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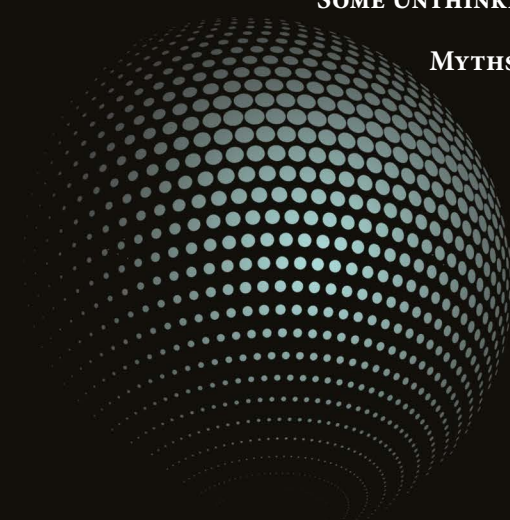
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The Artificial Intelligence Future of Criminology Scholarship

Paul Rich

President, Policy Studies Organization

As if being editor is not hard enough, Alain Bauer and other editors now face the complications wrought by artificial intelligence. I asked ChatGPT to provide ideas for this issue and below is what the computer offered immediately. It is alarming to consider where computers will be in five years. Will lawyers' briefs and judges' verdicts be turned out this way? And in ten years will the bestselling novels and most successful plays be credited to ChatGPT? We need to give this serious and immediate attention, because every day more is fed into the computers: the entire proceedings of law reviews, court proceedings, contracts and divorce writs and everything else you can imagine are being gobbled up. This issue will be included by the end of the month. Overworked interns and junior attorneys will certainly use the output, and undoubtedly some senior legal folk as well. Can you detect the nonhuman origin of the below? I cannot. I wonder if there will soon be artificial intelligence present at conferences and negotiations, talking to us with a great deal of authority. Thank you ChatGPT for your insight, maybe.

El futuro de la inteligencia artificial para la investigación criminológica

Como si ser editor no fuera lo suficientemente difícil, Alain Bauer y otros editores ahora enfrentan las complicaciones provocadas por la inteligencia artificial. Le pedí a ChatGPT que me diera ideas para este número y debajo está lo que la computadora ofreció de inmediato. Es alarmante considerar cómo serán las computadoras dentro de cinco años. ¿Se resolverán de esta manera los escritos de los abogados y los veredictos de los jueces? ¿Y en diez años, las novelas más vendidas y las obras de teatro más exitosas se acreditarán a ChatGPT? Necesitamos darle a esto una atención seria e inmediata, porque cada día se alimenta más a las computadoras: todo el proceso de revisión de leyes, procesos judiciales, contratos y órdenes de divorcio y todo lo demás que se pueda imaginar se está

engullendo. Este número se incluirá a finales de mes. Los pasantes con exceso de trabajo y los abogados subalternos sin duda usarán esta recurso, y sin duda también algunos abogados senior. ¿Puede detectar el origen no humano de lo de abajo? No puedo. Me pregunto si pronto habrá inteligencia artificial presente en conferencias y negociaciones, hablándonos con mucha autoridad. Gracias ChatGPT por su perspectiva, supongo.

犯罪学研究的人工智能未来

担任编辑一职需要辛勤付出，但Alain Bauer和其他编辑现在还准备应对人工智能带来的复杂问题。我请ChatGPT提供关于本期内容的看法，以下是其立即提供的内容。五年后计算机的发展状况如何，这是一个令人担忧的考量。律师的辩护和法官的判决会以ChatGPT这类方式呈现吗？十年后，最畅销的小说和最成功的戏剧会归功于ChatGPT吗？我们需要立即认真对待这一点，因为每天都有更多的东西被输入计算机，包括法律评论学报、法庭会议记录、合同、离婚令、以及其他你能想象到的一切。本期内容将于本月底出版。忙碌的实习生和初级律师肯定能借鉴本期内容，一些高级法律人员也是如此。你能发现以下内容出自非人类吗？我不能。我想知道是否很快就会有人工智能出现在会议和谈判中，以极大的权威与我们交谈。也许吧，感谢ChatGPT的洞察力。

Title: The Future of Criminology: Embracing Interdisciplinary Approaches for Holistic Understanding and Effective Solutions

Introduction: Criminology, the scientific study of crime and its causes, has long been a vital field for understanding and addressing the complexities of criminal behavior in society. As we move into the future, criminology stands poised to undergo significant transformations driven by advancements in technology, changes in social dynamics, and a growing recognition of the need for interdisciplinary approaches. The future of criminology holds immense potential to improve our understanding of crime, enhance crime prevention strategies, and foster more effective criminal justice systems.

Paragraph 1: Technological Advancements and Data-Driven Approaches The future of criminology will undoubtedly be shaped by rapid advancements in tech-

nology. The advent of big data, artificial intelligence, and predictive analytics will provide criminologists with powerful tools for analyzing vast amounts of information. This data-driven approach can aid in identifying patterns, detecting emerging trends, and developing targeted interventions. Moreover, advancements in forensic science and DNA analysis will continue to play a pivotal role in solving cold cases and improving investigative techniques. However, it is crucial to balance the potential benefits of technology with ethical considerations to ensure privacy rights and prevent algorithmic biases.

Paragraph 2: Interdisciplinary Collaboration and Holistic Approaches Criminology is no longer limited to the confines of traditional criminal justice disciplines. The future of the field lies in embracing interdisciplinary collaboration and adopting holistic approaches. Criminologists must work hand in hand with sociologists, psychologists, economists, computer scientists, and other experts to gain a comprehensive understanding of crime and its underlying causes. This interdisciplinary synergy will enable the development of innovative strategies that encompass social, economic, and environmental factors contributing to criminal behavior. By examining the broader context in which crime occurs, criminologists can propose evidence-based policies and interventions that address the root causes of criminal activity.

Paragraph 3: Restorative Justice and Rehabilitation In the future, criminology will place an increased emphasis on restorative justice and rehabilitation. Traditional punitive approaches that focus solely on punishment have shown limited success in reducing recidivism rates. Restorative justice, on the other hand, prioritizes healing, accountability, and community involvement. By emphasizing the needs of victims, facilitating offender accountability, and promoting reintegration into society, restorative justice practices have the potential to break the cycle of crime and foster a more balanced and just criminal justice system. Criminologists will play a vital role in shaping these alternative approaches and promoting evidence-based policies that prioritize rehabilitation alongside public safety.

Conclusion: The future of criminology holds great promise as it incorporates technology, embraces interdisciplinary collaboration, and focuses on restorative justice and rehabilitation. By harnessing the power of technological advancements, criminologists can leverage data-driven approaches to enhance crime prevention and investigative techniques. Interdisciplinary collaboration will foster a holistic understanding of crime, enabling the development of comprehensive strategies that address the complex interplay of social, economic, and environmental factors. Ultimately, the evolution of criminology toward restorative justice and rehabilitation will result in a more equitable and effective criminal justice system that prioritizes healing and community well-being.

Pakistan: Specific Islam, Unknown Aristocracies

Camille Verleuw

Preamble by Xavier Raufer

ABSTRACT

Although Pakistan wishes to present itself as an exemplary Islamic country where the functioning of the State and society is fully based on the (male) egalitarian principles of Sharia Law, its heritage and historical links to the functioning of Indian caste-based society persist today through the figure of the Ashrâfs. Camille Verleuw offers an overview of this thinly veiled caste system specific to Pakistan, and its implications for the organization of the Pakistani state and army.

Keywords: Ashrâf, phratries, caste, Sharia, army, Pakistan, India

Pakistán: Islam específico, aristocracias desconocidas

RESUMEN

Aunque Pakistán desea presentarse como un país islámico ejemplar donde el funcionamiento del Estado y la sociedad se basa completamente en los principios igualitarios (masculinos) de la ley Sharia, su herencia y vínculos históricos con el funcionamiento de la sociedad india basada en castas persisten hoy en día a través de la figura de los Ashrâfs. Camille Verleuw ofrece una descripción general de este sistema de castas apenas velado específico de Pakistán y sus implicaciones para la organización del estado y el ejército paquistaníes.

Palabras clave: Ashrâf, fratrias, casta, Sharia, ejército, Pakistán, India

巴基斯坦：特定的伊斯兰教、未知的贵族

摘要

尽管巴基斯坦希望将自身塑造成为一个模范伊斯兰国家，其中国家和社会的运作完全基于伊斯兰教法的（男性）平等原则，但它的遗产以及与印度种姓社会运作的历史联系仍然通

过阿什拉夫 (Ashrâfs) 的形象而存在至今。Camille Verleuw 概述了这一巴基斯坦特有的鲜为人知的种姓制度，以及该制度对巴基斯坦国家和军队组织的影响。

关键词：阿什拉夫，胞族，种姓，沙里亚，军队，巴基斯坦，印度

Preamble

The “French criminologist” mentioned by Camille W. in the following article is me. But after the anecdote hereafter narrated by an old friend, I would experience an even bigger surprise in Washington, D.C., during meetings dedicated to Islamist terrorism, in the company of the official top brass of the anti-terrorism: emissaries of the services, ministries and staffs concerned.

A small preliminary: to read Camille W’s article and profit from it, it is necessary to have first integrated this: it is as impossible to grasp the functioning of the Pakistani State apparatus without having fully understood the logic and the “mechanics” of the *Ashrâf*, as it is to study the Fifth Republic while ignoring the logic and the “mechanics” of the ENA (National School of Administration). Ignoring the *Ashrâf* in Pakistan or the ENA in France, generates the worst errors of analysis. Even the ousting of the United States from Afghanistan in August 2021 is primarily due to this ignorance, which has led to an avalanche of misunderstandings, errors, and prejudices in Pakistan over the years— *ultimately to disaster*.

Now in these Washington, D.C. meetings, having several times ventured the word *Ashrâf*—I soon found out that none of the participants, including some friends in major positions, including in the White House, had any idea what this term meant; even, they did not care at all about it—another indigenous folkloric joke.

War is a cultural phenomenon; indirect strategy, terrorism or guerrilla warfare, these variants of human hostility are also oh-so-cultural. Now geopolitics is invading international relations; in particular, the crucial pivot of Central Asia—an area where Pakistan is playing a subtle game from Turkey to China. Therefore, understanding WHO in Pakistan is playing this game is decisive. Hence the importance of the following scholarly text.

X. R.

Foreword

This short article is the result of a French criminologist's surprise at the reaction of eminent Pakistani jurists with whom he was discussing the Taliban movement¹ created in September 1994 in Kandahar, Afghanistan. In these friendly conversations, he raised the question of the participation in the creation of a group, unknown to him but whose name had been whispered to him by discreet Pakistani sources: "ashrâf." He was answered by a heavy silence!

For the whole world, Pakistan is an Islamic republic with a code of laws based on Sharia law, and basta! It is without remembering or knowing that this country was born from an agreement on the partition of the enormous English-ruled India on August 15, 1947. This partition led to an estimated migration of about 12 million people between the two new countries—and to the massacre of hundreds of thousands of unidentified people, given the lack of identity documents at that time. Nevertheless, hundreds of thousands of non-Muslim inhabitants remained within the borders of the new Islamic state of 803,940 km² (one and a half times the size of France).

The caste system that still exists in the Indian republic has been insidiously perpetuated in Pakistan, the country of the "pâk" (= pur²), and its population estimated today at more than 230.65 million inhabitants (three and a half times that of France), with about five million more men than women³ because the sons are more valued by the families, as in the People's Republic of China.

Caste: No! But strict stratification!

The works of most sociologists or political activists, plus the polls of the media since independence, show that Pakistanis cannot accept the idea of castes (Hindi "jaati," Punjabi "jatta," Sindhi & Pashto "zat"⁴) in their Islamic republic—but are forced to recognize a complete and strict stratification of the population with other names.⁵ Few authors, journalists, sociologists, politicians, etc., denounce the current system inherited from the Indian Empire because the sharia considers it illegal: all male Muslims have equal status (= ar. Kafâ'a) provided that their father and grandfather were Muslims, which is not the case for most of the converts after 1947.⁶ It should also be remembered that Muslim women are only worth 50% of men in a range of legal acts (e.g., in testimony).

Since the conquest of the Indian territories by the Muslim armies, many invaders have claimed to be descendants of the Prophet Mohammad via his daughter Fatima (~605–633 CE) and her husband 'Ali ibn Abitablib (~599–661, assassinated in Kufâ, in present-day Iraq).⁷ This descent is divided between those who claim as ancestor their eldest son Hasan (~624–670, poisoned born in Medina, in present-day Saudi Arabia) and those who claim descent from the other son, Huseyn (626–680, martyred in Karbalâ, in present-day Iraq). Some claim descent from

other children of the couple but also from the first “companions” of the prophet who fought with him after 623 to “spread” the new religion.

On this subject, 53 years of contacts with Muslims in many countries have made us discover how well their education had only concerned the principles and rites, accompanied by a few historical facts. Few of them were able to tell us about the early years of their religion, especially the warlike side of imposing faith in Allah, such as the hundred or so expeditions, battles, and murders during the nine years from the year 623 until the eve of the prophet’s death⁸. It should be emphasized—in the context of our research—that the day after the prophet’s death on June 8, 632, phratries were immediately formed, although less strict than those then well-established throughout the Indian continent, but centered on the prophet’s family, the first followers or companions, and his tribe.

In the Indian Mughal Empire, with its maritime coasts increasingly controlled or coveted by the then European powers, Muslims felt at the beginning of the nineteenth century, under the reign of Emperor Muhammad Akbar Shah (1806–1837, he was to be the penultimate), the need to reaffirm their presence, albeit a minority one, in the face of the Hindus, but above all to recall their powers and their involvement in the management of the empire. Four groups (“firqah”) of these Muslims were then considered the most capable of defending the community. It is not known who baptized them “**ashrâf**,” an Arabic word that has also passed into the Indo-European languages spoken from Iran to Bangladesh.⁹ It means “the nobles, the illustrious, the great characters, the notables, the aristocrats.” It is the plural form of the common noun or Arabic adjective “sharif” = honorable, noble, which is used in the Arab Near East to designate one of the descendants of the prophet. It is a word borrowed by many languages in the world, especially in Europe, in similar forms: it; sceriffo, fr; chérif (1551, sérif in 1528), nd. sjerief, port; xerife, span; je rife, eng; sherif, this last form having then been popularized by the Hollywood westerns!

On the other hand, the rest of the population of the large Indian zone is simply qualified as “**ajlâf**” (= the rude, uncivil, scoundrels, beggars, abject, the rabble) or “**arzâl**”¹⁰ when it comes to the untouchables (= the ignoble, vile, wicked, vicious, defective...). For the historian Edward Gait,¹¹ the opposition ashraf <> ajlaf corresponds to the Hindu division of the population into “dwija,” i.e., the whole of the Aryan invaders facing the Dravidian aborigines or Sudras that they subjugated in the II^e millennium before our era. This division of the Muslim community did not meet with full approval: Mirzâ Muhammad Hasan Qâtil¹² pointed out around 1815 that it demeaned the majority of the empire’s Muslims, such as artisans, merchants, bakers, and dozens of other members of the community.

The Ashrâf

Nevertheless, the reputation of these four groups of notables continued to spread until the conquest of the empire by the British, who established a formidable administration in all fields after 1857, notably to develop the education of the population. One of the main school manuals, “Rasum-i hind” (=Mores of India) published in 1862, popularized the concept of Ashrâf.¹³

For all the witnesses since that time,¹⁴ the Ashrâf include above all the descendants of foreign Muslims, Arabs, Persians, Turkish Chagatai, and Afghans as well as the members of the highest Hindu castes, early converts to Islam: Brahmanes, Rajputs, Kayasths, Khattris, Marathas, who already constituted the Indian elite.

- The **Seyyeds** (variously spelled in Pakistani books: syed, sayyid, saiad, sayyed, sayed, saiyyid, seyed, cf. the sid or seid in Moroccan Arabic, = the Cid of Spanish, French literature...). The Seyyeds claim to be descended from the prophet via his grandsons. These huge family phratries in Pakistan today are the Hasani, the Husayni (or Hosseyeni), the Za’idi (descendants of Zayd), the Rizvi (descendants of ‘Ali ar-Rezâ, also known as Ali al-Ridha), the Naqvi and the Bukhari (descendants of ‘Ali al-Hâdi). The majority of these Seyyeds must be duodecimal Shiites or Ismaé links but other phratries also claim to be from the family of the prophet (= Ahl al-bayt), such as the Sunnis descended from members of the clan of the prophet, that of the Bânu Hâshim, but also from all the other clans of the Quraysh tribe (e.g., the phratry of the Qureishi). At such a level of claim, it is impossible to put a figure on the number of Seyyeds in Pakistan—indeed, in all Muslim countries.
- The **Sheykhs** (or shaikhs, shaykhs, sheikhs...) claim to be descended from the companions of the prophet who took part in the battles to spread the faith to the east of Arabia, and in particular to Sindh from the year 711. Also called “Muslim khatri,” they are in greater number in this province of 49 million inhabitants where they are estimated at more than 11.8 million.¹⁵ Nevertheless, one must add to this number, the converts of the last few centuries, coming from the highest Hindu castes and part of the large landowners (zamindar¹⁶) in Punjab, now referred to as “Panjabi Sheykh.” Once again, their number cannot be evaluated because one cannot rely on the declarations of those counted, as will be recalled in a forthcoming paragraph. This will undoubtedly be the case during the next 7th census in December 2022.
- The **Mughals** stemming from the Turco-Mongolian troops which allowed Bâbur to establish an empire on a great part of the Indian continent from 1526 to 1530.¹⁷ The reign of his son Humâyun (1530–1556) was disrupted by revolts of generals which forced him to go into exile in Iran from where he returned victorious with new armies and imposed Persian as the language of the court and the administration. The actual number of Mughals is unknown. Many

bear the title of “mir” or “mirzâ.”¹⁸

- The **Pathans** (or Pashtun, Pushtun, Pakhtun, Pachtou...). These tribes provided numerous combatants to the Turko-Afghan armies of Mahmud of Gazni and Mohammad Ghori who invaded several regions of the Indian subcontinent during the 11th and 12th centuries. Other Pathan invaders followed. This is finally the only group of Ashrâf that can be counted without too great a margin of error. Today they are estimated to number some 15.75 million in Pakistan (few remained in India after 1947). The Pathans who came from India speak mainly Urdu, which is the “Muslim” form of Hindustani (now called Hindi in India). Urdu (= army in Turkish!), also called “Lashkari” (= military in Persian) is written with a modified Arabic alphabet and a vocabulary influenced by the Persian used at the court of the Mughal emperors (= Dari). To differentiate themselves from the millions of homonymous Muslims, the Pathans often include in their name the title of “khan” (= chief, leader, commander...).

Before going further in the evaluation of the number of Ashrâfs in Pakistan, let us recall a determining fact about the authenticity of the prestigious Islamic titles: during the 1872 census in Bengal (eastern part of Pakistan, which became independent in 1971 under the name of Bangladesh), some 250,000 Muslims of the 17.5 million inhabitants defined themselves as Ashrâf. In 1901, 19.5 million of the 21.5 million inhabitants called themselves Ashrâf!¹⁹

The “Barâdaris”

In addition to the four phratries mentioned above, Pakistan is home to dozens of others. The country does not have a formal caste system identical to that of the Indian Republic, but rather community groups called “Barâdari” (from the Persian “Barâdari” = brotherhood, from the same Indo-European root that gave rise to the Greek “phratría”²⁰). The word “phratría” designates an association of citizens linked by a community of rites and belonging to the same tribe. It is therefore well suited to describe Pakistani community groupings based on ethnicity, language, kinship and economic/social status, in which members are strongly advised to join.

The Barâdaris, also called “quom,” exist in all regions, even in each city or town large. Some are well known, such as the arains (farmers of Punjab and Sindh), the Kashmiris, the Kambhoos or Kambohs in Lahore,²¹ the Moeens or low-class Kammiss elsewhere in Punjab . . .²² Let us nevertheless underline a phenomenon which creates a certain confusion. To escape their low position in the Indian caste scale, thousands of people who did not emigrate to India after 1947, converted to Islam to obtain the same status of good Muslims according to the Sharia. Clearly, this did not please the Ashrâf and other Muslims, especially those descended from the conquerors of Sindh as early as 711 AD or from other Muslim invaders in the 11^e and 12^e centuries.

The American Pentecostal NGO “Joshua Project,” upon returning from an investigation in 2018, revealed the hypocrisy of official Pakistani Islam regarding the status of former low castes. Laws passed in 1992 and 1998, and the relief fund created in 2002, had still not been implemented. These castes were only renamed after their conversion to Islam by names of Arabic origin, such as the Dalits, who are from the “Muslim sheikhs!” Or the 4.4 million Ansaris in Punjab. Surprising Muslim names because they have nothing in common with the Seyyeds or Sheikhs or the Ashrâfs. They are still despised, considered untouchable, and popularly referred to by other names that are just as Muslim but have been diverted from their proper meaning to become humiliating appellations. The working conditions of these groups are still similar to a quasi-slavery in brick factories, agricultural exploitations, breeding, construction companies, public works or administrative services, etc.

Ashrâf and the Army

In view of the four groups referred to as Ashrâf and their history as men of war, it is clear that they form an essential part of the Pakistani army.²³ Their number among the 640,000 or so men in the army²⁴ is indeed secret, only a few of the highest-ranking officers who are very involved in the affairs of state are known to be members of the armed forces. Over the past 15 years, decisions have been taken to increase the proportional representation of Pakistan’s various ethnic groups in the army,²⁵ but the Punjabi and Pathan groups still form a large majority.

It is above all at the level of the Inter-Services Intelligence (ISI) that the “presence” of the Pathans has been most noticed since its creation in January 1948. The ISI officially depends on the armed forces but plays a political role that is too independent and is therefore criticized to the point that it is considered a “state within a state.” The words of its agents during our meetings in Afghanistan in the 1990s revealed an extreme “pro-Pashtunism,” which partly explains the extent of Pakistan’s intervention in its northwestern neighbor.

The use of preachers of the most fanatical Islam from the deobandi school to train the Afghan Taliban was the result of choices made by the ISI leadership in 1994. A Pandora’s box was then opened. Thirteen years later, in 2007, Pathans in Pakistan created a Deobandi extremist movement, the Tehrik-e Taliban Pakistan (TTP), to overthrow the Pakistani republic and install an Islamic emirate.

For fifteen years, these fanatics have killed hundreds of Pakistanis, including soldiers, their children and families, Shiites, and Sunni barelvis.²⁶ How can we forget them, while the Afghan Taliban, who impose an extremist deoband ideology on the 22 million inhabitants of their country, have been posing as mediators since May 2022? We will soon come back to the terrorist attacks of the TTP against the institutions of a Pakistan devastated by bad weather.

Endnotes

- 1 The name “Taliban,” which was quickly spread by all media, is a hybrid plural of an Arabic word: *tâlib* = student + *-ân* = plural mark of Iranian origin, from which the word actually means “students.” The normal form of the plural of *tâlib* in Arabic is *tolâb* which is only rarely used in Indo-European languages east of the Arabic-speaking world.
- 2 The translations of Persian words, their forms in Dari or Tajik, as well as their forms in the languages of Pakistan are ours after studies in Iranology after 1969 followed by long stays and activities in these countries.
- 3 www.pbs.gov.pk
- 4 The pronunciation “z” reveals that the borrowing of the Sanskrit form (“*jaati*,” Hindi *jaati*, panjâbi *jâta*,...) in Arabic was then transferred to Persian. Indeed, the initial consonant of the Arabic word is written with “d” surmounted by a point, which is pronounced as “z.”
- 5 Quora, Oct. 2014 or Carole Sahebzadah, Nov. 2018 are good examples of denials.
- 6 “Castes and Muslims,” Rémy Delage, May 2011.
- 7 “L’islam activiste chiite : actualité, perspective,” Leyla N. in “Atlas de l’islam radical,” CNRS Edition 2007.
- 8 Remarkable document on the prophet’s expeditions: https://wikimonde.com/article/Liste_des_exp%C3%A9ditions_de_Mahomet
- 9 The name “*ashrâf*” is also used in Somalia by clans that claim descent from the Prophet’s grandchildren, Hasan and Hoseyn: those of Hasan call themselves *sharif* and those of his brother *seyyed* (study by www.landinfo.no, August 2018).
- 10 The pronunciation “z” is a sign that the word first passed through Persian. Indeed, in this language, three other consonants of Arabic are pronounced like “z.” The 2^e consonant of the Arabic word is written exactly like a “d” with a dot on top.
- 11 Edward Albert Gait (1863–1950), administrator of the Indian Civil Service, published numerous articles on the populations of the Indian continent.
- 12 Mirza Muhammad Hassan Qatil, born in the Khatri caste in New Delhi in 1758, converted to Shiism at the age of 14, a writer who witnessed his time, died in 1817 in his native city. His work “*Haft Tamâshâ*” in Persian (Seven Shows) was published only in 1875 in Lucknow!
- 13 It was written by a schoolteacher, Pyare Lal, but contains aberrant beliefs of the time! The Mughals are direct descendants of Noah and the Pathans are descendants of Saul, the first king of Israel.
- 14 “The *Ashrâf* and *Ajlaf* Categories in Indo-Muslim Society,” Imtiaz Ahmad, May 1967; https://www.academia.edu/3992875/Ashrâf_SOAS_Keywords of David Lelyveld,

“Class, Caste, or Race: Veils over Social Oppression,” Haris Gazdar.

15 https://joshuaproject.net/people_groups/18084/PK

16 Iranian word: “zamin” = land + “-dâr” = suffix expressing ownership. The verb “dâran” = to have, to possess.

17 Bâbur was descended from the Turko-Mongol conqueror Timur by his father, and from Genghis Khan by his mother. He had settled in Kabul before going to fight in 1526 against the Sultan of Delhi, Ibrâhim Lodhi, whom he defeated at Panipat.

18 The title “mir” is an abbreviation of the Arabic word “amir” (= commander, cf. fr. emir). The “-zâ” of “mirzâ” is a Persian suffix meaning “born of,” it is equivalent to the suffix “-zâde” of many surnames from the Indian subcontinent (it is the past tense of the verb “zâdan” or “zâ'idan” = to give birth).

19 “The Bengal Muslims 1871–1906: A Quest for Identity,” Rafiuddin Ahmed, 1988.

20 Barâdari is the suffixed form of Persian “barâdar” = brother, cf. ang. brother, nd. broeder, all. Bruder, gal. brawd, lat. frater, etc.

21 “Role of biradari system in power politics of Lahore,” Muhammad Ibrahim, 2009.

22 https://joshuaproject.net/states_districts/PK/PK04 .

23 <https://pakistanarmy.gov.pk> .

24 https://en.wikipedia.org/wiki/Pakistan_Army .

25 https://en.wikipedia.org/wiki/Inter-Services_Intelligence

26 See *Sécurité Globale* n°10, Summer 2017, chapters on Pakistan, pp. 91–100 and pp. 123–132.

“Heal Not Harm”: Prison Violence and Restorative Justice

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ABSTRACT

If the judicial system and its penitentiary counterpart are often seen as actors in the sole punishment of convicted criminals, it must be noted that this punitive dimension alone does not fully satisfy the aspirations for justice of their victims. The concept of restorative justice seems to allow us to better respond to these aspirations: What is it about? How does restorative justice work? What are its mechanisms, how is it implemented, and for what results? Robert Cario invites us to consider the interest of restorative justice from the point of view of both victims and perpetrators.

Keywords: Crime, victims, perpetrator, restorative justice, justice system, prisons, mediation, violence

“Heal not Harm”: Violencia en prisión y justicia restaurativa

RESUMEN

Si el sistema judicial y su contraparte penitenciaria son a menudo vistos como actores en el castigo único de los delincuentes condenados, debe señalarse que esta dimensión punitiva por sí sola no satisface plenamente las aspiraciones de justicia de sus víctimas. El concepto de justicia restaurativa parece permitirnos responder mejor a estas aspiraciones: ¿De qué se trata? ¿Cómo funciona la justicia restaurativa? ¿Cuáles son sus mecanismos, cómo se implementa y con qué resultados? Robert Cario nos invita a considerar el interés de la justicia restaurativa desde el punto de vista tanto de las víctimas como de los victimarios.

Palabras clave: Crimen, víctimas, perpetrador, justicia restaurativa, sistema de justicia, prisiones, mediación, violencia

“治愈而不是伤害”：监狱暴力与恢复性司法

摘要

如果司法系统及其监狱部门经常被视为对已定罪罪犯进行单独惩罚的行为者，那么必须指出的是，仅靠这一惩罚并不能完全满足受害者伸张正义的愿望。恢复性司法的概念似乎让我们能够更好地响应这些愿望：它是关于什么的？恢复性司法如何运作？它的机制是什么，它是如何实施的，结果是什么？Robert Cario邀请我们从受害者和肇事者的角度考量恢复性司法的利益。

关键词：犯罪，受害者，肇事者，恢复性司法，司法系统，监狱，调解，暴力

As part of the 6th International Days of Research in Prisons coordinated by the Research Department of ENAP, the organizers showed participants a short excerpt from the documentary “Heal not harm” produced by the *Incarceration Nations Network* (posted on YouTube in September 2022).

Restore, not hurt. Starting from the fact that when a crime is committed, the traditional justice system always asks the same nagging questions: “What laws were broken? Who is the perpetrator? How should he be punished?” “Is this really what [the victims and perpetrators] want or need?” and what “would happen if there was another way?” The content of this documentary, which is just over 38 minutes long, gives voice to victims who have met the offender who caused their suffering. The interviewees were very satisfied. The program presented, which is very similar to post-sentence restorative mediation, is implemented by the Prosecutor to avoid victims having to wait for the trial. However, the criminal procedure does not stop its usual course. The voluntary participation of the offender is likely to influence the nature and the quantum of the sentence and/or its individualization through particular arrangements.

In addition, the documentary reports on a statistical study (not referenced) conducted in 2016 with 800 people who were victims of crime. The results are particularly compelling: 73% of them would prefer investments in education, mental health, substance abuse treatment, and job creation in prisons. Similarly, 80% of crime survivors who were given a choice between a restorative justice measure or a custodial sentence chose the former.

Restorative justice. This explicit reference to restorative justice programs has led to the question of whether they are/will be likely to reduce violence in prison? The

answer, scientifically demonstrated, is undoubtedly positive ... but not under any conditions. The integration of restorative encounters between convicted persons and victims (in closed and open environments) is not new and many of them have their origins in the ancestral practices of the First Nations, almost everywhere in the world. Since the Economic and Social Council (ECOSOC) resolution of 1982, the incentives to consider restorative programs have grown exponentially, both internationally (United Nations Declaration, 1985) and regionally (Council of Europe Recommendations (87–21, 88–6, 99–119) for the most part. The Council of Europe Recommendation of October 5, 2018 (merely inciting nonetheless) goes much further still by inviting member states to take into consideration the restorative justice measure implemented “as part of the sanction imposed” and/or when individualizing sentences (Rec. (18)8). Even more recently, a Declaration of the Committee of Ministers of Justice on sexual offences (Rec. (21)6 of 21 October 2021), the CM/Rec. (2023)2 of 15 March 2023 on Rights, services and support for victims of crime and the Venice Declaration on the role of restorative justice in criminal matters (14–15 December 2021) underlined the growing development of restorative justice, which should be considered as an important element of the global process of sustainable development in order to promote the advent of just, peaceful and inclusive societies, mainly favoring the reintegration of offenders and the recovery of victims.

In France, the Law of August 15, 2014, on the individualization of sentences and reinforcing the effectiveness of criminal sanctions, introduced, following the imperative provisions of the EU Directive of October 25, 2012, the possibility of resorting to it, in any criminal procedure, at all stages of the procedure (Art. 10-1 of the French Penal Procedure Code). At this stage of its deployment in France, participation in a restorative meeting does not bring any benefit, neither to the victim (additional damages, for example), nor to the convicted person (no consecutive sentence adjustments). This right to restorative justice is now open not only to victims and perpetrators, but also to their relatives and, more generally, to any person who feels concerned by the offence (see *Guide méthodologique*, Ministry of Justice, 2021, p. 15, 3). Very late after the entry into force of article 10-1, applicable to adults as well as minors from 1 October 2014, the recent Code of Criminal Justice for Minors has enshrined in its article L 13-4 the use of restorative justice ... by explicitly referring to article 10-1, as of 20 September 2011.

According to these new legislative and regulatory provisions, symbolically installed at the heart of the general principles of criminal procedure, the right to participate in a restorative workshop may be considered by victims and perpetrators of criminal offences (regardless of their respective status) throughout the criminal process. It is also a right for the victim during the execution of sentences (Penal Proc. Code, art. 707-IV, 2°). All offences are concerned, although scientific evaluation shows that the more serious the offences, the greater the progress to-

wards appeasement for each participant. As well as the restorative efficiency of the only “process,” independently of the “result” (the meeting, as long as it is desired), the participants always having the possibility to end it. The Circular of March 15, 2017 has pertinently clarified that the use of a restorative measure is not a procedural act and, therefore, is not subject to the principles governing criminal procedure. It is also autonomous in relation to the course of the criminal trial. Decrees have been issued to reinforce the implementation of restorative measures in 2020 (art. D. 1^{er} -1-1, the right to be offered a restorative measure by the competent magistrates within the criminal trial and during the execution of the sentence) and in 2021 (art. D. 1^{er} -1-1-1, recourse to such measures when the public prosecution cannot be initiated, cannot be maintained or has been extinguished).

With great relevance and clarity, the Penitentiary Code resulting from the Ordinance of March 30, 2022, which came into force on May 1, 2022, enshrines restorative justice in its preliminary title. Indeed, the Public Prison Service [...] “shall assist in the implementation of restorative measures” [...] (art. L. 1, 3rd paragraph).

Restorative measures thus provide an unprecedented and particularly secure space for speech and dialogue. Identifying and expressing the suffering suffered by each person, promoting mutual understanding of what happened (Why? Why me? What did I do or should I have done to prevent the violence from happening? Why you? How can I regain my self-esteem? How can I stop impacting my family and friends with my unhappiness? How can I resume my daily life: work, relationships, cultural activities? How can I regain confidence in society? In particular), leads much more effectively to the most complete restoration of people.

Participants are considered competent to regulate their own affairs, in the presence and with the support of trained professionals (in the broadest sense). Identifying and expressing the suffering experienced by each person, fostering mutual understanding of what has happened, and searching together for available solutions to remedy it, leads much more effectively to the fullest restoration of people. Hearing the offender fully assume his or her responsibility is, for example, essential for the victim and/or his or her family to escape from the strong psychological guilt that is so prevalent in many criminal situations. Ensuring that the offender commits to respecting their freedom and safety at the end of the sentence being served is also likely to appease the victimized persons.

In order to ensure that the work of justice is carried out with respect for human rights, Article 10-1 of the Code of Criminal Procedure imposes a series of guarantees that condition the use of a restorative justice measure. The requirement of recognition “of the essential facts of the case” (Dir. n° 2012/29, art. 12) by all is formal. And the earlier the recognition of the offender’s guilt, the more the victim feels that he or she has been listened to, heard, believed and understood. Logically, full information about the proposed measure should be given to potential participants: how the process will work and the safeguards available to them; possible

outcomes and the limits of their participation in relation to their expectations. The express consent of the participants to the chosen restorative measure, which is essential to its proper implementation, is the guarantee of their active participation. It is constant throughout the measure and can be revoked at any time. Therefore, participation in a restorative workshop is voluntary and disinterested. It cannot, under any circumstances, be imposed by the judicial authority which, during the control to which it is subject by the text, only ensures the conformity of the measure chosen by the parties to the conflict with regard to the conditions provided for by the Law and, under no circumstances, the appropriateness of this choice. The respect of such non-negotiable conditions requires that they be collected by an independent and impartial third party trained for this purpose. Such training cannot be improvised. Facilitators (in the broadest sense) must complete their basic training with knowledge specific to restorative processes (justicerestaurative.org). The relational approach is particularly promising in that it favors attentive listening, which is very different from the active listening used by professionals in the penal system. Focusing only on the expectations of the potential participants, it favors the in-depth exploration of each person's expectations, the scripting of the eventual meeting (whatever its form), and the open questions inviting exchange. The relational posture of the facilitators leads them to consider themselves as incompetent in relation to the unique experience of the people they accompany, and especially not as an expert and biased towards all the people involved. The control of the judicial authority or, at the request of the latter, of the prison administration, consists in verifying the respect of the conditions set out in article 10-1 of the code of penal procedure and not on the progress of the measure, with regard to the confidentiality that surrounds it. It is therefore a simple but essential control of compliance

Restorative meetings in prisons

The objective of reducing violence in prison can be achieved through three main modalities of encounters, among other remarkable prison programs. **Restorative mediation** can be implemented for the benefit of people (offenders, victims or relatives) involved in the same criminal case. However, there is no obligation to meet face-to-face; the exchange of letters and videoconferencing, in particular, are frequently chosen by the persons concerned. Restorative mediation is founded on the scientifically verified postulate that dialogue and mutual understanding have restorative effects inherent to the process itself.

The Restorative Conference pursues the same objectives as Restorative Mediation but brings together a more diverse number of participants around the offender, the victim and the mediator(s). It is more specifically designed to deal with offences committed by minors, within the community, but it is also applicable to those who, having been sentenced to a custodial sentence, have reached the age of ma-

majority after the offence, as well as to convicted adults. They are joined by all persons or institutions having an interest in the regulation of the conflict, in a position of benevolent support: friends, persons in whom each of the protagonists has a particular trust, referents of one or other of the parties, representatives of judicial, health or social institutions. Many practitioners consider that the restorative conference offered to minors in a situation of delinquency, including when they are incarcerated, constitutes the most successful restorative justice measure.

The Inmate-Victim Encounters (IVE) involve offenders and victims who, although they do not know each other, have committed or suffered acts of a similar nature. Both during the individual preparation workshops and during the five weekly three-hour plenary meetings, the participants share emotions, feelings, and questions that are likely to provoke, in a way that is unequalled by the current system, the “liberation” of the persons concerned (convicted prisoners, victims and/or their relatives if the latter did not survive the crime), who are trapped in postures of incomprehension, guilt, hatred, devaluation, emotional and social isolation, and finally, of suffering. During the plenary meetings, specially trained members of the community, “Mr. and Mrs. Everybody,” accompany the exchanges in a posture of unconditional benevolence towards all the participants. Their role is to listen attentively to the dialogues that are taking place, to hear and understand what the participants are experiencing during the exchanges, and to encourage them to persevere in this excessively courageous process of potential progress towards a horizon of appeasement.

The first experimentation of RDVs took place at the “Maison Centrale” de Poissy, followed by a few others, notably in the Yvelines; the first RCV took place in an open environment in 2014 in the Oise. It is only since 2017 that restorative programs have experienced a remarkable development, thanks to the integrated training of facilitators set up within the framework of a tripartite agreement between ENAP, IFJR and France-victims. More than 2,500 mediators/facilitators have been trained in this way (in metropolitan France and overseas): prison staff (DPIP, CPIP, guards, in particular), victim assistance professionals, PJJ educators, some magistrates, lawyers, and members of civil society. At the same time, community members (nearly 400) have also been trained to accompany the RDV/RCV. To date, nearly 300 programs have been carried out, benefiting more than 1,200 offenders and victims.

Prison violence and restorative justice

As violence can be defined as the most degraded form of language, its gestualization is frequent in the prison environment insofar as the people there are characterized by a restricted psycho-socio-linguistic code. In case of conflict, access to its symbolization remains much more exceptional. This is also true for victimized people. It is extremely difficult to obtain precise figures on violence between fellow

inmates as well as that directed towards prison staff. Moreover, not all of them are recorded, only those that have been the subject of disciplinary or criminal proceedings are listed. The fact remains that an increase in internal violence (between fellow inmates) and external violence (against guards) has been reported by all observers. The national plan to combat violence, published in November 2022, reports nearly 10,000 cases of violence between fellow inmates and a little over 4,000 against guards in one year. And this is only the tip of the iceberg, as no comprehensive criminological study has been undertaken in this regard. Not to mention all the invisible violence such as suicide attempts (119 in 2020, i.e., 6 times more than in the general population), self-mutilation (10 times more frequent among women prisoners), hunger strikes, violence against other prison staff or those involved in outside activities, violence in the open environment, especially against prison integration and probation counsellors, and structural violence, among others.

Such violence in no way prevents the inmates concerned and their victims from participating in restorative encounters. Of course, the benefits observed in restorative meetings are not the result of a magical practice. Forgiveness and therapy are by no means the objectives. A steering committee and project group, specific training according to the restorative measures (mediators, facilitators, members of the community), rigorous protocols developed with the concerned fields, and supervision by the IFJR are more likely to guarantee the provision of a safe and secure space for dialogue, respectful of the dignity that characterizes every person, without judgement, and always benevolent towards each participant. It is therefore not at all surprising that the person deprived of liberty, as well as the victim and/or his or her relatives, frequently state that the only person who can hear the repercussions of the crime, even if they are unbearable, is the one who is at the origin of the acts committed or who has suffered them, as much in restorative mediation measures as in the anonymous groups of VOE or VOE. Emotions are likely to arise, as in any human being: fear, joy, sadness, or anger are often exacerbated during restorative meetings. They are perfectly legitimate as long as they do not violate the dignity of one or more participants. The members of the community and, failing that, the facilitators, are specifically trained to welcome them and to invite the person concerned to share them with the other participants. Nothing would be more counterproductive than to ignore them, at the risk of aggravating them, or even leading to leaving the restorative program.

It is essential to be able to express one's emotions, which have been held back for too long or which are impossible to share in detention, including with the people in charge of monitoring them. Throughout the preparation workshops, they emerged. This learning of emotional management is a powerful vector of responsibility, which will be effective in detention in case of conflict between fellow inmates or between inmates and prison administration personnel: supervisors, CPIP, health personnel, and teachers, in particular.

Being able to tell their stories in a dedicated space, with mutual respect, without judgment, in complete confidentiality, after preparatory interviews with trained, independent and impartial facilitators, allowed all participants to speak freely. According to one offender, “The meetings allowed for a real liberation of speech. I was able to say what I was feeling and tell them that an offence like this can have repercussions [...] From the first meeting, it had an impact on me, I was able to speak up and say what I had to say, it was very emotional and it was good, I had the opportunity to pour out the excess that I had.” Becoming an actor, telling one’s story in resonance with the other was also noted. “I feel better, the fact that I spoke about the things I did, it did me good to empty myself, I understood why my daughter didn’t want to see me anymore.” “I was able to say things that I had never said before, things came out naturally, I felt good about myself.” The dedicated dialogue space allows people to be heard and understood. This is the case for victims: “Feeling less alone, having people who understand you, who say ‘get over it,’ you take it in your stride [...] There is an understanding that you don’t have elsewhere [...]. You come out of it liberated.”

During these encounters, the authors move from fear to confidence: “These victims, despite the fact that we were in prison and all, took us for normal people. I thought they were going to look at us the wrong way.” Another author adds, “At first I was withdrawn and as the meetings went on, I was able to discuss and talk with them better.” The humanity that encompasses these meetings leads to the discovery and sharing of emotions among the participants: “It allows us to understand the perpetrators, to humanize them, when we have had an aggression like that, it dehumanizes the person a bit. As we didn’t find him, I had difficulty materializing this person, I saw him a little like a spectre. It was so violent that I almost had the impression that it had not existed. It allowed me to anchor this situation with faces.” One author adds, “It’s very important. I feel like they understood us and that we’re not monsters. It’s a recognition. I had that feeling especially at the end.”

All of the individuals stated that these meetings were part of a reparation process: “It’s being able to ask the perpetrators all the questions that you ask yourself in these cases, why my house? What were they looking for? Why did they get there? I think what I got the most out of was being able to ask the authors directly.” In the same way, among the perpetrators: “The victims said that they felt more victimized. Yes, I have the feeling that I was able to contribute to their reparation.” “It was a liberation, the relief of a burden to be able to access these meetings because I was able to express myself, to let the victims express themselves and to understand their suffering”; “This respect and empathy were transformed into benevolence [...]. This respect and empathy turned into benevolence [...]. It is something that you remember for the rest of your life, this benevolence.” Victims emphasize in this sense: “The perception of the convicts has evolved, as they have met. They have become aware of the consequences of an offence. They have taken a step. At the beginning, I had the impression that I was talking to a wall, but afterwards we

were able to have more sincere dialogues with the perpetrators”; “We were delighted to see that they improved by seeing us.”

As for the protocol of the measures, the participants are unanimous regarding their organization, both in terms of the preparation and the conduct of the meeting session. “The situation was extremely well organized, so it was calm. I was really comfortable and safe”; “Since it was well organized, it was reassuring. [...] I found it impeccable because there were several preparation meetings, they anticipated our anxieties. [...] At the beginning I found it a bit long but it was quite coherent when I was in the group. It is absolutely necessary because it is much stronger than what you can imagine. It’s intense and after each week you have to be able to take on everything you’ve heard, it’s a lot of work, so you have to prepare for it.” “Finally, at the moment when we feel so much humanity, respect, trust, because the framework is made so that there is this trust that is put in place from the first day. As a result, we give ourselves up much more than we could have imagined.”

For the participants, the facilitators occupy an essential place: “They were fundamental people in my story”; “They were very present while remaining discreet during the meetings. You could see that they were present through their look, their way of being, their speaking up sometimes to redirect the discussion when someone was drifting off course”; “Without them it wouldn’t have had the same dimension. Without their benevolence, their calm, their patience too because it is probably not always obvious, and their professionalism. I find that they were the guarantors of the fact that the meetings went well.” The role of the community members, rarely evident at the beginning of the meetings, was also appreciated: “It was a crutch, a support and I liked the image that it represented, the image of understanding, of being listened to. It seemed to me that it was good that people from outside could hear our story. [...] If they hadn’t been there, something would have been missing. It gives us importance for us victims, for the perpetrators I don’t know but maybe it’s in the sense that people believe in them and in their capacity to change”; “And then what was good was that there were two other people who were with us. [...] Civilians you could say. [...]” And even their reflections on what we said were interesting, with the hindsight of those who have lived a life, we’ll say a normal life in quotation marks.

Dating still offers the opportunity to “meet yourself.” “It made me realize that I thought I was than what I actually was. This is a good thing because I tend to think that everything is fine, to bury it. It’s a realization of my fragility”; “For me, this experience opened my eyes, that I had to learn to speak and express myself and not to be frustrated with myself, to store up this frustration and let it spill over into blows at some point. [...] A work on myself in the end.”

Many aspects have been revealed by this relevant survey, such as : the interest of the psychological “net,” an essential support that is rarely used; the im-

portance of the stick, regulating exchanges; the regaining of self-esteem; the reduction of guilt for not having been able to prevent the facts from happening; the acceptance of not having an answer in the end; the reduction of fear in daily life; the reciprocal empathy, sometimes ambivalent in relation to the relatives; the confidence in the other; a look turned henceforth towards the future; the hope of a non-recurrence, mainly.

Of course, the survey does not avoid the fact that improvements must be made during the implementation of restorative justice measures, and more specifically during the encounter: better preparation of the participants as to their ability to question themselves; better correspondence between the acts suffered and committed; consideration of a longer duration of the plenary meetings, mainly.

The authenticity of the spaces of speech favors the relational dimension and the opening to the other, consolidating the humanity of each person. The richness of the exchanges and the appeasement that result from them are all the more remarkable, even though some people still consider them to be definitely improbable.

In summary, restorative justice measures do participate in the reduction of violence in prison and, consequently, contribute to the appeasement of interpersonal relations between convicts as well as between those with prison staff, mainly in detention. In this sense, at the end of the second Inmate/Victim Encounter (RDV) conducted within the Poissy Penitentiary in 2014, its director François Goetz stated about the inmates who participated: "...they are much less into 'victimitis.'" That is, they are more accepting of incarceration and therefore of the conditions of incarceration. They have a discourse that takes much more into account, but really, sincerely, the pain and suffering inflicted on victims. This is a powerful accountability tool to promote resilience and reduce recidivism.

However, it would be appropriate to create positions for "restorative justice referents" who would be responsible for providing information on the programs available within their respective departments and, if necessary, for facilitating restorative meetings. The preliminary title of the Penitentiary Code specifies that the public prison service "... shall assist in the implementation of restorative justice measures..." The National Plan to Combat Violence provides for "Building with the IFJR a mediation training for the penal population (Action No. 60)." Such training should be available to both prison staff and inmates in all prisons. A more complete collaboration and harmonization between "restorative mediation" (IFJR) and "mediation in a professional context" would, in this sense, be very relevant. If the voluntarism of the facilitators is simply remarkable, it is also essential to grant them a time dedicated to the restorative activities they carry out. Finally, and most importantly, it is important that restorative encounters be implemented in all detention units and, even more urgently, in women's prisons, so that they are not, once again, left out of the restorative innovations.

The National Plan to Combat Violence appears to be a genuine source of change in the treatment of persons placed in custody. Legitimate and ambitious, it will only really succeed if citizens really get involved, because violence in prisons or in open environments, as in society in general, is everyone’s business. In the same way, if there is not enough funding, this real social issue will remain, once again, a dead letter. Consequently, institutional reforms are necessary. By a massive decriminalization by returning to the original litigation the “offences” of low gravity (more characteristic of deviances or psychosocial or cultural maladjustments) insidiously introduced by the most populist forces of our country. It is also becoming urgent to empty the prisons, which are reaching historical records: nearly 73,000 people are currently detained there, even though serious crimes against the person are constantly decreasing. Such penal overpopulation leads to the violation of Article 3 of the European Convention on Human Rights, despite the repeated recommendations of the Committee for the Prevention of Torture and Inhuman Treatment. The European Court of Human Rights has regularly and very recently (J.M.B. et al. v. France, January 30, 2020) condemned France in this respect, without much effect on the ground, particularly with regard to the individual confinement of both accused and convicted persons. At the same time, and just as urgently, it is essential to no longer deprive of liberty those who have committed offences for which the sentence incurred or the remainder of the sentence to be served is less than three years. The same dynamic must lead to the significant recruitment of prison integration counselors in closed prisons and even more so in open prisons, in line with the ratios observed among other prison staff, so that the number of cases monitored is no more than 50. Fighting against violence in prison also means using restorative justice measures, in all their modalities, for the benefit of all persons who wish to do so, at all stages of the procedure, without distinction between the offences committed, in compliance with the conditions set out in article 10-1 of the CPP and article L13-4 of the CJPM.

In the end, it is a question of restoring the status of penal deprivation of liberty as the *ultima ratio*. Violence in prison is not inevitable. Neither is the construction of new prisons. Solutions do exist to calm interpersonal relations between prison staff (in the broadest sense, including all the partner professions concerned) and prisoners and, in the same sense, between fellow inmates. Without neglecting the better working conditions thus offered to the staff, who all too often suffer burnout or resign. Not to mention the substantial savings that would be made to meet the needs of the open environment, in particular. To paraphrase Seneca, it is not because things are difficult that we do not dare—it is because we do not dare that they are difficult.

Bibliography

Chauvenet, A., C. Rostaing, & F. Orlic, *La violence carcérale en question*, PUF, 2015.

Cario, R., *La justice restaurative*, Rubrique in Répertoire Dalloz de droit pénal et procédure pénale, 2023, p. 70.

Daccache, M., J.L. Sanchez, J. L., Touraut, C., & Lancevelee, C., *Prison violence: for a systemic approach. Synthesis of recent research in the humanities and social sciences*, 2018, hal-01961016.

In-Out, *Supervisor Violence. Breaking the Silence*, 2019-103, 49 pp.

IFJR, *National Surveys*, www.justiceresaurative.org.

L'Huillier D., *Violences et prisons*, in R. Meyran, *Les mécanismes de la violence*, 2006, pp. 95–102.

Mucchielli, J., *Auteurs et victimes : en prison, les violences sont interchangeables*, in Dalloz actualités, 13 Dec. 2022.

National Plan to Combat Violence (PNLV), Direction de l'Admin. Pénitentiaire, multigraph, 2022, 64 pp.

Dangerous Liaisons: Illegal Doping and Corruption

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ABSTRACT

Less studied and less popular with the general public than drug trafficking, the trafficking of doping products nevertheless has similarities with the latter, both in terms of sales figures and the origin of the products in the pharmacopoeia. However, the trafficking of illegal doping products presents specificities that must be studied in order to have a detailed understanding of this phenomenon: The present article proposes an overview of this issue by presenting a historical review of the prohibition of doping products in the sports world, and its consequences not only in terms of trafficking and organized crime but also in terms of massive and multidimensional corruption within the sports world on an international scale.

Keywords: Doping products, trafficking, sports world, law, organized crime, corruption, IOC

Relaciones peligrosas: dopaje ilegal y corrupción

RESUMEN

Menos estudiado y menos popular entre el público en general que el narcotráfico, el tráfico de productos dopantes tiene, sin embargo, similitudes con este último, tanto en términos de cifras de ventas como del origen de los productos en la farmacopea. Sin embargo, el tráfico de productos dopantes ilegales presenta especificidades que deben ser estudiadas para tener una comprensión detallada de este fenómeno: El presente artículo propone una visión general de este tema al presentar una revisión histórica de la prohibición de los productos dopantes en el mundo del deporte. y sus consecuencias no solo en términos de tráfico y crimen organizado sino también en términos de corrupción masiva y multidimensional dentro del mundo del deporte a escala internacional.

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Palabras clave: Productos dopantes, tráfico, mundo deportivo, derecho, crimen organizado, corrupción, COI

危险关系：非法兴奋剂与腐败

摘要

与贩毒相比，关于兴奋剂产品贩运的研究较少，公众对其的了解程度也较低，不过，无论是在销售数字还是药典中的产品来源方面，兴奋剂产品贩运与贩毒都有相似之处。不过，非法兴奋剂产品的贩运呈现出值得研究的特殊性，以便详细了解该现象。本文通过一项历史述评，对该问题加以概述，述评对象包括：体育界的兴奋剂产品禁令及其后果，这一后果不仅体现在贩运和有组织犯罪方面，还体现在国际体育界内大量的多维度腐败方面。

关键词：兴奋剂产品，非法交易，体育界，法律，有组织犯罪，腐败，国际奥委会

The illicit traffic in doping products is similar to that of drugs, but it also has its roots in pharmacopoeia: in the same way, the evolution of medical ethics has ended up dissociating the legal drug from the proscribed one, the food supplement from the doping product. Based on moral (alteration of behavior and performance) and public health (physical alteration) criteria, the arbitrary decision to ban these substances has pushed these products into the underground economy, into the illicit markets. Of additional interest: although these products have been banned, they historically already had a clientele.

Justified or not, this arbitrary ban is nevertheless fraught with consequences, first of all for the world of sport, as well as on the scale of major international trafficking. The obscure history of the fight against doping will therefore serve as a guideline to understand how this ban has allowed the illicit trafficking of doping products, but also corruption in sport, to feed itself and proliferate:

PERFORMANCE = DOPING – Since the establishment of the contemporary Olympic Games, the societal dynamics of performance implies that the competitors wonder about the possibilities and the means in their possession to surpass their competitors.

This first sequence in the contemporary history of doping defines the athlete as a professional who must become the most competitive in order to win. At the

beginning of the 20th century, at the 1928 Winter Olympics in St. Moritz, experts questioned the use of doping substances by athletes. The international sports institutions know that many athletes have already resorted to drugs such as cocaine, cannabis, arsenic, oxygen, morphine, heroin, alkalis, amphetamines, tranquilizers ... and strychnine, which the IOC recognizes the usefulness in events such as the marathon when Thomas Hicks used it in 1904.

APOGEE –1950, a pivotal decade for the multiplication and improvement of the do page: testosterone, to increase muscle mass; amphetamines, for prolonged efforts without feeling fatigue. This period sees the generalization of the taking of products do pants, without concrete condemnation. Knowing why an athlete from another country's team performs better becomes a crucial question. Catching up with the gap created by certain de covered (medical or chemical) or even finding-synthesizing a revolutionary substance to surpass other competitors feeds the logic of performance in the sports world.

In 1952, in the Olympic Winter Games of Oslo (Norway), speed skaters received medical care; after the test, one realizes that it is one of the first reported cases of use of amphetamines in competition.² In the 1956 Summer Olympics in Melbourne, Australia, the institutional use of synthetic testosterone by the Soviet sports system allowed the weightlifter Arkady Vorobyov to beat the Americans. On the American side, Dr. Ziegler deepened his experiments with anabolic steroids. Under his supervision, weightlifters Tony Garcy, Bill March, and Lou Riecke became national champions. March and Riecke set world records.³

AWARENESS – At the 1960 Summer Olympics in Rome, Danish cyclist Knut Jenson died during the Olympic road race: he took Ronical, stimulant of the blood circulation, or amphetamines: he was the first athlete to die since 1912.⁴ The health risks of athletes are exposed at the Tour de France 1967. Cyclist Tommy Simpson, who was leading the race in the overall classification, collapsed and died on live television. According to the autopsy, his body contained various types of amphetamine mines. In 1968, Yves Mottin, also a cyclist, died from complications related to the use of amphetamines.⁵

2 Cart Julie, "Sarajevo's Lab: Is It Up to Test?" *The Los Angeles Times*, 10 February 1984, Part III, p. 15 in Kremenik Michael *et al.* "A Historical Timeline of Doping in the Olympics (Part 1 1896-1968)," *op. cit.* pp. 19–28.

3 Todd, Jan, and Terry Todd, "Significant Events in the History of Drug Testing and the Olympic Movement 1960–1999," *Doping in Elite Sports* Eds. Wayne Wilson and Edward Dorse. Champaign II: Human Kinetics, 2001, p. 66 in Kremenik Michael *et al.* "A Historical Timeline of Doping in the Olympics (Part 1 1896-1968)," *op. cit.* pp. 19–28.

4 Dirix, Albert, "The doping problem at the Tokyo and Mexico City Olympic Games," *Journal of Sports Medicine and Physical Fitness* 6, 1966, p. 185 in Kremenik Michael *et al.* "A Historical Timeline of Doping in the Olympics (Part 1 1896-1968)," *op. cit.* pp. 19–28.

5 Todd & Terry, "Anabolic Steroids, The Gremlins of Sport," *Journal of Sport History*, No.14, Spring, 1987, p. 96 in Kremenik Michael *et al.* "A Historical Timeline of Doping in the Olympics (Part 1

Therefore, at the Olympic Games in Mexico City (1968), the Medical Committee screens a randomly chosen sport every morning. Urine tests were taken before the competition; if it was positive, the athlete could not compete. But some did not fear these tests: the East German discus thrower Margitta Gummel is put on Oral-Turinabol steroids by her team doctor, Dr. Manfred Hoppner—but there was no steroid test at these games. Gummel won a gold medal and set a world record.⁶

OVERVIEW – Half of the history of contemporary sports is marked by the use of doping products, leaving an indelible mark on the curve of sports records.⁷ This was followed by two decades (1970s–1980s) marked by the creation of the World Anti-Doping Agency and the appearance (late...) of the ideology of a sport that favors natural performance. The international sports institution's awareness of the issue was certainly late, but this did not prevent them from studying the criminal activities that contribute to doping.

Aiming to preserve the physical integrity of high-level athletes, the World Anti-Doping Agency's desire to purge the world of sport of doping practices is commendable. But the habits of the sports world and its economic construction around the performance are all counter-indications to truly renounce—and not only for the sake of the gallery—the use of doping products.

The problem here is that the trafficking of doping products prohibited in competition remains part of the dynamics of sports performance; doping is often perceived as necessary by the teams supervising the athletes in order to achieve a podium finish (pace of training ... performances). Sometimes, this practice leads to the corruption of sports institutions, torn between results with positive political and economic repercussions, and the respect of legislation aimed at protecting their athletes.

We must therefore study this doping/corruption correlation, to see if revising the autonomy of sports institutions would be enough to win the fight against the illicit trafficking of doping products. This study will first focus on the analysis of corruption and illicit trafficking of doping products, a self-sufficient phenome-

1896-1968),” *op. cit.* pp. 19–28.

6 Undergleider, Steven, *Faust's Gold*, *op. cit.* p. 146 in Kremenik Michael *et al.* “A Historical Timeline of Doping in the Olympics (Part I 1896-1968),” *op. cit.* pp. 19–28.

7 “The massive use of doping products during periods when doping was either not prohibited, controlled and sanctioned (before the end of the 1960s) or when the fight against doping was very effective (1970s–1990s) explains this improvement in records. The curve of progression of the 5000m, for example, draws a staircase with steps corresponding each time to the appearance of a new substance: the 1920s (cocaine, strychnine, trinitrine), the 1950s (amphetamines), the 1960s–1970s (anabolic steroids, ephedrine, cortisone), the 1980s (salbutamol), the 1990s (EPO). (...) The distribution curve of records takes the form of an asymptote that reflects the rise in performance levels throughout the 20th century, then the beginning of a decline from the 1990s. A stagnation of performances is observed in two thirds of the disciplines studied.” Bourq, Jean-François, *Le Dopage*, La découverte, Paris, 2019, pp. 19–20.

non, voluntarily or not protected by the duplicity of anti-doping rules and legislation, which in turn produce new hybrid forms, between corruption and new forms of criminalities.

I. Criminal dynamics: the self-sufficiency of doping and corruption

For a long time, the history of sports records was in fact that of “chemical enhancement” of performance; hence, a devastating criminal effect. This had to stop in order to preserve competitions from scandals (cheating scandals ... live deaths...). From now on, it was necessary to preserve the interest of the public, the physical integrity of the athlete. In short: to save “the glorious uncertainty of sport.”

Putting an end to doping in athletes implies that they should naturally give their best, push their biological limits, and not naively believe that every athlete will become “clean.” Above all, they must consider the repercussions of this new orientation on their sporting career. Before doping, the top athlete already knows that he or she will not retire without reason at the age of thirty (forty, at best). He knows that he risks losing part of his health and even his longevity. Aiming for a record imposes a sacrifice. The practice of high-level sport is not healthy: it is performative.

Whether national or international, the institution, the sports federation, and those who make it up, are now aware of this sacrifice. But is this injunction of natural performance well thought out in the interest of the athlete? Given the inevitable suffering that natural performance generates, wouldn't doping be more “human?” One idea inevitably comes to the mind of the top athlete and his team: does the damage caused by doping products really exceed that inflicted by the intensive practice of a sport?

This is the same as thinking that, for city dwellers whose lungs are already attacked by pollution, smoking three extra packs of cigarettes a day would not matter ... This absurd “screwed for screwed” mentality, combined with the demand for results and caution in the face of a history of sports doping, allows two illegal practices to develop:

- **The illicit trafficking of doping products** feeds corruption, allowing countries that do pent their athletes to obtain advantageous results. Today, the size of the doping market in sports, both professional and amateur, is estimated to be in excess of 40 billion euros, and the use of doping products affects a much larger public; all users combined, the financial volume of this market approaches that of drugs.⁸

Thus, “the global population of sports and non-sports people who engage in doping behavior on a regular basis, was estimated to be 27 million people, for an overall prevalence rate of 0.4%. For comparison, the prevalence rate for problem-

8 UNODC, “2019 World Drug Report,” onudc.org.

atic drug use was 0.6%” [United Nations Office on Drugs and Crime, 2017]. The use of doping products was broken down as follows: 15.5 million people in the top 26 developed countries (prevalence rate of 1.6%) and 11.5 million in the remaining 160 countries (average prevalence rate of 0.2%). The turnover of this market is estimated at 116 billion euros: 71 billion in the form of doping products, 45 billion in the form of supplements or food supplements [Donati, 2010].^{9, 10}

The more the illicit traffic in doping products goes beyond professional sport, the more it develops and has the means to synthesize substances, further improving the performances; in turn, these investments aimed at new clientele imply renewing the offer. In addition, the difficulties encountered by sports federations in abandoning the use of these products are giving rise to new ways of circumventing the regulations: a competitive impulse, but also a desire to play with limits, with fire.

- **Corruption** and the failure of sports federations to respect (or even to act on) the ban on doping. Corruption occurs when an individual invested with a public or private function solicits or accepts a gift or an offer in exchange for a promise to perform an act that may or may not fall within the scope of his or her duties. This implies a violation by the guilty party of the duties of his or her office. French criminal law distinguishes between two types of corruption: *passive* corruption (art. 432-11 of the Penal Code), in which the person who holds a public office takes advantage of it to solicit gifts, promises or advantages in order to perform or refrain from performing an act of his or her office.

The active (article 433-1 of the Penal Code) intervenes when a natural or legal person withholds or tries to obtain gifts, promises or advantages, from an individual exercising a public function, that he accomplishes or delays or abstains from accomplishing, an act of his function or facilitated by it; it is the corrupter.

Sports corruption is first of all passive, with employees of sports federations keeping quiet, or even encouraging, doping practices; against the success of a victory and the positive spin-offs going to the whole federation, as in the case of Schwazer and the Italian athletics federation in 2016.¹¹ It can also be active if the approach comes from a superior, in an institutional corruption as with Russia at

9 UNODC, “2019 World Drug Report,” onudc.org.

10 For more information, de Bongain Anne, “Culte sociétal de la performance et trafic de produits dopants, Chimie illicite et médicalisation du crime,” *Sécurité globale*, 2021/3 (N° 27), pp. 127–136.

11 “Olympic champion of the 50 km walk at the Beijing Olympics in 2008 and then world champion in 2016, the Italian Alex Schwazer (36 years) had been suspended for eight years the same year after a second positive control antidoping, anabolic steroids. [But last February, the Italian justice had cleared him criminally](#), considering that the transalpine walker had not committed the facts and that his positive samples could have been modified.” L’Equipe, “Doping, CAS rejects walker Alex Schwazer’s appeal,” May 7, 2021, <https://www.lequipe.fr/Athletisme/Actualites/Dopage-le-tas-re-jette-l-appel-du-marcheur-alex-schwazer/1249906>

the Sochi Olympics in 2012¹²; also, when the involvement of organized crime with the rigging of the outcome of a competition or match.

Corruption also feeds the illicit trafficking of doping products by undermining the idea of natural sport. Institutions and federations not knowingly encourage athletes to use doping products; they turn a blind eye, thinking that they can avoid the scandal associated with these practices. Here, the endogamous nature¹³ of sport and sports federations tends to encourage self-protection of athletes who have retained illegal practices.

Thus, the act of doping is not the act of an athlete but often the result of the supervising sports system, which pushes him or her to do it; at the very least, it refrains from dissuading him or her from doing so; this is due to the distorted evolution of the ethical question and the legality of doping in sports:

- First, the arbitrary decision to progressively ban substances that threaten the “glorious uncertainty of sport” and the physical integrity of athletes, both professional and amateur;
- Then the ability and willingness of the federations to follow the major international sports institutions by equipping themselves with the entire anti-doping apparatus—if, in reality, that is even possible.

As evidence, the figures revealed by sports federations like the USAPL (*United-States of America Powerlifting*¹⁴), recalling that 45% of the member countries of the IPF (*International Powerlifting Federation*) do not do anti-doping tests. In 2019, 57 of the IPF’s 130 member countries thus performed ... zero doping tests, 53% of IPF member nations tested between 0 and 10 of their athletes over a year, with zero failed doping tests reported between 2017 and 2019.

Conclusion: WADA¹⁵ does not condemn countries that evade its instructions and is satisfied that they are cooperative and approve its decisions. In criminology, the fact that flaws occur repeatedly reveals a system: in this case, the practice of solving problems superficially, not in depth. And the lack of desire—conscious or not—of international/national sports institutions and federations to study together the illicit traffic of doping products and sports corruption. The progressive deci-

12 The Russian intelligence services would have exchanged the urine samples of their athletes escaping the vigilance of the authorities of the fight against doping at the Sochi games in 2012.

13 Marie-Cécile Naves rightly wonders “why the world of sport does not question itself? Contrary to all the other spheres of society where we want more democracy, more renewal and more openness - generally speaking, this problem of endogamy of the inner circle is colossal and explains the law of silence and it is a world that does not open up to other types of skills, that remains closed in on itself. And there is a waste of talent and a refusal to be in touch with social developments.”

14 One of the major American athletic federations affiliated with the IPF (*International Powerlifting Federation*), which conducts doping controls in association with WADA.

15 World Anti-Doping Agency.

sions to ban on the one hand, and the ability/willingness to establish guidelines on the other, betray the duplicity of anti-doping rules and legislation.

II. Duplicity of anti-doping rules and legislation

Reminder: There is no *strict* and fixed definition of what a doping product is. It is defined by:

- Its action, because it is “used as assistance (generally) chemical to the organism, in response to a state of ill-being or to the concern of a better physical and/or mental wellbeing, to answer a stake of performance, at the origin of sanitary prejudices”¹⁶; and in the sports practice, of moral prejudices.
- Its presence in a revisable national and international convention¹⁷ of substances and doping procedures defined as illicit. It concerns above all the penalization of their use for athletic performance purposes, such as “the UNESCO international convention¹⁸ against doping” containing “means proscribed by WADA, updated every year”¹⁹ exposing the uncertain “geometry of the do page.”²⁰

Beyond this dynamic, the laws voted by national and international sports organizations, the conventions and the lists of products/substances designated as interdits are too little defined/precise. This legal vagueness makes it possible to play with detection thresholds and reveals the lack of will on the part of institutions to curb this phenomenon or to harmonize the prohibitions on the production of certain products on an international scale. Yet, is nothing conceivable or feasible here?

The constant evolution of doping substances and the difficulty of deciding on them leads to the establishment of a list of prohibited substances²¹ that is necessarily arbitrary, a practice whose flaws deserve to be exposed. “It’s arbitrary until they make the decision to cross the line with that substance. I hope you already know this, but there have been at least a few times when there have been gaps in

16 Jussieu.fr [online], “Doping: fight and prevention,” published on December 16, 2010, slide 2. Availability and access: <https://www.chups.jussieu.fr/polys/dus/dusmedecinedusport/diudopage/deceaurizlndd/index.htm>,

17 Ibid., slide 5.

18 United Nations Educational, Scientific and Cultural Organization.

19 Bourg Jean-François, *Le dopage*, La Découverte, Paris, 2019, p. 29.

20 Ibid.

21 The inclusion of substances and procedures defined as illegal in a revisable national and international convention. It concerns above all the penalization of their use for athletic performance such as “the international convention of UNESCO against doping” containing “prohibited means by WADA, updated every year” exposing the uncertain “geometry” of doping. “Out of this esquisse let us not forget that ‘what is not on this list is authorized, including doping products that, although not prohibited, are effective and dangerous: nicotine, glucocorticoids, Tramadol, beta 2-agonists, Actogevin, Neoton, Viagra, caffeine.”

the list, causing positive doping tests. Alpha methylphenethylamine is probably the best example, where the composition of a supplement that became a popular pre-workout stimulant caused positive doping tests, even before it was listed. So, it's arbitrary to some extent, to the point of considering that possession of a banned substance is even a concern for the athlete."²²

Here, Mr. Oliver Catlin, director of the company BSCG²³ exposes one aspect of the arbitrariness of the inclusion of certain doping substances on the list of prohibited products. The problem here is that the imprecision of the list leaves the athlete in a state of uncertainty. Furthermore, these lists place all the responsibility on the athlete: if he or she tests positive, he or she will have to prepare his or her defense alone: after a positive test, his or her federation is rarely involved. Thus, inadvertent doping (half of the positive doping tests) is partly due to the absence of a strict and yet ... arbitrary definition.

CBD products²⁴ are perhaps the best example I can think of where this arbitrary limit can sometimes become real or at least the threat is there: and that's CBD products (...) it comes from hemp and it's the main chemical in hemp as opposed to T.H.C.²⁵ But CBD products still contain small amounts of THC (...) They made an exception for CBD but for the other cannabinoids. They are present in CBD products and as far as they are concerned, many anti-doping agencies such as UKAD²⁶ or USADA²⁷ ban them. This is the perfect example in the nutrition field of anti-doping authorities interpreting the strict language of the list and creating what I would call "paranoia."²⁸

The example of cannabinoids, where legal uncertainty can lead to positive tests, is added to the lack of international harmonization of the ban on the production of certain drugs. Many athletes have taken drugs, even though they were legally purchased, unaware that they contained a molecule that could cause them to test positive in an anti-doping test.

Here, the entourage and the team of the high-level athlete plays a preponderant role: in sport, it is still possible to optimize performance by playing on the

22 Interview with Oliver Catlin, April 2022.

23 *Banned Substances Control Group*, a company offering a wide range of certificates and GMP (Good Manufacturing Practice) testing and compliance to the dietary supplements and natural products industries.

24 CBD: acronym of cannabidiol. Active substance present in cannabis, without psychotropic effect (contrary to THC), which would have relaxing properties. In France, the marketing of CBD-based products (vaping liquid, candy, etc.) is subject to very strict regulations.

25 T.H.C: acronym of tetrahydrocannabinol. Main active substance of cannabis, responsible for its deleterious effects on the psyche, but whose therapeutic form is authorized in some countries for its analgesic and antitumor properties.

26 U.K.A.D.: United-Kingdom Anti-Doping.

27 U.S.A.D.A.: United States Anti-Doping Agency.

28 Interview with Oliver Catlin, April 2022.

detection thresholds of the tests, which is possible by legally obtaining, in certain parts of the world, drugs that are otherwise prohibited, because they are considered doping products.

During major sporting events, Olympic Games, etc., contemporary sport has memories of waves of positive tests and compromised athletes' careers, for the simple reason that legal drugs, mentioned in their protocol, were targeted by the anti-doping agencies. This downstream fight condemns the athlete whose entourage and coaches of his federation know the trips and countries where their athletes follow these pharmacological protocols. "At the end of the summer of 2009, Schwazer asked the Athletics Federation to allow him to train in the Canary Islands, on Mount Teide (...) Vittorio Visini, ex-commander of the Carabinieri Sports Group, quickly understood that the real purpose of the training course for Schwazer was to meet with Dr. Michele Ferrari more or less clandestinely, due to the judicial investigations against him (...). Visini reported his suspicions to various executives of the Federation, but no one intervened to prevent it. They did not want to disturb the goose that lays the golden eggs."²⁹

All this goes beyond the simple negligence of federations and often involves the entourage and the medical team preparing the athlete for performance by wanting to exploit with impunity the loopholes in the system, the disparities in legislation and drug production, which are still legal in some countries. Rarely corrected by the international anti-doping system, these loopholes mean that new substances are detected downstream and not blocked upstream.

The legal disparity in the fight against the illicit traffic of doping products also stems from the long pharmaceutical separation between East and West, with this traffic often originating in Russia and Eastern Europe. Oliver Catlin built this reflection around Meldonium, a Russian heart drug banned for its metabolic modulator effects. Maria Sharapova failed a doping test in part because she was taking the drug. Beyond that, about 500 athletes have been caught using Meldonium, an obscure Eastern European heart drug that has become the number one doping substance in the world.

This has not been the electroshock expected by some experts, on the officials of the fight against doping, because as soon as one substance is detected, another replaces it on the market. Thus, Oliver Catlin found on the Internet sites selling Russian drugs, often to Western customers. He reacts, "It's not as if these are alternatives to doping, which the world anti-doping agencies do nothing about. Now all this is sold completely freely online to ... who knows? It's sold to Westerners who want perfect quality, undetectable Eastern European drugs... Is it sold to athletes to bypass a doping test? of course (...)."³⁰

29 Donati, Alessandro, "I signori del Doping," Rizzoli, July 2021, Milan.

30 Interview with Oliver Catlin, April 2022.

According to him, it is no coincidence that the Russian figure skater Kamila Valieva was using the three heart medications that caused her to fail the doping test. It is not an accident, and the example of Meldonium, a few years ago, should have opened the eyes and made ban Hypoxin, another drug she was using.

The idea of fighting against doping is based on a new conception of sport, where performance would be achieved without the chemical substances that alter the natural state of man, by strictly biological evolution. In fact, the sports world is performative and has always sought to optimize human physical capacities in any way possible, this moral dissociation therefore causes a two-speed evolution:

- that of the ideologies wanting to return to a natural sporting practice,
- and the reality of competitions, with the financial gains they make.

The public wants the spectacular, a word in which there is spectacle, a concept that must finally be analyzed, a whole underground sports economy having nestled between doping and corruption.

III. Multiplicity/hybridity of corruption

Corruption in sport is not uniform, but all its forms feed the trafficking of doping products. This is the case upstream, as the current sports system encourages doping (and in the case of Russia, even institutionalizes it); downstream, through the return on interest that comes with victory. The political and financial profit of a sporting victory in fact makes it possible to initiate other forms of corruption: doping also makes it possible to predict which athlete is likely to win the competition, or to know the outcome of a match. Thus, the illicit trafficking of doping products feeds the rigging of matches and sports betting, a new opportunity for it to take root, develop and intensify (and even become part of the landscape).

In its legal sense, bribery is the action by which a person invested with a specific function, public or private, solicits or accepts a gift, an offer or a promise, in order to accomplish, delay or omit, an act directly or not, within the framework of its functions. In sport in the *strict sense of the word*, it takes various forms: corruption of an athlete, match-fixing, vote-buying to be elected as the host country of a sports competition.

These various types of corruption are most lucrative and bait organized crime; starting with sports betting: “inevitably this new *Wild West* attracts the mafia, delighted to find a new way to recycle dirty money.”³¹

At this point, the athlete’s environment and integrity, in the sense of respecting the sporting ethics of his or her discipline, are put at risk. That an athlete’s performance generates profits attracts organized crime; gambling attracts the mafia.

31 Les dossiers du canard enchainé, *Lenvers du Jeu*, “II. Les jeux, quelle mafia?” *op. cit.*

In spite of the multiplication of approaches by criminals, the sports world still does not have a system to secure the athlete's environment.

Asia³² and the Balkans are the areas where corruption of athletes by the criminal underworld is most visible, but this phenomenon metastasizes to less corrupt countries, such as France and Spain.³³ For example, match-fixing, which rarely involves a direct relationship between the athlete and the criminal milieu, but much more often through the clubs. To stay in the Balkans, the case of the Albanian team Skanderbeg, which rigged 53 matches, including several internationals, is a striking case.³⁴ The team has since been banned from European competition by UEFA (Union of European Football Associations).

Thus, the athlete is not the only one targeted by the illegal world, but also the institutions—which sometimes even go so far as to infiltrate illegal activities into sport. The entry into the sports economy of these new shadowy actors reveals flaws weakening an already precarious fight against match-fixing on a global scale. In 2014, the Council of Europe adopted a convention to promote global cooperation in the fight against corruption in sports competitions. This “Maggingen Convention”—incidentally the only legally binding international treaty on the subject—has so far been ratified by Norway, Portugal, Moldova, Ukraine, and Switzerland and entered into force on 1 September 2019. Why is there such a lack of interest from the major European powers—France, the United Kingdom or Germany—in this convention aimed at harmonizing measures to punish the rigging of match results?

“The majority of governments refuse to ratify the convention on the pretext that it would interfere with the free movement of services in force in the European Union,”³⁵ especially for the island of Malta, whose economic dynamism is applauded by the European Union. Its interesting taxation has allowed the installation of numerous sports betting companies, whose growth has enriched the island. But it has also compromised the island with the world of illicit gambling, as Clothilde Champeyrache explains³⁶: “the island is an example of the blurring that can exist between legality and illegality in the economy (...) Prime Minister Lawrence Gonzi is at the origin of the law that created the gaming industry. His son David was named in an Italian investigation into the mafia and its links to gambling.”³⁷

32 Korean footballer Lee Kyung-hwan committed suicide after being banned for life from the Korean Football Association when he admitted his involvement in large-scale match-fixing. In 2011, prosecutors charged 57 people - 46 current and former players and 11 members of criminal gangs and bookmakers—with determining the results of 15 matches in 2010. (The World Game, “Korean player commits suicide,” November 5, 2012).

33 Meignan Geraldine, “Gros plan sur la corruption dans le sport,” *l'Express*, July 5, 2012.

34 Les dossiers du canard enchaîné, *l'envers du Jeu*, “II. Les jeux, quelle mafia?” *op. cit.*

35 Les dossiers du canard enchaîné, *l'envers du Jeu*, “II. Les jeux, quelle mafia?” p. 19, *op. cit.*

36 Senior lecturer at the Conservatoire National des Arts et Métiers. Economist and specialist of the mafia, his research topics are the stakes and evolutions of the illicit economy.

37 *Ibid.*

The link between online sports betting and the world of crime has been demonstrated above, targeting athletes as well as clubs and institutions; yet the lure of profit persists, even if there is a strengthening of cooperation between the regulatory authorities of the various European countries; this is particularly true following the dismantling by Europol in 2013 of a gang suspected of rigging 380 soccer matches.

The illegal world is present as soon as the profit is obvious, but sports institutions do not hesitate to resort to the same methods to enrich themselves, thus risking becoming a new player in the illegal world. As we have seen, harmonization measures could be taken, in particular the signing of conventions to combat the rigging of sports competitions; but the financial stakes are too high to tolerate this strengthening of security.

With unfortunate consequences: tolerating the financial manipulation of sports competitions facilitates the corruption of athletes, the rigging of matches and sometimes, of competitions. That this is seen as a lesser evil has made sport, through sports betting, “a support for money laundering”³⁸ says Laurent Vidal, director of the Sorbonne-ICSS Chair in Ethics and Security in Sport, supported by the director of the documentary *Sport, Mafia and Corruption*, Hervé Martin Del-pierre: “sports betting is manipulated by organized crime and has become, in spite of itself, the simplest, most efficient, most profitable and most formidable money laundering machine ever invented!”³⁹

From the specific—corruption of an athlete, complicity of clubs with the criminal world—we go back to the general, to international organizations such as FIFA (Fédération International de Football Association) and the Olympic Committee. Thus, this phenomenon contaminates even in the high places that are supposed to establish and defend the sports ethics. But can they be prosecuted; can they even be worried? No: these international non-governmental organizations dedicated to organizing the practice and competition of each sport are all-powerful, have no competition because they were pioneers (created more than a century ago) and have since been able to approve the federations that can compete, or not.

The economic *boom* in the world of sport in the 1980s, with the *sponsorship* and sale of broadcasting rights for international competitions, allowed these organizations to prosper.⁴⁰ Their enrichment, the prebends paid to their leaders and executives, have led to deviations and attempts at corruption, on themselves—or even by themselves. It is no longer the illicit world that sniffs out these financial

38 Ferret Alexandre, “Rigged tennis matches - Mafia: game, set and match!” January 18, 2016.

39 Ibid.

40 FIFA has multiplied its revenues by 200 in thirty years. Indeed, in 1970, it generated 1.5 million Swiss francs of income and in 2014 more than 2 billion. The same is true for the Olympic Committee, which went from 3.7 million Swiss francs in 1980 to 1.5 billion in 2016. Verschuuren Pim, “Institutional corruption in international sport, a new phenomenon, old problems,” *International and Strategic Review*, 2016/1 (No. 101), pp. 141–149.

boons, but the international sports system that sometimes becomes an actor in the illicit world, the architect of a new type of criminality, an institutional type.

Originally, these international organizations chose to be non-governmental, out of respect for the ethics of sport and to avoid the instrumentalization of States. In fact, they are not influenced by States, but they are often suspected of bargaining for the positive benefits of hosting international sports events for the host country. For a long time, vote buying in the two international organizations (IOC and FIFA) was a frequent corrupting practice; an example is the election of Rio as host city for the 2016 Olympic Games. Carole Nuzman, president of the Brazilian Olympic Committee is suspected of money laundering, corruption, and participation in a criminal entity by having facilitated the purchase of votes of other members of the IOC.⁴¹

FIFA seems to be affected as well: the Brazilian Ricardo Teixeira, the ex-director of the Brazilian Football Federation, is convinced that he sold his vote to Qatar for the 2022 *World Cup*.⁴²

Pim Verschuuren, a doctoral student at the University of Lausanne who specializes in the integrity of international sport governance, believes that the supposed ideal of strong autonomy on the part of international sports organizations has allowed them to manipulate their own competitions without fear of justice: “The series of scandals recently affecting institutional sport (ed. note: Rio games and *world* soccer in Qatar) is likely to continue; but has already exposed the problem of sports self nomy, a principle that the sports movement always defends, because protecting competitions, and sport in general, from any political manipulation of states. However, whether voluntarily or not, this autonomy has prevented the sports authorities from taking responsibility and today they are not accountable to anyone.”⁴³

This, while enjoying the tolerance of the States in front of the economic and political fallout that these events, these victories, can bring them; which, in turn, pushes the leaders of the sports world to neglect the security or ethical aspect, to the benefit of the financial aspect. In some recent cases concerning the security of sports events, this tolerance even touches on negligence, as shown by the chaos at the Stade de France, last May 28.⁴⁴

41 Bouchez Yann and Gatinois Claire, “Corruption at the Rio Games: the IOC suspends the Brazilian Olympic Committee,” *Le Monde*, October 6, 2017.

42 *Le Monde*, “Mondial 2022 : une enquête ouverte sur un virement suspect provenant du Qatar,” 27 novembre 2017.

43 Verschuuren Pim, “La corruption institutionnelle au sein du sport international, phénomène nouveau, problèmes anciens?” *op. cit.*

44 “During the Champions League final between Liverpool and Real Madrid, the forces of order were overwhelmed by the influx of tens of thousands of fans and attempts to intrude by people without tickets,” *L’Obs*, “Incidents at the Stade de France: the unfolding of this evening of chaos,” May 30, 2022.

Neglecting the security aspect and allowing sports authorities to regulate the event, which are more sensitive to business than to public order, not only flouts the principles that all athletes are supposed to respect, but also endangers their physical integrity, as well as that of the spectators and all the actors of the sports world taking part in these international sports' gigantic events.

Conclusion

To understand a phenomenon, it is necessary to confront it, to link it to others. Observing together the illicit traffic of doping products and the corruption of national and international sports institutions reveals a whole faulty system.

- The rejection of doping in the sporting world has led to a twofold phenomenon: progressive bans and the introduction of guidelines that are supposed to prevent two illicit practices: trafficking in doping products and corruption. However, at both the national and international levels, this evolution has led to a duplication of anti-doping rules and legislation that have not yet been harmonized; this lack of international coordination allows external corruption to be added to the latent corruption of sports institutions.
- The lack of control over an anarchic sports economy increases the risk of a convergence between institutional and organized crime.

All this leads to questions about the autonomy of sports institutions. Certainly, amending this autonomy would be a start; but, in the light of the facts studied, centralizing and not scattering repressive acts should now lead to a joint and serious fight against corruption and doping.

Is There a Sheriff for the Chaos of Cyber-Far-West?

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ABSTRACT

One of the main peculiarities of cyberspace is the absence of defined borders which would be similar to borders linked to the geography of States. Thus, cyberspace is difficult to regulate, and the regulatory norms that would be necessary for a safer use of cyberspace do not seem to emerge—therefore making cyberspace a lawless zone similar to a “Wild West without Sheriff.” The present article explores both the various threats that persist within this “cyber Wild West,” and the avenues for legal and technological improvements to deal with them—at both national and international level.

Keywords: Cyberspace, cyberthreats, cyberattacks, viruses, cyber Wild West, regulation, norms, defense, security, international law

¿Hay sheriff para el caos del Cyber salvaje oeste?

RESUMEN

Una de las principales peculiaridades del ciberespacio es la ausencia de fronteras definidas que serían similares a las fronteras vinculadas a la geografía de los Estados. Por lo tanto, el ciberespacio es difícil de regular y las normas regulatorias que serían necesarias para un uso más seguro del ciberespacio no parecen emerger, lo que convierte al ciberespacio en una zona sin ley similar a un “Salvaje Oeste sin Sheriff”. El presente artículo explora tanto las diversas amenazas que persisten dentro de este “cibersalvaje oeste” como las vías para las mejoras legales y tecnológicas para enfrentarlas, tanto a nivel nacional como internacional.

Palabras clave: Ciberespacio, ciberamenazas, ciberataques, virus, ciber Lejano Oeste, regulación, normas, defensa, seguridad, derecho internacional

是否有负责应对网络蛮荒地帶混乱的治安官？

摘要

网络空间的主要特点之一是没有明确的边界，后者类似于与国家地理相关的边界。因此，网络空间难以监管，而为了更安全地使用网络空间一事所必需的监管规范似乎并未出现——因此，网络空间成为一个法外之地，类似于“没有治安官的蛮荒地帶。”本文从国家层面和国际层面上探究了在该“网络蛮荒地帶”中持续存在的不同威胁，以及一系列法律和技术改进途径，以应对此类威胁。

关键词：网络空间，网络威胁，网络攻击，病毒，网络蛮荒地帶，监管，规范，国防，安全，国际法

“*In the next fifteen years, the number of attempted attacks by non-state actors, hackers, activists or criminal organizations will certainly increase. Some of these attacks could even happen on a large scale.*”¹ Here we are in 2023, fifteen years after these words were taken from the 2008 *White Paper on Defense and National Security*, fifteen years marked by a flood of all kinds of cyberattacks, which have always been devastating for the victims (public institutions, private structures, and individuals).

A recent example in the field of healthcare is Corbeil-Essonnes' hospital (Val d'Oise), which was the victim of a ransomware attack on August 21, 2022: a cybercriminal action in which the attacker asked for a ransom in exchange for the decryption password. This example is not isolated: a ransomware cyber-attack targeted the Castel Luccio hospital in Ajaccio (Corse-du-Sud) towards the end of March; it was also the case in Arles' hospital in August 2021. In 2019 alone, the National Agency for Information Systems Security (ANSSI) listed 18 of these attacks in the health sector.²

No state is spared in this regard: in the first half of 2021, 235 healthcare facilities were attacked by the cybercriminal group Ryuk, for ransoms of approximately \$100 million. In essence, “*Central Europe tops the list of regions affected by the spike in attacks on healthcare facilities, with a 145% increase in November [2020], followed by East Asia, which experienced a 137% increase, and Latin America with 112%. Europe and North America saw increases of 67% and 37%, respectively.*”³

However, these computer attacks do not only target the health sector but all sectors and by any means within the reach of cyber-attackers, depending on their purposes. This is why the threat, well identified in the 2008 *White Paper on Security and Defense*, is again recalled in the 2013 *White Paper on Security and*

Defense. First describing the terrorist threat, considering that the question “*is no longer whether an attack will be committed on national territory, but when,*”⁴ the 2013 *White Paper* also emphasizes “*the frequency and potential impact of the threat posed by cyberattacks on our information systems, training.*”⁵

Cyberspace, the modern Wild West

“*Despite attempts, notably in France, to regulate the use of the new military capabilities offered by the virtual world, cyberspace remains a Wild West.*”⁶

Like Jérôme Poirot (author of the above comments) and the General Secretariat for Defense and National Security (SGDSN), we believe that the cyberworld should be thought of as a modern Wild West, a lawless place, like those seen in Hollywood movies. In reference to the libertarian California of Silicon Valley⁷ and GAFAM, we must not conceive this zone like a strictly speaking lawless zone per se; rather, a lawless zone without the regulation of some cyber sheriff. Hence the result stated by the SGDSN, “*we can choose to have better control of the risks, thanks to a reinforced cyber defense and a more robust hygiene of cybersecurity in our society, or on the contrary to let ourselves drift towards a kind of cyber ‘Wild West.’*”⁸

This cyber Wild West is permitted, if not facilitated, by the libertarian vision of Internet use. “*Using their giga-servers as “weapons of mass disruption,” the lords of Silicon Valley [but not only them] have indeed ravaged, under the blows of their billions, entire industries and institutions: television, music, cinema, advertising, media; not to mention higher education, medicine, and money. And all the while, they were quietly siphoning off Big Data and trampling on the privacy of billions of Internet users on a daily basis.*”⁹ Who are we talking about? The GAFAMs (acronym for Google, Apple, Facebook, Amazon and Microsoft), but also the NATUs (for Netflix, Airbnb, Tesla, Uber), or the Chinese equivalents of the GAFAMs, namely the BHATXs (acronym for Baidu, Huawei, Alibaba, Tencent, Xiaomi), not forgetting Russia with the powerful Russian search engine Yandex or the social network VKontakte.

Yes, the “cyber-bazaar” that we observe today is a “cyber Wild West” *that has no borders. Thus, there is no French, American, or Russian cyberspace, the violation of which would constitute a violation in the same way as the violation of land borders, national airspace or territorial sea. To use a military term: there is no front in cyberspace, or else it is a global front. This does not mean that actions carried out in and through cyberspace cannot produce geographically determined or even targeted effects; current events provide almost daily proof of this.*¹⁰

Types of attacks listed

Given that the Internet is a space that is neither limited by space nor by time, it is summarized by a mesh of all the networks, anonymous, and without neces-

sarily being able to identify the attackers. This is why the computer attacks that are carried out on the Internet can be varied and listed according to three main methods¹¹:

- *the “information war,”* which uses the computer vector for the purpose of propaganda, disinformation, or political action, also called destabilization attacks.
- *the “war for information,”* aimed at penetrating networks in order to recover the information that circulates or is stored there, also called cyber-espionage.
- *finally, the “war against information,”* which attacks the integrity of information systems in order to disrupt or interrupt their operation, called sabotage.

These few examples are very circumscribed, and to better understand the various types of attacks listed, a study on this subject would require an in-depth book.

Firstly, the destabilization by denial-of-service *attack* (DOS), the massive sending of data to disrupt access to web pages, Japan was the subject of nearly 450 million (yes million) cyberattacks targeting the Tokyo Olympics, this number of attacks was 2.5 times higher than during the London Olympics in 2012.¹²

Secondly, cyber-espionage, or information warfare, is a method that is both effective and damaging for its victims. It can concern both state espionage and industrial cyberespionage, which is formidable for stealing competitors' industrial or business secrets. For a textbook case, a more powerful virus than Stuxnet (see below) can be observed, one that is dedicated to the field of industrial espionage. This was the Flame virus, “a *very complex type of malware designed to infiltrate a computer without the knowledge of its user in order to take control of it, collect information or delete files*”¹³; precisely this spyware spied on the functioning of the infected system without disturbing it.

Concerning the cyber-espionage of French institutional sites, the Ministry of Economy and Finance suffered two computer intrusions on the evenings of December 30 and 31, 2010, by spyware called “Trojan horses,” “*malicious programs [that] open a ‘back door’ on the infected computer allowing the attackers to connect remotely to the infected computers in order to intercept keystrokes and network communications and, above all, to exfiltrate sensitive documents to remote servers.*”¹⁴ This intrusion on the Ministry of Economy's website was qualified by the French National Agency for Information Systems Security (ANSSI) as “*the first attack against the French State of this magnitude on this scale.*”¹⁵

Thirdly, the computer threat is also sabotage, or war against information. The Stuxnet virus or worm (which would have weighed between 500 Kb and 1 Mb, equivalent to a digital photograph) was designed to sabotage Iranian nuclear sites in 2010.

Closer to home, the *NotPetya* computer worm massively affected the Ukrainian economy as well as the Chernobyl power plant in 2017. If this virus had

the purpose of sabotage, it would appear in the form of ransomware. Through its propagation mechanism and the interconnection of various actors whose subsidiaries were in Ukraine or had business relations there, many collateral victims were affected, “*such as the Danish shipping group Maersk, the French industrial group Saint-Gobain or the British communications and advertising group WPP. NotPetya infected its victims via a booby-trapped update of the MEDoc accounting software used by many Ukrainian companies.*”¹⁶

Fourth and lastly, we must not forget cybercrime, which, according to General Marc Boget (commander of the Gendarmerie-cyberspace) represented 6,000 to 7,000 billion dollars in 2020 worldwide, with a ransomware attack every 11 seconds. This cost of cybercrime is ten times higher than in 2018. The Center for Strategic and International Studies (CSIS) think tank and the McAfee company had in fact estimated it at 600 billion dollars, as they were unable to have exact figures, “*due to the lack of a clear perimeter of offenses and victims, and because of under-reporting, it seems complex to have stabilized data.*”¹⁷

The cyber Wild West would certainly not have been without the promotion of globalization, which is supposed to be beneficial in all respects. This is a statement that has been made for the past ten years at the highest level of government, according to which “*our forces, in conjunction with other government services, must finally have the necessary responsiveness to protect the country and the infrastructures or institutions that are essential to its economic and social life in the face of the risks of globalization (cyber threats, terrorism, acts targeting the security of supplies, and natural, sanitary or technological risks).*”¹⁸

An evolution of the threat or anarchy in the making

“*Few prospective works exist in the cyber domain, whether they concern future technological evolutions or employment doctrines. (However, it is certain that the threat will worsen in the next decade, resulting in a more dangerous and less stable cyber space, where computer attacks will be commonplace, forcing public institutions, companies, and individuals to protect themselves more strongly than today).*”¹⁹ According to the General Secretariat of Defense and National Security (SGDSN), as familiar as it is to anyone interested in the subject of cyber, the cyber threat is constant and evolving day by day, especially with the advent of new technologies and advances related to it, such as:

- From “cryptojacking,” a cybercrime using “*software installed on a system without the owner’s knowledge and allowing the computing power of infected machines to be used to perform cryptocurrency mining operations, rewarded by the generation of new cryptocurrency.*”²⁰
- The advent of the Internet of Things, which facilitates the interconnection between the Internet and objects, places, and physical environments, for a number

of connected objects (often very insecure) estimated at about 30 billion, thus leaving a colossal margin of maneuver to those with malicious intentions...

- The development of 5G and the deployment of software solutions in the Cloud. On this last point, “*in addition to the new potential security flaws linked to the Cloud supporting this virtualization, the growing share taken by the immaterial dimension of the network also exposes it to the need for frequent updates, which have as many windows of risk.*”²¹
- Finally, from what is seen by some as “the scary future of the Internet,” and soon to be used by cyber-attackers—to their benefit—artificial intelligence but also and especially quantum computing whose goal is to solve complex problems that cannot be done by classical computers. The other side of the coin: not only can current encryption keys be broken thanks to quantum computing, but quantum computers that manage to be infected by viruses will allow cybercriminals to perform complex calculations and make huge profits. By installing malware to mine crypto-currencies, “*the complex mathematical problems that miners of crypto-currencies such as bitcoin, must solve would be relatively trivial for a network of quantum computers.*”²²

We can only agree with the fact that the computer threat will evolve as the above elements demonstrate; again, from three factors that are imposed on us: a dangerousness of the threat linked to the multiplication of actors; a more extensive digitalization of our society accentuating the exposure to cyber threats; and an interweaving of cybercrime and national security issues. As proof, “*tools traditionally used for fraud and extortion, can cause damage to the information systems of the State and operators of critical infrastructures, paralyzing the continuity of their activities (e.g., in May 2017, Wannacry ransomware attack that affected Vodafone, Fedex, Renault, Telefonica, Deutsche Bahn and the British health system).*”²³

A threat legitimately perceived as a strategic priority

Given the importance of the threat to national information systems, as well as to all private information systems whose financial stakes are, strictly speaking, colossal, the cyber threat is logically understood and identified as a strategic priority. It can undermine the protection of the national territory and of French residents, and/or interrupt the continuity of the Nation’s essential functions. It was thus placed on the same level as other major threats in the 2013 *White Paper on National Defense and Security*: aggression by another State against the national territory; terrorist attacks; attacks on the Nation’s scientific and technical potential; organized crime in its most serious forms; major crises resulting from natural, sanitary, technological, industrial, or accidental risks; and attacks against French nationals abroad.

Beware: the *White Paper on National Defense and Security* remains a white paper, i.e., a document whose aim is to define an overall defense and security strategy for France; an incentive guide devoid of any legal force. For all that, this strategic priority constituted a basis for the elaboration of an offensive public doctrine, whose reflection was officially developed in 2008 within the *White Paper on national defense and security*, on the need to move from a passive defense strategy to an active strategy “*combining intrinsic protection of systems, permanent surveillance, rapid reaction and offensive action, requires a strong governmental impulsion and a change of mentalities.*”²⁴

Offensive capabilities are mentioned from the moment when “*it is no longer a question of protecting the system under attack, but of identifying the adversary, uncovering its modus operandi, neutralizing it, or even applying retaliatory measures.*”²⁵ This offensive posture is not only necessary but can also be implemented (within their competencies and attributions) by the various French services that have cyber as a total or partial competence and should not remain the prerogative of the armed forces (embodied by the Cyber Defense Command, COMCYBER). Thus, in order to neutralize adversary operations centers, offensive public doctrine may also involve intelligence services and police entities fighting cyber threats: the General Secretariat for Defense and National Security (SGDSN); the National Agency for Information Systems Security (ANSSI); the General Directorate for External Security (DGSE); the Directorate for Defense Intelligence and Security (DRSD); the Directorate for Military Intelligence (DRM); the Directorate General of Internal Security (DGSI); the National Directorate of Customs Intelligence and Investigation (DNRED); the Tracfin financial intelligence service; the Central Office for Combating Information and Communication Technology Crime (OCLCTIC); and the Gendarmerie Command in Cyberspace (COMCyberGEND).

These offensive capabilities can—and must—be seen as the armed arm of the strategic priority, the dissuasive role with respect to potential aggressors is not negligible, because “*it is legitimate to draw the consequences, as such a capability can have effects at the tactical, operational and strategic levels.*”²⁶

What is the place of law in today’s cyber Wild West?

“*The highway code is valid for any vehicle, luxurious or modest: in the same way, only a code of the cyberworld will effectively sanction the predators, marauding financiers, net giants, etc., who today plunder it with impunity or exploit its users.*”²⁷

As the law—legitimately—takes a predominant place in our societies, it is not out of the ordinary to consider regulating cyberspace, even though it is, by definition, subject neither to time nor to space. Regulating it is an ambitious but essential mission, given the ravages caused by the computer tools presented above, and with the more than damaging consequences, suffered or observed.

The first question is therefore: can international law have a protective effect? Like international cooperation, which is not the subject of a consensus at present (see above), one cannot help but note the limited place of international law in cyberspace, if only with the principle of self-defense of Article 51 of the United Nations Charter.²⁸ As proof of this, the 2013 *White Paper on Defense and National Security* states that “*questions that are currently open deserve further national inter-reflection within the United Nations: how to interpret the legitimate defense of Article 51 of the UN Charter in the face of cyber-attacks, or in the face of terrorist actions carried out in particular by non-state groups from states that are too weak to effectively control their territory? How can we reconcile the urgency that, in certain situations, attached to the implementation of the responsibility to protect, is the patience that is indispensable for building an international consensus?*”²⁹ Moreover, Article 51 does not refer to any weapon whatsoever, which could lead to confusion and suggest that cyber weapons might not be considered as weapons as such, although we know today that they are equivalent to weapons of mass destruction in their effects.

In addition to Article 51 of the United Nations Charter, the North Atlantic Treaty Organization (NATO³⁰) has a self-defense clause in Article 5 of its treaty. This provision provides that “*the parties agree that an armed attack against one or more of them occurring in Europe or North America shall be considered an attack against all of them, and accordingly they agree that, if such an attack occurs, each of them, in exercise of the right of self-defense individually or collectively, recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in agreement with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.*”

In both the UN Charter and the North Atlantic Treaty, no clarification has been made as to whether cyber weapons could be considered, or whether an armed cyber aggression was indeed considered an armed aggression.

Fortunately, in 2013, a group of experts mandated by NATO drafted the Tallinn Manual, which aims to transpose international law to cyber-conflicts. Even if this document is not binding as it has no legal value, this manual made it possible to develop a reflection on the application of international law to cyber issues.³¹ These experts concluded that “*a cyber operation constitutes a use of force when its dimensions and effects are comparable to those of a non-cyber operation reaching the level of a use of force.*”³² This is why the drafters of the Tallinn Manual proposed to consider—rightly—that cyber-attacks are equivalent to armed aggressions. Specifically, Rule 13 of the Tallinn Manual states that “*a State that is the target of a cyber operation of a level equivalent to an armed attack may exercise its inherent right of self-defense. Whether a cyber operation rises to the level of an armed attack depends on its dimensions and effects.*”³³

Based on the effects test, the notion of armed cyber aggression is still limited, as most attacks are currently considered below the threshold for the use of force and may qualify as an armed attack, as in the case of Estonia in 2007. “*Which remains probably the most massive attack ever carried out against a State, [and] did not lead to the implementation of Article 5 of the North Atlantic Treaty*”³⁴ nor to the use of self-defense provided for in Article 51 of the United Nations Charter, nor in Article 42 § 7 of the Treaty on European Union.³⁵

In addition to the question of the threshold authorizing the use of force, it is also necessary that the attacker can be fully identified, as the attribution of the attack can be very difficult to establish. Even assuming that the attack has been attributed, the question of self-defense still arises, according to the three criteria that condition it (necessity, proportionality, and immediacy). If individual self-defense does not pose a theoretical problem, what about collective self-defense, which cannot assume the application of the criterion of immediacy? As a practical example, Article 5 of the North Atlantic Treaty, which provides for the automatic mechanism of collective assistance, “*could only be implemented if the States concerned first share the same position on the attribution of a cyber-attack. But if attribution is already a complex process when carried out by a single State, what about a possible “co-attribution” that would have to be shared by some 29 States?*”³⁶

In addition to the legal tools provided by the United Nations Charter and the North Atlantic Treaty, the United Nations has had a Group of Governmental Experts (GGE) since 2004, also known as the Consultative Group of Experts (CGE), whose mission is to propose recommendations to strengthen international security in cyberspace. Bringing together some 20 states, the GGE experienced several failures in 2013. Yet a “breakthrough” occurred in 2015, nevertheless a modest one, when it was recognized that “*the principles of the prohibition of the use of force and of the peaceful settlement of disputes and, on the other hand, the principles of the law of armed conflict: jus ad bellum [right to war] and jus in bello [right in war]*”³⁷ applied to cyberspace. Progress slowed down in 2016 due to the departure of Russia, China, and Cuba from the GGE, resulting in a suspension of the work. However, developments could have been achieved during the 2016-2017 round of GCE negotiations. On that occasion, France proposed to deepen the work and clarify the standards. While most of these proposals were accepted, “*the negotiations failed on the issue of the application of international law to the conduct of States in cyberspace.*”³⁸

In the absence of consensus, international regulation and action seem difficult, if not simply impossible, to implement, which does not bode well for joint action to regulate the global cyber Wild West.

This is why it seems more reasonable to focus on individual actions taken by States on their territory to hope for regulation and the effective implementation and application of a “cyber highway code.” With regard specifically to our national

law, this regulation is done on a case-by-case basis, in order to set up protection systems for operators of vital importance, cryptology, surveillance (infiltration) or criminal responses. Laws are used for specific cases: recently, the proposed law on the security certification of digital platforms. French legislation has known many legislative provisions, but the first one must be mentioned, the law n°88-19 of January 15, 1988, relative to computer fraud (known as the Godfrain law) which initiated the fight against cybercrime. Without elaborating, let us not forget the law n°2004-204 of March 9, 2004, adapting justice to the evolution of crime (Perben II law), or the important military programming laws, the law n°2013-1168 of December 18, 2013, relating to the military programming for 2014 to 2019, and the law n°2018-607 of July 13, 2018, relating to the military programming for 2019-2025. These laws have been of major interest—in their field—to progressively carry out an efficient fight, whether in cyber-security or cyber-defense.

It is also through the law that the strategic priority has a legal basis justifying both defensive and offensive actions. It covers three themes. First, the defense of the fundamental interests of the Nation as defined in Article 410-1 of the Criminal Code. This includes its independence, the integrity of its territory, its security, the republican form of its institutions, the means of its defense and diplomacy, the protection of its population in France and abroad, the balance of its natural environment and the essential elements of its scientific and economic potential and its cultural heritage.

The second theme complements the first, as a consubstantial element in the protection of the Nation, national security. Article L. 1111-1 paragraph 1^{er} of the Defense Code stipulates that “the purpose of the national security strategy is to identify all the threats and risks likely to affect the life of the Nation, particularly with regard to the protection of the population, the integrity of the territory and the permanence of the institutions of the Republic, and to determine the responses that the public authorities must provide.” All public policies contribute to national security.

Finally, the third theme is that of intelligence, set out in the important intelligence law of 24 July 2015, which highlighted the link—quasi-umbilical—between intelligence and national security, with article L. 811-1 of the Code of Internal Security, noting that “*public intelligence policy contributes to the national security strategy as well as to the defense and promotion of the fundamental interests of the Nation. It falls within the exclusive competence of the State.*”

At first glance, the legislative and regulatory framework seems complete—but improvements are still needed, hence the modest focus on cyber security in the Ministry of the Interior’s draft orientation and programming law (LOPMI), since it only deals with cyber-patrollers or the fight against ransomware. Granted, a Cyber Security Code may have been developed. But when will there be a “cyber law” which, like the orientation and programming laws adopted for defense or

interior, would aim at the global theme of cyber defense, cybersecurity, and offensive public doctrine, or even more? Of course, many legislative and regulatory evolutions have been noted, and additions have been made in reaction to situations, actions, and misdeeds with heavy, even disastrous consequences. This is not an isolated case, as it is the same with terrorism where the legislative reaction is made after the fact, after an attack or a mass murder. Here again, as in the case of anti-terrorist legislation in its early days, the lack of anticipation and of a proactive posture predominates today, leaving room for circumstantial measures.

Avenues to consider

As indicated above, effective regulation is needed for cyberspace, all the more so in the absence of an international consensus or because of gaps that need to be filled, in order to have a body of effective tools and real effectiveness. To fill these gaps, two avenues can be seriously considered:

1 - the most feasible as it stands is to focus on research, innovation, and industrial policy. For example, the companies that have entered the field of cyber security, such as Thales, or the recent creation of the cyber campus at La Défense. Efforts are certainly made by the State, with the cyber security plan launched in 2021 (176 million euros for the purchase of French technologies and 515 million for research and development). 110 billion committed between 2010 and 2030 by the PIA (Programme d'Investissements d'avenir). The question is therefore not so much about the resources invested as about the related issues: installing a real innovation strategy, then reindustrializing through innovation and reinforcing this innovation culture, making tax changes to support innovative industrial companies, or bringing out new industrial champions. In fact, in addition to supporting innovation, it is clear that *“priority must be given to mobilizing all possible levers in terms of industrial policy.”*³⁹

2 - the implementation of digital sovereignty. But which one, European or national? In his work *Contribution à la théorie générale de l'État*, Professor Carré de Malberg observes three conditions for sovereignty: sovereignty-capacity, which is linked to independence; sovereignty-power, which is linked to competences; and sovereignty-authority, which is linked to the sovereign. Sovereignty cannot therefore suffer from any lack of those mentioned.

A European digital sovereignty, then? Some argue that it is necessary to establish European sovereignty,⁴⁰ even if there is already a lack of consensus on other important issues (Brexit, European defense, the position of certain states during the Russian-Ukrainian conflict). An even more obvious lack of consensus in the digital domain, with a *“lasting inability of the Union to fight against the predatory practices of certain Member States that take advantage of their national competence to develop ‘accommodating tax measures’ (tax advantages granted by certain States*

to GAFAMs),”⁴¹ without forgetting an economic history that stems from three traditions: the first, colbertist and interventionist; the second, ordo-liberal, encouraging reasoned competition; and the third, Anglo-American, with deregulated liberalism. From this, and from Carré de Malberg’s definition of sovereignty, a European sovereignty is a challenge, so a European digital sovereignty...

What then of a national digital sovereignty? The summary of the report of the commission of inquiry that led to the report of October 1, 2019, on digital sovereignty expressly mentions the “duty of digital sovereignty” in the face of challenges from digital giants, more precisely “*threats to our sovereignty and resulting in the challenge of the economic order, the legal order, and the fiscal and monetary system.*”⁴² National digital sovereignty is essential to establish a mechanism for protection and action against cyber threats. While some people call for European digital sovereignty, it is illusory without national digital sovereignty. Let’s remember that “*the European Union will not be able to defend us for a long time. It doesn’t know how to do it for borders. How could it do so on a subject as complicated as this, where the economic stakes are so high? We saw it during the pandemic: some EU countries (not France) were ready to sell their citizens’ health data on Covid-19 to one of the GAFAMs. We must therefore avoid the trap of the slogan: “We are weak because there is not enough Europe.” Let’s not wait until it can defend us: it will be too late!*”⁴³

The purpose of digital sovereignty is to serve national sovereignty. Because there is national sovereignty, there can also be digital sovereignty. One is exclusive to the other. Linked to the protection of the State and its population, national sovereignty implies the legitimate use of regalian prerogatives. In other words, “*the goal of digital sovereignty is to be able to exercise its own norm(s) to ensure the security of its economic, scientific and technical, and informational potential, which is necessary for the development of the country’s activities, especially with regard to the digital market in cyberspace.*”⁴⁴ If there is to be sovereignty, it can only be national digital sovereignty (which is appropriate, because we now have a Ministry of Economy, Finance, and Industrial and Digital Sovereignty).

To conclude, since 2008—and in considering this threat by the *White Paper on Security and Defense*—the technological means of defense against cyber threats have evolved, in order to respond as well as possible to devastating attacks, which persist and evolve, without us having a really effective response. A century ago, the historian Jacques Bainville already wrote that “*what is curious is not so much that everything has been said, but that everything has been said in vain, so that everything is always to be said again.*” Thus, it is necessary to act quickly, even if we have been hearing these words for the past fifteen years. Let’s not forget that the 2013 *White Paper on Defense and National Security* already discussed the slowness with which the system for fighting cyber threats was taking hold: “*How can such emergency action be combined with a longer-term political strategy aimed at establishing*

the authority of a State, the only legitimate and lasting guarantor of the protection of populations? The answer to these questions emerges too slowly in the crises where these principles are tested. The international consensus that could accompany and channel the necessary changes remains insufficient, while unprecedented situations are rapidly transforming the strategic landscape and or widening the range of possibilities.”⁴⁵

APPENDIX: Cyberattacks with a geopolitical background

Today, cyber threats are unfortunately diverse, and always have a definite impact on victims. Above all, cyber-attacks are virtual theatres of operations between states, supplanting traditional conflicts. If the great powers are not spared, cyber-attacks also affect the geopolitical area. Without having a clear answer on the identity of the aggressor, doubts or strong suspicions can appear.

Among all the publicly revealed cases, let us not forget that cyber-terrorism actions can be carried out, such as those mounted by the military branch of Hamas from a secret base in Turkey, created without the knowledge of the Turkish authorities (the headquarters of Hamas being in Istanbul).⁴⁶

| Target States | Attacks |
|---------------|--|
| United States | <p>December 2020, the U.S. Department of Energy confirmed that it was the victim of a cyberattack, suspecting that hackers linked to the Russian government were connected to the case.</p> <p>January 2021, the FBI, and NSA, DNI, and the U.S. Cyber Security Agency confirmed that Russia had massively hacked the government to gather information through cyber espionage. The Departments of State, Defense, Homeland Security, Commerce and Treasury were among the victims of these attacks.</p> <p>In February 2021, a computer attack was foiled <i>in extremis</i>. It was aimed at poisoning the water supply of a Florida city.⁴⁷</p> <p>May 2021, the U.S. Colonial Pipeline (distributing gasoline and other fuels) suffered a ransomware attack (<i>ransomware</i>). Without confirming the Russian government's involvement in the attack, the U.S. accused a Russian-based hacker group called Darkside of being behind the attack. Because it transports 378.5 million liters of fuel per day on the U.S. East Coast (about 45% of the fuel consumed by the region), a state of emergency had to be declared in 17 U.S. states due to the failure of one of the largest oil pipelines in the United States.</p> <p>The same group of hackers, Darkside, also claims to be behind the cyber-attack (ransomware) that targeted several European subsidiaries of the Toshiba group, including the one located in France.⁴⁸</p> |

(Table cont'd.)

| Target States | Attacks |
|---------------|---|
| Israel | <p>May 2020, a large-scale cyberattack was reportedly foiled by researchers at Tal Aviv University: “a massive informatic denial-of-service (DDOS) attack [dubbed NXNSAttack (non-existent domain name server attack)], which could have proved 800 more destructive than the one that crippled part of the U.S. East Coast Internet in 2016,”⁴⁹ an attack that had rendered unavailable on a temporary basis, Amazon, Reddit, Spotify and Slack sites for users on the East Coast. Doubts are also emerging about Iran, which, through the hacker group, named Charming Kitten.</p> <p>Above all, Israel has been the victim of numerous cyberattacks carried out in particular by Iranian hackers:</p> <ul style="list-style-type: none"> - May 2020, attack of hydraulic installations; - July 2020, new computer attacks against Israeli water infrastructures targeting a water pump in the Upper Galilee region and a facility south of Quds, claimed by a group of hackers called the Cyber Avengers; - November 2020, the impersonation of a former head of the Israeli military intelligence service; - May 2021, hacking of the computer system of the clothing company H&M Israel by the Iranian hacker group, identified as N3tw0rm. This attack is a blackmail on the publication of 110 gigabytes of data belonging to the company, if the latter did not meet the demands (not publicly disclosed) of the hackers.⁵⁰ |
| Iran | <p>While Iran is suspected of being behind many cyberattacks, the country is also the subject of cyberattacks, claiming to be subject to thousands of cyberattacks daily. The Islamic Republic of Iran has confirmed that an Israeli-origin attack targeting the electronic infrastructure of the country’s ports failed in July 2021.</p> <p>In October 2021, the fuel distribution system was crippled by a nationwide cyberattack.</p> |

(Table cont’d.)

| Target States | Attacks |
|---------------------------------------|---|
| <p>S o u t h K o r e a</p> | <p>South Korea has also not been spared from numerous cyber-attacks that have been rising sharply over the past five years, targeting South Korean defense information systems: 4,000 in 2017, 5,500 in 2018 and 9,533 in 2019. While most of the hackers' IP addresses were found to be in the United States or China, a North Korean cybercrime group was reportedly identified following an attack targeting the South Korean military's domestic computer networks, with an insignificant number of altered military documents.</p> <p>Even more, 1,580,000 is the number of cyber-attack attempts spotted every day in South Korea since the beginning of the year born 2021, an increase of 32% compared to the same period in 2020. Most of the attacks were carried out by North Korean hackers, with the aim of stealing money and cutting-edge technology, as well as obtaining data on vaccines and treatments for Covid-19.</p> <p>According to South Korean experts, hackers linked to North Korea intensified their attacks on South Korean diplomacy, security, and reunification experts during the joint military exercises between Seoul and Washington, D.C. in March 2021.</p> <p>A UN Security Council committee has accused North Korea of stealing an estimated \$316 million over the period 2019–2021 to fund their nuclear and missile programs, and with the cooperation of Iran.⁵¹</p> |
| <p>T a i w a n</p> | <p>Finally, Taiwan has seen an increase in cyber-attacks targeting Taiwanese companies since the year 2020.</p> <p>In December 2020 alone, nearly 100,000 cyberattacks affected Taiwanese government institutions, consisting partly of cybercrime and partly of destabilization of peripheral agencies, which were targeted due to a lack of protection of their systems and software.</p> <p>The island of Formosa is said to have suffered more than two million computer attacks in the first quarter of 2021 alone, attacks touching a large part of the infrastructure of the Internet of Things, shown by the example that the evolution of the threat described above is increasingly affecting so-called "smart" devices.</p> |

Endnotes

- 1 *Livre blanc sur la défense et la sécurité nationale*, La documentation française, Paris, 2008, p 53.
- 2 Olivier CADIC and Rachel MAZUIR, *Information report on the follow-up of the cyber threat during the health crisis*, Senate, n°502, June 10, 2020, p. 12.
- 3 Even as this is being written, a cyberattack has just disrupted the United Kingdom's health care system (or NHS), resulting in a full restoration of some benefits that could take several months.
- 4 V. Alexis DEPRAU, *Le droit face à la terreur*, éditions du Cerf, September 2021.
- 5 *Livre blanc sur la défense et la sécurité nationale*, La documentation française, Paris, 2013, p. 135.
- 6 https://www.opinion-internationale.com/2021/10/12/cyberespace-la-troisieme-guerre-mondiale-a-commence_95577.html
- 7 We must give credit where credit is due, as GAFAMs did not originate in California alone. Amazon and Microsoft come from Seattle, a place famous in the world today for what concerns technology and digital.
- 8 General Secretariat of Defense and National Security, *Strategic Cyber Defense Review*, 2018, p. 31.
- 9 Xavier RAUFER, *Cyber-criminology*, CNRS éditions, Paris, 2015, p. 46.
- 10 Bastien LACHAUD and Alexandra VALETTA-ARDISSON, *Information report on cyber defense*, *Assemblée nationale*, No. 1141, July 4, 2018, p. 20.
- 11 This distinction was made by Roger ROMANI, *Rapport d'information sur la cyberdéfense*, Sénat, n°449, 8 July 2008, p. 12
- 12 <https://www.zdnet.fr/actualites/450-millions-de-tentatives-de-cyberattaques-pendant-les-jeux-olympiques-de-tokyo-39931213.htm>
- 13 Jean-Marie BOCKEL, *Rapport d'information sur la cyberdéfense*, Sénat, n°681, 18 July 2012, p. 16.
- 14 Jean-Marie BOCKEL, *op. cit.*, July 18, 2012, p. 20.
- 15 *Ibid.*, p. 21.
- 16 Bastien LACHAUD and Alexandra VALETTA-ARDISSON, *op. cit.*, July 4, 2018, p. 37.
- 17 Éric BOTHOREL, *Information report on the future of European cybersecurity*, National Assembly, n°2415, November 14, 2019, p. 13.
- 18 *White Paper on Defense and National Security*, *op. cit.*, 2013, p. 89.

- 19 General Secretariat of Defense and National Security, *op. cit.*, 2018, p. 31.
- 20 Éric BOTHOREL, *op. cit.*, 14 November 2019, p. 11.
- 21 *Ibid.*, p. 16.
- 22 <https://www.zdnet.fr/actualites/l-avenir-effrayant-d-internet-et-si-le-pire-etait-devant-nous-en-matiere-de-cybersecurite-39947196.htm>
- 23 Christian CAMBON, *Report on the activities of the Parliamentary Delegation on Intelligence for the year 2019-2020*, National Assembly, n°3087, Senate, n°506, 11 June 2020.
- 24 *Livre blanc sur la défense et la sécurité nationale*, La documentation française, Paris, 2008, p. 53.
- 25 Jean-Marie BOCKEL, *op. cit.*, July 18, 2012, p. 96.
- 26 Jean-Marie BOCKEL, *op. cit.*, July 18, 2012, p. 96.
- 27 Xavier RAUFER, *op. cit.*, 2015, p. 11.
- 28 “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations until the Security Council has taken such action as is necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall in no way affect the power and duty of the Council under the present Charter to act at any time in such manner as it deems necessary to maintain or restore international peace and security.”
- 29 *White Paper on Defense and National Security*, *op. cit.* 2013, p. 32.
- 30 As an anecdote, “NATO was the target of several computer attacks in April 2010, attacks attributed to the Anonymous movement, and even the personal computer of the Secretary General of NATO was hacked,” in Jean-Marie BOCKEL, *op. cit.*, 18 July 2012, p. 59.
- 31 For all that, “France is not in favor of creating new legal tools in public international law to adapt to these new challenges,” in Oriane BARAT-GINIÉS, “Existe-t-il un droit international du cyberspace?” *Hérodote*, n°152–153, 2014, p. 204.
- 32 Tallinn Manual, Rule 11 - Definition of use of force: “A cyber operation constitutes a use of force when its scale and effects are comparable to non-cyber operations rising to the level of a use of force.”
- 33 Tallinn Manual, Rule 13: “A State that is the target of a cyber operation that rises to the level of an armed attack may exercise its inherent right of self-defence. Whether a cyber operation constitutes an armed attack depends on its scale and effects.”
- 34 Bastien LACHAUD and Alexandra VALETTA-ARDISSON, *op. cit.*, July 4, 2018, p. 30.
- 35 “If a Member State is the object of armed aggression on its territory, the other Member States shall render aid and assistance by all the means in their power, in accordance with

Article 51 of the Charter of the United Nations. This shall not prejudice the specific character of the security and defence policy of certain Member States.”

36 Bastien LACHAUD and Alexandra VALETTA-ARDISSON, *op. cit.*, July 4, 2018, p. 30.

37 *Ibid.*, p. 29.

38 General Secretariat of Defense and National Security, *op. cit.* 2018, p. 36.

39 Guillaume TISSIER, “Cybersecurity: does France have the means to achieve its ambitions?” *Conflits*, September-October 2021, p. 52.

40 Industry, politicians, and parliamentarians in particular, see to this effect Éric BOTHOREL, *Information report on the future of European cybersecurity*, National Assembly, n°2415, 14 November 2019; Jean-Luc WARSMANN and Philippe LATOMBE, *Bâtir et promouvoir une souveraineté numérique nationale et européenne*, Assemblée nationale, n°4299, 29 June 2021.

41 Didier DANET, *Conflits*, hors-série, June-July 2022, p. 47.

42 Franck MONTAGNÉ, *Report made on behalf of the commission of inquiry on digital sovereignty*, Senate, n°7, 1^{er} October 2019, p. 16.

43 Le cercle de la donnée, Agora 41, *Souveraineté numérique: essai pour une reconquête*, 2022, p. 78.

44 *Ibid.*

45 *White Paper on Defense and National Security*, *op. cit.*, 2013, p. 32.

46 <https://fr.timesofisrael.com/le-amas-opererait-en-secret-un-qq-de-contre-espionnage-cybernetique-en-turquie/>

47 By breaking into the computer system, the cybercriminal wanted to “significantly increase the amount of sodium hydroxide—caustic soda—discharged into the water. In small doses, this chemical substance prevents corrosion of the pipes that carry water, but in large quantities, it is a poison for the body that can burn the skin and cause, in particular, serious damage to the eyes,” in <https://www.france24.com/fr/%C3%A9co-tech/20210209-l-eau-dans-le-collimateur-des-pirates-informatiques>

48 <https://investir.lesechos.fr/actions/actualites/une-filiale-francaise-de-toshiba-visee-par-une-cyberattaque-1962812.php>

49 <https://www.ami-universite-telaviv.com/index.php/recherche/sciences/informatique/1225-les-chercheurs-de-l%E2%80%99universit%C3%A9-de-tel-aviv-r%C3%A9ussissent-%C3%A0-pr%C3%A9venir-une-cyber-attaque-%C3%A0-grande-%C3%A9chelle>

50 <https://www.i24news.tv/fr/actu/israel/1619975074-des-hackers-iraniens-au-raient-pirate-les-donnees-de-h-m-israel>

51 https://www.lepoint.fr/monde/ces-millions-de-dollars-voles-par-des-hackers-nord-coreens-pour-acheter-des-armes-nucleaires-09-02-2021-2413322_24.php

Terrorism in Peru: The Shining Path Revisited by Geography

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ABSTRACT

The terrorist phenomenon, because of its multidimensional nature, can be studied in different ways and according to different approaches: this article proposes, through the study of the evolution of the territorial strategy of the Shining Path in Peru from the 1970s to the 1990s, to consider the study of terrorism according to a spatio-temporal prism that leaves a great deal of room for empirical analysis and rigorous mapping.

Keywords: Shining Path, MRTA (Movimiento Revolucionario Túpac Amaru, rondas campesinas, terrorism, mapping terrorism, Peru

Terrorismo en Perú: Sendero Luminoso revisitado por la geografía

RESUMEN

El fenómeno terrorista, por su carácter multidimensional, puede ser estudiado de diferentes maneras y según distintos enfoques: este artículo propone, a través del estudio de la evolución de la estrategia territorial de Sendero Luminoso en el Perú desde la década de 1970 a la de 1990, considerar el estudio del terrorismo según un prisma espacio-temporal que deja mucho espacio para el análisis empírico y el mapeo riguroso.

Palabras clave: Sendero Luminoso, MRTA (Movimiento Revolucionario Túpac Amaru, rondas campesinas, terrorismo, mapeo del terrorismo, Perú

秘鲁的恐怖主义：从地理视角重审光辉道路

摘要

鉴于恐怖主义现象的多维性，其能通过不同方式、依照不同方法来加以研究。本文通过研究20世纪70年代至90年代期间光辉道路（秘鲁共产党）的领土战略演变，提出从时空角度研究恐怖主义，该角度为实证分析和严格制图提供了充足的空间。

关键词：光辉道路（秘鲁共产党），图帕克·阿玛鲁革命运动，农民巡逻队 (*rondas campesinas*)，恐怖主义，恐怖主义制图，秘鲁

This article is a continuation and confluence of two complementary approaches. First, it completes certain aspects of a piece of work that one of us published in *Sécurité Globale* a few years ago on the Shining Path and the consequences of its action on Peruvian society since 1980.³ Secondly, it is part of the implementation of a scientific project aimed at the elaboration of a general theory of the terrorist fact solidly anchored in the empirical analysis of the space-time of different concrete terrorist complexes.⁴ To do this, it is necessary to pay extreme attention to the history and historiography of terrorism, in order to construct a satisfactory periodization.⁵ Finally, no less important, the research leading to a regionalization/spatialization of data, is based on cartographic tools that are constantly being improved.⁶

The case of the Shining Path allows us to deepen our general approach and, as we will see, to formulate some hypotheses that could improve our knowledge of the terrorist fact. After a very brief presentation of the current state of work on the geographical aspect of the insurgency in which the Shining Path was the main protagonist, we will try to identify its main spatial characteristics, before developing an interpretative hypothesis concerning two crucial moments of the conflict.

A state of the question

It is not our intention here to provide a detailed overview of all recent research on the Shining Path. On the other hand, it is necessary to briefly review some of the works that concern its geographical particularities, as well as publications that allow a better understanding of the importance of the self-defense organizations (*rondas campesinas*) whose role was decisive in the defeat of the in surrection *senderista*.

To our knowledge, there are no recent works on the geographical aspect of the work of the Shining Path (SL). Most of the information on this subject can be found, therefore, in older publications, which should be consulted. Notably the good study by Gordon H. McCormick⁷ which deals with the urbanization of SL action around 1985; the pioneering article by Robert B. Kent⁸ which shows the expansion of the insurgency from the mapping of areas progressively put under military administration (state of siege); and the text by Sergio Koc-Menard⁹ which tests hypotheses on regional variations in SL implantation. With the possibility of using databases such as the *Global Terrorism Database* and now having an empirically proven methodology, it is possible to deepen the knowledge of the spatiality of the phenomenon that leads to SL. To do this, it is essential to begin by proposing basic cartographic representations, which in turn allow new hypotheses to be formulated based on controllable data. It is at this stage of the research that this article is dedicated.

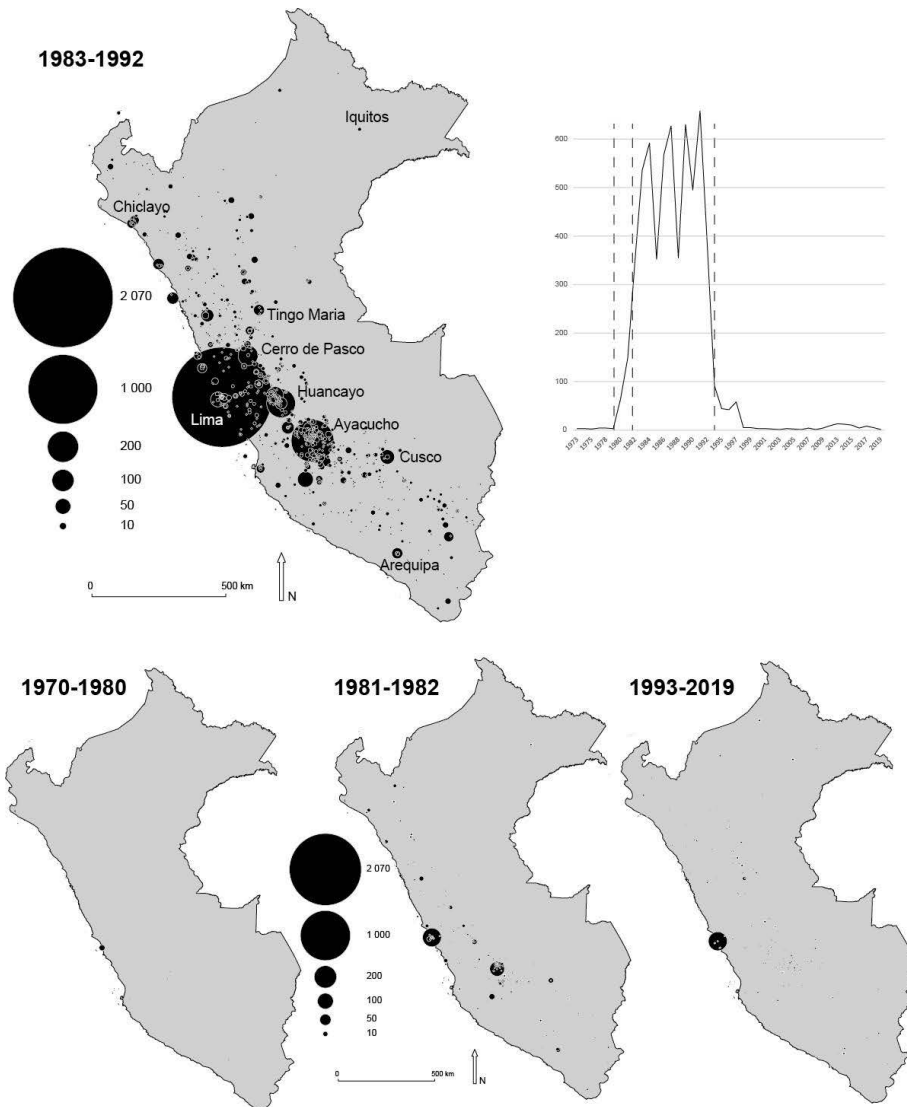
Concerning the *rondas campesinas*, about which we already have a few studies of varying quality (see references in the article cited in note 2), a recent publication usefully sheds light not only on their conditions of possibility, but above all on the reasons that explain their effectiveness in resisting and finally defeating the SL.¹⁰ Thanks to this contribution, it is possible not only to reach a more detailed knowledge of the *rondas campesinas* and to contextualize the few testimonies that come from them,¹¹ but also to draw all the lessons from Mario Fumerton's remarkable monograph on the Ayacucho region,¹²

We will return to this issue later in this article when we discuss the reasons for the shift in SL's primary business area beginning in 1985.

Spatial distribution of political violence in Peru between 1970 and 2019

The maps in Figure 1 provide a basic indication of the spatial distribution of acts coded as terrorist in the *Global Terrorism Database*.¹³ This initial representation includes acts that are properly terrorist, as well as actions that are more guerrilla in nature, which will be differentiated later on according to the identity of the victims. In the same way, during this considered period the SL is not the only entity that participates in the insurrectional violence in Peru, and it will be necessary for us to also differentiate its actions from those that were organized, in particular by the MRTA (*Movimiento Revolucionario Túpac Amaru*), or by unidentified authors.

These maps represent the temporal evolution of terrorism in Peru according to four periods of unequal duration. The choice of the dates that limit them is based on decisions that are based both on the historical knowledge of the set of facts and on the natural distribution of the incidents that appears in the histogram at the top right of Figure 1. Thus, we distinguish:



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 Source: Global Terrorism Database
 Logiciel Cartes&Données-©Articque

Figure 1. Spatial distribution of acts coded as terrorism in GTD, for Peru between 1970 and 2019

- *The first period (1970–1980)*, which precedes the outbreak of the SL insurgency (May 17, 1980) and begins in 1970 due to the availability of GTD data, is practically free of terrorist action, except for some isolated incidents in Lima, which took place during the progressive military regime (1968–1980).
- *The second period (1981–1982)* is that of the beginning of the armed action of SL in the zone of Ayacucho, and of terrorist activity that was of average intensity in Lima. SL was only partially responsible (or not claimed by this organization).

- *The third period (1983–1992)* corresponds to the maximum intensity of the insurgency. As we will see below, it is not homogeneous in relation to the spatial logics implemented, and it comes to an abrupt halt following the capture of Abimael Guzmán on September 12, 1992.
- *The fourth period (1993–2019)* is mainly characterized by a residual terrorism of SL and some of the actions MRTA, which disappeared following the de-nouement of the spectacular hostage taking at the residence of the Japanese Ambassador, in Lima between December 17, 1996, and April 22, 1997.

A few figures allow us to complete the graphic information. The first (Table 1) show that the maps in Figure 1 are based on very heterogeneous volumes of acts, which confirms the choice of the periodization adopted.

Table 1. Total number of acts coded as terrorist by the GTD. Peru, 1970–2019

| Period | Number of acts |
|--------|----------------|
| 70-80 | 18 |
| 81-82 | 545 |
| 83-92 | 4 935 |
| 93-19 | 322 |

Secondly, it is also useful to know that 52% of the attacks listed were carried out with bombs and/or explosives (3,031 cases out of 5,820), followed by armed attacks (21%).

Continuing our analysis, let us now turn our attention to the organizations responsible for the bulk of the (mostly) political violence during the period under consideration. Figure 2 once again shows the spatial distribution, the perimeters calculated according to the concentration of acts from a threshold¹⁴ and the bary-center corresponding to SL, MRTA and unknown (or unclaimed) perpetrators.

Several points deserve a brief comment here. They concern the characteristics of the MRTA, its spatial footprint which clearly differentiates it from SL, and some hypothetic reflections about the category of “unknown” authors which concerns a significant number of acts.

Table 2 shows the quantities involved.

Table 2. Quantity of acts by organization following the GTD. Peru, 1970–2019

| Organization: | Path of Light | MRTA | Other | Unknown |
|---------------|---------------|------|-------|---------|
| Acts: | 4302 | 545 | 102 | 871 |

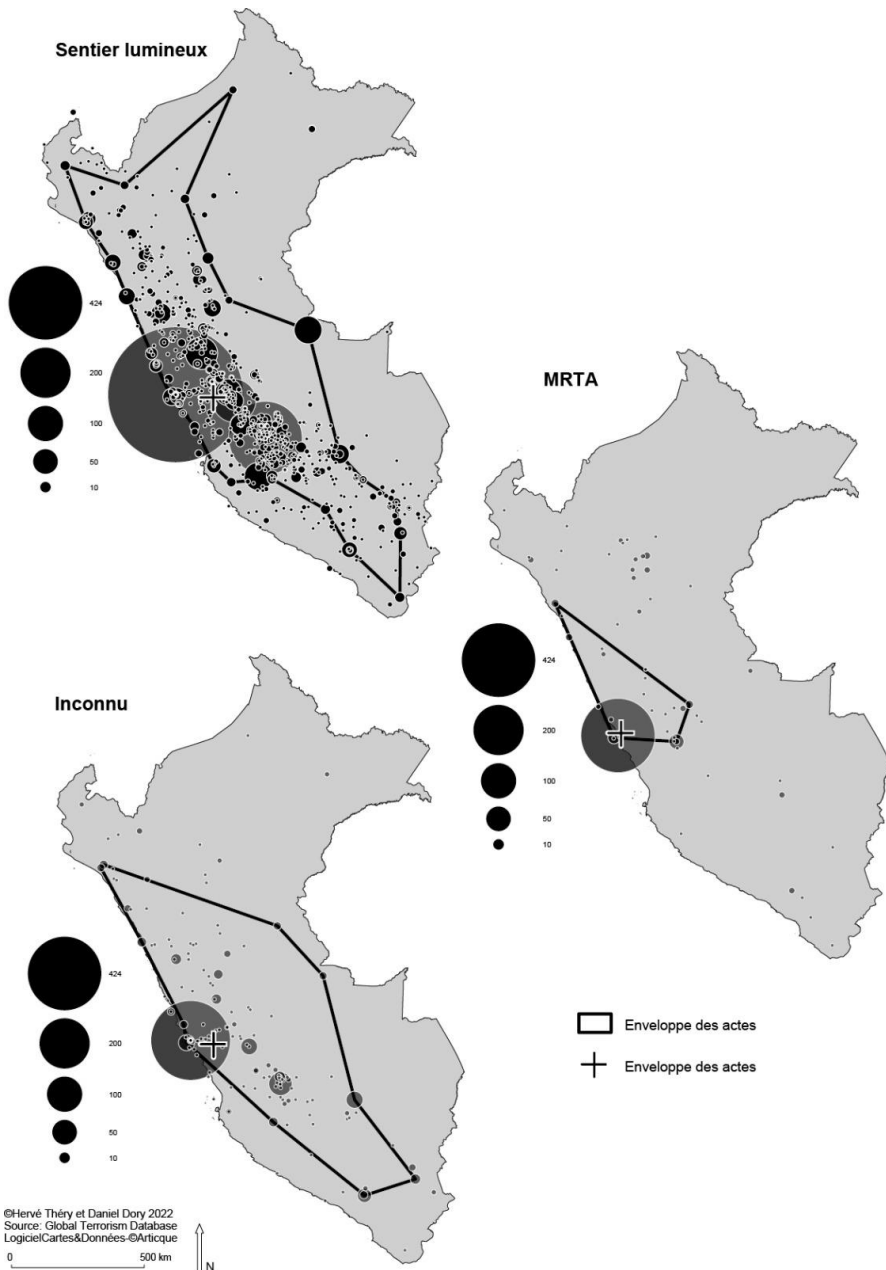


Figure 2. Distribution of acts coded as terrorism in the GTD, by responsible organization, Peru, 1970–2019

The MRTA was the subject of quite poor work at the time of its activity.¹⁵ This makes Gordon H. McCormick’s well-done study¹⁶ even more valuable, and its content is both updated and confirmed by the present study.¹⁷ Indeed, as the map corresponding to this organization in Figure 2 shows, the MRTA, during its years of operation (1984–1997), had a very different spatial footprint than the SL,

even though the two entities were in fact competing for the capture of a fairly similar social base. This fact corresponds in large part to the difference between the revolutionary and organizational models implemented by each group, a fact that McCormick has analyzed very well. While the MRTA was inspired by the Cuban/Guadarrist model of spontaneous mass mobilization based on the military success of guerrilla columns, neglecting the organizational factor, the SL owes its (relative) success to its organizational effort to build parallel hierarchies that replace the state presence in ever-expanding territories, in accordance with the Maoist model. And this contrast can be clearly seen in the maps in Figure 2. The MRTA initially only managed to have an urban presence (especially in Lima), later attempting to establish itself in the department of San Martín (north-central part of the country), before being replaced by SL. In contrast SL deploys, more or less intensely, on a big part of the Peruvian territory following a spatial logic of “oil spot.” We will return, later, on the geostrategic implications of this fact in connection with the general strategy of SL.

The map showing the distribution of acts whose perpetrators are “unknown” also deserves a brief comment. This is not so much because of the exceptional nature of this phenomenon, which is found in a very large number of situations,¹⁸ as because of the distribution of cases. And the examination of the corresponding map shows a strong similarity (perimeter and barycenter) with that of SL. Knowing that, depending on the location and circumstances, SL often opted not to claim its actions, it is possible to attribute most of these acts to this organization with a reasonable degree of probability. At its core this contrasts with the MRTA, whose actions were mainly driven by the intentions of being recognized by the public and were therefore almost always claimed.

The difference in targets, and thus the nature of the acts, between SL and MRTA is also apparent when we examine the maps in Figure 3.

If we consider as specifically terrorist the acts that target the civilian population, as opposed to those that attack members of the institutions of the Peruvian State (military, police, civil servants, etc.), we can make the following observations:

First, as mentioned above, both the volume and the distribution of the actions of the two organizations then in competition were very different. Then, we see for SL a clear zone of concentration of the terrorism in a perimeter including Ayacucho, Huanavelica, Huancayo and, especially, Lima. On the other hand, in the expansion zones (north and south) of the SL, guerrilla actions aimed at eliminating the state presence predominate. Here again, the MRTA offers a different picture, with a generalized predominance of terrorism, regardless of the time and place of the actions.

From this basic observation, it is now possible to refine the analysis and formulate some solid hypotheses about a major turning point in SL activity.

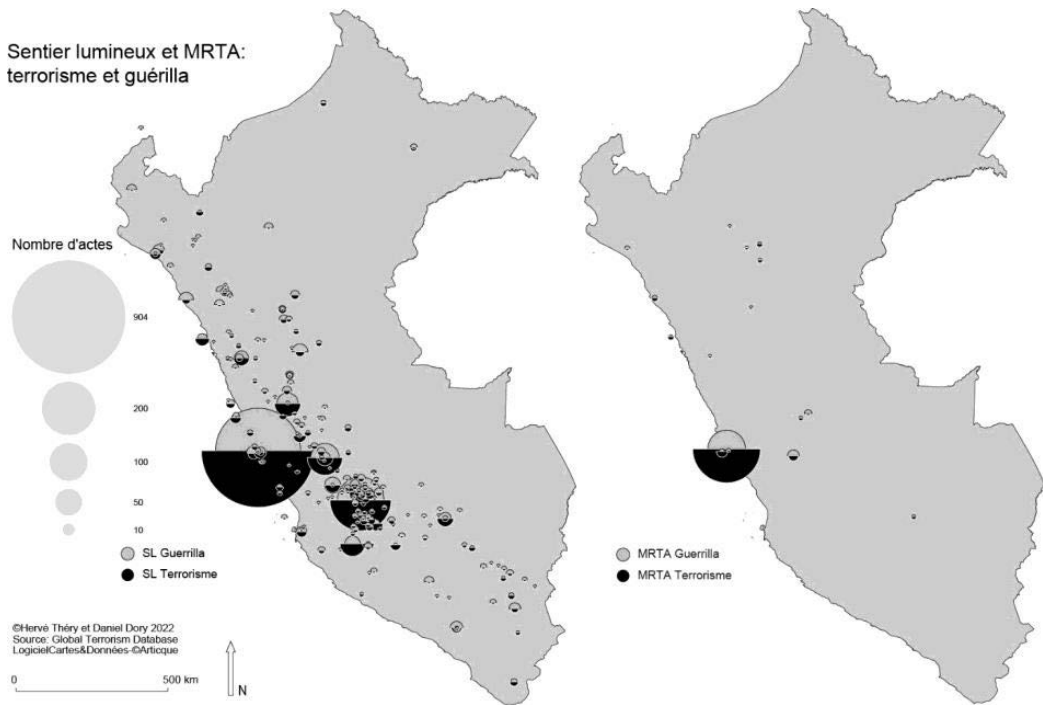


Figure 3. Distribution of acts coded as terrorist in the GTD, according to their targets. Peru, 1970–2019

How and why the Shining Path urbanizes its offensive

There is general agreement in the literature about the concentration of SL actions in the cities, especially Lima, in the mid-1980s. It remained to evaluate the volume and the dynamics, and to try to understand better the motivations, beyond the reproduction of the Maoist strategy of encircling the cities by the countryside.

To do this, three maps were constructed. The lower ones show the actions of the SL in two periods (Figure 4). The first one covers the years 1980–1985, that is, the beginning of the insurgent process centered mainly in the region of Ayacucho and in Lima and its surroundings. The second (1986–1992) includes the years of maximum SL activity, also marked by a significant shift in its territorial center of gravity.

The upper map synthesizes, for the first time, the spatial dynamics of the SL insurgency by contrasting the two major periods that characterize it. We can see very clearly a loss of base in the central Sierra (cordillera) (Ayacucho, etc.) and a concentration of actions towards Lima, which the displacement of the barycenter expresses without ambiguity. This despite a simultaneous extension of the zones where SL affirms its presence. Three series of factors of unequal importance can explain these facts.

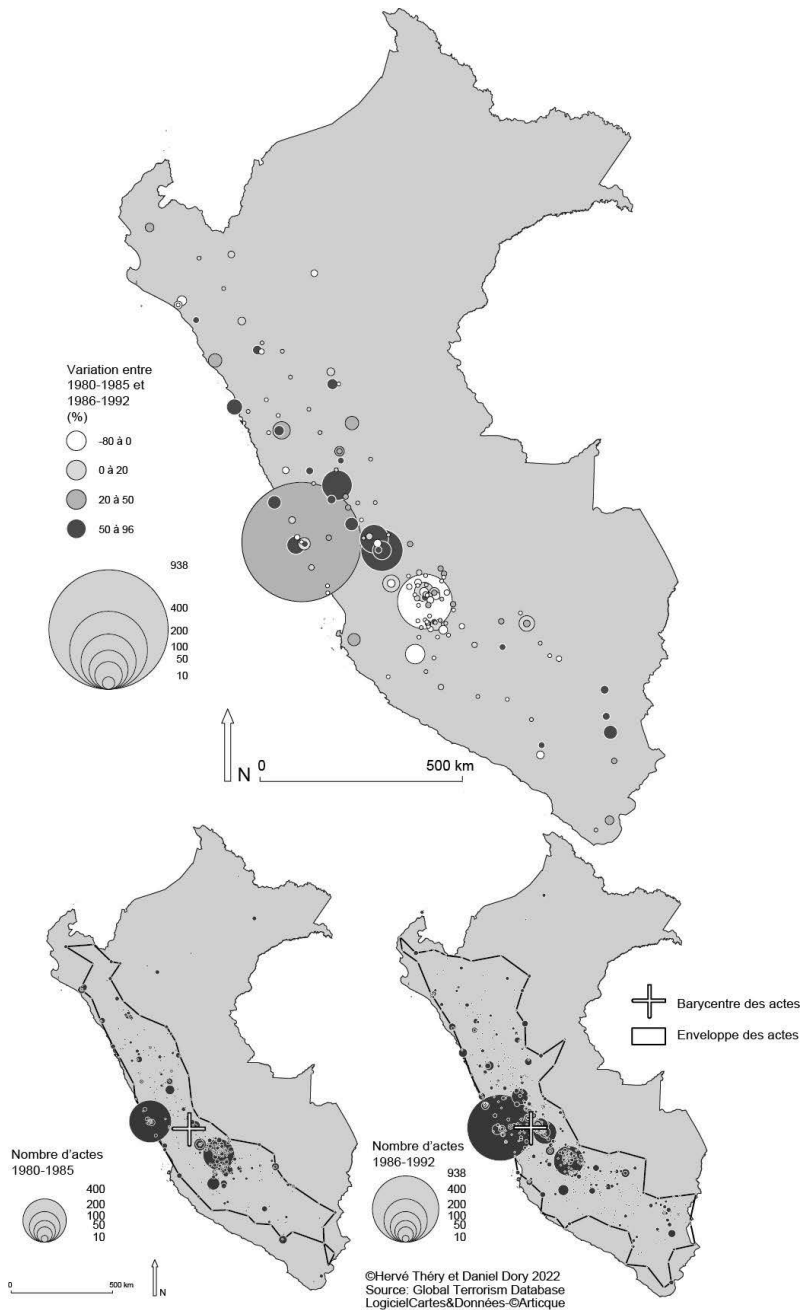


Figure 4. Spatial and temporal distribution of Shining Path actions between 1980 and 1992

First, the strategic logic elaborated by Abimael Guzmán,¹⁹ based on the Maoist concept of “protracted popular war” which, in its geostrategic aspect, includes the encirclement of the cities by the countryside. However, this general framework does not explain the choice of when SL will start to concentrate its action in the urban areas.

Second, it is possible that SL's decision to focus more intensely on Lima (especially) was also motivated by the beginning of MRTA's actions in 1984. It was then a question of trying to counter as quickly as possible the threat represented by this competing organization, whose development prospects seemed promising at the time.

Third, and most importantly, this shift in the territorial logic of SL's insurgency can be attributed to the rise of the *rondas campesinas* in the central Sierra during the second half of the 1980s. It is clear from the upper map in figure 4 that the concentration of actions in Lima and its surroundings correspond to a clear decrease in SL's presence in its original regions. It is not, therefore, an enveloping movement towards Lima from consolidated rural rear bases that we have assisted from 1986 onwards. But well to a displacement towards Lima of the center of gravity (see the barycenter) of the action of SL because of its progressive defeat in the Sierra due to the conjunction of the peasant mobilization and the application by the Peruvian army of a new counterinsurgent doctrine, finally effective. This point is crucial, because if the changes in the military system (the end of the brutal and blind repression, and encouragement to the peasant mobilization against SL) that led to the timely collection of indispensable information are well known,²⁰ the role of the *rondas campesinas* must have been undermined for a long time. The contribution of new publications on the subject has therefore been decisive in better understanding the accumulation of facts that led to the final defeat of SL. The cartographic work that we present in this article finally provides the basis for the formulation of solid explanatory hypotheses.

Conclusion

The case of the Shining Path, by its duration and by the extent of the damage caused (it is attributed to about 35,000 deaths) represents an episode that is somewhat out of the ordinary in the history of terrorism. Thirty years after the capture of Abimael Guzmán the scientific research is still far from having made light on this insurrection. It was therefore interesting to take on the subject once again, this time with the help of cartographic tools already proven on other objects. The result is not only a more precise overview, but also a new means of constructing hypotheses that can account for the decisive shift in SL's territorial logic in the mid-1980s. It is hoped that these results will serve to provide a rigorous framework for the design of future research programs aimed at deepening the knowledge of the many aspects of the reality of the Shining Path.

Endnotes

- 1 Daniel Dory, Geographer. Former lecturer at the University of La Rochelle, specialized in geopolitical analysis of terrorism. Consultant and trainer on security and terrorism issues.
- 2 Hervé Théry, Emeritus Research Director at CNRS-Creda, Professor at the University of São Paulo (USP-PPGH).
- 3 Daniel Dory, “The Shining Path: a laboratory for the study of terrorism,” *Global Security*, No. 16, 2018, 93–112. A basic bibliography and factual data are provided in this article, which we did not consider useful to reproduce here.
- 4 The main conceptual and methodological elements of this approach have been outlined in: Daniel Dory, “Analyse géopolitique du terrorisme : conditions théoriques et conceptuelles,” *L'Espace politique*, N° 33, 2017, (online); Daniel Dory, “Le terrorisme comme objet géographique : un état des lieux,” *Annales de Géographie*, N° 728, 2019, 5–36; Daniel Dory; Hervé Théry, “L’approche géographique du terrorisme : questions de méthode,” *L’Information géographique*, Vol. 86, N° 3, 2022, 29–48 ; Hervé Théry ; Daniel Dory, “L’étude géographique du terrorisme : nouveaux apports cartographiques,” *Sécurité Globale*, N° 30, 2022, 21–29. See also: Daniel Dory & Jean-Baptiste Noé, (Dir.), *Le complexe terroriste*, VA Éditions, Versailles, 2022.
- 5 The main lines of this problem have been formulated in: Daniel Dory: “L’Histoire du terrorisme: un état des connaissances et des débats,” *Sécurité Globale*, N° 25, 2021, 109–123.
- 6 See, for example: Hervé Théry; Daniel Dory, “Solhan : cartographier le terrorisme et la dynamique territoriale d’une insurrection,” *MappeMonde*, N° 131, 2021, (online).
- 7 Gordon H. McCormick, *From the Sierra to the Cities. The Urban campaign of the Shining Path*, RAND, Santa Monica, 1992.
- 8 Robert B. Kent, “Geographical Dimensionss of the Shining Path Insurgency in Peru,” *The Geographical Re view*, Vol. 83, No. 4, 1993, 441–454.
- 9 Sergio Koc-Menard, “Fragmented Sovereignty: Why Sendero Luminoso Consolidated in Some Regions of Peru but Not in Others,” *Studies in Conflict & Terrorism*, Vol. 30, N° 2, 2007, 173–206.
- 10 Edwar E. Escalante, “A Self-defense Network against Terrorism and Crime: Evidence from Peru,” *Terrorism and Political Violence*, 2021 (preprint available online).
- 11 For example: Valérie Robin Azevedo, “¿Verdugo, héroe o víctima ? Memorias de un rondero campesino ayacuchano (Perú),” *Bulletin de l’Institut Français d’Études Andines*, Vol. 43, N° 2, 2014, 245–264.
- 12 Mario Fumerton, “Rondas Campesinas in the Peruvian Civil War Peasant Self-defence Organisations in Ayacucho,” *Bulletin of Latin American Research*, Vol. 20, N° 4, 2001, 470–497.

- 13 We have discussed elsewhere the characteristics and limitations of this database, which despite its limitations is by far the best source currently available for the geographical study of terrorism. For more details, see the references mentioned in note 3.
- 14 The perimeters delimit the space within which the terrorist acts are located (above a certain threshold), the barycenters their center of gravity (taking into account the number of acts in each place).
- 15 Later, only the extremely mediocre little book by Suzie Baer, *Peru's MRTA*, Rosen, New York, 2003, can be mentioned.
- 16 Gordon H. McCormick, *Sharp Dressed Men. Peru's Túpac Amaru Revolutionary Movement*, RAND, Santa Monica, 1993.
- 17 It is not without interest to note that this approach, which aims to submit old works to the test of a later verification, according to data now available, opens new perspectives in the field of the history of terrorism.
- 18 See, on this point: Erin M. Kearns, "When to Take Credit for Terrorism? A Cross-National Examination of Claims and Attributions," *Terrorism and Political Violence*, Vol. 33, No. 1, 2021, 164–193. The author assumes that only 16% of the acts that appear in the GTD are claimed. The Peruvian case is therefore not atypical and is rather in a low range.
- 19 An acceptable biography can be found in: "Abimael Guzmán (Comrade Gonzalo)," in: James and Elisabeth Outman, *Terrorism Biographies*, U-X-L, Detroit, 2003, 142–151. By the way: this book, which contains 26 brief biographies, is a useful resource for research into the history of terrorism.
- 20 See in particular: Alberto Bolivar, "Peru," in: Yonah Alexander (Ed.), *Combating Terrorism. Strategies of Ten Countries*, University of Michigan Press, Ann Harbor, 2002, 84–115.

Theocratic Iran: A Worrying Succession

Camille Verleuw¹

ABSTRACT

While the health of the Iranian Supreme Leader, Seyyed ‘Ali Hoseyni Khâmene’i, seems to be wavering for several years, the question of his difficult succession arises—and sheds light on some of the mechanisms of the political functioning of the Islamic Republic and its recent developments. By proposing a historical inventory of Khamene’i’s political actions and, through that, on the evolution of Iranian institutions over the last 40 years, this article proposes a perspective on the situation of the Iranian political system through the prism of those who, within the Islamic republic, consider that the role of high-rank clerics is still too limited.

Keywords: Iran, Iranian Supreme Leader, Khomeini, Khâmene’i, elections, Islamic regime, 5th Assembly of experts, successor

Irán teocrático: una sucesión preocupante

RESUMEN

Si bien la salud del líder supremo iraní, Seyyed ‘Ali Hoseyni Khâmene’i, parece vacilar durante varios años, surge la cuestión de su difícil sucesión, y arroja luz sobre algunos de los mecanismos del funcionamiento político de la República Islámica y sus desarrollos recientes. Al proponer un inventario histórico de las acciones políticas de Khamene’i y, a través de él, sobre la evolución de las instituciones iraníes en los últimos 40 años, este artículo propone una perspectiva sobre la situación del sistema político iraní a través del prisma de quienes, dentro del República Islámica, considera que el papel de los clérigos de alto rango es todavía demasiado limitado.

Palabras clave: Irán, líder supremo iraní, Jomeini, Khâmene’i, elecciones, régimen islámico, 5^a Asamblea de expertos, sucesor

1 “Camille Verleuw” is the pen name of an expert bound to discretion.

政教合一的伊朗：令人担忧的继任

摘要

伊朗最高领袖赛义德·阿里·侯赛尼·哈梅内伊的健康状况似乎已经衰弱了好几年，同时出现了关于其继任者的困难问题，这揭示了伊斯兰共和国政治运作的部分机制及其近期发展。通过对哈梅内伊的政治行动进行历史盘点，并由此对过去40年伊朗制度的演变进行盘点，本文从“伊斯兰共和国内部那些认为高级神职人员的作用仍然太有限的人”的角度提出了对伊朗政治制度状况的看法。

关键词：伊朗，伊朗最高领袖，霍梅尼，哈梅内伊，选举，伊斯兰政权，第五届专家会议，继任者

Foreword

A few cancellations of planned activities and regular meetings in mid-September 2022, of the Iranian Supreme Leader, Seyyed 'Ali Hoseyni Khâmene'i, have revived attention on his state of health, while his family and the authorities had wished him a happy 83rd birthday on July 17. We had already reported on his health problems in an article published in the fall of 2016 in *Global Security* magazine No. 7. This article had been dedicated above all to the election on February 26, 2016, of the 5th Assembly of Experts (AEx, in Persian majles-e khobregân) whose 88 experts then elected were those who, over the next nine years, would have to choose a successor to Khamene'i in case of his death or his mental or physical inability to fulfill his responsibilities. This is until June 2025, the date also of the next presidential election in Iran if ... everything goes well.

The activities of the Supreme Leader, his speeches and messages in all fields are reported daily on his website www.khamenei.ir, written in eight languages: Persian, English, French, Spanish, Russian, Hindi, Arabic and Urdu, which is exceptionally rare for a leader even in the most technologically advanced countries. In fact, all Iranian institutions have one or more websites, often multilingual, with even an Internet address for each of their leaders or responsible members, as is the case of the Assembly of Experts, which is the main subject of this article: www.khobregan.ir & www.majlesekhobregan.ir (in Persian, English and Arabic).

Actions of the Iranian Supreme Leader

As in all states with a predominantly pyramidal power structure, a “sudden sneeze” from the leader can cause millions of citizens to sweat or hope. The 86.5 million

Iranians (NB: even Iranian sources differ!) live today under a regime that shares many characteristics with the People's Republic of China, which the hojjatoleslam 'Ali Khamene'i, then the President of the Islamic Republic of Iran, went to visit with many tokens of friendship from 9 to 14 May 1989. He then left Beijing, the Chinese capital, and flew to Pyongyang where he was also received with great deference by the North Koreans until May 19. In both countries, the Iranian President signed several military and nuclear agreements that remain secret to this day. These countries had in fact provided Iran with enormous quantities of arms which had enabled it to resist the Iraqi invasion from 22 September 1980 to 20 August 1988 while Western countries had favored the Iraqi regime in Baghdad of Saddam Hussein. Thirty-three years later, this still explains a large part of Iran's policy towards Saddam's "friends"...

While he still had only the title of "hojjatoleslam" (middle-ranking cleric), the hojjatoleslam Khâmene'i was elected deputy of the Iranian Parliament on May 28, 1980, at the dawn of his 41 years. He had never stopped fighting the Iranian imperial regime since the violent speech of Ayatollah Ruhollah Khomeini at the Feyziye theological school in Qom on June 3, 1963. The speech denounced the White Revolution of Shah Mohammad-Reza Pahlavi, which granted the right to vote to women and extended the distribution of land to the sharecroppers. At that time, they were then under the control of the descendants of those who had invaded Iran over the last few centuries, and thus had become owners of vast territories with all of their villages.

As soon as the Islamic Revolution had been won in February 1979, the great religious schools clashed underhandedly to place their leaders (ayatollahs), their graduate clerics (mojtahed) or their best students (talabe, pl. tolâb) in the new machinery of the state (according to 'Ali-Rezâ E'râfi, a fundamentalist cleric appointed Director of Religious Schools by the Supreme Guide Khamene'i on February 28, 2020, and elected expert on June 18, 2021, "the schools would house some 100,000 male talabe; 80,000 girls would also attend courses to be mojtahed"). It is in this context that 'Ali Khamene'i was pushed by the leaders of the Religious School (in Persian: howze'-e elemiye) of Mashhad to run for the post of President of the Republic for the next four years. He was elected in the elections of October 2, 1981, and officially inaugurated on October 13. He was re-elected in the presidential elections of August 16, 1985, the day after his 46th birthday.

Meanwhile, the first Assembly of Experts was elected on December 10, 1982. In 1985, it elected Ayatollah Hoseyn-'Ali Montazeri as Khomeini's successor. To replace some deceased members, an election was held on April 8, 1988. It was a real shock to the Assembly of Experts when it received a letter from Ayatollah Khomeini on March 26, 1989, stating that Montazeri was no longer eligible to replace him upon his death, thus revealing once again the muted struggles between political tendencies among Iranian Shiite clerics.

It was this first Assembly of Experts that met the day after Ayatollah Khomeini's death at the age of 86 on 3 June 1989. The majority of the 74 members present rejected the idea of a triumvirate of jurisconsults, consisting of 'Ali Meshkini Feyzabadi, Seyyed 'Abdolkarim Musavi Ardebili and Seyyed 'Ali Hoseyni Khamenei, to replace Khomeini. At the end of the debates chaired by 'Ali-Akbar Hâshemi Rafsenjâni (a filmed part of which will be broadcast in 2009), the Grand Ayatollah Mohammad-Rezâ Golpâyegâni received 14 votes and the hojjatoleslam 'Ali Khâmene'i 60 votes. As the elected was not a marja' as stipulated in the Constitution of 1979, he was appointed by interim. It was thus necessary to wait for the results of the referendum on the amendments to this Constitution that Khomeini had already recommended since 24 April 1989. Organized on the same day as the presidential election on July 28, 1989, the vote on these amendments, cast by 16,428,976 Iranians, was 97.57% in favor. This allowed the AEx to reconvene and confirm the election of Hojjatoleslam Khamene'i to the post of Supreme Leader on 6 August 1989 by 60 votes for the 64 that were present. He had just celebrated his 50th birthday. His failed attempt to be recognized as ayatollah by the Great Ayatollahs, who are the religious references recognized by the Shiites (called "marja'-e taqlid" = source of imitation), led to a more and more discreet use of the title of "faqih" which was given to Ayatollah Khomeini: the khamenei.ir website describes him as "Leader of the Revolution" (in Persian râhbar-e enqelâb).

The health of the Leader: first alert

Khamene'i's health has been a regular topic of concern since the fall of 2014, not only for supporters of the Islamic regime but also for leaders of many countries. For 33 years, he has ruled a large country—the world's 18th largest area—and a large nation—the world's 18th largest population—whose history and written language have been known for more than 2,500 years and which today remains a key player in the situation in the Middle East and West Asia due to its political positions and direct or military interventions by proxy.

It was on September 8, 2014, that it was discovered that 'Ali Khamene'i was suffering from prostate cancer. He underwent surgery on March 5, 2015, and resumed normal life and activity in the following weeks. Nevertheless, given the initial stage of his cancer, some doctors estimated that the Leader had only about 20 months to live. There is no doubt that Iranian leaders, especially clerics of all stripes, then redoubled their attention to prepare for the upcoming election of the 5th Assembly of Experts to be held on February 26, 2016, along with parliamentary elections to elect 290 new deputies.

The 5th Assembly of Experts elected in February 2016

Our previous study on the 5th Assembly provided many details that need not be repeated here, except those that determined a new political-religious situation in

the fall of 2022 after two by-elections, in February 2020 and June 2021. The reorganization of the provinces and the increase in population had officially resulted in a new number of experts per province out of a total of 88. We did not emphasize in 2016 how the distribution, which was not equitable for several provinces, given their place in the table of their population (in brackets), could only be explained by maneuvers of the conservatives, who had a majority on the Board of Supervisors, to hope for the election of clerics from their group (see below):

* 16 : Tehran (1st)

* 6 : Khorassan Razavi (2nd) & Khouzistan (5st)

* 5 : East Azerbaidjan (6st), Fars (4th) & Ispahan (3rd)

* 4 : Guilan (11th) & Mazanderan (8th)

* 3 : West Azerbaidjan (7th) & Kerman (9th)

* 2 : Ardebil (20th), Alborz (12th), Golestan (14th), Hamadan (15th), Kermanschah (13th), Kurdistan (18th), Lorestan (16th), Markazi (19th), Qazvin (21st) & Sistan-Baloutchistan (10th)

* 1 : Bushehr (24th), Chahâr Mahâl va Bakhtiyâri (26st), Hormozgan (17th), Ilam (31st), North Khorassan (27th), Khorassan Sud (28th), Kohgiluyeh va Boyer-Ahmadî (29th), Qom (22nd), Semnan (30th), Yazd (23rd) & Zandjân (25th).

The texts of the Constitution on the Assembly of Experts and the regulations confirmed by the Supervisory Board are, on paper, a guarantee of great and perfect fairness. The modalities are codified in an extremely detailed document, in 83 articles, available notably on the website of the Assembly of Experts in both Persian and English. Nevertheless, the 12 members of the Supervisory Board are not chosen for their independence. Six of the members are chosen directly by the Supreme Leader from among clerics who are experts in Islamic law, and another six members are elected by the deputies from a list of jurists, civil or religious, who specialize in various fields and who were themselves chosen by the head of the judiciary. They in turn are appointed by the Supreme Leader. These twelve people oversee judging without appeal, which cleric or jurist can present his candidacy to the Assembly of Experts, but also every four years they determine who can present his candidacy to a deputy position! A future paragraph will reveal the shenanigans for the February 2020 and June 2021 elections. The fundamentalists had already succeeded in eliminating nearly forty members on the eve of the 4th AEx election

in December 2006, even though they were elected in October 1998 to the 3rd AEx. The same pattern has been repeated in all elections and appointments in the workings of the Iranian state.

Since everything is hushed up!

In 2016, we published a table of six groups of Iranian clerics who were tearing each other apart to win an expert position (p. 59). Today we reduce it to only three groups of actors who will meet the day after the death of the “Leader of the Revolution” if it is to take place before June 2025, that is, in two years and eight months. We must remain extremely vigilant because the groups name themselves with words so similar or synonymous that countless voters probably did not check the exact box of their choice (in 2016, we had already pointed out how candidates were running under an identity quite similar to recognized and revered religious figures).

- The fundamentalists, conservatives, traditionalists or neo-Mahdists, whose leader is Ayatollah Mohammad-‘Ali Movahhedi Kermâni, 91 years old, Secretary General of the Association of Fighting Clergy (ACC, *jâmè-ye ruhâniyat-e mobârez*).
- The pragmatists and moderates: these ayatollahs or hojjatoleslams have preserved their powers that they had acquired since the establishment of the IRI in February 1979. It is not only in the essentially religious organizations that the early fighters have been marginalized, but also in the new institutions, such as the Islamic Revolutionary Guard Army (IRGA), where extremism has developed. The pragmatists have more support from several senior ayatollahs who are not entirely convinced of the durability of the current system of power, who do not accept that it is clerics of much lower rank who dictate the laws governing the country, and who are well aware, thanks to information received from their networks of followers, that the current regime survives only through its very strict and fussy control at all levels of the lives of its citizens. The fact that the Iranian regime, after 43 years in power, does not accept the existence of a single party or association advocating a different conception of the state betrays the extent to which its leaders fear popular sentiment or the aspirations of the population.
- The reformists or socialists: they are in the majority in the Society of Religious Fighters (SRC, *PR majma’-e rowhâniyun-e mobârez*), and the Society of Professors and Researchers of the Theological School of Qom (SPCEQ, *PR majma’-e modarresin va mohaqqeqin-e howze-ye elemiye-e qom*) The SRC was founded with the support of Imam Khomeini on March 16, 1988 by radical and “progressive” clerics, several of whom have since held high office:

President of the republic like Mohammad Khâtimi from 1997 to 2005, but others have been placed under house arrest like the former President of parliament Mehdi Karubi.

February 2020: 1st mid-term election of the 5th Assembly

The election takes place on 21st February at the same time as the parliamentary elections: 7 new experts are to be elected to replace those who died in the last four years, since 26 February 2016. Our previous remarks about the actions of conservative leaders are fully realized in this case.

In the February 2016 election, the 15 pragmatic and moderate clerics led by Ayatollah 'Ali-Akbar Hâshemi Rafsenjâni had all been elected in the 1st round, the 16th and last of the elected being then Ahmad Jannati, the leader of the fundamentalists! The fourteen other non-elected clerics of the list of fundamentalists have then sworn that they would recover, by all means, expert positions four years later in the elections of February 2020. This was possible with the help of the still fundamentalist-dominated Supervisory Board, which eliminated all candidates who were not fundamentalists. As a result, seven of the defeated fundamentalists from 2016 were able to get elected in 2020, including the two most extreme leaders: Mohammad Yazdi and Mohammad-Taqi Mesbah Yazdi. Nevertheless, Allah did not give them much time to enjoy their revenge: Yazdi died on December 9, 2020, and his compatriot Mesbah Yazdi, 22 days later on January 1, 2021, much to the chagrin of their young supporters, who will have to wait another year and four months to regain positions in the Assembly of Experts.

In terms of the conduct of the parliamentary elections on February 21, 2020, it is clear that the Supervisory Board has also managed to eliminate the maximum number of pragmatists and moderates. First, 80 of the 290 non-fundamentalist deputies elected in 2016 were not allowed to run again! This decision sent a message to the public that the Supreme Leader was endorsing a recapture of Parliament by the most conservative forces. As a result, turnout dropped to **42.57% of potential voters**, the lowest since 1979 and much lower than the 61.85% in February 2016. The feeling that the elections were again rigged was so strong in the country's largest constituency, the capital Tehran, that there was only 26.2% turnout of potential voters.

The expected result was that the fundamentalists regained a strong majority in parliament. The Minister of the Interior, 'Abdolrezâ Rahmâni Fazli, justified the low turnout by the popular reaction to the repression of recent demonstrations in several parts of the country, to the bad weather and finally to the coronavirus, which is not very credible because 4 days after the elections, the total death toll was still only 16 Iranians. Another fact killed by the minister is the number of Iranians who came to "vote." Individuals must have the polling station stamp on their

identity card, which is regularly presented in order to obtain documents from the administration, in particular the aid of Islamic charity societies or mosques.

June 2021: 2nd mid-term election of the 5th Assembly

From February 2020 to June 2021, six experts died. To replace them, the Supervisory Board again managed to elect fundamentalists who had been defeated in February 2016: 'Ali-Rezâ E'rafi, appointed Director of Religious Schools on February 28, 2020, Mohammad-Rezâ Modaressi Yazdi, Ahmad Dâneshezâde Mo'men, Hoseyn-'Ali Sa'di, Seyyed Mohammad Sa'idi, and Seyyed Sâdeq Pishnamâzi.

In the presidential election, the maneuvers of the Supervisory Board also continued. The candidates who could have beaten Seyyed Ebrâhim Ra'isi were discarded and only four losers in advance were allowed to participate in a parody of democratic elections. Results: 28,933,004 voters, or only **48.78%** of the 59,310,307 potential voters, the lowest level ever reached since 1980 in Iran for a presidential election. Ra'isi collected 17.926.345 valid votes, but the second position is occupied by the 4.167.028 invalid or null votes! **This is the first time in 43 years that the number of invalid or void votes has varied from 0.8% to 3.8%.** The second candidate, Mohsen Rezai, obtained only 3,412,712 votes! And the others even less.

This is an important point that the usual commentators have failed to note, but in February 2020 we were able to predict that Iran was about to enter into a new stage of its history. More than 50% of Iranians no longer believe in this Islamic regime to allow them to lead a good life without the spy of fanatics. Therefore, their reactions will be more and more numerous, fast and violent against the oppressive measures of a regime that does not want to see the reality.

The Assembly still has 83 experts in the autumn of 2022: five have indeed died since June 2021. Like the other future deceased, they can only be replaced in the next legislative elections, which will take place in the spring of 2024. Sometime before his death in January 2017, 'Ali-Akbar Hâshemi Rafsenjâni had hinted that the Assembly had tentatively agreed on one of its members to succeed 'Ali Khâmene'i. This is Seyyed Ebrâhim Ra'isi, then 57 years old, a cleric² whose mentor is still the most extreme ayatollah of the theological school of Mashhad, Seyyed Ahmad Alamolhoda. The latter gave his daughter Jamile in marriage to Ebrâhim, an extremely common occurrence among high-ranking Shiite clerics, who exchange their children to keep it at such a level. Alamolhodâ, now 78 years old, is regularly noticed for his ultra-violent preaching against any Iranian, even religious, who opposes his conception of an Islamic state, the "velayat-e faqih" (the guardianship of the jurisconsult) like the one initially advocated by Khomeini in 1970.

2 "Ebrahim Raisi: the Iranian cleric emerging as a frontrunner for supreme leader," Saeed Kamali Dehghan, *The Guardian*, 9/1/2017.

Like many ayatollahs, Alamolhoda considers that Khomeini's acceptance of the establishment of a republic in 1979 was a huge mistake! According to him, there should not even be presidential or parliamentary elections in Iran, let alone leaders who are not educated clerics! In the end, with an Assembly of Experts composed mostly of fundamentalists, there is no hope for a relaxation of the oppressive ideological control over the 86.5 million Iranians.

List of members to the 5th Assembly of Experts elected on February 26, 2016, with updates in the by-elections of February 21, 2020, and June 18, 2021

Codes:

X = experts who died after June 18, 2021, and who can only be replaced in the 3rd by-election in spring 2024.

S. = Seyyed

| Name, Surname | Age | | Province of election |
|----------------------------------|------------|--|-----------------------------|
| Abdkhodâ'i, Mohammad-Hâdi | 84 | | Khorasan Razavi |
| Abdollahi, 'Abdolmahmud | 75 | | Ispahan |
| Ahmadi Shâhrudi, Mohammad-Hoseyn | 64 | | Khousistan |
| Akhtari, 'Abbâs-'Ali | – | Defeated on the 26 II 16, elected on the 20 II 20 to replace Nasrollah Shâhâbâdi (deceased on the 12 III 18) | Tehran |
| Alamolhodâ, S. Ahmad | 78 | | Khorasan Razavi |
| Alavi, S. Mahmud | 68 | | Tehran |
| 'Âlemi, Hasan | 75 | | Khorasan Razavi |
| Alimorâdi, Amânollah | – | | Kerman |
| Âmeli Kalkurân, S. Hasan | 60 | | Ardabil |
| Bahrâmi Khoshkâr, Mohammad | 60 | | Kerman |
| Beheshti, Ahmad | 87 | | Fars |

| | | | |
|---------------------------------|----|--|--------------------------|
| Dâneszhâde Mo'men, Ahmad | – | Elected on the 18 VI 21 to replace Mohammad-‘Ali Taskhiri (deceased on the 18 VIII 20) | Tehran |
| Dastgheyb, S. ‘Ali-Asghar | 77 | | Fars |
| Dezhkam, Lotfollah | – | Elected on the 21 II 20 to replace Asadollah Imâni (deceased on the 7 V 18) | Fars |
| Dirbâz, ‘Askar | 63 | | West Azerbaïdjan |
| Dolâbi, Mohammad Hâji Abolqâsem | – | | Zanjan |
| Dorri Najafâbâdi, Qorbân-‘Ali | 77 | | Tehran |
| Emâmi Kashâni, Mohammad | 91 | | Tehran |
| E'râfi, ‘Ali-Rezâ | – | Defeated on the 26 II 16, elected on the 18 VI 21 to replace S. Hâshem Bathâ'i Golpâyegâni (deceased on the 16 III 20) | Tehran |
| Eslâmi, ‘Ali | 75 | | Qazvin |
| Eslâmiyân, ‘Ali-Rezâ | 71 | | Chahâr Mahal & Bakhtyari |
| Esmâ'ili, Mohsen | 58 | The only non-religious one | Tehran |
| Faqih, S. Mohammad | X | Deceased on the 22 III 22, not replaced yet | Fars |
| Farahâni, Abdolkarim | – | | Khousistan |
| Fayazi, Gholâm-Rezâ | – | Elected on the 21 II 20 to replace Habibollah Mehmânnavâz (deceased on the 22 IV 18) | North Khorasan |
| Feyzi Sarâbi, Mohammad | X | Deceased on the 14 IV 22, not replaced yet | East Azerbaïdjan |
| Hâshemzâde Harisi, Hâshem | 84 | | East Azerbaïdjan |
| Heydari Âl-e Kasiri, Mohsen | 65 | | Khousistan |
| Hoseyni, S. Mojtabâ | – | | Khorasan Razavi |
| Hoseyni Bushehri, S. Hâshem | 66 | | Bushehr |

Theocratic Iran: A Worrying Succession

| | | | |
|--------------------------------|----|---|--------------------------|
| Hoseyni Khorâsâni, S. Ahmad | – | | Khorasan Razavi |
| Hoseyni Shâhrudi, S. Abdolhâdi | 75 | | Golestan |
| Hoseyni Shâhrudi, S. Mohammad | 64 | | Kurdistan |
| Jannati (Massâh), Ahmad | 95 | | Tehran |
| Ka'binasab, 'Abbâs | 60 | | Khouzistan |
| Kalântari, 'Ali-Akbar | – | | Fars |
| Kâzerun (Kâzeruni), Mohsen | 62 | | Alborz |
| Khâtami, S. Ahmad | 62 | | Kerman |
| Lârijâni Âmoli, Sâdeq | 62 | | Mazandaran |
| Mahdavi, S. Abolhasan | 60 | | Ispahan |
| Malakuti, 'Ali | 74 | | East Azerbaïdjan |
| Malek Hoseyni, S. Sharafeddin | 60 | | Kohgiluye & Boyer Ahmadi |
| Mesbahi Moqaddam, Gholâm-Rezâ | – | Defeated on the 26 II 16, elected on the 21 II 20 to replace S. Abolfazl Mir Mohammadi Zarandi (deceased on the 24 XI 19) | |
| Mir Bâqeri, S. Mohammad-Mehdi | – | | Alborz |
| Mir Hoseyni Eshkevari, S. 'Ali | – | | Guilan |
| Mo'alemi, (Ramazân-)'Ali | 79 | | Mazandaran |
| Moballegghi (Moravveji), Ahmad | – | | Luristan |
| Modaressi Yazdi, Mohammad-Rezâ | – | Defeated on the 1e 26 II 16, elected on the 18 VI 21 to replace Mohammad-Taqi Mesbah Yazdi (deceased on the 1 I 21). The latter, defeated on the 26 II 16, was elected on the 21 II 20 to replace S. Mahmud Hâshemi Shâhrudi (deceased on the 24 XII 18). | Khorasan Razavi |
| Mohammadi 'Erâqi, Mahmud | – | | Kermanchah |

| | | | |
|--------------------------------------|----|---|------------------|
| Mohammadi 'Erâqi (Arâki), Mohsen | – | | Markazi |
| Mohammadi Nik Reyshahri, Mohammad | X | Deceased on the 21 III 22, not replaced yet | Tehran |
| Mohseni Garakâni, Ahmad | 96 | | Markazi |
| Mojtahed Shabastari, Javâd | – | | West Azerbaïdjan |
| Mojtahed Shabastari, Mohsen | X | Deceased on the 17 XI 21, not replaced yet | East Azerbaïdjan |
| Mo'menpur, 'Ali | – | Defeated on the 26 II 16, elected on the 21 II 20 to replace 'Ali Akbar Hâshemi Rafsenjâni (deceased on the 8 I 17) | Tehran |
| Moqtadâ'i, Morteza | 87 | | Ispahan |
| Movahhedi Kermâni, Mohammad-'Ali | 91 | | Tehran |
| Musavi Farrâz (Hamadani), S. Mostafâ | – | | Hamadan |
| Musavi Jazâyeri, S. Mohammad-'Ali | 79 | | Khuzistan |
| Musavi Nanekarân, S. Fakhreddin | X | Deceased on the 18 IX 21, not replaced yet | Ardabil |
| Namâzi, Abdolnabi | 77 | | Ispahan |
| Narimâni, Amânollah | 67 | | Kermanschah |
| Niyâzi, Hâshem | – | | Luristan |
| Nur Mofidi, S. Kâzem | 82 | | Golestan |
| Parvâ'i Rik, Ahmad | – | | Guilan |
| Pishnamâzi, S. Sâdeq | – | Elected on the 18 VI 21 to replace Nurollah Tabarsi (deceased on the 8 II 20) | Mazandaran |
| Pur Mohammadi, Mohammad-Taqi | 66 | | East Azerbaïdjan |
| Qomi, Mohsen | 62 | | Tehran |
| Qorashi (Qoreyshi), S. 'Ali-Akbar | 94 | | West Azerbaïdjan |
| Qorbâni, Zeynolâbedin | 89 | | Guilan |
| Ra'isi (Âl-e Sadat), S. Ebrâhim | 62 | | South Khorasan |
| Ramazâni Gilâni, Rezâ | 58 | | Guilan |

| | | | |
|--|----|--|----------------------|
| Rostami, Fâyeq | – | | Kurdistan |
| Ruhâni (Fereydun), Hasan | 74 | | Tehran |
| Sadrolsâdâti, S. Ruhollah | – | | Hormozegan |
| Sâdi, Hoseyn-‘Ali | – | Elected on the 18 VI 21 to replace Ebrâhim Hâj Amini Najafâbâdi (deceased on the 24 IV 20) | Tehran |
| Sâ’idi, S. Mohammad | – | Elected on the 18 VI 21 to replace Mohammad Yazdi (deceased on the 9 XII 20). The latter, defeated on the 26 II 16, was elected on the 21 II 20 to replace Mohammad Dâneszhâde Mo’men (deceased on the 21 II 19) | Qom |
| Sâ’idi Golpâyegâni, S. Mohsen | – | | Elam |
| Salâmi, ‘Ali-Ahmad | 77 | | Sistan-Baloutchistan |
| Shafi’i, S. ‘Ali | 82 | | Khuzistan |
| Shâhcherâghi, S. Mohammad | 88 | | Semnan |
| Soleymâni Asbukalâ’i, ‘Abbâs-‘Ali | 75 | | Sistan-Baloutchistan |
| Tabâtabâ’inezhâd, S. Yusef | 78 | | Ispahan |
| Taha Mohammadi, Ghiyâseddin | 75 | | Hamadan |
| Talkhâbi, Majid | – | | Qazvin |
| Tavvakol, S. Rahim | – | | Mazandaran |
| Vâfi Yazdi, Abolqâsem | 87 | | Yazd |
| Zâli Fâzel Golpâyegâni, Mohammad Hasan | – | | Tehran |

SPECIAL DRUG POLICY SECTION

INTRODUCTION

The Drug Policies seminar was launched in October 2019 by two laboratories of the Conservatoire national des arts et métiers (Cnam), ESDR3C and Lirsa. This project brings together in its scientific committee many renowned academics and specialists involved in these issues, including Professor Alain Bauer (Cnam), Jean-Pierre Couteron, addictologist, Didier Jayle, former president of the Interministerial Mission for the Fight Against Drugs and Drug Addiction, Laurent Laniel (European Monitoring Centre for Drugs and Drug Addiction) or Giovanni Molano-Cruz (Universidad Nacional de Colombia).

This initiative aims to produce a robust and balanced scientific knowledge, without taking a militant position, on subjects that are often controversial. Testimonies of actors, professionals, politicians and associations are also reported, in order to address more concretely the issues studied in each session of the seminar.

The approach is also interdisciplinary, with works from political science, law, criminology, sociology, economics, management sciences, history, medicine and public health, psychology and addictology.

The seminar and the online *Politiques des Drogues Journal* are also keen to offer an international perspective on a subject that lends itself well to comparative analysis. Thus, the *International Journal on Criminology* presents here a selection of articles published in the first three issues (2021-2022), devoted to various themes that go beyond the borders of France.

Enjoy reading!

Dr. HDR Sonny Perseil, Lirsa / Cnam

INTRODUCCIÓN

El seminario Políticas de Drogas fue lanzado en octubre de 2019 por dos laboratorios del Conservatoire National des Arts et Métiers (Cnam), ESDR3C y Lirsa. Este proyecto reúne en su comité científico a muchos académicos y especialistas de renombre involucrados/as en estos temas, incluido el profesor Alain Bauer (Cnam), Jean-Pierre Couteron, adicto, Didier Jayle, ex presidente de la Misión Interministerial para la Lucha contra las Drogas y las Toxicomanías. , Laurent Laniel (Observatorio Europeo de las Drogas y las Toxicomanías) o Giovanni Molano-Cruz (Universidad Nacional de Colombia).

Esta iniciativa tiene como objetivo producir un conocimiento científico robusto y equilibrado, sin adoptar una posición militante, sobre temas que a menu-

do son controvertidos. También se relatan testimonios de actores, profesionales, políticos y asociaciones, con el fin de abordar de manera más concreta los temas tratados en cada sesión del seminario.

El enfoque también es interdisciplinario, con trabajos de ciencias políticas, derecho, criminología, sociología, economía, ciencias de la administración, historia, medicina y salud pública, psicología y adicciones.

El seminario y la publicación en línea *Politiques des Drogues Journal* también están interesados en ofrecer una perspectiva internacional sobre un tema que se presta bien al análisis comparativo. Así, la *Revista Internacional de Criminología* presenta aquí una selección de artículos publicados en los tres primeros números (2021-2022), dedicados a diversos temas que van más allá de las fronteras de Francia.

¡Disfrute la lectura!

Dr. HDR Sonny Perseil, Lirsa / Cnam

编者按

2019年10月，法国国立工艺学院(Cnam)的两个实验团队(ESDR3C和Lirsa)举办了毒品政策研讨会。该项目的科学委员会汇集了参与这些议题的许多知名学者和专家，包括Alain Bauer教授(Cnam)、成瘾学家Jean-Pierre Couteron、“打击毒品和毒瘾部际任务”机构前主席Didier Jayle、欧洲毒品和毒瘾监测中心的Laurent Laniel、以及哥伦比亚国立大学的Giovanni Molano-Cruz。

该倡议旨在在不采取激进立场的情况下，就经常有争议的主题进行稳健和平衡的科学知识交流。还记录了参与者、专业人士、政客和协会的报告，以便更具体地应对研讨会各部分会议上所研究的问题。

采用的方法也是跨学科的，涉及政治学、法律、犯罪学、社会学、经济学、管理科学、历史、医学和公共卫生、心理学、以及成瘾学等领域。

研讨会和《毒品政策杂志》(*Politiques des Drogues Journal*)也热衷于就一个非常适合比较分析的主题提供国际视角。因此，《国际犯罪学杂志》在此展示了前三期(2021-2022年)发表的一系列文章，这些文章专门讨论了法国以外的不同主题。

享受阅读!

Sonny Perseil 博士，法国国立工艺学院Lirsa 研究团队

The Evolution of the Political and Media Framing of Drugs (2003–2022)

Drug Policy N°1 / July 2021 (Update)

Sonny Perseil

HDR in political science and management science

Cnam / Lirsa (EA 4603)

ABSTRACT

The way of framing drugs has clearly evolved in the last twenty years. The concept of addiction has become generalized and no longer concerns only substances, but also behaviors. We are also witnessing a form of generalized decriminalization of drug use and even drug trafficking in artistic representations, with sometimes sympathetic heroes of films or series who use or *deal drugs*. The tendency to emphasize the public health approach of harm reduction has also increased. In the United States, where the legalization of cannabis is progressing, the major phenomenon that has struck a chord is the use of opioids, whereas in France, the political framework of the subject seems likely to remain confused, as no major change has occurred.

Keywords: framing, representations, law, politics, drugs, entrepreneurs, cinema, series

La evolución del encuadre político y mediático de las drogas (2003-2022)

RESUMEN

La forma de enmarcar las drogas ha evolucionado claramente en los últimos veinte años. El concepto de adicción se ha generalizado y ya no se refiere sólo a las sustancias, sino también a las conductas. Asistimos también a una forma de despenalización generalizada del consumo de drogas e incluso del narcotráfico en las representaciones artísticas, con héroes a veces simpatizantes de películas o series que consumen o trafican con drogas. También ha aumentado la tendencia a enfatizar el enfoque de salud pública de la reducción de daños. En Estados Unidos, donde la legalización del cannabis

avanza, el principal fenómeno que ha tocado la fibra sensible es el uso de opioides, mientras que en Francia, el marco político del tema parece seguir siendo confuso, ya que no se ha producido ningún cambio importante.

Palabras clave: encuadre, representaciones, derecho, política, drogas, empresarios, cine, series

关于毒品的政治建构和媒体建构：2003–2022年间的演变

摘要

过去20年，毒品的建构方式显然发生了变化。成瘾的概念已经变得普遍化，不再只涉及物质，还涉及行为。还出现了一种关于毒品使用的普遍去罪化，甚至在艺术表现中反映了贩毒——有时电影或电视剧中会出现一些使用或交易毒品的讨喜英雄。强调公共卫生方法（以减少危害）的趋势也有所增加。在大麻合法化正在取得进展的美国，引起共鸣的主要现象是阿片类药物的使用，而在法国，由于未发生相关的重大变革，该主题的政治框架似乎很可能保持混乱。

关键词：建构，表现形式，法律，政治，毒品，企业家，电影，电视剧

Things have changed a lot in the field of drugs since the meeting that took place at the Sorbonne with Howard S. Becker in 2003. It is interesting to underline the extent to which the approach in terms of political framing, both on the theoretical, normative, and discursive levels, remains relevant. From this point of view, significant changes can be observed over the last twenty years. While trying not to characterize or oversimplify these transformations, the contribution briefly presented here will aim to grasp the main developments in this framing.

We will first recall the meaning of framing that we use, still inspired by the work of Jacques Gerstlé (2001), around whom we met with Howard S. Becker in 2003, in an approach that is mainly related to political communication. The framing of a social fact is the way in which it is regulated and mediatized, as well as the interactions between its law and its representations. It is assumed that the way in which the drug is shown and perceived influences its legal status and vice versa.

The sources available for this study are therefore easily accessible, since they are the norms governing the drug markets, from production to consumption. The different media fields, from journalistic production to works of fiction and the invasion of social networks, cover a vast surface. We will limit ourselves here to a work on a few audiovisual creations (cinema and series), without any pretension of exhaustiveness and by taking up some of the methodologies that made the success of the days “The reality of fiction,” which we have been organizing with Benoît Petitprêtre at the Conservatoire national des arts et métiers since 2018 (Petitprêtre, Perseil, Pesqueux, 2018).

We shall retain here four salient facts, which seem particularly representative of the evolution of the drug framework. Two very general evolutions, and two more national facts, one American, the other French.

The first element that appears particularly clear in our societies and in the media representations of them is the trivialization of life with drugs. The concept of addiction has become widespread and tends to be confused with the equally “catch-all” term drug. In 2014, the MILDT (Interministerial Mission for the Fight against Drugs and Drug Addiction) changed its name to MILDECA: addictive behaviors replaced drug addiction. Thus, in 2023, we are *addicted* not only to substances, whose use is legal or illegal, but also to video games, gambling, work, sex and even TV fictions (*binge-watching*) or luxury. This multiplication of addictions seems to de-dramatize the life of addicts: we would all be, more or less, addicted to something. All the more so since the limit between the licit and the illicit is less and less able to be grasped, especially if we refer to the use of drugs or cannabis, which has been legalized in many North American states for a few years.

Living with drugs, to use the title of the book edited by Alessandro Stella and Anne Coppel (2021), has become not only a socially and politically accepted reality in many parts of the world (though a practice that is opposed in many others), but also in many audiovisual creations where the protagonists are drug addicts. This trend is not completely new, since in his time Sherlock Holmes was also portrayed as a cocaine addict in the novels of Sir Arthur Conan Doyle.¹ Much more recently, on television, drug-loving heroes are proliferating, drugs of legal use—alcohol, tobacco (whose presence has been less marked for several years now, particularly in France, due to the application of the 1991 Évin law) —but also more and more often drugs, whose use is precisely on the borderline between the legal and the illegal. Two examples are medical series in which the main actors’ addiction to opioids such as Vicodin constitutes one of the main dramatic springs: *House* (USA, 2004–2012) and *Nurse Jackie* (USA, 2009–2015). At the same time, other series feature characters who live happily with their addictions, often multiple, such as *Shameless* (United Kingdom, 2004–2013; USA, 2011–2021), or *Irresponsible* (France, 2016–2019). In the profusion of French and American comedies, both in the cinema and on television, the character of the pot-smoking “slacker” seems

to have become an almost recurrent feature, again contributing to the trivialization of “living with drugs.”

And yet—this will be the second point—there must be suppliers and therefore merchants, entrepreneurs. The most important recent evolution in the framing of drugs is undoubtedly economic. To retrace the path of the last fifty years in broad strokes, one could say that at the beginning of this period, drugs were essentially represented as a vector object of certain forms of deviance and even criminality. This is what Howard S. Becker showed in *Outsiders*. During the 1980s, with the influence of a subject outside the debate but still interfering with drugs, AIDS, it was the medical point of view that emerged to promote, progressively, harm reduction and therefore a health-oriented framing of the theme. In 2003, during our first-round table at the Sorbonne, we were confronted with this evolution. However, since the end of the 2000s, or even the beginning of the 2010s, drugs have also become an economic issue. Its protagonists are no longer only criminal actors or individuals suffering from addiction, but also entrepreneurs.

In fiction and the media, these entrepreneurs, whose legal activity has become established in some North American states, are no longer just the dealers of mafia groups. More and more frequently, they are portrayed in a sympathetic way as small businessmen or shopkeepers. The number of creations, French and American, that rather positively show the exercise of these small illicit businesses has become important, from *Weeds* (USA, 2005–2012) to *Family Business* (France, 2019–2021), through *High Maintenance* (USA, 2016–2020) or the films *Paulette* (France, 2012) or *Five* (France, 2016). The characters are “nice” traffickers who come to this activity in order to make ends meet and their little business is not described in a critical way but appears most of the time justified. If many fictions continue to deal with the existence of large criminal enterprises living off of drugs, the series *Breaking Bad* (USA, 2008–2013) aims to show that in fact an opposition can exist between a small business and a large mafia group, led in this case by a fast-food owner. In all cases, including the darker creations of police inspiration, such as *Gomorra* (Italy, film, 2012, and series, 2014–2021) or *Cannabis* (France-Spain, 2016), the fictions show that the production and distribution of drugs obey the laws of the market and conform to the uses of management and marketing.

Finally, we will briefly discuss what seems to be the main elements of the American and French frameworks today.

In the United States, the priority drug issue now seems to be opioid-containing drugs, whose overuse has led to the deaths of tens of thousands of people, making them the most dangerous drugs. It is even claimed that these opioids kill more people than guns and car accidents combined and contribute to lower life expectancy.² So much so that there is now talk of an epidemic and even President Trump had seized on the subject by declaring it a public health emergency.³ Two quick comments, in terms of framing. First, if it were still necessary, this situation

vividly confirms the ideas developed by François-Xavier Dudouet on the role of the pharmaceutical industry that controls the legal drug market. There is no such thing as an illegal drug, there are only drugs whose use is illegal for certain social actors, but practically always legal for the big pharmaceutical groups. On the other hand, to take up part of the analysis of the doctoral thesis of Rufin Nzalakanda (Lirsa / Cnam) on the frauds committed by this type of company, they are able to enlist prescribers, experts and the media, who are able to promote the advantages of their drugs, even if they are dangerous drugs such as opioids. These groups have been successful in positively framing mass-produced and marketed substances, as Purdue Pharma did with OxyContin.

Finally, very briefly, a few words on the confusion that prevails in France in terms of framing. Confusion because the theme appears irregularly on the political and media agenda, irregularly in terms of time and in terms of the sense of framing. Indeed, if the general evolution of the framework described earlier—criminalization, then public health, then economic angle—seems to have started in France, with not only numerous fictions de-dramatizing drug use but also parliamentary works initiated in the field of cannabis well-being and economic exploitation—an interesting event occurred four years ago, which corresponds perfectly to an attempt of reframing. On September 17, 2019, four ministers (Interior, Justice, and Public Accounts) went to Marseille to outline the government’s new—essentially repressive—strategy against drugs, including a reform of the “anti-stups” office. Similarly, after extensive parliamentary work on recreational cannabis, fueled by numerous expert hearings, which led to a relatively consensual report between the French left and right in 2021,⁴ Interior Minister Gérald Darmanin (implicitly endorsed by the Élysée) closed the debate by recalling a formula that had been used in prevention messages in the 1980s: “Drugs are shit!” For the national elections of 2022 in France, the subject of “drugs,” which had been much discussed the previous year, was hardly discussed at all, as the war in Ukraine and, before that, the candidacy of Éric Zemmour, had monopolized the media attention.⁵ In this way, we understand to what extent, before any political action in this field, the issues of framing—the way of posing the problem, to synthesize to the extreme—remain fundamental and their analysis primordial in research on drug policies.

Endnotes

- 1 See in particular Conan Doyle, A. (1890). *The Sign of the Four*, and, among the many studies, <https://www.ulyces.co/longs-formats/sherlock-holmes-cocaine-docteur-wats-on-drogue/>
- 2 “In the U.S., opioids kill more than guns and car accidents combined.” *Raw/France TV Info*. 26 January 2018.
- 3 See, for example, “Donald Trump Makes Opioid Crisis a ‘National Health Emergency,’” <https://www.letemps.ch/monde/donald-trump-crise-opiaces-une-urgence-sanitaire-nationale,10/27/2017>.
- 4 <https://www2.assembleenationale.fr/content/download/341940/3351816/version/1/file/210505+Report+cannabis+recreational.pdf>
- 5 See S. Perseil, “La problématique des drogues dans les élections françaises de 2022: un rendez-vous raté?” *Politiques des drogues*, n°3, November 2022.

Bibliography

- Becker, H. S. (1985). *Outsiders. Studies in the sociology of deviance*, Paris, Métailié.
- Dudouet, F.-X. (2009). *Le grand deal de l’opium : Histoire du marché légal des stupéfiants*, Paris, Éditions Syllepse.
- Gerstlé, J. (dir.) (2001). *Les effets d’information en politique*, Paris, L’Harmattan.
- Nzalakanda, R. (2021). *La performativité de la grande entreprise pharmaceutique dans la chaîne de développement des produits de santé en France: une analyse de la fraude fondée sur le concept de Poche Organisationnelle Informelle (P.O.I)*, PhD thesis in management sciences, Conservatoire national des arts et métiers / Lirsa (EA 4603).
- Perseil, S., Lacombe, S. (dir.) (2004), *Le cadrage politique de la drogue - Autour de Howard S. Becker*, Paris, Éditions Pepper.
- Perseil, S., Petitprêtre, B., (dir.) (2021). *La réalité de la fiction 2*, Paris, L’Harmattan.
- Petitprêtre, B., Perseil, S., Pesqueux, Y. (dir.) (2019). *La réalité de la fiction. Ou des relations entre fiction, narration, discours et récit*, Paris, L’Harmattan.
- Stella, A., Coppel, A. (dir.) (2021). *Vivre avec les drogues*, Paris, L’Harmattan.

International Drug Policy: Between Myths and Reality

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ABSTRACT

For a long time, international drug policy was seen as a policy of prohibition whose sole aim was to eradicate drug addiction. The so-called opioid crisis that has hit the United States over the last twenty years has reminded the public opinion that drug addiction can come from completely legal channels and that what is prohibited in the field of drugs are not the substances themselves but the ways in which they are produced, commercialized, and consumed. This article reviews the history of international drug policy and attempts to discern what is reality and what is a myth. It shows that drugs have never been banned at an international level, but rather controlled to ensure that medical needs are met. Moreover, although the United States played a major role in the international drug policy after the Second World War, they were not its instigators. The credit goes mainly to the Europeans who invested in the League of Nations during the interwar period.

Keywords: International drug policy, opioid crisis, history of drug, war on drug, international drug control

Política Internacional de Drogas: Entre Mitos y Realidad

RESUMEN

Durante mucho tiempo, la política internacional de drogas fue vista como una política de prohibición cuyo único objetivo era erradicar la toxicomanía. La llamada crisis de los opiáceos que ha golpeado a Estados Unidos durante los últimos veinte años ha recordado a la opinión pública que la adicción a las drogas puede provenir de canales completamente legales y que lo que está prohibido en el campo de las drogas no son las sustancias en sí sino las formas en que se producen, comercializan y consumen. Este artículo

revisa la historia de la política internacional de drogas e intenta discernir qué es realidad y qué es un mito. Muestra que las drogas nunca han sido prohibidas a nivel internacional, sino más bien controladas para garantizar que se satisfagan las necesidades médicas. Además, aunque Estados Unidos jugó un papel importante en la política internacional de drogas después de la Segunda Guerra Mundial, no fueron sus instigadores. El crédito va principalmente a los europeos que invirtieron en la Sociedad de Naciones durante el período de entreguerras.

Palabras clave: Política internacional de drogas, crisis de opioides, historia de las drogas, guerra contra las drogas, control internacional de drogas

国际毒品政策：传闻与现实

摘要

长期以来，国际毒品政策被视为一项禁止政策，其唯一目的是根除毒瘾。近二十年来，席卷美国的所谓阿片类药物危机提醒公众，毒瘾能来自完全合法的渠道，并且毒品领域中禁止的不是毒品物质，而是其生产方式、商业化方式以及消费方式。本文述评了国际毒品政策史，并试图辨别什么是现实，什么是传闻。本文表明，毒品从未在国际层面上被禁止，而是受到管制以确保满足医疗需求。此外，虽然美国在二战后的国际毒品政策中发挥了重要作用，但却并不是该政策的发起者。该政策主要归功于在两次世界大战期间对国际联盟作贡献的欧洲人。

关键词：国际毒品政策，阿片类药物危机，毒品史，禁毒战争，国际毒品管制

On February 3, 2021, the consulting firm McKinsey reached a \$573 million settlement with 47 U.S. states to end lawsuits regarding the so-called opioid crisis.¹ The firm was accused of having, through its advice, favored undue sales of Oxycontin, a drug containing a very powerful opiate, oxycodone, manufactured by the pharmaceutical company Purdue Pharma. Derived from opium via thebaine, the substance is generally prescribed to relieve acute pain but has a high risk of addiction. In the United States, prescription opioids are suspect-

ed of having caused the death of 17,000 people in 2017 alone, more than heroin deaths (14,000).² In total, opium derivatives, from both the licit market and illicit trafficking, have caused the deaths of over 450,000 people between the years of 1999 and 2018.³

The situation is not bound to the USA solely. The increase in opiate use, albeit in much smaller proportions, is also observed in Europe.⁴ This episode is a powerful reminder that drug abuse is not just a matter of illicit supply. Far from being prohibited, drugs are first and foremost regulated and controlled, allowing the pharmaceutical industry to sell and doctors to prescribe substances containing opiates.

The opioid crisis does not reveal the failure of drug prohibition but a failure of control, which takes us back to the very origins of international drug policy at the turn of the 20th century. At that time, the drug problem was both moral and medical. It was moral in the sense that the non-medical use of certain psychoactive substances had always been the object of social condemnation because of the loss of self-control that it could cause and the social and physical decay that sometimes followed.⁵ At the end of the 19th century, several substances such as ether, alcohol or opium were thus blacklisted by temperance leagues, clerics and even some doctors.⁶ For them, the horizon of expectation was abstinence, i.e., the eradication of bad habits linked to these substances which were then constructed as vices, as underlined by the use of the term ‘mania’ for morphine addiction: morphinomania.⁷ The borderline with medicine was not very clear and many doctors became advocates of this hygienist vision, setting up these bad habits as pathologies, even coining the expression “drug addiction”.⁸ However, doctors and pharmacists are confronted with another issue, which is the whole problem of modern drugs: the therapeutic use of some of these substances, in particular opiates which are particularly powerful analgesics, and which are indispensable when pain becomes severe. For the latter, it is by no means a question of prohibiting drugs, but of regulating and controlling their availability and prescribing.⁹

From that time onwards, opiate drugs were diverted for non-medical use, either because they were sold over the counter or because doctors were indulging in complacent prescriptions, causing a health crisis in the United States¹⁰ that is very similar to the one the country is experiencing at the beginning of the 21st century. International drug policy was born out of this dual problem, but then, as now, there has never been any question of an outright ban of drugs. At the first conference held in Shanghai in 1909, it was recognized that opium and its derivatives as well as cocaine could be used for medical purposes. The whole challenge of international drug policy was to establish a global regulatory system for drugs used in medicine. The belief in the existence of a prohibition regime comes from the focus on the moral dimension of the problem and the emphasis on the repression of non-medical use.

Controlling the availability of drugs globally

By the end of the 19th century, the non-medical use of opium, morphine, heroin, and cocaine had become a major health problem in many Western countries where the availability of these products was insufficiently controlled. The response was to give doctors and pharmacists a monopoly over the dispensing of these products, based on the understanding that these professions were best able to determine what was of legitimate medical use and what was not. However, the pharmaceutical industries remained free to manufacture the quantities they wished, which, through the complexities of international trade and smuggling, led to some drugs, although produced in a completely legal manner, being introduced on the black market.

International drug policy, which came into being following the Hague Convention in 1912, sought first and foremost to break this link by ensuring that the production of the pharmaceutical firms was limited to medical and scientific needs.¹¹ Conducted under the aegis of the League of Nations, then the United Nations, this policy was built up in successive stages between 1920 and 1972.¹² The first was the adoption, in 1925, of a system of international import and export controls that prevented any diversion of legally produced drugs to the illicit market. To ensure its full effectiveness, a supranational body, the Permanent Central Committee, was created to verify the *bona fides* of trade. This policy, known as “system of certificates”, is still in force today under the responsibility of the International Narcotics Control Board (INCB).

However, pharmaceutical companies continued to manufacture far more drugs than the world’s medical needs could absorb, so that non-medical consumption continued to be supplied by firms whose production was entirely legal.¹³ The 1931 Convention imposed a strict limit on the number of narcotics that could be manufactured by each country based on a system of estimated world medical requirements that covered the entire planet, including countries that were not parties to the convention. The 1925 and 1931 conventions made it impossible for the pharmaceutical industry to supply drugs for illegal consumption unless they went underground or exploited loopholes in national health systems.¹⁴ Opium production, despite a first attempt in 1953, remained outside the control system until the adoption of the 1972 protocol.¹⁵ At that time, a large part of the raw material used in the production of natural opiates by pharmaceutical firms came directly from the poppy straw without passing through the opium stage. Gradually, opium production for licit purposes ceased in all countries of the world except India and China, which are today the last countries to maintain significant legal opium production.

From the mid-1970s onwards, the control system for the licit supply of drugs was in place, covering all stages from cultivation, through manufacture and international trade, to distribution by doctors and pharmacists. However, it is important to note that only the cultivation, manufacturing and import/export stages

are subject to direct international control, while national trade and especially the control of doctors and pharmacists are left to the discretion of the states. This is why the opioid crisis in the United States reveals not so much the failure of international drug policy as the failure of American control mechanisms, even though the country has been the champion of the fight against drug abuse for over a century. Such a hiatus has only been possible because of the moralistic view that is usually taken of drugs. As an absolute evil, a scourge of humanity, drugs cannot be at the same time the indispensable auxiliaries of modern medicine and thus have the double face of poison and remedy that the Greek term *pharmakon* recognizes. It is for this reason, it seems to us, that the opioid crisis was able to occur. The American authorities in charge of the drug problem were obsessed with the fight against illicit use and neglected to control licit use.

The war on drugs

International drug policy has long been perceived as a prohibition enterprise, neglecting the regulatory aspects that are nevertheless constitutive of it.¹⁶ This representation is based on two distinct phenomena that frame the implementation of the control system while concealing it. On the one hand, the action of moral entrepreneurs who, in the first third of the twentieth century, by emphasizing the eradication of smoked opium, gave the impression that they were seeking a pure and simple prohibition of substances. On the other hand, the reorientation of international drug policy itself, from the 1970s onwards, which under the influence of the United States in particular, focused on the repression of illicit uses, while neglecting the management of licit uses.

The first opium conference, held in Shanghai in 1909 on the initiative of the American president Theodore Roosevelt, was inspired by Bishop Brent, an Anglican bishop of the Philippines, who had succeeded in banning the use of smoked opium in the archipelago and who wished to extend this policy to the whole world.¹⁷ The prohibitionist tendencies of the American delegation that were led by Brent were not met with much support except from the Chinese delegation. They saw this as an opportunity to challenge the presence of Europeans in China. The other states present at the conference were anxious to preserve the revenues they derived from the sale of opium in their Asian possessions,¹⁸ but more generally from the trade of so-called manufactured drugs.¹⁹ Above all, it became clear that while drug abuse was harmful, it was impossible to ban opium and its derivatives entirely because of their medical use. Although it did not produce any concrete measures, the Shanghai conference however contributed to constructing the drug issue on a highly moral level,²⁰ which favored a prohibitionist reading of international drug policy.²¹

Brent also participated in the 1912 conference, which he chaired, and which led to the first international opium convention where the suppression of

drug abuse was set as a universal objective from the very first lines.²² However, the concrete means of achieving this goal did not, as we have seen, take the form of a ban on the substances in question, but rather the regulation of their use. When the follow-up to the 1912 Convention was taken over by the League of Nations in 1920, the United States, which had refused to be a member, found itself *de facto* marginalized and moved from being a leader to a follower. The Advisory Commission on Opium Traffic was thus created without them, although an assessor's seat was offered to Mrs. Hamilton Wright, widow of Dr. Hamilton Wright who had assisted Brent at the 1909 and 1912 conferences and who was the promoter of the first American federal drug law, adopted in 1914.

From 1923 onwards, the United States officially participated in the Commission's meetings with a special status, being represented by Brent. The hiatus between the American moral entrepreneurs, who were bent on eradicating smoked opium, and the Europeans, who were concerned, on the one hand, with preserving the income from the sale of opium in their Asian colonies and, on the other, with protecting their pharmaceutical industries in a global context of drug control, became apparent in the winter of 1924–1925. At this time, two conferences on drugs were held in parallel in Geneva. The first, to which the United States was not invited, dealt only with smoked opium and concerned only those states that still accepted this use in the territories under their authority, mainly in Asia. The second, in which the United States participated, was addressed to all states, and aimed mainly at regulating the supply of so-called manufactured drugs (morphine, heroin, cocaine). The American delegation was indignant about not being invited to the discussions on smoked opium. Faced with the refusal of the Europeans to invite them, they decided to leave the second conference with a bang, which meant that the United States was not party to the 1925 Convention which established the regulation of the international drug trade, including opium. Faced with this bitter diplomatic failure, the United States changed its strategy.

In the years that followed, the State Department made sure to send to Geneva professional diplomats who were much more thoughtful, and above all more attentive to the licit dimension of the problem. Even Harry Anslinger, the famous head of the Bureau of Narcotics, known for his crusade against marijuana in the United States, and a figure from whom Howard S. Becker built his concept of the moral entrepreneur, never took radical positions at the international level when he represented his country. Although they had a definite ideological influence, moral entrepreneurs were never able to reduce international drug policy to a pure prohibition policy, as was the case with alcohol prohibition in the United States during the 1920s. The regulation of licit activities, notably because of the economic and strategic stakes involved, systematically prevailed between 1920 and 1970. Thus, the 1961 Convention, which shows a definite inclination towards an increase in repressive provisions, particularly regarding non-medical consumption, remains above all a text which regulates licit activities.²³

The situation changed dramatically in the early 1970s, when the organization and management of the licit drug supply ceased to be the priority of international drug policy and the focus shifted increasingly to drug abuse control. There are two reasons for this shift. The first was the completion of the control system which, with the integration of poppy cultivation, now covered all links in the production chain. The other reason is the explosion of drug consumption from the illicit market among the youth of Western countries.

As early as 1970, the UN Commission on Narcotic Drugs recommended the creation of a United Nations Fund for Drug Abuse Control (UNFDAC). It was created the following year, thanks to the United States, which saw it as an opportune relay for the war on drugs launched by President Nixon in June 1971. As a voluntary fund, the UNFPA had the double advantage of allowing States to decide freely on the amount they wished to invest and the operations they wished to carry out. The UNFPA's actions focused mainly on education and prevention, as well as promoting alternative crops to opium and coca leaves. However, the multiplication of programs and their dependence on donors contributed more to weakening the unity of action of international drug policy than to strengthening it. Set up in parallel and independently of the existing bodies, and benefiting from a considerable influx of money, the Fund ended up creating all sorts of tensions and administrative jealousies.²⁴

The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in 1988, reinforced the idea that international drug policy was primarily a policy of repression, heralding important institutional changes. In 1991, UNFPA was merged with pre-existing bodies, including the Division of Narcotic Drugs and the Secretariat of the Commission on Narcotic Drugs, into the United Nations International Drug Control Program (UNDCP). In 1997, UNDCP absorbed the Centre for International Crime Prevention (CPIC) to form the United Nations Office on Drugs and Crime (UNODC). In 2002, the new entity was renamed the United Nations Office on Drugs and Crime (UNODC), the name we still know today. The creation of a fund dedicated to the fight against drug abuse, and the following merging with the center for crime prevention, gave the international drug administration a face which was resolutely turned towards the fight against illicit use. The other dimension of drug policy, namely the control of licit supply, was increasingly sidelined and carried out mainly by the INCB (International Narcotics Control Board) and its Secretariat. The United Nations General Assembly, in its various political declarations and its ten-year drug eradication programs, echoed this focus on the repression of illicit use, maintaining a Manichean vision of the drug problem.²⁵ The successive failures of the two ten-year drug abuse eradication programs and the harmful consequences of repression policies have led to the emergence of a strong criticism of the war on drugs, which may have led some to believe that the consensus of international

drug policy was fractured*. However, these criticisms have not led to a profound questioning of international drug policy, but, on the contrary, to a rediscovery of the principles of control and regulation which are at its foundation**.

Conclusion

When President Clinton announced at the United Nations General Assembly in June 1998 that drug use would be cut in half in the United States in ten years,²⁶ he certainly did not suspect that the opioid crisis then emerging would have no illicit origins but would be caused by American pharmaceutical laboratories and doctors. The opioid crisis in the USA reminds us that drugs do not have to be of illicit origin to cause abuse. This is because of the special status of drugs, which as the active ingredients of many medicines, are legally available in everyday life. Drugs have never been prohibited but controlled. The belief that drugs are prohibited is a moral and not an objective view of reality. It is a myth that not only distracts us from what a drug policy really is, but also makes us ignore the dangers generated by the absence of effective control.

* Bewley-Taylor, D. R. R., *International drug Control: Consensus fractured*, Cambridge University Press, 2012.

** Alimi D., *Dealing (with) drugs : dissonances et reconfigurations dans l'espace de gestion internationale des drogues au tournant des années 2000*, Thèse de 3^e cycle, Université de Paris I Sorbonne.

Endnotes

- 1 Forsythe, M. and Bogdanich, W. "McKinsey Settles for Nearly \$600 million Over Role in Opioid Crisis," *The New York Times*, February 3, 2021.
- 2 National Institute on Drug Abuse. (2021). "Overdose Death Rates. Advancing Addiction Science." January 29. <https://www.drugabuse.gov/drug-topics/trends-statistics/overdose-death-rates> Accessed 05.02.2021.
- 3 Centers for Disease Control and Prevention. "Opioid Data Analysis and Resources. CDC 24/7: Saving Lives, Protecting People." https://www.cdc.gov/drugoverdose/data/analysis.html#anchor_data_sources Accessed 05.02.2021.
- 4 Alho, H., Dematteis, M., Lembo, D., Maremmanni, I., Roncero, C., Lorenzo, S. (2020). "Opioid-related deaths in Europe: Strategies for a comprehensive approach to address a major public health concern," *International Journal of Drug Policy*, vol. 76. <https://doi.org/10.1016/j.drugpo.2019.102616>
- 5 Musto, D. F. (1987). *The American Disease: origins of narcotic control*, New York, Oxford, Oxford University Press, expanded edition, 1987.

- 6 Bachmann, C., and Coppel, A. (1989). *Le dragon domestique: deux siècles de relations étrangères entre l'Occident et la drogue*, Paris, Albin Michel.
- 7 Vuillaume, D. (2015). "La construction des pensées française et américaine sur la question des drogues. From the parallelism of the origins to the turn of the thirties," *Médecines/Sciences*, vol 31. pp. 921–928.
- 8 Yvorel, J. J. (1992). "Les mots pour le dire. Naissance du concept de toxicomanie," *Psychotropes*, vol. 2, no 2, pp. 13–19.
- 9 Berridge, V. (1978). "Professionalization and narcotics: the medical and pharmaceutical professions and British Narcotic use 1868-1926," *Psychological Medicine*, vol 8, no 3, pp. 361–372; Acker, C. J. (1995). "From all Purpose Anodyne to Marker of Deviance: physicians' Attitudes Toward Opiates in the US from 1890 to 1940," in Porter, R. and Teich, M. (Ed.). *Drugs and narcotics in History*, Cambridge, Cambridge University Press, pp. 114–132.
- 10 Berridge, V. and Griffith, E. (1987). "Opium and the people: opiate use in Nineteenth-Century England," New Haven; London, Yale University Press; Acker, C. J. (2002). *Creating the American Junkie: Addiction Research in the Classic Era of Narcotic Control*, Baltimore, Johns Hopkins University Press.
- 11 *Report of the International Opium Commission*, Shanghai, China, February 1 to February 26, 1909, Shanghai, North China Daily News and Herald Ltd, 1909.
- 12 See in particular: Lowes, P. D. (1966). *The genesis of international narcotic control*, Geneva, Librairie Droz; McAllister, W. B. (2000). *Drug diplomacy in the Twentieth Century: an international history*, London; New York, Routledge; Dudouet, F.-X. (2009). *Le grand deal de l'opium: histoire du marché légal des drogues*, Paris, Éditions Syllepse.
- 13 League of Nations, Opium Traffic Section of the Secretariat of the League of Nations, *Convention to Limit the Manufacture and Regulate the Distribution of Narcotic Drugs of 13 July 1931: Historical and Technical Studies*. C.191.M.136.1937.XI.
- 14 Dudouet, F.-X (2009). "De la régulation à la répression des drogues: une politique publique internationale," *Les cahiers de la sécurité intérieure*, vol. 52, no. 2, pp. 89–112.
- 15 For a detailed study of the licit market for opiates in the 1970s, see International Narcotics Control Board, "Report of the International Narcotics Control Board for 1980: Demand for and Supply of Opiates for Medical and Scientific Purposes." E/INCB/52/Supp.
- 16 See in particular Nadelmann, E. A. (1990). "Global Prohibition Regimes: The Evolution of Norms in International Society," *International Organization*, vol. 44, no. 4, pp. 479–526; Sheptycki, J. W. E. (2000). "The drug war" in Sheptycki, J. W. E. (Ed.), *Issues in Transnational Policing*, London, New York, Routledge, pp. 201–223; Levine H. G. (2003). "Global drug prohibition: its uses and crises," *International Journal of Drug Policy*, vol. 14, no. 2, pp. 145–153.
- 17 Lowes, P. D. (1966). *op. cit*; Musto D. F. (1987). *op. cit*.

- 18 Descours-Gatin, C. (1992). *Quand l'opium finançait la colonisation en Indochine*, Paris, L'Harmattan; Rush, J. R. (1990). *Opium to Java: Revenue Farming and Chinese Enterprise in Colonial Indonesia, 1860–1910*, Ithaca, Cornell University Press.
- 19 Bensussan, I. J. (1946). *Lopium: considérations générales histoire-géographie-chimie fabrication et usage de l'opium et études économiques, sociales et législatives*, Paris, Vigot Frères.
- 20 Barop, H. (2015). "Building the "Opium Evil" Consensus - The International Opium Commission of Shanghai," *Journal of Modern European History*, vol. 13, no. 1, pp. 115–137.
- 21 See especially Nadelmann, E. A. (1990), art. *cit.*
- 22 *International Opium Convention*, signed at The Hague, January 23, 1912.
- 23 Bewley-Taylor, D. and Jelsma, M. (2011). "Fifty Years of the 1961 Single Convention on Narcotic Drugs: A Reinterpretation," *Series on Legislative Reform of Drug Policies*, No. 12. Transnational Institute.
- 24 International Narcotics Control Board, *Report of the International Narcotics Control Board for 1987*, Vienna, United Nations.
- 25 See in particular the preamble of the General Assembly Political Declaration of 21 October 1998 A/RES/S-20/2*: "Drugs destroy lives and societies, undermine sustainable human development and generate crime."
- 26 United Nations, Press Release of June 8, 1998, AG/765.

How the Law of 1970 Limited Care Responses, More Than Uses

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ABSTRACT

Since the adoption of the 1970 law establishing a prohibition regime on drugs in France, and notably punishing their use, things have changed a lot. The AIDS epidemic in particular has encouraged an approach to social problems in terms of harm reduction. This approach is gradually being extended and is taking various forms (testing, low-risk consumption rooms, user expertise, etc.). As a society without drugs and addiction seems illusory, it seems appropriate to direct regulatory tools towards limiting risks rather than penalizing users.

Keywords: law of 1970, AIDS, harm reduction, users, addictions, regulation

Cómo responde la Ley de 1970 de atención limitada, más que usos

RESUMEN

Desde la aprobación de la ley de 1970 que establece un régimen de prohibición de las drogas en Francia y, en particular, sanciona su uso, las cosas han cambiado mucho. La epidemia del SIDA en particular ha fomentado un abordaje de los problemas sociales en términos de reducción de daños. Este enfoque se está extendiendo paulatinamente y está tomando diversas formas (testing, salas de consumo de bajo riesgo, experiencia del usuario, etc.). Como una sociedad sin drogas y sin adicciones parece ilusoria, parece apropiado orientar las herramientas regulatorias hacia la limitación de riesgos en lugar de penalizar a los usuarios.

Palabras clave: ley de 1970, SIDA, reducción de daños, usuarios, adicciones, regulación

1970年禁毒法如何限制（而不是使用）护理响应

摘要

自从法国于1970年采纳禁毒法以建立禁毒制度并特别惩罚毒品使用以来，情况发生了很大变化。艾滋病的流行尤其鼓励从减少危害的角度来解决社会问题。这一措施正在逐步推广，并且存在不同形式（例如检测、低风险毒品消费室、用户专业知识等）。鉴于没有毒品和毒瘾的社会似乎是虚幻的，因此将监管工具用于限制风险而不是惩罚使用者一事似乎是合适的。

关键词：1970年禁毒法，艾滋病，减少危害，使用者，毒瘾，监管

The law of 1970

This law penalizes the use, even the private use, of narcotics; drugs are thus made illegal. It therefore establishes a system of prohibition. In an attempt to balance the need for punishment and assistance to the user, it provides for free access to care, guaranteed by anonymity and free of charge. This access would be the result of a triple dynamic: the maturation of “demand” (in reference to psychoanalysis, which was dominant at the time¹), the exhaustion of “pleasure” (the user must be allowed to reach the end of the product-effect, until he or she tires of it, and then “ask” for help, a theory that Castel would criticize²) and penal constraint (the therapeutic injunction³). It thus inaugurates a binary approach, between judge and caregiver, which will progressively make people forget the other dimensions of use, hedonic, social, economic, or even public health, in a post-68 and pre-crisis economic context, well recalled by Alexandre Marchant⁴ and Vincent Benso.⁵

But the balance was soon lost, and the decrees that followed accentuated the prohibitionist aspect, such as the one of March 13, 1972, which prohibited the anonymous purchase of syringes in pharmacies.

The 1970s and 1980s were marked by a massification of drug use, which became increasingly visible, with the installation of “open scenes” and the resulting increase in delinquency. Anne Coppel speaks of “the first heroin groundswell.”⁶ For many politicians, drug use seems to be less a public health problem than a social issue. Indeed, this use is going to impose itself in the public space:

- **The open** drug dealing and consumption **scenes** in Paris, rue de l’Ouest, Belleville and then the Chalon block, move to the Goutte d’or, Stalingrad, Gare du Nord, and today, Porte de la Chapelle, “crack hill.”

- **Petty crime** (thefts, burglaries of pharmacies or private homes, assaults) is growing and is a feature of the news.

These behaviors, although resulting from the lifestyle induced by the penalization of the use, will give rise to responses reinforcing the prohibitionist side:

- Increase in the number of arrests: the number of drug offences (ILS) increased from 10,000 in 1979 to 20,000 in 1982, then 30,000 in 1986 and 150,000 in 2019. Today, the “Amende Forfaitaire Délictuelle” is the result of the same desire to punish the user as directly as possible.
- The debate on the distinction between trafficking and use was revived: users, who often also sell drugs to finance their consumption, were more often assigned the status of “trafficker,” in order to better justify incrimination. In 1984, a circular invite to determine whether the status of trafficker does not take precedence over that of user; in 1986, a special incrimination of transfer of drugs for use is created.⁷

Narcotic drugs, which are psychoactive substances with heterogeneous pharmacological characteristics, thus have in common their “illicit” criminal status, which cancels out any space for use. A single objective unites criminal prohibition and medical withdrawal, namely abstinence.

AIDS, harm reduction and self-support

During his 1985–86 election campaign, Jacques Chirac denounced the therapeutic injunction. The gateway to care that it would establish was suspected of favoring a lax response to drug use. Albin Chalandon, appointed Minister of Justice, promised a strict application of the law with the creation of 1,600 places in penitentiary centers focused on detoxification and 2,000 places granted to the association Le Patriarche, a sectarian association imposing abstinence through coercion. The principle of adherence to care and the model of a “group/community” approach (dominant in many countries, but not in France) will be permanently discredited.

But an unforeseen emergency is about to arise: the prevalence of a new virus, HIV, is exploding. Studies carried out in prisons among drug users reveal a worrying situation, with high rates of infected people.⁸ As this is an infectious pathology, it is therefore new caregivers who are going to take an interest in it, unaware of addiction and free of any representation about it. Other actors, also outside the field of addiction care, coming from the precariousness and community health, will get involved in the fight against this epidemic, but also against the first effects of economic precariousness which are becoming more and more visible. This time, in the name of public health, these professionals are going to push for a revolution in care practices on 3 axes:

- **Addressing use to reduce risk** through access to appropriate equipment. The exemplary measure will be the provision of clean syringes. Opposition to this measure forms the ideological basis of reactions to each step forward in the fight against drugs: weakening the fight against drugs, trivializing drug use, losing interest in care by allowing users who are too irresponsible and suicidal to change their behavior. But as soon as the decrees of 1987 and 1988 were passed, the results were clear: 52% of the users were using an individual syringe (they had been 70% sharing a year earlier). For the first time, a measure other than a repressive one had the value of a “socialization enterprise.”⁹
- **Meet users who are not seeking cessation assistance.** A quarter of needle exchange users are unknown to the health network.¹⁰ This shows the interest of *outreach*, practiced by Médecins du Monde, by Professor Flavigny’s “Amitié” teams and by the Abbaye association, renewing the street work of the 1970s. Dr. Jean-Pierre Lhomme fought to impose this minimum meeting threshold,¹¹ which he called “adapted threshold,” as opposed to the expression “low threshold” sometimes used. At the same time, “boutiques” were being set up, such as “La boutique” in Charonne and “Transit” in Marseilles, which provided assistance with everyday life (showering, meals, syringes, etc.) to active drug addicts who were in a precarious situation and did not wish to give up their drug use. This “going towards the user”—through needle exchange buses, outreach work or presence at parties (and not waiting for a request for care) and unconditional reception (without commitment to a course of care), with nevertheless minimal requirements (no violence, respect for the law, no consumption in the structure, no dealing), but without any condition to stop, and users being received even when they are under the influence of drugs—shows that the users are also able to meet on another axis than the prohibition of use. The question of overdoses, which was the first subject of RDR, even before AIDS prevention, is also present.¹²
- **Sharing expertise:** 1992 saw the creation of ASUD (Autosupport des usagers de drogues), the first active users’ association. It is committed to the rights of users, and in particular the right to access to substitution treatment (prescribing an opiate with the aim of reducing the use of street heroin), which prohibition had made illegal. As these treatments were prohibited, users diverted to codeine drugs (Neocodion®, 12 million boxes sold in 1994, 80% of which were self-substituted, Nétux®, Codethyline®, etc.). This “misuse” allows them to reduce the withdrawal syndrome and to manage their dependence.

Addiction medicine was born from the meeting of users’ knowledge¹³ and the practice of general practitioners who received them (Carpentier,¹⁴ Lhomme, Barsony,¹⁵ Lebeau, Magnin, and many others). From the end of 1993, with the authorization of methadone, until the marketing of Subutex® in February

1996, a series of circulars extended and organized access to substitution drugs which had previously been banned.¹⁶ The results were once again indisputable: in 1999, the number of fatal overdoses fell by 80%, and the rate of new infections fell from 30% to 4% between the beginning of the 1990s and 2001. Finally, arrests for heroin use fell by 67%.¹⁷

Responses, including medical responses, must therefore take into account the knowledge of users and respect their “comfort zone.” A new approach is needed, that of harm reduction (RDR), renewing and extending its historical model.¹⁸ In 2004, harm reduction was incorporated into the health law, and medical and social facilities such as the drug user reception and support centers for harm reduction (CAARUD) were dedicated to it.¹⁹ However, this progress is made under strict medical supervision and within the framework of the fight against transmissible diseases. No mention is made of support for drug use problems and the social dimension is neglected. Thus, drug use continues to be stigmatized and only escapes—in part—the police and the magistrate if the doctor is called in.

Expanding DRR: 2004–2016

This “house arrest under medical conditions” does not allow RDR to fully support users. A new stage will therefore begin, marked by three battles to obtain an “extension of the field of harm reduction”:

- **Testing**²⁰: as early as 1995, a different kind of RDR was needed to intervene in raves and other techno parties, and to adapt to their “new” drugs, MDMA, ketamine, speed, LSD, but also cocaine and alcohol. The “teufeurs” created associations such as Techno Plus, Keep Smiling, or Le Tipi, and invented, so to speak, an adapted risk reduction: reassurance, to accompany the “*bad trips*” (bad delirium), *chill-out* zones (to help users to come to their senses), and *testing*, a quick analysis of products, based on colorimetric reactive tests, which allows to inform the user before the act of consumption about the presence or absence of substances. This type of RDR, which falls outside the field of prevention of infectious contamination, will not be accepted by the public authorities in the same way: *testing* will not be included in the RDR reference framework.
- **For alcohol and tobacco**, psychoactive substances not prohibited and whose use is even advertised, it is in fact the fight against cancer that will fortunately move the lines. With the 1991 Évin law, it is the market that is targeted, not the user, with the objective of containing and regulating the supply: protection of minors, prohibitions on use in “shared” places, restrictions on sales and advertising. This will be more successful with tobacco, but the mistrust of vaping shows the difficulty of moving away from a purely medical approach to risks and integrating the expertise of users.²¹ In the case of alcohol, risk reduction

will first be carried out by the health authorities. It will mainly target occasional drinking and harmful use. For those users who are still determined to continue drinking, professionals will set up appropriate reception facilities to encourage and assist the practice of self-control.²²

- **SCMRs (low-risk consumption rooms):** at the beginning of 2009, the hepatitis C epidemic was on the rise and killing more people than HIV. Faced with the immobility of the authorities, the “Collectif du 19 mai,” which includes ASUD, the Fédération Addiction, Act-Up Paris, Safe, Gaïa/Médecins du Monde, SOS Hépatites and *salledeconsoommation.fr*, sets up a real-fake drug consumption room. Oppositions to this tool echoed those formulated against the exchange of syringes, notably the risk of “facilitating use.” It took seven years and a visit to the Council of State to verify the consistency of this principle with the prohibition of use, and its inclusion in the 2016 public health law.²³

A new definition of RDR was therefore adopted in 2016, partly thanks to the mobilization of user and community health associations (Aides, Asud, Act Up) and actors such as Médecins du Monde and the Fédération Addiction. It includes, in particular, three important points:

- It no longer differentiates between the licit and illicit status of the substance.
- It is not limited to the risk of infection: article L3411-8 states that “the policy of risk and harm reduction for drug users aims to prevent health, psychological and social damage, the transmission of infections and death by overdose linked to the use of psychoactive substances or substances classified as narcotics.”
- New missions have been added (drug analysis, experimentation of low-risk consumption rooms) and the protection of harm reduction workers from incitement to use in the exercise of their function is guaranteed.

However, this new approach to harm reduction remains focused solely on the prevention of medical complications and induced diseases. The use of drugs is still prohibited, a legacy of the bipolarity between disease and crime of the 1970 law.

Working between justice and medicine? Regulating the market to reduce the risks of objects and substances?

As we celebrate the 50th anniversary of the prohibition established by the 1970 law, and the 30th anniversary of the Évin law, it may be useful to recall three questions which cross the addictions policies.

Can there be drug-free societies?

Thousands of years of use of opiates, hallucinogens, alcohol, cannabis have been attested at different times, in different cultures, without necessarily inducing dra-

matic consequences, these uses being socially contained.

However, more “dramatic” episodes took place in the 19th century, at the time of the rise of global industrial capitalism. “Alcoholism,” “opium addiction,” “morphinism,” and “smoking” will indeed grow while companies are created to produce the incriminated substances and mass consumption develops, in accordance with the standard of the nascent market economy.

The episode of the last decades is contemporary with hyper-consumerism and the appearance of a multitude of technologies and psychoactive products, more and more powerful and available, generating easy and quick profits, but also damages on health and social life. Despite health warnings and repression, this consumerist use is felt as a good way to get well-being and adapt to a stressful context. The prohibition of the product denies the evidence of the social functions of the use of psychoactive substances.

Is our society particularly addictive?

Sociologists, anthropologists, and economists have examined this question, identifying four factors at the crossroads of the major economic, cultural and social evolutions of our globalized world. Christian Ben Lakdhar²⁴ reformulates the synthesis as follows: “*The first is the weakening of the social bond, and its corollary, individualization, which leads to an erosion of self-control, favorable to addictive behavior. The second is linked to the intensity of the environment and to the consumerist culture: speed, rapidity, permanent change would favor the excitement of desire. The third element consists in the search or the necessity of performance. It pushes the individual to help himself, to equip himself, to equip himself to hold on, to surpass himself or simply to stay in the race. The fourth element on which this addictive society is based is socio-economic: the rise of inequalities and poverty favors the use of psychoactive substances ... The addicted individual, necessarily successful, autonomous, and therefore uncertain, is immersed in a society where everything is a drug, an addiction, and potentially addictive,*” to the point that addictive behaviors have become “*the leading avoidable cause of death.*” Prohibition makes the user feel the need for self-control, often in contradiction with the dominant culture.

Is addiction a “transitory disease?”

The dimension of adaptive behavior of addiction, in connection with the collective acculturation to economic and social evolutions, questions its possible dimension of “transitory disease.”²⁵ A transitory disease does not mean imaginary but appearing/disappearing more or less according to the times, the representations and the ecological niches. Based on the work of Vigarello,²⁶ the period we are currently experiencing can be understood by grasping the changes in our relationship to pain and pleasure. The notion of “well-being” follows the evolution of techniques and work: overwork replaces physical fatigue: “*machine tools ... lighten the task of*

*the big muscles ... but by the speed of their flow, by the sustained attention that they demand, cause a considerable nervous fatigue ...*²⁷ The notion of well-being was developed as early as the 1950s²⁸; then followed Ehrenberg's notion of "the fatigue of being oneself."²⁹

When we look at the recent history of treatments for unhappiness, we see that molecules are regularly proposed to treat these new illnesses, such as depression or *burn-out*. Thus, cocaine "...mixed with wine" and "taken with each meal" is supposed to bring about rapidly "*the almost complete disappearance of the feeling of dejection and prostration so painful in neurasthenia.*"³⁰ In the 1930s, amphetamines inherited in their turn the mission to fight against fatigue. Today, some people see in CBD the new molecule that would help well-being. And why not, if we remember the success of energy drinks, prohibited then authorized, on the side of the "whiplash." Addiction is about our lifestyles and social relationships and cannot, therefore, be approached from a medical/judicial perspective alone.

Diversify the regulation tools

The current extension of the field of addictions does not result from a disease of our brains, which have suddenly become incapable of control, nor from a "weakness" of the law that should be reinforced, but is the result of transformations of the economic, cultural, and social context that increase the expectations towards the possible objects of addiction and deregulate the control of our consumption behaviors (*Cf* the opioid crisis in the United States). This phase, which began in the 1980s, is showing signs of exhaustion and of a possible new transformation, 40 years later and at a time when the ecological crisis is calling hyper-consumerism into question: a drop in smoking and alcohol use, a change in the status of cannabis.

Taking this sociogenesis into account is also very rich in terms of the evolution of practices. For if the relationship with others and with the world is a factor of use and of their deregulation, it can also participate in their decrease, by a transformation of its social links which would help to get out of tensions and sufferings, to fight loneliness and boredom, to satisfy its need to create, "to be with," to open spaces where to live social relationships which guarantee to each one a "perimeter of sovereignty," of rights, of choice and of autonomy. The law, for its part, should focus less on prohibiting use and penalizing users than on limiting risks (by penalizing certain uses) and helping to control the excesses of the market (regulatory policy). It would thus be consistent with the new paradigms of care.

Endnotes

- 1 Bergeron ,H. (1999). *L'État et la toxicomanie. Histoire d'une singularité française*, Paris, PUF.
- 2 Castel, R. et al. (1992). *Les sorties de la toxicomanie*, Paris, Mire/GRASS.
- 3 Gautron, V. (2018). "La medicalisation de la peine: un équilibre fragile entre aspiration thérapeutique et contrôle social," in : Clay, T. et al. (dir.), *Actes des états généraux de la recherche sur le droit et la justice*, LexisNexis, pp. 581–591.
- 4 Marchant, A. (2018). *L'impossible prohibition. Drogues et toxicomanie en France 1945–2017*, Paris, Perrin.
- 5 Benso, V. (2018). "L'affaire de Bandol: origine du mythe," in: M. Kokoreff, A. Coppel, M. Peraldi (eds.), *La catastrophe invisible, Histoire sociale de l'héroïne*, Éditions Amsterdam.
- 6 Coppel, A. (2018). "Les seventies et la première lame de fond de l'héroïne," in: Michel Kokoreff, Anne Coppel, Michel Peraldi (dir.), *op. cit.*
- 7 Chappard. P., Couteron. JP., and Morel, A. (2019). "La réduction des risques, fondement d'une nouvelle addictologie," In JP. Couteron, A. Morel (eds.), *L'aide-mémoire d'addictologie*, Dunod.
- 8 "HIV infection prevalences vary, depending on the source, between 0.6% and 2.0% (3 to 4 times higher than in the general population)." Protais C., Morel d'Arleux J., Jaufret-Roustide M. (2019). "Drug use in prison. Practices, consequences and responses." French Observatory of Drugs and Drug Addiction.
- 9 Ingold, Fr. (1988). "Les effets de la libéralisation de la vente des seringues: rapport d'évaluation," Direction Générale de la Santé, Institut de recherche et épidémiologie sur les pharmacodépendances (IREP).
- 10 Couteron, J.-P. (ed.) (2013). "Harm reduction: the new paradigm of addictions " *Cahiers Thématiques de la Fédération Addiction*, no.13.
- 11 Lhomme, J.-P. *Bilan d'activité 1991*, Mission Sida toxicomanie MDM.
- 12 Lecomte, D., Hatton, F., Michel, L., Le Toullec, A. (1994). "Décès par usage de stupéfiants en Ile de France," *BEH*, no 35, 29 August 1994.
- 13 Lalande, A. "Savoir des usagers, de quoi parle-t-on?" *Vacarme*, n°46, Winter 2009, pp. 84–88.
- 14 Carpentier, J. (1994). *La toxicomanie à l'héroïne en médecine générale*, Ellipses.
- 15 Barsony, J. (2010). *Open letter to drug addicts and others...if any remain*, JBZ & Cie.
- 16 Morel, A., and Couteron, J.-P. (2012). *Aide-mémoire de la réduction des risques en addictologie*, Dunod, Paris.

- 17 Coppel, A. (2002). *Peut-on civiliser les drogues? De la guerre à la drogue à la réduction des risques*, La Découverte.
- 18 O'Hare, P. "Meyerside: the first harm reduction conference and the early history of harm reduction," *International Journal of Drug Policy*, 18, pp. 141–144.
- 19 Decree n°2005-1606 of 19 December 2005 relating to the missions of the Centres d'Accueil et d'Accompagnement à la réduction des risques pour usagers de drogues and modifying the code de la santé publique, 22 December 2005, *Journal Officiel de la République Française*, text 44 of 113. Circular DGS/S6B/DSS/1A/DGAS/5C n°2006/01 of 2 January 2006, relating to the structuring of the harm reduction system, the setting up of reception and support centers for harm reduction for drug users (CAARUD) and their financing by the health insurance, *Bulletin Officiel Santé* n°2006-2 NOR: SAN-P0630016C.
- 20 Gaubert, M., Grillon, C., Pfau, G. (2020). "Analyse de drogues, du transfert du programme XBT de MDM à la construction d'un réseau national," in *SWAPS supplement* n°95.
- 21 Couteron, J.-P., Latour, N., and Morel, A. (2019). "Law, social control and regulation," in *Aide-mémoire d'addictologie*, Dunod.
- 22 Fieulaine, M. (2017), "How to integrate support and tools for safer drinking into practices? Risques alcool : changer de paradigme pour accompagner les personnes dans leurs usages," *Alcoologie et addictologie*, vol. 39, no. 4: pp. 364–372.
- 23 Chappard, P. and Couteron, J.-P. (2013). *Salle de shoot, les salles d'injection supervisée à l'heure du débat français*, Les empêcheurs de tourner en rond/La découverte, 2013.
- 24 Ben Lakdhar, C. (2019). *Addicts*, Seuil.
- 25 Hacking, I. (2008). *Between science and reality*, La découverte.
- 26 Vigarello, G. (2020). *Histoire de la fatigue*, Seuil.
- 27 Ibid.
- 28 Cazes, B., and Morin, E. "La question du bien-être," *Arguments*, n°22, 2 quarter 1961.
- 29 Ehrenberg A. (1998), *La fatigue d'être soi*, Odile Jacob, Paris ; Ehrenberg A. (1995). *L'individu incertain*, Calmann-Lévy.
- 30 Vigarello, G., *op. cit.*

The Normalization of Swiss Drug Policies

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ABSTRACT

The Swiss drug policy strategy has been praised for its innovative pragmatism. It reflects a transformation of the way we look at drugs by focusing on health and by eclipsing the moral background of the drug use context. In this model, help is no longer conditional on the obedience of the person being helped to the norm of the helper. Harm reduction cancels out the norm that defines the different addictions, which makes it possible to broaden the horizon of the intervention to the whole range of behaviors that can be described in terms of addiction. It leads to a global strategy aimed at creating conditions favorable to health as a variable determined by our behavior. Harm reduction introduces the notion of competence, implying the provision of a certain number of framework conditions favoring individual responsibility. The identification of signs of possible psychosocial impairment becomes everyone's business. Addiction policy tends to focus on visibility, reintroducing an ideological valorization of successful behavior, compatible with the economy. Stigmatization is reintroduced in the evaluation of each person's capacity for autonomy, which is unequally distributed.

Keywords: harm reduction, global health, individual autonomy, performance

La normalización de las políticas de drogas suizas

RESUMEN

La estrategia suiza de política de drogas ha sido elogiada por su pragmatismo innovador. Refleja una transformación de la forma en que vemos las drogas al centrarnos en la salud y eclipsar el trasfondo moral del contexto del consumo de drogas. En este modelo, la ayuda ya no está condicionada a la obediencia de la persona ayudada a la norma del ayudante. La reducción de daños anula la norma que define las distintas adicciones, lo que permite ampliar

el horizonte de la intervención a todo el abanico de conductas que pueden ser descritas en términos de adicción. Conduce a una estrategia global encaminada a crear condiciones favorables a la salud como variable determinada por nuestro comportamiento. La reducción de daños introduce la noción de competencia, lo que implica la provisión de un cierto número de condiciones marco que favorecen la responsabilidad individual. La identificación de signos de posible deterioro psicosocial se convierte en asunto de todos. La política de adicciones tiende a centrarse en la visibilidad, reintroduciendo una valorización ideológica del comportamiento exitoso, compatible con la economía. Se reintroduce la estigmatización en la evaluación de la capacidad de autonomía de cada persona, que se distribuye de manera desigual.

Palabras clave: harm reduction, global health, individual autonomy, performance

瑞士毒品政策的正常化

摘要

瑞士毒品政策战略因其创新的实用主义而受到赞誉。其通过关注健康并弱化毒品使用情境的道德背景，反映了毒品的看待方式的转变。在此模型中，帮助不再以“被帮助者服从帮助者的规范”为条件。危害的减少抵消了“定义不同成瘾”的规范，这使得“将干预范围扩大到能用成瘾来描述的整个行为范围”一事成为可能。此举导致了一项全球战略，后者旨在创造有利于健康的条件，这是由我们的行为所决定的变量。减少危害引入了能力这一概念，暗示应提供一定数量的、有利于个人责任的框架条件。识别可能的社会心理障碍迹象成为了每个人的职责。成瘾政策倾向于关注可见性，同时重新引入与经济相适应的成功行为的意识形态价值。在评价每个人的自主能力时会重新引入污名化，而这种能力的分布是不均的。

关键词：减少危害，全球健康，个人自主权，表现

The core of Swiss drug policy is characterized by the four-pillar strategy of prevention, harm reduction, repression, and therapy (Boggio et al., 1997). This approach is presented as an example (Beauchesne, 2007), and its success is remarkable: open drug scenes have been dispersed (Kübler, 2000), health problems have been brought under control (Zobel et al., 2004, pp. 13–17), and crime has been reduced (Aebi et al., 1999). The pragmatic method developed in Switzerland succeeds in controlling the most tragic manifestations of a phenomenon with which we must “learn to live” (Ehrenberg, 1996). Although the results are positive overall, it seems necessary to show what this approach leaves in the shade.

The current policy has its origins in the emergence of a moral panic (Cohen, 1972) in the face of the counterculture movement of the 1960s. As illegal drug use became the torch of generational opposition to the order of post-war society, the social reaction adopted a series of essentially repressive measures, overturning the timid prevention already at work and the nascent therapies. In 1975, the 1951 drug law was revised to punish not only trafficking but also consumption (Cesoni et al., 1994, p. 14). In the 1980s, youth movements demanded the occupation of their own spaces, “autonomous centers” on the bangs of state regulations (Roux et al., 1984, p. 204). These places were quickly overrun by problems related to heroin use (Bérout, 1982, p. 8). When they were evacuated by the police or by the occupants themselves, the users found themselves in public spaces, forming “open scenes,” notably in Bern, next to the Federal Palace, and in Zurich, in the Platzspitz park.

A strange tolerance then prevailed, with the police trying to circumscribe these activities in the areas where they had taken root. But heroin use was beginning to pose serious health problems: first AIDS, then hepatitis C, particularly affected these vulnerable populations. In 1986, the first injection room was set up in Berne; at the same time, the city of Zurich was developing sterile syringe distribution programmes (Geense et al., 1999, p. 35). Faced with the growing pressure of public opinion in relation to these scenes of distress, initiatives were launched, developing a new model in the field called “survival help.” These innovative measures—distribution of syringes, injection rooms, methadone substitution therapy and heroin prescription treatment—were developed by cities facing security and public health problems (Kübler, 2000). On the basis of these initial local experiments, the Confederation launched a coordinated programme of measures in 1994, based on the concept of *harm reduction* as a priority instrument of its drug policy. This orientation puts the emphasis on the health of drug addicts and the prevention of the spread of transmissible diseases. Help is no longer reserved for people who want to end their addiction. This “low-threshold” philosophy is rapidly expanding from health to hygiene and housing (Samitca et al., 2001).

The first dimension of this transformation is axiological: it is no longer a question of tolerating an illegal situation circumscribed to a space, but of provid-

ing a service in the name of health reasons in a context of illegal actions. This model of social action is not introduced without difficulty. While the beginnings were laid in the mid-1980s, it was not until ten years later that needle distribution was accepted nationally (Samitca et al., 2006). After having focused on the repression of trafficking, and then on the repression of consumer-offenders, the priority that emerged was the health aspect. This policy, enshrined in law only in 2011, validates a pragmatic vision in which assistance is no longer conditional on the obedience of the assisted to the caregiver's norm, but on his or her distressing situation.

By inspiring all fields of social action, harm reduction overcomes the normative constraint that defined the different addictions, thus broadening the horizon of intervention. In order to optimize public policies, the different fields of addictions are integrated (Wenger, 2014). To the use of illegal drugs is associated all behaviors that can be described in terms of addiction, involving legal consumer products such as tobacco and alcohol, but also addictions without substances, for example the practice of video games or gambling. This approach is conceptualized in the "cube model," which brings together the four axes of prevention, therapy, harm reduction and repression, taking into account that the appropriate measures vary according to the product and the intensity of consumption (Van der Linde, 2006). Following the recommendations of the WHO (2010), the theme of addictions is associated with the fight against "non-communicable diseases," sweeping away the old moral and quasi-epidemiological conception of a drug that "jumps in the face" of the average person on the street corner. Gradually, measures concerning legal and illegal drugs are being combined with the national prevention program *Diet and Physical Activity*, in a global strategy aimed at creating conditions favorable to health as a variable determined by our behavior and our environment. This linkage fits perfectly with the "cube" model developed in the context of the fight against addictions.

A second dimension linked to this more nuanced understanding of drug use is ontological, since harm reduction enshrines a new approach that can be described as contextual. The product is no longer considered to be the purpose of the action, but the object around which uses are structured (Couteron, 2015). The representation of the drug user is transformed: from a victim of the product, he becomes an actor placed at the center of the institutional system. This perspective introduces the notion of competence, implying a shift in the meaning of intervention: it is no longer an educator who prescribes good practices, but a preventionologist who, ideally, makes available a certain number of resources and framework conditions. However, the prevention community rarely has the political means to address the structural conditions of addictive behaviors (Graf, 2012). They focus their strategy on individual responsibility, seeking to strengthen health literacy and inform about the possible consequences of certain behavior patterns. The focus on skills confronts social action with the diversity of the field of intervention.

Faced with the sociological complexity of practices in context, it is the theme of psychological health that emerges as a common axis of work. This orientation is proving to be central to many projects, such as the “How are you?” campaign, set up in 2014 by the Pro Mente Sana Foundation and several cantons (Bern, Lucerne, Schwyz, and Zurich)—see: <https://www.comment-vas-tu.ch/>. Addiction appears as a response to a life situation that is important to identify early enough. This is the main idea of the so-called “early intervention” measures. The identification of signs of possible psychosocial impairment becomes everyone’s business: teachers, social workers, treating physicians, police officers. The program seeks to recognize “red flags.” But the difficulty in evaluating its effectiveness (Delgrande Jordan et al., 2021) may be due to the cultural unthinking of the notion of risk. Some potentially problematic behaviors remain valued when they directly benefit the economy or are part of an imaginary of self-improvement, as in the case of stimulant use.

The pragmatism of addiction policy tends to tighten on “visibility management” (Savary, 2014), reintroducing an ideological dimension while abandoning the dynamics of abstinence. Targeted actions to strengthen health skills aim to give people simple paths to “improve both their physical and mental performance” (Salveter, 2017, p. 3). Awareness campaigns spread the message that taking the stairs or eating an apple holds the promise of quality of life. The prevention strategy seeks to normalize not smoking by emphasizing the freedom that comes with a tobacco-free life. Alcohol prevention focuses on drinking control (<https://www.mobile-coach.ch>). The bottom-up “I’m Talking About Alcohol” campaign encourages everyone to find a personal response.

The cube model was abandoned in 2016, attesting to the merging of different health policy domains into a comprehensive harm reduction-oriented strategy. The guiding idea is that prevention becomes “as natural as brushing your teeth before going to bed” (Salveter, 2017, p. 2). The concept of harm reduction is applied to all daily activity, with the goal of empowering people to control the risks inherent in contemporary life. “Reading along on your smartphone, running five times a week, spending a night at the casino, toasting at an event ... Pleasure, profit, gambling, or social ritual, potentially addictive behaviors belong to the everyday.” (Jann et al., 2017). By evacuating the perspective in terms of substance, which supported the moral principle of defilement (Douglas, 1971), the risk of addiction is diluted into everyday rituality. Stigmatization, far from disappearing with the normalization of products deemed evil, is reintroduced: the person suffering from behavioral addictions is still designated as responsible for his or her weakness.

The immaterial nature of the conditions of addiction conceals the irreversible nature of some of the damage: the debts of the compulsive gambler follow the person for life. Harm reduction, by developing the idea of a low-threshold, has made it possible to overcome the obstacle of non-adherence to norms, which posed problems of effectiveness of social action. However, it remains subject to the sur-

rounding normative context, as when people denounce the non-payment of fines for cannabis use, refuse to distribute sterile syringes in certain prisons, or require six months' abstinence before being able to receive treatment. Some of the requirements for getting help are necessary for the proper functioning of the institution, but they run counter to the fundamentally dynamic principle of harm reduction.

The “drug problem” occupies less of the public opinion in Switzerland today, perhaps because it no longer questions the dominant norms head on. We do not care about the difficulties that some people may have in regulating their use of cell phones. By approaching the individual as a whole, this new approach risks losing sight of the always specific character of an addiction. A non-substance related perspective implies that professionals have to abandon certain positions. The risk is that the interdisciplinary exchange will erase the fact that behaviors belong to social registers. Confusing strategy with reality in the field means forgetting that policies do not transform representations of drugs and risks losing sight of the context in which addiction is based. At a time when we are pleading for a pragmatic approach which recognizes the rights of addicts, it is necessary to recall the need to insert it in the concrete fields of social policy, such as family or employment.

Bibliography

Aebi, M. F., Ribeaud, D. & Killias, M. (1999). Medical prescription of narcotics and delinquency: results of Swiss trials, *Criminology*, 32(2), pp. 127–148.

Beauchesne, L. (2007). “Une légalisation des drogues inscrit en promotion de la santé: les conditions,” *Criminologie*, vol. 40, no. 1, pp. 135–154.

Bérourd, G. (1982), “Valeur travail et mouvement de jeunes,” *Revue internationale d'action communautaire*, no. 8, pp. 5-30.

Boggio, Y., Cattacin, S., Cesoni, M., and Lucas, B. (1997). *Learning to manage: Swiss drug policy*, Geneva, Georg.

Cesoni, M. L. and Robert, C-N. (1994). Étude sur la politique législative suisse en matière de prévention des toxicomanies, Geneva, CETEL, 1994.

Cohen, S. (1972). *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, London, McGibbon and Kee.

Couteron, J. (2015). “Harm reduction,” *Social Life and Treatment*, 126, pp. 52–58.

Delgrande, Jordan M., Notari, L., Schmidhauser, V., Mathieu, T., and Stucki, S. (2021).

Expertise on the effectiveness of the Early Intervention approach and the scope of the groups concerned in Switzerland, Lausanne, Addiction Suisse.

Douglas, M. (1971). *De la Souillure*, Paris, Maspero.

Ehrenberg, A. (1996). "Comment vivre avec les drogues ? Questions de recherche et enjeux politiques," *Communications*, 62, pp. 5–26.

Geense, R., and Thomas, R. (1999). *Conditions d'injection en Suisse romande: situation et pistes d'amélioration*, Yverdon/Fribourg, GREAT/OSEO.

Graf, M. (2012). "Quelles approches de prévention structurelle faut-il implanter pour protéger la jeunesse?" in P. Jaffé et D. Lachat (eds.), *Adolescents and alcohol, an explosive cocktail*, Sion, Institut Kurt Bösch, pp. 78–83.

Jann, M., and Weber, M. (2017). "The foundation for the new National Addictions Strategy is laid," *Spectra*, no. 118.

Kübler, D. (2000). *Politique de la drogue dans les villes suisses entre ordre et santé*, Paris, L'Harmattan.

Roux, P., and Pedraza, A. (1984). "Lausanne bouge: le tournant obscur," *Revue suisse de sociologie*, No. 10, pp. 197–211.

Salveter, R. (2017). "Healthy living pays off," *Spectra*, no. 116.

Samitca, S., Geense, R., Huissoud, T., Morency, P., Benninghoff, F., Dubois-Arber, F. (2001). *Évaluation de deux structures à bas seuil de la ville de Lausanne: Le Passage et Le Point d'eau*, Lausanne, IUMSP, 2001.

Samitca, S., Jeannin, A., Arnaud, S., Dubois-Arber, F. (2006). *Remise de seringues et de traitements à la méthadone pour les personnes toxicomanes*, Lausanne, IUMSP.

Savary, J.-F., (2014). "La politique de la drogue en Suisse, entre solidarité et ostracisme," in Voélin, S., Eser Davolio M., Lindenau, M. (dir.) *Le travail social en résistance et innovation*, Geneva, IES éditions, pp. 287–295.

Van der Linde, F. (2006). "The perspectives opened by "psychoaktiv.ch,"" *Dépendances*, no. 29, pp. 2–4.

Wenger, J., Surber, M., Lanzi, L., Gantenbein, F., Kübler, D. (2014). *Analysis of addiction policy in Switzerland: causal coalitions in the fields of alcohol, tobacco and drugs*, Zurich, Institut für Politikwissenschaft.

WHO. (2010). *Action Plan 2008–2013 for the Global Strategy for the Control of Noncommunicable Diseases*, Geneva, WHO.

Zobel, F., and Dubois-Arber, F. (2004). *Brève expertise sur le rôle et l'utilité des structures avec local de consommation (SLC) dans la réduction des problèmes liés à la drogue en Suisse*, Lausanne, IUMSP.

The American Opioid Crisis and the Future of Drug Policies

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ABSTRACT

The U.S. opioid crisis has resulted in the deaths of several hundred thousand people since the early 2000s. It is therefore a major public health crisis. It started on the legal market with massive prescriptions of oxycodone and then developed on the black market with fentanyloids. Who is affected? How can this epidemic be stopped? Could it develop in Europe? What is its significance? These questions are addressed in the article.

Keywords: Opioids, crisis, United States, legal market, underground market, oxycodone, fentanyloids

La crisis estadounidense de los opioides y el futuro de las políticas de drogas

RESUMEN

La crisis de los opioides en EE. UU. ha provocado la muerte de varios cientos de miles de personas desde principios de la década de 2000. Por lo tanto, es una gran crisis de salud pública. Comenzó en el mercado legal con prescripciones masivas de oxicodona y luego se desarrolló en el mercado negro con fentaniloide. ¿Quién está afectado? ¿Cómo se puede detener esta epidemia? ¿Podría desarrollarse en Europa? ¿Cuál es su significado? Estas preguntas se abordan en el artículo.

Palabras clave: Opioides, crisis, Estados Unidos, mercado legal, mercado clandestino, oxicodona, fentaniloide

美国阿片类药物危机与毒品政策的未来

摘要

自2000年代初以来，美国的阿片类药物危机已导致数十万人

死亡。因此，这是一场重大的公共卫生危机。这一危机始于合法市场大量的羟考酮处方药，然后在芬太尼类药物黑市上发展起来。谁受到危机的影响？如何才能阻止该危机？危机能在欧洲发展起来吗？危机的意义是什么？本文研究了这些问题。

关键词：阿片类药物，危机，美国，合法市场，地下市场，羟考酮，芬太尼类药物

“92% of the world’s morphine supply is consumed by only 17% of the population, with consumption concentrated in the North, and 75% of the world’s population has no access to any analgesic medication. The reasons have little to do with cost or scarcity of supply and everything to do with global drug prohibition and repression.”¹ (Global Commission on Drug Policy, 2015).

The prehistory of the opioid crisis

In the United States, the Harrison Act, which preceded the “Volstead Act” of 1919 by five years, prohibited alcohol for fifteen years. It aimed to prohibit the production, importation, and distribution of opiates (opium, morphine, heroin) and cocaine. In principle, it did not prevent doctors from prescribing. But provided, the law specified, that it was “in the exercise of their profession” and “for legitimate medical purposes.” What are legitimate medical purposes?

“Maintenance,” i.e., long-term prescribing for morphine and heroin addicts, was not considered legitimate. In a country where the medical and pharmaceutical world was much less structured than in Europe, and later on the application of the Harrison Act gave rise to a struggle.

Between 1914 and 1920, 44 *narcotic clinics* opened, some of which practiced maintenance.² Most of these clinics were harassed by federal agents of the Narcotic Bureau who used, in the words of David Musto, “*threats and intimidation*.”³ Finally, between 1914 and 1938, twenty-five thousand doctors were prosecuted for selling narcotics, three thousand were imprisoned and thousands more were disbarred.⁴ Prescription is now the exclusive jurisdiction of the federal government. In the United States, as in most of the Western world, the medical use of morphine collapsed from the 1920s to the 1970s and 1980s.

In this young country where, seventy years earlier, thousands of doctors were incarcerated for abusive opioid prescriptions, the largest epidemic of fatal opioid overdoses ever seen in the world started with ... massive prescriptions written by doctors!

The U.S. Opioid Crisis: An Unprecedented Event

As of late 2019, we learned that for the first time since 1990, the number of fatal overdoses in the U.S. has decreased, in this case by 5%. But the year 2020 saw deaths rise again. Since 1990, in fact, the number of primarily opioid-related overdoses has increased by 500%. It was about 8,500 25 years ago, 52,000 in 2015, and that number continues to grow with an estimated 60,000 opioid-related deaths in 2017. This makes it the leading cause of death in the United States for those under 50, ahead of car accidents, homicides, suicides, or AIDS deaths.⁵ What happened? It all began, starting in the 1970s and 1980s, with a new (and welcome) societal sensitivity to the issue of pain in the Western world.

Relieve pain

For decades, from the 1920s to the 1980s, physicians were very reluctant to prescribe opiates for pain. Morphine was only used in cancer patients, often at the end of life, so much so that, the general opinion was that morphine meant imminent or near death.

This morphinophobia can be explained in good part by the period that preceded it, from the 1870s to the 1920s, when morphine and heroin (diacetylmorphine) were widely prescribed for both physical and mental pain. It was not known, or only discovered, that these substances could provoke a “hunger” that drove the patient to increase the doses while becoming physically dependent: thus, morphine addiction was born. The opiophilia of the 1870s/1920s was therefore followed by a period of opiophobia in the 1920s/1980s. However, from the 1970s and 1980s onwards, there was a real change in the way our societies conceived suffering. From then on, it was the doctor’s duty to “relieve pain.”

An explosion in the supply of opioids on the legal market

If pain is to be managed, the opiophobic mentality of physicians must be addressed. The medical press, both in Europe and the United States, is full of scholarly articles explaining that when an opiate is prescribed for a patient in pain, addiction is rare. Slowly, doctors began to prescribe again. The medicine of pain, algology, took off and pain consultations were created in many hospitals. Administrative obstacles, such as the “carnet à souches” in France, were removed.

Taking advantage of this new sensitivity, most of the opiate laboratories that manufacture opiates and have access to the American market have knowingly lied. One substance sums up these lies: oxycodone.

The new youth of oxycodone

Like heroin, oxycodone is a semi-synthetic opiate. However, while heroin is derived from morphine, itself extracted from *papaver somniferum*, oxycodone is derived from thebaine, the main alkaloid extracted from *papaver bracteatum* or Persian poppy.

Synthesized in 1916, oxycodone began to be used as an analgesic in 1917, “the year of initial enthusiasm.”⁶ As early as 1919, cases of iatrogenic addiction to Eucodal, its first commercial name, were described. At the time of the Geneva Limitation Convention in 1931, oxycodone was one of the first fourteen drugs classified in Group 1. And, in 1939, the Health Organization of the SDN regarded “the danger of contracting an addiction by taking Eucodal should not be considered less than the risk of morphinomaniac.”⁷ Let us add that after the war, Eubine suppositories enjoyed great “popularity.” How can we imagine for a moment that the Food and Drug Administration (FDA) was unaware of this issue?

In 1995, Purdue Pharma launched OxyContin® on the American market, with a sustained-release formulation that theoretically allows for two doses of analgesia covering the entire 24 hours. The oxycodone file, in which information has been accumulating for more than seventy years, makes it possible to affirm that it does indeed cause physical dependence and the risk of overdose. Nevertheless, Purdue will deny this for the next ten years, while reaping huge profits.

The Food and Drug Administration (FDA) quickly agreed to extend the indications of OxyContin, marketed in 1995, to all severe pain, whether cancerous or not, especially pain of rheumatological origin. The removal of the legal obstacle related to cancer was an opportunity that was immediately seized by the most enterprising laboratories, starting with the one that, as of 2015, is being singled out by all of America: Purdue Pharma. The FDA also accepted dosages of 40, then 80 and finally 160 mg.

In the United States, unlike in Europe, it is possible to advertise many prescription drugs in the mainstream media. Purdue then embarked on an intense television promotional campaign, initially targeting the 70 million Americans with lower back pain. The marketing campaigns were as aggressive as ever and sales exploded.

When certain laboratories buy “opinion leaders”

We know today, after investigations carried out by the most important American newspapers (*The New York Times*, *The Washington Post*, *The New Yorker*, etc.), that certain laboratories have been able to buy many, sometimes prestigious opinion leaders from the medical world. They are responsible for convincing their colleagues to prescribe oxycodone and other opioids such as hydromorphone or

fentanyl in increasingly broad indications. The laboratories have also hired, with comfortable salaries, experts from the administrations with a predilection for the FDA and even the Drug Enforcement Administration (DEA). Moreover, oxycodone has been associated with aspirin since the 1950s, then with paracetamol, which makes its prescription completely commonplace.

Oxycodone? A delicious opiate ...

Still, it's hard to understand why OxyContin has been so successful. Marketing doesn't explain everything. There is a secret: like heroin, oxycodone is a "delicious" opiate. It provides a sweet euphoria to which most people are rarely immune. Almost everyone falls under its spell, both drug users and patients, who discover this drug because they are in pain.

However, this is not the case for all opioids, and the euphoria that an opioid produces is often confused with the weight of the addiction it generates. Take methadone. It is physically highly addictive. Yet it plays a minor role in the current opioid crisis in the United States, even though it has a dual indication in that country: as an OST (opioid replacement therapy) and as a painkiller (level 3). The most likely explanation? Methadone is a "heavy" opiate which is very effective in erasing the signs of withdrawal, but it has very little euphoria. The opioid crisis should encourage us to have a consensus scale.

From the legal market to the underground market

Faced with the increase in overdoses, several American administrations became concerned in the early 2000s and asked the laboratories that market these opioids to take action. The response was the development of *abuse* deterrent galenicals ("*abuse deterrent*") through the combination of oxycodone/naloxone⁸ and *tamper resistant galenicals*. This was due to the hardness of the tablet that could not be crushed to make a powder or dissolved in water. In both cases, the aim is to discourage misuse by sniffing or injection. The FDA accepted to validate these new galenic forms, resulting in disastrous effects. Far from solving the crisis, they pushed prescription opiate users into the underground market.⁹

Non-Pharmaceutical Fentanyls (NPF) on the underground market

Up to that point, much has been said about oxycodone, but another opioid, or rather a group of opioids, plays a key role in the crisis: fentanyls. Synthesized in 1959, the first fentanyl was originally used in anesthesiology under the self-explanatory trade name of Sublimaze. It was then prescribed for pain in many forms, including patches (Durogésic), transmucosal tablets (Actiq) and sprays (Instanyl). Fentanyl has many derivatives of which at least three (alfentanil, remifentanil—which is very short acting, and the potent sufentanil) are used in human medicine. Carfen-

tanyl, the most potent opioid ever synthesized, is used only in veterinary medicine. Non-pharmaceutical fentanyls (NPF) or fentanyloids, including carfentanyl, are sold on the underground market or on the Internet and are responsible for thousands of deaths. Produced in China, they are brought to the American black market by Mexican cartels.

Short-acting and euphoric, even if less so than oxycodone or heroin, their potency opens a completely new page in the two-hundred-year history of modern opiates. The legal fentanyls, thus prescribed, certainly held a place in the heap of the corpses. But it is on the clandestine market that they cause carnage. Especially since in 1974 carfentanyl was synthesized. Its analgesic power is ten thousand times that of morphine. It became a kind of myth since it is said that two grains of salt of carfentanyl can take a person from life to death. This does not prevent some users from enjoying fentanyloids, sometimes combined with methamphetamine, and injecting it all together, thus relegating the “good old” speedball (heroin and cocaine) to the status of a remedy for the elderly.

Poor whites: first victims

Finally, this crisis has a specificity: for the first time in decades, it is an epidemic that affects mainly whites. Not just any whites, however: men who live in the countryside or on the outskirts of medium-sized cities, in regions that have been hard hit by deindustrialization and the ravages of globalization. In the northeastern United States, the *Rust Belt* is a symbol of this. It is among these “little whites” that the majority of the 60,000 deaths in 2016 were counted. The great heroin epidemic of the 60s and 70s and the cocaine/crack epidemic of the 80s and 90s primarily affected “visible minorities,” starting with African Americans. Now it is the “deaths by despair” of whites (alcohol, overdoses, suicides) that dominate the picture.¹⁰

“Since the early 1990s, among whites who died of accidental overdoses, the proportion with a master’s degree has held steady at 9 percent. Two-thirds of the victims had no more than a bachelor’s degree. Blacks and Hispanics were virtually unaffected until the advent of illegal fentanyl in 2013, after which they too experienced a sharp rise in overdose deaths.”¹¹

What is happening in the underground market at the same time? Heroin consumption is on the rise again. Mexican cartels quickly realized that demand was increasing. But, starting in 2010, this heroin is frequently cut to NPF. They most often come from China. The precursors to make NPF are fairly easy to find, while the synthesis is relatively simple. The over-prescription of opioids (including pharmaceutical fentanyl) and the dynamism of the underground market are acting in synergy.

The long inertia of the Food and Drug Administration

Today, the “opioid crisis” has received and continues to receive impressive media coverage.¹² This situation has evolved significantly and there is something mysterious about the delay in the recognition of the drama by specialists and then by American society as a whole. Since the mid-1990s, the prescription of opiates for pain has increased, and since the 2000s the death figures have become alarming. Twenty years later, the Food and Drug Administration (FDA) is in the dock: the early extension of the indications for OxyContin to non-cancerous chronic pain (NCCP) opened up a huge market. This included the validation of high doses per unit of intake, and the validation of “*abuse deterrent*” formulations. The main consequence of this was to accelerate the flight of patients to heroin on the underground market. The FDA’s slowness in taking measure of the catastrophe has permanently tarnished its image, while rumors of corruption are circulating.

Further, by an ironic paradox, only the Drug Enforcement Administration (DEA), the armed wing of the “war on drugs,” hated by all the enemies of “punitive prohibition” in the United States, tried, without success, to calm the “prescriptive” madness that had spread to a large part of the medical world and to force the pharmaceutical laboratories to stop pushing doctors to prescribe Oxycontin by all means. They also tried to calm down the “prescriptive” madness which had taken over a good part of the medical world and to oblige the pharmaceutical laboratories to stop pushing doctors to prescribe Oxycontin in the famous “*pills mills*” and in boxes of 100 tablets.

When reformers are indicted

The “*drug warriors*” point the finger at those who have fought for relief for suffering patients. These supporters of “punitive prohibition” gloat and say: “The American crisis gives a small idea of the catastrophe that would be the legalization of drugs! You were told that they were all dangerous, but you preferred to listen to irresponsible demagogues who spend their time explaining that they are not. And here we are!”

This speech is clever, too clever. For the “iron law” of prohibition is at the heart of the current crisis. It is formulated as follows: make and sell on the underground market the most potent substance in the smallest volume.¹³ During alcohol prohibition, between 1919 and 1934, the underground market offered neither wine nor beer but only distilled (and often adulterated) spirits with very high alcohol content. Today, fentanyloids are the equivalent of those distilled spirits from the time of the dry law that prohibited alcohol. Since the beginning of the second wave of the epidemic, i.e., in the last ten years, they have killed tens of thousands of people.

Moreover, the opacity of the clandestine market favors overdoses (OD): how can one know if a product is cut with fentanyl? More generally, no one today is able to measure what consequences the American opioid crisis will have on drug policy in America and in the world. Will it put a stop to pain management, to the development of OSTs and, more generally, to drug policy reform based on public health, harm reduction and human rights? Are we going to see essential achievements called into question? We must not hide the fact that the crisis raises these questions.

The United States and Canada now must deal with several million opioid addicts, which requires the mobilization of considerable budgets and the training of professionals. But they also have to find a solution to many outstanding problems: is it reasonable to continue to allow consumer advertising for prescription drugs? Who should check that a laboratory's discourse on its product respects, at the very least, the facts? What credible information should patients have? Who will have access to methadone or buprenorphine substitution treatments?

To face this epidemic in the long term, the authorities will have to mobilize impressive sums of money. Indeed, millions of Americans who have become addicted must be helped to manage their addiction as best they can, thanks to substitution treatments, often using buprenorphine (which, when not combined with psychotropic drugs and/or alcohol, makes OD practically impossible), while needle exchange programs, the creation of low-risk consumption rooms (SCMR), the widest possible access to naloxone, and simple, inexpensive tests to determine if there is NPF in heroin bought on the street or on the Internet should be multiplied. This will take years, the most pessimistic say decades.

Now it's time for the lawsuits. Purdue is bankrupt while Johnson & Johnson and three major distributors have negotiated a \$26 billion settlement in exchange for a stay of proceedings. In the meantime, European countries should ponder these lessons and understand that drug education, education based on facts and not lies, that stands at equal distance from apology and demonization, is indispensable. Doctors need to learn how to prescribe opiates and give their patients relevant information. As for "Big Pharma," its campaigns should be supervised. Men must be a little less helpless to tame the opioid dragon. It would be disastrous if this crisis were to result in a pure and simple reversal and if a triumphant opioid phobia were to deprive us of the benefits of opioids.

Endnotes

- 1 The Global Commission on Drug Policy. “The Negative Impact of Drug Control on Public Health: The Global Crisis of Avoidable Pain.” 2015. <http://www.globalcommissionondrugs.org/reports/the-negative-impact-of-drug-control-on-public-health-the-global-crisis-of-avoidable-pain>
- 2 Annie Mino: “Analyse de la littérature sur la remise contrôlée d’héroïne et de morphine,” Office fédéral de santé publique, Confédération Helvétique, 1990, and Annie Mino and Sylvie Arsever, *Jaccuse les mensonges qui tuent le drogués*, Calmann-Lévy, 1996.
- 3 David Musto, *The American disease, origins of narcotic control*, Oxford University Press, 1987, p. 184.
- 4 Anne Coppel and Christian Bachmann, *Le Dragon domestique, deux siècles de relations étranges entre l’Occident et les drogues*, Albin Michel, 1989, p. 374.
- 5 Josh Katz, “You draw it: how bad is the Drug Overdose Epidemic?” *The New York Times*, April 14, 2017.
- 6 Dr. G. Varenne, *L’Abus des drogues*, Dessart, 1971, p. 136-141.
- 7 *Ibid.*, p. 137.
- 8 This combination is supposed to discourage misuse by injection or sniffing because, unlike the oral route, naloxone can then act and cause a temporary state of withdrawal. Suboxone, a combination of high-dose buprenorphine and naloxone, follows the same logic.
- 9 See in particular William N. Evans, Ethan Lieber, and Patrick Power, “How the reformulation of OxyContin ignited the heroin epidemic,” The National Bureau of Economic Research, April 2018, and Briony Larance, Timothy Dobbins, Amy Peacock, Robert Ali, Raimondo Bruno, Nicholas Lintzeris, Michael Farrel, and Louisa Degenhardt, “The effect of a potentially tamper-resistant oxycodone formulation on opioid use and harm: main findings of the National Opioid Medications Abuse Deterrence (NOMAD) study,” *The Lancet psychiatry*, January 10, 2018.
- 10 Anne Case and Angus Deaton, “Morbidity and mortality in the 21st century,” *Brookings papers on Economic Activity*, Spring 2017.
- 11 Anne Case and Angus Deaton, *Deaths of Despair, the Future of Capitalism*, Paris, PUF, 2021, pp. 155–156. It should be noted that numerous other studies tend to show that in the United States, from 1990 to 2013/2014, poor whites are overrepresented among opioid overdose deaths. Chapter 5 of *Deaths of Despair* (pp. 89–99) is thus titled “Black Deaths and White Deaths.”
- 12 For example, *The New Yorker* of October 30, 2017, published Patrick Radden Keefe’s major investigation, “The family that built an empire on bread” on the Sackler family, while *Time* magazine devoted its entire March 5, 2018, issue to a photographic report

on this crisis, but focused almost exclusively on the injectors.

- 13 Leo Beletsky and Corey S. Davis, "Today's fentanyl crisis: Prohibition's Iron Law revisited," *International Journal of Drug Policy* 46 (2017): 156–159. The "iron law of prohibition" is a term coined by Richard Cowan and argues that "the stronger the repression, the more potent the prohibited substances." (Richard Cowan, "How the Narcs Created Crack," *National Review*, December 5, 1986, pp. 30–31).

Some Unthinking of the Impact of Traffic Regulation

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ABSTRACT

It is one of the recurrent arguments of the opponents of cannabis legalization: the drying up of the traffic, which would allow law enforcement agencies to fight against other more dangerous drugs and other criminal scourges. However, there is no study to support this claim. The configuration of cannabis trafficking to France today even allows for strong doubts, given the geographical and cultural proximity of the actors of the traffic to Morocco.

Keywords: legalization, drugs, cannabis, trafficking, Morocco

Algunos sin pensar en el impacto de la regulación del tráfico

RESUMEN

Es uno de los argumentos recurrentes de los opositores a la legalización del cannabis: el agotamiento del tráfico, lo que permitiría a las fuerzas del orden luchar contra otras drogas más peligrosas y otras lacras criminales. Sin embargo, no hay ningún estudio que respalde esta afirmación. La configuración del tráfico de cannabis a Francia hoy incluso permite fuertes dudas, dada la proximidad geográfica y cultural de los actores del tráfico a Marruecos.

Palabras clave: legalización, drogas, cannabis, tráfico, Marruecos

非法交易监管的影响：不计后果

摘要

非法交易的枯竭将使执法机构能够打击其他更危险的毒品和犯罪祸害，这是大麻合法化反对者反复提出的论点之一。不

过，没有研究支持该论点。鉴于大麻贩运者在地理和文化上与摩洛哥接近，如今向法国贩运大麻的情况甚至令人产生强烈怀疑。

关键词：合法化，毒品，大麻，非法交易，摩洛哥

This is one of the recurrent arguments of the opponents of cannabis legalization: the drying up of cannabis trafficking would allow law enforcement to fight against other more dangerous drugs and other criminal scourges. However, there is no research to support this claim (I). The configuration of cannabis trafficking to France today makes it highly doubtful (II).

The reasons why countries opt for this change in legislation may be primarily economic, or with liberal tendencies as in the United States, they all also put forward the expected decrease in traffic. This was even the first reason given by Uruguay in 2013. A parliamentary report¹ last spring defended the principle of a “supervised” legalization, in particular “to regain control of a traffic that is today in the hands of mafia networks.” However, the impact of legalization on criminal networks cannot be known in advance, its authors also recognized. Surveys carried out in the states that have legalized cannabis show that the impact on the black market is real, but far from stopping the traffic.

In Canada, where cannabis was legalized in 2018, the black-market share of consumer supply became a minority for the first time in the third quarter of 2020,² with 574 million spent in the legal market compared to 549 million from traffickers. The trend persisted, as in the 2^e quarter of 2021, the share of the black market had fallen further to 40% of purchases. According to an OFDT study of January 2021,³ which focused on the 15 American states that have legalized possession and consumption in recent years: Criminal groups are still largely invested in the black market for cannabis and are developing other forms of trafficking (heroin and methamphetamine) in order to compensate for the economic losses caused by the partial drying up of their outlets. The black market still accounts for 30 to 40 percent of demand, depending on the state. Further, the results of the Cannalex⁴ study in 2017 showed that the activities of transnational criminal groups had “not been fundamentally challenged by the legalization of cannabis” a few years after its implementation in Colorado, Washington and Uruguay.

“The legalization of a prohibited phenomenon never hinders its trafficking, but changes its contours,”⁵ a commissioner of the Central Office for the Repression of Illicit Drug Trafficking (now the Anti-Drug Office) had analyzed in 2019. Arms and tobacco trafficking demonstrate that smuggling does not stop with the legal regulation of the sale of dangerous products. The parallel market of manufactured

cigarettes was recently evaluated by a parliamentary information report⁶ between 9 and 12% of total consumption and around 30% for rolling tobacco. On the other hand, the comparison is limited with alcohol, where the black market is now marginal.

A shift in trafficking to other drugs

Among the consequences of legalizing cannabis in France, police officers specialized in the fight against drugs point out that traffickers would turn to other criminal activities to compensate for the loss of income. They would turn to the trade of harder drugs or to violent actions such as robbery or racketeering in order to keep the illicit income that would “sustain” entire neighborhoods. The discussion is unprecedented. It also suffers from a lack of historical perspective, given that these so-called disadvantaged neighborhoods have not always been irrigated by trafficking money, at least not before the years 1990–2000.

Northwestern University researcher Heyu Xiong has come to the same conclusion after studying the consequences of cannabis legalization in Colorado, Washington and Oregon.⁷ His research shows that traffickers respond to the changing legal environment “by escalating the level of systemic violence.” At least 7 to 11 percent of former marijuana dealers have switched to distributing other drugs following legalization. More generally, the researcher suggests that a change in cannabis market law should not be viewed in isolation from other drugs available in a jurisdiction and the labor force available in that sector.

The persistence of French routes of Moroccan cannabis

The geopolitics of cannabis trafficking in Morocco and France must also be considered. Morocco, the world’s largest producer of cannabis, which alone supplies 90% of the European market,⁸ is also the largest supplier of resin to France. The gradual modernization of the cannabis industry in the riif⁹ has enabled producers to better meet the quality requirements of French consumers, particularly with the ever higher THC levels, which are more harmful to consumers’ brains. If in the mid-1990s, the THC content of seized cannabis was less than 10%, in 2016, the majority of seizures had a content of more than 20%,¹⁰ and they now regularly reach 30%. But the main question is to what extent this massive influx might no longer be destined for France.

On this point, no country where legalization is taking place has as close proximity to a producing country, so the comparison is impossible. But geography must be taken into account. Indeed, southern Spain and northern Morocco meet like two parts of an hourglass until the Strait of Gibraltar, which separates them by only fourteen kilometers. Spain alone cannot act as a containment wall and is, unsurprisingly, the main entry point for resin trafficking into Western Europe. It

also shares with France its only land border to northern Europe. Moroccan cannabis is therefore partly transported through France to Italy, Germany, Belgium, the Netherlands, and parts of Northern Europe. A June 2019 note from the Central Directorate of Judicial Police estimates that at least 25% of the resin seized in 2018 in France was destined for other European markets. A commissioner who has been fighting drug trafficking for thirty years estimates between 5 and 10% maximum, the share of seized cannabis that enters the national territory. With this calculation, at least 850 tons of resin would pass through France. This means that we should have no illusions about the persistence of a French illegal cannabis route, as it is so well established.

Another difficulty is that the Moroccan diaspora, particularly powerful in Spain, the Netherlands, but also in France, has influenced cannabis production in Morocco and its importation since the 1990s. Family networks are recurrently confused with exporting, importing, and distributing networks in police investigations of resin dealers. French traffickers with family origins in North Africa also show an “ease” in making contact with Moroccan *jebellis* (intermediaries) and exporters because of a shared culture and language.¹¹

Finally, the latest World Bank report on migration and remittances estimates that in 2020 Morocco received nearly 8.2 billion euros in remittances, far more than official development assistance. Generally speaking, France is the 3rd country from which remittances to the kingdom come.¹² And the families are often from the Rif, a specific region of international emigration, according to Ayad Zaroual, a researcher at LISST.¹³ “These remittances represent 60 to 70 per cent of commercial bank deposits in the eastern Rif region,” says the Moroccan researcher. It is impossible to determine how much of these remittances come from drug trafficking revenues in France, but these data may be relevant to the possible effects of cannabis legalization on trafficking.

Endnotes

- 1 Parliamentary information report on the regulation and impact of the different uses of cannabis, commission chaired by Robin Reda, 28 June 2021 <https://www2.assemblee-nationale.fr/content/download/349566/3439035/version/1/file/Rapport+Cannabis+FINAL+v4.pdf>
- 2 Data: Statistics Canada 2021-08-31: Detailed household final consumption expenditure, Canada, quarterly: <https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=3610012401>
- 3 OFDT (January 2021) - La légalisation du cannabis aux États-Unis Modèles de régulation et premier bilan. Note n° 2021-1, Paris, Ivana Obradovic. See: <https://www.ofdt.fr/BDD/publications/docs/eisxiow3.pdf>

- 4 INHESJ-OFDT (2016). CANNALEX: a comparative analysis of regulatory experiences. Cannabis (Colorado, Washington State, Uruguay), Paris. See: <https://www.ofdt.fr/europe-et-international/projets-internationaux/cannalex/>
- 5 Claire Andrieux, *La Guerre de l'ombre, le livre noir du trafic de drogue*, Denoël, 2020.
- 6 Information report of the National Assembly's Finance Committee on the evolution of tobacco consumption and the yield of the tax applicable to tobacco products during containment and the lessons that can be learned from it, September 9, 2021. https://www.assemblee-nationale.fr/dyn/15/rapports/cion_fin/115b4498_rapport-informaticion#_Toc256000030
- 7 Heyu Xiong, "Displacement in the criminal labor market: Evidence from drug legalizations," Northwestern University, October 2018.
- 8 DCPJ Division of Studies, Strategic Analysis, and International Relations (DEASRI) memo, "Cannabis resin production and routes," April 2018.
- 9 Pierre-Arnaud Chouvy and Jennifer Macfarlane, "Agricultural innovations in Morocco's cannabis industry," *International Journal of Drug Policy*, 2018.
- 10 DCPJ Division of Studies, Strategic Analysis, and International Relations (DEASRI) memo, "Cannabis resin production and routes," April 2018.
- 11 See Claire Andrieux, *op. cit.*
- 12 France accounts for 10 percent of remittances to Morocco, behind the United States (14 percent), and Saudi Arabia (12 percent). *Migration and Development Brief* 35 November 2021 Dilip Ratha, Eung Ju Kim, Sonia Plaza, Ganesh Seshan, Elliott J Riordan, and Vandana Chandra. KNOMAD-World Bank, Washington, D.C. https://www.knomad.org/sites/default/files/2021-11/Migration_Brief%2035_1.pdf
- 13 Interdisciplinary Laboratory on Solidarity, Society and Territory. See <https://blogs.mediapart.fr/ayad-zaroual>. The State, the Rif and the Diaspora, July 12, 2018, Ayad Zaroual.

Myths and Realities of the Importance of Drugs in the Mafia Economy (The Italian Case)

Drug Policy #3 / November 2022

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ABSTRACT

Traditionally, drug trafficking is associated with mafias as if this illegal activity were the core of this type of criminal organization. A review of the history of Italian mafias shows, on the contrary, that drug trafficking is not essential to the existence of mafias: in particular, the control of the territory that is the basis of the power of these criminal organizations is established long before exercising a dominant position on these illegal markets; participation in drug trafficking can even be considered as a factor that has also partly weakened the mafias. The anti-mafia investigations mentioned in the reports of the Direzione Investigativa Antimafia allow us to relativize the weight of drugs in the mafia systems and to better understand their specificities. This observation makes it possible to suggest ways to better orient anti-crime policies.

Keywords: Anti-crime policy, drugs trafficking, illegal markets, Mafia, organized crime, power

Mitos y Realidades de la Importancia de las Drogas en la Economía Mafiosa (El Caso Italiano)

RESUMEN

Tradicionalmente se asocia el narcotráfico con las mafias como si esta actividad ilícita fuera el núcleo de este tipo de organización criminal. Una revisión de la historia de las mafias italianas muestra, por el contrario, que el narcotráfico no es esencial para la existencia de las mafias: en particular, el control del territorio que es la base del poder de estas organizaciones criminales se establece mucho antes de ejercer una posición dominante en estos mercados ilegales; la participación en el narcotráfico puede incluso considerarse como un factor que también ha debilitado en parte a las mafias. Las

investigaciones antimafia mencionadas en los informes de la Direzione Investigativa Antimafia nos permiten relativizar el peso de las drogas en los sistemas mafiosos y comprender mejor sus especificidades. Esta observación permite sugerir caminos para orientar mejor las políticas contra el crimen.

Palabras clave: Política anticrimen, narcotráfico, mercados ilegales, mafia, crimen organizado, poder

毒品在黑手党经济中的重要性：传闻与现实（意大利案例）

摘要

传统观点认为，贩毒与黑手党相联系，就好像这一非法活动是此类犯罪组织的核心一样。相反，一项关于意大利黑手党历史的述评表明，贩毒对于黑手党的存在而言并不是必需的：特别地，这些犯罪组织的权力基础——领土控制——早在其主导非法市场之前就已经建立；参与贩毒甚至能被视为一个在部分程度上削弱黑手党的因素。意大利反黑手党调查局(Direzione Investigativa Antimafia)报告中提到的反黑手党调查允许我们对黑手党系统中毒品的权重进行相对化，并更好地了解其特殊性。这一观察让“提出用于更好地定位反犯罪政策的方法”一事成为可能。

关键词：反犯罪政策，贩毒，非法市场，黑手党，有组织犯罪，权力

It is common to associate mafias and drug trafficking. This assimilation is part of a more general logic of the narrowing of the perception of what the criminal economy is. It is regularly reduced to its strictly illegal dimension (trade in prohibited goods), ignoring the question of criminal infiltration into the legal economy and, within the illegal markets, the one linked to drugs tends to capture almost all the attention. One reason for this focus is the U.S. war on drugs, as well as work such as that of Schelling (1967). However, this bias carries risks: a wrong or partial understanding of criminal realities—first and foremost those of mafias—leads to wrong anti-crime policies. It is therefore important to clarify how the equation between (Italian) mafias and drugs is fundamentally a preconceived idea that promotes confusion (1) in order to be able to specify the place of drugs in mafia “systems” (2). Overestimating the weight and significance of drugs is a risky diagnostic error (3).

The assimilation of (Italian) mafias and drugs: a preconceived idea that promotes confusion

Reducing the Italian mafias to the issue of drug trafficking is a frequent posture, but it is a sign of a double misunderstanding of the history of these criminal organizations: on the one hand, the emergence of the mafias is not linked to drug trafficking; on the other hand, the entry into this illegal activity was not an obvious operation, and it may even have been a source of fragility for the mafias.

The mafias in the strict sense of the term (see definition in the second part) pre-existed drug trafficking: this is true for the three traditional Italian mafias—namely Cosa nostra in Sicily, the camorra in the Neapolitan region and the Calabrian 'ndrangheta—but also for the Japanese Yakuza and the Chinese Triads. In the Italian case, many historians (such as Lupo, 1993) and sociologists (such as Catanzaro, 1988 and Gambetta, 1993) have pointed out that the mafias appeared as early as the nineteenth century and developed as their basic activity intermediation and protection, far from the drug problem.

It is therefore criminal organizations, already old and well rooted territorially, that will enter the drug trade in the 20th century. But we must also keep in mind that this entry is late and ultimately problematic while the control of the territory is already in place.

This entry, which Cosa nostra is the first to implement, is not made in the name of the criminal organization. The different Sicilian mafia families do not have a unanimous position on the subject. The first mafiosi to start trafficking drugs were few in number, isolated and acted in a personal capacity. Those who do were those who could exploit existing networks: mainly illegal emigration and tobacco smuggling. These two networks connect the Sicilian mafiosi to the United States, where there is a learning effect in drug trafficking. Pioneers in this traffic were the mafia families from the territories west of Palermo (Alcamo, the future drug laboratory, Cinisi, Partinico, Castellamare del Golfo, from which the Bonanno family, firmly established in New York, originated), because they managed the channels of clandestine emigration, as well as the Greco family, which logistically dominated the tobacco smuggling channel. Even so, the mafia presence is not massive: it is an initially modest and secondary presence for the Sicilian mafia. The latter does not master the techniques of production to dominate the market. Moreover, the place is already occupied, in particular by the French and the Corso-Marseilles network which will be dominant until the beginning of the seventies. It should be noted that until then Italy and Europe were relatively unaffected by the scourge of drugs.

The mafia pioneers of drug trafficking were successful in the production and marketing of the drug. The considerable profits they made from this activity created a ripple effect with the entry of other families into the heroin trade, in-

cluding those from Catania, on the east coast of Sicily. To the first names—those of Badalamenti, Buscetta, or Greco—will be added those of new entrants such as Bontade, Inzerillo, Spatola, Vernengo, Marchese, and Spadaro. In passing, this dispersed entry highlights another mafia reality that is too often ignored: Cosa Nostra is not a unitary pyramid structure. Mafia families engage in this illegal activity without unitary instructions because Cosa Nostra is gradually ceasing to be an explicit obstacle.

This should not make us forget that, despite the gains, the entry into drug trafficking has fundamentally weakened the Sicilian mafia. It was drugs that caused the two so-called “mafia wars” that bloodied the island. The first war (1962–63) began following accusations of fraud on a shipment of heroin and led to a dramatic series of cross-cutting settlements of accounts between the La Barberas and the Grecos. The second mafia war stems from the internal weakness of Cosa Nostra in the face of the changes brought about by the drug market. Generations clashed: the “traditional” mafia of Bontade, Badalamenti, and Buscetta was decimated by the rising mafia of the Corleone around Riina and Provenzano.

Another factor of fragility was the increase in the number of Sicilian collaborators of justice in the 1980s. Many of them motivated their decision by a disgust for the Mafia’s involvement in activities considered “dirty” and “despicable,” such as drugs and prostitution. More prosaically, the violence of the second Mafia war and the relentless cruelty of the Corleone family were surely the main reason for the surge in these collaborations. Finally, the violence of the mafia wars and the first damages linked to the local consumption of narcotics led to a reaction of the forces of order. This led to the maxi-trial of 1986 under the aegis of judges Falcone and Borsellino, thanks in particular to the revelations of the “repentant” Tommaso Buscetta.

Place of drugs in mafia “systems”

The relativization of the assimilation between mafias and drugs imposes to put the dimension of drug trafficking in the more general framework of mafia “systems” and thus to understand the specificity of a mafia.

Only one country has legally defined the crime of Mafia association, and that is quite naturally Italy, in article 416 bis of the Penal Code. It reads:

The association is of mafia type when those who are part of it use the intimidating force of the associative bond and the condition of subjection and omerta that derives from it to commit crimes, to acquire in a direct or indirect way the management or at least the control over economic activities, concessions, authorizations, tenders and public services, or to obtain profits or unfair advantages for oneself or for

others, or to prevent or hinder the free exercise of the vote or to obtain votes for oneself or for others in electoral consultations.

This allows us to understand how these criminal organizations constitute real “systems.” Present in both the illegal and legal spheres, the mafias manipulate electoral consultations and condition the population. By combining these dimensions, the mafias are able to build a form of social legitimacy such that they exercise a power that is increasingly accepted on their territory. However, this quest for social consensus is in contradiction with the share of public disorder induced by drug trafficking (assaults, overdoses, and *junkies* on the public highway, etc.). This explains why Cosa Nostra has long denied its involvement in drug trafficking or blamed it on the Italian American mafia and the Neapolitan camorra, which would have been the first to market drugs on Italian territory, while the Sicilian mafia would have been reluctant to supply the island. This behavior tends to support the idea that Cosa Nostra perceived its long-term interests and anticipated the risk that this traffic would jeopardize its local presence.

It also helps to understand why drug cartels—while they may seek to copy the mafia method—are not mafias. The specialization, at least initially, of the activity is the opposite of the constitution of a system. Drug cartels emphasize the productive and profit-generating dimension, and then may seek to exercise forms of control/legitimacy over a population or a territory (via the diffusion of a criminal “culture” through *narcocorridos*, or the distribution of food aid during the health crisis). The mafias are in an inverted sequence where power takes precedence and where drugs are only one activity among others and potentially, as we have seen, a problematic one.

The mafia insertions are multiple and not all have the same meaning for the criminal organization. However, if there is an essential activity—in the sense of what makes the essence of a mafia—it is not drug trafficking but racketeering, a symbol of the exercise of territorial sovereignty. Judge Borsellino clearly underlined—at the time when Cosa Nostra triumphed in drug trafficking—that the heart of the mafia is not the quest for profit but the quest for power, stating:

“(...) even when the mafia drew - and perhaps still draws, even if probably in lesser proportion - its most important resources from the production and trafficking of narcotic substances, the mafia organization never forgot that this was not at all its essence. So much so that, as all those who participated in the experience of the maxi-trial and the anti-mafia pool have experienced, even in those moments and even when there were mafia criminal families who earned hundreds and hundreds, if not thousands and thousands of billions [of lire] from the trafficking of narcotics, these same families did not neglect to continue to carry out those activities that were the essential activities

of mafia criminality, because drugs were not and have never been one. The fundamental characteristic of Mafia crime, which some people call territoriality, can be summed up in the claim, not to have but to be the territory, just as the territory is part of the State, so that the State “is” a territory and does not “have” a territory, since the latter is an essential component. The Mafia family has never forgotten that one of its essential characteristics is to exercise full sovereignty over a given territory.” (Collective, 1992, pp. 27–28)

Even if we consider that the entry into drug trafficking and the rise of the Corleone family may have reshaped the criminal organization by reinforcing the logic of profit, the mafia's multi-insertion once again puts the importance of this traffic alone into perspective. There are other types of trafficking that are sometimes much more profitable than drug trafficking, notably environmental trafficking, in the forefront of which is waste trafficking. In 1992, the Neapolitan camorriste leader Nunzio Perrella revealed, during his collaboration with the justice system, that he had given up drug trafficking to dedicate himself to the “transformation of waste into gold,” a very profitable and much less risky business.

It is possible to give up drugs. Moreover, Cosa nostra has lost its dominant position to the 'ndrangheta, without disappearing. We find this mafia specificity of claimed and long-term criminal poly-activity. The study of our three Italian organizations highlights the lasting accumulation of illegal and legal activities (Champeyrache, 2022). It is rare that a mafia withdraws from a traffic for a long time (unless it loses its grip to a more powerful organization in a specific market); on the contrary, mafias tend to extend the scope of their activities, whether in the legal sector (where infiltration affects ever more diverse sectors: from the traditional infiltration of construction and public works, to large-scale distribution and shopping centers, to funeral services, etc.) or in the illegal sector (with waste trafficking and food fraud, etc.).

The secondary nature of drugs in this galaxy of activities and, above all, the damage to the image of honorability of crime claimed by the mafias can provide clues for analyzing the phenomena of criminal delegation currently observable in mafia territories. The biannual reports of the Direzione Investigativa Antimafia (DIA) have been highlighting for some time now an observation from the field: the retail market for drugs (this is also largely true for prostitution) is delegated to Nigerian criminal organizations. Some have seen this as a sign of weakness in the mafias. It seems rather that it is a strategy, as shown by the “Ballarò pact”: this pact negotiated with Cosa nostra authorizes the Nigerians to manage prostitution in this district of Palermo. The delegation of trafficking appears to be a way of getting rid of businesses which, firstly, bring in relatively little money (wholesale trade brings in a lot of money, not street dealing), secondly, attract social disapproval, and thirdly, mobilize the forces of order because they are the most visible. Second-

ly, it can help the mafia to divert attention by exploiting racism, a strategy that is particularly dear to the camorra.

The risks involved in this diagnostic error

The inappropriate equation of mafia with drugs and, more generally, the overrepresentation of drug trafficking in the representation of the criminal economy and the understanding of criminal organizations lead to errors in diagnosis and therefore in treatment. Among these errors, the following can be mentioned:

- To believe that the mafia can be brought down by exclusively attacking drug trafficking is a delusion

The non-specialization of mafias and the interdependence of the markets in which they operate make action targeted at a single type of trafficking ineffective. Legalizing certain drugs would not solve the problem either (contrary to the provocative title of Emmanuelle Auriol's book, 2016). Regulating the market does not prevent the development of a black market in the hands of criminal organizations.

- Thinking of criminal organizations solely in terms of profit is reductive

Reducing criminal organizations to entrepreneurial forms driven by profit maximization (as the economics of crime does in the manner of Becker and Schelling) does not allow us to understand the economic irrationality of certain activities such as racketeering when it is systematic and regular (which implies extremely costly logistics for relatively mediocre gains), or the distribution of food rations during a health crisis. It is imperative to take into account the power dimension of the most important criminal organizations: corruption involves money (payment of bribes), but also control of territory, as illustrated by what the Italians call the "exchange vote." Italian mafiosi, but also Yakuza, are in a position to give voting instructions in their territories and therefore to offer these "vote packages" to the politician who, once elected, will return the favor in the form of public contracts, transformation of urban plans, access to places in day-care centers or retirement homes, etc. Unfortunately, this dimension is not taken into account by the definition of organized crime elaborated in 2000 at the United Nations Conference in Palermo. Yet this definition permeates the public policy of the signatory countries.

- A French example of underestimation of the mafia danger

In concrete terms, the tendency to analyze crime through the prism of drugs alone may explain the discrepancy between DIA reports warning of the risk of mafia infiltration in France and the French response, minimizing this risk by considering France to be only a transit country. However, this simplistic vision can only lead to fears that the mafia system is not taken into account: during an

anti-drug operation carried out in Menton against the Calabrian Pellegrino clan, it appeared that one of the accused owned an earthmoving company. No patrimonial investigation was carried out. However, the Italian experience shows that the construction industry is a privileged target for infiltration into the legal productive economy because it allows the mobilization of manpower (territorial control) and is a gateway to the public sphere (through the obtaining of public contracts).

Bibliography

Auriol, Emmanuelle. 1996. *Pour en finir avec les mafias. Sex, drugs and illegal immigrants: what if we legalized?* Paris: Armand Colin.

Becker, G. 1968. Crime and Punishment: An Economic Approach, *Journal of Political Economy*, 76(2), 169–217.

Catanzaro, Raimondo. 1988. *Il delitto come impresa. Storia sociale della mafia*. Padova: Liviana.

Champeyrache, Clotilde. 2022. *Geopolitics of the mafias*. Paris: Le Cavalier bleu.

Collective. 1992. *Magistrati in Sicilia. Interventi pubblici di Giovanni Falcone e Paolo Borsellino a Palermo*. Palermo-Sao Paulo: Ila Palma.

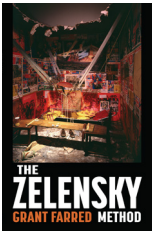
Gambetta, Diego. 1993. *The Sicilian Mafia: The Business of Private Protection*, Cambridge: Harvard University Press.

Lupo, Salvatore. 1993. *Storia della mafia dalle origini ai giorni nostri*. Rome: Donzelli.

Schelling, Thomas C. 1967. Economics and Criminal Enterprise. *The Public Interest*. 7, 61–78.

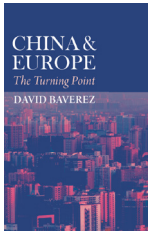


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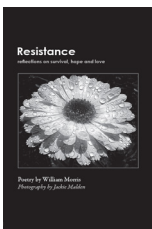
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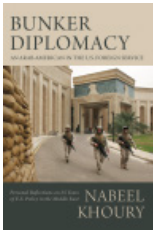
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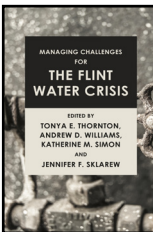
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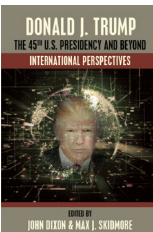
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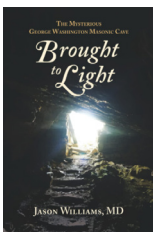
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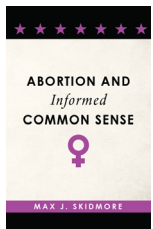
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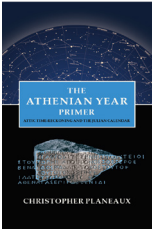
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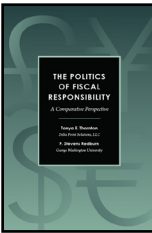
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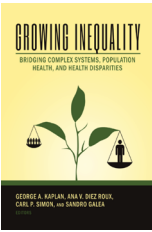
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The ability to translate ancient Athenian calendar references into precise Julian-Gregorian dates will not only assist Ancient Historians and Classicists to date numerous historical events with much greater accuracy but also aid epigraphists in the restorations of numerous Attic inscriptions.



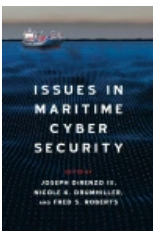
The Politics of Fiscal Responsibility: A Comparative Perspective by Tonya E. Thornton and F. Stevens Redburn

Fiscal policy challenges following the Great Recession forced members of the Organisation for Economic Co-operation and Development (OECD) to implement a set of economic policies to manage public debt.



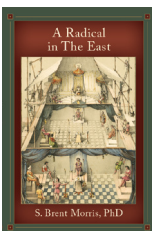
Growing Inequality: Bridging Complex Systems, Population Health, and Health Disparities Editors: George A. Kaplan, Ana V. Diez Roux, Carl P. Simon, and Sandro Galea

Why is America's health poorer than the health of other wealthy countries and why health inequities persist despite our efforts? In this book, researchers report on groundbreaking insights to simulate how these determinants come together to produce levels of population health and disparities and test new solutions.



Issues in Maritime Cyber Security Edited by Dr. Joe DiRenzo III, Dr. Nicole K. Drumhiller, and Dr. Fred S. Roberts

The complexity of making MTS safe from cyber attack is daunting and the need for all stakeholders in both government (at all levels) and private industry to be involved in cyber security is more significant than ever as the use of the MTS continues to grow.



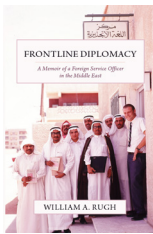
A Radical In The East by S. Brent Morris, PhD

The papers presented here represent over twenty-five years of publications by S. Brent Morris. They explore his many questions about Freemasonry, usually dealing with origins of the Craft. A complex organization with a lengthy pedigree like Freemasonry has many basic foundational questions waiting to be answered, and that's what this book does: answers questions.



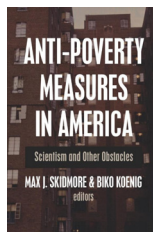
Contests of Initiative: Countering China's Gray Zone Strategy in the East and South China Seas by Dr. Raymond Kuo

China is engaged in a widespread assertion of sovereignty in the South and East China Seas. It employs a “gray zone” strategy: using coercive but sub-conventional military power to drive off challengers and prevent escalation, while simultaneously seizing territory and asserting maritime control.



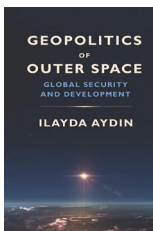
Frontline Diplomacy: A Memoir of a Foreign Service Officer in the Middle East by William A. Rugh

In short vignettes, this book describes how American diplomats working in the Middle East dealt with a variety of challenges over the last decades of the 20th century. Each of the vignettes concludes with an insight about diplomatic practice derived from the experience.



Anti-Poverty Measures in America: Scientism and Other Obstacles Editors, Max J. Skidmore and Biko Koenig

Anti-Poverty Measures in America brings together a remarkable collection of essays dealing with the inhibiting effects of scientism, an over-dependence on scientific methodology that is prevalent in the social sciences, and other obstacles to anti-poverty legislation.



Geopolitics of Outer Space: Global Security and Development by Ilayda Aydin

A desire for increased security and rapid development is driving nation-states to engage in an intensifying competition for the unique assets of space. This book analyses the Chinese-American space discourse from the lenses of international relations theory, history and political psychology to explore these questions.



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