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TABLE OF CONTENTS

Friend or Foe? Representations of WWI in Italian Fascist Cinema

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Abstract

The present essay investigates the representation of the First World War in Italian fascist cinema by analyzing some of the major films about the war made during the Fascist regime and, notably, Marco Elter's *Le scarpe al sole* (1935), Giovacchino Forzano's *13 uomini e un cannone* (1936) and Oreste Biancoli's *Piccolo alpino* (1940). The films will be examined from an original and specific angle, devoting special attention to their portrayal of the Austrian enemy. Little consideration has been paid so far in scholarly research to this aspect. The essay will specifically address the question, investigating the changing representation of WWI and, particularly, the metamorphosis of Austria from foe to friend in Italian cinema in the course of the twenty years of Fascist regime. In doing so, the essay will place the above films against the background of the Fascist regime's foreign policy, with special regard to the Italian-Austrian politics of friendship during the 1930s, followed at the end of the decade by Italy's alliance with Nazi-Germany and the birth of the Rome-Berlin axis.

Keywords: Italian Cinema, First World War, Italian Fascist Regime, Austro-Italian Relations

Introduction

The 100th anniversary of WWI has in recent years led to a significant revival of scholarly studies on the representation of the war in Italian cinema. In particular, attention has been directed to areas of research that had not been much investigated previously, such as the war's depiction in contemporary non-fiction films or their (re-)use in later times as footage material for documentaries and television productions about WWI. (On these topics, see in particular Basano & Pesenti Campagnoni, 2015; Faccioli & Scandola, 2014; as well as the special issue No. 13, 2016, of the journal *Immagine. Note di storia del cinema*, which includes, among others, Berruti & Mazzei, 2016; Faccioli, 2016; Pimpinelli, 2016.)

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However, a comprehensive study of the representation of WWI in Italian cinema is still lacking. Scholars have mostly investigated some periods and films, devoting attention in particular to war-time production and later films such as Mario Monicelli's *La grande guerra* (1959) and Francesco Rosi's *Uomini contro* (1970), which significantly contributed to critically revise the image of WWI on the Italian screens. (On the representation of the war in Italian films in the years 1915-1918, see in English, Bertellini, 2016; Lottini, 2018; Nobili Vitelleschi, 2000; and in Italian, Antonelli, 2018; Faccioli, 2008; 2014; Mondini, 2014; as well as the publications mentioned above. A selective list of works on the depiction of WWI in Italian cinema from 1919 up to today is provided in Bono 2018. See, in addition, Alonge, 2016; Cinquegrani, 2014).

This essay intends to specifically investigate the representation of WWI in Italian fascist cinema. (Studies on this period include Courriol 2014; Miro Gori 1988; Sorlin, 1986.) Linking to previous works by the author on the depiction of WWI in Italian film (Bono, 2018), the essay's focus will be on some of the major films about the war made during the Fascist regime and, notably, Marco Elter's *Le scarpe al sole* (1935), Giovacchino Forzano's *13 uomini e un cannone* (1936) and Oreste Biancoli's *Piccolo alpino* (1940). While Elter's film has been often discussed in the context of studies on the representation of WWI in Italian cinema, Forzano's and Biancoli's films have generally received less attention. (Beside the works mentioned above, see on Elter's film Brunetta, 1973; Isnenghi, 1978).

The films will be examined in the present essay from a new and specific perspective. Particular attention will be devoted to their depiction of the Austro-German enemy. But little consideration has been given so far in the scientific literature, regardless of the periods or films examined, to the image of the enemy in Italian films on WWI. This essay will specifically address the question, investigating the enemy's depiction in Italian fascist cinema. In doing so, the essay will deal with placing Elter's, Forzano's and Biancoli's films against the background of the Fascist regime's foreign policy, with special regard to the Italian-Austrian politics of friendship during the early 1930s, followed in the second half of the decade by Italy's rapprochement to Nazi-Germany and the birth of the Rome-Berlin axis. (For an overview on Italy's foreign policy in the interwar period, see in English, Burgwyn, 1997; Lowe and Marzari, 1975. On the political relations between Italy and Nazi Germany see, among others, Knox, 2000; Quartaro, 1980; and, for what specifically regards the Italian-Austrian relations during the 1930s, see Ara, 1990; Di Nolfo, 1974).

2. Nameless Enemy

Elter's *Le scarpe al sole* has been generally regarded as one of the most important Italian films on WWI. Historian Mario Isnenghi (1978), author of a seminal book in the 1970s on the myth and literary representation of WWI in interwar Italy (Isnenghi, 1970), considers it as one of the most significant contributions to the depiction of WWI in Italian cinema, putting Elter's film alongside Monicelli's and Rosi's (p. 345).

The film was produced on the occasion of the 20th anniversary of Italy's entering the war, in May 1915, and is freely based on the homonymous novel by Paolo Monelli from the 1920s, in which the Italian journalist recalled his memories of the war, during which he served in the Alpini, an elite mountain corps of the Italian army which gained great popularity during WWI.

The scarce attention in Italian cinema in the 1930s for WWI, in contrast to the number of films about WWI in the previous decade, has been generally explained by scholars as regarding the overall evolution of the Fascist regime, that in the beginning of the 1930s increasingly assumed bourgeois-conservative features, striving to remove the memory of the revolutionary and violent character of its earlier days. WWI was too problematically and tightly connected to the origins of the Fascist movement to fit into the new image that the regime wished to project of itself. As Italian film historian Gian Piero Brunetta (2009) remarks, „in the early 1930s, the Fascist regime changed its tactics;" „policymakers attempted to create the image of a pacified, harmonious Italy that was dominated by a petit-bourgeois ideology" (p. 91). In *A Concise History of Italy* Christopher Duggan (2014) effectively summarizes the point: "By the 1930s 'fascist man' was no longer a young barbarian. He was a patriotic, hard-working, church-going father" (p. 224).

Le scarpe al sole stands exemplarily for the changing depiction of WWI in Italian cinema of the 1930s. War is celebrated and at the same time its memory distorted, and mystified, and somehow repressed. It is of note that hardly any chronological or geographical information is provided in Elter's film. Almost no specific dates or places are mentioned. Where the fighting takes place or the year in which war breaks out and when it ends, remain unmentioned. As Gianfranco Miro Gori (1988) aptly remarks, the war depicted in *Le scarpe al sole* is barely characterized as WWI (p. 64). What is shown on the screen evokes WWI, yet is not intended to depict it explicitly.

The process of historical abstraction that WWI undergoes in Elter's film, the vagueness with which the conflict is depicted on the screen, also profoundly affect the enemy's representation, with the first images of the Austrians in *Le scarpe al sole* being representative of their portrayal throughout the film. During one of the actions of the Alpini the camera shows them skiing agilely across a white plateau. They attack an enemy trench. The enemy shoots at them from off-screen and sometimes one sees an Alpino falling. They fall lightly in the soft snow. There are no screams. No blood stains their white uniforms. The Alpini are marked by their courage as well as their agility, which the camera further emphasizes, also becoming mobile so as to follow them. In long shots, it glides alongside the Italians across the snow as they swiftly approach the enemy's positions.

The portrayal of the enemy in Elter's film is in clear opposition to that of the Italians. When the camera first shows the Austrians, one glimpses a number of soldiers in grey uniforms in a trench in the snow. The difference is striking. The Alpini master the space. They ski at night under the moonlight or swiftly scale a mountain's wall. By

contrast, the Austrians seem anchored to the spot. The camera highlights this further. The shots showing the enemy are static, the immobility contrasting overtly with the dynamicity of the Italian attack. A later scene is also representative: the Alpini confidently climb a precipitous slope, reaching the peak undetected, where they storm the enemy's position. The camera dwells on their ascent and athletic performance, with more attention dedicated to this than to the actual fight, which ends in no time in favour of the Alpini.

Significant too is the different connotation of the Italians and the enemy by means of their uniforms. The flawless white of the Alpini is opposed by the anonymous grey of the Austrians. Their thick, heavy coats contrast with the pleasing cut of the Italian uniforms. Also, the camera rarely gets close to the enemy. The Austrians mostly appear as little dots in the distance, which we look at from the Italians' perspective. They are indistinct, grey figures. The enemy in Elter's film is faceless, an anonymous entity, and almost never are the Austrians called by name. Most of the time, they simply are referred to as 'the enemy', without clarifying their nationality. The enemy appears nameless, his identity undetermined.

3. From Foe to Friend

This image of the enemy stands in marked contrast to the way in which the Austrians are represented in Italian films on WWI in the 1920s. As an example may serve Mario Volpe's *Il grido dell'aquila*. The film was produced in 1923, to celebrate the first anniversary of Fascism's seizure of power on October 28, 1922. In the film, Austrians rampage and destroy, knowing no mercy. Women and children fall victim to their violence. Of note is the visual link in *Il grido dell'aquila* between the Austrians and some snakes. The montage shifts between images of the enemy storming a little town in Northern Italy and a pair of snakes hideously slithering in the dust. *The spectator is* invited to see the snakes through the lens of Christian symbolism as a picture of the devil.

Noteworthy also is *La leggenda del Piave* (1924), which offers a further example of the negative image of the Austrians in Italian cinema in the 1920s. The film revolves around an Austrian spy, who sneaks himself into an Italian family, where the man tries to seduce the young Elena. When war breaks out, the villa where Elena's family lives is occupied by the enemy, and the spy appears again and rapes her. As *Il grido dell'aquila*, the film ascribes a barbaric strain to the enemy. When the Austrian mistreats Elena, it recurs to the metaphor of a white lily, squashed ruthlessly by a man's hand and trampled by a pair of black boots.

This portrayal of the enemy stand overtly in continuity with that in Italian war-time productions, the propagandistic and anti-Austrian tone being explicit. The enemy is portrayed as a bandit and behaves devilishly. Similar figures and situations to the ones in *La canzone del Piave* and *Il grido dell'aquila* are found in Oreste Gherardini's *Eroina serba* (1915), Riccardo Tolentino's *Il mio diario di guerra* (1915) and Edoardo

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European Journal of
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January - June 2021
Volume 7, Issue 1

Bencivenga's *Mariute* (1918), to name just some films from the war period. In *Il mio diario di guerra,* Austrian soldiers capture Ernesto's parents and little brother, when he joins the Italians. They beat them and when the boy throws a stone at an Austrian he is coldly shot. In *Eroina serba,* a girl falls victim to the enemy but would rather die than betray her country. In *Mariute*, Italian diva Francesca Bertini plays a peasant whose daughters are raped by Austrian soldiers.

The difference with the depiction of the enemy in Elter's film is apparent. One scene in *Le scarpe al sole* stands, in particular, in marked contrast to the devilish image of the enemy in Italian films of the 1920s. Austrian soldiers occupy a little village, advancing on the gravel road that runs through it. Some women observe them from the threshold of a house. An old woman quickly shuts the window, a man retreats inside. On the empty street, a young woman hurries home. She is frightened as she suddenly glimpses some Austrians behind a corner. She hurries onward, yet the camera rests for a moment on the Austrian soldiers. They sit on a bench, tired, their uniforms muddy. One of them greets her: "Good evening, Miss." It is an older man with a stringy beard and gaunt cheeks, missing a tooth. He seems harmless. What the camera shows is not a bloody warrior.

When the woman reaches home, an Austrian officer is sitting with her mother in the kitchen. He is telling the old woman about his son, who is fighting on the Eastern front. He has had no news for months. The humanity with which the enemy is depicted in this scene is remarkable. Elter's film confers the Austrian soldier on the street, the officer in the kitchen of the simple house, with a human touch. This scene stands as unique in interwar Italian films about WWI. It would take over two decades before meeting an enemy with human traits again on the Italian screens, in Monicelli's *La grande guerra.*

The shift in the representation of WWI in Italian cinema in the 1930s mirrors the contemporary evolution of the Fascist regime and the new character it assumes, as has been previously remarked. Yet a further element apparently plays a major role and attention must be given in order to better understand the mutation in the representation of WWI in Italian cinema in the 1930s to the development of Italy's foreign policy in the interwar period. In particular, the different depictions of the enemy in the 1920s and in the later films of the 1930s must be placed in relation to the contemporary evolution of the Austrian-Italian relations. From the late 1920s the Fascist regime showed an increasing interest in making Austria a closer partner. The strengthening of Italian-Austrian relations became a primary goal of Italy's foreign policy. Italy engaged itself in favor of Austria's independence, with Vienna finding in its southern neighbor a support against Nazi Germany. When in July 1934 a coup attempt supported by Berlin shook Austria, Italian troops were ordered to the Italian-Austrian border, a gesture that marks emblematically Italy's role at the time as a protector of Austria and its sovereignty.

The undetermined identity of Italy's enemy during WWI in Elter's film, the apparent vagueness as to its nationality, may find an explanation in the political friendship between Fascist Italy and Austria. In the depiction of the enemy in *Le scarpe al sole,* in its anonymity, one finds mirrored, it could be argued, the special relationship binding Rome and Vienna in the 1930s. This would explain the carefulness with which *Le scarpe al sole* avoids an explicit identification of the enemy with Austria. As if it were not to be recalled that the present friend had once been Italy's enemy. In fact, the politics of friendship between Rome and Vienna may represent a further reason, which has so far gone unnoticed, why the First World War is so infrequently present in Italian cinema of the 1930s.

4. What War is it about?

An interesting case is also represented by Forzano's *13 uomini e un cannone*. Little consideration has been paid to it in the scholarly literature on WWI in Italian cinema. In a pioneering investigation on the topic Gian Piero Brunetta (1985) only devotes a few lines to Forzano's film (p. 57), which has remained mostly unconsidered. For Pier Marco De Santi (2005) it is "an inconspicuous commercial product" (p. 144), while Alessandro Faccioli (2008) briefly describes *13 uomini e un cannone* as "[a] curious, claustrophobic and unremarkable work" (p. 947). Such comments seem not to do justice to the film, which marks a high point in the revision process of WWI in Italian cinema in the 1930s.

Forzano's film centers on a gigantic cannon and the squad of 13 men, referred to in the title, who maneuver it. The cannon hardly misses a shot and all efforts by the enemy to make out its position are vain. Of special note is the film's location, for *13 uomini e un cannone* takes place on the Eastern front, with the soldiers and the captain in charge of the astounding cannon being Austrians. They are the heroes, while the Russians represent the enemy, and the film clearly stands on the Austrians' side. They are presented as capable, courageous and cheery. The 13 men come from different backgrounds. There is a teacher and a peasant, a pharmacist and a student, a musician and a librarian. There are also an acrobat and a painter, while one of the men openly admits that he does not work: "My father is very rich", he explains. Yet in spite of the social differences, they are sincere comrades and happy to share at table what delicacies they may personally own. The spectator is explicitly invited to identify with the Austrians, who are at the center of the narrative and from the first moment gain our sympathy.

In contrast, the Russians are portrayed with a touch of irony. At the beginning, the film emphasizes the unspeakable fear of the Russian troops before the cannon. It seems to them like a fabulous and monstrous being. The film also makes fun of the Russian generals. They try mightily to locate and destroy the cannon, but to no avail. When they think to have finally hit it and put out of commission, the feat is celebrated with champagne. Yet suddenly, the cannon makes itself heard, hitting the Russian headquarters. Heavy dust envelopes and covers the generals. Their portrayal is in

clear contrast with the image of the Austrians. The lavish table where the Russian officers take their meals, between silver candlesticks and fine porcelain, is contrasted with the frugal fare of the Austrian squad. The montage sets the simple meal in the forest under a tent ironically against the Russian banquet, just as the uniform of the Austrian general who visits the squad on the day of its 500th hit, stands in explicit contrast with that of the Russians. His is field grey, unpretentious, while the Russian generals appear in showy uniforms, on which medals and all sorts of decorations shine.

13 uomini e un cannone represents a unique case among Italian films on WWI, with the enemy against whom Italy fights during WWI, the Austrians, becoming the film's protagonists. The film takes the side of the past opponent, while Russia, which fought together with England, France and Italy against the Habsburg monarchy and Germany, is portrayed as the enemy. Yet the film avoids explicitly characterizing the 13 men as Austrians. The only place where it points to their nationality is the opening credits. These roll against a stylized map reading "Austria" on the left and "Russia" in the up-right corner. Other than this, there are few hints that the 13 men actually are Austrians. There are only vague suggestions. Some of them have foreign names, as does the street where the family of one of the 13 men lives. As he writes them a letter, the address reads: Klosterneuburgergasse. In general, though, the film does not stress their nationality; rather, it purposely confuses it. Some names sound Italian and the fact that they are Austrians is easily forgotten in the course of the story. In front of the spectator stands a deliberately indeterminate hero; and this indetermination also regards the war the film is about. It remains nameless; no dates are given as to when it takes place. It is left to the spectator to identify it as WWI.

Forzano's film reflects significantly the deconcretization marking the depiction of WWI in Italian films in the 1930s. Contemporarily, the reversal of history into its opposite, with the past enemy elevated to hero and the designation of Russia as opponent, must be put in relation with the Fascist regime's international politics at the time of the film's production. On one hand, Forzano's film is to be understood in the context of Italy's politics of friendship with Austria. On the other hand, the Eastern enemy against whom the mighty cannon is aimed seems intended to suggest the Soviet Union. It is worth noticing that while the Austrian nationality of the 13 men remains vague, the enemy is systematically called by name: they are Russians. The different way they are referred to in the opening credits is exemplary, with the Austrian soldiers simply presented as "The Thirteen," their opponents explicitly identified as "The Russians."

In the 13 men which courageously battle the Russians one might detect a hint of the Fascist militias opposing the 'reds' in the years immediately following WWI. The film seems to imply that this is the enemy against whom war is to be fought. *13 uomini e un cannone* comes out in the fall of 1936 and the temporal coincidence with the outbreak of the Spain's civil war is worthy of note. Notoriously, Italy and Germany

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January - June 2021
Volume 7, Issue 1

supported Franco's military junta, while the Soviet Union overtly took the Republican side. Whether there is an echo of the Spanish conflict in *13 uomini e un cannone* remains an open question. Yet Forzano's film has to be placed in connection with the Fascist regime's changing alliances in Europe in the second half of the 1930s, with the past enemy transforming into a new and close ally and Italy engaging in the Spanish war at the side of Nazi Germany.

5. A War of the Past

The last film on WWI made during the Fascist regime was Biancoli's *Piccolo alpino*. The film freely adapts Salvator Gotta's homonymous novel of 1926. The novel, enormously popular, was one of the most-read books for children of the time and also one of the most successful Italian novels on WWI in the interwar period. In second place ranked Monelli's *Le scarpe al sole*. (As an introduction to Gotta's novel and Italian children's literature on WWI, see Colin, 2010; Orestano, 2016. An overview on the Italian literature about WWI can be found in Mondini, 2014). The story is about a boy, Giacomino, who, when war breaks out, joins a group of Alpini. Yet, in Biancoli's film, war is but a thrilling adventure, with no dangers, and everything ends well. Death is almost absent, as may be noted for the enemy as well, which practically disappears from the screen.

Throughout Biancoli's film the enemy is seen merely a couple of times. References to it are made in the dialogues, but without ever mentioning the enemy by name, and the occasional roaring of cannons in the distance reminds of its presence, yet one hardly catches a glimpse of the enemy. The first time that the enemy is seen it takes the form of a couple of spies wearing Italian uniforms, who kidnap Giacomino. As they speak no words, their nationality remains unclear. They are rather clumsy and Giacomino easily frees himself. Later, the enemy is briefly shown while Giacomino and another boy attempt to deliver an important message that they are trusted with to the Italian headquarters. It is just one shot, and what we get to see of the enemy are barely a couple of legs. In *Il piccolo alpino*, the enemy has no name and no face, and that is meant literally. The last time that one gets a sight of the enemy is while Giacomino and the other boy cross the river to reach the Italian positions. Enemy soldiers notice the boys and fire. Again, they do not speak any words, their muteness contributing to their anonymity. It makes an identification difficult, whereas their language would have suggested their nationality.

Noteworthy also is the following scene. During a storm Giacomino loses his way. We find him again in an Austrian orphanage. The boy was luckily rescued by a group of Austrian soldiers. He is fine, and the statement that sometimes can be found in the literature on WWI and Italian cinema that Giacomino is captured and held prisoner by the Austrians, is misleading (Miro Gori, 1988, p. 63; Casadio, 1989, p. 79). In the orphanage, Christmas is being celebrated. There is a joyous atmosphere, with the boys singing a Christmas song. When the director invites Giacomino to sing one, too, suggesting *O sole mio*, Giacomino, instead, sings a patriotic song, and everybody

appears outraged. Yet the reason remains unclear. Is it the tone of the song that contrasts with the Christmas atmosphere? Is it because it is Italian? That the Austrians among which the boy finds himself are actually the enemy remains untold, and when an Italian prelate later visits the orphanage asking about the boy, the director is ready to entrust Giacomino to the clergyman. Had not the boy in the meantime escaped from the orphanage through a window.

As illustrated by the above scenes, Biancoli's film is careful never to identify the enemy with the Austrians. Of note is also the text opening *Piccolo alpino*, that reads: "March 1915. On the eve of the war against the Habsburgs". It is a peculiar and meaningful phrasing. Taking care to avoid any reference to Austria, the film, instead, evokes a historical entity, the Habsburg empire, that already belongs to history. At the film's end, the enemy gets called by name again. Giacomino reads the communiqué by the Italian general-in-chief Armando Diaz announcing the victory against Austria-Hungary. Once more the enemy is referred to by the name of an historical entity of the past. The effort is evident to present WWI as a conflict led by Italy against an old dynasty and a state which do not exist anymore. Manifestly, any parallelism between the enemy and later Austria, which in the 1930s is a close partner of fascist Italy, is meant to be avoided. Meanwhile, Austria, too, ceases to exist, the country becoming part of Nazi-Germany. Its annexation by force to the Third Reich takes place in March 1938. And this may be a further reason that in *Piccolo alpino* there are hardly any references to Austria. As if Biancoli's film wanted to remove the fact that Austria actually had ever existed. Once again the history of WWI is being reshaped on the screen to adapt to the present.

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European Journal of
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January - June 2021
Volume 7, Issue 1

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Tendencies Regarding Fish Consumption – The Case of Portugal (Europe's Leader & 3rd in the World)

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Abstract

Portugal is Europe's leader in consumption of fish and ranks 3rd in the world (topped only by Iceland and Japan). Portuguese consumers eat 59 kg of fish per year, distantly followed by E.U. (28) numbers 2 and 3 - Spain and France - with 39 and 33.9 kilos per capita (2015). Culture theorists like Claude Fischler, Leon Rappoport, Mary Douglas, Poul Rozin, Massimo Montanari, Pierre Bourdieu and Cornelius Castoriadis, agree that the basic determinant of population's diet is its culture and food has always been much more than a source of physical nourishment. To analyse the tendencies regarding fish consumption we used *Docapesca Portos e Lotas S.A*'s data (a government owned company, under the Ministry of Finance and the Ministry of Sea). A total of 1393 respondents participated in 2 surveys (one survey being for the general of the population and another one specifically for generations born after 1980s) which gave us a total of 221 variables to analyse. 7 segments were identified, depending on lifestyle, relationship with fish and how consumers buy fish. Results were abundant, remarkable and complete, including ex. factors influencing store choice store; the best source of information about food; what healthy eating means/ how it has changed over time; price; time; taste; availability; cooking skills; factors influencing the choice of a store; perceptions regarding fresh fish, its flavour, quality and freshness, smell, price and confection; personal preferences (salted dry fish, smoked fish, frozen fish, canned fish, fresh fish, whole fish, fish stalls, fish fillets).

Keywords: food consumption, taste and identity, tendencies, fish, Portugal, EU, culture

Introduction

One of the most interesting and visible ways in which men and women express their cultural differences is through the food that they eat or do not eat (Fieldhouse 1986). Human diets are governed first by what men can gather from their environment and when given a choice, they eat what their ancestors ate before them. Regarding fish consumption Portugal turned out to be the highest in the EU-28, with 59 kg per capita year (2015) and the 3rd highest in the world (Topped by Iceland and Japan). These figures had no positive correlation with fish production levels. Fish production figures in Portugal did not achieve more than 256,589.00 tons in 2017, a figure that puts Portugal in a modest 10th place in the EU-15 and an insignificant place worldwide. Countries like Denmark or UK, with very high production levels, came (far) behind in the consumption ranking. It was with the EU-28 reality as a base of comparison that this research focused in the case of Portugal. Historically, fish consumption per capita in Portugal reached an all-time high of 71.4 kg in 1967 and an all-time low of 25.4 kg in 1979. Graphic 1 shows the levels of fish consumption and fish production in EU-28, and easily one can see how the reality of Portugal stands out in the group. Portuguese fish per capita consumption is more than 30 kg higher than the EU average of 25,1 Kg. Since the production level of fish is less than one third of the fish consumption, the market dependency on imports is very big. The main species imported are cod, shrimps, hake, squid, octopus, horse mackerel, tuna, sardines, mackerel, salmon, seabass, monk, crab and gilthead seabream.

Graphic 1

Levels of Fish Production and Consumption in the EU-28– Kg/Per Capita
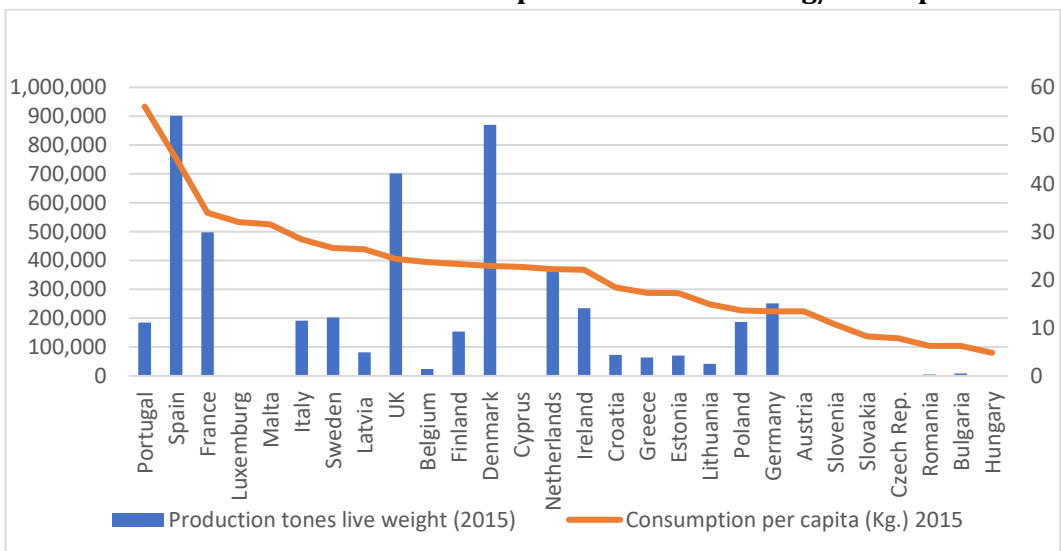
Source: (Source: FAO Fisheries Circular No. 972/4, Part 1, 2007; FAO 2016)

In line with these high fish consumption figures, Portugal household expenditure's for fish present a recording EUR 327 in 2016, which is about three times the EU average (graphic 2).

Graphic 2

Per Capita household expenditure for fishery and aquaculture products in the EU in 2016 and % variation 2016/2015 (out of home consumption is excluded)
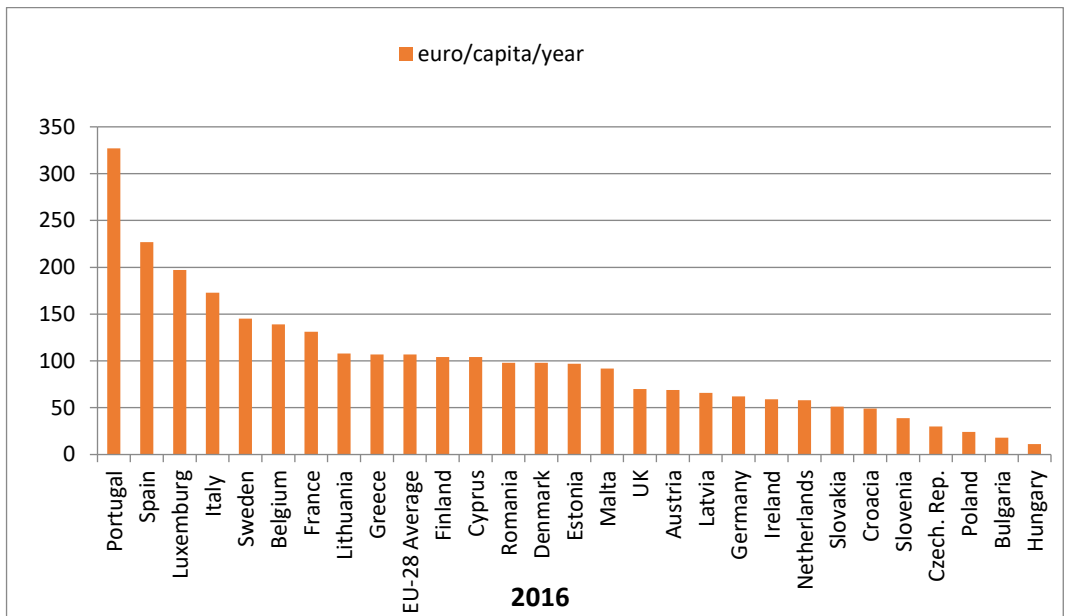
Source: "The EU Fish Market, 2017" Highlights, the EU in the world, EU market supply, Consumption trade, EU landings,

Aquaculture production, Maritime affairs and Fisheries – EUFOMA – European Market Observatory For Fisheries and Aquaculture Products

As a note for comparison, in 2016 the EU expenditure was EUR 220 billion for meat and EUR 54,8 billion for fish. The EU consumer spends, on average, four times more for meat than for fish. Portugal's expenditure for fish was around three-quarters that of meat in 2016. One should notice now that Portugal is a country with 1.187 km of coast line, (including the archipelagos os Azores and Madeira), with a Exclusive Economic Zone of 1,7 million km square and that more than 75% of its population living by the ocean. Portuguese culinary tradition is mostly linked to cod, small pelagics fish products (sardine), whole fish prepared with bones, and other different

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

types of seafood. The Portuguese seafood consumption is characterized by a wide variety of species. Despite the culinary tradition, cod (salted and dried) does not exist into the Portuguese waters[1]. Price has obviously affected consumption frequencies but, despite the risk that it could deter consumers from eating expensive products, such as cod, Portuguese consumers' choices are strongly affected by tradition. For this reason, despite the fact that its prices are two times higher than those of other fish species, cod remains the most consumed species[2]. Portuguese fish consumers perceive fish as healthy food. However, due to the current high level of seafood consumption, further increases may generate impacts on both on population diet and stocks, with increased fishery pressure (Almeida C., et al 2015).

Theoretical background: Food Culture Theory

Food is more than just a collection of nutrients; it has always been much more than a source of physical nourishment, being an important part of everyday culture (Sanjur, 1982). Food is a mean to distinguish us from the rest of the world and has the strength to define us. Food has many different meanings attached, like identity, personal relationships and power; Culture theorists like Claude Fischler, Leon Rappoport, Mary Douglas, Poul Rozin, Massimo Montanari, Pierre Bourdieu, Cornelius Castoriadis, and Diva Sanjur agree that the basic determinant of population's diet is its culture. Adults and children everywhere know exactly what to say when asked to describe a nutritious diet: they recite the food guide and list rich sources of vitamins and minerals. However, none of this memorized knowledge is reflected in their own eating habits (Fieldhouse 1986, preface). In fact, most people do not decide what to eat based on their rational biological and nutritional needs. They decide based on their culture.

Culture is not biologically determined nor individually developed. It is a learned experience, cultivated subconsciously in a natural group atmosphere. It is a kind of social heritage that makes us similar to some people and yet different from the vast majority of people in the world. The food we eat is a reflection of that heritage, of that culture. A taste towards a particular food or set of foods largely reflects the prevailing cultural environment (Mela, in Frewer et. al. 2001, pg 19), or, as Askegaard et al., (1998) defined, food culture is (in a anthropological way) a culinary order whose traits are relevant and similar among a certain group of people.

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[1] At this point one should mention the importance given to this fish species during the dictatorship period of 1933-1974, specially the 1934-1967 "Cod Campaign".

[2] The EU Consumer Habits – EU Consumer Habits Regarding Fishery and Aquaculture Products – January 2017

Food's traditional metaphysical significance can be accredited to its being an indispensable source of life and nourishment (Rappoport, 2003 pg 113). Counihan (1997, pg 1) stated that food is life, and life can be studied and understood through food. Nothing can be more vital than eating; nothing can be more intimate. Intimate is precisely the adjective to be applied, as in Latin, it is the superlative of interior. The mouth is the orifice opening into the interior depths of the body (Fischler, 1988, pg 282). Nothing could be more threatening or intimate than taking something into the body and yet this occurs in every act of ingestion (Rozin, 1998, pg 219). By eating food we allow it to ascend to the heart of our interior (Fischler, 1990, pg 11). The food we chose to incorporate will represent us, in a biological, psychological and social way (Fischler, 1988, pg 275).

2.1. The Functions of Food

The food we eat has different functions, which are deeply intertwined and of absolute importance: a biological function and a cultural function.

2.1.1. Biological Function (Nutrition): In physiologic terms, we use food to satisfy hunger, and provide nourishment; we cannot survive without eating.Food fulfils the basic biological needs of satisfying hunger and nourishing the body (Maslow, 1954), and through food, humans prevent, diagnose and treat physical and psychological illness. Some foods have traits that can have an immediate effect on psychological or emotional systems - sweets stimulate the brain and chocolate is well known for its ability to comfort a broken heart; certain teas treat stomach illnesses while drinking chamomile tea provides calmness; drinking coffee can make us sharper but also more stressed. By eating healthy food we can reduce high cholesterol and the risk of heart attacks; by not easting or by losing too weight, our body sends signals that something is wrong with it. But perhaps most interesting is the individual reactions people have to different types of foods. Basically "any want or need which we have relates to a sort of tension in our body; and by eating the kind of food we like we relieve that tension and we are happy" (Dichter, 1964, pg 11).

2.1.2. Cultural Function (Symbolic): In social terms, our relationship with food expresses our cultural identities. Aside from physiological needs, the creation of a diet is influenced by cultural and social standards on what can and cannot be eaten and what is liked and disliked (Fischler, 1980, pg 937). Indeed, there are hardly any significant social activities or emotional states to which food is irrelevant, and there are many personal interactions, such as parent-child relationships, to which it is central (Rappoport, 2003 pp. 21). Since our culture and its habits are deeply rooted in the food experiences of children, the formation of children's food habits is of major

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

interest. By eating certain foods, cooking in a specific way or using certain utensils for preparation (Douglas, 1972), we are sending signals that link us to our family, our culture, and our identity. Food behavior is closely tied to our sense of personal identity and social-adjustment habits; it is part of humans' social capital (Rappoport, 2003, pg 206). People communicate who they are through their uses of food (Fieldhouse 1986, pg 44), and seek out and consume only those things identified by their group or society as being good to eat (Rappoport, 2003, pg 142). Cultures shape our tastes. As we understand that food makes the eater (we are what we eat), it is therefore natural that the eater should try to make himself or herself by personal eating practices. It is because of the vital and symbolic importance of identity that man has invented cuisine (Fischler, 1988, pg 277). Cuisine, or in Lévi-Strauss 1968, words "a society's cookery" is a language into which society translates its rules, its practices, its structure.

3. Theoretical background: The Meanings of Food

People develop meanings to their reality and then express them through their cultural symbols and culinary systems. Culinary systems play a part in giving a meaning to man and the universe, by relating them to each other in overall continuity (Fischler, 1988, pg 281). But the meanings that we create can transform themselves, as one person gets one pattern and another a quite a different one from the same events (Douglas, 1992, pg 25).

Meanings are observable in physical things (Douglas, 1992, pg 23), and to find consistent and transparent meanings, it is useful to examine consumption patterns (Douglas, 1992, pg 22). Man gives meaning to food and food gives meaning to man. What we eat, the importance we give to food, and the meanings we create from our diets, reflect our gastronomic traditions and our food culture. If we observe the rules, then we would understand why some food products became part of countries' diets instead of others.

3.1. Food, Taste and Identity

Quantitative social differences have always existed between rich and poor populations, but with an increasing diversity of foods, these differences were able to take on a more qualitative character: food became not only a matter of social status, but also a mark of one's personality and taste (Hortense Powdermaker in Counihan et. al, 1997, pg 207). In his work from 1984, Distinction: a social critique of the judgment of taste (in French, La Distinction), Pierre Bourdieu gives us a view on how taste is formed, the underlying roots of taste, and on these taste mechanisms and

institutions. Belonging to a social class is as much a matter of mastering an aesthetic repertoire as it is a matter of material wealth. People tend to find things beautiful because they have been taught to appreciate them, not because they are inherently beautiful. A taste for the subtleties of fine wines or abstract expressionist paintings is acquired as part of an elaborate and advanced education unavailable to most people. Bourdieu puts things in a social space; socio-economic classifications like education and income are part of what he calls of cultural capital and economic capital. These two sources of capital are indicative of a higher social position.

The economic capital is associated with money. As food is concerned, the abundance and the type we eat are a sign of wealth and security in life. For Catholics, the difference between eating the jovial and privileged meat or the melancholy and humble fish, can distinguish high and low status on the social ladder (Toussaint-Samat, 1992, pg 313). The Lent fast, which lasts the forty days before Easter, forbids consumption of meat, but that does not apply to everyone, since the restriction may be removed by paying a certain fee to the local priest (Montanari, 1994, pg 47).

Cultural capital deals with something different: knowledge and recognition. Gourmets make efforts to acquire substantial knowledge about food and cuisine, primarily to use it to gain social status, to win friends, to influence people and above all, to acquire a valuable form of social capital. (Rappoport, 2003 pp 206). By displaying expertise in such matters, gourmets sincerely appreciate what they represent, but also display that they have acquired connoisseurship, and that they are members of an elite group capable of appreciating the finer things in life.

Just as the music connoisseur appreciates both the beauty and the taste of melody and scientific precision of orchestration, the food expert also appreciates both facets. He is aware of the orchestration of the meal, the combination of taste and aroma, and the nutritionally correct preparation and composition (Dichter, 1964, pg 12). From their knowledge on food, gourmets gain recognition. This is an example of Bourdieus' cultural capital. This competence to appreciate and experience things such as a fine fish dish or fine art is something that begins at home, with early childhood experiences. Someone in our life will teach us how to appreciate fish, and even how to desire coffee and chilli (Filedhouse, 1986, pg iii; Rozin, 1990) despite the bitter and burning sensations they evoke. We acquire these likes and preferences by interiorizing what we are exposed to. When all of the influences that our parents, family, peers (McFerran et. al, 2013, pg 61), teachers, media, work colleagues (...) have in forming our tastes are taken into account, it becomes apparent that our tastes are not subjective.

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

3.2. Food and Personal Relationships

Foods also have the function to initiate and maintain personal and business relationships (Farb et al., 1980, pg 4). It is through food that we demonstrate the nature and extent of relationships. When we are dating, taking or being taken out to dine is one of the first steps in a relationship, when facing emotional stress, couples usually try to bring back romance by dining out, and when it's time to apologize, a box of chocolate or a bottle of wine express thoughtfulness and sincerity. By preparing a special meal for a dear one or buying the type of chocolate our children prefer (Miller, 1998), we are showing that we think about them even when they are not present. Through food, we can express our love and caring for other people, just as how women have expressed love of family through careful selection, preparation, and serving of meals (Fieldhouse 1986, pg 28). The eating and giving of food thus remain a symbol of love, affection, and friendliness, as well as a source of pleasure in itself (Powdermaker, In Counihan et al., 1997, pg 208). Consumers eat in conformity with the society they belong to, more precisely the group, establishing distinctions and delineating precise frontiers (De Garine, 1990, p. 1453). By absorbing food, the eater incorporates a culinary system and with that, the group which practices it (Fischler, 1988, pg 280). Through food one can proclaim association or separation from a group. Human beings mark their membership in a culture or a group by asserting the specificity of what they eat, or more precisely by defining the differences of others' diets. Food determines, more than any other physiological function, the nature of social groups and the way their activities are formed (Richards 1948 in Fischler 1990, pg 18). If food was to be treated as a code, as a way to communicate, its messages would be found in the pattern of expressed social relations. These messages would be about different degrees of hierarchy, inclusion and exclusion, boundaries and transactions across the boundaries (Douglas, 1972 pp. 61).

If we were not submitted to the same food code we would not able to find the social organization encoded by the sender of the particular message. Food has an important symbolic and emotional weight attached to it and depending on our learned codes; we give different meanings to it. If we are born and raised in southern Europe we cannot imagine going to a wedding where champagne is not present, but, instead, if we are from the rural parts of the northern Europe, having champagne could be understood as an excessive luxury and perhaps also to some extent a sign of decadence (Solomon et al., 2002).

Going against these learned codes can be something intentional, like a teen's individuality statement, but it can also be something feared, due to groups'

stigmatization and personal guilt. It would seem impossible for someone raised as an orthodox Jew or Muslim to have an unmediated experience with a pork chop or ham sandwich because he or she would inevitably feel some sense of guilt or at the least an awareness of violating a religious prohibition (Rappoport, 2003 pp 107). People generally tend to feel guilty when indulging in junk food. The guilt aspect is already so well entrenched in our collective national discourses that consumers are often ready to apologize and rationalize for even thinking about eating a Big Mac or an ice cream (Rappoport, 2003 pp 196). The ritual of fasting, common to many religions, is instructive of an aesthetic diet being associated with the highest levels of spiritual and moral attainment, wisdom (Rappoport, 2003 pp 112), and self-control.

By sharing the same food codes and the same values of a group, we demonstrate our support and acceptance of its communal ties, and confirm and connect ourselves to the group and to what binds it. Examples of this assumption are prevalent: teenagers that want to be slim so to be accepted in a group; Catholics that fast from meat on Fridays and wholly days to identify themselves as Catholics. By eating something beyond the limits of what is locally accepted, people become the targets of powerful sanctions, and those who violate the food conventions of their group or society do so at their own risk (Rappoport, 2003; pg 44);

5. Methodology

So how can we start understanding the tendencies regarding fish consumption for the next decade? Well, according to Solomon, tendencies and trends refer to underlying values that drive consumers toward certain products and services and away from others; however, these values evolve over time and consumer trend forecasting is now a big business, with many organizations devoting huge resources to monitoring the bleeding edge of consumer behaviour. Based on this, we have framed our research giving top priority to the study of generation Y (people born in 1980-1995) and generation Z (born mid-1990s to mid-2000s). The fact is that, according to food culture theory, if we want to better understand the tendencies regarding fish consumption, we should pay special attention to generations Y and Z since they are the ones shaping seafood consumption in Portugal over the next decade.

Procedure and sample

To analyse the tendencies regarding fish consumption we used Docapesca Portos e Lotas S.A's data (a government owned company, under the Ministry of Finance and the Ministry of Sea). A total of 1392 respondents participated in 2 surveys (one survey being for the general of the population and another one specifically for generations

born after 1980s, generations Y and Z). Data was collected in 2017 using used quota sampling, by using a socio-demographic variable such as sex, age, and region representative of population as non-probability sampling technique. The descriptive statistics are shown in Table 1 and Table 2. The questionnaire was anonymous in order to guarantee a higher level of participation and honesty. Each question was debated by a multidisciplinary team composed of nutritionists, marketing and survey specialists, representatives of commercial companies, statisticians, and people experienced in the seafood sector. Furthermore, the attained preliminary questionnaire was sent to a group of twenty individuals outside the expert group with the purpose of assaying the clarity, simplicity, and appropriateness of the various questions. During this process, several alterations were introduced, but the overall architecture of five sections was kept in the final form of the questionnaire. These fish products were chosen on the basis of consumption importance in Portugal. In order to reach a large universe and different ages and geographical regions of the country, a telephonic and a web online medium was the natural option respectively. Survey for the general of the Portuguese population was contacted in order to understand a seafood consumption patterns in general. *There is a set of characteristics common to all these young people. However, there is also a lot that separates them and, in fact, there is not a homogeneous group of young people but rather 7 segments with different philosophies of life. Through the use of techniques of multivariate analysis Docapesca Portos e Lotas S.A identified the existence of a more complex response, indicating that it is necessary to understand how to communicate with these 7 distinct groups of young people: Trendy Seekers, Conservatives, Extreme Lifers, Traditional Families, Social Techies, World Protectors and Simple Lifers (Coelho et al., 2018)*. More detailed results data of relationship with fish and how Y and Z consumers buy fish for *each segment*, will be presented in a another paper as the second part of this study.

Statistical analysis

Factorial analysis of variance (general linear model, one-dimensional ANOVA) was carried out using the SphinxIQ software (Sphinx Company, Montréal, Canada). This methodology enabled to analyse the overall distribution of respondents as well as the consumption preferences and frequencies affected by the independent variables. The difference of means between pairs was resolved by using confidence intervals in a Tukey HSD test. Level of significance was set for $p < 0.01$.

ISSN 2411-958X (Print)
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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

6. Results and Discussion

Place of purchase of the fresh fish in the Portuguese population

Concerning place of purchase of the fresh fish, the universe of respondents clearly prefers supermarkets to local markets, 54.1% vs 17,6% (Table 3). The tendency is reinforced by Generations Y and Z, 66,5% vs 14.5% and 70,7% vs 8.1% respectively (Table 4).

Perception of the fresh fish in the Portuguese population

Portuguese consumers perceive Portuguese fish as the best in the world, ranged 4,05 by 5-point Likert type scale with 67,8% for agree/totally agree answers. However only with 38,9 % for agree/totally agree answers, consider themselves fish connoisseurs, , ranged 3,24 by 5-point Likert type scale (Table 5 and Table 6)

Store choice behavior in the Generations Y and Z in Portugal

Since supermarkets are preferred for the purchase of the fresh fish by Generations Y and Z, 66,5% vs 14.5% and 70,7% vs 8.1% respectively (Table 4), there is a growing need to evaluate the store choice behaviour in Portuguese context. The distribution of the importance variables of store choice criteria are presented in Table 6 (mean values in 5-point Likert type scale) and Table 7 (%). The data in Table 7 and Table 8 indicate that everyday low price, good value for money, pleasant shopping experience and variety are considered the most important store choice criteria, while product samples, being kid-friendly, variety of gourmet and exotic foods attracts the least attention. The importance attached to takeaway, specialties and recipes is moderate.

The best source of information about food for the Generations Y and Z in Portugal

The data in Table 9 indicates that 39,5% of young people in Portugal often look for fealty food solutions. It is for this reason that it is so important to understand the best source of information for them. Young people consume collaboratively, they rely more on input from social circles in making food decisions. The data in Table 10 indicates that Facebook is considered the most important source of the information about food, while blogs and magazines and producer website attracts the least attention. The importance attached to Youtube, Google, TV and Instagram is moderate. Generations Y and Z in Portugal will confer with family and friends (including their large social media friend groups) to help them make decisions related with food as much as they believe "chef de cuisine" (Table 11).

What healthy eating means to the Generations Y and Z in Portugal

Generations Y and Z in Portugal are concerned with health and food since 54% are pay special attention to the food they eat and 46% practice sports *(Coelho et al., 2018)*. The data in Table 12 indicates that main changes for a healthy diet are: cutting down on chocolates, sugar, etc. (46, 2%); cutting down on fats (39,8%); eating fewer processed foods (39,3%). Following a low-carbohydrate/high in omega 3 diet has moderated importance (29.6%). The data in Table 13 and Table 14 indicates that Generations Y and Z in Portugal perceive fish as the best choice for their meals, recognizing that fish is not their favourite. The data in Table 15 and Table 16 reveals that what young Portuguese like the most about fresh fish is its taste (66.7%) and its quality and freshness (26.4%). Smell (47.2%) is perceived as the biggest problem. The importance attached to price (25%), to bones (12.5%) and to the difficult of confection (11.1%) is moderate. There is also a belief that fresh fish is the most suitable food for meals, but it is more expensive than meat. This comes in line with the moderated belief that healthy food is more expensive (Table 12).

Meal choice behavior in the Generations Y and Z in Portugal

Regarding meal choice, the data in Table 17 and Table 18 indicate that price is more important in case of fresh fish then in general (65.3% vs 48%). On the other side of the scale we have consumption objective (frying, grilling, for parties), type (fresh, frozen, canned), format (whole, put, fillet), expiration dates, quality, final consumer (myself, children, family, friends) and promotion, which are perceived as particularly unimportant in case of fresh fish.

Cooking skills in the Generations Y and Z in Portugal

The data in Table 19 indicates that, contrary to what one might think, Portuguese young people know how to cook and like to cook, as opposed to Americans (Fromm et al., 2011). Almost 50% actually enjoy cooking and to be creative in the kitchen; 7.7% love to cook and consider themselves as experts; 31.1% simply do not mind cooking - it's just one of the things they do. On the other hand, less than 12% do not like to cook (it's an annoyance).

Personal preferences in the Generations Y and Z in Portugal

The data in Table 20 and Table 21 display a higher preference for Portuguese fish than for foreign farmed fish. Regarding fish presentation, chilled (fresh) fish is much more liked than salted/dried (Table 24 and Table 25). Appetizers, grilled and braded are particularly liked (Table 22 and Table 23). Portuguese young consumers prefer fish

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

filets to whole fish or fish stalls. This cannot be easily correlated to consumption levels of the various fish products, since many products cannot be sold in fish stalls (Table 26 and Table 27).

Spontaneous awareness of the seafood in the Generations Y and Z in Portugal

The data in Table 28 display a higher spontaneous awareness for codfish (37.8%), which comes as no surprise. As it was described previously, Cod is considered, by far, as the national fish – even though it does not swim in Portuguese waters. According to the Cod Industry Association, and according to the Norwegian Seafood Export Council, 20% of all the Cod captured in the world is consumed in Portugal – a total of 70.000 tones, 70% of which comes from Norway. As a curiosity, Portugal is the only country in Europe that consumes more Cod than salmon.

Conclusions

Portugal is Europe's leader in consumption of fish and ranks 3rd in the world. To analyze the tendencies regarding fish consumption we used Docapesca Portos e Lotas S.A's data (a government owned company, under the Ministry of Finance and the Ministry of Sea). Results were abundant, remarkable and complete. Substantial data indicates that (i) Portuguese consumers prefer to buy fresh fish in the supermarket; (ii) Everyday low price, good value for money, pleasant shopping experience and variety are considered the most important store choice criteria; (iii) while product samples, being kid-friendly, variety of gourmet and exotic foods, attracts the least attention of young people; (iv) The importance attached to takeaway, specialties and recipes is moderate; (v) Portuguese consumers perceive national fish as the best fish in the world (small pelagics like sardines and mackerel); (vi) but nevertheless, they don't consider themselves as fish connoisseurs in general; (vii) Young people in Portugal often look for healthy food solutions. It is for this reason that it is so important to understand the best source of information for them; (viii) Young people consume collaboratively - they rely more on input from social circles in making food decisions; (ix) Facebook is considered the most important source of information about food, while blogs and magazines and producer website attracts the least attention; (x) The importance attached to Youtube, Google, TV and Instagram is moderate; (xi) Generations Y and Z will confer with family and friends (including their large social media friend groups) to help them make decisions related with food as much as they believe "chef de cuisine".

Based on this extensive study one can also understand that generations Y and Z in Portugal are concerned with their health and with the food they eat, and the main

changes they normally do when "going healthier" include cutting down on chocolates/sugar/fats and eating fewer processed foods. Following a low-carbohydrate and high in omega 3 diet has moderated importance. Yong people in Portugal perceive fish as the best for their meals, recognizing that fish is not their favourite, reviling that what they like the most about fresh fish is the taste, it's quality and freshness – and what they like the least is its smell. There is also a belief that fresh fish is the most suitable food for meals but that it is more expensive than meat – which reinforces the belief that healthy food is usually more expensive. They still prefer wild to cultured fish - as well as Portuguese fish to foreign fish. Regarding fish presentation, chilled (fresh) fish is preferred over frozen, salted/dried, canned, and smoked fish. Furthermore, appetizers, grilled and braded are particularly liked by Portuguese young consumers. Fish filets are also more valued than whole fish or fish stalls. Regarding meal choice, data indicates that price is more important in case of fresh fish then in general. Contrary to what one might think, Portuguese young people know how to cook and like to cook. Portuguese young people's minds still perceive cod as having the highest fish awareness. Portugal is a leader in fish consumption and according to what was described in this research, that position will be maintained for some time. Some new nuances appeared with these new consumers (some new tendencies regarding preferred fish presentation or to better understand how to communicate with Generations Y and Z) but the conclusions indicate that consumers continue to believe in the excellent quality of fish and that it is an excellent and healthy food. According to the food culture theories, food habits are determined and dependent on the culture one belongs too. They are intertwined with ones identity and ones interpretations of the world. The food we eat reflects shared values and practices that characterize an institution - and institutions (or groups) share specific values and practices, making it distinct from other institutions or groups. The food we eat also makes us similar to our family or group and at the same time different from the other groups – it delineates social groups. People build their identity by consuming certain specific products and by consuming certain specific foods. Food and drink have such a symbolic and emotional significance, that food preparation and consumption are often associated with particular ritual events which have nothing to do with nutrition (Farb and Armelagos 1980). Having said so, in Portugal fish entirely fulfill its different biological/nutrition function and well as its cultural/symbolic function. One cannot ignore the fact that to generations Y and Z in Portugal, fish is also considered as having very good taste, and as being part of a tradition that is still very much present in these new generations. The foods served on Christmas and Thanksgiving carry a wide variety of emotional for family members. The meal as a

whole as well as specific items on the menu, usually evoke shared family stories, myths, and memories of deceased relatives embodying and preserving significant aspects of the family culture (Rappoport, 2003 pp 194). Portuguese food culture is embedded with fish and from what we have revealed in this paper, the new generations will continue to include it in their meals. Somehow fish is strong item in the complex construct which is "being a Portuguese".

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

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Tables

Table 1

Respondents demographic profile (n=1000) of survey for the *Continental Portugal population in general*

	No.	%
Region according to Nuts II		
North	352	35,2%
Centre	250	25,0%
Lisbon	277	27,7%
Alentejo	80	8,0%
Algarve	41	4,1%
Gender		
Male	491	49,1%
Female	509	50,9%
Age		
16/24 years	91	9,1%
25/34 years	168	16,8%
35/44 years	185	18,5%
45/54 years	181	18,1%
55/64 years	166	16,6%
65 years or more	209	20,9%
Education level		
Primary	192	19,2%
Secondary	488	48,8%
Higher	320	32,0%

Table 2

Respondents demographic profile (n=392) of survey for Portugal's *Y and Z generations*

	No.	%
Region according to Nuts II		
North	156	39,8%
Centre	90	23,0%
Lisbon	105	26,8%
Alentejo	25	6,4%
Algarve	16	4,1%
Gender		
Male	491	49,7%
Female	509	50,3%
Age		
16/19	45	11,5%
20/24	112	28,6%
25/29	110	28,1%
30/34	125	31,9%

Table 3

General results (%) of the survey into the place of purchase of the *fresh fish in the Portuguese population*

	% cit.
Supermarkets	54.1%
Fishmongers	22.1%
Local Markets	17.6%
Fish Auctions	6.2%
Total	**100.0%**

*p = **<0.01** ; Khi2 = **632.44** ; dof = **3** (**VS**)*
The relation is very significant.
elements over (under) represented are coloured.

Table 4

General results (%) of the survey into the place of purchase of the *fresh fish in the*

Table 5

Portuguese population as a function of age

	Supermarkets	Fishmongers	Local Markets	Fish Auctions
18/24	**70.7%**	**14.1%**	**8.1%**	7.1%
25/34	**66.5%**	**15.0%**	14.5%	**4.0%**
35/44	**59.0%**	**22.5%**	15.9%	**2.6%**
45/54	**57.8%**	**17.3%**	17.8%	7.1%
55/64	**42.7%**	**27.3%**	**23.3%**	6.6%
65 or more	**41.3%**	**29.5%**	19.9%	**9.2%**

*p = **<0.01** ; Khi2 = **67.57** ; dof = **15** (**VS**)*

The relation is very significant.
elements over (under) represented are coloured.

General results (5-point Likert type scale) of the survey into the perception of the *fresh fish in the Portuguese population*

	Mean	Std deviation
The Portuguese fish is the best in the world	**4.05**	0.99
I am careful with the origin of fish I consume	**3.37**	1.38
I like to explore new fish recipes	**3.27**	1.16
I consider myself a fish connoisseur	**3.24**	1.20

*Cronbach's Alpha = **0.66***

Evaluation of scales: from 1 (Strongly disagree) to 5 (I totally agree)

Table 6

General results (%) of the survey into the perception of the fresh fish in the Portuguese population

	Strongly disagree	I disagree	Neither agree nor disagree	I agree	I totally agree
I like to explore new fish recipes	7.3%	**16.9%**	**36.7%**	20.1%	**19.0%**
The Portuguese fish is the best in the world	**1.4%**	**4.0%**	**26.8%**	**24.1%**	**43.7%**
I consider myself a fish connoisseur	8.2%	**18.3%**	**34.6%**	19.2%	**19.7%**
I am careful with the origin of fish I consume	**13.1%**	14.7%	**23.6%**	19.0%	29.6%

*p = **0.00** ; Khi2 = **374.89** ; dof = **12** (**VS**)*

Table 7
General results (5-point Likert type scale) of the survey into the store choice behaviour *in the Generations Y and Z in Portugal*

	Mean	Std deviation
Everyday low price	**3.06**	0.60
Good value for money	**3.03**	0.64
Provide a pleasant shopping experience	**2.96**	0.62
Having a little bit of everything	**2.94**	0.64
Takeaway	2.86	0.65
Having specialties	2.82	0.64
Providing creative menu ideas or recipes	2.78	0.61
An online ordering system	**2.75**	0.62
Variety of exotic foods	**2.74**	0.59
Being kid-friendly	**2.71**	0.59
Providing new product samples	**2.70**	0.59
Variety of gourmet	**2.55**	0.62

*Cronbach's Alpha = **0.85***

Table 8
General results (%) of the survey into the store choice behaviour *in the Generations Y and Z in Portugal*

	Not important	Little important	Important	Very important
An online ordering system	**5.6%**	**17.9%**	**72.7%**	**3.8%**
Variety of gourmet	**4.8%**	**37.8%**	**55.4%**	**2.0%**
Providing new product samples	2.6%	**28.8%**	64.3%	**4.3%**
Being kid-friendly	2.3%	**29.1%**	63.8%	**4.8%**
Variety of exotic foods	1.3%	**29.8%**	62.8%	**6.1%**
Providing creative menu ideas or recipes	1.8%	27.0%	63.0%	8.2%
Having specialties	1.5%	26.5%	60.7%	11.2%
Having a little bit of everything	**0.3%**	23.0%	59.4%	**17.3%**
Takeaway	2.0%	23.0%	61.6%	13.3%
Good value for money	**0.3%**	**18.4%**	59.9%	**21.4%**
Provide a pleasant shopping experience	**0.3%**	20.7%	61.7%	**17.3%**
Everyday low price	**0.3%**	**14.3%**	64.5%	**20.9%**

*p = **<0.01** ; Khi2 = **348.73** ; dof = **33** (**VS**)*

Table 9
General results (%) of the survey into the healthy food solutions in the Generations Y and Z in Portugal

Table 10
General results (%) of the survey into the best source of information about food for the Generations Y and Z in Portugal

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

Non-descriptive	——
I often look for healthy food solutions	——

p =)
VS
7.7% (
I love to cook and consider myself an expert2
; dof =
11.7% 118.69
It's an annoyance ; Khi2 =
−0.00
I really don't like to cook p =
it's just one of the things I do 52.0%
−Neutral
I don't mind cooking 39.5%
Descriptive
I enjoy cooking and being creative in the
kitchen 8.4%
grandparents

Facebook	55.9%
YouTube	32.1%
Google	30.1%
TV	30.1%
Instagram	23.0%
Blogs	17.9%
Magazines	16.8%
Producer / Brand website	6.1%

p = <0.01 ; Khi2 = 224.28 ; dof = 7 (VS)

Table 11 General results (%) of the survey into the best source of information about food for the Generations Y and Z in Portugal

Chef de cuisine	55.1%
Family	40.5%
Colleague / Friend	36.9%
Teacher	23.3%
Scientist / Doctor	23.1%
Blogger	10.8%
Celebrity	5.1%

p = 0.00 ; Khi2 = 257.49 ; dof = 6 (VS)

Table 12 General results (%) of the survey into the best source of information about food for the Generations Y and Z in Portugal

Cutting down on chocolates, sugar, etc	46.2%
Cutting down on fats	39.8%
Eating fewer processed foods	39.3%
Following a low-carbohydrate, high in omega 3 diet	29.6%
Eating more natural, fresh foods	23.2%
Eating the same, but having smaller portions	20.7%
Using slimming programs	9.7%
Following another non-specified diet plan	7.1%

p = <0.01 ; Khi2 = 209.10 ; dof = 7 (VS)

Table 13

General results (5-point Likert type scale) of the survey into the perception about fresh fish meals for the Generations Y and Z in Portugal

	Mean	Std deviation
Fresh fish is the best for my meals	4.09	0.72
Fish is a very important part of a healthy diet	3.74	0.67
Fish is more expensive than meat	3.74	0.66
Fish is my favorite food	3.52	0.78
I buy fish only if it´s on the shopping list	3.49	0.80
I'm careful about the health benefits of products I consume	3.66	0.66
Healthy food is usually more expensive.	3.63	0.71
I should be eating more fish	3.66	0.74

Cronbach's Alpha = 0.74

Table 14

General results (%) of the survey into the perception about fresh fish meals for the Generations Y and Z in Portugal

	Strongly disagree	I disagree	Neither agree nor disagree	I agree	I totally agree
Fresh fish is the best for my meals	1.3%	0.8%	12.2%	59.4%	26.3%
Fish is a very important part of a healthy diet	0.0%	1.8%	33.2%	54.3%	10.7%
Fish is more expensive than meat	0.0%	1.3%	33.7%	54.3%	10.7%
Fish is my favorite food	2.3%	4.1%	40.1%	46.7%	6.9%
I buy fish only if it´s on the shopping list	2.0%	6.1%	39.8%	44.6%	7.4%
I'm careful about the health benefits of products I consume	0.3%	2.0%	37.5%	52.3%	7.9%
Healthy food is usually more expensive.	0.3%	4.1%	36.7%	50.0%	8.9%
I should be eating more fish	0.5%	3.1%	37.5%	47.4%	11.5%

*p = **0.00** ; Khi2 = **234.10** ; dof = **28** (**VS**)*

Table 15

General results (%) of the survey into the what Generations Y and Z in Portugal like less about fresh fish

Smell	47.2%
Price	25.0%
Spines	12.5%
Difficult confection	11.1%
Being farmed	4.2%

p = **<0.01** ; Khi2 = **81.39** ; dof = **4** (**VS**)
The relation is very significant.
elements over (under) represented are coloured.

Table 16

General results (%) of the survey into what Generations Y and Z in Portugal like most about fresh fish

Flavor	66.7%
Quality and freshness	26.4%
Variety	5.6%
Color	4.2%

p = **<0.01** ; Khi2 = **70.72** ; dof = **3** (**VS**)
The relation is very significant.
elements over (under) represented are coloured.

Table 17

General results (%) of the survey into the fresh fish meal choice behavior in the Generations Y and Z in Portugal

Table 18

General results (%) of the survey into the meal choice behaviour in the Generations Y and Z in Portugal

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

Price	65.3%
Origin (wild or farmed)	25.8%
Being Portuguese	15.8%
Certification	13.5%
Appearance	10.7%
Brand	10.5%
Flavour / Taste	10.2%
Promotion	8.9%
Final consumer (myself, children, family, friends)	6.9%
Quality	6.4%
Expiration dates	5.4%
Format (whole, put, fillet ...)	4.3%
Type (fresh, frozen, canned)	4.3%
Consumption objective (frying, grilling, for parties)	3.6%

$p =$ **<0.01** ; Khi2 = **949.67** ; dof = **13** (**VS**)
The relation is very significant.
elements over (under) represented are coloured.

Price	48.0%
Flavor / Taste	45.2%
Easy to find	36.0%
Appearance	33.5%
Quality	30.7%
Easy to cook	16.8%
Smell	15.6%
Nutritional value	12.9%
Texture	9.4%
Convenience	8.2%
Healthy	7.1%
Functional	5.9%
Biological / Organic)	5.4%
Pleasure	5.1%

$p =$ **0.00** ; Khi2 = **694.20** ; dof = **14** (**VS**)
The relation is very significant.
elements over (under) represented are coloured.

Table 19
General results (%) of the survey into the cooking skills in the Generations Y and Z in Portugal

I enjoy cooking and being creative in the	49.5%
I don't mind cooking – it's just one of the things I	31.1%
I really don't like to cook – It's an	11.7%
I love to cook and consider myself an	7.7%

$p =$ **<0.01** ; Khi2 = **174.69** ; dof = **3** (**VS**)
The relation is very significant.
elements over (under) represented are coloured.

Table 20
General results (5-point Likert type scale) of the survey into the cooking skills in the Generations Y and Z in Portugal

	Mean	Std deviation
Portuguese fish	4.11	0.74
Wild Fish	3.99	0.75
Portuguese farmed fish	3.85	0.89
Foreign farmed fish	3.80	0.88

Cronbach's Alpha = **0.81**

Evaluation of scales: from 1 (Do not like) to 6 (I do not know / I never tried)

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

Table 21
General results (%) of the survey into the cooking skills in the Generations Y and Z in Portugal

	Do not like	Like little	Indifferent	Likes	Like very	I do not know / I never tried
Portuguese fish	0.8%	1.5%	13.3%	54.3%	30.1%	0.0%
Wild Fish	1.3%	0.8%	18.4%	56.6%	23.0%	0.0%
Portuguese farmed fish	2.3%	3.8%	21.9%	51.3%	19.9%	0.8%
Foreign farmed fish	2.6%	4.3%	21.9%	52.8%	18.4%	0.0%

p = <0.01 ; Khi2 = 52.99 ; dof = 15 (VS)

Table 22
General results (5-point Likert type scale) of the survey into the preferences in cooking skills in the Generations Y and Z in Portugal

	Mean	Std deviation
Appetizers	4.11	0.75
Grilled	4.04	0.67
Breaded	4.04	0.78
In ethnic foods	3.96	0.82
Hamburger	3.96	0.89
Sandwiches	3.96	0.83
Roasted	3.94	0.75
In salad	3.94	0.79
Gourmet	3.94	0.84
Cooked	3.92	0.76
Tapas	3.89	0.90
Fried	3.85	0.67
Sushi	3.76	1.04
Crude	3.69	0.98

Cronbach's Alpha = 0.90

Evaluation of scales: from 1 (Do not like) to 6 (I do not know / I never tried)

Table 23
General results (5-point Likert type scale) of the survey into the preferences in fish presentation in the Generations Y and Z in Portugal

	Mean	Std deviation
Fresh fish	4.30	0.75
Canned fish	4.06	0.74
Smoked fish	3.96	0.87
Frozen fish	3.94	0.72
Salted / dry fish	3.93	0.88

Cronbach's Alpha = 0.86

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

Table 24

General results (%) of the survey into the preferences in cooking skills in the Generations Y and Z in Portugal

	Do not like	Like little	Indifferent	Likes	Like very	I do not know / I never tried
Cooked	1.3%	4.6%	11.7%	65.3%	17.1%	0.0%
Fried	1.3%	2.3%	16.6%	69.6%	10.2%	0.0%
Grilled	0.8%	0.8%	13.0%	64.8%	20.4%	0.3%
Roasted	1.3%	1.8%	18.4%	58.4%	20.2%	0.0%
Crude	5.4%	5.1%	19.4%	56.4%	12.5%	1.3%
Sushi	5.9%	4.3%	18.9%	51.5%	17.9%	1.5%
Tapas	2.6%	3.8%	18.1%	55.1%	18.9%	1.5%
Sandwiches	1.3%	2.3%	19.9%	55.1%	18.9%	2.6%
In salad	1.0%	2.3%	19.9%	56.4%	18.9%	1.5%
Gourmet	1.8%	2.0%	20.2%	54.3%	20.2%	1.5%
Hamburger	1.0%	4.1%	19.9%	51.3%	20.4%	3.3%
Breaded	0.5%	2.0%	17.9%	53.8%	24.5%	1.3%
In ethnic foods	1.3%	1.8%	20.2%	55.4%	19.1%	2.3%
Appetizers	1.0%	1.5%	11.0%	59.7%	25.3%	1.5%

*p = **<0.01** ; Khi2 = **243.65** ; dof = **65** (**VS**)*

Table 25

General results (%) of the survey into the preferences in fish presentation in the Generations Y and Z in Portugal

Personal preferences

	Do not like	Like little	Indifferent	Likes	Like very	I do not know / I never tried
Fresh fish	1.0%	1.5%	6.6%	48.2%	42.1%	0.5%
Frozen fish	1.3%	2.0%	14.5%	65.6%	16.3%	0.3%
Smoked fish	1.8%	4.1%	14.5%	57.4%	20.2%	2.0%
Salted / dry fish	2.3%	3.1%	17.9%	54.1%	21.4%	1.3%
Canned fish	0.8%	2.0%	13.0%	59.4%	24.0%	0.8%

*p = **<0.01** ; Khi2 = **114.08** ; dof = **20** (**VS**)*

Table 26

General results (5-point Likert type scale) of the survey into the preferences in fish presentation in the Generations Y and Z in Portugal

Table 27

General results (%) of the survey into the preferences in fish presentation in the Generations Y and Z in Portugal

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

	Mean	Std deviation
Fish fillets	3.75	0.69
Whole fish	3.58	0.77
Fish stalls	3.57	0.73

Cronbach's Alpha = **0.86**

	Do not like	Like little	Indifferent	Likes	Like very	I do not know / I never tried
Whole fish	1.3%	5.6%	34.7%	50.8%	7.7%	0.0%
Fish stalls	0.8%	3.1%	43.6%	43.9%	8.7%	0.0%
Fish fillets	0.8%	2.8%	26.5%	60.7%	9.2%	0.0%

*p = **<0.01** ; Khi2 = **33.46** ; dof = **8** (**VS**)*

Table 28
General results (%) of the survey into the spontaneous awareness of the seafood in the Generations Y and Z in Portugal

Codfish	37.8%
Sardine	21.3%
Hake	18.9%
Horse mackerel	18.1%
Sea bass	16.5%
Salmon	11.8%
Octopus	8.7%
Sea bream	8.7%
Squid	5.5%
Tuna fish	5.5%

*p = **<0.01** ; Khi2 = **71.15** ; dof = **9** (**VS**)*
The relation is very significant.
elements over (under) represented are coloured.

Interdisciplinary Computing: An Epistemological Examination and Proposed PLOs

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Abstract

The increase in the number of institutions offering degrees in interdis ciplinary computing raises a set of questions at the epistemological level. A set of questions is raised: is any integration of computing with some other field a representation of interdisciplinarity? What are the limits of enabling? What are the requirements of integration? Does the product of interdisciplinary computing remain computer science? These questions are urgent and answers should be provided especially that the number of such degrees is increasing accompanied by a growing demand on these jobs, as reflected on jobs and opportunities websites. A definition for interdisciplinary computing is needed. This paper attempts to answer these questions based on the huge literature available on interdisciplinarity in general, and interdisciplinary computing in specific. Special reference to career opportunities will be made. The study will be completed using document analysis examining the related documents as the data source of a qualitative research. A phenomenological study will be used to understand the meaning different schools are appropriating to interdisciplinarity. Enough documents will be consulted to extract the common themes and build a sufficient data set of emerging themes to validate the findings. While the phenomenological study aims at describing the essence interdisciplinary computing, grounded theory methods will be used to formulate a definition. As a result of this study is expected to better inform on the design and understanding of how different schools are managing their offering.Some explanatory, exploratory, or descriptive case study involving multiple types of data sources will be explored to acquire a deep understanding and provide support of the findings. The paper concludes with a proposed set of PLOs for interdisciplinary computing and reflecting its educational aspects and respecting technical norms.

Keywords: interdisciplinary, computing, epistemological, examination, PLOs

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

1. Introduction

The 21st century carried a change in the definition of knowledge and its dissemination. Consequently, the content of students' learning and the corresponding processes had been revised. Higher education had to acknowledge that enough knowledge lies outside traditional structures and it should be sought. Accordingly, it had to respond to its external environment without destroying its existing structures. This endeavor brought the concept of interdisciplinarity that requires working with knowledge from multiple disciplines, interacting with knowledge from different branches and its integration. This concept contributed to the production of a huge literature. Despite the relatively not short history, confusion still exists between interdisciplinarity and multidisciplinarity, especially that university curricula are commonly structured by academic disciplines. Tasks like developing interdisciplinary courses, sustaining interdisciplinary initiatives, and financing interdisciplinary programs are difficult specially that faculty members in general stand more at ease in their respective disciplines and norms.

It is agreed upon that interdisciplinarity requires working with knowledge from multiple disciplines, interacting with knowledge from different branches and its integration. This concept contributed to the production of a huge literature. Despite the relatively not short history, confusion still exists between interdisciplinarity and multidisciplinarity, especially that university curricula are commonly structured by academic disciplines. Tasks like developing interdisciplinary courses, sustaining interdisciplinary initiatives, and financing interdisciplinary programs are difficult specially that faculty members in general stand more at ease in their respective disciplines and norms.

In the case of computing education this actuality gets more troublesome. The reason for troubles is that many program of studies emerged from the integration of computing in traditional fields of studies. A range of enabled traditional programs appeared linked to different domains of the market, creating a demand for graduates with the field competencies enabled by non-technical computing skills, like computational thinking and systems analysis. At the end, appeared the interdisciplinary computing major. An increasing number of universities and colleges are announcing offering this field by twinning between Computer Science and some other discipline, with sometimes unexpected combinations.

At the epistemological level, a definition of interdisciplinary computing is needed. A set of questions is raised on whether any integration of computing with some other field can be considered as a representation of interdisciplinarity. The concept of computing enabling and its limits also raises questions on what differentiates interdisciplinarity from enabling. The forms and the requirements of integration of disciplines are also subjects to study and attempt to define. Many computing instructors are also concerned on whether the product of interdisciplinary computing remains computer science.

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

2. Interdisciplinarity

2.1. History of the term

David L. Sills in the International encyclopedia of the social sciences (1986) refers the first use of the term "interdisciplinarity" to the mid of 1920's. While he clarifies that he could not assure whether the founder of the term was the American Council of Learned Societies or the Social Science Research Council, he assures based on the study of the corresponding archives that The International Union of Academies encouraged "collective researches," while 1925 Annual Report of the Social Science Research Council asserted that "ordinarily the Council will deal only with such problems as involve two or more disciplines." As Sills continues in his research, he states that at 1930 Hanover conference, the board of the Social Science Research Council adopted a statement expressing the "Council's interest will continue to run strongly in the direction of these interdiscipline inquiries." (A Note on the Origin of "Interdisciplinary")

The Merriam Webster (n.d.) defines interdisciplinary as "involving two or more academic, scientific, or artistic disciplines". It states that the first known use of the term "interdisciplinary' gets back to 1926.

Deriving from this simplified definition is that by Klein and Newell (1998) which is widely-quoted as a definition of interdisciplinary studies: "A process of answering a question, solving a problem, or addressing a topic that is too broad or complex to be dealt with adequately by a single discipline or profession… [It] draws on disciplinary perspectives and integrates their insights through construction of a more comprehensive perspective."

In addition, a tightly similar definition of interdisciplinary research is offered by the National Academies (2004) and is broadly used: "Interdisciplinary research (IDR) is a mode of research by teams or individuals that integrates information, data, techniques, tools, perspectives, concepts, and/or theories from two or more disciplines or bodies of specialized knowledge to advance fundamental understanding or to solve problems whose solutions are beyond the scope of a single discipline or area of research practice."

2.2. Disciplinarity

The concept of interdisciplinarity historically depends on disciplinarity. Scholar Louis Menand (2001) considers that "interdisciplinarity is not only completely consistent with disciplinarity - the concept that each academic field has its own distinctive program of inquiry - it actually depends on the concept".

Studies suggest that each major area of knowledge consists of multiple disciplines that might correspond to some school subject or university major or department. Joe Moran gives a brief definition of discipline as follows: "a particular branch of learning or body of knowledge" (2002, p. 2). While Julie Thompson Klein (1990) offers a more

comprehensive and more popular definition: "The term discipline signifies the tools, methods, procedures, examples, concepts, and theories that account coherently for a set of objects or subjects. Over time they are shaped and reshaped by external contingencies and internal intellectual demands. In this manner a discipline comes to organize and concentrate experience into a particular 'worldview.'". (p. 104)

William H. Newell (1998) writes that "understanding the role of disciplines in interdisciplinary studies should be central to a full understanding of interdisciplinarity" (p. 541). This emphasizes the importance of knowing that the two concepts of interdisciplinarity and disciplinarity are strongly linked. This in turn highlights the importance of understanding the emergence of interdisciplinary studies through the formation of involved disciplines.

2.3. Multidisciplinarity

Youngblood (2007) defines multidisciplinarity in a simple way as "what happens when members of two or more disciplines cooperate, using the tools and knowledge of their disciplines in new ways to consider multifaceted problems that have at least one tentacle in another area of study".

Zaman and Goschin (2010) state that "multidisciplinarity results as a simple aggregation of different disciplines that preserve   unchanged   their   specific perspectives. They share a relationship that is not interactive but rather cumulative and may work together to collaboratively create a more complex image of the reality. The subject of research can better reveal its various features when examined by different perspectives, using the methods and insights offered by several established disciplines."

2.4. The confusion and distinction

The definitions of disciplinarity and multidsciplinarity were cited above in order to show the difference between these concepts and interdisciplinarity. Although interdisciplinarity depends on disciplinarity it is a wider and more complicated concept in theory and application.

Study of literature shows that the terms multidisciplinary and interdisciplinary are used in many cases interchangeably or confusingly.

Zaman and Goschin (2010) determine the main distinction between multidisciplinarity and interdisciplinarity "in the relationship that the disciplines share: multidisciplinarity   simply reunites a range of disciplines independently contributing to the investigation,   while interdisciplinarity blends their methods generating new and improved tools, better adapted to the research topic."

2.5. Definition of interdisciplinarity

Augsburg (2006) states that interdisciplinarity refers to the general phenomenon of combining or integrating disciplinary perspectives.

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

Klein (1990) offers a more comprehensive definition: "as a methodology, a concept, a process, a way of thinking, a philosophy, and a reflexive ideology. It has been linked with attempts to expose the dangers of fragmentation, to reestablish old connections, to explore emerging relations, and to create new subjects adequate to handle our practical and conceptual needs. Cutting across all these theories is one recurring idea. Interdisciplinarity is a means of solving problems and answering questions that cannot be satisfactorily addressed using single methods or approaches".

Another definition can also be taken from Rhoten & al. (2009) emphasizing that interdisciplinarity: "as both a process and a practice by which a set of purposive arrangements and a sense of community are established and ultimately integrates ideas with others to form an end product" (Rhoten, O'Connor, & Hackett, 2009, p. 87).

As a conclusion, for the purpose of our study, the adopted definition of interdisciplinarity is as follows: "An endeavor involving more than one discipline to address problems that can not by solved without the integration of the corresponding perspectives, methods and approaches of the involved disciplines".

3. Interdisciplinary Computing

3.1. Development

Since 1976, William W. Agresti from the University of Michigan-Dearborn, spoke about computer science as an interdisciplinary study. In a paper presented at the sixth SIGCSE technical symposium on Computer science education, Agresti described the organization of computer science education as an interdisciplinary program tracing the various relationships among disciplines and explaining the features of interdisciplinarity. Among the advantages of this program, he cites a lower cost program, a higher level of adaptation and a better interfacing between computer science and the other areas. Argesti called, at that time, to consider the interdisciplinary approach especially by colleges which want to offer a computer science degree but have limited funds.

Dabu (2017) considers that "in the formation of future specialists, computer science education cannot ignore the reality of a society in which research and technological progress are based primarily on interdisciplinarity and transdisciplinarity". For Dabu and for other theorists, including the Computing Research Association, computer science contributed in the development of classical sciences while it is evolving. This relation between classical sciences and computer science led to the emergence of new border sciences and the progress of others. Accordingly, there are calls to adapt to this trend and perform computer science education in an interdisciplinary manner. An increasing number of schools are announcing the delivery of interdisciplinary computing programs.

The National Research Council (2011) reports an ongoing debate about whether Computer Science should be introduced as a standalone subject or though an

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

integrative approach. Deitrick & al. (2017) report a set of national initiatives contributing to the rooting of interdisciplinary computing in the curriculum. They also report that including computing in other subjects reflects professional practice and presents computing as applicable and relevant to learners' interests. In addition, interdisciplinary computing activities are often collaborative in groups.

With the increase in problems scope, computing provides new tools to deal with scale and complexity what makes computing a team challenge. Students working in groups represents an alignment with sociocultural perspectives that highlight the value of participation in communities for learning. On the other hand, collaboration provides career preparation (Deitrick & al., 2017).

In parallel to the development of interdisciplinary computing programs, the volume of the related literature, research and textbooks, is increasing. Volumes on interdisciplinary computer science in this or that language are published, and many textbooks are revised and re-published reflecting an interdisciplinary approach.

3.2. Literature review

Like interdisciplinarity, a variety of definitions are given to interdisciplinary computing and interdisciplinary computer science. In what follows, a set of selected quotations will be exposed taken from offered programs. It is noteworthy that a large number of programs descriptions do not define interdisciplinarity nor the program and go directly to an overview of the content or education process. The term is used to denote a variety of meanings ranging from simple collaboration to integration.

3.2.1 Programs

- The overview of the Interdisciplinary Computing major at the Trinity College, Hartford, states: "This interdisciplinary major is designed for students who wish to combine the study of computing and computers with another academic discipline. Students can combine the study of computing with traditional academic disciplines, such as physics, chemistry, sociology, or biology, and with emerging fields that involve a substantial computing component, such as bioinformatics, cognitive science, and digital arts."

- (https://www.trincoll.edu/Academics/MajorsAndMinors/Computer/Pages/InterdisciplinaryComputing.aspx).
- The learning goals include: developing problem-solving skills, becoming proficient in programming, attaining an in-depth knowledge in computing systems, understanding the fundamental principles of computing, cultivating general intellectual skills in liberal arts education in relation to computing, and gaining a broad exposure to topics in computing and its related disciplines.

- The MIT Course Catalog 2018-2019 lists, under "Interdisciplinary Programs", a set of undergraduate and graduate programs. There is no text that reflect

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ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

the MIT view of interdisciplinarity. Among the undergraduate programs, 2 that interest this research: Computer Science and Molecular Biology and Computer Science, Economics, and Data Science. Logging into the corresponding pages, there is no mentioning of the term "interdisciplinary" or any derivative. One description that describes the interdisciplinary approach is the following: "The curriculum provides strong foundations in both biology and computer science and features innovative, integrative, capstone, and elective subjects. The goal is to produce an entirely new cadre of graduates who are uniquely qualified to address the challenges and opportunities at the interface of computational and molecular biology. Students in the program are full members of both departments and of two schools, Science and Engineering, with one academic advisor from each department."

- (http://catalog.mit.edu/interdisciplinary/undergraduate-programs/degrees/computer-science-molecular-biology/)

- The University of Kansas in its 2019-20 Academic Catalog cites a B.S. in Interdisciplinary Computing Program. In the overview of the program, it is stated that students "Graduates will have exercised shared responsibilities through activities such as contributions to multiperson or multidisciplinary technical projects, participation in professional society/organization functions, or performing collaborative research. In all such cases, graduates will have contributed to documentation of the collaborative activities."

- The Interdisciplinary Computing and the Arts major at the University of California San Diego "draws upon and aims to bring together ideas and paradigms from computer science, art, and cultural theory. The goals of the program are to prepare the next generation of artists who will be functioning in a computer-mediated culture; to give students necessary technical, theoretical and historical backgrounds so they can contribute to the development of new aesthetics for computer media; to prepare students to mediate between the worlds of computer science and technology, the arts, and the culture at large by being equally proficient with computing and cultural concepts; and to give students sufficient understanding of the trajectories of development in computing so they can anticipate and work with the emerging trends, rather than being locked in particular software currently available on the market." (https://visarts.ucsd.edu/undergrad/major-req/icam.html)

3.2.2 Textbooks and literature

- Robert Sedgewick and Kevin Wayne, in their popular textbook "Computer Science: An Interdisciplinary Approach" declare that "This book is an interdisciplinary approach to the traditional CS1 curriculum, in that we highlight the role of computing in other disciplines, from materials science to genomics to astrophysics to network systems. This approach reinforces for

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

students the essential idea that mathematics, science, engineering, and computing are intertwined in the modern world." (p. xiii).

- The summary on the "Discovering Computer Science: Interdisciplinary Problems, Principles, and Python Programming" book website, it is stated that the book "introduces computational problem solving as a vehicle of discovery in a wide variety of disciplines." this is achieved by the textbook "organized around interdisciplinary problem domains, rather than programming language features". The textbook includes "independent projects that encourage students to explore questions across disciplinary boundaries."

- The "Interdisciplinary Computing In Java Programming" website compares the textbook to other books on computation in the marketplace that tend to discuss the topics within specific fields, while it "introduces readers of different backgrounds to the beauty of the selected algorithms."

3.3. Phenomenological study

In phenomenology, the aim is "to describe as accurately as possible the phenomenon, refraining from any pre-framework, but remaining true to the essence as seen from the perspectives of the people involved" (Abakpa & al., 2017). The adopted type in this study is the descriptive or hermeneutical phenomenology which "refers to the study of personal experience and requires a description or interpretation of the meanings of phenomena experienced by participants in an investigation" (Padilla-Díaz, 2015). Purposive sampling was used to determine the samples using the self declaration as interdisciplinary as criteria. A list of significant statements was developed from the data, according to Creswell's phenomenological methodology (2013) using structural analysis.

More emphasis was placed on structural analysis than on textual. Textual analysis deals with the provided description of interdisciplinarity, while structural analysis deals with the interpretation of how interdisciplinarity is expressed by documents.

3.3.1 Significant Statements

The documents were consulted to extract the common themes and build a sufficient data set of emerging themes, that can be expressed through the significant statements advised by Creswell. These significant statements, extracted through structural analysis, can be grouped into 3 groups:

- Statements on the program:
    - Combining the study of computing with traditional academic disciplines and with emerging fields that involve a substantial computing component

    - Providing strong foundations in both a field and computer science and featuring innovative, integrative, capstone, and elective subjects

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

- o Draws upon and aims to bring together ideas and paradigms from computer science and humanities, art, and cultural theory

- o Adopting an interdisciplinary approach to highlight the role of computing in other disciplines, from materials science to genomics to astrophysics to network systems

- o Understanding computational problem solving as a vehicle of discovery in a wide variety of disciplines

- o Organization around problems involving multiple domains, rather than programming language features

- o Including independent projects that encourage students to explore questions across disciplinary boundaries.

- Statements on the enrolled students

  - o Students in the program are full members of all the collaborating departments

  - o Students stack sufficient understanding of the trajectories of development in computing so they can anticipate and work with the emerging trends, rather than being locked in particular software currently available on the market.

- Statements on the prospective graduates

  - o Graduates qualified to address the challenges and opportunities at the interface of computational and other fileds

  - o Graduates will have exercised shared responsibilities through activities such as contributions to multiperson or multidisciplinary technical projects or performing collaborative research

  - o To prepare the next generation of specialists who will be functioning in a computer-mediated culture

  - o To prepare students to mediate between the worlds of computer science and technology, the arts, and the culture by being equally proficient with computing and cultural concepts.

4. Grounded Theory

The techniques for data-gathering and analysis in the grounded theory were designed to allow concepts and categories to emerge from the data. Data is approached without preconceptions to avoid imposition of meanings. The aim is to produce theories that are truly grounded in the data that do not depend on any external concept. Potential knowledge is to be captured by taking a positivist approach to knowledge production.

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

Grounded theory merges the processes of data collection and analysis in order to achieve theoretical saturation. As a result, there is no fixed series of steps to be followed. (Charmaz, 2006, p. 101)

4.1. Grounded theory justification

Since this study is based on a document analysis. The research started from the lack of a fixed definition of interdisciplinary computing but progressively evolved throughout the research process to open the way to more research questions. The cyclical nature of the method serves well since the aim is to define. So, it was possible to start the readings, proceed to extracting the significant statements, work generalization of the statements, then derive a definition of interdisciplinary computing.

4.2. From phenomenological study to grounded theory

The use of both phenomenological study and grounded theory in this qualitative research is highly compatible with the paradigm from which the research evolved, which is interdisciplinarity.

The similarity between the two approaches, especially at the goal and product levels made it also possible to use a combined methodology. The goal of phenomenological study is to describe the meaning of the lived experience of a phenomenon, while the goal of grounded theory is to develop an explanatory theory of the basic processes. The product of phenomenology is a thematic description of the pre-given "essence" and structures of lived experiences, while that of grounded theory is to generate theory from the range of the participants' experience.

5. Definition of interdisciplinary Computing

Interdisciplinary computing is a field of study combining the study of computing at least one other academic discipline, being traditional or emerging, that involves a substantial computing component. This study provides a strong foundation in both fields featuring innovative, integrative, capstone, and elective subjects, bringing together ideas and paradigms from both fields, adopting an interdisciplinary approach to highlight the role of computing in the other disciplines. The program supports understanding computational problem solving as a vehicle of discovery in a wide variety of disciplines and is organized around problems involving the involved domains, rather than programming language features, through independent projects that encourage students to explore questions across disciplinary boundaries.

Administratively, students in the program are full members of all the collaborating departments in order to stack sufficient understanding of the trajectories of development in computing and develop the ability of anticipating and working with the emerging trends, rather than being locked in particular software available on the market.

Graduates of interdisciplinary computing programs are qualified to address the challenges and opportunities at the interface of computational and other fields, and to mediate between the worlds of computer science and the other fields. Their background should prove them exercised in shared responsibilities through activities such as they have contributed to multiperson or multidisciplinary technical projects or performed collaborative research. Those graduates are the next generation of specialists who will be functioning in a computer-mediated world.

6. Proposed Program Learning Outcomes

As an application of the definition adopted above, the following set of program learning outcomes of a typical interdisciplinary computing program is proposed. The mapping exercise should take into consideration the specific characteristics of the non-computing disciplines involved in the program.

- The integration of knowledge and modes of thinking drawn from at least 2 disciplines: Computer Science and the other twining discipline(s)

- Producing an interdisciplinary understanding of a complex problem or intellectual question

- Engaging in experiential learning in prospective career or academic field by serving effectively in some internship

- Demonstrating advanced critical thinking skills at levels required for effective performance in professional and other social or cultural contexts

- Demonstrating advanced communication skills (written, spoken, computer-assisted) at levels required for effective performance in professional and other social or cultural contexts.

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Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

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Comparative Study Between the Omani and British Legal Systems in Terms of Judicial Independence and Separation of Powers

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Abstract

The legal system of Oman is a junction of the locally inherent religious legal norms and foreign influence of the French and British legal systems. The legal documents of the country, such as Constitution Articles 60 and 61, may claim that the judiciary is independent, yet the Omani experience within the executive branch, and its role in legislation, demonstrate that the Middle-Eastern state stands in contrast to the United Kingdom (UK), where the separation of powers (SOP) has been in effect since at least 1701. As is indicative of the common historical theme, considering the powers of the sultan, Oman may be said to be in need of popular participation through the parliamentary branches, for the creation of a regional prosecutorial body, and the enforcement of international judicial independence and conduct resolutions. Oman showed a positive response during the peaceful protests in 2011. Still, Oman may require national conferences to discuss such cases with popular participation.

Keywords: comparative study, Omani, British, legal systems, judicial independence, separation of powers

Introduction

Chapter One

The Omani and British Legal Systems in Terms of Judicial Independence and Separation of Powers

Overview of the Research

Often, people hear their political regimes claim that their countries are judicially just. However, this may not necessarily be as claimed. In Oman, legal documents, such as the national constitution, reveal how the separation of powers (SOP) is a guiding principle. Still, a cursory inspection of the executive, legal and judicial branches reveals the influence of Sultan Qaboos on the legal branch. The legal system of the

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

country is a unique fusion of Sharia law and the legal traditions of France (as a civil written legal system) and the UK. The SOP is a concept regarded as a critical pillar of democracy.

Oman, a Middle-Eastern state, may not facilitate democracy due to its unique mentality, gravitating towards collectivism and strong centralised leadership. With this, it may come as no surprise that the country has no actual SOP, unlike the UK, as the sultan appoints judges, commutes sentences, and even grants pardons, as stipulated in Article 42 of the Basic Charter. He commands important judicial institutions, such as the Supreme Judicial Council, thereby reinforcing his authority.

The UK seeks to prevent the accumulation of judicial functions in one institution, as seen in the enactment of the Constitutional Reform Act of 2005, which established an autonomous Supreme Court, independent from the House of Lords. The influence of Sultan Qaboos on the judiciary affects the performance of judges, and the decisions they make. On paper, Omani Constitution Articles 60 and 61 require judicial independence; however, the state ruler's role in the appointment and removal of judges is crucial. The same cannot be said of the UK, where the branch has enjoyed autonomy since at least 1701, when the Act of Settlement was enacted. As opposed to Oman, the UK has clear rules for judges' removal. The same is true of the prosecutorial process and the responsibilities of judges, which are more clearly outlined in the British judicial context. Moreover, there are process stage overlaps in the countries' systems, such as arrest, investigation, legal defence by lawyers, and appeal. Even judicial institutions such as magistrate courts can be found in the Omani system, which indicates the British–Omani relationship legacy.

Religious influence makes its presence known in the availability of Sharia courts. Taken together, Omani courts show great judicial diversity and inclination towards specialisation; this hierarchical arrangementadds to the courts' independence. However, each institution finds itself under the sultan's influence. Indeed, it can be considered that the power of the sultan on the courts, especially the primary courts, is symbolic –any court ruling is pronounced in his name.

Sultan Qaboos has enforced a number of decrees that provide the judiciary with the tools to make the respective decisions,through his intervention in the judicial process via the legal body. However, with this formation of the system, the concept of judicial independence may be affected. To _reverse_ the situation, the sultanate needs a mixture of domestic and foreign measures to reshape the judicial landscape and keep authority figures separate from branches where they do not belong. Thus, unlike the UK, Oman has no clear SOP due to the state ruler's interference in the legal branch and judicial proceedings.

Methodology

The use of Primary data enabled the introduction of original sources, such as the penal code and national constitution, conveying the essence of legal provisions accurately.

The use of Secondary data, on the other hand, allowed the presentation of the views of subject-field experts, who offered their analysis and interpretation of the SOP issue, providing opinion-based value. To collect data for this extensive research, databases were searched to gather relevant reports, along with books, governmental websites and other sources. The project used the systematic literature review method.

Once formulated, the research question made it possible to identify what search engines could offer regarding factual evidence for the subsequent short listing of the most relevant sources, and extraction of their relevant information.

The formulation of the research question led to the choice of the exploratory research method, as the task involved evaluating judicial independence in Oman and the extent to which it helps to guarantee the rights of suspects and law-abiding civilians.The research question also narrowed the range of methods by necessitating the choice of the case study technique, which will help to study the SOP in Oman.

Research Value and Its Contribution

There seemed to be a particular research gap in the form of a deficiency of relevant studies, which made it necessary to list the most important rights of civilians and suspects, identify their presence in state legal documents – such as the constitution, penal code and royal decrees – and gather the facts of SOP violation or cross-branch influence by the royal executive branch.

 On the other hand, such evidence-backed analysis of multiple human rights makes a contribution to SOP research in its own right. While the comprehensive examination of search engines and databases did not return any results associated with the comparison of the legal and judicial systems of the UK and Oman, this research will provide value by presenting detailed information on the judiciary and legal frameworks of the states.

Overall, the research of topics related to power and state mechanisms in the Middle East –the political landscape of which is heavily dotted with dictatorial, centralised regimes – is always a difficult task to complete with regard to finding sources of information on delicate legal and judicial aspects. The problem is often the availability of sources detailing the judicial nuances of Oman, which may be an indicator of poor transparency, rationalising the lack of proper SOP.

Research Question

Compared to the English legal system, how does judicial independence in the Omani legal system, which is rooted in the country's constitution, contribute to protecting the rights of citizens, and what can be done to ensure this protection?

Aims and Objectives

1. Examine the role of Articles 60 and 61 of the Constitution of Oman in promoting judicial independence.

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

2. Discuss how the separation of powers in the Omani legal system contributes to protecting the rights of citizens and influences fairness and effectiveness in judicial judgements, with focus on suspects' rights.

3. Consider what can be done to guarantee that the independence of the judiciary in the Constitution of Oman leads to fulfilling suspects' rights.

Chapter Two: Background and Literature Review

Executive, Legislative and Judicial Branches in Oman

The chief of state tops the executive branch hierarchy, acting as both the sultan and prime minister. Sultan Qaboos bin Said Al Said assumed the position of sultan on 23 July 1970, assuming the position of prime minister exactly two years later. The monarch appears to be both the chief of state and head of the national government. Cabinet appointment is the prerogative of the state ruler. Since Oman is a monarchy, there is the institution of succession; thus, the Ruling Family Council chooses a successor from the extended family of the sovereign. The Defence Council will relay a predetermined successor, as chosen by the sultan, if the Family Council falls short of reaching a consensus three days after the ruler passes away or becomes incapacitated.

Influence of the Legislature in Oman

The legislative branch is bicameral in Oman, composed of Majlis al-Shura (the consultation council) and a lower chamber consisting of 84 seats, occupied by members elected through a popular vote for a four-year service period, which implies legislation drafting, in complete subordination to the ruler. It exercises its powers through four main bodies: the Chairman, the Council office, the standing committees and the Secretariat General, along with Majlis al-Dawla (State Council), or the upper chamber, consisting of 71 seats occupied by sultan appointees who hold advisory power.[1]The powers granted to this Council are part of the general policy of progressing in a series of stages to address important changes taking place in the sultanate. The Omani ruler is the ultimate authority on the Sharia Ibadite legal code as well as state legislation.[2]Based on Article 29 of the Council of Oman's Law – referring to Article 58 of the Basic Charter, which states thatParliament (Council of Oman) is composed of the members of the State Council and the consultation council – if the public interest requires so, the sultan can issue and approve laws without their preliminary review by the councils, which have no power to initiate legislation.[3]

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[1]*The CIA World Factbook, 2014* (Skyhorse Publishing Inc, 2013) <goo.gl/tt3ZQF> accessed 12 November 2017.

[2] Joanne O'Brien and Martin Palmer, *The Atlas Of Religion* (University of California Press, 2007) 61 <goo.gl/dTNBBH> accessed 12 November 2017.

[3]Basmah Al-Kiyumi, 'The Omani Constitution: A Critical Analysis' (MPhil, The University of Manchester, 2011) 152 <goo.gl/2XkqqT> accessed 12 November 2017

The judicial branch is formed by the Supreme Court. Referring to Article 60 of the Basic Law, the budding civil court system, administered by region, has judges practising Sharia and secular laws.[1] Different bodies and judicial officials handle different matters. The Imam and the qadi/judge are involved in justice administration. The qadis have the judicial power to hear disputes between people, while an inter-tribal disaccord requires settling by the Imam. Although the qadis are entitled to condemn to death, their order will not gain legal power unless approved by the Imam, then the sultan.[2] Qadis/judges represent a part of Sharia courts that coexists with secular institutions, such as magistrates' courts established by royal decree in 1984.[3]

The Oman Legal System as a Mixture of Religious Justice Traditions and Foreign Legal Inclusions Seemingly Motivated by Amicable Bipartite Relations

Judiciary Formation: Branch General Overview

It was only after the father of the current Sultan of Oman, Sultan Said bin Taimur, had been ousted by his son Qaboos that judicial reform efforts began. A bloodless coup ended the reign of Said, which spanned nearly four decades from 1932 to 1970. The country has since adopted a range of codes associated with tax, labour, criminal and commercial laws. Personal status, however, remains unlegislated. Efforts to regulate Sharia courts did not succeed, which resulted in the foundation of judicial tribunals and separate courts to enforce state law from the 1970s. Presently, there are both state and Sharia courts. The former applies the laws endorsed by a royal decree, while the latter applies the Ibadi/Islamic law within an increasingly restricted area of judicial competence. The sultan reserves the ultimate appeal tool. The sultan introduced a consultative council called Majlis al-Istishari in 1981; appointed members shape its composition. In 1990, the body was replaced by a Majlis al-Shura, which the ruler staffs with members selected by the sultan. The adoption and recommendation of amendments by a two-thirds majority, and legislation and state development planning review were the outcomes of the new Majlis empowerment.[4] The role of the judiciary system is to interpret and apply the law.[5] If the legal system creates the legal instruments of justice administration, it is rational to trace the nature of the legal system of Oman, which has been influenced by overseas legal traditions.

Islamic Legal Influence

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[1] *The CIA World Factbook*, 2013.

[2] Hussein Ghubash, *Oman – The Islamic Democratic Tradition* (Routledge, 2014) 41 <goo.gl/WwzXBt> accessed 15 November 2017.

[3] Fanack, 'Legal System' (2016) <goo.gl/vbZXsq> accessed 15 November 2017.

[4] *Oman Criminal Laws, Regulations And Procedures Handbook – Strategic Information And Basic Laws* (International Business Publications, 2015) 108 <goo.gl/x1S1qn> accessed 16 November 2017.

[5] Roger LeRoy Miller and Gaylord A. Jentz, *Cengage Advantage Books: Fundamentals Of Business Law: Excerpted Cases* (Cengage Learning, 2009) 33 <goo.gl/7UnYEh> accessed 18 November 2017.

The tribes of Oman embraced Ibadi Islamic beliefs in the 7th and 8th centuries.[1] Islam seems to have lost its prevalence in the legal framework of Oman to some extent, which indicates secularisation. According to Price and Al Debasi (2009), Oman was the last member of the Gulf Cooperation Council to reform its judicial branch in order to adjust it to the dictates of its Basic Law. In the aftermath, a ternary courts system supplanted the earlier separate Sharia and criminal and commercial courts. The country has limited the competence of the Sharia courts to personal cases involving Muslims, meaning most criminal and all civil cases are no longer their jurisdiction. The general courts of appeal now receive appeals against Sharia court decisions.[2]Notwithstanding, the role of Islam in Oman and the Middle East has been too potent for the religion to lose its grip on the local legal system.

Islam is a complete way of life, inseparable from other routine concerns of Muslims. Consequently, faith and culture and religion and politics are the same for Islam followers. In the Muslim world, there is no separating church from state.[3] Thus, it is no surprise that religion has dominated the judiciary for a long time. Sharia or Islamic law principles inform commercial, civil and criminal codes.[4] The legal system of Oman rests for the most part on the Ibadi school of Islam.[5] The Sharia traditions and customs can still be said to have guided the decision-making process of the judiciary.[6] Based on Sultan Decree 101/1996 and Article 2 of the Constitution of Oman, Sharia shapes the foundation for Omani legislation. The Family Law or Personal Statute Law, enforced by Royal Decree 97/32, codified Sharia provisions. Sharia court departments in the civil court system oversee personal status cases. A 2008 law determines that the testimonies of both sexes enjoy court parity. While the criminal law is a fusion of English common law and Sharia, the commercial law of Oman rests mostly on Sharia. Article 5 of the Law of Commerce defines the Islamic law as paramount in cases of conflict, silence and confusion.[7] The gradual secularisation of the legal system of Oman may be an outcome of the waning influence of Islam, and the growing influence of foreign legal traditions, possibly due to the trend of Westernisation that comes with world globalisation.

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[1]*Oman Criminal Laws, Regulations And Procedures Handbook*, 108.

[2] David Price and Alhanoof AlDebasi, *The Development Of Intellectual Property Regimes In The Arabian Gulf States: Infidels At The Gates* (Routledge, 2017) <goo.gl/qZBY4C> accessed 18 November 2017.

[3] Timothy L. Gall and Jeneen Hobby, *Worldmark Encyclopedia Of Cultures And Daily Life* (Gale, 2009) 752 <goo.gl/Py7ZKX> accessed 18 November 2017.

[4]'Oman' (US Department of State, 2010) 3
<https://www.state.gov/documents/organization/160076.pdf> accessed 12 November 2017.

[5] The Bertelsmann Stiftung's Transformation Index, 'BTI 2016 - Oman Country Report' (Bertelsmann Stiftung, 2016) 11 <goo.gl/R1j2Sd> accessed 22 November 2017.

[6]David Price and AlhanoofAlDebasi, 2009.

[7]*Oman Criminal Laws, Regulations And Procedures Handbook,* 108.

The British Trace

The region had not been subject to the forays of Europeans until the 16th century, when the Portuguese entered what is modern-day Oman. These foreigners were driven out in 1650, after which Omani power in the Indian Ocean and Gulf regions began. By the end of the 1600s, the Omani Empire integrated Zanzibar and Bahrain. In the century to follow, the decadence of the mighty state commenced. Country leaders chose to sign protection agreements with the British in 1798 and 1800, with the increasing interest of the French in the Indian Ocean. Eventually, a range of agreements and treaties brokered with Britons in the 19th century placed Oman under rising British influence, while the year 1891 formalised the status of Oman as a British protégé. The sovereignty of the Sultanate of Oman and Muscat was recognised after 60 years, in 1951 under Sultan Said ibn Taimur.[1] The presence of British elements in the current legal system of Oman is explainable in terms of the country's role in the ascension of the current ruler; the British brought Sultan Qaboos to power following a 1970 coup.[2] Currently, British relations with Oman have shifted from alliance-based relations to relationsoriented towards strategic partnership and commerce.[3] It is only logical that the British legal doctrine co-shapes the legal system of Oman following a long period of interaction. As identified by Fanack (2010), the Omani system rests upon Islamic law and English common law. British influence makes itself felt in the presence of specific courts within the branch. For example, the magistrate court system was instituted by royal decree in 1984, which allows it to take over all criminal cases from Sharia courts.[4]

The French Trace

The public law systems in all Arab states, Oman included, were influenced by the legal system of France. These states with written constitutions have experienced the great influence of France as regards administrative and constitutional law, as well as civil codes.[5] Although Oman entered the 1970s free of any foreign judicial influence, it went on to borrow from the civil law of France, having evolved in the Middle East.[6] The better part of Oman's legislation shows significant influence from the Egyptian legal system, shaped by the Napoleonic Code.[7] The code represents the combination of conservatism and liberalism typical of Napoleon, although the majority of basic

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[1]ibid.

[2] Oman Criminal Laws, Regulations And Procedures Handbook, 108.

[3] Francis Owtram, 'A Close Relationship: Britain And Oman Since 1750' (*Qatar Digital Library*)
<https://www.qdl.qa/en/close-relationship-britain-and-oman-1750> accessed 22 November 2017.
[4]Fanack, 2010.

[5] Mohamed A.M., *Ismail, International Investment Arbitration: Lessons From Developments In The MENA Region* (Routledge, 2016) 3 <goo.gl/TQRe8p> accessed 12 November 2017.

[6] Carol J. Riphenburg, *Oman: Political Development in A Changing World* (Praeger, 1998)
<goo.gl/RDXQEu> accessed 24 November 2017.

[7]*Conducting Business In Oman - A Guide For Foreign Investors* (Trowers & Hamlins LLP, 2009)
<https://goo.gl/eZLzya> accessed 24 November 2017.

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January - June 2021
Volume 7, Issue 1

revolutionary accomplishments, such as the abolition of feudalism, the freedom of religion, and equality before the law were consolidated within code laws. The code made all property rights absolute, including those of the acquisition of the biens nationaux, or confiscated properties. The document strengthened patriarchal power by placing husbands at the head of the household.[1]

The acceptance of French legal traditions and doctrine may have been the outcome of cooperation between the states, and the non-hostile, respectful attitude of the foreign state. In the 1840s, Oman was at its greatest, politically and commercially, ruling over an immense marine empire stretching from Cape Delgado and Zanzibar on the African coast to the coasts of Baluchistan and Persia. The head of state at the time was Sultan Said, who proved diplomatically active by signing treaties with the USA and UK, and later with France, which had new adjacent possessions in the Comoro Islands and Madagascar. After the first deal in 1841, a Treaty of Trade and Friendship followed on November 4 1844, gaining legal power in 1846. Apart from enabling a notable development in the relations between Reunion and Zanzibar, the deal led to the expansion of direct commerce between metropolitan France and the Omani Empire. The Chamber of Commerce of Marseille facilitated the well-known and successful expedition of the merchant vessel of Oman called "La Caroline". The sultan's representative Hadji Derwich paid a visit to Paris and Toulon, being welcomed by Louis-Napoleon Bonaparte, who was the republic's president.[2]

Upon the demise of the sultan in 1856, the empire came undone, that is, it continued its political and economic existence divided. The sons of the late sultan inherited two parts of the empire. Paris and London vowed to respect the autonomy of the sultanates of Muscat and Zanzibar, although London did transform Zanzibar into its protectorate in 1890. Still, owing to the agreement reached between the colonial powers, the sultans' sovereignty enjoyed the full respect of the two. The intercourse of Oman and France became stronger after France established a consular representation in Muscat, which was the decision of the foreign affairs minister of France. The year 1894 witnessed the arrival of the vice-consul Pierre Ottavi, who quickly gained the trust of Sultan Faysal. Being well disposed towards France, the sultan donated a house in Muscat known as the "Maison de la France".[3] Having had rich contact with prominent liberal legal systems often built around democratic values, Oman should observe the SOP as a tribute to long-standing amicable contacts and democratic sanity.

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[1]'The Civil Code' (*The Napoleon Series,* 2017) <https://goo.gl/ryt6VT> accessed 12 November 2017.
[2]'Presentation And Chronological Account' (*Embassy of France in Muscat*) <goo.gl/ohtAWT> accessed 2December 2017.
[3] 'Presentation And Chronological Account'.

Separation of Powers Overview in Both States, and the Legal Systems of Oman and the UK in Terms of Judicial Independence

SOP Stems from Democracy – Omani Interest in Democracy

The SOP acts as a driver of democracy. The SOP in Oman is a rule of principle, according to Articles 60–61 of the Basic Law, stating "There shall be no power over judges in their ruling except for the Law". Albert (2010) stated that democratic presidential systems employed the SOP in a bid to achieve the goal of preventing a single-state organ from gaining absolute power. The conventional narrative maintains that democracy demands the SOP. International popular culture representatives similarly share an understanding that such separation is central to democracy.[1] The presence of democracy appears to make judicial independence vital. An authoritative opinion expressed by the Courts and Tribunals Judiciary of the UK suggested that it was essential in a democracy for the judiciary and individual judges to be unbiased and independent of all manner of external pressures, as well as mutual influence, which allows the wider public, defendants and other participants of proceedings to have confidence that criminal cases will receive just resolution in line with the law.[2]

Omani society will have democracy no more than it will have the SOP, if it does not find itself wishing for both. There can be no democracy, nor the SOP accompanying it, if people do not want democratic rulers. If Omanis wanted such rulers, the following factors would not be decisive in the electoral process which brings the officialdom that must oversee reforms and democratisation to power. According to Transformation Index BTI 2016 (2016, 7), voters' choices were governed by ethnic or tribal affiliations and clientelism, as was the case with the Majlis al-Shura elections in 2003 and 2007. Clientelism is a political exchange, whereby a politician who acts as a patron offers patronage, which can be a privilege or financial support, in exchange for a vote cast by a client offering his/her electoral support.[3]If clientelism reigns supreme in the Omani electoral setting, the country's mentality may be such that it has no room for democracy. Under the legislature in practice, this act is an offence according to Section 3 of Article 36 of the Election Regulations, which states "to take any action that would affect the conduct of election, will be punished by imprisonment for 6 months and/or charged 3000 OMR".

The West fails in applying the democratic model in the Middle East due to factors such as personal friendships, sects and families, which take precedence over the state apparatus, contributing to democracy failure. These societies are not governed by the

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[1] Richard Albert, 'Presidential Values In Parliamentary Democracies' (2010) 8 International Journal of Constitutional Law <https://goo.gl/YuTzsT> accessed 12 November 2017.

[2]'Independence' (*Courts and Tribunals Judiciary,* 2017) <https://goo.gl/dfXM4w> accessed 4December 2017.

[3] James A. Robinson and Thierry Verdier, 'The Political Economy of Clientelism' (2017) 115 The Scandinavian Journal of Economics <https://goo.gl/B99Ph8> accessed 4December 2017.

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January - June 2021
Volume 7, Issue 1

rule of law. "Favour for favour" best describes these societies. If people should have any issue, they look for somebody related to them by region, tribe or family, who may offer them assistance. Requests most likely never meet refusal, for the bonds are particularly potent. With no efficient social security in place, Middle-Eastern countries leave people little choice other than relying on extensive family.[1]

Oman's Separation of Powers and Judiciary

As mentioned earlier, Oman has borrowed much in terms of judicial traditions from its long-standing allies and protectors; however, this borrowing may not include judiciary independence. The attitude of French procurers is such that they view themselves as accountable to the law in the first place, rather than to hierarchical superiors.[2] Omani legal documents may express the same independence ardour. As follows from Article 59 of the Basic Law, law sovereignty forms the basis of governance in Oman. Judges' impartiality and probity, along with the dignity of the judiciary, guarantee people's freedoms and rights.[3] De jure, the judiciary of Oman seems independent. The 1996 Basic Charter asserts the autonomy of the branch. De facto, different courts are subordinate to the supreme ruler and his infinite influence.[4] Truly, the judiciary is still said to be under this influence, contrary to the judicial autonomy guarantees of the Basic Law.[5] The government's executive branch attempts to exercise its powers legitimately.[6] However, the executive branch may not be succeeding in running the state legitimately, by ruining law sovereignty. According to Transformation Index BTI 2016 (2016, 10), the SOP is non-existent, with all powers accumulated by the sultan, who happens to be Minister of Foreign Affairs, Minister of Defence, chief of staff of the armed forces, and even Chairman of the Central Bank.

The influence of the executive branch remains strong despite the State Security Court having been rendered defunct in 2010.[7] The influence of the sultan leading the executive branch is strong, as it was he who abolished the court on September 22 via his royal decree. While active, the institution would review criminal and national security cases considered to require delicate and expeditious handling. The competence to review these cases passed to military and civilian courts.[8] Even positive shifts towards the provision of judicial bodies with a greater set of commissions do not make for greater separation and lesser executive branch influence. February 2012 saw the country given cause for optimism, when a royal

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[1] Andrew Green, 'Why Western Democracy Can Never Work In The Middle East'. *The Telegraph* (2014) <https://goo.gl/Y3z2HB> accessed 5December 2017.
[2] Jacqueline Hodgson and Laurène Soubise, Prosecution In France (2016) 15 <https://goo.gl/phmBQo> accessed 8December 2017.
[3] The Bertelsmann Stiftung's Transformation Index, 10.
[4]Fanack, 2010.
[5] The Bertelsmann Stiftung's Transformation Index, 11.
[6]ibid 10.
[7]ibid 11.
[8]'Oman', 3.

decree enhanced the independence of the Supreme Judicial Council from the Minister of Justicethrough the restructuring of the management of judicial affairs. Even so, the document reasserted the primacy of the sultan and reinstated his control over all competent authorities, as decisions of the council not made in the presence of the sovereign required his ratification. Concerning the prosecutorial division of the judicial branch, in February 2011, another royal decree expanded Public Prosecutor prerogatives. The Public Prosecutor office obtained all powers of the Inspector General of Police and Customs mentioned in the Public Prosecution Law. Still, the office is answerable to the sultan directly.[1]

The influence exerted by the state ruler manifests itself in a broad range of the sultan's judicial competence and commissions. Royal decrees have effected every piece of legislation since 1970. The sultan is in a position to commute sentences, grant pardons and appoint judges.[2] The appointment prerogative does not imply his occasional involvement in this matter, as the head of state fulfils all judicial appointments.[3] The commutation of sentence power implies the change of a criminal punishment to a less severe one, when perceived to be overly stringent. [4]The sultan would not hold such extreme judicial commissions without having taken the competence of judicial institutions that are usually separate in Oman. This position implies his supremacy over the top national legal body authorised to review all judicial decisions.[5] Since the council formulates judicial policy and oversees the judiciary, the sultan is involved in both as the head of the body.[6] The ruler does not preside over each judicial establishment, but still enjoys control; the magistrate court is not autonomous, as its president reports directly to the ruler.[7]

British Judiciary and Separation of Powers

In 2005, the UKtook essential measures to deepen the SOP between the legislature, judiciary and the executive branch. Before the reform, the Lord Chancellor was Speaker of the House of Lords, a member of the cabinet, and judiciary head with the authority to appoint judges, which was deemed problematic with regard to the edifice of the SOP. The document introduced considerable changes to the relations between all three branches.[8] The duty of maintaining judiciary independence was placed on government ministers, now prohibited from attempting to influence judicial decisions via special access to judges. The act reformed the position of Lord Chancellor, passing

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[1] The Bertelsmann Stiftung's Transformation Index, 11.

[2] ibid 10.

[3] ibid 11.

[4] Daniel E. Hall, Criminal Law And Procedure (Cengage Learning, 2017) 600 <https://goo.gl/eePnPh> accessed 12 December 2017.

[5] 'Oman', 3.

[6] Al-Kiyumi, 153.

[7] Fanack, 2010.

[8] 'The Three Branches Of Government' (*Law Wales,* 2016) <https://goo.gl/P6gmnp> accessed 13 December 2017.

its associated judicial functions to the President of the Courts of England and Wales, a new title bestowed upon the Lord Chief Justice, now tasked with the deployment, guidance and training of judges, and representation of the views of the judiciary of Wales and England to Parliament.[1]

The act is unambiguous, as seen in the way it formulates the matter of judicial independence. Rather than taking a brief form, the independence provision is a multi-point provision specifying the judiciary in all its diversity. Within the document, it comprises the Supreme Court, any other courts created under the law of any part of the UK, and any international court. Interestingly, the act authors included the guarantee of judicial autonomy for Northern Ireland.[2] Countries often seek to reassert their claim in semi-autonomous regions, as a means to prevent their potential secession. By reinforcing this judicial autonomy, the UK reveals itself democratic and respectful towards the SOP, even in less controllable regions.[3]

The act also established an autonomous Supreme Court that functions separately from the House of Lords, with its own building, budget, personnel and autonomous appointment system. The act established an autonomous Judicial Appointments Commission, responsible for the selection of candidates for judicial appointment to the Secretary of State for Justice, which guarantees that merit is the only appointment criterion in a transparent, open and modern system. The document relieved the Lord Chancellor of the duty to sit as a House of Lords speaker, with the role now elected by the House from its own members.[4] It would now be rational to examine the British judiciary to measure its autonomy. It is believed to beindependent, although, naturally, it does draw from the legislature.

The Chartered Institute of Legal Executives (2017) revealed that some laws applied across the entire territory of the UK, while others applied to just three, two or one of the countries. Common law, legislation, the European Convention on Human Rights, and European Union law form the backbone of British law. These laws provide the legal rules of conduct and economic performance from which to build judicial decisions, and the guarantee of independence from foreign influence allows judges to use these laws efficiently to administer justice. Indeed, as informed by the Courts and Tribunals Judiciary (2017), the UK offers the branch due protection to ensure its autonomy.[5] British judges enjoy immunity from prosecution for whatever acts they implement while executing their judicial function. They also benefit from immunity from being sued for defamation regarding what they say about witnesses, defendants or plaintiffs during proceedings, which sparks claims of being above the law hurled at

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[1] ibid.

[2] Constitutional Reform Act 2005 (2005) 2-4 <https://goo.gl/f4hDJD> accessed 18 November 2017.

[3] ibid.

[4] 'The Three Branches Of Government', 2016.

[5] 'The Legal System Of The United Kingdom' (*Chartered Institute of Legal Executives,* 2017) <https://goo.gl/W1wc5t> accessed 18December 2017.

the servants of Themis, so to speak. The Lord Chancellor or Lord Chief Justice is free to refer a judge to the Judicial Complaints Investigations Office, which determines whether it is acceptable to remove the branch colleague from office in particular circumstances, in which he or she is known to have perpetrated a professional offence.[1]

What immunity and independence really mean in the British judicial context is that judges can exercise their powers unhindered: the media, the state, litigants, or influential figures or entities such as big companies will not be able to exert influence on them legally.[2] This principle is vital, for judges often hear matters between British residents and powerful organisations, and residents and the state. To quote an example of actual independence, a judge handling a criminal trial against a resident will never be under the influence of the state. Only the law and case facts govern the process.[3]

In the UK, Britons do not have a codified constitution formulating the rule of law, nor the SOP. Despite this, the rule of law has prevailed on British soil, and the judiciary has retained its autonomy. The Act of Settlement 1701 provided judges with independence by guaranteeing their wages,[4] and guaranteeing that senior judges would perform their duties undeterred until removed by a motion in both Houses of Parliament – the only means to remove judges.[5] More importantly, the acceptance of the convention made it impossible for a sovereign to intervene in legal proceedings.[6] In fact, the judicial branch of the country gained a great deal of sovereignty, such that it came to question the actions of the executive branch.

From the 1960s onwards, judges questioned the decisions of public bodies and the national government, in a move heralding social change which made people less deferential and more willing to challenge the decisions of ministers. The UK entered the EU in 1972, which caused British law to become inferior to that of the economic bloc. In the wake of this change, judges were capable of ruling against Acts of Parliament. International law redevelopment and the newly acquired capacity of Britons to take cases to the European Court of Human Rights resulted in judges using new legal principles, which could potentially collide with the government's intentions regarding immigration and anti-terrorist legislation. The Human Rights Act of 1998 expedited this process, thereby giving judges the ability both to identifyActs of Parliament that contravened the act, and to enforce revision of the legislation. [7] In fact, it would be unlawful for a public authority to act in a way that runs counter to a

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[1]ibid.

[2] 'Independence'.

[3] 'Independence'.

[4]*Act Of Settlement,* 1701 (1701) 4 <https://goo.gl/qekDYm> accessed 23December 2017.

[5] 'Is The Judiciary Independent?' (*Brit Politics*) <https://goo.gl/QvpkbQ> accessed 23December 2017.

[6] 'Is The Judiciary Independent?'.

[7] ibid.

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

Convention right. A Minister of the Crown may order amendments to legislation that he/she deems necessary for the removal of the incompatibility.[1]

Details of the Prosecutorial Process in the Omani and English Systems, and Judges' Responsibilities

The Prosecutorial Process in the UK and Judges' Responsibilities

The prosecutorial process is a complex one, involving a variety of stages: pre-arrest investigations, the decision to press charges, the filing of a complaint or arraignment, preliminary hearings, arraignment on the indictment, pre-trial conferences or motions, trials, sentencing, appeals, parole, and expungements.[2] Blond (2009, 2–5) defined the first stage as crime reporting, adding the arrest and booking process, post-arrest investigation, the first appearance, and grand jury proceedings, while dropping some of the stages included by the previous source, and changing the sequence/position of stages within the chain of the prosecutorial process. The list of stages varies across countries.[3]

Concerning the UK and its prosecutorial process, a person contacts the police, reporting that an offence has been committed. Law enforcers will proceed to perform an investigation that may result in the detention of a person suspected of committing a crime.[4] The office of Public Prosecutor had not existed in Wales and England before the enactment of the Prosecution Offences Act of 1985. The removal of the prosecution decision from the police, and its assignment to the Crown prosecution service, ensures separation between the stages of investigation and prosecution, establishing autonomy in the decision-making of the Crown Prosecutor.[5] In his book, "The Antinomies of the Law Officers", Neil Walker stated that law officers often had to reconcile their commitment to values related to political/legal order integrity and their attachment to the government with its political goals.[6]

Regarding the Prosecution Office, if the service believes a case will be in the best interests of the public, and the case has reasonable success prospects, the Prosecution Service will undertake to prove the person guilty in court. Minor crimes such as speeding are within the jurisdiction of a Magistrates' Court. Three magistrates are present to hear cases; magistrates do not require any legal qualifications, as they seek

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[1] *Human Rights Act 1998* (1998) 5,9<https://goo.gl/Jf7jzk> accessed 18 November 2017.

[2] 'The Prosecutorial Process' (*The Law Office of Thomas Baynton,* 2017). <https://goo.gl/Pg4irW> accessed 7February 2018.

[3] Neil C. Blond, *Criminal Procedure* (Aspen Publishers Online, 2009) 2–5. <https://goo.gl/2CMUcY> accessed 9February 2018.

[4] 'The Legal System Of The United Kingdom', 2017.

[5] Jacqueline S. Hodgson, 'The Democratic Accountability Of Prosecutors In England And Wales And France: Independence, Discretion And Managerialism' (The University of Warwick, 2016) <https://goo.gl/Qny3eM> accessed 19February 2018.

[6] David Feldman, *Law In Politics, Politics In Law* (Bloomsbury Publishing, 2013) 128 <https://goo.gl/FG323W> accessed 19February 2018.

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the counsel of a Clerk, who is a qualified lawyer. It is unnecessary for these court officials to specify the causes of specific judicial decisions they make.[1]

Very serious crimes such as rape or murder are allocated to the Crown Court, based in around 90 centres across Wales and England. On most occasions, the decision made by the jury is unanimous; the judge advises the jury on the law. The judge's role involves passing a sentence if the defendant is proved guilty. Intermediate offences such as theft are heard by either a Magistrates' Court or Crown Court. The sentences for crimes incorporate fines paid to the state, community punishments in the form of unpaid supervised work, and imprisonment.[2]

The UK also uses so-called Senior Appellate Courts. Their function is to hear appeals from other courts. The Court of Appeal and the Supreme Court are two of the most Senior Appellate Courts. The Court of Appeal, covering Wales and England, is subdivided into Criminal and Civil Divisions. The Criminal Division hears appeals about presumed law errors committed in Crown and Magistrates' Courts, while the Civil Division hears appeals against decisions made by the High Court. Being the highest court of the British judicial hierarchy, the Supreme Court hears appeals from the Court of Appeal.[3]

All four countries are legally well placed to send their civil appeals to the institution. By contrast, only Wales, England and Northern Ireland are able to send criminal appeals, if necessary. Only in the event that a case raises a point of general public importance will it gain the privilege to appeal to the judiciary establishment. Decisions made by the Appellate Committee of the House of Lords, the Supreme Court, and the Court of Appeal become precedents for courts to follow while dealing with future cases, which excludes dual standards and ensures treatment parity, which are often perceived as critical justice aspects.[4]

The Prosecutorial Process in Oman, Judges' Responsibilities, and Suspects' Rights

The prosecutorial process does not seem well defined in Oman. As reported, there are no written rules of evidence in Oman. The same applies for any legal provision for a public trial and the codified procedures for entering cases into the criminal system.[5] Still, law enforcers and their specific prosecutorial functions are reflected in royal decrees. According to Royal Decree N. 92/99 (1999), the Public Prosecution Law contains articles detailing the early stages of the prosecutorial process in Oman and the actors involved. Article 2 claims that the Royal Oman Police is responsible for public actions in the event of misbehaviour. Article 3 states that the Inspector General

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[1] 'The Legal System Of The United Kingdom', 2017.
[2] ibid.
[3] ibid.
[4] ibid.
[5] Fanack, 2010.

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January - June 2021
Volume 7, Issue 1

of Police can trust some police officers, who may investigate felonies on the condition that they have the requisite skills.[1] In criminal cases, law enforcers provide defendants with written charges.[2]

Law enforcers may obtain warrants before arresting suspects, yet there is no legal requirement to do so. However, to keep suspects in pre-trial detention following 24 hours of detention, the authorities require court orders. Law enforcers will need to file charges or request that a magistrate judge grant continued detention. Judges may order detention for two weeks to enable investigations, and even offer extensions if necessary. The judicial system allows bailing. Detainees are not devoid of rights, as the 1996 Basic Charter does provide specific procedural and legal rights for them, yet these provisions are still to be fulfilled. In reality, law enforcers do not always do what is legally required. The way in which police handle detentions and arrests constitutes incommunicado detention in some cases. Law enforcers sometimes bar family members and attorneys from visiting detainees, which may lead judges to intercede to facilitate visits.[3] In theory, detainees are free to deploy a lawyer. The 1996 Basic Charter confirms the right to government-funded legal representation and counsel. However, these provisions remain unimplemented, as the government does not offer legal representation funding.[4]

There is the presumption of innocence for all, which provides defendants with the privilege to present evidence and confront witnesses who reinforce accusations. The judge is the hearing actor through whom the defence or prosecution can direct questions. The judge is usually the only person who questions witnesses directly in the courtroom. These judicial officials pronounce the ruling or sentence within 24 hours of trial completion. The convicted have the right to appeal to a three-judge panel against prison verdicts, if fines surpass an equivalent of 1,250 dollars and the incarceration period exceeds three months. However, national security crimes and grave offences automatically deprive defendants of the appeal right.[5] There are different court institutions engaged in the prosecutorial process, with judges and other judicial officials holding various powers, ensuring the adequate administration of justice.

The Ministry of Justice administers the Sharia courts applying religious law as interpreted under the Ibadi school of Islamic jurisprudence. Each of the 61 governorates or wilayats have courts of first instance. A single judge called a qadi presides over such courts. Appealing the rulings of the first instance courts, including fines over 260 dollars or prison terms of 14 days or more, requires presentation before the Sharia Court of Appeals in the space of one month following sentence

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[1] *Royal Decree N. 92/99.*<https://goo.gl/gXuz4k> accessed 23February 2018.
[2] Fanack, 2010.
[3] Oman Criminal Laws, Regulations And Procedures Handbook, 98.
[4] Fanack, 2010.
[5] Fanack, 2010.

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January - June 2021
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declaration.[1] Magistrates' Courts, accountable to the sultan, took over all criminal cases from the Sharia courts. Regional courts of first instance hear misconduct cases. A panel composed of two judges and the President of the Magistrates' Court adjudicates all felonies at the Muscat-based Central Magistrates' Court. All the felony panel's rulings are impossible to appeal, with the exception of the death sentence. Although seldom used, capital punishment is often a punitive measure in the case of serious offences such as murder, yet the ruling approval is the competence of the state ruler. This harsh measure has reportedly not been applied since 2001. The Criminal Appeals Panel – composed of two judges of the court and its vice president, and presided over by the President of the Magistrates' Court – will hear the appeals of rulings by first instance courts. The State Security Court will hear cases related to national security, in addition to cases that are delicate in nature or require expeditious action. Founded by a royal decree in 1981, the commercial courts system, also known as the Authority for the Settlement of Commercial Disputes, handles all cases associated with commercial issues.[2] The authority possesses actual powers to settle issues, as follows from the Commercial Companies Law #4/1974.[3]

Omani and English Judges, and Their Responsibilities

Constitution Articles 60, 61

The constitution of Oman contains articles addressing judicial matters, such as judges and their autonomy. Article 60 states that the judicial branch shall retain its autonomy, and the courts shall exercise its authority according to their various kinds and hierarchies. The judgements they produce must be in line with the law. Article 61 states that judges shall have no power over them in their ruling, save the power of law. Judges shall be impossible to remove, except in circumstances specified by the law. No party can intrude in lawsuits or justice affairs. In such a case, intervention shall be deemed an offence punishable by law.[4] Article 60 virtually declares the judiciary independent, while the next article reinforces the autonomy of judges subjected to the law exclusively.[5] Besides independence, the articles provide judges with freedom.[6]

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[1]ibid.

[2]Fanack, 2010.

[3]*Oman Chamber of Commerce and Industry, The Commercial Companies Law, No. 4/1974* (1974) <https://goo.gl/zvwbHA> accessed 7March 2018.

[4]*Oman's Constitution Of 1996 With Amendments Through 2011* (2011) 21 <https://goo.gl/d73mdV> accessed 25December 2017.

[5] Marc Valeri, *Oman: Politics And Society In TheQaboos State* (Hurst Publishers, 2009) 191 <https://goo.gl/Wm6V3M> accessed 28December 2017.

[6] Sulaiman al-Farsi, *Democracy And Youth In The Middle East: Islam, Tribalism And The Rentier State In Oman* (IBTauris, 2013) 73<https://goo.gl/jWQZh8> accessed 7January 2018.

Omani Judges' Appointment and Removal

Some researchers attribute the function of judge appointment to the Imam, who does so without any specific ceremony. The other members of the ulama assist in choosing the judges and presenting them as candidates. When picked, judges have distinctive autonomy, as does their jurisdiction, since the judges are often recruited from the ulama, performing the role of an autonomous juridical and legislative body. Resorting to the Imam is still a must, especially in essential cases.[1]Still, this view looks outdated, as Imams may no longer be involved in the appointment process. The Sultan of Oman liquidated the office of the Imam in 1959 when he vanquished insurgents with the aid of the UK, and dissolved the Treaty of Seeb, allowing the Imam autonomous rule in the interior, with recognition of the sultan's sovereignty elsewhere in the country.[2]

The termination of the institution came as a response to the five-year rebellion spearheaded by the new Imam from 1954, upon the discovery of oil in the interior. The Imam was exiled to Saudi Arabia in the early 1960s, never to return. The exiled Imam accepted support from the Saudi Arabian government until the 1980s, when this support ran dry.[3] Other researchers confirmed the present lack of an Imam in Oman,[4] and pointed to the sultan as an alternative to the Imam, stating that religious leaders or Imams have sometimes been elected in Oman, yet hereditary succession has been more widespread in the country.[5] Gravitation towards the sultanate may stem from an important political decision, which is likely to have determined judge appointment and other functions in the state. **Upon his ascension to the throne, Sultan Qaboos unified the coastal people ruled by sultans, and interior peoples ruled by Imams, which ended the geographical and cultural split between the Omanis**.[6] Therefore, unsurprisingly, the judge appointment function is believed to rest with the secular leaders of Oman. While theoretically autonomous, judges are appointed by the sultan.[7]

The Sultan of Oman also performs the duty of dismissing or removing judges.[8] Whether judges will keep working or have their tenure terminated is contingent on their professional conduct, which must comply with the independence expectation principle formulated in the Constitution Articles. The code of conduct for judges,

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[1]Ghubash, 41.

[2] Background Notes: Mideast, March, 2011 (InfoStrategistcom, 2011) <https://goo.gl/tpW3RM> accessed 13 January 2018.

[3]*Background Notes: Mideast, March, 2011,* 2011.

[4]Tony Walsh and Diana Darke, *Oman* (Bradt Travel Guides, 2016) 206 <https://goo.gl/guc4vd> accessed 13 November 2017.

[5]*The Report: Oman 2011* (Oxford Business Group, 2010) 18 <https://goo.gl/h7yu9j> accessed 13 January 2018.

[6]*The Report: Oman 2014* (Oxford Business Group, 2014) 16 <https://goo.gl/LjXBw4> accessed 25January 2018.

[7]Valeri, 191.

[8] Mohamed Y. Mattar, 'The Rights Of The Accused In The Criminal Justice System Of Oman' (The Federal Research Division, Library of Congress, 2011) <https://goo.gl/iKV3gX> accessed 27January 2018.

concerning their obligations, duties and behaviour code,was determined in Royal Decree 90/99, issuing the Judicial Authority Law.[1] Judges cannot engage in commercial activities or any work not in keeping with judiciary autonomy. Neither can the courts express political views, nor participate in political activities.[2]

British Judges' Appointment and Removal

The independence of British judges seems to be the continuation of an older legal tradition stretching back to the early 18th century. The Act of Settlement 1701 established three principles: the remuneration of judges is not to be reduced, judges are impossible to remove except through parliamentary proceedings, and the judges of superior courts can keep their power through good conduct rather than the pleasure of the Crown. While the legislature permits the removal of judges, the procedure cannot occur anywhere except in open Parliament. Removal grounds are restricted to incapacity or misconduct, while excluding the political motivation of sacking. A measure of accountability coexists with autonomy.[3]

In the UK, judges are appointed – in the case of a judge of the High Court or the Court of Appeal in Northern Ireland, the High Court of Justice or the Court of Session in Scotland, and the High Court or the Court of Appeal in Wales and England – by the head of state acting on the advice of the Minister of Justice, following the recommendation of the Judicial Services Commission. In the case of all other tribunals and courts, judges are appointed by the Justice Minister, following a Judicial Services Commission recommendation. Judges are also appointed in all cases from individuals who possess such qualifications as it is possible to prescribe by an Act of Parliament or the appropriate devolved Assembly or Parliament.[4]

Regarding when judges vacate their office, judicial officials will leave as soon as they reach the age of 70. Judges will no longer perform their duties upon receipt by the chief executive, the Justice Minister, or the prime minister of a resignation letter prepared by the judge. The judiciary official also leaves office following the acceptance of a position or office of emolument, or the obtainment of membership in the House of Parliament. Judges will be relieved of their duties upon the expiry of the predetermined appointment period, given the lack of tenure renewal. Of course, a judge is in position to continue to act if their hearing started before they reached retirement age, where duties will continue pending case completion. The potential grounds for removal include a failure in the proper execution of duties, grave judicial misbehaviour, and taking a position not in keeping with the proper performance of

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[1]Mattar, 10.

[2] 'Oman: Recent Developments' (2000) 15 Arab Law Quarterly <https://goo.gl/eoPpHu> accessed 27January 2018.

[3]Richard Devlin and Adam Dodek, *Regulating Judges* (Edward Elgar Publishing, 2016) 295 <https://goo.gl/kUxB6C> accessed 27January 2018.

[4] 'A New Magna Carta? – Political And Constitutional Reform Contents' (*Parliament.uk,* 2017) <https://goo.gl/BmrkvL> accessed 2February 2018.

the office – situations in which judges may find themselves due to personal behaviour or other reasons, and mental or physical incapacity, both lingering and permanent.[1]

Chapter Three: Recommendations and Conclusion

Recommendations and Their Viability

To guarantee the rights of suspects and residents, the actual SOP must be ensured to eliminate the influence of the sultan on the legal body. If Sultan Qaboos finds the political will to implement the SOP, he may achieve it in a number of ways. Oman would fare much better by enforcing international resolutions of court independence or borrowing excerpts from the documents. There are plenty of Positive SOP-based resolutions, such as the "Bangalore Principles of Judicial Conduct" or the "United Nations Basic Principles on the Independence of the Judiciary and the role of lawyers".[2]

Oman may also successfully borrow the idea of a joint prosecutorial body, such as that of the European Union. Thus, for example, the Lisbon Treaty provides a legal basis for the EU member states to establish a European Public Prosecutor with the respective authority in the courts of European Union members, for the punishment of offences committed against the financial interests of the politico-economic union.[3] Oman will be best served by becoming a part of or initiating a similar organisation, in the sense that a treaty between a range of Muslim states may create a joint prosecutorial body whose shared status will ensure the system of checks, and exclude the possibility of power abuse by individual political regimes. To transform themselves, countries sometimes perform power lustration, or the purging of the judicial, executive and legislative ranks. In addition, this may be achieved by creating national conferences with popular participation, to present such a vision to the public.

To introduce quality changes, an influential, strong internal reformer or reform advocate is required, preferably from among the power holders, as authority is certain to expedite the process of transformation. In Oman, there has been some rotation of duty holders and the passage of powers from one institution to the other, as was the case with the assignment of the powers of the Inspector General of Police and Customs to the Public Prosecutor Office. Royal decrees authorise all legislation, while judges are appointed by the sultan. The actual change may come from this supreme figure. If the sultan holds pardoning and sentence commuting powers, the judicial branch cannot be said to be autonomous, as it may be subject to intervention.

In these circumstances, voters emerge as the only viable means to change the situation, yet some of the voting behaviour leaves little optimism. Transformation Index BTI 2016 (2016, 7) reported the buying of voters in 2011 and 2012, and similar

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[1] 'A New Magna Carta? – Political And Constitutional Reform Contents', 2017.

[2] 'Independence'.

[3] Gerard Conway, 'Holding To Account A Possible European Public Prosecutor'. (2013) 24 Criminal Law Forum <https://goo.gl/vE61JJ> accessed 15 February 2018.

efforts earlier in the century. If the authorities attempted to buy voters, people did nothing other than sell their votes. Once they no longer do so, the politicians unwilling to perform quality transformations by effecting reforms will no longer be there to suppress democracy and halt the genuine implementation of the SOP. If favours and personal friendships are this deep-seated in Oman, it may be that democracy and SOP are not as much about voting, but rather changing the mentality of the nation, shaped for centuries, which may be an uphill task, if not comparable to the labour of Sisyphus. Violence is not the way forward, as the 2011 Egyptian revolution indicates. Revolutions appear to be the product of liberty-seeking people eventually deceived by political or military adventurists, who assume the reins of power later.Contrary to that, Oman showed a positive response to the peaceful protests in 2011, which shows that the sultan or the authorities in general will be quite willing to present such cases in the future.

Conclusion

The legal system of Oman, providing its judiciary the legal instrument of decision-making, has been a product of locally strong religious influence, and the inclusion of French and British legal traditions/elements. In attempting to borrow the finest legal accomplishments of foreign systems, the country may need to make a bold and historical step to practise the same principle of power separation that characterises the UK, where the judiciary has enjoyed great autonomy from potential royal abuse since at least 1701. Of course, the UK has not been ideal in terms of judicial autonomy, yet the principal difference between the UK and Oman has been that Britons reform their branches by redistributing commissions. This prevents specific figures from accumulating too many commissions, while the redistribution of commissions in Oman often leads to their accumulation by one authority. Oman's sultan enjoys a plethora of judicial powers, which of course considered as difficult mission andgives reason to question his aptitude and capacity to produce constructive and adequate judicial decisions. These decisions determine the economic quality of life of hundreds of thousands of local residents.

The rights of civilians may not be obvious via the legal branch that provides the means of decision-making, as it is not only on judicial precedents that courts rely. Besides, even such precedents come from laws and norms produced by the body where the sultan presides. However, the security obsession which may limit freedoms, in one way or another, is not so severe when compared to some state neighbours. More precisely, the country is in need ofthe creation of national conferences with popular participation to present such a vision to the public, including lustration and the enforcement of international judicial behaviour conventions. In addition, the utility of the current quasi-present SOP, and what Oman experienced during its positive response to the peaceful protests in 2011, shows that the sultan or the authorities in general will be quite willing to present this case in the future.

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Mediation in Juvenile Criminal Offenses - Albanian Case

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Abstract

In the treatment of juvenile ofenders in modern systems, priority is being given to procedures aimed at reconciliation and mediation, damage repair and the implementation of alternative measures to restrict freedom. The entirety of such proceedings fall within the concept of restorative justice. Restorative justice is of particular importance in the treatment of juveniles by the criminal justice system, as its main purpose is not to punish the perpetrator but to find methods that promote reintegration into society. One of the mechanisms that underpins restorative justice for juveniles that guarantees the success of education and reintegration in society is mediation in criminal conflicts. The mediation aims to engage the perpetrator in repairing the damage caused by the criminal offense as well as to restore reconciliation relations between the victim and the perpetrator. In this way, mediation procedures are of particular importance in the context of criminal law as they promote the values of dialogue and reconciliation in the way of conflict resolution and provide alternative solutions to criminal sanctions. In criminal cases involving juvenile offenders, the application of mediation procedures brings a number of positive aspects as it serves the immediate rehabilitation and reintegration of the juvenile offender as the primary aim of juvenile justice. Implementation of the mediation alternative leads to a better understanding of legislation in this area as well as an increased awareness of enabling application as one of the forms of intervention against juvenile delinquency. Restorative justice is already part of the juvenile criminal legislation following the entry into force of the Juvenile Criminal Code, which brings a new perspective to the implementation of restorative procedures in accordance with the principle of protecting the best interest of the minor. The paper focuses on the role and importance of mediation procedures and their sanctioning in Albanian legislation. The paper will analyze albanian mediation legislation as a positive achievement in the context of promoting the process of restorative justice in juvenile matters. Conclusions will be drawn and recommendations will be identified regarding deficiencies in legal regulations as well as the practical implementation of mediation procedures for juveniles.

Keywords: Juvenile Criminal Code, restorative justice, mediation, juvenile offender, prosecution avoidance

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

Introduction

In cases of juvenile offenders, criminal punishment should be the last resort leaving space for other solutions where restorative justice also plays an important role. Restorative justice reflects a humane and democratic attitude in dealing with crime, in a way that benefits victims, offenders, the community and society at large, conceptualizing it as a win-win process for all involved actors[1]. Restorative justice requires the active participation of the victim and the perpetrator, as opposed to the criminal procedure where the judge makes the decision. It is oriented towards repair compensation, rather than punishment[2].

Mediation is an important aspect of restorative justice. Mediation is based on an agreement between the offender and the injured party and ensures the settlement of the conflict through reconciliation, thereby avoiding litigation. In this way, juvenile offenders are provided with more effective opportunities to remedy the consequences of the action taken and to integrate into the community and to restore violated rights to the victim by repairing the damage caused by the offense.

Researchers define it as: "a confidential, law-abiding litigation where the parties voluntarily participate, aimed at resolving disputes arising from the commission of a criminal offense, using the services of an independent and impartial third party"[3].

t is thought that the mediation process as an element of restorative justice was developed around the 70's, first in the US and Canada and then in the European countries[4]. Nowadays mediation is taking on particular importance in matters involving minors. The application of mediation procedures allows juveniles to avoid criminal proceedings such as the application of criminal sanctions in accordance with the requirements of international standards.

At the same time, mediation procedures and contact with the victim raise the juvenile's awareness of the consequences of his or her actions and future failure to serve as a basic element of education. Mediation also serves to restore the rights of the victim as the victim receives proper sodisfaction through forms such as penance or compensation for the damage caused.

In this way, the application of mediation for juvenile offenders, in contrast to criminal sanctions, is also of interest to society as the primary interest of society is the education of juveniles and the avoidance of any possibility of continuing criminal

[1] Foundation "Conflict Resolution and Dispute Settlement", (2007), Summary of Conference Proceedings, "Implementing *Restorative Justice and Mediation in the European Perspective*", Tirana 23-24 May, p. 12.

[2] Save the Children, (2015), Handbook, *Mediation Service and Restorative Justice for Juveniles in Conflict with the Law*, Tirana , p. 14.

[3] Conflict Resolution and Dispute Settlement Foundation, (2007), *Restorative Justice and Mediation in Criminal Dispute Resolution, Handbook for Judges and Prosecutors*, UNICEF, Tirana, p. 6.

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

activity. The practice of serving sentences for juveniles within the existing infrastructure, in the absence of specialized institutions, has already shown that serving the sentence has not served their education properly. In some cases the period spent in penitentiary institutions has had negative effects in terms of returning to criminal activity. Likewise, the restoration of the relationship between the offender and the victim serves the well-being and possibility of peaceful co-existence of all community members. To this end, priority should be given to the mediation process as a means of resolving criminal conflicts for juveniles, thus avoiding the negative effects of facing criminal proceedings.

1. The historical context

Resolution of mediation disputes has existed as one of the forms of conflict resolution even in the Albanian historical context. Initially mediation procedures were regulated by customary law rules. The canons envisaged detailed rules regarding reconciliation procedures, ceremonies, or even reconciliation symbols that varied from province to province[1]. In Albanian customary law, canonical norms have been used mainly in reconciliation of blood feuds in order to limit blood feuds and hostilities. During the period of Skanderbeg's state and the Ottoman occupation a great development took the institute of covenants that served the process of reconciliation[2]. During the fascist occupation, the basis for settling disputes served acts issued by organisms created during the anti-fascist national-liberation war.

After the liberation of the country, the role of mediator was played by blood reconciliation committees and then by social courts as well as village, city and neighborhood courts[3]. These courts were empowered to make conciliation efforts in criminal matters pursued at the injured party's request. Procedures for resolving the case with reconciliation were also provided for by the criminal procedural legislation[4]. Reconciliation could lead to the prosecution not being initiated or dismissed, at the stage of investigation or trial, as a consequence of the waiver of the accusative victim's appeal[5]. The courts also had the right to dismiss criminal cases

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[1] In the *Canon of Lek Dukagjini* one of the symbols of reconciliation and forgiveness of blood was the brooding provided in its paragraph 989-990. Another symbol was that of the blood of bread, namely the lunch after reconciliation, and of the cross at the door as a sign of forgiven blood, as provided in paragraph 983.

[2] Elezi. I, (2005), *Mediation for Reconciliation in Criminal Conflicts*, published by the Dispute Resolution Conflict Reconciliation Foundation, pp. 32-34.

[3] Elezi. I, (2005), *Tradition and practice in applying conciliation mediation in the criminal field*, reference given at the National Conference on Mediation, published by the Foundation "Conflict Resolution and Dispute Settlement", Tirana 27-28 April, p. 34.

[4] Criminal Procedural Code of 1979 Art. 125.

[5] According to Article 98/2 of the Criminal Procedure Code of 1953 as well as Article 71 /5 of the 1979 Criminal Procedure Code, one of the reasons for the failure to institute criminal proceedings was the case where the injured party withdrew his claim.

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

that were not pursued by the injured party's appeal in cases where the guilty pleaded guilty and the educational purpose of the sentence was fulfilled[1].

In 1990 by law no. 7383, dated 08.05.1990, the social courts were established which had the object of their activity as well as the settlement of disputes between the citizens for the criminal offenses prosecuted at the request of the injured party. Researchers think that these courts took on the character of social organisms that underlie the idea of reconciliation[2].

With the adoption of the Criminal Code (CC) and the Code of Criminal Procedure (CPC), the institute of mediation was not explicitly provided for in the criminal and procedural legislation of the Republic of Albania. However, Article 48 of the CC adopted by law no. 7895, dated 27.01.1995 provides for mitigating circumstances as well as aspects related to the reconciliation and restoration of relations between the offender and the victim or his family, such as:

a) the person shows deep repentance;
b) replaces the damage caused by the criminal offense or actively helps to eliminate or reduce its consequences;
c) the relationship between the perpetrator and the victim is normalized.

2. Albanian legislation on mediation

Mediation procedures have found expression in Albanian legislation, initially with the adoption of Law no. 8465, dated 11.03.1999 "On mediation for the settlement of disputes" and subsequently with Law no. 9090, dated 26.06.2003 "On mediation in the settlement of disputes" which repealed the former. and further by Law no. 10385, dated 24.02.2011 "On mediation in the settlement of disputes" which is currently in force. The adoption of this legislation is of great importance as it institutionalizes mediation as an alternative to the resolution of criminal cases by creating real opportunities for its implementation in juvenile matters.

The law contains procedural principles and rules on the basis of which mediation will take place, outlining the rules related to the procedure of its development and the conditions for appointing a mediator. The law does not provide for special procedures for the development of juvenile mediation, but there is no impediment to existing procedures also being applied to mediation of juvenile offenders.

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[1] This competence was provided for in Article 73/1 of the 1979 Criminal Procedure Code which provided that:
"The court, the single judge or the investigator shall, in exceptional cases, have the right not to commence a criminal case, or during the investigation and trial in the first instance to dismiss it, when they consider that the danger of the offense committed and of the person is minor. and when he shows deep repentance. In these cases, the non-initiation or termination of the criminal case may also be initiated at the request of the state authorities, social organizations and labor associations. "
[2]Elezi. I, (2005), *Mediation for Reconciliation in Criminal Conflicts*, published by the Foundation "Conflict Resolution and Dispute Settlement", Tirana, pg 2.

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

In this law, mediation is defined as "extrajudicial activity, in which the parties seek the settlement of a dispute by a neutral third party (mediator), in order to reach an acceptable settlement of the dispute and which is not contrary to the law. "[1].

A very important aspect of this law is the provision of mediation also for criminal conflicts for a category of criminal offenses with low social risk[2]. The category of offenses for which mediation may be applied are those provided for in Articles 59 and 284 of the CPC. More specifically, mediation in the criminal field applies in the following cases:

Cases that are examined by the court at the request of the accusing injured party pursuant to Article 59 CPC.

In these cases the injured accuses has the right to file a claim with the court and to attend the trial as a party to prove the charge and to claim damages. Instead of litigation, the court may propose that the parties resolve the conflict through mediation. In the context of Article 59 of the CPC, mediation may apply to this category of offenses:

Other intentional injuries (Article 90), gross negligent injury (Article 91), minor negligent injury (Article 92), house rape (Article 112, first paragraph), insult (Article 119), insult motives of racism or xenophobia through a computer system (Article 119 / b), defamation (Article 120), unfair interference with privacy (Article 121), disclosure of personal secrets (Article 122), non-providing livelihoods (Article 125), unfair treatment of the child (Article 127), and violation of the inviolability of the home (Article 254).

All the offenses set forth in Article 284 CCP for which the prosecution can be initiated by the prosecution only with the appeal of the injured party who may withdraw it at any stage of the proceedings.

Prosecution authorities, the judicial police and the prosecution can play a positive role in this regard, which in such cases can inform the injured party of his right to settle the case through mediation. Referring to Article 284 of the CCP these cases relate to criminal offenses such as:

Intimidation (Article 84), light intentional injury (Article 89), sexual intercourse with increased violence (Article102), sexual or homosexual abuse (Article 105), sexual or homosexual intercourse with family members or custodian (Article 106), coercion or obstruction of cohabitation or dissolution of marriage (Article 130), publication of another's work under his own name (Article 148), unlawful reproduction of another's work (Article 149), assault on members the family of the person performing a state duty (Article 243), violation of the right of residence (Article 254), obligation to

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[1] Law no. 10385, dated 24.02.2011 "*On mediation in the settlement of disputes*", Article 1.

[2] Idem, article 3.

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

participate or not to strike (Article 264), malicious use of telephone calls (Article 275), violation of traffic rules (Article 210 / first paragraph) and insult of a judge (Article 318).

The law marks an important step towards alternative resolution of criminal disputes as it enables the offenses provided for in Articles 59 and 284 of the CCP to be resolved extrajudicially. The novelty of the new law relates to the obligation of the court in the case of disputes in the criminal field as above to invite the parties to resort to mediation procedure for their settlement[1]. This rule is in line with the provisions of Article 338 of the CPC which establishes the same obligation of the court to propose to the parties to settle the case concurrently in the case of offenses prosecuted at the request of the injured party.

Now, for the offenses provided for in Articles 59 and 284 committed by juveniles, the parties must first be subject to mediation and only if it fails should refer the matter to the justice authorities. The law in question is very detailed with regard to the principles on which the mediation will be based, the procedure for its development and the appointment of experts and the legal significance of the mediation agreement. Among the most important principles enshrined in the law are the volontary participation, the preservation of confidentiality and the respect for the equality of parties in the mediation procedure[2]. The law also sanctions the right to participate in the mediation procedure. It guarantees the parties the right to nominate a mediator or mediators as well as to determine the rules and procedure of mediation. This important principle enshrined in Article 3 of the law serves the effectiveness of the development of the mediation procedure as well as the positive consequences that are finalized in its agreement.

A guarantee of the success of the proceedings is the legal value of the agreement reached by the parties as well as the consequences of this agreement if the parties do not object. Resolution of the case through mediation and acceptance of the agreement by the parties leads to the non initiation of criminal proceedings or termination of the criminal case[3]. In criminal cases where juveniles are involved , if the case is resolved through mediation, the prosecutor or judge decides to dismiss the case[4].

Such an aspect is also sanctioned in the CPC which provides for the court or prosecutor's office to refrain from instituting criminal proceedings or ordering the dismissal of a criminal case if the matter has been settled through mediation. According to Article 290 / c of the CPC, one of the circumstances which does not allow the initiation of proceedings is also when the injured party's appeal is absent or when he withdraws the appeal.

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[1] Idem, article 2/5.

[2] Idem, article 3.

[3] Idem ,article 23/2.

[4] Idem, article 23/2/1.

3. Mediation in the Juvenile Justice Code

Although mediation legislation has been in force since 1999, the concept of restorative justice was sanctioned by the entry into force of Law 37/2017 "Juvenile Justice Code" (Code). Restorative justice is mentioned in the Code, originally in Article 44, which provides for the obligation of the competent authority to inform a minor in conflict with the law, victim, legal or procedural representative of restorative justice programs.

With the provision in the Code, restorative justice is now an integral part of the juvenile criminal justice system in accordance with the best interests of the juvenile. The manner of sanctioning is such that it considers not only the treatment of juveniles in conflict with the law, but also considers the interests of juvenile victims through their involvement in conflict resolution and the consequences of the offense.

Further, aspects related to restorative justice and mediation programs are regulated in the Code in Articles 63 and 64 where they are considered as alternative measures of avoidance of prosecution The importance of these programs relates to the fact that their successful implementation excludes juveniles in conflict with the law from formal investigation and adjudication procedures. This adjustment is in line with Council of Europe recommendations that promote out-of-court conflict resolution and international standards[1].

Restorative justice and mediation programs can be implemented at any time, from the time a juvenile is detained, to the pre-trial investigation as well as the trial, provided that no final court decision is made. Although initiated on the proposal of the prosecutor or the judge, they take place outside the premises of the prosecution or court in accordance with an approach of frendly juvenile justice.

A restorative justice or mediation program can be applied to a juvenile ofender if two conditions are met:

- The minor, defense counsel and / or legal representative must freely give free consent to such a decision;
- Any agreement to remedy the consequences of the offense committed by the minor is reasonable or appropriate[2].

The foregoing concludes that restorative justice procedures are voluntary procedures, meaning that they can be implemented only after the consent of the minor, his or her defense counsel or legal representative. The appearance of a free valve is a necessary condition for the whole process to operate, excluding any pressure, coercion or willful violation. The expression "must be reasonable" means that "if making this mediation decision or any other restorative justice program better

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[1] See Recommendation no. (81) 7 of the Council of Europe "*On measures to facilitate access to justice*", Recommendation no. (99) 19 "*On mediation in criminal matters*" etc.

[2] Code, Article 63/2 / (a) and 63/2 / (b).

protects the parties, takes care of preserving the juvenile's dignity, prevents his or her physical, mental and emotional harm, then the court or prosecution has the right to decide it"[1]. The term also implies a decision making in accordance with the needs and the principle of the best interest of the minor.

The Code states that the implementation of a restorative justice program may be conditioned by the application of certain obligations to a minor in conflict with the law such as[2]:

he or she understands the responsibility for the offense and its consequences;

compensate for the harm caused to the victim, the community and / or society;

apologize to the victim; and

take action acceptable to the victim and / or the community.

Acknowledgment of responsibility for the offense is also closely linked to awareness of the consequences of the offense and the willingness to settle it. This means pleading guilty, taking responsibility and willingness to compensate for the damage caused. Apologizing is also part of the process of taking responsibility for the offense and correcting the consequences. Apologizing has a positive impact on the moral distress of the victims and has a positive impact on the successful development of mediation procedures.

Minors may also be required to apologize to the victim and to take other actions acceptable to the victim and / or the community. The nature of the actions required is not specified in the Code as it depends on the type of program to be implemented.

The types of restorative justice programs that the Code provides may include participation in a program of avoidance and mediation, work in the public interest, and / or any other program that leads to the rehabilitation of the consequences of an offense committed by a minor.[3]

The decision to implement the restorative justice program, as well as the case for mediation, is a matter for the prosecution body. At the investigative stage, the competent body is the prosecutor, while at the judicial stage is the judge of the case.

Concerning the procedures of mediation development, the Code refers to the special law on mediation. Beyond the provisions of the special law, Article 64 of the Code lays down certain specific conditions that refer to the mediation process with juvenile subjects as:

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[1] School of Magistrates, (2019), *Electronic Commentary*, p. 127,
(http://komentarielektronik.magjistratura.edu.al/), consulted March 16, 2019.
[2] Code, Article 63/4.
[3] Idem, article 63/5.

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European Journal of
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January - June 2021
Volume 7, Issue 1

Mediation can only take place if there is free consent of the parties to the mediator, the accused juvenile and the injured party.

Mediation can only take place with the personal participation of the above parties.

We think that in the circle of persons whose presence is mandatory the psychologist and legal representative of the minor should also be included. This is also due to the fact that in juvenile justice procedures involving a minor in conflict with the law the participation of a psychologist and at the request of a minor is also mandatory for a trusted person[1]. The same principle has been sanctioned by international legal acts[2].

The Code has specified some specific aspects of the juvenile mediation procedure. such as family mediation or group mediation. In this form of mediation, in addition to the juveniles in conflict with the law, the victim and the mediator participate on a case-by-case basis as well as family and relatives, representatives of public agencies in the protection of children's rights. The purpose of family and group mediation is to prevent the escalation of future conflict in order to avoid retaliation by the victim's family members against the accused or his relatives[3].

The competent bodies, the prosecutor or judge to assess whether mediation is the most appropriate alternative, consider such elements as: the nature of the offense, the circumstances in which the offense was committed, the juvenile's history, the likelihood of a return to normal relations between juveniles and the injured party, the possibility of reducing the harm of the injured party, the possibility of rehabilitation of the minor and its reintegration into society[4]. If the parties agree to the mediation procedure, this procedure is most in accordance with the rules and law of mediation, where the parties together with the mediator are the main actors.

In principle, the participation of the Prosecutor and the judge is not mandatory. furthermore, these proceedings take place outside the Prosecution and Court. The Code provides for the possibility that the Prosecutor may participate in this process if he or she so evaluates[5]. This implies that the participation of the Prosecutor in the process does not depend on the consent of the parties but on the assessment of the Prosecutor himself. In the legal literature, this element is regarded as the premise for a fruitful exchange and a constructive outcome.[6]

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[1] The Code of Criminal Procedure provides for the presence of a psychologist in the entirety of procedural actions committed against minors, such as the recognition of persons (Article 171/3), the questioning of a minor witness (Article 361 / a, paragraph 2) etc.

[2] Council of Europe Recommendation (99) 19 "*On mediation in criminal matters*" concerning mediation in criminal matters requires that minors be entitled to parental assistance. The same document states that in cases of mediation with minors, all special rules that govern participation in court proceedings should be applied.

[3] School of Magistrates, Electronic Commentary.cited, pg. 125.

[4] Code, Article 64/6.

[5] Idem, Article 64/4.

[6] School of Magistrates, *Electronic Commentary*, cited, pg.125.

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European Journal of
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January - June 2021
Volume 7, Issue 1

In accordance with international standards[1], mediation can be applied as a measure of prosecution avoidance, ie as a measure that excludes the juvenile from criminal proceedings, thus serving its rapid social reintegration. Implementation as a measure of prosecution avoidance implies that successfully terminating within the legal term of the mediation agreement results in the termination of criminal proceedings against a minor in conflict with the law. or judgment of the case[2].

Mediation procedures can also be implemented as an opportunity to improve the relationship between the juvenile offender and the victim of the offense.

Conclusions and recommendations

Albania has made efforts to align legislation with international acts that place importance on restorative justice and mediation in criminal matters. The adoption of mediation legislation is a positive achievement in the context of promoting the restorative justice process. and avoiding the negative effects of a criminal process on juvenile offenders.

The first step in this direction was the adoption of the special law on mediation and, further, the adoption of the Juvenile Criminal Justice Code, where the notion of restorative justice was first sanctioned. The Code provides for a number of special arrangements for juvenile mediation procedures. Through this legal basis already restorative justice and mediation programs serve as alternatives to evading prosecution.

This enables the exclusion of juveniles from criminal proceedings as one of the principles deriving from international standards of juvenile criminal justice. Anticipating restorative justice and mediation programs in the Juvenile Criminal Justice Code is the right step in providing the necessary opportunities for juvenile offender rehabilitation, but also respecting the rights of juvenile victims.

However, both regarding the current legal regulation and the practical implementation of mediation procedures for juveniles it is worth highlighting some issues and addressing some of the following recommendations:

Mediation legislation, despite positive changes, has not yet provided adequate space for mediating cases with juvenile subjects.

Although mediation has been legally sanctioned since 1999, mediation procedures have not been properly used in resolving criminal disputes involving juveniles.

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[1] Recommendation no. 87 (20) of the Committee of Ministers "*Concerning the social response to juvenile delinquency*", recommends to the Member States encouraging the development of mediation procedures at the prosecutor's or police level in order to prevent juveniles from entering the criminal justice system and suffering from the consequences arising therefrom .

[2] The Code has set a deadline of 45 days as the maximum deadline for conducting a mediation procedure. See, Code, article 64/7.

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

The current law on mediation does not provide for detailed regulations on the development of the mediation procedure for juveniles, referring to Juvenile Criminal Code.

The Code does not provide details about programs that can be pursued in the context of restorative justice and mediation, and Albanian case law is still limited in this regard.

Mediation programs still have a limited scope only for the category of offenses prosecuted at the request of the accusing injured party or for which prosecution begins with the injured party's complaint.

The above mentioned legal framework for mediation needs further improvements which will increase the degree of its implementation and compliance with the requirements of international legal acts. To increase the degree of enforceability, the mediation process should not be limited to the cases provided for by law, but may also extend to other offenses of low social risk. Legal amendments should allow for the addition of criminal offenses for which mediation for juveniles can be conducted, including criminal offenses, or other offenses of minor importance other than those provided for in Articles 59 and 284 of the Code of Criminal Procedure.

An alternative may be the application of mediation as an alternative to prosecution for offenses punishable by up to 5 years of imprisonment or a fine. This would harmonize mediation legislation with the Code's provisions where avoidance measures apply to offenses with such penalty margins.

At the same time, harmonization of the Code with the law on mediation and the rest of the legislation, in particular the Code of Criminal Procedure, is necessary.

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[14] Laë no. 37/2017 *Juvenile Criminal Code*.

[15] Recommendation no. 87 (20) of the Committee of Ministers "*Concerning the social response to juvenile delinquency*

[16] Recommendation no. (81) 7 of the Council of Europe "*On measures to facilitate access to justice*",

[17] Recommendation no. (99) 19 "*On mediation in criminal matters*"

Positivist Misconceptions of Science and the Search for Viable Solutions

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Abstract

Prevailing current definitions of science are largely based on a traditional, positivist paradigm that favors the natural sciences and either denies or downplays the scientific status of the social sciences and the humanities. The disciplinary organization and institutionalization of research and systematic inquiry is still the norm. This article argues that the rigid organization of science and indeed the dominant view that there are hard sciences and soft sciences with the latter occupying an inferior position with regard to their knowledge claims and utility is pretty outmoded and does not fit well the current challenges and global needs. This is not just an academic issue but has clear practical implications in terms of funding and staffing, as well as the distribution of other valuable resources, especially in view of the dwindling federal and state funding for both the natural sciences and the humanities and social sciences. We develop our argument using as a methodological platform the ideas of 'The Two Cultures,' the 'Science Wars,' the new constructivist turn in social studies of science, and science as a social institution. We argue that current definitions of science need to be modified to include the humanities and to emancipate the social sciences and the 'soft' paradigms associated with them. This can form the basis of an earnest effort for better integration of different kinds of disciplines and for achieving much needed synergisms to tackle complex problems that tend to be multifaceted and whose solutions do not easily conform to single disciplinary paradigms. The contention here is that such a bridge between the two cultures can use as a model the social sciences, since they successfully combine methods from the natural sciences with approaches and theories common in the humanities. In our opinion, this is a feasible path to both greater interdisciplinarity and more vigorous collaboration between the different branches of science that can benefit both working scientists and society at large when dealing with pressing issues like

environmental problems, the depletion of natural resources, pandemics, and natural disasters.

Keywords: philosophy of science, organization of science, interdisciplinarity, soft paradigms, humanities

Introduction

We are facing numerous problems and challenges that need a collective effort on both a global and national level. An incomplete list would include global warming, environmental destruction and pollution, terrorism, war, epidemics and pandemics, inequality and poverty, resource shortages, economic crises, instability, and a host of others. Typically, these problems are complex and multifaceted. They do not lend themselves to simple solutions based on a single discipline or specialty, but instead require concerted efforts and collaboration among experts from multiple fields of research, as well as some degree of interdisciplinarity.

Take for example global warming. It definitely has important aspects whose understanding requires findings and explanations provided by the natural sciences (meteorology, chemistry, physics, biology, and certain engineering fields). But it also requires valid and reliable knowledge provided by the social sciences and humanities pertaining to social communities' and individuals' coping with and adaptation to their changing environment (sociology, economics, psychology, history, anthropology, etc.).

Given this reality, it is surprising that what counts as science and what is considered scientific is still largely based on a traditional, positivist paradigm that heavily leans towards the natural sciences and either denies or downplays the scientific status of the social sciences and the humanities. The disciplinary organization and institutionalization of research and systematic inquiry is still the norm and the division between "in-groups" and "out-groups" is pretty much alive.

This paper argues that the rigid organization of science and indeed the dominant view that there are hard sciences and soft sciences with the latter occupying an inferior position with regard to their knowledge claims and utility is pretty outmoded and does not fit well the current challenges and global needs. This is not just an academic issue but has clear practical implications in terms of funding and staffing, as well as the distribution of other valuable resources, especially in view of the dwindling federal and state funding for both the natural sciences and the humanities and social sciences.

This continuing duality and chasm between natural sciences and humanities has been reflected in the concept of the 'two cultures' initially developed by C.P. Snow in the late 1950s, which argues that these are two separate worlds that are largely incommensurate with each other and unfamiliar with one another. He considers this

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January - June 2021
Volume 7, Issue 1

polarization a sheer loss to society, a loss that is practical, but also intellectual and creative. Snow (1959) himself was hoping in his later writings for a bridge between the two cultures of science and literary endeavors or at least for a reasonable dialogue. He was keenly aware of the potential for doing so, being himself a scientist by training and a writer by vocation, although he did not elaborate the concrete mechanisms through which this might happen (Snow, 1959).

We believe that some type of integration has already been attempted on a smaller scale with interdisciplinarity and creative approaches to some problems (e.g., urban planning, human-computer interaction), but these are clearly the exceptions rather than the rule. It is still more common to try to protect your own turf, to set clear demarcation lines not only between the sciences and humanities, but within each of these domains. Even the right to study one domain by researchers from the other is questioned or dismissed outright. A fairly recent example of this are the so-called "science wars" that raged in the 1990s and early 2000s.

Interestingly enough, there was no substantial criticism by the natural scientists of sociology of science or of science and technology studies more generally so long as these adhered to a positivist model of science. That was the case in the early days of sociology of science associated with the works of its founder Robert Merton (1973). Sociology of science as a systematic study of the social institution of science took off in the 1960s and its emergence is generally credited to the works and investigations of Robert Merton. His sociology of science, a.k.a. "traditional sociology of science" or "the positivist and normative study of science" has several distinctive features. Science is perceived as a rational enterprise, where the content of the natural sciences is ultimately determined by facts of reality. There are clear lines of demarcation between science and non-science. For Merton (1973), the content of science is a "black box" and this content and the intellectual side of science is better left to historians of ideas and philosophers of science. Science is somewhat autonomous and unique among other human endeavors and scientific research is governed by a particular social structure at the heart of which is the "scientific ethos," which consists of observing the following four norms: communism; universalism; disinterestedness; organized skepticism.

It was not until the so-called "constructivist and interpretivist turn in social studies of science" that severe criticisms and rejection were voiced by a number of natural scientists that eventually culminated in the "science wars." The turn itself happened in the 1970s and was jumpstarted by the historian of science Thomas Kuhn, whose seminal book "The Structure of Scientific Revolutions" (1970) sent shock waves through the field of social studies of science (Chompalov & Popov, 2014). His ideas about "paradigm," "incommensurability," "normal science", and "scientific revolution" spurred a new wave of social studies of science that tried to demonstrate empirically that knowledge claims are relative and incommensurable and that all data are ultimately theory-laden. The proliferation of new science studies theories and

approaches were stimulated by this new paradigm. Postmodernist critiques and feminist approaches argued that far from being objective and impartial, science is essentially a socially constructed activity and hence should be treated no better or worse than other knowledge claims. This new constructivist turn was in turn noticed and severely taken to task by natural scientists. A group of those scientists criticized the social studies of science in their new form as essentially being unscientific and an example of how to let politics undermine the authority and reputation of science. The social scientists themselves responded by accusing natural scientists of hubris, lack of an earnest effort to evaluate alternative claims, partisanship, and obfuscation of the real issues.

In all of this, one thing became clear—the two cultures were as far apart as ever and unwilling to look for overlap, synergies, and integration of some of the opposing approaches. Snow's hope of a bridge between the two was certainly dashed. The present paper makes the argument that, although some interdisciplinary efforts have proven successful, these are few and far between and typically happen within one of the cultures (e.g., biochemistry or biotechnology) and juxtaposition has actually been worsened by the "science wars." A more natural and already existing bridge between the two cultures is provided by the social sciences that combine elements of both science and the humanities in the way they are practiced now. Just like the natural sciences, the social sciences often use quantitative methods, such as experiments, surveys, polls, systematic observations to collect data. They also employ random sampling for selection of units of analysis and various statistical techniques to carry out rigorous analysis and hypothesis testing. On the other hand, similar to the humanities they sometimes resort to qualitative methods, such as participant observation, interviews, field research, and content analysis, interpretation and hermeneutics. Recently, mixed methods of research that blend the quantitative with qualitative modes of investigation have gained traction in the social sciences. Finally, we discuss the implications and potential of integrating scientific and humanitarian methods for deeper understanding of complex phenomena and their tentative benefits for the public at large.

Definitions of Science: Problems and Queries

Most definitions of science are heavily based on the typical, positivist image associated with the natural sciences. On common way to define science is given by the Collins Online English Dictionary (2020): The systematic study of the nature and behavior of the material and physical universe, based on observation, experiment, and measurement, and the formulation of laws to describe these facts in general terms. There are several problems with this definition. First, it obviously considers as science only the natural sciences and excludes any other form of systematic inquiry, since it mentions just "the material and physical universe." What about the social world and human nature? Apparently, according to this widespread view, they don't qualify as valid objects of research to be considered scientific endeavors.

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January - June 2021
Volume 7, Issue 1

Second, the methods used in science are the observation and the experiment and a scientific activity should involve some kind of measurement. Again, this seems to be too restrictive and excludes, for example, some widely used methods in sociology that lead to a systematic collection of data that can then be analyzed to either test hypotheses or find patterns and thus amounts to doing science. There are the survey, unobtrusive measures, analysis of documents, secondary data analysis, various forms of the interview, and different modes of field research. Third, the definition talks about the "formulation of laws," but supposedly laws already exist in nature and we are just discovering them. Furthermore, it's not clear whether theory is part of science, but without its inclusion, how can we justify, for instance, theoretical physics, which is considered a very important and indispensable branch of this discipline.

Let's take another typical example. Andersen and Hepburn (2016), in their entry entry for the scientific method in *The Stanford Encyclopedia of Philosophy* state: "Science was seen to embody the most successful form of reasoning (but which form?) to the most certain knowledge claims (but how certain?) on the basis of systematically collected evidence (but what counts as evidence and, in particular, should the evidence of the senses or rather of rational insight take precedence?)" Again, several pertinent questions and queries seem in order here: Exactly which form of reasoning are we referring to here? How do we determine certainty of knowledge claims? What counts as systematically collected evidence? I can confidently argue that one of the most systematically collected bodies of evidence is the data collected by the General Social Survey, which is designed and carried out bi-annually by the National Opinion Research Center out of the University of Chicago. It is based on a very rigorous and tested methodology including multi-stage random sampling and strict and systematic procedures that produce one of the most representative data sets about the U.S. population on a variety of variables, such as demographics, opinions, views, affiliations, etc.

There are at least two other problems with current definitions of science. The first is cultural differences in the understanding of what science is. In the U.S. and UK, the conceptualization of science and the scientific method, as well as the terminology and colloquialisms, are anchored exclusively in the principles of Positivism. This in effect restricts science and *the scientific* to the Positivist paradigm and to the natural sciences. One consequence of this is that other paradigmatic traditions are overlooked. The articles on science on Wikipedia are interesting examples of conceptual and terminological differences about science in different cultures. They provide information about how in different cultures science is conceptualized differently. Currently it is easy to read articles in different languages using the Translate option of Wikipedia or the browser. However, when translated from German and French into English, there is no direct concept for the HUMANITIES as those academic disciplines which study the human condition using methods that are largely analytic, critical, or speculative, as distinguished from the mainly empirical approaches of the natural and social sciences. So, the Geisteswissenschaften, still

sciences in German, become Humanities (still non-sciences) in the English translation. The French for humanities, sciences humaines, in the English translations becomes Humanities and loses the direct reference to science. A closer interpretation of the original German definition will be that "the human sciences are those academic disciplines which study the human condition using methods that are largely analytic, critical, or speculative, as distinguished from the mainly empirical approaches of the natural and social sciences. Conventionally the humanities include the classics, languages, literature, music, philosophy, history, religion, and the visual and performing arts. Additional subjects sometimes included in the humanities are anthropology, area studies, communications and cultural studies, although these are often regarded as social sciences (Wikipedia). In short, both in German and French, the human sciences are considered a type of science.

The second problem is the exclusion from the typical definitions of science as a social institution. Social institutions include the constellation of activities, groups, organizations, and traditions that serve to fulfill an important need for society. Sociology of science has studied it as an institution for quite some time now. The point is that restricting science and the scientific method to the Positivist paradigm in effect means overlooking other paradigmatic traditions and disregarding the concept of science as an institution. By equating research results with Positivist science, the very concept of paradigm is neglected. However, if science is conceptualized as a social institution with the purpose of knowledge production, and if we accept the notion of paradigm, then other paradigms can easily be incorporated within the scientific realm. Such an approach will emancipate excluded paradigms. This way of thinking will provide solid ground for justifying, for example, the use of qualitative paradigms and for accepting their utility in making important discoveries about human groups, cultures, and societies.

The Two Cultures Divide

The prevalent concept of science as represented in the traditional definitions naturally leads to a sharp contrast between the natural sciences and the humanities, with the social sciences typically being lumped together with the humanities. This juxtaposition has existed for some time. Initially, the only form of scientific activity was the so-called "natural philosophy." The study of the human condition, or the so-called "humanities' then became institutionalized in the disciplines of philosophy, religion, music, and art. Later on, the so-called "natural sciences" developed as somewhat autonomous disciplines, such as physics, astronomy, medicine, biology, chemistry, mathematics, some areas of engineering (although those were later classified as applied science or technology). The so-called "social sciences" emerged as independent disciplines somewhat later in the 18th and 19th century (psychology, economics, political science, sociology, anthropology). Thus, the separation between the "hard sciences"(natural science) and the "soft sciences"(humanities and social sciences) took shape in the 19th century and under the positivist aegis continued

throughout the 20th century and into the present, although the concept of the "two cultures" was only articulated by the British scientist and writer C.P. Snow in the 1950s. In the famous 1959 *Rede Lecture*, Snow (1959, 1993) argued that Western science and humanities have developed as two separate and incompatible areas of intellectual endeavor that do not know or care much about each other and this lack of communication or cooperation impedes the solution of world's problems.

As the British intellectual put it: "Literary intellectuals at one pole—at the other scientists, and as the most representative, the physical scientists. Between the two a gulf of mutual incomprehension—sometimes (particularly among the young) hostility and dislike, but most of all lack of understanding. They have a curious distorted image of each other. Their attitudes are so different that, even on the level of emotion, they can't find much common ground." (Snow 1959, p. 2).

Snow acknowledges that the stubbornness of the "two tribes" in pursuing only their narrow interests and largely ignoring the second aspect of intellectual creative activity does not come without consequences for society and is not purely academic. He points out that "This polarisation is sheer loss to us all. To us as people, and to our society. It is at the same time practical and intellectual and creative loss, and I repeat that it is false to imagine that those three considerations are clearly separable." (Snow 1959, p. 6).

The British author seems to recognize that this had deteriorated in that regard in the previous 20 years or so and writes in regards to asking, for example, literary men to describe the Second Law of Thermodynamics: " The response was cold: it was also negative. Yet I was asking something which is about the scientific equivalent of *Have you read a work of Shakespare's?*

I now believe that if I had asked an even simpler question—such as, What do you mean by mass, or acceleration, which is the scientific equivalent of saying, *Can you read?*—not more than one in ten of the highly educated would have felt that I was speaking the same language. So the great edifice of modern physics goes up, and the majority of the cleverest people in the western world have about as much insight into it as their neolithic ancestors would have had." (Snow 1959, p. 8).

C.P. Snow further makes several important points. One is that the British system of education needs to be overhauled to become more general and not so specialized. Another keen observation is that there are whole branches of science that are not treated with the respect they deserve when we stick to the dichotomy "science versus humanities" by boxing them into classifications they themselves disagree with. For example, engineering and applied science are regularly regarded as poor cousins of the natural sciences, although they are considered as part of those. Similarly, the social sciences are lumped together with the humanities and not considered as distinct and specific intellectual domains that have their own subject matter and their own methods of research, as well as their own theories and autonomous institutional

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Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

entities with a particular subculture. Perhaps the most serious clash between the two cultures happened during the so-called "Science Wars."

The Science Wars

The term refers to a particularly contentious and acerbic confrontation between the natural sciences and the humanities/social sciences, which happened in the early 1990s. We have described this episode in the recent history of science in detail elsewhere (Chompalov & Popov, 2014), but will recap the main events and their implications in this section. For a long time, the two cultures largely ignored each other and focused on their own goals and objectives without much communication or even an attempt to examine let alone criticize one another. But this situation dramatically changed in the 1990s.

Two developments are probably responsible for the turn from being "polite strangers" to engaging in full-blown hostilities. One was probably the diminished funding by the government of the natural sciences and the changing mix of this funding. As the 20th century came to a close, American research and development spending reached $205.7 billion in 1997, up from $74.3 billion in 1960 (calculated in 1997 dollars to take account of inflation). During the same period, however, industry's share of spending rose from 33% to 65% of the total expenditures for R&D, while the government's share fell from 66% to 31%. Furthermore, more government funding went to the life sciences at the expense of a reduced share for the physical sciences. Physicists were not thrilled with this change, since they have largely been responsible for winning World War II and for the economic prosperity in the post-war period. The second development concerned a noticeable turn in the study of science from positivism to constructivism and the devaluation and debunking of some long held beliefs in the objectivity, superiority, and omniscience of the natural sciences and in particular physics and allied sciences. When this initial quiet development in an esoteric field (Science and Technology Studies), populated almost exclusively by humanists and social scientists, became more and more publicized and started affecting the reputation of and support for the hard sciences, the latter finally took the gloves off and the war was on.

As was already pointed out, the emergence of the social studies of science is associated with the research of Robert Merton (1970, 1973) who used a positivist model to study science itself. Examining the institutionalization of natural science in 17th century England with the establishment of the Royal Society and subsequent developments, Merton (1973) concluded that science is perceived as a rational enterprise, in which the content of the natural scientific knowledge is ultimately determined by facts. There are clear lines of demarcation between science and non-science, with the main one being that science provides verifiable and highly valid knowledge based on the scientific method and reflection of objective reality, knowledge that is cumulative and reliable. Sociology, however, has a role to play outside of the content of science and that is to study its social aspects, such as its

organization, science as a social institution, its relationships with other social institutions, and other "external conditions."

Science, argued Merton (1973), turns out to be a very logical and well-organized enterprise, which exercises social control over the scientific community by adhering to the "scientific ethos." The latter consists of the already mentioned four social norms guiding scientists' behavior: 1) "Communism," which asks scientists to share their findings with the scientific community so that the institution promises 'returns' only on 'property' that is given away; 2) "Universalism" enjoins scientists to evaluate knowledge claims using universal and impersonal criteria, so that the allocation of rewards and resources should not be affected by the contributor's race, gender, nationality, social class, or other functionally irrelevant statuses; 3) "Disinterestedness" suggests that the primary motive for scientists to do research should not be self-interest because such un-altruistic behavior would conflict with the institutional goal of science (extending certified knowledge); 4) "Organized Skepticism" proscribes dogmatic acceptance of claims and instead urges suspension of judgment until sufficient evidence and argument are available. So long as scientists observe and honor this "moral code," science will function smoothly and be able to achieve its major goals of producing valid and reliable knowledge, which has important practical applications (Merton, 1973).

The tension between the two cultures rose substantially in the early 1990s with a reorientation of social studies of science toward a more critical examination of how scientists create knowledge and how social factors affect this process. Thus, it was not until the so-called "constructivist and interpretivist turn in social studies of science" that severe criticisms and rejection were voiced by a number of natural scientists that eventually culminated in the "science wars." The turn itself happened in the 1970s and was jumpstarted by several ideas in philosophy and history of science, such as the falsification theory of K. Popper (2002) and the "epistemological anarchism" of P. Feyerabend (1975).

However, the biggest impetus for the "constructivist turn" came from the historian of science Thomas Kuhn, whose seminal book "The Structure of Scientific Revolutions" (1970) sent shock waves through the field of social studies of science (Chompalov & Popov, 2014). Terms such as "paradigm," "incommensurability," "normal science", "scientific revolution," "scientific anomaly", "scientific crisis," "scientific puzzle-solving", and so on became common in social studies of science and his views have reshaped the field, especially his ideas that science progresses not by systematic accumulation of verifiable knowledge but by abrupt interruptions, paradigm shifts, knowledge claims being relative and incommensurable, that different scientific communities can have diametrically opposed interpretations of the same data, that all data are theory-laden. A number of science studies theories and approaches were stimulated by this new paradigm: postmodernist critiques, feminist approaches, the strong programme, relativism, discourse analysis, laboratory constructivist studies,

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

reflexivity, and so on (Collins, 1981; Gilbert & Mulkay, 1984; Latour & Woolgar, 1979; Woolgar, 1988). What they have in common is the argument that science is a social construct, including scientific discoveries and theories, and should therefore not enjoy privileged epistemological status; scientific reasoning is just another form of discourse; nature and reality is what scientists agree to call natural and real. In a lot of ways this is perceived as challenging science's authority, debunking scientific "myths," cutting science down to size, and arguing that science is no more objective than any other human creative activity (Kuhn 1970).

This constructivist turn did not go unnoticed by natural scientists. A number of them, such as Gross and Levitt (1994), Sokal and Brichmont (1999) (Sokal of the famous or infamous "Sokal's hoax"), and Weinberg (1995) launched a scathing campaign of severely criticizing the new turn in social studies of science for being shoddy scholarship, incompetence about the scientific discoveries they are writing about, a political attempt to undermine objectivity and hence the authority and reputation of science, spreading nonsense and confusing claims about science, and so on. Perhaps the most serious attacks on science and technology studies came from Gross and Levitt (1994) in their provocatively titled book "Higher Superstition" where they dismissed "the relativism of the social constructivists, the sophomoric skepticism of the postmodernists, the incipient Lysenkoism of feminist critics, the millennialism [*sic*] of the radical environmentalists, the radical chauvinism of the Afrocentrists" as "unscientific and antiscientific nonsense, a bizarre war against scientific thought and practice being waged by the various strands of the academic left" (Gross & Levitt, 1994, pp. 252-253). In a later article Gross and Levitt (1995) hurl another accusation towards the constructivists and postmodernists, one of the most damaging sins anybody can commit in academia—incompetence and intellectual laziness. They argue that the guiding and main motives of the new "left anti-science warriors" is shying away from serious criticism based on understanding science in depth. Instead, the new postmodern critique becomes so appealing to its proponents, because it does not require anyone to master science., an activity that's fashionable and spreading as an easy way to make a career by engaging in lazy academics, inspired by a specific "cultural left" ideology that is profoundly hostile to natural science (Gross & Levitt, 1995).

The other side replied by accusing natural scientists of arrogance, deception, unwillingness to examine honestly alternative accounts, and so on. In a number of chapters in the edited volume "Beyond the Science Wars," edited by Segerstrale (2000), sociologists, historians, and philosophers who represent the constructivist/interpretivist trend in Science and Technology Studies (STS) tried to respond to the criticism by natural scientists. One reply is that scientists mischaracterize constructivism by labeling it "anti-scientific" and incompetent. Actually, about half of the authors in the volume have a science background. Furthermore, constructivism does not represent the whole field of STS, although it is clearly the dominant trend. More than 75% of scholars in the field and more than

80% of the articles in the top journals in the field (*Social Studies of Science* and *Science, Technology, and Human Values*) belong to some brand or reincarnation of social constructivism. Nonetheless, there are still about a quarter of articles and books that use quantitative methods of research and employ a modern-day positivist approach to systematically study science as a social institution in the vein of Merton's legacy. This research has largely been ignored by the natural scientists.

An additional dissatisfaction of constructivists is that scientists used methods that would be totally unacceptable in physics, chemistry, or biology to try to discredit their opponents.   Thus, the "Sokal Hoax" deliberately used deception and misrepresentation to try to publish something nonsensical about the theory of relativity and quantum theory in order to prove lax academic standards at the leading postmodernist journal *Social Text*. He succeeded and the article was indeed published as an example of how even a modern-day physicist can productively embrace post-modern theory to analyze developments in his own field. Sokal proved his point, but the methods he used were shaky and unscientific and surely involved deception. Social constructivists also object to their misrepresentations by natural scientists as leftist ideologues out to demolish science, as modern day Luddites, as incompetent when they are simply being controversial, etc.

The controversy still continues, although in the past decade or so the intensity of the debate has been somewhat toned down. The potential for it flaring up again, however, is still there. What is important to point out here is the context within which the Science Wars erupted. Up until the 1990s there was little interest or desire to engage on the part of the natural scientists, who regarded STS as an oddity that does not deserve their time and attention. By the early 1990s, however, the political, social, and funding context has changed unfavorably. Budgetary restrictions and pressure to engage more in teaching and less in research have alarmed many working natural scientists. Scientists have also been pressured to revise their ethics. Disturbing examples of the diminished role of natural science in the early 1990s were the closing down of the project to build a Superconducting Supercollider in Texas in 1993, or the setback in seeing diminished funding and support for NASA, or the closing of OTA, Congress's Office of Technology Assessment. As natural science has tried to push back and defend itself, it is quite possible that critics of science will face a stronger backlash, given the still formidable position that science occupies in society.

The Need for Integration: The Social Sciences as a Natural Bridge between the Two Cultures

The preceding discussion reveals that the current situation of the two cultures still remaining in their silos and unwilling to focus on a productive dialogue is highly unsatisfactory. The Science Wars only exacerbate an already tense situation especially in view of diminishing resources for both the natural sciences and especially the humanities and the social sciences. The changing of priorities in support and investment toward more applied science and immediate results puts an

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

additional strain on the relationships between the two cultures. The untenable common definition of science from a Positivist view needs to be modified to include any systematic effort that contributes to the body of knowledge and our understanding of phenomena that pertain to the natural world, the social world, and human nature. Instead of continuing turf wars and attempts to highlight the shortcomings of the other 'culture' the two cultures need to emphasize the positive contributions of each other and how this creates opportunities for cooperation and synergies.

This state of affairs is even more puzzling, since today the need for integration is greater than ever. The main reason is that most problems, especially global problems, are multifaceted and do not lend themselves to a simple, unidisciplinary solution. We already gave the example of global warming, which has multiple aspects that need to be addressed by a collective scientific effort (and that includes the social sciences and the humanities) in order for the policy recommendation to be successful. Chemical, biological, and physics analyses are definitely needed and essential to understand the mechanisms and consequences of our changing environment due to global warming. Meteorology has an important role to play by examining shifting climate patterns and what this entails. Urban planning (itself an interdisciplinary field) becomes a necessary part of these studies. The social sciences and humanities can also contribute to the solution in multiple ways. As is already happening, poorer communities in Third World countries are being displaced, and migration has also intensified due to more frequent and more severe natural disasters caused by global warming. Psychologically, it is also very challenging to deal with growing uncertainty, as well as with loss of life and property. Whole communities are uprooted and exposed to hardship and suffering. Crime in these areas affected by natural disasters is on the rise. Of course, there is also a tremendous price to pay financially and in terms of social instability, hunger, and loss of security.

Another appropriate example is the current global Coronavirus pandemic. A lot of mistakes could have been avoided if there was an interdisciplinary field dealing with possible epidemics and pandemics. The problem again has multiple aspects that needed to be addressed early on via cooperation among multiple disciplines instead of disparate ad hoc efforts to react to already unfolding events, which we were ill prepared to anticipate or react quickly to. Biology, especially virology and immunology, have improved our understanding of the genetic structure of COVID-19, how it affects the body, why it causes a more severe reaction in certain people, how many strands of the virus exist, etc. Immunology and pharmacology are working very hard to come up with an effective vaccine against the virus, while epidemiologists have identified the mechanisms of infection and transmission, the rate of spread of the disease in human populations, the rate of mortality, and so on.

But there are also important social and humanitarian aspects. One is the effect on the economy and how different countries deal with the economic impacts of the

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

pandemic. There is little doubt that we might be headed to another global recession. Certain industries have been devastated by the pandemic and some businesses may never recover (the hospitality industry, travel, restauranteurs, a number of small businesses). Others will be drastically changed (education, health care). Most people's financial savings will be wiped out. There are a lot of other economic implications from the pandemic, which depend on how long it will last and how many people it will ultimately affect. The speed of economic recovery, although hard to estimate now, becomes crucial.

Then you have all the political implications and changes that are brought about by the COVID-19 pandemic that political scientists and sociologists have to be cognizant of and study. Then you have the social and human dimensions of the pandemic. The psychological effects are also worth studying—dealing with the loss of a loved one and grief, added stress, increased mental problems, the effects of the lockdown and quarantine on people's psyche and moods, etc. Interestingly enough, there have been some unintended positive consequences. With less travel and use of motor vehicles we are witnessing cleaner air and less pollution. Also, the price of gasoline went down, which relieved the financial woes of millions of people.

All this points to a pressing need for more research integration and collaboration between the two cultures. One way this is happening on a modest scale is through interdisciplinarity.   This, however, has been and still is pretty modest and incremental.   Apart from the slow pace of the formation and functioning of interdisciplinary areas, another problem here is that it almost always occurs either within the natural sciences or within the humanities and social sciences but rarely across the two cultures. Thus, in the natural sciences we have biotechnology, biochemistry, physical chemistry, cheminformatics, environmental science (an interdisciplinary academic field that draws on ecology, geology, meteorology, biology, chemistry, engineering, and physics to study environmental problems and human impacts on the environment).   On the other hand, in the social sciences and humanities the interdisciplinary areas are cultural studies, religious studies, women's studies, urban studies, media studies, environmental studies (which studies human interaction with the environment from the point of view of ethics, geography, anthropology, policy, politics, urban planning, law, economics, philosophy, sociology and social justice, planning, pollution control and natural resource management). Rarely do we encounter a cross between the two cultures and these efforts have not been very successful (e.g., sociobiology). Apparently, we can all benefit as a society if we encourage and sponsor the growth of interdisciplinary fields that would involve cross-fertilization between the natural sciences, engineering, the social sciences, and the humanities.

One obvious bridge between the sciences and the humanities are the social sciences. They embody aspects of both and have the propensity to bring the two cultures together in a natural fashion. Take, for example, sociology. It definitely uses rigorous

quantitative methods just like the natural sciences. As a matter of fact the majority of current sociology employs some form of quantitative empiricism. The bulk of research published in the major sociological journals involves surveys, experiments, meticulous observation as methods of research and very sophisticated mathematical and statistical techniques to carry out the analysis and hypothesis testing (multiple linear regression, regression over space and time, logit and probit models, event history analysis, LISREL, log-linear analysis, factor analysis, and so on). But important specialties with sociology as a discipline also favor qualitative methods of research, constructivist and interpretivist theories, postmodernist ideas, ethnomethodology, cultural analysis, and similar tools of inquiry. Economics, political science, psychology, and communications studies exhibit the same fusion of quantitative and qualitative research methods and theorizing.

Concluding Remarks

We have so far tried to make a case for why current definitions of science do not pass muster and why the continual separation and animosity between the two cultures culminating in the so-called Science Wars are highly unproductive and harmful, especially in the current political environment. This is puzzling in view of diminishing public support for science, the spread and popularity of anti-scientific attitudes, and the dwindling government funding for scientific research and development. In anything, the sciences need to join forces and act together, as, to quote the old adage, "united we stand, divided we fall." Yes just the opposite seems to be taking place.

The accepted definitions of science exclude large areas of the humanities and social sciences by favoring the outdated Positivist thinking that only investigations of the natural world based on observations and experiments should count as scientific activity. The exclusively narrow interpretation of scientific evidence is largely due to the misconception about the "true" nature of science. In some countries and cultures, the conceptualization of science and the scientific method, as well as the terminology and colloquialisms, are anchored exclusively in the principles of Positivism. This in effect restricts science and the scientific to the Positivist paradigm. One consequence of this is that other paradigmatic traditions are overlooked. By equating research results based on the scientific method as applied to Nature with science, the very concept of paradigm is neglected.

However, if science is conceptualized as a social institution with the purpose of valid and reliable knowledge production, and if we accept the notion of paradigm, then other paradigms can easily be incorporated within the scientific realm. Such an approach will emancipate the excluded paradigms and such a way of thinking will provide solid ground for justifying the use of qualitative paradigms and for accepting their utility. The acceptance of the scholarly work in the humanities as a science will facilitate the acceptance of the paradigms in the humanities on par with Positivistm. This in turn will enrich the methodological options of a number of sciences and will allow for more productive interdisciplinary communication and collaboration.

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

Viewing science as a social institution will facilitate the understanding of what we call today Humanities and social sciences as knowledge production systems that provide high quality knowledge about the social world, cultural phenomena, and the human psyche. This high quality knowledge will be properly appreciated and used in program planning, event planning, and the design of activities and social situations. The perception of Humanities as sciences will also foster a more reflective and traceable approach to knowledge and the scholarly designs. The mediation between current sciences and humanities will allow us to clear many terminological problems, inconsistencies, and artificial differentiations. It will help understand better the relationships between theory and field research, basic and applied sciences, and the relationships of all of these to the technical/engineering sciences.

Social institutions can be viewed as activity systems as well. This provides a link between the activity and the institutional approaches of analysis. From an activity theory perspective, science can be construed as a system of activities. The subdivisions of science are currently the disciplines. We can see science in general as a system of activities or disciplines, separated, yet related to some degree. But in the current climate of interdisciplinary research, we can see science as a constellation of activities that complement each other. In interdisciplinary research we clearly need to interface those different activities in a way that they (or their agents) can communicate successfully, understand each other, evaluate each other's input and data, as well as accept and use the data and ideas offered by the other.

This can form the basis of an earnest effort for more integration of the two cultures and for achieving much needed synergisms to tackle complex problems that tend to be multifaceted and whose solutions do not easily conform to single disciplinary paradigms. The contention here is that such a bridge between the two cultures can use as a model the social sciences, since they successfully combine methods from the natural sciences with approaches common in the humanities. This is clearly one feasible path to both greater interdisciplinarity and more vigorous collaboration between the different branches of science that can benefit both working scientists and society at large when dealing with pressing issues like environmental problems, the depletion of natural resources, pandemics, and natural disasters.

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Ephemeral Museums in Pandemic Era: Bari and the Museo Provinciale that Was There, that Has Been and Has Never Been

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Abstract

The proposal introduces the theme of the communicative resilience of exhibitions during the Pandemic Era. On March 7, 2020, Italy and its museums, as well as the countless exhibitions housed in their rooms, were closed leaving hundreds, perhaps thousands, of works without the public: from the paintings of Raphael (Rome, Scuderie del Quirinale), to the tables of the Griffoni Polyptych assembled after three hundred years (Bologna, Palazzo Fava), to the statues of Canova (Rome, Palazzo Braschi), to the Sant'Antonio by Antonio Vivarini and to the San Felice in the chair by Lorenzo Lotto chased by Bernard Berenson in his Apulian 'pilgrimages' (Bari, Palazzo Ateneo). Indeed, the latter is the exhibition to which particular attention is paid here. The spaces of the ancient Museum have come back to life with the exhibition "Il Museo che non c'è. Arte, collezionismo, gusto antiquario nel Palazzo degli Studi di Bari 1875-1928". The exhibition involved lenders institutions such as Villa I Tatti - The Harvard University Center for Italian Renaissance Studies, the Central State Archive in Rome, the Pinacoteca of Bari 'Corrado Giaquinto' and several others. The exhibition in Bari was inaugurated on February 28th. After the first five days only the exhibition was closed for the advance of COVID 19 virus. In the 'great hall' - as the main space of the ancient Provincial Museum was called - everything remained suspended and perfectly finished: showcases, exhibitors, paintings, statues, clay and stone art objects. However, there was no longer the possibility of letting people, visitors enter. We said that it would have been wonderful to be said that it would have been wonderful to be able to reopen it at least 'virtually'. And so we did, with an immersive and advanced teaching perspective.

Keywords: Italy, museology, exhibition, history of art

1. Introduction

Twenty-five years ago, Catherine Puglisi dedicated the article *Guido Reni's Pallione del Voto and the Plague of 1630* on "The Art Bulletin", to the pandemic events of the fourth decade of the seventeenth century and to Guido Reni's painting kept in the church of San Domenico in Bologna. In the essay, the author compared the ferocity of the bubonic plague of 1630 to the equally devastating virulence of the AIDS epidemic in the twentieth century (Puglisi, 1995). The American scholar wrote in 1995, when the sequence of sinister pulmonary syndromes of our days has yet to arrive.

Moving from this reading model, it is not impossible for art historians of 2020 to look at the new great health emergency that has hit the world of the 21st century, with particular regard to the conditioning of the social and cultural life that it has produced. With the same effectiveness as Puglisi's essay, the endless list of coronavirus deaths published on the front page of the New York Times on May 24, 2020, can be compared to that of the dead in Vietnam and for this reason deserving of a second Memorial Wall in black granite. In fact, the capital title reads with excited and understandable emphasis: 'U.S. DEATHS NEAR 100,000, AN INCALCULABLE LOSS'. Consider how the conscripts who died in Vietnam between 1965 and 1972 were 'only' 17,318!

In light of such a communicative choice, it seems necessary to think of the coincidence with the disastrous losses and with the attitudes also held in Italy due to a virus that can be defined as an 'invisible enemy'. One could also think of the initial bold presumption of some of our fellow citizens and rulers in facing the unknown. All this before the army took to the field. All this before the squares, streets and churches of our cities emptied, becoming in spite of themselves witnesses of a 'suspended time' functional for the reports of more or less sensitive photographers. All this before the museums, as well as the countless exhibitions housed in their rooms, were closed, leaving hundreds of thousands of works orphaned to the public (Leonardi, 2020a).

From a certain point on, even the rainbow banners with the words #andràtuttobene - actually senseless and inadequate from the beginning - began to fade from the website home pages and from the facades of the emptied buildings of public institutions. Among these, the nineteenth century Palazzo degli Studi in Bari already home to a museum destroyed at the beginning of the new millennium by the virus (or plague?) Of the 'renewal' as an end in itself and without the compass of a good project.

Italy, as well as the Bari exhibition here subject of interest (Bari, Palazzo Ateneo, The Museum that does not exist. Art, collecting, antiquarian taste in the Palazzo degli Studi of Bari 1875-1928, from February 28 to April 24, 2020), had to stop before the advance of COVID19, like the rest of the planet and almost reproposing the script for a film that has returned as incredibly topical as Contagion (2011). All this happens exactly as the Italian States had to stop on the occasion of one of the main infectious waves of the Baroque century that inspired formidable artists, such as the Bolognese Reni, author of the aforementioned *Pallione del Voto.*

The possible examples relating to the Italian case are naturally very different from each other, especially in relation to what Francis Haskell has called 'ephemeral museums' (Haskell, 2008), that is, the exhibitions. The debate had already started on this issue before the pandemic (Montanari - Trione, 2017). The exhibitions, being temporary events by definition, for this reason have suffered more from the effects of this new 'time of distance' which has interrupted the link between cultural heritage and the public, highlighting the fragility of an entire system which - based on the triad protection-promotion-enjoyment - was born for an objectively 'other' world.

COVID19 has made it necessary to rethink the dialogue with visitors, a dialogue already in crisis and now complicated by the need to do it 'on the run'. It will probably be possible to verify the effects of unprecedented circumstances only in the long term, as well as the scientific stability of the various popular formats linked to the innumerable and sometimes questionable (even only in terms of taste) proposals online.

Fig. 1: The Minister of Cultural Heritage at the post-covid reopen of 'Raffaello 1520-1483'

It is possible to list here some of the realities that in recent months have been able to count on a strong media exposure, taking into account the weight and the obvious differences. Among the various initiatives that it will be interesting to continue to monitor over time and for the communication strategies put in place, it therefore seems useful here to recall the webinar sessions dedicated by the curators to the paintings and drawings of Raphael selected for the 500th anniversary of his death (Rome, Scuderie del Quirinale, Raffaello 1520-1483, from 5 March to 2 June 2020, postponed from 2 June to 30 August).

A first initiative is offered by the incursions of an idol of young people such as the youtuber Luis Sal, influencer for the tables of the Griffoni Polyptych, gathered after three hundred years from their dismemberment (Bologna, Palazzo Fava, *La riscoperta di un capolavoro. Il Polittico Griffoni,* initially scheduled from March 12 to June 28, then postponed from May 18 to January 10, 2021). A second case is represented by the stubborn will to reopen in presence to return to offer the perennial beauty of the eighteenth century with the statues of Canova (Rome, Palazzo Braschi, *Canova eterna*

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

bellezza, from 9 October 2019 to 21 June 2020, reopened to the public on 19 May). To all this must be added, in the writer's opinion, the 'denied' story of Simone Peterzano's paintings, these even blocked in what has become the Italian Wuhan for journalistic reports (Bergamo, Accademia Carrara, *Tiziano e Caravaggio in Peterzano*, from 6 February to 17 May 2020, with no possibility of extension), a situation perceived as so dramatic as to obtain the extension of an exceptional and solitary loan - almost a gesture of human pietas - such as that of *I Musici* di Caravaggio from the Metropolitan Museum of Art in New York.

II. Research lines for a resilient exhibition project

The exemplary case taken into consideration obviously moves from the same circumstances, i.e. the early closure for COVID19. The exhibition event (Bari, Palazzo Ateneo, the Museum that does not exist. Art, collecting, antiquarian taste in the Palazzo degli Studi of Bari 1875-1928, from February 28 to April 24, 2020) allowed to bring 'home' works such as Antonio Vivarini's Saint Antonio and Lorenzo Lotto's Saint Felice in the chair, both pursued by Bernard Berenson during his Apulian 'pilgrimages'. Without wanting to compare the event to the exhibitions listed above, however, it was in all respects a 'research exhibition'. The result was achieved without clamour, step by step and released from the logic of the 'event' at all costs, within the framework of a consolidated line of work which, since 2016, has been able to express itself through specific programs survey funded by the University of Bari 'Aldo Moro' and of which the writer was scientific coordinator. Among these, it is possible to remember *Collezionismo e processi di musealizzazione tra Puglia e Basilicata in Età Moderna e Contemporanea* which led to several preparatory publications for the exhibition we are talking about, to conferences, to dedicated teaching programs and seminars, involving colleagues from other universities, students and PhD students of the University of Bari.

Precisely on the thematic line expressed by this project, it is still possible to remember the jokes exchanged with the late Gianni Carlo Sciolla (University of Turin) when, together with Giuseppe De Sandi, among the authors of the essays in the catalogue, he was presented with a contribution for the 'Annali di Critica d'Arte' magazine dedicated to these topics (Leonardi - De Sandi, 2016). Sciolla immediately noticed that the essay could be an effective response to the inexplicable void that occurred on these aspects - straddling art history, collecting and museology- in a sensitive quadrant of southern Italy, where, with all evidence, the historians of the hitherto they had preferred to orient themselves on 'other' lines, obliterating however the extraordinary legacy of scholars such as Adriano Prandi, Michele D'Elia, Pina Belli D'Elia and Maria Stella Calò Mariani.

Precisely on the thematic line expressed by this project, it is still possible to remember the jokes exchanged with the late Gianni Carlo Sciolla (University of Turin) when, together with Giuseppe De Sandi, among the authors of the essays in the catalogue, I proposed him an essay for the 'Annali di Critica d'Arte' magazine dedicated precisely

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

to these topics (Leonardi - De Sandi, 2016). Sciolla immediately noticed that the essay could be an effective response to the inexplicable void that occurred on these aspects - straddling art history, collecting and museology - in a sensitive quadrant of southern Italy, where, with all evidence, the art historians had preferred to focus on other lines of research, obliterating the extraordinary legacy of scholars such as Adriano Prandi, Michele D'Elia, Pina Belli D'Elia and Maria Stella Calò Mariani.

Four years after that essay, with a careful campaign of archival reconnaissance carried out first on the Apulian-Lucanian 'territory' and then between Florence, Rome and Naples, it was possible to bring to the attention of a not only specialist public an almost totally unpublished picture that certainly concerns in the first instance the Bari museum, but also what was 'around' and 'outside' it, as demonstrated by the opening to the important story of Jatta collecting.

Of course, the exhibition - curated together with colleague Luisa Derosa - was born first of all from a sharing of intent between the University of Bari 'Aldo Moro' (MUR) and the Polo Museale della Puglia (MiBACT). However, it could not have seen the light without the decisive financial contribution of the Puglia Region, which here takes the opportunity to thank, together with Fabrizio Vona and Mariastella Margozzi (at various times both directors of the Polo Museale della Puglia), in addition to the Magnificent Rector of the University of Bari, at that time Antonio Felice Uricchio, now president of the Executive Board of ANVUR, and to all members of the Scientific Committee such as Maria Giulia Aurigemma (University of Chieti-Pescara), Massimiliano Rossi (University of Salento) and Alessandro Rovetta (Catholic University of the Sacred Heart).

It seems useful to remember how the Provincial Museum, whose space fell precisely in the current Palazzo Ateneo, made the due proportions and almost a century later, replicated the logistical situation created in Naples in the seventies of the eighteenth century, when the Palazzo degli Studi (initially Cavallerizza and then adapted for the University) it was thought to house not only the sculptures but also the paintings from the Farnese collection of Charles III of Bourbon (Pozzi Paolini, 1977; Leone de Castris, 2000), together with the antiquities found in Herculaneum and to Pompeii. Of course, several factors played a part in the formation of the Provincial Museum of Bari. Among these, the suggestions provided by the *Piano per i Musei* prepared in 1808 by Michele Arditi, from Salento, since 1807 general director of the Museum of Naples (Milanese, 1996). His *Piano* for the so-called 'provincial museums' - that is, places outside the Bourbon capital - aimed to create positive repercussions in the areas of the Kingdom "even the most remote and the least cultured", absorbing the debate of the southern reformist illuminists (Antonio Genovesi, Giuseppe Maria Galanti or Gaetano Filangieri) who had taken the field to contain the gap between Naples and the more distant areas.

Preventing the dispersion of archaeological finds and works of art, opening new travel routes for the heirs of the Grand Tour, educating people about taste for art, are some

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

of the requests that had already found space in the Arditi Plan and which materialized just after the unification of Italy, specifically with the foundation of cultural infrastructures such as the Provincial Museum which opened its doors in 1890, although it had been talked about since 1875 (Leonardi, 2017). The Bari museum was endowed with a double soul because it was linked both to the antiquarian ambitions and to the artistic ambitions of a rising mercantile traction ruling class. It is no coincidence that these were the years that starred Giovanni Jatta junior, inspector for the 'excavations and monuments' since 1875, who received the assignment from the Ministry of Education at the time to encourage the institution of a museum functional to safeguarding of "precious monuments" and to "increase the centres of scientific activity". A similar choice was the consequence of his commitment on the private side, since his grandfather Giovanni senior had already indicated him in his will as custodian of the famous family 'museum' in his native Ruvo, today the National Jatta Museum, where there was also an important picture gallery.

III. The architecture of the exhibition

As for the first 'work' that was brought on display, it is precisely the building in which the ancient Provincial Museum, the Palazzo degli Studi di Bari, has been placed, the result of a project selected by a personality of refined culture such as Emilio De Fabris. Note how De Fabris was the one who in Florence took care - in the second half of the nineteenth century - of important assignments of the newly reunited Italy: from the facade of Santa Maria del Fiore, to the museum display of Michelangelo's David at the Academy. On display, the visitor was able to appreciate the historical plans of the building, illustrating its various functions - including the museum ones - designed by the winner of the competition chaired by De Fabris, the Neapolitan Giovanni Castelli. They were then accompanied by the elegant letters of the one who was called to perform the fresco decorations of the Chapel, the Theatre and the rooms of the Museum, the Bolognese Rinaldo Casanova, an artist very active not only in Southern Italy (in Capodimonte he will deal to set up the Farnesian armory), but also in England, in London, where for example he intervened in the building of the Salviati Manufacture in Regent Street, today the headquarters of the Apple Store (Leonardi, 2020b).

Fig. 2: Frescoed ceiling by Rinaldo Casanova. Palazzo degli Studi, Bari.

Fig. 3: The ancient Pinacoteca in the Palazzo degli Studi of Bari. 1890-1910.

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

The Bari exhibition told about several elements that contributed to the creation of the museum 'container'. Among these, the essential archaeological-antiquarian component, well represented by the 'niche' described by Giuseppe Ungaretti who saw 'the most extraordinary baroque' in some canosine vases of 'twenty-two centuries ago' (1934) (Ungaretti, 1969), as well as the first finding that made its entrance to the Museum, a 'crockery' from the 5th century BC with the 'Stories of Theseus'. There was also attention for the Middle Ages rediscovered with the construction sites of the Apulian religious buildings, beautifully testified by the '*capitello degli schiavi*' of the Master of the Chair of Abbot Elia, even 'posed' in a historical photograph by Corrado Ricci reproduced on the didactic panels of the exhibition itinerary. Afterwards, the visitor was able to realize the fortune of figurative culture of Venetian origin in Puglia, with Antonio Vivarini's '*Sant'Antonio da Padova*', the strong point of a picture gallery - we will see the future Pinacoteca Provinciale - where the Venetian component was the undisputed protagonist. Finally, the contribution of the art market has proved essential for this newly founded museum: specifically, this chapter was narrated through the '*Sposalizio mistico di Santa Caterina*' attributed to Guercino, but considered by Roberto Longhi to be the work of the Genoese Domenico Fiasella, on which, still recently, there has been the possibility to exchange some happy jokes with the art historian Carlo Bertelli.

As mentioned above, the exhibition told not only what happened 'inside' the Provincial Museum, but also what happened 'around' and 'outside'. In the first case, the passage of illustrious visitors such as Bernard Berenson, who arrived in Puglia for the first time in 1897, was evaluated. Berenson visited the Museum in 1907 attracted by its nucleus of Vivarini works, then continuing to have relations with the Puglia until at least 1952, in turn making it known to his friend and patron Edward Perry Warren (De Sandi - Leonardi, 2020). We will limit ourselves here to remember how Warren was so intimate of Berenson that he was the recipient of the dedications of the first two editions of his monograph on Lotto (that of 1895 and that of 1901). He is also the one who purchased a magnificent volute crater and then sold it to the Bari Institute. Precisely because of these connections, it was decided to show the '*San Felice*' executed by Lotto for the town Giovinazzo, putting it into the system so much with Berenson's choice to identify an ideal city in the centre of not far Altamura, in the Murgia, where to take refuge (this happened from the pages of the magazine 'The Golden Urn' of 1897), as well as with the diaries and sketches of his wife, Mary Costelloe. The latter generously loaned from Villa I Tatti - The Harvard University Center for Italian Renaissance Studies. In this sense, it was extraordinary to be able to borrow the notebook that contains the design of 'our' *San Felice* accompanied by the considerations of the famous connoisseur (Leonardi, 2020c).

Finally, the 'out-museum' was well represented by the unprecedented events of a nineteenth century collectionism that gave shape to 'containers' conceived as private but which, since their origin, were also opened to the public with a specific mission:' to educate to taste '. In particular, this is what happened with the 'museum' of the Jatta

family in its palace in Ruvo, today partly home to the National Museum, from where a very precious sphinx-shaped rhyton arrived for the occasion, which certainly in the residence in the question was accompanied by paintings of absolute value, including a 'Lucrezia' by Artemisia Gentileschi. This painting is recently dispersed on the antiques market, which means a serious cultural impoverishment for not only the regional heritage. Also in this section, there was the possibility of also telling what exceptional happened immediately after 1928, the closing date of the Provincial Museum. This is the commitment of Federico Hermanin, German born in Bari and director of Palazzo Venezia during the twenty years (Nicita, 2000), who will send paintings from the Corsini and Barberini Galleries in Rome to the Apulian capital - including Luca Giordano on display - to graft them onto the pictorial nucleus of the ancient Provincial Museum (the Museum That Was There, That Has Been and Has Never Been) thus giving life to a new and independent Pinacoteca (Hermanin, 1930).

Fig. 4: Saint Antonio by Antonio Vivarini and the riproduction of Ungaretti's niche.

IV. Before Covid-19: the exhibition as an immersive research and teaching means

The difficulties were not lacking, although support from various institutions did not fail. Firstly by the Puglia Region and the 'Aldo Moro' University. Secondly, by the numerous lenders (Villa I Tatti - The Harvard University Center for Italian Renaissance Studies; Central State Archive; Jatta National Museum; Archaeological Museum of Santa Scolastica; Pinacoteca Corrado Giaquinto) who with their availability have guaranteed the return at home '- in Puglia - of works of fundamental importance. However, an essential factor in the executive phase of the project was to rebuild a 'supply chain' capable of governing all the steps of the realization process of

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

an exhibition: scientific, logistical, insurance, set-up, safety, up to the publication of the catalogue in the series 'The Voices of the Museum' (Edifir, Florence), founded and directed by Cristina De Benedictis and Antonio Paolucci.

After this experience, the University of Bari can be considered ready to launch new exhibition projects thanks to the impact that the exhibition has generated in the culture and memory of the city. This should be borne in mind especially in a city like Bari which - despite the commendable efforts - still lacks a real cultural infrastructure, net of the Pinacoteca 'Corrado Giaquinto' now in charge of the Metropolitan City.

Arriving in Bari in 2013 at the 'Aldo Moro' University to teach 'History of Modern Art', I was immediately struck by how this city was in Italy the only regional capital without a National Gallery and without a real and its museum network, despite the repeated unrealistic attempts linked to the contemporary (the ex Teatro Margherita) and the Santa Scolastica construction site, promised, promising and expected Archaeological Museum still far from being considered fully open. In a context so 'hostile' to the idea of museum, it is therefore not surprising that the museum institution housed in the Palazzo degli Studi - that is, the one told by the exhibition The Museum that is not there - has never been perceived by most part of the Bari adults as an 'encyclopedic' reality which in fact it has been since its origins.

Furthermore, the fact that for the younger segment of the population - in particular for the students of the University of Bari - there has simply never been a museum (archaeological or generalist at this point, it doesn't matter), leaves us perplexed. From this aspect derives the absence in recent times of an interest in the dismantling of the museum and for the methods of its formation and for the unity of the artistic and antiques collections, as well as the late nineteenth and early twentieth-century layout went to tell. To want to historicize the story, while remaining a step out of the inevitable and understandable tensions between the institutions culturally responsible for this loss, two factors must also be taken into account. The first, is that there has not been a peaceful debate among the experts (except for the 2007 conference coordinated by Luigi Todisco and for some 'voices' out of the choir journalism). The second is that a more incisive reaction from the so-called 'civil society' was lacking in view of the closure, in 2002, of one of the most characteristic elements of the cultural identity not only of the University, but of the entire Southern community. We will limit ourselves here to note that as such, in fact, the art historian Gustavo Frizzoni, a pupil of Giovanni Morelli, had read the Museum visiting it in 1914 and admiring - like Bernard Berenson in 1907 - its core of works of the Venetian Renaissance.

Precisely with regard to the identity value of the works of the Vivarini who marked Bari, Puglia and the Provincial Museum in question, it is to be considered that still in 2013 one of these, the polyptych by Antonio Vivarini with the Christ in Piety and the Saints Ludovico da Tolosa , Francesco d'Assisi, Giovanni Battista and Antonio da Padova (the last one is the signed and dated compartment received in the exhibition),

was 'chosen' by the Prada Group to be restored in coincidence with the inauguration of its new boutique overlooking the very central via Sparano in Bari. The showroom was opened in the spaces that had once been the historic publisher of Benedetto Croce, Giuseppe Laterza. Well, this work by Antonio Vivarini - like the Provincial Museum and the other figurative testimonies from the Veneto kept there - was for Frizzoni "worthy of a Capital" and therefore proof of mature cultural "independence" of all that vast area of the "province ex regnicola and then Bourbon which, until the unification of Italy, has always taken for granted the excessive protagonism and weight of the capital Naples (Frizzoni, 1914). Beyond all this, the incontrovertible datum is that a true museum and museum fossil, the Provincial Museum in 1928, then the Archaeological Museum until 2002, has been almost completely lost. How such a situation could occur is not easy to say, but it was not the intent of the entire exhibition operation to make a judgment. Compared to all this, however, the hope is that of having returned a mature opinion, from researchers attentive to the historical-social context of art, through a catalogue (pp. 376) designed to remain even after the spectacular moment of the exhibition , as well as through the initiatives set up during the three months of confinement coinciding with the exclusion of the public 'in presence' from the exhibition spaces.

V. During Covid-19. Operational testimonials / 1 (social networks)

The inauguration of the exhibition, which took place on February 28, 2020, inadvertently became part of the history of the city of Bari and its university as one of the last events carried out according to pre-COVID19 customs. It was in fact possible to welcome a large number of visitors on the occasion of the vernissage, without masks or social distancing, all spectators unaware of the final act of our lost normalcy. In retrospect it is very significant to have 'said goodbye' by starting an operation to recover the identity culture of the places where students and professors have lived (and hopefully they will be able to return to live). Although for a short time, alongside an unfortunately slower response from the teaching staff, the interest of the students was noted, especially of the so-called freshmen, fascinated, but inevitably affected, by an operation to return the memory of spaces intended for teaching and looking, as were those of the Provincial Museum, which unfortunately the University lost in the early 2000s and which has not yet managed to refunctional according to a coherent design.

On March 6, 2020, after only a week of opening to the public, it was necessary to turn off the lights and close the doors of the Provincial Museum again, without knowing when it would be possible to start again. A few days later each of us, undeniably afraid, found himself in front of the screen of his computer or smartphone. Among the sectors that immediately demonstrated good responsiveness, there was the 'culture' sector which has made a great commitment to the digital offer.

Fig. 5: During the inauguration day of 'Il Museo che non c'è'

Fig. 6: An Instagram post of @Unibartemoderna.

Without claiming to be complete, it will suffice to mention here how the MiBACT (Ministry of Cultural Heritage and Activities and Tourism) has renewed its YouTube channel, uploading short illustrative videos of those museums, collections and archaeological sites on a daily basis to which the health seals had been placed, finally trying to involve the much-discussed 'non-public' (Solima, 2020). We also tried to intercept the public through a social network with a younger target like Instagram, for which the hashtag #artyouready was specially designed, which today has more

than fifty-five thousand posts, slightly less than sixty-three thousand of the hashtag #mibact. Even individual museum institutions have intensified their attention on these channels. Among the most interesting realities, it is possible to include the Egyptian Museum of Turin which has implemented an already existing section, 'Passeggiate con il Direttore' ('Walks with the director'), transferring it completely to the online platform, and giving life to #Aportechiuse, dedicated to the protection and enhancement that could, and should, continue to be carried out. A similar initiative was also undertaken by the Uffizi Galleries, which created during the lockdown phase a considerable number of videos, uploaded to their Facebook page, at first only in Italian but then also in English, Spanish and even in Latin. Then coming to explore even more youthful resources like that of Tik-Tok.

In sixteenths, even in Bari the primary objective, which was not obvious could be achieved, was to still be at the service of the project and the public. In this way, the research team operationally engaged on the exhibition 'The Museum that is not there' has decided to develop a narrative appropriate to the new circumstances. Through the Facebook and Instagram accounts of 'Unibartemoderna', webpages already launched with moderate success since 2014 (social networks 1-2) with the aim of offering educational and research support to students of the historical-artistic disciplines of the Bari University , the exhibition story was returned with ten appointments (video 1-10). Each of these dedicated to the issues around which the
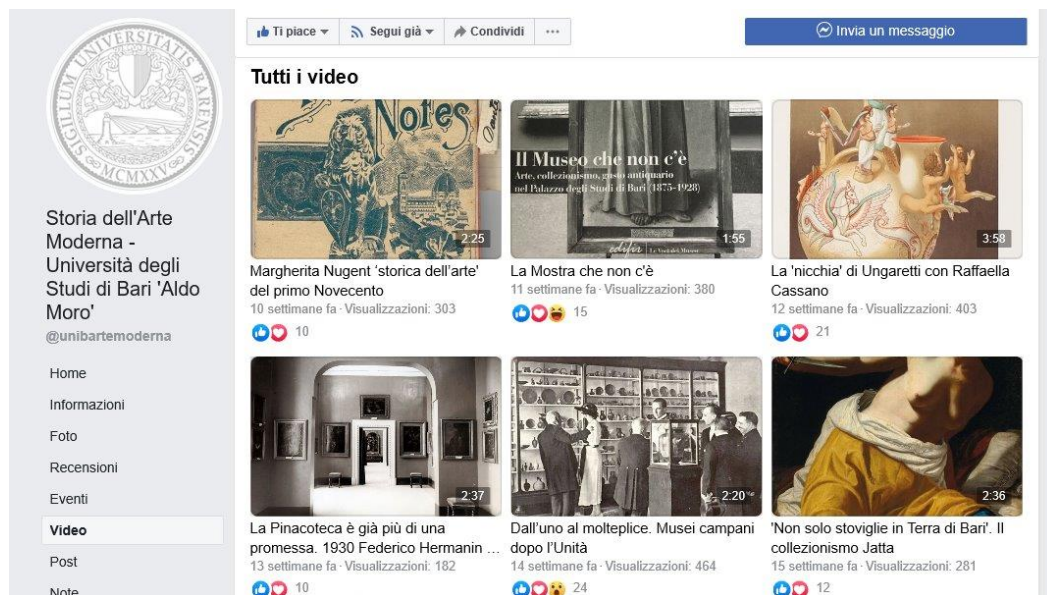

Fig. 7: Facebook's page @Unibartemoderna.

much more 'traditional' organized paper catalogue was built, let us remember again, around what was 'inside', 'around' and 'outside' at the Provincial Museum: 1) 'Il

Museo che non c'è (più)'; 2) 'The Atheneum' (dedicated to the construction and decoration of the Palazzo degli Studi in Bari); 3) 'Il Medioevo al Museo'; 4) 'Il Rinascimento veneto al Museo Provinciale di Bari'; 5) 'É tempo di agire. Edward Perry Warren e Bernard Berenson'; 6) 'Non solo stoviglie. Il collezionismo Jatta'; 7) 'Dall'uno al molteplice. Musei campani dopo l'Unità'; 8) 'La Pinacoteca è già più di una promessa. 1930 Federico Hermanin'; 9) 'La nicchia di Ungaretti con Raffaella Cassan'; 10) 'Margherita Nugent, storica dell'arte del primo Novecento'. These ten are joined by two others (video 11-12), the ''Costruzione del museo effimero' and 'La Mostra che non c'è', respectively concerning the set-up and dismantling of the same. It should be noted that the second occurred, given the impossibility of an extension, in the midst of the transition between the so-called 'Phase 1' and 'Phase 2' of the lockdown imposed by the Italian Government. Faced with this type of communication, the response from the public was more than positive with over four thousand contacts in total, recording an average of 360 views for each of the videos produced, oscillating between the 581 views of the most followed video and the 190 of what has the interest of the public was less aroused.

Fig. 8: Dismantling exhibition.

VI. During Covid-19. Operational testimonials / 2 (traditional and new media)

Perhaps one of the most interesting factors in planning communication was the choice to diversify the offer for the public, not limiting it to the social media channel. The most evident proof of this is the creation of two podcasts for the national radio channel Radio3 Suite, an Italian public radio broadcaster published by Rai (Radiotelevisione Italiana S.p.A). The podcasts, lasting twenty minutes each, aired as part of the '*Impossible Exhibitions*' program. *Guided visits to Italian museums*', a space dedicated to the voices of art historians, critics and archaeologists invited in the circumstance of the health emergency to talk about exhibitions and museums, allowing guided visits to real and imaginary places. The first of the events dedicated

to the Apulian situation was entitled '*The museum that is not there (anymore)*' and gave a detailed account of the exhibition and the related research project at the basis of it (podcast 1). The second, however, is *#weareinpuglia1964. Venetian paintings imported into the exhibition*, can be considered as a spin-off of the Bari exhibition, which was blocked by COVID19, having focused attention on a mandatory theme for this southern quadrant: the presence of Venetian artistic production in Puglia between the sixteenth and seventeenth century (podcast 2).The framework of the relationship with the media cannot be defined complete without the analysis of the press review, which started, as usual, with the aim of making the exhibition project known also through the print media, this in order to intercept a certain public perhaps more traditional, but certainly interested by definition in depth. The first article dates back to February 26, a real preview of the exhibition. The interview with one of the curators (Andrea Leonardi) took place during the arrival of the works and appeared on the pages of 'La Gazzetta del Mezzogiorno' with the title '*The Bari Museum that does not exist enchanted Giuseppe Ungaretti in 1934'* (Annibaldis, 2020). A second contribution, *'Once upon a time there was the Provincial Museum'*, of 27 February 2020, made it possible to reiterate the announcement of the imminent inauguration from the Bari pages of 'La Repubblica' (Totorizzo, 2020a). Arriving below date - the inauguration took place in the afternoon of February 28, 2020 - it was also possible to carry out a professional photographic campaign through the same newspaper ('La Repubblica'), of which a highly articulated gallery was published online - thirty-five images - entitled 'The Museum that does not exist: the treasures of history on display at the University of Bari' (Totorizzo, 2020b). A second article / interview is also dated 29 February, *'When Bari discovered that it also had a Medieval identity. Exhibition on the history of the Provincial Museum'* (Di Tursi, 2020a), of the 'Corriere del Mezzogiorno', a magazine which, together with the 'Corriere della Sera', covers the whole of Southern Italy. Note how from the same newspaper, but this time in its online version, a further intervention was also published entitled *'Once upon a time at the University the Provincial Museum'* (Di Tursi, 2020b).

Always recalling the idea of a lost heritage, after the so-called 'launch' and the photo gallery dedicated to the exhibition, 'La Repubblica' has returned to giving space to the cultural event with a large article signed by the curator, Andrea Leonardi, Once upon a time (and still is) the Bari Museum (Leonardi, 2020d), released on February 29, 2020. After these days and progressively increasing the restrictions due to the health crisis, the race against time seemed lost. The spaces for any form of communication had in fact been occupied by news relating to the agonizing spread of the virus. After the dismay over the confinement now extended to the whole country (declared by the Presidency of the Council of Ministers on the night of Saturday 7 March), the reorganized response on the subject of institutional communication matured on 24 March thanks to the contribution of 'Canale Arte'.

This media completely dedicated to everything that revolves around the world of ancient and contemporary art, streamed on the website http://www.canalearte.tv,

founded in Turin in 2013 and which has become a reference item for the panorama not only Italian, has reserved a large account of the event entitled 'The Museum that is not there (anymore!): an exhibition to remember the Provincial Museum of Bari' (Stroppiana, 2020). Moreover, the attention of the general public towards the contents of the interview given by Andrea Leonardi to Paola Stroppiana is evidenced by the more than nine hundred views that the article can today boast (data updated as of 12.07.2020).

On April 15, when the awareness had already established that it would not be possible to reopen the doors of the exhibition to visitors, the online magazine of S.i.S.C.A. (Italian Society of Art Criticism History) has dedicated a large insert to the exhibition entitled 'The Museum that is not there: the treasures of history on display at the University of Bari' (Petronella, 2020). Finally, the video (Youtube 1) created for the #PilloleDiCultura section of the Lyceum International Club in Florence (historic women's cultural association) on 22 June, therefore following the dismantling of the exhibition in the second half of May.

Fig. 9. Podcast in RAI-RADIO3-'Mostre Impossibili'.

VII. During Covid-19. Operational testimonials / 3 (Distance learning)

This type of initiative, placed in a university context - which objectively is not accustomed to 'be a Museum' -, was first of all an opportunity to create a sophisticated research and immersive teaching means. As such it has proved to be decisive to demonstrate - especially to students and PhD students - that the historical-artistic discipline deals with complexity. Moreover, it also served to disengage from the excess logic of a communication where everything can be called, indiscriminately, 'event' and / or 'exhibition'. It is of no secondary importance to recall what has been

produced in the context of distance teaching. To satisfy the need to involve the largest possible number of students who have had to follow the teachings of 'History of Collecting' (Second Level Degree in Art History) and of 'Museology and Museography' (Postgraduate Course in Archaeological Heritage) online, it was decided to propose a series of seminars, called 'pandemic seminars', administered on the Microsoft Teams platform. While the first, held by Giuseppe De Sandi, PhD student in Art History at the same University of Bari, was entitled *'Going for exhibitions: the idea of Baroque in ephemeral museums of the early twentieth century'*; the second, proposed by Andrea Leonardi, was dedicated to the theme of post-unification museums, *'Italy 1870. Around galleries, art galleries and museums of the new nation'*. Among the most innovative teaching experiences, there was finally the appointment proposed to the students of the 'Museology and Museography' course of the aforementioned School of Specialization in Archaeological Heritage. By exploiting the potential offered by distance learning, but without neglecting the direct approach with artistic artefacts and antiques, it was possible to transmit live the dismantling of the exhibition operations, illustrating the different and delicate work phases to the trainees: the packing of canvases, tables, archaeological finds and documents returned to their home; the drafting of condition reports; the focus on restorations made specifically for the exhibition event; the analysis of the specific materials used to ensure optimal and safe transport; the handling techniques adopted. All in keeping with that process of 'immersive teaching' which, although conducted remotely for necessity, has made clear the potential of an effective collaboration between students and teachers who have not missed the opportunity to say that the museum has been there.
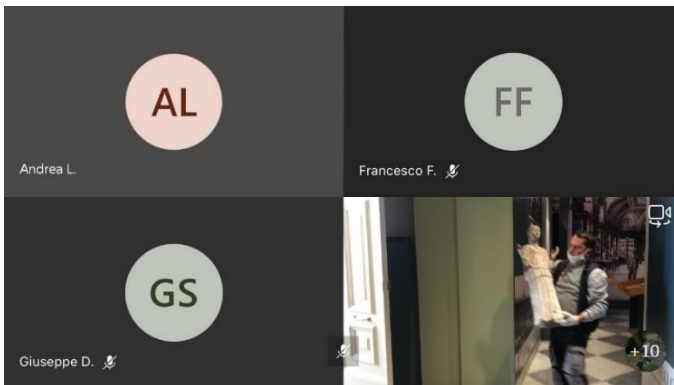
Fig. 10: A moment during the last online-lession.

VIII. Conclusion

Among the most fascinating working hypotheses and on which it was immediately reported to reflect there was the desire to return the idea of a space that - this time permanently - recalls the Museum. From the point of view of scholars who think primarily of art history, but also of museology and museography, it is not possible to

be opposed to the operation that led in the early 2000s to the transfer of the surviving archaeological collections from the Palazzo degli Studi to the beautiful complex of Santa Scolastica. If, however, we could go back in time, it would be appropriate to invite those who did so to rethink about the possibility of conserving the ancient spaces of the Provincial Museum. Indeed, it would be extraordinary to be able to continue looking at some of the paintings seen by Gustavo Frizzoni, Corrado Ricci and Bernard Berenson, together with a restricted selection of the archaeological finds that 'lived' in the still preserved ancient showcases - and fortunately protected by a pertinent bond - below the vaults frescoed by Rinaldo Casanova. It is precisely those showcases that speak to us of presences "in absence". The shelves are there, still embarked to remember the weight of the vases and furnishings that enchanted Ungaretti and that aren't there anymore. The period of the so-called lockdown is a useful state for reflecting and working on how to return to living this lost identity of formidable value and these lines want to be precisely the engine of such an intention.

* Andrea Leonardi: paragraphs I, II, IV; Giuseppe De Sandi: III, V; Claudia Colella: VI, VII. Conclusions, paragraph VIII, are the result of a common further reflection.

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Democracy and Prevention of Corruption in the European Legislation

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Abstract

This article discuses the concept of democracy, corruption and the relationship between. Democracy and corruption have been perceived to be in a close and complex relationship with each other. Scholars have argued that a solid link exist between them. When democracy weakens, we can almost certainly expect an increase in corruption due to the attrition of institutional checks and balances, independence of courts and frequent restriction of the space for civil society actions and political rights of citizens. The paper analyses the large impact corruption has on democracy, and the states sustained efforts to limit corruption can improve the strength of democracy by promoting just and competitive elections, ensuring better quality and delivery of public services and improving citizens' trust in political institutions and governments. The paper in the second part observes the legal norms approved by the European legislation concerning the fight against corruption, it seems possible to outline an emerging model of corruption prevention by concluding that the effort of European and national legislation to limit corruption should be a contribution to the consolidation of democratic regimes and efforts to improve the quality of governance.

Keywords: democracy, corruption, rule of law, development

Introduction

The relationship of Democracy and Corruption

There is a strong relationship of democracy with bribery phenomena, even though that democracy because of being transparent is declared to be the least corrupt form of states. From studies conducted year after year, there have been conclusions that show that there is many countries rated with a high level of democracy but at the same time with a high level of corruption. In contrast, there have been studies showing that non-democratic as well as autocratic countries have been successful in maintaining a low level of corruption. We must keep in mind that before we begin to analyse the relationship between democracy and corruption, we must clarify the

definition of these two concepts. For this we must first clearly specify what the term democracy will mean in this study. One of the views that also studies democracy is the electoral one. In this respect modern political democracy is the system in which the elected and those who have decision-making in the public sphere should be responsible for their actions towards citizens (Philippe C. Schmitter, Terry Lynn Karl, 1991). This view is a minimalist conception of the fact that vertical electoral responsibility is the most important bearing part of democracy. According to other scholars, democracy is defined to be in a broader sense, the definition should exceed competition during the election campaign and should include the consolidation of the rule of law as well as the balance of state institutions and respect for human rights (Merkel, 2004).

One of the aspects that scholars remain in extracting the content of the term democracy is that of democratic participation. In order to achieve full democratic participation, there must be the rule of law, freedom and equality of all citizens, respect for institutions in order to have a full involvement of citizens in the democratic election process. We must not forget the fact that in order to have a high-level democracy, the three powers that form the state must be independent and control and balance each other (Selen A. Ercan, Jean-Paul Gagnon , 2014).

The concept of "embedded democracy has been advocated by scholars like Merkel. He defined that embedded democracy consist of five cumulative elements, that are independent and transparent elections, political participation rights, civil rights of citizens as well as horizontal accountability and effective power to govern (Munck, 2016).

However, Merkel also recognizes the importance of the impact it has on democracy, external factors and conditions that can strengthen governance such as civil society and cooperation with international organizations. All these constituent elements of democracy are a starting point for the debate on the relationship between democracy and corruption (Morlino, 2004).

The fact that democracy is a system built on effective horizontal accountability it means that there must be a balance between the three constituent powers of the state, the legislative, the executive and the judiciary (David Collier, Steven Levitsky, 1997). All of these must mutually control each other. One of the most important factors for the realization of this mutual control is the assurance of independence of the judicial system and the rule of law (David Collier, Steven Levitsky, 1997). Because prosecutors are the only institutions that can control whether politicians or civil servants abuse power for their own personal interests and then the courts can provide penalties for these violations of the law. The higher the assurance of the independence of the judicial system, the higher will be the provision of impartial application of the law, which leads to the reduction of corruption. Still, people tend to analyse the chances for them to be caught by law enforcement bodies and in that case whether they are going to be indicted in a harsh way or not. According o the rational choice theory

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European Journal of
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January - June 2021
Volume 7, Issue 1

citizen tent to adhere to law enforcement if the punishment is to severe (Susan Rose-Ackerman, Bonnie J. Palifka, 2016).

The question before us is whether a high democratic form of government can lead to the extermination of corruption. Different conclusions have emerged from the research. One of them is that corruption is directly related to the socio-economic development of countries, so the higher the development, the lower the corruption (Pablo M. Pinto, Boliang Zhu, 2016)

On the other hand, we must keep in mind that even with a high-level democracy, corruption still finds a way to live. Studies that have been conducted in many countries have concluded that the link between the maturity of democracy and the level of corruption is not linear. In new democracies, corruption finds more room to live by undermining the executive, legislative and judicial powers. These are more fragile, so that laws are not very consolidated, and penalties are not too harsh (Hanna Back, Axel Hadenius, 2008).

Therefore, it is possible that corruption "infests" these weak points. When corruption extends, it undermines one or more of the democratic pillars and can significantly impair the overall democratic strength. Ultimately, a perverse and vicious circle that reinforces corruption is installed and further undermines democratic processes (Bo Rothstein, Aiysha Varraich, 2017)

2- The International Dimension of Corruption

Corruption has historically been a major problem for the functioning and stability of state regulations. In fact, the spread of episodes of corruption among politicians and public officials contributes to delegitimizing the political-administrative system, alters the democratic circuit of political representation, affects the correct exercise of public powers and promotes the waste of public resources. Moreover, the phenomenology of corruption has become increasingly more complex, given that the traditional subjects of criminal law, public subject corrupted and private-corrupting subject, very often overlap other subjects with the task of mediating illegal transactions (Teachout, 2018).

To explain the spread of corrupt practices, in the sociological and criminological literature two main theories have been elaborated. These theories differ in relation to the identification of the cause of the corruption phenomena in contemporary societies (Mongillo, 2012).

The first theory supports the fact that the corruption matrix is essentially economic, in the sense that the choices underlying the payment or the acceptance of bribes are the result of a rational calculation made by the subjects involved in the illegal transaction, who tend to compare the costs (which includes the probability of being discovered and the severity of the penalties provided for) and the benefits expected from the unlawful behaviour with the costs deriving from the available alternatives.

A second theory believes that the cause of corruption is socio-cultural, since the presence of corrupt practices in socio-institutional systems depends on the degree of entrenchment of moral values in civil society and on the consolidation of the "spirit of the body" and the meaning of the State among public officials (Mongillo, 2012). These two theories have similarities between them, so, they are complementary to each other while having both influenced recent policies to combat corruption.

Over the past few decades, economical growth has also increased ability to detect the negative effects that arise from the proliferation of corrupt practices, which are suitable for affecting different aspects of civil coexistence and the national economy. This awareness was formed through the knowledge acquired not only in the context of scientific research on this area, but also based on a series of studies and specialist insights that have been promoted by public institutions and by non-governmental organizations (Robinson, 2007). The researchers, have focused their studies in particularly in quantifying the economic costs using econometric methodologies, and have measured the additional indirect effects that entails a systematic spread of corruption in national political systems (Mo, 2001).

Scholars have ascertained that during time another international dimension of the phenomenon of corruption emerged and this could be attributed to various factors. One of the main important factors concerns the impact of the globalization of the economy which, by increasing the opportunities for commercial exchange between States and increasing competition between companies, can encourage the attempt to enter the foreign markets through the use of a bribe to obtain advantages and facilities from public administrations (Šumah, 2018). A second factor can be recognized in the role of multinationals companies. which, even following the erosion of the regulatory power of the nation-states, are capable of perpetrating transnational offenses, including those of a corruption type, by dividing the path of crime into several national territories , with the involvement of the various components of the corporate structure, so as to hinder the identification of the responsibility of the parent company (Šumah, 2018).

The mobility of economic activity allows large corporations, in with a view to "law shopping", that is, to choose the most favourable legal system, to also minimize the criminal risk, avoiding incurring the penalties imposed by the most severe orders among those in competition (Wells, 2014).

Furthermore, it should not be overlooked that corrupt practices now also increasingly affect officials of international organizations, who have become the centre of the decision-making process and decide the expenditure that are more important than ever from an economic point of view (Wells, 2014).

Studies have shown that both domestic and international corruption, created by public officials operating in the context of international institutions, are considered, in all institutional settings, as one of the main obstacles to economic globalization and

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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

the modernization of state's political systems, since they produce competitive distortions and cause bad allocation of public resources.

It should come as no surprise, therefore, that the main bodies and international organizations, such as the Organization for Economic Cooperation and Development (OECD), have been dedicated to promoting economic development globally, or regionally such as the European Union (EU), and even multilateral development banks, such as the International Monetary Fund and the World Bank (The Financial Action Task Force (FATF) , 2020). These international organizations have included the fight against corruption among the priorities of their political agendas, with the aim of stimulating national authorities to improve internal legislation by revising tools to combat corruption practices. In many cases, the goal of these institutions, especially those in economic vocation, it is not so much to preserve the integrity and correct functioning of the public administration involved in corruption offenses, but rather to avoid the competitive distortions generated by corruption, safeguarding both the correctness of international transactions and the interests of the participants in the global competition (Dahl, 2008). Therefore, we understand the need of international organizations to make the repressive responses to the corruption of foreign public officials as homogeneous as possible, helping to level the playing field for companies operating on a transnational scale.

In order to direct the initiatives of the supranational institutions and guide the legislative reforms of States it has been promoted the development of criteria and mechanisms for measuring both the economic damage caused by corruption and the degree of spread of corruption phenomena in national systems, with the preparation, among other things, of real and their own international rankings of states, in relation to the level of corruption they present.

Indeed, the models for measuring corruption are not unique, but can use three different categories of data: a) data taken from judicial data; b) the data derived from the outcome of the application of certain methodologies aimed at recording the perception of the phenomenon by the interviewees; c) data that take into account the direct experience of the respondents (United Nations Office on Drugs and Crime (UNODC), 2018). The latter measurement method makes use of indices that detect the direct experience of the interviewees upon episodes of corruption, also captured in its latent dimension. In the international context, these different analysis criteria are reflected. the World Bank periodically approves the rating of control of corruption (RCC), which is based on the opinions expressed by businesses and citizens, while the European Commission with Eurobarometer uses a periodic survey with which also includes the percentage of citizens who received the request or offer of a bribe in the last twelve months of reference (Leo W.J.C. Huberts, Karin Lasthuizen, Carel F.W. Peeters, 2006).

A significant contribution to this data collection activity is offered by a non-governmental organization, Transparency International (TI), which records the level

ISSN 2411-958X (Print)
ISSN 2411-4138 (Online)

European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

of corruption perceived in all countries of the world. The fundamental tool is the Corruption Perception Index (CPI), which is published annually, starting from 1995, which sorts the countries of the world based on the level of corruption. According to the reports undertaken by TI corruption is understood and perceived by citizens in a broad sense as "the abuse of public offices for private gain". (Transparency International, 2020).

The surveys carried out by Transparency International through the Global Corruption Barometer (GCB) allow, to evaluate the perception of the corruption phenomenon with reference to specific institutions.

The data that emerge from these different detection models have a significant impact on international public opinion as regards the reliability and authoritativeness of institutions and individual economies of the countries (Transparency International, 2013).

State legislators, as a result of international pressure, as well as endogenous needs for renewal of the political and administrative class, have approved over the past decades important measures to combat the corruption phenomenon, not only by intervening on the side of criminal repression, but also operating on the side of administrative prevention. This prevention was realised by introducing new forms of control, rules and standards of behaviour capable of preventing or hindering the implementation of corrupt behaviour by public administrations. This evolution of the anti-corruption policy has also been specifically prompted by several documents adopted by international bodies, with which state authorities have been asked for an integrated approach in the fight against corruption (Transparency International, 2013).

This work aims to examine the most relevant indications that can be drawn from the international legal system, especially from the European one, paying attention not only to the prospect of criminal repression, but also to the administrative prevention activity.

The Legislation provided to fight Corruption in the International Law

In front of the problems posed by the spread o f corruption practices on an international scale, often carried out by multinational companies, the international community has deemed completely insufficient the path of self-regulation and market sanctions to correct practices or deviant behaviours of economic operators has undertaken a action to promote the harmonization of criminal law provisions both regionally and globally. The preordained initiatives to develop global principles and rules on the responsibility of multinational companies on the fight against corruption have mainly taken the flexible form of the soft law: in particular, codes of conduct, guidelines, corporate social responsibility tools (Berenschot, Imagos Managment and Governance Solutions, 2012).

The codes of conduct include the Global Compact, an action program launched by the UN Secretary General Kofi Annan in 1999 to encourage transnational companies "to inform their activities and strategies of ten universally accepted principles in the areas of human rights, labour, the environment and the fight against corruption" (United Nations Global Compact Office , 2007). And of course, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactionsadopted on November 1997 by OSCD countries. As for the guidelines, the Guiding Principles on Business and Human Rights, issued by the UN on 16 June 2011, and the Guidelines for Multinational Companies, drawn up by the OECD in 1976 and updated several times, can be recalled (Conforti, 2018).

Non-binding recommendations have been widely used internationally to combat bribery. The OECD has been very active in issuing several recommendations, such as the Recommendation to further combat the corruption of foreign public officials in economic international transactions of 26 November 2009, or the Recommendation on Strengthening the Integrity in Public Procurement, of 16 October 2008. Furthermore, we can recall the formulation of the Principles for Integrity in Public Procurement in 2009, which highlights the need to take further measures to prevent the risks of corruption during the entire public procurement procedure, starting from the needs assessment phase up to the management of the contract and payment (OECD, 2020; OECD, 2020).

However, the fight against corruption was also conducted with the adoption of pact instruments, attributable to international hard law, based on multilateral agreements and treaties freely adopted by the States. These treaties oblige the States to modify domestic law according to common criminal legislation principles that they have agreed previously before. In the context of international law there are two conventions of a greater importance that must be mentioned, that, marked an important step for the evolution of national criminal systems.

First, we take note of the Organization for Economic Cooperation and Development (OECD) Convention on the fight against bribery of foreign public officials in international business transactions, signed in Paris on 17 December 1997 and entered into force on 15 February 1999. The OECD, while dealing institutionally with economic and social issues, has long since made a commitment against bribery in economic transactions of an international character, insofar as it considers the proliferation of corrupt behaviour an element of distortion of competition and a factor in lowering the civil and political standards of States.

The Convention requires the acceding States to consider a crime for individuals, as well as for legal persons, the fact of bribing foreign officials to obtain undue advantages in international trade. This is an innovative approach, given that at the time of the conclusion of the Agreement in almost all OECD countries the corruption of the foreign public official did not integrate the extremes of crime. As can be seen from the preamble, these provisions should have a deterrent and preventive effect,

ISSN 2411-958X (Print)
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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

discouraging the spread of corrupt practices by companies in the international market (OECD, 2020).

The relationship between the OECD and the states evolves moreover as a result of the establishment of a special Working Group on Bribery in International Business Transactions (WGB) based on the ratification of the Convention. The Working Groups' was mainly established to support and monitor the implementation of the Convention and, therefore, the coherent translation and application in national laws, in a way to avoid all those forms of implementation that are not faithful to the agreement text (Mongillo, 2012).

The method of continuous monitoring with periodic follow-up was provided, conducted by the WGB and based on a self-assessment system and subsequent mutual evaluation by the contracting States. At the end of the three phases of the monitoring, the WGB issues its recommendations and focuses on the issues to be further monitored. In phase 1, completed in 2001, was verified the abstract compliance of the legislation of the Member States with the commitments entered into force with the ratification of the Convention. In phase 2 that was completed in 2009, the site visits agreed with the foreign country were carried out, during which the concrete application of national laws was examined. Furthermore in the third phase of assessment, which began in 2010 and not yet completed for all contracting countries, focused on the enforcement of the 2009 Convention and Recommendation, on the implementation of the recommendations made to individual countries at the end of phase 2 and, therefore, also on any changes to internal regulations (Mongillo, 2012).

Another convention that bears a significant role is the UN Convention Against Corruption because is the only global legally binding agreement to combat corruption as a transnational phenomenon, known as the UN Convention of Merida on 2003. This Convention provides that the anti-corruption policy must take a twofold direction. On the one hand, it is necessary to activate a series of prevention measures for the public and private sectors, which are specified in Title II, that includes an institutional mechanisms, such as creation of a special anti-corruption body, the adoption of codes of conduct and measures for transparency and accountability (UNITED NATIONS, 2004). With regard to the procurement sector, which is considered particularly overexposed, in article 9 States are required to take the necessary measures to create appropriate public procurement systems that are based on transparency, competition and objective criteria for making decisions and capable of preventing corruption (Webb, 2005).

On the other hand, the Convention, in Title III aims at the improvement of criminal protection by imposing on the States the obligation to give criminal character to a wide variety of infringements related to acts of corruption, if they are not already configured in domestic law as offenses. Great importance is also given to international cooperation in some particular areas, such as mutual legal assistance for the

collection and transmission of evidence, extradition, freezing, seizure and confiscation of the proceeds from corruption (Webb, 2005).

4. The Fight Against Corruption in the European Zone

The legislation drawn up on the initiative of some European supranational institutions, such as the Council of Europe and the European Union conditioned the states' national policies against corruption. In fact, both these institutions, even if they are characterized by different roles and competences, since the mid-nineties, have tried to urge a profound revision of national laws to improve the forms of fighting corruption (Conforti, 2018).

In regional international law, the first goal historically pursued has been to improve the tools of criminal repression. At European level, it was first the Council of Europe that committed itself to the fight against corruption. As it is known, its main method of action to implement a closer union between the Member States is constituted by the activity of coordination and promotion of international agreements or conventions between States Parties (Conforti, 2018). On the side of the fight against corruption on 27 January 1999 the Criminal Law Convention on Corruption was opened for signature in Strasbourg, which constitutes the second major multilateral instrument adopted in this subject matter (Council of Europe, 1999).

The Convention has two fundamental objectives: the first one to coordinate the definition and prosecution of a wide range of corrupt in the sense of the facts, accepting a broad and inclusive notion of "corruption", and improve international cooperation to prosecute these crimes. The Criminal Law Convention on Corruption is also open to the adoption of third States and its implementation is monitored through mutual evaluation cycles between the acceding countries according to the model of peer review (Rau, 2011). In 1999 the Group of States against corruption (GRECO) - was established within the Council of Europe in order to "improve the ability of its members to fight corruption by monitoring, through a dynamic process of mutual evaluation and pressure as an equal, compliance with the commitments undertaken in this field". GRECO was the main forum for the development of specific indications in the European context, given that all the Member States of the European Union are part of it, contributing to defining certain European minimum standards to identify a common legal and institutional framework in the fight against corruption (Rau, 2011).

GRECO, in particularly manages a system of periodic evaluation of the Member States' strategies which culminates in the preparation of reports and recommendations, which constitute the privileged tool for providing information to the member states.

The European Union has also played an increasingly incisive role in the fight against corruption, following the process of "Europeanisation" of criminal law (European Parliament, 2018). This process started with the Maastricht Treaty and culminated with the provisions of the Treaty of Lisbon. During the different phases of the

ISSN 2411-958X (Print)
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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

European Union's criminal policy, certain acts have been adopted, with a varied legal form, which have been proposed with the objective of harmonization and coordination of national criminal laws in the repression of certain types of crime, such as organized transnational economic crimes (European Parliament, 2018).

In this regard, the Convention on the fight against corruption of public officials of the European Communities and of the Member States of the European Union, approved based on article 3, TEU, in Brussels on 26 May 1997, and entered into force on 28 September 2005. Its fundamental objective is to strengthen judicial cooperation at European level in the fight against corruption, but the Convention introduces for States the obligation to penalize corruption both for domestic officials, including those of other Member States and for the Community officials (Klip, 2016).

The Council Framework Decision 2003/568 / JHA of 22 July 2003 on combating corruption in the private sector, adopted by the Council of the European Union pursuant to Title VI of the Treaty on European Union, as part of the intergovernmental policy for judicial cooperation. The main purpose of the decision is indicated in ensuring that both active and passive corruption in the private sector are considered criminal offenses in all Member States, that even legal persons can be found guilty of such crimes and that the penalties are effective, proportionate and dissuasive (The Council of the European Union, 2003).

Subsequently, the European Union adopted some Community Directives on recycling and self-recycling, in particular the Directive 2005/60 / EC of the European Parliament and of the Council of 26 October 2005, and Directive 2006/70 / EC of the Commission, of August 4, 2006 (Klip, 2016).

5. European Initiatives for Prevention of Administrative Corruption

In the context of European legislation, even if the main concern has been addressed to criminal harmonization and therefore to the repression phase, the need has gradually emerged to introduce preventive control mechanisms and tools. In fact, the limits of criminal protection soon became evident to the European institutions, which could not combat adequately the corruption phenomenon, not only because the latter has become widespread and no longer episodic, but also because it was affected by a metamorphosis criminological of the "qualitative" type of corruption. Instead, a strategy based on administrative prevention was approved and, required the use of a multiplicity of legal techniques and involved coordinated action by all administrative subjects who have responsibility for the integrity and correctness of the administrative action (Klip, 2016).

5.1 The role of the Council of Europe

Some indications for a strengthening of administrative law institutions were formulated by the Council of Europe. In particular, the Criminal Convention of 1999, stipulated under the guidance of the Council of Europe, although mainly concerning

ISSN 2411-958X (Print)
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European Journal of
Interdisciplinary Studies

January - June 2021
Volume 7, Issue 1

criminal aspects, also provided, in art. 20, the creation of a specialized body in terms of administrative prevention, endowed with the independence necessary to carry out its duties (Council of Europe, 1999).

Since 2009, GRECO has drawn up specific reports about the individual member states. Some European member states of GRECO have been subjected to the so-called joint first and second cycle evaluation procedure, which ended with the approval of the Report and its Recommendations during the 43rd assembly, held in Strasbourg from 29 June to 2 July 2009 (Council of Europe, 2009). The report points out that corruption is perceived as a common and widespread phenomenon and affects many sectors of the public administration, that of urban planning, waste disposal, public procurement and health. The recommendations made following this analysis therefore highlighted the lack of a specifically coordinated anti-corruption program, the need to improve specialization and the coordination between the various subjects dealing with the fight against corruption and the importance for the country to implement effective repression, but above all, prevention of corruption measures (Council of Europe, 2009).

With regard to the latter profile, the Recommendations and the Report highlighted the need to provide effective corruption prevention measures, which must cover the different aspects of administrative action, such as the adoption of anti-corruption programs and plans; the development and prescription of coherent ethical standards applicable to all public officials; the development and prescription of clear and binding rules on conflict of interest for all subjects who they perform functions in public administration; and of course the protection for employees who, in good faith, report suspected cases of corruption within the public administration, called the whistle-blowers (Council of Europe, 2009).

5.2 The role of the European Union

The European Union, which was originally created for economic and social purposes, has extended its interference on the policies of the Member States in terms of combating corruption, stimulating national authorities to broaden the range of intervention tools with the introduction of administrative prevention measures. Prevention was considered in a 2003 European Commission Communication, which identified ten principles to improve the fight against corruption: the first one being the provision the control upon of a specific position of managers and administrative managers in scope of decision-making processes; also the establishment of specific competent and visible anti-corruption bodies; full accessibility and meritocracy in the management of public assignments; the adoption of quality management tools and control and supervisory standards; the promotion of administrative transparency institutes; the adoption of codes of conduct; the development of protection systems for those who report the offense; the introduction of clear and transparent rules on party financing and control external financial (Commission of the European Communities, 2013). Tackling

More recently, the EU Commission has intervened with another Communication, in which, after specifying the estimate of the cost of corruption for the EU economy, it envisaged the introduction of a special knowledge instrument, the "EU Anti-Corruption Report" , which aims to monitor and evaluate the actions taken by the Member States in the fight against corruption and to promote greater political commitment (Klip, 2016). The drafting of this document constitutes the Commission's response to the request by the European Parliament and the European Council, within the framework of the Stockholm Program, to develop tools for the periodic disclosure of Member States' efforts, in order to strengthen the will policy of the States themselves to tackle the issue of corruption. The Report is based on data from different sources: i surveillance and evaluation mechanisms of international organizations (OECD, United Nations, Council of Europe); control activities of European bodies such as the European Anti-Fraud Office (OLAF), Eurojust and Europol; Eurobarometer surveys; the advice of the expert group on corruption set up within to the Commission in 2011 and assisted by a network of researchers present in each Member State; research promoted by civil society; the information provided by the Member States.

The Report is prepared by the Commission and published every two years, starting in 2013, in order to promote correct reflection on the results, weaknesses and commitments of all Member States, identifying existing trends and weaknesses to be addressed and stimulating the exchange of best practices. Any relationship anti-corruption, therefore, is intended to examine several cross-cutting issues of particular relevance at European level, as well as more specific issues concerning each Member State (Klip, 2016).

In the EU Corruption Report, presented in February 2014, it is clarified that corruption can take different forms and different levels of severity from country to country and from industry to industry, even if a particular risk is identified in the procurement sector (European Commission, 2014). The Report, after highlighting some data testifying to the relevance of the phenomenon, analyses the changes introduced in the legal systems by recent legislative provisions.

The European Parliament has also taken a stand on the issue of corruption (European Parliament Resolution of 15 September 2011), which adopted a resolution on the European Union's efforts to fight corruption, underlining how the economic and financial recovery of the European area is hampered by corruption. With this resolution, the European Parliament has invited the institutions of the European Union and the Member States to ensure greater transparency of national public systems, by developing codes of conduct or improving those already in force, so as to provide clear rules regarding conflicts of interest, as well as in order to prevent and fight the spread of corruption.

The European Parliament also urged the Council and the Commission to make the network of anti-corruption contact points more efficient, by requesting constant

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Volume 7, Issue 1

information on the network's activities. Overall, these are acts attributable to soft law, which, however, have been able to significantly guide the evolution of national laws. In addition to these general requests, the EU's attention has been paid to some specific sectors, such as that of public contracts, in which the permeability to corrupt practices has been greater. The European Union legislation, based on provisions of the Treaty on the Functioning of the European Union, has introduced many rules to ensure transparency and objectivity in the procurement procedures, precisely to avoid abuses by public officials and collusive practices with businesses. Even in the European 2020 strategy, public procurement plays a fundamental role, as a more efficient use of public resources can allow companies to innovate and participate in international competition.

Conclusion

The relationship between corruption and democracy is a complex one. However, it is clear from the literature review that the two are closely intertwined. When democracy weakens, there is almost always an increase in corruption due to the loss of institutional checks and balances, fewer independent courts and frequent restrictions on the space for civil society actions and citizens' political rights. Likewise, when corruption is widespread, newly democratic states can hardly consolidate.

Democracy being a system built on effective horizontal accountability need the independency the three constituent powers of the state, the legislative, the executive and the judiciary that must constantly check each-other. Research has concluded that corruption can be fought by strengthening the judiciary by giving them a wide spectrum of effective laws, not just nationally but also regionally and internationally. Young democratic states need the help of international organizations in understanding, drafting and approving of legislation against corruption. In weak democracies the higher the assurance of the independence of the judicial system, the higher will be the provision of impartial application of the law, which leads to the reduction of corruption. In regard to studying the combat upon corruption within the international law we may see that all that has been said so far implies that rules for the fulfilment of international and European law as well as procedures to guarantee their effectiveness, are adopted within States.

The European Union has highlighted the need to provide effective corruption prevention measures, which must cover the different aspects of administrative action, such as the adoption of anti-corruption programs and plans; the development and prescription of coherent ethical standards applicable to all public officials; the development and prescription of clear and binding rules on conflict of interest for all subjects who they perform functions in public administration. The states that require to adhere to these international organizations are obliged to approve the conventions, treaties and agreement in order to harmonize their legislation in accordance with the

international law that requires to modify domestic law according to common criminal legislation principles that they have agreed previously before.

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