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Fraudster *Bernard Madoff* and the Accountant *Harry Markopolos* who blew the whistle on the gigantic \$65,000,000,000 Ponzi fraud years before 2008, but it fell on the deaf ears of the U.S. Securities Exchange Commission

By



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<http://www.criminal-lawyer.org.uk/>

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Laws and case law

Mental Health Act 1983 (UK) section 136

Public Law 109-171 (Deficit Reduction Act of 2005)

The Federal Civil False Claims Act, Section 1902(a)(68) of the Social Security Act

The Federal Civil False Claims Act, Section 3279 through 3733 of title 31 of the United States Code.

The Michigan Medicaid False Claims Act, Public Act 72 of 1977

Abstract

Mr. Harry Markopolos, a financial derivatives specialist, and some colleagues, realised that the Bernard Madoff Investment company must be falsifying performance data on their investment fund. The truth was then revealed about one man's psychopathic roam in the investment industry in the United States and Europe including the United Kingdom and Russia. Against all odds and the formidable obstruction of the Securities Exchange Commission, Markopolos desperately tried to expose Bernard Madoff's 'Ponzi Scheme'. From late 1999 to Madoff's confession in 2008, Markopolos made 5 written submissions to the SEC as well as many calls and meetings with SEC officials. The New York SEC staff comprised of lawyers and recent graduates who all lacked the training and/or experience to

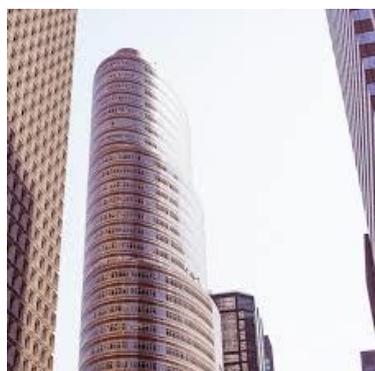
investigate financial crime. Markopolos did have the necessary skills, along with a few institutional investors who completed their own due diligence. The SEC refused to act earlier in the face of the overwhelming and compelling evidence because they were incompetent to the systemic ignorance of the workings of the industry they were supposed to be regulating. Had the SEC heeded Mr Markopolos's first documented complaint to them in 1999, they could have stopped Madoff's so-called Hedge Fund at that time and it would have saved others from losing \$44 billion from 2000 until Madoff handed himself to the police on December 10, 2008. Regarding the hedge funds Markopolos looked at, these fed billions of dollars of investors money into the Madoff Ponzi Scheme over many years with no 'due diligence' carried out and were wilfully blind and/or corrupt, in view of millions of dollars in fees they thus earned.

The whistleblower, Mr. Harry Markopolos

Harry M. Markopolos, now age 64, is an American former Securities Industry Executive and a forensic accounting and Licensed Financial Fraud Investigator. From 1999 to 2008, Harry Markopolos uncovered evidence that suggested that Bernie Madoff's Wealth Management Business in New York, United States, was an enormous Ponzi scheme.

In 2000, 2001, and 2005, and twice more, Mr. Harry Markopolos alerted the U.S. Securities and Exchange Commission (SEC) of his views, supplying supporting documents, but each time the SEC ignored him and in effect, gave his evidence only a cursory investigation before dismissing it.

Bernard Madoff was revealed as a fraudster in December 2008, when his sons contacted the Federal Bureau of Investigation (FBI), having heard their father's confession to them- that he had not invested a single penny of the billions of dollars that clients had entrusted to him but he was instead running a Ponzi fraud all these past years.



Lipstick Building, Manhattan. Source: Google.

It was all a fake. He had rented three whole floors of the multi-million dollar Lipstick Building with computers lit up and whirring away all day- it was a massive fake. They were doing nothing of consequence. Screens were showing lots of numbers etc, but Bernard Madoff never bought a single stock. The Annual Accounts including the Balance Sheet¹, which he submitted to the IRS, were absolute fake numbers, signed off by a minor accountant.

Personal life of whistleblower Mr. Harry Markopolos

Mr. Harry Markopolos is the eldest of three offspring of Georgia and Louis Markopolos, Greek-American restaurateurs. His father and two uncles once owned 12 Arthur Treacher's Fish and Chips restaurants in Maryland and Delaware. His younger brother, Louie, once managed the trading office for a New Jersey brokerage company. He has one sister, Melissa. Harry Markopolos and his wife Faith (who works in the financial industry for an investment company conducting due diligence of portfolio managers) have three sons, two of whom are twins.

The 2008 global financial recession- investors asked for a return of their capital

Bernard Madoff was forced to confess this to his sons because his cash situation was so dire that he could no longer “rob Peter to Pay Paul²” since the economic recession had set in on the American economy. After admitting to operating the largest private Ponzi scheme in history, Bernard Madoff was arrested, charged, tried and sentenced at Daniel P. Moynihan U.S. Courthouse, courtroom 24-B, in downtown Manhattan. He pleaded ‘guilty’ to eleven criminal charges, representing an extraordinary array of crimes committed over many years. Bernard Madoff’s prison sentence amounted to 150 years in jail.³ This meant that the judge intended Bernard Madoff to live the rest of his life in jail until he died. It was a ‘life without

¹ The balance sheet is a document presenting in summary form a true and fair view of a company’s financial position at a particular time, such as at the end of its financial year. It must show the items listed in either of two formats, its purpose is to disclose the amount that would be available for the benefit of members if the company were immediately wound up, and liabilities were discharged out of the proceeds of selling its assets.

² Nothing defines a culture as distinctly as its language, and the element of language that best encapsulates a society’s values and beliefs is its proverbs. The proverb “Rob Peter to pay Paul” is an old English idiom. The expression refers to years before the Reformation when Church taxes had to be paid to St. Paul’s church in London and to St. Peter’s church in Rome; originally it referred to neglecting the Peter tax in order to have money to pay the Paul tax. The *Peter tax* referred to the tax that people had to pay to fund the building of St. Peter’s Church, while the *Paul tax* referred to the tax that the people had to pay to fund the building of St. Paul’s Cathedral. In this sense the word ‘rob’, conveys that if a person does not pay a tax, he robbing another person (the Pope in this case) of what that person rightfully deserves. Thus, the saying means, not paying the *Peter tax* in order to pay the *Paul tax*.

parole' jail sentence. When he was first charged, he was allowed to return to his penthouse apartment for three months until a trial date was set. ⁴What he concocted in those three months is anyone's guess and his recent request to terminate his jail sentence after 10 years because "he is dying" may even be an excuse to be free to release some hidden monies to his family.

Uncovering Bernard Madoff's decades-long Ponzi fraud

In 2010, Markopolos' book on uncovering the Madoff fraud, *No One Would Listen: A True Financial Thriller*, was published. In it, Markopolos criticized the SEC for failing to discover the Madoff fraud despite repeated tips, and for failing to investigate properly the larger companies it supervised. Mr. Harry Markopolos described the private moments he had with victims of the Madoff fraud as: "*Heartfelt, gut-wrenching things- e.g. of people trying to commit suicide*⁵ *or losing loved ones who've died of heartbreak.*"⁶ Markopolos was a trained and qualified accountant.



Mr. Harry Markopolos, certified fraud accountant and analyst

Curriculum vitae of Mr Harry Markopolos

Mr. Harry Markopolos graduated from Cathedral Preparatory School in Erie, Pennsylvania, in 1974. He graduated in Business Administration from Loyola College in Maryland in 1981, and passed a Master of Science higher degree in Finance from Boston College in 1997. Harry Markopolos is a CFA charterholder, and a Certified Fraud Examiner (CFE). He began his

⁴ This almost criminal act by the police enabled Bernard Madoff to return home, to collaborate with his family, to destroy documents; to hide jewellery. Madoff or his wife or brother or niece or sons could not them make available documents that were in their possession, power or custody either for inspection by police or for use as evidence at any future trials in accordance with a notice to produce.

⁵ The act of killing oneself intentionally.

career on Wall Street in 1987 as a broker with *Makefield Securities*, a small Erie-based brokerage. During 1988, he obtained a job with *Darien Capital Management* in Darien, Connecticut, as an assistant portfolio manager. From 1991 to 2004, he served as a portfolio manager at Boston-based options trading company *Rampart Investment Management*, later becoming Rampart's chief investment officer.

Today, Mr. Harry Markopolos works as a forensic accounting analyst for attorneys who sue companies under the United States Federal False Claims Act and other laws, emphasizing tips that result in continuing investigations into medical billing,⁶ Internal Revenue Service, and United States Department of Defence frauds, in which a "whistleblower" would be compensated

During 1999, Markopolos learned that one of Rampart's frequent trading partners, Access International Advisors, was dealing with a hedge fund manager who consistently delivered net returns of 1% to 2% every month. Mr. Frank Casey, one of Rampart's principals, met with Access CEO Monsieur René-Thierry Magon de La Villehuchet, and learnt that the manager was Bernard Madoff, who was operating a wealth management business in which his clients gave him *carte blanche* to invest the money as he saw fit, in a set of securities. Mr. Frank Casey and Rampart's managing partner, Mr. Dave Fraley, asked Mr. Markopolos if he could design a product similar to Madoff's alleged *split-strike conversion*, in order to gain more clients.

Mr. Markopolos obtained a copy of Bernard Madoff's revenue stream, and he spotted problems. The alarm bells tolled in his own head when he saw the pattern of the return stream rising steadily with only a few downticks, represented graphically by a nearly perfect 45-degree angle. According to Mr. Markopolos, anyone who understood the underlying mathematical models of the markets would have known that such a return stream just does not exist in finance, since the markets were too volatile even in the most favourable conditions for this to be possible.

Based on this and other factors, Mr. Markopolos concluded that Bernard Madoff could not mathematically deliver his purported returns using the strategies he claimed to use. In his opinion, there were only two ways to explain the figures—that Bernard Madoff was either

⁶ The False Claim Act is a federal law that makes it a crime for any person or organization to knowingly make a false record or file a false claim regarding any federal health care program, which includes any plan or program that provides health benefits, whether directly, through insurance or otherwise, which is funded directly, in whole or in part, by the United States Government or any state healthcare system.

running a Ponzi scheme⁷ or front running (buying stock for his own and the hedge fund's accounts, based on insider knowledge about market impacts from about-to-be-executed client orders at his company's unrelated broker-dealer business). Mr. Markopolos later said that he knew within five minutes that Bernard Madoff's numbers did not add up. He claimed it took him another four hours to cover enough evidence that he could mathematically prove that they could have been obtained only by fraud.

Mr. Markopolos' senior colleagues at Rampart asked Markopolos to deconstruct Madoff's strategy to see if he could replicate it. He could not simulate Madoff's returns, using information he had gathered about Madoff's trades in stocks and options. For instance, he discovered that for Madoff's strategy to work, he would have had to buy more options on the Chicago Board Options Exchange than actually existed.

His calculations of Madoff's trades revealed that there was almost no correlation between Madoff's stocks and the S&P 100, as Madoff claimed. Markopolos also could find no evidence that the market was responding to any Madoff trades, even though by his estimate Madoff was managing as much as \$6 billion, three times more than any known hedge fund at the time. Given that, Bernard Madoff's supposed trades should have had a substantial ripple effect on broader markets, Markopolos suspected that Madoff was not even trading.

Probing the Bernard Madoff financial investment operation

With the help of two of his colleagues at Rampart, Casey and fellow analyst Mr. Neil Chelo, Mr. Markopolos continued to probe the Madoff operation. What they found concerned him enough that he filed a formal complaint with the Boston office of the SEC during the spring of 2000. However, the SEC took no action. Nonetheless, others in the investing world took Markopolos' findings seriously. In 2000, Joel Tillinghast of Fidelity Investments dropped his plans to study Madoff's strategies after a meeting with Markopolos. Tillinghast wrote years later that his discussion with Markopolos convinced him that Madoff was almost certainly engaging in fraud; as he put it, "nothing in Madoff's ostensible strategy made sense."

Two published financial papers about Bernard Madoff

Michael Ocrant, editor-in-chief of *MARHedge*, joined the effort to publicize Madoff's questionable actions. Casey surprised Ocrant with information that Madoff, whom Ocrant only knew to be one of the largest market makers on NASDAQ and one of the largest brokers

⁷ By paying established clients with newer clients' money.

on the New York Stock Exchange, actually ran a secretive multi-billion dollar hedge fund, directly managing investors' money. Mr. Ocrant investigated and wrote an article in the MARHedge publication, titled:

"*Madoff tops charts; sceptics ask how*". This article was published on May 1, 2001, questioning Madoff's returns.



MARHedge series. Source:: Google.

Within a week, another financial journalist Ms. Erin Arvedlund published an investigative article on Bernard Madoff in the publication *Barron's*, questioning Madoff's secrecy and results.



Barron's. Source:: Google.

Despite the details in these two scathing articles, the SEC took no action, and these articles did not appear to scare off Bernard Madoff's existing investors.

Mr. Markopolos then sent a more detailed submission to the SEC one year later. By this time, Mr. Markopolos was convinced that Madoff was not trading at all. He believed that Bernard Madoff's trading tickets would not match the OPRA tape, if investigated, and this would

have been solid proof that Bernard Madoff was a fraudster who was running a gigantic Ponzi fraud. This third submission about an analyst's findings also passed without action from the SEC. Mr. Markopolos said that he had always suspected that Bernard Madoff was most running a Ponzi scheme, due to his voracious need for more and more investors' cash in the United States, Europe including Russia, and the United Kingdom. A Ponzi scheme can last only as long as new money is flowing in to pay existing investors. For it to have lasted for decades meant that Bernard Madoff needed to have cash of many billions of dollars.

Not a front-running fraud

Markopolos' colleagues, Casey and Chelo, were inclined to think that Bernard Madoff was "front-running". Casey and Chelo believed in the hearsay assumption that Bernard Madoff was already a very wealthy man, and therefore they did not understand why Bernard Madoff wanted billions of dollars more of investment cash, which he did not need, presuming that he was indeed investing for his clients and handing over to them true profits from such investments. Therefore, Mr. Casey and Mr. Chelo suspected that it was more feasible that Bernard Madoff was actually illegally "front-running". Mr. Markopolos, however, doubted this, since front-runners do not need the massive amount of new investor money that Madoff kept accumulating in his bank deposit account. Additionally, Mr. Markopolos believed that if Bernard Madoff was performing illegal front running securities offences, he would have to siphon off money from his broker-dealer part of his alleged business to pay the investors in his hedge fund and this would mean he was short-changing the customers of his broker-dealer operation and the more sophisticated broker-dealer customers would have noticed, then challenged Bernard Madoff.

Mr. Markopolos visits Europe

Soon after Markopolos' second submission of concerns, proofs, and red flags to the SEC, Mr. Markopolos travelled to Europe with Monsieur Magon de La Villehuchet to help to gather interested investors for the real and legitimate analysts alternative product to Madoff's which he had developed for his employers Rampart.

Madoff's Ponzi scenario

Whilst in Europe, Mr. Markopolos conducted some more research and discovered that there were 14 different funds, at various investment firms, which were invested with Bernard

Madoff's scheme. Each fund manager believed that his fund was the only one from which Madoff was taking new money, and this was a classic Ponzi move of the "robbing Peter to pay Paul" scenario. When Markopolos heard this, he was convinced that Madoff's wealth-management business was a Ponzi scheme.

Markopolos persevered, even though he felt that it created a considerable risk to his own safety. He learned during his European visit that a large number of funds invested with Madoff operated offshore. To his mind, this was evidence that the Russian mafia and Latin-American drug cartels were invested with Madoff, and might want to silence anyone who threatened the viability of the hedge funds.

Markopolos leaves a Madoff fraud file with New York's Attorney-General

On December 17, 2002, Markopolos came up with a plan to deliver an investigative file anonymously to an aide of then-Attorney General of New York Eliot Spitzer as Spitzer delivered a speech at the John F. Kennedy Library in Boston. He put on a pair of white gloves to prevent leaving fingerprints, and wore an oversize coat. Even after leaving his employment at Rampart in 2004, frustrated that he was in a business that had to compete with cheats and lawbreakers, Mr. Markopolos continued to be driven by the intellectual challenge of solving the problem, and the ongoing encouragement from Boston SEC staffer Mr. Ed Manion.

A 21-page analysis of Bernard Markoff's frauds sent to SEC

The culmination of Markopolos' analysis was a 21-page memo sent during November 2005 to SEC regulators, entitled "*The World's Largest Hedge Fund is a Fraud*".

Harry Markopolos outlined Bernard Madoff's grand fraud and he wrote of his suspicions in more detail and invited officials to check his theories. He outlined 30 red flags that he believed proved Madoff's returns could not be legitimate. His analysis was based on more than 14 years of Madoff return numbers, during which time Madoff reported only four losing months, an implausible scenario that Markopolos said could be achieved only by fraud. In the complaint document, Markopolos states that:

*Bernard Madoff is running the world's largest unregistered hedge fund.

*Madoff has organized this business as "hedge fund of funds" privately labelling their own hedge funds, which Bernie Madoff secretly runs for them using a *split-strike conversion strategy*, getting paid only trading commissions, which are not disclosed in his tax returns.

Although Madoff's Ponzi scheme did not collapse until 2008, Markopolos believed that Bernard Madoff was on the brink of insolvency as early as the summer of 2005, when Markopolos's colleague Mr. Casey had found that at least two banks were no longer lending money to their clients to invest with Bernard Madoff. This prompted Bernard Madoff to seek loans from banks.⁸ In June 2008, six months before Bernard Madoff's Ponzi scheme imploded, Mr. Markopolos' team uncovered evidence that Mr. Madoff was accepting leveraged money for investment. In his recently published book⁹, Markopolos wrote that this was a sign that Bernard Madoff was running out of cash and needed to increase his intake of new funds to keep the scheme going. Then in December 2008, Bernard Madoff allegedly "confessed" to his sons, who sought legal advice and then reported their father to the Federal Bureau of Investigations¹⁰ (FBI), and the following day, Bernard Madoff was arrested and taken to the police station.

Speaker at Boston College Conference in June 2009

On June 3, 2009, Mr. Markopolos was invited to address a conference at Boston College, his alma mater, that he believed Madoff personally kept less than 1 percent of the \$65 billion reported stolen, Markopolos believed that Madoff's customers lost \$10 billion to \$35 billion, most of which went to early investors.

"Madoff will wind up in a special prison designed as much to keep the crook's victims out as Madoff in. He's a guy who can't afford not to be in prison," he said.

Bernard Madoff's casualties

Monsieur Thierry Magon de La Villehuchet committed suicide soon after Madoff's scheme collapsed, having lost \$1.5 billion. Both of Bernard Madoff's sons were to die an early death, as did several investors who committed suicide, overwhelmed at their loss of total finances because they invested all their money in the one business Bernard Madoff ran for so many years, living a lie and stealing these people's money to lived an undeserved life of wealth, privilege and abundance.

⁸ Who are these banks and did they allow Bernard Madoff bank loans? Did they come forward to state their losses?

⁹ Markopolos, H. Brick, S. et al, (2020) *No one would listen: A true financial thriller*, U.S.: Gildan Media.

¹⁰ The FBI's progenitor Agency, the Bureau of Investigation, was created in 1908 and evolved into the FBI in 1924. The FBI is charged with the enforcement of virtually all U.S. federal laws that are not the exclusive jurisdiction of other federal police and law enforcement agencies. Beyond criminal law enforcement, the bureau is responsible for internal intelligence conducted within the United States, espionage investigations, and the monitoring of other subversive activities. It also operates the National Academy, an advanced training centre for state and local police administrators, the FBI Crime Laboratory and the National Crime Information Centre.

Markopolos' Congressional testimony

On February 4, 2009, Markopolos testified before the United States Congress' House Financial Services Committee's capital markets panel and on March 1, appeared on CBS's 60 Minutes. Mr. Harry Markopolos harshly criticized the SEC for ignoring his warnings about Madoff. He had prepared a 65-page testimony. He said:

"Nothing was done. There was an abject failure by the regulatory agencies we entrust as our watchdog,"

He said that his original complaint to the SEC in year 2000 gave the SEC enough evidence to stop Madoff when he was supposedly managing as little as \$3 billion.

Markopolos described Bernard Madoff as *"one of the most powerful men on Wall Street,"* and so there was "great danger" in investigating Bernard Madoff. He said:

"My team and I surmised that if Mr. Madoff gained knowledge of our activities, he may feel threatened enough to seek to stifle us."

Mr. Harry Markopolos testified in the United States Congress that he feared for his, as well as his family's safety, until after Madoff's arrest, when the SEC finally acknowledged that it had received "credible evidence" of Madoff's Ponzi scheme years before. He said that Madoff's "mathematics never made sense," and that Bernard Madoff's "return stream never resembled any known financial instrument or strategy," and that Bernard Madoff was not making the volumes of trades he claimed. Markopolos told Congress that the best warning about Bernard Madoff's fraud came during his initial analysis of 87 months (a little more than seven years) of Madoff trades. During that time, Madoff reported only three losing months.

By comparison, the Standard & Poor's 500 Index reported 28 losing months during the same period. He likened Bernard Madoff's purported returns to a baseball player batting 966 for the season and "no one suspecting a cheat". Markopolos had concealed his identity from SEC regulators during his year 1999 report to the SEC about Madoff Securities Inc., although he did meet face-to-face with SEC officials in Boston, Mass, during years 2000 and 2001.

Because the SEC did not respond, Markopolos was fearful of taking his complaints to the industry's self-regulatory authority, the National Association of Securities Dealers (now the Financial Industry Regulatory Authority (FINRA)).

Mr Harry Markopolos feared the power that Bernard Madoff's brother, Peter Madoff had in that organization (he was a former Vice Chairman). He wondered whether Bernard Madoff

might have had associations with Russian and South American criminals who invested their spoils with Madoff Securities.

Markopolos testified that he had he sent a package of documents concerning Madoff Securities to former New York Attorney General Eliot Spitzer, who had successfully prosecuted a number of securities fraud cases, but that Spitzer did not act either. Mr. Harry Markopolos said to the U.S. Congress:

"It is time the nation woke up and realized that it's not the armed robbers or drug dealers who cause the most economic harm. The white-collar criminals living in the most expensive homes who have the most impressive resumes harm us the most. They steal our pensions, bankrupt our companies, and destroy thousands of jobs, and so ruin countless lives."

Markopolos' testimony included a reference to another \$1 billion Ponzi scheme, which he shared the next day with SEC Inspector General H. David Kotz, who gave the tips to SEC Chairman Mary Schapiro. He disclosed information regarding a dozen as-yet-unknown foreign Madoff feeder funds in Europe, the victims of which may have included "Russian mafia" and "drug cartels" investors. Mr. Markopolos stated that European royal families had also lost assets invested with Bernard Madoff. Then there was Williams Report, which questioned SEC's work on the Madoff investigation.

Markopolos noted that during his own employment at Rampart, he traded with some of the biggest derivatives companies in the world, and none of them had dealt with Madoff, because they did not think his numbers were real. He felt compelled to pursue what he believed did psychopath¹¹ Bernard Madoff perpetrate a massive fraud.

In his speech at the United States Congress, Mr. Markopolos assailed the SEC for ignoring his warnings, saying that the only reason Madoff confessed to his two sons was because he had no money left to "rob Peter to pay Paul". Madoff's family worked for him—they were educated and they must all have known of this gigantic fraud.

¹¹ A person who is not psychotic but who has a severe personality disorder. The psychopath is deficient in the capacity to feel guilt, shame or remorse; and many engage in criminal behaviour. See Rush, G.E. and Torres, S. (1998) *The encyclopaedic dictionary of criminology*, Nevada: Copperhouse Publishing Company.

Markopolos expanded on his criticism of the SEC in his published book *No One Would Listen*. He claimed that SEC regulators do not have nearly enough expertise to understand the various products offered in the modern market.

Incompetent Securities Exchange Commission

Mr. Harry Markopolos said that the SEC was still ‘panning by hand’. He believed that the SEC's enforcement staff did not take his complaints seriously, because they were expecting legal proof that Madoff was a fraud, not the mathematical evidence he provided. To his mind, the investigators did not understand that mathematical proof was stronger evidence than legal proof, because "with a math problem, there is only one correct answer." Then they were attorneys, with one undergraduate degree.

Bernard Madoff's niece was married to SEC employee Eric Swanson

The SEC's then chairperson Christopher Cox stated that an investigation will delve into ‘all staff contact and relationships with the Madoff family and firm, and their impact, if any, on decisions by staff regarding Madoff Securities and Investment. A now-former SEC compliance officer, Eric Swanson, married Madoff's niece Shana Madoff, a Madoff company compliance attorney.

Conclusion

Bernard Madoff duped the Securities and Exchange Commission which regulates the American financial industry.

Bernard Madoff did not shirk away from the trappings of his unjust enrichment. He and his wife Ruth Madoff owned a penthouse duplex apartment in Upper East Side, Manhattan, worth \$7 million; a holiday home in Palm Beach, Florida, United States, worth \$11 million; A second holiday home in Long Island, New York, worth \$7 million; a third holiday home in the South of France, worth \$1 million; four boats, namely, a 27-metre Leopard Yacht, which he named ‘BULL’, worth \$7 million, and moored in France, a second boat at Palm Beach, also named BULL, which was worth \$2.2 million; a third boat in Montauk, worth £300,000; and a fourth boat. The furniture and assets in his many homes were worth \$8 million and included a Steinway piano valued at \$139,000 and \$65,000 of silverware in his Manhattan luxury penthouse apartment.

Bernard Madoff kept \$17 million in CASH and \$45 million of securities, most of these assets Madoff bought with the proceeds of his long-firm fraud.

In June 2009, United States government agencies seized almost all of Bernard Madoff known assets and decided to give \$2.5 million to Ruth Madoff to continue, in a fashion, to live out a charmed life. This was extremely generous and some would say rather unethical, because she is an educated woman, and must have known he was a fraudster. People who lost their life savings did not receive such generosity. Families with young children whose mortgages were foreclosed and were left homeless, thousands having to sleep in the park with young children, were not so indulged. Some would argue that Ruth Madoff should be prosecuted also because she was implicated and even conspired with Bernard Madoff.

The SEC, in the pockets of Madoff, had one of their SEC colleagues married to Peter Madoff's daughter, a non-experiences undergraduate degree held in law, no experience whatsoever, and walked straight into a \$65 billion investment alleged business-as its 'Chief Compliance Officer' to this criminal mafia outfit. One might venture to add that Madoff's brother, niece, two sons, wife and computer technicians and other 'employees' and Russian lawyer for 35 years, were all complicit in this 'happy' fraud, which SEC called an 'Affinity fraud', non-defined in any US government legislation or university law textbook.

Bernard Madoff's bank was fined \$2.5 Billion for non-compliance of money laundering regulations, etc. Madoff's computer consultants were charged, tried and convicted of conspiracy to defraud and given ten years jail sentences. Authorities later discovered that Ruth Madoff had hidden half a million dollars for her grandchildren and this was then seized from her. Bernard Madoff is a very dangerous man and should never be released until he is dead. A life sentence must mean a life sentence. Were he to be released he would perhaps fly off in his jointly owned jetplane.

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Bernard Madoff had bought four boats, one jet plane, one penthouse Manhattan apartment and three holiday homes and he used \$69,000 of silverware at home.

Relationships between the Arab occupation and the concept of the "mafia"- with special reference to the Arab clans operating in Germany

By Dr. István Kovacs



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Abstract

This study examines and analyses the 9th century 'mafia' and organised crime concept in order to compare the findings with present day Arab clans allegedly operating in Germany from a law-enforcement viewpoint. The techniques in this study use criminal law, criminology, and in particular, reference to the quantitative performance of mathematical relative frequency calculations.

This study's conclusion is that over the centuries, the same organised crime concept prevails, its value and volume in centuries past equally present day *organised crime*. This author's scientific study of the aspects of organised crime concludes with the definite fact that *collusion or conspiracy* was the main factor of success, as intuitively, the gut reaction of most criminal lawyers and draftsmen well know.

The methodology used in this study opens a richer range of crime control techniques than the

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usual law enforcement response of detection and conviction-for example, disrupting the offending; and identifying the facilitating measures, which, once identified, can be used to block, reduce or remove the opportunities which enable such organised offending to take place. Some other factors that can be examined by using this author's technique includes using the same *modus operandi*; locations; using certain businesses to provide skills, resources, and even up-front financial loans by which they become investors in ongoing criminal activities. This methodology may possibly be used for analysis of many types of crimes if there is very careful and rigorous deconstruction of the complexity of each type of organised crime, with the deciding factor for many police jurisdictions being the cost of this type of analysis. This type of analysis can allow police jurisdictions to decide whether and how any suspected organised crime in their jurisdiction compares with other crimes. This methodology appears especially useful to arrest the rate of those organised crimes that have succeeded over long periods of time due to more data being available, such as for arms trafficking, people trafficking, slavery input at harvest time, drug trafficking, drug smuggling, and the most lucrative of crimes today-income from child pornography: its origin, banking method, bit-coin use, and destination, etc.¹³

This methodology when carefully used with assistance and consultation by most experienced police in the jurisdiction can save money and time and be more precise and narrowing in its objective, where careful thought with experienced and professional police personnel can decide exactly what their objective is, whether it be how tax evasion is facilitated through their jurisdiction or key areas of activity or classification of suspects in order to comply with AML regulations and finally, especially importantly, the quality and veracity of input information, because, as we know from using computers: garbage in equals garbage out.¹⁴

Keywords

Arab clans, Chinese triads, Germany, Hungary, Japanese Yakuts, mafia, Russian, organised crime, statistics, trafficking crimes, smuggling crimes, Ukrainian, United Kingdom, United States, worldwide.

¹³ Many types of organised crime involves international smuggling activities-such as drug trafficking, smuggling illegal immigrants, and other transnational illegal activities. Human smuggling is a criminal activity characterised by close cooperation between illegal migrants, their families and smugglers. Organised crime utilises export, import and transit. See Bullock, K., Clarke, R.V., and Tilley, N. (2010) *Situational prevention of organised crime*, UK: Willan Publishing, pp.17-34.

¹⁴ It is known that in jurisdictions such as the UK, eg, a display of wealth is one way that authorities use to investigate for money laundering, or trafficking or other crimes. However, not all criminals display the wealth accumulated and the UK Proceeds of Crime Act 2002 may be dragnetting but a fraction of proceeds of organised crime.

Laws

Universal Declaration of Human Rights 1948.

Money Laundering Regulations 2017.

Introduction

Organised crime is and has been an uncontrollable, threatening fact in the life of many communities in many countries worldwide¹⁵ and countering organised crime is one of the major challenges of the twenty-first century and opportunity must be the major driver for crime. It must be remembered, however, that an act can only be defined legally as a crime-if the act is legally prohibited at the time it is committed; if the perpetrator has criminal intent or mens rea¹⁶; if the perpetrator acts voluntarily-actus reus; and if there is a legally prescribed punishment for committal of the act in the jurisdiction where the act takes place.¹⁷ The nature, dynamism, and variety of crimes committed today appear limitless as criminals' ingenuity continually adapts itself in order to continue their criminality (including trafficking in women and children for sexual purposes) and smuggling of people, arms, drugs, and so on; money-laundering and other financial crimes, these being the most prevalent and lucrative criminal offences.¹⁸

No area of the world is immune to these dangers, as there will be everywhere and there is always a demand for illegal, forbidden goods and services in the amoral net of illegal money, greed, and lust. This supply and demand chain brings wealth both to the supplier and the consumer. This demand is especially true for the trafficking of arms, drug, and sex workers.¹⁹ These crimes are often correlated to "supportive activities" such as violence and corruption, the systematic use of which facilitates criminal activity.²⁰ The greater the physical, mental

¹⁵ Chamberlin, Henry, 'Some observations concerning organised crime,' *Journal of Criminal Law and Criminology*, 1931, Vol. 22. No. 5. p.: 652-670.

See also Mawby, R.I. (1999) *Policing across the world: Issues for the Twenty-first Century*, London: Routledge Publishers.

¹⁶ The Latin term for a guilty mind. As a rule, there must be a mind at fault before there can be a crime, but this is not an inflexible rule, and a statute may relate to such a subject matter and may be so framed as to make an act criminal whether there has been an intention to break the rule or otherwise do wrong or not. John Burke, (1977) *Jowitt's Dictionary of English Law*, 2nd Edn. London: Sweet & Maxwell.

¹⁷ Michael, J. and Adler, M. (1933) *Crime, Law and Social Science*, New York: Harcourt Brace Jovanovich Publishers.

¹⁸ Albanese, J.S. (2008) 'Risk assessment in organised crime: developing a market and product-based model to determine threat levels', *Journal of Contemporary Criminal Justice*, No.24, pp.274-95.

¹⁹ Finckenauer James and Voronin Yuri (2001) *The Threat of Russian Organized Crime*, Rockville: National Institute of Justice, Issues in International Crime.

²⁰ Hauck, Pierre and Peterke Sven, 'Organised Crime and Gang Violence in national and international Law', *International Review of Red Cross*, 2010, Vol. 92. No. 878, pp. 407-436.

and social damage they cause, the more dangerous their activities are to the society.^{21,22} The public order and public security are deteriorating, which weakens the citizens subjective sense of security.

The implementation of human and constitutional rights, the fulfillment of civil liberties, the fulfillment of community needs, the creation of public and private security, sometimes seems distant and utopian, but it is up to the state to produce, facilitate and ensure the delivery of these products under guarantee conditions.^{23,24}

In today's accelerated world there are laws of wolves in which states are forced to give up their full individualistic nature, while partially retaining autonomy to cooperate with each other, all in order that these strategic objectives can be achieved on solid foundations.²⁵ We can live anywhere on Earth, be it the territory of a secular superpower or a small nation-state, thanks to the downside of globalisation²⁶, we face threats that endanger or threaten the lives, physical integrity, and rights of all people on the planet.²⁷

The environmental destruction (climate change, disasters), the population explosion (high polarization among social layers, debt traps between countries, formation of unstable zones, black economy), international nature of crime (international organised crime, terrorism, proliferation of weapons of mass destruction, cybercrime, drug trafficking, corruption, trafficking in human beings for sexual purposes) can be considered sources of danger and threat. The subjective sense of security of citizens is strategically important for the state to determine which source of threat should be prioritized. In this study, the author deals with an international threat that causes billions in damage to the state through such illegal activities, which harm and endanger the lives and physical well-being of its citizens, and puts the authorities under constant stress.

²¹ Gurov, Aleksandr and Krasnaya Mafiya, (1995) *Moscow*, Russia: Samotsvet Publishing House.

²² Voronin Yuri, (1998) *Criminology*, St. Petersburg: Academy of the Ministry of Internal Affairs.

²³ Universal Declaration of Human Rights 1948.

²⁴ Morsink, Johannes, (1999) *The Universal Declaration of Human Rights: Origins, Drafting Intent*, Philadelphia: University of Pennsylvania Press.

²⁵ Domokos, Csaba and Kecskés Attila: *A farkas*. Marosvásárhely: 'Milvus Csoport' Madártani és Természetvédelmi Egyesület, 2006.

²⁶ Although globalisation and its effects is often more associated with international economic power than it is with social issues, its influence in terms of religion can have effects from one country to another, as it did concerning the cartoons in Denmark of the prophet Mohammed, when protests and riots erupted globally, leading to four convictions in London for soliciting murder. *Policing a Diverse Society*, pp 40-41.

²⁷ Maslow, Abraham, (2043-reprinted in 2013) *A Theory of Human Motivation*, U.S.: Martino Fine Books. Maslow's theory concerns human development and motivation. Maslow's work is a cornerstone of much of industrial psychology.

Definition of 'organised crime'

A uniform definition of organised crime is still the subject of widespread social debate among scientists and law enforcement professionals.^{28&29} Smith concluded that a phenomenon based on stereotype could not meet the basic requirements of definition, because a uniform definition would not include important circumstances and would not exclude all such circumstances, which is not relevant for the definition.³⁰ In his view, contemporary authors should not start from their own logical definitions, but it would be more useful to examine the dimensions and interpretations based on different perspectives. The question for him is not how the concept of the phenomenon of organised crime can be defined, but rather how its occurrence is fueled and caused by historical, economic, sociological, psychological, philosophical, and theological processes, forces and tools.³¹

The scourge of Organised Crime

Organised crime is one of the biggest threats of our time and action against it is urgent. The focus of this study was not on proposing a practical solution but on discussing a theoretical hypothesis that is transitive-non-transitive between the Arab clans operating in Germany and the concept of 'mafia'; reflexive-irreflexive; symmetrical-asymmetrical; and aimed to explore its monovalent and multi-valued relations. The dynamism and flexibility of organised crime provides a clear advantage over its policies and organisations for the time being.³² The following logical context in the fight against organised crime can be successful if law enforcement authorities assimilate the same ingenuity, innovation, organisational flexibility and cooperation that characterises criminal organisations early, as Naylor revealed.³³

²⁸ Finckenauer, James and Voronin, Yuri, (2001) *The Threat of Russian Organized Crime*, Rockville: National Institute of Justice, Issues in International Crime.

²⁹ Hauck, Pierre and Peterke, Sven, 'Organized Crime and Gang Violence in national and international Law', *International Review of Red Cross*, 2010, Vol. 92. No. 878, pp 407-436.

³⁰ Smith, Dwight, 'Some Things that may be more important to understand about Organized Crime than Cosa Nostra', *University of Florida Law Review*, 1971, No. 24, pp 1-30.

³¹ Smith, Dwight, (1975) *The Mafia Mystique*, New York: Basic Books.

³² Finckenauer, James, VORONIN Yuri: *The Threat of Russian Organised Crime*. Rockville: National Institute of Justice, Issues in International Crime, 2001.

³³ Naylor, Thomas, 'From cold war to crime war'. In: *Transnational Organised Crime*, 1995, Vol 1. No. 4. p.:37-56.

Theoretical research phase

The theoretical phase of the study's research method required abstract, logical use of force. The dialectical use of analysis and synthesis helped me to break down the subject into thoughts (separating their essential properties, structural elements, and some relationships), and then to map each part based on its structure and functionality in relation to the whole. This was complemented by the methodology of comparison, which assumed a number of judgments on the subject matter of the investigation, which were closely related and the knowledge within the resulting system was separated by the aspect of identity, similarity, difference and non-comparability. Following the theoretical phase, the author chose a quantitative method that analyses and understands the components of different concepts related to organised crime, based on mathematical frequency calculations which then show their relative frequency.

Research methodology

To investigate the sensitivity of the topic and the phenomenon surrounded by strong latency, the author considered it expedient to use several different but still complex research methods, which is hoped will serve as a guideline for developing both the theoretical and practical aspects of the fight against organised crime and can help to generate new scientific results.

Historical foundation research

In this study, the author conducted historical fundamental research, during which was performed primary and secondary source analysis. The 'data collection' activity meant 'archival research related to organised crime, the processing of written, preserved regulations, measures, orders, reports, police records and published studies'. Due to the fact that there is a scarcity of Hungarian literature on the subject, the author includes monographs from English and German and American texts.

Applied research

Later, the basic research was replaced by applied research, which promoted the use of the possibilities of utilising the results learned in the topic, as well as providing guidance on how to resolve problems encountered in practical implementation. In contrast to basic research, applied research with the functional, medium-term strategic goal parallel, enabled quick response to the changes that have occurred- its continuous application satisfying immediate

practical needs and mostly produced results that can be applied in a short period of time. Its key importance lies in the fact that, thanks to the accelerated world, organised crime networks use increasingly advanced technologies to commit crimes every day, against which the police need to use even more advanced human and physical resources to prevent and deter and disrupt crime, thus creating leverage against criminals. The dynamism and flexibility of organised crime provides a clear advantage over its policies and organisations for the time being.³⁴ The following logical context of this research reveals that the fight against organised crime can be successful if law enforcement authorities assimilate to the same ingenuity, innovation, organisational flexibility and cooperation that characterises criminal organisations, as Naylor had revealed.³⁵ The theoretical phase of the study's research method required abstract, logical use of force.

Gains from analysis and synthesis

The dialectical use of analysis and synthesis helped the author to break down the subject into thoughts (separating their essential properties, structural elements, and some relationships), and then to map each part based on its structure and functionality in relation to the whole. This was complemented by the methodology of comparison, which assumed a number of judgments on the subject matter of the investigation, which were closely related and the knowledge within the resulting system was separated by the aspect of identity, similarity, difference and non-comparability.

Hypothesis

This hypothesis assumes that there is a transitive, reflexive, symmetrical and multi-valued relationship between the response to the Sicilian Arab occupation of ninth century, the creation of the 'mafia' and the modern activities of Arab clans; the characteristics of organised crime have been the focus of the historical era since then the identity of crime.

Strategic Goal

³⁴ Finckenaue, J. and Voronin, Y., (2001) *The Threat of Russian Organized Crime*, Rockville: National Institute of Justice, Issues in International Crime.

³⁵ Naylor, Thomas, 'From cold war to crime war' In: *Journal of Transnational Organized Crime*, 1995, Vol 1. No. 4, pp.37-56.

The author's strategic goal is to create a mathematical statistical database that reduces the latency associated with organised crime through frequency coefficients, with the help of relations between concepts, which generates new scientific results.

The concept of Organised Crime

My hypothesis is based on a study published after the millennium, which states that the origin of the word mafia is all the way up to the ninth century, dating back to the Arab occupation of Sicily.³⁶ This is precisely linked to the 'aglabids' of the Arab Emirate dynasty, which for a century up to 800-909 A.D. exercised independent power in the Mediterranean as governors of the 'Abbasid' caliph by controlling maritime trade. Sicily then was famous for its wealth and maritime trade. The troops of 'agliba' landed in Mazara in 827, then in 832 they took Palermo and Messina in 842. This was followed by Sardinia and Malta, with which they ruled the entire western Mediterranean.

'Mafia' or 'refuge'

According to historical research, at this time when the Arabs were occupying Sicily, the Sicilians formed a secret society to unite their troops with the natives there and take action against the Arab oppressors. All of this meant a refuge for them, marked with the word 'mafia' which means 'refuge' in Arabic. The Sicilians had to unite their troops, by establishing the symbol of solidarity, the symbol of family. Those entering the secret society had to swear, among other things, that they would not tell third parties about the operation of the company, accept full obedience to the members of the group, and provide assistance to the members of the company if they are needed. The pledge made by the members was often identified with the Arabic equivalent of silence, the 'omerta'.

Medieval concept of 'mafia'

If we look at the medieval concept of 'mafia' we can see that it includes elements such as togetherness, family institution, confidentiality, i.e. internal conspiracy, use of violence, outlaws, and assistance, i.e. cooperation between members, and the organisation that assumes both a leader and executives.

³⁶ Rich, J.E., "They'll make you an offer you can't refuse: a comparative analysis of international organized crime", *Tulsa Journal of Comparative and International Law*, 2002, Vol. 9. No. 2. pp: 592.

Although the medieval concept of the ‘mafia’, as a resistance movement and a society, is linked to the Sicilian people, another aspect seeks to strengthen the hypothesis by building on it. For hundreds of years, the Arab conquest was part of the European region, including the Sicilian region, which led to the integration of nations. Both cultural characteristics have affected the other and have changed and are still changing.

Think of norms and values: extensity, locality, territoriality; the institutions; or even in itself for the integration of social processes and society itself.³⁷ All this includes collective identities, attitudes and practices, acceptance of norm choice, processes of deciding traceability, as well as social participation, network embedding, and community representation in space. While the Sicilians in the Middle Ages refused to accept this integrity and tried to overcome it by creating a ‘mafia’ in the form of resistance, in the meantime, today’s organised criminal networks - whether Arab clans, Chinese triads, Japanese Yakuts, or Russian and Ukrainian groups, etc. - want to rebel against political and legal integration by committing various crimes, which are implicated in illegality, in order to exercise power over everyone. Following this logic, the integration of Sicilian culture in the Ninth Century provided the basis for laying the pillars of organised criminal networks emerging in the Arab world and among Arab clans, and for embedding these characteristics of cultures.

What could be the theoretical basis for a most appropriate approach to organised crime?³⁸

Its sub-justification lies in the fact that the mapping of latency surrounded by organised crime can be greatly facilitated by the results of research in various disciplines and can help to uncover the attitudes underlying the phenomenon. Law, economics, sociology, or even psychology all have the ability to use the results presented in its own field to learn about and even control a social phenomenon in the service of science. The term of organised crime alone can be used etymologically in two different senses. On the one hand, it can be used for the profit of systematic and illegal activities, and on the other hand to identify the ‘gangster’, ‘mafia’, or ‘mafia-type organisation’ based on the stereotype.³⁹

According to some authors, such as Finckenauer, organised crime, like general crime, is fueled by the presence of ethnic minorities. (A typical example of this research is the Arab

³⁷ Kovách I. (ed): (2017) *Social intrusion*, Institute of Sociology, Research Center for Social Sciences, Hungarian Academy of Sciences, Belvedere Meridionale.

³⁸ Smidt, Dwight, ‘Paragons, Pariahs, and Pirates: A Spectrum-Based Theory of Enterprise’, *Journal of Crime and Delinquency*, 1982., Vol. 26. No.7, pp.358-386.

³⁹ Woodiwiss, Michael, ‘Organized Crime - The Dumbing of Discourse’, *British Society of Criminology*, 2000., Nr. 3. p.:1-10.

clans in Germany who came to the country as migrants.) The same applies to the environment of states with relatively high tolerance for deviance and the romanticization of crime, especially when the government and law enforcement are weak or corrupt (e.g., typically the Sicilian mafia).⁴⁰

The first attempt at the above was made in 1983 by Hagan, who carried out a systematic content analysis of 13 concepts from the period 1969-1981 (mostly from American sources). In his study, he set up a system of theses consisting of hierarchical code groups, which placed the most important elements of the concepts under mathematical and statistical frequency analysis. The results of the study showed which elements occur with the highest number of frequencies in terms of the collected concepts; this allows them to be part of the uniform definition. The result of its review is a convergence of consensus and coherent designation in which, in addition to the organisational hierarchy and the continuity of profits made through illegal activity, the use of violence

(n = 10) and corruption (n = 10) is the most recurring element.⁴¹ American researchers, especially Smith⁴², and members of the Wickersham Commission have done much to make people aware of the concept of organised crime not only in their home country but on other continents of the world.⁴³ The phenomenon of organised crime has been defined by the committee as: a unit with a specific social structure that involves thousands of crimes within a complex structure where criminal activity is not impulsive but the result of a complex conspiracy lasting several years and its goal to manage the main areas of the country (economic, judicial, political) in order to achieve a huge profit. This hierarchical, conspiracy-based definition of the phenomenon persisted until the 1960s, threatening the integrity of local governments, tarnishing the reputation of police and lawyers, penetrating legitimate businesses, and violating the integrity and integrity of a free society.⁴⁴

Separate criminal groups

Until the 1980s, during the transition period, the concept of organised crime materialised to separate criminal groups, but we now know that as a result of previous research, organised

⁴⁰ Finckenauer, J. In addition, Voronin, Y. (2001) *The Threat of Russian Organized Crime*, Rockville: National Institute of Justice, Issues in International Crime.

⁴¹ Hagan, Frank, 'The organized crime continuum: A further specification of a new conceptual model', *Criminal Justice Review*, 1983., Vol. 8. No. 2, pp.52-57.

⁴² Ibid ¹⁹.

⁴³ Wright, Ronald: 'The Wickersham Commission and Local Control of Criminal Prosecution', *Marquette Law Review*, 2013., Vol. 96. Nr. 4. pp1199-1217.

⁴⁴ Woodiwiss, Michael: 'Organized Crime - The Dumbing of Discourse', *British Society of Criminology*, 2000, Nr. 3. p.:1-10.

crime consists of an army of criminals that, unlike previous perspectives, is a more diverse and more integrated phenomenon.⁴⁵ Its complexity lies in the fact that it differs from smaller, loosely connected networks, and it not only involves a handful of people but a large hierarchical organisation that uses highly organised, secret codes, trained staff, and behaves like well-functioning legal businesses.⁴⁶

Sociological research aimed at exploring organised crime began in the 1990s. According to Borai, organised crime is usually a hierarchical relationship of at least three individuals and at least partly organised criminal activity, who track crimes within the organisational structure through planned division of labour, concealment of illegal activities, conscious use of flexible crime technologies and methodologies.⁴⁷ According to Korinek, organised crime is aimed at obtaining the highest and fastest profit from illicit needs under the current legislation, with the least possible risk taking, specialisation can be observed within criminal groups, and the commission of international and cross-border crimes as an occupation, they do not intend to provide for legal subsistence.⁴⁸ Although Hallmacher interpreted organised crime at this age as meaning that it is not present in society as an independent power, but that different organisations operate side by side, more or less independently of each other.⁴⁹ In the definition of Nánási, organised crime is a form of association, occupation, professional, usually wealth-seeking crime, which is based on division of labour, takes place with a high degree of conspiracy, and penetrates legal enterprises and sometimes public authorities.

The increased danger inherent in social crime continues to grow in the organization: through a greater number of staff, a series of offences, the greater weight of each crime individually, internal discipline, careful planning, and the organisation of the activity. The persons forming the organisation are professional criminals.⁵⁰ At the same time, Grennan and Bitz described organised crime as a recognizable, monopolistic, self-perpetuating, hierarchical organization willing to use violence and corruption.⁵¹ The definition of Maltz's is also related to all this, so we can talk about the characteristics of organised crime, when corruption, violence,

⁴⁵ Ibid ³².

⁴⁶ Williams, Phil, ' Transnational criminal networks' – In: Aquilla, J. and Ronfeld, D.(szerk.) (2001) *Netwars and Networks: The Future of Terror, Crime, and Militancy*, California: Rand.

⁴⁷ Borai Ákos, "Criminal Law Issues in Organized Crime", *Police Review*, 1992., Vol. 30. No. 5, pp.12-20.

⁴⁸ László Korinek, "The essential elements of organized crime", Budapest: Hungarian Law Society, 1996.

⁴⁹ Halmacher, Horst, (1986) *Crime scene*, Federal Republic. Organized crime. Children, pp.: 239.

⁵⁰ Nánási, László, " Issues of organized crime in Hungarian substantive and procedural criminal law", *Journal of Hungarian Jurisprudence in Romania*, 2006., Nr. 3. p.: 45-55.

⁵¹ Grennan, S., (2002) *Organized Crime: A Worldwide Perspective.*, New York: Pearson Prentice Hall.

discipline, high level of organisation are intertwined with ideology and legitimate businesses.⁵²

From this author's point of view, today's concept of organised crime includes the following obligatory elements:

- * a developing grouping requiring a minimum of ten people;
- * structured as a pyramid;
- * hierarchical co-operation between members;
- * organised division of labour, task system, decision-making, management;
- * separate implementation function;
- * group members have a permanent bond.

Thus their operation is ensured, partly from conspiracy, partly from open, illegal and criminal income, the purpose of which is to profit financially and create political and economic influence.⁵³

Their activities are dangerous to society, and the execution of their criminal activities is based on the use of technical means that go far beyond the achievements of the modern age.⁵⁴

In the 21st century, according to Strompf, the criteria of special criminal organisations are hierarchical in structure; they have a formal structure; the participants have a specific role, and a high level of conspiracy is typical of the operation.⁵⁵

Germany and the Arab clans

With regard the clans operating in Germany, it is worth mentioning the historical background first. The civil war in Lebanon took place between 1975-1990 when Kurds fled from Lebanon to Western Europe, the north States and Germany. The Kurds have submitted a number of asylum applications, some of which have been rejected, but the deportation could not be carried out by the authorities because the passports had expired and the Lebanese authorities had refused new application, it became a stalemate situation. Along with all this, many Turks took the opportunity to conceal their Turkish identity and nationality and portraying themselves as Lebanese as they applied for refugee status.

⁵² Maltz, Michael: 'Defining Organised Crime' In: Robert, K. (1994) *Handbook of organized crime in the United States*. London, pp 26–27.

⁵³ Kovács István, Organized crime across Hungary's borders and in the Schengen area, in particular the evaluation of SOCTA and EUROSTAT. *Border Police Studies*. (2019), Vol. 4sz.pp 82.

⁵⁴ István Kovács: "Oiling", organized crime, and prostitution in Hungary in the 1990s. In: *National Security Review*, 2014, Vol. 3. No.1, pp.114-146.

⁵⁵ Strompf Christina 'Guilty until proven innocent: A comparative analysis of organized crime laws in the United States, Italy, Japan, and Ecuador', *ILSA Journal of International & Comparative Law*, Vol. 23 Nr. 1, 28-34. p. 27-54

During refugee registration in Germany, other names were given and false information was provided. The situation was similar in several family clans of Palestinian origin, who also had no legal right of residence in the country, as in reality they did not come from the civil war territory of Lebanon, but migrated from Turkey.

The migration wave has turned into illegality

While the country disputed the legality of the stay and denied integration, these families saw the fundamental problem in not allowing a large number of family members - even those of Palestinian descent - to work in Germany. This is related to the fact that they were officially stateless, and their place of residency were not completely clarified either. Because they were unable to take a job, they financed their livings by committing various crimes. This is desperate because, since 1984, thousands of people's homes have become legalized in Berlin by the old case regulation, and at the same time their participation in the labour market has opened up, which, for the above reasons, has remained unused to this day.

Berlin is home to a large family with at least 50 generations of family members covering at least three generations. The criminals of these large families in Berlin specialized in drug trafficking, extortion of defense money, illegal gambling and sometimes spectacular burglaries or robberies. Such an example is the poker robbery at the Hyatt luxury hotel in 2010, or the Bode Museum burglary in 2017, when the perpetrators stole more than 3.7 million Euros worth of art objects.

Money laundering

Money laundering helps to make illegal incomes look legal: illegal money is invested in the purchase of residential and commercial buildings, car dealerships or bars, thus creating the appearance of legal money flows. The situation in Bremen is the same as in Berlin. The clans here are committing crimes against property and violence. Families in Lower Saxony have more than 2,000 members. The groups operate in Hanover, Hildesheim, Salzgitter, Peine, Wilhelmshaven and Lüneburg. Their criminal activities are mainly characterized by fraud, assault, drug-related crime, threats and extortion.

In North Rhine-Westphalia, in the most populous state, large Arab-Lebanese families live in the cities concerned in hundreds of orders of magnitude. Crimes range from human trafficking to drug-related crime and extortion. In addition, members of Lebanese family clans are occupied not only by crimes but also by public spaces, often lacking respect and

aggressive behavior. It is typical for families to form their own society and to operate a parallel justice system.⁵⁶

In the following, we look at the results of the frequency mathematical calculations and the extent of the relationship between the correlations, with particular reference to the concepts of “mafia” and organised crime, and the functioning of German clans.

Research results

With the help of the research methodology the author had the opportunity to test the hypothesis and to determine the essential components of the concepts. By embedding mathematical functions, the author calculated frequency and relative frequency. Frequency shows how many times a data occurs, while relative frequency shows how, compared to the total number of items, as one hundred percent, the items in the sample are distributed among each group. This gives an answer to the question of the rate of occurrence of the sample values as well as how and to what extent the individual elements of the sample are distributed among the different groups. Below is a summary of the possible values together with their frequency in a table:

Basic thesis						
	IX. century ‘mafia’ concept	Togetherness, hierarchy (family)	Conspiracy (confidentiality)	Use of violence	Outlaw	Cooperation
Conceptual components examined	Hagan’s ‘organised crime concept’	1	-	1	1	-
	Wickersham’s ‘organised crime concept’	1	1	-	-	1
	Borai’s ‘organised crime concept’	1	-	-	1	1
	Korinek’s ‘organised crime concept’	-	1	-	1	1
	Nánási’s ‘organised crime concept’	1	1	-	1	1
	Kovács’s ‘organised crime concept’	1	1	1	1	1
	Strompf’s ‘organised crime concept’	1	1	-	1	-
	Maltz’s ‘organised crime concept’	1	1	1	1	1
	Halmacher’s ‘organised crime concept’	-	-	-	1	1
	Grennan’s ‘organised crime concept’	1	1	1	1	1

In this basic hypothesis, created by the author, mathematical calculations are based on the basis the concept of the ‘mafia’ created in the Ninth Century. The author examined the components of the ‘concept of organised crime’ as he had discovered in the context of

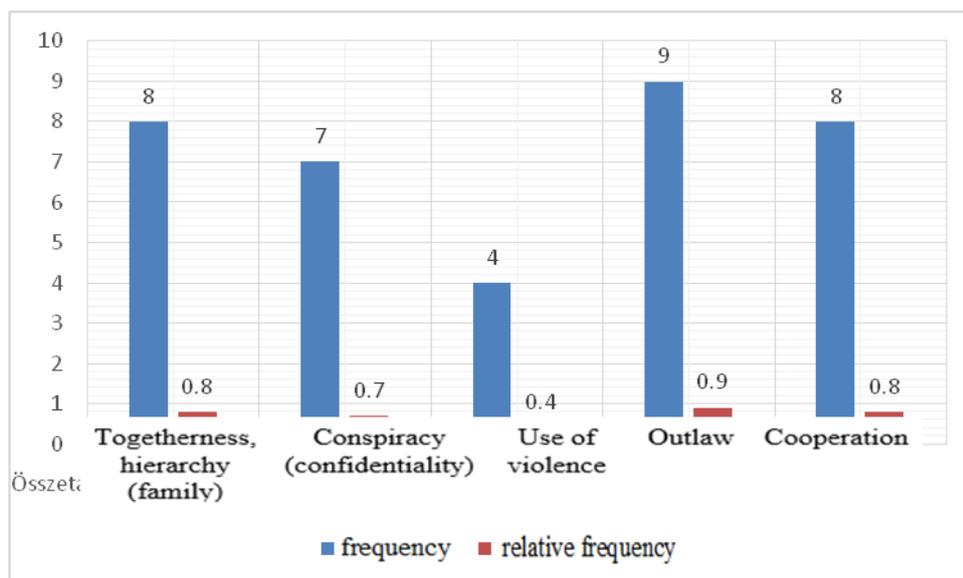
⁵⁶Wendt, Carstenetal, “Fight Clan Crime. Strategic Orientation-Sustainable Successes”, Position paper of the Bund DeutscherKriminalbeamter, 2016.

historical research that is the subject of the study. The table above shows well that among the components of the concept of 'mafia' that appeared in the 9th Century, in the 10 other definitions of organised crime examined by the author, *togetherness and hierarchy*, the component of the family, were present in 8 cases. (N=8). The frequency value of conspiracy as a component of confidentiality was 7, i.e., in 7 cases the concept of organised crime included secret operation. (N=7).

It was interesting to note that the use of violence was included as a frequency element in only 4 cases in the ten conceptual components examined. This meant the minimum frequency. (N=4). Outside the law, i.e. *illegal activity*, except for one case, reached the maximum frequency, in 9 cases it was a conceptual component in the concepts of organised crime examined. (N=9). *Cooperation*, i.e. the cooperation between members or organizations, was also a frequency factor of the concepts, which appeared in 8 cases, just like the hierarchical structure. (N=8). Mathematical calculations also show well that the basic conceptual elements of the 9th Century concept of 'mafia' can also be found in today's definition of organised crime, an important result being that *violence represented the minimum value while illegality represented the maximum value*.

If we examine the ratios on the next slide, we can also look at the modelling of relative frequencies. The relative frequency for *cohabitation* is 0.8; 0.7 for *conspiracy*; 0.4 with regard to the *use of violence*; 0.9 for *outlaws*; and for *cooperation* the relative frequency was 0.8.

The author was only able to examine the relative frequency in these ten concepts. However, it is to be noted that, **if the study were extended to include further concepts, its value would stabilize over time**. This means nothing but the probability around which values of relative frequency fluctuate. **Although this is hypothetical, it may be of major importance in the future**. The results are shown in the diagram below:



1. Diagram: The frequency and the relative frequency (Created by the author).

With regard to the research results, let us look at the verification of the hypothesis in terms of criteria. With regard to relations, the author considered the definitions of conceptual relations to be authoritative.⁵⁷ The Arab clans operating in Germany and the relationship between certain elements of the 9th century and the examined organised crime concepts is controlled, as there is a causal link between each element and the activity (for example, the law does not allow them to work, therefore they create the conditions necessary for subsistence, i.e. they commit a crime); the result-origin (for example, they are characterized by a series of illegal activities, i.e. they commit a criminal offence); the function-appliance (e.g., creating a legal appearance of illegal activity- money laundering is a typical case).

The correlation is reflective and reflexive; as the correlation between the activities of the individual elements and the Arab clans is defined in itself (it is clear that their activity encompasses the criteria related to organised crime).⁵⁸ The reflection is symmetrical because the related conceptual elements do not represent sequencing, they are interchangeable (for example, with regard to money laundering, first they create the appearance of legality and

⁵⁷Pálvölgyi Mihály: Information retrieval languages I. Eszterházy Károly College, 2011.

⁵⁸ But if we consider the word 'crime' in this context, and as typically encountered in media and political discourses, one could say crime is 'the doing of something forbidden by law and this could mean –stealing a mobile phone, vandalism, graffiti, mugging, stealing, taking illicit drugs, selling illicit drugs and such. The UK Home Office put this as its definition of crime in 2007 on its Local Government website (Home Office, 2007). Examining this definition of crime leads one to conclude that this is a definition for youth crime or street crime and does not include the faceless crimes committed by the powerful in the land-crimes of money laundering; arms trafficking; corruption, bribery, corporate crimes of environmental pollution, insider trading, grand larceny, selling stolen ancient relics, and criminal offences by company directors. See Sutherland, E.H. (1940), 'white-collar criminality', *American Sociological Review*, Vol.5, No.1, pp.1-12. See also, Reiman, J. (2007) *The Rich Get Richer and the Poor Get Prison*, (8th edn.), New York: Wiley Publishers.

then invest the illegal income in it). The relationship is multi-valued, since an element can be related to several elements in the same context (for example, almost every member of the family benefits from crime, whether or not they participated in it).

Conclusion

This author proved the contents of his hypothesis. The hypothesis was confirmed - that the social integration processes of the middle ages, especially the period of the great conquests, became more valuable, and the identities of different nations interacted with each other. This is well illustrated by the response of the Sicilian ethnic group during the Arab occupation to the formation of the 'mafia' which has now grown into a transnational organization, regardless of the criminal group that prevails in the region.

The concept of the 'mafia' of the ninth century began to emerge and developed over the millennia, which can be seen in either the nineteenth or twentieth century, by today's central definitions of organised crime.

Organised criminal groups operating today due to frequency and relative frequency index calculations, have characteristics that do not differ from the activity of groups used and organised in the ninth century, and even the frequency and relative frequency of some components, demonstrates outstanding value.

With regard to Arab clans and families operating in Germany, it was found that even the Ninth Century, thanks to integration processes, can be modeled in the transitive, reflexive, symmetric and multi-valued relation of the criteria of organised crime concepts valid to this day.⁵⁹

All this suggests that from the ninth century onwards, integration processes treated these characteristics as an identity marker of organised crime. This author achieved his strategic goal, since, although not in a representative way, but capable of reaching conclusions, was able to explore frequency and relative frequency coefficients that are most related to organised crime.

We need to recognize that if we want to be a member of a community, we must follow the rules that have been applied and created so that confidence in the democratic functioning of society is not undermined. The creation of the European Union, and the series of Conventions

⁵⁹ In Medieval times in English Law, eg, there were some ludicrous depictions of what they deemed to be crimes. See Ellis, H. (1890) *The criminal*, London: Walter Scott Publishing. Legal academics believe that it was not until the Eighteenth Century that property crime law was formulated –receiving stolen property, obtaining goods by false pretences, embezzlement, hunting and gathering food and wood on common land.

which have been amended since then, are based on fundamental human and constitutional rights, directives that all Member States must respect and ensure that they are reflected in internal standards. However, the citizens of each Member State must also adhere to law in order to build a society. Organised crime is obssessing these pillars of society and authorities must take action against organised crime through strict laws.

A recap on the characteristics of organised crime

By identifying the essential characteristics of organised crime, it may be necessary to develop a strategy that reflects on each element individually and separately. This reflection should extend to each of the subsystems operating the community, thus, the joint deployment of social, cultural, economic, defence and law enforcement systems is necessary to implement cooperation. If organised crime builds on the family and hierarchical relationships, then law enforcement, along with social institutions, should focus on these areas, i.e., disintegrate this kind of unity, making cooperation between members of organised crime less successful (for example, by controlling family members, keeping them under constant observation, if legally possible).

If organised crime is based on conspiracy, as shown above, greater emphasis should be placed on security and defence, but most of all on national security, data and information gathering with the sole objective to undermine this type of conspiracy. Importantly, the use of violence as shown in the author's study is clearly an atypical element in the concept.⁶⁰ Much closer banking supervision control and much closer business supervision are obvious solutions to putting a stop to this organised crime, and fortunately, there have already been renewed Money-laundering Regulations in the EU and around the world, overseen by the OECD.

The conceptual component of lawlessness and illegality envisages the development of a legal system in the EU that presupposes an even more regressive criminal policy, i.e., the tightening of criminal laws, notwithstanding that Member States do not all have uniformity in their policing structures and some states have voluntary police; some have community police among them, and some states have specialist financial police agencies which deal with financial crime, unlike in the 1950's, when police played a crucial role in binding communities together and establishing a common conception of citizenship and solidarity. States need policing and public support for policing. Public policing internationally, depends

⁶⁰ We are reminded that this study on trafficking is a study of organized financial crime.

on different constitutions, histories, and operational styles. Tendencies towards police centralisation in some states, coupled with a stronger political influence than elsewhere will affect the process of policing. Policing has had to change in line with globalisation. Factors of change include neo-liberal politics; increasing prosperity; geographical and social mobility; the breakdown of the nuclear family; the decline of the welfare agencies; terrorism; and the speed of change of technology. These factors have both enhanced and diminished our lives, and have combined to change the social context in which societies exist. The act of policing has been part of that change.

Some transatlantic trade in crime-control policies, such as zero-tolerance policing, have been studied, but concluded that there is little evidence of direct lesson-drawing.⁶¹ Today, we live in an age when global markets have been freed up, and so has the globalising of criminal opportunities. This author's scientific contribution to practical policing illustrates that factors that contribute to a particular crime can be scientifically pinpointed and may help to combat the hazards and threats of organised crime in a diverse society.

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⁶¹ Jones, T. and Newburn, T. (2007) *Policy transfer and criminal justice: exploring US influence over British crime control policy*, London: McGraw-Hill.

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Criminal Law Updates

[1] Police-prisoner interaction program

In the United States of America, there has been a long-term experiment/study between police officers and prisoners with the objective of making permanent the Elsinore Bennu Think-Tank for Restorative Justice. With the realization that traditional police recruiting and training is failing to train new police recruits into realizing that convicted criminals are more than the sum of their offences, by considering the results of this long-term study with a view to incorporating such training as one module of the Police Training course. It is realised that paramilitary stress academies produce defensive and depersonalised officers, whilst this destigmatization is thought to help improve the professional socialisation of police officers by lessening the transmission of outdated notions within their occupational culture. In effect, this module plans to synthesise the Inside-Out Prison Exchange Program with police academy training, to become a three-credit undergraduate course. It is thought that such a core part of new recruit police training has the potential to integrate the fundamentals of restorative justice and may produce direct benefits for public safety and may also be effective for building more authentic relationships between police and communities of colour.

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Norman Conti, Adam Burston, Jesse Wozniak and Elaine Frantz, “Criminal Justice Policy inside-out: an initial case study in education among police and incarcerated men”, *Police Journal. Theory, Practice and Principles*, September 2020, Volume 93(3), pp. 248-264.
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[2] The mentally ill: death by police contact in England, United Kingdom

A recently published desk research paper on deaths by police contact in England, specifically concentrated on those with mental illness. This desk research used “rich, qualitative data from interviews with families of nine people who died after police contact”, to examine how they died. Police in the United Kingdom have a duty of care to vulnerable people in society.

This can be deemed an unlawful use of force by police who often use restraint tactics not established in any guideline, policy or Police and Criminal Evidence Act (PACE) Code.

It is no surprise to readers that the number of civilian deaths after police contact in England and Wales is at the highest level in a decade, past the 283 persons in 2017/2018, according to the report by the Independent Office for Police Conduct (IOPC).

Police duty of care

Police are required to provide a duty of care to those they encounter and police have a procedural obligation to demonstrate that each individual's *right to life* has been enabled in encounters with police. See Article 2, Right to Life, the European Convention on Human Rights.⁶²

Inquest Report: Deaths in Police Custody in England and Wales

Concerning people of Black, Asian, and Minority Ethnicity (BAME) deaths in England and Wales on contact with police, the Inquest Report stated that:

“People of black, Asian and minority ethnicity die disproportionately as a result of use of force or restraint by the police, raising serious questions of institutional racism as a contributory factor in their deaths. The proportion of BAME deaths in custody where restraint is a feature is over two times greater than it is in other deaths in custody.”

The police article in this update informs, “UK police do have a statutory power to detain a person under section 136 of the UK Mental Health Act 1983. Vulnerable persons held by police in custody for whatever reason, be it lack of appropriate personnel to take over from the police, or lack of facilities where such a person can be taken, are not under arrest. Custody is intended to be used as a place of safety ‘only in exceptional circumstances’”. See also, Department of Health, 2008, para 10:21.⁶³

On page 18 of the Department of Health's Report was cited two deaths after police contact, as follows:

“Two people died following their release from police custody: One woman was detained under the Mental Health Act following concerns for her welfare. Handcuffs and leg restraints were applied. She was taken to one hospital and

⁶² See *Jeronovičs v. Latvia* [GC], no. 44898/10, 5 July 2016.

⁶³ “10.21. Professionals should be ready to discuss with patients the benefits of enabling some information to be given by professionals to victims, within the spirit of the Code of Practice for Victims of Crime issued under the DVCVA.”

DVCVA is the Code of Practice for Victims of Crime and supporting public information materials. Ministry of Justice. 2013. <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>

then another for a full mental health assessment. She was then held in a mental health unit until she died nine days later. Her cause of death was recorded as:

1a) pulmonary thromboembolism

1b) deep vein thrombosis.

*It could not be proved or disproved that the use of the leg restraints during her detention contributed to her death. While in custody, one man who had been arrested on suspicion of driving while unfit, appeared disorientated allegedly under the influence of drugs. The man still showed signs of being confused and drowsy when he was released **in the early hours of the morning**. He walked to the car depot that was located near train tracks to collect his car. A train then hit him, apparently having failed to get out of the way, possibly due to his confused state. He died from the multiple injuries sustained.”*

[3] Desk Research findings concerning deaths in England of mentally ill persons after contact with police in England

The findings published by police is that police are disproportionately more likely to use force on people with mental health issues and police are disproportionately more likely to use force on people from Black and Minority Ethnic communities, especially in police use of mechanical restraints and inappropriate transportation. This use of force is purposed to arrest people, and/or to make a mental health Order, even when people are tricked to move from inside their home to a public place, although there is very strong case law that quashes an Order so made or an arrest with no evidence.

The law of UK Mental Health Act 1983 with respect to section 136 (power to remove mentally disordered persons found in public places)

In the UK, the Mental Health Act 1983 is one of two most significant pieces of legislation for those with a mental disorder. The other significant legislation is the UK Mental Capacity Act 2005. The UK 1983 Act is primarily concerned with the compulsory detention and treatment of those persons with a mental disorder and section 1(2) of this 1983 Act defines the words

“mental disorder” as “*any disorder, or disability of the mind*”. This deliberately wide and general definition in s1(2) requires interpretation in both medical and legal terms:

***In medical terms**, *mental disorders* are most commonly defined in relation to two resources—first, the American Psychiatric Association’s Diagnostic and Statistical Manual (“DSM-IV-TR”); and second, the World Health Organisation’s International Classification of Diseases (“ICD-10”). These resources are used by medical doctors globally –as the diagnostic tools to identify mental disorders.

***In legal terms**, the Strasbourg case law of the European Court of Human Rights (“ECHR”) has developed the concept of the “unsound mind”, in light of Article 5 of ECHR. Article 5 provides for the right to liberty, but gives an exception for the “lawful detention...of persons of unsound mind.” Note that Article 5 ECHR is an absolute right, with exceptions. See the UK case law in 2007, *Secretary of State for the Home Department v JJ*.⁶⁴



Strasbourg European Court of Human Rights

By virtue of section 6 of the UK Human Rights Act (“HRA”)1998 compliance with Article 5 ECHR is a pre-condition to lawful detention under the Mental Health Act 1983. This in effect produced a practical overlap in the definitions of a “mental disorder” and an “unsound mind”.

In the 1979 Strasbourg European Court of Human Rights case law decision in *Winterwerp v Netherlands*,⁶⁵ the court held that:

*“[unsound mind] is a term whose meaning is continually evolving as research in psychiatry progresses, an increasing flexibility in treatment is developing and society’s attitudes to mental illness change, in particular so that a greater understanding of the problems of mental patients is becoming more widespread.”*⁶⁶

⁶⁴ *Sec. of State for the Home Dept. v JJ* [2007] UKHL 45, [2008] AC 385 [35].

⁶⁵ *Winterwerp v Netherlands* (1979) 2 EHRR 387 [37].

⁶⁶ *Ibid.* para.37.

The court also said:

“The very nature of what has to be established before the competent national authority- that is, a true mental disorder- calls for objective medical expertise. Further, the mental disorder must be of a kind or degree warranting compulsory confinement. What is more, the validity of continued confinement depends upon the persistence of such a disorder.”⁶⁷

This links the legal definition and medical definition of “unsound mind”.

This means that a clinical opinion is required in order to determine whether an individual falls within the scope of section 1 of the Mental Health Act 1983. It is also of interest that police use section 37 of the Mental Health Act 1983 to empower them to have a Hospital Order made especially because such an Hospital Order can be made *without a conviction* in the magistrates’ courts, so long as there is a finding that the arrested person did the act charged (*actus reus* and *mens rea* alleged to have been fulfilled).

We come to the crucial point of section 136 of the Mental Health Act 1983: the specific powers to arrest under s.136, UK Mental Health Act 1983. There are two powers to arrest a person police perceive to be mentally disordered: (s.135 and s.136) and here we deal only with the s.136 power.

Under s.136, there is a power to remove mentally disordered persons found in public places to a place of safety.

Police Powers

Under s.136 Mental Health Act 1983, an individual can only be held in “a place of safety” for up to 72 hours, and must only be so held to enable an appropriate and qualified medical practitioner from a mental health facility to examine an arrested person or whilst making active arrangements for medical treatment or care.

Note that the term “a place to which the public have access” (s.136) is not easily defined. It is therefore inevitable that the applicability of this term, in s.136 Mental Health Act 1983, is highly case-specific.

*Decisions by police officers are amenable to Judicial Review.

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Contact: d.baker@coventry.ac.uk

⁶⁷ Ibid. para.39.

Dept. of Health (2008) *Code of Practice Mental Health Act 1983*, London, UK: Dept. of Health.

Inquest, Deaths in Police Custody in England and Wales-Report.
<https://www.inquest.org.uk/deaths-in-police-custody/>

[4] Health and Safety hazards: Enlightenment about the plague and its true cause

British television relayed a two-part documentary a few weeks ago- about the plague in 1665 in London, when the rate of increase of plague began to accelerate. Despite the thought of times past that the plague was transmitted to humans by infected rats, research using modern technology on archeological remains seems to show that the bubonic plague was spread from person to person and some households were infected whilst others were not. The evidence suggests that the plague had been transmitted in a different way. In 1720, one hundred thousand people died of the plague in France and scientists there now believe, studying archaeological remains, that the plague was an infection caused by fleas rather than by rats, and there were more fleas among the poor than rich people.

Goal fever or typhus caused by lice

One is reminded of dire poverty especially in centuries past when people faced jail for almost any reason. See Howard, J. (1777) *The State of Prisons in England and Wales*, London: The Christian Mission. Some prisons in the 17th and 18th centuries had no sewers while others had open sewers. Thousands of prisoners die of typhus fever, which was transmitted by lice.

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LAW AND SOCIETY IN CHINA

Vai Lo Lo

Edward Elgar Publishing Limited (2020)

Book review by Sally Ramage
(Website at <http://www.criminal-lawyer.org.uk/>)



This monograph titled *Law and Society in China* has been with me for several months, due to the current political climate, but truth must prevail over politics and so this book review is finally being published.

The author Vai Lo Lo is a professor of law at Bond University, Australia. The author has successfully married social history, cultural history and jurisprudence in an introductory book on China, its society and its many laws in seven chapters which address China's long and distinguished dynasties in imperial China, leading up to law in transitional China, leading up through pre-reform to legislation in contemporary China, the latter topic taking up almost half of this book, from page 124 to the conclusions ending at page 201.

The history of China is generally presented according to the dynasty to which the period's ancient rulers belonged. From its inauguration in c. 2070 BC to the abdication of its last emperor in 1912, China was ruled by a series of 13 successive dynasties. The Chinese are a highly respectable nation with a very long and recorded history over thousands of years.

It has not been until these past forty years that the Chinese legal system began to develop at a rapid pace, although there is still much work to be done on improving and further developing legal codes and statutes.

Modern China

China has its Chinese Code of Civil Law, known as the General Principles of Civil Law. Civil Procedure Law deals with divorce cases, when conciliation is often successful, but curiously, China turns to Article 90 of the Criminal Procedure Law if conciliation is not

necessary, allowing the divorce matter to be conducted by other bodies at grass-roots governments and by neighbourhood committees. **Civil Law China**

China has a civil law tradition and one can appreciate this as China has traded with many other countries for thousands of years. This civil law country, like other civil law countries do not turn to legal precedents-they are not binding here. Therefore, due to trade with the rest of the world, China enacted the Foreign Economic Contract Law 1985, to create newer, more complicated model contracts, taking into account prevailing international practice and western private international law and contract law. There are modernised statutes on taxation; company law and the Code of Company Law; banking law; foreign investment law; contract law; new employment statutes and consumer statutes; Chinese Land Law; environmental laws; maritime law; and non-judicial means of dispute settlement; intellectual property laws; the law of family, marriage and succession; settlement of disputes by non-judicial means aka alternative dispute resolution, and of course, the then new Code of Criminal Law and Code of Criminal Procedure, passed in 1997. China now has China Law Reports translated into English. One has to always remember that China is a vast country to appreciate that although China is a unitary state, it has joined the World Trade Organisation (WTO).

Present Hong Kong legal issues

As an aside, the reviewer thinks it may be enlightening to address the matter of Hong Kong which bedevils our sitting rooms with scenes of rioting, protests, and destruction for many months now.

Treaty agreement

China resumed its sovereignty over Hong Kong since 1st July 1997 after 150 years of British colonial administration, during which time Hong Kong was governed by a common law legal system as the UK's is and there were only seven national laws of China applicable in Hong Kong until 1 July 1997.

Inter-regional conflict of laws became a very pressing issue.

End of colonialisation: Hong Kong

The United Kingdom has had Hong Kong as a colony, not least because, strategically, it was a vital point for international trade. So Hong Kong's common law tradition became known as Basic Law, as well as permitting six national laws of China, automatically applicable to Hong Kong.

Article 95 of the Basic Law in Hong Kong states that the courts of China and Hong Kong must render judicial assistance to each other.

End of colonialisation: Macau

The same applied to Macau since 31st December 1999, when China resumed sovereignty over this land, which the Portuguese colonised. However Macau is a non-Socialist civil law jurisdiction. Some scholars think that a similar codified system throughout will solve the problem.

Criminal elements risk losing illicit money

Underlying the rioting etc, is the reality of trade secrets, counterfeit drugs, illicit international trade and the usual drunkenness and lawlessness so common in the world today. One might hazard a guess that criminals are determined not to comply but are aware of China's death penalty, and like the Arab Spring, other underground social forces are at play.

Further byte-sized books on the laws of China

This is why Vai Lo Lo's book on law and society in China is as very important as it introduces Chinese thinking and Chinese jurisprudence which makes one realize how important it is to study the special terminology of Chinese law because special terminology of Chinese law may not always convey the same meaning of certain English expressions.

Further Reading

Learn about China at www.youtube.com

1-“China's Power and Prosperity” https://www.youtube.com/watch?v=gF_frOsTrgw

2-“Riding the Dragon”

<https://www.youtube.com/watch?v=JRmlcEBAiIs>

3-“Exiled Chinese millionaires”

<https://www.youtube.com/watch?v=4cwXifDaCjE>

4-“Uncovering Communist China” <https://www.youtube.com/watch?v=Tk2eP2T2pz8>

5-“Kyle Bass explains the Chinese Currency Crisis as an Investment Opportunity (2019)”

https://www.youtube.com/watch?v=ZB105xNq_AU

6-CHINA

<https://www.youtube.com/watch?v=JovtmKFXi3c>

7-[Cybersecurity and Data Protection in China](#)

China had its first reading of a new Bill titled

Personal Information Protection Law 2020 with the Standing Committee of the National People's Congress in October 2020. It will be China's first unified piece of national legislation on the protection of personal information.

8-China's Ministry of Public Security

Issued Guidance on the Implementation of the Multi-Level Protection Scheme for Network Security.

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