proof and truth. The evidence accepted by the court of appeal is not necessarily more reliable (from an empirical perspective) than 'evidence' withheld from the court, *e.g.* because it was obtained by illegal means. In fact, from the perspective of truth vindication, the latter might even be more reliable.

This cannot be affirmed as procedural outcomes may be at odds with the 'real' reality of which one may only have suspicion. Is there a 'real' criminal organisation? The police may be convinced, but the prosecutor may decide not to prosecute for a charge of 'participating in a criminal organisation'; witnesses may be intimidated etc., or there is actually no (sufficient) evidence. Each level represents a legal interpretation of reality, which is as far as we can get. But what must be recorded reliably are the outcomes themselves with the indication at what level they have been recorded.

This approach has the advantage of enabling a comparison between the subsequent observation (or interpretation) levels: what was observed in the 'hints and hunch phase' and what has finally been confirmed after juridical testing by the prosecutor and the courts? It goes without saying that this requires the use of the same measuring instrument and methodology at all levels.

Thresholds

This approach looks all encompassing: should all crimes for profit in which there is some form of cooperation be recorded? That would set the doors wide open to an unlimited and unsorted array of observations. That is correct, but as in any research project, one can set a threshold, though that reduces the variance. For example, Meloen et al. (2003) investigated the functioning of the crime-money in cases with a minimum of €450.000, as previous research findings lent plausibility to the hypothesis that below that amount of proceeds the 'usual suspects' did the 'usual thing': lavishly spending (Van Eekelen, 2000). In assessing the organisation of crimes for profit similar financial thresholds can be set. The same applies to the number of offenders: two or three and more.

Setting thresholds implies a limitation of the population, which must be unambiguously accounted for, either by theory or at least by a hypothesis, and if possible supported by previous findings. In the example above, the bottom line is clearly operationalised: proceeds over or equal to €450.000 and accounted for by referring to previous research outcomes (Van Eekelen, 2000). Note that this threshold is not about the 'aiming' of making such proceeds, such as seems to be the case with the EU criteria list, nor is it about the 'capacity' to make such an turnover, but about the evidence-based determination (by the police or forensic accountants) that a turnover of this amount or more was actually realised.[17] Do we need to set the same threshold for the whole range of criminal cases? Though at present the EU organised crime assessments claim to use the same EU organised crime definition as their thresholds, there is no logical reasonable explanation why we should do so. If it is true that the 'organised crime populations' are heterogeneous, why should we use the same thresholds for all? If we know from research that in the organisation of economic crime violence hardly ever occurs, there is no point to adopt that as a selection criterion. In short: setting thresholds is not merely a pragmatic tool to prevent an unmanageable inflow of cases, but also a methodological decision based on fact and theory or at least a testable hypothesis.

Assessing the Organisation of Crime

By relinquishing a uniform threshold for all sorts of crime, we have also abandoned the aim of assessing something like a general phenomenon, inadvertently

called ‘organised crime’. In its place we have introduced the criminal actors and their activities, which at first sight do not look like a solid replacement. However, that would underestimate the implications of the shift of the angle, as we can direct our focus to

• the nature of the criminal actors;
• the ways of organis*ing* criminal activities
• the interaction with the market environment, including
• the so-called ‘upperworld’.

In brief, *the organisation of crime* is just an umbrella indication for a number of specific organisational criminal settings.[18] Strictly it does not replace ‘organised crime’, which is left for what it suited for: a phrase for exciting conversations and political discourse and policy making (with all its risks of rhetorical use and abuse).

Assessing the organisation of crime addresses the behavioural side in which the first requirement is: *know your suspects*. Much like the banks in their know-your-customer and due dilligence policy are forced to seek for the natural persons, the actual beneficiaries, behind the corporate clients, the investigators and assessors of organised crime should be interested in the individuals behind the criminal organisations rather than the organisations themselves. Translated into this approach this means: elaborate a proper list of observational variables about persons and their conduct that can be scored from the first registered observations onwards.

The second main requirement is: *know their environment*, which is closely connected to the criminal conduct. While the criminal conduct concerns the core business, it takes place in a hostile environment. This hostile environment is not something vague, but directly related to the nature of the trade: prohibited substances (of which there are many), illegal services, or licit goods handled illegally/fraudulently. Each crime business has its own threatening environment which requires a different risk management, or with a biological metaphor, a different form of *criminal mimicry*. The mimicry of the protection market (locally based, Gambetta, 1993) differs widely from prohibited substances (underground market e.g. Morselli, 2001) or economic crime (upperworld oriented). Part of the environment consists of logistics and (upperworld) facilities, like transport and legal entities (Sieber and Bögel, 1993).

This approach will not be a holistic one or result in revolutionary new findings. It will address the same organisational criminal conduct, but it will project this with more precision and provide a more fertile ground for theory building about why and how people do things. For example:

• Forms and principles of criminal cooperation: the criminal dynamics of human interaction in time and space or, in management terms, the ‘criminal human and social capital’;
• Forms and manifestations of criminal entrepreneurial conduct: decision making and criminal risk management concerning with whom to work and the kind of modus operandi;

- The functioning of markets of prohibited substances and criminal services: for example, the organisation of the drugs market, human smuggling and human trafficking;
- The functioning of the market of legitimate products and financial markets: for example, the organisation of tax and investment fraud and counterfeits;
- The interaction between ‘upperworld’ and ‘underworld’ in broad terms, ranging from bribery (‘front line corruption’), business symbiosis to criminal erosion at the policy making level.

Researching the organisation of crime from these research angles does not need to start from scratch. Granted, the psychological aspects of crime organisers and their management, in terms of decision making, is certainly under-researched. In his speculative paper Bovenkerk, (2000) correctly pointed at the poverty in this field, which is a consequence of the criminal procedural habit. The public prosecution or the examining magistrate only asks for behavioural reports in cases of personal violence to determine criminal accountability and liability. Otherwise criminal entrepreneurs are considered ‘cognitively rational’: like the *homo economicus* fully accountable for their deeds which are based on a rational weighing of the pro’s and cons. Hence we have a problem of a shortage of sources. Management and decision making is also hardly addressed, which may be recovered nevertheless, because part of the investigation and court dealings are about ‘who decided what’ or ‘who was at the helm’, if only for sentencing purposes.

The market aspects of criminal organisations are better researched, actually giving support to the thesis of heterogeneity. However, most attention has been devoted to the prohibited drug markets, while the organisation of economic and financial crime has been research much more sporadically. Nevertheless, organising a continuous fraud scheme is organisationally more complex then hauling another shipment of dope (Van Duyne, 2006). The same applies to the criminal money market, in police parlance, money-laundering. In this field the poverty of empirical research is in poignant contrast to the political rhetoric (Suendorff, 2001; Van Duyne, 2003). These research topics illustrate that declaring the organised crime concept redundant will certainly not lead to empirical poverty. At best it can save time and energy for more fruitful intellectual endeavours.

Notes

1. See: *http://www.assessingorganisedcrime.net*.
2. UK Threat assessment. The threat from serious and organised crime. NCIS 2003.
3. That is not transparent either (unless one is part of the assessment working group), as the basic reports of the member states are classified.
4. 2004 European Union organised crime report.
5. See Dorn et al., (2005) for three meanings of the word “network”. Related to the drug market it can denote the working of the market as a whole, the cooperation of independent small groups of individuals or the durability of criminals’ organizational arrangements. Together it makes clear that the interesting network concept may be useful for interpretative purposes, but methodologically not appropriate for assessments.

6. For a detailed overview of OC definitions we refer to the website maintained by Klaus von Lampe, *http://www.organized-crime.de/OCDEF1.htm*
7. Organised Crime Situation Report 2005. Focus on the threat of economic crime. Strasbourg, 2005.
8. Our considerations, here, are very much related to one of the classic debating points in criminology: does the law prescribe criminologists what to study (on the basis of the legal determination of what forms of conduct constitute *criminal* behaviour) or does criminology put together its own research agenda, which might be inspired by sociology? rather than the law.
9. This can also be observed with suspicious transaction reports: the more reports an FIU receives, the more important its position. Although recently the tide seems to change: the focus is increasingly on the number reports of actual suspicious transactions rather than the number of unusual transactions reports (*e.g*. Van Dijck, 2006a).
10. Council of the European Union, 14959/1/01, CRIMORG 133, Brussels,10 December 2001.
11. The truncated definition of Fijnaut et al., 1996 was used.
12. EU Forum on the Prevention of Organised Crime – Measuring Organised Crime – Researchers meet Policy Makers on Concepts, Indicators and Tools, held in Brussels on February 6th, 2006.
13. Actually there are many different variations to this formula. Some of them have been presented in the Council of Europe OC situation report 2005 (p. 125). The formula $R = H \times P$ is derived from work in progress of the IKOC Research Project, coordinated by the researchers of Transcrime in Italy. The formula was presented at the EU Forum on the Prevention of Organised Crime – Measuring Organised Crime – Researchers meet Policy Makers on Concepts, Indicators and Tools.
14. It is not a coincidence that in the Dutch language – and perhaps not only there–the closest translation for the word 'assessment' is 'taxatie', literally meaning 'taxation'. In Dutch this word has the double connotation of both 'the levying of taxes' and 'determining the value of something'.
15. The commission of serious fraud does not need to be committed 'in combination': Nick Leeson worked alone and brought down Barings Bank, with others acting merely as passive instruments of his will and/or as dupes.
16. The AOC research team (see note 1) is currently involved in a pilot study in which in five European countries case files concerning the smuggling of cigarettes are analysed according to such a rigid template containing over 150 variables grouped in five connectable clusters. The first tentative conclusions are to be expected in the Fall of 2006.
17. We could also compare the police estimations with that of the public prosecutor, the sums mentioned in the verdicts (first instance and appeal) and finally with what the Central Recovery Bureau actually got from those defendants.
18. Actually, this is a variation of the title of Levi's contribution to the Oxford Handbook of Criminology: 'The organisation of serious crimes'. However, by adding the adjective '*serious*', the author slipped back to the mainstream. (Levi, 2002).

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8
The Rise of Two Drug Tigers: The Development of the Illegal Drugs Industry and Drug Policy Failure in Afghanistan and Colombia

Francisco E. Thoumi*

Introduction: Competitive Advantage and the Concentration of Illicit Drug Production

In 1970 Colombia was not known for their production of illegal drugs and Afghanistan had been a minor producer of opium for a long time: "opium was not really a 'traditional' crop in Afghanistan where it was not cultivated in most parts of the country until the 1990s. Unlike most countries in the region, Afghanistan did not have much of an 'opium culture'. Thus, opium consumption until recently remained relatively low" (UNODC, 2003: 87–88). At that time neither of those two countries was a large producer of opium poppy or coca or a significant player in international drug markets. Today they stand as the dominant producers of coca-cocaine and poppy-opium-heroin respectively, each one accounting for 70 percent or more of the world's supply of cocaine and heroin respectively.

The high concentration of illegal drugs production stands in stark contradiction with common beliefs about the reasons why a country produces them. It is commonly believed that the basic reason why illegal drugs are produced is that they are very profitable. This is a simplistic and trivial assertion in the sense that if they were not profitable, it is obvious that they were not produced. In market economies only some non-profit organizations would engage in non-profitable production. There is no question that profitability is a necessary condition for illicit drug production, but is certainly not a sufficient one. Indeed, if profitability were a sufficient condition, illicit drugs were produced in all countries and regions where they could be produced and Afghanistan and Colombia were only minor players in the illegal drug business.[1]

Producing illicit opium-heroin and coca-cocaine requires the performance of a series of illegal activities: purchasing illegal chemicals, cultivating illicit crops, creating clandestine manufacturing facilities, developing criminal distribution networks to smuggle and distribute drugs and to launder illegal revenues. The need

* This essay was written with the support of The Senlis Council: Drug Policy Forum. The author thanks the extremely valuable comments of Alain Labrousse to an earlier version of this paper and exonerates him of any responsibility for the opinions expressed here.

to perform these illicit activities conditions the location of the illegal industry. In a nutshell, it can be asserted that once an easy to produce good or service is declared illegal across the world, that illegality generates competitive advantages in the countries or regions that have the weakest rule of law and the most tolerant civil societies among those that have resources required to produce those goods and services.

Profitable illegal economic activity requires not only profitability, but also weak social and state controls on individual behavior, that is, a society where government laws are easily evaded and social norms tolerate such evasion. Social and state controls are the reason why profitable illegal activities are not produced in every location that has the natural resources, labor skills, technology and capital resources required to produce them. Those controls also contribute to the generation of internalized controls ("conscience") in every person that reinforce respect for social norms and laws.

It is then not surprising that the illegal drug industry is concentrated in countries, regions, and communities where the rule of law is weak. A short survey of the illegal drug production in the world highlights the importance of the rule of law and a central state that enforces it across its territory. Coca production is concentrated in three countries: Colombia, Bolivia and Peru but Colombia has concentrated cocaine manufacturing during the last three decades. Illegal poppy and opium production is also concentrated in Afghanistan, Myanmar and Laos and in the past it was produced in significant quantities in the Northwest Territories of Pakistan and in isolated areas of Thailand.

Bolivia and Peru have bi-national societies in which a large Indian population has been excluded from power and exploited during several centuries by a "white" and mestizo dominant group. Coca cultivation in Bolivia and Peru until the late 1960s was directed to the local market and done by peasants and Indians who were not stakeholders in mainstream society.

Coca and poppy are grown in Colombia in recently settled areas where the state has had a very weak presence. Many of the settlers in these areas arrived displaced by political violence. The residents of these areas consider themselves abandoned by the state. In many instances, left and right wing guerrillas have substituted the state and established order in those regions.

Drug trafficking has frequently provided funds to support insurgent and independence movements: FARC and ELN in Colombia, Shinning Path in Peru, the Taliban in Afghanistan, and similar groups in Chechnya, Albania, Kosovo, and other countries and nations. Interestingly, illegal drugs also have funded counterinsurgency movements (AUC) in Colombia and the Contras in Nicaragua.[2]

Colombia has concentrated cocaine and heroin manufacturing in the Andean countries. The two large original Colombian "cartels" located in Medellín and Cali were composed by individuals who had strong feelings of political exclusion.

Ethnic minorities and individuals who do not have strong loyalties to mainstream society have been the core of drug trafficking networks in the United States. During alcohol prohibition (1919–1933) American criminal organizations where predominantly made up by Italian, Irish and Jewish immigrants. In the late XX Century Jamaicans, Colombians, Nigerians, Haitians, Mexicans and native

groups such as the Crips, the Bloods and the Hell's Angels that were out of the social mainstream made up most trafficking networks.

The picture that arises from this short survey is clear. The communities where coca and poppy have had traditional uses grow those crops. Many of these communities have been isolated and/or excluded from the social mainstream in the countries where they are located. Cocaine and heroin producers and traffickers are also part of groups with very little loyalty towards the central state. Some are good old-fashion criminals, but many are part of political organizations that aim to overthrow the government or to achieve autonomy or independence.

These characteristics of the illegal drugs industry are consistent with the "new" international trade theory that highlights the importance of distance to large markets, technical knowledge, public infrastructure, the quality of institutions and the ability to deliver "just on time" as determinants of competitive advantage (Landes, 1998, Porter, 2000, De Ferranti, Perry, Lederman and Maloney, 2002: 1). This theory supported by empirical evidence shows that globalization and the sharp decline that has taken place in transportation costs have greatly diminished the importance of the stock of traditional factors of production (capital, labor, natural resources and technology) in determining the wealth of nations and the composition of a country's exports. Sustaining the rate of growth depends now on a country's ability to increase factor productivity which depends on specific market knowledge, physical distance to markets, technological knowledge, public infrastructure, worker discipline, and the ability to deliver goods of specific and services of specific quality *just in time.* This theory supports the argument that institutional and structural weaknesses and cultural aspects determine the competitive advantage in illegal goods and services.

To argue that culture is an important determinant of social problems and an obstacle to legal economic development and governability frequently generates strong reactions because cultural issues hit deep human feelings. Furthermore, it is not easy to define culture. In this essay economic culture is the set of "beliefs, attitudes and values that influence the economic activities of individuals, organizations and other institutions" (Porter, 2000: 14). In the "new" international trade theory these cultural aspects are key determinants of a country's competitive advantage.

How Afghanistan and Colombia Became Principle Actors in the Illegal Drug Trade

a. Afghanistan

As noted above, in 1970 Afghanistan was not an important actor in the international illicit opium market. Indeed, it had never been one. Opium has been produced in Afghanistan for centuries, but this had not presented significant domestic or international problems. It appears that by the end of the XIII century opium was grown in Badakshan (Labrousse, 2004), the northeastern province

which today is the base of the Northern Alliance. In a country of great ethnic diversity, the Ismaelites were the main consumers. The United Nations asserts that among the various provinces that produce opium this was the only province that had "something of an opium tradition" whose roots could be traced only to the XVIII century, a recent date by standards of that part of the world (UNDCP, 2003: 88). There is no question that during most of the XX century opium production in Afghanistan was modest and aimed at the domestic market. Some governments were concerned about the effects of local consumption and in 1945 opium cultivation was prohibited. The government could not fully enforce this measure but it did result in a decline in the opium crop that reached only 12 tons in 1956 (op. cit.).

After 1972 Iran, Pakistan and Turkey enforced bans on opium cultivation that encouraged the displacement of those crops to Afghanistan that became a player in the international opium market supplying mainly Iranian heroin labs. By 1980 it accounted for 19% of the world's output but the expansion of poppy during the 1970s was to pale compared to its development in the following decades.

The Durrani dynasty ruled Afghanistan until 1973 when king Zahir Sha was deposed by his cousin Sardar Moahmmed Daud who established a republic under his leadership. In April 1978 Daud was killed and his government overthrown by a communist group led by Nur Mohammed Taraki. Political conflict continued and Taraki was assassinated in 1979, an event that triggered the Soviet invasion in December 1979 (Rashid, 2001: 12–13). This led to an eleven year war of liberation followed by a five years civil war.

During this period opium plantings grew and the illicit drug industry became a source of funding for the Mujahedeen. It, however, provided only a minor share of their funding since they had ample support from the United States, China, Saudi Arabia and other countries (Labrousse, 1991: 106). A combination of factors led to the rapid expansion of opium cultivation: the central state's lack of control over the territory allowed a large increase of smuggling activities (including arms supplies for the Mujahedeen); the communist aviation's bombings of legal agricultural forced peasants to migrate to mountainous areas that had lower quality lands and where they had few options to plant profitable legal crops in small plots; and the incentives provided by the purchases by the Pakistani army's secret service that used illegal drugs profits to support Kashmir rebels in India (Labrousse, 2004). In 1990, just after the Soviet implosion and the end of the war of liberation, Afghanistan accounted for 41.68% of the world's opium output. The growth of opium continued and in 1995 when the Taliban took control of the government, Afghanistan's share of the world's opium crop output reached 52.4%, a figure that ballooned to 79% in 1999. (UNODC, 2004).[3]

The war against the Soviets had a great negative impact on rural sector production and employment that impacted directly a great majority of the population (at the beginning of the war 85% of the population was rural). The war also destroyed the financial and monetary system and completely disrupted education. Government funding for education virtually disappeared and the generation that grew during the 1980s, including many Pashtun young boys, was educated in

religious schools (*madrassas*) controlled by Muslim priests (*ulemas*) who followed the Deobandi Islamic tradition that sprung in XIX century India to oppose modernization efforts within Islam (UNODC, 2003: 91). These schools were the cradle of the Taliban.

Poppy development was encouraged by the war, not just because it was a source of funds for the warring factions but also because the collapse of the economic and financial systems created the need for new instruments to maintain value and provide collateral for loans. Opium in a way became a currency. Loans were, and are, made to be paid in opium. Peasants who need borrowed funds to tide them over the months were their farms or plantings do not generate a cash flow, borrow money to be paid in opium. Thus, they have to grow poppy to pay those loans. Dry opium has a high value to volume and weight ratio, stores easily and can be cashed at any time. In other words, it is highly liquid and a good store of value, two of the main characteristics of a good currency. Independent of its legal status, it is not surprising that opium became de-facto legal and an integral part of the country's economy (UNODC, 2003: 12).

After the Soviets left, a power struggle and internal armed conflict developed between the Mujahedeen and the Taliban, the two contending anti-soviet groups, and the Taliban emerged victorious in 1995. They initially considered banning poppy, but realized that they could not have succeeded given the weak rural economy and the role of opium in society. Their efforts were limited to banning cannabis production and the consumption of drugs, particularly opiates. After the Taliban took control over most of the country, poppy plantings increased 18.4% between1995 and 1998, but in 1999 the area cultivated exploded, expanding over 42% (UNDCP, 2004).

During the last 25 years Afghani opium has been exported mainly through Iran, Pakistan and Tajikistan. After the collapse of the Soviet Union the ancient silk route through Tajikistan and Central Asia had a substantial gain in importance. The opium networks involve organizations of traders from those countries specialized in contraband of various types, including weapons that had been a counter flow of opium trade. Afghanistan is also a trade corridor between Pakistan, Iran, Turkmenistan, Uzbekistan and Tajikistan. This trade by road frequently includes contraband and during the war local warlords "taxed" it. Those routes are also used to export illegal drugs. While Afghanis participate in those illicit trade networks, most opium exports is done by other nationalities, mainly Pakistanis and Tajikistanis. The rise of the Taliban was supported by powerful transport enterprises that considered that they could provide stable and safe routes (UNODC, 2003: 90).

Afghanistan is composed by a collection of tribes that historically have enjoyed a great deal of autonomy from the central state. Throughout the country there are warlords that control their own areas and that have the capacity to apply their own norms. Not surprisingly during the 1980s and 1990s a strong nexus developed between crime, war and opium.

Despite their religious motivations to ban opium, this crop, as noted, continued to grow after the Taliban took over the government. Some warlords supported the

Taliban on the implicit condition that they were to be allowed to continue their trade. Besides, the Taliban controlled most of the country, but they did not control Badakshan province, the part of the country that had a stronger opium tradition, that remained the stronghold of the Northern Alliance.

On July 27, 2000 Mullah Omar imposed a total ban on poppy cultivation in the areas under Taliban control. Farrell and Thorne (2004),* without praising or defending the Taliban, argue that "this may have been the most effective drug control action of modern times" achieved though a combination of "three principal techniques: the threat of punishment, the close local monitoring and eradication of continued poppy farming, plus the public punishment of transgressors". The Taliban intimidated the peasantry using the argument that the three-year drought that had devastated the rural sector had been God's punishment for the cultivation of an evil plant and used their power to implement the ban. The Taliban's success was remarkable. UNODC estimates that in 2000 there were 82,171 hectares under cultivation in Afghanistan that produced 3,276 tons of opium. In 2001 this figures had dropped to 7,606 hectares and 185 tons, virtually all in Badakshan, the area outside the Taliban's control.

UNODC (2003: 92) argues that in September 1999 the Taliban had ordered a one-third reduction in poppy plantings in an unsuccessful effort to fend international sanctions. A month later, the United Nations Security Council imposed sanctions on Afghanistan. Farrel and Thorne (2004) argue that besides their need for international legitimacy the Taliban had other reasons to impose the poppy ban. They claim that the Taliban had been in contact with UNODC officials and its general undersecretary Pino Arlacchi had offered an annual $25 million development assistance grant for ten years. The authors use an UNODC staff personal communication to support this assertion.

After the Taliban was driven out of power by the United States invasion of Afghanistan the poppy crop rebounded in 2002 to 71,100 hectares and 3,400 tons and continued increasing to 80,000 hectares and 3,600 tons in 2002.

There is no question that the Taliban's ban on poppy was extraordinarily successful in 2001 which confirms that an extremely authoritarian government that has control over the territory can eliminate illicit crops. There are strong reasons, however, why the ban could not have been sustained if the Taliban had remained in power.

First, it is true that UNODC had contacts with the Taliban, and in the late 1990s Pino Arlacchi was trying to negotiate an end to poppy cultivation in Afghanistan. Unfortunately, Arlacchi did not have the resources to deliver any significant assistance to the Taliban. In the late 1990s the total annual UNODC budget did not exceed $80 million 90% of which was made up by voluntary contributions of donor countries, mainly Italy, USA, Sweden, UK, Germany and Japan (Thoumi and Jensema, 2004). Most these contributions are earmarked in a "soft" way to fund projects on a topic or geographical region or in a "hard" way to fund specific projects. UNODC's budget is very inflexible and does not allow room for the undersecretary general to shift resources to new projects. Arlacchi's commitment

* The discussion of the Taliban poppy ban borrows liberally from Thoumi (2005a).

to provide $25 million per year during 10 years required funding for donors who'd have had to agree to give economic assistance to the Taliban. In the environment of that time, it was a very unlikely event that never materialized. It may be argued that the Taliban was misled by Arlacchi and that they were interested in opening a channel of communication with the international community but their rapport with UNODC would not have lasted beyond a couple of years because of UNODC's inability to deliver the promised help.

Second, the international heroin market experienced a significant change in 1999 as a result of a bumper crop in Afghanistan. The UNODC shows that the area cultivated with poppy in Afghanistan increased 42.2% that year and remained slighted lower in 2000. This resulted in a global increase of 32.6% in opium production in 1999 leading to a world opium surplus. Indeed, UNODC data indicate that heroin prices in Europe, the main market for Afghani opium had been declining sharply since 1996 when they averaged $118 per gram of heroin. This price fell to $87 in 1998, $64 in 2000, $59 in 2001, the year of the successful ban, $62 in 2002 and rebounded slightly to $69 in 2003 (UNODC, 2004, Vol. II: 363). The fact that during the year when there was virtually no opium production in Afghanistan European heroin prices reached their low point indicates that stockpiles were being sold at a high rate.

Third, as Farrell and Thorne (2004) show, opium prices in Afghanistan increased tenfold in 2001. This increase benefited peasants outside Taliban controlled areas in the northeastern region of the country controlled by the Northern Alliance. They, however, fail to notice that during 2001 and 2002 heroin prices in the main Afghani market outside Badakshan reached record lows. This is a clear indication that the large crops if 1999 and 2000 had led to a large accumulation of heroin stocks by traffickers, mainly Pakistanis and Tajikistanis (Labrousse, 2004). In other words, the Taliban had to take economic market forces into consideration when it imposed its ban on poppy cultivation an assertion further supported by the fact that the Taliban's ban did not apply to opium trading and trafficking, only to planting (Labrousse, 2004). In other words, during the poppy ban the trade in opium and heroin remained tolerated and taxed, and those with stocks were allowed to sell.

Fourth, the UNODC itself raises questions about the sustainability of the poppy ban: "There are also indications that some of the Taliban commanders and mullahs were personally involved in the opium trade. Even more important, a number of warlords, who were already involved in the opium trade, surrendered to the Taliban in exchange for the promise to continue with their lucrative opium business" (UNODC, 2003: 92)

Furthermore, "Though the Taliban successfully implemented the ban, they did not offer any alternative sources of income to the farmers. This caused extreme hardship to a significant number of peasants in a year in which Afghanistan was experiencing a severe drought and thus, very poor yields in other crops. The ban in combination with the ongoing drought meant that malnutrition worsened and cases of starvation deaths were reported" (UNODC, 2003: 93). Furthermore, one important reason why peasants grow poppy in Afghanistan is that poppy cultivation provides access to the only credit mechanism available to them as opium traders lend money to

peasants against future crops (UNODC, 2003, Mansfield, 2004). The poppy ban also prevented some peasants who were in loan arrears from catching up on their debt payments putting them at the mercy of the traffickers.

Fifth, had the Taliban remained in power and the poppy ban in place, the Northern Alliance could have continued using opium and heroin to fund their war against the Taliban that would have been deprived of that key funding source.

In conclusion, the ban on poppy cultivation was a windfall for the Northern Alliance, warlords and other traffickers who had stocks of opium and heroin in Afghanistan because had the ban not taken effect, the decline in the European price of heroin would have been much greater. It is also clear that the ban generated large costs to most poppy growing peasants and a windfall for those in the provinces controlled by the Northern Alliance where the ban was not enforced and benefited from extraordinarily high opium prices. Furthermore, the existence of large surpluses after a bumper 1999 crop and a large 2000 crop, the Taliban's failure to ban opium and heroin trafficking while peasants had great hardships raises substantial questions about the sustainability of the poppy ban. In fact, one cannot conclude that had the Taliban remained in power in Afghanistan, the poppy crop would not have rebounded as it did in 2002 and 2003.

b. Colombia

At the time of the Spanish conquest Colombia's natives had social organizations that were much weaker than those of Bolivia and Peru. They did not have a strong central state as the Indians in those countries or Mexico, Guatemala and Paraguay. Colombian tribes at the time of the Spanish colonization were a collection of fairly autonomous chiefdoms. The largest majority of natives were quickly assimilated into a mestizo society. The tribes that survived represent a small share of the Colombian population and are located in inhospitable locations in the jungle or arid areas where there is little economic activity. Because of that, traditional coca uses have been limited to a very small and isolated segment of the Colombian population, in contrast to Bolivia and Peru where they are widespread among the peasantry and rural-urban migrants. Coca use was so marginal, that between the 1860s, when cocaine was isolated and 1961 when it became illegal, Colombia did not export a leaf of coca or a kilo or cocaine.

In the 1950s and through the mid 1960s illegal drugs were a non-issue in Colombia. The first reference to Colombian drug traffickers is found in late December1956 when twin brothers, a pilot and a chemist, from Medellin's upper class were caught with a few kilos of heroin in a hotel in Havana.[4] Despite this discovery, Colombia's participation in drug trafficking at the time appears to have been incidental. Coca was grown is a few areas where mostly Indian peasants would chew it. Other illicit drug uses included a small group of musicians, writers and intellectuals who dared try new experiences.

Colombia's participation in the illegal drug business began in earnest in the late 1960s after the United States' promoted aerial spraying programs using paraquat

in Mexico and Jamaica. This created a scare among marijuana users and traffickers sought new sources. Marijuana plantings began in the Sierra Nevada de Santa Marta in the Colombia's Caribbean coast. This development is open to interpretations. Arango and Child (1987) argue that it was started by American Peace Corp volunteers who smoked marijuana and had contacts with United States markets taught peasants how to grow marijuana and started its exports.[5] Ruiz-Hernández (1979) presents a more complex picture: American traffickers went out looking for new supply sources and found the Colombian environment suitable. They distributed seeds and booklets with instructions how to grow the plant and returned to purchase and export the product. Colombians caught on quickly on the business and quickly substituted for the foreign traffickers. Colombia's marijuana business grew rapidly but did not last long as the Colombian varieties found it difficult to compete against the stronger "sin semilla" variety hydro phonically produced that became common in the United States.

The experience with marijuana led Colombians to seek other products and found cocaine, a much better product to traffic. Indeed, marijuana was bulky and cumbersome to smuggle while cocaine's very high value to volume and weight ratios make it an ideal smuggling commodity. Colombians started with small trafficking organizations that obtained coca paste or cocaine base in Bolivia and Peru, refined cocaine and smuggled it to the United States. In the United States Colombians used violence to eliminate the competition from the Cuban criminal organizations that had controlled cocaine trafficking since before the Cuban revolution and used a large wave of new Colombian migrants to develop their distribution networks. The illegal business produced very high rates of return and grew very quickly. By the late 1970s the large Medellín and Cali "cartels" were well established, controlled most of the international cocaine market and the drug trafficking industry had become entrenched in Colombian society. It funded political campaigns, began to make large purchases of rural land and urban real estate and had become a factor to recon with in many aspects of Colombian society (Thoumi, 2003, chapter four).

In 1979 Colombia signed an extradition treaty with the United States, ratified in 1982, that became the main source of conflict between the illegal industry and the government. The large amount of capital in the hands of the trafficking organizations that required an extensive social support network and the need to fight extradition led the "cartels" to seek political power. Carlos Lehder, currently serving a life sentence in the United States, established a political national-socialism leaning party and the famous Pablo Escobar "bought" himself a senator with a large constituency who placed Escobar as his substitute in Congress.[6] The need to protect their large illicit capital assets and to evade extradition led to the organization of armed groups. These confronted left wing guerrillas that have controlled large areas of the country for decades, expelled peasants from lands that drug traffickers wanted to control, and were a weapon in intra drug trade wars. The extradition threat led traffickers to challenge the state resulting in a narco-terrorist wave that claimed the lives of many government officials, politicians and law enforcement agents.

This reached its climax in 1989–1990 when three presidential candidates were assassinated by trafficking organizations.

The Colombian state implicitly recognizing its weakness, in several occasions has negotiated with trafficking organizations (Lee and Thoumi, 1999, Thoumi, 2003). In 1991 the government negotiated a system in which traffickers could turn themselves in, plead guilty to one crime and receive a reduced sentence that averaged about five years. Many, including Pablo Escobar, took advantage of this offer. He actually built his own jail on top of a hill overlooking Medellín and negotiated its control. He appointed its own guards and managed his jail from where he continued to run his business. When the government tried to move him to a real jail in July 1992, he escaped and declared an all out war against the establishment. This led to a period of narco-terrorism during which there were frequent bombs against civilian and political targets that ended in early December 1993 when Escobar was killed in a gunfight with the police.

The large “cartels” developed strong links with law enforcement agencies in some regions. The Medellín drug lords invested heavily in rural lands where left wing guerrillas had a strong presence. To protect and increase the value of their investments they organized self-defense groups that fought the guerrillas and were the origin of the current paramilitary movement. To achieve this goal the “cartel” built an alliance with traditional landlords and army personnel that supported the paramilitary.

The Cali “cartel” developed an extensive social support network in that city and led a social cleansing campaign to eradicate indigents, small thieves, prostitutes, homosexuals and others considered undesirables with the support of police members. These also provided intelligence and support to “cartel” members.

These unholy alliances of the “cartels” made it difficult to coordinate police and army anti-drug efforts. Indeed, it is highly probable that the Cali “cartel” provided intelligence to the government in its fight against the “Medellín” cartel. In any case, after the Medellín “cartel” was neutralized, the Cali “cartel” emerged as the predominant trafficking organization.

The 1994 election of Ernesto Samper to the presidency led to an international scandal when it became evident that the Cali “cartel” had provided major funding to his campaign. This led to an open conflict with the United States that “decertified” Colombia in 1996 and 1997. President Samper, under pressure, pursued the Cali “cartel” until almost all its leaders were in jail or killed. By the end of the Samper administration the large “cartels” had lost their importance and the industry had become fragmented into a large number of small “cartelitos” and a few medium size ones.

As noted, Colombia was traditionally a marginal coca producer. Coca plantings developed as a “backward linkage” to the cocaine industry that began in the late 1970s. By 1990 Colombia was the third largest coca grower in the world. During the 1990s several factors led to a dramatic increase in coca acreage that resulted in Colombia being by far the largest world coca producer. The fragmentation of the cocaine syndicates encouraged local production as small trafficking groups

have a strong preference to buy their inputs locally. Left wing guerrillas lost Soviet and Cuban economic support and found coca and poppy plantings and drug trafficking to be excellent sources of "taxes". The growth of the paramilitary movement also required funding and illegal crops and cocaine and heroin processing provided a good share of it. The confrontation between guerrillas and paramilitary displaced a large number of peasants, many of which settled in illicit crop producing areas. Colombia is today the country with the second largest number of displaced citizens in the world after Sudan. The opening of the economy after 1990 dramatically increased competition in agricultural products' markets and a rural crisis ensued that released a willing labor force for coca. Indeed, many peasants migrated from coffee, rice and other farms to unsettled areas where they started coca and poppy fields.

Illegal drugs produced regional booms and a welcome influx of foreign exchange in the 1970s but by the 1990 they had become a principle funding source for both left wing guerrillas and right wing paramilitary forces. The illegal drugs industry has been a main cause of the strengthening of the right and left wing guerrillas and the deepening of the armed conflict experienced by Colombia. It has also been a significant factor in the de-politization of those guerrillas, has corrupted the country's polity and the state apparatus, and its funding of armed actors has been a main cause of violence. Indeed, the presence of armed actors is the main explanatory variable of the extremely high murder rates that prevail in some regions of the country (Rubio, 1999).

The cocaine and heroin industries became main funding sources for political campaigns and political corruption. There is no doubt that a significant group of politicians have been, and are, dependent on the industry. In the current Congress, for instance, there are quite a few that represent or are linked to drug-trafficking paramilitary groups. Both paramilitary and guerrillas control and fight for control of many municipal governments, particularly in rural areas where illicit crops are grown and where drugs are manufactured. Many of the frequent massacres suffered in the country side are the result of those fights or fights to control drug and chemical precursor trafficking routes.

The illegal drugs industry has internationalized the long-running domestic armed conflict. It led to the involvement of foreign governments and international agencies in Colombian policy making functions and has weakened the country's sovereignty. Today left wing guerrillas and paramilitary groups are branded internationally as terrorist organizations. The external mingling in the country affairs and the large revenues provided those groups by the illegal industry have made more difficult and complex any possible solution to the country's internal conflict. Today drugs and armed conflict are intertwined which makes the solutions of the armed conflict and the "drug problem" more complex and dependent on each other.

The main implication of the growth of the illegal drug industry in Colombia has been its catalytic effect in a process of institutional weakening. The illicit drug industry flourished in Colombia because its institutions and the rule of law had become very weak. Once the industry became established, it accelerated and aggravated this weakening process.

Differences, Similarities and State and Institutional Weaknesses in the Two Countries

Afghanistan and Colombia are remarkably different countries. Afghanistan is one of the poorest countries of the world, a traditional society made up by a group of tribes for which Islam plays a key role. Afghani institutions and government forms have very old roots and traditions resilient to change. In contrast Colombia is a country that has experienced a very drastic modernization process that changed institutions and destroyed traditions. Afghanistan is predominantly a rural society (20 years ago 80% of its population was rural). At the beginning of the XX century Colombia was as rural as Afghanistan is today. At the end of the century Colombia was 75% urban. Income per capita, industrialization, and education levels, the role of women in society, the importance of religion, the power of the military and the system of government vary dramatically in the two countries. Without having any pejorative implication, one can assert that Afghanistan is a pre-modern society while Colombia that was pre-modern a century ago, it is still underdeveloped, but today it has many post-modern characteristics. Colombia has experienced a traumatic modernization process that has altered its institutions and culture but it has not produced a stable society.[7]

Despite those large and important differences, both countries became “drug export tigers”. As noted above, the illicit drug industry tends to concentrate in countries and regions where the rule of law of the central state is weak and civil society tolerant of illegal economic activities. In other words, the “drug production problem” is not one of economics alone, but it is primarily one of institutions, governability and social values. The histories of Afghanistan and Colombia support this hypothesis.

a. Afghanistan

Afghanistan is a country of many tribes with differing cultures and loyalties. The population is divided among a Shia minority and Sunni majority Moslems. Its history has been that of a battleground among three cultures (UNODC, 2003). The Hazaras that occupy the western region have always tended to look toward the Iranian plateau. Most speak Persian and are Shia. The Pashtuns and Beluchis on the east and southeast do so toward the Indian subcontinent and are Sunni. The tribes of the Northeast are Tajikistanis, Turkmen and Uzbeks and have roots and links with Central Asia. These ethnic groups are culturally and politically differentiated. They are however, not unified as each one is made up by several tribes. They all have strong tribal and ethnic identities to the point that the orthodox communist party itself was divided in two branches, the Parcham and the Khalk, representing the two tribal segments of Pashtun society, the Ghizlay and the Durrani. It is not surprising that the “creation of the Afghan State was thus not sufficient, in itself, to create a pan-Afghan national identity” (UNODC, 2003: 84).

Afghanistan as a country dates from the mid XVIII century but it was never consolidated as a state. The Durrani dynasty of the Pashtun Abdali tribe ruled Afghanistan from 1747 to 1973. The more than two centuries of Durrani rule witnessed the development of warlordism as the Durranis to remain in power had to continually negotiate with tribesmen and mercenaries who had great autonomy.

Afghani tribes have been very resilient against change and have opposed any modernization attempts. Tribal leaders have frequently appealed to holy wars or jihads to move the population in support of the traditional status quo and ancestral traditions (Roy, 1993: 492–493). Not surprisingly, social uprisings did not aim to make revolutions but to sustain traditional institutions threatened by modernity. The country's first constitution was written only in 1923, some 176 years after the country's creation, a move intended to modernize the country that spanned strong tribal apposition. The country's first university was created only in 1964. During the 1950s and 1970s the government in Kabul was very isolated from the rest of the country: "the troika of Khan (feudal lord), malik (tribal chieftain) and mullah (Muslim priest) controlled the country side quite effectively, had no need for a central government, and objected strongly and violently whenever the central government made any attempt at reform and change" (UNODC, 2003: 86).

Some of the ethnic and tribal lands were divided in 1893 by an agreement with the United Kingdom. This established the "Durand" line that divided between Afghanistan and Pakistan the lands occupied by the largest ethnic group, the Pashtuns. In Pakistan these lands compose the North-West Frontier Province that has maintained a large degree of autonomy from the central government. Today, "Pashtunistan", covers part of Pakistan and Afghanistan a fact that has been a source of friction between the two countries. This division compounds the loyalty problems faced by the Afghani government.

The communist Taraki goverment that took over power in 1978 had strong links with the Soviet Union and tried to implement a drastic modernization program with a socialist bent which, as in the past generated strong widespread opposition from tribal leaders and communities. One of the first measures was a land reform that "threatened the social structure which was based on a landlord/tenant relationship that politically and socially functioned as a patron/client relationship. Other reforms—the abolition of dowry, the enforcement of compulsory literacy courses, the appointment of young, inexperienced and dogmatic urbanites as local administrators, followed by mass arrests of popular leaders called 'feudalists'—antagonized rural communities and rekindled defiance toward the goverment encroachments" (Roy, 1993: 496).

After Taraki was assassinated in the spring of 1979 the Soviet Union invaded Afghanistan. The resistance to Soviet invaders was strong and widespread and it strengthened the tribal warlords. As noted, the war triggered the expansion of poppy plantings.

After the Mujahedeen expelled the Soviets, they could not establish a stable government that controlled the territory. Infighting among diverse factions and

the challenge from the Taliban continued the war, this time a domestic one (Rashid, 2001). The collapse of the economy and the need to fund the war efforts of various actors contributed to a continued expansion of poppy fields during this period.

The Taliban government that took over in 1995 followed the tribal paths of the past, opposed modernization and imposed an extreme version of Islam as the government guiding force. Theirs was a religious state based on pre-modern and fundamentalist interpretations of the Koran. The Taliban success was caused to a significant degree by the weakening of the state institutions, many of which stopped functioning, which created a power vacuum filled by religious fundamentalists (Goodson 2001, chapter 3).

By the time the Taliban took control of most of the country, the poppy culture was established in many regions and despite their intended ban, poppy continued to grow. There is no doubt, as noted above, that the Taliban succeeded in virtually eliminating poppy in 2001. However, as noted, this ban affected mainly peasants, the weakest link in the production-trafficking network, but it did not apply to trade and from the data presented above, it provided a windfall to traffickers and the Northern Alliance.

b. Colombia

The history of Colombia also illustrates the importance of values, institutions and governability in the development of the illegal drugs industry. The XIX century was characterized by a series of civil wars and conflicts, many of them local, that culminated in a bloody civil war at the end of the century between the liberal and conservative parties, the thousand days war, in which over 100,000 people died in a population of some 4 million. Colombia has been characterized for a high level of violence and widespread failure of the rule of law. The country has low levels of solidarity and trust. Social capital in Colombia has characteristically been of the bonding type within small social circles. Bridging social capital across groups has been extremely scarce. This has led some scholars to argue that Colombians' behavior reflect a remarkable individual logic but a disastrous social one (Gómez-Buendía, 1999). They characterize Colombians as extreme individualists who are not concerned with the social effects of their actions. Furthermore the state has particular weaknesses that differentiate it from that of other countries.[8] All these factors not only have made Colombia a very fertile ground for the development of the illegal drugs industry but also for the high level of violence, corruption and other social ills it currently confronts. These forces have been at work in Colombia for a long time, yet they had not brought about before social crises comparable to the current one. As Colombia evolved from a traditional rural society population grew, urbanization exploded, the rural frontier expanded spontaneously without state planning or regulation, education increased, income levels raised, women's roles changed, etc. These changes increased the vulnerability of the Colombian social structure to criminal economic

activities and made it the best location in the Andes for the illegal drug trafficking industry. Once established, this industry acted as a catalyst that accelerated a process of social change and continued to devastate traditional social controls (Thoumi, 1995b).

The following pages explain why Colombia has failed to develop a strong national identity, why the central state has been unable to control the territory and to generate bridging social capital.[9]

First, Colombia emerged from colonial periods as an ensemble of distinct regions with scant communication and trade exchanges among them. Physical obstacles were (and remain) very great so that regions tended to develop as fairly self-sufficient units. In many of them small urban centers grew and today Colombia is a country of many cities that are regional centers.[10] Because of its geography, Colombia was until the early XX century the Latin American country with the lowest per-capita international trade (Palmer, 1980: 46). Only the development of the coffee industry in the 1920s modified this condition. Furthermore, export production generated infrastructure that linked a few Colombian regions with the coast and foreign markets, but contributed little to national integration. Geography was also an obstacle to taxation because it increased its collection costs enormously. Hence its collection was frequently privatized through auctions that permitted private citizens to profit from it.[11] Until the middle of the XX century most central government revenues originated in international trade taxes.[12] Because of its geography, Colombia had the greatest need for investment in infrastructure to integrate the country and form a nation. But because of financial constraints and the need to respond to urban constituencies, the central state's presence has traditionally been precarious in large portions of the country. Indeed, the Colombian state has never controlled its territory.[13]

Second, geography was an obstacle to economic integration because of very high transportation costs and because most urban centers had a variety of weathers nearby that promoted a variety of food and other rural products. This encouraged regional self-sufficiency and discouraged the formation of a national market since most regions produced the same products.

Third, throughout history Colombia has been a country with abundant fertile land. Until the mid-XX century Colombia had a relative scarcity of labor. During colonial times the Spanish faced a political dilemma: in order for the Hidalgos to enjoy a "decent" life of leisure, it was necessary to create institutions that tied down peasants to the land. This led to limitations to peasants' movement and access to land but abundant unsettled lands offered opportunities for peasants and run-away slaves to flee to isolated regions where they could subsist independently of the state. Tropical illnesses were probably the main obstacles to these movements. During the XVIII and XIX centuries "palenques" or settlements of run-away slaves were established out of the control of the state, church and other dominant social institutions. By the late XIX century population in the minifundia areas in the central plateau had increased beyond what those smallholdings could support and peasants migrated mostly

to the opening coffee growing regions where they settled. These migrations led "to the spontaneous formation of societies marginalized from the social, family, religious and political controls that characterized their original locations" (González, 1998: 151) In other words, throughout history the Colombian state and society have had difficulties establishing controls to individual behavior and many Colombians have lived without them.

Fourth, regional heterogeneity found its expression in cultural diversity. Regional behaviors, accents and values tend to be very distinctive. Area loyalties are strong and the conformation of a national identity has been slow and incomplete.[14]

Fifth, during the first 110 years after independence (until the 1920s) Colombia suffered a chronic external debt crisis caused by Simón Bolivar's large foreign borrowing to finance his campaign to liberate Bolivia and Peru (Junguito, 1995). When the Gran Colombia (a country that included current Colombia, Panama, Ecuador and Venezuela) broke down in 1830, the external debt was distributed proportionally to each country's population, irrespective of each country's capacity to pay that was conditioned by its exports. Colombia, that had the lowest exports per-capita and the largest population, lived with a chronic balance of payments crisis and had to renegotiate its share of the debt several times during the XIX century. Because of this, the government did not have access to foreign capital markets to develop the infrastructure needed to integrate the country (Junguito, 1995).

Sixth, during the XIX and part of the XX century Colombia had a series of primary product export booms and busts: indigo, quinine, cocoa, rubber, and bananas. These booms generated short-lived prosperities in different places, which did not allow for the development of stable institutions and communities. Only the development of coffee from the 1920s on was conducive to those developments. This contrasts with the export booms and busts in other Latin American countries that repeated themselves in the same places.

Seventh, the structure of Colombian political parties is atypical. The main parties in Latin America are organized centrally and attempt to present a distinct political agenda. Others respond to a leader with a strong personality. In both these cases, the structure is organized from the top down. In contrast, the Colombian two traditional parties, liberal and conservative, are organized from local groups up. They tend to be organizations of local leaders who unite to influence the central government. In many regions they have substituted for the state and mediated between the central state and the citizenry. Many Colombians developed towards their parties the sort of loyalties that people develop towards the nation state. Until recently, many Colombian were Liberal or Conservative by birth rather than choice. "That sense of belonging represented a transcendental element of civil life that marked and defined personal identities" (Acevedo-Carmona, 1995: 41). For this reason, traditional Colombian parties have been multi-classist and spread throughout the country. Moreover, strong party allegiance has represented an obstacle for the development of other parties. These may meet with occasional success, but will fail to sustain

themselves in the medium term. Diverging political views are most frequently expressed as dissident factions of the traditional parties or as independent, non-party movements.

Eight, during the 1940s and 1950s Colombia experienced *La* Violencia, an ambiguous rural civil war between the two parties that killed about 200,000 people (1.8% of the country's population). This was ended by a "National Front" agreement that alternated the presidency and distributed all public jobs evenly between the parties. This peculiar arrangement led to the de-politization of the parties that became electoral machines whose main goal was to distribute the government bounty but achieved little beyond that. It is significant that from the post-war period until the late 1990s politics remained very distant from the formulation of many economic policies. These were relegated to highly trained professionals who formulated them and responded more to pressures of the economic elite than to the concerns of the majority. Hence the dictum "the country is in bad shape but the economy is doing well" which reflected public perceptions of Colombian reality for many years. The political system in Colombia has not been responsive to the need for social and economic reforms. Colombia has been the only country in the region where the political left never achieved an electoral success that allowed to experiment with policies different from those advocated by the traditional establishment.[15] This has had a positive effect to the extent that in contrast to most of Latin America, macroeconomic stability was able to prevail and extreme inflationary episodes as well as economic crises were averted (Urrutia, 1991). However, lower class grievances have not found channels to express themselves; significant needed reforms were frustrated and their supporters led to advocate the resort to violent non-political means.[16]

Ninth, native communities were weaker and did not generate social behavioral constraints in the majority of the peasant population, as in other Andean countries. In Bolivia, Ecuador and Peru native communities have a strong identity, their members develop a sense of belonging and the community generates important behavioral norms. In Colombia the largest native groups where organized enough to be exploited by the Spanish Colonizadores, but weak enough to survive as a community. In addition, those communities experienced a very fast process of *mestizaje*, blended into the mainstream and lost their identities (Jaramillo-Uribe, 1991, chap. 3). Colombia still has some native communities where social norms are strong and deviant *behaviors* punished. However, these are a minority. Most Colombian peasants are the result of *mestizaje* and have weak communal ties. Colombian native communities are the exception in rural Colombia. A few subsist in isolated areas or in the southern highlands that marked the northern limits of the Inca Empire.

Tenth, Colombia is the Latin American country that has had the most limited exposure to non-Spanish influences. It has had the fewest number of non-Spanish immigrants relative to the size of its population, especially non-Catholic. Colombia was settled by Spaniards who came shortly after seven centuries of warring with the Arabs. They came from one of the most medieval regions of Europe and the regional isolation discussed above allowed them to maintain

many of their traits. Their values have influenced Colombian society throughout its history. For instance, the 1886 Constitution that remained in force with some amendments until 1991, aimed at strengthening *Hispanidad* and it attempted to replicate the Spain of Philip II. This constitution was very hostile to non-Spanish and non-Catholic immigrants since the Church monopolized many civil procedures and controlled education. It is significant in this respect that Colombia is one of the countries where it is most difficult to become a naturalized citizen. These factors explain why until recently Colombia remained remote from modernizing ideas and technologies. In the words of former president Alfonso López-Michelsen, Colombia was the Tibet of Latin America. Traditional pre-modern Spanish values were not conducive to respect of central government laws or authorities and the isolation of many of the descendants of the Conquistadores allowed them to remain fairly autonomous from the central government. In the early XX century, Colombia was a very stratified society in which landlords retained a great deal of autonomy. Their local power was strong and they could frequently abuse it. In other words, their societies did not impose strong behavioral constraints.

Eleventh, Colombia experienced during the XX century a dramatic expansion of the agricultural and ranching frontier. This process was highly influenced by rural violence and population explosion.[17] Individual settlers spontaneously undertook most of this expansion with little if any state support. Most settlers were armed and many were displaced by rural violence in other regions. These settlements were violent and unstable. In many cases guerrilla organizations were welcome as they imposed order in the existing power vacuum.[18]

Twelfth, "La Violencia" also generated large rural-urban migrations to urban slums. One salient effect of violence-induced migration is the loss of links between migrants and their original communities, which are often destroyed. Many urban-rural migrants lost whatever social links and constraints they had, and their predicament caused them in turn to be extremely resentful. Furthermore, there was a significant rural-rural migration that went into the "empty lands" (terrenos baldíos) that established many settlements outside state control.

Thirteenth, The Colombian military is also distinctive. Colombia had not experienced military coups (the 1953–1958 military government was the result of an "opinion coup" in response to a social clamor to halt the "Violencia"). The armed forces have been traditionally weak. They have never controlled the territory and lacked in particular a significant presence in large border areas. In addition, they are not representative of Colombian society: military service by elite children has been exceptional. Finally, Colombian military personnel have generally not been active in politics, even after retirement.

Fourteenth, all Colombian citizens have had life long experience with violence and insecurity. It can be argued that every Colombian has been a victim and many others victimizers. Post trauma stress syndrome is rampant and untreated. One can only speculate about the implications that this may have on social development

prospects, but in a society in which everyone is leery, developing social trust is a considerable feat.

Drugs, Institutions, Governability, Social Values and Drug Policy Failure

Current anti-drug polices are fundamentally repressive. Their principle aim in mainly producing countries is to make it unprofitable to engage in drug production and trafficking. To reiterate an important point: if drug profits were the main determinant of drug production and trafficking location, neither Afghanistan nor Colombia would be important players in the coca-cocaine and opium-heroin industry as they would be competing with a large number of other countries where those activities could take place. The illegal drugs industry flourished in Afghanistan and Colombia as a result of historical processes that made those countries highly vulnerable because of the lack of rule of law from a central state and a tolerant civil society.

A comparison of the two countries shows that despite their great differences in culture, religions, traditions and economic development each one became the major producer of a plant based major illegal drug. These developments were the result of processes in which the central state failed to impose its rule in the country and the social controls on individual behavior were weakened or disappeared. In some instances, civil society organizations actually encouraged the development of the illegal industry that became functional to their goals. Today both countries are involved in complex armed conflicts that involve foreign armies and other international actors.[19]

The history of the development of the illegal drug industry in Afghanistan and Colombia demonstrates the importance of governance, institutions and values in the decision-making processes of individuals who are involved in the illegal industry. Current anti-drug policies are fundamentally designed to make illegal drugs production and marketing less profitable. They increase costs of doing illegal business and have large sanctions to those caught. Even alternative development, the only carrot in the anti-drug policy arsenal is designed to lower the relative profitability of illegal crops and when alternative development programs are funded by USAID, they are directly tied to eradication. Repressive anti-drug polices are formulated from the perspective of traditional analysis of domestic criminal activities that assume that in every society there always are some bad apples that need to be extracted: "we reject the argument that current drug laws have made the drug problem worse. What has made the problem worse are individuals who have made some very poor choices" (Tully and Bennett, 1992).[20] This logic applied to all those involved in the illegal drug industry in Afghanistan and Colombia, including scores of poor poppy and coca farmers, makes them criminals who have made "poor choices" and as criminals have to be punished.

This repressive approach denies any relevance to the social, political and economic processes that have resulted in the development of the illegal drug industry.

If as it is the case with Afghanistan and Colombia, these two countries are statistical outliers, that is, grossly atypical, to find a solution to the drug "problem" it is necessary to understand why they are outliers and to take measures accordingly. In Afghanistan and Colombia the illegal drugs industry is deeply intertwined with the armed groups that are warring in those countries. Indeed, it is unlikely that peace be achieved in either country without sharply decreasing the magnitude of the illegal drugs industry and vice-versa. That is, the drug, armed conflict and political problems have to be solved jointly.

In both countries it is imperative to strengthen the central state and governability and to generate true citizens who are stakeholders in the state and act accordingly. This is a tall order and one that many politicians might shy away from it because they consider that it is unrealistic. Despite this, it is necessary to at least have anti-drug policies that do not lower the possibility to achieve the long-term changes necessary for success. Unfortunately, some of the main anti-drug policies currently applied undercut the possibilities for long-term institutional change. Forced eradication, for example, is not likely to strengthen peasants' loyalty to the central state. Indeed, in the case of aerial spraying in Colombia, this policy makes the state look like an enemy of the peasantry. It may achieve some short-term success at the expense of having more peasants become involved in other illegal activities. One example of this are young people (men and women) who after seen their illicit and licit crops sprayed from an airplane, join a guerrilla or paramilitary group that offer their only employment opportunity.

Other policies like extradition, interdiction of drugs and chemical precursors and anti-money laundering measures attack the illegal industry's profitability but cannot eliminate it. This is why it is imperative to focus on changing the underlining social reasons for the development of illegal economic activities. Besides being involved in drugs, Colombia is today a top world producer of counterfeit United States dollars and kidnappings in the world. It is also a main supplier of prostitutes to the European market. It is the only country where one finds "not for sale" signs in buildings to prevent fraudulent sales, etc. In other words, it has developed a culture of illegality of which drugs are only one of the various illegal activities. Changing this culture is a prerequisite to eliminate the illegal drugs industry. Such a change requires patience as the process of building strong communities, generating solidarity, sense of belonging, and responsible citizenship is very uncertain.

In Afghanistan, more than in Colombia, anti-drug policies are today part of the war on terrorism. This war focus on traditional war actions but the causes of terrorism are not considered or discussed. As with drugs, they are dismissed by most policy makers as terrorism is considered as a tactic of those "who envy and hate us for our successes". In order to eliminate drugs in Afghanistan it would be necessary to change the land tenancy structure and to develop modern financial and marketing systems to provide resources and markets for the peasantry in the midst of a war environment. It is possible that a few successes be achieved with alternative development programs in some regions, but as long the

state control and the dependence on the drug trade of at least a segment of the politicians remains, it is highly questionable what current policies can achieve.

In Afghanistan and Colombia the "drug problem" is not one that can be solved with traditional policies without deeper changes in those societies. Indeed, one would love to have the problem be caused by the inefficient application of current policies in which case if those polices were enforced and applied correctly, one would achieve a solution. In both countries the "drug problem" is one of institutions, structure and values and those are very difficult to change but to begin the process of finding a solution, the first step is to recognize the complexity and nature of the problem. Otherwise we will continue applying ineffective policies and hoping for a solution that has not been found in over thirty years of a "war on drugs" and that is unlikely to be achieved with more of the same.

Notes

1. Thoumi (2003, chapter three and 2005b) develop a model of the competitive advantage in illegal drugs to explain this phenomenon.
2. See for example Gugliota and Leen (1990) and Scott and Marshall (1991) for documentation about the Sandinista and contras connections to the drug trade respectively.
3. It should be pointed out that the first United Nations serious estimate took place in 1994. Earlier figures are weaker and can be considered as "guesstimates".
4. It appears that the opium used to refine the heroin was of Ecuadorian origin. In February 1957 a small lab used to refine cocaine was discovered in their house in the posh Poblado neighborhood in Medellín. This incident may be construed as a precursor of later developments in that city (Saénz-Rovner, 2005).
5. This is an attractive exculpatory explanation for many Colombians but it is rather naive. For it to be valid, it is required that the only marijuana smoking Peace Corp volunteers were located in Colombia. Otherwise, they would have done the same in all other countries in the Caribbean Basin where they were placed.
6. In the Colombian congress every senator and representative was elected as part of a list. Those in lower positions in the list could replace the elected official when he or she did not attend congress sessions.
7. This is why some analysts refer to the Colombian condition as a "postponed modernity" (Jaramillo-Vélez, 1998).
8. It is important to acknowledge that there is another current of thought according to which the guerrillas, paramilitary and drug traffickers are calamities and scourges generated by exogenous factors. This current argues that Colombian institutions have been extraordinarily strong to survive in the presence of such strong challenges (Cepeda-Ulloa, 2004). Following this line, it is argued that the growth of the illegal drug industry was the result of an "external shock (Gaviria, 2000). The supporters of this position, however, fail to explain why the effects of the "external shock" were concentrated in one country and did not affect others.
9. These are taken liberally from Thoumi (2005).
10. The 1993 census, the last one available, estimated Bogotá's population at about 5 million. There were two metropolitan areas of 2 million each and one of 1.3 million, two others had over 600 thousand, one about half a million, three were in the 300–400 thousand range, nine in the 200–300 thousand range and six in the 100 to 200 thousand range.

11. Deas (1982) gives several examples. Those that auctioned alcohol and tobacco taxes appeared to have prospered but there were instances in which private collectors actually lost money.
12. Colombian low taxes were a constant throughout all the XIX century. Deas (1982) is a fascinating study of these problems and the ways in which various governments coped trying to collect them.
13. It may be argued that this has also been the case in other Latin American countries. Colombia, however, is different because of the dispersion of its population among small urban centers. In countries like Peru, Bolivia or Brazil, the state did not have presence in large parts of the territory, but most of the population lived in areas where the state did have presence, which was not the case in Colombia.
14. This is what Yunis (2003) calls regional "cultural endogamy".
15. The October 2003 election of left leaning Luis Eduardo "Lucho" Garzón as Bogotá's mayor maybe an important milestone for change.
16. Colombia has had reform-oriented movements. For example Liberation Theology originated in the country. However, the effect of these movements on government policies has been marginal at best.
17. From the end of post WW II to the mid 1970s Colombia had one of the highest population growth rates in Latin America. Since then it has had one of the sharpest declines. This was achieved through a quiet Government funded campaign after the Catholic Church agreed not to oppose it as long as the Government did not promote it openly. The effects of this decline on the labor force increase began to be felt only in the 1990s and were partially compensated by an increase in female labor force participation rate.
18. This process is in stark contrast with the Chapare settlements in Bolivia where many peasants migrated communally and where the state promoted migrations and had some presence. Indeed, today Chapare has the best rural infrastructure of any Bolivian region while the Colombian coca and poppy growing zones have almost none (Thoumi, 2003).
19. Labrousse (2005) makes an interesting parallel between FARC and the Taliban.
20. The article from which this quote is extracted was unanimously endorsed by the Major City Chiefs of Police at their October 6, 1988, meeting in Portland, Oregon.

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9
Half-baked Legalization Won't Work

Frank Bovenkerk

Introduction

The origins of this article lie in a conversation I had with Alan Block in 1989 after I talked about crime and punishment in the Netherlands with the group of students he had brought to Leiden. "You think you don't have organized crime in the Netherlands?", he asked me. I was so taken aback I didn't know what to say. I was familiar with what Block had written and knew his historical research demonstrated that the American Mafia gang wars of the 1920s had never occurred. But organized crime in the Netherlands, what was I supposed to make of that? We live in such a carefully planned, socially responsible country with virtually the lowest homicide rate in the world!

Alan Block asked me to stay another hour so I could listen to his own lecture on American gangsters in the Netherlands.[1] It turned out that the Cellinis, a crime family from Washington D.C. and part of Meyer Lansky's network, had settled in the Red Light District of Amsterdam in the 1970s to set up a gambling business. Maurits de Vries alias Zwarte Joop (Black Joe because of his black hair), locally known for his night clubs with live sex shows, served as the Dutch partner. Block had obtained his information from a police investigator from New Jersey who had been tracking down gangsters like Cellini and Nesline for years, and had taken the files home with him when he retired.

That very same evening, we went to the Red Light District to test the story. Ton van Dijk, gangster specialist at the Dutch weekly *Haagse Post*, served as our guide. As an amateur wrestler, Van Dijk was a regular at the athletic club upstairs from the sex palace *Casa Rosso*, where he lost a bout with trainer and world wrestling champion Chris Dolman every week just to keep in close contact with the Amsterdam underworld. Alan Block's story checked out. The "Americans with Italian names" had set up *Cabala Casino* and then *Club 26*.[2] We chatted with *the guys* about why the American Mafia had left Amsterdam again in 1986. Maybe it was due to mismanagement, maybe the clubs were competing too much, or perhaps it was because De Vries died ... a natural death. But the real reason must have been that with the Games of Chance Act, the Netherlands legalized gambling in 1986. From that moment on, Government

Ministries started organizing lotteries to give their own budgets some flexibility, and there was not much left for gangsters to do. So something changed, and it is one aspect of these changes – the cultivation and use of marijuana in the Netherlands – that this chapter is about.

Following the Current

One November evening in 1999, the Rivieren district in the Dutch town of Deventer was startled and unnerved by an invasion of 250 cops, city officials and power company inspectors. The six search teams this small army was divided into did a house-to-house check to see if anyone was commercially growing cannabis there. The Rivieren district was one of the former working-class neighborhoods city officials would rather not go to because the residents responded so aggressively to anything official. Things had quieted down now, the whole area had had a recent facelift and the tenants of the renovated buildings got along pretty well with each other. But the social problems were still there, there were still plenty of people out of work and lots of old-style large families who had to get by on welfare checks.

The reason for the police raid under the code name Following the Current was not the punishable cultivation of *Netherweed* in itself and no one had anything special against the neighborhood. On the contrary, the intervention meant a letdown for Dutch drug policy. The Mayor of Deventer was known for his progressive standpoint on the issue and this being a deprived district had made the authorities hesitant to go ahead with the raid.

It was however the Northeast Netherlands Power Company that sounded the alarm. Electricity for the strong lamps shining down on the cannabis plants was being tapped on a large scale via the cable before it reached the electricity meter. This was using up so much current that fuses were blowing. Neighborhood residents immediately remedied the situation, since in a Dutch winter, three and a half hours without current could mean the failure of a whole cannabis crop. But they were doing so by sticking iron nails in between the electricity poles, which is something the Fire Department expressly tells folks not to do. If there was a short circuit and a fire broke out, the power company could be held liable. The use of current in the neighborhood had quadrupled in the past year, which meant four million euros losses for the power plant. The strong lamps that supplied the light and heat that made the cannabis plants grow was using so much current that the neighbors had no electricity. Their television sets and refrigerators kept failing intermittently. The police were getting anonymous complaints about the odor and flooding coming from a neighbor's house. In a number of cases, the high electricity bills were what led to the suspicion of punishable acts. An annual usage of 2,500 kiloWatt hours is normal. A bill for 4,000 kiloWatt hours presumably means cannabis is being grown, and so does a bill of 300, because this suggests that the current is probably being tapped. Prospective cannabis growers got a tremendous boost when

new street lighting was installed as part of *Safe Living*, a neighborhood security plan. The streets were excavated for a couple of days to install new cables and residents were quick to take advantage of this unexpected opportunity to get their own wires installed.

Throughout the raid, the police were not taking any risks. Each apartment was searched by three patrol cops, one drugs investigator to make sure it was really cannabis and the permissible number of plants had been exceeded, and one power company employee. With reasonable certainty, the photographs taken from a helicopter earlier that night by thermal imaging cameras were able to locate the attics with cannabis. Pot farms were found in fifty-five of the ninety premises that were searched. The investigation method was later deemed acceptable by a judge. After all, there had been individual suspicions about each of the buildings. The search was largely conducted house-to-house simply because the cannabis was being grown in virtually all the buildings.

The Dutch Cannabis Act states that individuals can grow no more than five plants. If they harvest three times a year, this should supply more than enough for their own personal use. The police found pot farms though with maybe 250 plants, enough to pretty much fill the average living room. All the plants were the exact same kind, showing that the cannabis was not for innocent recreational use or a fun kind of hobby. The light installations, fertilizer and soil were all identical. The rooms were all sealed in the same way and there was always the same irrigation system. All this was indicative of one and the same supplier. The electricity meters had been so skillfully tapped that the police thought it might well have been done by power company employees earning a bit of money on the side. Whoever had been organizing the home cannabis farming in the neighborhood was apparently pretty well connected and not just in the underworld. The raid that had been prepared in total secrecy was filmed by a team from a commercial television company, poised on the outskirts of the Rivieren district at just the right moment, waiting for the police to arrive.

The pot farms were destroyed and all the remains were later picked up by a waste processing company. The current was turned off and wasn't turned on again until the very sizeable back bills had been paid. Not that the bills were not quickly paid, and the fines were apparently accepted as part of the calculated risk. The home cannabis growers were all interrogated, but once again their statements were identical and had obviously been carefully rehearsed. All of them said they were only growing cannabis for their own use, and the plants that had been found were their very first harvest. Later in court, this same statement was made by all their relatives who came in to testify that some of the plants were theirs. It was hard to keep from laughing when the judge questioned the umpteenth gray-haired grandmother and volunteered the assumption that in her case as well, the cannabis was for her own use. It was clear that none of the parties involved had any objections to the production of soft drugs in itself. In their opinion, it was not an offense that was inherently bad. There are nonetheless three reasons why all the suspects were hesitant to reveal much about their activities to either the police or the judge.

Firstly, they had been earning quite a bit of money and many of them would continue to do so in the future. If the crop is good – which is not always the case due to plant diseases – one room, attic or barn filled with cannabis can earn a grower anywhere from eight to thirteen thousand euros. Three or four crops a year can earn a grower so much he can pay off all his debts and finally have his share of the country's prosperity. "We also like a nice pork chop now and then and we wouldn't mind a good radio either," one of the suspects said. The judge gave most of the cannabis growers a fine of two thousand euros, and half the sentence was suspended. So it was only a small item on their budget. They paid the fines immediately and without any problem.

Secondly, the confrontation with the police and the court barely had any deterrent effect in this neighborhood. Some of the cannabis farmers already had a criminal record and had very little to lose. Everyone knew each other well as neighbors or relatives, and they joined to form a closed front against the outside world. Openly cooperating with the police was anything but a tradition here. And thirdly, as is noted in greater detail below, they were afraid of reprisals from whoever was organizing this underground cottage industry.

There was a second raid the following afternoon, this time at a local trailer park where another nine pot farms were destroyed. The police had known for quite some time that the people organizing the illegal home pot farms lived in one of the local trailer parks. In particular, there was a handful of suspects from a few notorious families. By notorious, I explicitly mean they did not hesitate to use violence to protect their commercial interests. The men involved were the ones who recruited interested cannabis farmers in the Rivieren district and supplied them with cloned nursery plants. They were the ones who supplied the breeding equipment and they saw to the sales. The police clearly had the impression that most of the marijuana was not grown for Dutch smokers or for delivery to the back doors of coffee shops. It was grown to be exported to Germany, and the men from the trailer park transported it to Germany themselves by car.

During the raid in the Rivieren district, the police observed a man who did not say a word and did not do anything at all but walk back and forth past the houses while the plants were being removed. He was from the trailer park. His intimidating presence was the third and most important reason not to talk to the police.

No matter how reluctant the authorities may have been about conducting the raid, many older and experienced police officers were delighted with it. Some of the inner cities where crime was rampant and the larger trailer parks set up by the government in the 1960s had essentially become no go areas. The residents were terrorized by the notorious families and after a certain number of threats, even the people who needed to be there because they worked for the power company, the Welfare Department or a debt collection agency decided it was wiser to stay away. In addition to the results of Following the Current in combating the illegal production of drugs and the illegal tapping of electricity (probably not even that much), at any rate now the residents had their neighborhood back. During the raid, the police felt reinforced by the encouragement of neighbors who wanted no part of the new cannabis economy and were only too happy to give the police addresses of other pot farms. They were

even indignant when the police ignored their instructions because the District Attorney running the investigation had only given them permission to search the addresses that had led to concrete suspicions in the past.

After the raid was over, it was not quite clear what the families of cannabis growers had been doing with their newfound prosperity. They had paid off their debts, bought some new electronic equipment and redid the living room. Their children had some expensive toys and were wearing new clothes. There was finally an expensive car out front. But no matter what they had been earning, all the new purchases had just gotten them into debt again and the investigators were surprised at how little cash they found in their homes. The new wealth still had not linked the people from this deprived district to the conventional world. They did not save any of the money they were earning, they didn't put it in the bank or invest it in setting up a nice legal business. It is true that they had only very recently boosted their earning power, but still, it did not look as if they were using the money to give the next generation a good education or guarantee their upward social mobility in any legal way.

All the Dutch media zoomed in on the spectacular raid. People had watched the same problem mushroom in other cities and, as had also been the case in Deventer, the authorities were hesitant to intervene. In particular, the clear link with the people from the trailer parks, who were already so stigmatized, made it a touchy matter. Following the Current was not the first raid of its kind, not by a long shot. There had been dozens of raids of this kind all across the Netherlands and the result as regards the number of plants or pot farms had been larger. But the abundant media attention put this kind of centrally steered but widely distributed criminal cannabis cottage industry into the limelight. Had the drug economy entered a new stage? This was not the last raid in Deventer. Later ones at the exact same addresses revealed that everyone simply went on with business as usual.

Dutch Decriminalization of Drugs

In the Netherlands, drug use is primarily viewed as a public health issue. Policy is focused on normalizing drug use. The authorities give youngsters pragmatic information and do not moralize.[3] The de facto toleration of cannabis is a sensible first step towards the complete legalization of drugs.[4] After all, there are relatively few objections to cannabis itself. It does have a hallucinogenic effect, but there are barely any unfavorable side effects. The absence of any withdrawal symptoms has led physicians and pharmacologists to classify it as non-addictive. As is the case with any other stimulant, a small percentage of users nonetheless have a hard time limiting their use. Counseling and therapy can however be arranged for these problematic users, who often have serious psychological issues to deal with. Compared to the harm caused by tobacco or alcohol, the harm caused by cannabis would not in any way seem to warrant prohibiting it.

It was more or less an accident of history that the use and cultivation of cannabis was first made punishable by law. There is a rather disenchanting

anecdote about it. In 1975, Bruun, Pan and Rexed wrote a history of the international agreements that led various countries to prohibit alcohol and drugs.[5] *The Gentlemen's Club* in the title of the book refers to a group of narcotics experts who kept running into each other at international conferences on the topic. The members of the club were the ones who prepared all the relevant decisions. At the convention in The Hague in 1923, Italy submitted a request to have cannabis put under international control, but the other countries were not interested. In 1923, South Africa requested that a study be conducted on cannabis in the various participating countries, as was indeed done a few years later. But before that happened, at the Second Opium Conference in Geneva (1924–1925), an eminent delegate from Egypt unexpectedly suggested prohibiting cannabis, even though the subject was not on the agenda. There were *hashishism*-related problems in Egypt at the time, and he asked the other gentlemen for their support. They decided to back him. In 1925, when twenty-five countries presented the results of the study requested by South Africa, it turned out that the harm caused by cannabis was negligible. The findings had however already been superseded by the political decision-making.

Harry Anslinger, the first American drug czar and head of the Federal Bureau of Narcotics, launched a vehement campaign against drugs in 1934. He stated that the use of cannabis led to crime and violence and claimed that cannabis users had been known to chop up their whole families into pieces. "Cannabis," he said, "is the most evil of all narcotics. Much worse than morphine and cocaine. People under the influence of cannabis change into animals." From that moment on, information on the effects of cannabis was selectively used. The American view prevailed and in 1955, cannabis was internationally prohibited.

In accordance with the international agreements, the Netherlands is under the obligation to prohibit the smuggling, growing, possession and production of various substances including cannabis. This obligation is expressed in Section 3 of the Opium Act passed in 1976. With the exception of commercial cultivation, the authorities have however decided not to give high priority to the prosecution of these offenses. There is a certain extent of leeway in the administration of justice because Dutch criminal law recognizes the rule of expediency. In other words, the prosecution of an offense can be waived if tolerating it serves the general interest, in this case public health. This rule of expediency constitutes the legal grounds for the famous and infamous Dutch toleration policy. Of course the Opium Act is also only enforced at a very limited level if at all in other countries including France – how else could a government effectively cope with millions of soft drug users? – but in the Netherlands this non-enforcement has been elevated to official policy.

This pragmatic approach is an active kind of policy that works. The Netherlands has succeeded in separating the worlds of hard and soft drug users. Despite the very liberal policy, the use of soft drugs by the younger generation has not gotten out of hand. The amount of soft drug use in the Netherlands is pretty much the European average. The Dutch policy manifests itself in the well-known coffee shops that sell marijuana and hashish instead of coffee. At the moment there are about 800 coffee shops, where anyone above the age of eighteen can buy an

amount of cannabis supposedly for their own use in any number of Dutch municipalities. Each coffee shop only has a limited supply in stock of a maximum of 500 grams. Users are also allowed to grow a maximum of five plants for their own use. They can buy everything they need at the grow shops where soil, fertilizer, pesticides and so forth are sold that can theoretically be used for any kind of horticulture. Everyone knows though that the more than 200 grow shops in the Netherlands are not for growing tomatoes but for marijuana. The great advantage of this policy is supposedly that it eliminates the trade in drugs and consequently the serious crime accompanying it. After all, everyone is now free to buy or grow cannabis and no one has to go to illegal suppliers.

According to the Dutch philosophy, it is however strictly forbidden to earn money on drugs. Dealing drugs is punishable by long (by Dutch standards) prison sentences. The police and courts are making every effort to prosecute dealers considered part of organized crime networks and give them prison sentences just as long as anywhere else in Europe. In the 1990s quite a few prominent Dutch criminals and their organizations, in so far as they existed, were put behind bars and there was active cooperation with foreign investigation agencies in the United States and Canada to eliminate the wholesale trade in narcotics.

The drug problem seems to have been neatly and pragmatically solved in a way the rest of the world views as *typically Dutch*. The organized drug trade has been eliminated and the Dutch are able to fill their need for soft drugs in a normal way. But is that really true? Then why have whole neighborhoods like the Rivieren district in Deventer started to mass produce Netherweed?

The Bare Truth and Half-baked Legalization

There is a bizarre discrepancy between the coffee shop policy permitting the use of cannabis and the battle against the wholesale drug trade and international smuggling. Professor Block's students always saw the irony of the situation. "How can you allow consumers to buy small quantities of drugs and make it illegal to supply the store?" We have what is known in the Netherlands as the *back door solution*. The police won't intervene at the front door and won't look at the back door! The use of drugs is legal, but the drug trade is not. There is an obvious historical parallel. In the 1920s, Americans could drink at home, but there was a law against manufacturing, importing or serving alcoholic beverages to paying customers.[6] In the United States, this contradiction in policy produced a unique form of organized crime.

Another complication is that the Netherlands is surrounded by a world where it is forbidden to buy drugs and there is no policy of toleration. This makes the Netherlands particularly interesting for drug tourists. Like youngsters all over, Alan Block's students are well aware that you can buy marijuana cheaply and smoke it at Dutch coffee shops without running the risk of getting arrested. Just as much is sold to foreign buyers in the regions bordering Belgium and Germany and the large cities in the west of the country as to Dutch users. Up to now, Dutch political efforts to keep

foreigners out of the drug shops have come up against EU anti-discrimination rulings. What is more, in the Netherlands you can grow large quantities of marijuana for export purposes and run much less of a risk of prosecution. I will demonstrate below how this risk-avoidance economy is organized. The elimination of the borders between the European Union member states has made it easy to export cannabis to the United Kingdom, France, the Scandinavian countries or Germany, where retail prices are higher and sometimes much higher than in the Netherlands.

The Netherlands occupies a unique position in the international drug trade.[7] Its location in the traffic geography makes it the perfect transit country for drugs throughout Western Europe. The cosmopolitan and relaxed commercial style makes it the perfect site for conducting international business. With a narrow majority, Dutch public opinion supports the toleration policy and drugs are viewed anyway as being less of a threat than in other countries. There is ample familiarity in the fields of agriculture and horticulture with the most modern growing techniques. Specialized knowledge on experiments with new varieties of cannabis has been imported from the United States. When Ronald Reagan came into office in 1980 and American drug policy tightened, this heralded the exodus of various marijuana mavens. In 1985, Ed (Magic Sam) Selezny and Ed Rosental both headed for the Netherlands. They continued their crop upgrading experiments in the open field as well as at premises in an Amsterdam working-class neighborhood converted into full-fledged laboratories. But the main distinctive feature is still the ambiguous drug policy with the two-door coffee shop as its very striking result.

It is hard to say exactly how much Netherweed is grown on Dutch soil. (The quality is getting better and better and the THC level is so high the police claim it has the strength of hard drugs.) We know how many pounds of marijuana are intercepted by the police every year at the pot farms or in transit, but we do not know what fraction they are of the total amount. Even an enormous haul (the most recent hauls in 2005 were 14,000 cuttings at pot farms in Roosendaal, 16,000 plants in Geleen and 15,000 plants in Drachten, all three of which are small villages) does not noticeably affect the price of marijuana, so the total amount of the supply has got to be huge. Since cannabis farming is locally organized in the Netherlands, there is no mafia boss or anyone like that who can oversee the total crop and the money it brings in, and who we can ask about it.[8] Nor does the size of the consumer market provide a definitive answer, since most of the production is assumed to be grown for export purposes. (Cannabis growers themselves tend to estimate the export percentage at anywhere from 80 to 85%.) The power companies base their calculations on the total amount of stolen electricity. It would be enough to completely supply a medium-sized town. The municipalities and housing associations estimate the percentage of their total housing supply that is used for pot farms at 1 to 2%. The media have a field day making their own estimates based on a few police figures. *Zembla*, a Dutch television programme that does serious investigative journalism, informed its viewers that one and a half to two billion euros worth of Netherweed was grown in 2005. That is just about what the Dutch production of cheese is worth! The equally serious newspaper *Limburgs Dagblad* has printed the police and power company estimates, and calculates that the annual turnover ought

to be a good four billion euros. That is somewhere in the vicinity of the total farming production of the Netherlands. We are talking big bucks, but how big?

So what do we know about this illegal branch of business? Taking the analogy with Prohibition in the United States one step further, the conditions for the development of a real mafia-type organization can be assumed to be optimal. Weren't the Italian crime syndicates a direct result of the growing black market in alcohol? At any rate that is the conclusion to be drawn from the overwhelming amount of popular literature about the birth of La Cosa Nostra. Economists, particularly Thomas C. Schelling, reason that illegal markets always deteriorate into systems of extortion and consequently tend to monopolize. Criminologists like Haller, Smith, Block and Reuter have objected to the mafia myth and analyse the business structure on the grounds of the production economy of the goods in question. Which is also what I would like to do here.

Cannabis farming is done in the Netherlands in three ways. It is done in the open field, usually surrounded and hidden from view by rows of corn stalks. Due to the limited amount of space in the Netherlands and the moderate ocean climate, the profits are not spectacular. Large plantations are run in huge commercial halls in industrial yards and in empty buildings on farms. Cannabis is grown there under special lamps and if the entrepreneur wants to play safe, he either gets his electricity from a generator or promptly pays his extremely high electricity bills. Small farms have been found in bedrooms, attics, sheds behind inner city homes and at trailer parks. There are individuals who independently pioneer with their own little farms, but it is usually large enterprises that rent the residential or commercial premises. The economic system bears a strong resemblance to some of the cottage industries of the nineteenth century. The enterprise equips the space with all the necessary electrical installations, distributes the raw materials, and all it asks of the subcontractors is that they provide the premises, keep an eye on the plants and water them now and then. For every harvest, and there can be up to four a year, there are cutting crews that come in, usually consisting of illegal aliens, who cut off the tops of the female plants that are ready to be harvested. The contracting out of the work is not based on the same principle as for example having shoes made by home workers in the nineteenth century. Instead the essence is that the criminal risk is transferred. It is relatively easy for the police to find the farms and confiscate the equipment and plants. The home farmer will not under any circumstance reveal who he really works for. The system makes him responsible and makes him pay the damages. As a result, the home farmer has no choice but to carry on. The owners of the buildings say they have no idea what the premises are being used for, and the farmers claim they just wanted to earn a little bit of money. None of the people who are arrested and appear in court know anything. They are *poor unfortunates* and the sentences they get are generally so short that they don't deter them from giving it another try.

Do the police really have no idea which gangs are behind this cottage industry? In fact they know quite a bit, but they are generally not motivated to go on investigating. Cannabis farming is a low priority for police investigators interested in organized crime. Their main focus is on hard drugs (XTC laboratories), people smuggling and

environmental offenses. When it is marijuana that is involved, there is a good chance the Public Prosecutor, who leads the investigation in the Dutch criminal law system, will announce he is not going to prosecute any offenses related to soft drugs. “We have more important things to do.” Of course there are thousands of people who know exactly what is going on in this world of illegal drugs, the people who own the premises, water the plants, drive the trucks, cut the tops off the plants, the neighbors and the power company inspectors, but they all keep their mouths shut. The neighborhood is benefiting from it financially, there are very few moral objections to soft drugs, and all you have to do is make sure the place doesn’t burn down or get flooded. But the most important reason is undoubtedly intimidation.

Every so often, someone who sees the police confiscating his plants and equipment manages to mumble “I can’t say anything. They’ll get me.” But that is about as far as the police ever get. The battle against the pot farms is now being fought by multi-disciplinary teams like the one in the Rivieren district. There are police forces that have a fixed day of the month they call Cannabis Day, when they dismantle ten or twenty pot farms. But all too often, they won’t even go there. At the trailer park where I once witnessed a raid myself, the residents made it very clear they couldn’t care less. What is more, no one expects the police to be there again for the next crop. Everyone at the trailer park understands that the police need to do their thing now and then, but they are not supposed to threaten their livelihood. As the commanding officer of the clean-up crew noted, “We are not threatening anyone’s livelihood, that would make my boys feel very uneasy.” The result is a modus vivendi between the investigation agencies and the illegal pot farmers.

In Closing

So in the end, this has been the unexpected and unintentional result of an effort to decriminalize cannabis that does not go far enough. What we are waiting for now is general legalization. How is the story going to end? I hope it will happen quickly enough for me to be able to tell Alan and Connie Block’s students all about it.

Notes

1. Alan A. Block, “American Criminals Abroad” in Alan A. Block, *Perspectives on Organizing Crime. Essays in Opposition* (Kluwer Academic Publishers, 1991).
2. See also Bart Middelburg, *De Mafia in Amsterdam* (Uitgeverij Arbeiderspers, 1988).
3. Ineke Haen Marshall and Chris E. Marshall, “Drug Prevention in the Netherlands – A Low-key Approach” in Ed Leuw and I. Haen Marshall (eds), *Between Prohibition and Legalization. The Dutch Experiment in Drug Policy* (Kugler Publications, 1994).
4. Tim Boekhout van Solinge, *Dealing with Drugs in Europe. An Investigation of European Drug Control Experiences: France, the Netherlands and Sweden* (Boom Legal Publishers, 2004).
5. Kettil Bruun, Lynn Pan and Ingemar Rexed, *The Gentlemen’s Club: International Control of Drugs and Alcohol* (University of Chicago Press, 1975).

6. Jan-Willem Gerritsen, *The Control of Fuddle and Flash. A Sociological History of the Regulation of Alcohol and Opiates* (Brill, 2000).
7. See e.g. Cyrille Fijnaut, Frank Bovenkerk, Gerben Bruinsma and Henk van de Bunt, *Organized Crime in the Netherlands* (Kluwer Law International, 1998).
8. Not that efforts have not been made in the past to do so. People known to operate in the international drug trade have been interviewed about the volume of the harvest (Van Dijk, Van Soomeren and Partner and Steinmetz, *Soft Drugs in Nederland; Consumptie en handel*) [Soft Drugs in the Netherlands; Consumption and Trade], Report no. 10 (Utrecht, 1995). They were however also unable to actually confirm their extremely high estimate with empirical data.

10
Pecunia Non Olet? The Control of Money-laundering Revisited[1]

Michael Levi

"Special sorts of conditions must exist for the creation of the special sort of criminal that he typified. I have tried to define those conditions–but unsuccessfully. All I do know is that while might is right, while chaos and anarchy masquerade as order and enlightenment, those conditions will obtain."

Eric Ambler (1937) *A Coffin for Dimitrios*

In 1991, *Crime, Law and Social Change* published its longest ever single article, at just over 40,000 words: it was my review of the shaping of the anti-money laundering movement, at that time little more than a twinkle in Panopticon's eye. I began by observing[2]

"The principal points of contact between police and bankers are in relation to (1) frauds (and other crimes such as robbery) against banks themselves, in which banks lose money, and (2) crimes or suspected crimes – involving dishonesty, import/export prohibitions (e.g. as I write [in 1990], arms to Iraq), narcotics, or terrorism – whose perpetrators and victims have individual or corporate bank accounts, even though in such cases, the banks themselves may not lose any money and may even make profits from handling the accounts. There are also further areas of state interest in banking transactions, such as the activities of arms dealers who may not be committing any offences in the U.K. or elsewhere, but who are of concern to the security services.

The movement in the direction of encouraging – and in an increasing range of cases, requiring – 'active citizenship' on the part of banks has as its objectives to prevent criminals from benefiting financially (a) from the offences for which they have been convicted, and (b) to the extent that monetary gain is the *criminals*' primary goal or is a crucial means to their other (e.g. political) goals, to deter or prevent them and others from committing crimes for gain in the future. These objectives are being pursued not only in Britain but also in the international arena.

Why should bankers co-operate with the police? Motives for co-operation can be placed on a continuum between *positive* – as when natural and/or corporate persons all hope to get something they want out of the relationship, even if the benefits are unequal – and *negative* - if the relationship arises solely out of fear or threat that something bad will happen to either or to both parties. Many non – banking professionals such as lawyers and accountants responded to my announcement of this research topic by asking, rhetorically, 'what relationships?' But in practice, police – bank relationships are characterized by a combination of both positive and negative elements."

Since that was written, the world has witnessed an extraordinary growth in efforts to control crime for economic and political gain (and, especially since '9/11', terrorism) via measures to identify, freeze and confiscate the proceeds of crime nationally and transnationally. Especially in Europe but in different ways throughout the globe, first bankers and then accountants, lawyers, notaries, real estate agents and even car dealers have been involuntarily co-opted into becoming unpaid agents of the state: identifying customers (individual and corporate) and, notwithstanding customer confidentiality, reporting both suspicions and large cash transactions to central bodies, though what happens afterwards to these reports is far less transparent. In mid-2006, a scandal broke out regarding the monitoring by the CIA of all electronic funds transfers sent via SWIFT, a Belgian institution[3], raising the question of how helpful these alleged observations had been in identifying terrorists, their assets or money flows towards them.

The Growth of Routine and Suspicious Activity Reports

Indicators of the impact of this financial monitoring are discussed elsewhere in some detail[4]. But let us examine one arena of change: the numbers of suspicious activity reports (SARs), accelerating after '9/11'. The Netherlands saw an 81 percent increase in 2002 over the previous year in the number of "subjective unusual transaction reports," largely due to the increase in the reporting of international money transfers. Suspicious transaction reports in that country rose 25 percent over the same one-year period, from roughly 20,000 to around 25,000. In 2004, the Unusual Transactions Disclosure Office (MOT) passed 41,002 suspect transactions to the Office for the Provision of Police Support to the National Public Prosecutor for the Disclosure of Unusual Transactions (BLOM in Dutch). Unlike most other nations, Dutch financial institutions (as well as casinos and credit card companies) are required to file "subjective unusual transaction reports" rather than suspicious activity reports with their financial intelligence unit, the Meldpunt Ongebruikelijke Transacties (MOT - Office for the Disclosure of Unusual Transactions). The MOT in turn decides whether to forward these cases in the form of suspicious transaction reports to law enforcement authorities (including BLOM). The strategy appears to be to encourage institutions to file a report if they have any doubt at all about a transaction, and let MOT sort the wheat from the chaff. In 2000, a Suspicious Transactions Intranet went into operation in the Netherlands, allowing police to view all such reports since 1997, and there is an experimental scheme for FIU data exchange within the EU which is expected to become EU-wide.

In February 2000, Japan expanded the scope of predicate offences to include all serious crimes. It also overhauled its suspicious transaction reporting system by creating a financial intelligence unit to analyze and disseminate SARs, cooperate with law enforcement officials, and exchange information with units in other jurisdictions. Previously, the Ministry of Finance received the reports but was not required to take any of the aforementioned actions. With these

changes, the number of SARs in Japan rose from 13 in 1998 to nearly 19,000 in 2002, more than 12,000 of which were deemed useful in law enforcement investigations.[5] In 2003, Japan revised its due diligence requirements and by 2004, the number of reports had risen to 95,315, of which two thirds were disseminated to law enforcement authorities. In Australia (population 20 million), where every international transaction must be reported, the country's financial intelligence unit – the Australian Transaction Report and Analysis Center (AUSTRAC) – reported seven million such transactions in 2001, among them 1.7 million "significant" with a cash component of A$10,000 or more and 7,809 "suspicious transaction reports". During the 2003-04 financial year, AUSTRAC received 10.8 million Financial Transaction Reports – a 14% increase from the previous year – 2 million significant and 11,484 suspicious transaction reports: over 1,000 intelligence packages were distributed to partner agencies.

Some other European jurisdictions have also experienced a growth in reports, as more institutions are covered by legislation and trained, and as legal and reputational risks of non – reporting consequently rise:

- In Belgium, CTIF-CFI received 11,234 reports in 2004 (compared to 9,954 in 2003). 664 cases were sent to the prosecution.[6]
- In France, TRACFIN (the French financial intelligence unit), received 10,832 suspicious transaction reports in 2004, compared to 9,019 in 2003.[7]
- In Germany, 8,062 suspicious transaction reports were submitted to the financial intelligence unit of the Bundeskriminalamt (German Federal Police) in 2004, compared to 6,602 in 2003. This confirms the trend of an increase of some 20% annually in recent years.
- In Liechtenstein, suspicious activity reports increased from 172 (in 2003) to 234 (in 2004).
- In 2004, the State Department for Financial Monitoring of Ukraine in 2004 received 725, 569 financial transaction reports. Following analyses, 164 cases were referred to the General Prosecutor's Office and other law enforcement bodies which led to 54 criminal cases being initiated.[8]

As regards the UK, from a few informal tip – offs from bankers to police in 1986, the number of what are now termed 'suspicious activity reports' by bankers and professionals to the UK National Criminal Intelligence Service (now replaced by the Serious and Organised Crime Agency) rose from a few hundred in 1991 to 15,114 in 1999 to 94,708 in 2003 – almost doubling after '9/11' – and to 195,000 in 2005 (9, 600 of them from lawyers). The US had routine cash and wire transfer reports (in their millions, reaching 13.6 million in 2004) but only in 1996 did they devise a regime of Suspicious Activity Reports from financial and other institutions: the number of US SARs rose from 52,069 in 1996 to 663,655 in 2004.[9] Taken together, this indicates a rise in social surveillance, paralleling shifts in Close Circuit Television, telecommunications intercepts and other methods of 'dataveillance'. However in what respects does this extra reporting count as success? A former head of financial crime regulation

at the UK Financial Services Authority stated in 2003 (personal communication) that a low number of reports counted as a 'red flag' of institutional failure to enforce AML regulations: but, though the view has some merit, this is to confuse outputs with outcomes, and takes no account either of (a) the preventative effect (if any) of potential client rejection or (b) what (if anything) is made by the law enforcement and regulatory agencies of financial reporting information.

These efforts to combat 'the dark side of globalization' have occurred against the background of liberalizing currency restrictions and of marketization in the 'Less Developed' world, including former Communist societies. The Financial Action Task Force (FATF)[10] – more than the UN, the creature of the OECD countries that are its predominant membership – has donned the mantle of policy-setting body, but an immense web of sometimes overlapping bodies – global, regional and industry-wide – have become involved, as money laundering has been the issue at which measures against drugs and other 'organised crime' activities, terrorism and corruption intersect. How do we see these measures and re-evaluate the analysis offered 15 years ago?

The History of and Motives Behind the AML Issue

One useful way of conceptualising the issue is as a global exercise in crime risk management which seeks to drag in as a conscript army those governments and those parts of 'the' private sector that seem unwilling to volunteer for transnational social responsibility. But what sorts of risks are they managing (and do they *believe* they are managing), and how politically coherent, serious and well considered has the attempt been? There is a temptation here to engage in 'motive-mongering' in which one looks into the oracle and sees the aims of nations (especially the original key movers – the US, UK and France) as prefigurations of the present and as nationally coherent. Interviews and documentation collected as part of a study funded by the UK Economic and Social Research Council[11] suggest that there were national issues that gave rise to particular foci of control interest – sometimes, like 'drug abuse', independently in different countries – before any co – ordinated international activity was even contemplated. Thus prior to the UN Vienna Drugs Convention of 1988, the Swiss Banking Commission sought to regulate capital flight and (post-Watergate) the Americans criminalised the bribery of public officials overseas[12], while the Americans and British criminalised drugs money-laundering. These actions were prompted by concrete ambitions and sometimes by scandals. Even before (a) the frantic and all-consuming financial search for terrorist funds in the wake of the air strikes against New York and Washington in September 2001 and (b) the collapse of Enron in December 2001 followed by a raft of major American corporate scandals, interviews and participant observation suggest that the expressed alarm of the authorities was motivated by far more than institutional and personal self-interest and by ideological 'control freakery': that there is a genuine fear of loss of control over

financial flows, which brings together a variety of themes and a variety of political positions including

1. financial regulators concerned about unmonitored 'off the books' (though often legal) transactions conducted by vast commodities hedging funds held in offshore finance centres;
2. law enforcement agencies and politicians bothered about 'transnational organised crime' and its ability to launder billions of what a senior civil servant termed in an interview 'mutant capital';
3. corporations (especially American-headquartered ones prohibited from paying bribes to foreign public officials by the Foreign Corrupt Practices Act 1977) campaigning for a legal 'level playing field' to that they can avoid losing tenders for contracts to bribe-payers;
4. overseas aid agencies troubled by the 'export' (aka theft) of funds by Third World potentates (Politically Exposed Persons, in the terminology of international private bankers) into covert individual and corporate accounts held in offshore finance centres[13]; and
5. corporations, intelligence and law enforcement agencies, and politicians concerned about terrorist finance both from proceeds of crime *and* from legal-source income.

However, though logically, money-laundering and the availability of strong privacy protections in some jurisdictions should be considered to be a common key component of all of these phenomena, in practice this was not the case. Let us take as an example Grand Corruption. Traditionally, aid agencies have been involved in welfare and economic development issues, though 'technical assistance' in law enforcement and drugs prevention has long been a favoured method of foreign policy intervention.[14] But in spite of the growing interest in the UK Department of International Development under Secretary of State Clare Short in Grand Corruption as a major source of welfare loss, the connection with money laundering was not really made until late 1999, when the combination of the active pursuit by President Musharraf of the millions allegedly looted by Benazir Bhutto when President of Pakistan, and the emerging scandal of the millions looted by President Sani Abacha from Nigeria came to media and political attention. A seminar organised by Clare Short's son – a law partner in Taylor Wessing – was apparently seminal in shifting DFID consciousness.[15] A research visit by this author just prior to '9/11' discerned almost no interest in money laundering within the World Bank, and relatively little positive active interest in the IMF either, despite the strong general focus on anti-corruption and governance issues in World Bank literature. So it would be a mistake to 'back-read' the current confluence of interest in money laundering as a natural property of those specialised departmental interests: it took a determined effort to see the relevance of money laundering to the anti-corruption movement.

This personal political interest (combined with pressures from OECD and from the global NGO Transparency International) percolated through the banking system, especially to the elite of private international banking, via (a) the actual and anticipated shaming of those institutions *known* to have held accounts for the corrupt public officials, and (b) via actual and anticipated regulatory and/or

criminal sanctions. Interviews with Swiss bank representatives and officials (and with international bankers generally) illustrate the growing consciousness (stimulated and advanced in time by some far-sighted senior compliance officers) among the largest global firms that they would be better off economically and socially if they did not accept business from the most egregious corrupt public officials (including those with whom they already had accounts). Once this judgment had been made – and it would not have been made without vigorous regulatory action and hostile media publicity – some serious efforts had to be made to work out how to spot such accounts within the institutions (including accounts held in the name of nominees or family members) and to enlist legitimation in the eyes of a sceptical media and politicians. To further this objective and to facilitate mutual trust in a highly secretive area with intense competition, eleven private international banks worked with Transparency International which, as an aggressive critic of transnational and domestic corruption, had sufficient credibility to serve this purpose, to develop the Wolfsberg Principles, so named after UBS training centre where they met. Once these principles had been announced and presented to the world – see www.wolfsberg-principles.com – other bankers who were not included in this elite process of global private sector policy development wanted to join, and a (potentially) virtuous circle was created, using positive reputational benefit (and the absence of very negative reputational harm) as a motivator.[16]

In the more general setting of the anti – money laundering movement, we can see the interplay of crime control, personal and institutional dynamics. Early Italian interest in the use of proceeds of bank robberies to fund the activities of the *Brigate Rossi* in the late 1970s drove *local* requirements on Italian banks to report large cash deposits and the realisation that this would make sense across borders and be applied to the Council of Europe generally. However at that time, there was insufficient political support for a binding Convention and the more modest Recommendation was made which in turn fed into the justification of the first general measure against money-laundering and asset confiscation in Europe – the Strasbourg Convention of 1990 – which went beyond the drugs-only focus of the 1988 UN Vienna Convention because it was already apparent to the Council of Europe Secretariat and to countries such as the UK that the drugs–only approach (so necessary to get agreement in the consensus atmosphere of the UN) was a theory failure: not only did it not go far enough for a serious measure of major crime control but also, it left too much room for 'launderers' and financial intermediaries such as banks to claim that they did not know that the funds were proceeds of drugs trafficking.

The key Council of Europe Secretariat member Hans Nilsson then joined the Secretariat of the Council of the European Union (at that time a tiny activity long before the recent development of the Justice, Liberty and Security functions) and brought with him a batch of ambitions to develop not just laundering and proceeds of crime but the entire range of Mutual Legal Assistance provisions, plus the monitoring of compliance that was a key component of the Financial Action Task Force. At that time, however, the EC had no competence in criminal matters, so controls of money laundering had to be smuggled in under the (still largely unexamined) guise that variations in Member State

provisions against laundering were a threat to the integrity of and free flow of funds within the internal market. This was a fiction that most Member States were happy to go along with (though many did not see it as a fiction), since the Treasury officials of the larger States had already been led by the FATF into thinking that AML was part of their role, and it was difficult politically to be seen to support money laundering, particularly when the measures of control were not obviously severe.

Also important in the evolution of anti money laundering activities were more modest elements, well below the threshold of grand social movements or international diplomacy. Prior to the Treaty of Amsterdam, the European Commission had no formal policy development and initiation role in crime control issues. However, the encouragement by funding from the European Commission and the Presidency's Multi-Disciplinary Group (MDG) of OISIN, Falcone, Stop II, AGIS and other mutual assistance programmes under the principle of information exchange, combined with sharing of experiences by members of FATF and Egmont – a global unofficial organisation of Financial Intelligence Units whose secretariat is at NCIS in the UK, which has grown from 12 members in 1995 when it began to 101 in July 2005 – generates a level of mutual knowledge at a personal and perhaps legal system level that encourages interpenetration, though this is easier to do within common law and within civil code systems than between them. The increased 'traffic' between countries forces them at an operational level to seek solutions to their interface problems (though these do not always succeed, nor are they always intended to). Thus Egmont was generated by the need of the American and Belgian administrative type financial intelligence units (FIUs) to both obtain information from and transmit information to police-type FIUs that existed elsewhere in the world. So it would be a mistake to see these policy and practice transfers as coming either from above or from below: rather they come from both, though given the financial cost of many exchanges in the money trail arena, some senior sanction and positive support is often needed before the exchanges are allowed to develop. In this sense, international is different from local partnership policing, where few marginal costs are involved: mid-week plane fares, hotels, and time off work are considerably more expensive and generally cannot be found from routine or training budgets. Note, however, that these tend to be available only for activities related to 'organised crime' as commonly understood. Frauds and economic crimes that fall outside those constructions in line with the EU Joint Action against Organized Crime 1997 do not receive funding, though some activities in support of action against EU fraud might be funded via OLAF (Organisation pour la Lutte Anti-Fraude) or its predecessor UCLAF.

In more recent years, the European Commission has been involved in supporting action against organised crime and payment fraud, the latter funded by DG Markets as part of the threat to the single internal market: the same principle that enabled the EC/EU to pass the first, second and third money-laundering directives of 1991, 2002 and 2005. The Justice, Liberty and Security Directorate of the European Commission has also sought to sponsor private-public partnerships in organised crime and terrorism prevention, as well as manifold legal measures.

The other key role of the EU has been in relation to the *acquis communautaire*, which has enabled them to engage in pressurised policy transfer of AML, anti-corruption, and mutual legal assistance legislation and programmes to candidate countries.[17] This has involved self-assessment questionnaires, mutual evaluations (also making use of the MONEYVAL evaluations within the Council of Europe framework), and some technical assistance programmes.

Though (anticipated) political risk is factored into the availability and pricing of credit, the special transformative quality of terrorism (as a credible threat rather than as propaganda) is that it generates a real threat to the security of international capital and the lives of financial services employees. My interviews with a variety of international bankers – both representatives of banking associations and senior compliance officers of major international private banks – indicate that there is a mixture of concern about the impact of drug abuse on the future of society[18] and scepticism about the effectiveness of government policies and intentions about drug control, and about the role that hitting out at banking secrecy can play in this process. (One senior Swiss banking representative agreed with my proposition that 'drugs decriminalisation is a price worth paying for the preservation of Swiss banking secrecy'.) Likewise, concern about the laundering of proceeds of corruption by Politically Exposed Persons (senior public officials) reflects not so much concern about the immorality of the conduct by foreign potentates but about the amount of media, regulatory and even criminal 'trouble' that is generated by such high-profile cases *both now in the foreseeable future*.[19]

Anti-money laundering legislation gave institutions the compliance discourse within which they could locate pragmatic attempts to mitigate harm to themselves. But in both systemic and individual institutional interest terms, terrorist threats to the culture of capitalism (Latin America excepted, nowadays from extreme Islamic-faith groups rather than leftists) are serious, so self-interest may *voluntarily* temper profit maximisation if institutions believe that the identification of terrorist finance can protect them or activities in which they have a stake[20]. However, whatever the general primacy of 'law and order politics' among the general population and however little sympathy there may be for bankers, this does not mean that bankers will find acceptable *any* measures proposed by governments to deal with terrorist finance, since they bear both most of the economic costs of compliance and the potential economic and reputational costs of compliance failures. The search for funds that may be used for terrorist finance that are not themselves proceeds of crimes is particularly irksome for bankers, since the methodology for spotting such transactions is obscure.

We aim here to provide a provisional understanding of how the international 'community' strives to counter the anomic, crime-facilitative effects of globalisation by rowing against the tide of economic liberalisation in the name of global crime control and financial stability[21]. Thus, there is a sometimes faltering attempt to create a new world anti-crime order as a component of, or supplement to, the New World Economic Order. There has been an important growth of 'soft law' instruments and cascading peer group pressures and their gradual transformation into a mix of raising consciousness of mutual interdependence with

economic and political sanctions to act against transnational corruption and transnational laundering facilities.

In 1986, when the legal regulation of money-laundering began in the West, British banking representatives had to go on a newly devised course in the US to find out what money-laundering was (or, to be more precise, what the Americans believed it to be)[22]: two decades later, there are (at least) monthly conferences in different parts of the globe updating bankers, regulators, legally required corporate Money – Laundering Reporting Officers and, increasingly, independent lawyers and accountants on changes in regulation and 'money laundering typologies', supplementing interactive videos and CD-ROMS whose viewing is considered to be essential to comply with national legal regulations on staff training.[23] There are also expensive bulletins and journals clustered around AML themes, e.g. the Journal of Money Laundering Control, Money Laundering Alert. These are supplemented by an army of consultants – usually containing former senior American, British, Swiss (or, in Asia-Pacific, Australian) police, regulators and FATF delegates – carrying out compliance reviews and remedying both national and corporate 'failures' with 'solutions' drawn from US or European legislation[24] aimed at finding favour with evaluators and regulators.

In this respect, the role of Switzerland was important as a valued party to FATF because of its symbolic as well as material importance as a large international banking centre. The UK and, to a lesser extent, the Netherlands and France were important to the AML movement because of their historic ownership of territories and Small Island Economies with substantial financial services businesses: the local income from licensing these and local employment in banking and corporate services was a welcome relief to governments who did not want to pay indefinite overseas aid to present and former colonies which had otherwise little prospect of economic diversification and prosperity. Indeed, many 'offshores' (and other emerging nations such as the People's Republic of China, India, and European former Communist countries) have found it difficult to accept the rationale for applying AML regimes: in their eyes, they were doing little different to what the major powers had done at an equivalent stage of their own development, and some suspected that this was anti-competitive behaviour on the part of the major powers[25]. In the most marginal of those jurisdictions, they may have suspected that the only reason they had any financial services business at all was their (sometimes declared but nowadays much more discreet) unwillingness to co-operate with the international crime and tax enforcement regimes. And regimes in which 'state capture' had occurred by kleptocrats and/or 'organized criminals' would resist transparency and mutual legal assistance if they feared it would control their rent-seeking behaviour.

It would be a mistake to see the international enforcement regime as solely a product of direct AML organisations. In a different sphere, the governments of France, Germany, Japan and the UK have been very publicly told by the Chair of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 that they need to amend their recent proposed or actual legislation and to improve implementation because they inadequately comply with the Convention.[26] In addition to regular reviews by the OECD, Council

of Europe and the Organisation of American States using self-assessment and mutual/expert evaluation methodologies, there are also a host of anti-corruption consultants and experts, bringing their national or Intergovernmental Organisation (e.g. World Bank) approved 'solutions'. The latter usually take the form of legislation and infrastructural bodies such as Independent Commissions against Corruption – now numbering 20 (plus four quasi-ICACs) around the world – that are internationally acceptable as indicators of proper systems being in place and therefore are copied by other jurisdictions seeking respectability.[27]

These experts' knowledge of *local* cultures and legislative frameworks is variable[28], but the basis for their selection is their professional experience in the donor countries – usually containing some international mutual assistance work – and they naturally export those law enforcement methodologies: this has been particularly common in Central and Eastern Europe and in the Balkans. There is thus a conscious and unselfconscious 'hearts and minds' transfer of national methods and frameworks, emanating from the fact that:

1. most donors of assistance genuinely believe their own systems (and/or the systems they have sponsored elsewhere) are the best;
2. the closer that foreign laws and criminal justice systems are to the advisor's domestic system, the easier mutual legal assistance is for the donor country's evidential admissibility purposes later, and
3. personal and national networking is a crucial ingredient of future cooperation.

These AML and anti-corruption activities have to be seen within the context of the general drive for 'security' and for the development of a climate favourable to economic liberalisation and multinational corporate activities in post-Communist Central and Eastern Europe and Eurasia. This constitutes a much larger cultural ambition than waging the War on Drugs. So when we ask ourselves questions about what lessons have been learned and to what extent an international control regime has successfully been created, we cannot avoid confronting the issues of what are the yardsticks of achievement and what metrics are, are not and might be used for measurement of them.

Core Objectives and Means of Attainment

The control of the money trail is an immense diplomatic, legislative and commercial work in progress which has brought together since the mid-1980s in a fluid but frequent series of global settings representatives from almost all countries in the Americas, Asia-Pacific, Europe, the Middle East and latterly, parts of Africa, and from diverse government departments – principally Justice and Treasury departments, but also foreign service diplomats – law enforcement, regulatory and intergovernmental officials and, in some more limited settings, bankers and other corporate executives and some NGOs.[29] In the anti-money laundering (AML) movement, there are numerous component crimes from corruption to tax fraud to terrorism, but the Global War on Drugs has been the common central theme since the beginning[30].

Interestingly, prior to 2000, few people in the mainstream anti-corruption and international development movements made a link between Grand Corruption and the AML regime, or at least conducted any serious policy initiatives that reflected such awareness: it was only in the course of the public phase of the Abacha scandal that the awareness percolated through NGOs that AML represented a point of prevention or recovery of proceeds of crime.

Notwithstanding this delayed awareness, every international body with finance and/or crime within its mandate has become drawn into this AML arena, because it actively wishes to make a contribution and/or because politically and bureaucratically, it cannot afford to neglect this source of funds, influence and prestige by failing to be a 'player'. This has led to a plethora of regulation and because money laundering *actually* is a common feature of all crimes for significant gain, AML has come to be written into the 'effectiveness' of all of these regulatory efforts including, with some conceptual and terminological strain, the financing of terrorism from the proceeds of otherwise lawful activity, including charitable donations.

This process adopted as a core tool a novel international 'soft law' peer group methodology, 'mutual evaluation': a lesson sought out and drawn in 1990 by the Financial Action Task Force from the rigorous (and consensus-based) method for reviewing the legislation and economic infrastructure of applicants for accession to the OECD, and which had the advantage also that it was familiar to Finance Ministers from IMF procedures. It has then embedded mutual evaluation into the apparently objective routines of agreed anti-money laundering surveillance for over a decade, during which seven regional bodies were created (with FATF and, more specifically, US and UK encouragement). This model has been adopted in AML, anti-corruption and mutual legal assistance evaluations worldwide.

In addition to international measures that combine regulatory and criminal justice measures, banking regulators also seek to control financial and reputational risks by exerting direct pressure on their domestic regulatees. Because of the centrality of the dollar in the settlement of international trade, all significant banks that are not licensed in the US seek correspondent banking relationships with banks that are. So when in April 1999, the US and UK Treasuries issued 'advisories' requiring their own regulated financial institutions to exercise special care in dealings with Antiguan banks, this had a marked negative effect on Antigua's business because it meant that *all* transactions were to be slowed and treated as 'suspicious'.[31]

However in 2000 – disappointed at the pace of change in some 'rogue financial states' and seeking wider international sanctions and legitimation than could be provided by national advisories alone – the FATF, at the initial instigation of the Clinton administration but supported by the G-7 after the peaceful resolution of some *internal* threats to 'blacklist' each other for non – compliance, overturned the commitment to *mutual* evaluation and instituted the Non-Cooperative Countries or Territories initiative. Under this, those members and non-members alike who failed to meet 'sufficient' of the FATF AML criteria (which had some additional and more stringent ones added to them for this exercise) would be listed and 'punished' by 'enhanced due diligence' (i.e. slowing down) or even exclusion from normal international banking facilities[32]: however, no procedure

had initially been envisaged on how countries were to get *off* the blacklist once they had been put on it.

In an attempt to routinise, professionalize and to some extent depoliticise the globalisation of AML activity, G-7 pressed forward the need for the initially reluctant International Monetary Fund to develop an AML component into its Reports on Observance and Standards and Codes that are applied to every country reviewed by the IMF. Nevertheless, the *law enforcement* component of AML policies remains open to re-evaluation, symbolised by the fact that, uniquely, these are completed not by core IMF staff but by outside experts.[33] It also has an uncertain relationship with the FATF, which in 2003 completed a major review of its own Recommendations and which has been given a new and enhanced mandate to deal with terrorist finance, including requiring originating information on wire transfers, progress on which had always been resisted by the private sector.

Furthermore, questions have been raised consistently about the willingness of FATF to apply consistent principles to more powerful nations than Turkey or Austria, where credible threats of sanctions induced changes. The meetings (and pre-meetings) have provided a forum for genuine debate about the criteria for blacklisting: thus (after considerable inter-departmental wrangling within some delegations), Israel was blacklisted (along with Lebanon) on 'merit' in 2002[34]. Although not alone, the prime candidate for accusations of lenient treatment for insiders is the US[35]: by its own assessment in 2001-2, the US was in full compliance with only 19 of the 28 Task Force recommendations requiring specific action. The 2006 review of the US was also fairly critical.

Prior to '9/11', strongly organised banking industry opposition had frustrated all but the most basic Know Your Customer requirements in the US, and it was only in the aftermath that it became politically opportune to "take out policies from the top and the bottom drawer"[36] and pass the USA Patriot Act 2001 that enabled it to comply more fully with FATF principles. (Sceptics may interpret events differently but this arguably reflected the *realpolitik* of domestic US politics rather than any deeper conspiracy or banking interests.) The operation of the non-compliance policy relies on a combination of the compliance findings under mutual evaluation reports and the self-assessment exercise, but until recently, these phases were out of alignment.

The stated priorities[37] are "to continue to set standards to combat money laundering and terrorist financing; to carry out typologies and compliance work in order to ensure global action against money laundering and terrorist financing; to develop closer co-operation with the IMF and the World Bank; and to enhance FATF's relationships with FATF-style regional bodies (FSRBs). This new eight year mandate is a recognition of the obvious need to deepen and expand the international community's effort to fight money laundering and the financing of terrorism." This agenda was pursued at the Paris meetings in June 2006, which granted particular authority to the Asia Pacific, European, and South American FSRBs to develop their AML roles.

Some countries that score high on AML measures score lower on anti-corruption ones (but not vice versa), but one difference between this arena and many other

social policy ones is that 'the problems' of corruption, transnational organised crime and money laundering are actively constructed by elites who have an interest in amplifying or (when accused by others) sometimes denying them.

Small Island Economies such as those in the Caribbean often moved into financial services at the instigation of the former or present colonial powers to reduce their dependence on aid[38], and annual licence fees can be a substantial and impossible-to-replace proportion of government income, the licence fee profit ratio being higher if regulatory and mutual legal assistance costs are negligible. This is quite independent of any corruption or *personal* 'rent-seeking'[39]. For all countries and regulated firms, due diligence on the origin and destination of financial transfers imposes economic costs, but the costs of crime elsewhere (from, say, a fraudulent bank or pyramid scheme) may be far greater than any benefits received by offshore governments and financial institutions.

Let us assume that controls are more likely to be seriously implemented where the people who have to apply them have a direct stake in the benefits of implementation. Most primary offences (drugs, fraud, tax evasion and theft) occur outside financial centres, reducing their motivation to combat money laundering, but the opportunity costs of financial services industry substitution are as real for those countries as drug crop substitution is in Afghanistan, Colombia and Peru.[40] There has been much discourse about the importance of a 'level playing field' – and concerns about this are commonplace, especially in countries of the North – but this might produce the extinction of many offshore finance centres, since they require an advantage from lower regulatory/licensing costs or other forms of arbitrage. This is one reason why there is particularly strong opposition to the 'harmful tax avoidance' proposals of the OECD, since this is seen as a far greater threat than the AML and anti-corruption drives to the economic survival of such territories, and taxation does not have the same cultural resonance as 'crime' and certainly as 'terrorism', making it easier to oppose, whether it comes in the form of lobbies such as the Tax Justice Network or from otherwise powerful individual governments.[41]

There is no evidence that anyone in the UK government believed that combating tax avoidance or even evasion was an important goal of the strategy. Indeed, tax crimes are not now a predicate under US money laundering or racketeering legislation (though once the tax form for that year is completed, production of false financial records may constitute the crime of false accounting in several countries). However, access to SARs and routine transfers has become a tempting objective of tax departments around the world.

Driven hard by the Americans and British, who recognised that without further consistent internationalisation of controls over illegal drugs, the supply side model of drug prohibition would not work[42], the 1988 UN Vienna Convention had captured the global *zeitgeist* of concern about the effects of drugs on all their societies: the highest common denominator of *domestic* political agreement and therefore the easiest to get through a consensus oriented diverse body such as the UN. The fact that the Convention was rushed through in an unprecedented two years indicates the level of urgency.

However, interviews – confirmed by the absence of references to it in the 1988 Convention – suggest that there was not yet any common sense of transnational organised crime as involving other than drugs trafficking syndicates, still less a realistic desire to deal with terrorist finance or terrorism – a subject that still evokes immense definitional difficulties at UN level. Rather, the same forces that drove the US and the UK to enact the first *domestic* anti-money laundering legislation in the mid-1980s[43] led them to want other countries to adopt such legislation and systems, both creating new institutions and using existing frameworks that were judged to be the best tactical means of achieving those results.

Broader internationalist ambitions were already under way on the part of the US, especially in the drugs enforcement arena, enhanced by the temporary merger with the DEA that made the FBI more internationalist: but the UK was unwilling to invest such vast resources in stationing large numbers of officers overseas.[44] The French government also had a strong interest in money-laundering regulation, driven by dislike of deregulation and concern about tax evasion in offshore finance centres (especially those connected to the British!).[45] This perspective on measures to control transnational crime is not without its contradictions, especially over the Franco-British reluctance to criminalise transnational bribery (until 2001) and over the French domestic political 'slush funds' that were used both for domestic clientilist purposes and to 'sweeten' overseas contract bids by French firms.

Spreading the Anti-Money Laundering Message Throughout the World

The above is taken from the title of the FATF's Annual Report for 2000, and expresses the evangelical tone of the AML movement. Partly reflecting 'spheres of influence' and partly immediate concerns of key members, the decision was taken to set up a regional body which was to be 'encouraged' in self-policing by adopting the new model of 'mutual evaluation' pioneered by the FATF. This was the Caribbean Financial Action Task Force, founded in 1990 and based in Trinidad, with a British-funded Secretariat (which fact caused political resentment among some Hispanic members).

Although nominally self-governing, it was well understood by Caribbean jurisdictions that this was intended to constitute pressure on them to reduce well-publicised scandals of corruption and easy acceptance of drugs and tax evaded cash 'in Uncle Sam's backyard', which had benefited some politicians personally as well as their friends and political supporters. However with combined Anglo-American pressure, there seemed little option but to fall in line. The process (and even the later NCCT initiative) enabled the more far sighted regulators and politicians to make use of external pressure and support to get their legislature and executives to 'clean up their act'.

The Caribbean was seen as the key problem area for drugs money laundering for the Americans and, by extension, for the British. However, it was also important to develop policies for other regions with finance centres, and so the gradual

sprawl led to FATF-style bodies in the Council of Europe and Asia-Pacific Group, followed much later by African and South American bodies (1999–2004). The United States is either a member or an observer at all of these regional gatherings, and the UK participates in all but the South American one.

Incorporation and Compulsion: Business Reactions to Money Trail Issues

Businesses vary widely in their motivations both for compliance to the law and for the wider exercise of Corporate Social Responsibility, a term whose salience in corporate life has been enhanced in recent years, stimulated by scandal and government reactions to it, but also by consumer and media pressures for transparency. It is mainly large companies whose dealings with the general public, with governments and with international institutions such as the World Bank for contractual and other purposes are significantly affected by reputation, including *but not restricted to* the absence of criminal convictions or ‘serious’ regulatory penalties.[46] Whatever their private views about customer confidentiality, most institutions have to take the view that co-operation with FIUs in anti-laundering measures is necessary.

Although the involvement of bankers in government AML policy development varies – the UK and Switzerland have always been at the collaborative end of the spectrum – senior compliance staff from the ‘Wolfsberg banks’ (previously seen as ‘the problem’ by many law enforcement officials) were not only given advance notice of but also were consulted over the revised Financial Action Task Force drafts of 2003. Nevertheless, perhaps out of concern to be misinterpreted as favouring some banks rather than others, and partly out of concern for information leakage in such a diverse industry, many governments have difficulties in large-scale information sharing with the financial sector.

The Impact of Terrorism

No review of contemporary crime control changes would be complete without terrorism. Mutual evaluation and the NCCT mechanism had already shifted many of the most recalcitrant jurisdictions into legislative and institutional reform on money-laundering, though countries such as China and India had mysteriously escaped listing, for reasons that were interpreted as geo-political by interviewees from countries of the South. ‘9/11’ had an immediate effect (a) in generating the hugely intrusive and extra-territorially applicable USA Patriot Act 2001[47] (and other, less significant, national legislation in over 50 countries), and (b) on enhancing and renewing the mandate of FATF – which rapidly generated Special Recommendations on the Financing of Terrorism that were approved within weeks – and reviving the pressure on the private sector to complete the counterparties to wire transfers.[48]

It also stimulated major interest in money-remitters and underground banking, and even in credit and debit card fraud. The most dramatic change was in refocusing

or distorting the concept of money-laundering to include proceeds from legitimate activities that might support terrorism, including aid to the families of terrorists. Every method that, upon deconstruction, anyone connected with the 'Al-Qaeda organisation' (later modified to 'network') had used to move money had to be monitored and controlled. Within Europe, too, the opposition of the European Parliament towards the regulation of the legal profession and others faded, and a rather hurried compromise Second Amending Money Laundering Directive was passed in 2001 which considerably extended the number of sorts of business (e.g. auction houses) required to report suspicions.

Transformations in Governance and Policy Transfer

Though methodological coherence and standardisation have only recently been formally developed in anti-laundering policies, mutual evaluation has gained increasing popularity as a *method*: it offers an apparently non-imperialistic rationale for intervention, since it is a component of a peer review process for instruments to which the jurisdiction has formally subscribed and therefore acquired some ownership. In many respects, the policy transfer process in AML and anti-corruption – assisted by foreign aid for particular developments and economic sanctions for undesired developments – has been a major success. One interpretation might be that 'Power Works': however illegitimate it may have been seen to be in the eyes of non-FATF and even some FATF members,[49] and whatever the impact of loss of government income on those jurisdictions that were already very poor, the introduction of sanctions in the Non-Cooperative Countries and Territories (NCCT) process in 2000 produced dramatic changes in legislation and institutions (a) among those that were blacklisted and (b) among those that judged themselves at risk of it and, in the words of one leading Offshore Finance Centre regulator to me, "would do anything to make sure we are not on that list" because of the flight of business that flowed from being on the list.[50]

However, 'Power Works' would be too crude an explanation, not least because it is too soon to tell whether the compliance it generated will work itself through to the behavioural level of criminals and (especially non-international) financial institutions and if so, for how long compared with a more democratically arrived at process. It is clear that AML has generated a rationale for greater coercive intervention by the UK in its 'offshores', but reflection on implementation experience and changes in the regulatory environment also played their part.

Nevertheless, (a) the goal of affecting the organisation and levels of serious crimes has been displaced in practice by the more readily observable goal of enhancing and standardising rules and systems; (b) the critical evaluation of what countries actually do with their expensively acquired suspicious transaction report data remains in its infancy;[51] and (c) the evaluation of and economic sanctions for poor AML performance, though apparently similar internationally, in practice has focussed more sharply upon smaller and weaker jurisdictions than upon the Great Powers, raising questions about the equity of the process.

Thus, mutual evaluation is a very useful process to international bodies who are concerned with effectiveness (or rather, efficiency and coherence) of implementation, which also offers a political mode of integration well beyond the mere passage of legislation: it does not by itself orient States to judging the impact of regulation on the extent and organisational form of primary criminal behaviour itself. Indeed, whereas there is a clear connectedness of anti-transnational bribery policies to fairer trade and of *some* 'good governance' controls to better flows of famine and (relative) poverty relief, the measurement of the relationship between anti-laundering controls and actual outcomes such as the reduction of crime in general or even particular forms of crime remains very much in its infancy.

The prospects for mutual evaluation as a mode of future governance seem positive, but there is now some substantial concern, especially for smaller jurisdictions with a smaller number of competent bureaucrats, as an increasing number of international bodies take up scarce time and resources in visits and questionnaires. There is no international and almost no national collective costing of AML or anti-organised crime efforts, nor are benefits in terms of crime reduction outcomes critically examined. It may be that existing bodies can take on board the shift in policy focus from banking secrecy to corporate secrecy, in the drive to make beneficial ownership more transparent to combat terrorist finance. But as with the contemporary debates on accounting standards in the post-Enron era, what the processes may be less good at, especially as the number of participants grows and procedures bureaucratise, is looking critically at what is being achieved in terms of *crime reduction outcomes*.[52] Instead, it can point to genuine changes in legislation, financial intelligence and investigation units and court processes, and to private sector compliance units, etcetera, but these are more about gains in coverage than effectiveness.

Whatever the moral and analytical objections[53], these may generate higher proceeds of crime confiscation yields in the fullness of time, especially as what I term the 'Western wave' of civil forfeiture – by-passing the need for conviction of defendants – rolls East from the US, Ireland, and the UK (and from Australia) against cultural and jurisprudential resistance from most parts of Continental Europe, just as the reversal of the burden of proof post-conviction for assets linked to offenders rolled east across Europe before it. But even disregarding the vast annual gap between estimated proceeds of crime (both stocks and flows) and asset forfeitures/taxes on crime, it remains uncertain and seldom asked, whether or not it is harder to practise as an 'organised criminal', a fraudster or a terrorist now compared with 1988, when the UN Vienna Convention and the Basle Committee on Banking Supervision ushered in the Brave New World of seeking on a global basis to control the criminal money trail.

Notes

1. This paper relies upon work funded under UK ESRC grant L216252037. An earlier version of this paper was given at a conference organised by the Transnational Institute: see http://www.tni.org/crime-docs/levi.pdf.
2. Michael Levi, "Pecunia non olet: cleansing the money launderers from the Temple", Crime, Law, and Social Change, 16, (1991) 217–302, at p.217.

3. http://www.nytimes.com/2006/06/28/world/europe/28secure.html. Swift, or the Society for Worldwide Interbank Financial Telecommunication, provides electronic instructions for money transfers among some 7,800 financial institutions – virtually every bank, brokerage house, and stock exchange. It routes more than 11m transactions each day.
4. Michael Levi and Peter Reuter, 'Money Laundering', in Michael Tonry (ed), Crime and Justice: an Annual Review of Research (Chicago University Press, 2006).
5. The latter figure has to be taken with some scepticism, since both the share of all SARs and the total number deemed useful to law enforcement seem extraordinarily large. (The latter figure may in fact merely indicate those not deemed useless.) This in turn suggests a reporting system that, though new, is effective at identifying only questionable transactions, and an enforcement system that is unusually energetic in pursuing these reports. A 2004 report on Japan – Twelve-Month Pilot Program of Anti – Money Laundering and Combating the Financing of Terrorism Assessments: Joint Report Prepared by IMF and World Bank – noted "the effective application of legal powers appears to be limited, as evidenced by the low numbers of investigations and prosecutions, which may be due, inter alia, to the limited resources allocated and to the insufficient level of coordination among the different agencies involved in anti – money laundering and combating the financing of terrorism."
6. http://www.ctif-cfi.be/fr/index.htm
7. Tracfin 2005. http://www.minefi.gouv.fr/tracfin/ressources/raptracfin2004.pdf
8. Ukraine/State Department for Financial Monitoring 2005: Report 2004. Kyiv.
9. Part of these increases should be discounted because it reflects the rise in the number of bodies required to make filings, though the extent differs in different jurisdictions.
10. FATF was created by the G-7 in 1989 as a temporary body with a Secretariat of a mere three people, and expanded subsequently from 16 (essentially OECD plus the European Commission) to 31 members. The thirty-one member countries and governments of the FATF are: Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; Finland; France; Germany; Greece; Hong Kong, China; Iceland; Ireland; Italy; Japan; Luxembourg; Mexico; the Kingdom of the Netherlands; New Zealand; Norway; Portugal; the Russian Federation; Singapore; South Africa; Spain; Sweden; Switzerland; Turkey; the United Kingdom; and the United States. The European Commission and the Gulf Co-operation Council are also members of the FATF. The global network includes the FATF-style regional bodies: Asia Pacific Group, the Caribbean Financial Action Task Force, ESAAMLG, EAG, GAFISUD and MENAFATF and Moneyval. The Offshore Group of Banking Supervisors is also part of this network. In 2005, China was admitted as an Observer.
11. Controlling the international money trail: A multi-level cross-national public policy review, ESRC Grant L216252037.
12. For the Democrats, this was an example of moral leadership that they expected the rest of the world to follow, rather more quickly than they appeared to have done.
13. These may not be in stereotypical tax havens, but major financial centres are all 'offshore' to non-residents. There is no space here to go into technical discussions of definitions of 'offshore'.
14. Bruce Bullington and Alan A. Block, 'A Trojan Horse: Anti-communism and the war on drugs', Contemporary Crises, 14, 39–56.1990; Ethan Nadelmann, Cops Across Borders, State Park: Pennsylvania State University Press, 1993; Peter Andreas and Ethan Nadelmann. Policing the Globe: Origins and Transformation of International Crime Control. (Oxford University Press, 2006).

15. Corroboration for this independent of interviews may be found from the fact that a mini-project on corruption and money laundering conducted by the author for DFID as part of a wider review of anti-corruption effectiveness received almost no interest when commissioned, but by late 1999 it had become of such interest that further work was commissioned, focussing on recovery of proceeds of corruption.
16. Mark Pieth and Gemma Aiolfi, http://www.wolfsberg-principles.com/pdf/wolfsberg process.pdf.
17. It is not completely coerced. There is a 'modernisation' cultural component that is relevant to the exchange as the former Communist countries of Central and Northern Europe join the EU, but non-compliance is not an option.
18. In addition to being subject to the media, bankers also have children and grandchildren, some of whom become entangled in drug-related harms.
19. This will be discussed in greater depth later. How long-term client managers' perspectives are might appear to be not germane to this review, but the transformation of legislation and regulation into actual practice depends on how front-line operatives are trained, incentivised and monitored by their line managers and compliance departments. Among the intriguing problems generated by these issues are whether – given their legal problems in the criminal courts – even some Western Heads of Government such as the then Italian Prime Minister Silvio Berlusconi had to be given special attention by bankers in case the bankers assisted in disposing of the proceeds of crime.
20. This stake might include businesses or governments to which they have loaned money.
21. A cynic might suggest that these controls are taken in the interests of Western capitalist security, but given the number of Third World countries devastated by the looting of both overseas aid and domestic assets by their corrupt potentates, we regard this as a very partial analysis.
22. Interview with the former Secretary of the British Bankers' Association.
23. In the UK, for example, all retail banking employees are required to pass examinations on money-laundering issues. There is a flourishing private sector market – often in collaboration with regulatory bodies – in training media, with the UK an early market leader.
24. Some of this does not fit operationally with central and eastern European legal systems, but this may not be a barrier and may not even be realised by the experts or known/cared about by the legislatures, since the aim is to please the assistance donors to avoid sanctions of some kind.
25. Interviews with Michael Levi, 1998–2003.
26. See OECD corruption website for country reports. For a critical review of prosecutions – though taking for granted the desirability of more criminal prosecutions as a way of dealing with Transnational bribery – see Fritz Heimann and Gillian Dell, 2006 TI Progress Report: Enforcement of OECD Convention on the Bribery of Public Officials, http://www.transparency.org.uk/TI_SecondOECDProgress Report_26%206%202006FIN1.pdf 2006.
27. It not only brings respectability, but also – at least in the past – foreign funding from the UK, US and World Bank. We shall leave aside the irony that Independent Commissions against Corruption were considered appropriate policy transfers for 'lesser breeds of men' but not for North American or EU countries, or – except in the very limited guise of OLAF – for the EC itself. As one interviewee from an EU accession country commented: "We now have a lot more laws and systems in place than any of the EU countries."
28. The Council of Europe had the oldest involvement in this area, and tends to use Europeans who are more likely to have local understanding. It and the much wealthier

EU, as well as the Organisation for Security and Co-operation in Europe and the UN, have expanded their activities since the collapse of the Soviet Union. The US has been particularly proactive, with the American Bar Association's Central European and Eurasian Law Institute projects (supported by the US government), and the Treasury Department's Office of Technical Assistance.

29. The physical absence of representatives from major socio-economic groups does not, of course, mean that they are not represented via lobbying and/or second-guessing by those who are present.
30. Guy Stessens, Money Laundering: an International Enforcement Model, (Cambridge: Cambridge University Press, 2000); William Wechsler, 'Follow the Money', Foreign Affairs; Jul/Aug 2001, 80(4), pp. 40–57; Petrus C. Van Duyne and Michael Levi. Drugs and Money: Managing the drug trade and crime – money in Europe. (London: Routledge, 2005).
31. The Antigua Advisories – precipitated by Antiguan legislation easing AML measures there, and by the European Union Bank internet fraud on international depositors (see Blum et al., 1998) which was symptomatic of domestic regulation – were lifted only in July 2001, and monitoring continued thereafter.
32. In the first round in 2000, Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines were listed. In 2001, Egypt, Grenada, Guatemala, Hungary, Indonesia, Myanmar, Nigeria and Ukraine were added. As of July 2006, Nigeria was de-listed and only Myanmar remains on the list, though others de-listed are under monitoring.
33. The AML staff are currently not in core or permanent IMF posts. In July 2002, the IMF Directors concluded:

> "the staff's involvement in assessing non-prudentially-regulated financial sector activities should be confined to those that are macro-economically relevant and pose a significant risk of money laundering/terrorism financing [italics not in original};
>
> all assessment procedures should be transparent and consistent with the mandate and core expertise of the different institutions involved, and compatible with the uniform, voluntary, and cooperative nature of the ROSC exercise;
>
> the assessments should be followed up with appropriate technical assistance at the request of the countries assessed in order to build their institutional capacity and develop their financial sectors; and the assessments would be conducted in accordance with the comprehensive and integrated methodology."

34. Both have now been removed from the list.
35. The Economist, 23 June 2001, p.801, and an earlier critical report by FATF in 1997.
36. US interviewee.
37. 2004, p.5.
38. Interviews with UK and Caribbean officials. This was one source of the bitterness that several Caribbean ministers expressed over the pressures to introduce tough regulation.
39. See e.g. Alan Block, Masters of Paradise (Transaction, 1990); Alan Block and Constance Weaver. All is Clouded by Desire. (Greenwood, 2004).
40. One could analyse the distribution of direct and 'trickle down' costs and benefits to expatriates and indigenous people, but this is too complex an issue to be reviewed here.
41. The Swiss have been in the forefront of the struggle against tax information sharing with the EU, as well as the wider OECD proposals. Important in this context is that because of their customs union with Liechtenstein, they are responsible for representing Liechtenstein's position also, and have given them substantial assistance in AML measures, especially since blacklisting gave Liechtenstein's bankers and lawyers

a ‘wake-up’ call. The US position on the ‘Harmful Tax Avoidance’ initiative by OECD has been softened substantially since the Bush administration replaced the Clinton one, despite burgeoning budget deficits and tax reductions that one might have thought would give legitimacy to anti-artificial tax avoidance and evasion measures. For the current state of play on information-sharing, see OECD, Tax Co-operation: Towards a Level Playing Field, (OECD, 2006).

42. We will not address here whether this model made sense anyway: see Naylor (2002) for a sharp critique.
43. The US had enacted its Racketeer Influenced Corrupt Organizations (RICO) legislation in 1970, but this did not contain bank routine or suspicious transaction reporting provisions and it was only in the mid-1980s that its asset forfeiture provisions became more commonly used (Levy, 1996; and interviews with US officials).
44. See Ethan Nadelmann, 1993, and Peter Andreas and Ethan Nadelmann, op.cit.. Though one should take into account both Customs officers and the military, for example the Navy in the Caribbean.
45. See Pierre Lascoumes and Thierry Godefroy (with contributions by Jean Cartier-Bresson and Michael Levi, Emergence du Problème des “Places Off Shore” et Mobilisation Internationale, (Paris: CEVIPOP-CNRS, 2002).
46. The administrative or regulatory sanction issue is particularly important in those jurisdictions that do not have or do not implement corporate criminal liability. We are not arguing that multinationals all behave lawfully all the time: if all the financial institutions that had been sanctioned for complicity in fraud against clients or money-laundering were prohibited from doing business, there would be few international banks left. The accounting firm Andersens is the most dramatic example in modern times of reputational harm obliterating corporate value: it should not be forgotten, however, that the key trigger of the collapse was the prosecution of the firm, which conviction would have disqualified it from audit work in the US. For a more general discussion of business regulatory issues – though it does not mention fraud or money laundering and only briefly mentions corruption and organised crime - see John Braithwaite, Restorative Justice and Responsive Regulation, (Oxford: Oxford University Press, 2002).
47. One impact was via the need of banks operating in the USA to control vigorously their correspondent banks, i.e. banks without a substantial physical presence in the country that pay fees for the right to use other banks to clear their currency transactions.
48. Though the US at the last minute proposed and received a special exemption for itself, to allow it more time to implement full details for amounts under its existing reporting limit of $3,000 for money transmitters.
49. The criticism is not so much that listed countries do not deserve to be there, but that other, unlisted countries are no less deserving of this status. Furthermore, scepticism has been expressed – even by FATF member country representatives – that the tighter control of the ‘offshores’ is aimed at generating a competitive advantage for the core FATF members who are controlled in some respects less strictly than the ‘offshore’ finance centres.
50. Some higher status offshore jurisdictions made the calculated gamble that they would be better off losing up to a third of their business to obtain a top rating from whichever evaluation group they were dealing with.
51. See Michael Gold and Michael Levi Money-Laundering in the UK: an Appraisal of Suspicion-Based Reporting, (London: Police Foundation, 1994); KPMG, Money Laundering: Review of the Reporting System, (KPMG, 2003); Matthew H. Fleming, UK Law

Enforcement Agency Use and Management of Suspicious Activity Reports: Towards Determining the Value of the Regime. (http://www.jdi.ucl.ac.uk/downloads/pdf/Fleming_LEA_Use_and_Mgmt_of_SARs_June2005.pdf); Stephen Lander, Review of the Suspicious Activity Reports Regime (Serious and Organised Crime Agency, 2006).
52. Michael Levi and Mike Maguire. "Reducing and Preventing Organised Crime: An Evidence-based Critique." Crime, Law and Social Change 41(5):397–469, 2004.
53. R. Tom Naylor, Wages of Crime (Ithaca: Cornell University Press, 2002).

11
Any Man's Death....
Some Reflections on the Significance of International Criminal Justice

Chrisje Brants

> *"No man is an island, entire of itself; every man is a piece of the continent, a part of the main. If a clod be washed away by the sea, Europe is the less, as well as if a promontory were, as well as if a manor of thy friend's or of thine own were. Any man's death diminishes me, because I am involved in mankind; and therefore never send to know for whom the bell tolls; it tolls for thee..."*
>
> John Donne, Devotions upon Emergent Occasions, Meditation 17, 1624

Introduction

It is a heresy – certainly among most international criminal lawyers for whom these matters are an article of faith, but also in wider social circles in Europe and beyond – to question the purpose and legitimacy of using criminal law as an instrument of transitional justice. To be sure, those on the receiving end (or who fear they might be one day) have put forward plenty of arguments why, per definition, international criminal trials lack legitimacy, ranging from accusations of victors' justice to a democratic deficit in the composition of court and prosecution. But by and large, scholars, politicians, public and media in most democratic states of the international community, embrace international criminal justice with varying degrees of enthusiasm, its significance in theory a self-evident given. Nevertheless, there is much disagreement about how to actually go about investigating, prosecuting and judging the war-crimes and crimes against humanity that are the focus of international criminal justice, and dissatisfaction with the practice of the existing international tribunals in particular.

The many disagreements are not merely about who should sit in judgment of whom and in what way (international, mixed or domestic court; role, obligations and rights of the participants; death penalty, yes or no), but concern in essence the much more fundamental question of what it is that international justice seeks to achieve and, perhaps more importantly, should seek to achieve. Indeed, most of the criticism levelled at the now functioning international courts and tribunals in their different forms, is based on – often implicit – normative frameworks of theoretical

aims and aspirations that in their turn influence how international justice works in practice and how we judge its performance. Some of these are drawn from general theories of trial and punishment in domestic settings, some from the stated aims of the international community in establishing international or internationalised courts, some can be traced back to declarations by the tribunals themselves. All seem to me to have one thing in common: they are based on seriously overstated goals and expectations that lay international justice wide open to the charge of failing to deliver the goods, undermine its fundamental legitimacy and obscure the message it sends to world.

This contribution is an attempt to unravel some of the arguments, in search of the fundamental justification and legitimacy of international criminal justice. What are its goals and what our expectations of it? How do they relate to each other, how realistic are they, and how viable? How relevant is the criticism and to what extent does it detract from the legitimacy of international criminal justice? But first we must clarify the term itself as I propose to use it here.

The International Dimensions of Transitional Justice

However much the horror of war may produce acts of great heroism and courage, it is far more likely to reveal the darker side of human nature. Invasion and occupation by hostile forces, or internal conflict during which people take up arms against their own government (or the government against the people) and against each other, are all likely to produce atrocities on both sides, and acts of terror and intimidation against the civilian population in general and political opponents in particular. Murder, torture, looting, rape, deportation, collaboration, resistance, or simply turning a blind eye and keeping one's head down, these phenomena are as old and probably as inevitable as armed conflict itself. Equally inevitable is the reckoning after hostilities have ceased and the losing side is called to account by the victors. Just how accounts are settled determines how the survivors – winners and losers, perpetrators and victims and the great majority who survived by doing nothing – will continue together in future. For this reason, the process of settling accounts is known as transitional justice, its ultimate aim being the transition from a society divided by the chaos, illegality and injustices of the past, to one in which law and justice are the leading and binding principles of stability.

Transitional justice has many guises, varying from the rough justice of lynch mobs and shaven heads to truth and reconciliation commissions. Sometimes it is the national authorities who create a special forum for trials and/or hearings and the execution of sanctions, or whatever particular form of justice and sanctions is considered relevant and effective.[1] Sometimes it is the international community that takes matters in hand, creating international tribunals and developing substantive norms of international criminal law and procedure.[2] And sometimes national governments request the aid of the international community in creating special mixed (or "internationalized") courts and tribunals.[3] The ultimate in international criminal justice is the International Criminal Court, established on the premise

that, if states are unable or unwilling to try those guilty of international crimes, it is the duty of the international community to do so (the so-called principle of complementary jurisdiction). My concern here is with those forms of transitional justice which have international implications and which are concerned with what we, after World War II, have come to define as war crimes and crimes against humanity: gross violations of fundamental human rights committed within the systemic framework of violence that is armed conflict, and judged by a court of law and according to internationally recognized substantive norms of criminal law and standards of fair trial.

I am not therefore concerned with either lynch mobs or truth commissions (although both can exist next to criminal procedures and can be equally effective, sometimes more so),[4] but with post-conflict criminal trials and their international dimensions – what I, for the sake of a better term, call international criminal justice, although it may well take the guise of national criminal trials with, or without, international pressure and/or aid. In a way, all transitional justice has international dimensions, if only because it is closely associated with periods of political change in the aftermath of armed conflict, and therefore its outcome is of importance for (the future stability of) a region or even the world and the international community as such. As a result, its goals have political overtones – legitimization of change, nation-building, transition to democracy – that, when combined with the traditional goals of criminal law and a professed belief in the universality of fundamental human rights and shared moral repugnance of crimes against humanity, give international criminal justice a certain autonomous significance and discursive power.

Indeed, according to Teitel, both the form and the substance of transitional justice develop parallel to political events: as it currently functions, it has evolved from the post-war internationalism that relied on interstate co-operation with a view to rebuilding Europe, through the accelerated democratization that accompanied the end of the Cold War and the demise of the Soviet Union and "really existing socialism", to the now prevailing conditions of persistent conflict governed by globally recognized and normalized "laws of violence". In this context, global criminal justice has become the "new paradigm of the rule of law".[5] When viewed from this perspective, its pretensions transcend the political, even while they are shaped by political events. This in its turn affects the discourse about goals and effects, which is usually couched in terms drawn from domestic criminal jurisprudence and disparate theories of punishment: international criminal justice is said to establish the rule of law (and therefore legitimize and ease the transition to democracy) because it also effects reconciliation, conflict resolution, rehabilitation, deterrence, retribution, and because it provides a platform of recognition and satisfaction for victims, exposes mass-victimization and lends a voice to the millions who would otherwise go unheard. For all of these reasons, international criminal justice seems to aspire to, and claim for itself, an ability to deal with the past and to determine the future: by subjecting the perpetrators of gross injustice and barbarism to global civilized standards of law, it not only delivers justice for all concerned, but also helps prevent history from being either forgotten or repeated. These are no small pretensions, but strangely enough

they seem to have accumulated in a process somehow quite separate from the legal development of the norms and procedures through which they are to be achieved. Indeed, it is one of the great paradoxes – "schizophrenias" even – of international criminal justice,[6] that the very norms and procedures that determine its *raison d'être* and legitimacy as an expression of the rule of law, at the same time often stand in the way of its goals. But, mind-boggling though such goals sometimes are in their scope and ambition, the very fact of their declaration makes them equally necessary to a demonstration of legitimacy.

However, before taking a closer look at how the different aspects of what have come to be defined as the legitimate aspirations of international criminal justice now interact and contradict each other, the first part of this article is concerned with the past. For there is one trial that does not usually figure in the literature on transitional or international criminal justice and to which, ironically, the international community was originally opposed. Yet the trial of Adolf Eichmann by the State of Israel has come to exemplify some of the most important aspirational parameters within which international criminal justice now operates, and contains some important lessons about its potentials and limitations.

Lessons from the Past: The Trial of Adolf Eichmann[7]

In May 1960, Adolf Eichmann was kidnapped in Argentina by the Israeli secret service, the Mossad, and taken in secret to Jerusalem to stand trial for his part in organizing and executing the genocide and related atrocities against the Jews in occupied Europe. Contrary to the defence's protestations that a fair and impartial trial would be impossible, the handling of the case by the judges (all Jews of German origin who had fled Europe in the 1930's) is generally considered to have been exemplary. Eichmann's defence – his lawyer was also German (though not Jewish), engaged and ultimately paid for by Israel – was concise, skilful and competent, and in some ways more than a match for the prosecutor who had problems proving all of the charges and, in general, sticking to the point. Adolf Eichman was charged under Israel's "Nazis and Nazi Collaborators (Punishment) Law 1950" with crimes against the Jewish people, war crimes, crimes against humanity (murder, extermination, enslavement, starvation and expulsion), crimes against non-Jewish people (especially deportation of Poles) and membership of hostile organisations (Gestapo, SS and SD).

Eichmann was found guilty, though not on all counts and not necessarily on the prosecutor's arguments, or on the basis of the hundreds of hours of harrowing testimony by survivors which generally failed to link him personally to the horrors described. In its final judgment, the court stressed his contemporary knowledge of and deliberate participation in the policy and facts of the genocidal *Endlösung*, rather than his personal involvement in atrocities. But the judges were unimpressed by his assertion that he was merely a cog in the wheel of the Nazi-machinery. Given that the Holocaust should be seen as a collective enterprise by the Nazi state, which one team of people committed jointly in all places and at all

times, Eichmann's responsibility was to be regarded as "that of a 'principal offender' who perpetrated the entire crime in co-operation with the others".[8] Despite protests against the death sentence that was handed down (many from leading Israeli intellectuals and Jews all over the world), he was hanged at midnight on May 31st, 1962.

The kidnapping of Adolf Eichmann was undoubtedly illegal under international law, a violation of the sovereignty of Argentina,[9] and resulted in unanimous condemnation by the Security Council.[10] Whether or not an Israeli court had jurisdiction is a moot question. The Court ruled that any illegality in the way in which the accused was brought before it, could not affect jurisdiction (the presumed illegality being not against the accused but against the state whose sovereignty was violated).[11] More important although not unrelated, was the other argument, which had political ramifications far beyond any legal niceties of international jurisdiction rules. It concerned the right of the State of Israel to try and punish perpetrators of the Holocaust, given that neither the perpetrator nor the victims were its citizens at the time of the crime, nor was it committed on Israeli territory – Israel simply did not exist during war. Drawing on case law and authorities as far back as Grotius, the court established that the "right to punish" derived from "a universal source (pertaining to the whole of mankind) which vests the right to prosecute and punish crimes of this order in every state within the family of nations". There was already a precedent for the evocation of this principle of universality with regard to German war criminals, namely Nuremberg.

Even more to the (political) point, however, was the right of Israel to "...try any who assault its existence.

> [...]The State of Israel, the sovereign State of the Jewish People, performs through its legislation the task of carrying into effect the right of the Jewish People to punish the criminals who killed its sons with intent to put an end to the survival of this people."

And, as the court pointed out rhetorically, "[c]an there be any one who would contend that there is no sufficient 'linking point' between the crime of the extermination of the Jews of Europe and the State of Israel?"[12] Although the court was careful to distance itself from factors extraneous to matters of jurisdiction, guilt and innocence ("It cannot allow itself to be enticed into provinces which are outside its sphere"),[13] the legal reasoning that established the *nexus* between Israel and the crime, and therefore the jurisdiction of the court, does not disguise the political reality that the trial was also a symbolic assertion of Israel's right to represent the Jews past and present. As such, it became both a symbol for Israel's claim to nationhood and a forum for survivors to tell their story, providing at the same time a means of reinforcing the memory of the Holocaust: "You ask, what shall we gain from the Eichmann trial? We shall gain nothing, but we shall be fulfilling our historic duty towards six million of our people who were murdered".[14]

The political expediency of the trial, and the urge to (re)write history in order to (literally) do justice to the millions of dead and surviving Jewish victims, strongly influenced how the prosecutor, himself under no little political pressure, put his case together. Nuremberg had relied predominantly on documentary evidence and had

not treated Shoah any differently from other crimes committed by the Nazi's: genocide against the Jews was not one of the specific charges. The Israeli prosecutor sought a "living record of a gigantic human disaster"[15] as could be provided by live witnesses, and they were selected in order to give as broad a historical picture as possible. The intention was to put the Holocaust back on the map of remembrance, and to influence public awareness at home and abroad, to which end extensive facilities were set up for the international press. The trial however also put something else on the map: Adolf Eichmann as the personification of the *genocidaire*.

Eichmann had evaded trial at Nuremberg,[16] and indeed, when his name appeared in passing in the files there, one of the judges scribbled "who is he?" in the margin. Although Simon Wiesenthal and Allied intelligence went after him later, interest soon waned. Only after a German prosecutor had tipped off the Israelis in the late fifties that Eichmann was in Argentina, did they consider action, though not until Simon Wiesenthal identified his *alias* (Ricardo Klement) at an address in a suburb of Buenos Aires. Eichmann was therefore relatively unknown before the trial. By the time it started, and certainly after it finished, he had become a global icon, a representation of the evils of totalitarianism and all it stood for. This was to influence, probably forever, the way in which the genocide is universally envisaged.

There was only one man in the bullet-proof glass booth to whom the guilt of the great crime of the century now paraded before the eyes of the world could be ascribed, and a rather nondescript little man at that. In reality Eichmann was not particularly small, but he had a thin, pinched look and a stoop, and was plagued by a tic in the muscles of his face that made him twitch involuntarily. In his rather crumpled but decent dark suit and horn-rimmed glasses, he looked like an absent-minded, if nervous, bookkeeper, an impression reinforced by the copious notes he took and the piles of documentation on his desk to which he referred continually; an audible sigh of disappointment arose in the courtroom when he first appeared.[17] All of this hardly matched the received psychological wisdom about the Nazis at the time, namely that they were all depraved criminals, which may be the reason why the prosecutor seriously overstated his case and tried – unsuccessfully – to prove that Eichmann had killed at least once with his own hands, while contending that he had "a demonic personality". At the same time, he sought to paint him as the main actor in the genocide, thereby putting him on a par with Hitler as the primary planner and actor, motivated by extreme anti-Semitism. From the beginning it was obvious that this too would be very difficult to prove.

It was Hannah Arendt who portrayed Eichmann as part of a bureaucratic totalitarian machine, a desk-killer, the personification of the "banality of evil", and it was this more than anything else that informed the thinking about how genocide works for decades to come: part of the evil normality of the modern totalitarian state that allows decisions about policies of genocide at the bureaucratic top to be implemented as mass murder "in the field".[18] Only much later did others turn to the role and essential contribution of "ordinary men" in the "Final Solution", thereby complementing, but never negating the understanding generated by the trial of Adolf Eichmann.[19]

In their final judgment, the Israeli court stuck to resolutely to their core business:

"[...]It is the purpose of every criminal trial to clarify whether the charges in the prosecution's indictment against the accused who is on trial are true, and if the accused is convicted, to mete out due punishment to him [....This does] not mean that we are unaware of the great educational value, implicit in the very holding of this trial, for those who live in Israel as well as for those beyond the confines of this state. To the extent that this result has been achieved in the course of the proceedings, it is to be welcomed. Without a doubt, the testimony given at this trial by survivors of the Holocaust, who poured out their hearts as they stood in the witness box, will provide valuable material for research workers and historians, but as far as this Court is concerned, they are to be regarded as by-products of the trial."[20]

With hindsight, however, what we can learn from the Eichmann trial is that this manifest aim of all criminal trials is, in a way, easily outweighed by its latent – and not so latent – by-products.

From an early stage it was clear that the trial provided both a political stage for a public relations exercise by Israel and an opportunity to (re)write history, reviving fading memories of what had actually occurred in Europe in all of the occupied countries and at the hands of all of the different parts of the German war-machine – the latter prompting the not unjustified complaint by Eichmann's counsel that, necessary though this might be for historians to establish, it was hardly relevant to his client's guilt. Nevertheless, precisely because of its historical digressions the trial was certainly successful in marking a transition in the way in which Israeli's viewed themselves and others viewed Israel. For the first time, not the perpetrators of Shoah but its victims were at the centre of the stage. Survivors living in Israel felt themselves free to speak at last, whereas before they had been simply part of the Jewish struggle for survival in Palestine (their stories no more deserving than those who had fought their Arab neighbours or British forces) and had been reluctant to force their own and very special trauma on society. The new awareness of their past greatly contributed to the national consciousness of all Israelis, enhanced the value of Jewish sovereignty and its territorial manifestation in the State of Israel, and enabled the new generation to greater understanding of both their elders and their own roots.

Neither were the effects confined to Israel. The trial of Adolf Eichmann was a global media event, as Nuremberg was not.[21] It, rather than Nuremberg, demonstrated how genocide was not confined to either naturally "barbarous" people , or to lunatic political ideologues (the only other cases within living memory being the Turkish massacre of the Armenians, Stalin's collectivisation policies and possibly the war waged by Italy against the Abyssinians).[22] It also forced a new generation of West Germans to confront the past, and brought home to other countries that did not live through it, what the Holocaust had meant.[23] The trial stimulated debate all over the world and led directly and indirectly to numerous publications. It personalised the suffering and gave the victims a voice, and demonstrated that the bearing of witness can be a reparative and healing act in itself. And finally, it was a demonstration of the triumph of right over wrong, of the rule of law over lawlessness. Although strictly speaking the Eichmann trial cannot be regarded as a form of transitional justice as the concept is usually employed, in terms of the goals and functions of transitional justice it was a national and international success.

Less attention has been paid to the downside of this achievement, although as Cesarani has noted,[24] commentators at the time such as Elie Wiesel were uneasy about just what message people would take away from the Eichmann trial. It was true that it had reversed the process of "collective world amnesia", but this was not without its price. A criminal trial is singularly unsuited to either to the writing of history or to the explanation of major social and political events such as revolution – or genocide. In the case of Eichmann this had a number of consequences, deriving from both the political implications and from the procedure itself.

From the outset, the prosecutor was determined to put a case on the table that would tell the whole story of the persecution and would rouse public opinion world wide. But the story that eventually came out was a highly selective version of events that, although it certainly clarified the suffering, made no mention of the role of collaborators and bystanders not only in Germany but also in the occupied countries, or of the (lack of) response of the outside world, including the Jews themselves. Indeed, Prime Minister David Ben Gurion, heavily involved in formulating the concept for the trial, instructed the prosecutor to go easy on the West Germans as a nation and to avoid insulting Chancellor Konrad Adenauer, while Foreign Minister Golda Meir suggested that the failure of the Allies to intervene and rescue Jews from Europe be downplayed and the role of the Mufti of Jerusalem and the Arab countries in providing a safe haven for fugitive Nazis be highlighted. Neither were Eichmann's personal contacts with the underground Jewish forces engaged in armed struggle in Palestine and looking for a deal in exchange for weapons, ever mentioned.[25]

The prosecutor relied heavily on the testimony of survivors as evidence, but, heartrending though it was, it was often piecemeal and inconclusive as victims struggled to remember or became confused under cross-examination, and usually irrelevant to the matter in hand: whether Eichmann was personally guilty under the criminal law. It therefore became necessary to supplement it with endless piles of documents: although the judges were naturally sympathetic to and gentle with the witnesses, the court demanded clear evidence upon which a conviction could be based. Even so, all the documentation did not definitively prove Eichmann's intent to wipe out the Jewish nation and in the final event the court relied partly on evidently flawed hearsay testimony against which the accused could not rightly defend himself. This is perhaps the major bone of contention with what was otherwise a scrupulously fair trial. But the exhaustive examination of documents served to lengthen proceedings and subsequently bored the wits out of the journalists who disappeared from the courtroom in droves – and were not therefore able to inform the public of the significance of the most important evidence.

Moreover, those who watched the trial carefully noted a curious effect of the highly emotional witness statements on both the court and the assembled media and public.

> "The relentless stream of horrifying testimony was numbing. Paradoxically, the efforts of the judges to maintain decorum and avoid expressions of emotion did not make the evidence easier to digest but tended to flatten it out: "things were discussed that were not discussable'."[26]

As a consequence of the prosecution strategy and of Eichmann's own performance in the courtroom and insistence that he was merely obeying orders, the image of the *genocidaire* as constructed by Hannah Arendt became the predominant view: new totalitarian man, simply going about his business in the totalitarian order of things. This may have been a politically expedient message at the height of the Cold War, but just as the accounts and images of victims and the events of the Holocaust in general were incomplete, so too the image of the perpetrator was skewed. As Cesarani has pointed out, Eichmann ("the smallest of men", according to Harry Mulisch)[27] and his actions may have been banal, but there was no banality in their consequences: Eichmann the man was unimportant in the great social and historical context of things. But very the vehicle of the criminal trial was bound, per definition, to disguise the nature of the Holocaust and those involved in it, for Eichmann the man was on trial. The French word *genocidaire* is untranslatable, for it means so much more than the person who commits genocide. Indeed, an individual does not "commit" genocide in any normal sense of the word. Genocide is a collective, political and social-psychological event involving a society as a whole that, in certain historical and social-political circumstances, evolves from a climate of distrust and hate to actual perpetration. What any individual did personally is only part of that evolution and essentially cannot explain the phenomenon itself. However, the only thing that matters in a criminal trial is what someone does personally. Eichmann's final defence that he was expatiating "the guilt of the epoch" was in a sense true, but irrelevant.

The Aspirations of Current International Criminal Justice

Whatever the political intentions of the Israeli government and prosecutor, once the court was in session it focussed the trial on the establishment of guilt, and just retribution. That it brought in its wake a healing process for the victims and perhaps set in motion the beginning of reconciliation both with and in Germany, that it helped Israel to adult nationhood, that it helped define history and memory or at least brought it back from the brink of forgetfulness, these were secondary, though not unimportant – or, granted, unintended – effects. And yet all of these, together with truth-finding and retribution, have at some time and by different authors, been raised to autonomous normative status and evoked to justify the existence of international – transitional – criminal justice. What the Eichmann trial did not aim for was rehabilitation and deterrence: rehabilitation was off the horizon with the death penalty, and the execution of Eichmann certainly did not serve as a sufficient deterrent, as subsequent events elsewhere in the world have shown. But these too must be added to the current list of normative aspirations in the international field. It is my contention that much of the dissatisfaction with the practice of international justice arises firstly because it suffers from a surfeit of stated aims that leads to overblown expectations. Secondly and partly as a consequence, as in the case of Adolf Eichmann, (international) criminal law is utilized for purposes for which it is, by definition unsuited and is, moreover, shot through with political subtexts in order to justify this.

The Eichmann trial, however international its ramifications may have been, first and foremost took place in a national context and served national aspirations, and was determined by national Israeli and Jewish interests that far transcended the merely political: as the court pointed out, who of the international community could in good faith deny the Jews the right to put Eichmann on trial? Or that essentially justice had been done and that Israeli society and the world were the better for it (even if the death penalty was an aberration)? That was not because the history of the Holocaust had been either definitively written or satisfactorily explained by the trial, but because justice was done, and seen – and accepted – to be done, in and by a society in no doubt about the essential legitimacy of the court or its verdict.

History-telling and the Legitimacy of International Criminal Justice

Current international criminal justice usually lacks the legitimacy that derives from the direct and uncontested link between the crime, its victims, the court and the sentence, for the simple reason that, by its very nature as transitional justice, the society most affected will be in the throes of (the aftermath) of armed conflict and horrendous crimes, in a state of some chaos and confusion, and divided among and against itself. It will also be at odds about the root causes of its trouble and about how to define who victims and perpetrators are. That makes truth finding, retribution and reconciliation through criminal process, even the idea of a fair trial, contested concepts from the outset (the Eichmann trial could succeed precisely because that was not the case). But because legitimacy is necessarily contested in countries where society is still split by violence and injustice, the writing of history with a view to nation-building and the establishment of democracy and the rule of law, becomes one of the primary legitimizing aims of international criminal justice. It is, however, a certain sort of history-writing, which can all too quickly degenerate into (international) power politics, aimed at legitimizing new regimes and demonizing the old. This is the case whether or not the international community undertakes or is involved in the trials of those who took the lead in mass atrocities.

As in a national context when "ordinary criminality" is the issue, one of the ultimate goals is for a final court's judgment is to draw a line under past events and make the future possible, to bring closure. But, as ever in the context of international crimes, the issues are magnified. Here it is the past that is on trial in the person of its most salient figures, and with it everything that at least part of the nation believed in and that must be shown to be morally wrong. In this sense the trial may well serve a move towards democracy and the rule of law, but at the same time it will be "aimed at promoting the political transition, that is, to underscore the illegitimacy of the prior regime and to advance political transformation."[28] Whether or not this makes the trial and its outcome any the more acceptable to a majority of

the population is a moot question whose answer will depend, among other things, on the ability, legitimate mandate and accepted authority of the new rulers to hold the old to account.

This is all the more problematic if trials are not the result of purely national developments, but have their roots in international interference. States in need of measures to promote the rule of law and democracy, certainly if the lack thereof has allowed the commission of mass murder and other crimes against humanity, are the pariahs of the international community: the failed or rogue states that are unable or unwilling to enact those measures themselves. In these cases, the international community will be the major actor in setting up and conducting, or helping to set up and conduct, criminal trials, either through the United Nations or at the ICC on the basis of complementary jurisdiction. But however much the manifest aim may be to end the impunity of the perpetrators of mass atrocities and so promote peace and justice, the history-telling involved in the truth-finding process will inevitably also foster and be meant to foster normative regime change and nation building. It is but a small step from retro-active history-making legitimizing the trial of prior leaders, to legitimizing pro-active intervention with the humanitarian aim of stopping atrocities and making the trial possible in the first place. The legitimacy of transitional justice then becomes "irrevocably linked to the legitimacy of humanitarian intervention".[29]

One of the problems here, of course, is that there is a fundamental difference between international and national criminal justice. The latter derives the justification for intervention by legitimate authority in the conflictual state of affairs between perpetrator and victim, from the prevention of the anarchy and private feuding that would arise if settling accounts were left to the parties involved, and would endanger the stability of the community as a whole. Although an important international dimension of transitional justice is the notion that it will contribute to stable international relations governed by the rule of law and therefore to the security of the community of nations, here the analogy ends. In international justice the principle of the sovereignty of states precludes there being *a priori* a legitimate authority with autonomous powers to intervene outside of the collective and political will of the community of states and only then if states submit to being part of that collective (this underlies, for example, the principles currently governing the jurisdiction of the International Criminal Court). Internationally instigated transitional justice must create its own legitimacy by first creating that legitimate authority. This is a political process that does not always get the desired result.

In the absence of international consensus on intervention, states may, for whatever reason, feel that justice should prevail over sovereignty and go ahead to create the conditions in which a trial becomes possible. It should not be forgotten that the trial of Adolf Eichmann would never have taken place at all had Israel not taken the law into its own hands. As in the Eichmann-case, history telling in court then has the additional function of justifying both the trial itself, and the illegality of its inception. We may be willing to accept this in the case of Eichmann, and perhaps in the case of Slobodan Milosevic (intervention in Kosovo and the bombing of Belgrade and Serbian positions by NATO on humanitarian grounds – the United

Nations did not intervene until later – undoubtedly contributed significantly to the removal of Milosevic and his eventual transfer to the tribunal in The Hague). But this is a slippery slope indeed, the implication being that the end always justifies the means (and it is indicative that the military action during which President Noriega was abducted from Panama to the US bore the name "Operation Just Cause"). It opens the door to a situation in which criminal trials become the legitimization for armed intervention with a view to regime change, and international criminal justice becomes a rhetorical excuse for furthering the aims of powerful states willing and able to use force with impunity to remove whatever regime they consider a danger, not primarily to the people it oppresses or even to the international community, but to their own national political and economic interests. Events in Iraq and the trial of Saddam Hussein spring to mind. This is the point at which international criminal law and genocide trials become the tools of (inter)national power politics and risk losing their legitimacy altogether.[30]

Establishment of the Rule of Law, Victors' Justice and Fair Trial

For many, the most important aspect of international criminal justice is its power to "promote the rule of law in international relations"[31] and, by expressing "a core equality under the law norm, [to] advance an important element of re-establishing the sense of a threshold rule of law" in national communities torn by conflict and lawlessness.[32] Speaking of the establishment of the ICC, in a statement before the International Bar Association Kofi Annan referred to "the promise of universal justice".[33] There are a number of reasons why, in both the material world of Realpolitik and in the discursive reality of international criminal law, this goal is, not only practically but also theoretically, one of the most problematic: it is hampered by power politics, but, paradoxically, also endangered by the contradictory demands on the criminal process that arise from a combination of other goals and functions.

International criminal trials are shaped by the (global) political scene, and this in itself can stand in the way of a claim that transcends politics. To attempt to transform conflict and atrocity into individual crimes answerable to the rule of law and thereby achieve peace and reconciliation in the region is one thing. To attempt to impose peace, security and democracy through international criminal law as part of regime change, and as a justification for armed intervention is another. The former is difficult enough, especially if the court is established while hostilities are still ongoing (as e.g. the ICTY), or if the old regime has been replaced by a new one that sees the court as a means of shoring up its own political viability and seeks to influence the process of justice for its own ends (as in Rwanda). The latter however raises two further, fundamental problems.

A court established after armed intervention that has achieved its stated aim of overthrowing the old regime, and seeking to try its leaders and demonize them in the process of the history-telling that will inevitably be part of the trial, has a legitimacy problem from the start. Its purpose of doing justice is irrevocably tainted by

the politics of both the interventionist state and the new regime, notwithstanding the rhetoric that the trial is a necessary step on the road to democracy and the rule of law. Unfortunately, the road to democracy is not only paved with good intentions and the trial of Saddam Hussein is a case in point. No doubt he deserves to be found guilty. Some would say he deserves to hang. But in the circumstances the outcome is a foregone and contested conclusion and will be seen as serving American political interests as much as – probably rather than, even – the stability of future Iraqi society. Such trials are more likely to undermine the legitimacy of the successor regime and the likelihood of reconciliation than to establish the rule of law.

Whether or not transitional justice has no other aim than the peace and reconciliation process or is simply a sequel to armed intervention with a view to regime change, there is always something of victors' justice in the air. Does it matter? That rather depends on who the victors are, how legitimate their position and their aims, and what sort of justice is meted out. The second situation is far more problematic than the first: the doctrine of intervention for the purpose of regime change and of the "pre-emptive strike" lack international legitimacy from the very start, to say nothing of victors who themselves have dirty hands when it comes to human rights abuses. To seek to establish that legitimacy through a criminal trial that is promoted as a manifestation of the rule of law is a contradiction in terms, that will also undo the great advantage of victors' justice, namely that is unequivocal. It expresses a relationship between law and power from which it draw its authority, and is recognizable as such.[34] But it must then meet two criteria: its inception must not be tainted by illegitimate aims and power politics which undermine the acceptance of authority, and it must be recognizable as justice if it is to be more than simply "punishment, revenge, spectacle" as some so-called realists maintain victors' justice always is.[35] Ironically, it was the Americans who persuaded the other Allies that summary execution or even a summary trial followed by execution, of the Nazi-leadership would be a self-defeating exercise, and that only fair and just procedure would go any way to laying the foundation for both a new and legitimate regime in Germany and a durable peacetime order.[36]

This brings us to the second reason why, even if there is no reason to doubt the fundamental honesty of an international criminal trial in terms of its stated aims, it is very difficult to conduct a fair trial that is accepted as such by all concerned, and also meets all of the other goals that international criminal justice sets itself. And yet, only a trial that is scrupulously fair can serve to show what the rule of law can achieve. The fairness of the procedure is paramount to an international criminal trial, for its very legitimacy lies in the demonstration that civilized values will and must prevail over barbarity. The problem is that this is not the only thing that it sets out to achieve: it also aspires to retribution, to justice for victims, to truth finding that transcends the question of the defendant's guilt and serves the much broader purpose of making sure that what happened goes down in the annals of history and is not forgotten.

According to Osiel,[37] the predominant purpose of such trials even is the development of a coherent collective memory as a means of coming to terms with a divisive and painful history. But he also sees problems and challenges here, some of which

we have already dealt with and which were manifestly obvious during the Eichmann trial: history telling with a view to establishing collective memory is open to abuse for political ends and, even without it, is fragmentary and selective at best, for it cannot operate as a cohesive force unless the picture it paints is one with which survivors are willing to identify so that it will bind them together in future.[38] A second problem relates to the position of victims' testimony as the main vehicle of collective memory, for this will put victims and perpetrators on opposite sides of a black and white dividing line, and that – in ignoring the problems of collaborators, bystanders and the inter-changeability of perpetrator and victim in situations of mass atrocity – is neither a "true" version of events nor a promising starting point for reconciliation and a tenable future. And finally, history telling may compromise a fair trial, although Osiel makes light of this risk by asserting that the purpose of the trial means that it is "self-consciously designed to show the merits of liberal morality" and so should ensure that it does so "in ways consistent with its very requirements".[39]

I beg to differ. Whether or not the collective memory to be established is one that will "show the merits of liberal morality", the very fact of history telling compromises a fair trial, not only procedurally, but also more fundamentally in undermining an essential element of the rule of law: "core equality". It is certainly true, as Osiel maintains, that the way a case is constructed legally can influence historical and collective memory in several ways, and that prosecutors often seek to influence such memory.[40] But that works the other way round too: the collective memory that prosecutors seek to establish influences the legal construction of the case and the way in which it is conducted. Indeed, in some cases prosecutorial discretion allows the prosecutor to set the trial agenda to re-reading the meaning of victims and justice, and re-telling history, rather than to fair truth-finding by the court. The essence and purpose of the trial, of fairness even, then becomes the victim's, rather than the defendant's day in court, which turns the truth finding and due process purpose of the adversarial trial on its head.

History telling takes time and makes for long drawn out trials that then appear to be neither fair to the defendant nor just for the victim and, moreover, undermine the very process of establishing a collective memory that is in any way a version of events acceptable to the community at large. Part of this was already apparent during the Eichmann-trial, that failed to hold the attention of the media and the public as time went by and matters became repetitive or simply boring, with "numbing" testimony too fragmented and contradictory to provide a solid basis for a conviction so that the court and the prosecutor had to fall back on documentary evidence. Compared to the length of current trials, however, the Eichmann-case was a model of celerity, taking just over a year from the first court session to the execution of sentence and with witness testimony heard within 14 weeks. After almost five years, the prosecutor had still not wound up the case against Slobodan Milosevic, the main reason being that the indictment was framed so as to include the widest possible historical background and to give victims as broad a platform as they needed to bear witness to their suffering. "[...The indictment...] is like a whole chapter of a state's life, dissolution, collapse and rebirth. And to put that into the form of a trial – it's really impossible".[41]

A second reason for the length of the trial is related to the first, and at the same time shows how history telling can stand in the way of due process. A fair trial requires that the defendant be able to defend himself and will, therefore, be allowed at least as much time as the prosecutor to refute oral testimony and all other evidence, whatever its scope. Adversarial debate, including witness testimony and cross-examination is probably the ideal way to establish an acceptable version of the truth, and the Statutes of both the ad hoc tribunals and the ICC provide for an adversarial trial process. However, the very nature of the crimes they try and of the ongoing, though possibly no longer armed, conflict in the societies where those crimes were committed, make testifying an exceedingly traumatic and often dangerous undertaking. If witnesses feel they are endangering themselves (or their families) by testifying, if they have gone into hiding or for some other reason are unwilling or unable to attend court proceedings, there will be no debate and severely diminished opportunities for conducting a defence, yet, because the testimony of victims is often hazy and fragmented and that of former adversaries unreliable, cross-examination is more necessary than ever.

This not only applies to witnesses for the prosecution, but also to witnesses for the defence, who may be equally unwilling to attend. Without their testimony, history telling goes by the board and proof is either impossible or incomplete. The only way out is to skimp on the fair trial requirements. The Israeli court did so by using – essentially unchallengeable – hearsay evidence of dubious reliability, while Eichmann was unable to obtain the presence of former Nazis (understandably loath to risk a journey to Israel), either to challenge them as to their motives in attributing all the blame to him, or to show extenuating circumstances. The international courts have several ways of using evidence that would not normally be acceptable in an adversarial trial, among other things allowing anonymous testimony.

And finally, there is the problem of equality under the law. International criminal justice already has an overreaching problem with equality that is built in to the principle of complementary jurisdiction.

> "Disintegrating states, failed states, rogue states, form the context of the crimes with which it is concerned, for they are the ones unable and unwilling to prosecute the perpetrators; neither do they have the power to remove themselves *per se* from its jurisdiction. Good states, nice democratic members of the international community, will not see their citizens and soldiers before the international court. In any event, some of the things that nice states do in war are not always crimes under the ICC Statute: just as the Nazi bombing of Rotterdam and Coventry counted as crimes of war and the allied destruction of Dresden did not, the use of poison gas and dum-dum bullets is a war crime under article 8 of the Rome Statute and deploying anti-personnel mines and atomic weapons is legitimate."[42]

There is also a serious problem of equality that relates to both the selectivity inherent in history-telling as a result of its implicit aim (to discredit the old regime), and to the necessity of not allowing history-telling to get so out of hand that it clouds all other considerations and precludes the trial coming to a reasonably speedy conclusion (or any conclusion at all). The former means that defendants and the crimes with which they are charged will be selected according to their relevance to

a certain sort of history. The ICTY has tried, with varying success, to avoid this, by making sure that the accused came from all of the ethnic groups involved in the fighting. The ICTR, however, has been unable to bring both parties to equal justice, one of the reasons being that the successor Tutsi-regime has sought to use the tribunal to further its own political ends and has attempted to control the trial agenda, among other things by preventing survivors travelling to Tanzania to testify; without their testimony charges against Tutsi officers suspected of atrocities against the Hutu population will not stick. That this sort of selectivity is one of the problems of victors' justice, and that it loads the die very much against the loser, is obvious, but it gains even greater weight in survivor-communities at odds about who is to be regarded as perpetrator and who as victim.

Even if not inspired by the less attractive aspects of victors' justice, trials can only be brought to a (reasonably speedy) conclusion by reducing both the choice of defendants and of the charges to manageable proportions. It is impossible, and therefore self-defeating to even attempt to put the past in all of its manifestations on trial. This not only means that even in a fair and even-handed series of trials some – probably the majority – of criminal acts against individual victims will go unpunished. It also implies that selection will inevitably have the same effect as in any criminal trial: it reduces the narrative of crime to a few provable sound-bites, and in many ways devalues the victim's experience by taking individual culpability out of the context that was the reality of that experience. No trial of an individual murderer can ever do justice to the collective reality of genocide – for which reason deterrence, retribution and justice for victims are problematic concepts in the context of international criminal justice.

Deterrence and Retribution

Mark Drumbl has criticized the international legal community for failing to develop a comprehensive theory of punishment that does justice to the extraordinary nature of international criminal justice and the crimes with which it is concerned.[43] Although it has "spawned an extensive wave of institution building in international relations", trials and punishment remain very much geared to ordinary concepts of individual guilt and action, ignoring the collective nature and possible normative difference of mass atrocity. In other words, concerned as it is with the "self-important trappings"[44] of its institutional surroundings, international criminal justice has not much to offer in the way of effective punishment. That is not how the international courts view matters:

> "Punishment dissuades for ever [...] others who may be tempted in the future to perpetrate such atrocities by showing them that the international community shall not tolerate the serious violations of international humanitarian law and human rights".[45]

This is quite a claim, and before we get to the retributive value of punishment *per se* in an international setting, a few words on the idea of deterrence as posited above by a trial chamber of the ICTR. Deterrence is a vexed criminological question in any system of criminal justice, for as a negative with innumerable variables, it is

incapable of irrefutable empirical proof. Moreover, what *is* known about the deterrent value of criminal law and punishment shows that it depends on the possibility of making a rational choice to commit a certain act by weighing its illegality against the practically certainty, or at least more than the mere possibility, of being caught and incurring sanctions. The prospect of (relatively swift) sanctions may, in some cases and for some crimes, serve to deter. We may wonder whether, in the case of mass atrocities the risk of punishment figures at all given the circumstances, for there is a legitimizing and socializing logic in societies on the path to genocide that undercuts any rational calculation (even if the chances of standing trial for international crimes were substantial, which they are not, and certainly not in the short term).

Crimes against humanity and genocide have a certain mad and evil rationality, but they take place in a group culture of fear and violence that, through techniques of neutralization, come to form a culture of normality in which situations are redefined and individuals perceive their behavior as legitimate. Neutralizing techniques include "rationalizing vocabularies" that are part of a consensus producing machinery in society that allows collective or individual actors to negate their own or other people's responsibility. It is this culture of normality that brings "ordinary men" to deviate from what would "normally" be compelling social and moral norms.[46] This is entirely irrelevant in the normative sphere of criminal guilt and the ICTY is correct in emphasizing that there is "neither merit nor logic in recognising the mere context of war itself as a factor to be considered in the mitigation of the criminal conduct of its participants".[47] Deterrence, however, is not a normative concept but an empirical effect and its value in situations in which the abnormal has become normal is dubious, to say the least. Deterrent effects aside, however, Drumbl has a problem with notions of retribution as a function of and justification for international criminal justice. He proceeds according to the (Kantian) definition of retribution that underlies so-called absolute theories of penality: the infliction of punishment rectifies the moral balance if it is proportionate to the nature and consequences of the crime, and goes on to note that the proportionality is seriously lacking in international criminal justice. In many cases, the punishment meted out by international courts is of only slighter higher retributive value than punishment for domestic crimes, or the punishment meted out by domestic courts for international crimes. In some cases it is, per definition less: in Rwanda, sentences by the national courts (that include the death penalty, which the tribunals cannot impose) regularly exceed those of the ICTR for the same crimes – lesser crimes in some ways, for the ICTR tries the "big shots" of genocide and the national courts the "ordinary men".[48] Drumbl also notes that the preoccupation with individual guilt deprives truth finding of any connection to reality and victims of a sense of just retribution.

The comparison with national courts in Rwanda is somewhat false, as the argument surely cannot be that, because they have the death penalty, international tribunals should also be able to pass death sentences – an option deliberately, and on the grounds of human rights considerations, denied them by the international community. If the problem is one of equality, then perhaps the national courts should make sure that their sentencing is more in keeping with the tribunals,

rather than the other way round. There is, in any event, a peculiar slant to the criticism that proportionality is lacking in international criminal justice, for what could possibly be "proportionate" punishment for genocide and other crimes against humanity? Just as a criminal trial cannot re-enact the grossness of the crime, so the punishment can never, from a perspective of proportionality, atone for or even "avenge" the extent of suffering – not in a domestic setting of violence and certainly not in an international setting of mass atrocity. Of necessity the grossness of crimes against humanity and genocide will be reduced to one or two provable acts if we are to have a tenable trial at all. This indeed may devalue the individual victim's experience – but would anyone suggest that we relinquish the requirement of proof according to stringent standards and beyond reasonable doubt in order to avenge as many individual victims as possible. What then of the notion of fair trial within the rule of law?

The tribunals have already gone some way down the road to relaxing standards of proof, by extensive interpretation of the concept of "joint criminal enterprise" and guilt by association with a group acting with common (criminal) purpose and intending the crime, rather than seeing only individually committed acts of atrocity as deserving of punishment.[49] But it is still meted out according to individualized guilt within a collective, one of the reasons why Drumbl complains of its lack of penal theory and inability to provide retribution given that crimes against humanity and genocide are collective phenomena. The very nature of such crimes and the moral stigma that they carry go some way to explaining why international criminal law lays such emphasis on individual immorality as the basis of criminal liability. But we should also question whether true collective guilt could ever be a solution.

To be sure, an essential prerequisite to mass atrocity is the silent majority of bystanders who do nothing but look the other way, who hear the politicians exhort the masses to violence but do not respond in protest. Without them, and without the little soldiers who do not question the big general's criminal orders (if they recognize them for what they are under the peculiar circumstances that generate mass atrocity), there would be no genocide. That is a sociological and psychological explanation of a social-psychological phenomenon. It does not follow that this can be translated into categories relevant to criminal procedure or that the moral guilt of the collective can serve as a basis for the retributive value that the punishment of individuals should represent, any more than it follows that under these circumstances punishment will serve as a deterrent.

Justice for Victims

Those who criticize the lack of retributive value in sentencing by international criminal courts, do so partly because they connect it to the concept of justice for victims.[50] We must however ask what is meant by justice for victims and what retribution through punishment can contribute. If only because of the selectivity inherent in all criminal justice (by which I am not referring to problems of victors' justice or selective history making but to the inevitable reality that only some

evil – hopefully the "worst" – will get punished in any system international or otherwise), retribution as a means of avenging individual victims is symbolic – a formalized and stylized expression of recognition and disproval of all the harm inflicted by punishing only a selective part of it. Its legitimacy derives from the authority of the organs of justice and the acceptance by society at large and victims in particular of that authority and the relevance and legality – in the widest sense of the term – of its actions. For that reason, neither retribution nor its contribution to a sense of justice done, also for victims, can be measured by simply looking at sentencing or at whether the criminal process and the concepts of guilt it embodies form a true mirror of empirical reality. The latter moreover, could well stand in the way of what is also claimed to be a goal of international justice: restoring dignity to victims. In the sense that it gives (some of) them a face and a voice with which they may to speak for all who, like their fate, would otherwise remain unknown, there is some truth in this. But we must recognize that it is a selective truth, and that the primary goal of a criminal court – to conduct a fair trial – may be either compromised by the desire to do justice to victims, or may cause them stress and additional trauma as they testify and are cross examined.

That is as true for the Eichmann case as it is for contemporary international criminal justice. But there is also a great difference between the two. The problems associated with victims in international criminal justice are not that sentences are too lenient or that the very process itself reduces and deforms real experiences (which, in any event, are not the same for everyone concerned). These aspects, which some characterise as defects, are and will remain inherent unless we relinquish either the idea that crimes against humanity deserve to be punished under the criminal law, or the notion that such punishment is legitimate only after the establishment of guilt according to due process, and that there are limits to the form it may take – whatever the feelings of victims. Unlike the Eichmann-case, however, the community directly affected by the crimes may be, metaphorically and literally, at some distance from the court that judges them, so that its acceptance of both process and judgment is compromised from the start.

As Drumbl has noted, notions of justice are (partly, I would say) a matter of legal culture, so that some localized influence, drawing on what is traditionally understood to be justice, would appear to be indicated. In general terms that is very true, but it is much easier said than done, however enthusiastic some scholars may be about so-called mixed or nationalized tribunals.[51] To start with, what if national concepts of justice call for punishments internationally proscribed as inhuman or degrading (or as no-go areas for the tribunals, such as the death penalty because they otherwise contravene fundamental human rights), or if trials are conducted according to procedures that do not meet the internationally agreed requirements of a fair trial? These are very real issues in the practice of international justice, as the case of Rwanda has demonstrated, but they are not overcome by introducing (otherwise unacceptable) local standards without destroying the fundamental legitimacy of international criminal justice.

Physical distance is another issue that is not necessarily easy to resolve. The removal of the process of justice from a community where conflict is still raging, or

where successor-regimes may seek to enact a particular form of selective vengeance that ignores their own involvement in atrocities, is possibly the only way to ensure that justice is done at all. At the same time it considerably complicates investigation and evidence gathering (which become contingent on the co-operation of local government authorities; the defence is in an even more difficult position in not having even the international status to demand co-operation), and carries the very real risk of alienating the society where the atrocities took place from the process of judgment and punishment. Such problems have beset both the ICTY and the ICTR, but the latter to a much greater extent.[52]

The location of the tribunal in Arusha was chosen to protect and insulate it from political forces in Rwanda that could undermine its integrity. The result has been unfortunate, to say the least. The tribunal is viewed as remote and inaccessible and most Rwandans have little idea of what it has accomplished, or even what it seeks to accomplish. Not only does it challenge state sovereignty, domestic concepts of justice and the belief of a government and a large part of society in their own innocence, it has also not been isolated from the machinations of a successor government that has attempted to thwart investigation and evidence gathering with regard to its own role at every turn. This in itself is a grave threat to the stated goals of the UN Security Council (to foster national reconciliation between Hutu and Tutsi and to strengthen the Rwandan legal system).[53] Moreover, there has been little chance for Rwandan professionals to gain much experience that they could translate into a national legal system, for they have not been engaged in a professional capacity at the tribunal for fear of Tutsi government spies. (Not until 2005 did the first Rwandan defence lawyer make an appearance at the tribunal). Inequality of treatment is another grudge: this not only refers to differences in sentencing between the tribunal and the national courts, but also to the conditions in which defendants are held; and to an omission that has unnecessarily antagonized the victim-community, the fact that perpetrators of rape, but not their victims have been offered HIV-treatment. As ever, the answer must not be to set the standard to the lowest common denominator but to raise it to humane and acceptable levels of equality. A so-called outreach-programme has been set in place to encourage interaction and dialogue between the tribunal and Rwandan professionals from the legal and academic community and the media. It is more than a little ironic that, as Peskin says, "Whether or not such engagement advances reconciliation between Hutu and Tutsi, it certainly may help reconciliation between the tribunal and the Rwandan society".[54]

The Fundamental Legitimacy of Criminal Justice?

Both the arguments used to criticize the practice of international criminal justice, and the interpretation of the goals that are said to justify its very existence, have one thing in common. They are all based on the concept that (international) criminal law derives its primary legitimacy from its instrumentality, its claimed ability to both promote

peace, security and justice because it deters, exacts retribution, gives victims dignity and effects reconciliation through (historical) truth-finding: "[t]he euphoria surrounding the ICC's establishment creates a sympathetic posture that obscures a more critical discourse on the *efficacy of managing* massive atrocities in distant lands within the rarefied confines of international legal process" (italics not in original).[55] It cannot be denied that international criminal justice is indeed anything but effective in terms of its own goals. It patently does not deter, or has not managed to do so yet. It is by definition selective, so that its history telling is partial and distorted and victims may feel alienated by a process in which they neither recognize themselves nor feel themselves justly represented, avenged or recompensed.[56] In some cases it is openly political. In others, the desire to engage in history telling and to do justice to victims leads prosecutors and sometimes courts to deviate from their primary task and/or skimp on the rules of fair trial; or, they may be so concerned to demonstrate the value of due process and comprehensive history telling, that it becomes difficult to bring the trial to any sort of conclusion. In all of these scenarios the claim that international criminal justice "establishes the rule of law" is compromised.

Moreover, the inherent selectivity in both the historical narrative of a criminal trial and the related form that the trial takes, when combined with the individualization of criminal guilt airbrushes a number of things out of the picture. They are not relevant to the defendant's guilt, but bypassing them may leave a number of issues unresolved that are relevant to reconciliation and coming to terms with the past. This criticism is true, but it is based on expectations that ask too much from the criminal law. A criminal trial is not concerned with the collective moral guilt of a society that has allowed the culture of perverse normality to develop in which genocide becomes possible. And, however relevant the issue of bystanders and collaboration is to understanding how and why crimes against humanity and genocide occur, the criminal law requires no one to be a hero: "it asks no more than that we muster the same courage as other reasonable, normal citizens, [and it is] abundantly clear how few are able to find that courage and how many turn a blind eye in the hope of getting themselves and their families through without too much hassle."[57] Criminal justice is not a panacea for all the ills of society. Indeed, understanding the genesis of crime and the nature of the suffering it inflicts, more often than not leads to the conclusion that the criminal law is the wrong way to tackle either its causes or its effects.

Despite all of this, many in the international academic community continue to advance justifications for the institution of international criminal justice that derive from instrumental goals. It is unfortunate that tribunals sometimes resort to implausible rhetoric to underscore this: punishment does not "dissuade for ever others who might be tempted" (genocide not being like shoplifting, a matter of giving in to temptation unless one will probably be caught), and no sentence can be proportionate to genocide. This lays them open to the charge that "the retributive justification is unclear beyond exhortations that the selected punishment is a necessary response on the part of the civilized world to gross violations of international humanitarian law".[58]

But so what? The legitimacy of a cause should not be confused with the arguments used to justify it. Even if instrumental goals are shown to be untenable,

that is not incompatible with the legitimacy of an autonomous function of (international) criminal law and its praxis that derives not from short term, one-case effectiveness or "management efficacy" but from the continual expression it gives to the power of and a commitment to fundamental human rights and values, therefore from its long term discursive value. Although they may do little to humanize or even mitigate the barbaric realities of politics and war, "human rights languages are all that we have to interrogate the barbarism of power".[59] The language of international justice is part of exposing essential evil,[60] of the construction of "techniques of persuasion as a means of creating awareness".[61] This gives a new and non-instrumental meaning to deterrence that is not about dissuading others who are tempted to commit international crimes, but about the internalisation of humanitarian values so that it becomes unthinkable even to think about their commission.

The contribution of international criminal trials as a demonstration of such values in the rights and rituals of a fair trial, is nowhere as obvious as in the principle of the presumption of innocence. High ranking personages taking the visible and audible political or military lead in crimes against humanity, with whom international criminal justice is primarily concerned, do not stand trial because they might not be guilty. Who, even among the judges, could honestly say that they think General Mladic, who glorified in his power to give orders – and in the orders themselves – in front of the assembled war correspondents and peacekeeping troops at Sbrenica, might be innocent? But if and when he comes to trial, the presumption of innocence will serve to show that, whatever we might think or even know, the fundamentals of the rule of law dictate that punishment is legitimate only if guilt is proven by the prosecutor according to established evidentiary rules: for criminal trials are just as much about preventing the (mis)use of arbitrary power and punishment, as they are about the use of legitimate authority to prosecute, judge and punish.[62] The presumption of innocence in the face of all public knowledge about guilt is a perfect example of what a fair trial seeks to demonstrate: that no one is above the law and that no one should be denied its protection: not the victims, but also not the perpetrator.

There are those who maintain that all of this is irrelevant because these are "local" crimes that should not be subject to criminal process based on western-generated theory and determined by western philosophical discourse. This is not the same argument as that, if at all possible and for many different reasons, trials should take place in the country where the crimes were committed. Rather, it denies the universal applicability of human rights discourse and of the discursive power of the legality of a fair trial in an international court anywhere but in the west. This sort of cultural relativism has completely lost the plot. Western involvement in international criminal justice is not problematic because of the humanitarian values it embodies, but because it is so often determined by economic and political self-interest.[63] Its current formulation may have its origins in western Enlightenment theory, but humanitarian discourse matters more than ever when material reality is determined by Realpolitik.

Neither are gross violations of human rights that are the subject of international criminal justice to be regarded as "local" crimes. Mass atrocity is more than the sum of its parts and as such it transgresses universal norms and is of concern to

humanity as a whole. Such crimes offend the universal human community, whose duty it is to intervene to stop them and to prosecute their most influential perpetrators in solidarity with those who cannot help themselves. The fundamental legitimacy of international criminal justice is its message of solidarity and commitment – no more, but certainly no less: "any man's death diminishes me..."

Notes

1. As in many European countries after the Second World War, and more recently some Latin American countries and South Africa.
2. E.g. the international tribunals for Rwanda and the former Yugoslavia.
3. E.g. Sierra Leone and Cambodia.
4. Lynch mobs and summary justice in general are hardly legitimate, but that they can be effective is undeniable, as for example in the case of the Rumanian dictator Ceaucescu.
5. Teitel, 2005: 839.
6. Cf. Ratner, 1998.
7. This paragraph is based on a number of sources, the most important of which are Hannah Arendt's famous work on the significance of the trial and of Eichmann himself, 1963; the prosecutor Gideon Haussner's perspective on events in Jerusalem, 1967; David Cesarani's definitive biography of Adolf Eichmann, 2005; Harry Mulisch, a Dutch author who reported with great insight on the Eichmann trial, 2005, (orig. in Dutch, 1961); and the transcript of the judgment, available at: *www.nizkor.org/hweb/people/e/eichmann-adolf/transcripts/Judgment*.
8. Transcript, *supra*, part 60.
9. Of which the Israelis were perfectly aware, given that for a while Israel insisted that private persons, acting on their own initiative, had been responsible for the abduction.
10. UN Resolution 23 June 1960, S/4349 with a preamble on US initiative that Eichmann should be 'brought to appropriate justice'.
11. This doctrine seems to hold a special attraction for the common law countries and has been invoked several times by the USA, for example as a justification for the trial of President Manuel Noriega of Panama after his abduction by American forces.
12. Transcript, *supra*, part 3.
13. Transcript, *supra*, opening passage.
14. Prime Minister David Ben Gurion, quoted in Cesarani, *supra* at 239/240.
15. Hausner, *supra*, at 303/304.
16. Immediately after the war, he escaped from American captivity, eventually reaching Argentina in 1950.
17. Simon Wiesenthal had foreseen just such a reaction, and had suggested, impossibly, that he appear in court in SS-uniform.
18. Arendt, *supra*.
19. Browning, 1992.
20. Transcript, *supra*, opening passage.
21. Over 700 journalists attended the trial (among them Hannah Arendt writing for the New York Times), which was broadcast daily, live on t.v., in the United States, Europe and beyond.
22. Although certainly not all of the men who were sentenced to death at Nuremberg, were ideological luncatics – General Jodl probably being the most notable exception – this

was the prevailing idea at the time: if not stark raving mad (like Hess who escaped the gallows for that reason), then crazy enough to have fallen for Hitler and his plans, or depraved enough not to care about the consequences.

23. This was especially true for the United States, although there is some evidence that in the USA the lesson did not last and soon degenerated into cold war rhetoric about the general danger of totalitarianism, i.e. in the parlance of the day: communism.
24. Cesarani, *supra*, at 337–339.
25. *Idem*.
26. Cesarani, *supra*, at 338.
27. Mulisch, *supra*, at 161 (original Dutch version).
28. Teitel, *supra*, at 846.
29. *Idem*.
30. Cf. Alvarez, 1999.
31. Kingsbury, 1999, at: 688.
32. Teitel, *supra* at: 855.
33. Quoted in Turner, 2005, at: 4.
34. Teitel, *supra*, at 847.
35. E.g. Mearsheimer, quoted in Bass, 2003 at 5.
36. Overy, 2003.
37. Osiel, 1999.
38. The Jerusalem court had this to say: 'Hence also the trend noticed during and around the trial, to widen its range. The desire was felt [...] to give, within the trial, a comprehensive and exhaustive historical description of events which occurred during the Holocaust, and in so doing, to emphasize also the inconceivable feats of heroism performed by ghetto-fighters, by those who mutinied in the camps, and by Jewish partisans'. (Transcript, *supra*, opening passage).
39. *Idem* at 65.
40. *Idem*, at 229–239.
41. Steven Kay QC, British counsel at the Milosevic trial, speaking tot The Times, Monday, March 13 2006.
42. Brants, forthcoming.
43. Drumbl, 2005.
44. Brass, *supra*, at 2.
45. Prosecutor v Rutaganda, (ICTR-96-3-T, T.Ch. December 6 1999), para 456.
46. Brants, *supra*, forthcoming: 'Victims are deprived of their status as human beings by labelling them 'vermin' (legitimizing their destruction in the process), the bombing of civilians becomes 'collateral damage', bulldozing villages and destroying crops is 'punishment' and 'deterrence' for harboring insurgents, deportation of groups of the population – often a prelude to or part of a program of genocide – goes by the benevolent name of 'ethnic cleansing'.
47. Prosecutor v. Blaskic, IT 95-14-A, para 711 (ICTY Ap.Ch. 29 July 2004).
48. Drumbl, *supra*, at 580/581.
49. This provision was used, for example, to prosecute the Bosnian Serb general Krstić, who commanded the transport of Muslim women and children and was therefore directly involved in the unfolding humanitarian crisis at Srebenica in 1995, but against whom there were insufficient indications that he could be held responsible for the ensuing massacre of the men (*Prosecutor v. Krstić*, Case No. IT-98-33-T, 2 August 2001). See also Van der Wilt, 2005, 12–13.
50. So too Drumbl, who calls for 'more victim sensitivity' in punishment.

51. See e.g. Turner, 2005.
52. The following is based on Peskin, 2005.
53. SC Res 955, 8 November 1994.
54. Peskin, *supra*, at 955.
55. Akhavanm 2003, at 712.
56. The ICC Statute attempts to remedy this by giving the court the authority to award reparations to victims, and by giving victims their own status at trial (rather than being simply witnesses). Whether or not this will remedy the problem remains to be seen. From the point of view of a fair trial, there is much to be said for keeping victim-oriented procedures strictly separate from the truthfinding and the due process that surrounds it.
57. Brants, 2000, at 233.
58. Henman, 2003, at 72.
59. Baxi, at 126/127–130.
60. Cohen, 2001, at 283.
61. *Idem*, 130.
62. This is not as strange as it may sound to those schooled in adversarial process. Inquisitorial judges are also in a position to form an opinion about guilt before the trial; nevertheless, the presumption of innocence applies here too and serves, among other things, to remind the judge that the burden of proof rests squarely with the prosecutor and that if he fails, *in dubio pro reo* will prevail and the defendant must be acquitted. Many a professor knows beforehand which student will the fail the test, but that does not relieve him or her from a duty to hold examinations.
63. It should not be forgotten that Nelson Mandela, in his autobiography *Long Walk to Freedom* welcomed the codification of these values in the UN Declaration and different international instruments of humanitarian law as 'reaffirming faith in human dignity', nor that the majority of states that have acceded to the ICC are from the continent of Africa.

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12
VITA

Alan A. Block
Professor, Crime, Law & Justice
The Pennsylvania State University

Background Information

Education

Ph.D. (1975) UCLA, History; M.A. (1968); California State University, Northridge, History; A.B. (1966) UCLA, History

Present Position

Professor, Administration of Justice, 1985-current; Professor of Jewish Studies, 1999–2002.

Previous Experience

Wayne Aspinall Chair in History, Political Science, and Public Affairs, Mesa State College, Grand Junction, Colorado, spring 1996; Associate Professor of Criminal Justice/Sociology, University of Delaware (1981–1985); Director of Research, New York State Senate Select Committee on Crime, New York, N.Y., (1980–1985); Assistant Professor of Criminal Justice/Sociology, University of Delaware (1974–1980); Visiting Professor, Faculty of Law, University College Cardiff, Cardiff, Wales (1979–1980); Instructor, Department of History, Alfred University, Alfred, New York (1971–1974); Teaching Assistant, Department of History, UCLA (1970–1971).

Scholarly Activities

Published Material: Books

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25. "Defending the Mountaintop: A Campaign Against Environmental Crime," in Frank Pearce and Michael Woodiwiss (eds.), *Global Crime Connections: Dynamics and Control* (Macmillan, and University of Toronto Press,1993).

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26. "Introduction," in Harold Traver and Mark S. Gaylord (eds.), *Drugs, Law and the State* (Transaction Publishers and Hong Kong University Press, 1992).

27. "IRS Intelligence Operations Under the Alexander Regime: A Commentary on Undercover Operations," in *Crime, Law and Social Change* – Special Issue "Covert Policing", September 1992.

28. "Failures at Home and Abroad: Studies in the Implementation of U.S. Drug Policy," in Block and McCoy, *War on Drugs: Studies in the Failure of U.S. Narcotics Policy* (Westview Press, 1992).

29. Book Review of *Jewish Settler Violence: Deviance As Social Reaction*, in *Justice Quarterly* (March 1992).

30. Book Review of *Addicts Who Survived: An Oral History of Narcotic Use in America, 1923–1965*, in *Journal of Social History* (December 1990).

31. "On The Need For The Waste Industry Disclosure Law," in Pennsylvania House of Representatives, the Conservation Committee, *Hearings on House Bill 2228, The Waste Industry Disclosure Law*, 15 February 1990.

32. "A Trojan Horse: Anti-Communism and the War on Drugs," with Bruce Bullington in *Contemporary Crises: Law, Crime and Social Policy* (1990) 14: 3.

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33. "All the Commissioner's Men: The Federal Bureau of Narcotics and the Dewey-Luciano Affair," with John McWilliams in *Intelligence and National Security* (1990) 5: 2.

34. "European Drug Traffic and Traffickers Between the Wars: The Policy of Suppression and its Consequences," in *Journal of Social History* (winter 1989) 23:2.

35. “Violence, Corruption and Clientelism: The Assassination of Jesus De Galindez, 1956,” in *Social Justice* (summer 1989) 16: 2.

36. “On the Origins of American Counterintelligence: Building a Clandestine Network,” with John McWilliams in *Journal of Policy History* (1989), 1: 4.

37. “The Khashoggi Papers,” in *Contemporary Crises: Law, Crime and Social Policy* (1988), 13: 1.

38. “Crime in the Waste Oil Industry,” with Tom Bernard in *Deviant Behavior* (1988) 9.

Reprinted in David Shichor, Larry Gaines, Richard Ball, *Readings in White-Collar Crime* (Waveland Press, Illinois, 2002).

39. “Masters of Paradise Island: Organized Crime, Neo-Colonialism and The Bahamas,” with Patricia Klausner in *Dialectical Anthropology* (1987) 12:1.

40. “Thinking About Violence and Change in the Sicilian Mafia,” with Bruce Bullington in *Violence, Aggression, Terrorism* (1987) 1: 1.

41. “America’s Toxic Waste Racket: Dimensions of the Environmental Crisis,” with Frank Scarpitti in Tim Bynum (ed.) *Organized Crime in America: Concepts and Controversy*, Criminal Justice Press, 1987.

42. “A Modern Marriage of Convenience: A Collaboration Between Organized Crime and U.S. Intelligence,” in Robert J. Kelly (ed.) *Organized Crime: A Global Perspective*, Rowman and Littlefield, 1986.

43. “Casinos and Banking: Organized Crime in The Bahamas,” with Frank Scarpitti in *Deviant Behavior* (1986) 7: 4.

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44. “Behind the Court Room Door: Politics and the Magistrates’ Courts,” with Philip A. Thomas in *Australian Journal of Law and Society* (1984) 2:1.

45. “Organized Crime and Toxic Waste Disposal: A Summary,” in U.S. Senate, Permanent Subcommittee on Investigations, *Hearings, Profile of Organized Crime: Mid-Atlantic Region*, Government Printing Office, 1983.

46. “Defining Illegal Hazardous Waste Disposal: White Collar or Organized Crime?” with Frank Scarpitti in Gordon P. Waldo (ed.) *Career Criminals: Readings in Organized, Corporate, and Professional Crime*, Sage Publications, 1983.

47. “Fascism, Organized Crime and Foreign Policy: An Inquiry Based on the Assassination of Carlo Tresca,” with Marcia J. Block in R. Simon and S. Spitzer (eds.) *Research in Law, Deviance and Social Control*, JAI Press, 1982.

48. “ ‘On the Waterfront’ Revisited: The Criminology of Waterfront Organized Crime,” *Contemporary Crises: Law, Crime and Social Policy* (1982) 6:4.

49. “History and Public Policy: An Inquiry into the Organized Crime Control Act, 1970,” *The Public Historian* (winter 1980) 2: 2.

50. “Searching for Women in Organized Crime,” in S.K. Datesman and Frank Scarpitti (eds.) *Women, Crime and Justice*, Oxford University Press, 1979.

51. “Miners, Tailors and Teamsters: Business Racketeering and Trade Unionism,” with William J. Chambliss in *Crime and Social Justice: Issues in Criminology* (1979) 11.

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52. “The Snowman Cometh: Cocaine Syndicates in Progressive New York,” *Criminology* (1979) Vol. 17, No. 1.

53. “History and the Study of Organized Crime,” *Urban Life: A Journal of Ethnographic Research* (1978) Vol 6, No. 4.

Reprinted in Eric H. Monkkonen (ed.), *Crime and Justice in American History*, vol. 8, part 1, K. G. Saur, (1992).

53. Book Review of *The New Psychohistory* in *Journal of Marriage and the Family* (1977).

55. “Aw! Your Mother’s in the Mafia: Women Criminal in Progressive New York,” *Contemporary Crises: Law, Crime and Social Policy* (1977) 1: 1.

Reprinted in R. Simon and F. Adler (eds.) *Sociology of Deviant Women*, Houghton Mifflin, 1978; and **Reprinted** in L. Bowker (ed.) *Women and Crime in America* Glencoe Publishing, 1981.

56. Book Review of *Lansky* and *Kill the Dutchman: The Story of Dutch Schultz* in *Journal of Social History* (1973).

57. “The Land of Nod: A Geography of Whittaker Chambers,” *UCLA Graduate Journal* (1969) vol. 3.

Conference Papers and Related Activities

1. “Benex and Russian Organized Crime,” at the annual meeting of the European Society of Criminology, Helsinki, Finland, August, 2003.

2. “Crooked Caribbean Banks, Irish-American and Israeli Traffickers in Colombia and the Carribean,” invited paper by the Central Intelligence Agency and the DCI Crime and Narcotics Center, Library of Congress, January 29, 2003. The paper placed on the internet by the CIA and DCI.

3. “An Analysis of The Bank of New York’s Involvement with Russian Capital Flight,” at the annual meeting of the European Society of Criminology, Toledo, Spain, September 2002.

4. The Causes and Consequences of Russian Organized Crime, 1980 – 2000,” at the annual meeting of the American Historical Association, Tucson, Arizona, August 2002.

5. “Some Thoughts on the Bank of New York and Russian Money,” at the annual meeting of the American Society of Criminology, Atlanta, Georgia, November 2001.

6. “From The Bahamas to Hong Kong: A Contemporary History of Fraud and Tax Evasion,” at the annual meeting of the American Historical Association – Pacific Coast Branch, Vancouver, British Colombia, 2001.

7. “Kennedy, Hundley and Their Trojan Horse: Joseph Valachi’s (In)Significance to the Study of Organized Crime,” at the annual meeting of the American Society of Criminology, Atlanta, Georgia, November 2001.

8. “The Serious Crime Community of Crooked Lawyers: Tax Evasion and Securities Fraud,” at the annual meeting of the American Society of Criminology, San Francisco, November 2000.

9. “State-Sponsored Transnational Organized Crime,” at the Economic & Social Research Council Research Seminar Series, Policy Responses to Transnational Organized Crime, Scarman Centre of the University of Leicester, this meeting at the Home Office, London, December 15, 1999.

10. “Smash and Grab – Bandit Capitalism: Resource Expropriation and Capital Flight in the CIS,” at the annual meeting of the American Society of Criminology, Toronto, Canada, November 1999.

11.“By Fair Means or Foul: Organized Criminal Enterprise and the Human Condition,” with Jeffrey Scott McIllwain, at the annual meeting of the American Society of Criminology, Toronto, Canada, November 1999.

12. “Penny Wise: Accounting for Fraud in Thinly-Traded Securities,” with Sean Patrick Grififin at the 13th International Conference of The International Society for the Reform of Criminal Law, “Commercial and Financial Fraud: A Comparative Perspective,” Plenary 6: Securities and Mutual Funds Fraud, Malta, July 10th, 1999.

13. “Environmental Crime and Pollution: Wasteful Reflections,” Plenary Session, at the 2nd International Conference for Criminal Intelligence Analysis, “Assessing Tomorrow’s Challenges Today,” sponsored by the Royal Institute of International Affairs, National Criminal Intelligence Service, Interpol, London, England, March 1999.

14. “Criminal Syndicates in the Caspian Sea Region: The Expropriation of Resources,” at the conference Global Crime, Corruption, and Accountability, at the annual meeting of EPIIC (Education for Public Inquiry and International Citizenship), Tufts University, March 1999.

15. “The Links Between Waste Industries and Systematic Criminal Behavior,” a Rockefeller Foundation Project, presented at the conference Global Crime, Corruption, and Accountability, at the annual meeting of EPIIC (Education for Public Inquiry and International Citizenship), Tufts University, March 1999.

16. Chair of the panel “Stealing Assets and Laundering Money: International White Collar Crime,” at the annual meeting of the American Society of Criminology, Washington, D. C., November 1998.

17. “The House of Fraud: The World of Penny Stock Scamming,” with Sean Patrick Griffin, presented at the annual meeting of the American Society of Criminology, Washington, D. C., November 1998.

18. Discussant on the panel “Criminology and Human Rights: Comparative and International Perspectives,” at the annual meeting of the American Society of Criminology, Washington, D. C., November 1998.

19. “On the Origins of Iran-Contra: Lessons from the Durrani Affair,” presented at “Grand Crossings,” a symposium honoring the life and work of Professor Alexander Saxton, UCLA and the Clark Library, September 25–26, 1998.

20. “The International Traffic in Narcotics: A Critique,” presented at the annual conference of the International Society for the Reform of Criminal Law, Barbados, August 1998.

21. “State Organized Crime: A Consideration of the National Intelligence Service,” annual meeting of the American Society of Criminology, San Diego, November 1997.

22. Chair of the panel *Substance Abuse* annual meeting of the American Society of Criminology, San Diego, November 1997.

23. “Penny Wise: Accounting for Fraud in the Penny-Stock Industry,” with Sean Patrick Griffin, 5th Liverpool Conference on Fraud, Corruption & Business Crime, Liverpool, England, April 16, 1997.

24. Chair of the panel *Organized Crime and American Labor* annual meeting of the American Society of Criminology, Chicago, November 1996.

25. “The Teamsters and the White House: Organized Crime and the Department of Labor,” with Sean P. Griffin, annual meeting of the American Society of Criminology, Chicago, November 1966.

26. “The Failure of International Sanctions: Smuggling Oil to South Africa During the International Embargo,” annual meeting of the American Society of Criminology, Chicago, November 1996.

27. “Fueling Our Future: The Role of Government at Century’s End,” *and* “Good Fellaskis: Mafia and the New Russia,” at the 48th Annual Conference on World Affairs, *Technology, Power, and Change*, University of Colorado at Boulder, April 8–12, 1996.

28. Chair and discussant on the panel *Smuggling, Anticommunism and Moral Panics: Historical Influences on National Drug Policy* annual meeting of the American Society of Criminology, Boston, November 1995.

29. Co-Organizer of the conference Organized Crime and Public Policy: Issues for Central and Eastern Europe, held at Charles University Law School, Prague, Czech Republic, October 1995.

30. “Organized Crime and International Security: An Emerging Paradigm,” paper presented at the Organized Crime and Public Policy: Issues for Central and Eastern Europe, conference at Charles University Law School, Prague, Czech Republic, October 1995.

31. Invited participant for *Workshop on Organized Crime*, National Strategy Information Center, Washington, D.C., May 1995.

32. Invited participant for the panel *Implications of the Globalization of Financial Markets and Financial Institutions*, at Tufts University’s tenth anniversary symposium “Visions of the Future: Anticipating the Year 20/20 conducted by EPIIC (Education for Public Inquiry and International Citizenship), Boston, March 1–6, 1995.

33. “Petroleum Rackets, Racketeers, and the Underground Economy: The Criminal Process’ Limitation in Dealing with Complex Frauds,” paper presented at the 8th International Conference of the Society for the Reform of Criminal Law,” Hong Kong, December 1994.

34. “International Organized Crime,” paper presented at the annual meeting of the Law & Society Association, Phoenix, June 1994.

35. "Organized Crime and Casino Gambling: An International Phenomenon," with Lisa Vardzel, paper presented at the Ninth International Conference on Gambling and Risk Taking, Las Vegas, June 1994.

36. "How do statistics and the media influence our perception of crime and the way we formulate anti-crime policy?" panel discussion at the symposium *Criminal Justice 1994: The Constitution, The Courts, The Questions*, sponsored by The Fund For Constitutional Government, National Press Club, Washington, D.C., May 1994.

37. "The New Russian Mob," invited paper presented at the Combined Law Enforcement Intelligence Group seminar, Ocean City, Maryland, October 1993.

38. Chair of the session, *An Examination of the BCCI Affair*, at the annual meeting of the Society for the Study of Social Problems, Miami Beach, Florida, August 1993.

39. "Organized Cross-Atlantic Crime," with Petrus van Duyne, paper presented at the 11th International Congress on Criminology, Budapest, Hungary, August 1993.

40. "Racketeering in Fuels: International Organized Crime," paper presented at the Third International Conference on Ethics in the Public Service, Jerusalem, Israel, June 1993.

41. "Organized Crime Trends in The Netherlands: Briefing Paper," invited paper by the Directie Criminaliteitspreventie, Ministerie van Justitie, Den Haag, The Netherlands, March 1993.

42. "Money-Laundering on Two Caribbean Islands: Sint Maarten and Grand Cayman," with Jack Blum, invited paper presented at a conference sponsored by the European Economic Community and Observatoire Geopolitique Des Drogues, Paris, December 1992.

43. Invited Participant at the National Strategy Information Center's conference *The Impact of International Organized Crime on U.S. Interests: The Gray Area Phenomenon*, Washington, D.C., December 1992.

44. "Organized Crime Tax Frauds," invited paper for the conference *White Collar Crime and Public Corruption*, Queens University, Kingston, Ontario, 1992.

45. "Into the Abyss of Environmental Policy: Battling the World's Largest Hazardous Waste Incinerator, East Liverpool, Ohio," paper presented at the annual meeting of the American Society of Criminology, New Orleans, 1992.

46. Chair of the session *Perspectives on Drugs and Drug Policy in 20th Century America*, at the annual meeting of the American Society of Criminology, San Francisco, 1991.

47. Chair of the session *Poisoning The Poor: Illicit Waste Disposal*, at the annual meeting of the American Society of Criminology, San Francisco, 1991.

48. "Organized Crime and Energy: Reflections on Tax and Energy Policy," paper presented at the annual meeting of the American Society of Criminology, San Francisco, 1991.

49. "IRS Intelligence Operations Under the Alexander Regime: A Commentary on Undercover Operations," paper presented at the annual meeting of the Law & Society Association, Amsterdam, The Netherlands, June, 1991.

50. Moderator for the session "The Intelligence Dimension in Fiction," at the conference *The Wall: Reality and Symbol*, The Pennsylvania State University, October 1991.

51. "Unraveling Operation Leprechaun: The Political World of the IRS in the Watergate Era," paper presented at the second Liverpool conference on "Fraud, Corruption & Business Crime," April 1991.

52. "Thoughts on the History of Organized Crime: In Praise of Revisionist Criminology," paper presented at the annual meeting of the American Society of Criminology, November 1990.

53. Discussant at the session *New York Crime: The Progressive Period*, at the annual meeting of the American Studies Association, New Orleans, October 1990.

54. Invited speaker for the session *Evaluation of Current Drug Policy*, at the annual meeting of the Northeastern Association Criminal Justice Sciences, Vermont, October 1990.

55. Co-Organizer of the conference War on Drugs: Lessons in History and Public Policy, University of Wisconsin, Madison, Wisconsin, May 1990.

56. "Failures at Home and Abroad: Case Studies in the Implementation of U.S. Drug Policy," paper presented at the "War on Drugs: Lessons in History and Public Policy," University of Wisconsin, May 1990.

57. "Clio and the Mob: Historical Assumptions in the Federal Assault on Racketeering," paper presented at the annual meeting of the American Society of Criminology, 1989.

58. Chair of the Session *Historical Perspectives on Criminal Justice* at the annual meeting of the American Society of Criminology, 1989.

59. "Defending the Mountaintop: Research in the Public Interest," paper presented at the annual meeting of the American Society for Industrial Security, Nashville, 1989.

60. "The Galindez Assassination: A Discussion of State Organized Crime and Espionage," paper presented at the annual meeting of the American Society of Criminology, 1988.

61. "A Trojan Horse: A Cautionary Tale of the Relationship Between Drug Policy and Foreign Policy," with Bruce Bullington, paper presented at the Drug Policy Foundation conference, Washington, D.C., 1988.

62. "European Drug Barons: Issues in the Social History of Narcotics," paper presented at the International Congress of Criminology, Hamburg, Germany, 1988.

63. "Crisis in the Internal Revenue Service: The Demise of the Intelligence Division under Donald Alexander, 1973–1976," paper presented at the annual meeting of the Organization of American Historians, Reno, Nevada, March 1988.

64. "Drug Enforcement or Counterespionage?: The Federal Bureau of Narcotics, 1940–1960," with John McWilliams, paper presented at the annual meeting of the American Society of Criminology, 1987.

65. Chair of the session *Crime and Public Policy* at the annual meeting of the Southwestern Social Science Association, Dallas, 1987.

66. “Ambiguities in U.S. Caribbean Policy: The Bahamas, Narcotics, and American Foreign Policy,” paper presented at the annual meeting of the Southwestern Social Science Association, Dallas, 1987.

67. “Toxic Waste Disposal and Law Enforcement: From Carter Through Reagan 1,” with Frank Scarpitti, paper presented at a plenary session of the annual meeting of the Academy of Criminal Justice Sciences, 1986.

68. “The Clandestine Politics of the Federal Bureau of Narcotics: The Dewey-Luciano Affair,” with John McWilliams, paper presented at the annual meeting of the American Society of Criminology, 1986.

69. “Aspects of the ‘Black Economy’: The History of Organized Crime and Off-Shore Banking in The Bahamas,” with Frank Scarpitti, paper presented at the annual meeting of the American Society of Criminology, 1985.

70. “Banking On and With the Mob: Focus on Cooper Funding,” paper presented at the annual meeting of the Academy of Criminal Justice Sciences, 1985.

71. “Masters of Paradise Island: Organized Crime and The Bahamas,” with Patricia Klausner, paper presented at the annual meeting of the American Society of Criminology, Montreal, 1984.

72. “Corporate Crime and the Petro-Chemical Industry: Illicit Activities in Fuel Oils,” paper presented at the annual meeting of the American Society of Criminology, 1984.

73. “Political Corruption and Toxic Waste: An Essay on the Manipulation of Information,” paper presented at the annual meeting of the American Society of Criminology, 1983.

74. “Reflections on World Politics and the History of Narcotics,” paper presented at the International Congress of Criminology, Vienna, Austria, 1983.

75. “Organized Crime By Any Other Name: Some Thoughts on the Terms White-Collar and Organized Crime,” with Frank Scarpitti, paper presented at the annual meeting of the American Society of Criminology, 1982.

76. Chair of the session *Criminological Theory and Organized Crime*, at the annual meeting of the American Sociological Association, 1982.

77. “On the Waterfront: The Criminology of Waterfront Organized Crime,” paper presented at the annual meeting of the Academy of Criminal Justice Sciences, 1982.

78. Chair of the session *The Politics of Federal Law Enforcement and Regulatory Activity, 1870–1940*, at the annual meeting of the Academy of Criminal Justice Sciences, 1982.

79. “Fascism, Organized Crime and Political Murder: Focus on Carlo Tresca,” with Marcia J. Block, paper presented at the annual meeting of the American Society of Criminology, 1980.

80. “Political Economy and Organized Crime: Focus on French and British Historiography,” paper presented at the annual meeting of the American Sociological Association, New York, 1980.

81. “History and Policy: An Inquiry into the Organized Crime Control Act, 1970,” paper presented at the Conference on History and Public Policy, Carnegie-Mellon University, Pittsburgh, Pennsylvania, 1980.

82. “Historical Studies of Organized Crime and Political Economy: The Sixteenth Century,” paper presented at the annual meeting of the American Society of Criminology, 1979.

83. “Murder and Organized Crime,” paper presented at the International Symposium on Victimology, University of Westphalia, Muenster, Germany, 1979.

84. “Behind the Court-Room Door: Politics and the Magistrates’ Courts,” with Philip A. Thomas, paper presented at the annual meeting of the British Sociological Association, Law and Society Conference, Warwick, England, 1979.

85. “Some Thoughts on the State of Comparative Research in the Study of Organized Crime,” paper presented at the annual meeting of the Society for the Study of Social Problems, 1977.

86. “The Role of Employers in the Development of Criminal Syndicates,” paper presented at the annual meeting of the European Group for the Study of Deviance and Social Control, Barcelona, Spain, 1977.

87. “The Snowman Cometh: Cocaine Syndicates in Progressive New York,” paper presented at the annual meeting of the Missouri Valley History Conference, Omaha, Nebraska, 1977.

88. “Organized Crime and Corruption: The Politics of Supersession and Special Prosecuting in New York City, 1930–1942,” paper presented at the annual meeting of the American Society of Criminology, 1977.

89. “The Search for Women in Organized Crime: An Inquiry Into Historical Methods and the History of Ideas,” paper presented at the annual meeting of the American Society of Criminology, Phoenix, Arizona, 1976.

Editorial Services

Associate Editor, *War Crimes, Genocide & Crimes Against Humanity*
Member of the International Advisory Board, *Transnational Organized Crime*.
Member of the Editorial Board, *Criminal Law Forum*.
Editor-in-Chief [1987–2004], *Crime, Law and Social Change: An Interdisciplinary Journal.*

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